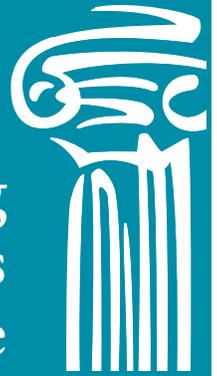


# DOCKET CALL NEWSLETTER

Vol. 22, No. 1 • Summer 2005 • Editor: Lexine D. Walker

[www.vayounglawyers.org](http://www.vayounglawyers.org)

Young  
Lawyers  
Conference



Virginia State Bar

## O'Kelly McWilliams Receives Burnette Award

*Jennifer Campbell*

O'Kelly E. McWilliams III is this year's recipient of the prestigious R. Edwin Burnette Jr. Young Lawyer of the Year award. The Burnette Award is named for a former president of the YLC and is awarded to a member of the Virginia State Bar who sets a high standard for bar leadership. McWilliams, who was president of the Virginia State Bar's Young Lawyers Conference during 2001–2002, received the award on June 17 during the YLC's annual luncheon held in conjunction with the VSB's annual meeting in Virginia Beach.

As YLC president, McWilliams helped the conference launch the Oliver Hill/ Samuel Tucker Pre-Law Institute to encourage minority youth to consider legal careers, a diversity education program, and a Professional Development Conference geared toward newly licensed lawyers.

From the beginning of his career, McWilliams assumed leadership positions not only at the VSB, but also with the American Bar Association, which awarded him a Minority in the Profession Committee scholarship. He since has worked to encourage other minority lawyers to apply for the funding and get involved in issues on a national level.



O'Kelly McWilliams (left) was named 2005 R. Edwin Burnette Jr. Young Lawyer of the Year at this year's Virginia State Bar Annual Meeting in Virginia Beach. McWilliams is joined by ABA President Robert Grey (right).

In the community, McWilliams has helped his fraternity, Kappa Alpha Psi Inc., with its Kamp Kappa's Street Law course. He coached mock trial teams of African American boys between the ages of 10 and 16 from southeast Washington, D.C.. He also supports Fairfax County's Medical Care for Children Partnership,

which helps children of working parents obtain medical and dental care.

At his church, Heritage Fellowship United Church of Christ in Reston, he teaches a financial management course. He formerly chaired the church's

*continued on page 5*

# Legal Ethics Corner

Jeffrey Hamilton Geiger

**Q** My in-house counsel contact at Acme, Inc. just e-mailed me an invitation to come to a post-shredding party after they complete a document destruction day. That's rather strange because Acme retained me to sue Emca, Inc. in what will likely be a discovery intensive case. Hmmm.

**A** Egad—put that shredder away! Amid legal news headlines of “shredding parties” and “document destruction days” lie claims of “spoliation,” defined as the “the willful destruction of evidence or the failure to preserve potential evidence for another’s use in pending or future litigation.”<sup>1</sup> Succinctly stated:

Evidence destruction impedes the search for truth because it creates inaccuracy if the fact of destruction is unknown and uncertainty if the fact of destruction is revealed. Destruction of evidence is unfair because it potentially creates inequality of access to information.<sup>2</sup>

Aside from civil and criminal remedies for the spoliation of evidence, there exist express ethical rules prohibiting such conduct. The adoption of the *Rules of Professional Conduct* placed broader obligations on attorneys, as in Rule 3.4(a), which provides that:

A lawyer shall not: Obstruct another party’s access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party’s access to evidence. A lawyer shall not counsel or assist another person to do any such act.

The comments to the rule explain that:

The procedure of the adversary system contemplates that evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evi-



dence, improperly influencing witnesses, obstructive tactics in discovery procedure and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered,

concealed or destroyed. Applicable law makes it an offense to destroy material for purposes of impairing its availability in a proceeding or one whose commencement can be foreseen. Paragraph (a) applies to evidentiary materials generally, including computerized information. 

## ENDNOTES

- 1 *Trigon Ins. Co. v. United States*, 204 F.R.D. 277, 284 (E.D. Va. 2001).
- 2 *Rambus, Inc. v. Infineon Technologies AG*, 222 F.R.D. 280, 288 (E.D. Va. 2004) (citation omitted).

