Twentieth Anniversary Conclave on the Education of Lawyers in Virginia

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The Twentieth Anniversary Conclave included the presentation of the inaugural William R. Rakes Leadership in Education Award established by the Section on the Education of Lawyers. Presenting the award to Mr. Rakes were Education Section Chair Professor A. Benjamin Spencer (center), of Washington and Lee University; W. Taylor Reveley III, Conclave 2012 chair and president of the College of William and Mary (right); and G. Michael Pace Jr., managing partner of Gentry Locke Rakes and Moore LLP, which underwrote the reception and the award that Mr. Rakes is holding.
Find people worthy of the name on the door. That was my mentor's advice. But the landscape has changed over the last few years. Profits are harder earned and have to be more wisely spent. So I'm getting help to ensure we're always healthy enough to attract and retain top talent. After all, it might as well be my name on the door.

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Natalia Kabbe, J.D.
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Educating Lawyers in Virginia in the 21st Century

by Clarence M. Dunnaville, Jr. Richmond

Chief Justice Cynthia D. Kinser stated at the recent conclave on legal education that:

“By contributing our respective insights and experiences, together we can ensure that the legal profession in Virginia, through education, is always equipped with the tools necessary to ensure that every person who seeks legal representation in this commonwealth receives quality representation.

“We together share a responsibility for the education of attorneys. Together we are more knowledgeable and skilled in how to educate attorneys than we would be separately. And together, we can improve the legal profession that serves all the citizens of this commonwealth.”

It is the responsibility of all members of the bar to improve the legal profession and to ensure that Virginia lawyers are competent and ethical, and serve the public.

I have practiced law in Virginia, New York and New Jersey, for more than fifty years and have been admitted pro hac vice in more jurisdictions than I recall. I have worked as a staff attorney for a federal agency, as an assistant United States attorney, as a senior attorney for one of the nation’s major corporations, as an attorney with a small law firm, and as a single practitioner. I have practiced nearly every type of law from antitrust to workers compensation. I have briefed and argued appeals in many federal and state appellate courts throughout the nation, and tried many cases in federal and state courts in Virginia and elsewhere. I also have two sons who graduated from Virginia law schools in the not too distant past, so I believe I am aware how law is currently being imparted to our prospective lawyers. I, therefore, feel qualified to add my thoughts to the dialogue on educating lawyers in Virginia.

Early this past spring, I ran into a neighbor at the supermarket. He told me that his daughter was planning to get married to an outstanding young man who was graduating from law school, but that he was very worried for his daughter. He said the young man owed more than $150,000, and had no job offer. I am aware that the predicament of that young man is typical for recent graduates, rather than the exception. The cost of the bar examination, including the cram course, living expenses, bar exam fees and transportation to Roanoke would be in excess of another $7,000.

The bar needs to re-evaluate how we are developing lawyers, and at what cost, and to consider how we can do better. The profession is governed by the American Bar Association, the Virginia legislature and the Supreme Court of Virginia. Therefore, we need to carefully examine the changes that can be made within the requirements of those regulatory organizations to better and more efficiently develop lawyers at substantially less cost and to serve the public need.

I have questioned whether the bar examination is essential to producing competent attorneys. Some states do not require that graduates of their state-approved law schools sit for a bar examination. If it were eliminated in Virginia there would be an immediate saving of at least $7,000 for each applicant.

Only about two-thirds to perhaps three-fourths of the students pass the July exam. So a minimum of 25 percent of the deeply indebted students are rejected by our bar examiners each July. Only about half of the next February applicants pass. Many ethically qualified law school graduates, who have invested thousands of dollars and are certified by our law schools as competent, are never admitted.

Our bar examiners, in good faith, believe they are protecting the public. But I can say without equivocation that nothing I crammed for and was tested on in any bar examination was significant to me or any clients in all of the years I have practiced. I have never heard a lawyer say otherwise.

The Virginia State Bar should mandate that law schools develop entry-level, ready-to-practice lawyers, based on standards set by the ABA and the state bar. The bar examiners should, of course, certify candidates to the Supreme Court for admission to the bar. This includes supervising the multi-state professional responsibility exam and carefully examining the applicants’ character. The law schools should be responsible for ensuring the competency of lawyers, not the bar examiners.

The bar examiners and many members of the profession honestly feel that it is the role of the bar exam to protect the public. I do not agree and do not think the bar exam is capable of fulfilling that responsibility. It is impossible to test on the many areas that would be necessary to begin to meet this broad objective. Cramming for the test — using the profiteers that thrive on our hapless applicants — is the stressful unpleasant task of every law school graduate. Twenty-five percent will fail. We can do better. Let’s get rid of the bar exam.

Law schools and the state bar should assure that all law graduates understand law office management and the sanctity of trust accounts, and how they are managed. It is also essential that graduates have training in client development and the economics of legal practice. Public service should be emphasized throughout law school in every course. I do not feel that a course load of fifteen hours per week is sufficient to cover all needed subjects. I realize the tremendous amount of reading required under the Socratic Method, and believe that law schools are committed to this type of teaching for the near future. For that reason, I would add required interactive courses. Student advance preparation would be required for the courses. There would be no examinations. They would

Educating Lawyers continued on page 62
IN 2011, MY PREDECESSOR, George Warren Shanks, appointed the Payee Notification Task Force. It consisted of eighteen members reflecting past and present leadership of the Virginia State Bar, Virginia Bar Association, Virginia Trial Lawyers Association, Virginia Association of Defense Attorneys, Virginia Women Attorneys Association, and individuals with legislative experience and experience in the insurance industry. Its mission was to tackle the thorny issue of payee notification legislation.

Since 2006, the debate regarding payee notification has been contentious. In council meetings, advocates have championed this protection as the surest safeguard against lawyer theft of client settlement payments. Opponents have countered by arguing that the measure unfairly singled out personal injury practitioners regarding a risk that is present in any settlement context. More importantly, opponents decried the authorization of an insurance company’s direct communications with a represented plaintiff.

Over time, ardent opponents, like me, became reserved supporters of the measure. In 2007, council overwhelmingly defeated a payee notification measure. In 2009, however, confronted by the sobering news of the multimillion dollar defalcation by attorney Stephen Conrad, council approved it in a close vote and moved forward with payee notification legislation. On a separate track, the VTLA embraced the need for payee notification protection, but offered competing legislation that broadened its scope to encompass payments by insurers in all liability matters, not simply personal injury cases.

At the behest of then Chief Justice Leroy R. Hassell Sr., the VSB and the VTLA withdrew its proposed legislation and awaited further instruction from the Court. At the Court’s direction, the task force was created to reconcile the differences between the competing payee notification measures sponsored by the VSB and the VTLA, and to provide such further recommendations as deemed appropriate. To that end, the task force has recently submitted a report to the Supreme Court providing its unanimous recommendations.

In response to its primary charge, the task force has recommended that insurance companies be required to notify claimants or judgment creditors that the insurer has issued a payment of $5,000 or more in settlement of a liability claim or judgment to the attorney or other representative of the claimant or judgment creditor. Council will address and vote upon this recommendation at its October 19, 2012, meeting. If approved, the proposed statute will be returned to the Supreme Court for consideration, with the hope of presenting this matter to the Virginia General Assembly for consideration in January 2013.

As mentioned above, payee notification has received considerable comment during the past six years that due to space limitations cannot be repeated in this column. However, the proposed statute can be accessed for your review at the VSB’s website at http://www.vsb.org/site/news/item/payee-notification-2012-06. The bar welcomes your comments.

The task force did not limit its consideration to payee notification alone. Embracing a multi-faceted approach to the public protection of clients against lawyer defalcations, the task force made recommendations regarding the Clients’ Protection Fund (CPF). The CPF was established in 1997 to compensate persons who have suffered financial loss caused by the dishonest conduct of a Virginia lawyer. Currently, the loss to be paid to any one client petitioner cannot exceed $50,000. Reimbursement of losses attributable to any one lawyer or law firm is limited to 10 percent of the CPF’s net worth.

The task force has recommended that the per claim maximum for the CPF be increased from $50,000 to $100,000 per client, and that the maximum payments for each defalcating attorney be increased from 10 percent to 15 percent of the net worth of the CPF. Additionally, the task force has recommended that the CPF undertake an actuarial study of the fiscal effect of its recommendation.

An actuarial study of the CPF by the bar would not be its first. In a 2005 study, actuaries determined that the CPF needed a corpus of approximately $9 million to provide earnings from interest sufficient to satisfy projected future claims against the CPF. In

Client Protection continued on page 63
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The Virginia State Bar suffered three significant losses in recent months, with the deaths of former presidents Roderick B. Mathews, Robert H. Patterson Jr., and William B. Poff. The three were not only leaders of our State Bar, they were giants of the legal profession in the state, the country, and the world.

Roderick Bell Mathews, who was bar president in 1987–88, died April 27, 2012, at his home in Richmond.

Rod Mathews was a tireless advocate for the rule of law. The Richmond Times-Dispatch reported that in 2006 he helped launch the World Justice Project, whose mission is advancing the rule of law throughout the world. He was treasurer of the project when he died of cancer. In tribute, the World Justice Project Opportunity Fund, which provides seed money for on-the-ground programs generated in regional and global meetings, will be renamed in his honor.

Robert Grey, former ABA president and Richmond lawyer, eulogized Rod with this message: “We all know Rod Mathews as a former President of the VSB and the longtime Virginia State Delegate to the ABA. But what you may not know is that Rod Mathews was a bar leader with worldwide experiences. He studied, visited and valued all societies, cultures and the rule of law here and abroad. To that end, Rod was a founding board member and officer of the World Justice Project, an organization formed to aid all countries in improving civil society through a multi-disciplined effort. Rod thought deeply about the rule of law and was committed to making a difference. We will truly miss him.”

Rod’s interest in rule of law programs continued up until his death. He was instrumental in orchestrating rule of law programs held through the generous support of the Virginia Law Foundation at the Holocaust Museum in Richmond.

Rod was born in Lawton, Oklahoma, grew up in Charleston, West Virginia, and moved to Richmond in 1957. He graduated from Douglas S. Freeman High School and in 1963 he earned a bachelor’s degree in economics and political science from Hampden-Sydney College. He earned a law degree from the University of Richmond, where he was on the law review. He also graduated from the executive program of the University of Michigan School of Business.

Rod began practicing law with the firm now known as Christian & Barton LLP. He left the firm after 22 years and became senior vice president of Blue Cross and Blue Shield of Virginia, which he was instrumental in turning into a mutual insurance and publicly traded company. He also served as Virginia’s delegate to the American Bar Association’s policy-making House of Delegates for 23 years. Rod was also very active in the Virginia Law Foundation, serving on its board of directors from 2004 to 2010.

After retiring, Rod worked as an arbitrator in health law cases. He was a certified mediator under the rules of the Supreme Court of Virginia.

Survivors include his wife, Karia Kurbjun Mathews; three sons, Roderick B. Mathews Jr. of Columbia, South Carolina, Andrew Crittenden Mathews of Copenhagen, Denmark, and Malcolm Timothy Mathews of Anacortes, Washington; a brother, Frank Bell Mathews of Charleston, West Virginia; a sister, Judith Schulze of Lewes, Delaware; and five grandchildren.

Robert H. Patterson Jr., who was president in 1985–86, died July 12, 2012, at VCU Medical Center. He was 85 and had been in declining health for more than a year. Mr. Patterson grew up on Richmond’s Church Hill, the son of a railroad man and a nurse.

The Times-Dispatch noted that Mr. Patterson was chairman of McGuireWoods from 1979 until 1989. He spent his career with McGuireWoods, joining one of its antecedents as an associate in 1952. McGuireWoods lauded Mr. Patterson’s “commanding presence, his ability to marshal resources, his capacity to inspire, his knack for getting people to lay aside their personal concerns and unite to accomplish a common goal” as being

Giants of the Bar continued on page 66
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Candidates Seek President-elect Endorsement

Statement of Candidacy of Raymond B. Benzinger

It is sometimes difficult to set down the goals of a candidate for president-elect of the Virginia State Bar because, if elected, I would assume the responsibility in June 2014. Many things could happen before then and the president must react to immediate concerns as they arise. Examples are the attempted hijack of our reserve fund or the legislature’s failure to fund judicial vacancies.

However, my immediate and long-term goals are to modernize the bar’s office procedures and make plans for converting to paperless record-keeping. Principal among my goals is to democratize the procedure for selecting members of the executive committee. Currently, the procedure has the features of a buddy system rather than an open selection process.

Also, the powers of the executive committee need to be redefined and it may take amendments to the bylaws to accomplish that end. Right now the committee sometimes takes on the responsibility of making decisions in the absence of the VSB Council in session on matters that could have waited until the next council session. Council, after all, is the legislative and deliberative body of the bar. The decision to rebate bar dues, though undoubtedly happily received by bar members, could have waited until an opportunity to debate the issue in council. There have been several other similar actions by the executive committee.

At 74 years old, I am winding down this law practice of over forty years and hope to be the first full-time president of the Virginia State Bar.

Benzinger is a graduate of Georgetown University Law School and also has an LLM from Georgetown. He is a member of the VSB Council. He has been the recipient of honors for his public service and service to the bar, and has been awarded the James Keith Public Service Award from the Fairfax County Bar Association. He is married and has three children and seven grandchildren.

Statement of Candidacy of Kevin E. Martingayle

Most Virginia lawyers recall vividly the hardships of a statewide freeze on filling vacant judicial positions, and a budget proposal to take millions of dollars from Virginia State Bar funds. I remember attending the VSB annual meeting banquet in June, 2010, and listening to the newly-installed president at that time, Irving M. Blank, explain that he did not have any particular agenda. He was planning to stay the course and keep the VSB on track. President Blank could not have foreseen the crises that erupted during his tenure as president. I worked alongside Irv and many other members of the bar to protect the judicial branch and our profession. Fortunately, we prevailed, for now. But we have much to protect, and room for improvement.

The lawyer elected president needs to be ready, willing, and able to handle crises and emergencies. With the benefit of having participated in the judicial vacancy and budget battles, and with two decades of experience handling a wide variety of litigation and appeals, I have the background, energy, and skills necessary to represent the VSB in addressing any challenges that may come our way.

Other goals and priorities I have for the VSB include: advocating for increased funding for judges, court clerks and VSB staff; increasing communication and strengthening ties between the bar and the court clerks’ offices; seeking new ways to prevent attorney disciplinary violations before they occur; and continuing the enhancement of the VSB’s assistance to and communications with the Supreme Court of Virginia.

Martingayle is a graduate of Hampden-Sydney College with a BS in Economics. His law degree is from the University of Virginia Law School. He is an owner and partner of Bischoff Martingayle PC. He is chair of the Better Annual Meeting Committee and is on the Executive, Budget and Finance, and Legal Ethics committees. He is married to Elisabeth Martingayle and has three children.
When it comes time to appeal or to resist an appeal, call Steve Emmert at (757) 965-5021.

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VIRGINIA STATE BAR
AND VIRGINIA CLE
The Section on the Education of Lawyers in Virginia has established an award to honor William R. Rakes, of Gentry Locke Rakes & Moore LLP, for his longstanding and dedicated efforts in the field of legal education, both in Virginia and nationally. The inaugural award was presented to Mr. Rakes in conjunction with the 20th Anniversary Conclave on the Education of Lawyers in Virginia sponsored by the Virginia State Bar’s Section on the Education of Lawyers on April 22-23, 2012.

Criteria
This award recognizes an individual from the bench, the practicing bar, or the academy who has:

1. demonstrated exceptional leadership and vision in developing and implementing innovative concepts to improve and enhance the state of legal education, and in enhancing relationships and professionalism among members of the academy, the bench, and the bar within the legal profession in Virginia.

2. made a significant contribution (a) to improving the state of legal education in Virginia, both in law school and throughout a lawyer’s career; and (b) to enhancing communication, cooperation, and meaningful collaboration among the three constituencies of the legal profession.

Nomination Process
Nominations will be invited annually by the board of governors of the Section on the Education of Lawyers, although the award may only be made from time to time at the discretion of the selection committee appointed by the section’s board of governors. The selection committee will include five members: at least three members of the Section on the Education of Lawyers, with one each from the bench, the practicing bar, and the academy, including the chair of the section; and at least one former award winner.

When a nominee is selected, the award will be presented at a special event to include a reception for the honoree and his/her family, friends and colleagues; past award recipients; and special guests. The law firm of Gentry Locke Rakes & Moore LLP has agreed to underwrite the award and the special event to honor award recipients on an ongoing basis. Please submit the nomination form below, together with a letter describing specifically the manner in which your nominee meets the criteria established for the award. Nominations should be addressed to Professor A. Benjamin Spencer, chair, Section on the Education of Lawyers, and submitted with your nomination letter to the Virginia State Bar: Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, VA 23219. Nominations must be received no later than December 3, 2012.

For questions about the nomination process, please contact Elizabeth L. Keller, assistant executive director for bar services: keller@vsb.org (804) 775-0516.

WILLIAM R. RAKES LEADERSHIP IN EDUCATION AWARD

Please complete this form and return it with your nomination letter to the Virginia State Bar: Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, VA 23219. Nominations must be received no later than December 3, 2012.

Name of Nominee: ____________________________________________
Profession: __________________________________________________
Employer/Affiliation (Law Firm, Law School, Court): ________________
Address of Nominee: ___________________________________________
City: ________________________________ State: ________________ Zip: ________________
Name of Nominator: __________________________ Telephone: ___________
Email: _______________________________________________________
Signature: ___________________________________________________
I am very pleased to welcome you to this issue of Virginia Lawyer dedicated to the recent 20th Anniversary Conclave on the Education of Lawyers in Virginia.

The Section on the Education of Lawyers in Virginia was the product of the first such conclave twenty years ago. Since then its members have been dedicated to thinking about ways to improve the legal training of aspiring and practicing lawyers in the commonwealth. With the 20th anniversary conclave, we have taken that commitment to a new level, dedicating two days of discussion among the bench, bar, and the academy to formulate concrete ways that we can enhance legal education to meet the challenges of the 21st century.

The material you will find in these pages reflects a summary of our discussion as well as some of the ideas that have emerged from the conclave. It is our hope that going forward the section will be able to spearhead efforts to make many of these ideas a reality, improving the training of lawyers throughout their careers.

It is also our hope that the broader legal community will partner with us in this effort, as it will take a unified commitment and hard work from everyone to make the changes necessary to modernize Virginia’s legal education. I am confident that members of the legal profession in the commonwealth will rise to that challenge to make Virginia one of the guiding lights in the ongoing discussion surrounding legal education reform.

Our section is the first of its kind in the country. We provide a vehicle for exchanging ideas about legal education while we continue to foster cooperation among our eight law schools, the bench, and the bar. The section publishes a quarterly newsletter, Education & Practice, conducts a Professionalism for Law Students course annually in each of the Virginia law schools, and has cosponsored innovative CLE programs in collaboration with the Virginia law schools. For more information on the section, go to http://www.vsb.org/site/sections/educationoflawyers. To read transcripts of the conclave, go to http://www.vsb.org/site/members/20th-anniversary-conclave.

The Twentieth Anniversary Conclave on the Education of Lawyers in Virginia was financially assisted by the Virginia Law Foundation.

A. Benjamin Spencer, chair of the VSB Section on the Education of Lawyers, is a professor of law at Washington and Lee University. He recently was appointed director of the Frances Lewis Law Center, the independently funded faculty research and support arm of W&L Law. As director, he oversees the center’s agenda, which includes sponsoring symposia, enhancing the intellectual life at the school of law, and providing support to faculty in their scholarly endeavors. He has authored two books in the area of civil procedure, Acing Civil Procedure and Civil Procedure: A Contemporary Approach. Prior to joining the Washington and Lee faculty, Professor Spencer was an associate professor of law at the University of Richmond School of Law. He also formerly worked as an associate in the law firm of Shearman & Sterling and as a law clerk to Judge Judith W. Rogers of the U.S. Court of Appeals for the D.C. Circuit.
Twenty years ago the Virginia State Bar held a conclave on legal education at Wintergreen in Central Virginia. The conclave was composed of practitioners, judges, and legal academics, and the theme was “Sharing the Responsibility for Legal Education Among the Law Schools, the Bar and the Bench.”

The Wintergreen conclave took place at an interesting time. Judge Harry T. Edwards, of the U.S. Circuit Court of Appeals for the District of Columbia, had published a provocative article earlier that year titled “The Growing Disjunction Between Legal Education and the Legal Profession.” He lamented the trend of law professors distancing themselves from the practice of law and directing their scholarship more toward the theoretical and interdisciplinary, and less toward the profession.

