



PUBLISHED BY THE CRIMINAL LAW SECTION OF THE VIRGINIA STATE BAR FOR ITS MEMBERS

44th Annual Seminar Program

February 7, 2014 • Steven D. Benjamin
Doubletree –Charlottesville

February 14, 2014 • Hon. S. Bernard Goodwyn
Doubletree – Williamsburg



Steven D. Benjamin

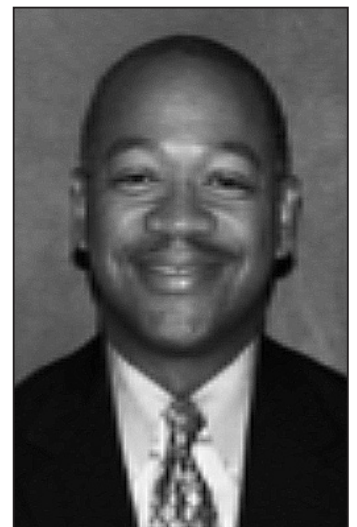
is an attorney in private practice with the Richmond, Virginia firm of Benjamin & DesPortes. He is the Immediate Past President of the National Association of Criminal Defense Lawyers, a Fellow of the American Board of Criminal Lawyers, and a Past President of the Virginia Association of Criminal

Defense Lawyers. He serves as Special Counsel to the Virginia Senate Courts of Justice (Judiciary) Committee, is a member of the Virginia Indigent Defense Commission, and served two terms as a member of the Virginia Board of Forensic Science.

Mr. Benjamin led the litigation and legislative effort to abolish Virginia's mandatory fee caps on compensation for court-appointed counsel. At the request of the Virginia Supreme Court, he helped establish and chair an annual Advanced Indigent Defense Training Seminar. He is a recipient of the Virginia State Bar's Lewis F. Powell Pro Bono Award in recognition of his years of indigent defense and efforts toward indigent defense reform.

Hon. S. Bernard

Goodwyn is a Justice on the Supreme Court of Virginia. He joined the Court in October 2007. Before joining the Supreme Court of Virginia, he served as a state trial court judge for 12 years, during which he presided over a wide variety of civil and criminal cases in



one of the busiest jurisdictions in Virginia. Prior to going on the bench, he was a litigation partner at Willcox & Savage, a Norfolk, Virginia law firm where his practice concentrated on commercial, personal injury defense, and Section 1983 litigation. He was appointed to the full-time faculty of the University of Virginia School of Law for the 1994-95 academic year as a Research Associate Professor of Law. He is a graduate of Harvard University and the University of Virginia School of Law.

Virginia State Bar

44th Annual Criminal Law Seminar

FEBRUARY 7, 2014 • Doubletree Hotel • CHARLOTTESVILLE
FEBRUARY 14, 2014 • Doubletree Hotel • WILLIAMSBURG

- 8:00** **Late Registration and Exhibits**
- 8:15** **Welcome and Opening Remarks**
- 8:30** **Recent Developments in Criminal Law and Procedure**
 Back by popular demand, the annual comprehensive review of developments in substantive and procedural criminal law.
 • *Prof. Ronald J. Bacigal*
- 9:30** **Coffee Break and Exhibits**
- 9:45** **Immigration Issues: How to Avoid the Road Home**
 Tips on navigating the potential immigration consequences of a criminal case.
 • *Amy L. Austin, Esq.* • *David E. Gluckman, Esq.*
- 11:00** **Stress Management/Lawyers Helping Lawyers (Ethics)**
 What to do and where to go when the inevitable stress of shouldering other people's problems becomes too much for you or your colleague.
 • *James E. Leffler*
- 12:15** **Luncheon**
Steven D. Benjamin, Esq. — Benjamin & DesPortes, PC, Richmond, (Charlottesville)
Hon. S. Bernard Goodwyn — Justice, Supreme Court of Virginia, (Williamsburg)
- 1:30** **Ethical Issues in the Practice of Criminal Law**
 Judge Roush and Rod Leffler return to discuss the Virginia Rules of Professional Conduct in real-life scenarios.
 • *Rodney G. Leffler, Esq.* • *Hon. Jane Marum Roush*
- 2:45** **Revocations: Serving Your Suspended Sentence on the Installment Plan**
 In reality, a case is ultimately won or lost at a revocation hearing. This panel discusses the law and strategy involved in a revocation proceeding.

Charlottesville: *Albert LaFave*
 Elizabeth Murtagh, Esq.
 Areshini Pather, Esq.

