

JOURNAL

Newsletter of the Fairfax Bar Association

www.fairfaxbar.org

July/August/September 2015

2015-2016 Fairfax Bar Association Leadership

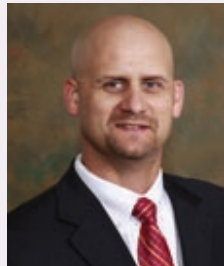
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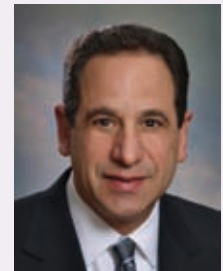
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FORMER FAIRFAX LAW FOUNDATION BOARD MEMBERS AT THE FBA ANNUAL MEETING

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President's Column

By Douglas R. Kay, Esq.

THE YEAR AHEAD

I consider it a high honor to be FBA President for the next year. There is certainly much on our agenda for the year ahead, and, no doubt, there will be additional effort responding to unanticipated but inevitable issues and crises of varying degrees. I look forward to the challenges to come.

Ahead this summer there are five separate judicial investitures, including two in the Circuit Court (Penney Azcarate and Steve Shannon), and three in the General District Court (Manny Capsalis, Michael Lindner, and Tina Snee). These ceremonies celebrate the significant accomplishments of five fine lawyers. I certainly hope that many of you will attend these investitures to personally congratulate each of them.

Ensuring that Fairfax County obtains all necessary judicial resources from the Virginia General Assembly has been one of the highest (if not the highest) priority of the FBA Board for several years. That endeavor continues. As it stands now, as soon as we lose a judge in the Juvenile & Domestic Relations District Court (through retirement or otherwise), that court will be expected to operate with one less judge. This is unacceptable. The task ahead will be to persuade the General Assembly to keep all of the judge positions in our District Courts and fill the one remaining vacancy in the Fairfax Circuit Court.

In the fall, we will hold our annual convention at the Gaylord National Resort and Convention Center, National Harbor, Maryland, on September 26 and 27. The Board carefully considered the location for the fall convention. For many years, the FBA has alternated between "out-of-town" conventions—Las Vegas, New Orleans and Montreal to name a few and "in-town" conventions. Recent "in-town" conventions have been hosted at the Greenbriar, Bedford Springs, and Tides Inn. While attendance has remained strong, the Board felt strongly that it was time for the "in-town" convention to be truer to its name this year. National Harbor is less than 20 miles from the Fairfax County Courthouse. We hope that, with removal of the travel obstacle, we will enjoy even greater participation from our membership, and that we will see many new faces at the convention this year.

Programming for the fall convention promises to be excellent. The Thurgood Marshall Distinguished Professor of Law from the University of Virginia will discuss topics contained in her soon-to-be published book about civil rights. A panel of judges and experts will study social media evidence—from collection and preservation of it, to the effective presentation of it, in a courtroom. There will be breakout sessions with judges on topics of interest for attorneys specializing in domestic relations, criminal law, and civil litigation. A recently retired judge will engage attendees with an interactive lecture on trial advocacy. And, to fulfill annual ethics MCLE, we will hear a lively and interactive panel discussion that will include the President-Elect and a Senior Ethics Counsel from the Virginia State Bar.

You will not want to miss what promises to be the highlight of the fall convention. On Saturday night, September 26, we will have a dinner roast of retiring Chief Judge Dennis Smith. Joe Condo—who spoke at Judge Smith's investiture 20 years ago—has graciously agreed to be the master of ceremonies. Please contact Joe if you have any good material. This dinner promises to be a truly special event. The convention will conclude with an outing to Nationals Park on Sunday afternoon. A convenient river taxi from National Harbor to Nationals Park is available for those interested.

I sincerely hope that all of you will actively participate with these and other FBA activities this summer and fall. I look forward to seeing each of you at events and around the courthouse. As always, please do not hesitate to reach out to me with suggestions, questions, and concerns. Thank you again for giving me the opportunity to serve you as President. ■



FAIRFAX BAR JOURNAL

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4110 Chain Bridge Rd., Suite 216

Fairfax, VA 22030-4009

Telephone: 703-246-2740

Fax: 703-273-1274

fba@fairfaxbar.org

<http://www.fairfaxbar.org>

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Executive Director/Editor

Courtne L. Norris • 703-246-2740

cnorris@fairfaxbar.org

Communications Coordinator

Kristin Derlunas Fisher • 703-246-3721

kfisher@fairfaxbar.org

Graphic Design/Space Advertising

Ann Hill Thornton • 703-743-9375

rodangraf@aol.com

Classified Advertising

703-246-2734

fba@fairfaxbar.org

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2015-2016 Fairfax Bar Association Leadership Bios

OFFICERS

President Elect: Douglas R. Kay — Offit Kurman, P.C.

Doug received his B.A. from Virginia Tech and his J.D. from California Western School of Law in San Diego, CA. He has been an active member of the Bar, having served as a member of the Judicial Screening Committee, Law Library Committee, and as Chair of the Legislative Committee. Doug has been a member of the FBA's Board of Directors since 2008.

Immediate Past-President: David L. Marks — Law Offices of David L. Marks

David received his B.A. from Washington College in Fredericksburg, VA, and his J.D. from the T.C. Williams School of Law at the University of Richmond in Richmond, VA. David has been an active member of the FBA, having served on the Board of the Young Lawyers Section and as its Secretary and President. He served on the Pro Bono Advisory Board and as Co-Chair of the Committee from 2003-2006. David has been on the Board of Directors since 2007.

President-Elect: Richard A. Gray — Feldesman Tucker Leifer Fidell LLP

Richard received his B.A. from Old Dominion University, his M.A. at George Mason University, and later his J.D. from the New England School of Law. His FBA involvement includes being a member of the Family Law Section and Liaison to the Fairfax County Juvenile and Domestic Relations District Court. Richard has been a member of the FBA's Board of Directors since 2009.