A few months after the Wintergreen conclave, the MacCrate Report was issued by the Section of Legal Education and Admissions to the Bar of the American Bar Association. Its emphasis on the teaching of skills and values provided the agenda for conclaves held around the country over the next several years. The Virginia conclave was promoted by the American Bar Association as the model for conclaves held in more than twenty-five states.

A consensus statement issued following the conclave concluded that the principal purpose of the conclave was to create opportunities for the practicing bar, the judiciary, and the legal academy to discuss and reflect on the broad subject of legal education. The objective was to identify areas that could be improved, and to encourage each constituency to offer its unique perspective in the ongoing work of the others.

Education in the law schools, admission to the bar, and continuing education were the main topics then as they remain today. Participants in 1992 concluded that the first year of law school was very successful, but the second or third years were progressively less successful. They also noted that communication skills, both oral and written, should be emphasized more to address the perception that many law graduates were deficient in this critical area. Admission issues, including the bar exam, were discussed and participants said that more thought should be given to the purpose of the bar examination and whether there are feasible alternate methods of assuring that persons licensed by the commonwealth are at least minimally competent. Conclave attendees were concerned that commitment to lawyer education on the part of law firms and practitioners has been impaired by a more competitive practice environment and increases in the costs of practicing law. There was broad concern that the profession’s emphasis on billable hours and profits has diminished attention to hands-on training and development of new lawyers. The conclave recognized that mentoring had historically been and continues to be a very important ingredient in the development of new lawyers and urged senior members of the bar to make themselves available for advice and consultation to less experienced lawyers.

Changes During the Last Twenty Years
Since the conclave in 1992, we have seen important changes in the practice of law and in the law schools, which provided challenging issues for discussion at the 20th Anniversary Conclave to which this issue of Virginia Lawyer is dedicated. Many of the changes have been for the better but some have not.
Continuing Dialogue
A permanent section of legal education of the Virginia State Bar emerged from the recommendations which came out of the Wintergreen conclave. The section is made up of academics, judges, and practitioners, and provides an ongoing forum for discussions and projects related to legal education. Its Education and Practice newsletter provides an opportunity for all three branches of the profession to stay abreast of important developments.

Diversity
We have achieved significant advances in diversity during the last twenty years. Minority enrollment in accredited law schools in 1992 was 19,410. In April 2012, it was 36,859, a 90 percent increase. Full-time faculty who are minorities increased during the twenty-year period from 649 to 1,417, a 118 percent increase, while minority deans and administrators increased from 192 to 876, a 356 percent increase. We have also increased the number of women in law school leadership positions as deans or in other administrative posts. In 1992, there were 765 in that category and in 2012 there are 2,436—a 218 percent increase.

Clinical and Skills Training
We have seen significant developments in the availability of clinical and skills offerings in law schools following the MacCrate Report and additions on this subject to the Standards for Accrediting Law Schools. While many students participate in such programs, many do not. There is pressure from some quarters for law schools to turn out graduates who are “practice ready.” The area of clinical education will undoubtedly evolve and will become a larger part of the programs of many law schools. But one size doesn’t fit all. Law schools will determine the markets they serve and determine the extent to which clinical training will be beneficial to their students. In addition to practicing lawyers and judges teaching part-time as adjuncts, many law schools are hiring a substantial number of experienced lawyers as full-time faculty.

While the emphasis on teaching legal writing has increased, there is still the perception (or reality) that not enough is being done.

Law School Economics
There are currently 200 ABA-accredited law schools in the United States. Twenty years ago there were 176. That is not a large increase over a twenty-year span. The enrollment in 1992 was 129,580 and in the spring of 2012 it was 146,292, a 13 percent increase.

Full-time faculty in accredited law schools in 1992 was 5,635, and in 2012 it was 8,264, a 47 percent increase. Part-time faculty during that period increased from 3,994 to 8,408 for a 111 percent increase. Deans and administrators increased 178 percent, from 1,406 to 3,903.

The increase in law schools, students, and faculty/staff is not that surprising over a twenty-year period. However, the cost of law school and the debt students incur is alarming and is not sustainable. In 1992, the average annual tuition in public law schools was $4,015. In 2012, it is $22,115, a 451 percent increase. In private law schools, during the same period of time, tuition increased 185 percent from $13,730 to $39,184.

While scholarships available at accredited law schools have topped $1 billion a year, the way that money is distributed to students is trending away from need-based to merit-based. During the five-year period from 2005-2010, the number of need-based scholarships decreased from 20,781 to 17,610. During the same time, the number of students receiving non-need-based or merit scholarships increased from 31,265 to 39,845. The dollar amount of scholarships for need-based recipients grew $23 million, from $120 million to $143 million, while the non-need-based grew $231 million, from $291 million to $522 million.

A portion of the tuition charged at many, if not most, law schools goes toward scholarships for top-ranked applicants and students. Critics say the top of the class is being educated on the back of lower-ranked students. Those critics assert that this behavior is stimulated by the schools’ quest for higher rankings of which student test scores and grades play a significant role.

As law school costs have increased, the availability of federally guaranteed loans has increased as well. A large number of law school graduates begin practice with law school debt in the range of $100,000 to $250,000, and many have undergraduate debt as well. This puts enormous pressure on students to begin practice with professional success and stability.
pressure on graduates to find jobs that will permit repayment of those loans. It puts pressure on employers as well, and many jobs will not support the repayment of such debt.

The availability of student loans has permitted law schools the luxury of balancing their budgets as the debt load of students escalates.

The Current Jobs Market
The student debt problem is exacerbated by the current legal jobs market. Law schools are graduating about 45,000 people per year and there are legal jobs available for only about 25,000. Law graduates claim they have been led into debt by the false promises of employment and high salaries. The economy has had an enormous impact on law firms and the demand for newly-minted lawyers has substantially weakened. While applications to law school have decreased in the last few years, the number of admittees has not been significantly reduced.

Employers are complaining that law graduates have not been trained to practice law and clients will not pay for new lawyers to learn at their expense. The litany of complaints about law schools and the costs of a legal education would suggest that structural changes should be considered.

The Need for a Lower-cost Model
Personnel costs are the single greatest item in a law school’s budget. The current model is for law professors to divide their efforts (about 50/50) between legal research/scholarship and teaching. Some have suggested that not every law school needs a faculty doing both research and teaching; instead, many law schools could reduce costs (and faculty by as much as half) by focusing on turning out lawyers rather than scholarship. The question is whether there is any need for all law professors to turn out law review articles.

Research-oriented law schools could remain as they are and practice-oriented law schools could be staffed mainly by experienced lawyers who are focused on preparing their students for the practice of law. The profession needs a better balance between teaching and scholarship, and all schools doing both is not sensible from a cost standpoint.

Impediments to Change
The main impediments to change in law schools are the traditions of tenured faculty governance, the ABA Accreditation Standards, and the U.S. News & World Report rankings.

The power to make meaningful change in a law school resides in the tenured faculty with leadership from the dean. Change is slow because a consensus is necessary. It takes a strong dean and a willing faculty to effect meaningful change. Washington and Lee should be commended for the significant restructuring of its third-year program. This kind of innovation is rare but was done within the existing ABA Standards.

Accredited law schools are required to offer an education that is “consistent with sound legal education principles,” the prime purpose of which is to “maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.” (See Standard 101). Unfortunately, some standards have little direct relation to the overriding principle quoted above. And it is without question that some standards add to the costs imposed on the students. The standards require, for example, that most instruction be offered by full-time faculty and that the dean be a tenured member of the faculty. These requirements significantly reduce the ability of a school to rely heavily on experienced practitioners and judges who may be better able to teach courses in their areas of expertise. The standards also allow only a small part of a legal education to be provided by distance-learning technologies. But if a school can demonstrate that it can deliver a sound legal education substantially through distant faculty members, it is hard to understand why such a program would be prohibited by the standards.

A further impediment to meaningful change is the annual rankings published by U.S. News & World Report. Admission rates, LSAT scores, grade point averages, student/faculty ratios, and employment data all play a role in the rankings. The U.S. News rankings apply the same criteria to all law schools, which promotes the one-size-fits-all concept. The U.S. News rankings during the last several years has had a great impact on admissions, scholarship, increases in numbers of faculty, and other important factors.
There must be a better way. Schools should define their markets and be judged on their success in training lawyers for that market. Practice-oriented schools will not mirror research-oriented schools. Each will focus their resources on what they do best.

**To Be Continued**

Legal education in the United States is the envy of the world. We have a great profession and do an enormous amount of good for society. However, the law schools, practicing bar, and judiciary all have important issues to address and resolve. I have believed for many years that it is important for the three branches of our profession to work together on legal education issues affecting the profession. Some of those issues have been considered at legal education conclaves and progress has been made. Let us continue the dialogue for the improvement of the profession.

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**Special Presentations During Conclave 2012**

The Conclave Planning Committee arranged to have three special speakers participate in the 20th Anniversary Conclave on Legal Education.

On Sunday Evening, April 22, David Yellen, dean at Loyola University Chicago School of Law, and William D. Henderson, professor at the Indiana University School of Law in Bloomington, engaged in a spirited debate. Both have lectured and written extensively on legal education and the changing economics and structure of the legal profession. Their presentation was titled “Is there a Crisis in Legal Education?” They focused their point-counterpoint discussion on the following issues:

- Are there too many law schools and law students?
- Why is law school so expensive?
- How good a job are we doing at educating students for what they need in the practice of law; are lawyers doing a good enough job communicating what they want in training for law students?
- Are there dramatic changes coming in legal education?

John E. Montgomery, dean-emeritus and director of the Center for Professionalism, of the University of South Carolina School of Law, was the featured luncheon speaker on Monday, April 23. Montgomery focused his remarks on the increasing importance of mentoring in the legal profession, especially in the face of waning professionalism, civility and public respect for the legal profession.

Complete transcripts of these presentations may be found on the 20th Anniversary Conclave webpage of the Virginia State Bar’s website.
How Are Law Schools Addressing Major Changes in the Practice of Law and in Accrediting Standards for Legal Education?

by Margaret Ivey Bacigal
Conclave 2012 Reporter

W. Taylor Reveley III, president of the College of William and Mary, introduced the first panel discussion on how law schools are addressing major changes in legal practice and accrediting standards for legal education. He framed the discussion by asking four questions:

What have been the major changes in these two aspects of the legal profession in the last generation? To what extent are law schools responding creatively and effectively? Should law schools do more to prepare their graduates to practice law effectively from “day one” and to use their legal training productively in other careers? Noting there are no single answers to these questions, he observed law schools are facing great changes and enormous challenges. He further noted that the education of lawyers is not only the responsibility of law schools but also legal employers, the organized bar, and the courts.

Panelists were Jeffrey A. Brauch, dean of Regent Law School; Davison M. Douglas, dean of William and Mary Law School; Tracy A. Giles, a member of the ABA Section of Legal Education; David C. Landin, of Hunton & Williams; and A. Benjamin Spencer, director of the Frances Lewis Law Center at the Washington and Lee University School of Law.

Presentations
Dean Brauch provided an overview of what law schools are doing to prepare their graduates, and the challenges for law schools. He had three main points:

Legal education has never been better. Although the first year of law school continues to focus on critical thinking and legal analysis using the traditional doctrinal approach, the second and third years of law school incorporate more skills training than in the past. Reasons for this shift include ABA accreditation standards; the bar’s need for practice-ready lawyers, particularly as clients are less willing to pay for on-the-job training; and feedback from law graduates.

Teaching methodologies have also been adapted to respond to different learning styles. There is more interaction among professors and students, greater use of multi-media, expanded use of preliminary assessments rather than a single exam, and an increase in academic support programs.

Skills training addresses a wide range of practice skills and needs to be preserved. Client counseling, contract drafting, and law practice management are now taught along with traditional negotiation and trial and appellate advocacy courses. Practicums on specific topics allow small groups of students to work with a practitioner to explore issues while developing skills and professional judgment.

Enhanced legal education is expensive and financially sustainable models need to be explored. Over the years, tuition costs have gone up significantly. In the past, readily available student loans helped cover these costs. Law school enrollments went up and new law schools opened. Now, law schools and the profession are facing a period of austerity. High tuition costs are
no longer sustainable. Students are confronted with significant debt loads at a time when there are fewer traditional first-year jobs and salaries are down and likely to remain so. Despite the increased numbers of graduates, bar pass rates largely remain unchanged. The convergence of these factors has led to a significant drop in law school applications nationwide. Fewer applicants mean law schools will either need to reduce class size, thereby reducing tuition dollars, or dig deeper into applicant pools, potentially affecting the quality of the classroom and the profession. To address these issues, law schools may need to lower tuition, have faculty teach more courses leaving less time for scholarship, shorten programs of study, and utilize more adjunct professors and distance learning. Many of these solutions raise accreditation concerns.

Dean Douglas said law schools should be doing more to prepare their graduates to practice law effectively from day one. He offered the following points:

Given the changes in the legal profession, the legal training provided by legal employers is more limited; therefore, law schools are increasingly seeking to fill this gap.

Using a toolbox analogy, Mr. Douglas identified the following tools historically needed by law students: most important, critical analytical thinking skills; knowledge of basic legal doctrines, regulations, and the statutory system; methods of legal research; analytical and persuasive legal writing (today’s students have weaker writing skills than in past); analytical and persuasive oral expression; and elements of professionalism.

New tools needed by law students include: the ability to manage multiple, complex legal problems using a team approach; expanded practical skill sets; a greater degree of business and financial sophistication; the ability to work effectively with others; and an understanding of the business side of practice.

Although legal education today is more effective and diverse, the challenge is to manage costs.
Mr. Landin noted that potential law applicants want good information to help them decide whether to attend law school and where. law students want a good legal education at a reasonable cost. Young lawyers want fulfilling careers. All are eager to learn about professionalism and are looking to law schools and the bar for guidance. While helpful programs exist, Mr. Giles challenged the group to think of other ways to reach out, including the expanded use of mentoring programs.

Mr. Landin, focused on the changes in law practice and questioned how these will impact legal education. Highlights from his remarks follow.

There has been a real economic downturn in the legal profession and there is no expectation of a reversion to the old ways of practice.

The relationship between law firms and law students has changed. First-year associate programs have largely been eliminated and second-year programs are more limited, thereby reducing legal training opportunities. Fewer employment offers are being made by firms. More contract positions are being utilized. Starting salaries are lower. Law students are changing. As discussed, they have significant student debt and are facing the elimination of jobs as well as lower-paying jobs. Today’s students also frequently lack life experiences that require them to interact with others in a variety of settings.

The relationship between law firms and associates has changed. Performance reviews are more stringent. There are fewer partnership opportunities and the partnership track takes longer. Less mentoring is occurring.

Relationships with clients are changing. Clients will not pay for summer associates’ work, and in many cases, for new associates’ work. Increasingly, clients try to avoid using lawyers. When advice is sought, it is treated as commodity work and subjected to budgets and cost controls.

Mr. Landin said these changes raise important issues, which he framed in the form of the following questions:

Why do law schools mandate three years for a degree?

Why do law schools fail to offer a sufficient number of sections of courses important to being a good lawyer? (In asking the question, he recognized more courses are now being offered than in the past.)

Why do law schools offer too few practice courses?

Where is judgment and discretion taught?

This question was posed to both law schools and practitioners.

Professor Spencer addressed the role accreditation and rankings play in legal education. As historical background, he noted that in 1921 the ABA rejected recommendations supporting continued diversity among law schools which served different populations and practice areas. Instead, the ABA moved to a unitary set of standards applicable to all law schools which included the requirements for a three-year legal education, a library with a certain number of volumes, and a full-time faculty.

Like the ABA, U.S. News and World Report (U.S. News) also applies a unitary system to rank law schools, unlike its practice with undergraduate institutions. As a result, legal education has focused on input rather than output or what type of student the school is producing. This focus limits experimentation, including the expansion of experiential learning. Highlighted below are some of the obstacles Mr. Spencer identified:

Traditional law school hiring practices are not in sync with the staffing needed to deliver experiential education. Faculty is traditionally hired based on academic credentials and scholarly productivity. Asking these faculty members to teach practice, experience-based courses becomes a challenge; therefore, if law schools are going to continue their commitment to experiential education, they are going to need to rely more heavily on adjuncts. This circles back around to U.S. News’s rankings. A major factor in the rankings is a school’s reputation among peers and practitioners, which is driven by scholarly productivity. If schools shift away from hiring faculty who are productive scholars, they risk lower rankings.

Who cares? Students, alumni, and employers care. Consequently, if employers are serious about experiential education and law schools producing
more practice-ready students, they need to make hiring decisions based upon these criteria rather than a school’s prestige. Until this happens, law schools are less likely to pursue more experiential learning programs.

Experiential education in the form of skills courses and clinics is costly given the low faculty-student ratios required. As already noted, tuition costs are already up, with law schools offering far more student services than in the past. These costs are not sustainable when students cannot continue to take out loans, when jobs are contracting, and when existing salaries are lower than in the past.

Mr. Spencer concluded by saying the situation is complex with no simple solutions.

Discussion and Suggestions
Professor Reveley said the two worst things that have happened to law practice are: The American Lawyer’s publication of profits per partner; and U.S. News ranking of law schools, which is largely driven by scholarship, prestige, and an uninformed electorate.

The audience raised numerous points and questions, including:

- More emphasis needs to be placed on teaching legal writing.
- Law students need to understand the importance of context in understanding and solving legal problems, be they related to business, finance, economics, government, international affairs, legislation, or non-profits. Short courses taught by adjuncts were recommended.
- Law schools need to teach students problem solving skills and values.
- How do law schools do more with less?
- If scholarship is to be sacrificed, what do others think of this? Reactions included concern; the role of scholarship may vary depending on the professor and the school’s mission; and a broader view of what constitutes scholarship may need to be adopted.
- If there are to be multiple categories of faculty, how will this impact morale and the sense of community, particularly if some members are perceived as more valuable than others? How will tenure and compensation be handled?
- The importance of alternative dispute resolution was recognized and it was recommended that actual arbitrations take place in law schools so students could observe them.
- Doctrine, skills training, and ethics need to be integrated into courses and not be free-standing.
- Regarding the length of law school, one person observed that three years makes sense if the third year is equivalent to a capstone course where coursework is synthesized with practical experience. Another person predicted that within two decades, law school will only be two years, thereby reducing student costs. Current ABA rules and bar exam coverage pose obstacles to achieving a shorter program of study.

There was a consensus that law schools are doing a good job teaching critical thinking and legal analysis. A recurring theme was that more experiential legal education is needed to help students become "practice ready.” Deficits in legal writing, problem solving, and understanding the various contexts within which legal problems arise were concerns. A major issue is how do schools enhance legal education given the unsustainable costs and changes in the legal profession? If more is to be done with less, how will this be accomplished? What changes will be required of law schools? What impact will these changes have on law schools and the profession, particularly with regard to faculty, scholarship, budgets, and the number of years students attend law school? What changes will law firms, the ABA, ranking authorities, and the Virginia Board of Bar Examiners have to make if changes are to become a reality?
How Should We Measure Preparedness for Admission to the Bar?

by Jeanne F. Franklin
Conclave 2012 Reporter

Jeanne F. Franklin focuses on mediation, facilitation and conflict management services through Franklin Solutions, in Arlington, with a particular emphasis on employment and healthcare conflicts and the challenges of collaboration. A past president of the Virginia Bar Association, she serves on the Joint Alternative Dispute Resolution Committee Council, the Virginia Bar Association’s Health Law Section Council and its Committee on Special Issues of National and State Importance, and on the American Health Lawyers Association ADR Service Task Force. She currently serves as a member of the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

Supreme Court of Virginia
Senior Justice Elizabeth B. Lacy introduced the second panel discussion by framing the context in which the Virginia Board of Bar Examiners functions to assess competency to practice law. She reminded the audience that the legal profession is self-regulated, a privilege few if any other professions enjoy. Thus the stakes are high for the profession to discharge its responsibility to protect the public by ensuring the competence of those admitted to the practice of law. She added that the consumer protection factor is further challenged by the blurring of geographic and other boundaries; Virginia lawyers of the future may be practicing on a broader scale and stage in several respects.

Panel members were the Honorable B. Waugh Crigler, U.S. District Court, Western District; William D. Dolan III of Venable; Professor James E. Moliterno of Washington and Lee University School of Law; and Anita O. Poston of Vandeventer Black.

Presentations
Anita Poston of the Virginia Board of Bar Examiners provided enlightening details about the Virginia Bar examination and admission process.

