



The Virginia Bar Association
YOUNG LAWYERS DIVISION

Opening Statement™

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

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CELEBRATION AND TRANSITION

Turning the Page

The upcoming VBA Winter Meeting is fast approaching on January 24-26 in Williamsburg. All VBA members are invited to attend. If you are a young lawyer who is interested in getting involved with the Young Lawyers Division of the VBA, the Annual Meeting is an excellent first step. New faces are always welcome at our Williamsburg meeting.

This issue of the *Opening Statement* marks several milestones. First, we are proud to present a special feature with Chief Justice Donald W. Lemons of the Supreme Court of Virginia. In an in-depth interview with *Opening Statement* Editor-in-Chief Daniel D. Mauler, the Chief Justice offered his advice to young attorneys seeking to better their appellate advocacy skills. We are indebted to the Chief Justice for graciously offering his time to the YLD.

Second, we celebrate the incoming class of YLD Officers and Executive Board Members, who are profiled in this issue. Current Chair Andrew B. Stockment ably steered the YLD through 2018, and he now moves to Immediate Past Chair. Incoming Chair Jennifer L. Ligon will lead the YLD during 2019. Both Andrew and Jen are alumni of the editorial staff of the *Opening Statement*. We are particularly proud to thank Andrew for his dedicated service and to welcome Jen to her new position. Additionally, we have a remarkable incoming class of Officers and Executive Board Members. If you have questions about the YLD, do not hesitate to speak with any of our new leaders.

Third, and bittersweetly, we must say goodbye to two long-serving editors at the *Opening Statement*. This issue will be the last overseen by Editor-in-Chief Dan Mauler, as he “graduates” from the YLD at the upcoming Williamsburg meeting. Dan first joined the editorial staff four years ago (Volume 3, Issue No. 1), and he was then promoted to Editor-in-Chief the following year, taking over the reins from founding Editor-in-Chief Andrew Stockment. The *Opening Statement* will, however, be in excellent hands, as we are proud to announce that Graham K. Bryant has been named as the next Editor-in-Chief.

Finally, we also say goodbye to Development Editor Lena L. Busscher, who will soon join the U.S. Attorney’s Office for the Western District of Virginia. Lena joined the editorial staff three years ago in 2015 (Volume 3, Issue No. 4). We thank Dan and Lena for their years of service to the *Opening Statement* and to the YLD.

As you can see, there is a lot happening in this issue. Thank you for reading, and we hope you enjoy this issue of *Opening Statement*!



Daniel D. Mauler
Editor-in-Chief



Lena L. Busscher
Development Editor



Kelsey S. Miller
Development Editor



Graham K. Bryant
Development Editor

VBA Annual Meeting

The Virginia Bar Association will hold its 129th Annual Meeting in Williamsburg on January 24-26, 2019. The statewide event is an excellent opportunity to attend CLEs, to see old friends and make new ones, and to network and socialize with lawyers of all ages. As usual, the YLD will have programming specifically tailored to young lawyers. All young lawyers are welcome and encouraged to attend.

To learn more about the YLD, visit our website at <https://www.vba.org/yld>.

Featured Activities:

Fri., Jan. 25, 12:45pm–2:00pm:
YLD Luncheon and Business Meeting

Fri., Jan. 25, 2:15pm–3:45pm:
General Session (CLE): Artificial Intelligence and the Rise of Big Data

Fri., Jan. 25, 3:45pm–4:45pm:
YLD/Judiciary Networking Reception “Pints and Pairings”

Fri., Jan. 25, 6:00pm–11:30pm: **Annual Reception, Banquet, and Dance**

Fri., Jan. 25, 9:15pm–11:00pm: **YLD “After-Hours” Social**

Sat., Jan. 26, 8:00am–9:15am: **Annual Breakfast and Business Meeting**

Sat., Jan. 26, 11:00am–12:30pm:
General Session: Reuniting America: Can We Be Part of the Answer?

Sat., Jan. 26, 12:10pm–1:10pm:
Closing Reception

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THE VIRGINIA BAR ASSOCIATION YOUNG LAWYERS DIVISION

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MESSAGE FROM THE CHAIR

The YLD's Bright Future

By Andrew B. Stockment

Throughout the past year, the VBA Young Lawyers Division has thrived as we pursued the VBA's mission to advance the highest ideals of the profession through advocacy and volunteer service. In fact, the VBA Young Lawyers Division has served as an inspiration to other bar associations. The VBA YLD won Awards of Achievement from the ABA Young Lawyers Division in the Diversity, Service to the Public, Newsletter, and Comprehensive categories and was the only bar association in the country to receive the Outstanding Public Service Award from the American Bar Endowment in 2018.

