



The Virginia Bar Association  
YOUNG LAWYERS DIVISION

Volume 3 No. 4 ♦ Fall 2015  
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www.vba.org/yld

# Opening Statement™

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

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## INTRODUCTION

# Ten Issues and Counting

We are pleased to present the Fall 2015 issue of *Opening Statement*. In this tenth issue of our newsletter, VBA President-Elect Jim Guy shares some senior partner “secret mojo” in a letter to himself at age 25 (page 2), which is the first in a series of letters from his “future” self. Sam Towell offers practical tips about how to avoid procedural missteps that could cost your client millions of dollars (page 4), and Andrew Stockment provides an overview of Virginia’s new statute about employee privacy for personal social media accounts and pitfalls for employers (page 6). YLD Chair Nupur Bal recounts the YLD’s numerous successful activities over the past few months (page 5), and Seth Ragosta reports on the YLD’s national recognition through multiple ABA Awards of Achievement (page 10). We have also included photos from recent YLD events (page 8).

In addition, Andrew reflects on the first three years of this newsletter and looks ahead to the future of *Opening Statement* as Dan Mauler takes the helm as Editor-in-Chief. We are also glad to welcome two new editors to the *Opening Statement* Editorial Board: Lena L. Busscher and Jennifer L. Ligon. Lena is an associate at McGuireWoods in Richmond, where she focuses her practice on toxic tort, environmental, and product liability litigation, and Jen is an associate at McCandlish Holton in Richmond, where she concentrates on transactional and regulatory matters in the firm’s Health Care Practice Group. We are excited about the contributions they will make to this newsletter in the coming year.

Please help us tell the story of the Young Lawyers Division. If you are planning a YLD event, let us know so we can help publicize it and increase participation, and please send us a write-up and photos afterward so that we can share your successes with the rest of the Young Lawyers Division and the VBA. In addition, we are always looking for substantive articles to publish. Please consider turning a recent experience or research assignment into an article to share with your fellow young lawyers. If you are a more experienced lawyer reading this newsletter, please consider writing an article for *Opening Statement* to share your wisdom with attorneys who are in the early stages of their career. We look forward to receiving your submissions, and we welcome your comments and suggestions. You may contact us at: [editors@openingstatement.org](mailto:editors@openingstatement.org).

Thank you for reading. We hope you enjoy this issue of *Opening Statement*!



**Andrew B. Stockment**  
Editor-in-Chief



**Daniel D. Mauler**  
Development Editor



**Lena L. Busscher**  
Development Editor



**Jennifer L. Ligon**  
Development Editor

## VBA Summer Meeting

The Virginia Bar Association will hold its **126th VBA Summer Meeting** on **January 21-24 (Thurs. - Sun.)** at the Williamsburg Lodge in Williamsburg, Virginia. The Annual Meeting will have numerous opportunities to develop your legal knowledge and skills through excellent CLE programs, as well as opportunities to network and socialize with lawyers and judges of all ages. The YLD will have programming specifically geared for young lawyers, including “Pints and Pairings - Good for what Ales’ You!” - a networking opportunity for young lawyers to meet and socialize with members of the judiciary in a casual setting. We hope you will consider joining us at the VBA Annual Meeting. Whether you have never attended a VBA meeting or you have never missed one, every VBA meeting is a great opportunity to strengthen existing friendships with colleagues and to form new ones.

**More details coming soon at:**  
[vba.org/vbaannual2016](http://vba.org/vbaannual2016)

## Upcoming VBA Events

**Nov. 18:** Get to know the VBA - a happy hour with Virginia judges

**Dec. 10:** ABC Networking Social – Northern Virginia (co-sponsored by the VBA YLD, Virginia Society of CPAs, and the Virginia Bankers Association)

**Jan. 21-24:** 126th VBA Annual Meeting

**Feb. 4:** ABC Networking Social – Northern Virginia (co-sponsored by the VBA YLD, Virginia Society of CPAs, and the Virginia Bankers Association)

View the complete calendar at:  
[vba.org/calendar](http://vba.org/calendar)

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The VBA Young Lawyers Division welcomes unsolicited articles, which should be sent by e-mail to: [editors@openingstatement.org](mailto:editors@openingstatement.org). Nothing in this newsletter should be construed as legal advice. The materials appearing herein represent the views of the authors and not necessarily those of The Virginia Bar Association, the Young Lawyers Division, or the Editorial Board.



