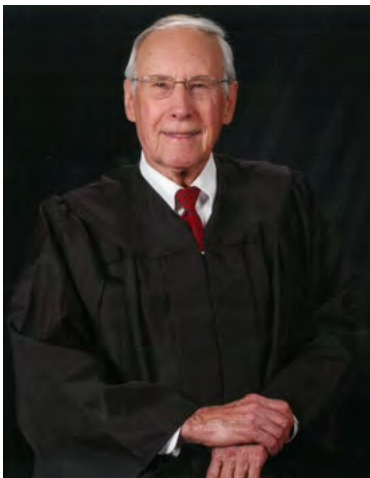


Judge William Whitney Sweeney

A Remembrance by Margaret A. Nelson, Esquire



The people of Virginia lost a great man, a preeminent jurist and a dear friend on November 5, 2017.

On that day, after a long illness, the Honorable William Whitney Sweeney, 89, of Lynchburg passed away with his family by his side.

At the time of his retirement in 1998, he was the longest serving circuit court judge in Virginia and one of the most respected. “Judge Sweeney was the embodiment of the characteristics that define a great judge. He was wise, fair, courteous and a lifelong student of the law,” said retired Judge J. Michael Gamble of the 24th Circuit who practiced before

Judge Sweeney for more than a decade before his own elevation to the circuit bench where they served together for seven years. An editorial in the Lynchburg *News & Advance* chronicled: “Judge Sweeney was everything a judge should be. He had a wonderful demeanor and the lawyers who practiced before him appreciated his kind and even temperament and his fairness and intelligence.”

Judge Sweeney grew up in Lynchburg and graduated from E.C. Glass High School. He

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Waller Holladay Horsley

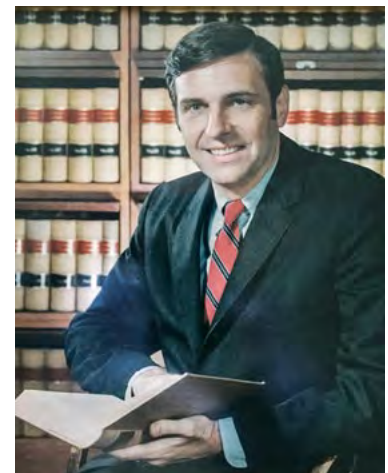
A Remembrance by William L. S. Rowe, Esquire*

**With thanks to Richard H. Burton and J. William Gray, two other lawyers who enjoyed working with Waller for many years, and who were most helpful with this Remembrance.*

1973 was a lucky year for me: the Army advised that it wanted me for three months, not three years; Hunton Williams Gay & Gibson offered me a job; and I met Waller Horsley. Meeting Waller was clearly the most important of

those three events for me, though it took a while for me to appreciate that fact because Waller said he wanted me to be a tax lawyer, and that was the furthest thing from my mind. Even so, after a day of discussion, he promised me a varied career and told me simply: “Welcome aboard.”

Waller had a career of academic achievement that anyone would envy. He was graduated from



Continued on page 5 >

From the Chair of the Senior Lawyers Conference

Robert E. Hawthorne, Esquire

In this issue of the Senior Lawyer News, we remember Waller H. Horsley, a deceased, distinguished lawyer, and the Honorable William W. Sweeney, a deceased, distinguished judge, both of whom possessed and demonstrated personal and professional qualities which were and are inspirational to members of the legal profession and the public. We express our gratitude and respect for their many contributions in upholding the honor of the profession of law.

The purpose of the Senior Lawyers Conference is to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, to encourage cordial discourse and interaction among the members of the Virginia State Bar (VSB), and to pursue its Mission and Goals as follows:

The SLC shall serve the particular interests of senior lawyers and promote the welfare of seniors generally. In serving the interests of senior lawyers, the SLC will plan and present programs and activities and produce publications of interest to senior lawyers, and coordinate activities for senior lawyers by, for, and with state and local bar associations. To promote the welfare of seniors generally, the SLC will study issues of concern to seniors, prepare and present programs and publications designed to explore

and develop such issues, advocate appropriately on behalf of such issues and cooperate with other entities interested in such matters.

As of May 1, 2018, the Senior Lawyers Conference has 19,576 members.

In bar year 2017-2018, I have had the honor and the pleasure to serve as chair of the Senior Lawyers Conference, and in that capacity, I have also served on the Virginia State Bar Council and on the Virginia State Bar Council Executive Committee.

Some of the significant activities of the SLC during this year have included sponsoring the April 2018 issue of the *Virginia Lawyer Magazine*, assisting the local bar associations in presenting Senior Law Day programs, circulating the Senior Citizens Handbook and sponsoring the 50 year award presentation breakfast at the annual meeting in Virginia Beach. Serving as chair of the SLC has been a very rewarding experience, and I am left with a great appreciation for the contribution to the Bar and the community at large that is being made by the members of the SLC.

The upcoming meetings of the SLC Board will be held on a to-be-announced Tuesday, at locations to-be-announced in Charlottesville or in Richmond in each of: September 2018, November 2018, February 2019, and April 2019.

The 2018 SLC annual business meeting will be on Saturday, June 16, 2018 at the VSB 80th Annual Meeting in Virginia Beach, in the Capes Ballroom in the Sheraton Oceanfront, 3501 Atlantic Avenue, Virginia Beach, VA, at 9:45 a.m. The 2018-2019 slate of officers for the Board of Governors is:

Chair: Carrollyn C. Cox
of Virginia Beach

Chair-elect: John D. Eure
of Roanoke

Secretary: Margaret Nelson
of Lynchburg

Treasurer: Peter C. Burnett
of Leesburg

Senior Lawyer News Online Newsletters

The *Senior Lawyer News* is published as an online newsletter. Periodically, we publish Remembrances of deceased distinguished lawyers or judges whose personal and professional qualities are inspirational to members of the legal profession. Volunteers are needed to write articles for future issues of The Senior Lawyer News. <http://www.vsb.org/site/conferences/slc/newsletters>. Please call Frank O. Brown, Jr., Newsletter Editor, (804) 673-7545 if you are interested in writing an article for the newsletter.

graduated from the Virginia Military Institute in 1949 and matriculated to the University of Virginia Law School. The Korean Conflict interrupted his legal training and he served in the United States Army 101st Airborne Division (the “Screaming Eagles”) from which he was honorably discharged as a Captain with over 33 jumps. Returning to complete his law studies at UVA, he then joined the Lynchburg law firm of Caskie, Frost, Davidson and Watts and became an accomplished trial lawyer.

Lifelong friend and former colleague at Caskie & Frost, John R. Alford recalled his gratitude for the mentoring he received from law colleague Bill Sweeney. For Alford, it seemed only appropriate that, when a vacancy occurred on the bench, Governor Albertis Harrison appointed Sweeney, age 36, to the circuit court bench as the youngest circuit court judge in Virginia in 1965. “He was an excellent lawyer who became an excellent, competent, courteous and respectful judge.”

While on the bench Judge Sweeney was dedicated to promoting and maintaining high standards of legal scholarship and he remained exceptionally active in judicial education. Over many years he taught other judges at the National College of Judicial Education and taught newly appointed judges at the American Academy of Judicial Education. To promote understanding among Virginia legislators concerning critical issues, he served as chairman of

the Virginia House of Delegates Ethics Committee. Senior U.S. District Court Judge Norman K. Moon, his longtime friend, fellow trial lawyer, and fellow 24th Circuit Judge said: “He helped new judges learn the ropes when they came on the bench, and he was widely respected for his teaching and his service to the judiciary.”

