

Justice Lemons Carries University of Richmond Rule of Law Dialogue to London

by Dawn Chase

Justice Donald W. Lemons of the Supreme Court of Virginia was to go to England early this month to continue a dialogue that began this spring in Williamsburg—or more than four hundred years ago in London.

This month's occasion started with the American Bar Association's Section on International Law Conference. The Right Honorable Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales, presented an address on the Rule of Law and terrorism. He invited Lemons, along with Justice Randy J. Holland of the Delaware Supreme Court, to present responses.

Later, Justice Lemons was scheduled to give a lecture on "Jamestown Legacy—Reflections on the Rule of Law," at the historic Middle Temple Inn of Court in London.

The invitations followed the Rule of Law Conference held April 11–14, 2007, at the University of Richmond and Historic Jamestowne. (See "Centuries after Jamestown, Rule of Law Provides Means to Racial Justice," in the June/July 2007 issue of *Virginia Lawyer*.)

The conference and subsequent program in England continued a relationship that the English Inns of Court have had with Virginia since before the first English settlers sailed up the James River in 1607.

"That story heretofore had not been told in the United States," Lemons said on September 5 in an interview at his chambers in Richmond.

Barristers at the Middle Temple Inn of Court drafted the Virginia Company Charter, through which King James I gave

a stock company permission to develop a settlement along the mid-Atlantic coast of North America.

"It was the barristers—the lawyers—of the Middle Temple who were predominantly involved in drafting the charter, soliciting the stock subscriptions, financing the settlement itself, and then providing the legal structure for the colony," Lemons said.

"They drafted the documents that provided the first democratic form of government in the New World."

Lemons—a trustee of the American Inns of Court and a member of the John Marshall Chapter in Richmond—invited the English Inns to participate in the Rule of Law Conference. Each of the four English Inns prepared for the event by holding a Jamestown lecture in connection with the quadricentennial.

And during the conference, the English Inns donated a plaque that commemorates the founding of the colony. The plaque rests at Historic Jamestowne. A photo on Lemons's wall shows Lord Phillips and United States Chief Justice John G. Roberts Jr. shaking hands across the plaque, while Lemons and retired U.S. Justice Sandra Day O'Connor look on.

Lemons and law school dean Rodney A. Smolla, then of the University of Richmond, now of Washington and Lee University, were co-hosts of the Rule of Law Conference, which drew many highly placed members of the British judiciary, as well as Roberts, O'Connor, and U.S. Justice Stephen G. Breyer.

While Americans celebrated the four hundredth anniversary of the founding of

Jamestown, the Rule of Law Conference focused on the Anglo-American experience of democracy. The conference explored how ideas from England grew when transplanted into American soil, and how the Anglo-American experience compares to that of emergent democracies in different cultures.

The Virginia Company Charter conveyed the "rights of Englishmen" upon the Jamestown settlers from the beginning. But the details of those rights "took off in different directions altogether," Lemons said.

Many of the core principles remained in place. "In an Anglo-American sense, if we were to identify the things that make up a Rule of Law, we would include first of all a broad participatory democracy. The right to vote, for example, as a cornerstone of democratic expression is similar in both countries.

"You'd have the right to own property, the right to form contracts. When you have these rights, you have to have a system to be able to enforce them so that [the rights] mean something. So there would be an independent, reliable system of dispute resolution.

"In the Anglo-American experience, we have had a very high regard for the rights of conscience, and that is expressed—at least in our constitutional development—as free exercise of religious belief, free speech, the right to assemble, the right to petition government, the right to a free press."

But as the Rule of Law developed in America, the details diverged from the English version.

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“What happened, of course, is that the combination of physical distance and a little bit of benign neglect on the part of the mother country allowed the American experience to move in a different direction,” Lemons said.

“First of all, the common law started development in America case-by-case, and because of different needs and different circumstances the common law in America took a different direction.”

An example, he said, addresses the establishment of religion. “It wasn’t long after the colonists came here, and before there was any new country—in the sense of a declaration of independence and a constitution—that Thomas Jefferson introduced the Bill for Religious Freedom—a decidedly antiestablishment doctrine. Patrick Henry tried the Parson’s Cause out in Hanover County, which was a decidedly antiestablishment reaction of a jury in Virginia.

“And of course, what is now the First Amendment to our Constitution has the prohibition against the establishment of religion initially by the federal government—a proscription that has now been extended to the states.”

In another example, the right to trial by jury is more limited in England than the United States, Lemons said.

“... because of different needs and different circumstances the common law in America took a different direction.”

The balance of government also took different directions. In England, “Parliament

remains supreme,” Lemons said. But the American expression includes a separation of powers—“not only between executive, legislative and judicial branches, but (also) the separation of powers that we call federalism—where we have state systems and we have a federal system.”

The conference also examined emerging democracies. “The idea of exporting democratic principles and Rule of Law concepts around the world becomes uniquely difficult as you come to areas of the world where the history, tradition, culture, and values are dramatically different than ours. It doesn’t mean that you don’t pursue the same values, necessarily, but it means that the application of them is a new and different challenge.”

As Lemons was preparing for the conference more than two years ago, he was approached by chiefs of two Virginia Indian tribes. They asked him, “Will your Rule of Law Conference explain where the Rule of Law was when our people were displaced from their lands?”

