

Docket Call

The Official Newsletter of the Young Lawyers Conference of the Virginia State Bar

Patrick J. Austin, Esq., Editor

Volume 31, Issue 2 • Fall, 2014

Q&A with Incoming Chief Justice of the Supreme Court of Virginia Donald W. Lemons

Patrick Austin

1. First and foremost congratulations on being elected to serve as Chief Justice of the Supreme Court of Virginia. As a younger attorney, did you always plan to eventually join the bench?

• Thank you. I am looking forward to the challenge. Before I went to law school, I was a probation officer in the Fairfax County Juvenile and Domestic Relations Court. I may have had a fleeting consideration that one day I would be a Juvenile Court Judge, but I never imagined that I would become a Justice of the Supreme Court, much less Chief Justice.

2. What is life like as a Justice of the Supreme Court of Virginia? Does each day present new challenges or do you find yourself getting into a routine?

• I have often been asked, particularly by people outside the legal profession, "What sort of cases do

you hear?" The short answer is "just about everything you read about in the newspaper." Legal issues are pervasive in every aspect of daily life in America. Chief Justice John Marshall once observed: "The judicial department comes home, in its effects, to every man's fireside: it passes on his property, his reputation, his life, his all." There is nothing routine about the substance of what we do on the Court. Our work is enormously important in the lives of our citizens, and every one of our Justices is keenly aware of the significance of what we do.

3. What was the election process like for the Chief Justice position?

• In years past, the Chief Justice was the person who had been on the Court for the longest time. The legislature changed the process in 2002 to allow the Justices to decide who should be Chief. We

made this most recent decision at a business retreat in August.

4. What objectives or goals do you have as Chief Justice?

• The administration of a branch of government is a significant challenge. Additionally, the Chief Justice hears cases and writes opinions like the other Justices do. There are many issues before us. We continue to have less judicial positions funded than authorized. A study by the National Center for State Courts carefully analyzed the need for judges in each area of the state. We remain underfunded and understaffed. Our population is aging and the court system must always anticipate the legal issues that are unique to this reality. Our population is more diverse than ever with special challenges relating to culture and language translation in the court systems. Unfortunately, our court

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Brandon Raub vs. Creigh Deeds: Walking the Tightrope of Involuntary Mental Detention Commitments in Virginia

Kevin Lacey

In 2008, Virginia enacted a sweeping overhaul of its involuntary mental health detention system in response to the death of 32 students at the hands of a deranged gunman at Virginia Tech. These reforms were intended to strike the right balance between liberty and security by creating overlapping layers of protection for both the community and the individual. However, as two high profile incidents over

the past two years clearly demonstrate, the debate over involuntary mental health commitments in the Commonwealth is far from over.

The purpose of this article is to use two recent high profile incidents to explain Virginia's existing emergency mental health commitment system, as well as to highlight how these incidents have led to legal controversies.

THE BRANDON RAUB INCIDENT (2012)

Brandon Raub was a United States Marine veteran who was involuntarily

hospitalized under a mental health Temporary Detention Order (TDO) in 2012 as a result of several posts he wrote on his Facebook page.

The incident began when Raub was visited at his home in Chesterfield County, Virginia by local and federal law enforcement officers. These officers wanted to inquire about Facebook posts that appeared on Raub's Facebook page. According to a recent appellate court filing from Raub's attorneys, these posts stated

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system faces extraordinary challenges by the reality of increased drug and alcohol addiction. There is also a need to meet the challenges posed by mental health issues and our veterans who may have difficulty coping with physical, mental and emotional disabilities. Often, these issues wind up in the court systems of the Commonwealth. Also, the courts of the Commonwealth must keep up with changing technology. These are just a few of the topics on the agenda for the near future.

5. *Over the years as a judge, does any case stand out to you as particularly fascinating and/or challenging?*

- There are a number of cases that come to mind. One of them is the capital murder appeal of the “beltway sniper,” John Muhammad. That case was covered in local, state, national, and even international media. Muhammad’s appeal involved 102 separate assignments of error. I authored the Court’s majority opinion in that case.

6. *Did you have a favorite law school class?*

- I cannot think of a class that I did not enjoy in law school!

7. *If you had to choose another profession besides law, what would you choose?*

- I would probably teach English literature or history or be a chef or a photographer.

8. *The legal job market is tough right now and many law school graduates are having a difficult time securing that first job out of school. What recommendations would you make to a graduate who is trying to get their foot in the door at a law firm, or just get a legal job in general?*

- What a tough question! First, I would suggest that the law graduate not confine his or her search to traditional legal positions. A law degree is very versatile and the training prepares a person for a variety of occupations – policy and politics, journalism, teaching, business, and Foreign Service immediately come to mind. For the graduate who is looking in more traditional areas of the legal

profession, I think there are a few things that may help in landing a job:

- Life experience between undergraduate and law school. Increasingly, employers are looking for people who have had real-world experience and have matured somewhat.
- Community service. Fortunately, more and more law firms are looking at how engaged a lawyer may be in the community in which she lives.
- Having something published. After all, lawyers are all about communicating the written word.
- Demonstrated ability in public speaking.
- Internships and summer jobs that make connections that may be useful.
- A judicial clerkship.

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that Raub was preparing for a revolution and indicated that former Presidents George W. Bush and George H.W. Bush would be imprisoned as a result of this revolution. Other posts contained vague threatening language that Raub later said were simply lyrics to a heavy metal song.¹

After determining that Raub’s posts were too vague to constitute a crime under Virginia law, the local law enforcement officers exercised their authority under § 37.2-808 to temporarily detain Raub until he could be evaluated by a psychiatric professional.² Such a detention is commonly referred to as a paperless Emergency Custody Order (ECO).

According to the statute, the petitioner or officer must have probable cause that the person being detained “[H]as a mental illness and that there exists a substantial likelihood

that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.”

While an ECO may take the form of a written order issued by a state magistrate, law enforcement officers also have the authority to take someone into custody for a mental health evaluation if they reasonably believe that the criteria of § 37.2-808 are satisfied. According to an appeal to the United States Court of Appeals for the Fourth Circuit that was later filed by

Raub’s attorneys, the decision by the law enforcement officers to detain Raub was made after consulting with Michael Campbell, an evaluator for the local Community Services Board.³

After an initial detention period of five hours at a local police station, Raub was evaluated by Campbell, who then reported his findings in a petition for involuntary commitment.⁴ This petition was presented by Campbell to a state magistrate as part of a formal request for a TDO under § 37.2-809. The purpose of the TDO, which applies the same criteria as § 37.2-808, is to authorize a longer period of detention for the patient until he or she is able to have a full hearing before a Virginia special justice. The current version of § 37.2-809 allows for a patient to be detained for up to 72 hours before a hearing, but can extend for a longer period of time if the hearing date falls on a weekend or holiday.