Vice-President: Thomas W. Repczynski — Offit Kurman, P.C.

Tom completed his undergraduate work at Dartmouth College and later received his J.D. from George Mason University School of Law. His FBA involvement includes serving as Chair of the Law Library Committee, and participation in the Budget and General District Court Committees. Tom has been a member of the FBA's Board of Directors since 2009.

Treasurer: Christie A. Leary — Law Offices of Christie A. Leary, P.C.

Christie received her B.A. from the College of William and Mary and later went on to receive her J.D. from the George Mason University School of Law. She has been a very active member of the Bar, and has served as the President of the Young Lawyers Section, as Director of the Run for Justice 5k, and is a member of the Fairfax Law Foundation Board of Directors. Christie has been a member of the FBA's Board of Directors since 2009.

Secretary: Valerie E. Hughes — The Bowen Law Firm

Valerie received both her B.A. and law degree from George Mason University. She has been an active member of the Bar as a member of the Circuit Court Committee and the Domestic Relations subcommittee. She served as Chair of the Circuit Court Committee and on the Judicial Screening Committee. Valerie has been a member of the Board since 2011.

General Counsel: Luis A. Perez — Luis A. Perez, P.C.

Luis received his J.D. with honors from the University of Puerto Rico and an LL.M. in taxation from Georgetown University. He is the past Chairman of the FBA's Juvenile and Domestic Relations Committee and has served as the President of The Fairfax Law Foundation. Luis has been a member of the Board since 2012.

NEWLY-ELECTED BOARD MEMBERS

Director: Lacey Ullman Conn — Michael L. Davis & Associates

Lacey received a B.S. in Exercise Science from The Ohio State University and a J.D., *cum laude*, from the University of Toledo College of Law. She is a Past-President of the FBA Young Lawyers Section and, as a young lawyer, served on both the Fairfax Bar Association Board and the Fairfax Law Foundation Board.

Director: Richard F. Gibbons, Jr. — Richard F. Gibbons, Jr., P.L.C.

Richard received his B.A. from the College of Holy Cross in 1984 and his J.D. from the College of William and Mary in 1987. His involvement in the FBA includes serving as chair and co-chair of the Legislative Committee. Richard is also a member of the Circuit Court Committee and the Domestic Relations subcommittee.

Director: John A. Kassabian — Kassabian & Kassabian, P.L.C.

Since 2007, John regularly served as a substitute judge and is the Fairfax City Prosecutor, former Chairman of the General District Court Committee, and Ombudsman of the FBA General District Court Judicial Feedback Program.

Economical Solid State Drives Are Here

By Sharon D. Nelson, Esq., and John W. Simek

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We all covet the latest and greatest of technology, not to mention possessing the fastest computer. One way to increase the speed of your computer is to use a solid state drive (SSD) instead of a mechanical one. Essentially, SSDs are flash memory devices that appear as a hard disk to the computer. It is very fast to write and read from memory as opposed to accessing data from the rotating platters of a mechanical disk drive. Solid state drives are three to four times faster than their mechanical counterparts when writing or reading large files. Sound good? Then you'll love to hear that SSDs are hundreds of times faster for the smaller random reads and writes that are common for normal usage of a computer.

There are some big advantages to using SSDs. There are no moving parts so they travel well and aren't impacted by vibration. Without moving parts, they use less power and don't generate as much heat. The downside is that they are a little more expensive than a traditional hard disk. It used to be that solid state drives were a very expensive luxury, but not anymore. The price gap has narrowed. You can now get a really good 500GB SSD for around \$200.

So which SSD should you buy? We recommend going for the 500GB Samsung 850 EVO drive. You should be able to find one for less than \$200. According to test results, the drive is slightly faster than other 500GB SSDs. It also comes with a five-year warranty. The drive is also rated at 150TB of writes, which is double other drives in the same price range. The best SSD vendors at least make their own flash memory, but use components from other manufacturers. Samsung is the only manufacturer that makes 100 percent of the SSD. That includes the controller, firmware, and NAND type flash memory.

The Samsung drive also includes software to move the operating system and data files from your Windows environment to the SSD. There is an additional included utility called Samsung Magician toolbox, which is used for drive maintenance such as firmware updates. For those of us that are security minded, there is hardware support for full disk encryption. We're big fans of full disk encryption and are constantly telling lawyers that it should be their only option. Encrypt the whole drive and you won't have to worry if you placed that confidential client document in a secure folder. Just dump it anywhere on the drive and you'll know it is safe since the whole disk is encrypted. If you are a Windows user (the drive can be used in Macs too), there is an additional feature that lets you use up to 4GB of your system RAM as a write cache for the SSD. That will boost the performance even more.

There are many great SSDs available for your computer. The variables are price, performance, software, reliability, etc. If you are not using SSDs in your current computers, now is the time to consider them, especially since the price premium is not that great.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and digital forensics firm based in Fairfax, VA. 703-359-0700; www.senseient.com.

Hon. Donald P. McDonough
Retires as Chief Judge of the General District Court
19th Judicial Circuit



ANNUAL MEETING LUNCHEON

*President's Award Recipients: Steven D. Briglia; Stephen A. Horvath;
Hon. Daniel E. Ortiz; Jonathan Phillips; Kim Pratt; Thomas W.
Repeczynski; and Ryan M. Witkowski.*

*Hon. Arnold B. Kassabian Award Winner: Mary Agee,
President and CEO of Northern Virginia Family Service.*



INFORMATION SECURITY CHECKLIST

E-MAIL?

Is your e-mail being filtered to protect users from spam, viruses and phishing attempts?

ENCRYPT?

Is data on mobile devices encrypted? (smartphones, laptops, tablets)

Do you have a disaster recovery and incident response plan?

PLAN?

