

JOURNAL

Newsletter of the Fairfax Bar Association

www.fairfaxbar.org

April 2009



A Passport to Paris Bench Bar Dinner Dance & Silent Auction

It was not April, but Paris in March was a wonderful experience for the Fairfax Bar Association at its Annual Bench Bar Dinner Dance and Silent Auction. With the economy like it is, this was as close as any of us will get to Paris in 2009. That did not stop 550 hardy souls from attending and having *un bon temps*.

The economic downturn was apparent in the smaller silent auction this year; there were less items to bid upon. However, those items that were donated were enthusiastically reviewed by the attendees. A fair amount of the jewelry was auctioned off as well. By all accounts, the bidders uniformly came away very pleased with the quantity and the price of their new purchases.

A shining moment in this economic malaise was the institution of an open bar. No more lines to buy tickets; it was order and consume. This certainly kept the mood light and lively.

The dinner, as always, was of high quality and enjoyed by all. This year's band, the **Grammy nominated Bill Kirchen and Too Much Fun**, got many people up on the dance floor. The service was excellent and all participants appeared to be enjoying themselves. A special highlight was a jam session featuring Judge Jonathan Thacher.

The highlights of the evening were the announcement of a Fairfax Law Foundation scholarship honoring **Judge David T. Stitt**, which will be presented to a student at George Mason School of Law; presentation of a portrait; and brief remarks by the now-retired **Judge Robert W. Wooldridge, Jr.**

As always, the event was a wonderful opportunity to interact with the judges and with fellow practitioners whom one might not ordinarily see in the course of the month. Mark your calendars for **March 6, 2010** for the next **FBA Bench Bar Dinner Dance and Silent Auction**. ■

(More photos on page 10)

President's Column

by Julie H. Heiden



Finding a Balance...

Seven years ago the Bench and Bar lost a great lawyer and a great friend, Ralph Boccarosse. Judge Bach presided over a mediation I had with Ralph just the day before he suffered his first cardiac event. As the mediation came to an early end, Ralph was hopeful he would be able to get some time in at a golf course. As things were wrapping up, Judge Bach and Ralph discussed different golf clubs and Ralph shared an idea he had about hosting a "golf club swap" for all of the unused golf clubs folks had stored in their garages. When Ralph was getting ready to leave, he mentioned he hadn't been feeling well recently and might stop off at the doctor's office. We assumed he might have a chest cold or pneumonia—never anticipating it would be the last time we would see him.

When I went to Ralph's memorial service, I knew I would hear stories about the "great lawyer Ralph" and I expected to hear more stories of his golf adventures. I did hear those remarks, but I also heard many thoroughly entertaining facts about Ralph which revealed a diverse, well-rounded, fun-loving husband, father, and friend. The stories reiterated to me of the importance of working hard, while not forgetting the importance of taking time for family and friends or the importance of finding a balance in life.

At Judge Schell's recent investiture, Sandy Havrilak delivered an entertaining speech about Judge Schell, and mentioned the fact that he plays the clarinet. As I listened to Sandy, I began to think of the many members of the Bench and Bar who also have hidden talents—talents which further reiterate the importance of finding a balance in life.

The problem many of us face as lawyers is either not knowing how, or not taking the time, to balance the pressures of work and life. As I believe we can all learn from the members of the bar who have learned to balance these pressures, I wanted to highlight a few interesting bar member facts—facts which I refer to as "did you know..."?

Did you know Judge Thatcher builds and plays electric guitars?

Did you know Judge Mutnick is in the Coast Guard Reserves and is actively protecting us?

Did you know Stephen Ratliff is a referee?

Did you know Matt McConnell plays piano and sings?

Did you know Judge McWeeny is a movie fanatic who knows directors and actors from virtually every movie dating back to the 1940s?

Did you know Tom Koerner has a swing dance school?

Did you know James Freeman coaches high school basketball?

Did you know that J&DR Judges Daniel and Grodner both have boats and love to spend time on the water?

Did you know Heather Bardot is a Girl Scout leader?

Did you know Judge Klein and Judge Cassidy are photographers?

Did you know John Carstens is a Boy Scout leader and plays ice hockey?

Did you know Robert Worst sings with a swing band?

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FAIRFAX BAR JOURNAL

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editor's approval. The editor reserves the
right to reject any submissions that,
in the opinion of the editor,
are inappropriate for the Journal.*

Extensive Catalog of CLEs Now Presented Online and Podcast

by David L. Ginsberg, CLE Chair

With great thanks to the generosity of our judges, FBA staff and FBA members, the CLE Committee is able to present a wide variety of practical and educational CLEs each year. We cannot overstate how much we value your willingness to share your expertise with your colleagues, and we welcome your ideas and assistance in creating new programs. This year has been a very exciting one for our committee as we are making several major transitions in the way that CLEs are offered. Over the course of 2009, we will be moving to a more stable CLE schedule in which we will offer one primary CLE each month of the year except July and August. As this schedule moves into effect, you will benefit from having much more advance notice of our events, and as a result, we hope to see even more of you in our audience.

Luckily for many of us, you no longer have to appear in person to be in our audience. All of our CLEs are added to the FBA's online catalogs shortly after the live presentation so you can get your CLE credit from the comfort of your own home. The FBA has an extensive catalog of more than **140** CLEs online and more than **30** podcasts. Feel free to check out the selection on www.fairfaxbar.org.

Also, please visit the FBA website to see a complete schedule of upcoming live CLEs. These are also listed in the Friday blast emails. However, unlike previous years, you must now click on the CLE link in the email to obtain information about the program's content and schedule. We look forward to seeing you at our upcoming programs. Check them out on Page 12 of this newsletter or online.