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After the magistrate was presented with the petition, the magistrate issued a TDO, and Raub was taken to a local hospital where he remained for several days until he was able to have a hearing before a Virginia special justice and access to representation by an attorney. At this hearing, the Virginia special justice ordered Raub to be involuntarily committed for an additional period of time at another hospital. However, this order was overturned approximately 48 hours later when a Virginia circuit court judge intervened in the case. According to the circuit court judge, the original petition for the TDO was so devoid of facts that it lacked a factual basis that could give rise to the case or controversy in question. Therefore, the subsequent involuntary detention ordered by the special justice was invalid.⁶

However, this was not to be the end of the legal controversy generated by Raub's detention. After his release from the hospital, Raub's attorneys at the non-profit Rutherford Institute went on to initiate a lawsuit on his behalf against Michael Campbell, the mental health evaluator that requested the TDO. The suit was brought in federal district court and alleged that the evaluator committed an unlawful seizure by requesting the TDO, and by advising the officers to initiate a paperless ECO. The district court subsequently granted summary judgment to Campbell. In August 2014, Raub's lawyers appealed their case to the United States Court of Appeals for the Fourth Circuit in an attempt to overturn the district court's decision.

According to Raub's attorneys, the Facebook messages that formed part of the basis for the TDO petition were simply Raub's political views and did not constitute a specific threat to any current or former public officials.⁷ Raub's attorneys also asserted that the evaluation conducted by Campbell failed to meet professional standards and failed to yield any evidence of mental illness. According to his lawyers, nearly all of the allegations made against Raub were based upon his belief in

various outlandish conspiracy theories, which they assert cannot be considered evidence of mental illness.

What happens in this appeal will be very important for the future of involuntary detentions, particularly in regards to the conspiracy theory argument.⁸ Can mental health professionals cite to beliefs in conspiracy theories to demonstrate that someone is afflicted with mental illness, or would that amount to a political persecution of dissenting minority opinions? In this regard, the Fourth Circuit will be wading into the front lines of a debate between security and liberty.

THE CREIGH DEEDS INCIDENT (2013)

The second incident occurred more recently in 2013 and involved the stabbing of Virginia State Senator Creigh Deeds by his son, Gus Deeds. The incident also resulted in the suicide of Gus Deeds, who was suffering from a mental illness known as bipolar disorder.⁹ Like Brandon Raub, Gus Deeds was originally detained under a mental health Emergency Custody Order (ECO). However, no TDO was ultimately issued and Gus Deeds was released from custody within hours of his evaluation because the local Community Services Board (CSB) was unable to locate a hospital bed for Gus to be transferred to. Soon after being released from custody, Gus attacked his father and committed suicide.

The case of Gus Deeds is clearly a case where the Virginia mental health detention system failed, but not because the concerns of liberty triumphed over the concerns of security. As far as the public record is concerned, there was no dispute over whether Gus Deeds satisfied the statutory criteria for an involuntary detention. Indeed, his subsequent violent acts appear to have validated whatever concerns there were when he was evaluated under an ECO. Nevertheless, Gus Deeds was still set free because of a requirement within § 37.2-809 that requires the designation of a detention facility before a TDO could be issued by the state magistrate. In addition, prior to 2014, ECOs automatically

expired and could not be re-issued for the same incident if a TDO was not issued within six hours of the initial detention. According to the Office of the Inspector General's report on this incident, the length of time needed to transport a patient to the nearest CSB Evaluator left the CSB with a little over three hours to conduct an evaluation and locate an available bed for Gus Deeds.

However, this does not necessarily mean that employees of the CSB were entirely blameless. In the aftermath of the incident, the Virginia Office of the Inspector General was only able to independently verify that local CSB employees contacted only seven of the ten mental health facilities they claim to have contacted.¹⁰ Of the three facilities that the office was unable to independently verify as having been contacted by the CSB, two of them had open bed space on the night that Gus Deeds was detained. This report in turn will likely be a critical piece of evidence in an upcoming civil suit arising from the incident, which at this point appear to be inevitable.

In 2014, an attorney representing Creigh Deeds filed a notice of intent to sue four local governments that are served by the CSB that evaluated Gus Deeds. According to reports in the media, the notice alleges that employees of the CSB committed gross negligence when they failed to locate a hospital or other facility that Gus Deeds could have been transferred to.¹¹

As a result of this incident, the Virginia General Assembly strengthened the existing mental health regime by setting up a state-wide registry of available bed space and by designating state hospitals as beds of last resort when no bed space at a local hospital can be found. In addition, the length of time that a person can be detained under an ECO has been lengthened to eight hours to prevent a tragic incident like this one from occurring again.

LEGAL AND POLICY RAMIFICATIONS

The decision by the Virginia General Assembly to lengthen the time of

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detention for an emergency mental health evaluation in response to the Gus Deeds incident represents a significant shift to the side of security over liberty. In contrast, no changes to Virginia's mental health detention system were made in response to the Brandon Raub incident. Whether Raub's detention was justified, or made as a result of gross negligence will be decided by the courts. However, even if the Fourth Circuit rules

broadly in favor of Raub, it is unlikely to have a far-reaching policy impact.

In light of high profile events like the Virginia Tech massacre and the Creigh Deeds incident, public opinion will remain on the side of security for the foreseeable future. That being said, a favorable ruling from the Fourth Circuit could have a far-reaching impact on the procedures that are followed by mental health profes-

sionals and the criteria that can be used by mental health professionals to petition for the issuance of ECOs and TDOs. A broad court ruling could even force policy makers to reconsider aspects of the law.

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The Great Estate [Virginia Estate Planning]

Recent U.S. Supreme Court Case Sheds New Light on Estate Planning Jesci Norrington

With the federal estate tax exemption now only affecting couples with an estate over \$10 million (singles over \$5 million), and no state estate tax in Virginia, many people thought estate planning was a dying practice for middle class families. Not so. The recent U.S. Supreme Court's decision in *Clark v. Rameker*¹ is a prime example of why estate planning is necessary and will continue to thrive.

In *Clark v. Rameker*, a mother left her IRA to her daughter as a named beneficiary when she passed away. In 2010, the daughter and her husband filed for bankruptcy with approximately \$300,000 left in the inherited IRA account.² Prior to *Clark*, there was a split among the Circuit Courts on whether an inherited IRA was afforded the same protection from creditors as a traditional IRA. The Supreme Court took the issue on and addressed whether inherited IRAs (traditional or Roth) were exempt assets under the bankruptcy code in *Clark*. The Court found that, although the mother's funds were in an account that was exempt, once the daughter inherited the IRA, it was not considered "retirement funds" anymore.³ Since the account no longer qualified as a retirement

fund, the daughter's inherited IRA was now exposed to her creditors.