Is your backup engineered so that it cannot be encrypted by ransomware?

BACKUP?

SECURITY?

Do you have written security policies?

TRAINING?

Do your employees receive annual training on information security?

Are there industry standards with which your firm must be compliant?

HIPPA?

Do you have a Bring Your Own Device (BYOD) policy?

BYOD?

POLICIES?

Is a password policy in place requiring strong, 14-character or longer passwords?

UPDATED?

Is your security software up-to-date, licenses current, and actively scanning?

**FEED
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MIND**



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2015 Fairfax Bar Association 15th Annual

Spring Golf Tournament

By Robert S. Letnick, Esq.

The Fairfax Bar Association's 15th Annual Spring Golf Tournament was held on Monday, May 11, 2015 at the Westfields Golf Club. The golf tournament was once again held on the first Monday after Mother's Day. 87 golfers participated in this event on a beautiful spring day.

As in past years, there was a silent auction that benefited the Fairfax Law Foundation. The Law Foundation supports valuable programs in the community including *pro bono* legal services to indigent clients, maintaining the public law library, and offering law-related education programs to area students, including the court tours that many of us see taking place at the Courthouse. During the silent auction, there were many rounds of golf from area golf courses auctioned off, including golf at the Westfields Golf Club, Stonewall Golf Club, Old Hickory Golf Club, Bull Run Golf Club, Country Club of Fairfax, Heritage Hunt Golf & Country Club, Potomac Shores Golf Club, 1757 Golf Club, and Reston National.

The format for our yearly golf tournament remained a scramble, which is also known as a captain's choice. For those who are not aware, at each hole each member of the team hits a tee shot and the team then selects which of the tee shots is the best ball to play. The players then play their next shot from that spot. This process continues for each shot thereafter, including putts, until the ball is in the hole.

This year's golf tournament, as in past years, was highly competitive with numerous teams shooting in the 50's. The first place team shot a score of 53 or 18 under par, and was the team of Steve Cochran, Bill Musto, Michael Cochran, and Scott Heon. The second place team was the team of Bob Letnick, Jeremy Letnick, Bob Farrell, and Mike Annessa with a score of 55, or 16 under par. Finishing in third place was the team of Matthew Brennan, Mark Nicewicz, Raj Dua, and Vinny Duggaol with a score of 56, or 15 under par. Bringing up the rear was a team that shot 80, or 9 over par. For all of their hard work, in addition to a gift certificate in the pro shop, they were also the recipient of a bobblehead dog that was actually engraved "I Played Like a Dog." Hopefully these dog bobbleheads shall be proudly displayed in their offices because they worked harder by taking more strokes than the rest of the field.

While warming up in preparation for the golf tournament, the annual putting contest was held. To get into the finals in this putting contest, each participant was required to sink a putt which this year consisted of a 15-foot putt with a significant break. Approximately 10 golfers qualified and then all who qualified hit a very difficult lengthy uphill putt from approximately 90 feet away with a large right-to-left break. The putting contest was won by Richard Dzubin. The women's longest drive on the 11th hole was won by Kieran Carter. The men's longest drive on Hole #6 was won by Bob Gardiner.

There were five closest-to-the-pin competitions with four of them taking place on each of the par 3 holes. Ted Britt Ford again sponsored the hole-in-one competition on the 3rd hole, which is considered by many to be the signature hole at The Westfields Golf Club. At the tee box was a striking 2015 red Ford Mustang that was provided by Ted Britt Ford. While none of the golfers was able to drive this motor vehicle home, notwithstanding the fact that the pin was in its customary pin placement approximately 6" onto the green in the left hand corner over a water hazard, the closest-to-the-pin was won by Nick Calderone at a distance of 2'4". Based on a show of hands after the golf tournament, notwithstanding the difficult pin location, numerous teams were able to birdie this hole.

The closest-to-the-pin competition on Hole #12 was won by Joe Yoon. The women's closest-to-the-pin competition on Hole #7 was won by Sarah Welch; while the men's closest-to-the-pin competition on Hole #17 was won by a past president of the Fairfax Bar Association and the President of the Virginia State Bar, Edward L. Weiner. What was truly amazing about this shot was the fact that Ed hit the shot under extraordinary

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Spring Golf Tournament

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circumstances. Most people who know Ed would question whether he possesses the requisite skill necessary to hit a tee shot to 2'3" on the closest-to-the-pin hole. The second place team, including this scrivener, had already completed their round of golf and while driving in they arrived at the tee box at Hole #17 at the opportune moment. Ed was on the tee box and before he could hit his tee shot there was a substantial amount of bantering between the two groups of golfers. Ed was able to somehow hit a fabulous golf shot, ignoring all the distractions and shocking all who were present.

For the third year in a row, each of the golfers had an opportunity to take a second tee shot on the 14th Hole, which is a short par 4 of approximately 250 yards. The second tee shot, as in past years, was hit with a baseball bat at a location approximately 100 yards off the 14th green. The closest-to-the-pin competition on this hole with an actual golf shot at 250 yards was won by Jim Bitner at a distance of 33'10". While our former President of the Fairfax Bar Association, Jay B. Myerson, could not be present at this year's event, this hole was redesignated as the "Jay B. Myerson Memorial Golf Hole Part Trois."

The Merrill Corporation once again provided videotape coverage of each participant's tee shot on the 1st hole, which was played during the dinner buffet and the awards ceremony after. The video showed a number of participants hitting a driver off the tee for their team and, once a good drive was hit, the other players competed in the closest-to-the-keg competition, which required a shot at a beer keg placed in the middle of the fairway at about 170 yards from the men's tee box. This year's winner of the closest-to-the-keg competition was Rich Dzubin who hit it to a distance of 20'8" from the keg.