For more than three decades, Judge Sweeney taught trial practice and advocacy as an adjunct faculty member at three different law schools. His efficacy is legend as his law students across Virginia and the nation recount their own stories of his exceptional gift for teaching the “ins and outs” of trial strategy and practice. His son, Dan Sweeney, also an attorney, said that his father’s passion for teaching the law probably influenced his father’s decision to accept the suggestion from his Sunday School teacher at Court Street Methodist Church, retired Judge S. DuVal Martin, who asked him to teach others about the greatest trial of all time, “The Trial of Jesus.” Dan recalled: “Judge Martin gave Dad his notes, and Dad began a lifelong hobby of research and teaching that trial over 700 times throughout Virginia at churches and civic groups throughout his career.” I, too, was one of many for whom Judge Sweeney’s “Trial of Jesus” had a profound impact. For many people, his trial presentation was their only exposure to a “real” judge and a hands-on explanation of an historic trial.

For thirty-three years Judge Sweeney served on the circuit court bench in the 24th Circuit where those who came before him knew of his intellect, fairness, and courtesy. His successor to the bench for the Bedford County Circuit Court, Judge James W. Updike, Jr. said: “I had the privilege to practice law in Judge Sweeney’s courtroom in Bedford for more than 17 years and he was an exemplary person and judge. I have always appreciated the mentorship he provided to lawyers, young and old, who appeared before him, myself included. Since Judge Sweeney’s retirement and while I have had the privilege to be in his chair, it has become even more clear to me that there was no finer judge anywhere than he. Through these years, while deciding some especially challenging cases with difficult issues and no clear answers, many times I have asked myself, ‘what would Judge Sweeney have decided?’ That’s the kind of extraordinary judge and person he was.”

Over the decades, hundreds of lawyers experienced their first trials before Judge Sweeney. Roanoke attorney, Kai Memmer, recalled her anxiety when she faced her first jury as a newly-minted trial lawyer with fear that she might not receive a fair shake as an outsider. “Judge Sweeney was the consummate gentlemen, fair to all parties, so patient. He made me feel completely at ease and never rushed us. It was one of the most pleasant memories of my trial experiences.” Judge


Moon noted: “Judge Sweeney was a gentleman who sought to treat litigants and lawyers fairly.”

Of his role Judge Sweeney has said: “a good judge is like a good basketball referee. You should be almost invisible.” And, he once told a reporter: “When you’re a judge, people stand up when you walk into the courtroom. Lawyers laugh at your jokes, even when they’re not funny. You can’t let it go to your head.” And he never did. As Rudyard Kipling penned: Judge Sweeney never lost “the common touch”.

After retirement from the bench, Judge Sweeney offered his talents in a different way...as a mediator. Lawyers had the opportunity to see a different side of him. Lynchburg attorney Phil Baker said: “He loved doing that and he was good at it. He was always a good listener.” Sweeney told many that he relished the opportunity to work collaboratively with individuals rather than having to pick winners and losers.

At his funeral, John Alford reflected that he could give no higher praise than to recall that Judge Sweeney got it right in his life.

“Bill Sweeney was a good man ... a good husband ... a good father... a good church member... a good community servant ... a good lawyer... and a good judge.”

These are my recollections gathered with all the others: our remembrance of Judge Sweeney from a grateful community. 

SLC dedicated issue of the *Virginia Lawyer Magazine*

The Senior Lawyers Conference is responsible for the Senior Lawyers Conference Dedicated Issue of the *Virginia Lawyer* magazine each year. The most recent Senior Lawyers Conference Dedicated Issue was the April 2018 issue. The next Senior Lawyers Conference Dedicated Issue of the *Virginia Lawyer* magazine will be the December 2019 issue. Please call Frank

O. Brown, Jr. (804) 673-7545 if you are interested in writing an article for a future Senior Lawyers Conference dedicated issue.



Thinking about retiring?

See page 24 for more information about the Supreme Court of Virginia’s changes to the Emeritus status of membership.

the University of Virginia in 1953 with Phi Beta Kappa honors, managing to captain the school's tennis team at the same time. After three years in the Navy, Waller returned to law school at the University of Virginia and received Order of the Coif honors in 1959. Among the friends Waller tutored in tax law while in law school was Ted Kennedy.

Waller joined what was then known as Hunton Williams Gay Powell & Gibson and worked for the next ten years with Lewis Powell, later Justice Powell of the U.S. Supreme Court, and Brice Graves, one of the first full time tax lawyers in the South. This combination of mentors gave him a remarkably broad legal vision that included the full range of corporate transactions, all with a tax focus. When many today focus their practices on a handful of sections of the Internal Revenue Code, Waller covered the tax waterfront from mergers and acquisitions and employee benefits to estate planning and administration.

It was ultimately estate planning and administration that drew Waller's primary attention. He loved people and thrived on helping families. His compassion

and caring for his clients was evident. With his background in corporate and tax law, no problem was beyond his ability to analyze and solve, and his clients trusted him implicitly to guide their families to the right solution for all.

Waller was widely recognized as an expert in trust and estate law and was elected to what is now known as The American College of Trust and Estate Counsel in 1969. He served as President of ACTEC from 1990-1991, the first Virginian to hold that office.


In the best tradition of what the Richmond Bar often called "Hunton & Gruntin," Waller was a tireless worker. Eleven hour days, six days a week, with lunch in a brown bag at his desk and a brown brief case of tax developments to read at home, was his standard.

Waller left Hunton & Williams in 1992 to form the firm of Horsley & Horsley and carry on the practice of trust and estate law with his sons, Garrett and Stuart.

What was not apparent to some was how much of his time, both in the office and outside the office, Waller spent on his community, often in leadership roles. Before serving as President of ACTEC

in 1990, he served as President of the Virginia State Bar from 1982-1983, helping the profession chart its course through the brambles of lawyer advertising in a difficult and fast changing time. He served on the Board of Visitors of the University of Virginia, as a board member of St. Christopher's School and The Community Foundation (serving Richmond and Central Virginia), and as Senior Warden of St. Stephen's Church in Richmond. Continuing his love of tennis, Waller was founder of the Richmond Tennis Association and served as referee of and counsel to the Fidelity Bankers/United Virginia Bank professional tournament.

At his funeral service, it was said that preparing to eulogize Waller Horsley was like taking a course in hagiography. Those of us who knew Waller well knew him as a great friend, confidant, mentor and lawyer par excellence.

Waller died on May 10, 2017, survived by his wife, Margaret Stuart Cooke Horsley; three children: Terrell Horsley Welch, Stuart Waller Horsley, and J. Garrett Horsley; and seven grandchildren. 

Pro Bono Activities By Senior Lawyers

The SLC actively encourages individual pro bono activities by senior lawyers. To find out how you can become involved in providing pro bono services, please call John Oakey at (804) 775-4336.

Mentoring Activities By Senior Lawyers

The SLC actively encourages senior lawyers individually to mentor and to support collegially new and younger lawyers.

Senior Law Day Programs

by Robert T. Vaughan, Jr., Esquire

If there were an opportunity to provide needed information to senior citizens about legal matters that are very important to them while at the same time raising the image of attorneys in the eyes of the public, would your local bar association be interested? A better question may be, why would you miss such an opportunity?

The first Senior Law Day Program was presented by the Allegheny-Bath-Highland Bar Association on May 24, 2005 to an audience of about 100 senior citizens in the Circuit Courtroom by a panel of lawyers and a General District Court judge. In September 2005, upon the suggestion of William T. Wilson, a former Chair of the Senior Lawyers Conference (SLC), the SLC adopted the Senior Law Day Program as one of its primary projects. Since, Senior Law Day Programs have been presented across the Commonwealth with great success.

Whether in a grand setting in a city council chamber with cameras rolling or a humble parish hall of a local church, those who attend Senior Law Day Programs are sincerely interested in obtaining information about the complex issues that affect their daily lives and each attendee is genuinely appreciative of the time and effort local attorneys take to deliver the programs.



The panel for the first Senior Law Day Program divided up sections of the Senior Citizens Handbook, a publication of the SLC, for the topics of its presentation. I have been personally involved with the Danville Bar Association in presenting three Senior Law Day Programs in the City of Danville over the years. At each event, a copy of the Senior Citizens Handbook has been given to each attendee. Our programs have been presented on a Friday morning at a local church between 9:00 a.m. and noon. Attendance varies from 50 to 75 people.

