39th Annual Seminar Program Confirmed
Congressman Bobby Scott to Deliver Luncheon Speech in Williamsburg;
Marvin Anderson to Speak at Charlottesville Luncheon

The Honorable Robert C. “Bobby” Scott, of the U.S. House of Representatives, will be the featured luncheon speaker for the 39th Criminal Law Seminar session in Williamsburg on Friday, February 6. Marvin Lamont Anderson, of Hanover County, will deliver luncheon remarks in Charlottesville on Friday, February 13. Mr. Anderson was incarcerated in the Virginia State Penitentiary for fifteen years before being exonerated with the assistance of The Innocence Project.

Congressman Scott began serving his eighth term as a Member of Congress in January 2007. Prior to serving in the U.S. House of Representatives, Rep. Scott served in the Virginia House of Delegates from 1978 to 1983 and in the Senate of Virginia from 1983 to 1993. During his 15-year tenure in the Virginia General Assembly, Rep. Scott successfully sponsored laws that are critical to Virginians in healthcare, education, employment, economic development, crime prevention, social services and consumer protection. His legislative successes included laws that improved healthcare benefits for women, infants and children, increased the Virginia minimum wage and created the Governor’s Employment and Training Council. He also sponsored the Neighborhood Assistance Act, which provides tax credits to businesses for donations made to approved social service and crime prevention programs.

In December 2001, Marvin Lamont Anderson became the ninety-ninth person in the United States to be exonerated due to post-conviction DNA testing. On December 14, 1982, then eighteen years old, he was convicted by a jury of robbery, forcible sodomy, abduction, and two counts of rape. The court sentenced Anderson to a total of two hundred and ten
years imprisonment in the Virginia State Penitentiary. Marvin Anderson spent fifteen years in prison and four years on parole fighting to prove his innocence.

The detailed seminar schedule and registration form are available at http://www.vsb.org/docs/sections/criminal/CLS09.pdf. The seminar program will begin at 8:15 a.m. at each location, with welcoming remarks from the section’s Chair, David P. Baugh, followed by the customary lecture on “Recent Developments in Criminal Law and Procedure” by Professor Ronald Bacigal from the University of Richmond. Following the coffee break, Elliott Norman will speak at 10:15 a.m. on “Defending Criminal Aliens: Avoiding Collateral Damage.” At 11:00 a.m., Judge Stanley Klein will reprise the interactive session on “Objections in Criminal Cases” with the assistance of Judge Gerald Lee and Professor Cynthia Jones in Williamsburg and Judge Cliff Weckstein in Charlottesville. The afternoon session will begin at 1:45 p.m. with the ever popular Judge Dennis Dohnal and Rodney Leffler discussing “Ethical Issues in the Practice of Criminal Law” followed by Craig Cooley addressing “Ten Keys to Successfully Trying a Case” at 2:45 p.m. The final topic for the day, beginning at 3:45 p.m., will be a panel discussion on “Voir Dire” with David Baugh, Judge Beverly Snukals and James Willett.

Ron Bacigal is a Professor of Law at the T.C. Williams School of Law of the University of Richmond, and a Reporter of Decisions for the Court of Appeals of Virginia. He is an alumnus of Concord College and graduated with highest honors from Washington and Lee Law School. He did graduate study at The Hague as a Fulbright Scholar, served as a law clerk to United States District Judge Ted Dalton, and then served as a Lieutenant in Navy JAG. Bacigal joined the University of Richmond Law School faculty in 1971 where he teaches Criminal Law, Criminal Procedure, Criminal Process and Evidence. He is the author of Virginia Criminal Procedure, Virginia Criminal Procedure Forms, Criminal Offenses and Defenses and he co-authored Virginia Jury Instructions. He also has authored Trial of Capital Cases in Virginia for the Section and Virginia CLE. He has twice been selected to receive the Distinguished Educator Award at the University of Richmond, and he received one of the Governor’s Outstanding Virginia Faculty Member awards in 1991. He was the 2008 recipient of the Section’s Harry L. Carrico Professionalism Award.