This year we set out to increase the value of our YLD meetings (and make it easier for young lawyers to get approval and reimbursement for attending) by expanding our CLE offerings. In 2018 we provided a record number of CLE opportunities for young lawyers, with a total of seven hours of CLE programming across a wide range of topics. To help us develop best practices for our numerous projects and events, we launched a new online post-event form (vba.org/yld_post_report) for project chairs and event organizers to report details about events after they have taken place. For YLD members who have recently "graduated" (aged out) of the Young Lawyers Division or who are facing that prospect soon, we have laid the groundwork to facilitate finding opportunities for continued engagement and active leadership in the VBA. Please contact me (or any other YLD officer) if you

are a recent or soon-to-be YLD graduate and would like help with the transition to post-YLD involvement in the VBA.

Under the excellent leadership of incoming YLD Chair **Jen Ligon**, the YLD will continue to develop its relationship with the Virginia State Bar Young Lawyers Conference and explore opportunities for collaboration, work with the Board of Governors on the development of the VBA's next strategic plan, and continue the VBA's efforts to engage with law students. We will also be attending the First Annual Law Student Wellness Summit on February 5, 2019, which will include strategy discussions with Supreme Court of Virginia Chief Justice Donald W. Lemons, Justice William C. Mims, other members of the Court, the deans of all eight of Virginia's law schools, and members of the Virginia Board of Bar Examiners. Whether you are a law student or a young lawyer, I encourage you to attend this event on the important topic of wellness in the legal profession.

It has been a privilege to serve our members and promote the VBA as YLD Chair. I would like to take this opportunity to thank several people. First, **Kylie Hinson**, **Khadijah Vasser**, and **Yvonne Cockram** have worked continuously behind the scenes to make all of our YLD events run smoothly, and I greatly appreciate their hard work. Second, the excellent ideas, energy, and

Continued on page 12



Andrew B. Stockment

Shareholder, Lenhart Pettit (Charlottesville)
YLD Chair, 2018-19

Bio: Andrew focuses his practice on intellectual property, technology, and business law, and he leads Lenhart Pettit's cybersecurity and data privacy practice. He joined the VBA as a law student and served in various positions over the years, including founding

Editor-in-Chief of Opening Statement, Co-Chair of the ABA Awards of Achievement Committee, and YLD Representative to the Law Practice Management Division. Andrew received the YLD's Emerson G. Spies Award, and he currently serves as a member of the VBA Intellectual Property and Information Technology Law Section Council. He is a graduate of the University of Virginia School of Law. Andrew, his wife Martha, and their daughter live in Crozet and are active members of Trinity Presbyterian Church. They enjoy reading, hiking, and watching U.Va. Men's Basketball.

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Officers and Officer Candidates



Jennifer L. Ligon

Senior Associate, Williams Mullen (Richmond)
YLD Chair, 2019-20

Bio: Jennifer is an associate in the Health Care Section at Williams Mullen. Her practice focuses on transactional and regulatory matters for health care providers, including hospitals, health systems, and physician groups. Jennifer is an avid Syracuse fan.

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Madelaine A. Kramer

Counsel, Sands Anderson PC (McLean)
YLD Chair-Elect, 2019-20 (nominated)

Bio: Madelaine is a civil litigation attorney and member of Sands Anderson’s Business and Professional Litigation Group. She focuses her practice on professional liability defense and the defense of companies in personal injury, product liability, employment and complex commercial matters throughout state and federal courts in Virginia, DC and Maryland. Madelaine has been involved in the VBA since serving on the VBA YLD Law School Council as a law student at the University of Richmond. She has served as a member of the YLD Leadership Council since 2013 and is currently the Chair of the Law School Councils.

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Andrew B. Stockment

Shareholder, Lenhart Pettit (Charlottesville)
YLD Immediate Past Chair, 2019-20

Bio: Andrew leads Lenhart Pettit’s cyber-security and data privacy practice and advises clients in the areas of intellectual property, technology, and business law. Andrew joined the VBA as a law student and currently serves as the YLD Chair-Elect and as a member of the Intellectual Property and Information Technology Law Section Council. He received the YLD’s Emerson G. Spies Award in 2013, and he is a graduate of the University of Virginia School of Law. Andrew and his wife Martha, and their daughter, live in Crozet and are active members of Trinity Presbyterian Church. They enjoy reading, hiking, and watching U.Va. Men’s Basketball.

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Frank R. Cragle, III

Partner, Hirschler Fleischer (Richmond)
YLD Secretary-Treasurer, 2019-20 (nominated)

Bio: Frank Cragle is a trial lawyer and a member of Hirschler Fleischer’s Insurance Recovery Team in Richmond. He handles a variety of corporate and commercial business disputes, including insurance recovery and policyholder claims. Frank also devotes a substantial portion of his time to business tort claims and employment litigation.

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Executive Board Candidates



Craig A. Hoovler

Associate, Miles & Stockbridge P.C.

Bio: Craig Hoovler is a litigator and registered patent attorney supporting our Commercial and Business Litigation and Intellectual Property Practice Groups. He assists on a range of traditional areas of litigation, including financial, construction, banking, privacy, and transportation disputes, as well as intellectual property matters, including patent, trademark, copyright, and trade secret litigation. His practice also includes preparing and prosecuting domestic and international patent applications in a variety of technical areas, along with drafting and negotiating contracts and licenses pertaining to all forms of intellectual property.

