Virginia Lawyer
VIRGINIA LAWYER REGISTER
The Official Publication of the Virginia State Bar

VIRGINIA PRESIDENTS

Senior Lawyers Conference
Robert Carter and Early Emancipation
Lawyer Leads Clean Up on the Elizabeth River
International Arbitration
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Features

GENERAL INTEREST

15 Happy Presidents’ Day

16 Down by the River, a Lawyer Cleans Up
by Gordon Hickey

18 As Virginia Companies Conduct Business Abroad,
Arbitration Clauses Ensure They Can Collect When
Legal Disputes Occur
by Adrianne L. Goins and Ralph C. Mayrell

24 What We Do Here:
The Member Compliance Department
by Deirdre Norman

SENIOR LAWYERS CONFERENCE

26 The Senior Lawyers Conference —
Do Not Keep It a Secret!
by Bruce E. Robinson

28 Robert Carter III, Emancipation, and the
Arc of the Moral Universe
by Frank Overton Brown Jr.

32 Senior Lawyers: Make Your Age an Asset
by Jack W. “JB” Burtch Jr.

VIRGINIA LAWYER REGISTER

46 Disciplinary Proceedings
47 Disciplinary Summaries
48 Notices To Members:
48 Supreme Court of Virginia Acts
48 on Rules, Judicial Canons,
48 Ethics Opinion
48 Supreme Court of Virginia
48 Amends Rules
48 Free Legal Answers
48 YLC Celebration of Women and
48 Minorities in the Legal Profession
48 Bench Bar Dinner
48 Bar Leaders Institute
48 Solo & Small-Firm Practitioner
48 Forum
48 2017 TECHSHOW
48 Indigent Criminal Defense Seminar
48 Nominations Sought For Awards
49 Nominations Sought For District
49 Committee Vacancies
50 Nominations Sought For
50 Committee Vacancies
50 2017 Council Elections

Noteworthy

VSB NEWS
34 March is Mediation Month
by Governor McAuliffe

PEOPLE
34 In Memoriam

Departments

6 Letters
10 Indigent Criminal Defense Seminar
35 CLBA
36 VSB TECHSHOW
37 Book Review
44 CLE Calendar
51 Professional Notices
53 Classified Ads and
Advertiser’s Index
54 VSB Annual Meeting — Save
the Date

Columns

8 President’s Message
12 Executive Director’s Message
14 Ethics Counsel’s Message
39 Virginia Law Foundation
41 Law Libraries
42 Technology and the Practice of Law
2016–17 OFFICERS

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Virginia Lawyer
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On Unbundling

Before accepting John Whitfield’s convenient analysis in your October issue (The Next Step in “Unbundling”: The Case for Limited Scope Representation) of the supposed benefits which will accrue to low-income clients once pro bono lawyers working with legal services programs are ethically permitted to “unbundle” what they do, interested persons should read Judge Jed Rakoff’s piece in the November 24 New York Review of Books entitled “Why You Won’t Get Your Day in Court.”

Rakoff is a United States District Judge for the Southern District of New York, and his article deals with the predicament of people he calls “ordinary US citizens.” In the opening paragraph of his thoughtful piece, he identifies eight factors that have denied “ordinary US citizens” “effective access” to “their courts.” The first factor on Rakoff’s list is the “ever greater cost of hiring a lawyer.” According to the article, “between 1985 and 2012, the average billing rate for law firm partners in the US increased from $112 per hour to $536 per hour, and for associate lawyers from $79 per hour to $370 per hour. These billing rates increased at more than three times the rate of inflation during the same period.” (Emphasis added)

The other seven factors on Rakoff’s list include: the “increased costs of litigation, other than legal fees”; “the increased unwillingness of lawyers to take a case on a contingent fee”; “the decline of unions and other institutions that provide their members free representation”; “the imposition of mandatory arbitration”; “judicial hostility to class actions”; “the increasing diversion of legal disputes to regulatory agencies”; and “in criminal cases, the vastly increased risk of a heavy penalty in going to trial.”

Rakoff’s piece makes clear that the “bundled” nature of legal representation has nothing to do with the loss of meaningful access to justice by his “ordinary US citizens.” Given the extensiveness of the problem and its complex multi-faceted etiology, pretending that lack of access only affects the indigent both ghettoizes the issue, and also makes it less likely to be addressed as a national concern.

Hugh O’Donnell Norton

Responses to Lawyers at Leisure Letter

It saddens me that the response to the August 2016 cover article (Letters, December 2016) was a sense of feeling marginalized. My father is one of the men on the cover and I could not be more proud of both his career as a lawyer for over thirty-five years and his fifty-year passion for surfing. During my lifetime, I have watched my dad go above and beyond for his clients AND get barreled in big waves. I may be biased, but this makes me proud of who he is and the life he lives. What is wrong with having a hobby that you enjoy with other people in your profession, taking trips to do it, and having nicknames for your friends? I find all of this to be quite normal and unaffected by one’s gender or race. I think your comments are harsh and unmerited. As a woman, I understand where you are coming from. I don’t doubt that it is difficult to make a name for yourself in a profession dominated by white men, but I do not feel that this article epitomizes your particular struggle. In fact, in this very article my father speaks about humility — how surfing makes him both a better lawyer and more devout human being because of the very fact that it reminds him that he is NOT on top, he is NOT the one in control. In a society that is becoming more polarized each day due to our differences in race, gender, and religion, I think we could all benefit from being humbled, and perhaps for some, this is learned by riding waves.

Dorsey Clarke Richmond

In her letter to the editor which appeared in the December 2016 issue of this magazine, Ann Adams complained that the cover story of the August 2016 issue showed six successful Virginia attorneys and judges who enjoy catching waves in tropical locales in their spare time, and all of whom happen to be white men. Ms. Adams went on to claim that she has never seen “a cover representing the diversity of the Virginia bar membership.” Apparently she missed the April 2016 cover, which showed a female VSB member who balances a successful legal career with running a sheep farm in Loudoun County. I found both stories equally interesting, but apparently Ms. Adams did not. She is entitled to her opinion, but she should apologize to these leaders of the bar for insinuating that they are practicing exclusion of women and minorities.

Nathaniel M. Baldwin
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President’s Message
by Michael W. Robinson

The Senior Lawyers Conference: Maturity, Wisdom, and Public Service

This edition of Virginia Lawyer highlights the work of the Senior Lawyers Conference. That focus gives me the opportunity to address the work of the Virginia State Bar’s conferences, and in particular recognize the work of the Senior Lawyers Conference.

Four conferences operate within the Virginia State Bar: the Young Lawyers Conference, the Senior Lawyers Conference, the Diversity Conference, and the Conference of Local Bar Associations. The work of these conferences, organizationally and functionally, should not be confused with the work of the twenty Virginia State Bar sections. Each section is a voluntary association of VSB members, with the associational principle typically focused on a particular practice area or substantive area of law. Sections are self-funded in the sense that each member of a section pays voluntary dues and the section’s budget is established as a function of those voluntary dues; thus, mandatory dues are not used for the work of the sections.

In contrast, the four conferences of the Virginia State Bar are more structurally organized to allow the VSB to fulfill its three-prong mission of regulating the profession, improving the quality and availability of legal services to Virginia citizens, and improving the justice system. Whether conference membership is voluntary — as is the case for the Conference of Local Bar Associations and the Diversity Conference — or dictated by a member’s years at the bar, the conferences are organized as a means for the bar to address its mission. This organizational principle is carried through with the chair of each conference serving on the VSB Council and as ex officio members of the executive committee.

The Senior Lawyers Conference was established in 2001 and is composed of all members of the bar aged 55 or older. To paraphrase the words of current chair Bruce Robinson, the conference seeks to leverage the maturity and wisdom of its members in fulfilling the bar’s mission. In furtherance of that effort, the conference focuses on issues of interest to senior lawyers and to the promotion of legal services for the commonwealth’s senior citizens.

A few of the Senior Lawyers Conference’s efforts warrant particular recognition.

The conference prepares and publishes the Senior Citizens Handbook. This free publication provides important legal guidance on a broad range of subjects, including: (1) financial issues — such as social security, tax relief, and assistance programs (2) health care issues — such as Medicare and Medicaid, dealing with alzheimer’s disease and dementia, and long-term care issues (3) advance planning — such as estate planning, medical directives, and powers of attorney, and (4) protection of legal rights. In addition to legal guidance, the handbook provides information on organizations and local agencies available to assist senior citizens. The conference has distributed tens of thousands as a service to Virginia’s senior citizens.

The publication goes hand-in-hand with local “Senior Law Day” programs that the conference sponsors in coordination with local bar associations or local organizations. Members of the conference present information and help senior citizens with necessary, basic legal instruments such as advanced medical directives and powers of attorney. A senior law day program may also include information on funeral planning, prevention of elder abuse and fraud, financial planning, reverse mortgages, long-term assisted living, and access/eligibility for legal aid and pro bono legal services. The Senior Lawyers Conference provides a senior law day “blueprint” for any organization interested in sponsoring a senior law day program, as well as providing Senior Citizens Handbooks for program attendees.

The conference also works to promote pro bono opportunities for its members. In light of the important pro bono work Virginia’s senior lawyers can provide, the VSB is taking steps to promote, and frankly make it easier, for members to take emeritus status so that members can continue to provide pro bono services even after otherwise retiring from the active practice of law.

President’s Message continued on page 13
Appeals only

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Executive Director’s Message

by Karen A. Gould

The VSB TECHSHOW: A “Must Attend” Event

Under the able and dynamic leadership of Sharon D. Nelson, former Virginia State Bar president and techy extraordinaire, the third VSB TECHSHOW will take place on April 24, 2017, at the Greater Richmond Convention Center. Information and registration details can be found online at http://www.vsb.org/site/events/item/vsb_techshow. The 2017 VSB TECHSHOW will feature Virginia Supreme Court Justice Cleo E. Powell and a nationally known panel of ABA TECHSHOW speakers, all of whom are very approachable and love answering the questions of attendees, even when not at the podium.

Technology is here to stay, so it’s more important than ever to keep up with it in your practice. In 2016, the Supreme Court of Virginia amended the ethical rules governing Virginia lawyers to require that “[a]ttention should be paid to the benefits and risks associated with relevant technology.” At the same time, it also amended Rule of Professional Conduct 1.6(d) to require that “[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.” Is it time to learn how to encrypt confidential client e-mails or is it past that time?

In addition to keeping up with technology to comply with your ethical obligations, you really need to understand technology so that it can help you with business development. Social media may be part of that picture, but technological tools can make an unbelievable difference in producing results.

The VSB TECHSHOW schedule should make it obvious why you should attend this program. The schedule includes a panoply of choices, depending upon where your interests and your needs take you:

8:00–8:30 Registration/Continental breakfast

8:30 Welcome — VSB TECHSHOW Chair Sharon D. Nelson, VSB President Michael W. Robinson and Justice of the Supreme Court of Virginia Cleo E. Powell

8:45–9:45 First Sessions

• Ethics: Practical Budget-Friendly Cybersecurity at Warp Speed (Sharon Nelson, president, Sensei Enterprises Inc., Fairfax, and John Simek, vice president, Sensei Enterprises Inc.)

• Taking Your Law Firm Paperless: A Step by Step Guide (Catherine Sanders Reach, director of Law Practice Management and Technology, Chicago Bar Association, Chicago)

9:55–10:55 Second Sessions

• Building a Virtual Law Practice, Including a Client Portal (Jim Calloway, director of Management Assistance Program at Oklahoma Bar Association, Oklahoma City, and Nerino Petro, chief information officer, HolmstromKennedy PC, Rockford, IL)

11:05–12:05 Third Sessions

• Essential Law Office Tech — On a Budget (Britt Lorish/Debbie Foster, Affinity Consulting Group, Tampa)

• Digital Transactions: E-Signatures, E-Contracts and Authentication (Tom Mighell, Contoural Inc., Dallas, and Dave Ries, Clark Hill PLC, Pittsburgh)

12:05–12:45 Lunch

12:45–1:45 Fourth Sessions

• Avoiding Ethical Missteps in the Digital Era (Reid Trautz, American Immigration Lawyers Association, Washington, DC, and Nerino Petro)

• A Lawyers Guide to Case Management Systems (Natalie Kelly, director of Law Practice Management at State Bar of Georgia, Atlanta, and Debbie Foster)

1:55–2:55 Fifth Sessions

• Encryption is Simple, Easy and Cheap — and May Be Ethically Required (John Simek and Dave Ries)

• Everything Lawyers Need to Know About Backing Up — In or Out of the Cloud (Catherine Sanders Reach and Jim Calloway)
Executive Director’s Message

3:05–4:05 Sixth Sessions
• Macs in Law: The Year Behind and the Year Ahead (Tom Mighell)
• Controlling Your Inbox: It CAN be Done (Reid Trautz and Natalie Kelly)

4:15–5:15 Plenary —
• ALL NEW: 60 Tech Tips in 60 Minutes (Sharon Nelson, Debbie Foster, Jim Calloway, and Tom Mighell)

All told, an anticipated seven CLE hours are included in the program and three hours of Ethics, depending upon what programs you choose (MCLE approval pending). Modeled on the educational component of the ABA TECHSHOW®, held for the last thirty years in Chicago, the VSB TECHSHOW is fortunate to have some of the same speakers appear at its program. The conference fee is $100 and includes Wi-Fi, continental breakfast, lunch, and coffee breaks, as well as CLE credit.

The Virginia State Bar is proud to be able to help its members by putting on quality programs like the VSB TECHSHOW, and thanks to all of those involved in organizing the conference — and the amazing speakers who travel from throughout the country to Richmond to share their legal tech knowledge!

Endnotes:
1 Va. Sup. Court Rule 1.1, Comment [6], amended by order dated December 17, 2015, effective March 1, 2016.
2 Id.

Finally, the conference works to assist and educate Virginia’s senior lawyers on a range of important issues, including steps necessary in wrapping up a law practice upon retirement, and steps lawyers should take to protect clients — and lawyers and their families — in the event of a lawyer’s death, disability, or other disaster. The conference has coordinated presentations in conjunction with the VSB’s Solo and Small Firm fora, as well as through local bar presentations. These efforts are prime examples of how the work of the conference furthers the bar’s public protection mission.

The structure and work of the four conferences allows the VSB to further its mission. Virginia lawyers can be proud of the work of the Senior Lawyers Conference in educating the public, educating its members, and helping to improve both the quality and availability of legal services in the commonwealth.

President’s Message continued from page 8

We Are Looking for A Few Good Lawyers…

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Substance abuse, mental health issues, and other causes of physical or mental impairment can be among the hardest issues for lawyers to acknowledge in themselves or in others, including their partners and colleagues. Lawyers are understandably reluctant to suggest that a colleague is impaired, especially when the nature of the impairment is such that the colleague may not be aware of her own issues. However, partners and other lawyers who have managerial authority over other lawyers in a firm may not ignore the impairment of another lawyer in the firm.