Elliott Norman is a partner at Williams Mullen in Richmond. He has focused his practice on immigration law since 1986. He regularly advises technology, staffing, manufacturing, and multinational corporations on recruiting and retaining global talent. As a former federal prosecutor, he counsels on compliance with I-9 rules and Homeland Security enforcement measures. He also enjoys helping movie producers move cast and crew around the world. His expertise includes transfers of executives, manufacturers and specialists to U.S. operations and solving problems impacting business travel and visa issuance. Mr. Norman has lectured widely on immigration and background/security check issues for industry and bar groups in the U.S. In addition, Mr. Norman is the author of numerous works on business and immigration issues, including the U.S. Immigration Law Handbook: A Guide for Foreign Investors, Professionals and Businesses, now in its ninth edition.
The Honorable Stanley P. Klein - Judge Stanley Klein has been a judge for the 19th Judicial Circuit in Fairfax County since 1992, and he was a substitute judge for the Fairfax general and juvenile and domestic relations district courts from 1983 until his election to the circuit court. He is a graduate of the State University of New York at Buffalo and received his J.D. from the Georgetown University Law Center in 1975. He was a private practitioner in the law office of Nicholas Kapnistos in Arlington, then sole practitioner in Fairfax, prior to becoming a partner with Graham, Klein & Schewe and with the firm of Klein & Greenspun. He was a Commissioner in Chancery for the Fairfax Circuit Court. He served on the Executive Committee of the Judicial Conference of Virginia from 1998 to 2002, and is a member of the Advisory Committee on Rules of Court for the Conference, and was a member and Chair of the Conference’s Probation and Parole Committee. He has been an Adjunct Professor of Law at the George Mason University School of Law from 1997 to the present, and he is a member of the George Mason Inn of Court. He has served on the Standing Committee on Professionalism of the Virginia State Bar from 1998 to 2004, serving as Chair from 2000-2002.

The Honorable Gerald Bruce Lee - Judge Lee became a United States District Judge for the Eastern District of Virginia, Alexandria Division, in 1998. Prior to that time, he was a judge of the 19th Judicial Circuit for Virginia, in Fairfax County, and was a partner in the Alexandria firm of Cohen, Dunn & Sinclair. Judge Lee is a graduate of American University and earned his J.D. from the University’s Washington College of Law. He was awarded an honorary doctor of laws degree by the University in 2003. He served as an elected member of the Virginia State Bar Council, was Chairman of the General Practice Section of the Bar, Chairman of the Judiciary Committee of the ABA’s General Practice Section, served as President of the Northern Virginia Black Attorneys’ Association, and as President of the George Mason American Inn of Court. Judge Lee was also Chairman of the Judicial Conference of Virginia Judicial Education Committee and he was editor of the VIRGINIA CIRCUIT COURT JUDGE’S BENCHBOOK. He has been an active participant in numerous continuing legal education courses, and has lectured and conducted mock trials at numerous Virginia and District of Columbia law schools.

Professor Cynthia E. Jones - Cynthia Jones has been a full-time member of the American University Washington College of Law faculty since 2004. She holds expertise and teaches in criminal law; criminal procedure; evidence; and Race, Crime and Politics. She has made various presentations in the areas of ethnic and racial justice, racial profiling, and the juvenile death penalty. Professor Jones was an associate at the law firm of Dickstein, Shapiro and Morin from 1990 through 1992. She has served as an adjunct instructor at AU Washington College of Law, UDC, and George Washington University. Previously, she was staff attorney at D.C. Public Defender Service; deputy director of the D.C. Pretrial Services Agency and executive director of the D.C. Public Defender Service. She has lectured extensively on criminal law and sentencing issues.
The Honorable Clifford R. Weckstein – Judge Weckstein has been a circuit judge in Roanoke since 1987. He is a graduate of the University of Virginia and the Marshall-Wythe School of Law of the College of William & Mary. Prior to going on the bench he had an active trial and appellate practice in Roanoke, and he has contributed much of his time to the improvement of the profession. He has long served on the faculty of the National Trial Advocacy College at U.Va and in 2003 was awarded the prestigious William J. Brennan Jr., Award. He has been a member of the Board of the Criminal Law Section, the Family Law Section, the Section on the Education of Lawyers, and the Special Committee on Technology on Technology for the Virginia State Bar. Judge Weckstein has been a faculty member for the Virginia State Bar’s Harry L. Carrico Professionalism Course.