Since pensions have gone by the wayside, numerous families invest a large part of their estate into IRAs as a way to save for their retirements and get favorable tax treatment in the process. Protecting these important assets is a top goal for many estate-planning clients. The *Clark* decision now exposes these IRA accounts to creditors of loved ones. The post-*Clark* world means parents who work hard all their lives to save and build up an IRA for their retirement and pass that IRA on to their child could vanish by a single mistake committed by that child. For example, let's say these parents pass away and their IRA goes to their child. Two months later, that child is driving a little fast in the early morning with slick roads, loses control and slams into a school bus causing serious injuries. This is commonly referred to as a catastrophic creditor situation. The school bus parents are likely to sue. In an instant, that IRA the parents worked so hard to build is likely gone.

So what can estate planning attorneys do to combat the troubling scenario listed above in this post-*Clark*

world? There are solutions. There are a number of estate planning techniques that can be employed to protect assets from creditors. For example, stand-alone retirement plan trusts have become a popular option. Or, simply using a well-drafted revocable trust can be a viable option. When properly drafted, the trust can be designated to receive retirement plan distributions, without the normal tax consequences of naming a trust as a beneficiary. Though, it must meet the requirements of the designated-beneficiary test.⁴ This allows provisions and protections of the trust to apply to the funds and helps provide the asset-protection so many clients desire.

As evident by the *Clark* decision, estate planning is not dead. In fact, it is more important than ever. Anyone, whether they are in the middle class, or millionaires, deserve to be informed of all the asset protection options they can utilize to protect and enhance their estate.

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- 2 *Id.* at 11.
- 3 Raub Brief at 11.
- 4 *Id.* at 12.
- 5 *Id.*
- 6 *Id.* at 4.
- 7 Raub Brief at 13-16.
- 8 A decision on Raub's appeal was still pending, as of the date of publication for this issue.
- 9 Nikki Schwab, *Creigh Deeds Tells Son's Mental Health Horror Story*, U.S. NEWS & WORLD REPORT, Mar. 31, 2014. See <http://www.usnews.com/news/blogs/washington-whispers/2014/03/31/creigh-deeds-tells-sons-mental-health-horror-story>.
- 10 *Inspector General Releases Report Into Gus Deeds Treatment*, WDBJ7 NEWS, Mar. 27, 2014. See <http://www.wdbj7.com/news/local/inspector-general-releases-report-into-gus-deeds-treatment/25198254>.
- 11 Matthew Cella, *Virginia State Sen. Deeds Considers Lawsuit Over Son's Suicide*, THE WASHINGTON TIMES, May 15, 2014. See <http://www.washingtontimes.com/news/2014/may/15/deeds-files-notice-ahead-possible-lawsuit-over-son/>.

Endnotes for *The Great Estate* by Jesci Norrington

- 1 *Clark v. Rameker*, 134 S.Ct. 2242 (2014).
- 2 *Id.* at 2245.
- 3 *Id.* at 2247.
- 4 Treas. Reg. § 1.401(a)(9)-4

Four Common Mistakes New Attorneys Make (And How to Avoid Them) Jessica O'Connell

Much of what you learn in law school won't prepare you for your first job as an attorney. This article provides advice from seasoned attorneys in government and private practice on common mistakes new attorneys make and gives useful tips and reminders on how to avoid them.

Mistake #1 Too Afraid to Ask Questions

Many young attorneys want to impress their superiors, not bother them, or a combination of both. So, when the young attorney receives an assignment, they don't ask many questions about what their boss actually needs. This routinely results in oversights and corrections having to be made later in the process.

Don't be afraid to ask questions. Of course, avoid questions that you could easily look up yourself, but if you get truly stuck on a research project or a

brief and are coming up empty-handed, talk to the assigning attorney to be sure you fully understand the assignment. When you ask questions, be prepared to tell the attorney what you have done and where you are having trouble. Senior attorneys, or judges, won't expect you to know everything, and they would much rather have you ask for clarification than waste hours of precious time getting nowhere. As a young attorney, you're expected to learn and progress and your superiors understand that there is a steep learning curve for any new attorney.

Another important time to ask questions is after you've submitted your assignment. Ask for specific feedback about your work. Do not automatically assume that a partner who says nothing about your work, yet keeps giving you more work, loves every aspect of the finished product. No one is perfect and everyone's writing has room for improvement. Take initiative and ask questions about ways to improve so

you know what you should continue doing and what you need to work on.

Mistake #2 Poor Legal Writing

Poor legal writing can come in a variety of forms. Some new attorneys mistakenly commit "overkill" with their assignments and include a plethora of extraneous information that doesn't address the central issue of the assignment. This results in your superior having to cull through unnecessary case law or analyses that could have easily been left out. Other new attorneys have the opposite problem; they get an assignment and only provide a paragraph or two of research material.

Tip: know your audience and make sure you are writing for your audience. Depending on what you're writing and who you are writing for, your tone, structure, and style will be different. Be sure to ask the assigning attorney, partner, judge,

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Day in the Life of a “Baby” Judge Advocate General

Brandon Bierlein

“There is no life before 5 a.m.” The law school, bar exam studying, pre-December 2013 version of myself certainly embraced this statement. Unless I was riding a caffeine wave or celebrating with a brewsky or two, the hours between midnight and 5 a.m. were strictly reserved for pillow time. Imagine my surprise as my alarm clock jolts me awake as gently as a cattle prod at 4:30 a.m. sharp every morning. I reference December 2013 because that’s when I took an oath to, “Defend the Constitution of the United States” as a Judge Advocate for the United States Air Force. What follows is a day in my life as a “baby” Judge Advocate General (JAG).

Public perception as to what JAGs do largely comes from the television show JAG. Would it be cool to fly onto a tiny destroyer in the middle of a storm to interview a witness for a court-martial? Um... yes, yes it would. That said, JAGs are still lawyers, so we’re usually not gallivanting through monsoons in helicopters.

I’ll spare you some of the gritty of my daily routine. Unfortunately, I’m not allowed to profit from my position as a government employee, so a recitation of products I use in the mornings (like a delicious peanut butter flavored cereal or a beverage that often is the best part of waking up) is a waste of everyone’s time. The day is Monday. Therefore, it’s a “PT” day. PT stands for physical training. In true military fashion, it must be abbreviated because “gym” has an absurdly high number of letters.