Jeff Geiger is a Principal in the Richmond office of Sands Anderson Marks & Miller. You may reach him at [jgeiger@sandsanderson.com](mailto:jgeiger@sandsanderson.com).

## Virginia State Bar Professionalism Course



### Upcoming course dates:

AUGUST 25, 2005—ROANOKE

SEPTEMBER 22, 2005—RICHMOND

for additional dates and a registration form:

[www.vsb.org/membership/professionalism.pdf](http://www.vsb.org/membership/professionalism.pdf)

# Message from the President

Savalle Sims  
2004–2005 YLC President



At the beginning of the bar year, I joined my predecessor, Kathleen M. Uston, in challenging Virginia young lawyers to take up the call to join the work of the YLC. During the past year, I have had the opportunity and privilege to work with a number of talented, creative and dedicated young lawyers across the Commonwealth—all of whom have sacrificed time away from their families and professional obligations to answer the call to serve. YLC volunteers resoundingly answered the call and went above and beyond to honor our profession and to improve the perception of our profession in the community. I am pleased to report that the YLC had an extremely productive year that could not have been accomplished without the service of our membership and the involvement and participation of all our volunteers.

Throughout the year, the YLC created and implemented a number of programs to serve the public. In September, the YLC partnered with the State Board of Elections in implementing its voter education initiative throughout the Commonwealth. The YLC distributed a “Know Your Rights and Responsibilities” brochure to over 100,000 citizens throughout the Commonwealth. In partnership with the Virginia Bar Association Young Lawyers Division, the YLC’s Emergency Legal Services Committee activated to provide assistance in connection with Tropical Depression Gaston and remnants from Hurricanes Frances and Ivan. Additionally, the YLC presented the American Bar Association’s Diversity Tolerance Initiative to over 200 third grade students at Varina Elementary School in Richmond.

During Community Law Week, the YLC tailored the American Bar Association’s “We the Jury” program to Virginia’s judicial system and presented it to over 600 Commonwealth high school students. As part of the program, the students participated in a mock *voir dire* and deliberated in connection with a civil or criminal case. The YLC held its Minority Pre-Law Conference in April at the University of Richmond’s T.C. Williams School of

Law. In doing so, the YLC assisted in exposing students to all phases of developing a legal career from the law school admissions process to the selection of career opportunities. More recently in May, the YLC partnered with the VBA YLD to implement Wills for Heroes in Williamsburg. The YLC provided wills, advance medical directives and powers of attorney to approximately two dozen first responders in the Williamsburg area.

The YLC also implemented programs for the benefit of the bar. In March, the YLC hosted its Fourth Annual Professional Development Conference in Charlottesville. This year’s PDC featured a dual track between Transactions & In-House Counsel and Litigation. One of the highlights of the PDC was one of the YLC’s jury based initiatives for the year: A View from the Box: A Panel Discussion of Judges, Trial Lawyers and Former Jurors. The panel consisted of several jurors from state and federal criminal and civil trials and noted litigators Craig S. Cooley and Julia Judkins. The Honorable James Jones of the United States District Court for the Western District of Virginia served as moderator. More recently at the Annual Meeting, the YLC hosted the Attorney General debate. In October, and again in June, the YLC welcomed new attorneys to the Virginia State Bar at our admission and orientation ceremonies.

At its annual luncheon, the YLC also honored this year’s R. Edwin Burnette Jr. Young Lawyer of the Year award recipient, O’Kelly E. McWilliams III. O’Kelly exemplifies outstanding service to the YLC, the legal profession and the community. Congratulations, O’Kelly!

As my year as President of the YLC comes to an end, it is my pleasure and privilege to pass the reins of YLC leadership over to Jimmy F. Robinson Jr. who will assume the role of YLC President. Jimmy is a talented and creative lawyer with unending energy and dedication to the YLC. I am confident that you will enjoy working with him. 

## Community Law Week:

# We the Jury Program

Community Law Week is held during the first week of May to help the community to better understand the role of the law in their lives. This year, the Young Lawyers Conference conducted the We the Jury Program. This program is particularly significant because Robert Grey, President of the American Bar Association, former president of the Young Lawyers Conference and currently with Hunton & Williams in Richmond, made the American jury the focus of his term as president.

