

Criminal Law News

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The Newsletter of the Criminal Law Section of the Virginia State Bar



56th Annual Criminal Law Seminar **SPONSORED BY VIRGINIA CLE®** **IN COOPERATION WITH THE VSB CRIMINAL LAW SECTION**

Friday, January 30, 2026
Hilton Richmond Hotel & Spa/Short Pump
Live and Webcast

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Chair's Column

Alison G. Powers, Esquire



Virginia's Lawyer Shortage: A Deeper Crisis and a Roadmap for Reform

In September 2024 I wrote a column about the newly formed Virginia State Bar created Entry, Growth and Distribution of Virginia Attorneys Study Committee (EGAD VA) and the work they were doing to look into the causes of Virginia's lawyer shortage. The results are out and the warning is now critical: without structural change, Virginia's lawyer shortage will get worse and the consequences will land squarely on communities least able to absorb them.

According to the [EGAD VA Executive Summary and related report](#):

- Nationwide analysis by the *American Bar Association* indicated that large swaths of Virginia — **60 out of 133 counties and cities** — qualify as *legal deserts*, with fewer than one attorney per 1,000 residents.
- Between **2012 and 2024**, the number of individuals taking the Virginia Bar Exam dropped precipitously:
 - **57% fewer examinees** took the Virginia-essay portion,
 - **61% fewer took the full bar exam**,
 - and **56% fewer new attorneys** were admitted to practice by examination.

These trends reflect not only fewer lawyers entering practice but a profession that is aging and contracting in geographic areas already struggling with access to counsel.

Law school enrollment nationwide has declined over the past decade, but Virginia has been hit particularly hard. The cost of legal education continues to rise, while starting salaries in public service, rural practice, and small firms remain stagnant. For many graduates, the math simply does not work.

The result is a vicious cycle. Fewer lawyers mean heavier burdens on those who remain. Heavier burdens accelerate burnout and early exits from practice. That, in turn, discourages new lawyers from

entering already strained regions. Meanwhile, judges face dockets filled with self-represented litigants, slowing proceedings and increasing the risk of unjust outcomes.

Technology, often touted as a solution, can help, but technology cannot replace trained advocates, nor can it compensate for a lack of institutional knowledge in high-stakes proceedings.

The EGAD VA committee's work culminates in a comprehensive set of findings and 30 evidence-based recommendations. Key themes from the executive summary include:

- **Bar admissions reform:** Enhancing *score portability* and reducing barriers to entry could help Virginia compete with neighboring jurisdictions.
- **Stronger collaboration between educators and regulators:** Law schools and bar authorities must align training and admissions to better meet workforce needs.
- **Expanding pathways to licensure:** Alternative pathways could ease entry for qualified candidates.
- **Targeted incentives:** Recruit and retain lawyers in underserved "lagging circuits" through focused financial and professional support.
- **Reducing cost barriers:** High educational debt and the cost of licensure dissuade potential candidates from entering or remaining in practice.

These recommendations provide a roadmap that looks beyond symbolic fixes toward systemic solutions.

Virginia's lawyer shortage is not merely a professional issue, it is a public crisis of access to justice. Legal deserts do not appear overnight, and they do not disappear without intentional, coordinated effort. If we fail to rebuild the pipeline now, the next generation will inherit a system that exists in name only, one where rights are theoretical and access to justice depends entirely on geography and access to financial resources.

Virginia State Bar 56th Annual Criminal Law Seminar

Friday, January 30, 2026 • Richmond

Course Schedule

8:15 **Welcome and Opening Remarks**

Chuck Slemm, Seminar Chair

8:30-10:00

Recent Developments and Criminal Law Update (1.50 CLE hrs)

Professor Corinna Lain, University of Richmond School of Law



Corinna Barrett Lain is the George E. Allen Chair in Law at the University of Richmond School of Law. She is one of the nation's leading authorities on the death penalty, presenting her work at national and international conferences and publishing in the top law journals in the country. Her work has appeared in the *Stanford Law Review*, *University of Pennsylvania Law Review*, *Duke Law Journal*, *UCLA Law Review*, and *Vanderbilt Law Review*, among other venues, and has been cited by numerous courts, including a concurring opinion of the United States Supreme Court.