Lemons said, “Well, I could think about almost nothing else with regard to the conference for weeks after that, because . . . I realized that there were at least two groups that appeared to have no reason for celebration of the Jamestown event: American Indians—indigenous people—and African-Americans, who were brought here in 1619 on a Dutch warship that came up the James River.

“We decided that we were going to tell the story and engage in a dialogue that was honest because we have not always been consistent about the application of these principles that we call the Rule of Law.

“The fact that we have failed upon occasion, however, does not mean that we don’t extol the virtues of the concepts and continue to ask why we have departed from these concepts upon occasion, and what we can do to remedy the problem.”

So Elaine R. Jones, retired president of the National Association for the Advancement



Virginia Justice Donald W. Lemons

photo © Doug Buerlein

of Colored People Legal Defense Fund, and Joe Shirley Jr., the president of the Navaho nation, were invited to the podium. “You could have heard a pin drop in the room as [Shirley] explained that [Indian people] feel they have been left out of the American dream.”

“I think the conference had an integrity about it that was truly remarkable,” Lemons said.

What connection does the lofty assemblage of the Rule of Law Conference have with the workaday Virginia lawyer?

Lemons responded with a reference from Alexis de Tocqueville’s nineteenth-century political science commentary, *Democracy in America*.

“It was the lawyers of America who held together the very fabric of this society,” Lemons said. DeTocqueville observed that lawyers “permeated the institutions of America. It was the lawyers who protected the Rule of Law.

“It is so important for lawyers, at a time like this, to recommit themselves to these principles of the Rule of Law that undergird everything that is America.”

Lawyer Rehab No Slap on the Wrist

VSB Supports Path to Recovery for Lawyers Willing to Work

by Dawn Chase

A lawyer impaired by substance abuse or mental illness can cause serious problems for the client who pays him for counsel and advocacy, only to find that phone calls aren't returned, deadlines are missed, and the legal matter never gets resolved.

While lawyers are free to choose among assessment and rehab programs, there is one—Lawyers Helping Lawyers—that the Virginia State Bar financially supports to ensure that attorneys can get help, even when their practices are in a shambles and their financial reserves are minimal.

Attorneys become involved with Lawyers Helping Lawyers in four ways:

- Lawyers approach the program individually to seek assistance with substance abuse, depression, or another psychiatric problem.
- Colleagues, friends, or family of lawyers seek the program's help to set up interventions when a lawyer's life or practice is harmed by his problem.
- The Virginia Board of Bar Examiners, when it flags a lawyer with a potential substance abuse problem or mental illness during an investigation for licensure, refers applicants to the program for assessment.
- The Virginia State Bar sometimes refers to LHL for evaluation, treatment, and monitoring when a disciplinary investigation detects signs of impairment.

Confidentiality

The Virginia State Bar finds out that a lawyer is receiving help from Lawyers Helping Lawyers only if the lawyer has waived confidentiality. Lawyers release this information in situations involving professional discipline, such as:

- An attorney who faces disciplinary charges discloses his LHL relationship as mitigating evidence that he is addressing an underlying problem. The bar might then request an assessment of the attorney's progress from LHL.

- The bar, in investigating professional misconduct, finds reason to suspect impairment and refers the attorney to LHL for assessment. The reports are released to the bar with the attorney's written permission.

- A bar disciplinary sanction can include a condition that the lawyer comply with a Lawyers Helping Lawyers treatment or monitoring plan. The bar can obtain reports on the attorney's cooperation with the program and results of screenings for substance abuse. If the attorney doesn't comply, he faces harsher sanctions.

The VSB is not interested in the intimate details of the lawyer's illness and treatment. It wants to know whether the attorney has an impairment that can be brought under control so he can practice effectively.

In some cases of attorney impairment, compliance with a Lawyers Helping Lawyers contract is required as a condition of an admonition or reprimand (public or private) or a suspension for professional misconduct.

In cases in which the bar determines the lawyer's illness is jeopardizing the public, the hearing on disciplinary charges may be postponed indefinitely, and the bar can ask that the attorney be summarily suspended for impairment.

After the lawyer has improved, he can petition the Disciplinary Board for reinstatement. The bar then can proceed on the postponed disciplinary matter.

Lawyers cannot avoid ethics charges by going into rehab. "We don't have any problem with somebody suffering those consequences," said Lawyers Helping Lawyers Executive Director James E. Leffler.

Public Disclosure

Impairment hearings are not listed on the public docket, and they are closed to the public. The hearing is before a panel of five members of the VSB Disciplinary

Board. A guardian ad litem is appointed to safeguard the interests of unrepresented respondent attorneys.

An impairment suspension is posted on the VSB Web site with this wording: "The Virginia State Bar Disciplinary Board suspended [Attorney's] law license on impairment grounds." No details are provided, and no press release is distributed.

If an attorney is ordered to enter into a monitoring agreement with LHL as part of a public disciplinary sanction for professional misconduct, that fact is public and might be included on the Web site and in the press release that is distributed. The final Disciplinary Board order, which often describes details of the case, also is posted on the Web.

Signs of Impairment

George H. Hettrick, a longtime volunteer with Lawyers Helping Lawyers, published a 1999 article, "Addiction to Alcohol and Other Drugs: Recognizing the Signs of Lawyer Impairment,"¹ that offers a checklist of suspicious signs, which include "borrowing" from trust accounts, procrastination, pervasive dishonesty, blaming problems on others, more than one conviction of driving under the influence, and poorly managed finances.