In Virginia, competence is measured in three ways: an applicant must have completed an accredited law school program or a law reader program; must demonstrate his or her character and fitness to practice by means of an evaluation process conducted by a separate committee of the Board of Bar Examiners; and, must pass the examination administered by the board.

The Character and Fitness Committee moved from the earlier practice of accepting certification by Virginia law school deans as to character and fitness to the current process of reviewing extensive applicant information, with an eye to certain indicia such as suggestion of possible substance abuse issues and difficulty managing finances. Closer scrutiny of anywhere from 80 to 100 applicants may occur in each round of applications, and hearings to make a final determination of fitness may occur in the case of about thirty applicants. Once past the character and fitness reviews, applicants may take the exam.

The principle guiding the examiners’ drafting of the exam is to test an applicant’s “minimum competency on any given day to practice in a general law practice” and is designed to measure the entry-level practitioner. The exam has evolved and the challenge has been how to test a new practitioner in the average Virginia community. The answer at present is that the Virginia portion of the exam (as opposed to the multistate) contains nine essay questions that test from approximately twenty-seven substantive areas. The
Virginia essay questions require the applicant to analyze fact patterns, spot legal issues, and note substantive, procedural, and professionalism issues in the answers.

Since 1960 when the number of applicants taking the exam was 477, the number has risen steadily to the high in 2011 of 2,022. Yet, the pass rates have not appreciably changed, although grades on the multistate portion of the exam have inched upward. Of concern, though, is a clear pattern of deteriorating writing skill.

Just as the bar examiners pay thoughtful attention to the drafting of the exam in light of its guiding principle, they give careful attention to the validity and accuracy of grading and to fairness over time. How they perform both functions includes comparing notes and ideas with other state bar examiners.

Professor Moliterno then offered his perspective on whether the bar exam is an accurate measure of preparedness to practice law. He began with his conclusion that the bar exam tests both too much and too little. He agreed that the exam serves a very important gatekeeper function but suggested that the function should bear a stronger relationship to “what is on the other side of the gate.” Noting the relationship between the bar exam and what law schools teach, he framed the question as, “How do we meet the challenge of designing a test that serves its purposes but that does not have unintended, deleterious consequences?” Some of his points were:

The exam tests basic knowledge in too many subjects — preparation for twenty-seven substantive areas is too much; no lawyer knows all useful law, and it is unrealistic to test every topic that might come up in a new practice. Lawyers practice by synthesizing substantive knowledge and skill to solve a particular client problem.

The breadth of knowledge tested on the bar exam acts as a deterrent to law schools and law students who might otherwise want to depart from a more traditional legal curriculum and try innovative approaches to integrated curricula that blend subject matter with skills instruction and practice.

Of concern, though, is a clear pattern of deteriorating writing skill.
Law schools need to teach more to inculcate skill sets, including making the law students write; there should be more courses about synthesizing several substantive areas, about professional culture, values, and business, about problem solving and how to get things done — in short about the practice of law (what’s on the other side of the gate).

The need for law schools and their students to pass the bar examination creates the perception that focusing on matters other than the subject areas that may be tested poses risk and thus creates insecurity about taking time and resources to try other learning approaches.

Law schools need freedom to innovate and to devote a higher percentage of their resources to such efforts.

Judge Crigler addressed the core question, “Does the bar exam test competency to practice law in Virginia?” He emphasized that the ability to communicate well orally and in writing is vital to the effective practice of law. Yet he observed that today’s students tend to speak in text messaging format; in their writing, they use a lot of words but their points are not easily discernible. Judge Crigler said that writing is a real problem.

Law schools are trying to do something about the writing problem but how to cure it is not easily answered. Key points in his comments included:

> We need innovation in teaching and by implication in testing or measurement of competence in communications; we must develop new responses to competence issues.

> We must not lose sight of the imperative to serve members of rural and local communities in Virginia, providing competent lawyers to fill their need for capable advice and representation. Meeting that need requires lawyers who will be able to communicate with the people in their local communities by writing well and relating effectively through oral communication.

> Lawyers practicing in local communities do not necessarily know what legal problem will walk through their doors and the bar exam does need to have that in mind in assessing competence.

> The great homogenization of the bar exam should not detract from the state bar examiners’ role in seeing that communities within the state will be served by competent lawyers.

> In response to the apparent decline in law firm hiring of summer interns, we should consider year-round law school to allow more time for honing of knowledge and skills.

> A question is, how do we meet the challenge of producing law students who are prepared and productive, who will function well in their capacity as practicing attorneys? It is not just about grades and good test takers.

Mr. Dolan, former Virginia State Bar president, spoke from his vantage point as an attorney practicing in a large law firm employing young law students and graduates. He thanked the law schools for their willingness to engage in this conversation at a time when they are being asked to do more and in the face of increasing challenges.

He noted that some literature focuses on distinguishing between law students from “elite” schools who are groomed to serve the corporate community, and those from more local schools who will likely be serving individuals. However, he said he believes that the skills necessary to be a practicing attorney are universal and he views the challenge under discussion as how to “make sure that the eight million people who live in Virginia, when they have a Virginia lawyer, they have someone that we believe is competent, is ethical, and has integrity.”

He drew a conclusion similar to Judge Crigler’s — that the most essential and valued skill is legal writing. Significantly, it is the ability to write well that is observed and assessed in law firm legal internships and hiring decisions. Mr. Dolan elaborated that the changes in law firm hiring and practice driven by the economy (such as clients indicating that they will not pay for work done by first- and second-year associates) rein-
force the need for this skill; a primary value of the young associates’ work is to write — to produce well-written and reasoned analyses.

He urged that we do something about the US News & World Report law school rankings which are having a distorting effect, and detract from the job of educating future lawyers. In closing, he returned to the notion of character as a core competence to practice law, and pointed out that our culture is saturated in materialism. We should remember our aspirational heritage, and remind students coming into the profession that the “lions of the bar” were lawyers who were oriented to public service.

**Discussion and Suggestions**

Audience discussion of the panel topic was lively and wide ranging. Nonetheless, on the specific subject of how to measure competence to practice law:

Consensus was not reached that the bar exam in its current form should be changed.

Concern was expressed about the high cost of applying for licensure and preparing for the examination on top of law school debt already accrued. In light of that, what might law schools do to help students with the bar examination?

Experience following the third-year program at Washington and Lee is that the students are not doing significantly differently on the bar exam. But that should not detract from the point that it is the fear of the exam that can drive law school and law student reluctance to engage in too innovative a curriculum.

Can law firms do more to assist with mentoring and internship experience, through which experienced practitioners will provide some practical skill instruction and assessments?

Pre-law requisites are seen as a possible way to provide and measure skills competencies, placing some of the teaching and demonstration of competence at an earlier stage in the continuum of forming legal practitioners.

The panel was concluded by Professor Reveley who also served as co-chairman of the conclave. He offered three concrete actions that could address identified issues:

- Alleviate concerns about the cost of commercial bar preparation courses for applicants and their uneven caliber of instruction by having law schools take over the function, and at lower cost to students;
- Expand law firm apprenticeships such as those offered at Gentry, Locke, Rakes & Moore LLP to enhance teaching of practical skills and core competencies;
- Take steps to address the writing problem (acknowledging that teaching writing is hard for multiple reasons) by asking law schools to make demonstration of competence in writing a condition of admission and by having the bar exam include a writing dimension.

There is a perceived tension between the function of the Board of Bar Examiners and the call upon law schools to innovate and revise curricula. Yet both parties share the common purpose of minting young lawyers who will be competent to take their place in society as servants of their legal clients. This suggests a more focused dialogue between them to confirm common goals, and generate, evaluate, and flesh out ideas that may help each perform their respective jobs to meet those shared goals, while taking into account the changing environment, including culture, resources, and identified public needs.
How Do We Most Effectively Seek to Educate Lawyers Throughout Their Careers?

by John H. Foote
Conclave 2012 Reporter

Moderator W. David Harless introduced the third panel comprising Justice Donald W. Lemons, Fairfax County Attorney David P. Bobzien (who also serves as the chair of the Virginia Law Foundation’s CLE Committee), Jacquelyn E. Stone of McGuireWoods, and University of Virginia Professor Richard D. Balnave, for an examination of the continuing education of lawyers. Perhaps the central message of this panel was that it remains critical to provide continuing education (and to pursue it as a lifelong lawyer) in both core competencies and practice management.

Presentations
Mr. Bobzien drew from a University of Wisconsin survey to identify eleven core skills necessary for a good lawyer: communicate effectively in writing; be proficient in legal analysis and reasoning; communicate effectively orally; do computer-assisted legal research; exhibit professionalism, including civility; write legal briefs and memoranda; exercise good professional judgment; treat staff and clients with respect; do traditional legal research; interpret statutes using statutory construction and interpretation; and manage time. A continuing legal education program must provide training in these core skills, even as it attempts to address broader issues of practice and management of both office and life.

He reported that the CLE Committee consulted with the Young Lawyers Division of the Virginia Bar Association whose principal introduction to new attorneys is its “Bridge the Gap” two-day seminar, with substantive concentration in real estate transactions, estate planning and administration, business organization, family law, criminal law and practice, debtors’ and creditors’ rights, civil litigation, and ethics. Their analysis has suggested, however, that a different model is required that does not dwell excessively on areas that replicate law school. Virginia CLE is therefore rolling out “Backpack to Briefcase, the New Virginia Lawyer.” This is a skills-oriented training program involving interaction with seasoned attorneys and judges. It will provide a one-day course, and fifty weeks of unlimited access to substantive Virginia CLE online courses and live webcasts in more than twenty practice areas. It will involve an introduction to the VSB and the VBA, panel discussions on management of expectations, effective communications with other lawyers in your own firm, with opposing counsel and with other outside lawyers. There is to be instruction in client interviewing and communications, writing persuasive legal correspondence, and effective use of technology and social media, including instruction in the ethical implications in the use of such technology. Training will be provided in time management and accounting. A segment will be provided on networking and client development, and an introduction to the resources available to Virginia lawyers. It will provide segments on managing student loans and personal financial planning, and Virginia’s MCLE requirements. There will be an introduction to

John Holland Foote is a shareholder with Walsh, Colucci, Lubeley, Emrich & Walsh, in Prince William. His practice focuses on land use approvals and related litigation. He has appeared in a broad range of complex matters in state and federal courts, both trial and appellate. He is a graduate of LSU, and served as an Army infantry officer in Vietnam. After graduation from UVA Law, he joined the United States Department of Justice Honors Program and was assigned to the White House staff to serve as the third-ranking official of President Ford’s Vietnam Era Clemency Program. Mr. Foote currently serves on the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.
Lawyers Helping Lawyers. The program will close with tips from the bench.

Justice Lemons reflected that we may well be expecting too much of the law schools and that much of the responsibility for professional training necessarily falls on the bench and bar. More training occurs in context after one leaves school and to that end he focused on mentoring and the role of experienced practitioners and judges in the nurturing of good lawyers. Mentoring has exploded in the last decade and has come of age. It has also become more formalized, in part because many young lawyers become dissatisfied with the profession early and leave to do other things. Studies have also shown that solo and small firm practitioners, without access to mentoring relationships, suffer a higher rate of bar complaints and of malpractice action, in part because they often engage in an episodic practice and do not have an opportunity to develop ongoing relationships with clients. There is often no mechanism to resolve client conflicts as there is in firms where there are people to whom one can turn. Mentoring seeks to provide the kind of advice, guidance, and atmosphere for the lawyer who does not otherwise have it.

These programs involve what the justice described as prime movers: organizations, people, or groups that have concluded mentoring is a critical part of the training of the legal profession. He noted that one of their limitations is that they tend to be available in urban areas and not to smaller communities where solo practitioners and small firms may face the greatest need.

The justice described the Delaware requirement in which every law school graduate must complete a five-month clerkship before they may practice. This is a clinical and mentoring combination that can be satisfied while in law school or afterwards, but the mentor must certify that each aspiring lawyer has absorbed certain information, and that they are of good moral character and fitness to practice at the Delaware Bar.

Mentoring seeks to provide the kind of advice, guidance, and atmosphere for the lawyer who does not otherwise have it.
Justice Lemons focused on the American Inns of Court, of which he is the president. The Inns exist solely to promote professionalism, civility, ethical behavior, and excellent work product among the American bench and bar and focuses on value- and skill-oriented teaching experiences and preferably operates in groups of five, but no fewer than three. The mentoring cycle lasts for one year and involves not only attendance at lectures on skill issues and the basics of practice, but includes regular follow-up throughout that year.

The justice described law school as a foundational experience, but it is to expect too much of a law school to worry about the training of a lawyer during the full course of a career.

Professor Balnave agreed that though a student spends three years in law school, a practice may last thirty-five and more years, and there are now many different models of continuing education. He agreed that some lawyers, especially at the commencement of a practice, very likely need substantive training in how to manage a challenging witness, or how to conduct an effective deposition, and could benefit from programs such as those offered at the Trial Advocacy College at UVA. Others need more generalized or, alternatively, more specialized training and it is the need of the practicing bar and the goals that we seek to achieve that properly determine our methods, and not the other way around. One of his principal concerns, however, is that many lawyers simply do not know what they do not know, and there is a need to provide grounding in substantive areas defining what one needs to know if one practices in such areas as family or criminal law. While such programs need not teach about evidence, trial techniques, or forensics, outlines of the basics are needed to communicate an ade-

... most of the disciplinary complaints against lawyers are office-management related involving such matters as trust funds, neglect, and a lack of proper conflict-checking mechanisms, and yet there is no credit given for training in these areas.

He described the Critical Issues Summit, a cooperative effort between the ALI/ABA and the Association for Continuing Legal Education. He focused on two specific suggestions. The first is whether states should, in granting credit for courses, demand a description of the specific objectives of the course, its learning objective. This would assist the practitioner in making an informed choice when looking at the large array of possible continuing education programs. The second is whether credit should be granted for non-substantive continuing programs, for such areas as information technology or law office management. He observed that most of the disciplinary complaints against lawyers are office-management related involving such matters as trust funds, neglect, and a lack of proper conflict-checking mechanisms, and yet there is no credit given for training in these areas.

Ms. Stone described how McGuireWoods has developed its in-house CLE programs. She acknowledged her firm’s obligation to Thomas E. Spahn, who has taught not only his firm’s lawyers, but almost all Virginia lawyers. McGuireWoods now offers 150 to 200 programs each year for which each of its departments is responsible. They focus on practice skills development for which Virginians do not necessarily obtain credit and there is a first-year orientation program, and ongoing training in business development, communication skills, work styles, transactional writing, risk management, leadership and management skills, writing to clients, negotiations skills, delegation and work allocation, and accounting and finance. The firm sponsors retreats for junior and mid-level associates. It has a program for advanced legal editing given by an outside consultant. The firm also focuses on work-life balance and management of stress, as well as pro bono and community service. All new associates at McGuireWoods are assigned a pro bono matter, and encouraged to continue such work. The firm gives credit for that work to recognize its importance, and so that young lawyers are not penalized in the world of maximization of the billable hour. Young lawyers become involved in new practice areas and early responsibility, and obtain a clear sense of the need to
manage a client’s expectations, and have direct client interaction.

The firm has a built-in mentoring system where every attorney is assigned a supervising partner who is responsible for helping with the necessary tools to develop practice, learn areas of practice, and meet other lawyers. The program is established in the first two years of a lawyer’s career and the key to its success is that it is affirmatively encouraged and monitored in order to measure its effectiveness. People are tasked with the management of these programs, and the firm has a director in charge of professional development and attorney training, and managers who focus on professional development and the resources available. As lawyers advance there is additional training on skills development in areas such as the giving and receiving of effective feedback, leadership development, project management, and techniques of successful mentoring.

Discussion and Suggestions

Sharon D. Nelson offered that one group not heard from was the law student. She said that students with whom she has spoken are discouraged and even angry about their legal education, and she noted that there are about fourteen suits against law schools alleging deceptive promises. She criticized what she understood to be occurring with post-graduation employment numbers, to the effect that some schools are reporting higher employment numbers than they achieved, and that there are schools that have hired their own graduates to increase their numbers. Dean Paul Mahoney said that at UVA there is a fellowship program for students that go into governmental or nonprofit organizations. UVA recognizes that it can dramatically improve the chance of a student obtaining a permanent position if he or she gets a subsidized position, so the law school funds a full year of work. It has experienced a tremendous rate of success in obtaining permanent jobs for participants.

There were several suggestions for possible changes to CLE rules to permit more nontraditional courses in practice management and professionalism. Justice Lemons noted that some states provide CLE credit for mentors and their protégés as an inducement for participation in such programs.

Chief Justice Cynthia D. Kinser observed that there had been insufficient discussion of how to overcome Virginia’s geographical barriers to CLE. A lawyer from Lee County must go to Roanoke for programs, and it may take two days. The conclave should address how to bring lifelong career training to the lawyers in areas where they represent and serve about seventy percent of Virginians. She said that the bar must find better ways to train lawyers from Lee County to the Eastern Shore. It is not sufficient to talk only about the substantive elements of offerings, but also about how to make them convenient and accessible. Thomas Strassburg, the executive director of Virginia CLE, reported that they now have more than 200 substantive programs online. While that may not be an ideal means of legal education, the presentations are very good. There are also live, interactive webcasts. The CLE board is aware that live interactivity is important, so there is the four-hour requirement. But the interactive webcasts do provide additional opportunities for rural areas and are available at any computer. Lee Livingston, former chairman of the MCLE board, decried the demise of live CLEs, and hoped that it remained possible to preserve a space where people come together to study, so that the bar could lean against the atomization of our culture. Mr. Harless said that it was the charge of our several state organizations to ensure that the opportunities the chief justice referred to are available not only electronically but live. He said that there had been a time when one could attend a live program in Abingdon, but no longer.

Concern was expressed that the student with substantial debt should not have to pay for continuing legal education. Yet another supported the concept of a phased admission process and suggested that lawyers might obtain a provisional certification, for one or two years under supervision of a licensed attorney, and then complete a final exam before independent practice.

In closing, Professor Balnave said that when he is teaching clinical courses his principal focus is not so much on technical skills, but rather on evidence of judgment and how decisions are made.
Do Judges Have a Meaningful Role in Legal Education?

by the Honorable Walter S. Felton Jr.
Conclave 2012 Reporter

Walter S. Felton Jr. was elected to the Court of Appeals of Virginia in September 2002, and has served as chief judge since April 2006. Judge Felton served as a Captain in the United States Army Judge Advocate General Corps 1969–73, at which time he began his law practice in Suffolk, Virginia. In 1982, Judge Felton was appointed to the faculty of the William & Mary Law School, where he subsequently attained the rank of professor of law, and served as Legislative Counsel for the college. He also served as administrator of the Commonwealth’s Attorneys Council, the state agency responsible for training the commonwealth’s prosecutors. In 1994, he was appointed as deputy attorney general of Virginia, heading the Intergovernmental Affairs Division, and in 1995 was appointed as senior counsel to the attorney general. He served as counsel to the governor for four years. He is a member of the Judicial Council of Virginia, the executive committee of the Judicial Conference of Virginia, and the State/Federal Judicial Conference.

The Honorable Gerald Bruce Lee of the U.S. District Court, Eastern District, introduced the forth panel made up of the Honorable Cynthia D. Kinser, Chief Justice, Supreme Court of Virginia; Hugh M. Fain III, president, Virginia Bar Association; Monica Taylor Monday, of Gentry Locke Rakes & Moore; and the Honorable Michael F. Urbanski, U.S. District Court, Western District.

Judge Lee noted that the judiciary plays a major role in the education of lawyers, and those who desire to become lawyers. Before turning to the panel for the views of each on the role of judges in the education of lawyers, he commented that those who wear the robe of judicial authority teach continually throughout the course of litigation from pretrial through final judgment. He noted that judges have a special responsibility in teaching about the law, not only in courtroom settings, but by participating in activities outside that setting in law school courses, participating in trial advocacy and appellate advocacy classes, in moot court competitions, and in continuing legal education programs for lawyers and other judges.

Presentations
Chief Justice Kinser emphasized that the role of the judiciary in the education of lawyers begins with judges setting the bar of what is expected of lawyers by being timely and well-prepared, by conducting themselves professionally and civilly throughout the course of litigation, and by demanding those same characteristics of attorneys who come before the courts.

It is the role of the Supreme Court to determine the ethical standards that lawyers are required to obey when practicing law in Virginia. Those ethical standards represent the minimum required to obtain and maintain the license and privilege to practice law in the commonwealth. The Supreme Court continues to review and alter those standards as the practice of law changes, including the impact of the rapid advancement of technology, to ensure that standards for licensure keep pace with the practice of law.

