

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org February/March 2010

FAIRFAX COUNTY CIRCUIT COURT VACANCIES FILLED



Hon. Lorraine Nordlund



Michael F. Devine



Brett A. Kassabian

NEW APPOINTEE TO THE GENERAL DISTRICT COURT



Richard E. Gardiner



Annual Bench Bar Dinner Dance March 6, 2010

The Fairfax Bar Association may always have Paris with the 550 revelers who attended the Annual Dinner Dance last year. This year, the evening goes glamorous with old Hollywood and the *Casablanca* theme “As Time Goes By” on Saturday, March 6, 2010, at the Fairview Park Marriott in Falls Church, VA.

The evening is the largest social event of the year in the NOVA legal community and promises dinner, dancing, fun, and camaraderie. All members of the bench and bar are welcome to partake in this annual occasion. There will once again be an open bar and new this year, a wine tasting. Attendees will be able to tantalize their taste buds with a selection of red and white wines. Purchases and pickups of the wine will be available at [The Wine House in Fairfax City](#). [Michael Pearce](#), owner of The Wine House, invites dinner-dance goers to stop and “...taste through our delicious handcrafted set of Spanish wines and meet the importer and wine personality, [Jonas Gustafsson](#). Understand why Spanish wines are the hot topic of conversation in wine circles today.”

The open bar and wine tasting are slated to start at 6:30 PM; dinner at 8:00 PM followed by dancing.

Another new addition to the evening’s festivities is the band [The Mustangs](#). This lively band has just one goal in mind—to keep everyone on the dance floor. The band will play with eight pieces, including three lead singers, and two horns. The repertoire includes over 400 songs with everything from Aretha Franklin to ZZTop, and just about everyone in between.

Be on the lookout for more information on the Web site and in the blast email. Sponsorship opportunities are available. For more details, to register, or to sponsor the event, contact [Courtne L. Norris](#) at 703-246-2084, or email her at cnorris@fairfaxbar.org. ■

President's Column

by Corinne N. Lockett

THE FBA's JUDICIAL SCREENING PROCESS

It is my opinion that one of the most important functions of the Fairfax Bar Association is our participation in the judicial appointment process. Member surveys repeatedly show that you agree with me. Having the opportunity to give our membership's input on the merits of potential future Fairfax County judges is essential to our livelihood, and is unique in Virginia. There are few other local bar associations in Virginia in a position to assist the legislature with a complete picture of each judicial appointment applicant. Who better than one's peers to give an opinion on whether or not a judicial applicant has the know-how and demeanor to be a good judge than those who have seen the applicant day-in and day-out over the last several years?

Recently, however, both our process and the thankless volunteers participating in it have received some harsh criticism. It is my hope that a brief explanation of the FBA's judicial screening process will clear up any misconceptions and concerns.

Let me be the first to admit that the FBA's judicial screening process is far from perfect. Whenever one takes a panel of ten divergent personalities and several individuals seeking the approval of this panel, surprises are bound to occur. Add in the fact that all of the people involved are attorneys, and we are fortunate that total chaos does not ensue! However, when you look back to judicial screenings over the years, you will notice that the process is in no way chaotic, but instead is consistently stable and has dependably produced positive results. In fact, our judicial screening process has been used as a model for several local and state bar associations.

The most important aspect surrounding all FBA judicial screenings is the fact that all proceedings are strictly confidential. To encourage a free flow of information and to protect the confidential information of the applicants, the panel members and the candidates all sign confidentiality agreements prior to every screening. Under the agreement, panel members and applicants are not to repeat or discuss anything transpiring during the process outside of the screening session. Under recent revisions to the rules, any panel member who breaches the agreement will be removed from all future panels. The FBA President and Panel Chair are also now authorized to publicly address any misconceptions resulting from any confidentiality breaches by panel members or applicants.

The FBA's judicial screening process begins when the FBA receives notification from the Virginia General Assembly that an appointment is imminent. The General Assembly gives the FBA a deadline for submission of our assessment and the wheels start turning. Panel members are chosen from the Judicial Screening Committee (JSC), and as many alternates as needed to complete the panel.

Just a little bit about the JSC. Its members are volunteers who agree to be appointed to panels and who give up one to two days of billable hours to interview and screen applicants for potential judicial openings throughout the year. The rules of the FBA Judicial Screening require that membership of JSC be as diverse as possible (types of practice, firm size, ethnicity, race, gender, age, and experience), and the FBA does everything humanly possible to gather ten volunteers with diverse backgrounds to sit on each and every screening panel.



FAIRFAX BAR JOURNAL

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right to reject any submissions that,
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are inappropriate for the Journal.*

continued on page 10

FBA HONORS VOLUNTEERS IN THE LEGAL COMMUNITY

*L-R: Scott Barat, Esq.,
representing Pillsbury Winthrop Shaw Pittman, LLP;
Steven Frazier, Esq.;
Susan McClean, Paralegal;
and Edward L. Weiner, Esq.*



The FBA is pleased to announce the 2009 *Pro Bono* Awards. Local legal professionals were honored for their *pro bono* service at the Fairfax Bar Association's State of the Judiciary Luncheon on December 1, 2009. During the presentation, Arlene Beckerman, Director of *Pro Bono* Activities, said "With our current economic state, *pro bono* volunteers are in a high demand. Our volunteers give of their time and talents so they can aid the underserved in our community so they, too, can have access to justice." The winners for outstanding *pro bono* work are:

Pro Bono Paralegal of the Year: Susan McClean

Susan McClean of McCandlish & Lillard PC was the winner of the Pro Bono Paralegal of the Year Award. She is a career paralegal, and has been an active member of the National Capital Area Paralegal Association. Ms. McClean started volunteering to work in the Northern Virginia Pro Bono Law Center's Neighborhood Outreach Program at a homeless shelter. Through this project, attorneys meet with clients to provide legal advice and referral information in locations that are convenient and accessible. The role of the paralegal is extremely important as they establish bonds with the clients, helping to put them at ease while professionally assisting the lawyer. Ms. McClean has been a regular volunteer, becoming involved with the problems of the clients and helping to provide insights to the lawyers, who may not be as familiar with particular poverty legal issues. In the challenging environment of a homeless shelter, Ms. McClean has shown both compassion and legal skill in helping in this hands-on project. Ms. McClean also volunteers with the Florian Foundation, an organization that assists attorneys to prepare estate planning documents for police officers, fire fighters, and other first-responders in the metropolitan Washington, D.C. area.