There were many sponsors and donors who helped make this tournament a success this year as in all of the past

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FAIRFAX BAR ASSOCIATION
Serving the Northern Virginia Legal Community

Spring Golf Tournament 2015
Special Thanks to Our Sponsors!

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Fairfax Memorial Park/Funeral Home
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Birdie Sponsor - \$500
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DiPietro, PLLC

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Kirby-Hunter Investigations, Inc.	Weiner, Spivey & Miller, PLC

Hole in One Sponsor
Ted Britt Ford

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- Reston National
- Stonewall Golf Club
- Westfields Golf Club
- Westfields Marriot



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Spring Golf Tournament

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years. Special recognition goes out to one of the premium sponsors, Ted Britt Ford, who sponsored the hole-in-one competition on the 3rd hole. Eagle sponsorship (\$1,000.00) was provided by The Fairfax Memorial Park/Funeral Home, and FindLaw; while Birdie sponsorship (\$500.00) was provided by Charlson, Bredehoft, Cohen, Brown & Jones, P.C., and DiPietro, PLLC.

The general sponsors and donors to this year's tournament included Kirby-Hunter Investigations, Inc.; Rudiger, Green & Kerns Reporting Service; Merrill Corporation; Weiner, Spivey & Miller, PLC; Wayne D. Berthelsen, Esq.; ShounBach; Commonwealth Investigations, Inc.; Freedom Bail Bonding; Oden, Feldman & Pittleman, P.C.; and The Fitting Studio at Westfields Golf Club. Herb Hunter of Kirby-Hunter Investigations, Inc. assisted the Bar Association by providing each participant with photographs of their foursome which were taken on the 3rd tee box. Further, I recently learned that one of our sponsors, Wayne D. Berthelsen, Esq., who has been a long-time member of the Fairfax Bar Association and even a member of the predecessor organization, has decided to retire from the practice of law. All who have had the privilege of either litigating against him as I have, or have gotten to know Wayne through his years of service to the Fairfax County Juvenile & Domestic Relations District Court as Guardian *ad Litem* for children, or through Bar Association activities, have been most fortunate to have had the opportunity to observe an excellent attorney who is very highly regarded in the legal community. While Wayne will be missed, we wish him many years of well deserved and enjoyable retirement with his family.

Prior to the commencement of the golf tournament, all of the golfers enjoyed lunch at the grill adjacent to the practice putting green. Following the tournament, Westfields served their annual delicious buffet. After the dinner, prizes were awarded and numerous golf items were raffled off, including 20 golf clubs, golf bags, golf shoes, sunglasses, and dozens of boxes of golf balls. This was once again a most memorable golf outing and the entire staff at the Westfields Golf Club did a great job in assisting us in putting on this event.

The Fairfax Bar Association has scheduled a fall golf tournament at a relatively new golf course known as Potomac Shores Golf Club located in Dumfries, Virginia, on Monday, September 21, 2015, with registration commencing at 11:30 AM and a shotgun start at 1:00 PM. This golf course is a magnificent Jack Nicklaus Signature Golf Course with many memorable golf holes. Those who participate in this event will also be treated to a very elegant clubhouse where we all can enjoy a buffet dinner and cold beverages while reviewing the results and awarding the prizes. While some groups in the Fairfax Bar Association golf tournaments can be somewhat competitive, if you participate in one of our golf tournaments you will find a wide variety of skill levels including many participants who play only once or twice a year in the Bar Association events. No matter what your skill level, all are encouraged to participate and enjoy a beautiful day out on the golf course away from all of the anxieties of the office. If you need any additional information concerning this outing, please contact the Fairfax Bar Association, 703-246-2740, or you can always contact me at 703-273-4100. ■



Video Evidence Has Its Day in Court

Andrew T. Elders, Esq., Co-Chair, Criminal Law Section

It is not a new story. A technological advance causes sweeping changes in the way things are done. Existing procedures and expectations are disrupted at first. The structures, rules, and strategies that once dominated have to be reconsidered and reformed. But in the long term, the system works better because of the changes, and society benefits. And eventually, everyone involved wonders how things could have stayed the way they were for so long.

I was in traffic court a month ago and happened to find myself sitting through an officer's red light docket. He had written a number of tickets for running a red light at a particular intersection, and 10 or so people had come to court to challenge the charges against them. The first few trials were unremarkable, with the defendant saying they didn't think they had run the light. But the officer had video, and was prepared to play it. For the first couple of cases, the trials went forward as usual and the video showed what it showed (in all of the cases I saw, the video showed they had, in fact, run the light). Next, when asked how she wanted to plead, a woman said, "Well, I was going to plead not guilty, but can I see that video first?" And when she did, she pled guilty. And then the judge did something interesting—rather than waiting to hear testimony first, he had the officer "roll the tape" as soon as the defendant got to the podium. Basically, the video became the trial. The witnesses had the chance to comment on the video, of course. But in most of the cases, the video spoke for itself and determined whether or not the driver was guilty.

The advent of broadly available small-scale video recording devices is already revolutionizing the practice of criminal law in Fairfax and elsewhere. Suddenly, video is everywhere. Factual disputes that once would have been one person's word against another's are now determined using video evidence. Interrogations are increasingly recorded by the investigating officers. Interactions between police and citizens are far more likely to be recorded by citizens. And there is more to come. Many police forces are embracing body cams to protect their officers and to show that their work is being done by the book. Dash cams are now in use in the vast majority of DWI cases here in Fairfax.

It is this last item that seems to have made the biggest splash for Fairfax criminal practitioners in the past year or so. DWI cases once included 30-60 minute debates about the officer's characterization of the defendant's driving behavior, slurred speech, unsteady gait, or performance on field sobriety tests. Today, those examinations are increasingly obsolete. We don't need to hear the officer's description of these events. We can just watch the video. Obviously, there can still be disagreements about what the video shows and what it means, and sometimes the video/audio doesn't work. But in most cases, this is a monumental change in how these cases are tried.