When the courthouse cafeteria reopens, most of our programs are likely to return to that venue, at least in the near future. However, the budget cuts are affecting us all, and due to cuts in the sheriff's budget, the necessary courthouse security may not be available at the current bargain rate (free!) or any rate for much longer. For this reason, our live programs may relocate to other nearby sites.

Despite the budget crunches, there are no plans to increase the CLE fees. Not only will the attorney rates remain the same, but we will continue to offer discounted rates for paralegals and your staff.

Please do not hesitate to contact the FBA office if you have questions about upcoming CLEs or would like to suggest topics for future programs. ■

FBA MEMBERSHIP HAS ITS BENEFITS Highlights on USI Affinity Insurance



The FBA offers comprehensive member benefit packages that no attorney should be without. Combining the leverage of its 2,000 members in the legal community, the FBA is able to offer discounts on a wide range of products and services. This issue highlights insurance benefits.

Members of the FBA have access to quality benefits through **USI AFFINITY**. This includes Lawyers Professional Liability Coverage, Employee Benefits, Worker's Compensation, Business Overhead, and much more.

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Look for more member benefit highlights in upcoming issues of the *Journal*!

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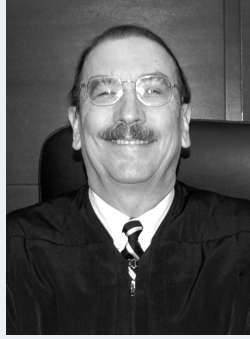
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Interview With The Honorable David S. Schell

by Edward J. Walinsky, Esq.

*The Honorable David S. Schell
Circuit Court Judge for the 19th Judicial Circuit
Commonwealth of Virginia*



Q. Where were you born?

A. Tampa, Florida.

Q. Where did you go to school?

A. I went to elementary, junior high, and high school in Fort Walton Beach, Florida.

Q. Then off to Southern Mississippi where you played with Brett Favre, I understand?

A. No (chuckle). I was a music education major at Southern Miss.

Q. Was music a big influence while growing up?

A. Yes. I played in the junior high school band and the high school band. I started playing the clarinet at about age 12. In high school I played clarinet and I also played baritone sax in the jazz band.

Q. What were your other interests in high school and junior high?

A. I played Little League and I played basketball (just pick-up games a lot). I had a very active social life in junior high school and high school and, of course, growing up in Fort Walton Beach, a lot of family days at the beach. A lot of swimming and some boating and fishing. I was a Florida All State Jazz Baritone Sax player for two straight years, my junior and senior years. I enjoyed Gerry Mulligan and Stan Getz.

Q. Where exactly is Fort Walton Beach?

A. Fort Walton Beach is in the panhandle, between Pensacola and Mobile.

Q. When you went to Southern Mississippi, did you think you were going to be a music education major? Was that your plan at the time?

A. Yes, when I graduated from high school, I wanted to be a high school band director as my career. Southern Mississippi had a very good regional music education department at that time. I was 18 years old and they were very nice to me when I went to visit. They gave me a really good scholarship, as did Florida State University and some other schools. But I ended up picking Southern Mississippi primarily because they were so nice to me when I went up there, and also I think that my parents were inclined to have me go there because of the size of the large scholarship. It helped.

Q. What did you do after college?

A. I was in graduate school at Southern Miss., going to get a Master's Degree in music history. I had decided at that point that rather than being a high school band director, I wanted to be a university professor in music history or musicology. Then I got a letter in the mail that said, "You will report for your pre-induction physical at Crestview, Florida at 6:00 AM." I reported. They put us on a bus and

took us to somewhere in Alabama, and shockingly, I passed the physical. Then at that point, I started auditioning for military bands because I was probably going to be drafted. I was selected by the United States Army Band, Pershing's Own, here in Washington, D.C., playing clarinet.

Q. How long was that career?

A. That was a little less than six years. I went to law school at night the last three and a half years or so. I was able to get tuition assistance because I was active duty and I was able to get the G.I. Bill and stack them one on top of the other. That was how I was able to pay for law school at night at American University.

Q. Why did you pick law school?

A. Well, after I was up here for awhile, I just decided kind of without any real basis in anything other than curiosity, to take the LSAT. I did pretty well on the LSAT and decided that I would apply to some law schools to see if I could get in, and I did. Once I was accepted to a law school then it, of course, firmed up that I was going to complete it and become a lawyer. I can remember when I got accepted to the first law school saying to myself, "Well I guess I am going to be a lawyer," because I felt very confident. I found out, once I got there, that it was a lot harder than I expected.

Q. During law school did you have time for any extra-curricular activities?

A. I would go to the Kennedy Center for concerts and I would go to a lot of baseball games. We would go see the Baltimore Orioles on a pretty regular basis when I was in the military and going to law school. Occasionally, we would catch a Redskins game, so that was basically it.

Q. So you then graduated in what year?

A. Let's see. I graduated from American University in 1978. I passed the Bar late that year. I can remember sitting on my steps of my little duplex over there in Arlandia waiting for the mail, and I remember every minute of that entire morning that I got my results advising that I had passed the Bar. I do remember that. It was quite a day.

Q. So where did you start legally?

A. I hung out a shingle in early 1979. I rented office space from Joe Condo. Eventually in that office suite were Ray Diaz, Robert Mayer (a bankruptcy judge now), and several other people.

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Interview With The Honorable David S. Schell

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Q. What else happened in your early legal career?