Judges have a responsibility to impress upon lawyers that the license to practice law in Virginia requires more than simply abiding by minimum ethical standards. The oath of office taken by each lawyer includes the pledge “to act courteously and professionally demean oneself” in the practice of law. Judges have the ongoing responsibility to remind attorneys, and each other, of the requirement to conduct themselves courteously and professionally in matters coming before the courts.

The Supreme Court also sets requirements imposed on lawyers who seek to practice law in Virginia through reciprocity, when those individuals have not successfully completed the Virginia Bar Exam, have not attended the mandatory professionalism course required as a condition of the license to practice law in Virginia, or completed a similar course in the state of their licensure.

Chief Justice Kinser reminded that being a judge is very isolating, and that being an appellate judge is even more isolating. As a result, lawyers may be hesitant to ask judges for feedback on how they are doing. Judges have a responsibility to break that barrier and let lawyers know that members of the judiciary are willing to discuss matters of performance in and out of the courtroom, and are willing to participate in continuing
legal education programs. And in those settings, whether formally or informally, judges should give feedback to attorneys, not case specific, but generally, regarding effective and persuasive legal writing, oral communications, and the importance of being prepared. Judges should engage lawyers appearing before their courts in conversations regarding the application of particular statutes, rulings on motions, and in other matters that impact their effectiveness in the courts.

Mr. Fain said local and statewide bench/bar relationships and regular bench/bar meetings are particularly important in the continuing education of lawyers. Formalized bench/bar meetings, often accompanied by a meal in an informal setting, go a long way in the continuing education of lawyers, and the development of professional relationship between the bench and the bar. Those periodic gatherings of lawyers and judges are important not only for the social discourse, but equally important for the educational conversations and presentations made during those gatherings. Bench/bar meetings where judges are invited to discuss ongoing issues as well as developing issues tend to be well attended both because of the educational value to the attendees as well as the opportunity to exchange ideas. Area judges invited to host a table at these events facilitate informal discussions regarding developments in the law, best practices in particular courts, as well as other matters of local concern. Sadly, in many of the more rural areas, the travel distance often makes bench/bar gatherings more difficult, if not unworkable.

Mr. Fain emphasized the need for the bar to speak out to the bench about what the lawyers believe are matters that they need to be educated about. Bar leadership needs to be more active in making an outreach to the bench, particularly to
Hugh M. Fain III (left), president of The Virginia Bar Association, and W. David Harless, president of the Virginia State Bar, attended the conclave.

The Supreme Court of Virginia was well-represented at the conclave. Attending (left to right) were the Honorable Elizabeth A. McClanahan, the Honorable LeRoy F. Millette Jr., Senior Justice Elizabeth B. Lacy, the Honorable Donald W. Lemons, the Honorable William C. Mims, Chief Justice Cynthia D. Kinser, the Honorable S. Bernard Goodwyn, and the Honorable Cleo E. Powell.

Representatives from all eight Virginia law schools attended the sessions. Pictured (left to right) are Associate Dean Rena M. Lindevaldsen, from Liberty University; Dean David N. Yellen, from Loyola University Chicago School of Law (guest speaker); Dean Daniel D. Polsby, from George Mason University; Dean Davison M. Douglass, from William and Mary; Dean Clinton W. Shinn, from Appalachian School of Law; Mark H. Grunewald, former Interim Dean at Washington and Lee University; Dean Paul G. Mahoney, from the University of Virginia; Dean Jeffery A. Brauch, from Regent University; and Dean Wendy C. Perdue, from the University of Richmond.

Conclave leaders included William R. Rakes, of Gentry Locke Rakes & Moore LLP, who was the vice-chair; the Honorable Cynthia D. Kinser, Chief Justice of the Supreme Court of Virginia, who was honorary chair; and W. Taylor Reveley III, president of William and Mary, who was chair.

VSB President-elect Sharon D. Nelson made a point during a conclave session. Among the audience were (front row, left to right) the Honorable Pamela Meade Sargent and the Honorable Teresa M. Chafin; (second row, left to right) John J. Davies III, the Honorable Lisa Hicks-Thomas, Jackie Stone, Monica Taylor Monday, Mark E. Grunewald, and Mary Z. Natkin; (back row, left to right) William E. Glover and Karen A. Gould.

The Honorable Gerald Bruce Lee, of the U.S. District Court for the Eastern District, was moderator of Panel IV, "Do judges have a meaningful role in legal education?"
Conclave participants found time to chat and exchange ideas between panel sessions. Professor Margaret Ivey Bacigal, of the University of Richmond School of Law, talked with former VSB President William D. Dolan III (center) from Venable LLP and John Holland Foote, from Walsh, Colucci, Lubeley, Emrich & Walsh PC.

Anita O. Poston, a member of the Virginia Board of Bar Examiners, talked with Virginia Supreme Court Justice Donald W. Lemons (center) and W. Scott Street III, secretary of the Board of Bar Examiners, during a break between panels.

The bar, bench, and the academy were deeply involved in the discussions. Among those attending (left to right) were Washington & Lee Professor A. Benjamin Spencer, chair of the Section on the Education of Lawyers; the Honorable Gerald Bruce Lee, of the U.S. District Court, Eastern District; William and Mary President W. Taylor Reveley III; William E. Glover, of Glover & Dahmk; the Honorable Walter E. Felton Jr., chief judge, Court of Appeals of Virginia; VSB President W. David Harless, of Christian & Barton LLP; William R. Rakes, of Gentry Locke Rakes & Moore LLP; VSB Executive Director Karen A. Gould; and David P. Bobzien, immediate past-president of the Virginia Law Foundation, which helped finance the conclave.

Former Governor Gerald L. Baliles, of the Miller Center of Public Affairs, spoke during the first day of the conclave.
Recently, there have been and continue to be increasing reports of a lack of civility and professionalism in the manner lawyers speak to each other both at the trial and the appellate levels.

Recently, there have been and continue to be increasing reports of a lack of civility and professionalism in the manner lawyers speak to each other both at the trial and the appellate levels. Judges are increasingly asked to consider charges of deceit, unprofessional and unethical behavior in cases before the courts. Yet, for whatever reason, motions seeking sanctions frequently are not filed, thereby encouraging that conduct to continue. Often, it is difficult for the courts to address the issue when there is no clear breach of the Code of Professional Responsibility.

Ms. Monday provided some examples of statements in pleadings or briefs gathered from various courts. Somehow opposing counsel’s representations are not just wrong anymore, they are “absurd,” “ridiculous,” “dishonest,” and “myopic in our view of the world and prone to wild exaggeration.” Instead of being incorrect, opposing counsel are “hopeless,” they “engage in subterfuge,” “obfuscate the facts,” “employ a selective memory,” and “try to pull the wool over the court’s eyes.”

She noted that when judges do intervene and impose sanctions and make disciplinary complaints, that intervention educates offenders of the unacceptability of the behavior and that such behavior demeans our system of civilly resolving disputes between litigants.

Unfortunately, heavy court dockets at times do not allow a swift response by judges when informed of the unacceptable behavior and, when sanctions are imposed, concern arises that the intervening judge may have abandoned the role of impartial and unbiased decision-maker in resolving the legitimate dispute between the litigants.

At times, even judicial intervention in unprofessional behavior does not act as an impediment. Judges may be concerned about re-election by the General Assembly when the offending lawyer makes a complaint of being disciplined by a judge to local legislators, who are increasingly non-lawyers, and that concern often becomes an impediment to prompt sanctions being imposed, and creates some impunity on the part of the offending lawyers.

The Virginia Bar Association developed and advanced the Principles of Professionalism as guidelines for the practice of law. Those principles were approved by the Supreme Court of Virginia, further providing education for lawyers.

Having judges appear at Continuing Legal Education programs across the commonwealth to address unprofessional and uncivil behavior sends the important message that unprofessional and incivility will not be tolerated.

Having judges appearing at local bar association meetings to talk with lawyers about protecting their reputations while zealously representing their clients, and about what is not acceptable language in briefs and in oral presentations, is also an important part in the continuing education of lawyers by the judiciary. Judges educate lawyers by returning briefs for replacement when the documents contain ad hominem attacks or inappropriate language, or by taking recesses when a lawyer crosses the line of civility to deal with that behavior. Quiet teaching moments, as when judges open court with an announcement that professional demeanor and courteous behavior is expected, create educational moments that can go a long way toward maintaining appropriate decorum in the courtroom. Judges also educate by being patient, prepared, professional, and civil; by letting lawyers do their jobs; by listening carefully...
to arguments presented, and promptly disposing of matters before the court.

Judges should encourage pro bono work by lawyers as places where honing legal skills under difficult circumstances can lead to more competent representation generally.

Judges should encourage involvement in mentoring activities for new lawyers, whether informally through the local bar association, within the law firm, or in connection with mentoring programs such as provided by local chapters of the American Inns of Court, or other mentoring programs, especially when that can be done in conjunction with a law school and involve educating law students.

Judge Urbanski noted that while the courts have a limited role in legal education, it is the role of the judge to ensure that the trial is conducted professionally and civilly.

Leading by example goes straight to the area of core competence and preparation. The judge sets the example of what is expected of lawyers by being competent, by being prepared, by not being rude, by letting the lawyers do their jobs, by listening to the lawyers, by letting them make their arguments, and by being patient in rulings from the bench.

The visible world of civility and professionalism by judges and lawyers is vitally important to public confidence in our system of justice. However, it is the invisible world of incivility and a lack of professionalism outside the courtroom that the court doesn’t see. It is the lawyer who doesn’t return phone calls, the lawyer who refuses to give deposition dates because the lawyer doesn’t want the deposition taken. It is the lawyer who is just hard to deal with on a daily basis. It is this invisible world that judges need to tackle.

Sanction motions triggered by the refusal of a lawyer to agree to a time and place of a deposition should send messages — that is educate — lawyers that such behavior will not be tolerated.

Judges educate by being open and accessible to settle litigation disputes that occur outside the courtroom.

Education by the law schools in core competency for those who want to be trial attorneys is important. Judges should participate in that educational process.

The ineffective assistance of counsel cases, both state and federal habeas cases, suggests that cases are being handled by lawyers who lack ability to try even simple criminal cases. Local bar associations, with the assistance of local judges, are capable of providing low-cost or no-cost training programs for those lawyers who want to represent indigents who are charged with criminal offenses, particularly those young lawyers who by economic necessity or by a sense of ethical duty want to be counsel in those cases, but are without the experience necessary to provide competent representation. Judges should encourage and participate in that training where possible.

Judge Urbanski also suggested that lawyers can obtain experience and training by doing pro bono work. Federal courts are encouraging lawyers to participate in §1983 cases, with local training of lawyers to handle those cases. Obtaining local training with judge participation increases the core competency of those who undergo that training and increases the availability of lawyers to do those cases, while lawyers gain valuable federal trial experience.

Discussion and Suggestions

Judge Lee said that among the lessons learned from the panel is that judges provide the best role model by themselves being prepared to make proper rulings on motions and by requiring that cases be tried with civility and professionalism.

Judges provide education for lawyers through participation in continuing legal education programs, by participating in local bar activities, by teaching courses in law schools, and through mentorships of beginning lawyers, and using law student interns and law clerks in their chambers.

He called attention to various summer programs sponsored by the American Bar Association, such
as the Judicial Internship Opportunity Program where students work in state and federal judges’ chambers. Other summer programs provide opportunities for judges to participate in programs for disadvantaged young people with the assistance of volunteer lawyers, where the participants come into court, do mock trials, see the judges as problem solvers and caring individuals.

In response to a question, Chief Justice Kinser said that appellate judges and justices are disconcerted when briefs are poorly written, or meritorious issues are not raised or not argued, but that appellate courts must walk a fine line in remaining impartial and not becoming advocates for one side or the other.

Taylor Reveley, conclave chair, said that the issue of legal writing permeated a good bit of the discussion during the conclave panels, and asked whether members of the judiciary would think it appropriate, quietly in chambers perhaps, to suggest to a lawyer that some legal writing instruction might be helpful to that person. Judge Lee responded that he would be very reluctant to do that, particularly if the lawyer in question thought that he wrote well. He noted that clearly there are lawyers who are well known for writing well and with clarity, but often the written product, while well-written, after further review misstates case law or statutory authority. It is equally important that judges and opposing counsel can trust what is being written as being accurate, especially when reciting legal precedents in support of the writer’s position in a case.

Chief Justice Kinser also suggested that while well-written briefs are invaluable in assisting the decision-maker, oral argument remains a tool for judges to ask counsel to clarify what is written in the brief. She encouraged the law schools to assist law students to find internships with judges, whether during the law school year, or in the summer, even if pro bono, to hone their writing skills. She also suggested that bench/bar meetings even in the smaller, more rural areas had potential to continue to educate those with legal writing problems, and the local judge could encourage the lawyer to attend a course in legal writing, either in person or remotely, or be assigned a mentor to help with legal writing.

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The conclave is online.

For more coverage of the 20th Anniversary Conclave on the Education of Lawyers in Virginia, including transcripts, meeting materials, photos, and DVD availability, visit http://www.vsb.org/site/members/20th-anniversary-conclave.
A Few Suggestions for Steps Forward: Writing, Training, Mentoring, and Money

by W. Taylor Reveley III
Conclave 2012 Chair

When the first Conclave on the Education of Lawyers in Virginia took place in 1992, the road ahead for the legal profession seemed paved with opportunity, not difficulty. We lawyers were on a roll. Our 20th Anniversary Conclave occurred in more austere times. Each pillar of the profession—the legal academy, practicing bar, and bench—confronts a need common to all facets of the American economy these days: how to continue to perform with excellence but at less cost. We lawyers are not on a roll in the early 21st century, and our way forward is unclear.

Despite this (or perhaps because of it), the sense of community at our recent conclave—the sense of our all being in it together—was strong, indeed far stronger than at conclave 1992. Law deans and professors, practicing lawyers, and judges in 2012 all saw a need to work together for the lifelong pursuit of legal education.

Participants in conclave 2012 carried on a rich, often sharply pointed conversation about how best to move forward, and they did so with almost no finger pointing or defensiveness, and no suggestion that either law schools, or law firms, or courts should pull the laboring oar while the others coast on theirs. There was consensus that the lifelong education of our learned profession takes sustained effort by everyone, whether law professor, practicing lawyer, or judge.

Any gathering as collegial and productive as the 20th Anniversary Conclave generates a profusion of suggestions about remedial steps and promising initiatives. Often such a wealth of ideas paralyzes us. So much is suggested that focus falls on nothing, with predictable results. Failure to home in on a very small number of potential steps forward leads to lots of talk, no action. Very promising proceedings bear little fruit.

Let me suggest a few ways in which the 20th Anniversary Conclave might avoid this fate. By no stretch of the imagination do these ways embody the only important ideas to emerge at the conclave. If even one of these conclave 2012 emphases resulted in a concrete step forward for the education of lawyers in the commonwealth, however, this could have a galvanizing effect on the pursuit of other good ideas. Successfully taking one step forward does sometimes spur a sustained forward march.

What if the VSB Section on the Education of Lawyers were to choose one of the ideas about to be noted, propose how to implement it with roles for law schools, law firms and departments, and courts, and then rally support for implementation via bar associations, starting with the State Bar? That just might work.

FIRST, what if we took on legal writing? Its sad state is a constant source of frustration and hand-wringing at conclaves and other gatherings of lawyer leaders. Let’s see if something remedial
might actually be done before the next conclave meets in some future year. What might reasonably and realistically be asked of law schools — that they focus each and every student on the basics of good legal writing, provide enough well qualified teachers genuinely committed to the mission to get the job done for each student, and perhaps even certify in some fashion that each student has

in fact mastered the basics? Then what might be asked of bar examiners — that they require as a mandatory aspect of bar passage a demonstrated capacity to handle the basics of legal writing?

What might be asked of law firms and departments — a meaningful period of apprenticeship for new lawyers, including emphasis on legal writing, and an abiding firm-wide commitment to good writing made manifest in concrete ways?

And what might be asked of judges — sustained pushback against the misuse of facts and authority in papers filed with them, and a willingness to intervene and seek help from the organized bar when confronted with lawyers incapable of writing? There is nothing talismanic about any of what’s just been sketched, and it’s all at a high level of generality. The proverbial devil awaits in the details. But the Education of Lawyers Section could sort them out. It is clear that if we are to improve legal writing in the commonwealth, we all must have skin in the game — law deans and professors, law firms and law departments in corporations, agencies and non-profits, and judges.

SECOND, there was concern at the conclave about whether MCLE too narrowly restricts the sorts of skills training that might reasonably qualify for credit, and there was concern about the difficulty of getting credit-bearing courses to the far reaches of the commonwealth. These seem like matters ripe for relatively easy resolution if the Education of Lawyers Section were to focus the pursuit.

THIRD, what about law firms and departments in Virginia getting seriously into the mentoring and apprenticeship business? There was strong interest at the conclave of this possibility and discussion of useful models elsewhere. Such a regime could have wonderful effects for the young apprentices as well as the firms and departments. The need is especially great in an era when much mentoring that used to occur has fallen prey to high billing rates, the press for billable time, and the reluctance of clients to have young lawyers anywhere near them if they come with their meters on.

FOURTH, cost is a growing hurdle that law schools must learn to jump if they are to continue to command students of the sort they want. An element of cost is incurred to study for the bar. What might law schools, with the aid and comfort of the organized bar, practicing lawyers, and judges, do to lessen this burden? Would it be feasible for all law schools, even the most elite, to provide an elective credit-bearing survey course focused on likely bar subjects in the final term of law school, expressly to help students review and remember? Could law schools provide their own bar preparation courses in the summer at materially less cost than the norm for commercial courses, relying on a few of their own professors and others drawn from firms and the bench?

Let me end with one last thought that also commanded consensus at the conclave. Law is a calling at least as much as it is a living, a business. We lawyers can do an enormous amount of good for society, and in so doing we can find great satisfaction. But it’s hard to do much good or find much satisfaction if we ignore the calling aspect of our profession. Perhaps this is the idea on which the Education of Lawyers Section might focus its implementing thoughts for the lifelong learning of lawyers. Even the most grizzled and disenchanted legal dog is not beyond reach of a calling if only he or she could be brought face to face with its seductive power. This takes education.

Law is a calling at least as much as it is a living, a business.
Virginia State Bar
Section on the Education of Lawyers in Virginia

2012 Conclave Planning Committee

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Richmond
The Virginia Office for Protection and Advocacy (VOPA) is a small but energized state agency. It is part of a nationwide network of such agencies that receive federal grants to assist individuals with disability-related issues. Sometimes these issues are life changing and involve problems such as abuse, neglect, employment, or housing discrimination. Other times these issues are life enhancing and involve something as simple as going to the movies on the show’s opening weekend and enjoying the show.

Steven M. Traubert is an attorney who works for VOPA and he is a movie buff. Thus he was especially motivated to help a movie-loving deaf client. Arguably this client had illegally been denied accommodation at a movie theater because of an industry practice of not offering a captioned showing of a new movie until the third or fourth week after its original release.

Following the age of silent films, individuals with hearing impairments have faced challenges to fully enjoying a movie in a movie theater. Various technologies (including both open and closed captioning) have been developed to address this concern. Open captioning in a film theater is accomplished through burned-in captions which project the text of what words are being spoken on the screen. These captions are visible to everyone, like subtitles in a foreign film. Movie theater chains have been reluctant to make open captioned showings universally available partly from a belief that use of the technology would negatively affect the experience of movie-goers not dependent on the captioning and thus reduce theater revenue.

Closed captioning refers to any technology that allows as few as one member of the audience to view the captions. In recent years, the best-known closed captioning option for movie theaters has been the “rear window” captioning system. This technology works by providing movie patrons requiring captions with a panel device that reflects captions for the viewer, but is nearly invisible to surrounding patrons. The panel can be positioned so that the viewer watches the movie through the panel and captions appear either on or near the movie image. A problem for the movie-goer using this technology is that it is sometimes necessary to sit in a certain area of the theater to obtain the best angle for reflecting the backward text. A major problem for movie theaters has been the cost of the hardware and license fees charged by the distributors of the proprietary software.

Special effort has been made to build accessibility features into newer digital projection systems. A digital captioning device called the DTS-CSS (Cinema Subtitling System) is a combination of a laser projector which places the captioning (words, sounds) anywhere on the screen and a thin playback device with a compact disc that holds many languages. This eliminates the proprietary caption distributions required for film and the associated royalties. Film distributors have largely underwritten the cost of movie theaters converting to digital films because of the enormous savings realized by the distributors in being able to produce a master digital version that can be inexpensively reproduced and delivered to theaters in lieu of tapes.