Pro Bono Lawyer of the Year: Steven Frazier, Esq.

Steven Frazier, Esq., was the recipient of the Pro Bono Lawyer of the Year Award. Despite being in active practice for a relatively short period of time, Mr. Frazier has dedicated himself to helping the poverty population in a number of ways. He is committed to helping in areas where the need is the greatest, and has prepared himself to be an effective advocate through specialized training. In only a short time, Mr. Frazier has participated in the Northern Virginia Pro Bono Law Center's Neighborhood Outreach Programs, handled several uncontested divorce cases, represented a client in a custody appeal on very short notice, handled a contested divorce, and litigated a housing matter. He has also assisted clients with debt counseling, and has trained to participate in "Wills on Wheels." Mr. Frazier serves as a role model for attorneys, those new to the profession and to those with years of experience.

Pro Bono Law Firm of the Year: Pillsbury Winthrop Shaw Pittman LLP

The Northern Virginia Pro Bono Law Center presented its Pro Bono Law Firm of the Year Award to Pillsbury Winthrop Shaw Pittman LLP, represented by Scott Barat. Pillsbury Winthrop has demonstrated a firm-wide commitment to pro bono work in its community. The firm has encouraged its lawyers from varying practice areas to become involved in volunteering their time. As a result, lawyers from the Northern Virginia office of the firm have participated in many and varying pro bono projects, including conducting organizational and transactional work for local nonprofits, representation of a client in an appeal of a family law matter on constitutional grounds, participating in legal clinics, representation in uncontested divorce matters, several predatory lending-related cases, and more.

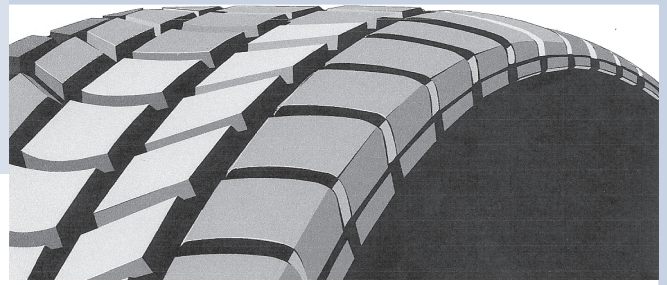
James Keith Public Service Award: Edward L. Weiner, Esq.

The James Keith Award, named after a Fairfax Circuit Court Judge who retired to spend many years volunteering as a poverty lawyer, was presented to Edward L. Weiner, Esq. of Weiner, Rohrstaff & Spivey, PLC. Mr. Weiner has a history of pro bono and public service spanning almost three decades. He has volunteered countless hours of pro bono legal assistance to help the hearing-impaired community through the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons. Mr. Weiner is also well known for his outstanding fund-raising efforts on behalf of numerous organizations, including the Fairfax Law Foundation, the School of Music at George Mason University, the Recurrent Respiratory Papillomatosis Foundation, and others. He participates in VDOT's Adopt-A-Highway Program, is a regular blood donor, and helps "ring the bell" for the Salvation Army. Mr. Weiner also serves on the Boards of the Fairfax Law Foundation and George Mason University Center for the Arts. Mr. Weiner was recognized for the outstanding breadth and length of his public service.

Beckerman added, "We congratulate all of the day's award winners. The example of these selfless efforts will surely inspire others to do the same." ■

COME AND KICK OUR TIRES!

By Kristin Derlunas Fisher, Communications Coordinator



Do you have a witness who is too feeble to travel to the courthouse, but you need their testimony? What if the witness is on the other side of the country? What if there's a protected witness, such as an abused child, and he/she does not want to face his/her accuser? Not a problem. It can be done with the use of the 15 high-tech courtrooms in the Fairfax County Courthouse.

The use of document cameras, DVDs, PowerPoints, iPods, video arraignments, and other gadgets are wonderful and useful tools, if you know how to use them. In order to not flood David Bartee, Director of Courtroom Technology, and his office, the FBA's Technology Section formed the "Technology in Fairfax Courtrooms: Come Kick Our Tires" CLE. "We all agreed that there was a need to train attorneys on the use of the high-tech courtrooms in some organized fashion. David's office couldn't continue to do this on a one-on-one basis, so we thought the most effective method would be a small hands-on CLE," said Sharon Nelson, FBA Technology Committee member.

The CLE is limited to 12 so as to allow everyone adequate time to use the various technologies. The session starts with a brief overview, the logistical aspects of reserving the courtrooms, a synopsis about the legal implications of using this technology, and ends with demonstrations of how the technology works. Attendees usually have about one hour to familiarize themselves with the technology and are encouraged to bring personal laptops and mock evidence to practice with.

Because each CLE is composed of 12 different people, the interaction and questions from the participants are different. "In practically every session, an attendee will ask a question that the faculty may not have anticipated; this is a great mechanism for adding the course content and enriching the overall learning experience," said the FBA's Technology Committee Chair, Michael Minter.