In addition to introducing the Senior Citizens Handbook and briefly reviewing its contents and resources, three to four topics fill up the time. Either the local bar association or a sponsor covers the cost of lunch for those who attend.

We have found that two to three presentations covering legal issues and one from the community work well for us, but there is no set agenda and no hard and fast rules. The SLC has a template and

examples of agendas of prior successful programs to provide a good start. The programs require one or two interested organizers, who meet two or three times to choose a date, time and topic areas, obtain speakers, secure a venue, and plan advertisement. Generally, the organizers present one or more of the topics. These

programs take very little of a busy lawyer's time and they do not require a long-term commitment. There is plenty of room for both young and older, more seasoned lawyers to participate, and the rewards are real and immediate. In my experience, my presentations have related to areas that I discuss with my clients every day. It is really not a difficult task.

William T. Wilson was clearly right when he stated in his article published in the Spring 2008 issue of the Senior Lawyer News titled "The 'Senior Law Day Program' – A Win-Win-Win Program", that senior citizens "win" because they receive information about legal issues affecting their lives; the lawyers and their bar associations "win" because it is impossible to be a part of one of these programs and not see the enormous good that is being accomplished; and lawyers in general, the bar associations, and the legal profession "win" because the programs raise their image in the eyes of the public.

Continued on page 7 >

I encourage local bar associations to consider seriously presenting Senior Law Day Programs every year as part of their project plans, or certainly once every other year. I further suggest that they work with their judges at all levels and consider joining with surrounding bar associations to

give these programs. For more information and guidance for presenting a successful Senior Law Day Program please contact Stephanie Blanton, 1111 East Main Street, Suite 700, Richmond, Virginia, 23219-0026, (804)-775-0576, blanton@vsb.org; Bruce E. Robinson, Esq. 415 East Atlantic

Street, P.O. Box 538, South Hill, Virginia, 23970-0538, (434)-447-7922, bruce.robinsontr@gmail.com; or Robert T. Vaughan, Jr., Esq., 772 Main Street, Danville, Virginia, 24541, (434)-792-5005, rvaughan@robertvaughan.net. We look forward to hearing from you.

CLE: “How to Close, Sell, or Buy a Law Practice”

The Senior Lawyers Conference, in conjunction with Virginia CLE, presented a 3 hour live/webcast/phone seminar, titled, “How to Close, Sell, or Buy a Law Practice” on Wednesday, November 8, 2017 from 10:00 a.m. – 1:15 p.m. The seminar was held live at the Virginia CLE studio in Charlottesville, and was accessible anywhere via the webcast and phone options. James McCauley, Frank O. Brown, Jr., Robert E. Hawthorne, and Robert T. Vaughan, Jr. were the presenters. The program covered in detail the ethical

and practical aspects of closing, selling or buying a law practice. On Tuesday, December 5, 2017, there was a repeat recorded Webcast with Live Q&A, and a repeat recorded Telephone seminar with Live Q&A from 10:00 a.m. – 1:15 p.m. Both the November 8, 2017 and the December 5, 2017 seminars qualified for 3 hours of live-interactive MCLE credit, all 3 hours of which are Ethics credit. The program is available as an Online Seminar, viewable on the Virginia CLE website (www.vacle.org) through November 30, 2020.

Let's Build Your Practice Together.

We take the calls, and you take it from there.

www.vsb.org/vlrs

Celebrating 40 Years of Service



VA Lawyer Referral Service



New FINRA (Financial Industry Regulatory Authority) Rules Take Effect to Protect Seniors and Vulnerable Adults From Financial Exploitation

First Uniform, National Standards To Protect Senior Investors

Two FINRA rule changes took effect on February 5, 2018 addressing the financial exploitation of seniors and vulnerable adults, putting in place the first uniform, national standards to protect senior investors. Firms are now required to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account. In addition, the rule permits FINRA member firms to place a temporary hold on a disbursement of funds or securities when there is a reasonable belief of financial exploitation, and to notify the trusted contact of the temporary hold.

“These important changes, developed in collaboration with our members, provide firms with tools to respond more quickly and effectively to protect seniors and vulnerable investors from financial exploitation,” said Robert L.D. Colby, FINRA's Chief Legal Officer. “With the aging of the U.S. population, financial exploitation is a serious and growing problem, and protecting senior investors remains a top priority for FINRA.”

The trusted contact person is intended to be a resource for firms in handling customer accounts, protecting assets and responding to possible financial exploitation of any vulnerable investors. The

new rule allowing firms to place a temporary hold provides them and their associated persons with a safe harbor from certain FINRA rules. This provision will allow firms to investigate the matter and reach out to the customer, the trusted contact and, as appropriate, law enforcement or adult protective services, before disbursing funds when there is a reasonable belief of financial exploitation. It is a critical measure because of the difficulty investors face in trying to recover funds that they have inadvertently sent to fraudsters and scam artists.

FINRA recently published [Frequently Asked Questions](#) to help firms prepare. Shortly after the February 2017 announcement of the approval of these changes, FINRA amended its [New Account Application Template](#), a voluntary model brokerage account form that is provided as a resource to firms when they design or update their new account forms, to capture trusted contact person information.

The rule changes were approved by the SEC in February 2017. FINRA set February 5, 2018 as the effective date to provide member firms substantial time to prepare and develop policies and procedures. In addition, FINRA staff met with firms at events

throughout the year to help them prepare for the rule changes.

The need for the proposal became clear from discussions with firms and calls into FINRA's [Securities Helpline for Seniors](#)[®], which has highlighted some of the issues firms are facing when it comes to senior investors. To date, the helpline has fielded more than 12,000 calls, recovering over \$5.3 million in voluntary reimbursements from firms to customers since its launch in April 2015.

About FINRA

FINRA is dedicated to investor protection and market integrity. It regulates one critical part of the securities industry – brokerage firms doing business with the public in the United States. FINRA, overseen by the SEC, writes rules, examines for and enforces compliance with FINRA rules and federal securities laws, registers broker-dealer personnel and offers them education and training, and informs the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers a dispute resolution forum for investors and brokerage firms and their registered employees. For more information, visit www.finra.org.

Protecting Lawyers' and Clients' Interests in the Event of the Lawyers' Disability, Death or Other Disaster

The [SLC website contains the following documents](#) to assist lawyers in their planning: Durable Special Power of Attorney Regarding Law Practice; Agreement Regarding Law Practice; Last Will and Testament provisions with appropriate powers to Executor. In addition, Frank O. Brown, Jr. presents a CLE Ethics program to local bar associations on this topic. This program is presented as a one hour, one and one-half hour, or two hour program, with full ethics credit. This program has been presented

at least once in Abingdon, Alexandria, Arlington, Big Stone Gap, Boydton, Covington, Charlottesville, Danville, Fairfax, Farmville, Fredericksburg, Gloucester, Hanover County, Harrisonburg, Henrico, Irvington, Keysville, Leesburg, Luray, Manassas, Mclean, Melfa, Norfolk, Richmond, Roanoke, Salem, Smyth County, Stratford Hall, Virginia Beach, Warsaw, Williamsburg, Winchester, and several additional times in many of these locations. It has also been presented as part of the Virginia Supreme Court and Conference of Local and Specialty Bar Association's Solo and Small Firm Conferences. Most recently, the program was presented on May 2, 2018 to the Fairfax Bar Association. On September 12, 2018, the program is planned for the Newport News Bar Association in Newport News; on September 21, 2018, the program is planned for the Prince William County Bar Association in Manassas; and on October 5, 2018, the program is planned for the Salem-Roanoke County Bar Association in the Roanoke Valley.



On May 2, 2018, in the conference room of Sensei Enterprises in Fairfax, Virginia, the program "Protecting Your and Your Clients' Interests in the Event of Your Disability, Death or Other Disaster (and Closing a Law Practice)" was presented to the Fairfax Bar.

If your local bar association is interested in having Frank Brown's ethics program presented, at no charge, please call SLC Liaison Stephanie Blanton at (804) 775-0576. The Checklist on Closing a Law Practice is also available on the [SLC website](#).