Williamsburg: *William R. Blaine, Jr., Esq.*
 David R. Lett, Esq.
- 3:45** **The Changing Landscape of Discovery**
 A look at the discovery rules in Virginia from the viewpoints of the prosecution, the defense and the bench.
Charlottesville: *Jonathan Shapiro, Esq.*
Williamsburg: *Jeffrey A. Swartz, Esq.*
Both Locations: *Hon. Raymond F. Morrogh and Hon. Charles S. Sharp*
- 5:00** **Closing Remarks and Adjournment**

Look for seminar brochure and registration information in mid-December
<http://www.vsb.org/site/sections/criminal/annual-seminar>

LECTURERS



Ronald J. Bacigal is a Professor at the University of Richmond School of Law, and a Reporter of Criminal Decisions for the Court of Appeals of Virginia. He received his law degree from Washington and Lee Law University, followed

by graduate study at The Hague as a Fulbright Scholar. He has been a visiting professor at Duke Law School and Washington and Lee University; served as chairman of the Criminal Law Section of the Association of American Law Schools; and is a member of the National Judicial College faculty.



David Gluckman is an attorney with McCandlish Holton's Immigration Practice Group in Richmond, Virginia. He advises businesses and individuals nationwide and worldwide, guiding them through the U.S. immigration labyrinth toward their short-

and long-term goals. His expertise includes temporary-visa petitions, permanent-residence applications for family-based and employment-based applicants in all categories, citizenship, and the immigration consequences of criminal convictions. David is a summa cum laude graduate of the University of Richmond School of Law.



Amy Austin has been a solo practitioner since January 2013 focusing on criminal defense in both state and federal courts. Prior to that, she served as an Assistant Federal Public Defender in Richmond, Virginia, from 2001 to 2012. Past experience

also includes serving as a law clerk to U.S. District

Court Judge Elizabeth Hallanan, Southern District of West Virginia, as an assistant state public defender in Fayetteville, WV, and as a staff attorney with the United States Court of Appeals for the Fourth Circuit.

Jim Leffler is a Licensed Professional Counselor who joined Lawyers Helping Lawyers as the Mental Health Services Coordinator in January 2004. He assumed the role of Executive Director in December 2005. Mr. Leffler has extensive experience in the field of chemical dependency and mental health. The staggering numbers of attorneys that commit suicide led to Mr. Leffler's interest into this phenomenon. He became certified as a suicide prevention instructor in 2004 and has made numerous presentations on this subject to numerous Virginia Bar organizations in Virginia and nationally to three different sections of the American Bar Association.

He started and managed outpatient programs for the Medical College of Virginia's Department of Psychiatry, Charter Westbrook Hospital and St. John's Hospital. He has supervised numerous individuals working towards licensure and certification as counselors in the state of Virginia. He also has consulted with various agencies in matters such as professional conduct of staff, privacy rights of clients, and the importance of accurate diagnosis to insure appropriate treatment. Mr. Leffler has undergraduate and graduate degrees from Virginia Commonwealth University and has been licensed since 1990.



Jane Marum Roush has been a judge of the Fairfax County Circuit Court since 1993. From 1985 to 1993, she practiced with the firm of Hogan & Hartson LLP (now Hogan Lovells) in McLean and Washington, D.C., and from 1981 to 1985, she was

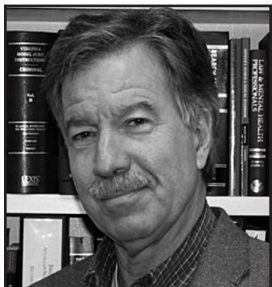
an associate at the firm of Boothe, Prichard & Dudley (now part of McGuireWoods LLP) in Fairfax. She is a graduate of Wellesley College and the University

of Virginia School of Law. She has taught at the University of Virginia School of Law, the Virginia College of Trial Advocacy, the National Judicial College and the American Academy of Judicial Education. Her current activities include serving on the Judicial Council of Virginia.



Rod Leffler is an experienced trial lawyer who has tried hundreds of cases in state and federal courts. He is a former prosecutor and substitute judge. Mr. Leffler is a Fellow of the American College of Trial Lawyers and has been called “The Man

to See” in Northern Virginia by Legal Times. He has been named one of “Virginia’s Legal Elite” by Virginia Business and is listed in Super Lawyers® and The Best Lawyers in America©. He was the recipient of the Harry L. Carrico Professionalism Award in 2007.



Albert M. LaFave, Jr. is a 1973 graduate of the University of Virginia, who has worked in community corrections for twenty years as a probation officer before becoming the Sentencing Advocate for the Charlottesville-Albemarle

Office of the Public Defender. He serves as the “Recorder” for the Citizens Advisory Committee for his office. He has served as the “Prison Advocate” for the University of Virginia (Health and Behavioral Sciences) Institutional Review Board for approximately eight years. He is a past (founding) board member of the Piedmont House Board of Directors and also served on the Gemeinschaft Board for several years. He has served on the Region Ten CSB for several years, and was one of the initiators of the “Healthy Transitions” program which allows inmates being released from jail or prison to access ongoing mental health treatment at a critical juncture of their lives, and is a member of

the local “Mental Health and Wellness Coalition.” He is a past Chair of the Community Diversion Incentive Program.