A. *I practiced law in Northern Virginia for 13 years. Part of that time, 10 years, I was giving a seminar for the Women's Center once a month, a three-hour seminar on the legal aspects of separation and divorce. That was great, as it kept me up-to-date on domestic relations law. Then I ended up finally in McLean before I came on the bench.*

Q. Did you ever have a partner yourself or was it pretty much a solo practice?

A. *No, I had partners through the years. People like Jim Boring, Tom Parrott, Karl Pilger, Larry Becker, Hal Leiding, who has passed away now, Don Caruthers, who has now moved to another jurisdiction. In the beginning, the two people who really got me off to a good start, though, were Stan Klein and Joe Condo. They took me around and showed me the ropes. Stan showed me how to do a commissioner's hearing for no-fault divorce. Joe helped me with many other things including how to do a real estate settlement. They both showed me what to do and how to conduct myself properly.*

Q. So was it mainly domestic work?

A. *No. In the beginning it was everything, guardian ad litem work in the Juvenile Court, court-appointed defense work in the General District Court and in the Circuit Court, and Juvenile Court for criminal cases. I even did mental commitment hearings. One of the special justices was Mike Valentine and another was José Aunon. I was strictly a general practitioner. I did real estate settlements at one point in my career on a pretty regular basis. I have done some limited personal injury and a big product liability case for the homeowner. So I did a lot of varied stuff in the beginning, but over the years, it pretty much settled down into family law.*

Q. What drove you into litigation primarily after law school?

A. *I was very independent. I wanted to be my own boss. I had a very independent streak.*

Q. During the 13 years of practicing law, what did you do outside the law?

A. *I played in the Fairfax Men's Softball League, slow pitch softball, for four to five years on a couple of teams. I also played in the men's basketball league on some teams in Fairfax. I also played a lot of pick-up games with friends. You know, not in leagues. I went to the opera every once in a while. I enjoy the opera, selected operas, not every opera. I would go to concerts at the Kennedy Center for classical music. I very much enjoyed going to sporting events such as the Redskins games with people who would invite me. I do not have season tickets. I also would go to baseball games occasionally. I went to a lot of hockey games. My son was born on July 4, 1988, and once he was born, anything he was involved in, I was there, Little League and soccer. I did all of it, even camping with the Boy Scouts.*

Q. During your legal career, what Bar activities did you do?

A. *I was chairman of the Public Relations Committee. I was on the Legislative Committee. I was on the 10th District Grievance*

Committee, and I was asked to be a Commissioner in Chancery by Judge McWeeny. That was a very interesting experience.

Q. Did that help lead you towards being a judge?

A. *Yes, I think that did help. I enjoyed it.*

Q. So, when did you decide this might be a good idea?

A. *I was influenced to start thinking about it when I had a one-day custody trial in front of Judge Kassabian in the Juvenile Court. It was one of those compelling cases where the one parent has just lost control of themselves and the child was not doing well with them. The other parent stepped in and they could not agree, so we had to have a contested hearing with a guardian ad litem. Child Protective Services had been called and they testified also. Judge Kassabian awarded custody of the child to my client and once the child got with my client and settled down, things turned around. The child did very well and, in fact, had excellent visitations with the other parent.*

When I saw the good that Judge Kassabian had accomplished for that child, I started thinking that maybe that was something I wanted to do. I wanted to be in the Juvenile Court because I had an interest in that area. I heard there was an opening, put my application in, and the rest is history. There wasn't any long-term plan. I was thinking that it might be something I would like to do, but I would say that the custody case and putting my application in all happened within a year's time. The opportunity came up and I applied for it.

Q. On weekend afternoons in the fall, assuming you have nothing to do at court, are you in front of the television and if so, who are you rooting for?

A. *I root for the Redskins. I root for the Nationals if there is a baseball game on. I am usually not going to be on the couch in front of the television. I might be listening to music on my computer (legally), or looking at the news on the computer. I might be taking a walk with my wife. I was always at my son's games during the weekends, instead of watching sports.*

Q. When you were on the Juvenile Court, what kinds of activities did you do there legally in terms of committees?

A. *For nine years, from 2000 to 2009, I presented to the Family Law Committee an annual review of the 40 most important Virginia Supreme Court and Court of Appeals cases that impacted the Juvenile Court, commonly referred to as the "Top Forty." I also presented this lecture to all of the Juvenile Court judges in the Commonwealth at our annual judicial conference.*

I was chairman of the Advisory Committee to the Virginia Supreme Court, Court Improvement Project: Foster Care and Adoption. We did a lot of work in the beginning in drafting legislation to change the abuse and neglect laws. Originally there were no timelines whatsoever. We implemented timelines. We made some other changes to make sure we have more hearings in abuse and neglect cases so that there is more judicial oversight. I was very involved in that committee for over ten years.

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WANT TO LEARN MORE ABOUT WHAT GOES ON INSIDE A COURTROOM?

Join the Law Related Education Committee

by Sonya M. Duchak, Esq., Chair, Law Related Education Committee

Besides not getting lost in the new courthouse, the Law Related Education Committee can claim that it has successfully continued the Court Tour Program through all of the construction and changes at the Courthouse. Relying on the expertise of its court tour guides, the Court Tour Program continues into its 15th year under the sponsorship of the Fairfax Law Foundation, and coordination by the Fairfax Bar Association, without missing a beat. Many folks do not know the history of the Court Tour Program and are surprised to hear that it began in 1986 as part of the Virginia Court Docent Program. It gained a strong supporter in Chief Justice Harry L. Carrico of the Virginia Supreme Court. The first director of the Fairfax Court Docent Program was Jeannette Sheridan, who coordinated the program with the help of the Junior League from 1986 until 1995. In 1995, the Fairfax Bar Association began coordinating the Court Tour Program, and has continued to do so ever since. While the Court Tour Program initially serves eighth grade students of Fairfax County Public Schools, it is also open to any school group from any community, including private, parochial, and home-schooled students. It has even sponsored tours for adult education students from local community colleges. About 1,500 students attend this program throughout the school year and have the opportunity to observe trials, meet judges, clerks, and other members of the public service community; and get an understanding of the local judicial system. Please join the Court Tour Program as a guide, and it is almost guaranteed that you will learn something new each time you bring a school group through the courthouse.