Legal Ethics Opinion 1886, approved by the Supreme Court of Virginia on December 15, 2016, makes clear that Rule of Professional Conduct 5.1 requires a partner or other lawyer with managerial authority in a firm to take precautionary measures before a lawyer’s impairment results in serious misconduct or a material risk to a client or the public. This means that partners and supervisory lawyers are required to take action when they reasonably believe that another lawyer in the firm may be suffering from a significant impairment. This duty is different from the duty to report an other lawyer’s misconduct under Rule 8.3(a); there is an independent duty to ensure that the impaired lawyer does not engage in misconduct even if she has not already done so.

In practical terms, the first step for the firm (acting through its partners or other managing lawyers) when it believes that a lawyer in the firm is suffering from an impairment will be to confront the impaired lawyer and strongly encourage her to seek an appropriate evaluation and/or treatment. Lawyers Helping Lawyers (LHL), an independent non-disciplinary and non-profit organization that assists legal professionals and their families dealing with depression, addiction, and cognitive impairment, may be able to help with figuring out how best to handle this confrontation and with finding resources to refer the lawyer for assistance or treatment. LHL or other professionals may be able to help the firm determine how to manage an impaired lawyer and how to evaluate what level of involvement by the firm is necessary and appropriate.

Depending on the nature and extent of the impairment, and the nature of the firm’s practice, the firm may be able to allow the lawyer to continue to practice with limitations and supervision — for example, a lawyer who has no problem drafting documents when there is no external pressure from short deadlines or other demands, but who cannot maintain composure in an adversarial situation, may be able to limit her practice to research and writing while being removed from any time-sensitive matters or matters involving contact with other parties. On the other hand, the lawyer may be so impaired that she cannot competently practice law at all, and the firm may need to forbid her from working at the firm and insist that she seek appropriate assistance, counseling, therapy, or other treatment as a condition of returning to work at the firm.

In addition to proactively addressing an impairment before clients are affected, the other lawyers in the firm need to evaluate whether the impaired lawyer has already committed misconduct that raises a substantial question as to her honesty, trustworthiness, or fitness to practice law. If so, Rule 8.3(a) requires them to report that misconduct, even if the firm has already taken steps to address the misconduct and prevent it from recurring in the future and even if the impairment has already been reported to LHL. As the LEO explains: “The report to the lawyer disciplinary agency is necessary to address the misconduct and protect the public. The report to the lawyer assistance program [LHL] is necessary to address the underlying illness that may have caused the misconduct.”

Note, though, that the duty to report is subject to the duty of confidentiality to the firm’s clients, and a lawyer’s misconduct cannot be reported if the client refuses to allow disclosure of confidential information necessary to make the complaint.

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http://www.valhl.org

VSB Ethics Hotline:
(804) 775-0564
Happy Presidents’ Day

On this Presidents’ Day, it’s interesting to note that eight of our presidents, including William Henry Harrison who was born on Berkeley Plantation in 1773. He was living in Ohio when he was elected president. Of the eight Virginia presidents, half were lawyers — Jefferson, Monroe, Tyler, and Wilson. Only one of them, Wilson, went to law school — the University of Virginia.

The Virginia State Bar Young Lawyers Conference cordially invites you to the

Annual Bench-Bar Dinner

in Celebration of Women and Minorities in the Legal Profession

March 8, 2017
Jepson Alumni Center, University of Richmond

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Online registration now available: https://vsbevent.virginiainteractive.org/

Got an Ethics Question?

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Non-lawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue “E-mail Your Ethics Question” box on the Ethics Questions and Opinions web page at www.vsb.org/site/regulation/ethics/.

www.vsb.org
Jim Lang was hired to do one thing — get about thirty rusting and rotting ships and boats out of an Elizabeth River cove where they were blocking his client’s access to his property.

After some legal wrangling and judicious application of the federal government’s Clean Water Act, he was successful. The case was settled and the detritus was shipped out.

Yet, “We felt like the job wasn’t complete,” Lang said in a recent interview. The waterway was now open, but the shoreline opposite his client’s property was a mess.

Lang may have been hired to do that one thing — clean out the ships. But then Lang, like many other lawyers, did one more thing. He went beyond his client’s expectations and organized a concerted community service project that will likely pay dividends for years to come. Last August, along with about fifty volunteers,
Lang cleaned up that mess along the opposite shore, and jumpstarted a plan for a total restoration of this part of the riverfront.

Lang, who has a history of community involvement, decided it was not enough to simply get the ships out of the waterway. He began organizing volunteers. He started with the members of his own firm, Pender and Coward, PC, where he found more than a half dozen volunteers. He then asked for help from the environmental consultants who helped in the lawsuit, Kerr Environmental Services. “I’m going to be down there with attorneys in the mud pulling trash out of the water,” he told them. “You should come join us.”

He called on the Bridgetrust Title Group, who were part of the lawsuit, and they helped. Valbridge Property Advisors helped. Then Lang asked the Boy Scouts — where he had long been a volunteer — and Boy Scout Troop 1 from Trinity Presbyterian Church helped. Carmelo Gomez, his client in the lawsuit, came up from his home in Florida to help. Gomez’s son and daughter-in-law also arrived from their home in New York to help. Volunteers from the Norfolk Wetlands Board and at least one staffer from the City of Norfolk also helped.

Why did Lang do it?

“We attorneys have an obligation to give back to our community.”

The shoreline lies along the city-owned Riverside Memorial Park in Compostella Heights, an area where 35 percent of the residents are below the poverty line. “These are people who don’t have the ability to get the attention of their government,” he said. If someone had clogged up the waterway in another more affluent part of the city the residents “would know who to call and you...
Virginia businesses are part of the global market, and the global market touches every part of Virginia business. About 700 internationally-owned businesses are located in Virginia.¹ Foreign direct investment in Virginia amounts to $1.3 billion over the past two years and includes cities from all across Virginia—from Martinsville to Virginia Beach to Richmond to Arlington.² Exports are just as active. Virginia exported $36.1 billion in products and services in 2014, from industries as diverse as industrial machinery and vehicles to energy to information technology to agricultural goods.³ These exports come from all parts of the state.⁴ Whether it is a Virginia Beach defense contractor providing naval training in Senegal,⁵ or an Eastern Shore farmer selling soy beans to Saudi Arabia,⁶ Virginia companies are global players. Through international investment and the export and import of services and products, Virginia businesses are engaged in transactions ranging from simple to complex with foreign companies. Those counterparties could be foreign investors in Virginia, foreign purchasers of Virginia products or services, foreign partners for distribution of Virginia products, or foreign sellers of products and services to Virginia businesses. Unfortunately, just like with domestic transactions, Virginia businesses always face the risk that their transactions will sour — a risk increased when dealing with a foreign counterparty not accustomed to US business and legal practices, or vice-versa for the Virginia business abroad.

When a domestic transaction results in a dispute, a Virginia business can turn to Virginia’s state and federal courts — in fact, any American court — to resolve the dispute, no matter where in the United States the counterparty is from. Further, if the Virginia company prevails, it can collect the damages awarded. That confidence in collection does not exist if the judgment debtor is a foreign counterparty with its assets located abroad.
No matter the definitiveness of victory in Virginia court, or the quality of the Virginia company’s lawyers, when litigating against a foreign business, on the day after judgment day, the judgment from the Virginia court might be unenforceable against a foreign business in that business’s home country.

Arbitration clauses are the key to holding the parties to an international transaction accountable in the case of disputes. Virginia companies, and especially those new to business with foreign counterparties, should always consider contracting to arbitrate disputes. Arbitration not only has the potential to offer a neutral forum and simplified, uniform rules, but even more importantly, arbitration also offers greater certainty of collecting on hard-fought victories against foreign businesses.

Judgments Get Stuck at the Border
For Virginia businesses (and Virginia lawyers) accustomed to contracting with domestic counterparts and litigating disputes in domestic courts, it can come as a surprise to discover that judgments from Virginia and other US courts often do not travel well abroad. Judgments often get stuck at the border because there is no widely adopted international treaty or regime for their enforcement. In most jurisdictions, an American judgment is, at best, evidence of debt, which the claimant must sue on and win — again — before collecting.

Attempts to implement treaties for the enforcement of judgments, such as the 1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments, have made little headway, and while the 2005 Hague Choice of Court Convention has taken effect, its initial coverage is limited. There are also regional treaties and regimes, but the US is not a member to any treaty for the enforcement of judgments.

Since no regional or bilateral treaty applies, a Virginia company attempting to enforce an American court judgment must face off with the local law and courts of the enforcing country. Friendliness to the enforcement of foreign judgments varies greatly, and even the friendliest country’s rules can be complex.

Take, for instance, England, where $1.2 billion in Virginia products were exported and from where $406 million in foreign direct investment came into Virginia between 2011 and 2015. English law is relatively friendly to foreign judgments, and in particular to American judgments. There are no real language barriers, and the common law English procedure is comprehensible to American practitioners. Enforcing a foreign judgment involves moving for an action on the American judgment as a debt. English common law offers limited defenses to enforcement: consensual or territorial jurisdiction, notice, public policy, and natural justice (i.e., due process). Adding a wrinkle, however, the laws of enforcement in Northern Ireland and Scotland are different from those applicable in England and Wales.

In the United Arab Emirates (UAE), destination of $157 million in Virginia exports, enforcement of judgments is more difficult. By way of example, in the Emirate of Dubai, the Dubai Civil Court (DCC) applies not only a “public morals” defense to enforcement, but will also refuse to enforce judgments against parties in cases over which the DCC court would have had original jurisdiction. Where, for instance, a plaintiff takes an American court judgment to the DCC to enforce against a resident of Dubai, the DCC will likely say the DCC was the proper forum for the dispute and will refuse to enforce the American judgment unless the Dubai resident has agreed to the American forum. The Dubai International Financial Center (DIFC) Court is more obliging, so long as the defendant or its assets are located in the DIFC’s limited jurisdiction.

On the other hand, the People’s Republic of China, Virginia’s number one source of imports ($6.9 billion) and foreign direct investment ($2.1 billion for 2011–2015), and second-place for Virginia product exports ($1.7 billion) after Canada, is not so friendly when it comes to enforcing an American judgment. Chinese courts require reciproc-
ity, typically in the form of a treaty, between the originating country and China before they will enforce a judgment. Even then, Chinese courts will evaluate the merits of the judgment for a conflict with Chinese sovereignty, Chinese law, and Chinese security or social interests. Parties seeking to enforce American judgments will face substantial hurdles in China. Courts in Russia and India can be similarly unfriendly to enforcing American judgments.\textsuperscript{14}

\textbf{Arbitration Treaties Facilitate Enforcement of Arbitral Awards}

Arbitration awards are far more enforceable across international borders than domestic court judgments because the New York Convention has been adopted in all but a handful of countries. Notable holdouts include Iraq, Taiwan (Virginia’s No. 7 export destination\textsuperscript{15} and No. 17 import source\textsuperscript{16}), Equatorial Guinea, Angola, Namibia, Sudan, South Sudan, Libya, Chad, Ethiopia, Yemen, and much of sub-Saharan Africa.

\textit{Virginia exported $36.1 billion in products and services in 2014, from industries as diverse as industrial machinery and vehicles to energy to information technology to agricultural goods. These exports come from all parts of the state. Whether it is a Virginia Beach defense contractor providing naval training in Senegal, or an Eastern Shore farmer selling soy beans to Saudi Arabia, Virginia companies are global players.}

In the rest of the world, the New York Convention has the force of law, and awards from arbitrations sited in one state party are enforceable in another state party. Article III of the New York Convention requires that the enforcing country “shall not . . . impose[] substantially more onerous conditions . . . on the recognition or enforcement of arbitral awards . . . than are imposed on the recognition or enforcement of domestic arbitral awards.” That means that if a country would enforce a domestic arbitration award, it must enforce a foreign arbitration award under the same circumstances,\textsuperscript{17} subject to many countries’ reservations that they will only enforce arbitral awards related to commercial disputes and from arbitrations held in a party-state to the New York Convention.

The New York Convention does create limited exceptions to the mandate of enforcement of arbitration awards, but they are small compared to the challenges facing court judgments. For instance, enforcement can be refused if the defendant was not given notice of the arbitration or the opportunity to present its case, if the arbitration was illegal under the law of the country where the arbitration was sited or has been set aside by that country, or if the arbitration is “contrary to the public policy of” the country where enforcement is sought. Of these, the public policy exception is the most potentially troublesome to enforcement, but it is often narrowly construed and applied.

The New York Convention vastly increases the likelihood of enforcement while simplifying the procedure. Returning to the earlier examples, in England and Wales, the enforcement of foreign arbitration awards is strongly favored under the 1996 Arbitration Act. The defenses resemble those listed in the New York Convention. In particular, the public policy exception is very limited in application.

In Dubai, both the DCC and the DIFC will enforce foreign arbitral awards relatively reliably. The DCC generally will enforce such an award even if it might arguably have had jurisdiction over the company or assets involved in the dispute.

Foreign arbitration awards can be successfully enforced in China (with some limitations), even if the arbitration proceedings were held in the US. In fact, foreign arbitration awards are more readily enforceable than awards from arbitrations seated in China. Importantly, only the Supreme People’s Court can make the final decision to refuse enforcement of a foreign arbitration award, part of a concerted effort by Chinese courts to provide a pro-enforcement environment for foreign arbitration awards.\textsuperscript{18}

Russia and India remain trickier prospects even under the New York Convention, though foreign awards clearly receive more favorable treatment than foreign judgments.
Both countries have applied aggressive readings of the public policy exception in the name of domestic interests in the past, though the courts and a recent statutory amendment have recently improved the perceived position in India. And India imposes a burdensome reciprocity requirement that only recognizes awards from the around fifty countries notified in the Official Gazette of India, but the US has been recognized.

In addition to the New York Convention, the 1975 Panama Convention between the United States and Latin American countries and the Riyadh Convention between Middle Eastern countries provide further avenues for the enforcement of awards in circumstances where the New York Convention might be unavailable.

The Panama Convention, which arose out of historical resistance among Latin American countries to the New York Convention, is now largely redundant with the New York Convention and is rarely invoked. Although under US law the Panama Convention should override the New York Convention where both apply, American courts treat the two identically. The Panama Convention does remain potentially relevant. For instance, it sets default arbitration rules and requires notice be provided of the applicable rules, and failure to comply with these requirements could render an arbitration unenforceable. Also, the Panama Convention could apply to NAFTA Chapter XI arbitrations between American investors and the government of Mexico, and to similar disputes under the DR-CAFTA trade agreement between the Dominican Republic, Central American countries, and the US.