## LETTERS FROM THE FUTURE

# Dear Self at Age 25

By James Patrick Guy II

Dear Self at Age 25:

I'm writing from your future to share some of the secret mojo I now have access to as a senior partner and VBA leader. PLEASE DO NOT SHARE this information with anyone else – it's risky enough for me to send it to you, and we don't want to cause a rift in the time-space continuum!

First of all, congratulations and thanks for all the hard work so far! You're graduated, licensed and busy! I'm the happy beneficiary of your deferred gratification, and you have done a pretty good job, but there are some things you could do better that will benefit us both. Not that I'm ungrateful, I just want to make a few suggestions:

Take better care of yourself. I remember that you think that sleep, exercise and a nutritious diet are luxuries you can catch up on later, but diet cola, adrenaline and pig-headedness are not sustainable substitutes! The demands on your time are only going to increase as promotions and children add new unyielding responsibilities to your life. If you get regular physicals NOW, learn healthy sleep habits now (at least

until the kids arrive – especially the third one!), and cut the almost-but-not-quite-food out of your diet, you'll be more productive now, and I'll feel better later.

401K. Right now. Max it out. Really.

Stop working so hard to pretend to be what you think a lawyer is supposed to be like, based on what you've seen on TV and in movies. Once you let that go, you're actually going to become a much better lawyer.

Cultivate people you admire as mentors. Pick people who will inspire, challenge and enlighten you in roughly equal proportions. You can have multiple mentors, and each will bring you something different. They don't have to be older than you, though most will be.

Engage with the VBA's YLD! It's not enough to join – what you get out of it is a multiple of what you put in, but nothing times anything is still nothing.

The quantum-post bandwidth is dissipating, so I've got to run.

Best (self) regards,

Self at Age 50 ■



### James Patrick Guy II

Shareholder, LeClairRyan (Glen Allen)

**Law School:** University of Virginia School of Law (1990)

**Bio:** Jim Guy is/was/will be the 128th President of the Virginia Bar Association. He is a shareholder at LeClairRyan where he has practiced energy law for over 20 years. He is a husband, father, pub singer, cancer survivor and aspiring time lord.

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## 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 more than 50 projects and committees at: [vba.org/yldactivities](http://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 Committee to share your proposal: [vba.org/yld](http://vba.org/yld).

# Reflections and Looking Ahead

By Andrew B. Stockment, Editor-in-Chief

I have had the honor and privilege of serving as Editor-in-Chief of *Opening Statement* during its inaugural years. As the capable **Dan Mauler** prepares to take over responsibility for this publication, I would like to take this opportunity to reflect on the early years of this newsletter and look forward to *Opening Statement's* bright future.

In the spring of 2012, then-YLD Chair **Dan Ortiz** (now a Fairfax County Circuit Court Judge) asked me and my Communications Committee Co-Chair, **Virginia Flynn**, to create a newsletter for the Young Lawyers Division, which had not had an active newsletter for a few years. (The YLD's previous newsletter, *Division News*, was published from 2004 to 2009.) We set out to create a newsletter that (1) features substantive articles to help young attorneys develop their practices, (2) highlights past and upcoming YLD activities and projects and inspires young lawyers to get more involved, (3) provides a forum for young lawyers to share their knowledge and experience, along with author photos and detailed bios to help young lawyers market themselves and their practices, and (4) is memorable and has an attractive design with full color graphics and photos, all with the intention of creating a publication that YLD members would look forward to reading. The ultimate objectives of *Opening Statement* are to tell the story of the Young Lawyers Division, to foster the development of community within the YLD, and to encourage young lawyers to become more involved in the YLD and in the VBA and legal profession at large.

*Opening Statement* has always been a team effort, and the following young lawyers have served with me on the Editorial Board over the course of our first three volumes: Virginia Flynn, Jean Humbrecht, Matthew Baker, William Reisinger, Dan Mauler, Lena L. Busscher, and Jennifer L. Ligon. Their writing, editing, and other work made this newsletter possible, and, thanks to the contributions of numerous young lawyers, experienced attorneys, judges, and others, *Opening Statement* has enjoyed great success in its first three years, including the receipt of two ABA Awards of Achievement, with a First Place award this year!