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Emily Gomes

Associate, Hogan Lovells US LLP (Northern Virginia)

Bio: Emily Gomes focuses her practice on commercial and civil litigation. She helps her clients navigate complex contract disputes, data breach investigations, and interactions with state attorney general’s offices. Emily has assisted clients and gained expertise in a number of industries, including education, transportation, insurance, and government services. Prior to attending law school, Emily joined Teach for America and spent three years in Houston, teaching social studies to middle school students.

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Executive Board Candidates (continued)



Patrick Bolling
Associate, Woods Rogers Edmunds & Williams (Lynchburg)

Bio: Patrick's practice has mostly related to transactions and litigation involving various corporate and real estate matters, but has lately seen a significant dose of employment disputes and data privacy matters. In addition to his efforts for the YLD, Patrick has served on the VBA's Real Estate Section Council. Locally, Patrick is a recent President of the Board of Directors of the Arc of Central Virginia and serves on a committee of young leaders devoted to the success of Lynchburg's historic Academy Theater.

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Graham K. Bryant
Law Clerk, Supreme Court of Virginia

Bio: Graham K. Bryant currently serves as a judicial law clerk to Justice William C. Mims of the Supreme Court of Virginia, in which role he studies developments in state and federal appellate law as well as techniques for effective legal reasoning and writing. An active member of the Virginia Bar Association and Virginia State Bar, he serves on the VSB Special Committee on the Future of Law Practice and VSB President's Committee on Lawyer Well-Being. Graham also writes and presents on the technological, legal, and social trends affecting the legal profession in the twenty-first century. Prior to his current position, Graham served as a law clerk to Judge Glen A. Huff of the Court of Appeals of Virginia.

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Current Executive Board Members



Kristen R. Jurjevich
Shareholder, Pender & Coward, P.C. (Virginia Beach)

Bio: Kristen is a corporate and transactional attorney at Pender & Coward in Virginia Beach, focusing her practice in the areas of business law, residential and commercial real estate transactions, community association matters, and litigation in the state and federal courts in Virginia. Kristen is a member of the YLD Executive Board and has been actively involved in the VBA since January 2015, when she became the VBA YLD Chair of the Regent Law School Council. She also serves as Chair of the ABA Awards of Achievement Committee and has participated as a YLD member of the VBA Pro Bono Council.

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Joseph A. Figueroa
Associate, Watt, Tieder, Hoffar & Fitzgerald, L.L.P. (McLean)

Bio: Joe is an associate in the McLean office of Watt, Tieder, Hoffar, & Fitzgerald, L.L.P., concentrating his practice in the areas of construction, government contracts, suretyship law, and commercial litigation. In addition to the VBA, Joe is also active in the Northern Virginia legal community, serving on the board of directors of the Young Lawyers Section of the Fairfax Bar Association. Joe previously served as a law clerk to the Honorable Daniel E. Ortiz and Charles J. Maxfield of the Fairfax Circuit Court.

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William D. Prince IV
Director, Thompson McMullan (Richmond)

Bio: Will's practice focuses on the representation of businesses and financial institutions in general litigation and bankruptcy matters, with a particular focus on commercial litigation and business disputes.

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Michael W. Stark
Associate, McGuireWood LLP (Richmond)

Bio: Michael is an associate at McGuireWoods in Richmond. He handles product liability, toxic tort, and consumer financial services litigation on the trial and appellate levels. Michael also has an active pro bono practice, representing clients in connection with the Virginia Hispanic Chamber of Commerce's free legal clinic and the Legal Aid Justice Center. He also regularly represents prisoners in federal civil rights cases.

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Daniel R. Sullivan
Partner, Gentry Locke Attorneys
(Roanoke)

Bio: Dan maintains an active civil litigation practice, with a particular focus on business litigation and insurance defense. He also regularly assists businesses and individuals in determining insurance coverage issues. He maintains an active bar license in West Virginia as well as Virginia. Before law school, Dan spent a year in Spain in foreign exchange studies, and then a year in Chile doing volunteer work. Dan is fluent in Spanish.

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Departing Officers and Executive Board Members

Thank you to Jeremy S. Williams, Daniel D. Mauler, Nancy S. Lester, Laura Golden Liff, and Jonathan Lucier who are departing the Executive Board of the YLD after many years of service. We appreciate your many contributions to the YLD.



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Making an Impact when Joining an Organization

By Kristen R. Jurjevich

As attorneys or law students, our time and capacity to volunteer for an organization or sit on a board is limited. This is especially the case for those that have families, significant others, or other important aspects of life outside of the office. The goal is to make the most meaningful impact, while getting the most out of the time and effort spent—all without getting burnt out.

While I am no expert on this topic and this is not meant to be a comprehensive overview of volunteering in an organization, I want to offer a few thoughts based on my time spent in the roles of volunteer, board member, and other leadership roles for an organization.