Another program for youth that is sponsored by the Foundation is the Devonshire Program. This program began in 1999 by the Safe and Drug-Free Youth Section of the Fairfax County Public Schools to provide volunteer attorney speakers to reach out to groups of at-risk teenagers who have already been charged with possession of alcohol or drugs at school, at a school event or on a field trip, or who have been found to be under the influence of alcohol or drugs in the community, and have been recommended to the program by school administrators or guidance counselors. The program is designed to provide these teenagers with some insight into the legal consequences of getting involved with drugs or alcohol as a minor. Attorney speakers participate in the Devonshire Program each Wednesday for one hour. Approximately seven to eleven students attend the Devonshire Program each week and it runs throughout the school year.

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Interview With The Honorable David S. Schell

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I was on the Liaison Committee to the Department of Juvenile Justice, which regulates the holding facilities for delinquent children in the state's system down by Richmond and Beaumont. Very serious offenders go to those places. I was on the Education Committee for several years.

I was very involved with my fellow judges in totally revamping the Juvenile Court docket and the way we do things in that court. I was Chief Judge of the Juvenile Court for four years.

Q. What then made you think about coming to the Circuit Court?

A. *I went to a technology conference with Judge Dennis Smith of this court. We had a long conversation while we were there about the Circuit Court and about what the Circuit Court does, and the advantages and disadvantages of that court. That was like the one little block that tipped me to apply. There had been a kind of a critical mass building for a number of years where I was thinking about it and thinking about it, but I really did, and still do, love the Juvenile Court.*

There had been slowly building in me a desire to come to Circuit Court and I think the conversation with Dennis provided the critical mass for me to actually say, "Yes, I am going to go ahead and do it." Of course, you know that when you run for one of these things, you need to go and really do it. You need to spend some time thinking about it, and it is not an inconsequential thing to undertake. I had been on the bench for 17 years in the Juvenile Court and felt very strongly that the new judges that had been brought in there showed that the court is in excellent hands. There was not any need for me to be there to ensure that things get done or anything like that. It is all going to be taken care of, better than I could have done, and it seemed like an appropriate time to come to Circuit Court. I also wanted to expand the scope of what I was doing. The scope here is huge and the subject matter is very large. I wanted to have an opportunity to do that, to do some different things. It was just a slow buildup and then finally I did it, and I am glad that I did.

Q. Tell us about your Motions Days, in which everything comes at you all at once.

A. *The decisions are important, but the scope of what you handle on a civil Motions Day is quite broad—everything from pleas in bar to discovery. You also have a docket at 11:30 AM, with all the domestic relations matters. It is very challenging. I have to say that on the first Motions Day at 10:00 AM, when I walked in the room, the non-domestic relations motions docket, I did not recognize one lawyer in the room and they did not recognize me. We got through it. And then the 11:30 AM docket comes around, which is the Domestic Relations Docket, and I walked in the room and I recognized just about every lawyer. I*

am getting to know the personal injury and business bar and they are getting to know me.

Q. What kind of trials do you believe you will like the least?

A. *What I dislike continues to be the custody case where one or both parents have an agenda that is not in the best interest of the children. Every family lawyer knows what I am talking about. It is usually only one parent, but it is possible to have both where the children are really not the issue. That is the trial I dislike the most. The trials I like the best are when the attorneys do really well. I especially get a kick out of seeing young attorneys do well.*

Q. What do you want the Bar to hear from you that I have not asked so far? What type of information or advice would you give?

A. *Preparation is extremely important. I think every single lawyer who practices in this court knows that, and I do not really need to tell them that. I like to be shown the Code section that supports your position. I like to have an appellate court case that supports your position, and I would like it to be "the" case that matches the facts of the case. I also prefer, in terms of substance, if you have a United States Supreme Court case that supports your position, particularly in the criminal law area.*

I guess, to be fair, I do like the attorneys to be courteous to each other and courteous to the other parties, and to the judge. I also like attorneys to be able to ask questions in an efficient manner; ask one question, listen to the answer, and then the next question and listen to the answer, etc., moving along efficiently. Also, have your case planned out so that you can efficiently move from one witness to the next. This is nothing out of the ordinary, just common sense.

President's Column

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If you have an interesting fact about yourself or a member of our bar which you have permission to share, please send me the "Did You Know Fact" and I'll include it in the future. Even though it is easy to get caught up in the day-to-day pressures of practicing law, we should all remember to make time for our family and friends, to make time for our community, to make time for the things we enjoy doing, and to make time for finding a balance in life. ■

The Fairfax Public Law Library Has a New Facility

by Ira S. Saul, Chair

I. OUR BEAUTIFUL NEW SPACE

The Fairfax Public Law Library is privileged to occupy our gorgeous new space, located in Room #115, on the first floor of the beautiful expanded Courthouse. While the Courthouse expansion continues to be a work in progress, the Law Library is now permanently situated in our new location.

The Law Library is the beneficiary of Fairfax County's initiative to make the Courthouse more responsive and accessible to its primary constituency: the citizens of Fairfax County. As a public library, the Fairfax Public Law Library is part of the County library system and is an important resource to the public generally, to *pro se* litigants, as well as to the bench and bar.