With digital films, the captioning technology is already embedded at no extra cost to the theater — it is simply a question of when the theater wants to turn on the captioning. The hearing impaired moviegoer only needs a special pair of glasses available at the theater and she can sit where she wants and not be a distraction to her neighbors.

However, according to the National Association of the Deaf’s “Movie Access Coalition,” even with the new technology, only a small percentage (less than 5 percent) of all the movies being shown nationally in movie theaters are shown with captions, and mostly well past the show’s opening weekend. Past litigation efforts in different parts of the country to require captioning at all theaters (but not on all screens at a multiplex theater) were not successful based largely on the cost of the technology and the projected lost revenue.

Traubert took the position that in light of the new technology eliminating the cost barriers, this was indeed an issue that came within the reach of the Americans with Disabilities Act. Instead of arguing that it was a reasonable accommodation to require that all theaters provide a captioned option for all opening shows, he took the position that it was reasonable to require that a captioned option for an opening show be available on a rotational basis. This argument was based on regulations involving physical accessibility of theaters where a movie theater was not required to make all of its theaters handicapped accessible. Rather, they were required to rotate films so that each new film was eventually available at an accessible theater.

Put in terms of Traubert’s client’s position, if he wanted to see “The Avengers” with captions on opening weekend, he should be able to go to at least one theater in his locality and see the film with his friends. After all, participating in new releases of popular films such as the “Harry Potter” series, or the “Batman” movies, has become a cultural experience.
Through its advocacy efforts, VOPA was able to reach out to Regal Cinemas and provide demographic information regarding the population of deaf and hard of hearing individuals in the Norfolk and Richmond Areas. As a result, Regal Cinemas has made captioning technology widely available in Norfolk and Richmond, enabling millions of Virginians to have access within an hour’s drive to captioned films at any showing at a Regal Theater using digital format.

This is a win for Traubert’s client and is a win for Regal Cinemas as well.

Endnotes:
1 http://www.nad.org/issues/technology/movie-captioning
VSB Member Receives Thurgood Marshall Award at ABA Annual Meeting

Lawrence R. Baca, who has been cited for having worked on more civil rights cases involving American Indians than any other attorney in the history of the Department of Justice, was recently honored by the ABA for his considerable achievements. He was presented with the American Bar Association Thurgood Marshall Award for 2012 by the Section of Individual Rights and Responsibilities at the August 4, 2012, annual meeting in Chicago.

Baca, a member of the Virginia State Bar since 1977, retired in 2008 after thirty-two years with the United States DOJ in the Civil Rights Division and the Office of Tribal Justice. Cases he worked on include the first DOJ case to secure the rights of American Indians to run for state or county office; the first case to secure the right of American Indians, whose languages are historically unwritten, to receive election information orally in their own language; and the first case in which a federal court ruled that American Indians have a right under the 14th Amendment to equal educational opportunities from the states in which they live because they are citizens of those states. Baca also filed DOJ’s first five racial redlining cases to enforce the Equal Credit Opportunity Act and all of them were on behalf of Native Americans. Indian Country Today, the largest circulation Indian-owned newspaper in the country, called him “the grandfather of Indian country credit.”

“Tonight you have planted me among the tall trees of our profession and of the civil rights movement,” Baca told the audience at the awards dinner.

The redlining cases “brought about a credit revolution in Indian country,” Baca said. “Two federal banking regulatory agencies changed their anti-discrimination regulations with respect to residents of Indian reservations, citing my cases against General Motors Acceptance Corporation and The Great Western Bank as precedent. The doors to fair credit access for Indians were flung open.”

In a 2002 interview, Baca said one of the most vivid memories of his childhood was the scars he saw on his father’s chest. Baca’s father was stabbed twenty-seven times when he accidentally went into a “white’s only” bar in 1939. His attackers were never charged. As everyone from the sheriff to the attorneys in the state attorney general’s office was white, there was little hope for justice for an American Indian in that time and place.

This memory drove Baca to law school and led to his life’s mission.

“It’s important to see people of all color,” Baca said during the interview. He said the presence of minorities in the courtroom is crucial to the realization of justice, noting that people are more comfortable and more confident that they’re getting a fair hearing if there are others there like them.

Baca, a Pawnee Indian, said his most important contribution at DOJ was, “I changed the face of the Department of Justice by recruiting more American Indian attorneys to the department.” He was an active recruiter and role model. When he arrived at the DOJ there was one other American Indian attorney. By the 1990s there were twenty-six American Indian attorneys at main justice. Baca says he didn’t recruit every American Indian lawyer who has ever worked at the DOJ, but the ones he didn’t recruit most likely were recruited by someone who he did recruit.

The Thurgood Marshall Award is just one of the major honors he has received. In February 2008, the ABA presented him with its Spirit of Excellence Award for his work on diversity in the legal profession and for opening doors at the DOJ for American Indian lawyers. In April 2008, the Indian Law Section of the Federal Bar Association created the Marshall Award for Excellence in Federal Indian Law to honor his career as a bar leader and civil rights lawyer. He was the first recipient. Also in April 2008, immediately before his DOJ retirement celebration, Baca was presented with the Attorney General’s Medallion by then Attorney General Michael B. Mukasey. It is the highest award the attorney general can present to a retiring employee and had only been presented six times since 2000.

“I am not sure how you respond to any of those honors except with complete humility. The Federal Bar Association has a very small number of awards that are named after individuals. That puts me in a pretty exclusive class. I am humbled by the gesture of my FBA colleagues. And it was my co-workers at the Office of Tribal Justice who nominated me for the Attorney General’s Medallion. That was a bit overwhelming,” Baca said.

On September 12, 2009, Baca was inaugurated as national president of the 16,000 member Federal Bar Association. He made history in becoming the first American Indian president of a national non-minority bar association.

Lawrence R. Baca Lifetime Achievement Award for Excellence in Federal Indian Law to honor his career as a bar leader and civil rights lawyer. He was the first recipient. Also in April 2008, immediately before his DOJ retirement celebration, Baca was presented with the Attorney General’s Medallion by then Attorney General Michael B. Mukasey. It is the highest award the attorney general can present to a retiring employee and had only been presented six times since 2000.

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Marshall Award continued on page 64
Legal Aid produces results — not only for the low-income people who receive civil legal services, but also for the communities they live in.

Legal Aid returned a measurable $139 million to Virginia communities in fiscal 2009–10. Every dollar spent on Legal Aid returned at least $5.27.

Some of the money generated by Legal Aid helped low-income families directly. Millions fueled the economy as a whole, in the form of cost savings for taxpayers; federal dollars flowing into local economies, creating hundreds of jobs; taxes paid by the people working those jobs; fewer foreclosures; efficiencies in Virginia’s courts; and economic benefits for health-care providers.

The return could be much higher if Legal Aid received enough funding to meet the vast need for its services.

These are the conclusions of a report, Economic Impacts of Civil Legal Aid Organizations in Virginia, commissioned by Legal Services Corporation of Virginia (LSCV), the agency that funds and oversees Virginia’s Legal Aid offices. The report was prepared by Kenneth A. Smith, Ph.D., a nationally recognized evaluator of the outcomes and benefits of Legal Aid organizations.

The $139 million that Legal Aid brings into the economy includes:

• $72.4 million directly assisted low-income families. When Legal Aid helps a family gain child and spousal support, buy food, pay their rent or utilities, or obtain medical care, the family spends those dollars in their community.

• $61.3 million in federal dollars that flow into local communities. This money includes grants that support Legal Aid services as well as veterans’ benefits, Social Security disability for the elderly and disabled, and Medicaid. That money would be lost to Virginia if Legal Aid had not assisted clients with their applications and appearances before review boards. The money supports jobs for 850 Virginians and provides income for businesses across the state.

• $2.5 million in state and local taxes that are paid by the 850 persons employed through the federal draw-down money.

• $2.8 million in cost savings for taxpayers. When Legal Aid helps a client avoid eviction, collect child support, or escape domestic violence, there is less demand for tax-funded programs.

Legal Aid brings other returns that are more difficult to measure. These include:

• Savings for banks and investors when foreclosures are prevented.

• Fewer write-offs of indigent patients by health-care providers.

• More efficiency in the courts.

“The work of our Legal Aid offices is not just about protecting the legal rights of low-income Virginians,” said Mark D. Braley, executive director of LSCV. “It’s about providing services that bring tangible benefits to all Virginians by creating jobs, increasing tax revenues, saving taxpayer dollars and making it possible for medical providers and others to get paid for their services to our clients.”

“Virginia taxpayers receive a significant return on their relatively small investment in Legal Aid.”

Despite its roles as a cost-saver and income-generator for communities, the Legal Aid system has had to significantly curtail the level of help it provides people seeking legal services since the report data was compiled. The reduction is because of the economic decline that reduced support of Legal Aid from governments and charities, a steep rise in the poverty population and people seeking legal assistance, and a drop in interest rates, which are tied to Legal Aid’s funding.

Since 2009, the number of persons employed by LSCV’s Legal Aid programs dropped by almost 20 percent, from 318 to 257. The system has lost thirty-four attorneys and twenty-seven support staff, including case-handling paralegals, and closed one office.

Skeletal staffs remain at many of the system’s thirty-five offices statewide. Intake hours have been cut back, and, increasingly, applicants with serious legal problems are turned away. Of those who get appointments, many receive advice instead of the full representation they need. Legal Aid offices have become more like emergency rooms performing triage.

“Without the funding to accept more applicants who need legal assistance, Virginia civil legal aid programs are unable to prevent thousands of the evictions, foreclosures, Medicaid denials and other costly and tragic legal emergencies that low-income Virginia families experience each year. The result is a significant loss of opportunities affecting every resident,” the report concludes.

Braley is continuing efforts to expand participation in the Interest on Lawyers’ Trust Accounts (IOLTA) program that, in better times, provides a

Legal Aid continued on page 57
Notice to Members:
MCLE Compliance Deadline Is October 31

REMEMBER — The MCLE requirement is 12.0 CLE hours of which 2.0 must be ethics and 4.0 must be from live interactive programs. See FAQs about the new requirement and other MCLE compliance information at http://www.vsb.org/site/members/mcle-courses/.

Your compliance deadline for mandatory continuing legal education is October 31, 2012. Go to https://member.vsb.org/vsbportal/ and log in to review your MCLE record and certify your course attendance.

The MCLE End of Year Report (Form 1) will be mailed in early November. Please review the report and, if incomplete, amend as instructed. Amended reports must be received by the bar no later than 4:45 PM on December 15, 2012.

Questions: Please contact the MCLE office at (804) 775-0577 or email MCLE@vsb.org.

Anastasia K. Jones and Prescott L. Prince Join VSB

Anastasia K. Jones and Prescott L. Prince have joined the Virginia State Bar as assistant bar counsel.

Jones and Prince both will prosecute professional disciplinary cases in the fifth district, which covers parts of Fairfax and Prince William.

Beginning in 2009, Jones was a partner with Blandford & Jones PC in Powhatan where her practice included adult and juvenile criminal defense, family law, Guardian Ad Litem matters, civil litigation, probate matters, estate planning, and small business documentation and transactions.

Jones was previously in solo practice, and was an associate with Strother Law Offices PLC, and Cook & Associates LLC, both in Richmond. Her practice focused primarily on family law and civil litigation.

Jones was admitted to the bar in California in 2000 where she practiced until 2006 with the law firm of Sheppard, Mullin, Richter & Hamilton LLP. She handled state and federal litigation, bankruptcy proceedings, and various transactional matters. While in California she gained extensive experience in researching and writing appellate briefs.

A native of Southern California, Jones received her bachelor’s degree from the University of California, Irvine, where she majored in social science and was Phi Beta Kappa. She earned her law degree from University of California, Berkeley.

Prince was active in the military law and general practice sections during the last twenty years. He was in the Navy JAG Corps for four years after graduating from Washington and Lee University Law School, and then spent most of the next twenty years in private practice at Clarke & Prince, ending up as managing partner.

He was recalled to active duty in 2007 and sent to Iraq to serve as a Rule of Law officer. In 2008 he became deputy chief defense counsel — Navy, where he was responsible for the supervision of all sailors assigned to the office of the chief defense counsel. He also served as detailed military counsel and team leader for the defense team representing Khalid Sheikh Mohammad.

Prince’s bachelor’s degree in psychology is from Davidson College. He has a master’s in clinical psychology from Radford University and his J.D. degree is from Washington and Lee University Law School.
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<th>Local and Specialty Bar Elections</th>
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<tr>
<td><strong>Charlottesville-Albemarle Bar Association</strong></td>
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<tr>
<td>John Lloyd Snook III, President</td>
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<td>Palma Elyse Pustilnik, President-elect</td>
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<td>John Tyler Grisham, Secretary</td>
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<td>Brian Andrew Craddock, Treasurer</td>
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<td><strong>Fredericksburg Chapter, VWAA</strong></td>
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<tr>
<td>Amanda Anne Reid, President</td>
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<td><strong>Greater Peninsula Women’s Bar Association</strong></td>
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<tr>
<td>Lois Norma Manes, President</td>
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<tr>
<td>Chammie Ann Riley, Vice President</td>
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<tr>
<td>Dywona Lynette Vantree-Keller, Secretary</td>
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<tr>
<td>Charles Edwin Powell, Treasurer</td>
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<tr>
<td>Hon. Stephen Ashton Hudgins, At-Large Board Member</td>
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<td><strong>Hanover County Bar Association</strong></td>
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<td>Martin Lee Kent, President</td>
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<tr>
<td>Adam Russell Nelson, President-elect</td>
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<td>Thomas Douglas Lane, Secretary</td>
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<td>Shari Lynne Skipper, Treasurer</td>
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<td><strong>Harrisonburg-Rockingham Bar Association</strong></td>
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<td>Grant David Penrod, President</td>
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<td>Elizabeth Quisenberry Wirtz, President-elect</td>
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<td>Erin Elizabeth Layman, Secretary</td>
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<td>Vanessa Nicole Keasler Gogia, Treasurer</td>
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<td><strong>Hopewell Bar Association</strong></td>
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<td>Daniel Powers Leavitt, President</td>
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<td>Walter Douglas Stokes, Secretary-Treasurer</td>
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<td><strong>Metro Richmond Family Law Bar Association</strong></td>
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<td>Christopher Hunt Macturk, President</td>
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<td>Carrie Willis Witter, Vice President</td>
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<td>Mark Bruce Michelsen, Secretary</td>
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<td>Jennifer Marie Fox, Treasurer</td>
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<td>Edward Seayers Whitlock III, Henrico Representative</td>
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<td>Rebecca Elizabeth Duffle, Colonial Heights Representative</td>
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<td>Craig Weston Sampson, Richmond Representative</td>
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<td>Melissa Suzanne VanZile, Chesterfield Representative</td>
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<td>Michael Preston Tittermary, Hanover Representative</td>
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<td><strong>Norfolk &amp; Portsmouth Bar Association</strong></td>
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<td>Gary Alvin Bryant, President</td>
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<td>Virginia Lynn Van Valkenburg, President-elect</td>
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<td>Mary Teresa Morgan, Secretary</td>
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<td>Thomas Wayne Williams Jr., Treasurer</td>
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<td>Bonnie Patricia Lane, YLS Chair</td>
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<td><strong>Northern Virginia Chapter, VWAA</strong></td>
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<td>Kelly Marra Juhl, President</td>
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<td>Vinceretta Taylor Chiles, President</td>
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<td>Helvi Lue Holland, President-elect</td>
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<td>Beverly J. A. Burton, 2nd Vice President</td>
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<td>Doris Elenicia Henderson Causey, Secretary</td>
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<td>Polly Chong, Treasurer</td>
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<td><strong>Peninsula Bar Association</strong></td>
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<td>Adrienne Rachelle Mauney, President</td>
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<td>Rhonda Kinard, Vice President</td>
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<td>Alesandra Nicole Fitzgerald, Secretary</td>
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<td>Shukita LaVonda Massey, Treasurer</td>
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<td><strong>Prince William Chapter, VWAA</strong></td>
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<td>Kimberly Anne Irving, President</td>
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<td>Thomas Harlan Miller, President</td>
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<td>Stephen Weldon Lemon, President-elect</td>
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<td>Richard Clifford Maxwell, Secretary-Treasurer</td>
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<td><strong>Roanoke Chapter, VWAA</strong></td>
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<td>Erin Boyd Ashwell, President</td>
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<td><strong>The Loudoun County Bar Association</strong></td>
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<td>Cheryl Kaye Graham, President</td>
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<td>Ridley Penn Bain, President-elect</td>
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<td>James Gray Norman Jr., Newsletter Editor</td>
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<td>Jeanette Aldora Irby, Parliamentarian</td>
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<td>Michael Robert Doucette, President</td>
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<td>Kimberley Slayton White, President-elect</td>
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<td>Raymond Francis Morrogh, Vice President</td>
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<td>Nancy Grace Parr, Secretary-Treasurer</td>
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<td><strong>Virginia Women Attorneys Association</strong></td>
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<td>Mary Grace Anne O’Malley, President</td>
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<td>Maryse Celine Allen, President-elect</td>
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<td>Elizabeth Pendzich, Secretary</td>
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<td><strong>Winchester-Frederick County Bar Association</strong></td>
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<td>William August Bassler, President</td>
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<td>Nate Lavinder Adams III, Vice President</td>
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<td>David Lee Hensley, Secretary</td>
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<td>Timothy Martin Mayfield, Treasurer</td>
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In Memoriam

Paul Francis Baker
Marshall
October 1963 – December 2009

L. Charles Burlage
Manakin-Sabot
December 1923 – December 2011

R. Baird Cabell
Franklin
January 1923 – July 2012

John Deery Crocetti
Washington, D.C.
April 1972 – May 2012

Daniel Alexander Curran
Adamsville, Rhode Island
January 1940 – May 2010

Nere E. Day Jr.
Norfolk
April 1922 – November 2007

Kenneth G. Deskins
Weber City
May 1936 – September 2011

John W. Dozier Jr.
Glen Allen
June 1956 – August 2012

Carroll Edward Dubuc
Falls Church
May 1933 – August 2012

Robert C. Duke
Harrisonburg
September 1917 – October 2003

M. Patton Echols Jr.
McLean
October 1925 – July 2012

Joseph P. Fitzgerald
Alexandria
July 1943 – February 2012

Robert C. Foldenauer
Leesburg
December 1928 – September 2010

Paul Lemoine Galis
Claudville
April 1941 — January 2012

Thomas C. Givens Jr.
Tazewell
June 1950 – February 2012

Frank Madison Gray Jr.
Locust Dale
April 1938 – March 2012

Ronald Edwin Greigg
Bethesda, Maryland
June 1046 – July 2012

Gene Ralph Haislip
Winchester
July 1938 – May 2012

Carson E. Hamlett Jr.
Richmond
July 1928 – July 2012

Amy Edwards Harte
Surry
August 1959 – June 2012

Daniel Hartnett
Accomac
April 1931 – April 2012

Fred Crum Hardwick II
Hampton
August 1948 – December 2011

Ernest M. Holdaway
Richmond
October 1924 – July 2012

Angelo J. Iandolo
Ashburn
January 1927 – January 2012

Auzville Jackson Jr.
Richmond
February 1927 – July 2012

Max Jenkins
Dublin
March 1934 – July 2012

Charles Howard Koch Jr.
Williamsburg
July 1944 – February 2012

Benjamin Rice Lacy IV
Richmond
August 1950 – July 2012

Scott Warner Loveless
Salt Lake City, Utah
December 1948 – March 2012

Robert Anthony Lowman
Radford
March 1925 – February 2012

William McTyeire Martin III
Newport News
January 1944 – February 2012

Lawrence C. Mawn
Annapolis, Maryland
July 1943 – December 2011

James R. McKenry
Virginia Beach
April 1935 – July 2012

Nicole Marie Montalto
Newport News
January 1966 – July 2012

Frederic A. Nicholson
Norfolk
October 1926 – October 2010

Ingrid Ellen Olson
Richmond
November 1965 – July 2012

Stephen R. Ottersten
Suffolk
February 1940 – April 2011

Joseph M. Parker
Winston-Salem, North Carolina
October 1931 – August 2012

Robert H. Patterson Jr.
Richmond
January 1927 – July 2012
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<td>Mandy Joy Pearce</td>
<td>Virginia Beach</td>
<td>May 1974 – June 2012</td>
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<td>William B. Poff</td>
<td>Roanoke</td>
<td>August 1932 – September 2012</td>
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<td>Robert David Reif</td>
<td>McLean</td>
<td>November 1952 – June 2012</td>
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<td>Jay Anthony Richardson</td>
<td>Virginia Beach</td>
<td>October 1928 – January 2012</td>
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<td>Walter J. Rielley</td>
<td>Boyds, Maryland</td>
<td>October, 1922 – May 2011</td>
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<td>Douglas Presley Scott</td>
<td>Annandale</td>
<td>December 1942 – May 2012</td>
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<td>Carman James Seccuro</td>
<td>Arlington</td>
<td>August 1944 – June 2012</td>
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<td>George C. Seward</td>
<td>New York, New York</td>
<td>August 1910 – February 2012</td>
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<td>Kenneth W. Smith</td>
<td>Fairfax</td>
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<td>U. LeRoy Sweeney Jr.</td>
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<td>Burton R. Thorman</td>
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<td>Kenneth T. Whitescarver</td>
<td>Fredericksburg</td>
<td>August 1949 – July 2012</td>
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<td>Kenneth Paul Webber</td>
<td>Winchester</td>
<td>January 1958 – May 2012</td>
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<td>Bessie Castle Wendell</td>
<td>Midlothian</td>
<td>December 1931 – July 2012</td>
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<td>Hugh V. White Jr.</td>
<td>Richmond</td>
<td>July 1933 – August 2012</td>
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<tr>
<td>Charles H. Winberg</td>
<td>Richmond</td>
<td>October 1926 – July 2012</td>
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The **Senior Citizens Handbook**: a resource for seniors, their families, and their caregivers. 2009 edition now available.