1. Do What You Love, and You’ll Love What You Do

If you’ve never joined an organization, but you want to get involved and don’t know where to start, the best way is to identify something you’re passionate about. For example, you may be passionate about special needs kids; consider volunteering for the Special Olympics. You may be passionate about duck hunting; consider joining an organization like Ducks Unlimited. You may be passionate about economic growth and bringing together business leaders for networking; consider joining a local young professionals group or chamber of commerce.

If you find something you are passionate

about, you’ll be more energized in volunteering, and it won’t seem like work all the time. It will be worth the effort. Focus your time and effort on what you love, and you’ll enjoy the time spent volunteering.

2. Face Your Fears

While I consider myself to be friendly and outgoing (albeit a bit awkward, at times), my personality default is to just keep quiet and observe. For those of you who know me, this may be hard to believe. Note, I state this is my *default* (i.e., my comfort zone). I’ve realized over the years, however, that to make the most out of time spent in an organization, I would need to step out of my comfort zone. In other words, don’t always wait for someone to invite you to be on a board or ask you to assist with a project or join a subcommittee. Instead, apply for board positions, offer to assist with projects or subcommittees if you hear or sense a need, or even offer to start a subcommittee if you think it would benefit the organization. Chances are that those you are waiting for an invite from are just as busy or would not want to specifically ask for fear of thinking you may agree merely out of a sense of obligation. And chances are just as likely that those same persons would love to have someone like you *step up* because you are willing to assist and are passionate about the project, committee, or organization.

Further, don’t be afraid to voice your opinion or offer ideas. Even if your opinion or

idea is not the greatest or even used, by voicing an opinion, you may spur other ideas that would not have been thought of but for you facing your fears and speaking out.

3. Respect Other’s Opinions

Whether you are in a volunteer position, or a position of leadership, remember to listen when others speak out or offer to join or start a subcommittee. It is important, especially as a leader or board member of an organization, to foster a sense of inclusion. Welcome ideas, and give time for ideas to surface. Make it a safe place for someone to speak up. Often, the first idea is not the best, and if you don’t give time for, or encourage, others to “face their fears” and speak out, you risk stifling creativity. Brainstorming breeds creativity, which breeds innovation—and innovation benefits every organization. In other words, diversity of thought sparks life and innovation into an organization, while groupthink leads to dead ends.

4. Check Your Motive

It is important to get involved, but even more important is getting involved for the right reasons. While volunteer and/or leadership positions may bolster one’s resume, this should not be the sole reason for joining an organization. If you are volunteering for the right reasons, however, you should be proud to list it on your resume. Volunteering and/or serving in leadership positions do have the added benefit of showing potential employers what you are passionate about and that you are making an effort to give back and make a meaningful impact by volunteering or leading in an organization. You should use it.

5. Be a Servant Leader

“There are too many cooks in this kitchen.” As a child, I didn’t fully understand the meaning of this phrase. As an adult, I realize now that it meant there were too many people trying to lead or tell others what to do, and not enough people doing the work, which often resulted in chaos and nothing getting done. An organization can only have



Kristen R. Jurjevich

Shareholder, Pender & Coward, P.C. (Virginia Beach)

Bio: Kristen is a corporate and transactional attorney at Pender & Coward in Virginia Beach, focusing her practice in the areas of business law, residential and commercial real estate transactions, community association matters, and litigation in the state and federal courts in Virginia. Kristen is a member of the YLD Executive Board and has been actively

involved in the VBA since January 2015, when she became the VBA YLD Chair of the Regent Law School Council. She also serves as Chair of the ABA Awards of Achievement Committee and has participated as a YLD member of the VBA Pro Bono Council.

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a few leaders; however, it needs more or many volunteers willing to do the “work.” Often times, the biggest impact you can make as a volunteer is *showing up* and *rolling up* your sleeves (literally or figuratively) to get the job done. And if you commit to do something—do it. Likewise, as a leader, the biggest impact you can make is by exercising what I call “servant leadership,” meaning that no job is too small, even for someone in a leadership position. As a leader, your volunteers (or even outsiders) will notice, be inspired, and respect you even more.

6. Avoid Burnout

As a law student, I was given the opportunity and wanted to be involved in numerous organizations and clubs (e.g. Law Review, Trial Advocacy, Moot Court, etc.). One of the best pieces of advice given to me during my law school tenure was by one of my favorite professors who told me that it is ok to say “no” to some of these opportunities, and in fact, I shouldn’t try to be overly involved. In other words, he encouraged me to choose only a couple of things and do them well. This advice rings true when joining organizations. Be careful to not overextend yourself. Best practice (especially as a

busy law student or practitioner) is to commit to only one or two things—and do them well. I’m not suggesting you limit yourself to two organizations; rather, if you intend to be “all in” with an organization, I suggest you limit the number of those to which you are willing to commit time and effort so that you can give your *bests efforts*. Keep in mind that there may be different seasons in your life for different organizations. It may not be the season for one organization (whether a volunteer or leadership role), but this doesn’t mean it will never happen. There may be timing issues—whether it be for you (e.g., because of what you are involved in at the time) or the organization (e.g. board succession planning). However, if the timing is right and you haven’t over-extended yourself, you’ll be in a position to go “all in” and make the most meaningful

impact, while getting the most out of the time and effort spent. ■

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Submit Your Article or Event Write-up to *Opening Statement*

The *Opening Statement* Editorial Board welcomes the submission of articles by young lawyers. Generally, articles should be about 1,300 words and should be on a topic of interest to young lawyers. (Longer articles may be divided into two installments and published in successive issues.)