The We the Jury program was held all across Virginia; in Virginia Beach, Manassas, Alexandria and Roanoke. The program is designed to inform high school students of the importance of the jury as a fundamental principle of the American legal system, guaranteed by the United States Constitution. The program's goals are for students to learn about the evolution of the jury system and how the right to trial by jury was guaranteed to all American citizens in the Bill of Rights to the United States Constitution, to understand and appreciate the role that American citizens play in the judicial system by participating in the jury process, to learn about the *voir dire* process of selecting a jury, to understand the order of a typical trial and the jury's role in the proceedings and to become more willing and better prepared to serve on juries.

The program begins by introducing students to the evolution of the jury system. Each school may choose to conduct a civil or criminal trial. Volunteer attorneys conduct a mock *voir dire* with students acting as citizens in the jury pool. The students view an interactive mock trial video and participate in deliberations in an effort to reach a verdict. The more students understand their role as potential jurors before they are called to serve on a jury, the better prepared they will be to carry out this important responsibility.

This year's program was held at the following locations:

Stonewall Jackson High School, Manassas—May 16, 17  
Patrick Henry High School, Roanoke—May 24, 25  
First Colonial High School, Virginia Beach—June 6, 8 

## Virginia LawyerReferral Service brings clients to you.

 VLRS 

For more information see the application at  
[www.vsb.org/vlrs.html](http://www.vsb.org/vlrs.html)

# Circuit Beat

## No Bills Night

### RICHMOND—BETSY DAVIS

This spring, Richmond area lawyers appeared on *Call 12*, a local television news program on Channel 12, the Richmond NBC affiliate, in order to reach the greatest number of local residents through our “No Bills Night” program. This year's Richmond area “No Bills Night” was a great success! Channel 12 publicized our service event during its evening news broadcast so that callers could call in with any legal questions. Five young Richmond lawyers manned the phones in Channel 12's phone bank from 5 p.m. to 6:30 p.m. on May 3, 2005, and assisted 106 residents. We fielded questions on all areas of the law, ranging from collections to landlord-tenant law to medical malpractice. All of the attorneys who volunteered enjoyed participating in the program, and the callers were very appreciative.

No Bills Night was initiated by the YLC in a statewide effort to provide the public with an opportunity to confidentially consult with a lawyer for approximately 10 minutes about problems with which they are confronted.

### DANVILLE—DARREN BENTLEY

Each year various YLC circuits offer free consultations through the No Bills Night Program, in conjunction with Law Week. This year, the Danville Region held its program from 6 p.m. to 9 p.m. on May 12, 2005, at the law offices of Clement & Wheatley. We had eleven local attorneys volunteer to staff the phones for this event. Together, these attorneys were able to address a total of 37 calls from people with a variety of legal issues. Questions about wills and estate planning were most prevalent (10), with family law, bankruptcy, landlord/tenant and criminal law questions tied for second place with four questions each. Several other areas of the law were also covered by our volunteers.

This event gives us the opportunity to give something back to our local communities. As usual, the volunteers had a rewarding experience, and we hope to have an even bigger event next year in conjunction with Law Week. 

Betsy Davis and Darren Bentley are regional chairs for the “No Bills Night” program.

## Address Change?

If you have moved or changed your address, please see the VSB Membership Department's page on the Web for an **address update form** at [www.vsb.org/membership/](http://www.vsb.org/membership/).

# Profile of Past YLC President Tracy A. Giles

*Savalle C. Sims*

Tracy A. Giles served as president of the YLC from 2000 to 2001. Under Tracy's leadership as YLC President, the YLC created and implemented a number of programs including the YLC's first Annual Professional Development Conference. Tracy has an extensive history of

bar service at the local, state and national level.



While serving as YLC president, Tracy served on the Executive Committee and the Council of the Virginia State Bar, where he effectively represented the interests of all young lawyers. After aging out of the YLC, Tracy has continued to remember and support the goals of the conference and young lawyers from the local level to the national level. Most recently, Tracy has served on the American Bar Association's Presidential Appointments Committee for the last three years—he chaired ABA President Robert Grey's committee last year. Sitting on those committees, Tracy had a personal goal to see that young lawyers were brought to the attention of the ABA Appointments Committees and received as many placements as possible.