Lain is also one of the leading voices on criminal justice in Virginia more broadly, lecturing at annual conferences for the bench and bar and serving as the principal co-author of Thompson-West's *Virginia Practice Series*, a four-volume treatise that serves as an authoritative guide for Virginia criminal law and procedure. Lain graduated *summa cum laude* from the College of William & Mary, and received her J.D. from the University of Virginia, where she served on the managing board of the *Virginia Law Review* and was elected to Order of the Coif. She clerked on the Tenth Circuit Court of Appeals and then served as a prosecutor in Henrico County before joining the Richmond Law faculty in 2001. Lain is a former sergeant in the United States Army, an elected member of the American Law Institute, and a recipient of the University of Richmond's Distinguished Educator Award. Her book *Secrets of the Killing State: the Untold Story of Lethal Injection* (2025) has been the subject of over two dozen podcasts, and led to over 70 interviews in print and online media.

10:00-10:15 **Networking Break**

10:15-11:15 **Crimmigration 101: Navigating the Intersection of Criminal and Immigration Law**

(1.00 CLE hrs)

Ashley Warmeling, Senior Immigration Resource Attorney, VIDC



Ashley is the Senior Immigration Resource Attorney for the Virginia Indigent Defense Commission (VIDC). In this role, he advises all public defenders in Virginia on the immigration consequences of criminal offenses for non-citizen clients. Prior to joining the VIDC, Ashley was a Managing Attorney at the Amica Center (formerly known as CAIR Coalition). In this role, Ashley supervised entry-level attorneys in their representation of clients in Virginia immigration detention centers. She also led the Fairfax County Immigrant Defense Program and the DC Immigrant Justice Legal Services Program. She also represented clients who had been designated mentally incompetent by the Immigration Court. Ashley has also worked at Human Rights First and the Asylum Seeker Advocacy

Project. After graduating law school, she clerked for the Senior Judges at the District of Columbia Superior Court in Washington, DC. Ashley is admitted to practice law in Virginia and Michigan. She is fluent in English and Spanish.



Tanishka Cruz, Founding Attorney, Cruz Law, PLLC

Tanishka V. Cruz is the founder and managing attorney at Cruz Law PLLC a small law firm in Charlottesville established in 2017 focused on immigration law matters, including but not limited to removal defense, family-based immigrant visas, and humanitarian forms of immigration relief. She also serves as a court appointed Guardian ad litem for children before Virginia Courts. Tanishka previously served as a board member for the Legal Aid Justice Center and has co-supervised students in the University of Virginia School of Law's Immigration Law Clinic. She received her BA from Temple University and her Juris Doctor from Drexel University.

11:15-12:45

New Law, New Beginnings: Virginia's New Records Sealing Legislation (1.50 CLE hrs)

Lauren McGarry Young, Expungement and Sealing Resource Attorney, VIDC



Lauren graduated from James Madison University with her B.S. in mathematics before heading to law school at the University of Richmond School of Law. Upon passing the bar, Lauren moved back to her hometown of Martinsville, Virginia and worked at the Martinsville Public Defender's office for about 6 years. She then moved to Richmond, Virginia with her now-husband, Chase, and began working at the Legal Aid Justice Center where she helped community members who had been impacted by the legal system to clear their fines and fees as well as expunge their criminal records. With help from several other organizations, Lauren led several expungement clinics across

the state. Recently, she returned to the VIDC as the Expungement and Record Sealing Training and Resource Attorney where she is excited to help lawyers across the state with all their sealing and expungement questions!



Mackenzie Babichenko, Hanover County Commonwealth's Attorney

Mackenzie Babichenko is the Commonwealth's Attorney for Hanover County. She is an active participant in the Virginia Association of Commonwealth's Attorneys, the Virginia State Bar, and the Hanover County Bar Association as well as with local and regional initiatives such as the Hanover Child Abuse Response Team, Hanover Human Trafficking Multidisciplinary Team, Richmond Regional Human Trafficking Collaborative, and Southern Virginia Internet Crimes Against Children. Additionally, Mackenzie serves as a member of the Commission on Youth, on the board of Hanover Safe Place, and represents the 15th Circuit on the Virginia State Bar Council. Born

and raised in northeastern Ohio, Ms. Babichenko received her Bachelor of Science Degree in Forensic Chemistry, Cum Laude, from George Washington University where she minored in Physics and Psychology. She earned her Juris Doctor, Cum Laude, from the University of Miami Miller School of Law. After obtaining membership with both the Virginia State Bar and the Patent Bar, she began her career as an Assistant Commonwealth's Attorney in Portsmouth, Virginia. In 2014, Mackenzie moved to Hanover County where she became an Assistant Commonwealth's Attorney. During her tenure she was promoted first to Senior Assistant Commonwealth's Attorney and later to Deputy Commonwealth's Attorney before being elected Commonwealth's Attorney for Hanover County upon the retirement of the esteemed R. E "Trip" Chalkley, III in 2023. Beyond her professional responsibilities, Mackenzie serves the community through her involvement and partnerships with Hanover County Public Schools, Reynolds Community College, Randolph-Macon College, and the Hanover County Sheriff's Office Police Academy. When not working for the community, Ms. Babichenko enjoys spending time with her husband, Igor, and their three children.

