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V·B·A

News Journal

THE VIRGINIA BAR ASSOCIATION

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On the Cover: The Northumberland County Courthouse (1900), photograph by John O. Peters. One hundred forty photographs of Virginia courthouses are contained in *Virginia's Historic Courthouses*, written by John O. and Margaret T. Peters with a foreword by the late Justice Lewis F. Powell Jr.; photographs by John O. Peters; published by University Press of Charlottesville; and sponsored by The Virginia Bar Association. To order the book, call the VBA at (804) 644-0041 or 1-800-644-0987.

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The Case for the Voluntary Bar

by James V. Meath

At the outset, let me say that I have been rewarded beyond belief in two areas. First, many of you have been so kind to let me know that you share my thoughts concerning the singular pride that we have in being Virginia lawyers. Second, because of the nature of my practice, I have not had the occasion to stay in touch with as many of my friends, classmates and colleagues who practice within the Commonwealth as I would like. It has been particularly rewarding to reconnect with these individuals. Although it is hard to believe, we have been out of law school for 26 years. In every instance, I am proud of the contribution that these lawyers and judges are making to the legal system and serving the citizens of the Commonwealth of Virginia.

It has been rewarding as well to speak to local voluntary bar groups and recognize what good things that these groups are doing, considering the stress that exists for time, talent and funds for voluntary bar work. One example that I point to is the domestic violence project that has been so highly successful in Chesterfield County. As I studied their project and realized how successful it has been, it saddened me that this project has not been templated and made uniform throughout the Commonwealth. That brings me to the central question that I am often asked. The question is understandable and logical. It is "Why should I belong to the VBA or any other voluntary bar organization (Richmond Bar Association, Norfolk/Portsmouth Bar Association, Old Dominion Bar



The case for the voluntary bar association is an easy one to make. Yes, there are tensions, there are membership concerns, but I am heartened by the fact that in my travels around the Commonwealth, people come up to me and ask me how they can get involved, or *more* involved, in the work of the VBA. That, indeed, is our challenge.

Association, Roanoke Bar Association...), when I am required to belong to the mandatory bar?" I have pondered this question for quite some time, and I believe that I have formulated the beginnings of what I consider to be a good answer.

As Chief Justice Hassell has often articulated, the Virginia State Bar needs to be strong and responsive to all of us, but equally as important is the strength of the voluntary bar. Indeed, we are fortunate to have, as leaders of the Virginia State Bar, current President David P. Bobzien of Fairfax and President-elect Phillip V. Anderson of Roanoke. Both of these gentlemen are not only colleagues, but have become friends, as we have traveled in the same circles as bar leaders. Both of these individuals continue to be active members of The Virginia Bar Association. It is also the support of the Chief Justice, that of former Presidents of the Virginia State Bar, and the handwork of our 5,600 members that help me answer the question posed above.

The mandatory bar must itself be strong beyond reproach and also beyond reproach in its mission.

That mission — regulation, discipline and self-policing. Many of us have been, and *should* be, actively involved in the Virginia State Bar. Indeed, the current Chairman of our Board of Governors is now on Bar Council and has been actively involved in the Virginia State Bar for many years. As our good friend, albeit under house arrest, Martha Stewart, would say, "That is a good thing." So let me, at least partially, make the case for the voluntary bar.

Some voluntary bar associations are struggling to maintain membership in an era where there are many other entities competing for coveted dues money. Voluntary bar associations are outside of the regulatory scheme that the legislature has set out. They are not engaged in discipline or regulating lawyer conduct or self-policing issues. We, as attorneys, have little control over the mandatory bar. As stated above, we all participate at varying levels of the bar structure, as we should. Most of the functions of the mandatory bar typically do not overlap the functions of the voluntary bar. The voluntary bar historically

has addressed some of these non-regulatory areas and has done quite well. I would like to mention a few.

First of all, there is the administration of justice. I have just related above the Chesterfield Bar Association's *pro bono* domestic violence initiative. This is a worthwhile project that has provided real value to its members and the public at large. Our Association has also been at the forefront of lobbying efforts to enhance the administration of justice. Indeed, this has been a part of our mission since 1888. There is no better example of our Association's efforts to enhance the administration of justice than the fact that in March I was proud to represent our members in making an address and presentation at the 20th anniversary of the Court of Appeals of Virginia. The VBA, along with other groups, engaged in a resolute seven-year effort to establish an intermediate court of appeals in Virginia. I can tell you that the Court is very aware of our efforts in this regard and is deeply appreciative of our efforts.

The next area where we have significant influence is in law reform. The State Bar, being a governmental agency, is precluded from lobbying. That, in and of itself, leaves a void as to which groups can lobby the legislature on behalf of the profession and the public. I know that I share your pride in the record of our Association's efforts in this regard. We are well-known within all three branches of the government. We are known to provide an objective voice for many causes at the General Assembly. Our lobbyists are well-respected, and our positions on legislation are sought-out. We have provided real worth to the profession and the public at large in many areas. In particular, we have been dogged in advancing the rights of children and the disabled. Our sections and committees have provided guidance to the legislature on numerous bills, not the least example of which is the negative bill on guardians *ad litem* that was

blocked in 2002 and the expanded training of guardians *ad litem* project of the Supreme Court of Virginia, with which our Commission on the Needs of Children has worked extensively since then. Currently, we are engaged in a continuing effort to reverse the dismal record of the Commonwealth of Virginia in providing funds for the defense of indigent criminal defendants. This year we made minor gains, but, as we did with the intermediate court described above, we will not stop in our efforts, and we will continue to press the cause and work actively, lobbying all three branches of the government.

Another topic that deserves mention is the independence of the judiciary. Our organization is well-known among the judiciary for our commitment to judicial independence. We provide a clearinghouse for judges who are subject to unfair criticisms of their judicial decisions. Further, we are committed to use our resources to ensure that there is due process involved in the appointment and re-appointment of our judges within the Commonwealth of Virginia.

On this same topic, at the recent annual meeting of the Virginia Trial Lawyers Association, I attended a provocative program, moderated by W. Coleman Allen of Richmond on the topic of judicial independence, which included video clips of shocking TV ads from the recent state Supreme Court campaigns in West Virginia, where Justice Warren McGraw was ousted by challenger Brent Benjamin. I commend the VTLA for this outstanding program, which examined these crucial issues in depth.

Next, I would cite our divisions, sections and committees. To point out just one, our Law Practice Management Division continues to address the myriad of challenges that exist in the practice of law. From law firm management, lifestyle balance, professionalism, substance abuse, employee

benefits, retirement and disability, it is the Law Practice Management Division that provides our members with information and guidance on these issues. We have provided and continue to provide expertise in the form of seminars and materials to our members to enhance professionalism and deal with the lifestyle balance issues that are so prevalent today in our profession.

Finally, if the case for the voluntary bar has not already been made, one only needs to look at one of our own, the current President of the *voluntary* American Bar Association, Robert J. Grey Jr. of Richmond. Robert has dedicated his efforts to using his office to put in front of everyone the need for jury reform. Our Association has assisted Robert in carrying this message. We entrust juries who are made up of small bodies of ordinary men and women with decisions that involve the liberties and property of defendant citizens. Having been charged thusly, it is incumbent upon us to provide every juror with the respect, dignity and tools that they deserve to carry out that process to render the best, fairest and sound decisions that they can.

The case for the voluntary bar association is an easy one to make. Yes, there are tensions, there are membership concerns, but I am heartened by the fact that in my travels around the Commonwealth, people come up to me and ask me how they can get involved, or more involved, in the work of the VBA. That, indeed, is our challenge. What we have done in the past is written. The value that we will bring and the relevance that we will maintain with lawyers around the Commonwealth is yet to be determined.

In that regard, I am reminded of the words of the great bard, Yogi Berra, "The future just ain't what it used to be." Whatever the future, the involvement of the voluntary bar is important to it. **VBA**

The Role of Nonprofits in the Rehabilitation of Prisoners

by The Honorable Mark L. Earley

The following remarks were delivered at the annual Virginia Law Foundation Fellows Dinner on January 20 in Williamsburg by former Virginia Attorney General Mark Earley and are reprinted with his permission.

The criminal justice system in America today is broken. If measured by its ability to rehabilitate prisoners and facilitate their successful reentry to society, it is by all accounts a failure. With the U.S. having the highest per capita incarceration rate of any country in the world and totally unacceptable rates of recidivism, virtually every neighborhood and every household is touched by incarceration.

We have failed to balance justice with mercy by all but ignoring rehabilitation. Some offenders need to be locked up forever, and some will never change. But our criminal justice system is not based on that assumption alone. Indeed, on average, violent offenders serve only 49 months before they are released; offenders for all types of crimes serve an average 25 months. And once these prisoners are released, more than 50 percent of them will return to prison within three years.

We are poor stewards of taxpayer money if we basically ignore rehabilitation and thereby ensure continued high recidivism rates. There must be a renaissance of commitment to rehabilitation by everyone connected with the criminal justice system and most importantly by the nonprofit sector.