As one might expect, these changes in how things work seem to be leading to changes in outcomes. Defense attorneys are anecdotally reporting an increase in acquittals, which they attribute to the waning power of the officer's account of events. This makes sense in many ways. There are many reasons to expect that the videos in DWI cases would not live up to the officer's description, and not because the officers involved in these cases are lying about what they saw. While there may be an officer willing to intentionally stretch the truth here and there, it is far more likely that the officers may be subject to confirmation bias. This occurs when an observer interprets information in a manner consistent with what the observer expects. Confirmation bias is a serious concern in the sciences, which is why medical trials and other scientific experiments are often done using a "double-blind" methodology that focuses the experimenter only on the data she is collecting, rather than any other information about the experiment.

Think about this from the perspective of the officer in most DWI stops. By the time the officer observes field sobriety tests, he has already (1) seen driving behavior leading him to believe the driver may be intoxicated; (2) conducted a stop, making an investment of the officer's time; (3) spoken to the driver and assessed the driver to be a DWI suspect; (4) usually smelled alcohol on the driver's breath; and (5) usually heard the driver tell him that the driver has consumed some amount of alcohol. Having all this information already in mind, the officer is then asked to objectively observe the field tests and report that information. It would not be at all surprising if the officer viewed those tests differently than a less-invested observer. A similar effect likely would be seen in the characterizations made in the officer's criminal complaint and incident report, which are written after the arrest is made and after the officer has made an even greater investment into the case. Video allows judges and juries to judge driving behavior, speech, gait, and performance on field sobriety tests without getting the information through the lens provided by the investigating officer. DWI cases are just one example of how video reduces the need for a witness to characterize events. Indeed, every criminal case would benefit from allowing the trier of fact to get closer to the event itself, rather than someone else's description of the event.

For criminal defense attorneys, not every defense case will benefit from video evidence. There likely will be just as many criminal cases where a client's face is easy to identify because of clearer and more widely-available video as cases where video exonerates a client. Some videos will do nothing more for the defense attorney than help him show his client the strength of the evidence against him. Nor should the advent of new technologies be judged solely by whether they help defendants win cases. The legal system, and society broadly, benefits from clearer and more objective evidence. ■

Recent Executive Orders on Federal Government Contracting

By Stephanie D. Wilson, Esq., Chair, Government Contracts Chair

In 2014, President Obama signed several Executive Orders directly impacting federal contractors: Executive Order 13658, Establishing a Minimum Wage for Contractors (February 12, 2014); Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information (April 8, 2014); Executive Order 13672, Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity (July 21, 2014); and Executive Order 13673, Fair Pay and Safe Workplaces (July 31, 2014).

The Executive Order Establishing a Minimum Wage for Contractors raised the minimum hourly wage for all workers of federal construction and service contracts to \$10.10. The Department of Labor has issued a final rule implementing the provisions of this Executive Order, which clarified that this minimum wage requirement applies to construction contracts covered by the Davis-Bacon Act, service contracts covered by the Service Contract Act, and concessions contracts. The final rule also established recordkeeping requirements and set standards for determining if workers are covered by this Executive Order.

Because the majority of federal contractors are already being paid wages greater than \$10.10 an hour, the immediate impact of the wage increase is minimal for most contractors in most areas of the country. The impact will be the greatest in the middle of the country where prevailing wages are lower, and for workers throughout the country working in lower-skilled service jobs, such as janitorial and food service positions. The DOL's final rule confirms that approximately 200,000 workers will benefit as a result. The Executive Order and final rule do not cover workers that are exempt from the Fair Labor Standard Act's minimum wage and overtime requirements, such as those employed in a bona fide executive, administrative, or professional capacity. It also does not include FLSA-covered employees who spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.

The Executive Order providing for Non-Retaliation for Disclosure of Compensation Information prohibits federal contractors from discriminating or retaliating against employees or applicants that discuss their compensation. The goal of this Executive Order is to provide the transparency needed to reduce pay discrimination and ensure fair compensation. The Department of Labor issued a proposed rule implementing this Executive Order on September 17, 2014.

Executive Order 13672 added sexual orientation and gender identity to the prohibited basis of employment discrimination. The Department of Labor published a final rule in December, and the amended regulations took effect on April 8, 2015. Under this rule, federal contractors that provide fringe benefits to spouses cannot discriminate based on whether the employee is in a same-sex or opposite-sex marriage.

The primary purpose of the Fair Pay and Safe Workplaces Executive Order, which is expected to be implemented beginning in 2016, is to encourage federal contractors receiving taxpayer dollars to maintain lawful working conditions for their employees. It imposes significant new requirements for federal contractors to ensure their compliance with fourteen federal statutes, executive orders, and equivalent state laws, including the FLSA, FMLA, ADA, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Davis-Bacon and Service Contract Acts, and recent Executive Order 13658 – “Establishing a Minimum Wage for Contractors.” It requires contractors bidding on procurement contracts valued at \$500,000 or more to disclose “whether there has been any administrative merits determination, arbitral award or decision, or civil judgment” issued against the contractor during the preceding three years for violations of the federal and state labor laws covered under the Executive Order. It also requires federal agencies to appoint a “Labor Compliance Advisor” to help contracting officers review contractors’ disclosures during the procurement process and contract performance, and requires contracting officers to consider this information in determining whether an offeror has a satisfactory record of compliance, integrity, and business ethics.

The Executive Order directs the FAR Council to propose to amend the FAR to identify considerations for determining whether serious, repeated, willful, or pervasive labor law violations demonstrate a lack of integrity or business ethics. It also directs the Secretary of Labor to develop guidance to assist agencies in determining whether adverse rulings were issued for serious, repeated, willful, or pervasive violations. On May 28, 2015, the Federal Acquisition Regulatory Council issued proposed regulations and the Department of Labor issued proposed guidance to implement this Executive Order.