The skills that an attendee already has vary from person to person, but most are at least at ease with using their personal laptops. Sandra Havrilak, a "Come Kick Our Tires" CLE participant, said, "I used it a little in the new juvenile court, so I had some familiarity. After the CLE, I feel much more comfortable with it." Making an attorney

more relaxed in an unfamiliar setting is just one benefit to this CLE. "[Another] advantage of the CLE is that it better prepares attendees to utilize technology to help put them on the best case possible," said Minter. Nelson echoed this sentiment when she said, "Ineffective use of the technology slows a trial down and sometimes results in evidence not coming in. Something as simple as failing to mute your microphone can be disastrous in a real life trial."

The CLE has six sessions under its belt, with another one in February. The demand for the CLE is still going strong—each session has been full with a short waiting list. If you are interested in attending the "Technology in Fairfax Courtrooms: Come Kick Our Tires" CLE, sign up fast because they tend to fill up quickly.

To inquire about or sign up
for the next "Come Kick
Our Tires!" CLE, contact
Jana Gill at
jgill@fairfaxbar.org
or
703-246.2735

**Frequently asked questions
from the "Technology in Fairfax
Courtrooms: Come Kick our
Tires" CLE (suggested by
Michael Minter).**

Q. Do all judges rule the same way involving the use of technology?

A. "No" is the answer. Questions regarding what types of technology and media will be allowed can potentially be resolved via motions.

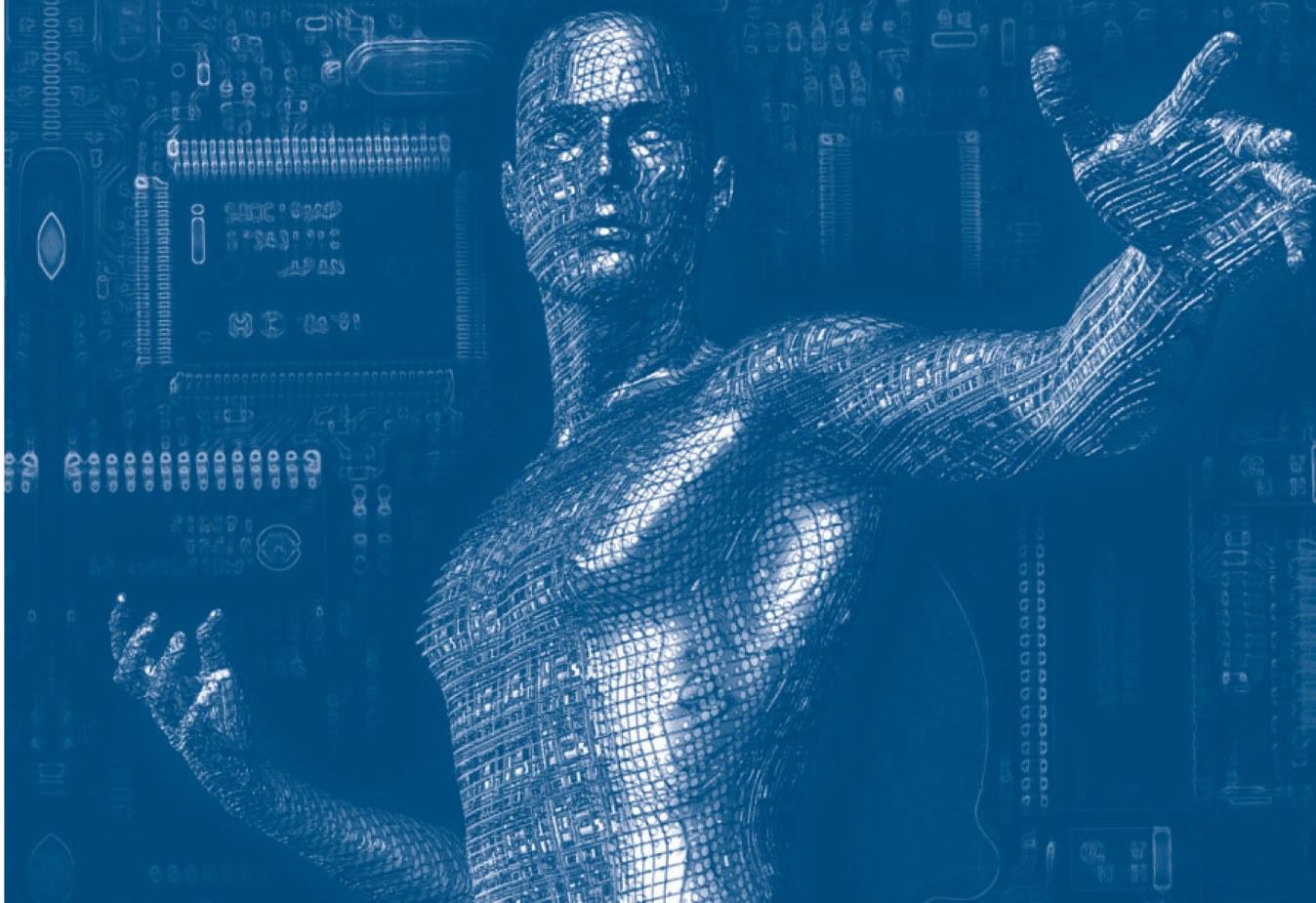
Q. Will my Macintosh laptop work in a high-tech courtroom?

A. Yes, provided the attorney brings the proper adapter for connecting to the courtroom network.

Q. Do I have to bring my own laptop to present evidence, or can I simply bring the media (disk, flash drive, etc.)?

A. In certain cases, it is sufficient to bring digital media without a laptop, as the courtroom podium is configured to accept and play various types of media. It is essential, however, that the attorney set up a pre-meeting with the Courtroom Technology Office to test out the media to ensure it is compatible with the courtroom system. ■

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WHAT IT MEANS TO PRACTICE LAW

By Timothy J. McEvoy, Fairfax Law Foundation (FLF) President 2009

The mission of the FLF is to serve the community by providing legal and other assistance to the indigent and to those with special needs; providing law-related community education programs, and promoting access to, and improvements in, the justice system.