Tracy has continued to work with his local bar and the VSB since his presidency. He currently serves on the Eighth District Disciplinary Committee and the Executive Committee of the Conference of Local Bar Associations. He is also on the board of the Roanoke Bar Association. Tracy currently practices with his wife, Malissa L. Giles, in Roanoke, at the firm of Giles & Lambert, P.C. Tracy and Malissa have three daughters, Elizabeth, Mary Grace and Rosie. Tracy's practice focuses heavily on bankruptcy.

Tracy says the best thing about his bar work has been the friends he has made across the state and around the country. He says he constantly gets calls from lawyers he's met around the country asking for a referral to someone in Virginia who can do a certain type of case. Fortunately, he says, bar service has introduced him to a lot of great lawyers in Virginia.

During the 16 years since he first got involved in bar work, Tracy has served on a number of committees and held a number of appointments, including running the ABA's Disaster Legal Services program and serving on the ABA Board of Governors, the ABA House of Delegates and the Commission on Domestic Violence.

In September, Tracy will run for election to become Virginia's State Delegate to the ABA. State delegates sit in the ABA House of Delegates which is the ABA's policy making body. They also sit on the ABA's Nominating Committee which chooses ABA officers, including the president of the association.

Virginia lawyers who are members of the American Bar Association are eligible to vote in the election for ABA State Delegate. Ballots will be circulated this September.



O'Kelly McWilliams (left) is the 2005 R. Edwin Burnette Jr. Young Lawyer of the Year. Judge Burnette (right), for whom the award is named, is a general district court judge in Lynchburg.

*continued from page 1*

Constitution Committee, and he co-founded its Legal Ministry, through which he counsels congregants on legal issues and advises the church leadership on personnel, family law and business matters. "O'Kelly mentors young men in our congregation, and during Spring Break hosted one such teenager in his office to provide him meaningful, firsthand exposure to the practice of law in a law firm," his pastor, the Rev. Dr. Norman A. Tate, wrote in the letter nominating McWilliams for the award.

McWilliams was raised in Richmond and graduated from Longwood University in 1990. He received a law degree from George Mason University in 1993. He practices employment law with the firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC in Washington, D.C. McWilliams, 36, and his wife, attorney Karen Turner McWilliams, recently celebrated their 10th wedding anniversary. They have two children.

Jennifer Campbell is an attorney currently practicing administrative law. She can be reached at [jennic1@gmail.com](mailto:jennic1@gmail.com).

# Scenes from the Beach

67th VSB Annual Meeting • June 16–19, 2005



# Candidates for Attorney General Meet in First Debate

Vicki L. Wiese



Delegate Bob McDonnell (l), R-Virginia Beach, and Senator Creigh Deeds, D-Bath County, face off at the traditional Attorney General Debate at this year's Annual Meeting in Virginia Beach. The YLC grants the Attorney General candidates their first opportunity to face each other before each race for that position.

The Virginia State Bar Young Lawyers Conference continued its tradition of hosting the Virginia Attorney General debate at the VSB annual meeting in Virginia Beach. On June 18, 2005, Democratic State Senator Creigh Deeds of Bath County and Republican Delegate Bob McDonnell of Virginia Beach squared off in their first face-to-face debate of the campaign season. The candidates drew a large crowd, and they fielded questions submitted by young lawyers before the event at the Cavalier Oceanfront Hotel. The event was moderated by Rebecca Cooper, from the local ABC affiliate in Washington, D.C.

Both candidates shared some common ground on issues such as better funding for court-appointed attorneys and the rights of gun owners, but Deeds and McDonnell took up very different positions on taxation and social issues. The recent case of Terri Schiavo, together with the Virginia case involving Hugh Finn in 1998, served as grounds to address the issues surrounding the end of life. Deeds preferred political restraint from involvement in such private issues, while McDonnell supports state involvement in keeping with its responsibility to protect human life. In that same vein, McDonnell also opposed government-funded embryonic stem cell research.