The goals of these Executive Orders are to protect employees, eliminate discrimination, ensure fair compensation, and crack down on unethical and irresponsible contractors. The requirements imposed by the minimum wage increase, the prohibition against retaliation for discussing compensation, and the prohibition against discrimination based on sexual orientation and gender identity are all fairly straightforward. The Fair Pay and Safe Workplaces Executive Order, however, introduces additional complexity to an already complicated process that, if not implemented correctly, could result in delays in the contracting process, place additional burdens on contracting officers, and potentially insert a subjective element into the process that opens the door to abuse by federal agency officials. Those involved in the area of government contracting should keep an eye on this area as it continues to develop in the coming months. ■

UPCOMING EVENTS/CLEs

AUGUST 6, 2015
INVESTITURE OF MICHAEL J. LINDNER

AUGUST 14, 2015
INVESTITURE OF
HON. PENNEY S. AZCARATE

SEPTEMBER 9, 2015
THE ULTIMATE VIEW FROM THE BENCH
CLE: BEST PRACTICES, PROCEDURES, AND
ETHICS FROM THE JUDGES' PERSPECTIVES
4:30 - 7:30 PM

Fairfax County Courthouse
3.0 MCLE (1.0 Ethics) Credits *Pending*
\$105 FBA Attorney Members
\$150 Attorney Non-Members
\$75 FBA YLS Members/\$120 YLS Non-Members

SEPTEMBER 17, 2015
INVESTITURE OF TINA L. SNEE

SEPTEMBER 21, 2015
FALL GOLF TOURNAMENT

Potomac Shores Golf Club
11:30 AM-12:30 PM - Registration
1:00 PM - Shotgun Start
\$125 Per Person On or Before August 21
\$150 Per Person After August 21
Includes: Greens Fee, Cart, Box Lunch, Buffet Dinner,
and Prizes. Questions regarding the tournament?
Contact Bob Letnick at 703-273-4100.

SEPTEMBER 26-27, 2015
FBA ANNUAL CONVENTION

Gaylord National Resort & Convention Center
201 Waterfront Street
National Harbor, MD 20745

September 26 Features:
ROAST OF HON. DENNIS J. SMITH
Questions? Contact Maurissa Weiner at 703-246-2735.

SEPTEMBER 27, 2015
FBA DAY WITH THE NATIONALS
Nationals Park, Washington, DC

OCTOBER 2, 2015
INVESTITURE OF STEPHEN C. SHANNON

OCTOBER 7, 2015
BANKRUPTCY 101 CLE
4:00 - 7:00 PM

Fairfax County Courthouse
3.0 MCLE Credits *Pending*
\$105 FBA Members/\$150 Non-Members
\$75 YLS Members/\$120 Non-YLS Members

OCTOBER 14, 2015
PLANNING FOR CONFLICT CLE:
WHAT BUSINESS LEADERS AND LAWYERS
NEED TO KNOW ABOUT DISPUTE
RESOLUTION AND DRAFTING DISPUTE-
RELATED CONTRACT CLAUSES
4:00 - 6:00 PM

Odin Feldman & Pittleman PC
1775 Wiehle Avenue, Suite 400, Reston, VA 22190
4th Floor Jury Assembly Room
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\$100 Attorney Non-Members
\$50 FBA YLS Members/\$80 YLS Non-Members

continued on page 15

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HOW CAN WE INSPIRE THE LEGAL PROFESSIONALS OF TOMORROW?

By Barbara Waldman

Virginia trial lawyer Doug Landau was not thinking about that when he responded to a notice just over two years ago from the Fairfax Bar Association (FBA) seeking an Attorney Volunteer to help students at a local middle school prepare for a competition on constitutional law. Landau was simply eager to give back to the local school that his four (grown) children had attended—Rachel Carson Middle School (RCMS), down the street from his office in Historic Herndon.

Starting in the fall of 2013, Landau made bi-weekly visits to RCMS to help civics teacher Cynthia Burgett's 8th grade class prepare to compete in "We the People," a program that teaches middle school students about the U.S. Constitution and promotes civic competence and responsibility. Since its inception in 1987, more than 28 million students and 75,000 educators have participated in the "We the People" Program.

With the help of Landau and other volunteers, the 2013-14 team from RCMS was the Virginia state champion and took third place in the National Competition. "We the People" was a richly rewarding experience for everyone involved. Landau was beaming with pride at "his" students' success. In other words, he was hooked—and hopeful to be invited to help again.

So when Ms. Burgett asked for his help with the 2014-15 program, Landau enthusiastically agreed. Once again, together with other parent and community volunteers, Landau coached the students as they studied topics and materials related to constitutional law, the U.S. judicial system, and our democratic form of government. Landau also used his experience as a trial attorney to help the students practice things like speaking slowly and clearly, thinking through their answers, and staying calm during the judges' questions.

But could this year's team fare as well as last year's? Off to a good start, the team was undefeated in the regionals, won the Virginia State Championship in Williamsburg, VA, and ultimately advanced to the National Championship, which was held on the campus of George Mason University over the weekend of April 18-19, 2015. On Sunday April 19, the team from RCMS learned they would advance to Monday's final round of three! These bright students gave outstanding performances Monday morning and then went to school not knowing whether they had improved upon last year's third place finish.

When the second place winner was announced at the program's closing banquet on Monday evening, the Carson kids realized they had indeed won the National Championship – in only their school's second appearance ever at the National Invitational. The banquet hall erupted, as this culturally diverse team had proven mastery over material many of the parents could not help their children to learn. As the most ethnically diverse team at the competition, the Rachel Carson kids proved once again that America is a true "melting pot" and that citizens from all backgrounds can be well-versed in our government's branches, history, and goals.