For those of you who have not had occasion to use the Law Library in our new location, or just stop by to see the facility, we encourage you to do so (hope you don't get too lost—good luck!). The new facility includes eight public computer research workstations. The library has seating for 108 people, which includes 60 individual carrels, and a periodical reading room area with four comfortable chairs. Under the direction of our Head Librarian, Tom Pulver, there is now room to display the entire collection. It is divided into two main groups: Virginia materials; and all other materials, all arranged logically, methodically, and in a user-friendly manner, in Library of Congress classification order. Our online catalog has been fully created and is now available outside of the Law Library for users with Internet access. Please go to <http://www.fairfaxcounty.gov/courts/lawlib> and then click on the Law Library Online catalog link.

The new facility contains other amenities including a fine conference room with seating for 12 persons. The conference room will be made available to the bar for groups of two or more, for attorney conferences, and other FBA and attorney-related functions. Please speak with the Law Library staff should you wish to reserve the Law Library conference room.

II. NEW HOURS

Effective as of January 9, 2009, the new Law Library hours are:

Mondays 8:00 AM to 5:30 PM

Tuesdays 8:00 AM to 4:30 PM

Wednesdays .. 8:00 AM to 4:30 PM

Thursdays 8:00 AM to 5:30 PM

Fridays 8:00 AM to 4:30 PM

The hours have been reduced by order of the Fairfax County Sheriff, which is in charge of Courthouse security. You are undoubtedly aware of the fiscal challenges Fairfax County faces in these difficult economic times. Because of these challenges, after-hours security for the Courthouse has been curtailed, resulting in the Law Library being ordered to shorten our hours to coordinate with available Courthouse security personnel.

Unfortunately, because of a lack of Courthouse security personnel on site, the Law Library temporarily is not able to allow FBA members to use the Law Library after hours. We encourage you to avail yourself of the George Mason University Law Library in Arlington after hours, which maintains extended hours for the Law School.

Mr. Frey, the FBA Board, Law Library Committee, and Law Library staff are hopeful that we will be able to extend the courtesy to FBA members to again allow after hours Law Library access very soon.

III. OUR STAFF

The Law Library is extremely fortunate to have superb professional staff. Our Head Librarian, Tom Pulver, holds a Master of Library Science degree from the Catholic University of America librarianship program, with a concentration in law. Tom's experience includes tenure as a law librarian for some of the largest law firms in the country. The two capable staff members you will find at our Information Desk are Cathryn Butler and Missy Scheeren. Cat is a member of the Virginia State Bar, having received her law degree from George Mason University. Missy is a graduate of the George Washington University Law School. You will find our staff to be extremely helpful and knowledgeable, and happy to assist FBA members in meeting your legal research needs.

IV. FUTURE PLANS

The Law Library is planning a number of new initiatives to optimize the use of our wonderful new facility. In future *Journal* issues we look forward to sharing our exciting future plans with FBA members. ■

Once again, if you have not enjoyed the new Law Library facility, please visit us soon.

YOUNG LAWYERS SECTION UPDATES

The Young Lawyers Section continues to fill the 2009 calendar with exciting events for its members and the community. On February 28, 2009, the Fairfax Bar Association Young Lawyers Section held the annual Color of Justice Program at the Fairfax Circuit Court. The purpose behind the Color of Justice Program is to encourage college-bound minority high school students to consider careers in the law as attorneys and judges. Over 60 high school students attended the event. The students had the opportunity to tour a holding cell, participate as jurors in a mock trial, and ask questions to a panel of distinguished judges. The event was a huge success.

The Young Lawyers Section would like to extend a huge thanks to all the judges and attorneys who participated. In addition, we would like to thank the **Asian Pacific American Bar Association of Virginia**; **Northern Virginia Black Attorneys Association**; the **Hispanic Bar Association of Virginia**; the **Northern Virginia Chapter of the Virginia Women Attorneys Association**; together with the **Fairfax County Public Schools College Partnership Program**; and the **George Mason University School of Law** for their support. Lastly and certainly not least, a big thanks to **Tania Saylor** and **Kathleen Waldy**, who were in charge of the event.

There have also been many occasions in the past few months for the Section to socialize. On January 14, 2009, members of the Paralegal Section and the Young Lawyers Section came together to enjoy a happy hour at On The Border in Tysons Corner. On February 12, 2009, over 100 young lawyers gathered at Ireland's Four Courts in Arlington for a joint happy hour of the Fairfax, Alexandria, and Arlington Young Lawyers Sections. The Section looks forward to more events with the Paralegal Section and the area's other young lawyers. And on March 20, the Young Lawyers gathered to help kick off March Madness at Hard Times Café & Cue. Stay tuned to our weekly email blasts for more information on the Section's happy hours—they're a great way to connect with other lawyers in a relaxed atmosphere.

The Section is also committed to creating opportunities for its members to interact with the Fairfax judiciary. On April 1, 2009, Circuit Court Judges will meet with members for the Section's annual Breakfast with Judges event. The judges will talk with members in an informal setting, addressing issues specifically applicable to young lawyers. On March 23, 2009, Circuit Court Judges Brodie and White will share a casual dinner with a smaller group of Section members at Dolce Vita to share their experiences.

For the athletic members of our Section, the Board is working to put together a softball league of area lawyers to debut later this spring. The running team continues to participate in local races and looks forward to once again running in the Lawyers Have Heart 10K coming up in June. For more information on the softball league, contact Christie Leary at cal@greenspunlaw.com and for running information, contact Erin Sylvester at erin.sylvester@fairfaxcounty.gov.