We have featured substantive articles on a wide range of topics, including how to collect on civil judgments, trial strategies and advice about appellate brief writing, protecting clients from scams, handling residential real estate settlements, requesting records under the Virginia Freedom of Information Act, trademarks and brand protection, contract drafting and negotiation, landlord and tenant issues, handling medical malpractice cases, effectively protecting privileged materials, cybersecurity

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‘[T]hanks to the contributions of numerous young lawyers, experienced attorneys, judges, and others, *Opening Statement* has enjoyed great success in its first three years, including the receipt of two ABA Awards of Achievement, with a First Place award this year!’

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best practices, developments in Virginia's fraudulent conveyance laws, health care issue spotting for general practitioners, copyrights and works made for hire, and a wide assortment of career advice, as well as numerous event write-ups, photos, interviews, Messages from the Chair, and other features. Many thanks to all of our authors and contributors!

I would also like to publicly thank a few people whose assistance and ideas played integral parts in the success of this publication. First, thanks to my sister-in-law, **Margaret Feldman**, who suggested “Opening Statement” as the name for this newsletter during a brainstorming session on a family beach trip. Second, thanks to my mentor and former colleague, **Michael Guanzon**, who provided valuable ideas and critical feedback as we laid our plans for the newsletter and developed its design and layout. Finally, thanks to my wife, **Martha Stockment**, for serving as an uncredited editor and proofreader behind the scenes, and whose suggestions and support were invaluable.

Looking ahead, the future of *Opening Statement* is bright. During the time that Dan Mauler has served on the Editorial Board, he has helped to put in place procedures to make the editing and publishing process more effective and efficient, and he has proposed numerous ideas for ways to make *Opening Statement* more interesting and engaging. I am confident that Dan and his editorial team will lead *Opening Statement* to new heights of success in the years ahead! Lastly, to all of our readers: please continue your vital role in helping us tell the story of the VBA Young Lawyers Division by sending us your articles, event write-ups, photos, and suggestions! ■

# \$2.5 Million Phone Call

By Samuel T. Towell

Could your \$2.00 shortfall cost your client \$2.5 million? It's happened at least once. Several teachable moments arose in *Landini v. Bil-Jax*, an unpublished order announced by the Supreme Court of Virginia in January 2015.

Landini and his workers' compensation subrogee sought to initiate a product liability case against a handful of corporations in Powhatan County. The plaintiff's attorney, based in the western part of the state, mailed the complaint to the circuit court seeking damages of \$2.5 million six days before the statute of limitations ran. She also included a check for \$344, a filing fee common in the attorney's home jurisdiction. The package arrived at the clerk's office the following day.

However, \$344 is not the filing fee for a complaint seeking damages of \$2.5 million in Powhatan County, which has a library assessment fee \$2.00 higher than the standard applied in the west. The Powhatan clerk informed the plaintiff's attorney of the shortfall several days after receiving the complaint and check—the day the statute of limitations ran. The plaintiff's attorney mailed a check for the \$2 shortfall, and the clerk filed the complaint four days after the expiration of the statute of limitations.

Landini's counsel nonsuited the action before service and timely refiled. Defendants asserted a plea in bar of the statute of limitations, noting that the original complaint had not been timely filed. The circuit court sustained the plea, and the Supreme Court affirmed. End of the line for the plaintiffs.

Some practitioners have described the

result as overly harsh, and on appeal the appellants made colorable—if ultimately unsuccessful—arguments that the payment of a library fee should not be, in effect, jurisdictional. Nevertheless, the case serves as a useful guide regarding best practices for attorneys both young and seasoned.

**1. Contact the Clerk's Office regarding Filing Fees.** The website for the Supreme Court of Virginia has a handy tool for calculating filing fees in every circuit and general district court. However, it never hurts to confirm with someone in the office of the court in which you are going to file. This is especially true if you are operating outside of the jurisdiction with which you are most familiar.