Landau's experience working with such willing learners reignited his own passion for the study of the law and exemplifies the promise of exposing young scholars to material in an engaging and challenging manner. Not only did the kids master the material, but they proved to be confident critical thinkers, graceful under pressure, and humble in their accomplishments – characteristics that will serve them well in their futures.

For now, these Rachel Carson Middle School students can take pride in knowing they are the best in the country when it comes to constitutional law! Doug Landau and the legal team at Abrams Landau extend their hearty congratulations to the constitutional scholars at RCMS! ■

Doug Landau is the founder of the law firm Abrams Landau, Ltd., located in historic downtown Herndon. The firm specializes in helping injured clients with their workers' compensation, Social Security disability, and personal injury cases. Abrams Landau prides itself on its caring approach as well as its involvement in giving back to the community through education programs, head injury prevention, and volunteer work.

New Members

May 2015

Patricia C. Anderson
Rammy George Barbari
Jillian Eva Berner
Maribel N. Bustamante
Lisa Callan
Aubrey Lynn Carew Sizer
Dennis P. Chapman (Col./Retired)
Linda Choe
Ayama Detweiler
Jessica Eddy
Justin Fasano
Jeremy Gurvitch
Armaghan Jahangiri
Jay Navin Kadiwala
Barbara Kinosky
Mary Ann McGarry
Carolyn Mills
Sara Nekou
Mohammad Nilforoush
Caitlin Marcella Payne
Charles Emory Rothermel
Anders T. Sleight
Michael E. Stamp
Craig Steckley
Alexander Peter Taousakis
Rachele Valente

June 2015

Sumra Ahmad
Crystle Elaine Chrispen
Brandon Jerrold Custord
Katherine McDermitt Ebbesson
Olivia Mei Halleck
Brian Han
Oliver Manfred Krischik
Mary Ann McGarry
M. Thomas McWeeny, Jr.
Rachel Pari Mohseni
Andrea Morisi
Mariam Noori
Stephanie Rochel
Jad Sarsour
Melissa L. Scheffkind
John Robert Schroeder
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Maria Christina Simon
Kimberly Skiba-Rokosky
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July 2015

Mr. Mark Joseph Oberndorf
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OFFICES FOR SALE OR LEASE

3927 Old Lee Hwy, Unit 102-C—Fairfax Commons near intersection at Main St and across from Courthouse Shopping Plz. 1,150 SF upper lvl office suite has high ceilings, open flr plan, 2 pvt offices, kit, BA, util, extra lighting & 5-ton HVAC. Suitable for many uses! Plenty parking!

SALE—\$250,000 (\$217.39 psf) *New Reduced Price!*

3843 Plaza Drive—Located at Old Lee Hwy and Plaza Dr. 2,542 SF on 2 flrs; Main lvl (1,308 SF) has recep area, conf rm, 2 pvt offices, lg workspace, kitchenette, work rm, util rm, & 2 entrances. Lower lvl (1,234 SF) has 2 pvt offices, lg exec office or conf rm, full kit, work/storage rm, BA & util rm. Plenty free, unassigned surface parking. Uniform ext. signage avail. **SALE—\$535,000. *Owner retirement & relocation requires 5% below market price for speedy sale!***

10379-B Democracy Lane—Located in the heart of Old Town Fairfax off of University Dr. Lovely 2,000 SF suite with 6 pvt offices w/bay windows, 2 conf rms, open workspace, recep area, 2 BA, 2 storage/file rms, and 2 zoned HVAC systems. Move-in ready!

SALE—\$470,000 (\$235 psf) OR LEASE \$17 psf + elec & cln.

3911 Old Lee Highway, Unit 43B—Located in the heart of FFX City near corner of Main St and across from Courthouse Shopping Plaza. Excellent visibility facing Old Lee Hwy. Lovely office has high ceilings, 4 pvt offices, recep area, conf rm, office/workroom, util closet, BA & kitchenette. Uniform ext signage allowed. Plenty parking.

SALE—\$258,750 (\$225 psf) OR LEASE—\$1,800/mo + elec & cln.

3919 Old Lee Highway, Unit 81-C—Located in the heart of FFX City near corner of Main St and across from Courthouse Shopping Plaza. Layout features recep/admin area, 4 pvt offices, conf rm, kitchenette, BA & stor closet. Ground floor unit is ADA accessible. Uniform ext signage allowed. Plenty parking. **LEASE—\$1,869/mo + elec & cln.**

10627 Jones Street (at Judicial Dr) Suite 301-A—Red Maple Ct - Bright 2nd flr corner unit 1,000 SF w/recep/waiting area, 2 offices, conf rm, BA, util/storage & file rm. Avail immed 2-5 yr lease. Owner will replace carpet w/3 yr lease min. Existing furniture conveys.

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4103 Chain Bridge Rd—Location! Office building w/plenty parking across from Fairfax Courthouse! Office suites from 600 SF - 4500 SF. New paint, carpet, standard build-out w/4+ yr lease. **LEASE—\$23 PSF, full service.**

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ANNOUNCEMENTS

BEAN, KINNEY & KORMAN, P.C.

JERRY BOYKIN was inducted into the Virginia Trial Attorneys Hall of Fame. Jerry is a civil litigation attorney and is Of Counsel to the firm. He has been litigating for more than 30 years, and has participated in over 30 jury trials.

The Virginia Trial Attorneys Hall of Fame was created to objectively recognize Virginia's best trial attorneys. Attorneys are accepted based on a scoring methodology that does not take votes from other lawyers into account.

RACHELLE HILL was elected to a three-year term on the Virginia State Bar Council effective July 1. She will represent the 17th Circuit which comprises Arlington County and the City of Falls Church. Rachelle is an employment law attorney focusing her practice on counseling regional small to medium-sized companies and regional and national banks on various employment law matters, including employee handbooks, personnel policies and federal and state wage and hour laws.