The Honorable Dennis W. Dohnal - Judge Dennis Dohnal is a graduate of Bucknell University and the George Washington University Law Center. Since graduation from law school he has served as an Assistant United States Attorney, as a partner with Bremner, Baber & Janus, and as a Director with Brenner, Dohnal, Evans & Yolff in Richmond. He is currently a United States Magistrate Judge for the Eastern District of Virginia. He has also served as Special Counsel for the Division of Legislative Services for the Virginia General Assembly. He is a former President of both the Bar Association of the City of Richmond and the Richmond Criminal Bar Association, has served as Chairman of the Virginia State Bar Special Committee to Study the Virginia Code of Professional Responsibility, and serves as a member of the Virginia State Bar Council. Dohnal has also served as Chair of the Special Committee on Court-Appointed Fees of the Virginia Supreme Court and is on the Executive Committee of the Virginia State Bar. He served as Chair of the Criminal Justice Section from 1983-1984 and was the 1999 recipient of the Section’s Harry L. Carrico Professionalism Award.

Rodney G. Leffler - Rod Leffler is an alumnus of Penn State and the George Mason University Law School. Between college and graduation from law school he served as a police officer in Fairfax County, and began teaching during that period at the Northern Virginia Criminal Justice Academy. He was an Assistant Commonwealth’s Attorney in Fairfax County for two years before joining a private firm in Fairfax. He is currently a partner in the firm of Leffler & Hyland and is also a substitute judge in the 19th Judicial District. Leffler has served on the Judicial Screening Committee of the Fairfax County Bar Association, and as Chairman of that group’s Circuit Court Committee. He was also a member of the Tenth District Committee of the Virginia State Bar and was Chair of the Criminal Law Section’s Board of Governors in 1998-1999. He was a faculty member for the Professionalism Course, and is an Adjunct Professor of Professional Responsibility at the George Mason University School of Law. Leffler is a Fellow of the American College of Trial Lawyers, is included in The Best Lawyers in America, has been named one of Virginia’s Legal Elite and has been called “the man to see in Northern Virginia” by the Legal Times. He received the Section’s Harry L. Carrico Professionalism Award of the Section in 2007.
Craig S. Cooley - Craig Cooley is a criminal defense lawyer, a substitute judge in the Richmond area, and an adjunct Professor of Law at the University of Richmond. He is a graduate of the University of Richmond and received an M.A. in political science and his law degree from the University as well. Cooley is a past Chair of the Criminal Law section of the Bar, served as President of the Richmond Criminal Bar Association, and is a member of the Advisory Committee on Rules of Court for the Supreme Court of Virginia. He is a Fellow of the Virginia Law Foundation, received the Hill-Tucker Public Service Award from the Richmond Bar Association, the Harry L. Carrico Professionalism Award from the Criminal Law Section of the Virginia State Bar, and the Livingston Hall Juvenile Justice Award from the American Bar Association. His 31 years of law practice include 68 capital murder representations, over 500 murder trials, and over 4500 representations of indigent defendants. He has tried over 600 jury trials. He received much national acclaim for his participation as co-lead counsel in the defense of Lee Boyd Malvo in the Washington DC Beltway Sniper cases.

David P. Baugh - David Baugh currently serves as chair of the Board of Governors of the Criminal Law Section, and is the Virginia Capital Defender in Richmond. Baugh has a long history of successful involvement in high profile cases in Virginia and around the nation. He is a graduate of Virginia State University and Texas Southern University, where he received his law degree, is a former Assistant United States Attorney in Texas and Virginia, and is a past President of both the Virginia College of Criminal Defense Attorneys and the Richmond Criminal Bar Association. He has previously served the Section by lecturing at the annual seminar and at the Virginia State Bar Annual Meeting, and he was a luncheon speaker at the Criminal Law Seminar in Charlottesville several years ago.