We’re as busy as ever at age fifty-five and over, and we face new challenges and opportunities, with little time to search them all out. How can anyone find out about them all and, with such an array of choices, how does anyone begin to make a selection?

The **Senior Citizens Handbook**. Available online at http://www.vsb.org/docs/conferences/senior-lawyers/SCHandbook09.pdf.

**Free and Low-Cost Pro Bono Training**

Visit the Pro Bono page on the VSB website for free and low-cost pro bono training and volunteer opportunities: http://www.vsb.org/site/pro_bono/resources-for-attorneys
Thurgood Marshall called her “Shorty” when he was having a good day and “Knucklehead” when he was having a less-than good day.

That was one of the passing revelations from Supreme Court Associate Justice Elena Kagan during an hour-long presentation at the University of Richmond on September 20, 2012. She spoke earlier in the day at a Richmond Bar Association luncheon.

Kagan and law school Dean Wendy Perdue spoke in a conversational format in front of about 200 students and faculty in the Merhige Moot Courtroom. Kagan's comments — entertaining, informative, and even instructional — were clearly aimed at those law students.

When Perdue rattled off the list of the many high-profile jobs Kagan had before being named to the Court, Kagan joked “I can’t keep a job. … This job, I’m keeping.”

When Perdue pointed out that Kagan’s father was a lawyer and asked her whether she had always wanted to be a lawyer herself, Kagan answered, “I don’t think I really did want to be a lawyer…. I didn’t think what my father did was very interesting.”

By the time she was in law school, though, she knew she belonged. Evidence suggests she was right.

President Barack Obama appointed her to the Court in 2010. She had been serving as the 45th solicitor general of the United States. The first case she argued in that position was Citizens United. It was also the first case she ever argued before any appellate court.

Kagan was born in New York, N.Y. She received her bachelor's degree from Princeton University, her master of philosophy degree as a Daniel M. Sachs Graduating Fellow at Worcester College at Oxford University, and her law degree from Harvard Law School.

Early in her career, she served as a law clerk to Judge Abner Mikva of the U.S. Court of Appeals for the District of Columbia and then as a law clerk to Supreme Court Justice Thurgood Marshall. She was an associate in a Washington, D.C., law firm. She has been a professor at the University of Chicago Law School and a professor and the dean at Harvard Law School. She was associate counsel to President Bill Clinton and then served as deputy assistant to the president for domestic policy and deputy director of the Domestic Policy Council.

Kagan provided an interesting glimpse into how the Court goes about doing its job, describing what documents the justices have in front of them when they’re on the bench — bios of the lawyers, including a list of the cases they had previously argued — and how the first votes on the cases are handled. As the most recently appointed justice, she always votes last.

She also talked about how she goes about writing her opinions and about how she works hard to avoid legalese and to make the opinions understandable to a broad audience. “If you can write an opinion that anybody can understand you make it even more useful,” she said.

She also said she is not a fan of concurring opinions. It is better for everyone, including lawyers, when the Court reaches consensus on a case.

The comment about Marshall, whom Kagan described as “the greatest lawyer of the 20th century,” came as she was commiserating with a student who was having trouble speaking into a microphone that was a little taller than she was. Kagan joked that she has the same problem.

But the student’s question was about the value of having women in important positions in the legal profession.

Kagan noted how difficult it was for Justices Sandra Day O’Connor and Ruth Bader Ginsburg to move up in the profession when they did. Now, she said, things have changed enormously and for the better. She said it was a great thing that there are three women on the Court. Nine might be a little out of reach, she allowed. But five? Why not?
Georgia is a relatively new independent country with an even newer Georgian Bar Association that is working on how to support and regulate lawyers.

A delegation from Georgia arrived in Virginia September 19 to study how the Virginia State Bar operates and to learn how some of the policies and procedures here might be adapted for use in Georgia.

Georgia declared its independence from the USSR in 1991, but didn’t have a bar association until 2005. In Georgia, lawyers are called advocates and are regulated by a General Assembly, which elects members of the Executive Board, Ethics Commission, and Audit Commission. The ethics code was adopted in 2006.

The rules for advocates are continuing to evolve. For example, the GBA just started continuing legal education, with six hours required this year. That will gradually increase to twelve hours in 2014.

The three-member delegation comprised Ekaterine Gasitashvili, chairperson of the GBA Ethics Commission; Tamar Khubuluri, a member of the GBA Ethics Commission; and Irina Lortkipanidze, the bar development and institutional strengthening specialist with East West Management Institute Judicial Independence and Legal Empowerment Project. They met on September 24 with VSB President W. David Harless and other members from the Christian & Barton firm to discuss the bar, lawyer ethics, disciplinary procedures, and other issues.

Attending were Cliona Robb, of Christian & Barton and a district committee member; R. Braxton Hill IV, a former VBA-YLD president and a district committee member; Ekaterine Gasitashvili, chairperson of the Georgian Bar Association Ethics Commission; Harless; Tamar Khubuluri, a member of the GBA Ethics Commission; Roman Lifson, litigation partner at Christian & Barton; Irina Lortkipanidze, the bar development and institutional strengthening specialist with East West Management Institute Judicial Independence and Legal Empowerment Project; James Edward Betts, managing partner at Christian & Barton; and Kathryn R. Montgomery, VSB deputy bar counsel.

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Harless noted that conflicts are a serious concern for Virginia lawyers and perhaps even more troublesome for law firms, where a conflict with one associate can eliminate the entire firm. He also said that perhaps the greatest value lawyers get from their bar dues is the right to self-regulation. “If we were not self-regulated we would be regulated by a government bureaucracy.”

In addition to the meeting at Christian & Barton, the delegation attended a professionalism course, met with lawyers from the Professional Regulation Department, Supreme Court Justice William C. Mims, Virginia Bar Association President Hugh M. Fain III, Thomas E. Spahn of McGuire Woods, and VSB Executive Director Karen A. Gould; and attended a Legal Ethics Committee meeting and a Disciplinary Board hearing. They also did a bit of sightseeing.

The Georgians decided to come to Virginia, according to Gasitashvili, because Washington & Lee University Professor James E. Moliterno has been working with the GBA to develop its ethics regulations and legal ethics opinion office. Lortkipanidze said the delegation was in Virginia “to support the GBA ethics commission and to meet our counterparts in the State Bar.” She said the GBA was using the VSB and its website as an example.

Lortkipanidze also praised VSB Ethics Counsel James M. McCauley for his assistance and for the work he did to organize the delegation’s visit.

McCauley returned the compliment. “They should be commended for their hard work and efforts to establish a fair system of self-regulation for the legal profession of the Republic of Georgia,” he said. “Much of their procedural rules have been drafted using the VSB’s rules as a benchmark. It has been a privilege and exciting experience to have as guests representatives of the Georgian Bar Association who are so dedicated to establishing the rule of law in their country.”
The Continuing Education of Lawyers – Why It Matters

by Heather Casey

A lawyer’s education does not end at the conclusion of a bar exam. There are good reasons for this; the law evolves over time, as do the tools researchers use to find the law. In order to keep up with substantive changes in the law and technological advances, lawyers, like doctors and other learned professionals, need to maintain their grasp on the changes that arise as society develops and technology improves.

One method of ensuring that lawyers continue their education after law school is the continuing legal education requirement that all state bars require of active members. To meet Virginia’s annual twelve credit-hour requirement (including two hours of ethics), national organizations such as the Practising Law Institute offer CLE courses which may count towards the state’s requirements. Conferences concerning a specific area of law can often apply to a state bar’s CLE credit hour requirements. Law schools also hold events such as symposia and workshops that may count towards CLE credits.

Technological advances now provide methods of completing CLE courses without the need to travel outside the comfort of home or office. Attorneys can “attend” CLE courses via audio and video webinars and teleconferences. Attorneys have options to pursue CLE courses through various methods of self-study, including online courses, audio CDs and DVDs as well as books and course materials. In Virginia, these books and course materials are essential; they are sometimes the only places to find discussions of those changes in the law so vital to successful practice.

We all know the law is ever-changing, but the pace of technological advances in finding the law has become staggering. Within the past few years, several publishers have unveiled new resources that are changing the way lawyers research. These include new versions of Westlaw (WestlawNext) and LexisNexis (Lexis Advance). WestlawNext and Lexis Advance are research systems that offer “Google-like” approaches to searching for legal materials. Rather than selecting specific databases first and typing in a terms and connectors search, researchers can simply type a query into both WestlawNext and Lexis Advance, just as if using Google, and receive countless results spanning all types of resources, from cases to statutes to secondary sources such as law review articles and practice forms. (Researchers can also narrow selections in both systems but the default setting retrieves results from all available databases).

At the same time, Bloomberg has expanded its business coverage to include a new online database focused on law, Bloomberg Law. Bloomberg Law offers access to cases and statutes as well as a citator service similar to KeyCite in Westlaw and Shepard’s citators in LexisNexis. One advantage of Bloomberg Law is its ability to retrieve docket items if the dockets have been retrieved from PACER and posted to Bloomberg Law. This ability to retrieve court documents without incurring PACER’s charges gives Bloomberg Law an edge as a legal online resource. Bloomberg also recently acquired another legal publisher, the Bureau of National Affairs, and changes are in the works based on that merger. Hein Online continues to expand its collections, making more materials available to practitioners who know where to look.

Knowing how to use these various platforms is essential to the effective practice of law. Legal research is the foundation of a lawyer’s job and as we increasingly move away from print resources to electronic access, it is important for lawyers, whether they have been practicing for fifty, fifteen, or five years, to stay aware of the changes to the tools they rely on for competent legal research. CLE courses are an excellent resource for learning about changes in the law, but it is also vital to remain educated about the evolving tools for finding the law.

Continuing Legal Education Websites

Virginia CLE: https://www.vacle.org/
The website outlines hundreds of Virginia-centric MCLE-approved seminars with many media options. An attorney can search the programs by topic or date and report credits online to the Virginia State Bar.

Practising Law Institute:
http://www.pli.edu/
PLI is a national continuing education group and offers programs and publications in twenty-four practice areas. They offer onsite seminars, mostly in New York, but offer webcasts as well.
Contact the Virginia State Bar to inquire about credit approval.

Heather Casey is the reference and research services librarian at the University of Richmond School of Law, where she also teaches legal research in the first-year Lawyering Skills course. She has a master’s degree in library science from Drexel University and a law degree from the College of William and Mary.
The Harry L. Carrico Professionalism Award was established in 1991 by the Section on Criminal Law of the Virginia State Bar to recognize an individual (judge, defense attorney, prosecutor, clerk, or other citizen) who has made a singular and unique contribution to the improvement of the criminal justice system in the Commonwealth of Virginia.

The award is made in honor of the Honorable Harry L. Carrico, a former Chief Justice of the Supreme Court of Virginia, who exemplifies the highest ideals and aspirations of professionalism in the administration of justice in Virginia. Chief Justice Carrico was the first recipient of the award, which was instituted at the 22nd Annual Criminal Law Seminar in February 1992.

Although the award will only be made from time to time at the discretion of the Board of Governors of the Criminal Law Section, the Board will invite nominations annually. Nominations will be reviewed by a selection committee consisting of former chairs of the section and Chief Justice Carrico.

Prior Recipients

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<thead>
<tr>
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<td>1992</td>
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<td>2002</td>
<td>Craig S. Cooley, Esquire</td>
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<td>2004</td>
<td>Richard Brydges, Esquire</td>
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<td>1997</td>
<td>Reno S. Harp III, Esquire</td>
<td>Esquire</td>
<td>2006</td>
<td>The Honorable Paul B. Ebert</td>
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<td>1999</td>
<td>The Honorable Dennis W. Dohmal</td>
<td>Esquire</td>
<td>2008</td>
<td>Prof. Ronald J. Bacigal</td>
<td>Esquire</td>
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<td>2000</td>
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<td>Esquire</td>
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<td>2012</td>
<td>Melinda Douglas</td>
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Submission of Nomination

Please submit your nomination on the form below, describing specifically the manner in which your nominee meets the criteria established for the award. If you prefer, nominations may be made by letter.

Nominations should be addressed to Lisa Caruso, Chair, Criminal Law Section, and mailed to the Virginia State Bar Office, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, VA 23219. Nominations must be received no later than December 3, 2012. Please be sure to include your name and the full name, address, and phone number of the nominee.

If you have questions about the nomination process, please call Elizabeth L. Keller, Assistant Executive Director for Bar Services, Virginia State Bar, at (804) 775-0516.

(Please attach an additional sheet explaining how the nominee meets the criteria for the Harry L. Carrico Professionalism Award.)
Imagine practicing law today without using a computer: For most of us, unimaginable. For today’s law students, learning the law without a computer also would be unimaginable. Are computer technology and legal education and the practice of law now permanently symbiotic?

Many law students first learned about computer technology systems when using proprietary Westlaw and Lexis legal research services before the Internet became ubiquitous. Now those services and many competitors are accessible on the Internet using laptops, tablets, and cellular telephones. The use of laptops in the classroom is an ongoing item of controversy among law professors. Some say that students spend too much time in class surfing social media web sites instead of paying attention to the professor’s remarks, and others say that it’s the professor’s responsibility to capture and hold the interest of the students during class. But students want to use laptops and handheld devices, and they will use them whether or not teachers like it.

Debates regarding legal education often focus on Dean Langdell’s case method and what some view as positive changes including adding clinical training and skills development. But perhaps the most consequential change both in legal education and in law practice was initiated without specific relevance to substantive and procedural law, and instead occurred because of instant computer access to a plethora of information about the law.

Some disagree about whether the end result of a legal education primarily is preparing law students for law practice by teaching students the law, or preparing law students’ minds for legal analysis.

In either case, a critical component of the legal education process is teaching competence in the use of computer technology that will enhance the work product of practicing attorneys.

Among the first experiences a practicing lawyer has after joining or opening a law firm is exposure to the firm’s technology. Knowing how to use a firm’s computer system productively and reliably is a necessity. Because so much of law school education depends on computer technology for research, writing, and information sharing, new graduates already know many aspects of technology used in the practice of law.

Unfortunately, although most professional rules of attorney ethical conduct require basic competence, experience and competence in using computer technology in the practice of law is not specifically referenced either in professional responsibility rules or in commentaries accompanying the rules. Some bar legal ethics opinions support a requirement of competence in technology.

This situation may well change because the ABA adopted the following language at its 2012 annual meeting:

“Rule 1.1 Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. ... [6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with technology, engage in continuing study and education and comply with all continuing education requirements to which the lawyer is subject.” (emphasis added)

Ponder a typical day in the professional life of an increasing number of members of the Virginia State Bar:

First, early in the morning, reading and replying to e-mails and reading about current events and legal developments on the Internet, either using a laptop computer or a hand-held computer device;

Second, arriving at the office and logging on to the office network using a computer providing access to document files, e-mail, the Internet, word processing, spreadsheets, data bases, and more.

Each of these applications requires knowledge, experience, and judgment for effective use, with periodic new versions requiring continuing education about changes. Improper use of any of these applications could result in inappropriate loss of confidentiality of information, inaccurate documentation, incorrect computations, flawed research, or loss of vital and relevant information. Some might say that if an attorney really needs to know how these or other applications function, surely a staff member or colleague can assist. But would an attorney not be expected to have a basic understanding of laws and judicial decisions relating to statutes of limitation and repose, contracts, proximate cause, mens rea, fraud, gross income, and perjury regardless of the attorney’s day-to-day practice and without the immediate assistance of anyone else?

In other words, while a heightened level of technology expertise would be appropriate in situations requiring advanced knowledge and expertise (such as for an attorney concentrating in communications, intellectual property, or health law), a primary part of every attorney’s competence is to be able to recognize basic issues and implica-
tions and thereby to know when to learn more and when to ask for the assistance of colleagues. Knowing basic computer technology is a part of that competence.

In 2012, an attorney must know and understand how to properly configure search inquiries, delete "cookies" or cached information, use proper formulas in spreadsheets, and protect confidentiality and security with passwords and encryption. The attorney should also know how to avoid prematurely sending an e-mail by inserting addressess only after the e-mail has been proofread, inadvertent and inappropriate disclosure of information when using Internet search engines, mixing up versions of documents when using word processing, and inadvertently releasing metadata or prior versions of documents in a file shared with others when that information could prejudice a client's best interests.

Sadly, a lesson was learned from an error during the extraordinarily complex and massive bankruptcy case involving Barclays Capital Inc. A formatting error in an Excel spreadsheet inadvertently resulted in 179 Lehman contracts mistakenly included in an asset purchase agreement. That led to the filing of a motion in the U.S. Bankruptcy Court for the Southern District of New York stating that a first-year law associate had unknowingly included the contracts as a part of an executed agreement.

The critical need for all attorneys to have and maintain the requisite knowledge and skill required to practice law, including learning the benefits and risks associated with technology, has never been greater. Even while the debate continues about what and how law schools should be teaching and what attorneys should be learning, one thing is certain: every attorney must know how to practice safe computing. Today, those attorneys who ignore the need for basic competence in the use of computer technology do so at their peril.

As well stated by Sharon D. Nelson, the president-elect of the Virginia State Bar: “It's about time the ABA competence comments under the Model Rules now include keeping current regarding the benefits and risks associated with relevant technology. For those lawyers who are still in the Jurassic age of technology, remember what happened to the dinosaurs: many more of your colleagues, and likely many of your clients, now believe that you are ethically required to know and to keep up with changes in law office technology.”

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**Legal Aid** continued from page 47

strong financial base for Legal Aid. IOLTA revenue dropped by $4 million annually since interest rates fell in 2007. Once Legal Aid’s second-largest source of funding, IOLTA is now one its smallest.

LSCV, with the support of statewide bar associations, will continue efforts this year to convert the voluntary IOLTA program to a mandatory one and to increase state funding.

Braley said that LSCV commissioned the study to demonstrate that Legal Aid’s work benefits not only individual clients, but also Virginia communities, courts and government, and is a worthwhile investment that provides demonstrable returns.


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**Dawn Chase** is director of communications for Virginia’s legal aid system. She works at the Virginia Poverty Law Center, 700 East Main St., Suite 1410, Richmond, Virginia 23219. http://www.vplc.org

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**Alan S. Goldberg**, of McLean, is a solo practitioner and a past president and inaugural fellow of the American Health Lawyers Association, and vice-chair of the Law and Technology Committee, past chair of the Health Law Section, and a member of the Education of Lawyers Section and the Virginia Mandatory Continuing Legal Education Board of the Virginia State Bar, and an adjunct professor of Health Law at George Mason University School of Law and American University Washington College of Law.
In Chesterfield County, Virginia, a man upset after a child custody hearing confronts the ex-wife’s lawyer as he is entering his office building and fires a shot at him with a rifle. In Leesburg, Virginia, a lawyer is working late in the office expecting one final appointment, when he is summoned to the front door by the bell. The lawyer is shot at through the window. In Bucks County, Pennsylvania, at 9 a.m., two lawyers have just arrived at work and are talking in the parking lot outside the office when a man in sunglasses and a knit cap approaches and shoots one lawyer in the back of the head. In St. Paul, Minnesota, a man upset about losing custody of his child to his ex-wife walks into her lawyer’s office on a Friday just after 5 p.m. and repeatedly stabs the lawyer, attempting to slit her throat.