But Hettrick stresses that those traits in isolation do not mean the person is a substance abuser. "[T]he observation must be coupled with a pattern of gradual behavioral changes over time," he writes.

Signs that a lawyer suffers from depression are similar to those of substance abuse, Leffler said.

Protecting while Seeking Rehab

Under what circumstances would the Virginia State Bar prosecutors agree to allow an impaired lawyer to continue practicing on the condition that he comply with a Lawyers Helping Lawyers contract?

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“Public protection is paramount,” said VSB Counsel George W. Chabalewski. “What are the charges?” Each case is assessed individually. The prosecutor would weigh the effect on past and future clients, prior misconduct findings, the lawyer’s office management practices, the immediacy of any problems, and the lawyer’s medical status, including prognosis.

Impairment can include not only mental illness and substance abuse, but also irreversible conditions such as brain injury and dementia, Chabalewski said.

“In an instance where there has been no harm to a client and this person [the respondent] seeks treatment, and we think there’s a likelihood he can be helped, I think we meet the needs of public protection by not only us watching him, but ensuring that Lawyers Helping Lawyers is watching him,” while the lawyer continues to practice.

Financial Issues

Lawyers impaired by substance abuse and depression often have depleted their financial and social resources by the time they address their problem. They often are divorced or separated from their spouses and they have isolated themselves from colleagues. Their insurance, if they have any, rarely provides adequate coverage of inpatient mental health and substance abuse treatment, followed by outpatient medical care.

Lawyers Helping Lawyers provides the services it offers in-house for free. For other costs related to rehabilitation, it offers interest-free loans from its Stephen C. Chapple Recovery Assistance Fund. The assessments that Leffler does would cost the bar or the attorney \$500 to \$1,000 if they were done elsewhere in the medical community.

Slap on the Wrist?

A disciplinary requirement that a lawyer comply with an LHL substance abuse contract is tougher duty than a lot of sanction terms, such as extra continuing legal education hours or hiring an office auditor, Leffler said.

The usual contract requires a two- to three-year commitment. It usually starts with an intensive five-hour assessment by Leffler, a licensed professional counselor with a master’s degree in rehabilitative counseling. A treatment plan is developed in collaboration with an appropriate therapist and can include inpatient treatment, intensive outpatient treatment, and individual and group counseling. In addition, support groups, random urine screens for drugs, and meeting weekly with LHL volunteers are part of recovery contracts.

“What you’re asking somebody to do is to change their life, and this requires a great deal of work,” Leffler said. “Frequently the most important thing in an attorney’s life is their career, and they will go to almost any lengths to avoid not being able to be a lawyer.

“Seventy-five percent of the people who go into contract with us complete it successfully.”

LHL’s Future

“The bar couldn’t afford to pay for the evaluations that Lawyers Helping Lawyers obtains,” said Barbara Ann Williams, a former VSB counsel and now member of the LHL board.

“The most striking thing I learned after I became bar counsel was how many lawyers who have disciplinary problems also have substance abuse or mental health issues.

“Lawyers who have problems can also be very talented . . . with a lot to offer the public.”

As a board member, she has become aware that “there are going to be more situations where respected members of the bar encounter cognitive defects.” They will need help identifying their problems, receiving treatments that might be available, or being guided into retirement if they no longer can practice safely.

Lawyers Helping Lawyers operates on a shoestring, with a budget of \$160,000 to \$180,000 and about fifty active volunteers throughout the state. Leffler said that, when more money becomes available, the

program hopes to expand by adding part-time positions in Southwest and Northern Virginia. LHL currently is recruiting volunteers in the Virginia Beach-Tidewater area, which Leffler said is underserved.

Williams said the VSB gets a bargain in Lawyers Helping Lawyers. “They are a very committed group of folks, with a belief in the power of redemption: No matter how dire the situation, there is always the possibility that the person can turn their life around and use their legal education to help others.”

Endnote:

1 Hettrick’s article can be obtained by contacting Lawyers Helping Lawyers at (877) 545-4682 or jim@valhl.org.

About Lawyers Helping Lawyers

Lawyers Helping Lawyers is a 501(c)(3) nonprofit organization that provides confidential substance abuse and mental health services to the legal community, including attorneys and judges and their families and staffs.

It is supported by donations. The Virginia State Bar is LHL’s largest contributor, at \$100,000 per year. Other donations come from The Virginia Bar Association (\$20,000), Virginia Trial Lawyers Association (\$17,500), Virginia Association of Defense Attorneys (\$1,000), ALPS (\$30,000), Minnesota Mutual (\$4,000), various law firms (\$15,000), and individual contributors.

LHL employs an executive director and secretary. It also is assisted by about fifty active volunteers statewide.

Services include planning interventions, assessments, referral to treatment providers, monitoring rehabilitation contracts, coordinating treatment and twelve-step groups, and providing community education.

Information on Lawyers Helping Lawyers can be obtained by calling (877) 545-4682 or e-mailing jim@valhl.org.