As always, the issue of taxes was discussed in the context of each legislator's past voting record and in terms of future tax proposals supported by each candidate. Deeds supported a tax package that would generate revenue in excess of one billion dollars over a two-year budget cycle, to provide more funding for fire and rescue workers as well as better pay for sheriff's deputies and state troopers. McDonnell quickly took issue with the proposition, claiming that Deeds approved higher taxes while the current Republican tax program will

provide state revenue growth in excess of fifteen percent, making higher taxes unnecessary.

One social issue receiving recent national attention again found the candidates in agreement. Both candidates declared their respective support to ban same-sex marriage with a state constitutional amendment, although Deeds has previously voted against a General Assembly resolution seeking a federal constitutional ban. Deeds explained that he voted against seeking a federal constitutional ban against same-sex marriage because that issue should be addressed by state law only.

The Attorney General debate is just another way that the Young Lawyers Conference of the Virginia State Bar demonstrates its high level of commitment not only to young lawyers, but to the bench, bar and citizens of Virginia. If you are interested in becoming involved in some of the many activities sponsored by the Young Lawyers Conference, or to simply learn more about the Conference, please contact Anne Cardea at (804) 916-7157 or [acardea@leclairryan.com](mailto:acardea@leclairryan.com). 

The author notes that a significant amount of information was obtained for this article from the *Virginia Lawyers Weekly* article entitled "McDonnell, Deeds clash on social issues, Taxes" and from the *Roanoke Times* article titled "Hopefuls Square off in their First Debate" which appeared on June 19, 2005 on B1.

Vicki L. Wiese is a member of the Young Lawyers Conference Board of Governors. She can be reached by phone at (540) 985-0098 and by email at [vwiese@frithlawfirm.com](mailto:vwiese@frithlawfirm.com).

## *Docket Call*

A quarterly publication of the Young Lawyers Conference of the Virginia State Bar.

*Editor:*

**Lexine D. Walker**

*Editorial Board:*

**Jennifer Campbell, Mary Nguyen Thexton  
Jeff Geiger, Mary L.C. Daniel**

*Board Liaison:*

**Vicki Wiese**

*Design & Production:*

**Cheryl L. Pavkov**

*Docket Call* welcomes contributions from members of the YLC.

*Send submissions to:*

**Publications Dept.,  
Virginia State Bar  
707 E. Main St., Suite 1500  
Richmond, VA 23219-2800**

# 2004–2005 YLC Outstanding Service Awards

The YLC congratulates the following recipients of Outstanding Service Awards, which were presented at the annual meeting in Virginia Beach.

Theodore Atkinson	We the Jury	Washington, DC
Darren W. Bentley	No Bills Night	Danville
Anne C. Cardea	Membership Involvement	Richmond
Joshua M. David	Professional Development Conference	Newport News
Rita Poindexter Davis	Minority Prelaw Conference	Richmond
Jeffrey H. Geiger	Emergency Legal Services	Richmond
Danielle D. Giroux	Diversity Tolerance Program	Richmond
Audra Hale-Maddox	Professional Development Conference	Tysons Corner
Beth G. Hungate-Noland	Celebration of Women & Minorities in the Profession Bench/Bar Dinner	Richmond
Vanessa L. Jones	Children & the Law Committee	Chesterfield
Christy E. Kiely	Students Day at the Capitol	Richmond
J. Barrett Lucy	Emergency Legal Services	Roanoke
Jacqueline S. McClenney Neal	Minority Prelaw Conference	Richmond
Daniel E. Ortiz	Professional Development Conference	Fairfax
Elizabeth G. Perrow	Voting Rights Program	Roanoke
William B. Porter	Professional Development Conference	Fairfax
Laura W. Rugless	Williamsburg Circuit Representative	Williamsburg
Richard D. Scott	Voting Rights Program	Roanoke

## DOCKET CALL

Virginia State Bar Young Lawyers Conference  
707 East Main Street, Suite 1500  
Richmond, VA 23219-2800

PRESORTED  
FIRST CLASS  
U.S. POSTAGE PAID  
RICHMOND, VA  
PERMIT NO. 709