The Riyadh Convention is a significant treaty for instances where a plaintiff seeks to enforce an arbitration award in Iraq, Libya, Yemen, Sudan, Somalia, or the Palestinian Territories, which are members of the Riyadh Convention but not the New York Convention. Take Iraq, which in the past frowned upon international arbitration generally. Since 2011, some Iraqi courts have shown willingness to recognize and apply principles and rules borrowed from international arbitration absent domestic legislation, and that willingness, combined with the Riyadh Convention, could provide an avenue to enforce awards from arbitrations in, for instance, Dubai. It is worth noting that while the Riyadh Convention resembles the New York Convention, its public policy exception extends to awards contrary to Islamic Shari’a, which complicates the enforcement of any award containing interest or damages for future losses.

The Lesson? Remember the Arbitration Clause

For a Virginia company engaged in business with a foreign counterpart without assets in a convenient, friendly jurisdiction, arbitration is often the best way to improve the chances that the Virginia company will collect if it wins the dispute on the merits. Many countries important to Virginia’s international commerce will not enforce a foreign court judgment, and even those that will enforce judgments will impose complex procedures full of traps for the unwary. On the other hand, nearly all countries relevant to Virginia businesses will enforce foreign arbitration awards, if sometimes imperfectly. Thus it is critical for any Virginia company, when negotiating a contract with a foreign counterpart, to include an arbitration clause so that if a dispute arises, it

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is resolved by arbitration and the likelihood of collection after victory day is strong.

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Endnotes:
7 The European Union and Mexico have ratified the Convention and it took effect on October 1, 2015. The United States, Singapore, and Ukraine have signed but not ratified the Convention. HCCH, Status Table: Convention of 30 June 2005 on Choice of Court Agreements, https://www.hcch.net/en/instruments/conventions/status-table?cid=98 (last updated June 2, 2016).
10 State Imports from Virginia, supra note 9.
12 State Exports from Virginia, supra note 9.
13 The following countries have enforcement treaties with China: Uzbekistan, Kazakhstan, Kirghizia, Tajikistan, Turkey, Cyprus, Laos, Vietnam, Mongolia, Bulgaria, Belarus, Poland, Russia, Romania, Ukraine, Hungary, Lithuania, Spain, Italy, France, Greece, Argentina, Cuba, Egypt, Morocco, and Tunisia. Hong Kong and Macao also have specific reciprocal arrangements.
14 A cautionary note: While foreign courts disfavor American judgments, Virginia courts are open to recognizing foreign judgments. This unlevel playing field means that if the Virginia company is the defendant, and loses, in a foreign forum, the foreign counterparty might be able to enforce its foreign judgment in the United States and in Virginia with relative ease. See Va. Code § 8.01-465.13:3.
15 State Exports from Virginia, supra note 9.
16 Id.
17 Note that Article VII of the New York Convention provides that the New York Convention does not alter rights available under existing multilateral or bilateral arbitration treaties.
19 Waste Mgmt., Inc. v. United Mexican States, ICSID Case No. ARB(AF)/00/3, at ¶ ¶ 9–11, 15–18 (Sept. 26, 2001).
would have government down there making sure that it was taken care of.” The people of Compostella Heights don’t have that kind of clout.

“We attorneys have an obligation to give back to our community,” Lang said. “For years I’ve devoted a lot of time to community service and other organizations. During this time in my life, I had some time to take this one on.”

So, on a Saturday in August, the fifty volunteers that Lang had gathered cleaned up 600 feet of Elizabeth River shoreline. They pulled out metal, ropes “as thick as your ankles,” tires, oil cans. They filled a twenty-cubic-yard trash container with junk and had it hauled away.

About two weeks later the volunteers came back along with members of the Elizabeth River Project to install a test planting along a stretch of the mudflat. Pamela Boatwright, a deputy director of the organization, said that a larger stretch of the shoreline will have to be built-up and filled in before the marsh grasses can be planted there. That’s a step for down the road, after the group determines how well the test planting does. In the end, it will be returned to a living shoreline with a natural ecosystem protecting the shore from erosion.

Boatwright has high praise for Lang. “He’s the one who orchestrated it all,” she said. “He put all the partners together, coordinated the date, did it all.”

Her group wasn’t involved at all in the legal battle over the river. But it was the settlement of that dispute that brought Lang into the environmental cleanup project. “In most cases like this, I would imagine (the lawyers) would have just gotten the vessels out and gone away. Jim took it to that next level, where he saw they did some damage, so let’s try to repair it,” she said. “That’s very astounding and very cool.”

“He knew how to rally all the partners around him. You know, many hands make light work.”

Lang, whose practice focuses on environmental law, hopes to see a living shoreline there in the future. “It helps eliminate blight in the community and protects the waterway from pollution.”

“If we didn’t go down there and clean up that shoreline, it wasn’t going to happen.”

Volunteers pose for a picture in August, 2016, before beginning their clean-up of the Elizabeth River cove shoreline. Photo credit: Rubin Communications.
If you are reading this, you are in all likelihood one of the almost 52,000 lawyers who are members of the Virginia State Bar. Whether you are an active lawyer, an associate lawyer, or a judge, the rules of the Supreme Court of Virginia require that the VSB member compliance team — formally known as the Membership and CLE departments — keeps up-to-date records on your address of record, your Continuing Legal Education, your membership dues, your professional liability insurance, and your standing with the bar.

These records and requirements are intended to protect the public and to maintain the professional standards expected of a Virginia lawyer. They are fully detailed in the 1,128-page *Code of Virginia*, a heavily dog-eared copy of which may be found on the desk of VSB Director of Member Compliance Gale Cartwright. “Our role is to regulate people that we also happen to work for, and that is a delicate balance.” Cartwright says. “So our goal when dealing with all lawyers is to wear two hats — that of regulator and that of customer service agent.”

Understandably, lawyers occupied with running their professional careers often find themselves butting up against the deadlines that the Virginia legal profession requires: all lawyers must pay their annual dues by July 31 of each year, complete their MCLE hours by October 31, and report those hours to the bar by December 15. These deadlines and the e-mails, phone calls, and paperwork associated with them keep Cartwright and the fourteen staff members of Member Compliance busy year-round.

“We are always busy, whether it is with admitting new lawyers, reciprocity, corporate counsel, status changes, address updates, or just the inevitable issues that occur when busy people are trying to make deadlines,” says Cartwright, who has worked for the VSB since 1989. “I am extremely blessed to have a great staff who work hard and who are all very dedicated to the efforts of the department and the VSB.”

The member compliance team has myriad responsibilities in addition to keeping track of members, including: providing information to the public confirming attorney standing and contact information, providing advice and ensuring compliance with the requirements for reinstatement from suspensions as well as reactivation from retired or disabled status, complying with FOIA requests, providing advice on CLE approval standards and course approval training, producing certifications of good standing and bar cards, and registering new corporate counsel, law firm professional entities, and lawyers qualified as Real Estate Settlement Agents.

“We are bound by the rules to make sure lawyers comply, but we also want to make it as easy as possible on them. We want to be
considered a resource to help our lawyers — especially if they are struggling to find a CLE course, or even figure out how to pay for CLE if finances are an issue,” says Cartwright.

Cartwright, who has been married to Bob, a middle school teacher for thirty-eight years, has nine grandchildren and in her off-hours volunteers with a group that works with young men at a juvenile correctional facility. Known to sport reading glasses to color coordinate with most every outfit, she refers again and again in a brief interview to her desire to provide customer service to the lawyers her department serves.

“Often attorneys find themselves facing health issues, family emergencies, or age-related issues. We are here to provide the best advice on possible solutions to their specific situation.” During the compliance season it is not uncommon for Cartwright to come in to the office on weekends and holidays to take calls from lawyers who are working to meet compliance deadlines. “They are sometimes surprised to have me answer the phone, but helping them with compliance is really what we aim to do,” she says.

In addition to all the data required in maintaining the records for almost 52,000 lawyers, Cartwright’s department must also review over 20,000 proposed CLE courses each year to determine whether they meet the educational requirements of the regulations. Distance learning courses have created a proliferation of CLE options, each of which must be reviewed for content and approval by the bar. Cartwright and her team work closely with the MCLE Board, composed of twelve volunteer lawyers appointed by the Supreme Court of Virginia, on course approvals, regulations, waivers, and extensions.

Cartwright says that when lawyers run into trouble with MCLE or dues issues it often includes a measure of procrastination. “My main wish for our lawyers would be that they call me directly as soon as they realize they have a problem, because we want to give them the resources to help them. We want to serve them, and we try to be as customer-service oriented as possible. Unfortunately, not everyone takes advantage of us, or they only come in contact with us when the problems have gone on for too long.”

Serving tens of thousands of lawyers across Virginia and across the United States while reviewing those potential CLE courses means that the compliance department rarely has a moment when a phone is not ringing or an e-mail is not being answered.

“My hope is that lawyers come to us whenever they have a problem, and let us help them make compliance as easy as possible.”

Yet Cartwright believes it is all part of the customer service for which she wants her department to be known.

“We must be ever cognizant of our many-faceted roles of being both a public servant and a provider of service to our bar members. My hope is that lawyers come to us whenever they have a problem, and let us help them make compliance as easy as possible.”
The Senior Lawyers Conference — Do Not Keep It a Secret!

by Bruce E. Robinson

Lawyers are good at keeping secrets. Ethically, it is part of our responsibility to our clients. But there are some things that we should not keep secret. Do not keep it a secret that the Senior Lawyers Conference (SLC) of the Virginia State Bar has about 18,900 members. Do not keep it a secret that all members of the Virginia State Bar who are 55 or older and who are in good standing are automatically members of the SLC. Do not keep it a secret that the purpose of the SLC is to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, to encourage cordial discourse and interaction among the members of the Virginia State Bar (VSB), and to pursue its mission and goals as follows: The SLC serves the particular interests of senior lawyers and promotes the welfare of seniors generally. In serving the interests of senior lawyers, the SLC plans and presents programs and activities and produces publications of interest to senior lawyers, and coordinates activities for senior lawyers by, for, and with state and local bar associations. To promote the welfare of seniors generally, the SLC studies issues of concern to seniors, prepares and presents programs and publications designed to explore and develop such issues, advocates appropriately on behalf of such issues, and cooperates with other entities interested in such matters.
Do not keep it a secret that the SLC, created in 2001, is an outgrowth of the Senior Lawyers Section, which was established in 1987. The core programs of the SLC are coordinating and presenting Senior Citizen Law Days; providing pro bono legal services; presenting CLE Ethics Programs to lawyers on protecting their and their clients' interests in the event of the lawyer's disability, death, or other disaster; and sponsoring the Fifty Year Awards Ceremony at each VSB Annual Meeting.

A bunch of years ago, I received a phone call from my buddy John Mizell, who was then the chair of the SLC, whom I had not heard from for quite awhile. John was soliciting me to serve on the board of governors of the SLC. I then realized that I had been a member of the SLC for a number of years. I wasn’t paying attention to the aging process. And I wasn’t interested in committing to serving on a board. John convinced me to attend the special brunch at the Annual Meeting. I met John at the Fifty Year Member Brunch at the Cavalier Oceanfront Hotel and sat in the rear of the room. It was a beautiful Saturday morning as the honorees and family members gathered. It was a mini law school reunion for some who had not kept up with their schoolmates over the past half century. I noted receding hairlines, bald heads, a sea of white hair, tan, trim bodies and some not so tan and trim bodies, some in suits or dresses, others in shorts and flip flops. There were a few wheel chairs, some walkers, and oxygen tanks. There were a few female honorees, but mostly the group was void of diversity. Following the meal, each individual name was called and each recipient was photographed receiving his or her award. They stood tall and proud, abandoning the wheel chairs, walkers, and oxygen tanks for this shared precious moment as family members proudly snapped pictures of their memorable occasion. I was touched by the ceremony, and I knew that I wanted to become more active in the SLC.

I am now the chair of the SLC, and I cherish my work with the SLC. Aging is a noble and unpredictable process; the practice of law is a challenging and honorable profession. I think we ought to recognize special occasions in our lives and in our profession, calculated by time, e.g. birthdays, anniversaries, and years of service. The fact is that some people do not want to be reminded of their advanced state of maturity, but most do want to be remembered. It appears that some folks wish to ignore, reverse, or slow down the aging process, but most of us carry on silently and diligently, and we hope, with dignity.

Do not keep it a secret that we warmly welcome new members to the Senior Lawyers Conference. You know who you are, and we know who you are. Those who became new members of the SLC in 2016, with birthdates in calendar year 1961, are among the last phase of the Baby Boom Generation. When JFK took office in 1961, he said, “My fellow Americans, ask not what your country can do for you; ask what you can do for your country.”

Do not keep it a secret that today we are encouraging all senior lawyers to ask what we can do for our profession and for the citizens of this commonwealth, especially the senior citizens. Call me at (434) 447-7922, call any of our Board members listed on www.vsb.org/site/conferences/slc/board-of-governors, or call our VSB staff liaison Stephanie Blanton at (804) 775-0576. We will help you to find the answer to that question.

Do not keep it a secret that we all need to help.

Bruce Edwin Robinson, chair of the Senior Lawyers Conference, has been in private practice since 1978 as a sole practitioner, primarily in the fields of bankruptcy and criminal law. He served as the assistant commonwealth’s attorney for Mecklenburg County and is currently a substitute judge and Chapter 7 Bankruptcy Trustee, Eastern District of Virginia at Richmond. He lives in South Hill and serves on the board of the Virginia Legal Aid Society.
Robert Carter III, Emancipation, and the Arc of the Moral Universe

by Frank Overton Brown Jr.

On September 10, 2016, in front of the Northumberland County Courthouse in Heathsville, the Virginia Department of Historic Resources unveiled Historical Marker O 73, recognizing the actions of Robert Carter III in filing a Deed of Gift (recorded September 5, 1791) that eventually resulted in the freeing of more than 500 enslaved African-Americans. In slightly more than 100 words, the Historical Marker describes events that began 225 years ago and that changed the course of many lives then and in future generations. The words make it seem as though the events took place simply; however, the sequence of events was quite complex and took decades to complete. The implementation of this plan was affected by the intersection of law, politics, religion, morality, conscience, societal mores and customs, economics, courage, patience, perseverance, and even human frailty.

Robert Carter III was sometimes referred to as Robert Carter of Nomini Hall (or Nomony, as he spelled it) and also as “Councillor” Carter, to distinguish him from his father and his grandfather, both of whom bore the same name. He was born on February 9, 1728, in Lancaster County. He was the grandson of Robert “King” Carter, owner of vast amounts of land, slaveholdings, and other wealth, who died on August 4, 1732, at age 69. Robert Carter the younger, the son of King Carter and the father of Robert Carter III, died on May 16, 1732, at age 28, preceding King Carter by a few months. King Carter’s last will and testament with four codicils was admitted to probate in the general court on October 16, 1732. The general court, which was in Williamsburg, was the court of highest jurisdiction in the colony. At the time of King Carter’s death, Robert Carter III was 4 years old.