In Memoriam

William H. Abeloff
Gochland
November 1934–August 2006

James Claiborne Allred
Fairfax
October 1946–March 2007

Kenneth P. Asbury
Wise
October 1922–March 2007

Robert F. Banks
Norfolk
December 1927–March 2007

David Kent Beals
Atlanta, Ga.
July 1936–June 2007

Herman T. Benn
Suffolk
December 1911–June 2007

Leslie Annette Lyda Borden
Alexandria
March 1949–August 2006

Mark E. Borton
Longwood, Fla.
July 1929–November 2006

Andrew Elliott Carpenter
Tuscumbia, Ala.
March 1974–July 2007

Eugene E. Derryberry
Roanoke
October 1942–July 2007

William Edward Findler
Arlington
July 1948–June 2007

John M. Fischer
Fairfax
March 1940–May 2007

Reinhard W. Fischer
Phoenix, Ariz.
February 1947–February 2007

F. Rodney Fitzpatrick
Roanoke
October 1925–February 2007

Benjamin R. Gardner
Martinsville
October 1941–September 2007

Griffin T. Garnett Jr.
Arlington
August 1914–June 2007

A.A. Giangreco
Leesburg
June 1924–February 2007

John R. Hanley
Alexandria
November 1920–March 2007

James O. Harrell
Titusville, Fla.
February 1935–December 2006

Oliver W. Hill
Richmond
May 1907–August 2007

Richard E. Ingram
Martinsville, N.J.
March 1940–June 2007

Paula Ann Jameson
Arlington
February 1945–June 2007

Monroe Jamison Jr.
Abingdon
March 1955–July 2007

Roby G. Janney
Luray
April 1920–April 2007

Ann Perinchief Jarrell
Fredericksburg
April 1945–February 2007

John T. Ketcham
Bowie, Md.
February 1937–September 2006

Lewis A. Martin Jr.
Charlottesville
November 1924–July 2007

Michael Edward McKenzie
Arlington
January 1938–July 2007

Thomas Ransom Porter
Marshall
July 1950–May 2007

Gerald Milton Rubin
Northbrook, Ill.
October 1930–August 2006

Charles E. Sandeen
Largo, Fla.
November 1919–July 2007

Albert William Schlim
Newport News
December 1930–March 2007

Lynne Ann Smith
Vienna
July 1956–May 2007

Harold Kenneth St. Clair
Covington
October 1941–February 2007

Raymond H. Strople
Portsmouth
October 1940–August 2006

Valerie Szabo
McLean
March 1956–June 2007

Catherine Blackwell Tackney Talbott
Baltimore, Md.
May 1947–July 2007

Peter Augustus Theodore
Blacksburg
April 1954–July 2007

Thomas Daniel Taylor
Warsaw
September 1934–July 2007

Larry M. Topping
Poquoson
April 1932–June 2007

Lynn Vandenburg
Minneapolis, Minn.
October 1961–May 2007

John Stanley Warner
Tucson, Ariz.
February 1919–April 2006

Elizabeth Curtin Weimar
Washington, D.C.
June 1957–June 2007

Edward R. Willcox Jr.
Norfolk
April 1928–May 2007

Richard Alan Williamson
Williamsburg
September 1943–June 2007

Virginia Law Foundation Pauses Grants

by Dawn Chase

The Virginia Law Foundation is reviewing its grant-making process to try to give more impact to its philanthropy.

During the review, the foundation will not accept new grant requests for fiscal 2009, but it will continue to provide up to \$200,000 for continued support of existing projects, such as law student public service internships and certain legal services programs.

Part of that money also will be available to the Virginia State Bar and The Virginia Bar Association, subject to approval by the foundation board.

John L. Walker III of Richmond, president of the VLF board, refers to the one-year suspension of the new-grant process as a “quiet bridge cycle ... which would give us time to formulate and to focus on the means by which we can become more impactful grant makers.”

The VLF was founded in 1974 and from 1983 until 1995 administered Virginia’s Interest on Lawyers’ Trust Accounts Program. Since 1984, it has awarded more than \$22 million in grants for law-related projects. The board annually allocates 5 percent of the market value of its investment portfolio—which now totals about \$13 million—to grants and operations.

Despite the size and largess of the VLF, which ranks nationally among the most generous in bar foundation giving, board members feel it has taken a passive approach characterized by “fragmented support to a variety of causes,” said VLF Executive Director Sharon K. Tatum, quoting a letter sent last summer to bar and community leaders by former VLF President John A.C. Keith.

Walker said, “In the past, we have supported a large number of grants. We came to the realization that, while our support

was very important, ... our impact had become somewhat diluted because we were making so many grants.”

Grants awarded for fiscal 2008 totaled \$425,000. They range from \$660 for translation of “Children and Divorce” pamphlets into Spanish for the VSB’s Family Law Section to \$72,000 for public interest internships by students at Virginia law schools. The thirty-six grants were chosen from seventy-six requests for funds totaling \$1.11 million. The list of awarded grants is available at www.virginialaw-foundation.org/currentgrantawards.htm.

The bridge cycle was proposed at a retreat in April, when board members focused on the foundation’s core mission and values. They rewrote the VLF mission statement to make it sleeker. It now states: “The Virginia Law Foundation promotes through philanthropy the rule of law, access to justice, and law-related education.”

The VLF subsequently surveyed legal and nonprofit entities to seek input that would help it “redirect or refocus our philanthropy,” said Jeanne F. Franklin of Alexandria, chair of the transition committee that is overseeing the project.