Lastly, the Board is finalizing the details for a Wine Tour later this spring. Stay tuned to our weekly email blasts for further details on this and other events coming up this year. ■

More BBDD Photos



Non-Residential Leases and Tenant Insolvencies

by Brian J. Lubkeman, Partner, McGuireWoods LLP
Chair, FBA Real Property Law Section

Landlords of non-residential property have always appreciated and understood the risk that their tenants might become insolvent. In fact, tenant bankruptcies have been viewed as part of the normal business cycle, and many property owners (at least those that are concerned about long-term success) incorporate some calculation of risk in determining rents, demanding security deposits (and the form of such deposits), and in crafting lease provisions. Tenants go bankrupt even in times of economic prosperity, although in the past few years, with steadily rising rents and fewer concessions by landlords, sharp focus on protection of landlord's interests was not necessarily critical. In today's economic environment, we are now beginning to see the effects that a tenant bankruptcy can have not only on a poorly prepared landlord, but also on subtenants and even other tenants in a multi-tenant building or retail center.

Most practitioners understand the basics of the effect of a bankruptcy filing by a tenant. Regardless of the type of bankruptcy selected (Chapter 11—reorganization, and Chapter 7—liquidation, being the usual options), a tenant is granted an immediate and automatic stay upon filing a petition (it is critical for landlords to understand that the stay becomes effective without notice or any hearing). This automatic stay prevents court actions from commencing against the tenant, and stops all legal proceedings pending against the tenant as of the date of filing of the petition. It is unlawful for a landlord to commence or continue any collection, eviction, or other repossession actions against a tenant in bankruptcy. A landlord may not send notices of default, may not hire a broker to show the premises, or otherwise enter the premises and, importantly, the landlord must continue to perform its lease obligations during the period of the stay. Also, and only because these provisions continue to appear in leases from time to time, lease clauses that permit a landlord to terminate a lease by reason of tenant's insolvency and bankruptcy are not generally enforceable as a matter of law, although there may be reasons for continuing to include variations on such provisions in leases. Bankruptcy courts also may invalidate other provisions of leases in order to ensure the availability of greater assets for the bankruptcy estate.

A fact that may be lost on the less experienced landlord is that tenants in bankruptcy are required to continue to pay rent. Any unpaid rent during bankruptcy becomes an administrative expense that is given preference over certain other debts (assuming, of course, that funds are available, and understanding that collection of administrative expenses may take significant time, depending on the particular bankruptcy case).

Ultimately, a tenant in bankruptcy has three choices under the Bankruptcy Code with respect to any real estate lease: (i) assume the lease; (ii) reject the lease; or (iii) assume the lease and assign it to a third party. This decision ordinarily needs to be made during the 120-day automatic stay period (or before the entry of an order confirming a plan of reorganization if that occurs first), although the Bankruptcy Code does provide that the stay period may be extended for an additional 90 days for cause. If a tenant fails to assume or reject the lease, the bankruptcy Code provides that the lease is deemed to be rejected. By law, rejection of a lease (whether express or implied) terminates the tenant's obligation to perform under the lease and allows the landlord to assert a rejection damages claim. It may also terminate the leasehold estate, although this should not be assumed. Section 365(d)(4) of the Bankruptcy Code provides that upon rejection, "the trustee shall immediately surrender [the] ... real property to the [landlord]." However, some courts have held that rejection is only a breach of the lease and not necessarily a termination of the lease itself. Rejection damages can be difficult to calculate and there are express limits upon the amount that a landlord may claim. The structure of such a claim, therefore, becomes critical.

A tenant choosing to assume a lease must provide the landlord with assurances that it will be able to perform on a going forward basis and must also cure all defaults (including any non-monetary defaults). This is not an automatic process, in other words, and landlords should carefully consider whether it should file a written objection with the bankruptcy court as to any assumption (and/or assumption with assignment to a third party).

What all of this means is that landlords must, at a very early stage, consider the exit strategy in the event their tenants become insolvent. Merely demanding large security deposits is not sufficient (since those deposits become part of the bankruptcy estate in most instances), nor is relying upon the hope that rents continue to increase sufficiently such that future tenants will indirectly make good on any losses from prior tenants. Requiring third party guarantors for lease obligations, demanding letters of credit (and ensuring that they are properly drafted so that they do not become part of the bankruptcy estate), and, most importantly, properly drafting leases to place the landlord in the best possible position if bankruptcy occurs, are all essential. ■

WANT TO LEARN MORE ABOUT WHAT GOES ON INSIDE A COURTROOM?

continued from page 7

In February, the Law Related Education Committee, in conjunction with the Juvenile and Domestic Relations Court Committee, sponsored our 12th appearance at the annual Chocolate Lovers' Festival at the Juvenile and Domestic Relations District Courthouse. The day started off with a fine group of attorneys representing Mr. Wolf and Ms. Pig before Judge O'Flaherty in a civil case for damages. The trial ended in favor of Ms. Pig after her heartbreaking testimony and the help of Judge Mann leading the jury. The committees then showcased "So You Think You Are Smarter Than a Lawyer" with the master of ceremonies being none other than Judge Clayton of the Juvenile and Domestic Relations District Court. The audience had to match wits with Judge Mann of the J&DR Court; Jessica Greiss-Edwardson of Potomac Legal Aid; Luis Perez, Chairman of the Juvenile and Domestic Relations Committee; Stephen Gangemi, Law Clerk to Judge White of the Circuit Court; and Eric Kessel, prominent personal injury attorney in Annandale, VA. The audience at times was stumped by the expertise of this fine panel of attorneys, but for the most part, was able to choose the correct answer without too many lifelines. We had one final performance of Mr. Wolf and Ms. Pig, with the jury now coming back in favor of Mr. Wolf and he was awarded the damages sought. The Law Related Education Committee would like to thank all participants of the mock trials including Russ Hatchl, Ed Culbertson, Stephen Gangemi, Tina Fewell, Luis Perez, Eric Kessel, Todd Petit, Jennifer Haberin, Judge Mann, Judge O'Flaherty, and the many agencies who provided information to the public at the festival, including ASAP, CASA, the Sheriff's Department, the Domestic Relations Unit, the Department of Family Services, Foster Care and Adoption, Probation Department, and J&DR Court Services. It was truly a very successful festival for everyone. ■