The purpose of this talk is to suggest that the winds of change are blowing across the face of America,

stirring up a fresh commitment to the rehabilitation of prisoners and to suggest that nonprofits, not the government, should lead the way.

Although today I am the president of Prison Fellowship USA, a nonprofit holistic Christian ministry to prisoners and their children, for the first 47 of the 50 years of my life, I gave little thought to prisoners. I visited prison once to take part in a church service. As a lawyer I would go to visit my clients in prison. As a state senator and then as attorney general of Virginia, I toured Virginia's prisons and supported legislation that was "tough on crime." I generally felt that those in prison belonged there, deserved to be there, and had no potential.

Such a perspective has been common among citizens and policymakers. But I believe it is changing, perhaps more rapidly than we think.

At least four factors are driving this change. First, with two million people incarcerated in America today, we are reaching a tipping point in public opinion. Almost everyone has a friend or family member who is or has been in prison. It is no longer somebody else's problem.

Second, government funding for increasing incarceration and recidivism rates has reached the saturation point.

Third, in the last four years courageous efforts from conservative political leadership, most notably President George W. Bush, have put prisoner reentry initiatives and the mentoring of prisoners' children front and center on the political agenda.

Such actions signal a departure from the traditional conservative approach of "lock 'em up and throw away the key."

Fourth, a blossoming of primarily faith-based efforts, at both national and local levels, are leading thousands of volunteers in local churches to become involved in the lives of prisoners both in prison and as they reenter society.

Having served in the Virginia senate for 10 years and as Virginia's attorney general for four, I know only too well that in times of fiscal stress, correctional budgets are the first to be cut. Within those budgets, rehabilitation and educational programs are the first and proportionally the deepest cuts that are made. That is not likely to change in the real-world competition for dollars. Even when state treasuries are bulging, these efforts historically receive relatively low priority because of demand in other "high profile" areas. But even if that changed overnight and prisoner rehabilitation and reentry became the number one priority of state governments, government agencies are *by nature* woefully incapable of rehabilitation that transforms.

Prisoner rehabilitation and reentry efforts cannot be delivered by bureaucrats. For starters, it is anything but a 9-to-5 job. Instead, they must be delivered through a community of loving relationships that are patient, nurturing, sacrificial, holistic, and able to sustain a genuine long-term commitment to the welfare of prisoners and ex-prisoners.

These efforts must be administered

by those who believe that darkness can be overcome by light, evil by good, despair by hope, and addiction by freedom. They must be delivered by men and women who believe in hope and transformation even for those who have murdered, raped, beaten, stolen, kidnapped, and been bound by addictive behaviors. They must believe that in spite of, and precisely because of, their past, transformed prisoners and ex-prisoners are uniquely situated to contribute to society because they have experienced brokenness, forgiveness, and restoration.

Rehabilitation must focus on a transformation of the heart, dispositions, and character. It must equip prisoners with the knowledge and skills for productive work. It must be characterized not by a systems approach but by a relational (mentoring) approach. It must begin in prison and continue for up to two years after release from prison—a critical transitional stage. And since it cannot be provided primarily by the state, it must be provided by nonprofits, including churches and faith-based nonprofits such as synagogues, mosques, etc.

A refocusing on the importance of rehabilitation is not “soft on crime,” nor does it compromise public safety. I would not advocate such an emphasis if it did. Indeed, the state has a duty to protect the public, restore the victim, guard the treasury, and ensure the safety of inmates in prison. A commitment to rehabilitation is consistent with each of these goals; correspondingly, a failure to provide rehabilitation compromises each one of them. For without rehabilitative efforts that transform, inmates are more of a threat upon release than when they were sentenced, more victims are created, more taxpayer money is spent for the same thing over and over again, and inmates are at a greater risk of violence and criminal corruption in prison. Such an understanding is leading to public support of bold new initiatives in rehabilitation and a willingness to

ABOUT THE AUTHOR

Mark Earley, former State Senator and Attorney General of Virginia, became president of Prison Fellowship in 2002. As president and CEO of Prison Fellowship, Earley oversees the national ministry founded by Charles Colson in 1976, which has since spread to 105 countries in addition to the United States. Prison Fellowship's core commitments are fellowshiping with Jesus, visiting prisoners, and welcoming their children. In line with these commitments, PF works with thousands of churches and volunteers across the U.S. to disciple prisoners and prepare them to re-enter the community; to minister year-round to prisoners' children through Christmas, camping, and mentoring programs; and to help redeem the culture by embracing, defending, and applying a clear biblical worldview. Additionally, Earley serves as chairman of Operation Starting Line, a multi-ministry, interdenominational outreach to prisoners in America that is helping the local and in-prison church provide in-prison evangelistic events, ongoing inmate mentoring, and post-prison assistance for ex-prisoners and their families.

Earley, an attorney, practiced law for 15 years with the firm of Tavss, Fletcher, Earley and King in Norfolk. He served in the Virginia State Senate from 1987 to 1997 and then served as the Attorney General of the Commonwealth of Virginia from 1997 to 2001. In 2001 he was the Republican candidate for Governor of Virginia.

From 1977 to 1982, Earley served on the staff of the Navigators, an international evangelical ministry active on college campuses, military bases, and other settings. He served in campus ministry at the University of the Philippines in Manila and in the U.S. at the West Chester University in Pennsylvania and at the College of William and Mary in Virginia. Earley is a graduate of the College of William and Mary, where he received a B.A. in religion. He earned a juris doctor degree from Marshall-Wythe School of Law.

become personally involved in this community-based effort.

The partnership between governments and nonprofits for purposes of rehabilitation and reentry are not new. What is new is the large-scale interest developing among nonprofits, the explosion of interest among faith-based nonprofits, and the willingness of nonprofits to spend their own money as opposed to government grants.

Indeed, the renaissance in rehabilitation spearheaded by nonprofits need not be fueled by government funds. Some limited application of grants may be helpful in developing prototypes and has been instrumental in the start of some new programs, but in the long run the prison population is too large and the needs in rehabilitation too intensely relational to be realistically supported by the government. This can and should be a movement largely sustained by the fuel of philanthropy, and the correctional system must welcome and adapt to the partnership.

The objection, of course, from some secularists will be that religion has no place in this endeavor. But it is not their choice. It is the choice of the prisoner. And in the prisons of America today, there is a deep and abiding interest in things spiritual. So long as prisoners have freedom of religion and so long as they wish to pursue a changed life through their faith, they should be allowed to take advantage of the resources available.

Rehabilitation, successful reentry into society, and reduced recidivism rates are long accepted goals of government. Nonprofits, faith-based or not, that can provide a service that meets these goals should be allowed to do so. Particularly in the arena of aftercare or reentry, nonprofits and specifically faith-based nonprofits in the form of local churches are uniquely well suited to engage in rehabilitative and reentry efforts.

If the external forces sparking an attitude change in society at large are the high incarceration rate, state budget woes, and a shift in conservatives' approach to crime,

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what then is internally fueling the churches are increasingly moving into the prisons of America, which are littered with broken lives looking for a message and a model of forgiveness, love, and hope.

Let me give just one significant example. In four prisons across the U.S, Prison Fellowship has developed and staffs a program called the InnerChange Freedom Initiative, which immerses prisoners in a values-based environment taught from a biblical perspective. The in-prison portion—which addresses academics, life-skills training, spiritual development, and job preparation—is followed by several months of post-prison support to ensure that released prisoners have the best opportunity to successfully reintegrate into society. For each program, hundreds of volunteers from local churches are recruited and trained to work with and mentor the ex-prisoners.

Based on records for Prison Fellowship's fiscal year ended in June 2004, of the 909 program participants (from all four prisons) who have been released from prison so far, 90 percent have mentors, 86 percent are involved with a church community, and 85 percent are gainfully employed. In a 2002 University of Pennsylvania study that focused on the Texas program—the one in operation the longest—researchers found that of those prisoners who completed the entire program, only eight percent were reincarcerated within a two-year period.

David Russell is one of those “success stories.” David has described his first stint in prison as the state’s “attempt at rehabilitation — where all I learned was how to do my crime a little better so I wouldn’t get caught.” His second imprisonment — when he participated in the InnerChange Freedom Initiative—he calls a time of “*transformation: changing the heart*” through a faith relationship.

Nonprofits must be allowed to operate within and alongside the prison system. States must allow for innovation and experimentation with the guidelines of ensuring public safety. There will be success and failures along the way, but the system cannot get worse than it is at present unless we do nothing but continue the status quo.

Although the government should not forfeit its role in certain aspects of the rehabilitative process, the correctional system is unable to provide the web of human nurture and love necessary to effect life-changing transformation in the lives of prisoners.

To be successful, such community-based nonprofits must be motivated by love for their fellow man and a deep-rooted conviction that life transformation is possible and is worthy of individual and community sacrifice. Many if not most of the nonprofits stepping up to the plate are faith-based, others are not; but all should be welcome insofar as their methodology and purposes are not contrary to public policy and public safety, and all should be held accountable for results. **VBA**

Update to Summary of Post-1998 Rehabilitative Alimony Cases and Trends (September 2003-March 1, 2005)

by Cheryl Watson Smith

In 1997, the Legislature amended *Virginia Code* § 20-107.1¹ to include the option of awarding spousal support for a defined duration, in addition to spousal support for an undefined duration or lump sum or any combination thereof. In the October/November 2004 edition of the *VBA News Journal*, a look at the known “rehabilitative alimony” cases revealed that some defined duration support awards were being made in the extreme situations, i.e. long marriage, short award of support/short marriage, permanent support. Since September 2003, 10 cases were located, seven of which were from Fairfax. However, a few trends are emerging in these cases, at least in Fairfax.