It has been said that jokes about people mask more deeply seated feelings about competition, fear, dominance, and many other emotions. In this regard, everyone likes a lawyer joke, and few other brands of humor unite people of every political, religious, and cultural background.

In more difficult times, the joking has turned dark to the point of violence. Most people have heard the Shakespeare quote “the first thing we do, let’s kill all the lawyers.” The line probably got a lot of laughs from the audience of *Henry VI, Part 2*, and it still does today. Yet the words were spoken by a character named Dick the Butcher, not Shakespeare. The Butcher was a follower of an anarchist named Jack Cade, and his attitude reflects the Shakespearean message that it is not necessary to change the law if one can simply eradicate those who labor long hours, and with care, to support the law’s just administration.

With a few tweaks and amendments, the Butcher’s formula has been employed in almost every modern totalitarian regime and in some that merely adopt totalitarian measures when needed to keep the ruling class in power. As one particularly pointed and systematic example, the Nazis sought out and killed thousands of lawyers and other intellectuals upon the annexation of Poland in 1939. Proscription lists were prepared and these prominent thinkers were hunted down and executed. Reflect on this the next time someone asks “What’s better than 1,000 dead lawyers at the bottom of the ocean?” Lawyers often inspire respect, but there is also a disturbing and recurrent hostility that finds expression in these kinds of jokes.

The Founders of our way of life understood the role of private attorneys as well, or better, than the demagogues and dictators. Yet, they ensured that this country would follow a different path. Among the great accomplishments of the Constitution is the Ninth Amendment. While it tends to get relatively little attention, it guarantees to American citizens all the rights that the original colonists enjoyed as English citizens—the proverbial “rights of Englishmen.” By adopting this catch-all Amendment, the Founders assured the new Americans that the federal government had no intention of stripping away any of the freedoms of private or commercial life that had been fully secured through revolution.

The unwritten and overlooked subtext of the Ninth Amendment is that it assumes an organized Bar. Stop and reflect on this too. A great many of those who contributed to, or ratified, the Constitution and its original Amendments were trained as attorneys. They clearly understood both the philosophical and practical ramifications associated with preserving all preexisting common law rights. Philosophically, the preservation of rights meant nothing without free and fair-minded attorneys and judges to enforce them. A private Bar was assumed as a basic underpinning of the American system at its most elemental level. Practically, litigation and legal wrangling were already well-established features of the American scene by the time of the American Revolution, and it is unlikely that anyone who benefitted from the legal system, through legal fees or otherwise, had any intention of limiting their financial potential through the Constitution.

More recently, the United States has been rocked by scandal after scandal, exposing questionable—if not criminal—corporate ethics and decision-making. The list is long and well known, including ENRON and, more recently, a host of frauds related to mortgage-backed securities. In all cases, the law was either deliberately skirted or so desperately stretched that the line between legality and illegality became unclear. Some enriched themselves at the often heartbreaking expense of many others. In the wake of these events, educated observers have come to decry the decay of corporate ethics and the relativism that caused so many to lose their moral compass. On a world stage, and within the American public itself, these scandals have severely damaged respect for the rule of law in the United States.

No one is in a better place to change this trend than practicing attorneys and judges. As professionals, and as people who work for a living generally, we are rare in that we follow codes of ethics and are subject to discipline for violating them. We understand like no others what the “Rule of Law” means—or at least we should. Saying no to clients when they are tempted to follow an ill-advised course of conduct, observing discovery rules when no one is looking, and generally being civil to our professional brothers and sisters, is where it all starts. Most of us understand this and care deeply to preserve our professional culture. Regrettably, however, we lawyers are often poor marketers of what we do. Jokes persist, at least in part, because the public does not fully grasp what we are about or why we care. The fault is almost entirely ours.

The essence of the Fairfax Law Foundation is to teach the public, and especially our children, what it means to have the Rule of Law. The Foundation has many well-established and incredibly valuable programs in place for this purpose. These include the

continued on page 14

FAIRFAX PUBLIC LAW LIBRARY

(FPLL) NEWS

By Tom Pulver, Library Director



Despite budget problems experienced throughout the county, our law library continues to be a great source of current legal resources, both in print and online.

Did you know that we have access to every state and federal statute, case law, and a large number of cases that are not available in print? Also, we have a very significant collection of electronically-available treatises too numerous to mention here.

When the *Melendez-Diaz* case (Supreme Court case re: certificates of lab analysis) was decided, we had immediate electronic access to the opinion—within minutes of release and long before it became available to the general public from any source. Did you know that some changes to *Virginia Code* provisions become available electronically before the actual printed text of the revised statute gets distributed by publishers? Also, new *Code* provisions sometimes are not immediately available elsewhere, even on the “official” website of the Virginia General Assembly!

Do you want language from any issue or year of the *Federal Register*, *Code of Federal Regulations*, or any state or federal statutory code sections with annotations? Do you need to Shepardize a case, even if it has no official publication date or cite? Would you like to research law review articles? The Library's subscription to the HeinOnline database gives you access to original PDF

text versions for about 98% of all law reviews ever published, from the first volumes to present. We have it for you! We strive to provide you with research tools formerly available only in larger or cutting-edge law firms. Now these are available right here in our law library for anyone to access absolutely free of charge.

We also have a nearly-complete collection of superceded *Virginia Code* volumes. The law library has kept and/or obtained past *Code* supplements from the original *Hening's Statutes at Large* to the present. Our collection now includes the official *Virginia Code* of 1819 (a two-volume commemorative reprint donated by the Honorable Judge Jane Roush) and a couple of *Code* supplement volumes from the 1940s that are not even available at the Law Library of Congress.