PT begins no later than 0700 hrs., depending on the activity planned. As a base legal office, we have PT three times a week with Mondays always being the most difficult. This morning’s workout is a personal favorite – a card workout. After a quick mile-and-a-half run, the whole office circles around a deck of cards in the base gym’s aerobics room. Every suit corresponds to an exercise

(hearts are pushups, spades are mountain climbers, etc.) and the value of the card is the number of that exercise the group must complete.

One by one, we cycle through the whole deck. Cards are great workouts and they get your blood pumping so well that morning coffee is unnecessary. A few ambitious baby JAGs brag that they’ve kicked the coffee habit entirely. Lies. PT may wake a JAG in the morning, but only coffee can keep him awake at 5 p.m. Fridays PT is a group sport, whether soccer or flag football or wallyball.

PT is an integral part of any JAG’s life. JAGs are lawyers and military officers. In combat, the Geneva Conventions only protect those who handle the Good Book, and that book isn’t the Manual for Courts Martial. Every JAG is expected to be in good physical condition, be ready to deploy to a combat zone at a moment’s notice, and pass the Air Force Physical Fitness Test. Until “Spanks” become an approved part of the uniform, fitness is an obligation every JAG must take seriously. Many Staff Judge Advocates – that’s the head of every legal office, the legal advisor to the wing/base commander, and my boss – allow late reporting on PT days, so the “law” part of my job starts around 0800 hours.

As a fellow lawyer, if I were to ask friends of mine from law school what they do, the inevitable answer would be something like “I work for a small, personal injury firm” or “I work in the regulation division at the FCC.” Those short, small descriptions adequately encapsulate where my friends work, who they work for, and generally what law they practice. Pete at the FCC practices communications law and Sally at the PI firm practices... well... personal injury law. When I say I’m a JAG, few lawyers know anything about the law that JAGs practice, other than courts-martial.

The simple, yet unsatisfying, answer is that JAGs do nearly all of the legal work of the Air Force. While there is a small, and extremely skilled, corps of civilian attorneys at the Pentagon, their focus is on law and policy at the highest levels, like contracts for major weapons systems or policy memoranda on the role of women in combat. An average JAG doesn’t have the luxury of a specialty – he or she is expected to competently perform the roles of general counsel, prosecutor and sole practitioner.

My average Monday starts with a five-minute scan of my inbox, including the base law enforcement blotter. The blotter lists everything the base police did over the weekend and, by extension, the list of misconduct the office should expect to prosecute that week. Immediately thereafter is the attorneys’ meeting where we discuss everyone’s most important projects for the week. By necessity, JAGs communicate constantly. The base legal office is the legal resource for an entire Air Force base and there simply isn’t time for a JAG to become an expert in operations law, criminal law, medical law, labor law, environmental law, torts, or the other myriad practice areas of the JAG Corps.

Mondays are my day for legal assistance appointments. Active duty military members, retirees, and their dependents are entitled to free estate planning and legal consultations for life. It’s an extraordinarily valuable benefit of military service. The only topic off the table is criminal defense; otherwise, JAGs regularly advise on estate planning, domestic relations, landlord-tenant, and consumer protection law.

An average Monday brings into my office a landlord tenant dispute, a child custody question, two divorces, and a will for a deploying service member. Legal assistance may be the most challenging aspect of military practice. Anything, and I mean

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➤ *Day in the Life of a "Baby" Judge Advocate General*, continued from previous page

anything, can walk through your door. However, it's incredibly rewarding in that it's the medium by which a JAG's advice can immediately help a service member. A service member takes his or her mind off legal troubles at home while they are fighting abroad.

During my appointments, my phone rings half a dozen times. I tactfully ignore it, not wanting to insult my legal assistance clients, but my phone is the harbinger of a busy day. Unless there's someone in my office, the phone takes priority. My legal office prides itself on its relationships with the base community. Commanders, first sergeants, and flight chiefs all feel comfortable calling JAGs about any topic, and they do. A phone call could mean a commander needs advice on how to punish one of his troops for falling asleep on post. The call could be a first sergeant calling because a sobbing dependent wants a protective order against her abusive spouse. Or, it could be notification that an aircraft crashed in a field and a JAG needs to fly out to the crash site to assess damage.

You might be thinking – "I get that JAGs do great things, but you not mentioning courts-martial means

that CBS's JAG lied to me, right?" Wrong. Courts-martial and military justice are at the Corp's core. Both judicial and non-judicial punishment are at the heart of preserving good order and discipline in the military. Between legal assistance clients and putting out proverbial fires, I constantly work on my cases. My calendar groans under the weight of scheduled meetings with investigators, response deadlines for motions to suppress, and witness interviews. Our country's military leaders demand that every case be given full time and preparation so as to respect the justice process. Emphasis on due process manifests itself as JAGs having time to prepare for every single case well in advance of trial, a luxury rarely afforded to overworked civilian prosecutors.

Every single JAG will try courts-martial. Among the JAG Corp's requirement is that every new JAG demonstrate sufficient proficiency in case preparation and courtroom skills. As an uncertified (I prefer uncertified to "lacking a certificate of competency") JAG, case preparation for my four courts-martial and one discharge board takes up the rest of my day, but I'm never alone. I'm fortunate

to have a team of highly skilled Air Force paralegals. As no man is an island, no JAG could possibly process the paperwork necessary to fly in witnesses from around the world without the assistance of the JAG Corps' paralegals. JAGs are reminded that we are military officers and leaders through regular training and mentorship of our paralegals.

That's a typically messy day in the life of a JAG. As General Rockwell, the Deputy Staff Judge Advocate once told me, "That uncomfortable feeling? That's a good thing." He's absolutely right. Being a JAG means fighting every day to keep your head above water and to give the best advice you can. The Air Force's mission depends on it. Being a JAG may require long hours and constant preparation, but that uncomfortable feeling? It makes every day as a JAG an awesome adventure.

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➤ *Four Common Mistakes New Attorneys Make*, continued from page 4

etc. what exactly they want from your work (again, asking questions solves many problems).

Mistake # 3 Not Proofreading

Do not view any assignment as a rough draft. Always, always, always proofread your work. It's painful, but you have to do it more than once. If a senior attorney, client, or judge reads your work and finds mistakes, they will think you don't pay attention to detail, or even worse, you are lazy. Seemingly minor typos and errors distract the reader and may make him or her question the credibility of the entire product.

If you've been working on an assignment for a long time, step away from it and work on something else or

take a walk around the block. Later, go back and proof the assignment again. Returning to the document later will allow you to re-approach the assignment with a fresh perspective, and you're likely to catch more mistakes, and perhaps even find a better way to phrase your findings.

Mistake #4 Not Maintaining a Work-Life Balance

New attorneys generally work long hours, but if you don't take the time to take care of yourself and maintain balance in your life, you're likely to get stressed out, overwhelmed and your performance as an attorney will suffer. Exercise and eat well. Make time to spend with friends. Get enough sleep. Take time to enjoy

old hobbies or pick up new ones. This may sound like lecturing, but it is astonishing how many attorneys neglect this simple advice and burn themselves out in just a few years.