The Honorable Beverly W. Snukals - Judge Snukals was elected to the Circuit Court bench for the City of Richmond in 2002, after serving as a General District Court Judge for four years. Judge Snukals received her undergraduate degree from Hollins University where she was a member of Phi Beta Kappa, and her law degree from the University of Richmond School of Law where she was a member of the Law Review. While a practicing attorney, Snukals was a principal in the Richmond firm of Mezzullo & McCandlish, practicing in the area of civil litigation. She was a substitute judge for nine years. She has been an adjunct processor at the University of Richmond School of Law for the past six years. Additionally, she has published law review articles in the University of Richmond Law Review and Journal of Civil Litigation. She has served on the Executive Committee of the Judicial Conference, the District Court Judicial Education Committee, and the Richmond Community Corrections Board. Currently, Judge Snukals in a member of the Lewis Powell Inn of Court, Honorary Vice President of the Richmond Bar Association, Chair of the Judicial Section of the Virginia Bar Association, and a member of the Board of Governors of the Criminal Law Section of the Virginia State Bar.

James A. Willett - Jim Willett has been an Assistant Commonwealth’s Attorney in Prince William County since 1987, following private practice with Bremner, Baber & Janus and four years in the Richmond Commonwealth’s Attorney’s Office. He is a graduate of Monmouth College, The Pennsylvania State University, and the University of Richmond School of Law. He is an Adjunct Professor at George Mason University, served as President of the Richmond Criminal Bar Association and of the Prince William County Bar. He was a member of the Board of Governors of the Criminal Law Section and served as Chair in 2000-2001.
Chairman’s Column

The death of Bob Shepherd, while being a time of grief and loss for all who knew him as a professor, lawyer, friend, or steadfast supporter of the rights of children, is also a time to reflect on our profession and dedication to the validity of the Constitution of this nation and Virginia. Every one to whom I have spoken has something good and professional to say about Bob. All remember his testimony in the legislature, his teaching, his CLE’s on juvenile justice in this state, his laughter and his true personal class, a Renaissance man.

He was and is truly a hero.

Webster’s Collegiate Dictionary defines a hero as “a man admired for his achievements and noble qualities.” Bob Shepherd was a man of great achievements and noble qualities. More importantly he saw the opportunity, in all he did, to exhibit those noble qualities. While there are many men and women who have noble qualities, our profession gives each of us the opportunity to exhibit them.

There are men and women who labor as street workers, housewives, insurance men, and laborers, even those in glamour jobs such as athletes and entertainers, who do not have the opportunity to show their dedication to a goal or ideal. We have that opportunity, as it comes everyday.

We are trial lawyers and trial judges, noble professions. Everyday we must remind ourselves of our oaths, which often compel us to do that which we might not want to do or that which is not easy. We must adhere to a set of rules. The ability to adhere to those rules, to face distain and ridicule from others in the name of our oaths is what makes each of us a hero. Just like some soldiers become heroes when they do that which is not normal or expected, we can do the same.

Look for those opportunities. Embrace them. Show others, particularly citizens, your love for the law and the principles of citizenship. Stand up for all human beings, even if they are despised or in a minority. We are American and we believe in the Bill of Rights. Each is an opportunity. The poorest man or the most abandoned child, each deserves protection under and from our laws.

I can only hope my life will be remembered with some of the respect that Professor Robert Shepherd’s brings to mind. Each of us should take a moment and seriously contemplate our professional and personal legacy. I know I cannot reach Bob Shepherd’s. But I know he would want me to try.

Virginia Court of Appeals Criminal Law and Procedure Decisions

Jones v. Commonwealth, Va. App., S.E.2d (12/23/08). The Court distinguished Illinois v. Wardlow, 528 U.S. 119 which found reasonable suspicion when the suspect “fled” from the approaching police. “Flight” did not occur here when the suspect “began to walk away from the officers, heading ‘briskly’ towards a nearby townhouse.” The suspect ignored requests to stop and clutched his right side as he walked. The subsequent pat down and seizure of a weapon were unconstitutional because the police lacked a reasonable suspicion that the suspect was engaged in criminal activity.