Join us for the VSB 80th Annual Meeting!



The meeting offers 12 CLE programs, luncheons, receptions, banquets, athletic events, and awards all in the relaxed setting of Virginia Beach. Join old friends or make new friends. **CHEERS to 80 YEARS!**

Events include:

Thursday, June 14:

- Fore Diversity Golf Tournament

Friday, June 15th

- Eleven CLEs
- Clarence M. Dunnville Jr. Diversity Achievement Award

• Family BINGO

- Annual Banquet & Installation of President Leonard C. Heath Jr.

Saturday, June 16th

- The General Practice Section will present its 32nd Tradition of Excellence Award

- SLC 50-Year Awards Recipient Brunch

- "Lawyer Feud" CLE
- Closing Raffle Reception

More information at www.vsb.org/annualmeeting

Senior Lawyers Receive Prestigious 2018 Law Awards

The Senior Lawyers Conference congratulates the following Senior Lawyers who have received prestigious law awards in 2018:

VSBS William R. Rakes Leadership in Education Award: **Steve A. Isaacs**;

VSBS Conference of Local and Specialty Bar Associations' Local Bar Leader of the Year Award: **Jay B. Myerson**, of Reston;

VSBS Diversity Conference Clarence M. Dunnaville Jr. Achievement Award: **Hon. Rupen R. Shah**, of Staunton;

VSBS Betty A. Thompson Family Law Section Lifetime Achievement Award: **J. Patrick McConnell**, of Reston;

VSBS Family Law Section Family Law Service Award: **Mitchell D. Broudy**, of Norfolk;

VSBS General Practice Section Tradition of Excellence Award: **Grayson P. ("Gray") Hanes**, of Tysons;

VSBS Harry L. Carrico Professionalism Award, **Hon. Martin F. Clark, Jr.**, of Martinsville.

Induction as Fellows of the Virginia Law Foundation:

Alan S. Anderson (Alexandria)

L. Lee Byrd (Richmond)

Calvin W. Fowler, Jr. (Richmond)

George C. Howell III (Richmond)

Julia B. Judkins (Fairfax)

Jeffrey L. Mincks (Chesterfield County)

Hon. Charles E. Poston (Norfolk)

Hon. Angela Edwards Roberts (Richmond)

Hon. Winship C. Tower (Virginia Beach)

Virginia Lawyers Hall of Fame Inaugural Class:

W. Coleman Allen, Jr., Richmond

J. Rudy Austin, Roanoke

Edward Barnes, Chesterfield

Joel M. Birken, Fairfax

Irving Blank, Richmond

Irvin V. Cantor, Richmond

Bernard J. DiMuro, Alexandria

Wyatt B. Durette, Jr., Richmond

Robert J. Grey, Jr., Richmond

Phoebe P. Hall, Richmond

Robert T. Hall, Fairfax

Grayson P. Hanes, Falls Church

Jack L. Harris, Richmond

Philip Hirshkop, Alexandria

Lynn Jacob, Richmond

John A.C. Keith, Fairfax

James W. Korman, Arlington

Justice Elizabeth B. Lacy, Richmond

Gary LeClair, Richmond

Judge Gerald Bruce Lee, Alexandria

David S. Mercer, Alexandria

James W. Morris, Richmond

Anita M. Poston, Norfolk

Mary M.H. (Molly) Priddy, Richmond

Conrad E. Shumadine, Norfolk

Hunter W. Sims, Jr., Norfolk

Judge Diane McQ. Strickland, Roanoke

Thomas E. Spahn, Alexandria

Mary Lynn Tate, Abingdon

Colin J.S. Thomas, Staunton

Judge John M. Tran, Fairfax

William T. Wilson, Covington

Robert C. (Robin) Wood III, Lynchburg

Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation

ISSUE BRIEF • April 2018

By David Godfrey, ABA Commission on Law and Aging
American Bar Association Commission on Law and Aging

[Editor's Note. This article is included to provide general suggestions and conceptual practice considerations for practitioners. The choices of the exact language used in drafting documents, should always be determined by the practitioner in the exercise of the practitioner's best judgment.]

The mission of the American Bar Association Commission on Law and Aging (ABA Commission) is to serve as the collaborative, interdisciplinary leader of the Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons, particularly low-income and vulnerable elders. Since 1979, the ABA Commission has carried out this mission through research, policy development, technical assistance, advocacy, education, and training.

Key Lessons

1. Extra care in the creation of advance care planning documents can reduce the risk of abuse and exploitation.
2. Requiring accountability, additional checks and balances, and limited authority are drafting tools lawyers can utilize to limit risk of abuse.

3. Attorneys should advise clients to be extra diligent when selecting the agent(s) named in advance planning documents.

4. Authorizing revocation by third parties can help to limit the damage done by named agents who start to abuse or exploit the client.

Introduction to Risks in Advance Planning Documents

We use a variety of tools such as powers of attorney and advance health care directives to carry out the goal of advance planning to put into place a plan for decision making if the person should lose the ability to make choices. The tools used to empower agents and advisors to help make and carry out decisions, in the event of incapacity, can become tools of abuse and exploitation. The health care surrogate or proxy can start making health care decisions that are clearly not a reflection of the person. The agent under a power of attorney can mismanage or steal assets, empowered by the appointment as an agent. This Issue Brief explores the extra care that should be taken when drafting advance planning documents and selecting agents or advisors. Attorneys should

include safeguards when drafting documents to ensure the documents require accountability, are transparent, limit high risk decisions, and expand the ability to revoke the authority if the agent starts to act inappropriately.

Selecting Agents

The first step to minimize risk in advance planning is carefully selecting agents for health care, financial or personal decisions. Most families default the selection to a spouse, child, or other close relative with little thought given to the ability of the person to do the job. Attorneys should first take time to discuss the responsibilities of the agent with the client. Some of the responsibilities of an agent include:

- Understanding the goals and values of the person;
- Making decisions as the person would;
- Safeguarding the person and their property;
- Avoiding conflicts of interest; and
- Acting as a fiduciary.

Characteristics to look for in an agent or proxy:¹

Selecting an agent or proxy is a big decision. The client should know the person, and feel comfortable that the person selected will be able to make decisions that reflect the wishes of the designator. Here are some of the characteristics a client should look for when selecting an agent or proxy:

- Trustworthy: if there is any doubt—name someone else.
- Commitment: the agent should be committed to the person driven principles of supported decisionmaking.²
- Listener: active listening to all involved is needed for good decision making.
- Available: the agent needs to be nearby or easy to contact when decisions need to be made. The agent should also be over 18 and healthy enough to be available and act.
- Organized: the agent needs to keep good records, take care of tasks on time, and calendar needed actions.³
- Emotional strength: health care and financial decisions can be very stressful. The agent needs to have the strength to make hard decisions.
- Diplomatic: the agent should be able to resolve conflict when disagreements arise between family members. The agent needs to be able to hear everyone out, explain the

options, the reasons for the choice being made.⁴ While it is impossible to predict exactly how an individual will act as the agent, there are certain characteristics that are red flags to both the individual and the attorney when selecting an agent.

Here are some characteristics the client may want to avoid when selecting an agent or proxy:

- A person who lacks emotional stability or strength;
- Personal financial problems (agents who steal money frequently do so because they need money);
- Persons with active substance abuse or addiction issues;
- Someone in poor health; and
- Persons who are not easily available when needed.

Note 1 “How to Select an Attorney-In-Fact,” Legal Nature, (2013) published online at legallnature.com/article-center/power-of-attorney/how-to-select-an-attorney-in-fact.

Note 2 Practical Guide to SDM, American Bar Association Commission on Law and Aging, (2016) available at americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool.html.

Note 3 “Help for agents under a power of attorney,” Consumer

Financial Protection Bureau, available online at consumerfinance.gov/consumer-tools/managing-someone-elses-money/#power-of-attorney.