In the coming months, the committee will create ways for the VLF to:

- Identify and encourage development of innovative projects. The VLF hopes to more clearly articulate “what we’d like to see accomplished in service of the specific prongs of our mission,” Franklin said.
- Develop a system for vetting proposals.
- Adopt best practices for projecting and measuring the impact of projects.
- Open the foundation to collaborations that will give more impact to its philanthropy.

Any new procedures or goals will go into effect for fiscal 2010.

Walker declined to predict what direction the foundation will take. However, a hint may be found in the VLF’s first partnership, which it recently established with the Virginia Holocaust Museum in Richmond.

The foundation has pledged \$100,000 toward the museum’s half-million-dollar project to construct a replica of the Nuremberg, Germany, courtroom where leaders of Nazi Germany were tried after World War II. The VLF will appoint two members to the commission that oversees the exhibit and the educational programs that will accompany it.

As part of the partnership, the museum will bestow an annual “Virginia Law Foundation and Virginia Holocaust Museum Rule of Law Award”—a promotion of the VLF name in a place visited by members of the general public from throughout the world.

The VLF board decided to support the exhibit because the Nuremberg trials were a testament to the Rule of Law. “At its core, the VLF recognizes and appreciates the Rule of Law as an essential cornerstone of any stable society,” Walker said.

In another project that takes the VLF in a new direction, the foundation established the Oliver White Hill Internship Program, which provides funds annually to support a summer intern to work in civil rights and civil liberties law. The Oliver White Hill Foundation will automatically receive the interest earned in this fund annually—another first.

In fiscal 2009, while the VLF transition committee does its work, the foundation will provide about \$200,000 in ongoing

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Want to Become a CLE Provider?—Here's How

by Dawn Chase

How does a lawyer become a continuing legal education presenter?

The answer, according to people who hire CLE teachers, is by developing practice experience, networking, building a strong résumé, and asking.

Once you've gotten a teaching engagement, give your class something to take home and use to better represent their clients, and you might be invited back.

Practice Experience

Experience is the first requirement that CLE providers look for, said Gary L. Wilburt, executive director of Virginia CLE. Would-be teachers should have five to ten years' experience under their belt. Young lawyers "may be real smart folks," but "smart" doesn't substitute for years spent developing a practice area, he said.

Networking

Join and participate in practice sections—through the Virginia State Bar, The Virginia Bar Association or specialty bars such as the Virginia Association of Defense Attorneys or the Virginia Trial Lawyers Association. "Get involved in the section's CLE development—they basically plan the seminar and they recruit speakers," said Charles Crank, business manager of Virginia CLE, where "most speakers are referred to us from other attorneys who have been presenters for us."

Virginia CLE vets potential teachers by asking others in the same practice area, "Do you know them? What is their reputation? Have they spoken before?" If someone on the panel that's putting together a seminar has served on a committee with you, you might be recommended.

Résumé

The following could be included on your CLE résumé:

- Legal topics in which you have demonstrable expertise

- Sections and associations in which you are active
- Public speaking experiences with schools, bar speakers bureaus or other programs
- Faculty experience
- Service on the bench
- Articles or books you have written or co-written
- A list of significant cases you have been involved with, broken out by bench and jury trials
- Previous CLE teaching experience, including in-house training

When compiling your list, gauge whether you're ready for your target audience. For example, Jack L. Harris, executive director of the VTLA, said, "Our programs are not training grounds where people can be a presenter fifty times before they become a good one." Quality is a bread-and-butter issue for providers. "Our reputation rests on the quality of programs," Wilburt said.

Asking

If you're part of a panel putting together a seminar, make your interest in being a presenter known. Tell other members of your section about an area of law you'd like to share your insights about.

You can even express your interest by cold-calling CLE providers, or the boards and committees that put panels together. "I take those e-mails and I take those phone calls," Wilburt said. "We do take people who just call us. We plug them into a discussion with members of a section that is selecting a panel."

"We're always looking for good speakers," Harris said.

Give Your Audience Something to Use

"The best teachers are people who love standing before a group and helping them understand particular subjects," Harris said.

"You can't have someone up there theorizing. You've got to know whether it works or doesn't work." The ideal presenter "can improve a lawyer's ability to represent clients. That's critical."

Harris also encourages speakers to provide examples so the audience can visualize how the case went—either through demonstrative evidence or by telling stories. Focus not on how knowledgeable you are, but on how you won your case and how your audience might be able to do it.

What's in It for You?

Most CLE presenters, unless they have a niche practice for which few speakers are available, don't get paid, although some travel and preparation expenses might be covered. "It's hard to carve out exceptions," Wilburt said.

But presenters do receive payback in CLE credits for themselves—the number of hours you present, plus four times the hours, up to a cap of eight hours, for preparation.

It gives lawyers an opportunity to get away from the practice for awhile.

If you speak with some frequency, it can enhance your referral base for clients, as well as generate more speaking engagements.

Finally, you earn a reputation for giving back to the profession. "The legal profession is rather unique," Wilburt said. "There is a general altruistic motive" in educating fellow lawyers. Also, "There are lawyers who really like to teach—it's different from practicing."

Edmonds Receives NABE's Top Award

Thomas A. Edmonds, executive director of the Virginia State Bar, holds the National Association of Bar Executives Award for Outstanding Bar Leadership. The award is the highest bestowed by NABE, which Edmonds served as president. With him in August during the NABE Annual Meeting in San Francisco are (l-r) VSB President Howard W. Martin Jr., Edmonds's wife Martha, and Allan B. Head, executive director of the North Carolina Bar Association, who served as NABE president in fiscal 2007.