12:45-1:45

Plated Luncheon – “A Salute to the Men and Women of La Mancha”*Craig S. Cooley, Craig S. Cooley, P.L.C.*

Craig Cooley is a practicing attorney in the Richmond, Virginia area. He is a past Chairman of the Criminal Law Section of the Virginia State Bar, past President of the Richmond Criminal Bar Association, a Substitute Judge, has served on the faculty of the Professionalism Curriculum Course of the Virginia Supreme Court, and served as an Adjunct Professor at the University of Richmond Law School. His 48 years of law practice include over 70 capital murder representations, over 500 murder trials, and over 4500 representations of indigent defendants. He has tried over 500 jury trials. Mr. Cooley served as co-lead counsel to Lee Boyd Malvo, the 17 years old juvenile tried for capital murder as one of the two "D.C. Beltway Snipers."

2:00-3:00

Elder and Vulnerable Adult Abuse: Coordinated Civil and Criminal Responses

(1.00 CLE hrs)

Alison G. Martin, County of Henrico Commonwealth Attorney's Office

Alison Martin, Assistant Commonwealth's Attorney for Henrico County brings enthusiasm and energy to her practice. She handles all phases of prosecution of sophisticated and complex violent matters, including high profile media cases like the Adam Oakes matter and *Comm. v. Nasir Eberhardt*, who murdered Highland Springs High School basketball standout Jahiem Dickerson. She is a frequent lecturer and law enforcement trainer on issues related to child abuse, sexual assault, and elder abuse. Additionally, she provides training regarding in-court testimony to law enforcement recruits. She frequently represents the CA's office at forward-facing community events, including presentations at churches related to elder and child abuse. She is married to another lawyer, and they are the proud parents of three boys.

Anne Heishman, County of Fairfax Commissioner of Accounts Office

Anne M. Heishman was appointed Commissioner of Accounts for the 19th Judicial Circuit on July 1, 2020. Ms. Heishman began her legal career in 2003 as a law clerk to the Honorable Michael P. McWeeny of the Fairfax County Circuit Court. Her legal practice concentrated on guardianship, conservatorship, estate and trust administration, and contested fiduciary matters. Ms. Heishman also routinely served as a Guardian ad Litem for incapacitated adults. In addition to her law practice, Ms. Heishman has been a lecturer and panel participant for seminars presented by the Virginia State Bar, the Virginia Academy of Elder Law Attorneys, the Virginia Trial Lawyers Association, and the Fairfax Bar Association. She has served as a board member for the Conference of the Commissioner of Accounts since 2020 and currently serves as the Past-President for the Conference. During her years of practice, Ms. Heishman was recognized as a top Elder Law attorney by *Washingtonian* magazine, *Northern Virginia* magazine, *Virginia Business* magazine, and *Arlington Magazine*. She was named as a 2023 Influential Woman of the Law by *Virginia Lawyers Weekly*.

3:00-3:15

Networking Break

3:15-4:15

GenAI and the Legal Profession (1.00 CLE hrs)

Justice D. Arthur Kelsey, Supreme Court of Virginia



The Hon. D. Arthur Kelsey has served as a Justice of the Supreme Court of Virginia since 2015. His judicial career spans more than two decades and includes service at every level of Virginia’s judiciary. Prior to joining the Supreme Court, he served on the Court of Appeals of Virginia beginning in 2002, From 2000 to 2002, Justice Kelsey was a judge of the Fifth Judicial Circuit of Virginia. Justice Kelsey earned his B.A. in Political Science, magna cum laude, from Old Dominion University and his Juris Doctor from the Marshall-Wythe School of Law at the College of William & Mary, where he was elected to the Order of the Coif. Before assuming judicial office, Justice Kelsey practiced law as a litigation partner at Hunton & Williams. He previously clerked for Chief U.S. District Judge John A. MacKenzie of the Eastern District of Virginia. Justice Kelsey is a prolific legal writer whose scholarship explores jurisprudence, legal history, appellate review, and the structural foundations of judicial power. His publications have appeared in Virginia Lawyer, the VBA Journal, Judicature, the Regent University Law Review, the Tulane Law Review, the Journal of Maritime Law and Commerce, and other professional journals. He is also a contributing author to the Antitrust Law Developments (4th ed.) published by the ABA Section of Antitrust Law and has served as Associate Editor of American Maritime Cases. Justice Kelsey continues to write and lecture frequently, contributing to the ongoing study and refinement of Virginia’s legal system and the broader American jurisprudential tradition.