Note 4 “Making Medical Decisions for Someone Else: A How-To Guide,” American Bar Association Commission on Law and Aging, (2009), available online at americanbar.org/content/dam/aba/administrative/law_aging/2011_aging_bk_proxy_guide_gen_authcheckdam.pdf.

CASE EXAMPLE

Joyce named her youngest son, Sam, as her health care proxy and agent on her power of attorney. Sam lived 800 miles away and traveled frequently for work. Joyce discussed her personal, financial and health care values with Sam. When Joyce got sick, her daughter, Denise, moved to live nearby. Denise was Joyce’s primary caregiver during the last couple of years of Joyce’s life. Joyce never discussed her personal, financial and health care values with Denise. Denise made Joyce’s health care decisions, managed her money and paid Joyce’s bills after Joyce was no longer able to communicate. The advance directives naming her son, Sam, were nearly useless, because of his lack of availability. The financial and health care decisions that were made didn’t always reflect Joyce’s values. The planning failed because Sam’s availability was not factored into the selection of an

agent, the personal and health care values and goals of Joyce were not documented and Joyce was not encouraged to discuss her wishes with everyone in the family. Drafting Health Care Directives: Discussing Health Care Values The first step to assuring an advance health care directive is used to make health care decisions that reflect the values and goals of the person is careful selection of the agent as discussed above. The second step is a conversation between the person and the agent and other family members about health care goals and values. Health care values are deeply held personal beliefs about the kinds of care a person wants, or does not want, and about what is most important in the person's life. Health care goals are the desired outcome for treatment. Values are deeply held and long lasting, goals are formed at the time of illness or injury. The Conversation Project workbooks, Five Wishes directive, and Go-Wish cards are available to help guide conversations about health care values.⁵

A common misconception with health care planning is that the person can dictate all future health care decisions to the agent well in advance. However, because the spectrum of health conditions is so incredibly broad, it is very difficult to leave specific directions regarding specific treatments that are useful or effective. The directions commonly left in living wills about specific treatments are often difficult for the agent and health care practitioner to

interpret. It is hard to tell when death is imminent, there can be disagreement if the person will ever regain consciousness. The agent should have a meaningful understanding of the person's strongly held values. This understanding will provide much more useful guidance when it is time to make a decision. The person and the agent should have these value conversations early and often. The conversations should also be held between the person and all family members while the person is able to lead the discussion. This should help foster open communication between family members. If the person is eventually unable to make or communicate decisions, open communication between family members is a helpful practice to avoiding bad choices by the health care proxy or agent.

PRACTICE TIP

Powers of attorney and health care advance directive laws are state specific. All changes or additions to a power of attorney or advance health care directive form should be done by an attorney with expertise in the laws of the state the person is in. Examples offered may not work in your state.

Drafting Powers of Attorney

A power of attorney is an important planning document; however, a power of attorney in the wrong hands can be a license to steal. A power of attorney creates a legal right for the agent to transact business on behalf of the person who has created the power, known as the grantor. The authority

granted in a power of attorney can be limited, and accountability can be drafted into the document. Powers of attorney can be revoked; however, it can be challenging for the grantor to revoke power.

Note 5 "Health Decision Resources," American Bar Association Commission on Law and Aging, (2017) available online at americanbar.org/content/dam/aba/administrative/law_aging/Health_Decisions/Resources.authcheckdam.pdf.

Five safeguards to consider adding to a power of attorney for finances

Every Power of Attorney should be carefully tailored to the needs of the individual creating the power (called the principal or grantor). Because of the potential for misuse of powers by the person named as one's agent, the following safeguards should be considered:

1. Third Party Accounting: Enlist a trusted third party to do accounting and oversight and ensure transparency. Powers of attorney normally have no monitoring or oversight after the principal loses capacity. Having a second set of eyes on the money provides a minimum amount of transparency. Accountings need not be professional products, but they should at least document the dates, nature, and amount of all financial transactions. The grantor can

arrange online access for copies of bank and credit card statements to be sent to the third party.

2. **Second Signature:** Require a second signature by a trusted third party for large transactions. Large transactions, such as the sale of a home, or liquidation of a large investment, can be the hardest to undo. A second signature by a trusted third helps ensure the appropriateness of the transaction.

3. **Power to Revoke:** Grant a power to revoke the agent's authority to a trusted third person. This is a serious power to give any third person, so it requires an exceptional level of trust and reliability in the third person. But, if the agent's actions prove seriously out of line, this can be a last resort. Some powers of attorney also authorize law enforcement or adult protective services to revoke the authority of the agent if they believe abuse or exploitation is taking place.

4. **Define Gifting Power:** Clearly define the power of the agent to make gifts. The safest option is to prohibit gifts, but many people want to continue their pattern of giving even after they lose capacity. Limiting gifting requires identifying the permitted recipients or class of recipients and limits on the amounts and frequency.

5. **Limited Powers:** Limit any changes to beneficiary rights under accounts or contracts. This may include rights of survivorship under bank accounts, or

changes in beneficiary designations under trusts or life insurance policies, annuities, investment portfolios, or similar instruments.

PRACTICE TIPS

Increasingly, financial institutions can arrange to provide electronic records to anyone designated by the account holder. Having access to financial records makes it much easier for the agent and designated third party to monitor transactions. When limiting the dollar amount of transactions, it is important to cover the possibility of a large transfer being broken down into many smaller transfers. It is also important to provide for a back-up on a second signer.

Draft language for a power of attorney

My agent shall keep complete records of all transactions on my behalf and provide a quarterly accounting to _____. The quarterly accounting shall include copies of all financial statements, credit card or loan statements.

Any transaction or series of related transactions totaling more than \$_____ shall require two signatures, the signature of my agent named in this document and the signature of _____.

I authorize _____ to revoke this power of attorney on my behalf, if they believe the powers granted in this document are being abused.

My agent is not authorized to make gifts of my money or property.

My agent is not authorized to change the beneficiary, payable

on death, or transferable on death designations on any bank account, financial account, life insurance policy, pension, trust, annuity or similar contract or instrument, with the exception that my agent may assign a life insurance policy for the limited purpose of pre-paying funeral arrangements for me incident to an application for Medicaid benefits.

Conclusion:

Unfortunately, abuse and exploitation happen with or without advance planning. When attorneys help clients with advance planning, they can take steps to reduce the risk of the advanced planning tools being used as tools of abuse and exploitation. Attorneys can help clients select better agents, encourage discussing personal, financial and health care values and goals, and draft reasonable limitations into advance planning documents that reduce risk. There's no guarantee that abuse will not happen, but we can take steps to reduce the risk and make it harder for these tools to be tools of abuse and exploitation.

Additional Resources

- David Godfrey, Senior Attorney, ABA Commission on Law and Aging, david.godfrey@americanbar.org
- [Listing of power of attorney laws](#) in all 50 states, ABA Commission on Law and Aging
- [Selected Issues in Power of Attorney Law](#) in all 50 states, ABA Commission on Law and Aging

- [Listing of advance health care directive laws](#) in all 50 states, ABA Commission on Law and Aging
- [Managing Someone Else's Money guides](#), Consumer Financial Protection Bureau
- [Department of Justice, Elder Justice Initiative](#)
- [Administration for Community Living](#)

- ABA Commission on Law and Aging
 - [National Adult Protective Services Association](#)
- Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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[Editor's Note: as Elder Fraud continues to be a growing problem for senior citizens, the United States Justice Department released the following on february 22, 2018.]

Department of Justice, Office of Public Affairs
FOR IMMEDIATE RELEASE • Thursday, February 22, 2018

Justice Department Coordinates Nationwide Elder Fraud Sweep of More Than 250 Defendants

Attorney General Jeff Sessions and law enforcement partners announced today the largest coordinated sweep of elder fraud cases in history. The cases involve more than two hundred and fifty defendants from around the globe who victimized more than a million Americans, most of whom were elderly. The cases include criminal, civil, and forfeiture actions across more than 50 federal districts. Of the defendants, 200 were charged criminally. In each case, offenders engaged in financial schemes that targeted or largely affected seniors. In total, the charged elder fraud schemes caused losses of more than half a billion dollars. The Department coordinated its announcement with the FTC and state Attorneys General, who independently filed numerous cases targeting elder frauds within the sweep period.