The FPLL is still expanding its print collection and we constantly monitor for new publications that may help our FBA members, practitioners, judges, and the public. Thanks to many benevolent law firms like Bingham McCutchen in New York and Boston; or Dillon, Bitar & Luther in New Jersey; as well as institutions like the Maryland State Law Library in Annapolis, we have expanded access to expensive law treatises and specialized publications usually unavailable to all but the most privileged organizations.

continued on page 14

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Local Law Firm Goes to the Dogs This Past Holiday Season

by Kristin Derlunas Fisher, Communications Coordinator

For some, they were found roaming the streets. Some once had a family, but others are neglected and fearful. Wherever they came from, all are now given a second chance at the Friends of Homeless Animals (FOHA) shelter, and thanks to a local law firm, their second chance just got a little brighter.

When the holiday season rolled around, the lawyers and staff at **Shoun, Bach, Walinsky & Curran, P.C.** came up with the idea of helping homeless animals and help they did in a big way. FOHA shelter is a non-kill rescue, currently has 132 dogs awaiting their forever home. Thanks to the firm, all 132 dogs are now being sponsored for the next 90 days in hopes they will be adopted. “We are a firm of animal lovers, and many of us have adopted our pets from shelters like FOHA,” said Albert M. Bonin, an attorney with Shoun, Bach, Walinsky & Curran, P.C., and current Fairfax Law Foundation Board member.

This donation comes at a critical time. The economy has proved to be especially tough on rescues. Donations are down, many families are being forced to give up their pet due to financial constraints, and more potential families are opting not to adopt due to financial circumstances. Bonin also reflected on this when he said, “Donations to shelters like this have been down due to the economy. Donations often trickle in at \$25.00 at a time. These shelters are especially in need of resources during the holidays.”

Sponsoring a FOHA dog will help defray the cost of daily shelter expenses such as providing dog food. Sponsorship will also help pay for veterinary care and medicines, such as heartworm preventatives.

Shelly O'Brien, Development Director for FOHA, did not expect to receive a phone call about this large donation. “Most of our donations are smaller amounts and are from individuals or families. This was a unique situation for FOHA.” The law firm seemed to inspire others in the Northern Virginia community. “Three other new donors noted the law firm gift when making their gift to FOHA; a couple even noted that they have been past clients of the firm,” said O'Brien.

Bonin hopes that the firm's donation will continue to inspire others. “We hope that others will also get into the holiday spirit and either provide a donation of any amount, look to the shelter for their next pet, or donate their time,” he said.

For more information on FOHA, visit www.foha.org, or call **703-385-0224** for information on visiting the shelter. Adoption hours are **Saturdays 12:00 PM - 5:00 PM**, and **Sundays 12:00 PM - 4:00 PM**.



Catrin, one of the 132 dogs that Shoun, Bach, Walinsky & Curran, P.C. has sponsored, is a two-year old Australian Cattle mix whose owner passed away. Relatives took Catrin and her brother to a local shelter, but unfortunately the brother was euthanized before FOHA was able to save them both. In addition, Catrin had heartworms, which usually costs about \$500 to treat. Many shelters are unwilling to take dogs with heartworms due to the expense, but FOHA was able to help Catrin and give her a second chance. Catrin gets along well with other dogs, and is very loving.

The Legislative Committee meets monthly to discuss, monitor, and promote legislation that may be of interest to FBA members. Most of these issues arise out of the Virginia General Assembly. The FBA has no lobbyist in Richmond, so a key function of the Legislative Committee is to monitor and report to the Board of Directors on important legislation. The Board then determines whether the FBA should advocate for or against a particular bill. If the FBA wants to advocate for or against a particular piece of legislation, the Committee members begin to contact other FBA members, Delegates, and Senators to express our organization's view. As attorneys, we are able to present unique arguments to elected officials on the possible consequences of a bill.

At this time of year, with the General Assembly back into session on January 13, 2010, we are busy. The FBA focuses on legislation that affects the administration of justice, not on more partisan issues such as taxes, transportation, or healthcare. By way of example, the following bills are currently pending for the 2010 session:

HB 14—provides that in domestic relations cases filed after July 1, 2010, the court may draw an adverse inference against any witness who refuses to answer a question regarding adultery or fornication on the ground that the testimony might be self-incriminating.

HB 22—prohibits use of a hand-held communications device while operating a motor vehicle.

HB 40—a parent who is permanently disabled cannot be guilty of criminal nonsupport of his/her child.

HB 45—prohibits an insurance company from canceling, refusing to renew, or increasing rates on a policy on an owner-occupied dwelling because the dwelling was built using Chinese drywall.

HB 66—allows a court to appoint a vocational expert to evaluate a party's earning capacity in cases of spousal and child support when a party's earning capacity is in controversy.

HB 102—court may defer and dismiss a first-offense petit larceny charge.

HB 107—clarifies that schools should receive notice when students 18 years or older are charged with certain crimes subject to the jurisdiction of the J&DR District Court.

continued on page 14

FBA'S ABA DELEGATE REPORT ABA MID-YEAR MEETING—February 8 & 9, 2010

By Jay B. Myerson, Esq.

The American Bar Association's Mid-year Meeting of its House of Delegates will be held this year on February 8 and 9, 2010.

The ABA House of Delegates consists of 555 members, and the Fairfax Bar Association is one of only 80 local bar associations in the nation to be represented with its own delegate.

Currently, I have the good fortune to serve as the FBA's delegate and, as part of that representation, I will be providing brief updates prior to, and following, both the Mid-Year and Annual Meetings of the ABA House of Delegates.

By way of background, the House of Delegates is the policy-making body of the association. The House of Delegates, established in 1936, meets twice a year, at ABA Annual and Mid-Year Meetings.

As noted on the ABA's Web site, at the Mid-Year Meeting, the Nominating Committee nominates officers and members of the Board of Governors. During the Annual Meeting, the full House votes on these nominees and on any nominations made by petition. Additionally, at its meetings, action taken by the House of Delegates on specific issues becomes official ABA policy.

Reports with recommendations that will be considered at the February 2010 meeting of the ABA's House of Delegates are available online.