Local and Specialty Bar Association Elections

The Alexandria Bar Association

Eugene Andrew Burcher, President
Gwena Kay Tibbits, President-elect
Barbara Sattler Anderson, Secretary
Alexander Hugo Blankingship III, Treasurer
Seth Mark Guggenheim, Director
Kathleen Maureen Uston, Director
Sarah Elizabeth McElveen, Director

Asian Pacific American Bar Association of Virginia, Inc.

Su Yong Min, President
Michael Lee Chang, Vice President
Ann Nguyen Luu, Secretary
John Minh Tran, Treasurer

Campbell County Bar Association

George William Nolley, President
Frank Austin Wright Jr., Vice President
Paul Austin McAndrews, Treasurer

Charlottesville-Albemarle Bar Association

Donald Ronald Morin, President
John Walter Zunka, President-elect
Marc Andrew Peritz, Secretary-Treasurer

Greater Peninsula Women's Bar Association

Dywona Lynette Vantree, President
Frank Alwin Edgar Jr., Secretary
Charles Edwin Powell, Treasurer
Stephen Ashton Hudgins, At-Large Board Member
Lois Norma Manes, At-Large Board Member
Polly Chong, At-Large Board Member

Local Government Attorneys of Virginia

Jan Leslie Proctor, President
Joseph L. Howard Jr., Vice President
Rhysa Griffith South, Secretary-Treasurer

Metropolitan Richmond Women's Bar Association

Leslie Ann Takacs Haley, President
Tracy H. Spencer, President-elect
Vanessa Laverne Jones, Vice President
Jayne Ann Pemberton, Secretary
Ashley Beuttel Macko, Treasurer

Norfolk & Portsmouth Bar Association

Donald Charles Schultz, President
John Lockley Deal, President-elect
Jeffrey Lance Stredler, Secretary
David Wayne Lannetti, Treasurer
Andrew Richard Fox, YLS Chair

Portsmouth Bar Association

Christine Dung Nguyen Piersall, President
Elizabeth Bartlett Fitzwater, President-elect
Anetra Leta Robinson, Secretary

Richmond Chapter, Old Dominion Bar Association

Courtney Martin Malveaux, President
Carlos LeMont Hopkins, Vice President
Yvette Anita Ayala, Secretary
Robert Edley Jr., Treasurer

Roanoke Bar Association

George Alfred McLean Jr., President
Mark Kenneth Cathey, President-elect
Francis Hewitt Casola, Secretary-Treasurer

CALL FOR NOMINATIONS

Family Law Service Award

**Lewis F. Powell Jr.
Pro Bono Award**

Lifetime Achievement Award

**Oliver White Hill
Law Student Pro Bono Award**

**R. Edwin Burnette Jr.
Young Lawyer
of the Year Award**

Tradition of Excellence Award

**For more information on
these awards, see
[www.vsb.org/site/members/
awards-and-contests](http://www.vsb.org/site/members/awards-and-contests).**

JOIN US!

Become a member of the VSB Committee on Technology and the Law.

If you are interested in:

- electronic filing and record keeping
- privacy and public access issues
- technology and law practice management
- the intersection of technology and ethics

Join Chair Sharon Nelson and the committee when it meets electronically and personally at the VSB Annual Meeting each June. Contact her at snelson@senseient.com if you would like to become a committee member.

Virginia's Eastern District Court Has New Clerk



G. Fernando Galindo has been named clerk of court for the U.S. District Court for the Eastern District of Virginia. He supervises clerks offices at courts in Alexandria, Richmond, Newport News, and Norfolk, which is his home office. The appointment was effective April 23, 2007.

Galindo has worked for the federal court system for sixteen years. He joined the Eastern District of Virginia in 2004 as chief deputy clerk and has served as acting clerk since April 2006, when Elizabeth H. Paret moved to the U.S. Court of Appeal for the District of Columbia Circuit as circuit executive.

Galindo previously was chief deputy clerk for the U.S. Court of Appeals for the Second Circuit in New York, and he has held positions with the U.S. district courts for the Southern District of New York and the District of Columbia. He holds a degree in psychology from St. Mary's College in Maryland.

National Adoption Day

November 17, 2007



Alexandria

Date: Sat., Nov. 17, 2007, 10:00 AM, Alexandria Circuit Court
Contact: Amel Logan, Alexandria Dept. of Social Services, 703-519-3318 x 212
Note: By Invitation Only. Please contact Amel Logan if you are interested in attending.

Campbell County

Date: Sat., Nov. 17, 2007
Campbell County Circuit Court
Contact: Joan Millward, Clerk, Campbell Co. Dept. of Social Services, 434-332-9753

Fredericksburg

Date: Sat., Nov. 17, 2007
Fredericksburg Circuit Court
Contact: Joan Millward, Clerk, Fredericksburg JDR District Court, 540-372-1072

**For more information, visit
NationalAdoptionDay.org**

Hampton

Date: Sat., Nov. 17, 2007, 11:00 AM, Hampton Marina Hotel
Contact: Shirley Bowie, Hampton Dept. of Social Services, 757-727-1965

Newport News

Date: Sat., Oct. 27, 2007
Contact: Carole Sutton, Newport News Dept. of Social Services, 757-926-6113

New River Valley

Date: Sat., Nov. 17, 2007, 10:30 AM, Skate Center, Christiansburg, VA
Contact: Depaul Family Services, 540-381-1848

Prince William

Date: Sat., Nov. 17, 2007, 10:00 AM, Prince William Circuit Court. Contact: Addie Whitaker, Prince William Dept. of Social Services, 703-792-7500

Richmond

Date: Sat., Nov. 17, 2007, 10:00 AM, Oliver Hill Courts Building. Contact: Diane Ickes - 804-646-2918 or Diane.Ickes@RichmondGov.com
Note: By Invitation Only. Please contact Diane Ickes if you are interested in attending.