Attorney General Sessions was joined in the announcement by FBI Acting Deputy Director David Bowdich; Chief Postal Inspector Guy Cottrell; FTC Acting Chairman Maureen Ohlhausen; and Kansas Attorney General and President of the National Association of Attorneys General Derek Schmidt.

“The Justice Department and its partners are taking unprecedented, coordinated action to protect elderly Americans from financial threats, both foreign and domestic,” said Attorney General Sessions. “Today’s actions send a clear message: we will hold perpetrators of elder fraud schemes accountable wherever they are. When criminals steal the hard-earned life savings of older Americans, we will respond with all the tools at the Department’s disposal – criminal prosecutions to punish offenders, civil injunctions to shut the schemes down, and asset forfeiture to take back ill-gotten gains. Today is only the beginning. I have directed Department prosecutors to coordinate with both domestic law enforcement partners and foreign counterparts to stop these criminals from exploiting our seniors.”

The actions charged a variety of fraud schemes, ranging from mass mailing, telemarketing and investment frauds to individual incidences of identity theft and theft by guardians. A number of cases involved transnational criminal organizations that defrauded hundreds of thousands of elderly victims, while

others involved a single relative or fiduciary who took advantage of an individual victim. The schemes charged in these cases caused losses to more than a million victims.

“Winners. That’s what so many of the people who received these solicitations in the mail thought they were. But they’re not. They are [victims \(link is external\)](#) of scams that Postal Inspectors have seen and investigated for decades. In fact, some of the same operators we encountered 20 years ago are back. But so are we. Yesterday, Postal Inspectors around the country executed search warrants on 12 locations that some of these same operators used to run their scams. We’re letting the American public know – and especially our vulnerable older Americans – that Postal Inspectors are working hard to protect them and ensure their confidence in the U.S. Mail,” said Chief Postal Inspector Cottrell.

“Over the last year, the FBI has initiated more than 200 financial crimes cases involving elderly victims who were devastated financially, emotionally, mentally and physically. Picking up the pieces of these fraud schemes can be equally as traumatizing for the caregivers of these elderly victims,” said Acting Deputy Director Bowdich. “The FBI reminds seniors and their caregivers to be vigilant. If any person believes they are the victim of, or have knowledge of fraud involving an elderly person, regardless of the loss amount, they should report it to the FBI.”

Actions against mass-mailing fraud industry

As part of the initiative, the Department’s Consumer Protection Branch, working with the U.S. Attorney’s Office for the Eastern District of New York and others, brought numerous cases this past week in a coordinated strike against more than 43 mass-mailing fraud operators, including criminal charges against six individuals. In addition, law enforcement agents executed 14 premises search warrants from Las Vegas to south Florida, served numerous asset seizure warrants, and coordinated with the Vancouver Police in Canada, who executed over 20 warrants, including search warrants on business premises.

“The defendants targeted elderly and vulnerable consumers both in the United States and abroad, using U.S. addresses and the U.S. mails to try to legitimize their fraudulent schemes,” said U.S. Attorney for the Eastern District of New York Richard P. Donoghue. “They sold false promises of life-changing prizes that never came true. We will pursue the perpetrators of these mail schemes wherever they are located, and hold them accountable.”

These recently filed cases particularly targeted transnational criminal actors who collectively defrauded at least a million victims out of hundreds of millions of dollars. Indeed, just one of the schemes prosecuted criminally by the Consumer Protection Branch operated from 14 foreign countries to cost American victims more than \$30 million. [Click here for map showing a transnational, single fraud scheme.](#)

Mass-mailing fraud inflicts hundreds of millions of dollars in losses to elderly U.S. victims each year. Department prosecutors and U.S. Postal Inspectors have taken a comprehensive approach to combatting this fraud, disrupting and prosecuting individuals who manage the schemes, artists who draft the fraudulent solicitations, list brokers who supply victim lists, and individuals who collect victim payments. [Click here for fact-sheet with cases on mass-mailing fraud.](#)

Actions against other elder fraud schemes

Prosecutors across the country from the Criminal Division’s Fraud Section, the Consumer Protection Branch and the U.S. Attorney’s Offices have heeded the call to focus resources on elder fraud cases. Over 50 U.S. Attorney’s Offices and Department Components filed elder fraud cases in the last year. [A list of Elder Fraud cases is provided on this interactive map.](#)

Some examples of the elder financial exploitation prosecuted by the Department include:

“Lottery phone scams,” in which callers convince seniors that a large fee or taxes must be paid before one can receive lottery winnings;

“Grandparent scams,” which convince seniors that their grandchildren have been arrested and need bail money;

“Romance scams,” which lull victims to believe that their online paramour needs funds for a U.S. visit or some other purpose;

“IRS imposter schemes,” which defraud victims by posing as IRS agents and claiming that victims owe back taxes;

“Guardianship schemes,” which siphon seniors’ financial resources into the bank accounts of deceitful relatives or guardians.

Many of these cases illustrate how an elderly American can lose his or her life savings to a duplicitous relative, guardian, or stranger who gains the victim’s trust. The devastating effects these cases have on victims and their families, both financially and psychologically, make prosecuting elder fraud a key Department priority.

Public education

The Department has partnered with Senior Corps, a national service program administered by the federal agency the Corporation for National and Community Service, to educate seniors and prevent further victimization. The Senior Corps program engages more than 245,000 older adults in intensive service each year, who in turn, serve more than 840,000 additional seniors, including 332,000 veterans.

Using its vast network operating in more than 30,000 locations, Senior Corps volunteers will communicate about elder fraud to potential victims across the country and will use their skills, knowledge and experience to educate their peers and caregivers about the most prolific types of schemes and how to avoid them. [Click here for information on Senior Corps’ efforts to reduce elder fraud.](#)

Coordination with state officials

Kansas Attorney General Schmidt highlighted the cases filed by state Attorneys General targeting elder

frauds within in the sweep period, and he emphasized efforts at the state level to combat elder abuse and protect seniors from fraud and exploitation. He encouraged all of the state Attorneys General to devote enforcement and public education resources to preventing financial exploitation of senior citizens.

Coordination with foreign law enforcement

Exceptional assistance from foreign law enforcement partners amplified the effectiveness of the Department’s initiative. The sweep announced today benefited greatly from the work of the International Mass-Marketing Fraud Working Group (IMMFWG), a network of civil and criminal law enforcement agencies from Australia, Belgium, Canada, Europol, the Netherlands, Nigeria, Norway, Spain, the United Kingdom and the United States. The IMMFWG is co-chaired by the U.S. Department of Justice and FTC, and law enforcement in the United Kingdom, and serves as a model for international cooperation against specific threats that endanger the financial well-being of each member country’s residents. Attorney General Sessions expressed gratitude for the outstanding efforts of the working group, including law enforcement action taken as part of the sweep by the Vancouver Police Department in Canada to halt mass mailing schemes that defrauded hundreds of thousands of elderly victims worldwide.

Elder fraud complaints

Elder fraud complaints may be filed with the FTC at www.ftccomplaintassistant.gov or at 877-FTC-HELP. The Department of Justice provides a variety of resources relating to elder fraud victimization through its Office of Victims of Crime, which can be reached at www.ovc.gov.

Topic(s):

Consumer Protection

Elder Justice

Component(s): Civil Division

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D.C. 20201.

Lewy Body Dementia

By Edward F. Anello, Ph.D., Director, Virginia Center on Aging

Dementia isn't a specific disease in itself but a term that describes a set of symptoms that can reflect many different and sometimes overlapping conditions or causes. Dementia includes progressive impairments in memory and recognition, changes in personality, and losses in reasoning ability and self-care that interfere with daily life. Dementia is the result of brain disease or injury from such causes as Alzheimer's disease, Dementia with Lewy Bodies (DLB), vascular dementia, frontotemporal lobe dementia, or Traumatic Brain Injury (TBI).