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

GRACE E. BURNSIDE has joined the firm as a principal, and **MARK L. ROSENBERG** and **FRANÇOISE M. CARRIER** have joined as Of Counsel. Ms. Burnside has over 20 years of experience in commercial real estate with a special emphasis in retail leasing. Ms. Burnside has served as in-house counsel to several real estate developers, including EDENS and Federal Realty. Mr. Rosenberg, who obtained his juris doctor from Harvard and a Master of Laws in taxation from Georgetown, has more than 20 years of experience in corporate law matters, including securities law, tax law, and commercial litigation. Mr. Rosenberg began his legal career working as counsel to a U.S. House of Representatives committee and as an attorney for the Federal Trade Commission, where he was lead counsel for transportation issues for petroleum company mergers. Ms. Carrier has extensive experience in land use issues. She has worked for Montgomery County on zoning issues from 2001-2014, and was Chair of the Montgomery County Planning Board from 2010 through 2014. As Chair, Ms. Carrier led

a successful effort to completely rewrite the Montgomery County Zoning Code, which had not been substantially rewritten in more than 30 years.

CATHERINE M. REESE was admitted into the Board of Family Law Trial Advocacy, an American Bar Association Accredited Organization.

UPCOMING EVENTS/CLEs

continued from page 11

OCTOBER 29, 2015

CIVIL PROCEDURE CLE: Best Practices In Civil Litigation Before The General District Court
4:00 - 7:00 PM

3.0 Credits (1.0 Ethics Pending)

\$105 FBA Members/\$150 Non-Members

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NOVEMBER 20, 2015

JAZZ FOR JUSTICE CONCERT

7:15 PM Pre-Concert Reception

8:00 PM Concert

George Mason University Center for the Arts

\$20 - Tickets; \$15 - Seniors/Adults

Jam Session to Follow Immediately

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Michael E. Stamp
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- Business Litigation
- Employment Law
- Unfair Business Practices



Brittany V. Ruyak
Staff Attorney

- Business Litigation
- Unfair Business Practices

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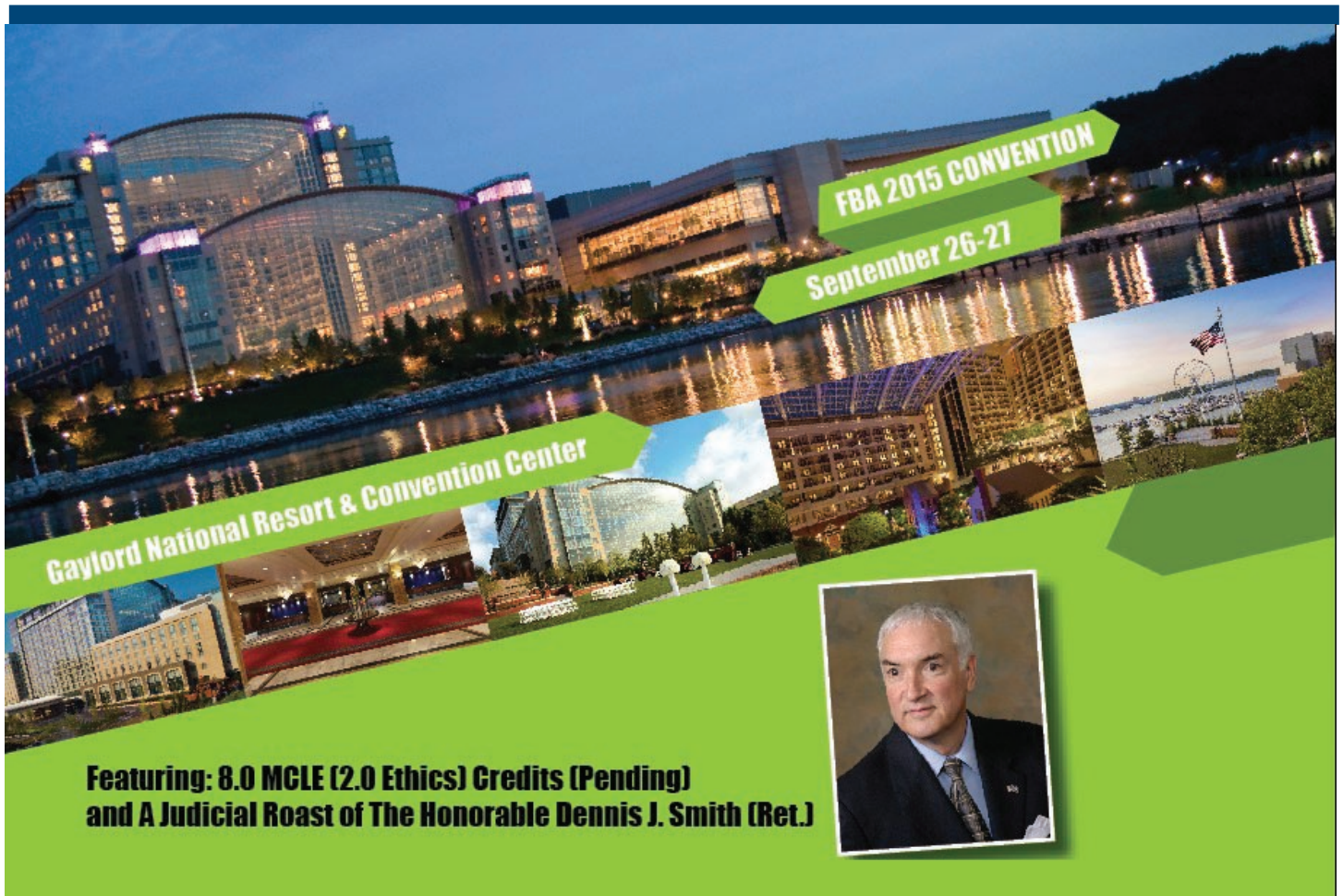
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