John Carter, Charles Carter, and Landon Carter, all uncles of Robert Carter III, qualified as the executors of King Carter’s estate. In a letter, dated August 12, 1733, John Carter wrote, “My Father [King Carter] some time before his Death in a discourse with Sir John Randolph Said he would settle the Estate he had design’d for his Son Rob’t [Robert...
Carter the younger] in the following manner. First for the payment of his debts, then to raise a sum of money for his wife equal to that she brought him in marriage, then to raise a fortune for his Daughter, & his Son Robert [Robert Carter III] to have the rest: to this purpose I intend at the meeting of our next [General] Assembly to propose that a Settlement be made of this Estate According to my Fathers Intentions... I was appointed Guardian to my Nephew [Robert Carter III] Last General Court, & as such have ye management of His Estate, which I Shall be as desirous to improve to his advantage, as if it were my own..."

John Carter, Charles Carter, and Priscilla Carter [mother of Robert Carter III], petitioned the General Assembly to enact special legislation providing the relief referenced in the letter. In August 1734, the General Assembly passed the requested legislation, and the statute (Hening, Vol. 4, Chap. XVI, pp. 454-457, August 1734 – 8th George II) recited the problems that the statute was intended to correct and that had resulted because Robert Carter the younger had predeceased his father, King Carter: "Whereby, according to the strict rules of law, all the lands, tenements, and other hereditaments aforesaid, with the appurtenances, devised to the said Robert Carter, the son, pass to the said Charles Carter, the next in remainder in tail male; and all the slaves devised to him, descended to the said John Carter, the eldest son and heir of the testator, as a real estate, undisposed of [at this time, under Virginia law, slaves were classified as real estate and had been since the passage in October 1705 of an Act by the General Assembly (Hening, Vol. 3, Chap. XXIII, page 333, October 1705 – 4th Anne), declaring that, subject to certain provisos of the Act ‘... all negro, mulatto and Indian slaves, in all courts of judicature, and other places, within this dominion, shall be held, taken, and adjudged, to be real estate (and not chattels) [emphasis added] and shall descend unto the heirs and widows of persons departing this life, according to the manner and custom of land of inheritance, held in fee simple...’ So that the family of the said Robert are left unprovided for, and can have no relief by any ordinary remedy; though the said testator, after the death of the said Robert, did, in private discourse, declare his design to provide for the said widow and her children...’ The act went on to provide that two thousand five hundred pounds sterling would be paid to Priscilla Carter and two thousand pounds sterling to Elizabeth Carter (Robert Carter III’s sister), with all of the rest being held in trust for Robert Carter III until he should turn 21.

The irony of the enactment of this special legislation is that, had it not been done, Robert Carter III would not have received from his grandfather’s estate the substantial wealth and slaves and would not have been able to free those slaves and their increase beginning many years later.

When Carter became of age in 1749 and “came into his inheritance,” he went to England to further his education. He studied law and was admitted to the Inner Temple in London. He returned to Virginia in 1751 and began managing his vast wealth and landholdings, which included plantations in the counties of Westmoreland, Richmond, Frederick, Loudon, and Prince William.

In 1754, Carter married Frances Ann Tasker, the daughter of a wealthy and politically prominent Maryland family. Frances brought with her a substantial dowry, and the marriage enabled Carter to obtain a 20 percent interest in the Baltimore Iron Works, one of Frances Tasker’s father’s businesses. Robert and Frances had seventeen children, many of whom died young; Frances Tasker Carter died in 1787, at age 49.

In 1752, Carter was appointed to the Westmoreland County Court, and in 1758 he was appointed to the Governor’s Council of State, on which he served until 1776 when the council ceased to exist.

Despite that being a slaveholder is inherently inhumane, and that the term “humane slaveholder” is an oxymoron, by all accounts Carter treated his slaves in a humane manner, especially in comparison to many other slaveholders. Philip Vickers Fithian, Princeton educated, and an aspirant to become a Presbyterian minister, who lived as a tutor in Carter’s household from October 1773 through October 1774, wrote in his journal, “Mr. Carter is allow’d by all, & from what I have already seen of others, I make no Doubt at all but he is, by far the most humane to his Slaves of any in these parts.”

Carter had been raised in the Anglican faith, the established religion in Colonial Virginia, but he later became a Baptist at a time when Baptists in Virginia were considered dissidents. He was baptized in 1778 and joined Morattico Baptist Church, a racially
mixed congregation. Carter experienced mob violence against Baptist prayer services. Toward the end of his life, he became a member of The Church of the New Jerusalem (Swedenborgian). He was a seeker who also read and studied Presbyterian, Quaker, and Methodist beliefs. He was a philanthropist, particularly in religious causes. In the process of his spiritual maturing, he became convinced that human slavery was wrong. Even though by 1791 Carter had left the Baptist Church, his long evolving belief about the evils of slavery was bolstered by his reading of a sermon written by John Leland (and titled “Letter of Valediction on Leaving Virginia, in 1791,” which Leland delivered before his return to Connecticut); Carter copied it into his daybook. Leland was a famous Baptist minister who preached in Virginia for sixteen years from 1775 until 1791. He was an ardent advocate for religious liberty and an opponent of slavery. In his sermon, Leland wrote: “...Before I close, I wish to add a word in behalf of the poor, unhappy negroes, and speak a little for those who are not suffered to speak for themselves. I have generally been quiet on this head... as I am well convinced that many of my dear brethren have the same feelings with myself, I can unbosom myself with confidence. It is not my intention to drop the ministerial vest, and assume the politician’s garb to-day; but, after adding that slavery, in its best appearance, is a violent deprivation of the rights of nature, inconsistent with republican government, destructive of every humane and benevolent passion of the soul, and subservive to that liberty absolutely necessary to ennoble the human mind, let me ask whether Heaven has nothing in store for poor negroes better than these galling chains?”

At a District Court, continued, held for the District of Richmond, Westmoreland, Lancaster, and Northumberland, at the Northumberland Courthouse, on September 5, 1791, Carter’s Deed of Emancipation, dated August 1, 1791, was acknowledged in open court and was ordered to be recorded. In the preamble to his deed, Carter recited his absolute ownership of the slaves listed on the detailed schedule annexed to the deed, and that he had “...for some time past been convinced that to retain them in Slavery is contrary to the true principles of Religion & Justice, that therefore it was my duty to manumit them, if it could be accomplished without infringing the laws of my Country, without being of dis-
Trust Indenture recited that “... whereas altho sundry slaves contained in the Schedule aforesaid have under the Deed aforesaid obtained their emancipation, yet the said Deed has been found inadequate to the purposes therein expressed and intended, and, it has become necessary to adopt some more effectual plan to carry out the intention and design of the said into full and compleat effect...” The indenture was recorded at a court held for Westmoreland County on September 24, 1798, and it transferred to Dawson, as trustee, for the consideration of the sum of one dollar paid to Carter by Dawson, all of Carter’s slaves who had not previously been emancipated, and their increase, subject to terms of the Trust Indenture, “...until a full and complete Emancipation of the beforementioned Slaves shall be Effected.”

Although at times Carter and Dawson had difficulties in their relationships, during Carter’s lifetime, and even after Carter’s death, Dawson, as trustee under the deed of trust continued to issue deeds of emancipation into the early 1800s. For example, he presented a deed of emancipation to the Court of Frederick County to be admitted to record. The executor of Carter’s estate objected to the recordation of the deed of emancipation, and the justices of the County Court refused to admit the deed of emancipation to record. In April 1805, Dawson applied to the Winchester District Court for a mandamus directed to the justices of Frederick County to compel them to record the deed of emancipation, which writ was denied. Dawson appealed to the Supreme Court of Appeals, which reversed the judgment of the District Court of Winchester and awarded a peremptory writ of mandamus to the justices of the County Court of Frederick, commanding them to receive proof or acknowledgment of the deed of emancipation and to admit it to record. The Supreme Court of Appeals decided this case in March, 1808.

Robert Carter III understood a great deal about the arc of the moral universe, and he acted courageously and positively, based upon his beliefs, his understanding, and his conscience, but it took Theodore Parker, a Congregationalist minister, who was born in 1810, six years after Carter died, to state concisely and in a memorable way (which has been borrowed by many people over the years), in a sermon titled “Of Justice And The Conscience”: “Look at the facts of the world. You see a continual and progressive triumph of the right. I do not pretend to understand the moral universe, the arc is a long one, my eye reaches but little ways. I cannot calculate the curve and complete the figure by the experience of sight; I can divine it by conscience. But from what I see I am sure it bends toward justice.”

Guided by his conscience, Robert Carter III looked at the facts of the world in his days and beyond, determined what he believed to be his duty, and took positive actions that most of his peers did not, and, as a result, many individual lives and subsequent generations were improved.

I thank my wife, Susan V. Brown, and my son, Matthew R. O. Brown, for their help to me in my writing this article; as always, their careful proofreading, thoughtful suggestions, and patient encouragement were of great importance. In addition, I thank Matthew for his many years of loyal and dedicated assistance and research skills, and for our collegial discussions. Also, I thank the following for their kind assistance to me in locating research materials: Darlene Herod of The Virginia Baptist Historical Society at the University of Richmond; Jennifer Huff of the Virginia Historical Society, Richmond; Tina Miller and Anna Moulis of the Library of Virginia, Richmond; and Kate Collins of the David M. Rubenstein Rare Book & Manuscript Library, Duke University, Durham, NC.

Robert Carter continued on page 33

Frank Overton Brown Jr. is in private practice in the Richmond metropolitan area and concentrates his practice in the areas of wills, trusts, estate planning, estate and trust administration, and related tax matters. He is a member and past chair of the Virginia State Bar Senior Lawyers Conference, and has served on the Virginia State Bar Council. He is a fellow of the Virginia Law Foundation and is a fellow of the American College of Trust and Estate Counsel. He is a recipient of the Virginia State Bar Tradition of Excellence Award. He is co-founder of the University of Richmond Annual Estate Planning Seminar, which will be held for the 45th time on May 11, 2017.
Law firms focus on attracting bright young graduates, not lavishing attention on their more experienced lawyers. We’ve all seen it happen. Senior lawyers may be offered “of counsel” status or nudged into working on less demanding — and less profitable — cases. Often we’re offered enticing retirement packages. The former can be a subtle form of age stereotyping while the latter is a straightforward purchase of legal rights for cash. Unfortunately, age discrimination is alive and well in law practice, just as it is in other professions. Although it became illegal in 1967, with the passage of the Age Discrimination in Employment Act, the bias against aging lawyers is hard to prove. Just when we think we’re at the height of our powers, our colleagues and clients may think we’re on the decline. Our years at the bar have given us the skill to size up situations quickly — focusing on the solution while our younger cohorts are still figuring out the problem. Yet we’re often perceived as slowing down, or maybe even heading towards a full stop.

While ours may be one of the last professions where experience and graying temples are still perceived to add value, our youth-focused culture doesn’t see this accumulated wisdom as the significant benefit it once was. We know that at some point, if we can’t keep up the pace, we’ll have to get off the track. But many senior lawyers are committed to practicing as long as possible.

So what can the senior lawyer do to prevent both the conscious and unconscious effects of apparent age discrimination?
The first thing we can do to stay vital is simply to keep up with current legal practices. Older lawyers who are eased out because they resist client values or challenge new firm leadership are not necessarily the victims of age stereotyping. Even if lawyers think the client or firm is going in the wrong direction, their duty remains what it always was—to serve lawful client goals and firm objectives. The consequence of a failure to adapt to change isn’t age discrimination; it’s intransigence. Having an assistant print out an e-mail so it can be read as hard copy is antiquated. Change has come. Just because we’re senior lawyers doesn’t mean we can’t be up-to-speed on the practice of law today.

Second, we can follow our passion. Many of us spent our careers focused on a particular area of the law. We worked to earn a good reputation for handling the specific kinds of matters in which our expertise could make a real difference. Senior general practitioners probably undertake more different matters than other lawyers, but all of us have a range in which we are highly competent. We need to give ourselves permission to say “no” to cases that don’t energize us and to enthusiastically embrace those that do. It’s ironic that our profession has a problem with lawyer burnout. Lawyers don’t burn out when the flame still shines brightly.

Finally, we can counter age discrimination by exercising our long-accumulated wisdom. This is crucial today, when the profession is undergoing a profound disruption. Former vendors, such as form providers and document control services, are taking over significant chunks of what were once integral parts of law practice. While this may threaten new lawyers trying to carve out their niche, it can present senior lawyers with a real opportunity. In short, time at the bar develops legal wisdom. Wisdom can’t be commoditized. It’s not offered in an online form. There is no way to rush the process of achieving wisdom. So if we have finally made the transition from legal technician to legal counselor, we might as well take advantage of it. As the late Peter Drucker suggested, it’s as simple as making the distinction between doing things right and doing the right things. This two-word switch uncovers the new perspective it has taken us a whole career to develop and practice—still.

Senior lawyers who continue to practice law are essential to a healthy legal profession. Rather than resisting the perception that we are slowing down or being pushed aside, we can assert that our perspective as long-serving members of the bar is more valuable now than ever. Law practice is changing, and we who are still in the profession are committed to changing as well. In fact, our age can be our most important asset.

Robert Carter

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Jack W. “JB” Burtch Jr. is with the Richmond law firm Burtch Law PLLC, where he practices labor and employment law, including alternate dispute resolution and mediation. He is a graduate of Wesleyan University and Vanderbilt Law School. He is active in the Virginia State Bar as former chair of the Senior Lawyers Conference and immediate past chair of the Conference of Local Bar Associations.
March is Mediation Month

Proclamation by Governor McAuliffe

WHEREAS, the Virginia Mediation Network, the Virginia Association for Community Conflict Resolution, the Virginia Collaborative Professionals, the Virginia Center for Consensus Building at Virginia Commonwealth University, and the Joint Alternative Dispute Resolution Committee are entities that support quality dispute resolution services; and

WHEREAS, 2017 marks the 24th anniversary of the passage of the dispute resolution proceedings statute that continues to play an important role in institutionalizing the use of mediation in the courts in Virginia; and

WHEREAS, Dispute Resolution Services in the Office of the Executive Secretary of the Supreme Court of Virginia continues to administer the mediator certification program, providing a way for the public to locate a mediator for individual services; and

WHEREAS, with continued adherence to the 2002 Virginia Administrative Dispute Resolution Act, governmental entities in the Commonwealth, including the Department of Human Resource Management, the Virginia Workers’ Compensation Commission, the Department of Professional and Occupational Regulation, the Department of Education, and the Fairfax County Consumer Affairs Branch, are demonstrating a commitment to application of creative problem solving when faced with complex issues and disputes; and

WHEREAS, Virginia’s universities, colleges, and law schools often incorporate mediation into their curricula and programs; leaders, managers, and supervisors apply mediation practices and skills in the workplace; and not-for-profit community-based dispute resolution centers provide opportunities to resolve issues effectively and affordably in communities; and

WHEREAS, mediators and other dispute resolution practitioners, through their significant expertise in helping stakeholders find durable solutions to important issues, have demonstrated the value of the field of alternative dispute resolution and the value of mediation as a tool for peacemaking between and among individuals, groups, neighborhoods, and countries; and

WHEREAS, the Commonwealth of Virginia continues to be a leader in promoting the use of such principles and practices;

NOW, THEREFORE, I, Terence R. McAuliffe, do hereby recognize March 2017 as MARCH IS MEDIATION MONTH in our COMMONWEALTH OF VIRGINIA, and I call this observance to the attention of all our citizens.