Making time to focus on yourself and do things you enjoy will make you happier, healthier, and more effective attorney for your firm and your clients. If you find yourself having trouble setting aside time for yourself, keep a calendar and block off workouts or dinners with friends, just like you would for a client meeting, hearing, or any other important task.

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Trying Your First Virginia Divorce Case

Andrew R. Page

You're standing behind counsel table for the first time in your local court, with your divorce client by your side. You tried everything you could to resolve the case in the settlement conference, but the other side was unreasonable. He or she knew you had never tried a divorce case before. The judge is about to come out. You look down at your table to see what you have. How can you be ready for that first trial?

OPENING STATEMENTS

In most divorce cases, judges are not very interested in long drawn out opening statements. Many do not want one at all. But in most complex divorce cases, giving a brief opening statement will help clarify the issues for the court. Stating what legal issues are contested, and why, is a valid use of an opening statement in divorce cases. Additionally, letting the court know what facts are in dispute is another valid use of an opening statement.

However, the most important use for opening statements is to set the theme of your case. The theme is the heart of why you should win. For example, a good theme of a custody case might be "children need a parent; not a friend." That lets the court know that custody is at issue, that you are trying to show your client is a parent, and that you will be arguing that the opposing party is performing a role as friend to the children.

TRIAL OUTLINES FOR WITNESS PRESENTATION

Organization, in tune with a great theme, is crucial for an effective trial. Perhaps the best advice given to me about organizing a divorce case was from my mentor, Brandon Zeigler of Wolcott Rivers Gates. Mr. Ziegler suggested preparing a trial outline for each issue that is to be tried. In the majority of divorce cases, that would

mean a trial outline for jurisdictional evidence, grounds of divorce, spousal support, equitable distribution, child custody and visitation, and child support. Be sure to note any evidentiary issues that may arise and cite the applicable evidence rule so you can respond to any objections.

For example, a trial outline should be prepared for the jurisdictional requirements of a divorce. The outline would also have an overview of the first witness, likely your client. As you receive your answer to each question, place a check mark by it. After your client is done, you would call your corroborating witness and go through an outline regarding the jurisdictional evidence of corroboration, once again placing a check by each answer.

The trial outline should be prepared with the witnesses in the same order you intend to call them. Additionally, your trial outline should include the exhibits in the same order that you intend to introduce them. So, for example, if you intend to prove ability to pay for spousal support through the adverse party's employer, you would prepare a trial outline with the questions you intend to ask the employer and have paystubs and W-2s labeled and in the order you intend to introduce them. Once you have established the order of exhibits and labeled them, prepare a copy of the exhibits for the court, opposing counsel, and for the witnesses. Doing so will help everyone know exactly where you are and which document you are referring to

BENCH MEMORANDA FOR ARGUMENTS

According to Mr. Zeigler, the most under-utilized tool by trial lawyers is the bench memo. Often, attorneys assume that judges know everything about the law. However, most judge will acknowledge that there are areas that they can improve knowledge in.

Even judges who are up-to-date on legal developments may overlook something due to ever increasing caseloads. Thus, it is important to help the judge by presenting a brief.

The brief should be just that—brief. It does not need to be a treatise on the law of child custody or hybrid property. A simple two-page memorandum laying out the law and presenting two-to-three sentences of facts as you expect them to play out at trial is more than sufficient. This should not be your law school brief that tells both sides of the story. This brief is your chance to show the court how the law favors your client.

There should be a separate bench memo for each issue that you intend to argue, much like the trial outlines above. Submit the briefs to the court as far in advance as possible. However, don't forget to bring another copy with you for the court, just in case. Refer to it in your motion to strike or closing argument.

CONFIDENCE IS KEY

The judge has just walked through the door. As you look down at counsel table you see your trial outlines and bench memos. Your preparation in organizing the case brings immediate relief from your brief moment of worry. You are ready. You are prepared. Your client hired you because he or she believed in you. You had to pass an extremely difficult exam to get your license. Remember that you have the knowledge to complete your trial and win. Present the case with confidence.

Drew Page is a 2010 graduate of Regent University School of Law. He is now a partner at Stallings & Randall, P.C. He can be reached at drewpage@valawgroup.com.

Welcome to the Young Lawyers Conference (YLC)— Now Is the Time to Get Involved

Maureen Danker

This year continues to be a busy one for the Young Lawyers Conference (YLC)! In August, we learned of three Awards of Achievement that were bestowed upon the YLC from the ABA's Young Lawyers Division. The YLC received second place in the Service to the Bar Category for our Professional Development Conference; Special Recognition in the Newsletter Category for YLC's quarterly publication, Docket Call; and Special Recognition in the Comprehensive Young Lawyers Division Category.

On September 20th, we held our Leadership Conference in Richmond. We had a very exciting line up of speakers, made up of YLC board members, program chairs, and bar leaders. All of these speakers contributed to our conference by sharing their fresh ideas for this bar year. Brian Wesley, a fellow board member, discussed ways to successfully plan and execute programs. Chris Fortier, another board member, gave an overview of our social media policies and how to utilize all of the YLC's platforms to promote our programs and events. Elizabeth Cooper, who is one of the co-chairs for our Domestic Violence Safety Project, discussed her ideas of expanding this program. Her ideas included training attorneys to provide pro bono representation to individuals in Protective Order proceedings, and also to distribute a safety brochure and legal pamphlet to domestic violence victims, statewide.

This was just one of the many programs that the YLC has in place which we are looking to expand. To do so, we are looking for the assistance from our circuit representatives to volunteer

their time and make this one of their projects during the bar year. Nate Olson, President-elect of the YLC, discussed the importance of being involved and the impact the YLC has on other attorneys and the community.

We had the pleasure of hearing from Michael Pace, Kate Fitzgerald, and Lori Lord, of the Center for Teaching the Rule of Law. Each

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spoke briefly about this non-profit organization, whose mission is to spread the word on the Rule of Law to children throughout Virginia. They are also seeking the assistance from the YLC and our circuit representatives to bring their program into middle schools and high schools in the Commonwealth. This year, the theme of their project is the Magna Carta. You can check out their organization and program on their website at thecenterforruleoflaw.org.

Up next for the YLC was the Minority Pre-Law Conference which took place on October 4th at the Marshall-Wythe School of Law at

the College of William & Mary. The minority pre-law conference is an open-to-all conference, designed to provide students with information on the LSATs, law school admissions and legal careers. In an effort to make Virginia lawyers available to attendees at this Conference, YLC partnered with the Section on the Education of Lawyers, for the Prelaw Mentoring Program. This program allows active, and retired, members of the Virginia State Bar, the judiciary, and full-time Virginia law school professors to serve as mentors to undergraduate students interested in pursuing legal careers. Many members of the YLC have already signed up as mentors for this great program.