**2. Don't Wait Until the Last Minute.** If your client comes to you at the eleventh hour, this is not always an option. Most of the time, however, you have at least a few weeks until the statute runs. Don't feel you need to use all that time. I find it helpful to set an internal deadline on my calendar rather than rely exclusively on the actual deadline or a two-week reminder. It can be too easy to click and ignore a reminder, and a deadline can sneak up on you to the point that, by the time you see it, it is already too late.

**3. Use a Trackable Delivery Service.** Not every client will pay for a runner or Federal Express. Incur the expense anyway. Receiving confirmation that a filing has been received by the court in a timely fashion eliminates a number of potential pitfalls. The absence of a confirmation can allow you to take

additional measures while there is still time.

**4. Request File Stamped Copies.** Enclose copies of your filings with a request in your cover letter that the clerk stamp the copy as filed with the time and date and return the copy to you in the self-addressed stamped envelope that you enclose. You will want those actual copies anyway for your case file.

**5. Emergency Situations Require Extraordinary Measures.** The best laid schemes o' mice an' men / Gang aft a-gley. Even if you take all of the precautions outlined above, crises can still arise. Note that the plaintiff's counsel was informed on the final day for filing that the fee was two dollars short. A (small) window of opportunity remained to rectify the problem. The attorney could have: (1) phoned a friend in the area and asked for assistance; (2) requested aid from any fellow attorney near the Powhatan courthouse (surely someone would have loaned \$2.00 and taken 15 minutes out of his or her day to do a solid for a colleague); or (3) dropped everything and driven down in person.

There is no foolproof process for avoiding every misfortune, mistake, or turn of bad luck. If the attorney in *Landini* had employed the practices listed here, the result likely would have been different, but that is not guaranteed. However, employing these practices significantly reduces the risk that your case gets bounced on a procedural technicality before you even get out of the gate. And that is an important milestone to reach. Few settle a case barred by the statute of limitations. ■



## Samuel T. Towell

Deputy Secretary of Agriculture & Forestry, Office of Governor Terence R. McAuliffe (Richmond)

**Law School:** University of Virginia School of Law (2005)

**VBA Leadership:** Former member of the YLD Executive Committee

**Bio:** Sam is a once and future litigator from the City of Richmond. Prior to his current appointment, Sam practiced in the litigation departments of McGuireWoods LLP and Williams Mullen in Richmond. He has also clerked on the U.S. Court of Appeals for the Fourth Circuit and the Supreme Court of Virginia.

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# Commitment to Public Service

By Nupur S. Bal

The Young Lawyers Division has had a busy few months! Thanks to all of our members for their efforts, time, and selfless dedication in the furtherance of the YLD's commitment to public service. It gives me great pleasure to share updates on a few of our projects with you.

**Will Van Thunen** and **Blair Wortham** have been busy with the Capitol (Richmond) Mentor Program—this year, the committee has collaborated with Woodville Elementary School to offer an attendance support program, a lunch buddy program, and a college appreciation day. The programs' goals are to provide members of the school community with the skills necessary to embark on a productive path in their academic journeys.

**Tim McHugh** reports that the Veteran Issues Task Force has been making positive progress towards recruiting volunteer attorneys and assisting with intake and placements needs for veterans with legal, service-related issues. This year the committee has placed 29 requests for assistance. **Ashlee Webster** and **Bryan Holbrook** are working on a Veterans Day presentation and social in Roanoke, and **Tim McHugh** and **Bob Barrett** are partnering with the Norfolk Naval Station JAG office to expand our presence in the Tidewater area.

Northern Virginia has been bustling and hustling with several membership initiatives this fall. In September, a legislative breakfast was held at Hogan Lovells in Tyson's Corner. The event was well-attended (50 attendees) and featured speakers **Del. David Albo**, **Del. Rip Sullivan** and VBA lobbyist **Jeff Palmore**, who shared their thoughts on the then-upcoming General Assembly elections and the 2016 legislative session.

Next, a Membership Series CLE was held on October 26th at the Eastern District of Virginia Courthouse in Alexandria, which concluded with a cocktail reception. The presenters, who spoke on the ethics of social media marketing, included **Jim McCauley** (Virginia State Bar Ethics Counsel), **Robert Tyler** (Associate University Counsel at the University of Virginia) and **Steve Emmert** (appellate attorney at Sykes, Bourdon, Ahern & Levy, P.C.).