As these cases illustrate, violence against those in the legal profession is a serious concern worthy of attention. The number of Americans murdered on the job has grown steadily over the last ten years, and no office, including a law practice, is immune to violence. Many experts agree that the current recession has only increased the likelihood of violence in the workplace. There has always been a concern about third parties, such as angry clients or opponents acting out, particularly in certain practice areas, such as domestic and criminal law. But added to that risk should be employees, who may act out violently, especially in this stressful economy. Downsizing, lay-offs, and restructuring produce stress and increasingly harsh workplace environments. Another potential problem is domestic violence coming from an employee’s home life. Law firms need to consider all of these risks and should implement appropriate security procedures for their office. The comments below should help identify the steps you need to take and the issues you need to consider.

First, the firm should identify the risks (clients, opponents, past employees, current employees, spouses or significant others, etc.) that may pose a threat. Next the firm should create a plan for providing protection and safety. Once the plan has been finalized lawyers and staff should be educated regarding the procedures for safety.

The attorney and the staff need to be prepared to deal with upset clients, employees or other third parties who may create a security concern in the office. Some of the security issues that should be addressed in the employee manual and in training for staff and attorneys include:

- Information on how to handle abusive or rude individuals, on the phone or in person.
- Discussions/examples identifying at what point rudeness becomes dangerous.
- At what point should an individual be asked to leave the office?
- What action does staff take once the individual has been told to leave and refuses to do so?
- When should a lawyer or the managing partner be notified about a problem client or situation and exactly who within the law firm should be notified if there is an on-site emergency?
- What is the procedure for handling a client, or even a non-client, who shows up at the firm upset or irate? For example, that person should be shown to a waiting area removed from the rest of the firm, the concerns about the client should be immediately explained to the attorney out of the hearing of the client, and a decision should be made regarding whether or not to contact authorities and to circulate an emergency e-mail to the rest of the staff to leave the building. An angry or hostile person should not be invited into the lawyer’s office within the interior of the firm but is better kept waiting in a conference room where the staff and attorney can converse without further aggravating the situation.
- Have a contact list with important emergency numbers and information for lawyers and staff. If your building has security, how do you alert them to an emergency? This information should be readily available on a moment’s notice.
- If possible meet with clients and others in a conference space at the front of the office rather than in an internal space.
- In some practices, based on the nature of the practice, the physical location of the practice and after- business-hours doors should be kept locked.

by Wendy F. Inge
© 2012 ALPS Co.
• Consider avoiding meetings with clients or adversaries when you're alone in the office, especially after hours.

• If staff or lawyers are aware or become aware of circumstance that could lead to a violent altercation, notify the managing partner so that decisions can be made regarding any additional safety precautions that should be taken.

• Consider removing your home address from the phone book.

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**Tips for Avoiding Workplace Violence**

**Evaluate your work environment:** Critically examine all areas of your work premises including parking lots, entryways, reception areas, work areas, and offices. Is the lighting adequate? Are there convenient escape routes? Do you have a method to summon assistance? Determine when doors should be locked (in some areas, it is appropriate to lock the front door and have a bell and intercom for clients to announce their arrival). Provide security for personal items such as purses, and after-hours procedures for employees' safety.

**Promote courtesy and respect:** One of the best ways to prevent violence in the workplace is to foster a day-to-day attitude of respect and consideration by everyone in your work environment, including clients, staff, lawyers and all other third parties such as opponents and their counsel.

**Identify and eliminate potential weapons:** Identify any objects available in your immediate work area that could be used as weapons. Remove or secure objects that could be used in a violent act.

**Pay attention to early warning signals:** Often, people who become violent reveal their intentions in advance or have a history of violence. Threats from clients, coworkers, or third parties should be immediately reported to the managing partner who can then report to local authorities if appropriate. Policies should encourage employees to report domestic violence occurring in an employee's home that could escalate into the office or into stalking behavior. Also, routinely contact references and conduct background checks on prospective employees, lawyers, and staff. If there is a history of violence or aggressive behavior, then you may not want to hire them.

**Listen to your instincts:** Don't ignore your internal warning system. If you sense impending danger, respond accordingly. If someone comes into your office in a trench coat in the summer … trust your instincts.

**Know your violence response procedures:** Violence response procedures are simple plans designed to minimize injury during a violent incident. These procedures should include a plan to summon assistance and move people to a safe area. All employees should be educated on these safety procedures. Consider ePanic Button, an affordable means to summon support discreetly, ePanic Button is a software program that sends e-mails, text messages and pop up alerts through a worker's computer. It can instantly and discreetly summon support and it also provides report generation for tracking purposes.

**Zero-tolerance policy:** The firm should develop as part of its safety policy, a zero-tolerance policy for violent behavior or threats of violent behavior by employees. As well as potentially being held liable for negligent hiring, employers are increasingly held liable for negligent retention and negligent supervision of violence-prone employees. Firm policy should clearly state that inappropriate behavior in the workplace, such as violence or threatening behavior, is grounds for immediate termination. Policies should formalize employee access to management, and employees should be encouraged to report questionable behavior immediately. All complaints should be thoroughly investigated. Performance and behavior standards should discourage violent behavior and provide avenues for treatment or discipline, including immediate termination of potentially violent employees.
CLE Calendar

Introduction to Virginia’s Sentencing Guidelines—six-hour seminars, 9:30 a.m. to 5 p.m.

November 1, 2012 — Williamsburg
National Center for State Courts
Williamsburg

November 16, 2012 — Richmond
Henrico County Training Center
7701 E. Parham Road

December 5, 2012 — Fairfax
Fairfax County Government Center
12000 Government Center Parkway

December 12, 2012 — Chesapeake
Sheriff’s Department
401 Albemarle Drive

December 19, 2012 — Roanoke
Roanoke Higher Education Center
108 N. Jefferson Street, Ste. 208D

Advanced Sentencing Guidelines Issues and Ethical Hypotheticals—six-hour seminars, 9:30 a.m. to 5 p.m.

October 18, 2012 — Fairfax
Fairfax County Government Center
12000 Government Center Parkway

October 26, 2012 — Richmond
Henrico County Training Center
7701 E. Parham Road

Refresher Regional Sentencing Guidelines Topics—three-hour seminars, 9 a.m. to Noon or 1 to 4 p.m.

November 29, 2012 — Fredericksburg
Salem Church Branch
2607 Salem Church Road

Virginia Lawyer publishes at no charge notices of continuing legal education programs sponsored by nonprofit bar associations and government agencies. The next issue will cover December 17, 2012, through February 21, 2013. Send information by October 31 to hickey@vsb.org. For other CLE opportunities, see Virginia CLE offerings below and “Current Virginia Approved Courses” at http://www.vsb.org/site/members/mcle-courses/ or the websites of commercial providers.

Virginia CLE Calendar
Virginia CLE will sponsor the following continuing legal education courses. For details, see http://www.vacle.org/seminars.htm.

October 18
31st Annual Family Law Seminar:
Challenging Issues in Today’s Family Law Practice
Live — Norfolk. 9 AM—4:15 PM

October 18
FRAUD—The Most Used and Least Understood Cause of Action:
Allegations, Defenses, and Practice Tips
Video — Tysons Corner, Virginia Beach, Warrenton, 9 AM—1:05 PM

October 18
What’s New at the Virginia Supreme Court? An Overview of Recent Civil Decisions 2012
Telephone, Noon—1:30 PM

October 19
FRAUD—The Most Used and Least Understood Cause of Action:
Allegations, Defenses, and Practice Tips
Video — Charlottesville
9 AM—1:05 PM

Virginia CLE Calendar

October 19
Ethics Update for Virginia Lawyers 2012
Telephone, 2—4 PM

October 22
21st Annual Advanced Elder Law
Video — Alexandria, Charlottesville, Richmond, Roanoke, Tysons Corner
9 AM—4:15 PM

October 23
Great Adverse Depositions—Principles and Principal Techniques
Live — Richmond, 8:30 AM—4:30 PM

October 23
31st Annual Trusts and Estates Seminar
Live — Williamsburg, 9 AM—4:15 PM

October 23
The iPad for Lawyers
Telephone, Noon—1:30 PM

Brief Writing a Chore?
I have spent thirty years representing a large federal agency in EEO and other kinds of cases in federal district and appellate courts. Over the last twenty years, I have been attorney of record in over 150 cases in the federal appellate courts.

Let me do what I do best: write persuasive briefs and memoranda, while you build your practice servicing and representing your clients.

Writing samples available.

David G. Karro
703/963-8775
briefs4lawyers@gmail.com
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<tr>
<td>October 23</td>
<td>Nuts and Bolts of Title Insurance: Policy Forms and Coverages</td>
<td>Video — Tysons Corner, 9 AM — 1:20 PM</td>
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<tr>
<td>October 23</td>
<td>13th Annual Virginia Information Technology Legal Institute — 2012</td>
<td>Video — Alexandria, Charlottesville, Norfolk, Richmond, Roanoke</td>
<td>8 AM — 4:25 PM (RICHMOND VIDEO BEGINS AT 9 AM)</td>
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<td>October 23</td>
<td>Trials of the Century</td>
<td>Video — Tysons Corner, 8:55 AM — 4:15 PM</td>
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<tr>
<td>October 24</td>
<td>31st Annual Trusts and Estates Seminar</td>
<td>Live — Lexington, 9 AM — 4:15 PM</td>
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<tr>
<td>October 24</td>
<td>Great Adverse Depositions — Principles and Principal Techniques</td>
<td>Live — Dulles, 8:30 AM — 4:30 PM</td>
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<tr>
<td>October 24</td>
<td>Nuts and Bolts of Title Insurance: Policy Forms and Coverages</td>
<td>Video — Alexandria, Charlottesville, Norfolk, Richmond, Roanoke</td>
<td>9 AM — 1:20 PM</td>
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<td>October 24</td>
<td>DUI Defense in Virginia</td>
<td>Video — Tysons Corner, Warrenton, Winchester, 9 AM — 4:15 PM</td>
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<tr>
<td>October 24</td>
<td>Exit Strategies for the Business Owner</td>
<td>Telephone, 10 AM — NOON</td>
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<td>October 25</td>
<td>The Top 10 Malpractice Mistakes (and How to Avoid Them)</td>
<td>Telephone, 9—10:30 AM</td>
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<td>October 25</td>
<td>13th Annual Virginia Information Technology Legal Institute — 2012</td>
<td>Video — Tysons Corner, 8 AM — 4:25 PM</td>
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<td>October 25</td>
<td>Trials of the Century</td>
<td>Video — Abingdon, Alexandria, Charlottesville, Harrisonburg, Norfolk, Richmond, Roanoke, 8:55 AM — 4:15 PM</td>
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<tr>
<td>October 25</td>
<td>What’s New at the Virginia Supreme Court? An Overview of Recent Civil Decisions 2012</td>
<td>Telephone, 5—6:30 PM</td>
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<td>October 25</td>
<td>Tom Spahn on Unauthorized Practice of Law and Multi-Disciplinary Practice</td>
<td>Telephone, 7—9 PM</td>
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<tr>
<td>October 26</td>
<td>5th Annual Advanced Business Litigation Institute</td>
<td>Video — Abingdon, Alexandria, Charlottesville, Dulles, Harrisonburg, Norfolk, Richmond, Roanoke, 9 AM — 5:30 PM</td>
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<td>October 26</td>
<td>Trials of the Century</td>
<td>Video — Tysons Corner, 8:55 AM — 4:15 PM</td>
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<td>October 26</td>
<td>Covenants Not to Compete</td>
<td>Telephone, NOON — 3 PM</td>
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<td>October 29</td>
<td>Gain the Edge! Negotiation Strategies for Lawyers</td>
<td>Live — Fairfax, 9 AM — 4:30 PM</td>
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<td>October 29</td>
<td>Document This! Best Practices for Lawyers — Creating, Managing and Negotiating Documents</td>
<td>Video — Alexandria, Charlottesville, Richmond, Roanoke, Tysons Corner, Virginia Beach, 9 AM — 4:15 PM</td>
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<td>October 29</td>
<td>21st Annual Advanced Elder Law</td>
<td>Video — Norfolk, 9 AM — 4:15 PM</td>
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<td>October 30</td>
<td>Gain the Edge! Negotiation Strategies for Lawyers</td>
<td>Live — Richmond, 9 AM — 4:30 PM</td>
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<td>October 30</td>
<td>31st Annual Trusts and Estates Seminar</td>
<td>Live — Fairfax, 9 AM — 4:15 PM</td>
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<td>October 30</td>
<td>Legal Technology and Practice Management: Future Trends and the Best of What’s Out There Now</td>
<td>Video — Alexandria, Charlottesville, Richmond, Roanoke, Tysons Corner, Virginia Beach, 9 AM — 4:15 PM</td>
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<tr>
<td>October 30</td>
<td>Appellate Practice: Building and Perfecting Your Appellate Skills</td>
<td>Video — Alexandria, 8:45 AM — 4:30 PM</td>
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<tr>
<td>October 30</td>
<td>Tom Spahn on Unauthorized Practice of Law and Multi-Disciplinary Practice</td>
<td>Telephone, NOON — 2 PM</td>
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<tr>
<td>October 31</td>
<td>Appellate Practice: Building and Perfecting Your Appellate Skills</td>
<td>Video — Abingdon, Charlottesville, Fredericksburg, Norfolk, Richmond, Tysons Corner, 8:45 AM — 4:30 PM (RICHMOND VIDEO BEGINS AT 9 AM)</td>
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<td>October 31</td>
<td>Legal Technology and Practice Management: Future Trends and the Best of What’s Out There Now</td>
<td>Video — Alexandria, 9 AM — 4:15 PM</td>
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<td>October 31</td>
<td>Interpreting All That Psychobabble</td>
<td>Telephone, NOON — 3 PM</td>
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<td>November 1</td>
<td>Gun Trusts</td>
<td>Live — Springfield, 8:30 AM — 4:10 PM</td>
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<td>November 2–3</td>
<td>33rd Annual Construction and Public Contracts Law Seminar</td>
<td>Live — Charlottesville, FRIDAY: 8:30 AM — 5:25 PM; SATURDAY: 8 AM — 12:20 PM</td>
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<td>November 7</td>
<td>Eminent Domain Law in Virginia</td>
<td>Video — Fredericksburg, Richmond, Roanoke, Tysons Corner, Virginia Beach, 9 AM — 4:15 PM</td>
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<td>November 13</td>
<td>Backpack to Briefcase: The New Virginia Lawyer</td>
<td>Live — Lexington, 8:30 AM — 5:30 PM</td>
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<td>November 13</td>
<td>Great Adverse Depositions — Principles and Principal Techniques</td>
<td>Video — Alexandria, Charlottesville, Richmond, Roanoke, Virginia Beach, 8:30 AM — 4:30 PM (RICHMOND VIDEO BEGINS AT 9 AM)</td>
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<td>November 14</td>
<td>Backpack to Briefcase: The New Virginia Lawyer</td>
<td>Live — Fredericksburg, 8:30 AM — 5:30 PM</td>
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<tr>
<td>November 14</td>
<td>Great Adverse Depositions — Principles and Principal Techniques</td>
<td>Video — Tysons Corner, 8:30 AM — 4:30 PM</td>
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Letter to the Editor

Educating Lawyers continued from page 9

be led by volunteer judges and professionals, and would cover such subjects as the federal and state court systems, the jury system, ethics, public service, pro bono obligations, office management, client development, trust management, civil procedure, legislation and regulation, and financial instruments.

In addition to the required interactive classes, elective courses would still be offered on many of these subjects. However, all law students would be required to take the basic interactive classes. I feel the state bar should work with the law schools to develop and implement this effort.

The third year should consist entirely of clinical training. I think that what is now the third-year practice certificate should be granted at the end of the first year. Hopefully, the Supreme Court would agree. I believe that 150 hours of pro bono or authorized public service should be included in the third year, and required for admission to the bar of all law graduates.

Five years ago, the Carnegie Foundation issued its report on educating lawyers. The study emphasized the need for reforming law school curricula to increase training in the areas of ethics and professionalism and to develop the responsibility for public service. The study quoted the American Bar Association MacCrate report of the mid-1990s, which reads:

Providing additional classroom coverage of professional issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses. If the proponents of the need for increased law school training in ethics and professionalism are right, however, an effort equivalent to that which led to the increase in clinical legal education in the 1970s and the increased emphasis on skills training in the 1990s is required. The aim of this effort should be to elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills. This is indeed an ambitious goal. (American Bar Association, 1996).

In my view, the MacCrate report correctly notes that law school curriculum reform is slow and modest. In fact, the basic curriculum is pretty much the same as when I attended law school more than a half century ago. In my judgment, there is a critical need for change. The Washington and Lee School of Law model is an excellent step forward. Professionalism can best be developed in an environment where the student is working or interning as a professional during the third year of law school, as Washington and Lee now requires.

The Carnegie report recommends an integrative strategy for legal education wherein law schools teach lawyering skills and professionalism. I agree. Law schools can accomplish these goals bringing together experienced practitioners, judges and regulators with their faculty, and can develop integrated curricula that include all aspect of professionalism. The University of Richmond’s Downtown Center is an outstanding model for developing professionalism. However, the program is voluntary.

The Washington and Lee third-year model, under the leadership of professors A. Benjamin Spencer and Mary Z. Natkin, is a visionary and much needed program. The University of Richmond model, developed and implemented by Tara L. Casey, is also outstanding and should be required for all University of Richmond students.

I am mindful of the issue of ratings and the power of the US News and World Reports, as well as costs. It is my view that changes can be made within the constraints required by the ABA and the US News and World Reports ratings competition to meet the challenges, and at affordable costs. Some of the thoughts I have expressed above, such as requiring non-credit courses and seminars and more efficient use of the third year, would address many of the concerns.

Writing skills are essential. All law graduates should be required to complete and pass a course in legal writing. In this computer age, more and more young people are absolutely unable to communicate in writing, and certainly unable to prepare a lengthy persuasive document. Law students should be able to write before they reach law school, but unfortunately, that is not the case in too many situations. A mandatory legal writing course would solve this concern.

With all of this in mind, I offer the following suggestions for the bar examiners.

1. Assume that all applicants will pass the bar examination the first (and only) time.
2. Make available to all applicants on the Internet the following:
   A. Specifically what the bar exam will cover (not the questions, but the substance in enough detail to permit the applicants to study and pass).
   B. Detailed text materials covering all areas included in the examination, at minimum expense.
3. Grade the applicants in a manner that will enable all who study to pass.
4. In the event that there are some applicants who fail, the bar examiners should provide counseling and re-examine those individuals on the subjects they failed. If an applicant satisfactorily passes 24 or 25 of the required 27 subjects, and meets the bar examiners’ standards for “protecting the public” in those areas, why should the applicant be re-examined on the subjects he or she has passed?

Educating Lawyers continued on page 64
November 14
Video — Charlottesville, 9 AM – 4:15 PM

November 15
Video — Fredericksburg, Richmond, Roanoke, Tysons Corner, Virginia Beach 9 AM – 4:15 PM

November 15
Attorney Privilege Issues: Avoiding the Problems
Live — Charlottesville/Webcast/
Telephone, NOON – 2 PM

November 16
Representation of Incapacitated Persons as a Guardian ad Litem — 2012 Qualifying Course
Live — Charlottesville, 9 AM – 4:05 PM

November 20
Gain the Edge! Negotiation Strategies for Lawyers
Video — Alexandria, Charlottesville, Richmond, Roanoke, Tysons Corner, Virginia Beach
9 AM – 4:30 PM

November 27
31st Annual Trusts and Estates Seminar
Video — Alexandria, Charlottesville, Fredericksburg, Leesburg, Richmond, Roanoke, Virginia Beach
9 AM – 4:15 PM

November 28
31st Annual Trusts and Estates Seminar
Video — Tysons Corner, Warrenton, Winchester, 9 AM – 4:15 PM

November 29
12th Annual Advanced Seminar for Guardians ad Litem for Children — 2012
Live — Richmond, 9 AM – 4:30 PM

December 4
Recent Developments in the Law: News from the Courts and General Assembly
Video — Charlottesville, Fairfax, 9 AM – 4:55 PM

December 5
The Rocket Docket: Trying Cases in the Eastern District of Virginia
Live — Richmond, 8:55 AM – 1:25 PM

December 5
Gun Trusts
Video — Alexandria, Charlottesville, Richmond, Roanoke, Virginia Beach
8:30 AM – 4:10 PM (RICHMOND VIDEO BEGINS AT 9 AM)

December 6
The Rocket Docket: Trying Cases in the Eastern District of Virginia
Live — Alexandria, 8:55 AM – 1:25 PM

December 6
Gun Trusts
Video — Tysons Corner, 8:30 AM – 4:10 PM

December 11
42nd Annual Advanced Business Law Seminar
Video — Charlottesville, Fairfax, Richmond, Roanoke, Virginia Beach
9 AM – 5:45 PM

December 12
Attorney Privilege Issues: Avoiding the Problems
Telephone, NOON – 2 PM

December 13
Ethics Update for Virginia Lawyers 2012
Telephone, 2 – 4 PM

Client Protection continued from page 10

response, the General Assembly and the Supreme Court approved a $25 per year CPF assessment for each active member of the bar. The assessment became effective in 2007, but has a “sunset” provision making it effective only through June 30, 2015. While the mandatory CPF assessment has increased and will continue to increase the net worth of the CPF fund until June 30, 2015, the CPF nonetheless will not achieve the $9 million benchmark or the desired future claims payment capability under present circumstances.