The YLC consists of over 10,000 members, made up of 19 board members, 31 Judicial Circuit Representatives, and more than 50 program chairs, who oversee our programs throughout the year. On the pages that follow, the details of our programs are listed out as well as contact information for each program. If you are unsure of which program to assist with, or for more specific information on our programs, contact this year's Membership Chair, Paula Bowen at: PBOWEN@ci.martinsville.va.us.

Also be sure to check out our website at: www.VAYoungLawyers.org and friend, follow, and connect with us on all our social media platforms, which include Facebook, Twitter, Google+, LinkedIn, Instagram, YouTube, and Tumblr. With so many ways to volunteer, be involved, and stay connected, the YLC has something for everyone. We hope to hear from you soon!

Young Lawyers Conference Board of Governors



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Involvement Guide 2014-2015

The YLC coordinates a variety of programs in service to both the Bar and the public. If you are interested in assisting with any program or commission, please contact any YLC Board Member, Program Chair or Co-Chair, or your Circuit Representative.

SERVICE TO THE BAR

ADMISSION AND ORIENTATION CEREMONY

This committee is responsible for organizing and staging a special ceremony sponsored twice a year by the YLC at which time all newly licensed attorneys are given the opportunity to appear before the Supreme Court of Virginia to be admitted to practice in the courts of Virginia. Because the Court sits in Richmond, this committee typically is comprised principally of young lawyers practicing in the metropolitan Richmond area.

Contact: Robert Michaux
rmichaux@spottsfain.com

ANNUAL MEETING/PROGRAMS

This committee plans a CLE or other special interest program to take place during the Bar's Annual Meeting held each June in Virginia Beach. During gubernatorial election years, this committee typically schedules a debate.

Contact: Andrea C. Davison
adavidson@beankinney.com

ANNUAL MEETING/ATHLETICS

This committee is responsible for organizing the "Run in the Sun" 5 kilometer foot race and the David T. Stitt Memorial volleyball tournament, both sponsored by the YLC during the Bar's Annual Meeting in June in Virginia Beach.

Contact: Laura M. O'Brien
lobrien@kdbfamilylaw.com

BENCH BAR CELEBRATION DINNER COMMITTEE

Each year the YLC hosts a dinner to honor newly elevated women and minority judges from across the state. The dinner provides an opportunity for young lawyers to interact with judges in a casual, relaxed atmosphere.

Contacts: Melissa York
Myork@hccw.com

Nerissa Rouzer
nrrouzer@morrismorris.com

BOARD MATCH

Board Match is a program that the YLC is developing to provide an opportunity for local non-profit organizations to solicit new board members and board participation from area lawyers.

Contacts: Melissa A. Hamann
Melissa.a.hamann@gmail.com

Christopher C. Johnson
Chris@johnsonlawva.com

DOCKET CALL NEWSLETTER

The editor and editorial board of the Docket Call are responsible for publishing four issues of the YLC's newsletter each year.

Contact: Patrick Austin
paustin@hsinjurylaw.com

FIRST DAY IN PRACTICE SEMINAR

In conjunction with the General Practice Section, this committee plans and implements the First Day in Practice Seminar for new lawyers traditionally held the day after the Fall Admission and Orientation Ceremony.

Contact: Everett L. Bensten
Everett.bensten@gmail.com

PROFESSIONAL DEVELOPMENT CONFERENCE

This committee implements a one day CLE program addressing practice tips and professionalism issues specific to young lawyers.

Contacts: Melissa Alfano
Alfano.melissa@gmail.com

Joel R. McClellan
Jmcclellan@Marksandharrison.com

SERVICE TO THE PUBLIC

COMMUNITY LAW WEEK

This committee develops programs and sponsoring activities during the first week in May devoted to enhancing the public's awareness and appreciation of the role of law in American life. Included among the activities are presentations in the media, programs in the public schools, and public forums.

Contact: Vacant

DOMESTIC VIOLENCE SAFETY PROJECT

Responsible for developing programs to raise awareness about legal issues related to domestic violence, the DVSP has distributed a Safety Brochure and a Legal Pamphlet in both English and Spanish to domestic violence victims statewide and trains attorneys to provide pro bono representation to domestic violence victims.

Contacts: Elizabeth Cooper
coopereh@gmail.com

Kristen Pettibone
Kpettibone@liberty.edu

EMERGENCY LEGAL SERVICES

This committee, in conjunction with VBA-YLD, has developed and implemented a statewide Emergency Legal Services Response Plan, which includes training volunteers and working with other bar organizations to establish communication plans in the event of natural disasters and other declared emergencies.

Contacts: Jessica Trivizas
jtrivizas@lawmh.com

Sarah E. Cox
Sarah.cox@dpor.virginia.gov

IMMIGRANT OUTREACH

This committee designs projects, including the Immigrant Outreach-Education Regarding Deportation Ramifications of Criminal Convictions program, to raise awareness about the legal issues facing Virginia's immigrant population.

Contacts: Jamilah D. LeCruise
jdlecruise@gmail.com

Giovanni DiMaggio
giodimaggio@gmail.com

LEGAL HANDBOOK FOR CANCER SURVIVORS

Recognizing the need for a resource addressing the legal issues faced by cancer survivors in the Commonwealth, the YLC developed a handbook covering topics such as insurance, employment, advance medical directives, and wills. The handbook is printed and distributed to medical facilities and cancer advocacy organizations throughout the Commonwealth and available online as a PDF.

Contact: Kristi Cahoon Kelly
kkelly@kellyandcrandall.com

MENTAL HEALTH LAW COMMITTEE

This committee puts on a free, semi-annual CLE in different locations around Virginia. The CLE explains notable developments in Virginia mental health law as they apply to aspects of all practice areas. Mental health laws touch a broad range of practice areas, including employment, family law, trusts and estates, civil rights and criminal law. The course is presented in an engaging format consisting of panelist discussion, audience participation and hypothetical problems.

Contacts: Shayla N. McGee
Shayla.sipp@fema.dhs.gov

Elizabeth Hafey
ehafey@gdldlaw.com

MINORITY PRE-LAW CONFERENCE

This committee plans a seminar that strives to expose college students, especially minority students, to many aspects of a legal career. From LSAT prep courses, mock law school classes, and a mock trial to panel discussions with the bench, bar, and law students, this course provides valuable information to Virginia students considering a career in the law. The event is held in Northern Virginia, Southern Virginia, and Tidewater.