<http://www.abanet.org/leadership/2010/midyear/docs/SUMMARYOFRECOMMENDATIONS.doc>.

One report that is receiving significant interest within the Virginia delegation is a report by the National Conference of Commissioners on Uniform State Laws. This report recommends approval of the Uniform Collaborative Law Act. This proposed legislation was promulgated by the National Conference of Commissioners on Uniform State Laws in 2009.



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President's Column

continued from page 2

Once all conflicts presented by applicants and panel members to the JSC chair are weeded out and confidentiality agreements are signed, the panel conducts interviews of each applicant pursuant to the rules. The process generally begins with an opening statement from the applicant followed by interviews of each applicant. Each panel member is given the opportunity to ask questions. Once all questions are asked and the applicant is given the chance to give a brief closing statement, the applicant is asked to wait outside of the room and the panel deliberates to determine if there are any further questions before the applicant is excused. After the panel completes the interview process, panel members painstakingly deliberate the strengths and weaknesses of each application. Afterwards, the panel votes by secret ballot on the qualifications of each candidate. The panel votes first on whether or not applicants are "Qualified" pursuant to the ABA guidelines by a simple majority (so that no one panel member can derail the process). If found "Qualified," there is more discussion and a second vote is taken to determine, again by simple majority, if the panel believes applicants should be determined to be "Recommended." Finally, if "Recommended," the panel will then vote by secret ballot to determine whether any applicants merit a "Highly Recommended" designation, which requires four-fifths of those voting. Once all voting is concluded and the designations are complete, the panel begins drafting a detailed and substantive summary of the reasons, positive or negative, for the panel's designation of each applicant.

Once the panel completes the final drafts of the summaries and goes home (often after 10:00 PM), each applicant is contacted by the Panel Chair with his/her rating and allowed to review their summary. If the applicant chooses not to go forward with their application for any reason, the applicant may withdraw from the FBA screening process and the summary is not released. If the applicant decides to move forward, the summary is released on the FBAWeb site and submitted to the general membership for a vote. The applications, summaries, and the FBA vote count are then hand-delivered to the legislature. With this information in hand, the legislature has an invaluable tool to make a determination that significantly impacts all our professional lives. Sounds simple enough, right? Not even close.

A myriad of unforeseen and unexpected issues arise during the interviews and deliberation process. The panel is required to slog through these issues and determine which have credibility, which may be relevant to the judicial appointment process, and which are not pertinent to a judicial appointment. The phrasing and wording of every summary must be exact. Cognizant of how the summary may affect each applicant's professional future, the panel spends hours wording each summary as carefully as possible in an attempt to subtly express their concerns without destroying a candidate's reputation. This work is accomplished by the panel during long sessions, often over 12 straight hours without more than a lunch break. Having been on two of these panels, I can assure you that everyone is exhausted and every instinct you have is to just put something down on paper and get home to your

continued on next page

"Do It Yourself" ESI Collection— Risky Business for Clients and Counsel

Self-collection of discovery has a nice ring to clients' ears. Early in a case, it appears to represent a prime opportunity to control outside experts' costs, leverage in-house IT resources, and maximize control over the matter. For a limited group of clients, it also presents a splendid chance to "hide the ball" without outside interference or knowledge. While some clients are drawn to self-collection, it's critical that counsel point out its shortcomings, which can result in wasted time and money, and exposure of both client and attorney to unnecessary legal risk.

While we're still calling it "e-discovery," discovery today includes the preservation, collection, review, and production of paper and electronically stored information (ESI). Collecting ESI requires an understanding of a client's IT infrastructure and the technical capability to identify and copy data from both a network (desktops, email and file-share servers, mapped drives, other data repositories), and custodian level (thumb-drives, PDAs, DVDs).

Counsel has a good faith obligation (and a duty of competence!) to conduct or manage the collection process. Failure to properly do so has subjected many clients and their attorneys to sanctions. Penalties include a court's refusal to allow in certain evidence, adverse inferences, and even dismissal of the case. Courts are granting sizeable monetary sanctions (some in multi-million dollar amounts) against clients and counsel alike. And in numerous opinions, judges are admonishing attorneys that they can no longer be "hands off." Counsel must become competent in e-discovery. Failure to abide by the requirements of a litigation hold and the consequent preservation and collections duties will simply not be tolerated.

The risks associated with client self-collection are numerous. Clients virtually always over- or under-collect discovery, owing to their lack of legal and technical expertise. They often fail to preserve critical metadata and use poor collection methodologies and tools. They do not adequately document their process, nor do they generally "sample" their data to ensure that they are genuinely preserving and collecting relevant information. Worst of all, clients have a vested interest in the result—time and time again, courts have issued sanctions where it is clear that the clients have succumbed to the temptation to withhold damaging ESI.

Clients also tend to rely on their own IT staff, who will generally "oversell" their e-discovery capabilities. It has been our experience that IT staff tends to "stomp" on the evidence, impacting dates of last access and other metadata that may be material to the case. IT experts are one thing, and EDD (electronic data discovery) experts are another. Despite the distinction, however, it's imperative that EDD experts work with in-house IT folks, because the latter know where the data is and how it is structured within the client's network.

EDD experts offer a variety of solutions that can simultaneously increase the accuracy and efficiency of a collection project. They

continued on next page

LEGAL SERVICES OF NORTHERN VIRGINIA AND POTOMAC LEGAL AID SOCIETY MERGE AT THE START OF 2010

conduct interviews with key players to assist in the identification of relevant ESI and relevant time periods. Done correctly, these interviews will also yield keywords and concepts that will assist in narrowing the universe of data of potentially relevant ESI. The smaller the volume of data, the less there is that requires manual attorney review. Make no mistake about it—the largest cost associated with e-discovery is attorney review! As such, applying appropriate expert analysis and technological filters at the front end of a discovery project will result in savings.