So, while Alzheimer's disease is the most common and widely known cause of dementia, it is not the only cause. Dementia with Lewy Bodies (DLB), in fact, may be the second most common cause of progressive dementia but it is certainly less well known.

Alzheimer's and DLB have similar causes in that each is the result of inappropriate deposits of protein in the brain, called neurofibrillary tangles and amyloid Beta plaques in Alzheimer's and called Lewy bodies in DLB, named after Dr. Frederich Lewy. Lewy discovered the abnormalities in how the brain processes the protein alpha-synuclein while working in Dr. Alzheimer's laboratory in the early 1900s.

It turns out that these Lewy bodies are found in the brains of people

who have Alzheimer's disease or have Parkinson's disease. It's the relationship between DLB and Parkinson's that is significant: some who have Parkinson's eventually develop dementia and some people with DLB eventually develop Parkinson's symptoms; the latter include various problems with movement, like muscle rigidity, shuffling gait, and bent posture, and clinically are called parkinsonisms.

A family caregiver or health care provider may notice behaviors in the person under consideration. Common early symptoms in Alzheimer's include difficulty remembering recent conversations, names, and events; apathy, depression; perhaps loss of smell. Common early symptoms with DLB may be similar to Alzheimer's but with sleep disturbances, hallucinations, and parkinsonisms. The movement problems are hallmarks of DLB, "core clinical features."

Recently, I participated in a fine webinar hosted by the federal Health Resources and Services Administration (HRSA) which featured Angela Taylor, Director of Programs at the Lewy Body Dementia Association. I am indebted to her for much of the following information.

DLB affects men more than women, with age of onset being anywhere from 50 to 85.

Cognitive or brain processing problems with DLB are somewhat similar to those with Alzheimer's and include forgetfulness, trouble with problem solving or analytical thinking; difficulty planning or keeping track of sequences; disorganized speech and conversation; difficulty with sense of direction or spatial relationships between objects.

Someone with DLB often has fluctuations in concentration, alertness, episodes of confusion, and excessive daytime sleepiness. Also, as mentioned, parkinsonisms are characteristic of DLB, including rigidity or stiffness, a shuffling walk, balance problems or falls, tremors, slowness of movement, decreased facial expression, and a change in posture.

While hallucinations and delusions are more symptomatic of delirium than of dementia, individuals with DLB tend to have these, as well as a heightened sensitivity to antipsychotic medications that may be used initially to treat these symptoms. So these medications can be dangerous in people with DLB.

Sleep disorders are common. A person with DLB may act out dreams, sometimes striking or otherwise injuring a bed partner. Insomnia and restless leg syndrome are common. Again the connection of DLB to movement disorders.

Lastly, there are distinctive autonomic dysfunctions, meaning involuntary or unconscious actions, such as dizziness or fainting, difficulties with regulating body temperature, urinary incontinence, constipation, and unexplained blackouts or transient loss of consciousness.

All of these symptoms present great challenges to family caregivers. More so because there's so little public awareness of DLB. Caregiver burden occurs early and may be higher than in Alzheimer's disease because of the disparate symptoms and the reality that clinicians may be late in diagnosing what may seem like an odd and diverse set of symptoms.

Things are not hopeless, however. If the individual with DLB is diagnosed early, he or she often is more responsive to interventions than with a diagnosis later in the progression of the disease. Persons with DLB have been found to be more responsive to cholinesterase inhibitors, the types of drugs usually prescribed for those with Alzheimer's. Medications for controlling parkinsonisms like dopamine promoters may help. But treatment is a balancing act; medications for one symptom can worsen another.

Caregivers need to be alert, therefore, for medication sensitivities, including the need to minimize the use of neuroleptics/anti-psychotics, which are powerful tranquilizers prescribed to reduce confusion, delusions, and hallucinations; specifically, avoid older antipsychotics like haloperidol. In someone with DLB, these drugs may worsen the individual's cognition or behavior, producing apathy or limiting movement, just what's not desired in someone with DLB.

The Lewy Body Dementia Association (LBDA) endorses a comprehensive treatment plan, one that includes appropriate medications for the person with DLB, a regimen of physical exercise, alertness to medication sensitivities and adverse drug effects, and a focused attempt to improve the quality of life for both the person with LBD and the family caregiver. LBDA offers a robust array of information and resources designed to increase the caregiver's understanding of the disease.

LBDA recommends as the current treatment strategy the goal of improving quality of life. It states that many symptoms can be managed or reduced with medications, as well as with nonpharmacological treatments. Because there's such a strong movement disorder component of DLB, it recommends

that the individual participate in occupational therapy (OT), physical therapy (PT), and speech therapy. Again, caregiver education and support are critical.

If you are caring for someone who has been diagnosed with LBD or if you suspect that someone you know may have LBD, visit the association's website at LBDA.org. The LBDA.org website features tabs on Support groups; LBD Caregiver Link; Publications; Information about LBD for the general public; Support resources for LBD families, including local and virtual support groups, phone and email support; LBD stories written by LBD families; Educational resources, such as webinars for LBD families and healthcare professionals; Research news, including notices of clinical studies that are now recruiting participants; and other ways to get involved with LBDA.

[Editor's Note: This article which appears in *Age in Action*, Volume 33, Number 2, Spring 2018, is printed here with permission. It is hoped that the information in the article will be of assistance to seniors in general, to lawyers who are serving those seniors, and to lawyers themselves. More information on lawyer well-being can be found at www.vsb.org/site/members/lawyer_well_being.]

Visit the SLC Website at www.vsb-slc.com

BRUNCH AND CEREMONY HONORING 50 YEAR VSB MEMBERS

At the VSB Annual Meeting, the SLC sponsors a brunch and awards ceremony at which the lawyers who are receiving their 50 year membership awards are honored. The honorees and their

families are invited, and special certificates are given to commemorate this special milestone. The brunch will be held on Saturday, June 16, 2018, at 10:00 a.m. at the Sheraton Oceanfront.



Fee Dispute Resolution Program



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For information on the program, go to our website at www.vsb.org/site/about/resolution-of-fee-disputes.

The Dark Side of Cloud Computing

by Sharon D. Nelson, Esq. and John W. Simek

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We have said for many years that the cloud will generally protect a law firm's data better than the law firm would itself. As more and more law firms adopt Microsoft Office 365, thereby moving to the cloud, we have come to the conclusion that a few words of caution are in order when law firms entrust their data to the cloud.

With huge volumes of law firm confidential data (and data from other verticals) moving to the cloud, it is no wonder that the bad guys are taking aim at the clouds. And there seems to be a shift afoot, in which the main responsibility for protecting corporate data in the cloud belongs to the cloud customer rather than the cloud provider.

The Cloud Security Alliance (CSA) recently issued the latest version of its [Treacherous 12 Top Threats to Cloud Computing Plus: Industry Insights](#) report.

While there are many security concerns in the cloud, CSA's list focuses on 12 concerns specifically related to the shared, on-demand nature of cloud computing. CSA conducted a survey of industry experts to gather professional opinions on the greatest security issues involving cloud computing. In order of severity, here are the 12 risks.



1. Data breaches

Data breaches can result from human error, application vulnerabilities, poor security practices – or they can be the result of a targeted attack. The data uncovered might be personally identifiable information, health records, financial information, trade secrets, intellectual property, etc. In our judgment, this is consistently the major concern for law firms.

2. Insufficient identity, credential, and access management

Criminals pretending to be legitimate users, operators, or developers can read, modify, and delete data; issue control plane and management functions; snoop on data in transit or release malicious software that appears to originate from a legitimate source according to CSA.

3. Insecure interfaces and application programming interfaces (APIs)

Cloud providers expose a set of software user interfaces (UIs) or APIs that customers use to

manage and interact with cloud services. Provisioning, management, and monitoring are all performed with these interfaces, and the security and availability of general cloud services depends on the security of APIs. Clearly, they need to be designed to protect against accidental and malicious attempts to circumvent policy.