Whitehead v. Commonwealth, 53 Va. App. 1, 668 S.E.2d 435 (2008). A dog trained to detect narcotics alerted to a vehicle occupied by four people. “By the time officers searched [the fourth suspect] they had probable cause to search his person through the process of elimination. Each fruitless search – of the car and the other occupants of the car – increased the likelihood that Whitehead possessed the odorous contraband.”

Caprino v. Commonwealth, Va. App., S.E.2d (12/23/08). Doyle, 426 U.S. 610 prohibits the use of a defendant’s silence after receiving Miranda warnings, whereas Fletcher, 455 U.S. 603 permits such evidence if no Miranda warnings are given. In this case counsel failed to establish that “Caprino’s silence was in response to any Miranda warnings he received,” thus Doyle is inapplicable.
The determination of probable cause for a competency hearing requires examination of the totality of the facts. "While the court itself raised the issue of Johnson's incompetence sua sponte, this does not mean the court had to order a competency evaluation. ... the court's questioning of Johnson's abilities represented only 'tentative speculation.' The court's momentary conjecture did not bind it to order an evaluation."

Cobbins v. Commonwealth, 53 Va. App. 28, 668 S.E.2d 816 (2008). The standard for withdraw of a guilty plea "requires the defendant (i) to establish a good-faith basis for making the guilty plea and later seeking to withdraw it, and (ii) to proffer evidence of a reasonable basis for contesting guilty." Defendant here lacked good faith and attempted to manipulate the trial court.

Pearce v. Commonwealth, 53 Va. App. 113, 669 S.E.2d 384 (2008). "For other crimes evidence, the general rule is that in a criminal prosecution, 'proof which shows or tends to show that the accused is guilty of the commission of other crimes and offenses at other times ... is incompetent and inadmissible for the purpose of showing the commission of the particular crime charged. ... The rules regarding the admissibility of evidence used to impeach the credibility of a witness are entirely different." Defendant's level of intoxication because of illegal drugs and alcohol "was highly relevant" to his ability to perceive the events about which he testified and thus was admissible evidence.

Johnson v. Commonwealth, Va. App., S.E.2d (12/16/08). Case of first impression regarding Code s18.2-51 [malicious wounding]. "Although we have not previously held in a reported opinion that a single blow with a fist may constitute sufficient evidence to prove an intent to permanently injure, we hold that under the circumstances of this case the jury could make such a determination." The dissent did "not accept the majority's contention that permanent harm or disfigurement is a 'natural and probable consequence' of a single blow with a bare fist, when unaccompanied by other circumstances of unusual violence or brutality."

Woody v. Commonwealth, Va. App., S.E.2d (12/30/08). Defendant was convicted of DUI under a County ordinance, and refusal to submit to a breath or blood test in violation of the Virginia Code. Defendant's notice of appeal identified the Commonwealth of Virginia and not the County as the appellee. This oversight divested the Court of Appeals of authority to hear the appeal of the DUI conviction because "failure to join an indispensable party is a jurisdictional defect that requires dismissal of the appeal."

U.S. v. Whorley, F.3d (12/18/08). The right to possess obscene material in one's home [Stanley v. Georgia, 394 U.S. 557] does not create a right to obtain such material in interstate commerce. Also, "cartoons depicting minors in sexually explicit conduct [need not] depict real-life minors to violate" federal statues dealing with child pornography.

The section launched the Member Resources Area of its website in December! Visit http://www.vsb.org/site/sections/criminal/ to find a directory of section members and this issue of the newsletter. Future issues of the section's newsletter will also be posted here. This site will be available only to Section members. Section members can access this information on the Member Resources Area of the section’s website at http://www.vsb.org/site/sections/criminal/.

Username: criminallylawmember; Passcode: hCq9xV54.
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