4:15

Closing Remarks

Chuck Slep, Seminar Chair

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3 Sa	1.0	5.5
1 Su	3.5	3.0
5 Mo	7.5	1.5
6 Tu	2.0	5.0

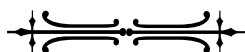
Recent Matters

- William Holden Family
- Larry Smith General

FOURTH CIRCUIT COURT OF APPEALS CRIMINAL LAW AND PROCEDURE DECISIONS

U.S. v. Hawkins, F.3d (12/11) “We find no basis for reasonable suspicion that the individuals here were engaged in criminal activity. The drug task force officers saw a short interaction between [3 people] in the apartment parking lot. But the drug task force officers did not see a handshake, drugs, or money. And this interaction took place in the middle of the afternoon, in broad daylight, and in a public place. The fact that the events occurred in an area known to the officers from prior investigations or that [one of the persons] was convicted of a drug crime over ten years ago does not change the analysis of the interaction because the drug task force officers were not permitted to label [that person] as a drug dealer and view all the facts through that lens. Additionally, the minor and reconcilable inconsistencies between the statements taken during the traffic stop do not elevate the officers’ hunch that drug activity took place to reasonable suspicion. Accordingly, the facts here taken together failed to create reasonable suspicion sufficient to extend the traffic stop.”

U.S. v. Coe, F.3d (11/12) The court strongly condemned an officer’s testimony that: “whenever there’s any type of crime that’s committed, regardless of what type of crime it is, if you’re going to encounter a person . . . obviously best to go with the firearm first because you never know what that person has.” This “philosophy about when to draw a weapon is not the law, and we denounce such views in the strongest possible terms.... Pointing a firearm at someone is a threat with deadly force that is likely to instill fear and can needlessly escalate a situation by making it more dangerous for everyone involved. We emphasize that officers have no constitutional carte blanche to draw firearms ‘whenever there’s any type of crime that’s committed.’”



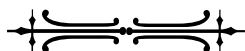
VIRGINIA SUPREME COURT CRIMINAL LAW AND PROCEDURE DECISIONS

Commonwealth v. Jackson, Va. (11/10) In reversing the Court of Appeals, the Supreme Court addressed the dividing line between appropriate and inappropriate consideration of a defendant’s lack of remorse. A trial court may consider a lack of remorse, so long as it is not explicitly linked to a defendant’s prior claim of innocence or not guilty plea or exercise of his right to remain silent. I.e., punishment cannot be enhanced based upon a “prior claim of innocence implicit in his not guilty plea.” In this case, “the circuit court did not abuse its discretion in sentencing Jackson for his probation violations. Acting within the boundaries of its discretion, the court took into account Jackson’s failure to accept responsibility for his probation violations and fashioned a sentence that viewed with skepticism the likely success of further rehabilitation efforts.”

Orndoff v. Commonwealth, Va. A witness who appears in a courtroom while voluntarily intoxicated can be held in summary contempt, particularly where the intoxication disrupts orderly adjudication. Here the circuit court observed behavior by Orndoff that was understandably a source of concern for the court. The evidence personally observed by the judge in the courtroom, however, did not establish, beyond a reasonable doubt, that her behavior was attributable to voluntary intoxication. Consequently, holding Orndoff in summary contempt was not appropriate. If summary contempt is not appropriate, a trial court is not powerless to vindicate its authority. However, it must proceed in a separate hearing, with the ordinary due process safeguards of notice, opportunity to present evidence, and the opportunity to test the evidence presented against the person charged with contempt. [Three Justices dissented].