Articles. Substantive article topics may include, for example:

- New developments in the law
- Day in the Life of... (e.g., “Day in the life of a Circuit Court law clerk” or “Day in the life of an assistant city attorney”)
- Recent experience with... (or Lessons learned from...) (e.g., “Lessons learned from taking a legal aid pro bono case,” “Recent experience with arbitration,” or “Lessons learned from participating in the VBA Veterans Issues Task Force”)
- Tips/Advice (e.g., “Arguing your first jury trial,” “Tips for effective negotiations,” or “How to handle your first client meeting”)
- General Overview of a legal practice area (e.g., “Understanding partition suits” or “What every lawyer should know about property settlement agreements,” etc.)

We welcome articles that are written specifically for *Opening Statement*, as well as articles that are adaptations of previously published material, such as blog posts, articles from firm newsletters, excerpts or summaries of law review articles, etc. The complete Author Guidelines and the VBA Publication Agreement are available online at: www.openingstatement.org.

Photos and Event Write-ups. In addition to substantive articles, we are also interested in receiving photos and/or write-ups from YLD events. If you took photos at a YLD social or other event, please pass them along to us for possible use on the YLD website or in the *Opening Statement* newsletter.

Please send your submissions or questions to the *Opening Statement* Editorial Board at: editors@openingstatement.org.

Game Place: Signed, Not Sealed; Reversed

By Patrick Bolling

An attorney’s greatest fear is perhaps missing some obvious risk in a deal or case that the attorney could have avoided. This fear may be heightened in associates who are still developing confidence in their expertise. Who of us hasn’t jolted awake in the middle of the night thinking something like: “Did I make that edit?” or “When is that brief due?” Awareness of hazards is part—maybe all—of the job description. This article draws to your attention a trap¹ that sprang when the Supreme Court of Virginia decided *Game Place, L.L.C. v. Fredericksburg 35, LLC*.²

THE TRIAL COURT ENFORCES AN UNSEALED FIFTEEN-YEAR LEASE

Game Place was a tenant at Fredericksburg 35’s shopping center. Game Place paid rent to Fredericksburg 35 monthly until 2014 when it terminated its “month-to-month periodic tenancy.”³ Fredericksburg 35 sued Game Place for both rent accrued after termination and attorney fees that it claimed were due under a written lease with a fifteen-year term.⁴ The lease had been entered by the parties’ predecessors in interest and passed down to them through a series of land sales and a lease assignment.⁵

Game Place argued that the fifteen-year term in the lease was not enforceable because leases with terms in excess of five years must, under Virginia law, contain a common law seal or a seal

substitute prescribed by statute, and the lease contained neither.⁶ Game Place’s termination notice therefore properly terminated the lease and no rent had accrued thereafter, it argued. The trial

‘Even a verbose lease for a term of more than five years . . . must contain a seal or seal substitute because that’s what the Virginia Code says such a lease must contain.’

court, however, emphasized that the law looks at substance and not form, and to not enforce the lease’s fifteen-year term because it lacked a seal or seal substitute would be to look at form and not substance.⁷ The trial court accordingly enforced the fifteen-year term and ordered Game Place to pay about \$85,000 to Fredericksburg 35.⁸

THE SUPREME COURT OF VIRGINIA REVERSES THE TRIAL COURT

The Supreme Court sided with Game Place on appeal. It appeared to the Court that the trial court had enforced the lease—despite lacking a seal or seal substitute—because it contained enough words to *emply* a sealed instrument.⁹ Even a verbose

lease for a term of more than five years, the Court wrote, must contain a seal or seal substitute because that’s what the Virginia Code says such a lease must contain.¹⁰ The Court excised the fifteen-year term from the lease and held that Game Place’s occupancy and payment of rent to Fredericksburg 35 each month implied a month-to-month tenancy.¹¹ Rent therefore stopped accruing after termination. The Court reversed the trial court and entered final judgment in favor of Game Place.¹²

BETTER WARM UP THE WAX

In the post-*Game Place* landscape, the snare is now obvious and easy enough to avoid by exactly four strokes of the keyboard. The real estate bar will no doubt scan for recently disturbed ground and cut a wide swath. But what about the iron contraption currently hanging off your ankle? All is not lost. As the Court noted in its opinion, the common law seal has four statutory substitutes.¹³ If your client’s existing lease lacks the magic word, hopefully the drafts person



Patrick Bolling

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Bio: Patrick’s practice has mostly related to transactions and litigation involving various corporate and real estate matters, but has lately seen a significant dose of employment disputes and data privacy matters. In addition to his efforts for the YLD, Patrick has served on the VBA’s Real Estate Section

Council. Locally, Patrick is a recent President of the Board of Directors of the Arc of Central Virginia and serves on a committee of young leaders devoted to the success of Lynchburg’s historic Academy Theater.