Roanoke County

Date: Sat., Nov. 17, 2007
Roanoke County Circuit Court
Contact: Ellen Weinman, 540-389-3825

Lawyers Slow to Request Fee-Cap Waivers

Waivers Sought in Only 208 of Almost 43,500 Vouchers

by Dawn Chase

Court-appointed attorneys have been slow to apply for new waivers of Virginia's fee caps in criminal cases pursuant to *Code of Virginia* § 19.2-163. Hundreds of attorneys also have used the wrong form, or filled the right form out incorrectly, when they applied for payment—whether they requested a waiver or not.

In the first quarter since July 1, when the waivers went into effect, only 208 waiver requests were among the almost 43,500 vouchers for criminal court-appointed work processed by the Supreme Court of Virginia's Office of the Executive Secretary, which administers the waiver program. Of the 208 applied for, 189 were granted some or all of the amounts requested. Of \$40,805 in waiver fees requested, \$34,464 was granted.

The response is frustrating to those who have worked for many years to convince the General Assembly to pay higher fees to court-appointed attorneys. Supporters of higher fees hope that the \$8.2 million in waivers approved by the 2007 legislature lays a foundation for eliminating the fee caps altogether.

However, unless court-appointed attorneys accurately complete the revised FORM DC-40, LIST OF ALLOWANCES, and report actual time spent in and out of court per charge, the Supreme Court of Virginia will not have the data, and the supporters will not be able to prove their premise that lawyers are putting in many more hours than they are paid for when defending the poor.

Many more fee vouchers—almost 4,350—were returned to lawyers because of errors that included:

- Lawyers used the old form that is no longer in effect instead of using the revised FORM DC-40, LIST OF ALLOWANCES (REVISED 7/07).
- Many attorneys did not indicate the actual time spent in and out of court for each charge.
- Three hundred failed to include their Virginia State Bar member numbers—a requirement on the new form.

Because the returned vouchers were not processed, the Court does not know if they included waiver requests.

Betsy Wells Edwards of the Virginia Fair Trial Project is working to identify the reasons lawyers do not seem to be taking the opportunity to increase their pay for court-appointed clients.

“Getting waivers approved and partially funded was a major public policy breakthrough,” Edwards said. “The legislature will be closely monitoring the requests for and paying out of waivers.

“It is very disheartening and potentially damaging for so few court-appointed lawyers to have sought waivers. If we are to succeed in upcoming sessions in getting more money for indigent defense in Virginia, it is imperative that court-appointed lawyers apply for waivers.”

One reason for the slow response might be that filling out the forms, which requires recording actual time spent per charge, is a cultural change for lawyers who had become used to receiving the same low fee regardless of the time and effort required.

Edwards said she plans to work with criminal bar associations and other groups to present training sessions for possible continuing legal education credit.

The pressure to get accurate numbers is building: The Supreme Court must report this fall on the early response, to General Assembly money committees. Proponents would like to use this and future quarterly reports from the Court to document the need for continued or additional funding during the 2008 and future General Assembly sessions. To do so, accurate and complete reporting by attorneys on the DC-40 is essential.

As lawyers adjust to the new required level of documentation, Court officials emphasize that timekeeping need not be complicated. For example, if a lawyer has a client who faces three charges, calculating time per charge can be as simple as dividing the total time spent on the client by three and listing that amount for each charge.

Changes are being made to clarify certain areas of the DC-40. The Office of the Executive Secretary anticipates the edited forms will be available after the first of the year.

Links to more information, forms, and a training video for waivers is posted on the Virginia's Judicial System Web site, www.courts.state.va.us.

Fee-Cap Waivers for Court-Appointed Counsel:

Some Frequently Asked Questions

Compiled by Betsy Wells Edwards

What are fee-cap waivers?

A new fee-cap waiver system was established by the 2007 Virginia General Assembly pursuant to amendments to *Virginia Code* § 19.2-163. The amendments went into effect on July 1, 2007. Two levels of additional compensation beyond the fee caps may be awarded through these waivers.

The first level is called the *supplemental statutory waiver amount*. In general district and juvenile and domestic relations district courts, the current fee cap for a single misdemeanor or delinquency charge is \$120. This may be waived up to \$120 in additional compensation under a first-level waiver. Single felony charges now capped at \$445 can be waived up to an additional \$155, and other felonies currently capped at \$1,235 can be waived up to an additional \$850. These first-level felony waiver amounts are available in circuit court and when the felony case is resolved in district court.

The second level, available in all courts and all cases, is called the *fee for additional waiver*. This additional fee allowance is unlimited and depends on the circumstances of the case.

How do I apply?