NEW FBA MEMBERS 2009

January

James Frederick Anderson
Stephen David Burns
Larissa Carso
Elaine M. Darroch
Steven L. Duckett, Jr.
Douglas Foord
Brian M. Glass
Heather A. Hickman
Anne E. Higdon
R. Scot Hopkins
Jeffrey Alexander Hord
Susan Kim
Elizabeth Lippy
Linda J. Lonas
Renee Noel Powell
Mark Edward Shaffer
Michael C. Sprano
Karen Kessel Sultan
William Walsh
Jonathan W. Ware
Jason F. Zellman

February

Margaret Marie Adkins
Gabriel A. Assaad
Cynthia Crawford Beattie
David Burger
Sarah M. Chuba
Kristina A. Cruz
Katherine Claire Dewart
Erica Everhart
Patrick Vernen Foltz
Henry Robert Gola
Ralitza Grigorova
Joanna Hicks
Heather Lynn Howard
William Koerner
Marieann Z. Machida
Joseph Oscar Moreno
Helen D. Neighbors
Justin Alexander Pan
Sean Allen Passino
Estela Ramirez
Heidi Ricker
Peter Randolph Roane
Jenna K. Sands
Jeffrey S. Saradar
John Simek

UPCOMING EVENTS/CLEs

HOW TO CREATE A VIRGINIA SELF-SETTLED ASSET PROTECTION TRUST CLE

April 28, 2009

5:00-7:00 PM

2 MCLE Credits *Approved*

Location: Fairfax Public Law Library

Speaker: Evan Farr, Esq.

MOTIONS PRACTICE IN THE LOCAL CIRCUIT COURTS: A COMPARATIVE ANALYSIS CLE

May 8, 2009

2:00-5:00 PM CLE

5:00-7:00 PM **Cocktail Reception**

3.0 MCLE (1.0 Ethics) Credits *Pending*

Location: Fairfax County Government Center

In conjunction with the Alexandria, Arlington County, and Prince William County Bar Associations

FBA ANNUAL SPRING GOLF TOURNAMENT

May 11, 2009

Location: Westfields Golf Club

GENERAL DISTRICT COURT CLE

May 14, 2009

4:30-8:00 PM

3.5 MCLE (0.5 Ethics) Credits *Pending*

Location: Fairfax County Courthouse Cafeteria

YOUR FIRST TIME IN COURT CLE

June 3, 2009

Location: TBD

ANNUAL SUPPORT STAFF ORIENTATION

June 12, 2009

Location: TBD

CRIMINAL LAW HOT TOPICS CLE

June 23, 2009

4:30-7:30 PM

Location: TBD

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October 4-7, 2009

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Call the FBA at 703-246-2740 or email:

jgill@fairfaxbar.org or cnorris@fairfaxbar.org.

2009 TRAVER SCHOLAR AWARD RECIPIENT

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is the recipient of Traver Scholar Award for outstanding service to the education of lawyers. The Traver Scholar award is an award given annually at the Advanced Real Estate Seminar in honor of Courtland Traver, a retired McGuire Woods attorney, who gave many hours of service to the education of real estate lawyers.

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SHOUN, BACH, WALINSKY & CURRAN, P.C., is pleased to announce the relocation of its law offices to: 4000 Legato Road, Suite 400, Fairfax, VA 22033; 703-222-3333; Fax: 703-222-3340; www.shoun.com.

RACHEL L. VIRK, P.C. is pleased to announce the publication by Vanguard Books, LLC of Ms. Virk's new book entitled "The Four Ways of Divorce - A Concise Guide to What You Need to Know About Divorce Using Litigation, Negotiation, Collaboration and Mediation," available at www.amazon.com.

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classifieds continued on next page

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continued next page

SPRINGFIELD—OFFICE SPACE AVAILABLE

Martin, Arif & Greene, P.L.C., has two offices available. A first floor office suite, one office with private entrance. Tenants will have access to the conference room, waiting area, reception services and the kitchen area. Referral work possible. Rent and terms negotiable.

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FAIRFAX CITY—Walk to the Courthouse from this 1,000 SF, one-level suite, located in Lawyer's Row on Judicial Drive. Freshly painted and newly carpeted, this ready-to-occupy space also features a reception area with desk, four offices, including one with a wall of book shelves. A wet bar and private restroom are additional features. Please contact Paula Brown Kelley, Kelley Commercial Real Estate, Inc., for more information at 703-978-2685.

FAIRFAX CITY—Office condo for lease - Judicial Drive. Owner Agent. Walk to Courthouse, free gated parking. \$3,015.83 per month excluding cleaning services; 3% annual escalation. Corner suite, five windowed offices plus reception, kitchen, server room. Contact: Barrett Industries Commercial Real Estate Division, Inc. - Virginia Licensed Agency. Kathy Knight or Angelo Ceresa 703-435-3311, Ext. 109.