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used the words “this deed,” “this indenture,” or other words importing a sealed instrument or recognizing a seal in the body of the lease.¹⁴ If not,

‘[W]e trade in rules, and the rules of the game don’t give a free stroke to a player whose ball lands in even a small bunker. A bunker is a bunker’

fingers crossed that the lease was properly acknowledged in a way that clearly demonstrates an intent to convey real estate before an officer authorized to take acknowledgments of deeds.¹⁵ And if all else fails, let’s hope your client signs leases with some panache because a “scroll by way of a seal” will carry the day.¹⁶ Such a thing, the Court tells us, is a scrawl or flourish intended as a seal.¹⁷ If your client isn’t the flourishing type, or doesn’t intend its flourishes as a seal, let’s hope they keep a Corpex embossing tool in the trunk because an imprint or stamp of a corporate seal on paper will also work.¹⁸ Parchment is fine, if your client is into the finer things.¹⁹

Query whether the Court would have been persuaded that use in a lease of the term “premises” would by itself

operate to imply a sealed instrument, as “premises” refers to “the subject of a conveyance or bequest, specified in the premises of [a] deed.”²⁰ No matter. The point of this article is maybe that the most obvious hazards are the easiest to overlook. The green is so large after all. But we trade in rules, and the rules of the game don’t give a free stroke to a player whose ball lands in even a small bunker. A bunker is a bunker, the Court seems to say in its *Game Place* opinion.²¹ ■

Endnotes

1. “[T]he Statute of Conveyances . . . creates a trap for the unwary. If a lease, which conveys for more than five years, is not by deed or by will properly executed under seal, then the document itself is ineffective,” JEROME P. FRIEDLANDER, II, *VIRGINIA LANDLORD-TENANT LAW* 23 (2d ed. 1998) (citing Va. Code. § 55-2; *McCue & McCue Limited Partnership v. Hamel Health Ventures, Inc.*, 17 Va. Cir. 331 (Fairfax 1989)).
2. 295 Va. 396 (2018).
3. *Id.* at 401.
4. *Id.*
5. *Id.*
6. *Id.* at 412. As the Court explains in its opinion, the requirement that deeds be sealed is incorporated into the definition of “deed” in the Statute of Conveyances codified at Va. Code § 55-2. See Va. Code § 11-3.
7. *Game Place*, 295 Va. at 400.
8. *Id.* at 408.
9. *Id.* at 407.

10. *Id.*

11. *Id.* at 415.

12. *Id.*

13. “[Va. Code § 11-3] does not abolish the seal requirement. Instead, it relaxes the seal requirement by offering a limited list of specific substitutes for a seal. These substitutes include (1) ‘a scroll by way of a seal’; (2) an imprint or stamp ‘of a corporate or an official seal on paper or parchment’; (3) the use in the ‘body of [such] writing’ of the words ‘this deed,’ or ‘this indenture,’ or other words importing a sealed instrument” or recognizing a seal; or, finally, (4) a proper acknowledgement of a document clearly demonstrating an intent to convey real estate ‘before an officer authorized to take acknowledgments of deeds.’ The statute does not identify when a seal is necessary but instead only addresses ways to make a written instrument compliant with the seal requirement if either the common law or a statute requires a seal.” *Id.* at 407.

14. *Id.*; see also Va. Code § 11-3.

15. *Game Place*, 295 Va. at 407.

16. *Id.*

17. *Id.* at 408.

18. Va. Code § 11-3 (noting that official seals also work).

19. *Game Place*, 295 Va. at 407; see also Va. Code § 11-3.

20. BRYAN A. GARNER, *GARNER’S MODERN ENGLISH USAGE* 721 (4th ed. 2016).

21. Thanks to the reader’s patience for the author’s indulgence of the trap metaphor, which the author recognizes has been stretched to or past its useful limits.

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The VBA Foundation funds numerous programs, including the *Ask A Lawyer Project*, the *Pro Bono Hotlines*, the *Model Judiciary Project*, the *Veterans Issues Task Force*, and *Regional Mentoring Programs*. To donate or to learn more, visit: vba.org/foundation.

Opportunities to Get Involved

Are you looking for an opportunity to get involved with the VBA Young Lawyers Division? You can read about the YLD’s multiple projects and committees at: vba.org/yldactivities. Just reach out to the project or committee chair to learn more. In addition, the YLD always welcomes ideas for new projects. Just reach out to anyone on the YLD Executive Board to share your proposal: vba.org/yld.

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The VBA YLD is pleased to announce that we are accepting advertisements for publication in the *Opening Statement*. The *Opening Statement* is highly visible within the VBA. It is published and distributed to all members of the YLD four times per year. With such high visibility, what better way to reach your peers? Funds from advertisement purchases will be used to help support the operations of the VBA YLD and its numerous programs, including the *Opening Statement*. If you are interested in purchasing advertising space in the *Opening Statement*, please contact us at editors@openingstatement.org.