Any court-appointed attorney in private practice who has represented an indigent defendant in a criminal matter is eligible to apply for a waiver. The attorney must complete a FORM DC-40(A) APPLICATION AND AUTHORIZATION FOR WAIVER OF FEE CAP (7/07) for each charge for which a waiver is being sought, along with the FORM DC-40 LIST OF ALLOWANCES (REVISED 7/07) and submit these forms with a time sheet to the court in which the case is concluded. The revised FORM DC-40 (not the old DC-40) must be completed whether the attorney is applying for a waiver or just seeking compensation as a court-appointed attorney within the statutory fee cap.

What if the case began before July 1, 2007?

If the case concluded on or after July 1, 2007, the court-appointed attorney may

apply for a waiver. The “trial/service date,” which is the date the case concluded, is the date that will determine whether the attorney is eligible for a waiver.

I was appointed by the J&DR court in a civil matter. Am I eligible to apply for a waiver?

No. Only attorneys appointed to represent indigent adults or juveniles in criminal matters may apply for the waivers.

What is the difference between the two levels of waivers?

The first level, or *supplemental statutory waiver amount*, is limited to the amount specified in the statute for the charge; it must be approved only by the presiding judge. The second-level waiver, or *fee for additional waiver*, is not limited in amount and must be approved by both the presiding judge and the chief judge.

When I request a first-level waiver, can the judge award less than the amount specified in the statute?

Yes, *Code of Virginia* § 19.2-163 provides that the court may award “up to” the additional amounts specified for the first-level waivers.

When do I apply for a waiver, and when will I be paid?

Once the case is concluded, you must submit the required paperwork within thirty days to the court in which the case was concluded. Some courts prefer that vouchers be submitted the day a case is ended. Each DC-40 form should be processed within thirty days of the local court certifying the authorized amount for payment and submitting it to the Office of the Executive Secretary of the Supreme Court.

What criteria will the court use in deciding whether to grant my request for a waiver?

In determining whether to grant either waiver, the court will consider the effort expended by the attorney, the time reasonably necessary for the representation, the novelty and difficulty of the issues, or

other circumstances. A list of examples of “exceptional case” factors that courts should consider when granting a waiver is available on the Virginia’s Judicial System Web site—www.courts.state.va.us.

Can I appeal if my request for a waiver is denied?

No. There is no appeal process available if an application for waiver of fee cap is denied.

Do I have to complete an attorney time sheet for every charge?

No. An attorney time sheet is required only when a request for waiver is submitted. It must be attached to the DC-40 and DC-40(A) when they are submitted to the court. However, the code requires that actual hours worked per charge be documented on the DC-40 (REVISED 7/07) form, regardless of whether a waiver is requested. If a waiver is not sought, no time sheet need be attached.

Why do I have to specify actual hours spent per charge on the DC-40 form?

This information is essential for the Court to collect the data to accurately project the cost of and justify any future funding increase to or elimination of the statutory fee caps.

What first-level waiver amount is applicable if I am representing a juvenile charged with an offense that would be a felony if committed by an adult?

The first-level waiver amount for all delinquency cases in J&DR is \$120.

Betsy Wells Edwards is executive director of the Virginia Fair Trial Project. For more information, go to the Virginia’s Judicial System Web site, www.courts.state.va.us, and the article “How to Request a Fee-Cap Waiver,” in the June/July 2007 issue of *Virginia Lawyer*. Questions should be addressed to the clerk of the court in which the case was concluded.

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After you find a case you want to bookmark, save it as a favorite in your personalized library (My Library) to be able to pull it up immediately each time you log in to Fastcase.

To save a case as a favorite document:

- Pull up the full text of the case.
- Click the Add to My Library link at the top of the page.
- You can now view the case in your personalized library by selecting **My Library | Go to Favorite Documents**.

Even if you don't save the case as a favorite, **My Library** keeps a research

history that includes your ten most recently viewed cases. So if you lose your place, or forget what you were reading during your last research session, you can simply consult your most recently viewed cases.

To access your recently viewed cases:

- Go to **My Library** in the blue menu bar at the top of the page.
- From the drop-down menu, click on **Go to Recent Documents**.

And, of course, with Fastcase's research trail, you always have access to your ten most recent searches, right from your start page. To access your research history, go to **Start | My Research Home**. Your search history is

in the center of the page, and you can re-run any search just by clicking it in the list.

Have more questions?

Call Fastcase at 1-866-773-2782 (8 AM to 8 PM ET), or view the Fastcase Tutorial at **Help | Tutorials**.

The Fastcase Legal Research System is a free member benefit of the Virginia State Bar, and includes a comprehensive, national online law library. To log on, visit the state bar Web site at www.vsb.org and click the link for Fastcase.

Grants *continued from page 22*

support to projects it previously funded. They include:

- The public service internships
- The VBA's Capital Defense Workshop
- The Page County Bar's Law-Related Education Project
- The Virginia Poverty Law Center's annual Statewide Legal Aid Conference
- Immigration counseling services provided by the Catholic Diocese of Richmond
- The Mid-Atlantic Innocence Project
- The Legal Aid Justice Center's Virginia Institutionalized Persons' Project

- Southwest Virginia Legal Aid's community training to protect victims of domestic violence
- VSB and VBA projects, to be identified later by the board

While Walker says "it's a very exciting time for the law foundation," he and Franklin describe the task of reevaluating funding priorities as sobering.

"Fundamentally, the need is so great out there," Franklin said. ☞