Elizabeth Murtagh is Deputy Public Defender, Charlottesville-Albemarle Public Defender Office, Charlottesville, Va. • B.S.W., 1979, Virginia Commonwealth University; J.D., 1989, Washington and Lee University; Associate

Editor, Virginia Capital Case Clearinghouse Digest; Charlottesville-Albemarle Bar Association; Virginia State Bar Criminal Law Section Board of Governors; Virginia Law Foundation Fellow 2012; Adjunct faculty member of the University of Virginia School of Law; Investigator, ABA study An Assessment of Access to Counsel and the Quality of Representation in Delinquency Proceedings in Virginia; Investigator, ABA study An Assessment of Access to Counsel and the Quality of Representation in Delinquency Proceedings in West Virginia; former member of the following: Mid-Atlantic Juvenile Defender Center Advisory Board of the National Juvenile Defender Center; NLADA Graham v. Florida Advisory Board; House Joint Resolution 69 Juvenile Competency Workgroup, Virginia Commission on Youth; Indigent Defense Commission’s Juvenile Law Study Group; Virginia Indigent Defense Commission Standards of Practice Committee; Indigent Defense Commission Appellate Default Committee; frequent lecturer on representing children in court and criminal law for continuing legal education programs.



Areshini Pather is an assistant Commonwealth’s Attorney in the City of Charlottesville where she prosecutes domestic violence cases. She has been a prosecutor since 2011. Prior to that she was a Supervising Assistant Public Defender at

the Office of the Public Defender for the City

of Richmond. Ms. Pather had been with the Richmond Office since 2005. She earned both her law and undergraduate degrees from the University of Virginia. Ms. Pather is an active member of the Charlottesville Criminal Bar Association. She originally hails from Cape Town, South Africa.



Bill Blaine is in his fifteenth year as an Assistant Commonwealth's Attorney. His area of concentration is revocations of all types (suspended sentence, findings under advisement, pre-trial bail/bond). He also maintains a sizable caseload of new felonies and misdemeanors. With respect to revocations, he has presented to prosecutors' CLE conferences, the sixth circuit's magistrates, and to the Newport News Commonwealth's Attorney's Office. He appeared [along with Joe Whitby] at the University of Richmond Law School for a "fireside chat" discussion about revocations. He received his law degree from William & Mary in 1998, and his Bachelor of Science degree in electrical engineering from the University of Pennsylvania in 1993.



David R. Lett graduated from Virginia Commonwealth University in 1974 with a Bachelor's of Science degree in Accounting and, in 1984, he graduated from the University of Georgia's School of Law with a Juris Doctor degree. After matriculation, he put out a "shingle" and he has since maintained a substantial criminal practice in state and federal courts. Mr. Lett is a former member of the Virginia Supreme Court's faculty on Professionalism, and he currently serves as a commissioner for the Virginia Indigent Defense Commission.



Judge Charles S. Sharp has been a Stafford County, Virginia Circuit Court judge since September 1, 2008. Prior to that, he was the elected Commonwealth's Attorney for the City of Fredericksburg, Virginia. Before assuming that position,

he was engaged in private practice for five years and served as an assistant Commonwealth's Attorney in both Stafford and Spotsylvania Counties. He received his undergraduate degree from Vanderbilt University and his law degree from the University of Virginia. He is a past president of the Virginia Association of Commonwealth Attorneys and past chairman of the Commonwealth Attorney's Services Council. He previously served as the first President of the Virginia Drug Court Association and as the chief prosecutor for the Rappahannock Regional Drug Court. He has been a facilitator for drug court teams around the country. Judge Sharp was a member of Governor Warner's Task Force

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<http://www.vsb.org/site/sections/criminal/>

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Section members*

to Combat Drunk Driving. He is currently a member of the Virginia State Drug Treatment Court Advisory Board and serves as chairman of the Evaluations Committee of that Board. He currently serves on the Board of Governors of the Criminal Law Section of the Virginia State Bar and a member of the Virginia Code Commission and the Virginia Sentencing Guidelines Commission.



Raymond F. Morrogh is the Commonwealth's Attorney for Fairfax County, Virginia. He earned his Juris Doctorate from George Mason University. He is a member of the Fairfax Criminal Justice Advisory Board, the National District

Attorneys Association Board of Directors, and is the current president of the Virginia Association of Commonwealth's Attorneys and Chairman of the Commonwealth's Attorney's Services Council. He has also served twice as the Chairman of Virginia's Forensic Science Board.