Contacts:

Northern Virginia
Nichelle Charles
Nichelle.charles@gmail.com

Aaron Gleaton
avgleaton@gmail.com

Hampton Roads

Shemeka Hankins
Shemeka.hankins@norfolk.gov

NO BILLS NIGHT

The Conference, through this committee, conducts No Bills Nights to provide a forum for the public throughout Virginia to raise legal issues and to seek information regarding their legal rights, without cost. This year, the Conference hopes to put on programs in Abingdon, Charlottesville, Danville/Martinsville, Lynchburg, Fredericksburg, Northern Virginia, Staunton/Lexington, Richmond, Roanoke, Tidewater and Winchester/Harrisonburg.

Statewide Contact:

Seth M. Land
sland@pennstuart.com

Regional Contacts:

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Holly N. Mancl
hmancl@pennstuart.com

Charlottesville
VACANT

Danville/Martinsville
Rachael Sanford
Sanfordr@clementwheatley.com

Fredericksburg
VACANT

Lexington/Staunton
VACANT

Lynchburg
VACANT

Northern Virginia
Kabara Korth Praskavich
kabara@rooplaw.com

Richmond
James Olmsted
jolmsted@spottsfain.com

Roanoke
D. Adam McKelvey
dmckelvey@crandalllaw.com

Tidewater
Shemeka Hankins
Shemeka.hankins@norfolk.gov

Winchester
VACANT

OLIVER HILL/SAMUEL TUCKER PRE-LAW INSTITUTE

The Virginia State Bar Young Lawyers Conference in conjunction with the Millennium Diversity Initiative and the University of Richmond T.C. Williams School of Law has designed a program, the Oliver Hill/Samuel Tucker Law Institute, to facilitate diversity in the legal profession. The program enables at-risk, minority students to attend a weeklong comprehensive seminar that encourages them to become members of the legal profession.

Contact: Alicia N. Roberts
Anroberts1@gmail.com

Tamar L. Jones
tjones7183@gmail.com

RULE OF LAW DAY AT THE CAPITOL

The purpose of this program is to educate 400 at-risk middle school and high school students about rule of law principles and the operations of their state government. Students take a field trip to the Virginia Capitol where they learn about the

legislative, executive and judicial branches from various government officials in these branches. Prior speakers at this program include the Governor of Virginia, the Virginia Attorney General, Justices of the Supreme Court of Virginia, and Senators as well as Delegates from the General Assembly of Virginia. After students listen to these speakers at the General Assembly Building and the Supreme Court of Virginia, students are divided into groups to discuss different factual scenarios with attorneys, judges, and law enforcement officers assigned to their specific group.

Contacts: Justin Sheldon
Justin.sheldon@leclairryan.com

Gabriel A. Walker
Gabriel.walker@leclairryan.com

WILLS FOR HEROES

In response to the events of September 11, 2001, the Young Lawyers Division of the South Carolina Bar Association created a program called *Wills for Heroes* to allow the legal community to show its appreciation for the efforts and sacrifices made by firefighters, police, sheriffs and emergency medical technicians. This committee, in conjunction with VBA-YLD, has developed and implemented a program in the Commonwealth to provide simple wills, advanced medical directives, and powers of attorney to First Responders on a pro bono basis.

Contacts: Michael Abejuela
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Jonas Callis
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YLC Commissions

CHILDREN AND THE LAW COMMISSION

Helen Chong
hchong@courts.state.va.us

PRO BONO COMMISSION

K. Alyse Latour
alatour@mofomo.com

WOMEN AND MINORITIES IN THE LEGAL PROFESSION COMMISSION

Krystle Cobran
Krystlec24@gmail.com

Jeree M. Thomas
Jeree@justice4all.com

Circuit Representatives

In 1983, the YLC established a statewide network of Circuit Representatives appointed from each of the state's 31 judicial circuits. This network is designed to meet three objectives: 1- to provide a liaison between practicing young lawyers on the local level and the Young Lawyers Conference Board of Governors; 2- to promote statewide communication and participation among young lawyers in the projects and activities of the YLC; and 3- to increase the quantity and quality of public service legal programming throughout the Commonwealth. The primary responsibility of each Circuit Representative is to organize and carry out an annual project for young lawyers in his or her judicial circuit. These projects have ranged from CLE programs to community service programs to YLC membership projects. If you are interested in becoming a Circuit Representative or assisting with any of the projects of the YLC, please contact any YLC Board Member or your Circuit Representative.

FIRST CIRCUIT

City: Chesapeake
Craig Ellis
cellis@cityofchesapeake.net

SECOND CIRCUIT

City: Virginia Beach
Counties: Accomack & Northhampton
Jamie Allgood
jla@shupertlaw.com

THIRD CIRCUIT

City: Portsmouth
Rebecca Robinson
rrobinson@por.idc.virginia.gov

FOURTH CIRCUIT

City: Norfolk
Carticia Basnight
carticia.basnight@gmail.com

FIFTH CIRCUIT

Cities: Franklin & Suffolk
Counties: Isle of Wight & Southhampton
Andrew Page
andrewrussellpage@gmail.com

SIXTH CIRCUIT

Cities: Emporia & Hopewell
Counties: Prince George, Surry, Sussex, Greenville, & Brunswick
Kevin O'Donnell
kevin.odonnell@richmond.edu

SEVENTH CIRCUIT

City: Newport News
J. Anderson Mullins
amullins@waynemoorelaw.com

EIGHTH CIRCUIT

City: Hampton
Angelaine Harmonie Mason
harmoniemasonesq@gmail.com

NINTH CIRCUIT

City: Williamsburg
Counties: York, James City, Charles City, New Kent, Gloucester, Matthews, Middlesex, King William, King & Queen
William W. Sleeth, III
william.sleeth@leclairryan.com

TENTH CIRCUIT

Counties: Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Lunenburg, Mecklenburg, & Prince Edward
Emily J. Lenschow
Lenschowlaw@gmail.com

ELEVENTH CIRCUIT

City: Petersburg
Counties: Amelia, Dinwiddie, Nottoway, Powhatan
VACANT

TWELFTH CIRCUIT

City: Colonial Heights
County: Chesterfield
Anne L. Roddy
aroddy@anneroddylaw.com

THIRTEENTH CIRCUIT

City: Richmond
Brandon H. Reid
breid@reidgoodwin.com

FOURTEENTH CIRCUIT

County: Henrico
Lester C. Brock
Lbrock@hccw.com

FIFTEENTH CIRCUIT

City: Fredericksburg
Counties: King George, Stafford, Spotsylvania, Caroline, Hanover, Westmoreland, Richmond, Essex, Lancaster, & Northumberland
Christopher S. Colby
ccolby@vanblk.com