FAIRFAX CITY—Office space for lease. 10519 West Drive, 3 blocks from Fairfax Courthouse. 1100 SF ground level with separate entrance. Free parking. \$1900 mo. plus electric. Call Karen or Jerri 703-573-0400.

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TYSONS CORNER—Private offices in Tysons available for rent. Two unfurnished (9'9" x 12" each) window offices in newly decorated estate law/wealth management office. Rent: \$1300/mo. or \$2500/mo. for both (includes utilities). Access to common areas including conference rooms, copy room, and kitchenette. Call 703-847-8900 or email: reception@cohenandburnett.com.

Paralegal Section News

The Paralegal Section received the following thank you letter from David Grabauskas, Director of the Boys Probation House in Fairfax, along with notes from some of the individual boys, for their gift donations over the Valentine holiday.

March 29, 2009

Joanne Randa
10201 Fairfax Boulevard
Fairfax, Virginia, 22030

Dear Joanne:

On behalf of all the residents and staff of Boys Probation House, I would like to personally thank you and the entire Bar Association for their generous gifts over the Valentine holiday.

Your thoughtfulness went a long way to ensuring the boys had a happy Valentine's Day.

Sincerely,

David Grabauskas
Director, Boys Probation House



THE "SECRET" BENEFIT OF MEDICAID ASSET PROTECTION

By Evan H. Farr, Certified Elder Law Attorney
Author of *The Virginia Nursing Home Survival Guide*

You've heard of Elder Law, but if you're like most attorneys you probably don't really understand how Elder Law can help your clients, and the parents of your clients, protect their assets while also getting better long-term care. Well, here's the secret . . . through the process of Medicaid Asset Protection, my firm and I can help clients get better long-term care by protecting their assets from forced liquidation so that the protected assets can then be used to pay for an enhanced level of care. For example, protected assets can be used to hire a private caregiver to supplement the basic level of care provided by a nursing home (which provides, on average, only about ninety minutes of care per day), or to purchase services or items for a nursing home resident that are not covered by Medicaid, such as special medical devices, upgraded wheel chairs, transportation services, entertainment, and other amenities that make life easier or more enjoyable. Is Medicaid Asset Protection ethical? Absolutely! It's no different from taking tax deductions to minimize income taxes, or structuring estate planning to minimize estate taxes. Everyone pays federal and state taxes that fund the Medicaid system. Why not also plan your estate to benefit from these taxes?

How much can we protect? Though this varies from client to client, we can typically protect all of the assets of a married couple and at least half of the assets of an unmarried client, even when planning is done at or near the time that the long-term care is needed. We can also help many clients obtain a special Veterans benefit that is available to help defray the cost of home care or assisted-living care for many war-time veterans. Medicaid laws are extremely complex and change frequently. Despite this complexity, and despite the fact that much of the Medicaid law was re-written in early 2006, numerous Medicaid Asset Protection strategies still exist, and we help clients work through these strategies every day. We handle the entire Medicaid Asset Protection process, from planning to implementation to filing the application.

As a Certified Elder Law Attorney, Certified Estate Advisor, and Virginia Super Lawyer, I welcome referrals from all over Virginia, and I'm always delighted to discuss a potential case with another attorney to determine if a referral is appropriate. If you think your clients might need an Elder Law specialist for themselves or their parents, please call me at 703-691-1888, or contact me by email at EvanFarr@FarrLawFirm.com or via our Web site, www.VirginiaElderLaw.com.

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Viva Las Vegas:

The FBA Heads West for Their 2009 Conference

Every other year, the FBA invites the legal community, their families and friends to go outside the area for some fun, socializing, and education. Two years ago, the excursion ventured out onto the high seas on the first CLE at Sea. This year, the FBA plans to take a chance and roll the dice in Las Vegas, Nevada!

"This isn't just a business conference, but a chance for guests to enjoy a fun-filled vacation with family, socialize with colleagues, and get some needed CLEs in one of the most exciting cities in the country," said Corinne Lockett, Vegas Task Force Chair and FBA President Elect.

The conference will be held on October 4 - 7, 2009 at the MGM Grand Hotel and Casino. Attendees at the conference will be able to earn up to six CLE credits, but Vegas isn't all work and no play. Guests will enjoy a three-night stay in a deluxe guest room, at least one cocktail party, discounts to KÀ by Cirque du Soleil, free craps lessons, two line passes to Studio 54, 25% discount to all spa services, and a \$35 activity credit (per stay) towards dining or entertainment. Due to the recent economic downturn, the FBA was able to negotiate a significant rate reduction which was then passed on to you! The package has been recently reduced to only \$750 per individual attorney, \$850 per couple (one attorney/one non-attorney), and \$600 each for two attorneys sharing a room.

"Las Vegas has so much to offer," added Lockett. "Guests can golf, eat at great restaurants, spend a day at the spa, shop in some of the world's most exclusive boutiques, hike the Grand Canyon, see a museum or Broadway style show, dance the night away at Studio 54, or try your luck by hitting the gaming tables. The FBA will also help guests organize day trips to visit the Grand Canyon, go horseback riding in Red Rock Canyon, take the Richard Petty Driving Experience Tour, or go hot air ballooning over the Las Vegas strip. This conference has something for everyone," she said.

Signing up early by **APRIL 30, 2009** will also allow guests to be entered for some special prizes including an upgrade to a Bungalow Suite, a round-trip limo transfer to and from the hotel/McCarran International Airport, a VIP welcome amenity chosen by the hotel valued at \$100, and a spa treatment at the Grand Spa valued at \$150.