Jonathan Shapiro has practiced criminal law in the federal and state courts for the past 40 years. He has been listed for years in the Washingtonian Magazine's survey of best criminal lawyers. He represented accused spies Harold

Nicholson, CIA station chief, and NSA employee Brian Regan. Along with his partner Peter Greenspun, he represented "Beltway Sniper" John Allen Muhammad. He was honored by his law school in 2001 with the Peter Cicchino Alumni Award for Outstanding Advocacy In The Public Interest Within The United States. Mr. Shapiro was previously a clinical instructor at the Washington College of Law of The American University, where he was also the director of the Institutionalized Persons Clinic. He is now a Visiting Professor at Washington and Lee University Law School

where he co-directs the Criminal Justice Clinic and the Criminal Practice Practicum, and where he has taught criminal procedure, criminal law and evidence. He is also a member of the Fairfax firm of Greenspun, Shapiro P.C.

Jeff Swartz graduated from Virginia Tech and attended law school at The Marshall-Wythe School of Law at the College of William and Mary. He is a former prosecutor with the Norfolk Commonwealth Attorney's Office where he gained extensive experience handling drug cases and cases involving crimes of violence including murder, robbery and sexual assaults. He returned to private practice in 1997, and specializes in criminal defense work. Jeff has lectured at the Norfolk Police Academy as well as on behalf of the Virginia Trial Lawyers Association.

Save the Date

**76th Annual Meeting
Virginia State Bar – Virginia
Beach**

June 12-15, 2014

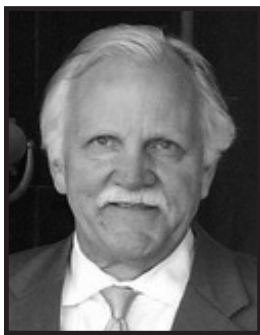
Friday, June 13

(2.0 CLE, including 1.0 Ethics)

Plans are underway for a program to be co-sponsored by the Litigation and Corporate Counsel sections

***'Friending' Electronic Evidence –
How to Subpoena, Obtain and
Present Electronic Evidence at Trial***

Look for Annual Meeting
registration information in April at
www.vsb.org



Chair's Column

Francis McQ. Lawrence

We look forward to our 44th annual seminar in Charlottesville on February 7, 2014 and Williamsburg on February 14, 2014. Please join us!

The Supreme Court has now named a 23-member committee to consider proposed changes to the rule for criminal discovery. This committee, chaired by a circuit court judge, includes circuit court judges; a Court of Appeals judge; four Commonwealth's Attorneys; representatives from Victim-Witness Assistance programs; the State Police; the Department of Forensic Science; county sheriff's officers; and a police chief. The group also includes lawyers with extensive criminal defense experience; a capital public defender; VSB ethics counsel, and a law professor who serves as head of a capitol case clearing house. This distinguished group provides a voice for virtually all of the constituents in the criminal justice system.

I am hopeful that an unintended consequence of this committee will be to reduce some of the distrust and tension which became manifest from earlier discovery revision efforts. As Virginia becomes more urbanized and the practice of criminal law becomes more specialized, fewer and fewer attorneys move back and forth from the prosecutor's office to roles as criminal defense attorneys. Accordingly, the participants in the criminal justice system appear more polarized.

I was surprised in a recent conversation that I had with an attorney who has had a broad practice that included both time as an assistant Commonwealth's attorney and as a criminal defense attorney. He shared that many prosecutors believe that defense

counsel view criminal cases as a "game." While the role of defense counsel to zealously represent clients within the bounds of the law differs from that of the prosecutor's role to assure justice for all, the defense bar lives in the same community as prosecutors, their kids attend the same schools, they shop in the same places, and attend the same places of worship. In short, we are all citizens committed to the best possible criminal justice system.

Broader discovery for defendants is not that complicated. The two jurisdictions that I practice in most frequently both have open file policies; both are in writing and require some reciprocal discovery. Neither of the current prosecutors in these two jurisdictions have a problem with the open file policy. The City of Charlottesville has five staff attorneys and the County of Albemarle has six staff attorneys, both are able to find a corner of their offices for defense counsel to review the files. Both require dictation and/or notes of the file and will only make copies of those documents provided by rules – i.e. statements of the defendants and the like. Both permit advance viewing of videos such as dash camera footage, surveillance videos and the like, and both will usually permit clients with attorneys to view.

In my previous articles I cited our local newspaper The Daily Progress - I go back to that for a third time - as the editorial writer concluded, discovery rules "should require prosecutors to disclose the identity of testifying witnesses, as well as any prior statements they might have made."

It is my hope that the Supreme Court Committee can provide a modification of the rule that assures every criminal defendant will know the witnesses against him and any prior statements they made. It is also my hope that as we move forward with this committee we consider, on a broader scale, what can be done to "mend," what appear to be fractures in the criminal justice community and voice our disagreements temperately.



Criminal Law NEWS



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