Joshua M. Parrett
jparrett@anthonywilliamsllaw.com

SIXTEENTH CIRCUIT

City: Charlottesville
Counties: Madison, Greene, Albemarle, Fluvanna, Goochland, Louisa, Orange, & Culpeper
Jason P. Seiden
Jseiden@michiehamlett.com

SEVENTEENTH CIRCUIT

City: Falls Church
County: Arlington
Jennifer A. Bradley
Jbradley@mdmblaw.com

EIGHTEENTH CIRCUIT

City: Alexandria
Melissa A. Little
Melissa-little@comcast.net

NINETEENTH CIRCUIT

City: Fairfax
County: Fairfax
Laura O'Brien
lobrien@kdbfamilylaw.com

Kristina Wolf
kwolf@uscourts.cavc.gov

TWENTIETH CIRCUIT

Counties: Loudon, Fauquier, & Rappahannock
Eric J. Demetriades
eric@hdattorneysatlaw.com

TWENTY-FIRST CIRCUIT

City: Martinsville
Counties: Patrick & Henry
Jessica Henson
Jhenson@vaelderlaw.com

Courtney L. Armstrong
carmstrong@wardarmstrong.com

TWENTY-SECOND CIRCUIT

City: Danville
Counties: Pittsylvania & Franklin
Michael A. Nicholas
Mnicholas@dmklawfirm.com

TWENTY-THIRD CIRCUIT

Cities: Roanoke & Salem
Counties: Roanoke
Abigail Murchison
murchison@gentrylocke.com

TWENTY-FOURTH CIRCUIT

Cities: Lynchburg & Bedford
Counties: Nelson, Amherst, Campbell, & Bedford
Michael R. Sloan
Michael@overstreetsloan.com

TWENTY-FIFTH CIRCUIT

Cities: Covington, Lexington, Staunton, Buena Vista, Clifton Forge, Waynesboro
Counties: Highland, Augusta, Rockbridge, Bath, Alleghany, Botetourt, Craig
Kent A. Gibson
Kent@spencerandtaylor.com

TWENTY-SIXTH CIRCUIT

Cities: Harrisonburg & Winchester
Counties: Frederick, Page, Rockingham, Warren
Kristopher R. McClellan
kmccllellan@lspic.com

TWENTY-SEVENTH CIRCUIT

City: Galax & Radford
Counties: Pulaski, Wythe, Carroll, Grayson, Montgomery, Floyd, Giles, Bland
Eric D. Chapman
echapman@cowanperry.com

TWENTY-EIGHTH CIRCUIT

City: Bristol
Counties: Smyth & Washington
VACANT

TWENTY-NINTH CIRCUIT

Counties: Giles, Bland, Tazewell, Buchanan, Russell, Dickenson
Pebbles L. Burgess
pld@streetlawfirm.com

THIRTIETH CIRCUIT

City: Norton
Counties: Wise, Scott, Lee
Sarah W. Jessee
swynn@vt.edu

THIRTY-FIRST CIRCUIT

Cities: Manassas & Manassas Park
County: Prince William
Ashley Izard
aizard@donnadoughertylaw.com

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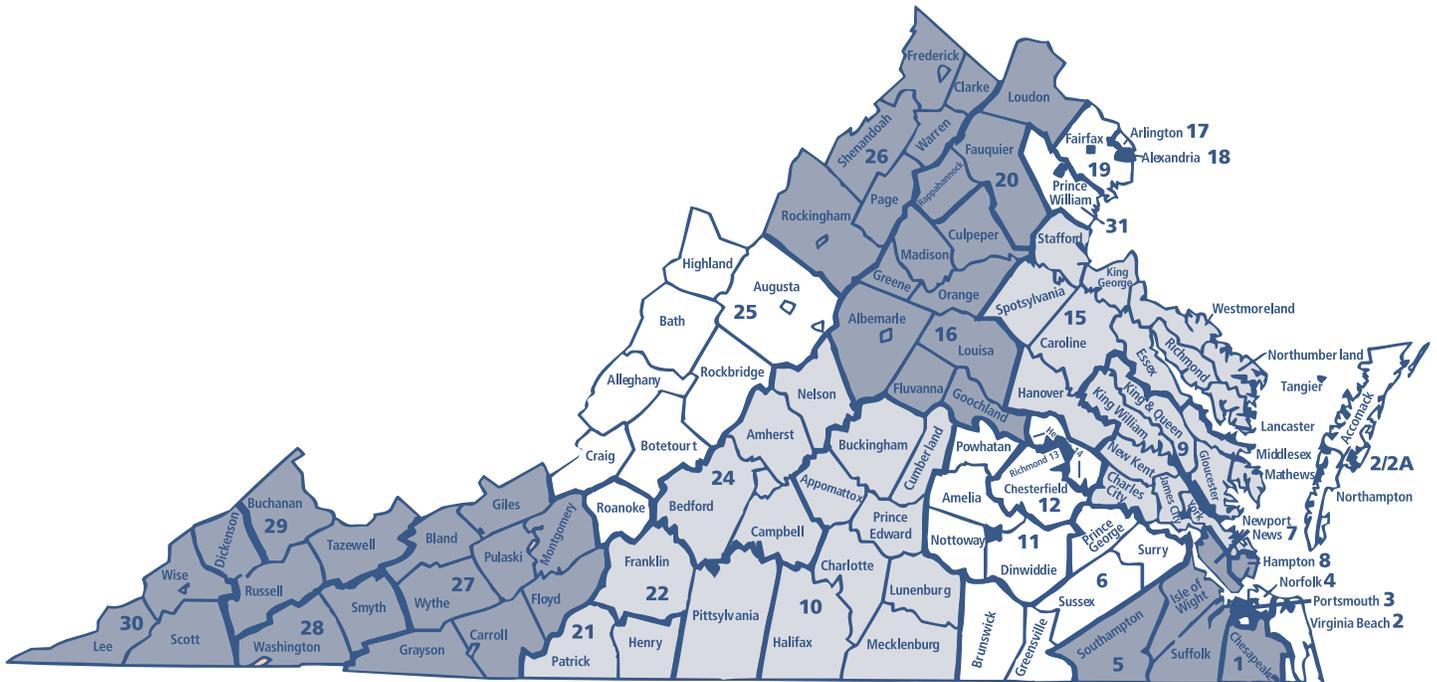
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If you are interested in becoming a Circuit Representative or assisting with any of the projects of the YLC, please contact any YLC Board Member or your Circuit Representative.

A full listing of volunteer opportunities and a volunteer form can be found at <http://www.vsb.org/site/conferences/ylc/getting-involved>



INVOLVEMENT GUIDE

YLC 2014-2015

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