4. System vulnerabilities

System vulnerabilities are exploitable bugs in programs that attackers can use to infiltrate a system to steal data, taking control of the system or disrupting service operations. Vulnerabilities within the components of the operating system put the security of all services and data at risk. When there are multiple tenants in a cloud, systems from various businesses are placed close to each other and given access to shared memory and resources, creating a new attack surface. Not a great idea for law firms.

5. Account hijacking

Cloud services add a new threat to the landscape. If attackers gain access to a user's credentials, they can watch activities and transactions, manipulate data (truly, the manipulation of data may be scarier than a data breach), return falsified information and redirect clients to illegitimate sites.

6. Malicious insiders

We have seen this time and again in law firms. A malicious insider such as a system administrator can access potentially sensitive information. Now imagine that malicious insider working for your cloud provider...systems that depend solely on cloud service providers for security are at greater risk.

7. Advanced persistent threats (APTs)

APTs are a form of cyber-attack that infiltrates systems to establish a foothold in the IT infrastructure of target companies, from which they steal data. APTs work stealthily over extended periods of time, often adapting to or eluding the security measures intended to defeat them. APTs can move laterally through networks and appear to be normal network traffic to realize their goals.

8. Data loss

An accidental deletion by the cloud service provider, or a physical catastrophe such as a fire or earthquake, can lead to the permanent loss of customer data unless the provider or cloud consumer takes adequate measures to back up data, using best practices in business continuity and disaster recovery. Multiple backups tested regularly are a requirement.

9. Insufficient due diligence

Executives need to develop a good checklist for due diligence when evaluating cloud providers. Many rush aboard without a considered study of the cloud provider.

10. Abuse and nefarious use of cloud services

Poorly secured cloud service deployments, free cloud service trials, and fraudulent account sign-ups via payment instrument fraud expose cloud computing models to malicious attacks. Bad actors might leverage cloud computing resources to target users, organizations, or other cloud providers. CSA cites examples of misuse of cloud-based resources including launching distributed denial-of-service attacks, e-mail spam, and phishing campaigns.

11. Denial of service (DoS)

DoS attacks are designed to prevent users of a service from being able to access their data or applications. By compelling a targeted cloud service to consume inordinate amounts of finite system resources such as processor power, memory, disk space, or network bandwidth, attackers can cause a system slowdown and leave all legitimate service users without access to services. This is not a theoretical threat – it has happened time and again in spite of good faith efforts to defend against such attacks.

12. Shared technology vulnerabilities

Cloud service providers deliver their services scalably by sharing infrastructure, platforms or applications. In general, this is a good thing, keeping costs down and allowing customers to scale up or down as needed. Cloud technology often divides the “as-a-service” offering without

substantially changing the off-the-shelf hardware/software. Underlying components that comprise the infrastructure supporting cloud services deployment may not have been designed to offer strong isolation properties for a multi-tenant architecture or multi-customer applications. Shared technology vulnerabilities present a serious cybersecurity risk.

We are not trying to scare law firms away from cloud computing (just to be careful!), but it's worth noting a study from last summer. A [post in RCRWireless News](#) said that a cyber security incident that takes a top three cloud provider offline for three to six days could cause anywhere between \$6.9 to \$14.7 billion in economic losses and between \$1.5 and \$2.8 billion in industry insured losses. That is one among many findings in a report published by Lloyd's of London in partnership with the American Institutes for Research (AIR), which explores the impact a cloud failure could have on the economy.

The results of the report were based on the top 15 unnamed cloud providers in the U.S., which together constitute a 70% market share. In the event of three to six days of cloud downtime, the report found that Fortune 1000 companies will carry 37% of the ground-up losses and 43% of the insured losses. This is, obviously, particularly meaningful to very large law firms.

Businesses outside the Fortune 1000 are potentially at the

greatest risk, carrying 63% share of economic losses and 57% of insured losses. Right out of the gate, we know that law firms consider being out of business 3-6 days unimaginable.

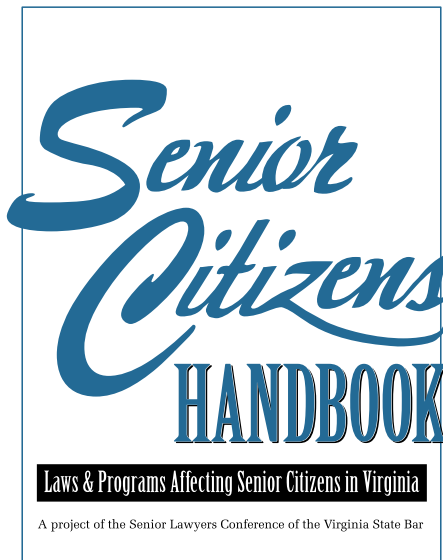
The corollary to a cloud disaster is mitigating your risk through cyber insurance. As the report says, "Organizations large and small are investing in risk and loss mitigation, including preventative security and post event recovery measures. The continued expansion of the cyber insurance market is both necessary and inevitable. Taking proactive measures now to build a risk-based cyber insurance ecosystem, ahead of the next truly catastrophic event, is essential to establishing more resilient communities and businesses."

Bottom line, the cloud is generally a good place to be for law firms, but it is not without its threats and complications. For solo/small firms, we prefer a hybrid cloud, where law firms own their own equipment which is secured by their IT provider in a datacenter where they have the assurances of redundant power and Internet connections. This environment does require more work in order to properly configure and secure the systems, but leaves access to the data in the hands of the law firm and not the cloud provider.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and digital forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

[Editor's Note: Printed with permission.]

Senior Citizens' Handbook



Produced by the SLC, this is the VSB's most requested publication. It is a resource for seniors, their families, and their caregivers to provide an overview of and contact information for opportunities and choices facing senior citizens today, with a summary of how specific laws affect Virginia's older citizens and practical advice on issues such as Medicaid, Alzheimer's Disease, landlord-tenant relations, and much

more. There is also an extensive list of community-service organizations that details the various services available to senior citizens. This is available through the VSB Publications Office.



Do Not Call Registry

Operated by the Federal Trade Commission, the National Do Not Call Registry allows you to register your home telephone and your mobile telephone against telemarketing calls. The correct address is <https://www.donotcall.gov/>.

Senior Lawyers Conference Website Resources

The Senior Lawyers Conference website, at <http://www.vsb.org/site/conferences/slc>, contains a wealth of Public and Attorney Resources and Links of interest to Senior Lawyers and Senior Citizens.



**You're retiring,
but your
law degree
doesn't have to.**



**Transition into
Emeritus Status
and practice
only pro bono.**

*"I want to give back to my profession
that has given so much to me."*

-Charlie Phillips, Salem, emeritus member

- **Free CLEs**
- **No dues**
- **Affiliation, not supervision**
- **Choose your passion**

There are tens of thousands of Virginians who need your help but cannot afford an attorney. Whether it's one day a month or five days a week, your legal experience could change the life of a child, a family, a community.

When you retire, you can help close the justice gap in Virginia by practicing pro bono as an emeritus member of the Virginia State Bar. Emeritus designation allows you to stay engaged in the practice of law without worrying about dues or the clients' protection fund fee.

As an emeritus member, you must continue to keep up your yearly education requirements, but you will be eligible for 12 FREE hours of CLE credit from Virginia CLE.

Emeritus members must be affiliated with a Qualified Legal Services Provider of their choice, but they no longer have to be supervised by a legal aid attorney while doing their pro bono work.

To be eligible:

1. You are willing to limit your practice exclusively to pro bono service.
2. You are an active, associate, or retired member of the bar in good standing and not the subject of discipline by our bar or any court within the past 15 years.
3. You have practiced law for 20 years or more.
4. You have been actively practicing for five of the seven years immediately preceding your application.
5. You certify your affiliation with a Qualified Legal Services Provider.
6. And you certify whether or not you are covered by malpractice insurance.

You can apply at any time.

For questions about the program, contact the VSB Pro Bono / Access to Legal Services department at (804) 775-0522.

To start the application process toward emeritus status, call the membership department at (804) 775-0530.