Over the remaining three-year life of the statutory assessment, the CPF should receive an average of $750,000 annually. Claims payments since July 1, 2004, have averaged approximately $337,600 annually. If this claims experience holds constant, the CPF will increase its net worth by approximately $1,200,000 over the next three years. As of June 30, 2012, the net worth of the CPF was just over $5,800,000. Based on these assumptions, the net worth of the CPF will total approximately $7 million as of June 30, 2015, approximately $2 million short of the $9 million recommended by the 2005 actuarial study.

Additionally, since FY2004, the average yield on CPF investments has been 3.8 percent, nominally higher than the 3.5 percent return assumed in the 2005 actuarial study. However, the rules governing the CPF require that all funds be invested in certificates of deposit, U.S. governmental securities, and federal agency securities. The recent yield for these investments has been significantly lower than the 3.5 percent investment yield that formed the basis for the 2005 actuarial projections. For example, the interest income in FY2012, net of bank service charges, totaled $192,428. Unfortunately, we may reasonably expect that these investment conditions will continue for the indefinite future.

The recommendations of the task force are timely and consistent with the VSB’s client protection mission. The members of the task force deserve our unqualified gratitude for their service and their unanimous commitment to achieving consensus regarding these issues. These recommendations require our profession’s immediate attention. I commend them to your thoughtful consideration and comment.

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Ultimately, there should be a 100 percent pass rate for all who graduate from an approved law school. Since the bar examiners believe their role is to protect the public, they should at a minimum accept a dual mission of protecting the public and assisting law graduates to become lawyers.

We must do a better job in developing young lawyers at a substantially lower cost. It is the responsibility of all of us, as the chief justice stated, to improve the legal system that serves Virginia. I have tried to present some ideas that I do not think will impose on the law schools’ faculty concerns, or competition for prestige.


Virginia State Bar
Harry L. Carrico
Professionalism Course

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Virginia Lawyer Magazine
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Richmond, VA 23219-2800

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Marshall Award continued from page 46

His tenure in the FBA includes founding the Indian Law Section, which he chaired for twenty years while increasing the attendance at its annual Federal Indian Law conference from 225 to 750. When Baca stepped down as chair of the section, he was elected to the FBA national leadership ladder, where he served as secretary, treasurer and president-elect on his way to becoming president. He has also been very active in the National Native American Bar Association (NNABA) where he is the only person to have served as NNABA president three times. At the ABA, he served on the Committee on Problems of the American Indian, the Council on Racial Justice, and the Commission on Racial and Ethnic Diversity in the Profession and he was chair of the commission for three years.

A 1976 graduate of Harvard Law School, he was the first American Indian ever hired at the United States DOJ through the Attorney General’s Honor Law Program. At the time of his retirement he was on detail as the deputy director of the DOJ Office of Tribal Justice.

Baca also accepted a position as an adjunct professor at American University’s Washington College of Law, where he taught for two years while still an attorney at the DOJ and then taught Federal Indian Law for one semester at Howard University School of Law.

Now that he is retired, Baca says he will do some pro bono consulting, and rewrite his syllabus for Federal Indian Law and look for another adjunct position. “After practicing law for thirty-two years, you have to give back to the legal educational system that gave you the career you enjoyed,” he said. “Otherwise, I’m a retired guy with a new camera.”

Baca is the second member of the VSB to receive the Thurgood Marshall Award; Oliver W. Hill received the award in 1994. Baca paid homage to Hill during his acceptance speech.
FIRST DAY in PRACTICE and Beyond

Tuesday, October 30, 2012
Greater Richmond Convention Center
8:15 am – 4:00 pm

6 MCLE HOURS PENDING (2 ethics)
Tuition includes lunch, a disc with many substantive outlines, as well as a FREE one-year membership in the General Practice Section. The faculty includes some of Virginia’s most distinguished lawyers and judges.

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Enclosed is my registration fee of $85.00 to attend the seminar on October 30, 2012.

Name ____________________________
VSID ____________________________
Address ____________________________
City, State Zip ____________________________
E-mail address ____________________________
(E-mail address needed for sending out information regarding materials.)

Break-Out Sessions
(Select your preference. Break-out sessions will be assigned on a first-come, first-served basis.)

8:45-9:30 am ___ Criminal Law OR ___ Wills, Trusts and Estates
9:35-10:15 am ___ Family Law OR ___ Bankruptcy Law
10:30-11:15 am ___ Contract Drafting OR ___ Technology & Your Practice
11:20-12:00 am ___ Employment Law OR ___ Personal Injury
12:45-4:00 pm General Session

Please make your check payable to the Virginia State Bar and mail to:
Bar Services, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219
Registrations will be accepted on a first-come, first-served basis. **SPACE LIMITED.** Curriculum subject to change.

***A LINK TO MATERIALS WILL BE SENT OUT VIA E-MAIL PRIOR TO THE PROGRAM***

ONLY CDs WILL BE HANDED OUT ON SITE

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LEARN THE BASICS FROM THE BEST

Experienced judges and lawyers will provide attendees with practice tips and real-life essentials.

Choice of Morning Break-Out Sessions:
8:45 AM – 12:00 PM
• Criminal Law or Wills, Trusts and Estates
• Family Law or Bankruptcy Law
• Contract Drafting or Technology & Your Practice
• Employment Law or Personal Injury

General Session:
12:45-4:15 PM
• How to Avoid the Disciplinary System
• Discovery 101
• Charging & Getting Your Fees
• Appellate Advocacy
• Civility and Courtroom Etiquette: A Panel Discussion

In the 1970s Mr. Patterson won what was at the time one of the largest antitrust settlements ever, a $45 million settlement for Sergeants, the pet-products arm of pharmaceutical firm A.H. Robins Co., for anti-competitive practices by rival Hartz Mountain. During Mr. Patterson’s chairmanship, McGuireWoods also represented Robins in multistate litigation alleging that its Dalkon Shield birth-control device was faulty, causing injury and illness for as many as 200,000 American women.

He also led Virginia Military Institute’s defense of its 150-year-old, males-only admissions policy. VMI, from which Mr. Patterson graduated in 1949, won at trial, but the verdict was reversed and later affirmed by the U.S. Supreme Court, forcing the taxpayer-supported school in Lexington to admit women.

Mr. Patterson retired from the practice of law on December 31, 1999, shifting to volunteer work, including delivering the morning newspapers to patients at St. Mary’s Hospital in suburban Richmond.

Mr. Patterson interrupted his studies at VMI during World War II to join the Navy. After the war, he completed his degree at VMI and went on to graduate from the University of Virginia law school in 1952.

Mr. Patterson was predeceased by his first wife, the former Luise Wyatt. He is survived by his wife, Anne Marie Whitemore; a son, Robert H. Patterson III; two daughters, India Gregory and Margaret Mansfield; a stepson, Robert P. Whitemore, all of Henrico; and seven grandchildren and a stepgrandchild.

WILLIAM B. POFF, who was bar president in 1981-82, died September 5, 2012, surrounded by family and friends.

He was born in Vickers, Virginia, on August 23, 1932. His father, John Poff, ran a country store and his mother, Pansy Boose Poff, was a school teacher. The Roanoke Times reported that Mr. Poff graduated from Christiansburg High School at the age of 15 and then attended Virginia Polytechnic Institute and State University. He earned his law degree at Washington & Lee University where he was editor-in-chief of the Law Review and Order of the Coif.

He was commissioned into the United States Army, and taught at the Judge Advocate General school in Charlottesville. He joined the Woods Rogers law firm in 1959.

Mr. Poff was a mentor to countless attorneys throughout Southwestern Virginia, and a number of the attorneys he mentored went on to become judges. He practiced law with Woods Rogers for more than fifty years and argued and tried hundreds of cases in federal and state courts in Virginia and beyond, winning cases before the Supreme Court of Virginia, the Fourth Circuit Court of Appeals, and the United States Supreme Court.

In addition to serving as president of the State Bar, he was president of the Virginia Trial Lawyers Association, a member of the board of governors of the American Bar Association, and a founding member of the Virginia Association of Defense Attorneys. He received the Frank W. “Bo” Rogers Jr. Lifetime Achievement Award from the Roanoke Bar Association and also received a lifetime achievement award from the Virginia Association of Defense Attorneys. Earlier this year he received the Roger Groot Professionalism Award from the Ted Dalton American Inn of Court, the Inn’s highest honor.

Former VSB president and Roanoke lawyer Phillip V. Anderson described Mr. Poff as a “a true legal legend who not only was exemplary at his trade but was a gentlemen and epitomized professionalism in his practice.”

He was a long-time leader in Roanoke’s Sister Cities program. He worked diligently in support of Republican Party politics. He served as director of local organizations such as Mill Mountain Playhouse, the Roanoke YMCA, and the Roanoke Valley Jaycees.

He was predeceased by his first wife, Magdalen (Mag) Barbara Andrews Poff. He is survived by his wife, Spring; and his stepdaughters, Virginia, Young, Sunn, Anne and her husband, Mike; and his grandchildren, Carter, Ryan, Victoria and Peyton.

Virginia’s lawyers were indeed fortunate to have these fabulous leaders in the law serve as presidents of the Virginia State Bar.
Brian A. Boys, M. Bradley Brickhouse, Letha Sgritta McDowell, William H. Oast III, Sandra L. Smith, and Stephen E. Taylor announce the formation of the elder and disability law firm of Oast & Taylor PLC. Oast & Taylor’s practice areas include estate planning, trust & estate administration, special needs planning, long-term care planning, guardianships and conservatorships, personal injury settlement consultation, and litigation supporting these areas. Oast & Taylor has offices in Virginia Beach, Portsmouth, and Elizabeth City, North Carolina.

Katrina C. Campbell has joined the United Nations as an ethics officer. She is based in New York City at the UN’s headquarters. There, she is responsible for managing the UN’s protection against retaliation program, providing confidential ethics advice, and for training, outreach and education of staff members on ethics issues.

Patricia A. Dart, a former prosecutor with the commonwealth’s attorney’s offices of York and Louisa Counties, has opened Dart Law PC in New Town Center, Williamsburg. The firm’s focus is on criminal defense (state and federal), traffic matters, drafting wills and trusts, corporate matters, bankruptcy, and work as guardian ad litem for children. The office is located at 4805 Courthouse Street, Suite 204, Williamsburg, Virginia 23188.

John D. Epps, partner at Hunton & Williams recently accepted the Roger D. Groot Pro Bono Publico Service Award from the Virginia Bar Association.

John G. Finneran Jr., the general counsel and corporate secretary of Capital One Financial Corp., received the 2012 LexisNexis Award for outstanding service to the bar from the VBA.

Kimberly Anne Fiske, a partner with the Alexandria law firm of Fiske & Harvey where she practices trust and estate law, has been named non-profit board leader of the year by the 2012 Volunteer Alexandria’s Business Philanthropy Summit for her community service leadership. She recently received the award during the 5th Annual Spring for Alexandria, a citywide, four-day event that focuses on giving and community service.

Nina J. Ginsberg, a partner at DiMuro Ginsberg PC in Alexandria, was sworn in as a member of the National Association of Criminal Defense Lawyers board of directors at the annual board and membership meeting in San Francisco, California, on July 28. This will be Ginsberg’s third term on the board.

Arianna S. Gleckel, an attorney with Bean Kinney & Korman, has been named to Leadership Arlington’s Class of 2013. Gleckel practices law in the areas of commercial litigation and employment law, as well as lending services and landlord-tenant law. She also represents creditors in bankruptcy proceedings.

Kelly Rae Gring has joined Glasser and Glasser PLC as an associate attorney. She previously worked at a creditors’ rights firm in Richmond where she co-managed its Virginia operations. Her areas of expertise are in civil litigation, creditors’ rights, bankruptcy, foreclosure, and collections.

The Greater Richmond Bar Foundation elected the following for the 2012–13 year: Leslie A.T. Haley, president; Scott C. Oostdyk, vice president; Anne D. McDougall, Freed & Shepherd PC, secretary; Gerald W.S. Carter, Harrell & Chambliss LLP, treasurer; and Brian R. Marron, immediate past president.

Jonathan E. Halperin, formerly of Regan, Halperin & Long in Washington, D.C., has opened the Halperin Law Center LLC outside of Richmond. The Halperin Law Center handles a wide variety of serious personal injury and wrongful death cases in Virginia, the District of Columbia and Maryland including product liability, premises liability and vehicular accident cases. More information can be found on the firm’s website at www.halperinlegal.com.

Robert A. Harris IV has formed Harris Law Firm PLLC, with offices in Washington, D.C. Harris was previously a partner at Sack & Harris PC in McLean. He will continue his general business practice with an emphasis on commercial real estate matters.

Marissa M. Henderson has become a partner at the maritime law firm of Ventker & Warmann PLLC in Norfolk. Her practice focuses on admiralty and maritime law, particularly litigation.


Matthew B. Kaplan has formed The Kaplan Law Firm in Arlington. His practice will focus on civil litigation and criminal and civil appeals in state and federal courts in Virginia and the District of Columbia. Kaplan previously worked for the firm of Cohen Milstein Sellers & Toll PLLC in Washington, D.C., where his focus was on complex civil litigation.

Richard D. Kelley has joined Bean, Kinney & Korman as a shareholder. Kelley focuses his practice on complex civil litigation, primarily in the areas of business and construction litigation.

Kevin E. Martingayle and William C. Bischoff have launched their own firm beginning July 2, 2012.

Irina Manelis has joined Dyer Immigration Law Group PC as an associate attorney. Dyer Immigration Law Group is located in Glen Allen and limits its practice to issues arising under the immigration laws of the United States.

Yvonne McGhee, executive director of the Virginia Bar Association, has been installed as president of the National Association of Bar Executives. Mcghee assumed the post at the NABE annual meeting in Chicago. The NABE supports decision makers at more than 250 U.S. bar associations and legal organizations.
David G. Nusbaum has been appointed associate attorney with The Norton Law Firm PLLC, in Vienna. His practice will focus on corporate and commercial transactions, and providing outsourced general counsel services.

William H. Oast III, attorney with Oast & Taylor PLC, recently announced the official opening of the firm's offices in the Town Center/Pembroke area of Virginia Beach and in Elizabeth City, North Carolina. Another office in Olde Towne Portsmouth will also be opened.

Oblon, Spivak, McClelland, Maier & Neustadt LLP partners Jonathan Hudis and Scott A. McKeown once again have been appointed to leadership positions within the American Bar Association Intellectual Property Law (ABA-IPL) Section. Hudis was elected to serve on the ABA IPL Section’s council, its governing body, for a four-year term. He also was appointed vice-chair of the section’s CLE board, which oversees live and webinar course offerings throughout the year. McKeown was appointed as chair of the Post Grant & Inter Partes Patent Office Practice Committee, after having previously served as vice-chair of this committee for a two-year term. He is co-chair of the firm’s post grant patent practice group, focusing on post-grant counseling, litigation and related prosecution issues.

Kellam T. Parks has opened the Law Office of Kellam T. Parks PLLC at 4164 Virginia Beach Blvd. near Town Center, focusing primarily on domestic relations, personal injury, and credit reporting dispute cases. For more information go to www.ktparkslaw.com.

Gary M. Pearson has been appointed commissioner of Accounts for Fauquier County. He continues his private general practice with his wife, Lois Graninger Pearson.

Linda M. Quigley has formed Quigley & Associate PLLC. The firm focuses on intellectual property, internet law and e-commerce, and business law and litigation. Julia M. Bishop has joined the firm as an associate attorney. The office is located at 530 East Main Street, Suite 720, Richmond, VA 23219, and the firm serves all of eastern Virginia. (804) 591-1626, linda@quigleypllc.com, julia@quigleypllc.com.

Thomas M. B. Salmon has joined Baker & McKenzie’s Zurich office as Of Counsel. He focuses on international trusts, estate, and tax planning. Previously he was chief international trust officer of Citibank’s International Private Bank and a director of a number of Citi’s international trust companies. He has been based in Switzerland for more than 25 years.

Colin J. Smith has joined Holland & Knight as a partner in its Tysons Corner office. He comes to Holland & Knight from Watt, Tieder, Hoffar & Fitzgerald and brings with him Senior Counsel Briana B. Stolley. Smith focuses primarily on sophisticated commercial real estate transactions, including development, sales and acquisitions, financings and leasing. Stolley represents owners, developers, investors and tenants of office buildings, shopping centers, industrial parks and mixed-use developments in connection with the leasing, development, acquisition and disposition of commercial real estate.

W. Ryan Snow has been elected managing partner of Crenshaw, Ware & Martin PLC effective July 1, 2012. He succeeds Timothy A. Coyle who served in that role for twelve years. Coyle will continue his Business Law and Public Sector Law practice. Snow joined the firm in 2001 and chairs the firm’s Business Disputes and Construction Law practice groups.

A. Benjamin Spencer, professor of law at Washington and Lee University School of Law, has been appointed director of the Francis Lewis Law Center by Dean Nora V. Demleitner. The Francis Lewis Law Center is the independently funded faculty research and support arm of W&L Law. As director, Spencer will oversee the center’s agenda, which includes sponsoring symposia, enhancing the intellectual life at the school of law, and providing support to faculty in their scholarly endeavors.

Stephen B. Stern, a partner at Hyatt & Weber PA in Annapolis, Md., has received the 2012 Label A. Katz Young Leadership Award, named for the youngest person to achieve the office of international president of B’nai B’rith. Stern received his award at B’nai B’rith’s 2012 policy conference on September 9 in Washington, DC.


Christopher P. Thumma has joined the law firm of Harman Claytor Corrigan & Wellman, as an associate. He will concentrate his practice in general civil litigation, including motor vehicle, premises, and products liability.

Troutman Sanders LLP has opened an office in Beijing, the law firm’s third office in China since it entered the world’s most populous nation in 1997.

Rachel E. VanHorn and Robyn D. Pepin have joined Glasser and Glasser PLC as associate attorneys. VanHorn’s areas of expertise are in civil litigation, criminal defense, estate planning and creditors’ rights. Pepin’s areas of expertise are in bankruptcy and creditors’ rights.

H. Kimberlie Young has joined the Norfolk Sheriff’s Office as legal counsel. She recently retired from the U.S. Navy Judge Advocate General’s Corps after twenty-three years of active duty. Her last assignment in the Navy was as Staff Legal Advisor at Headquarters, Allied Commander Transformation, NATO in Norfolk.

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Nominations Sought for District Committee Vacancies

The Standing Committee on Lawyer Discipline calls for nominations for district committee vacancies to be filled by the Virginia State Bar Council in June 2013.

Nominations, along with a brief resume, should be sent to the Virginia State Bar by February 28, 2013.

For more information see http://www.vsb.org/site/news/item/nominations-2013-14-DC

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SALUTES

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Clarence would like to salute Washington and Lee School of Law for its efforts in legal education reform, including the School’s innovative third-year curriculum. The course of study consists entirely of practice-based simulations, real client experiences, and advanced explorations into legal ethics and professionalism. In addition, students fulfill a law service requirement, instilling a career-long commitment to helping the underrepresented and supporting the Bar.

Clarence would also like to acknowledge the contributions to legal education reform by Washington and Lee Law Professor A. Benjamin Spencer. As chair of the Education section of the Virginia State Bar, Ben has worked tirelessly to bring together academics, members of the judiciary and lawyers to improve legal education in Virginia by focusing on the entire life cycle of the profession, from prelaw interest, to law school and bar admission, and through continuing legal education.

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