The challenge for attorneys is that they must convince the client that self-collection is expensive and dangerous—and that the use of experts ultimately saves money and limits risk. It is helpful for attorneys to have preferred vendors on board prior to the commencement of litigation. Once litigation is in play, counsel must educate the client about and stress the need for a systematic, repeatable, defensible, and transparent process.

True e-discovery experts offer the enormous value of a compendium of experience and resources. They have already tested their processes and know how to document them. They are objective, have great technical capacities, and are accustomed to interfacing between clients and outside counsel to ensure that ESI is properly preserved, collected, reviewed, and produced. Generally, after the first use of an expert, both attorney and client are better educated, thus, saving time and money in any subsequent litigation. Most importantly, recognized experts who appear in court and who have done their jobs well generally keep clients and attorneys from becoming subject to e-discovery sanctions.

DIY is great for some things, but it is rarely wise in the world of e-discovery.

—Sharon D. Nelson, Esq. is the President of Sensei Enterprises, a computer forensics and information technology firm in Fairfax, VA.

—Aaron P. Lawler, Esq. is Vice President of Aphelion Legal Solutions (aphelionlegal.com), a boutique provider of e-discovery consulting and document review services. ■

President's Column

continued from previous page

family. But that does not happen. The panel spends literally hours meticulously and repeatedly going through summary drafts line by line to make sure they express exactly what the panel wants to say.

As I stated earlier, this is in no way an easy job—for either the applicants or the panelists. Nevertheless, I think that almost everyone who has volunteered to be on a judicial screening panel in the past would agree that serving on the panel was one of the most rewarding experiences that they have had with the FBA. I strongly encourage anyone who agrees, to join the Judicial Screening Committee next year. One day of your time can make a great impact on the bench that you may be arguing before for many years to come. Your input matters. ■

The two nonprofit legal aid organizations that provide free civil legal services to low-income Northern Virginians merged into a single organization as of January 1, 2010. Legal Services of Northern Virginia (LSNV), the eight-office organization that is currently celebrating its 30th year of serving the region's poor, elderly, and children, is joining with Potomac Legal Aid Society (Potomac), an innovative program based in Falls Church with an additional office in Fredericksburg. The merged organization, which will continue with the Legal Services of Northern Virginia name, will serve clients in the Northern Virginia counties of Arlington, Fairfax, Loudoun, and Prince William, and in the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It will also provide limited services in Fredericksburg and surrounding jurisdictions. The organization's mission is to promote a more just community by providing high-quality civil legal assistance to families and individuals who face the loss or deprivation of a critical human need, such as food, shelter, income, medical care, education, family stability, or personal safety.

LSNV Executive Director Jim Ferguson will continue to serve as the Executive Director of the merged program and Potomac Executive Director Susan Stoney will serve as the new Deputy Director for Client Services of the merged program.

"In the current horrible economic environment, there are a lot more people who are struggling financially, and there are fewer resources to help them," said Ferguson. "The merger is taking two very strong organizations with long and impressive track records and combining them into one great program that will be more than the sum of its parts. We view the merger as an opportunity to better meet the needs of the region's poor, elderly, and children, and to expand into some innovative new programs."

According to Susan Stoney, "It makes sense for the programs to combine their resources and to think creatively about how to use those resources to address recurrent problems and meet the needs of the growing low-income population."

As a result of the recession, there is more demand than ever for civil legal services for low-income clients. More people simply have nowhere else to turn. In their most recent fiscal year, the two organizations completed a combined total of 8,665 cases on a wide spectrum of issues, including domestic violence, child custody, foreclosures, evictions, bankruptcies, consumer fraud and lending scams, special education and long-term care—just to name a few. ■

**More information about LSNV can be
found on their website at**
www.lsnv.org

NEW MEMBERS

November 2009

Carolyn Marie Abbate
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Craig William Berry
Joan Therese Boardman
Whitney M. Bolton
Townsend Bourne
David Adam Burger
Christine N. Chang
Brian M. Choi
Brian Patrick Coleman
Clyde C. Crane, II
John Murphy Delaney
Edward Gino Di Cristofaro
Ryan Van Peter Dougherty
Adam E. Draper
Christin Eberst
Shani Rosanne Else
Soudabeh Natasha Goodarzian
Benjamin Robert Goodhue
Adriane Sullivan Grace
Angela Marie Griffith
Ralitza Grigorova
Matthew Alexander Haddix
Christopher Brian Hatch
Slayde Hawkins
Thomas Southard Hay, Jr.
Sebastian A. Hoeges
Erin Elizabeth Hoye
Utibe Inyang Ikpe
Daniel E. Ingersoll
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Candace Mary Kanka
Christopher Landrigan
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Christopher Michael Leins
Jeremy S. Letnick
Kristina Lorraine Lewis
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Monique Antonia Miles
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Kathryn McMahon Moses
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Robert O'Brien
Sean D. O'Malie
Philip Siegel Raskin
Mitchell Robert Receski
Dr. Keith Reutter
Jessica Laura Rider

K. Vanessa Rodriguez
Catherine Lillian Roehl
Che Christopher Rogers
Sarah Saadian
Alberto Salvado
Carlos A.F. Salvado
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Sigrid Caroline Schroeder
Elena Schwieger
Erika Lee Smith
Emily Harwood Smith
Thorn McClellan Smith
J. Thomas Spiggle
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Joshua Perry Steward
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Michael Sawyer
Robert Tarcu
Melanie Kraycar Tiano
Lindsay Bush Velarde
Amanda Jean Weiland
Peiyong Weng
Kristin Powerll Wertman
Brooke M. Williams
Dimitri Lydell Willis
Alan John Wonnacott
Emily Bronwen Zitter-Smith