An Interview with the Chief Justice

By Daniel D. Mauler

For young Virginia attorneys interested in developing their appellate advocacy skills, the opportunities to gain such experience can be depressingly rare. Outside of a few specialized government offices and law firm practice groups, appellate opportunities for young attorneys are difficult to find. And, of course, if a young attorney catches that opportunity, then comes the next challenge: execution.

Virginia attorneys are, however, fortunate to practice in this Commonwealth. Generally-speaking, we practice in a climate of civility that encourages more experienced attorneys to mentor their younger colleagues. I experienced this first-hand when I handled my first appeal in the Supreme Court of Virginia. I found colleagues, both inside my law firm and out, who willingly sacrificed billable hours to answer my questions, edit my briefs, and moot my oral argument. Any list of advice for young attorneys seeking to develop appellate skills starts here: seek out others willing to help with a few hours of their time.

Virginia attorneys are also fortunate to have a Chief Justice who believes deeply in the importance of civility, integrity, and mutual assistance within the legal profession. As a part of this interest, Chief Justice Donald W. Lemons recently sat down for an *Opening Statement* interview to discuss his advice to young Virginia attorneys seeking to develop appellate practices.

PREPARATION: STANDARD OF REVIEW, ERROR CORRECTION, AND LAW DEVELOPMENT

According to the Chief Justice, attorneys must think “jurisprudentially” when crafting an appeal. This means to think about the requested ruling’s effect on the rest of the law. “It is not sufficient to think like a lawyer during an appeal. You need to think like a judge.” This likely means first determining the applicable standard of review. “Standards are more important than many lawyers realize,” the Chief Justice warns. The standard will likely control the outcome of the case, and you should expect the bench to test your understanding of the standard if the question is at all close.

Next, the appellate attorney must determine at the outset if the case is one of “error correction” or “law development.” According to the Chief Justice, this is “one of the most important concepts that Virginia lawyers should know before appealing.”

In contrast to the Supreme Court of the United States, which generally only takes cases that develop the law, the Supreme Court of Virginia sees itself in civil cases as both an error-correction court and a law-development court. (There are important nuances to the Supreme Court of Virginia’s jurisdiction in appeals from the Court of Appeals, which serves as the primary error-correcting court for criminal, domestic relations, workers’ compensation, and agency cases. In those



Courtesy: Supreme Court of Virginia

Chief Justice Lemons offered advice to Virginia young attorneys seeking to improve their appellate advocacy.

case, the Supreme Court’s jurisdiction is limited by statute, and practitioners must understand the different dynamics at work.)

As the name implies, error-correction cases generally deal with reversing a process error made by the lower court. An example would be where a trial court allows an expert witness to testify in a manner that is contrary to an applicable statute.

In contrast, a law-development case focuses on changing or extending current law. An example could be where an advocate argues for an enlargement of civil fraud liability. While the advocate focuses on the civil fraud sphere, the appellate bench may be thinking about the impact, if any, on criminal fraud liability.

According to the Chief Justice, both types of appellate cases are frequently decided in the Supreme Court. Once a litigant identifies whether the case is an error-correction or law-development case, “don’t fear saying so in your briefs.” For example, at the writ stage, the advocate’s task is to convince the Supreme Court to grant an appeal. Knowing the type of case allows the advocate to more forcefully argue that a “legal error must be corrected” or that the case “deserves



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this article are the personal views of the author and are not necessarily the views of the U.S. Department of Justice or the United States Government.)

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attention to advance the law.”

IMPROVING BRIEF WRITING

In the craft of appellate advocacy, the written brief remains paramount. The brief is the “dominant persuasive tool,” according to the Chief Justice, and “it must be sufficient on its face in the four corners” to cover your argument. “Don’t save points for oral argument and omit them from your written brief. Doing so will waive those points.”

Your brief must efficiently communicate your argument to the Court. The table of contents serves as an “important tool” and is often overlooked as an advocacy tool, according to the Chief Justice. Each subject heading that appears in the table of contents can quickly summarize the point of that section, particularly when the headings are “topical sentences that explain complete thoughts with proper punctuation.”

Appellate advocates have to know their audience — and the tools that audience uses to read your brief. According to the Chief Justice, electronic tablets “are used heavily” by the justices. In fact, many justices hardly read paper briefs or appendixes anymore. Instead, each justice has an electronic tablet that is loaded with all briefs, appendixes, and the all-important bench memos prepared by the Court’s law clerks.

That means that savvy appellate practitioners will write their briefs to be read on screens as opposed to on paper. Format your brief with this in mind. Use bullet points to make lists, rather than long, run-on sentences. And, according to the Chief Justice, reduce — or preferably, eliminate — footnotes. Otherwise, tablet readers must first scroll down to find the footnote, and then scroll back up to resume their place in the text. If the content is important enough to include in your brief, it is important enough to work into the text.