Commonwealth v. Hubbard, Va. (9/11) The Fourth Amendment requires a “special justification” for searches that are peculiarly intrusive. A strip search typically involves “an inspection of a naked individual, without any scrutiny of his body cavities.” A visual body cavity search goes further

and “extends to a visual inspection of the anal and genital areas.” A “manual body cavity search,” the most intrusive search, entails “some degree of touching or probing of body cavities.” We need not delineate the exact definitional distinctions between the various categories of invasive body searches here, because the circumstances of this case justify the officer’s conduct no matter what label we put on the challenged search. The officer was patting down the outside of Hubbard’s underwear underneath his shorts. The officer later pulled the waistband of Hubbard’s underwear out far enough to see the suspected bags of contraband and retrieve them. The bags of cocaine were “just sitting down between [Hubbard’s] buttocks and his underwear.” Hubbard was physically resisting the search, and if he “were to break the bag,” it would have spilled out its contents in the immediate presence of the restraining officers, Hubbard, and the other passenger. The officer had been instructed by his command to not field test “bags of white powder” because of the risk that they may be laced with fentanyl, which “has become so dangerous in today’s time that a simple poof of that powder that could reach [their] nostrils could kill [them].” The officer’s retrieval of the bag of drugs from Hubbard’s underwear was reasonable under the circumstances of this case.



VIRGINIA COURT OF APPEALS CRIMINAL LAW AND PROCEDURE DECISIONS

Hollingsworth v. Commonwealth, Va.App. (11/25) It was entirely reasonable for Officer to pat suspect down despite the fact that another officer had done so before additional information was revealed. “The Fourth Amendment simply did not require [police] to risk either being shot while continuing to investigate the attempted robbery or allowing Hollingsworth to orchestrate an armed escape.”

Holley v. Commonwealth, Va.App. (11/18) An individual violates Code § 18.2-370(A) only if that

individual is at least 18 years old and the victim is less than 15 years old. It is uncontested that V.S. was 16 years old when she received the text from Holley’s cellphone number proposing the act of cunnilingus. Therefore, as a matter of law, Holley could not have violated Code § 18.2-370(A) and the trial court erred when it convicted Holley.

Blanton v. Commonwealth, Va.App. (11/18) Defendant contends that the statutory language prevents the Commonwealth from combining the weight of the five bags of methamphetamine mixture that he was transporting together in a single box. He suggests that the statute’s use of the term, “a mixture,” refers to the content of each bag separately. Nothing in the statutory language reflects an intent by the legislature to prohibit aggregating the weight of multiple packages of illegal drugs of the same type to determine the weight of the “mixture or substance” for which a defendant may be prosecuted and punished under Code § 18.2-248(H)(5). In short, the plain language of Code § 18.2-248(H)(5)’s enhanced penalty provision contains no requirement for unitary packaging, and we will not read such a requirement into that provision.

Williams v Commonwealth, Va.App. (9/16) Clarifies that the balancing tests are different under Virginia Rules of Evidence 2:403 and 2:404 for determining when otherwise admissible evidence must be excluded because of its prejudicial effect. Rule 2:404(b) does not use the “substantially outweighs” standard from Rule 2:403(a). Instead, Rule 2:404(b) permits the introduction of otherwise admissible prior-bad-act evidence only “if the legitimate probative value of such proof outweighs its incidental prejudice.” The difference in balancing tests makes it easier for a party to introduce relevant evidence generally than to introduce relevant prior-bad-act evidence. Prior-bad-act evidence that is otherwise admissible must be excluded whenever its probative value is merely outweighed by its incidental prejudice; the prejudice need not substantially outweigh the probative value.

Rodriguez v. Commonwealth, Va.App. (9/9) “Code § 18.2-67.7:1 changed the general prohibition against character evidence to prove propensity by creating a narrow exception in child sexual abuse cases.” Although Virginia courts have not expressly addressed a constitutional challenge to the admission

of evidence solely to establish propensity, we look to federal courts for guidance and hold: Evidence “of a defendant’s prior conviction in prosecutions for felony sexual offenses against a child ‘for the purpose of establishing propensity to commit other sexual offenses’” is admissible. However, this conviction was reversed because the trial court should have excluded a juror who affirmatively stated that “it would be very hard” for her to fairly and impartially decide the case based on all the evidence and would be inclined to convict based on Rodriguez’s prior convictions alone.

Millspaugh v. Commonwealth, Va.App. (9/2)
“Dismissal is the proper remedy when an event occurs while a case is pending on appeal that renders it moot—that is, ‘renders it impossible’ for this Court to grant appellant the relief requested.” Millspaugh is no longer subject to the [emergency substantial risk order]. As a result, even if we agree with Millspaugh that the order should have been limited to only 14 days, there is no relief we can grant because we cannot “undo” the fact that he was subject to the order for extra time.

Criminal Law News



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