In Memoriam

James P. Brice
Roanoke
August 1926 – September 2016

Berry Leslie Conway II
Abingdon
April 1956 – October 2016

Ralph M. Dillow Jr.
Bristol
August 1929 – October 2016

Aubrey M. Davis Jr.
Chester
May 1937 – November 2016

Lenore Ruth Dreyfuss
Boynton Beach, Florida
June 1929 – July 2016

John Elwood Ely
Midlothian
June 1952 – November 2016

James L. Hutton
Blacksburg
June 1932 – November 2016

The Honorable Nathan Curtis Lee
Prince George
December 1956 – January 2017

Stephen Richard Meenan
Virginia Beach
April 1959 – June 2016

John Lane Mitchell Jr.
West Point
August 1946 – May 2016

Bert A. Nachman
Newport News
September 1923 – October 2016

Larry French Packett
Arlington
August 1947 – October 2016

Richard Rau
Lancaster
September 1923 – November 2016

Frank K. Saunders
Roanoke
February 1932 – August 2016

Thomas B. Shuttleworth II
Virginia Beach
October 1945 – December 2016

Eric Sanel Spector
McLean
September 1937 – January 2016

Paul Elton Turner Jr.
Newport News
December 1960 – November 2016

Edward Hatch Valance
Clinton, New York
March 1930 – September 2016
Local and Specialty Bar Elections

The Virginia Bar Association
David S. Mercer, President
C.J. Steuart Thomas III, President-elect

Virginia Law Foundation
Lucia A. Trigiani, President
Stephen D. Busch, President-elect
F. Anderson Morse, Vice President
Yvonne C. McGhee, Secretary
Karen A. Gould, Treasurer

Call for Nominations

VSB Conference of Local Bar Associations nominations are due April 28, 2017.

Awards will be presented at the CLBA Annual Meeting and Breakfast in June at Virginia Beach.

Award of Merit Competition recognizes outstanding projects and programs of Virginia bar associations.

Bar Association of the Year Award recognizes a member bar association that has best fulfilled the attributes member associations strive to attain.

Local Bar Leader of the Year Award recognizes past and presently active leaders in their local bar associations who have continued to offer important service to the bench, bar and public.

Specialty Bar Leader of the Year recognizes past and presently active leaders in their specialty bar associations who have continued to offer important service to the bench, bar and public.

For more information, please visit the website at http://www.vsb.org/site/conferences/clba/clba-awards.

Solo & Small-Firm Practitioner Forum

The Solo & Small-Firm Practitioner Forum focuses on issues that confront attorneys who practice alone or in small firms. Law office management and ethics are among several topics covered at these CLEs.

These CLEs are free, include lunch, and are available on a first-come, first-served basis. See registration information and agenda on the CLBA website at www.vsb.org/site/conferences/clba-calendar.

April 7, 2017
Solo & Small-Firm Practitioner Forum
Holiday Inn Downtown, Lynchburg

Bar Leaders Institute

Lewis Ginter Botanical Garden, Richmond

March 10, 2017

For more information, please visit:
www.vsb.org/site/conferences/clba-calendar.
or contact Paulette Davidson at davidson@vsb.org.
The Virginia State Bar
TECHSHOW
April 24, 2017
Greater Richmond Convention Center

Agenda
8:00–8:30 Registration/Continental breakfast
8:30 Welcome—VSB TECHSHOW Chair Sharon Nelson, VSB President Michael Robinson and Justice of the Supreme Court of Virginia Cleo E. Powell

8:45–9:45 First Sessions
• Ethics: Practical Budget-Friendly Cybersecurity at Warp Speed (Sharon Nelson — President, Sensei Enterprises, Inc., Fairfax, VA / John Simek — Vice President, Sensei Enterprises, Inc., Fairfax, VA)
• Taking Your Law Firm Paperless: A Step by Step Guide (Catherine Sanders Reach — Director of Law Practice Mgmt and Technology, Chicago Bar Association, Chicago, IL)

9:55–10:55 Second Sessions
• Building a Virtual Law Practice, Including a Client Portal (Jim Calloway — Director of Mgmt Asst Program at Oklahoma Bar Assn, Oklahoma City, OK / Nerino Petro — Chief Information Officer, HolmstromKennedy PC, Rockford, IL)
• Time/Billing/Accounting Software: Everything Lawyers Need to Know (Britt Lorish — Affinity Consulting Group, Roanoke, VA)

11:05–12:05 Third Sessions
• Essential Law Office Tech — On a Budget (Britt Lorish / Debbie Foster — Affinity Consulting Group, Tampa, FL)
• Digital Transactions: E-Signatures, E-Contracts and Authentication (Tom Mighell — Contoural, Inc., Dallas, TX / Dave Ries — Clark Hill PLC, Pittsburgh, PA)

12:05–12:45 Lunch

12:45–1:45 Fourth Sessions
• Avoiding Ethical Missteps in the Digital Era (Reid Trautz — American Immigration Lawyers Assn, Washington, DC / Nerino Petro)
• A Lawyers Guide to Case Management Systems (Natalie Kelly — Director of Law Practice Mgmt at State Bar of Georgia, Atlanta, GA / Debbie Foster)

1:55–2:55 Fifth Sessions
• Encryption is Simple, Easy and Cheap — and May Be Ethically Required (John Simek / Dave Ries)
• Everything Lawyers Need to Know About Backing Up — In or Out of the Cloud (Catherine Sanders Reach / Jim Calloway)

3:05–4:05 Sixth Sessions
• Macs in Law: The Year Behind and the Year Ahead (Tom Mighell)
• Controlling Your Inbox: It CAN be Done (Reid Trautz / Natalie Kelly)

4:15–5:15 Plenary — ALL NEW: 60 Tech Tips in 60 Minutes (Sharon Nelson / Debbie Foster / Jim Calloway / Tom Mighell)

Register online now!
Space is limited and first come/first served. Online registration is available at https://vsbevent.virginiainteractive.org/Home/Detail/11. The $100 registration fee will include free Wi-Fi, continental breakfast, lunch, and coffee breaks, as well as CLE credit.
WAIT, LAWYERS! Don’t be run off by “Rhetoric and Discourse” in the title or by other high-sounding non-legal phrases inside, such as “theoretical and methodological perspectives,” “discourse and organizational communication,” or “rhetorical discursive interaction” that appear throughout, or because the book is not written by a lawyer, law professor, or judge.

Those who are about to put the book back on the shelf should pause and consider:

• The author examines in detail the oral argument in three highly publicized and controversial recent Supreme Court cases, one involving a high school student’s freedom of speech rights, another the death penalty for rape, and one on gun rights.

• Based on the nature, number, length, and content of the individual justices’ questions and comments to counsel, as well as the number of interruptions in each case, the author sets out his opinions and conclusions about how these are (or may be) reflected in the Court’s decision in that case.

• There are two provocative and challenging letters about current problems with oral argument and recommend improvements from the author to Chief Justice Roberts, one at the beginning and another near the end of the book. (It should be noted that the same justices sat in all three cases: Justice Samuel Alito Jr., Justice Stephen Breyer, Justice Ruth Bader Ginsburg, Justice Anthony Kennedy, Chief Justice John Roberts, Justice Antonio Scalia, Justice David Souter, Justice John Paul Stevens and Justice Clarence Thomas).

Ryan A. Malphus holds a PhD in Communications from Texas A&M University and is a litigation consultant. His first interest in the role of communication in Supreme Court argument began with the preparation of his doctoral thesis at Texas A&M. This interest continued to grow and resulted in this book. He studied countless treatises discussing Supreme Court oral argument from the fields of law, politics, psychology, and others, read many case transcripts and attended the Court to observe the arguments in a large number of cases.

In studying the writings about the Supreme Court, the author found virtually nothing on the part played by communications between the justices and counsel during oral argument. This led to his development of what he considers to be new theory or model of analysis of court oral argument, which he calls “judicial sense making.” Judicial sense making “emphasizes the role of communication in the process of judicial decision making.” Otherwise stated, any analysis of the outcome of a case should include not only the case precedents, the politics of the individual justices, the practical aspect of the decision and other factors, but should take into special account the effect of oral argument communications on the court’s opinion in the case and on the individual votes of the justices.

In Morse v. Frederick (2007) a high school student (Frederick) skipped school, positioned himself across the street from his school and displayed a large banner reading “Bong Hits 4 Jesus” in full view of a group of students gathered on school grounds to watch the passing of the Olympic torch. The school principal (Morse) directed Frederick to take down the sign because she concluded it promoted the use of illegal drugs. Upon Frederick’s refusal, the principal confiscated the sign and later suspended Frederick. He unsuccessfully appealed the suspension and later filed a suit for monetary damages for violation of his First Amendment freedom of speech rights. Frederick’s suit ultimately reached the Supreme Court and in a 5-4 decision, the Court decided for the school principal, holding that her actions were appropriate in “safeguarding students from speech that can be reasonably interpreted to encourage drug use.”

The author analyzes the justices’ questions and comments to counsel in this case to evaluate whether they indicate “a substantial preference for one
advocate over another.” Specific issues addressed are whether the particular justice’s participation challenged an advocate, permitted the advocate sufficient time to respond, was more frequent than reasonably expected, assisted the advocate, and whether the justice’s treatment of the advocate was fair.

To evaluate these measurements the author provides statistical tables showing the number of questions, interruptions, and statements of the various justices to counsel, the speaking time consumed by each justice’s participation and the amount of speaking time each advocate had to support or explain his position. Indications from these tables of a bias for or against either appellate counsel are pointed out and discussed.

In Kennedy v. Louisiana (2008) the Court had to decide whether the death penalty for rape of a child provided by a Louisiana statute constituted cruel and unusual punishment prohibited by the Eighth Amendment. The Court upheld (again by 5-4) that the Louisiana statute was unconstitutional.

In arriving at his examples of how behavior by a justice can hinder or assist an advocate and/or influence that justice’s decision in this case the author addresses the same issues considered in Morse v. Frederick and again sets out tables providing statistics. He concludes that the conduct of the various justices discussed did indeed affect the proceedings in several ways and likely contributed to how the justices reached their decisions.

In District of Columbia v. Heller (2008) a DC security guard, (Heller), applied for a permit for his handgun, which he wanted to keep in his home for self-defense. DC had a statute which prohibited possession of a handgun by anyone except someone in law enforcement and Heller’s application was thus denied. In determining the constitutionality of the statute, the Court had to decide whether the Second Amendment gives citizens the individual right to “keep and bear arms” apart from such a right created in order to maintain a “well-regulated militia.” The case drew national attention and Amicus Curiae briefs were filed by nearly every state. At oral argument the discussion was “vigorous” and nearly every justice participated. Once more the Court split 5-4 in deciding in favor of Heller, concluding that the Second Amendment granted American citizens the personal and individual right to possess firearms.

From a historical constitutional perspective, the author considers Heller a much more important case than Morse or Kennedy and analyzes its oral argument in comparison. He notes that Chief Justice Roberts’s extension of argument time to counsel was something he had not seen in his extensive research of many previous cases and comments that the quoted exchanges between the justices and counsel seemed “to indicate that the justices treated the case with greater care and attention than other cases.”

The real meat in this book is of course in the three chapters discussing the three cases (7, 8, and 9). However the chapters on the history of oral argument (Chap. 2), on whether oral argument really matters (Chap. 4), and on the purposes of oral argument from the viewpoint of both advocates and justices (Chap. 6) should be of considerable interest and add extra substance to the author’s analysis of the arguments in the three cases. Although the other chapters may have more non-legal information from the field of communications than we need to know, the author has mixed into these chapters valuable lawyer-like observations.

Your reviewer considered including in this review some of the quoted questions and comments by justices in the three cases but concluded that the reader should digest and evaluate the quotes and the author’s conclusions and opinions in the setting of the entire discussion in each case as written by the author from beginning to end.

This book is recommended to:
1. US Supreme Court justices;
2. Federal circuit court judges and state appellate court justices and judges;
3. Lawyers specializing in appellate practice in federal and/or state courts;
4. Lawyers who occasionally engage in appellate practice;
5. Lawyers who appeal their cases on their own;
6. Law professors teaching appellate court proceedings and practice; and
7. All lawyers and others in any way interested in US Supreme Court proceedings and decisions, (everyone, lawyer and non-lawyer alike, should be).

William B. Smith is a retired member of the Dickerson and Smith Law Group in Virginia Beach and a former president of the Virginia Beach Bar Association. He is a former member of the Virginia State Bar Council, chair of its Litigation Section, and chair of the Senior Lawyers Conferences.
The Virginia Law Foundation promotes through philanthropy:
• The rule of law,
• Access to justice, and
• Law-related education.

The Annual Dinner of the Virginia Law Foundation combines recognition of excellence with the spirit of collegiality. Since 1983, the Virginia Law Foundation has recognized 486 lawyers as Fellows. Fellows are:
• Leaders in the practice of law — in every possible practice.
• In private practice — small firm, medium firm and large firm lawyers.
• Counsel to businesses — small and large.
• Public servants — working in every level of government.

Justices, judges, and mediators.

The annual Fellows induction ceremony was held on January 19, 2017, in Williamsburg in conjunction with the 128th Annual Meeting of the Virginia Bar Association. The Law Foundation welcomed twenty-four Fellows, selected by the Fellows Committee from confidential nominations made by a vast cross-section of the legal community.

The selection criteria has not changed over the years. All Fellows must be:
• Active or associate members of the Virginia State Bar for at least ten years;
• Residents of Virginia;
• People of integrity and character;
• People who have maintained and upheld the highest standards of the profession;
• Outstanding in the community; and
• Distinguished in the practice of law.

Based upon these criteria, the 2017 class of Fellows, listed below, is an exceptionally worthy group.