Published Court of Appeals Case:

1. *Miller v. Cox*.² The Court of Appeals remanded the issue of spousal support raised in Husband’s 2003³ appeal for reconsideration in light of the Court’s reversal on several equitable distribution issues. Then, in this Appeal, the trial court’s award of \$9,000 per month permanent support in this 15-year marriage was affirmed. This was a second marriage for both parties, each with children from prior marriages. Both parties were in their 50s and healthy. Wife netted approximately \$25,000 per year and the trial court’s finding of a five percent return on her \$1,700,000 equitable distribution award was affirmed. Husband earned between

\$573,000 and \$872,000 per year. Wife maintained the home, had limited professional help and was primary caregiver of Husband’s son who visited several weeks each summer. Wife worked throughout the marriage, but testified she sacrificed her career to move several times with Husband, including a 1993 move to Washington, D.C., for Husband to be the CEO of his company, which managed retirement assets. Husband argued that, based on Wife’s financial estate and access to retirement funds from the equitable distribution, a defined duration award was “compelled.” The Court of Appeals disagreed. An award of defined duration or undefined duration is discretionary with the court. The Court of Appeals noted that a “change in either party’s position regarding support is more properly addressed, not in speculated anticipation of change, but in relation to the current circumstances of the parties” and the award may be altered upon a showing of a change in circumstances.⁴

In affirming the undefined duration, the Court of Appeals also affirmed the trial court’s award of \$9,000 per month, which included a substantial amount for retirement savings. The Court of Appeals went so far as to state that “[t]he parties’ savings plan during the marriage is not only an appropriate consideration, it is a mandatory one.”⁵ However, it is important to note that *both* Husband and Wife were committed to a savings program during the marriage and

both testified to their history of savings, so the trial court’s award gave appropriate consideration to the parties’ pattern and custom of savings and investing a substantial portion of their income throughout the marriage.

Unpublished Court of Appeals Cases:

1. *Massa v. Massa*.⁶ The trial court’s award of permanent spousal support of \$10,000 per month and no imputation of income to Wife was affirmed. The parties had been married for 17 years and had four children, 4-14 years of age. The Husband had a B.S. and earned \$26,000 per month, plus other incentives. The Wife had a B.A. in English and a master’s in social work, but she had never worked as a social worker. By agreement, the children alternated weeks in each parent’s home.

Husband asked the court to impute income to Wife. The party seeking imputation of income has the burden of proving that the other party is voluntarily unemployed or under employed. Husband’s vocational expert testified that Wife could work as a social worker earning \$32,000 per year, even though the known jobs required 2-3 years’ experience. The expert opined that Wife’s master’s degree was comparable to the required work experience, but admitted he had never placed a person in a position as a social worker.

The trial court considered all of *Virginia Code*⁷ § 20-107.1(E)

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factors, including the length of the marriage, the very high standard of living, the disparate income levels, and, as required by factor (E)(11), the parties' decision during the marriage regarding employment, career and parenting arrangements. The trial court found that the parties had agreed Wife would stay home with the children; that the children still needed her assistance to some extent; and, that even if Wife could go back to work, she was limited in what she could do because she "had put aside her career employment goals, consistent with her educational background" to further the parties' understanding that she would stay home with the children which permitted "husband's career to flourish."⁸ It was reasonable for the trial court to conclude that the parties' agreement for Wife not to work outside the home for 14 years negatively affected her earning capacity and career opportunities at divorce.

Husband feared that the trial court's use of the term "permanent support" as opposed to support "for an undefined duration" foreclosed the court's ability to modify the award. The Court of Appeals has consistently held that a court award of permanent support is subject to modification if the circumstances change. Moreover, § 20-109(A) permits the court to increase, decrease or terminate the amount or duration of any spousal support or maintenance.⁹

2. *Holland v. Holland*.¹⁰ The trial court's award of \$700 per month for six years was affirmed. This was

almost a 12-year marriage with two minor children. Husband earned \$74,400 per year. Wife earned \$9,756 per year. By agreement, Wife stayed home while the children were young. She had returned to work in 1998 and contributed to the family finances. Husband earned significantly more than Wife did, but the court found he provided equal non-monetary contributions. The Wife was healthy, able to work and there were no special circumstances with the children.

3. *Block v. Block*.¹¹ The trial court's award of permanent support of \$1,500 per month was affirmed. The parties separated in 1998 after a nine-year marriage. The divorce was awarded August 3, 2004. There were three minor children, one with a special need (learning disability). By agreement, the Wife worked part-time (32 hours per week) as a nurse earning \$50,000 per year. Husband attended dental school during the marriage. He averaged over \$150,000 per year. The trial court based its award upon the income, earning capacities, standard of living during the marriage, monetary and non-monetary contributions, special needs of the child, education and parenting arrangements during the marriage and the effect of the parenting arrangements on present and future earning potential.¹²

Circuit Court Opinions:

1. *Heiche v. Heiche*.¹³ \$1,000/month for four years, no stated basis. This was a nine-year marriage; three children, custody with Wife; Husband with a college degree

earned \$130,000/year; Wife earned \$11,352/year; grounds were Wife's adultery, and the court expressly found that complete denial of support would be a manifest injustice. Four and one-half year reservation (half of the length of the marriage).

2. *Abraham v. Bereketab*.¹⁴ \$4,000 lump sum support, stressed short duration of marriage. This was almost a four-year marriage; Husband earned \$5,578/month; Wife earned \$2,427/month; one child, custody with Wife. The lump sum was to assist Wife to find housing comparable to the marital standard of living.

3. *Hoegle v. Hoegle*.¹⁵ \$5,500/month permanent support, rejecting Husband's argument for defined duration support. This was a 22-year marriage; one child, living with Husband; Husband had a law degree; Wife had a B.A. in health care administration. The court found Wife could earn \$40,000/year, but not more due to her alcoholism, prior unsuccessful treatment and her absence from the job market at times during the marriage.

4. *Goldman v. Goldman*.¹⁶ \$3,000/month for 13 years and Husband pays mortgage until marital residence sold, no stated basis. This was a 21-year marriage; Husband was 53 and Wife 52; two children, one in college, one with Wife; Wife's two-year nursing training was in 1971 and the Court accepted her expert's opinion that a 10-month refresher training course was needed, rejecting Husband's expert's testimony that a five-week refresher course would suffice. The Court expressly did not impute income to Wife, so support could not have been rehabilitative. There were considerable retirement funds divided, so since support expired when Wife turned 65 it is possible that the limited duration award was meant to support the Wife until social security and retirement benefits became payable, but the court did not state this expressly.

5. *Crawford v. Crawford*.¹⁷ \$1,200/month for 24 months, no stated basis

and essentially no findings, except the short duration of the marriage. This was a 4-year marriage; each had children for whom Wife cared during the marriage; Husband, 46, had a college degree and was employed with General Dynamics; Wife, 37, had an associate degree, paralegal certificate and was working toward a B.A. Husband had been supportive of Wife's educational endeavors. Each party was granted a reservation.

6. *Edgar v. Edgar*.¹ \$750/month for three years, rehabilitative award to cover Wife's educational expenses.² This was an 18-year marriage; Husband, 44, was retired military and each spouse received a portion of his retired pay; Wife, 42, supported Husband's career through many moves. At the time of trial, Wife was caring for the parties' child, working overtime, and already in a three-year part time nursing program earning her B.N. The court stated that the three-year award was to permit Wife to complete school without having to continue to work overtime and to put herself in a better position to support herself in the future.

Trends:

From these cases, several trends are emerging, at least in Fairfax:

Defined duration awards are increasingly common in very short marriages. Although the cases do not explicitly state this, the emphasis on the short duration of the marriages implies that the Wife (in these cases) had not made enough of a financial sacrifice or had not suffered damage to her long-term earning capacity to have a permanent entitlement to the marital standard of living. Marriages of five years or less are typically being considered a short marriage. If both spouses work and there are no children, then a marriage a few years longer than five is still being considered short. However, if there are children early on and one spouse stops working to care for the child(ren), then a marriage of less than five years may not be

considered short.

Defined duration awards are not as prevalent in long marriages, except to meet the support needs until a pension and/or social security benefits begin. (*Goldman*) But, in *Miller*, with the focus on retirement savings, the court rejected Husband's contention that Wife's ample retirement compelled a defined duration award. A financial planner may be of assistance in these cases to show the level of support needed until retirement benefits commence, and to determine whether the expected benefits will meet the spouse's financial needs for the spouse's life expectancy. If the court bases its award upon a specific amount of expected future retirement benefits, it is particularly important that the amount be stated in the order, so that the award can be modified if unforeseen circumstances (e.g., another boom or crash in the stock market, or possible major amendments to Social Security) result in retirement benefits greater or smaller than expected.