Finally, there is a YLD sponsored social with

**Virginia Supreme Court Justice Jane Marum Roush** and **Fairfax County Circuit Court Judge Daniel Ortiz** on November 18th at Auld Shebeen in Fairfax. Kudos to **Laura Liff** and the Membership committee in pulling these events together!

Co-chairs **Chris Gill**, **Will Prince**, **Lauren Wheeling**, **Stacey Forbes** and **Derek Swanson** had yet another AMAZING year with the Legal Food Frenzy, raising approximately 1.3 million pounds of food and cash-equivalent donations. Special thanks to all the firms who participated, and congratulations to the winning firms on a job well done!

**Alex Chudoba** has been hard at work finalizing a publication designed to assist youth with responsible credit and debt management as individuals beginning the trek on the consumer pathway. He is working on getting feedback from youth and other YLD members so that the brochure can be disseminated soon.

**Jon Lucier** shares that the Virginia Hispanic Chamber of Commerce Legal Aid Clinic completed four clinics this year, dedicating 70 total hour of pro bono time and taking on 12 cases. Big thanks to the 20 clinic attendees who worked tirelessly on this committee.

Our Law School Councils have been active and eventful. The Washington & Lee Law School Council has been revived by **Patrick Bolling** and **Doug Pittman**, who worked with **Andrew Stockment** and the VBA Law Practice Management Division to organize a CLE event titled "How Not To Be Stupid on the Internet" in Lexington in October. The event also included a career panel and social

to engage new members. **Rand Robins** and **Nancy Lester** are working with American University to launch a law school council at their law school, and the University of Richmond held a symposium on ethics this past spring.

On the horizon, the Disaster Legal Assistance Committee is planning a CLE focused on refreshing participants' knowledge of issues related to emergency legal services. In addition, the Diversity Recruitment Committee is hosting a webinar early in 2016, and preparations are underway in terms of lining up speakers and an agenda.

One of the main objectives the YLD is tasked with is to provide service projects and opportunities for young lawyers to engage in and give back to our communities. Thank you so much to each and every one of you who has worked tirelessly to make these projects fruitful and successful this year. Your diligence and industry has paid off. In July, the VBA YLD was recognized by the American Bar Association with four Awards of Achievement. The YLD won **first place** in the comprehensive category (recognizing a combination of six new and ongoing projects), **first place** in the newsletter category (for this newsletter!), **second place** for the service to the public category (for the Model Judiciary program held in April) and **second place** in the service to the bar category (for the University of Richmond Law School Council Spring Symposium in March). Last but not least, a million thanks to **Andrew Stockment** and **Seth Ragosta** for their tireless efforts to get the YLD recognized on a national level with the submission they crafted for the ABA Awards of Achievement. ■



**Nupur S. Bal**

Shareholder, DeFazio Bal PC (Richmond)

**Practice Areas:** Family Law and Divorce

**Law School:** Tulane University School of Law (2005)

**College:** Emory University (2002)

**VBA Leadership:** YLD Chair (2015 - Present)

**Awards:** Virginia Super Lawyers Rising Star (2015); Virginia Business Legal Elite (2015); People's Choice Award, Richmond Times

Dispatch; Influential Women of Virginia, Virginia Lawyers Weekly (2015).

**Bio:** In addition to her law practice and her work as YLD Chair, Nupur is also active in her community, serving as a board member for SCAN (Stop Child Abuse Now) and volunteering her time to provide pro bono services.

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# Employee Privacy for Personal Social Media Accounts

By Andrew B. Stockment

On July 1, 2015, Virginia Code § 40.1-28.7:5 (“Social media accounts of current and prospective employees”) became effective, which applies to all government and private employers, regardless of the organization’s size or revenue. Notably, the new law does not create a private cause of action.

## OVERVIEW

Under the statute, “social media account” is very broadly defined to mean “a personal account with an electronic medium or service where users may create, share, or view user-generated content, including, without limitation, videos, photographs, blogs, podcasts, messages, emails, or website profiles or locations,” but excluding “an account (i) opened by an employee at

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‘[S]ocial media account’ means virtually any personal e-mail accounts and accounts associated with traditional social media . . . , cloud storage services . . . , photo sharing services . . . , online dating websites, message boards and other similar sites . . . , and many others.’