December 2009

Leslie Barnes
Caroline Helene Cobb
Simon Green Courtman
Thomas Michael Cusick
Rebecca Lynne Evans
Michael Andre Gilliam
Claudia Lorena Guzman-Farfan
Dewayne Early Harley
Nadar Moneef Hasan
Jerald Russell Hess
Elizabeth L. Howard
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Lindsay Jane Kile
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Jennifer R. Nickolas
Kevin Robert Pearson
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Zachary M. Rudisill
Kevin Michael Scott
Barno Shamansurova
Timothy J. Slattery
Jennifer Laura Tomac
Nghia Tran
Debra Van Putten
Tyler Benjamin Wasilition
Brian J. Whittaker

UPCOMING EVENTS/CLEs

EMPLOYMENT & ETHICS: WHAT EVERY VIRGINIA LAWYER SHOULD KNOW CLE

February 24, 2010

4:00-7:00 PM

3.0 MCLE (1.0 Ethics) Credits

Location: Fairfax Courthouse Jury

Assembly Room (404)

\$105.00 FBA Attorney Members;

\$150.00 Attorney Non-Members;

\$75.00 Affiliate Members;

\$120.00 Support Staff Non-Members

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Deadline for Reservations: February 22, 2010

HOT TOPICS IN JUVENILE & DOMESTIC RELATIONS LAW CLE

March 24, 2010

4:00-7:00 PM

Location: Fairfax County Courthouse—
Courtroom 3K

3.0 MCLE Credits

\$105.00 FBA Attorney Members;

\$150.00 Attorney Non-Members;

\$75.00 Affiliate Members;

\$120 Support Staff Non-Members

TOPICS IN BUSINESS REPRESENTATION CLE

April 26, 2010

Further Details TBA

10th ANNUAL SPRING GOLF TOURNAMENT

May 10, 2010

Location: Westfields Golf Club

INTELLECTUAL PROPERTY: THE IMPACT OF THE SUPREME COURT'S *BILSKI* DECISION CLE

May 27, 2010

5:00-6:30 PM

1.5 CLE Credits

\$52.50 FBA Attorney Members

\$75.00 Attorney Non-Members

\$37.50 Affiliate Members

\$60.00 Support Staff Non-Members

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ANNOUNCEMENTS

COLTEN CUMMINS WATSON & VINCENT P.C. is proud to announce that **THOMAS M. CUSICK** has joined the firm as an associate. Mr. Cusick is a *cum laude* graduate of the T.C. Williams School of Law at the University of Richmond. Prior to joining Colten Cummins Watson & Vincent P.C., he clerked for the Honorable Robert P. Doherty, Jr. and the Honorable James R. Swanson in the Roanoke County Circuit Court. Mr. Cusick's practice will focus on family law and civil litigation.

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NEEDHAM MITNICK & POLLACK PLC is pleased to announce that **SHERI R. ABRAMS** has joined our firm as Of Counsel, effective January 1, 2010. Ms. Abrams founded her own law firm in 1995 and is a leading attorney in the field of Social Security Disability Law. She has represented clients in Virginia, Washington, D.C., and Maryland in their Social Security Disability appeals. 400 S. Maple Avenue, Suite 210, Falls Church, VA 22046; 703-536-7778; Fax: 703-536-2452; www.nmpattorneys.com.

Legislative Committee News

continued from page 9

SB 43—relieves the trustee under a will from filing an inventory or annual accounts with the Commissioner of Accounts under certain circumstances.

A final bill of note is **SB 124**, a bill to provide funding for electronic traffic summons. Senator Chap Petersen introduced this bill last year, and by only two votes it was narrowly defeated. Rather than writing out traffic tickets, police officers could simply swipe a person's driving license on the officer's computer. This would generate a printed ticket, and more importantly, it would enter the data in the District Court's computer. This eliminates the need for clerks to manually enter traffic tickets. Believe it or not, this is still how all traffic tickets in Fairfax County are processed. The FBA supports passage of this bill, and encourages members to call or email their representatives in Richmond.

These are only a sampling of bills pending in Richmond. You can access all the bills at leg1.state.va.us and click on the 2010 Session. If there any bills that you believe merit attention, please contact the FBA or me at rfg@rfgvalaw.com. ■

WHAT IT MEANS TO PRACTICE LAW

continued from page 6

Court Tour Program, which introduces local students to the court system, and *pro bono* programs that assist persons in need with fundamental legal issues like housing. The Foundation also supports programs to heighten awareness of its goals, among them the annual Jazz for Justice program at George Mason University, and the newly-launched Stitt Cup, a volleyball tournament that honors the Hon. David T. Stitt, late of the Fairfax Circuit Court bench. Just as there is not a particular groundswell of private support for attorneys, so there is not necessarily support for programs run by attorneys. Thus, it is incumbent on us to be the volunteers to make these programs work. If not as volunteers, then as financial supporters, or both.

If not us, then who? Please look up the Fairfax Law Foundation at www.fairfaxlawfoundation.org and consider a contribution of time or money to help advance our common professional and civic cause. The Foundation would like to thank those who already have pledged to the Foundation and its programs. Recently, the Foundation hosted a reception to honor those who have made contributions to the Capital Campaign. This important fund-raising initiative helps to support the programs and mission of the Fairfax Law Foundation. Be sure to check out the pictures and a full recap in the next issue of the *Journal*. ■

FAIRFAX PUBLIC LAW LIBRARY (FPLL) NEWS

continued from page 7

Some of our recent acquisitions include the following:

- *Corpus Juris Secundum*
- *Causes of Action 2d series*
- *McCarthy on Trademarks and Unfair Competition*
- *Maryland Corporation Law*
- *District of Columbia Practice Manual*
- All Virginia Continuing Legal Education (CLE) publications

In addition to the 100-seat main floor facility, the Library now offers FBA members a 12-seat conference room that can be scheduled in advance for multi-purposes, as well as a 12-seat computer training room for CLE and related instructional uses by FBA members and County agencies. To advance schedule the use of any of our facilities, please call 703-246-2170. ■



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