The court must (1) make written findings on the factors in § 20-107.1 (E) and (2) explain the basis for any defined duration award.²⁰ Except for *Crawford* and *Heiche*, the cases are doing a fairly good job on the first requirement, making findings on the 20-107.1(E) factors. However, except for *Edgar*, the courts are essentially failing to identify the *basis* for the nature and duration of the defined duration award. If appropriate, the court is to specify the events and circumstances reasonably contemplated by the court, which supports the award for a defined duration. The failure to explain the basis for the defined duration is clear error. Without an explanation, a future court will not know *why* the limited term was awarded and will not have a basis to determine whether to extend or contract the term or the amount of the award.

Although fairly common in other states, conspicuous by its absence in Virginia are reported cases making

both a permanent and a defined duration or a lump sum award. A "combination" award may be a reasonable alternative in cases where the support recipient can work and meet part of his or her needs but will never reach the income level of the support payor in order to maintain the marital standard of living. After a long marriage, in which an entitlement to permanent support exists, most of the cases just award it. However, in the appropriate case, consider seeking an award of a lesser amount of permanent support, combined with a limited term award, to give an employable support recipient an opportunity and an incentive to find employment.

A lump sum award as part of the combination could cover education and retraining costs, but the lump sum, once awarded, does not terminate, even upon remarriage, and cannot be modified. A defined duration award provides more flexibility and if the basis of the award is clearly stated, then it will be more apparent if the award needs to be modified in amount or duration, if the circumstances change during the defined duration. Once the duration ends, the defined award terminates; but, the lesser amount of the permanent award continues to address, without the necessity of further litigation (hopefully), the issues of maintaining the standard of living, the disparity in incomes, financial sacrifices made during the marriage and damages to the recipient spouse's long-term earning capacity.

Practice Pointers:

- Request or remind the court to make findings.
- If appropriate, have a financial expert testify to the level of support needed until retirement; the amount of retirement benefits expected to be available; and, whether the level of retirement will meet the spouse financial needs.
- Submit draft findings and draft explanation of the basis to the court for consideration.

· If no findings or basis is given, preserve the objection for appeal by stating “The court erred by failing to make the findings and conclusions required by *Virginia Code* § 20-107.1(F), and by failing to state clearly the events and circumstances supporting an award of spousal support for a limited duration.”

Perhaps next year more judges will have defined duration (or denial of defined duration) cases which they feel are appropriate to report, since identifying the trends and the basis for the trends provides more guidance to practitioners, which may increase the settlement opportunities for spousal support cases. **VBA**

NOTES

1. See B. Turner, “Spousal Support In a Time of Transition: Recent Changes in Virginia Spousal Support Law,” Fourth Annual Virginia Chapter of the American Academy of Matrimonial Lawyers CLE (October, 1998) for an outline summarizing Virginia and non-Virginia law on the issue of rehabilitative alimony; Rehabilitative Alimony and the Reservation of Spousal Support in Divorce Proceedings, House Doc. No. 55 (1997); For a discussion of the general history of the legislation, the jurisdiction and applicability

of the amendments see Peter N. Swisher et. al., *Virginia Family Law: Theory and Practice* § 9-6.1 (2003 ed.)

2. 44 Va. App. 674, 607 S.E.2d 126 (2005). Case from City of Alexandria.

3. *Miller v. Miller*, Unpublished, Record No. 2261-02-4 (July 15, 2003). Case from City of Alexandria.

4. *Miller v. Cox*, 44 Va. App. at ____.

5. *Id.* at ____.

6. Unpublished, Record No. 0843-03-4 (March 30, 2004). Case from Fairfax County.

7. All references are to the 1950, *Code of Virginia*, as amended unless otherwise stated.

8. *Id.*

9. Note also, *Pappas v. Pappas*, Unpublished, 2004 WL 1822345 (Ct. App. August 17, 2004): separation agreement allowing “increase or decrease” in spousal support did not allow modification of duration. This case states quite clearly that duration could be modified if the award had been made by a court (otherwise, the contract construction issue would be irrelevant). So, if you want the duration to be modifiable, use broad modification language. E.g., “Spousal support may be increased, decreased or terminated in amount or duration by a court of competent jurisdiction based upon a material change in circumstances.”

10. Unpublished, Record No. 1231-04-3 (December 7, 2004). Case from Roanoke City.

11. Unpublished, Record No. 2059-04-2 (March 1, 2005). Case from Chesterfield County.

12. An interesting procedural question was raised in this case. Wife filed for spousal

support in JDR in April 1998. The divorce was filed after the July 1, 1998 amendments to 20-107.1. The trial court refused to state whether the amended version of the statute applied as Husband requested. The trial court articulated factors in the amended version of the statute. The Court of Appeals found that those factors were encompassed under the “such other factors” of the prior version of the statute.

13. 2004 WL 1879209 (Fairfax July 21, 2004).

14. 2004 WL 877842 (Fairfax March 31, 2004).

15. 2004 WL 351145 (Fairfax February 9, 2004).

16. 2003 WL 23272407 (Fairfax December 29, 2003).

17. 2003 WL 23272405 (Fairfax November 24, 2003).

18. 2003 WL 22779080 (Fairfax November 12, 2003).

19. Court stated its findings and gave a clear explanation of the basis for the award which is an example of a trial court getting all of the § 20-107.1 procedures exactly right.

20. § 20-107.1(F) provides two requirements: In contested cases in the circuit courts, any order granting, reserving or denying a request for spousal support shall be accompanied by written findings and conclusions of the court identifying the factors in subsection (E) which support the court’s order. If the court awards periodic support for a defined duration, such findings shall identify the basis for the nature, amount and duration of the award and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court, which support the award.

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The 2005 VBA Legislative Review

Bills which passed both houses and were signed by the Governor are in boldface; all others are in regular type.

AREA OF PRACTICE	BILL INFORMATION/NOTES/STATUS
Access to Justice	<p>HB 1596, Del. Black, R-Sterling, incorporates HB 1516, Del. Reese, R-Oak Hill; HB 2814, Del. McDonnell, R-Virginia Beach. Support increases in compensation for indigent defense counsel. Bills passed in House Courts but tabled in House Committee on Appropriations.</p> <p>Support initiatives of the Virginia Indigent Defense Commission.</p> <p>Support initiatives for funding civil legal services.</p> <p>HB 2208, Del. Marrs, R-Richmond. Additional fee collected in civil case filings to be deposited into criminal fund. VBA opposed; failed in House Courts.</p> <p>HB 2628, Del. Albo, R-Springfield. Provide tolling of time limitations on habeas petitions where petition is based on attorney's failure. Passed both houses; signed by Governor.</p>
Business Law	<p>SB 933, Sen. Stosch, R-Henrico. Technical changes pertaining to LLCs. Passed both houses; signed by Governor.</p> <p>SB 1228, Sen. Stosch, R-Henrico. Revisions to the Virginia Stock Corporation Act. Passed both houses; signed by Governor.</p>
Civil Litigation/Boyd-Graves Conference	<p><i>Civil Litigation Section:</i></p> <p>Pre-suit disclosure coverage.</p> <p>SB 1018, Sen. Mims, R-Leesburg. General verdict accompanied by answers to interrogatories. Passed both houses; signed by Governor.</p> <p>SB 830, Sen. Mims, R-Leesburg. Taxable costs awarded to prevailing parties. Stricken by patron. To be reviewed in interim with Supreme Court.</p> <p>Underinsurance coverage: notice. Tabled by VBA Board.</p> <p>Clarifying discovery of expert witnesses. Possible handoff to Boyd-Graves.</p> <p>HB 2010, Del. Armstrong, D-Martinsville. Clarifying impact, if any, of changes in statutory judgment interest rate on existing judgments. Passed both houses with Senate amendment; signed by Governor.</p> <p>HB 1520, Del. Janis, R-Glen Allen. Pro se litigation; closely held corporations. Expands authority of nonlawyer appearances in General District Court. VBA opposed. Failed in House Courts.</p> <p>SB 1118, Sen. Norment, R-Williamsburg. Create a single form of pleading for civil actions. Endorsed by Judicial Council. Passed both Houses; signed by Governor. Effective 1/1/06.</p> <p><i>Boyd-Graves Conference:</i></p> <p>Amending Rule 5:6(b) of the Virginia Rules of Professional Conduct.</p> <p>SB 827, Sen. Mims, R-Leesburg. Amending Va. Code 8.01-417(B) to share subpoenaed documents in civil cases. Passed both houses; signed by Governor.</p> <p>SB 790, Sen. Obenshain, R-Harrisonburg. Amending Va. Code 8.01-428(c) to extend the time to pursue post-trial relief. Passed both houses; signed by Governor.</p> <p>HB 2654, Del. Hurt, R-Chatham. Amending Va. Code 8.01-420.4 concerning the place for taking depositions. Passed both houses; signed by Governor.</p> <p>SB 1123, Sen. Obenshain, R-Harrisonburg. Amending Va. Code 8.01 to provide waiver of service of process akin to Federal Rule 4. Passed both houses; signed by Governor.</p> <p>SB 1019, Sen. Mims, R-Leesburg. Amending various provisions of the Va. Code to limit use of Social Security information in docketing judgments and other public filings. Addresses divorce proceedings. Passed both houses; signed by Governor.</p> <p>Amending Va. Code 8.01-272 adopting "same transaction or occurrence test" for res judicata. Deferred to 2006 session.</p> <p>HB 2174, Del. Johnson, D-Abingdon. Amending Va. Code 8.01-398 and 19.2-271.2 regarding privileged marital communications. Passed both houses with Senate substitute; signed by Governor.</p> <p>Removing distinction between attorney-issued and court-issued subpoenae. Deferred to 2006 session.</p> <p>Amending Rule 4:79 (a)(4)(B) of the Rules of the Supreme Court of Virginia regarding use of expert deposition at trial.</p> <p>HB 2652, Del. Hurt, R-Chatham. Amending Va. Code 8.01 and 18.2-344 to permit use of unsworn declarations. Passed both houses; signed by Governor.</p> <p>Endorsing resolution supporting formation of Family Court and endorsing funding to do so.</p>