David Grant Altizer (Tazewell)
Barbara S. Anderson (Alexandria)
Mary Bauer (Charlottesville)
Gregory R. Bishop (Richmond)
Hon. Sean T. Connaughton (Alexandria)
Patrick C. Devine, Jr. (Norfolk)
David John Gogal (Falls Church)
James Patrick Guy II (Richmond)
John Owen Gwathmey (Richmond)
Jonathan P. Harmon (Richmond)
Helivi L. Holland (Suffolk)
Harry M. Johnson III (Fairfax)
Hon. Stanley P. Klein (Fairfax)
Thomas A. Lisk (Richmond)
Thomas H. Miller (Roanoke)
Sharon D. Nelson (Fairfax)
JoAnne L. Nolte (Richmond)
Hon. Nancy G. Parr (Chesapeake)
Bernadette Speller Peele (Stafford)
Lewis F. Powell III (Richmond)
Robert F. Redmond Jr. (Richmond)
Hon. Jane Marum Roush (Arlington)
Daniel M. Siegel (Richmond)
Hon. Shannon L. Taylor (Richmond)

The Annual Dinner program included special recognition for four tenured Fellows, introduced by friends, colleagues, and mentors who are also Fellows of the foundation. In a video presentation created for the occasion, the Foundation celebrated:

• Vincent J. Mastracco Jr. presented by William R. VanBuren III
• Clarence M. Dunnville Jr. presented by The Honorable Roger L. Gregory
• John Til Hazel presented by Grayson P. Hanes
• The Honorable Elizabeth B. Lacy presented by former Governor Gerald L. Baliles

These Fellows have had and continue to have an impact on the legal profession, their communities, and the
Commonwealth of Virginia. Their stories touch, inspire, and make us proud to be lawyers.

That is the design of the Fellows program — to recognize legal service of community-minded attorneys who have changed both the profession and the public perception of lawyers. Indeed, the Fellows of the Law Foundation embody the characteristics most admired in lawyers — they are citizen lawyers who are also consummate professional leaders.

Lucia Anna “Pia” Trigiani is president of the Virginia Law Foundation. She is a founding partner with MercerTrigiani law firm in Alexandria where she practices community association law. A past president of the Virginia Bar Association, Trigiani currently serves on the Judicial Council of Virginia and the Judicial Ethics Advisory Committee. She is a member of the Boyd Graves Conference and serves on the faculty of both the Virginia State Bar Harry L. Carrico Professionalism Course and Virginia CLE®. She is a member of the Virginia Law Foundation Fellows Class of 2013.

FORTY-SEVENTH ANNUAL

Criminal Law Seminar

Recent Developments in Criminal Law and Procedure

Should YOU Be Committed if You Do Not Have a Mental Health Docket?

Evidence-Based Practices: Buzzword or Useful Tool?

Are You Smarter Than a 3L: Ethical Issues in Criminal Defense

What You Need to Know About the Transformation of Virginia’s Juvenile Justice System

Lab Notes: Department of Forensic Science Update

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

Video Replays in 13 Locations on Three Different Dates
Approved 6.5 MCLE Credits (including 1.5 ethics credit)
iTips for the Lawyer on the Road

by Suzanne Corriell

Because this is the Senior Lawyers Conference issue, let’s start with the best deal in the United States: the America the Beautiful – the National Parks and Federal Recreational Lands Senior Pass (https://store.usgs.gov/pass/senior.html). The $10 lifetime pass (yes, ten dollars!) permits the pass holder (62+) and companions (of any age) access to more than 2,000 recreation sites, including many of those managed by the National Park Service, Fish and Wildlife Service, and Bureau of Land Management.

Once you’re at a park, use your device to take a picture of the map—or download a copy of the map (if available) and save it to your iBooks. Then, if you lose connectivity or your paper copy flies away, you’ll still have access to a version of the map. (Lesson learned from a stranger on the trail, telling his kids that he snapped a picture “before Mom left with the map.”)

While you’re traveling, it’s good practice to ensure that you aren’t wasting your cellular data. On an iOS device, you can view which apps are data-heavy, by going to Settings > Cellular. This lists the quantity of data each app has consumed since the statistics were last reset—and it allows you to understand which apps are using more than you’d like. Switching each toggle to “off” will disable cellular access for that individual app.

For example, your App Store may be consuming a large amount of data because it’s automatically downloading updates as soon as each update becomes available. To change the setting for automatic update downloads from the App Store, go to Settings > iTunes & App Store and toggle “off” for using cellular data for automatic downloads. Remember: none of these settings have to be permanent; you can always change them if you need to use cellular data for an update. Alternatively, you can go to your App Store and download the updates manually (especially once you find a trusted Wi-Fi connection).

Similarly, Background App Refresh can also use a lot of cellular data; you can alter these settings under Settings > General > Background App Refresh. You may also find yourself in a location where you don’t have any cellular access, but you still have access to Wi-Fi. To preserve your battery life, leave your Wi-Fi on, but switch to airplane mode.

Mail on iOS can also significantly increase data consumption. The best option for managing this is to alter the “fetch” rates under Settings > Mail. Setting it to “manual” will prompt the server for new messages only when you open the app, instead of downloading content in the background.

Many articles recently have discussed the risks of using off-brand or unapproved chargers. In addition to the risks of fire due to inadequate insulation, many of these chargers are poor performers: charging slowly, breaking frequently, and now, risking security. Be sure to use certified chargers and adapters to ensure that your device is securely performing at its full potential.

A couple of peripherals can be particularly helpful for travelers. An external backup battery charger (or “power bank”) can provide rechargeable battery power for various devices; some even support several devices at once, or numerous charges. If you need to transfer data or files from one device to another without using the Internet or the cloud to do so, consider a flash drive with both a USB and Lightning connector.

It’s also imperative to be aware of security for your devices while traveling, especially keeping confidential information secure. Before you depart, be sure to backup your device to preserve all data and settings, and enable “Find My iPad” in case of loss. Set a passcode lock; and be sure that your contact information is available in your case (or on the home screen), should an honest traveler recover your device. When using Wi-Fi networks, be sure to look for data security symbols before inputting any information; and beware of public Wi-Fi because of possible hackers and security issues. To keep your passwords secure, consider a password management app, such as 1Password.

For those who are frequent air travelers, try Airport by FLIO. This free app provides maps and ground transportation tips, helps you connect with Wi-Fi, and locates food, vendors, power stations, and attractions. (O’Hare has a yoga room and a farm in Terminal 3.) TripIt is an itinerary coordinating app that can connect with your Gmail account to organize flight, car rental, and hotel information—and can synchronize with Microsoft Outlook or Google Calendar. The Netflix app now lets you download content to your device so that you can watch a movie or show even when you have no or poor Internet connectivity.

Happy trails!

Suzanne Corriell is associate circuit librarian at the United States Court of Appeals for the Fourth Circuit. She is a past-president of the Virginia Association of Law Libraries.

by Charles B. Molster III and Mary C. Zinsner


New Federal Cause of Action That Can Be Litigated in US District Court
One important feature for practitioners of the Act is that it creates a new federal private right of action, and confers federal question jurisdiction in US District Courts, with no amount-in-controversy requirement. See 18 U.S.C. 1836(b). Previously, federal jurisdiction was only available in trade secrets cases where diversity existed (i.e., plaintiff and defendant are citizens of different states, and the amount in controversy exceeds $75,000), see, e.g., 28 U.S.C. § 1332, or where the complaint included claims brought under the Computer Fraud and Abuse Act (CFAA). See 18 U.S.C. 1030(g).

While the Act contains an interstate commerce requirement that the trade secret must be “related to a product or service used in, or intended for use in, interstate or foreign commerce,” 18 U.S.C. § 1836(b), it is not anticipated that this will be a difficult requirement to meet, especially given the breadth of the decisions by the US Supreme Court as to the minimal elements necessary to satisfy the Commerce Clause or similar federal statutory provisions. See Russell v. United States, 471 U.S. 858, 859 (1985) (statutory language utilizing “affecting commerce” signals Congress’s intent to exercise Commerce Clause powers to the fullest); see also Wickard v. Filburn, 317 U.S. 111, 125 (1942) (“But even if appellee’s activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time has been defined as “direct” or “indirect.”)

Prior State Law and Uniform Trade Secrets Acts
Prior to the Act, trade secrets cases were litigated predominantly in state court, with courts interpreting state law. This resulted in the development of a disparate body of jurisprudence, both procedurally and substantively, even though forty-eight states, including Virginia, had adopted at least some version of the Uniform Trade Secrets Act. See Va. Code Sections 59.1 – 336 et. seq. These state-by-state differences include the length of the statute of limitations period, provisions regarding disclosure of the trade secrets themselves during the course of the litigation, and the application of the “inevitable disclosure” doctrine.

New Strategic Decisions for Litigators
Because the Act does not replace or preempt state law (except with respect to whistleblower provisions discussed below), new choices are now available for attorneys handling trade secret cases. These choices include whether to file in state or federal court, and implicate important strategic considerations, including the powerful remedy of an ex parte seizure order; availability of uniform federal court procedures; the speed of the applicable federal court (Is it a Rocket Docket? Can the plaintiff keep up with that pace); the length of the federal statute of limitations (three years) versus the applicable state law statute; state law requirements regarding disclosure of the trade secret by the plaintiff during the litigation; applicable state law re the “inevitable disclosure” doctrine; and similar considerations. Consultation with experienced trial counsel regarding these considerations will be critical – both to plaintiffs and defendants (including the decision whether to remove to federal court if the Act is pleaded in a state court action).

Important Considerations for International Clients
The Act also has important considerations for international clients doing business in the US. Because the Act is an amendment to the EEA, 18 U.S.C. §§ 1831-1839, its scope encompasses conduct occurring in foreign countries. A corporation formed in the US can be liable for misappropriation occurring outside of the US. 18 U.S.C. § 1837 (1). And a foreign corporation can be liable under the Act for foreign misappropriation so long “as an act in furtherance of the offense was committed in the United States.” 18 U.S.C. § 1837(2). The Act thus poses risks to foreign corporations, which may now be brought into US federal court proceedings as defendants. Courts must still have personal jurisdiction over the international defendant, but the Act may provide an easier pathway to proving minimum contacts with its broad conspiracy language. Also, Federal Rule of Civil Procedure 4(k)(2) may be used in conjunction with the Act to obtain in personam jurisdiction over foreign defendants.

Remedies Under the Act—Some Old, Some New
The Act includes multiple remedies for misappropriation of trade secrets,
including injunctive relief; damages; double or punitive damages for willful and malicious misappropriation; and a provision for ex parte seizures.

**Injunctions**

Injunctions may be granted “to prevent any actual or threatened misappropriation.” 18 U.S.C. § 1836(b)(3)(A)(i). A court may require affirmative action to protect the trade secret, bar disclosure of the trade secret, or condition future use of the trade secret upon payment of a reasonable royalty. 18 U.S.C. § 1836(b)(3)(A)(ii). The Act provides for certain restrictions on injunctive relief, including that the injunction may not prevent anyone from entering into an employment relationship, and it may not conflict with applicable state laws regarding restraints on trade. 18 U.S.C. § 1836(b)(3)(A)(iii) The Act provides for any materials seized in the custody of the court; the court must hold a seizure hearing within seven days; and the court must protect the seized materials from being disclosed to the public, or destroyed or damaged while in the custody of the court. 18 U.S.C. § 1836(D).

A motion to dissolve or modify the seizure order may be filed at any time by the person harmed, and if a seizure order is wrongful or excessive, the person harmed may bring a cause of action to recover damages, including punitive damages and attorney fees. 18 U.S.C. § 1836(F).

**Whistleblower Protections — Attention Corporate Counsel**

The Act also includes protections to whistleblowers, including when an individual disclosed the trade secret “in confidence” directly or indirectly to federal, state, and local government officials; or to a lawyer and did so “solely for the purpose of reporting or investigating a suspected violation of law”; in a document filed in court under seal; and in anti-retaliation lawsuits, provided the information is disclosed only to an individual’s lawyer, is filed under seal, and is not disclosed except by court order. 18 U.S.C. § 1833(b).

The Act also requires an employer to “provide notice of the immunity . . . in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.” 18 U.S.C. §1833(b)(3). This provision applies to all contracts entered into or updated after the date of enactment (May 11, 2016), and applies to employees, contractors, and consultants. Id. If an employer fails to provide such notice, the employer “may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) in an action against an employee to whom notice was not provided.” 1833(b)(3)(C).

**Teaching Points for Litigators and Corporate Counsel**

The Act changes dramatically the landscape for trade secret litigation and includes many new opportunities for trade secret plaintiffs, new challenges for defendants, and new considerations for corporate counsel — including with regard to developing pre-litigation procedures to prepare for fast-paced injunctions or seizures, and modification of existing employment contracts/confidentiality policies and other documents regarding the new whistleblower protections and the like. Careful attention to these new provisions and strategies on the front end will likely pay substantial dividends going forward.

**Charles B. Molster III**

Charles B. Molster III, a partner in the Washington, DC, office of Winston & Strawn LLP, has extensive experience handling complex litigation matters in federal and state courts around the country, including patent infringement, telecommunications, antitrust, injunction, trademark/copyright/trade secrets, corporate governance/shareholder litigation, securities litigation, employment litigation, and other commercial litigation. He also provides outside general counsel services to various clients.

**Mary C. Zinsner**

Mary C. Zinsner is a partner at Troutman Sanders. Her practice focuses on business and commercial litigation and representation of financial institutions in lender liability, operations, consumer finance, fiduciary and creditor’s rights disputes. She regularly represents clients in defense of litigation involving allegations of identity theft and privacy matters. She has handled numerous matters in federal and state court involving allegations of trade secret theft, including multi-jurisdictional and international cases.
CLE Calendar

Virginia CLE Calendar
Virginia CLE will sponsor the following continuing legal education courses. For details, see http://www.vacle.org/seminars.htm.