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the request of an employer; (ii) provided to an employee by an employer such as the employer’s email account or other software program owned or operated exclusively by an employer; (iii) set up by an employee on behalf of an employer; or (iv) set up by an employee to impersonate an employer through the use of the employer’s name, logos, or trademarks.” Thus, “social media account” means virtually any personal e-mail accounts and accounts associated with traditional social media (e.g., Facebook, Twitter, YouTube, Google+, LinkedIn), cloud storage services (e.g., Dropbox, Box, Google Drive, OneDrive, SpiderOak), photo sharing services (e.g., Flickr, Google Photos), online dating websites, message boards and other similar sites (e.g., Reddit), and many others. (It is also conceivable that a

court could interpret “electronic medium” to encompass *devices*, such as an employee’s smartphone.)

The statute prohibits an employer from requiring current or prospective employees to:

1. Disclose the username and password to the current or prospective employee’s social media account; or
2. Add an employee, supervisor, or administrator to the list of contacts associated with the current or prospective employee’s social media account.

Va. Code § 40.1-28.7:5(B).

In addition, “[i]f an employer inadvertently receives an employee’s username and password to, or other login information associated with, the employee’s social media account through the use of an electronic device provided to the employee by the employer or a program that monitors an employer’s network, the employer shall not be liable for having the information but shall not use the information to gain access to an employee’s social media account.” Va. Code § 40.1-28.7:5(C).

The statute further prohibits an employer from (1) taking action against or threatening to discharge, disciplining, or otherwise penalizing a current employee for exercising his rights under the statute, or (2) failing or refusing to hire a prospective employee for exercising his rights under the statute, but the law does not prohibit an employer from viewing publicly available information. Va. Code § 40.1-28.7:5(D)-(E).

## EXCEPTIONS

However, the statute includes two exceptions, one of which may largely undercut the protections the new law might seem to offer for employees. First, the statute does not prevent “an employer from complying with the requirements of federal, state, or local laws, rules, or regulations or the rules or regulations of self-regulatory organizations.” Va. Code § 40.1-28.7:5(F) (1). Second, and more significantly, the

statute provides that: “Nothing in this section: . . . [a]ffects an employer’s existing rights or obligations to request an employee to disclose his username and password for the purpose of accessing a social media account if the employee’s social media account activity is reasonably believed to be relevant to a formal investigation or related proceeding by the employer of allegations of an employee’s violation of federal, state, or local laws or regulations or of the employer’s written policies. If an employer exercises its rights under this subdivision, the employee’s username and password shall only be used for the purpose of the formal investigation or a related proceeding.” Va. Code § 40.1-28.7:5(F)(2).

Thus, the second exception in the statute would potentially allow an employer to exercise its “existing rights” (whatever those may be) to require an employee to “disclose his username and password . . . if the employee’s social media account activity is reasonably believed to be relevant to a formal investigation or related proceeding by the employer of an employee’s violation of . . . the employer’s written

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‘[T]he terms of use for most online service providers . . . both (1) prohibit users from sharing their passwords or allowing others to access their accounts and also (2) prohibit users from requesting passwords or accessing accounts belonging to other users.’

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policies.” That exception would seem to give employers broad latitude to require access to employees’ personal accounts to investigate violations of the employers’ written policies.

## VIOLATING TERMS OF USE: BREACH OF CONTRACT

It is worth noting, however, that the terms of use for most online service providers

(such as Facebook) both (1) prohibit users from sharing their passwords or allowing others to access their accounts and also (2) prohibit users from requesting passwords or accessing accounts belonging to other users. Consequently, an employer who requires an employee to disclose his username and password is both (1) requiring the employee to breach the contract with the provider of the social media account, and (2) breaching the contract it entered into with the provider if the employer also has an account with the same provider.