AREA OF PRACTICE	BILL INFORMATION/NOTES/STATUS
Commission on the Needs of Children	HB 2246, Del. Bell, R-Albemarle. Guardian <i>ad litem</i> standards. Oppose as introduced. Referred to Criminal Law Subcommittee of House Committee on Courts of Justice. Bill tabled.
Construction & Public Contracts Law	HB 2283, Del. Janis, R-Glen Allen. Regarding contractual disputes; amendments to the Virginia Public Procurement Act. Passed both houses; signed by Governor.
Criminal Law	HB 1754, Del. Janis, R-Glen Allen, and HB 2265, Del. Bell, R-Albemarle. Embracery; penalty. Provides that any person who attempts to corruptly influence a juror is guilty of a Class 1 misdemeanor. HB 1754 rolled into HB 2265. Referred to Crime Commission for study.
Domestic Relations/ Family Law	No new initiatives. Will closely monitor all family law-related legislation that arises. Typical high volume of bills, but again, most negative legislation avoided. Assist in securing budget amendment granting the Judicial Council additional time to study the issue of family courts in Virginia.
Elder Law	HB 2601, Del. Landes, R-Weyers Cave. Medical assistance services; establishing more restrictive asset transfer limit. VBA opposed. Passed House; left in Senate Committee on Finance. Possible study by section. Support advocacy of long-term care partnership program legislation that may arise during the session.
Environment, Natural Resources & Energy Law	HB 1752, Del. Janis, R-Glen Allen. Administrative Process Act; judicial review. Support clarification of the declaratory judgment statute. Passed House; referred to Senate Committee on Courts of Justice, assigned to Administrative Process Subcommittee; left in Senate Committee on Courts of Justice.
Health Law	<p>HB 2237, Del. O'Bannon, R-Henrico. Virginia Self Referral Act clarification. Passed both houses; signed by Governor.</p> <p>HB 2243, Del. O'Bannon, R-Henrico. Certificate of Public Need revision. Passed both houses; signed by Governor.</p> <p>Corporate practice of medicine. Not introduced this year, but will study with Business Law Section.</p> <p>Major medical records legislation resulting from a study done with the Joint Commission on Health Care. Legislation includes the following bills:</p> <p>HB 2514, Del. O'Bannon, R-Henrico; HB 2515, Del. O'Bannon, R-Henrico; and HB 2516, Del. O'Bannon, R-Henrico.</p> <p>Plus:</p> <p>HB 2363, Del. Melvin, D-Portsmouth; SB 1064, Sen. Martin, R-Chesterfield; SB 1109, Sen. Blevins, R-Chesapeake; SB 1110, Sen. Blevins, R-Chesapeake; SB 1203, Sen. Mims, R-Leesburg.</p> <p>All passed both houses in block passage; signed by Governor.</p> <p>HB 1753, Del. Janis, R-Glen Allen. Exempt Department of Medical Assistance Services from Administrative Process Act in part. Defeated in House Committee on Courts of Justice.</p>
Law Practice Management	HB 1520, Del. Janis, R-Glen Allen. Oppose/modify pro se representation for nonlawyers beyond Small Claims Court. Modified substitute re-referred to House Courts of Justice subcommittee and stricken from docket there.
Needs of the Mentally Disabled	<p>Oppose HB 961 carried over from 2004: Guardianship or conservatorship for individuals with mental retardation (Del. Barlow, D-Smithfield). Left in House Committee on Courts of Justice, 12/04.</p> <p>Oppose SB 507 carried over from 2004: Judicial authorization of treatment and detention of incapacitated persons. SB 507 left in Senate Committee on Education and Health, 12/04.</p> <p>Support SB 1017, Sen. Mims, R-Leesburg, in modified form for 2005. Passed both houses with amendment; signed by Governor.</p> <p>Monitor SB 640 carried over from 2004: Mentally ill defendants (Sen. Edwards, D-Roanoke). Left in Senate Committee on Courts of Justice, 12/04.</p>

Real Estate

Oppose SB 982, Sen. Watkins, R-Midlothian. Title insurance; policies or contracts to be based upon published risk rates, penalty. Failed in Senate Committee on Commerce and Labor.

Support **HB 2821**, Del. Suit, R-Virginia Beach. Title insurance; allows companies to charge negotiated risk rates. **Passed both houses; signed by Governor.**

HB 2052, Del. Nixon, R-Richmond. Internet access to court records. **Passed both houses; extends sunset provision of controls two years to 7/1/07; signed by Governor.**

SB 992 and **SB 1192**, Sen. Devoletes Davis, R-Vienna. Access to court land records; establishes Real Property Recording Act and authorizes certain secure remote access. **Passed both houses; extends sunset provision of controls two years to 7/1/07; signed by Governor.**

Taxation

Endorse formation of a Tax Court. Deferred to 2006; section will study the appropriateness of a Tax Court.

Recommend solutions to modify the "excessive delay" in dealing with administrative tax protests.

HB 2679, Del. Lingamfelter, R-Woodbridge. Eliminate local tax "pay to play" rule. Passed both houses with Senate substitute; Governor's recommendation received by House. **Passed both houses; signed by Governor.**

Real Estate Tax Appeal initiative. Tabled by VBA.

Support enactment of uniform procedures for protesting real property taxes.

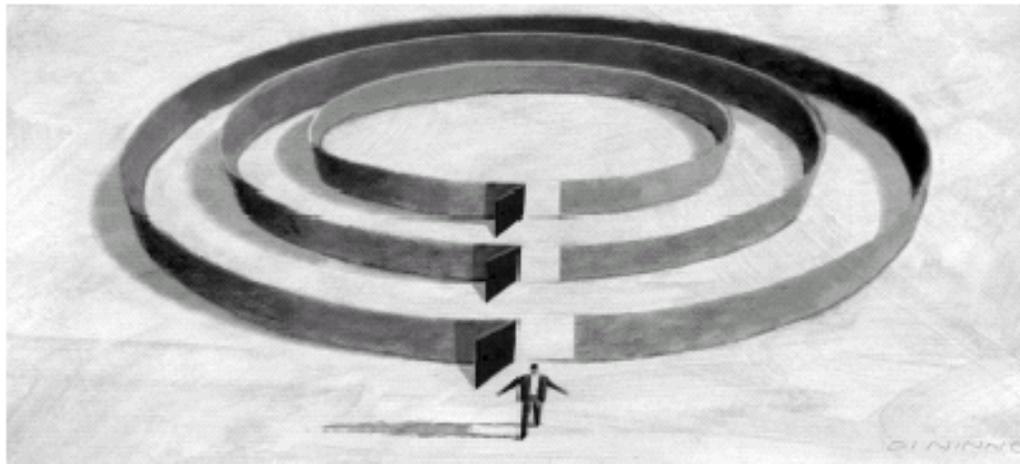
Wills, Trusts & Estates

Reintroduce former HB 139 from 2004 (failed) to lift restrictions on family members as witnesses of advance medical directives. Support **HB 2584**, Del. Kilgore, R-Gate City. **Passed both houses; signed by Governor.**

SB 891, Sen. Mims, R-Leesburg. Sets out Uniform Trust Code of NCCUSL in Virginia. Passed both houses with House amendment to delay effective date to 7/1/06; Governor's recommendation received by Senate. **Passed both houses; signed by Governor.**

HB 1715, Del. Kilgore, R-Gate City. Investment protection restriction of the "legal list" of securities afforded fiduciaries (follows HB 140 from 2004). **Passed both houses; signed by Governor.**

Open space easement legislation carried over from 2004. Oppose. Carryover passed over.



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Law School Councils serve and socialize

by **R. Braxton Hill IV, Chair, VBA Young Lawyers Division**

For nearly 50 years, The Virginia Bar Association's Young Lawyers Division has given newly-minted Virginia lawyers the opportunity to undertake *pro bono* service, to develop leadership skills and to forge friendships that span the length of careers as well as the breadth of the Commonwealth. With modest fanfare but tremendous success, the Association recently extended those benefits of membership in the Young Lawyers Division to law students, who represent the next generation of bar leaders. To sow the seeds of bar service among these future leaders of our profession, the Young Lawyers Division established Law School Councils (LSCs) across Virginia. A brief glimpse at the achievements of our law student members reveals how felicitous that decision has proved to be.