February 22
Mastering Voir Dire in Virginia
Live — Charlottesvile/Webcast/Telephone
Noon—2 PM

February 23
The New “Fostering Futures” Program
— What Extending Services for Foster Youth to Age 21 Means for Youth, Families, and Guardians ad Litem in Virginia
Live — Charlottesville/Webcast/Telephone
Noon—2 PM

March 2
The Art of Discovery in Contested Guardianship Cases
Live — Charlottesville/Webcast/Telephone
Noon—2 PM

March 3
Ship Recycling: Where and How Obsolete Vessels Are Taken Apart
Live — Charlottesville/Webcast/Telephone
Noon—1 PM

March 3–4
21st Annual Advanced Real Estate Seminar
Live — Williamsburg
Friday: 1–5:30 PM; Saturday: 8 AM—12:20 PM

March 7
Adoption Law: Understanding the Nuts and Bolts of the Practice in Virginia
Webcast/Telephone
11 AM—2:15 PM

March 8
Contract Remedies and Litigation Advice
Live — Charlottesville/Webcast/Telephone
Noon—2 PM

March 9
Ethical Advocacy in Mediation
Webcast/Telephone
3–4 PM

March 10
Representation of Children as a Guardian Ad Litem — 2016 Qualifying Course
Video — Abingdon, Alexandria, Charlottesville, Norfolk, Richmond, Roanoke
8:30 AM—5:15 PM (Richmond video begins at 9:00 AM)

March 11
The New “Fostering Futures” Program
— What Extending Services for Foster Youth to Age 21 Means for Youth, Families, and Guardians ad Litem in Virginia
Webcast/Telephone
11 AM—1 PM

March 12
Representation of Children as a Guardian Ad Litem — 2016 Qualifying Course
Video — Tysons
8:30 AM—5:15 PM

March 14
Criminal Defense Strategies When Representing Foreign Nationals: Understanding the Immigration Consequences of Criminal Convictions
Live — Charlottesville/Webcast/Telephone
11 AM—2:15 PM

March 15
Virginia State Bar Harry L. Carrico Professionalism Course
March 2, 2017, Alexandria
April 20, 2017, Charlottesville
May 25, 2017, Hampton
July 13, 2017, Roanoke
August 29, 2017, Alexandria
September 14, 2017, Richmond

See the most current dates and registration information at www.vsb.org/site/members/new.
CLE Calendar

Annual Bankruptcy Practice Seminar 2017
Live — Richmond
8:30 AM–4:45 PM

March 21
Representation of Incapacitated Persons as a Guardian Ad Litem — 2016 Qualifying Course
Video — Abingdon, Alexandria, Charlottesville, Norfolk, Richmond, Roanoke
9 AM–4:05 PM

March 22
47th Annual Criminal Law Seminar 2017
Video — Alexandria, Charlottesville, Danville, Hampton, Richmond, Roanoke
8:15 AM–4:45 PM (RICHMOND VIDEO BEGINS AT 9:00 AM)

March 22
Representation of Incapacitated Persons as a Guardian Ad Litem — 2016 Qualifying Course
Video — Tysons
9 AM–4:05 PM

March 23
47th Annual Criminal Law Seminar 2017
Video — Lynchburg, Norfolk, Winchester
8:15 AM–4:45 PM

March 23
Contract Remedies and Litigation Advice
Webcast/Telephone
NOON–2 PM

March 24
Mastering Voir Dire in Virginia
Webcast/Telephone
NOON–2 PM

March 28
Ethical Advocacy in Mediation
Webcast/Telephone
1–3 PM

March 29
Representation of Children as a Guardian Ad Litem — 2016 Qualifying Course
Video — Virginia Beach
8:30 AM–5:15 PM

March 30
Information Exchanges with Virginia Government Agencies: Two-Way Street?
Live — Charlottesville/Webcast/Telephone
NOON–2 PM

March 30
Elder Law Basics 2017
Live — Fairfax
9 AM–4:10 PM

March 30
Ship Recycling: Where and How Obsolete Vessels Are Taken Apart
Webcast/Telephone
NOON–1 PM

March 31
Criminal Defense Strategies When Representing Foreign Nationals: Understanding the Immigration Consequences of Criminal Convictions
Webcast/Telephone
11 AM–2:15 PM

April 7
Information Exchanges with Virginia Government Agencies: Two-Way Street?
Webcast/Telephone
NOON–2 PM

April 11
Hot Topics in Business Bankruptcy
Live — Charlottesville/Webcast/Telephone
NOON–2 PM

April 12
Your First Trial
Live — Charlottesville/Webcast/Telephone
3–5 PM

Let’s Build Your Practice Together

The Virginia Lawyer Referral Service offers an easy, inexpensive way to meet new clients, grow your law practice, and market yourself as a Virginia lawyer. We make 12,000 referrals a year in 300 areas of practice. If you’re just hanging out your new shingle, or expanding your successful practice, we want to help you! Check out www.VLRS.net and sign up for this unmatched service.
# DISCIPLINARY PROCEEDINGS

<table>
<thead>
<tr>
<th>Respondent’s Name</th>
<th>Address of Record</th>
<th>Action</th>
<th>Effective Date</th>
</tr>
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<tbody>
<tr>
<td><strong>CIRCUIT COURT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrew Ira Becker</td>
<td>Virginia Beach, VA</td>
<td>Suspension – 4 years</td>
<td>January 11, 2017</td>
</tr>
<tr>
<td>Shannon Jones Dunham</td>
<td>Eastville, VA</td>
<td>Suspension – 5 years w/Terms</td>
<td>October 20, 2016</td>
</tr>
<tr>
<td>Joseph Francis Grove</td>
<td>Mechanicsville, VA</td>
<td>Public Admonition</td>
<td>December 16, 2016</td>
</tr>
<tr>
<td>Christopher DeCoy Parrott</td>
<td>Manassas, VA</td>
<td>Suspension – 21 months</td>
<td>November 21, 2016</td>
</tr>
</tbody>
</table>

| **DISCIPLINARY BOARD**                 |                   |                                 |                 |
| Mark Howard Allenbaugh                | Cleveland, OH     | Revocation                      | December 9, 2016|
| Mike Meier                             | Fairfax, VA       | Suspension – 30 Days           | November 29, 2016|

| **DISTRICT COMMITTEES**                |                   |                                 |                 |
| Jonathan David Esten                   | Manassas, VA      | Public Reprimand w/Terms       | January 4, 2017 |
| Michael Denis Kmetz                    | Norfolk, VA       | Public Reprimand w/Terms       | December 5, 2016|
| Nancy Beth White                       | Bon Air, VA       | Public Reprimand w/Terms       | November 18, 2016|

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<tr>
<th>Suspension – Failure to Pay Disciplinary Costs</th>
<th>Effective Date</th>
<th>Lifted</th>
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<tr>
<td>Michael Thomas Reynolds</td>
<td>December 22, 2016</td>
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<tr>
<td>James Fred Sumpter</td>
<td>January 19, 2017</td>
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<tr>
<td>Michael Alan Ward</td>
<td>January 5, 2017</td>
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</tr>
</tbody>
</table>
DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Virginia Supreme Court Part 6, § II, eff. Jan. 1, 2000) or another of the Supreme Court Rules. Copies of disciplinary orders are available at the Web link provided with each summary or by contacting the Virginia State Bar Clerk’s Office at (804) 775-0539 or clerk@vsb.org. VSB docket numbers are provided.

CIRCUIT COURT

Andrew Ira Becker
Virginia Beach, Virginia
16-051-103958
Effective January 11, 2017, a three-judge panel of the Circuit Court for the City of Virginia Beach suspended Andrew Ira Becker’s license to practice law for four years for violating professional rules that govern competence, diligence, fairness to opposing party and counsel, impartiality and decorum of the tribunal, truthfulness in communications, and misconduct. This was an agreed disposition of misconduct charges. RPC 1.3(a), 1.4(a), 1.5(a, b); 1.7(a)(2); 1.8(a); 1.15(a)(1,3)(b)(3,5)(d)(3); 8.4(bc)
www.vsb.org/docs/Becker-012017.pdf

Shannon Jones Dunham
Eastville, Virginia
16-021-104302, 16-021-104800
On October 20, 2016, the Circuit Court of the County of Northampton suspended Shannon Jones Dunham’s license to practice law for five years, with terms, for violating professional rules that govern diligence, fees, conflict of interest: general rule, conflict of interest: prohibited transactions, safekeeping property, and misconduct. RPC 1.3(a); 1.5(a,b); 1.7(a)(2); 1.8(a); 1.15(a)(1,3)(b)(3,5)(d)(3); 8.4(bc)
www.vsb.org/docs/Dunham-121916.pdf

Joseph Francis Grove
Mechanicsville, Virginia
15-033-102813
On December 16, 2016, a three-judge panel of the Circuit Court for the County of Hanover issued a public admonition to Joseph Francis Grove for violating professional rules that govern diligence, communication, and declining or terminating representation. This was an agreed disposition of misconduct charges. RPC 1.3(a), 1.4(b), 1.16(c)
www.vsb.org/docs/Grove-012017.pdf

Christopher DeCoy Parrott
Manassas, Virginia
16-053-104072
On November 21, 2016, a three-judge panel of the Circuit Court for the County of Fairfax accepted the Virginia State Bar’s twenty-one month suspension of Christopher DeCoy Parrott’s license to practice law for violating professional rules that govern diligence, communication, safekeeping property, declining or terminating representation, bar admission and disciplinary matters, and misconduct. This was an agreed disposition of misconduct charges. RPC 1.3(a,b), 1.4(a,b), 1.15(a)(1,2)(b)(2-5), 1.16(d), 8.1(a), 8.4(c)
www.vsb.org/docs/Parrott-121916.pdf

DISCIPLINARY BOARD

Mark Howard Allenbaugh
Cleveland, Ohio
17-000-107650
On December 9, 2016, the Virginia State Bar Disciplinary Board revoked Mark Howard Allenbaugh’s license to practice law based on his disbarment by the Court of Appeals of Maryland. His license had been summarily suspended in Virginia on November 18, 2016. Rules Part Six, § IV, ¶ 13-24
www.vsb.org/docs/Allenbaugh-121916.pdf

Mike Meier
Fairfax, Virginia
14-042-099357
On November 29, 2016, the Virginia State Bar Disciplinary Board suspended Mike Meier’s license to practice law for thirty days for violating professional rules that govern competence, meritorious claims and contentions, candor toward the tribunal, fairness to opposing party and counsel, truthfulness in statements to others, respect for rights of third persons, and bar admission and disciplinary matters. This was an agreed disposition of misconduct charges. RPC 1.1, 3.1, 3.3(a)(1,4), 3.4(j), 4.1(a), 4.4, 8.1(a,b,d)
www.vsb.org/docs/Meier-121916.pdf

Jonathan David Esten
Manassas, Virginia
16-053-105611, 16-053-106296, 17-053-106333
On January 4, 2017, the Virginia State Bar Fifth District – Section III Subcommittee issued a public reprimand with terms to Jonathan David Esten for violating professional rules that govern diligence, communication, and declining or terminating representation. This was an agreed disposition of misconduct charges. RPC 1.3(a), 1.4(a), 1.16(c)(d)(e)
www.vsb.org/docs/Esten-012017.pdf

Michael Denis Kmetz
Norfolk, Virginia
15-022-103103
On December 5, 2016, the Virginia State Bar Second District Subcommittee, Section II, issued a public reprimand with terms to Michael Denis Kmetz for violating professional rules that govern diligence and communication. This was an agreed disposition of misconduct charges. RPC 1.3(a), 1.4(a,b)
www.vsb.org/docs/Kmetz-121916.pdf

Nancy Beth White
Bon Air, Virginia
16-033-104728
On November 18, 2016, the Virginia State Bar Third District Subcommittee issued a public reprimand with terms to Nancy Beth White for violating professional rules that govern communication, fees, and terminating representation. This was an agreed disposition of misconduct charges. RPC 1.4(a), 1.5(a)(1-8), 1.16(d)
www.vsb.org/docs/White-121916.pdf
NOTICES TO MEMBERS

SUPREME COURT OF VIRGINIA ACTS ON RULES, JUDICIAL CANONS, ETHICS OPINION
On December 15, 2016, the Supreme Court of Virginia took the following actions:
• Amended portions of Rule 3B:2 and Rule 3C:2 regarding Uniform Fine Schedule. Effective immediately.
• Amended Section IV, Paragraph 13.1 of the Rules of the Supreme Court of Virginia regarding Suspension for Failure to Complete the Professionalism Course. Effective March 1, 2017.
• Amended Rule 5:6 regarding Forms of Briefs and Other Papers. Effective immediately.
• Amended and adopted Legal Ethics Opinion 1886 regarding the duty of partners and supervisory lawyers in a law firm when another lawyer in the firm suffers from significant impairment. Effective immediately.

SUPREME COURT OF VIRGINIA AMENDS RULES
On January 31, 2017, the Supreme Court of Virginia amended the following rules, effective April 1, 2017:
• Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.
• Rule 5:37. Petition for Rehearing After Consideration by the Full Court.
• Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by Electronic Means.
• Rule 5A:34. Rehearing En Banc After Final Disposition of a Case.
www.courts.state.va.us/courts/scv/amend.html

FREE LEGAL ANSWERS
Sign up for Virginia.freelegalanswers.org. The website is part of an ABA multi-state initiative to provide online pro bono civil legal assistance to Virginia residents with income levels of 250 percent of the poverty guidelines or less (a household income of just over $29,000 annually for a single adult). Details: https://virginia.freelegalanswers.org/

YLC CELEBRATION OF WOMEN AND MINORITIES IN THE LEGAL PROFESSION BENCH BAR DINNER
Registration is open for the YLC Celebration of Women and Minorities in the Legal Profession Bench Bar Dinner on March 8 at the University of Richmond Jepson Alumni Center. www.vsb.org/site/conferences/ylc-calendar/cle452015

BAR LEADERS INSTITUTE
Registration is open for the March 10 Bar Leaders Institute at the Lewis Ginter Botanical Garden, Richmond. www.vsb.org/site/conferences/clba-calendar/bar_leaders_institute

SOLO & SMALL-FIRM PRACTITIONER FORUM
Registration is open for the April 7 Solo & Small-Firm Practitioner Forum at the Holiday Inn Downtown, Lynchburg. www.vsb.org/site/conferences/clba-calendar/solo_small_firm_practitioner_forum3

2017 TECHSHOW
Registration is open for the April 24 VSB TECHSHOW at the Greater Richmond Convention Center. www.vsb.org/site/events/item/vsb_techshow

INDIGENT CRIMINAL DEFENSE SEMINAR
Registration is open for the May 3 Annual Indigent Criminal Defense Seminar at the Greater Richmond Convention Center with webcasts in Weyers Cave and Wytheville. www.vsb.org/special-events/indigent-defense

NOMINATIONS SOUGHT FOR AWARDS
The VSB is seeking nominations for the following awards:
• The General Practice Section Tradition of Excellence Award. The nomination deadline is March 20, 2017.
• The Special Committee on Access to Legal Services Oliver White Hill Law Student Pro Bono Award. The nomination deadline is March 24, 2017.
• The Special Committee on Access to Legal Services Virginia Legal Aid Award. The nomination deadline is March 24, 2017.
• The Young Lawyers Conference R. Edwin Burnette, Jr. Young Lawyer of the Year Award. The nomination deadline is April 1, 2017.
• The Diversity Conference Clarence M. Dunnaville Jr. Achievement Award. The deadline is April 1, 2017.
• The Conference of Local Bar Associations Awards of Merit, Local Bar Leader of the Year Award, Specialty Bar Leader of the Year, and Bar Association of the Year Award. The nomination deadline is April 28, 2017.
Please see the VSB Awards and Contests page for a list of all bar sponsored awards and deadlines. www.vsb.org/site/members/awards-and-contests/
NOMINATIONS SOUGHT FOR DISTRICT COMMITTEE VACANCIES

The Standing Committee on Lawyer Discipline calls for nominations for district committee vacancies to be filled by Council in June. Note that there are vacancies which may not become available because some members are eligible for reappointment.

To review qualifications for eligibility, see Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-4 – Establishment of District Committees, specifically 13-4.E (Qualifications of Members) and 13-4.F (Persons Ineligible for Appointment).