MASTERING ORAL ARGUMENT

According to the Chief Justice, in every case, each appellate lawyer develops “three oral arguments: the one prepared before the hearing, the one actually given, and the one the lawyer wishes was given.” While this is undoubtedly true, preparation can make the one actually

given look closer to the one the lawyer wishes was given.

Prior to oral argument, an advocate needs to “know the record, briefs, and amicus briefs better than anyone else in the room.” While that knowledge should not necessarily be memorized, the advocate needs a system for quickly locating important citations, page numbers, and other references. One potential method is a spreadsheet that acts as a quick-reference guide to the filings. Each line summarizes an important point, such as the preservation of an error below, and lists the page number in the record.

The Chief Justice also recommends that an advocate outline the presentation by topics. Write out the outline so it looks different than the brief. Then, cut it down, outlining again to synthesize to the most important topics. Doing so “shrinks the content and focuses the mind. And if it won’t write, then it’s not right,” says the Chief Justice.

Moreover, he notes, it is not necessarily advisable to “follow the same order of points as you did in your brief. Oral argument is the only opportunity for the attorney to sit at the justices’ table. Use this opportunity to influence the conversation.” Flexibility is important as some justices may want to discuss an argument that the advocate considered minor while briefing. It is perfectly acceptable (and *not* a waiver) to discuss at oral argument only a portion of the points from your brief, particularly when the Court’s focus is on just one or two points.

Relatedly, displaying an appropriate demeanor at oral argument is vital. “Avoid getting into an argument with a member of the bench. This may seem obvious, but a surprising number of lawyers forget this,” according to the Chief Justice. Additionally, many lawyers try to evade the tough questions. The justices are annoyed by this. According to the Chief Justice, the best approach is to answer the question directly and followed immediately by the explanation, such as “Yes, but . . .” or a “No, and . . .”. It is important to listen carefully to questions posed from the bench, as questions are “not always hostile. Sometimes they may be your friend, as one justice is speaking to another justice.”

There are few guarantees about what will come up in an oral argument, but there are two: an opening and a closing. “Have openings and closings scripted out ahead of time. These are very important.” The opening can be practiced in advance (if you are the appellant, remember to reserve time for rebuttal), and if done well, can capture the Court’s attention. The closing should similarly be scripted ahead of the argument, ready for use when time is about to run out. This concise closing should encapsulate and remind the Court of the exact relief requested.

GAINING APPELLATE EXPERIENCE

Many young Virginia attorneys are interested in gaining appellate experience but lack the good fortune of working in offices with frequent appellate matters. How do interested young attorneys gain such experience? According to the Chief Justice, the Court is mindful of the need for either court-appointed or pro bono counsel among its appellate cases. The Clerk of the Supreme Court maintains a list of counsel who have volunteered for court-appointed or pro bono representation in appellate matters. In appropriate cases, the Supreme Court will select counsel from this list to handle meritorious cases where a party would otherwise proceed without counsel.

To be considered for this list, young attorneys should express their interest via a letter to the Clerk of the Supreme Court. In that letter, include your background and legal experience. A writing sample and resume will help, too. Additionally, consider identifying other more experienced counsel who could serve as a “second-chair” on the briefs or in the preparation of the case. Having another attorney with whom to test ideas is invaluable in appellate cases.

A NOTE OF THANKS

The author would like to thank Chief Justice Lemons for his gracious gift of time for this interview. Additionally, the author thanks Ms. Sharon L. Abernathy, Assistant to the Chief Justice, for her invaluable assistance in arranging the logistics of this interview. Without Ms. Abernathy’s assistance, this article could not have come to fruition. ■

Recap of YLD Fall Meeting



Courtesy: VBA Staff

Former YLD Chairs Steven Gould and Nupar Bal offer their insights to current members.



Courtesy: VBA Staff

Meeting attendees learned about legal requirements governing the preservation of footage from police body cameras.



Courtesy: VBA Staff

VBA President Steuart Thomas (left) speaks with YLD Chair Andrew Stockment (middle) and former YLD Chair Steven Gould (right).



Courtesy: Madelaine Kramer

After the formal CLEs concluded, YLD members take a riverfront canal cruise.

... The YLD's Bright Future, continued from page 2

commitment on the part of **Jeremy Williams** (Immediate Past Chair), **Jen Ligon** (Chair-Elect), **Madelaine Kramer** (Secretary/Treasurer), and the YLD Executive Board have been essential to our success and are a sure sign that the future of the YLD is strong. Finally, I would like to thank my wife, **Martha Stockment**, for her tireless and invaluable support throughout

my involvement in YLD leadership and for coming (along with our daughter) to all of the YLD's meetings across the Commonwealth and beyond.

The YLD is a vibrant, active, and collegial community of young lawyers that welcomes new members as we engage in service to the bar and service to the public,

and the YLD provides all young lawyers an opportunity to develop meaningful and lasting friendships with members of the legal community throughout the Commonwealth. As I transition into the role of Immediate Past Chair, I look forward to seeing how the YLD continues to flourish under the leadership of Jen, Madelaine, and future leaders. ■