The Law School Council for the **Appalachian School of Law** has adopted the ASL Memorial 5K Run/Walk as its Community Service project. The proceeds of the race benefit the Anthony Sutin and Thomas Blackwell Endowment Scholarship Funds, and the ASL LSC greatly appreciates the Association's financial support of the event. As a sponsor, the Association receives prominent billing on race fliers and T-shirts. **Victoria Schawl**, the current ASL LSC secretary/treasurer, reports that the students have nominated officer candidates for next year,



and elections will take place in mid-April.

The **George Mason University** Law School Council is likewise going strong. On April 10, the GMU LSC will lend a hand with the Arlington Food Assistance Center's "Canstruction" competition, which showcases structures created of donated nonperishable foods by local architectural firms. The students will help dismantle the contest entries and organize the donated food for distribution to needy

Arlington families. On the organizational front, the GMU LSC has drafted a new constitution and has recruited a faculty sponsor, **Prof. John L. Costello**. The students anticipate receiving recognition by the school as an official student organization by the end of the semester, which recognition would entail eligibility for funding through the Student Bar Association. New officer elections are scheduled for mid-April.

The **University of Richmond** Law School Council was busy in February with its Elder Law Symposium, which was moderated by **Christopher M. McCarthy**, chair of the VBA Elder Law Section. Law student **Helen Baucom** spearheaded the event, garnering 89 registrants, including 30 law students, three professors and approximately 50 attorneys from as far away as Tidewater and Roanoke. In March, the UR LSC held a "Necessities Drive" contest with the William and Mary LSC,

through which the UR students collected a carload of donations for the Safe Harbor Shelter in Richmond. Additionally, student member **Jackie Wilbur** has implemented a mentor program that matches UR law students with local attorneys. The students and lawyers have enjoyed several social events in the past few months, including a Richmond RiverDogs hockey game, and they plan to square off on the kickball diamond in the near future. Much to the dismay of VBA President Meath, kilts will not be permitted on the field of play.

In November the **University of Virginia** Law School Council welcomed remarks by **Ted Ellett**, now the Association's past president. UVA LSC President **Adam Brink** reports that the address shed a great deal of light on the Association's current programs, goals and concerns, and also made a strong case for student membership in the UVA LSC. In February, the UVA LSC organized a panel discussion entitled "Serving the Public in the Private Sector" for the law school's Public Service Conference. Three members of the Association served as panelists for the standing-room-only seminar, providing a distinct and well-received local flavor to the broad range of subjects addressed over the Conference weekend. With elections on the horizon, the Council is laying the foundation for another productive year.

Representatives of the **William and Mary** Law School Council joined us at the Annual Meeting in Williamsburg, and the students are planning a membership and



University of Richmond law students mingled with elder law practitioners at the Elder Law Symposium sponsored by the UR Law School Council in March, which featured lawyer Shawn Majette of Richmond as its keynote speaker (above).

networking social event for mid-April. Demonstrating its commitment to community service, the W&M LSC collected donations for the Avalon Center for Women and Children as part of the “Necessities Drive” contest with the UR LSC. The W&M LSC thanks outgoing officers **Kelly Street**, **Brad Reeves**, and **Sarah Edmondson**, as well as 2L officer **Rachel Juhas**, who will remain with the Council next year.

In the rolling hills of Lexington, the **Washington and Lee** Law School Council hosted a cocktail reception on February 10 at the W&L Alumni House, drawing 20 law students and seven lawyers. The students are looking forward to hosting a similar event in Roanoke this fall.

In addition to the laudable work of our law student members through the VBA/YLD Law School Councils, law students also play a key role in the Association’s **Community Service Program**, which encourages attorneys across the Commonwealth to make an annual commitment of 50 hours of *pro bono* legal service, 50 hours of nonlegal community service, or a mix of both. Under the leadership of William and Mary’s **Dean Robert E. Kaplan**, the Community Service Program’s Law School Outreach

Committee is formulating guidelines for making the Community Service Program available to students, faculty, administration and staff at law schools throughout Virginia. Thanks to the efforts of that committee, which includes student members **Karen Jordan** (Appalachian), **Jodie Herrman** (George Mason), **Joseph Verser** (Regent), **Scott Hulgán** (University of Richmond), **Kristin Glover** (University of Virginia), **Sarah Wayland** (Washington and Lee) and **Elizabeth Bircher** (William and Mary), the Association hopes to implement the Community Service Program at Virginia’s seven ABA-accredited law schools at the start of the 2005-06 academic year.

The foregoing is by no means an exhaustive list of the contributions made to our Association, our profession and our communities over the past few months by our law student members, who must balance their bar service with the demands of family life, course loads and job searches. Reflected glory shines brightest, and based on the dedication, initiative and leadership shown by these students, we can take comfort in the knowledge that the Young Lawyers Division will be in good hands for years to come. **VBA**

Be a shining star – sign up for the VBA Community Service Program in 2005!

The VBA Community Service Program wants you... and your law partners... and the members of your local bar association to shine this year!

As the Community Service Program enters its second year, its Council members are determined to increase the number of participants across the state. Based on comments from attorneys and judges who have certified their service hours for 2004, doing good does one good – and the Community Service Program is working to spread that good feeling throughout the Commonwealth with its “Make the Commitment” drive, March 1-May 31, 2005.

All Community Service Program participants for 2004 and 2005 will be part of the CSP Charter Club and publicly recognized for their service contributions. You’ll want to see your name on the Charter Club list!

Remember, the VBA Community Service Program doesn’t cost anything (no dues, no fees); you don’t have to be a VBA member; and it’s not a mandatory program with a bunch of records to keep.

All you have to do is visit the Community Service Program page on the VBA website at www.vba.org, print out a commitment form for “VBA Pro Bono Servant” or “VBA Community Servant” and complete it, then send it to the VBA office.

You’ll commit yourself to perform 50 hours of *pro bono publico* legal service or nonlegal community service this year. (Let’s face it, many attorneys do *much* more than 50 hours of service every year.) Later, you’ll receive a form to report your service to the VBA, and early in 2006 the Association will publicly recognize those lawyers who have completed and reported their service.

Questions? **Just call us** at (804) 644-0041 if you don’t find all the details you need on the website. **Make your commitment today and shine your service talents on your community!**

Whitcomb Dreams

A lawyer's life lessons from his lunch buddy

by Brooks M. Smith

"There is a place where the sidewalk ends..."

And each time I cross the tracks and ascend the hill, past boarded-up apartments and junkyard dogs, to the windswept plain known as Whitcomb Court, I think about how remote the merry poetry of Shel Silverstein is from this garbled concrete outpost. There are no crimson rays or songbirds or peppermint clouds here. Just rows of two-story tenements — seemingly abandoned in the cool light of day — and a squat public building styled Whitcomb Court Elementary School.

This is a place of nearly undeniable squalor. A place that strains minute by desperate minute against the hopelessness that seeps in through broken windows, cracked walls and sole-less shoes. A place of Sisyphean struggle.

And yet, through it all, it is a place of children. Hungry, but impelled by youthful energy. Their dreams and worries like wet frescos, immovable in spite of the chaos, but alive with emotion and contrast.

Every so often — not nearly as often as I would like — I venture up the hill to eat lunch in the school cafeteria with a little girl named Derrica. She's halfway through the fourth grade, quixotic, outspoken, occasionally querulous, and always ebullient at the sight of her lunch buddy. She's surely as poor as the rest, as exposed to the realities of the projects as her many siblings, or her rasorial mom, or her absentee dad, or her impossibly young grandmother. In the two years that we have dined together, she seems to have grown 10, a little person too

soon become big.

We do not often talk about important things. Mostly, we critique the cafeteria food, play silly games with fruit roll-ups, and compete to see who can drink their chocolate milk the fastest. Sometimes, we go to the library after lunch so that she can read to me. So ponderous, but urgent with the need to sound out each word, to make some sense of the story line, as if it were all foreign to her. Lately, she's delighted in hearing about my own little girl's belabored efforts to speak, to sound out simple words like "moon" and "mommy," as if these girls were confidants in a confused world of vowels and silent letters.

Last week, I asked Derrica if she'd ever been on a trip, ever ventured to a faraway place. She looked at me as if I had asked a nonsensical question. And I realized that I had, so I quickly re-phrased it.

"Derrica, if you could take a trip anywhere in the world, where would you go?"

She furrowed her little brow and then said, more unequivocally than I could have imagined, "South America."

"But why there?" I thought and then asked aloud.

She looked sheepish for a minute, and then explained. "There's a little girl that comes on TV sometimes, her name is Jenny, and she's very, very poor. She doesn't have a family, or a home, or food. I asked my mom if we could adopt her, so that she could come live with us. My mom said that would be okay, but only if we

could find a way to go down to South America to get her. So that's where I want to go."