FIRST DISTRICT COMMITTEE:
2 attorney vacancies; 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 1st, 3rd, 5th, 7th or 8th judicial circuits.

SECOND DISTRICT COMMITTEE, SECTION I:
1 attorney vacancy (current member is eligible for reappointment); 3 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 2nd or 4th judicial circuits.

SECOND DISTRICT COMMITTEE, SECTION II:
4 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 2nd or 4th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION I:
1 attorney vacancy; 3 non-attorney vacancies (1 member is eligible for reappointment.) Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION II:
2 attorney vacancies; 1 non-attorney vacancy. Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION III:
3 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

FOURTH DISTRICT COMMITTEE, SECTION I:
3 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy. Vacancies are to be filled by members from the 17th or 18th judicial circuits.

FOURTH DISTRICT COMMITTEE, SECTION II:
3 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 17th or 18th judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION I:
2 attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION II:
3 attorney vacancies; 2 non-attorney vacancies (both members are eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION III:
2 attorney vacancies (1 member is eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

SIXTH DISTRICT COMMITTEE:
3 attorney vacancies (1 member is eligible for reappointment); 1 non-attorney vacancy. Vacancies are to be filled by members from the 9th or 15th judicial circuits.

SEVENTH DISTRICT COMMITTEE:
2 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies. Vacancies are to be filled by members from the 16th, 20th or 26th judicial circuits.

EIGHTH DISTRICT COMMITTEE:
2 attorney vacancies (both members are eligible for reappointment); 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 23rd or 25th judicial circuits.

NINTH DISTRICT COMMITTEE:
3 attorney vacancies (2 members are eligible for reappointment) 2 non-attorney vacancies. Vacancies are to be filled by members from the 10th, 21st, 22nd or 24th judicial circuits.

TENTH DISTRICT COMMITTEE, SECTION I:
3 attorney vacancies (1 member is eligible for reappointment. Vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

TENTH DISTRICT COMMITTEE, SECTION II:
3 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies. Vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

Nominations, along with a brief résumé, should be sent by February 28, 2017, to Stephanie Blanton, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026. Blanton@vsb.org
NOTICES TO MEMBERS

NOMINATIONS SOUGHT
FOR COMMITTEE VACANCIES

Volunteers are needed to serve the Virginia State Bar’s boards and committees. The Nominating Committee will refer nominees to the VSB Council for consideration at its June meeting.

Vacancies in 2017 are listed below. All appointments will be for the terms specified, beginning on July 1, 2017, unless otherwise noted.

EXECUTIVE COMMITTEE: 6 vacancies (2 current members are not eligible for reappointment, and 4 current members are eligible for reappointment). Filled from ranks of the council for 1-year terms, by council appointment.

CLIENTS’ PROTECTION FUND BOARD: 3 vacancies (1 current lawyer member from the 3rd disciplinary district is not eligible for reappointment; 2 current lawyer members from the 6th and 8th disciplinary districts are eligible for reappointment). May serve 2 consecutive 3-year terms. Appointment by council.

JUDICIAL CANDIDATE EVALUATION COMMITTEE: 6 lawyer vacancies (of which 4 vacancies are to be filled by a member from the 3rd, 4th, 9th or 10th judicial circuits and 2 member-at-large vacancies). May serve 1 full 3-year term. Appointment by council.

VIRGINIA LAW FOUNDATION BOARD: 2 vacancies (of which 1 current lawyer member is not eligible for reelection and 1 current lay member is eligible for reelection). May serve 2 consecutive 3-year terms. Appointment by VLF Board on recommendation of council. Term commences January 1, 2018.

VIRGINIA CLE COMMITTEE: 6 lawyer vacancies (of which 6 lawyer members are eligible for reelection to 1-year terms). Appointment by VLF Board on recommendation of council. Term commences January 1, 2018.


Nominations, along with a brief résumé, should be sent by March 10, 2017, to VSB Nominating Committee, c/o Asha Holloman, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026. nominations@vsb.org

2017 COUNCIL ELECTIONS

If you are interested in serving on Council, the Virginia State Bar’s governing body, there will be an election conducted in the following circuits by electronic ballot: 1, 2, 4, 7, 9, 11, 13, 14, 15, 18, 19, 20 and 25. To be eligible to run, you must be an active member in good standing of the circuit as of March 15, 2017. You must file a nominating petition with the executive director at elections@vsb.org on or before March 31, 2017. The nominating petition shall be signed by not fewer than ten other members eligible to vote in the circuit, and shall be accompanied by a statement of qualifications not exceeding one hundred and fifty words (in Word format) and a digital photograph (head shot). It is recommended you describe what is it about your background that makes you well suited to the position and what you hope to accomplish as a member of bar council.

An election by meeting will be conducted in the 10th Circuit. The incumbent is eligible for re-election. The election date has been set by Chief Judge Leslie M. Osborn. It will be held at the Charlotte Circuit Court on Friday, April 14, 2017 at 3:00 p.m. Nominations will be made at the circuit meeting or by any member eligible to vote in the circuit. No supporting petition or second for such nomination will be required. See sample petition at www.vsb.org/site/news/item/council_elections_2017.

Fee Dispute Resolution Program

Now that your work is done, do you find yourself in a dispute with your client over fees and costs? The Virginia State Bar offers another way to settle those disputes, without resorting to costly litigation.

The Special Committee on the Resolution of Fee Disputes oversees the Fee Dispute Resolution Program to provide an avenue, other than litigation, for the expeditious and satisfactory resolution of fee disputes between attorneys and their clients through mediation and uniform arbitration proceedings and works to foster trust and communication among attorneys and clients.

For information on the program, go to our website at www.vsb.org/site/about/resolution-of-fee-disputes.
Lucia Anna “Pia” Trigiani has been named 2017 president of the Virginia Law Foundation. Trigiani is a founding partner with Mercer Trigiani law firm in Alexandria where she practices community association law.

A past president of the Virginia Bar Association, Trigiani currently serves on the Judicial Council of Virginia and the Judicial Ethics Advisory Committee. She is a member of the Boyd Graves Conference and serves on the faculty of both the Virginia State Bar and Virginia CLE®. She is a member of the Virginia Law Foundation Fellows Class of 2013.

She currently serves as chair of the Virginia Common Interest Community Board, a position she has held since 2008 when former Governor Tim Kaine established the board. Her community leadership includes completing a 2016 term as chair of Virginia Free and serving on the boards of the Commonwealth Human Services Foundation, Library of Virginia Foundation and Lead Virginia. Gov. Terry McAuliffe appointed Trigiani to the Board of Visitors of Longwood University in 2014 and Virginia Growth and Opportunity Board in 2016. Trigiani succeeds Irving M. Blank as president of the Virginia Law Foundation.

Thomas S. Berkley has joined Pender & Coward as a shareholder. Berkley focuses his practice in the areas of maritime, admiralty, and transportation. He routinely advises marine terminals, shipyards, ship lines, and trucking and cargo interests on operational, contract, insurance and liability issues.

Ellen C. Carlson has left her association with Commander & Carlson, Attorneys & Mediators, to focus on consumer bankruptcy (both debtors and creditors) representation and family law.

Linda Choe has joined Bean, Kinney & Korman as an associate. She represents individuals in divorce and other family law matters. In addition, Choe serves on the board of directors for the Asian/Pacific Islander Domestic Violence Resource Project.

Michael S. Dry, a former assistant US attorney for the Eastern District of Virginia and most recently the deputy chief of its Criminal Division, has joined Vinson & Elkins as a partner in the firm’s Government Investigations and White Collar Criminal Defense practice. Based in the firm’s Washington, DC office, Dry’s practice will focus on white-collar criminal defense, internal investigations, government investigations, civil regulatory enforcement matters, and complex commercial litigation.

Matthew D. Green has joined the Richmond office of Sands Anderson PC. He focuses his practice on commercial litigation, professional liability, products liability, and insurance coverage. In addition to his extensive jury trial experience, he has successfully represented clients in various forms of alternative dispute resolution.

Nathan C. Gaudio has been elected as a partner in Poles Tublin Stratakis & Gonzalez LLP’s Reston office. He focuses his practice in the areas of business and corporate matters, as well as real estate law and estate planning and administration. He also counsels clients in connection with maritime transactions, corporate governance, and financing matters.

Lisa J. Hedrick has been elevated to shareholder at Hirschler Fleischer. She is a member of the firm’s Mergers and Acquisitions practice, where she counsels clients in complex matters dealing with mergers and acquisitions, capital raising, private equity, business formation, and general business law, and is an advisor to numerous operating companies, private equity firms, and constituents.

Hirschler Fleischer announces the launch of its Construction Law Blog, which provides industry executives with case updates, practical guidance, and other important legal news. Blog posts will provide tips for navigating contract negotiation, payment and scheduling disputes, regulatory concerns, and other practical considerations that impact construction projects as well as breaking news on legal developments, recent revisions to standard contract forms, updates on local industry events and insights on current trends. The Construction Law blog is available on the firm’s website at www.hf-law.com/construction-law-blog.

Pender & Coward announced that the following shareholders have been elected to serve on the firm’s Executive Committee: Richard Matthews, Chief Executive Officer; Mark Baumgartner, Chief Financial Officer; and David Arnold, Chief Operating Officer.

Austin-based trademark and copyright law firm Pirkey Barber PLLC announces that Washington, DC-area law firm Vold & Williamson PLLC has merged into the firm, establishing a new Pirkey Barber office in the Washington area. The principals of Vold & Williamson, Tara Vold and Paul Williamson, are now members of Pirkey Barber PLLC.

Tina D. Reynolds, a member of the Government Contracts and Public Procurement Practice Group, is based in the Northern Virginia office of Morrison & Foerster. She represents a wide variety of government contractors including information technology, defense, biotechnology, and pharmaceutical companies, with a focus on general contract counseling, compliance, and litigation.

Tyler J. Rosá has joined Pender & Coward in the Virginia Beach office. He focuses his practice in the areas of corporate and transactional law, litigation, and real estate. In addition to civil litigation, business and real estate matters, Rosá handles local government defense, homeowners’ association, and trust and estate litigation.
Brian R. Sanderson and Kevin F. X. DeTurris have become principals with the law firm of Blankingship & Keith PC. Sanderson joined Blankingship & Keith after practicing for eighteen years with another local firm. He is a veteran litigator who has tried cases to verdict in all of the local courts, including the federal courts. His practice is concentrated primarily in the representation of individual and institutional healthcare providers. DeTurris is an experienced first-chair trial attorney with who has successfully represented clients in all of the local federal and state trial courts, Supreme Court of Virginia, Maryland Court of Special Appeals, and 4th Circuit Court of Appeals. He regularly litigates complex business disputes involving breach of contract, labor agreements, fraud, conspiracy and a host of other business torts.

Megan Scanlon has joined the law firm of Kaplan Voeker Cunningham & Frank, PLC, as an Associate practicing in commercial real estate and finance. She also works with community and homeowners associations around the Commonwealth, as well as advising on fair housing issues. Scanlon holds a BS from the United States Military Academy at West Point, and a JD from Seton Hall University School of Law.

Nathaniel L. (Nate) Story has been promoted to partner at Hirschler Fleischer. An experienced litigator, Story is a member of the firm's Construction & Suretyship Practice which advises developers, contractors, suppliers, small-business owners, and general counsel on a wide range of industry issues and disputes. Story serves as editor of Hirschler Fleischer’s recently launched Construction Law Blog, which provides industry executives with case updates, practical guidance and other important legal news.

Peyton M. Stroud has joined Christian & Barton LLP in Richmond as an associate in the firm’s corporate and public finance practice groups. She received her law degree from the University of Richmond School of Law, and her undergraduate degree from the University of Virginia.

Andrew J. Tureaud has become an associate with Chadwick, Washington, Moriarty, Elmore & Bunn PC, practicing in the Fairfax office and focusing in the area of common interest community association representation.

For confidential, free consultation available to all Virginia attorneys on questions related to: legal malpractice avoidance, claims repair, professional liability insurance issues, and law office management, call Fairfax County lawyer, John J. Brandt, who acts under the auspices of the Virginia State Bar at (703) 659-6567

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ADVERTISER’S INDEX

ALPS Corporation .......................................................... inside front cover
Dr. Deborah Armstrong ....................................................... 11
Geronimo Development Corporation ................................... back cover
Gilsbar PRO ................................................................. 9
Global Holding ............................................................. 52
Liberty University .......................................................... 7
L. Steven Emmert ............................................................ 9
McAfee Gordon & Associates ........................................... 11
Minnesota Lawyers Mutual Insurance Company .................. 11
National Legal Research Group ......................................... 44
Norman Thomas, PLLC .................................................... 11
Virginia Barristers Alliance Inc. ......................................... inside back cover
Virginia State Bar Members’ Insurance Center ...................... inside back cover

JUDICIAL INQUIRY & REVIEW COMMISSION POSITION

The Judicial Inquiry and Review Commission of Virginia seeks applicants for the position of Commission Counsel. The successful applicant will begin work for the Commission on January 1, 2018, upon the retirement of current Commission Counsel. The Commission is an independent judicial branch agency composed of seven members elected by the General Assembly. Counsel serves at the pleasure of the Commission and must be a member in good standing with the Virginia State Bar, with at least 10 years’ experience. Significant trial and appellate experience is preferred. Salary is that of a Virginia Circuit Court Judge and is subject to appropriations by the General Assembly. Standard state employee benefits are provided. Counsel’s duties are as follows: supervising Commission staff and day-to-day office functions; screening, investigating, and evaluating complaints against Virginia judges alleging ethics violations; preparing agendas and materials for monthly Commission meetings and advising Commission members regarding the merits of such complaints; representing the Commission at Commission hearings; and before the Virginia Supreme Court and legislature; providing ethics advice to Virginia judges upon request; and making presentations at judicial conferences regarding ethics issues. Counsel must have the skills needed to deal with the public and the three branches of state government. The Commission’s office is in Richmond and Counsel must reside in the Richmond area and be willing to travel within Virginia as necessary. To apply, please visit www.courts.state.va.us and select “Employment Opportunities” on the right-hand side. Applications are required by April 14, 2017.

“Not in Good Standing” Search Available at VSB.org

The Virginia State Bar offers the ability to search active Virginia lawyers’ names to see if they are not eligible to practice because their licenses are suspended or revoked using the online Attorney Records Search at www.vsb.org/attorney/attSearch.asp.

The “Attorneys Not in Good Standing” search function was designed in conjunction with the VSB’s permanent bar cards. Lawyers are put on not-in-good-standing (NGS) status for administrative reasons—such as not paying dues or fulfilling continuing legal education requirements—and when their licenses are suspended or revoked for violating professional rules.

The NGS search can be used by the public with other attorney records searches—“Disciplined Attorneys” and “Attorneys without Malpractice Insurance”—to check on the status and disciplinary history of a lawyer.
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