This little creature, herself devoid of the comforts that we off-the-hill dwellers take for granted, betwixt dirty and poor, and exposed to hopelessness at every turn, still she clings to hope. And not for herself, not for her own survival or satisfaction, but for a little creature even less fortunate than she, remote but bonded by irreducible reality.

I was stunned, nearly fell off my chair, nearly burst into tears. I felt like the Grinch when he heard the Whos down in Whoville singing their sweet song in spite of their loss, felt like the weight of a hundred-pound iron had been lifted from my chest, felt like I could sit there forever listening to this little creature beside me, her voice now sweet with crimson rays and songbirds and peppermint clouds.

There is a place where the sidewalk ends, and it is not too far from here. Few follow the path there, and even fewer follow it out. It is a place of overwhelming need, nearly unfixable, almost forgotten. But it also is a place of children, and hope, and from time to time, impossible beauty. Lunch is served promptly at 12:20, so don't be late or you might miss it.

"Yes we'll walk with a walk that is measured and slow,

"And we'll go where the chalk-white arrows go,

"For the children, they mark, and the children, they know,

"The place where the sidewalk ends." VBA

Brooks Smith is an associate at Hunton & Williams LLP in Richmond and is the immediate past chair of the VBA Environment, Natural Resources and Energy Law Section. In addition to writing this essay about his "lunch buddy," he recently read it to listeners on National Public Radio. For information on becoming a "lunch buddy" for a Richmond elementary student, please contact VBA Young Lawyers Division Richmond Mentor Program Co-Chairs Andrew Sherrod at (804) 697-1231 or Caroline Browder at (804) 782-7643.

Candidates, CLEs, cooking, and much more: the VBA Summer Meeting is the place to be !

July 14-17, 2005, The Greenbrier, White Sulphur Springs, W.Va.

Major party candidates continue VBA tradition of gubernatorial debates



Kilgore

Kaine

Former Attorney General Jerry Kilgore (R) and Lieutenant Governor Tim Kaine (D), the projected gubernatorial candidates of their respective parties, have accepted The Virginia Bar Association's invitation to debate at the Summer Meeting, continuing a decades-long tradition of holding opening debates of statewide political campaigns at VBA Summer Meetings.

The debate will be held on Saturday, July 16, from 10:30 a.m. to noon, at The Greenbrier. Professor Robert D. Holsworth, director of the L. Douglas Wilder School of Government and Public Affairs at Virginia Commonwealth University, will serve as moderator.

VBA President Jim Meath voiced the pleasure of the Association's Board of Governors at the candidates' commitment to the event. "We believe this will give both men an excellent platform and afford citizens an early look at a major decision that will be made in November 2005," he said.

More information will be posted on the VBA website at www.vba.org.

ABA President Grey will moderate panelists' discussion of lawyer professionalism and values

The organized bar's role in overseeing professionalism in the legal community will be considered during a general session on Friday, July 15, during the VBA Summer Meeting.

American Bar Association President Robert J. Grey Jr. of



Grey

Richmond will moderate a panel of leading figures within the legal profession, including former Chief Justice Thomas Zlaket of the Arizona Supreme Court and University of Illinois Law Dean Heidi Hurd, who will discuss mandatory and voluntary efforts of monitoring lawyer professionalism.

The program is presented by the VBA Committee on Special Issues of National and State Importance and the VBA Law Practice Management Division.

Books and cooks: Adriana Trigiani will present her new novel and join in a family-style culinary demo



Author Adriana Trigiani (seated L) will visit the Summer Meeting as part of her national book tour, reading from her new release *Rococo* on Friday afternoon and joining her mother and sisters (above; VBA member Pia Trigiani is standing at L) and The Greenbrier's chefs for a culinary demonstration on Saturday, featuring dishes from her recent compilation of recipes and memories, *Cooking with My Sisters*.

CLE schedule offers variety of subjects, formats, presenters

The following continuing legal education programs, listed with their sponsoring entities, will be offered at the VBA Summer Meeting:

Videotape Presentation: **“Eye of the Beholder: Client Perceptions of Ethics Issues in Intellectual Property Law (Further Expanded and Enhanced),”** Intellectual Property and Information Technology Law Section.

“Tips on Effective Advocacy in Arbitration,” Civil Litigation Section.

“Fifth Annual Review of Criminal Law Decisions of the Virginia Supreme Court,” a presentation by Prof. Ronald J. Bacigal, Criminal Law Section.

“Drinkin’ My Baby Goodbye: Dealing with a Substance Abuser in Family Law Matters,” Domestic Relations Section, Judicial Section, and Virginia Joint Alternate Dispute Resolution Committee.

“The FLSA Today: Fair Pay or Foul Play?” Labor Relations and Employment Law Section.

General Session: “Professionalism: How Can Lawyers, Judges and the Organized Bar Restore Our Values?” Law Practice Management Division and Committee on Special Issues of National and State Importance (see related article on facing page).

General Session: “Conflicts Between Lawyers and Their Clients II,” an interactive ethics presentation by Thomas E. Spahn, Law Practice Management Division.

“The 2005 Bankruptcy Reform Bill: 20 Years in the Making,” Bankruptcy Law Section.

“An Overview of the 2005 Revision of the Virginia Stock Corporation Act and Post Sarbanes-Oxley Danger Zones for the Directors and General Counsel,” Business Law Section.

“Seventh Annual Review of Civil Decisions of the Virginia Supreme Court,” a presentation by Hon. Jane Marum Roush, Civil Litigation and Judicial Sections.

“Reducing Malpractice by Identifying and Helping the Impaired Lawyer,” Lawyers Helping Lawyers Program.

Details will be available in the meeting brochure and at www.vba.org.

APRIL/MAY 2005

VPLC seeks entries for its 2005 juried photo exhibition, ‘Through Different Eyes’

The Virginia Poverty Law Center (VPLC) has issued a call for entries in its 2005 juried photographic exhibition.

“Through Different Eyes: The Faces of Poverty in Virginia” is a large-scale effort to capture through visual images the lives of those in our society who are most invisible. The project intends to educate the public through art about the lives of low-income families and individuals in Virginia. These families share many qualities that are universal — including triumphs and tragedies, pleasure and sorrow, pride and pain, sacrifice and excess, courage and fear, love and anger, spirituality and thoughtlessness. VPLC specifically seeks entries that avoid stereotypes and instead explore the varieties of daily experience and singular moments shared by our neighbors.

The Honorary Committee, led by Governor Mark Warner, will invite the finalists and the community to a public exhibit and awards celebration this fall in Richmond. VPLC, working with the Virginia Museum of Fine Arts and Legal Aid Societies in Virginia, will tour the exhibit throughout Virginia, thereby guaranteeing maximum exposure for the project. Additionally, VPLC will work with the Virginia Commonwealth University School of the Arts and the T.C. Williams School of Law at the University of Richmond to produce a publication that incorporates selected photography, testimonials, and essays on the social justice aspects of poverty law in Virginia. The Virginia Bar Association and McGuireWoods LLP are assisting with public relations for the competition, exhibit, and publication.

The nationally-recognized jury for the exhibition includes Robert Sullivan, the long-time editor of LIFE magazine, LIFE.com, and LIFE Books; Brooks Johnson, the photography curator from the Chrysler Museum; Tom Rankin, executive director of the Center for Documentary Studies at Duke University; and Willie E. Williams, a celebrated photographer, curator, and educator. The jury will select images that portray the courage and dignity of low-income families and individuals in the Commonwealth of Virginia.

While the focus is regional by definition, any photographer may enter the competition. Rules for entrants and an entry form are available online at www.vplc.org. Dates for submitting work for consideration run from March 1 through June 30, 2005.

For more information about the work of VPLC, please visit www.vplc.org.

For members only: password protection will be coming soon to the VBA website

Later this year, accessing certain areas of The Virginia Bar Association’s website at www.vba.org will require a bit more effort than a simple mouse-click. In other words, VBA members will need a password to view protected areas of the website. This feature will protect members’ privacy and allow the VBA to provide more value-added features for members only. To simplify matters, each VBA member will have a unique user name which consists of that member’s ID number. The password will be the member’s ID number plus the first three letters of the member’s last name, as indicated by the following (facetious) example:

Member: Virginia B. Lawyer

User Name: 12345 (VBA member ID)

Password: 12345law

(member ID plus first three letters of last name)

Afraid you can’t remember your member ID? Watch the printed address label on the back cover of the *VBA News Journal* — member IDs are now being included with the address information.

THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL/21

*The John Marshall Foundation
invites you to save the date of September 24, 2005,
for a gala banquet
in honor of the 250th anniversary
of the birth of John Marshall, "The Great Chief Justice."
More details to be available in future issues and at www.vba.org.*

CLASSIFIEDS

REAL ESTATE

Village comfort with urban convenience in Chester! 3850sf landscaped brick/frame home, cul-de-sac, new roof, Pella windows, 1st-floor master suite, walk-in attic, den w/FP and built-ins, formal dining/living rooms, must see! Easy access to Rts. 288 & 10, I-95, Richmond/Midlothian/Tri-Cities. **Call E. M. Jacobs, M.D., 748-8411, 731-5439.**

PROFESSIONAL ANNOUNCEMENTS

Mary G. Commander and Elisa D. Carlson are pleased to announce the formation of Commander & Carlson in Norfolk, Virginia. The law firm emphasizes family law, adoption, workers' compensation and mediation. Ms. Commander and Ms. Carlson are also the co-authors of "Adoption Procedures and Forms: A Guide for Virginia Lawyers," published by Virginia CLE.

The VBA News Journal offers classified advertising. Categories available are as follows: positions available, positions wanted, books and software, office equipment/furnishings, office space, experts, consulting services, business services, vacation rentals, and educational opportunities. Rates are \$1 per word for VBA members and \$1.50 per word for non-members, with a \$35 minimum, payable at the time of submission. Ad costs must be paid in advance. The VBA News Journal reserves the right to review all copy before publication and to reject material deemed unsuitable.

Professional announcements may be printed; the cost per announcement is \$15 and text may be edited for style and space limitations. Deadlines are one month in advance of the date of publication. Information is available online at www.vba.org, or call for details at (804) 644-0041.



The VBA Law Practice Management Division has established an agreement with the American Bar Association to sell ABA books to all members of the VBA/LPMD — that is, all members of The Virginia Bar Association — at a 20% discount.

You can go to www.vba.org, click on a link to the Book Program, peruse a list of books, and print out an order form to send to the VBA office with your payment.

NOTE: ALL books published by the ABA — not just the ones listed on the VBA website — are available with the 20% discount. You must, however, place your order through the VBA office to receive the discount.

Resources you can trust. Information you can use. At prices you can handle. On the Internet at www.vba.org. On the phone at (804) 644-0041.

NEWS IN BRIEF

Elaine Charlson Bredehoft of Reston has been inducted as a fellow of the International Academy of Trial Lawyers (IATL). A partner in the law firm of Charlson, Bredehoft & Cohen and a member of the VBA Labor Relations and Employment Law Section Council, she is one of 14 inductees invited to join the group of more than 500 national and 100 international lawyers. She has been included in *The Best Lawyers In America* every year since 1997, was named by *Washingtonian* magazine among the "50 Best Lawyers in Washington" in 1997, among the "40 Top Lawyers Under 40" in 1998, among the "75 Best Lawyers" in 2002, and listed as one of the top employment lawyers in 2004. Bredehoft was also featured as one of 12 top employment lawyers in the Washington area in *Legal Times* in 2004. In 2003, she received the honor of being inducted into the American College of Trial Lawyers, an honor limited to the top one percent of attorneys in each state.

Malcolm M. Christian of Richmond, a VBA Life Member and counsel to the law firm of Spotts Fain, PC, has received the Hunter W. Martin Professionalism Award from the Bar Association of the City of Richmond. In nominating him for the award, a bar member noted "Throughout his 52 years of membership in the Richmond Bar Association and active practice of law in the Richmond area, and throughout his community involvement including service as President of the Henrico County School Board, [he] has demonstrated the highest level of professionalism and courtesy to his clients and fellow members of the bar."

Joseph W. Correll of Fredericksburg, former chair of the VBA Substance Abuse Committee, has been named as the recipient of this year's Lewis F. Powell Jr. Award, for outstanding *pro bono publico* legal service, by the Virginia State Bar. Correll volunteers more hours of service to Rappahannock Legal Services than any other attorney, earning the nickname "Joe Monday." In addition to his legal aid service for the past nine years, he has been a longtime supporter of the Lawyers Helping Lawyers Program and a participant in the VBA Community Service Program. He is a retired federal administrator with 42 years of civil service, primarily in the U.S. Department of the Interior.

Being a VBA member has its rewards!



• Members of The Virginia Bar Association can purchase reliable and affordable insurance and financial services that not only

provide benefits for themselves, their families and employees, but also offer a source of non-dues revenue to the Association. **Virginia Barristers Alliance, Inc.**, which offers products and services of MassMutual Financial Group, is administered by Dean Hardy and Howard DiSavino Jr. of Richmond.

The program offers VBA members a great variety of personal and business insurance and financial services. Through MassMutual, Dean and Howard offer life, disability income and long-term care insurance plans in addition to employee benefit programs and business-oriented services. Health insurance*, college tuition funding plans, retirement planning, estate analysis and other investment** services are among the other available features. Professional liability insurance has recently been added to the list of offerings. The MassMutual long-term care product is available at a 10 to 15 percent discount, depending on age, to VBA members. The disability income insurance policies are also available to VBA members at discounts starting at 10 percent.

Visit www.virginiabarristersalliance.com on the Internet to learn more about the wide range of insurance coverage options for VBA members and other Virginia legal professionals, or call **1-800-358-7987** or **(804) 270-5128**.

• Your VBA membership guarantees you special discounts with **DHL Express**. With DHL Express you can expect guaranteed domestic services — next morning, next afternoon, second day, and ground. You can also count on

outstanding international services to more than 220 countries and territories around the world. Take advantage of your VBA membership and sign up today for savings on all of your express shipping needs with DHL Express. Call **1-888-758-8955** or log on to www.airexpressadvantage.com to sign up and receive a free welcome kit. (Mention the special code **CJC3** for VBA members.)

• Display your VBA membership certificate in an elegant frame featuring Italian hardwood moulding, True Conservation matboard with the Scales of Justice embossed in gold, a fibrex backboard and brass-plated fittings with a wire hanger! **Framing Success** is the exclusive supplier of certificate frames to the VBA and offers frames that will fit your certificate perfectly — there is no need to send in your treasured document for framing. Orders are shipped within 2 to 4 weeks of your order. Framing Success is a member of the Professional Picture Framers Association and the invitation-only Fine Arts Trade Guild. Visit



them on the Internet at www.framingsuccess.com, e-mail fsinfo@framingsuccess.com, or call toll-free at **1-800-677-3726**.

• **EXCLUSIVE** benefits for members of The Virginia Bar Association! LexisNexis offers flexible research and big savings on the **LexisNexis at lexis.com®** service for attorneys in small law firms, new admittees and solo practitioners! Search Advisor, Shepard's®, case summaries, core concepts and exclusive content



make your research easier. From the new attorney just starting a practice to the seasoned litigator who delves into a new area of law, LexisNexis provides unique offerings that are affordably priced and easy to customize as business needs change over time. Call **1-800-356-6548** to take advantage of your exclusive Member Benefit.

• The VBA Worldpoints MasterCard is an exclusive offer for members



through **MBNA America**, now available with no annual fee. The face of each card displays the VBA logo, which instantly identifies you as an attorney and a VBA member. Apply by phone, **1-800-847-7378, code KAQ0**.

• The VBA Law Practice Management Division has an agreement with the American Bar Association to sell **ABA books** to all members of The Virginia Bar Association — at a **20% discount**.

You can visit the VBA website, click on a link to the Book Program (www.vba.org/books.htm), peruse a list of books with pricing information, and print out an order form to send to the VBA office with your payment. (*ALL books published by the ABA — not just the ones listed on the VBA website — are available with the 20% discount. You must, however, place your order through the VBA in order to get the discount.*) Other arrangements are offered to VBA members without Internet access.

• Receive substantial discounts on *Virginia's Historic Courthouses*, by John O. and Margaret T. Peters, when purchasing the book through the VBA. A handsome addition to any home or law firm library, the book is also a great gift! Call **1-800-644-0987** for rate information and to place your order.



• Every VBA Section member in good standing receives a **summary of legislation** pertaining to that Section at the close of the General Assembly Session in the spring of each year. This valuable service is lauded annually by Virginia attorneys!



*Not offered through MassMutual.

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CALENDAR OF EVENTS

June 16-19, 2005

67th Virginia State Bar Annual Meeting

Virginia Beach

June 30–July 2, 2005

Fourth Circuit Judicial Conference

Hot Springs

July 14-17, 2005

115th VBA Summer Meeting

The Greenbrier

September 9-10, 2005

VBA Labor Relations & Employment Law Conference

Hilton Oceanfront, Virginia Beach

September 30-October 2, 2005

VBA/YLD Executive Committee and Council Meeting

Wintergreen

October 7-9, 2005

VBA Board of Governors Meeting

Hotel Roanoke

October 21-22, 2005

Boyd-Graves Conference

Hotel Roanoke

October 27-30, 2005

Southern Conference of Bar Presidents

The Greenbrier

October 28, 2005

VBA Virginia Tax Practitioners Roundtable

Farmington, Charlottesville

January 19-22, 2006

116th VBA Annual Meeting

Kingsmill, Williamsburg

July 20-23, 2006

116th VBA Summer Meeting

The Homestead

*For more details, please visit our website at www.vba.org or call the VBA office at (804) 644-0041.
A complete calendar of events with links to additional information is posted on the website.*

**The VBA Summer Meeting is *the* place to be!
July 14-17, 2005 • The Greenbrier**

Call 1-800-624-6070 to reserve your room today!

**Watch for schedule and registration information
in the mail (postal and electronic) and online at www.vba.org.**

VBA

The Virginia Bar Association

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