#### **VIOLATING TERMS OF USE: CRIMINAL OFFENSE?**

In addition, using another person's password to access a third party's Internet-connected computer in violation of that third party's terms of service (or other computer use policy) could be construed as a criminal offense under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030, particularly in jurisdictions that interpret the CFAA broadly (namely, the First, Fifth, Seventh, and Eleventh Circuits). It is uncertain how jurisdictions that interpret the CFAA narrowly (the Ninth Circuit and the Fourth Circuit) will construe these actions.

The Ninth Circuit, which interprets the CFAA similarly to the Fourth Circuit, heard oral arguments on October 20, 2015, in *United States v. Nosal*, Nos. 14-10037, 14-10275 (9th Cir.) (hereinafter *Nosal II*), in which one of the issues before the court is whether the use of another person's password, with that person's consent, but in violation of a company's computer use policy, constitutes accessing a computer "without authorization" under the CFAA.

In *United States v. Nosal*, 676 F.3d 854, 863 (9th Cir. 2012) (en banc) (hereinafter *Nosal I*), the Ninth Circuit previously held that "the phrase 'exceeds authorized access' in the CFAA does not extend to violations of use restrictions." *Id.* In *Nosal I*, the court touched on the issue of password sharing and observed that "Facebook makes it a violation of the terms of service to let anyone log into your account . . . . but few imagine they might be marched off to federal prison for doing so." *Nosal I* at 861 (citations omitted). In my opinion, the CFAA should not be construed to

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'[U]sing another person's password to access a third party's Internet-connected computer in violation of that third party's terms of service...could be construed as a criminal offense under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030....'

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create criminal liability for password sharing (and use of such shared passwords) in violation of an agreement between private parties, which appears to be supported by the Ninth Circuit's opinion in *Nosal I*. It remains to be seen how the Ninth Circuit will address the issue of password sharing in *Nosal II*. It is likely that the Fourth Circuit would reach a conclusion similar to that of the Ninth Circuit. Nevertheless, businesses should be cautious about engaging in conduct that could give rise to criminal liability. ■

## **Save the Date: November 18**

### **Get to Know the VBA!**

Save the date, Wednesday, November 18, 2015, for the "Get to Know the VBA" happy hour with Supreme Court of Virginia Justice Jane Marum Roush and Fairfax County Circuit Court Judge Daniel E. Ortiz. From 5:30pm-7:30pm Justice Roush and Judge Ortiz will engage in an information discussion about the benefits of VBA membership at Auld Shebeen, 3971 Chain Bridge Road (Downstairs Cellar) Fairfax, VA 22030. Beer, wine and hors d'oeuvres will be provided by the VBA Young Lawyers Division. Come out to network and get to know the VBA with two of Virginia's finest from the bench! Please RSVP to [elizabethfoskey@vba.org](mailto:elizabethfoskey@vba.org).

### **Support VBA Foundation**

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](http://vba.org/foundation).



#### **Andrew B. Stockment**

Associate, Lenhart Pettit (Charlottesville)

**Practice Areas:** Intellectual Property and Technology Law, Business Law, and Securities and Private Equity

**Law School:** University of Virginia School of Law (2009)

**VBA Leadership:** YLD Executive Committee (2014 – Present), Intellectual Property and Information Technology Law Section Council (YLD Representative, 2012 – Present), Law Practice Management Division Executive Council (YLD Representative, 2014 – Present), ABA Awards of Achievement Committee (Co-Chair, 2015 – Present), *Opening Statement* (Editor-in-Chief, 2012 – Present), YLD Communications/Publicity Committee (Chair, 2012 – Present)

**Awards:** Super Lawyers Rising Stars (2013 – 2015), VBA YLD Emerson G. Spies Award (2012)

**Bio:** Andrew was a software engineer before becoming an attorney, and he has been a lifelong technology and innovation enthusiast (including a particular interest in data security and privacy). When he is not practicing law or working on bar projects, Andrew and his wife Martha enjoy hiking and watching U.Va. Men's Basketball. Andrew's other articles and projects are available at: [www.andrewstockment.com](http://www.andrewstockment.com).

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**Twitter:** @AndrewStockment

# VBA Summer Meeting



Courtesy: Marilyn Shaw/VBA

VBA members looking fancy and enjoying the Gala Dinner during the 125th VBA Summer Meeting.



Courtesy: Marilyn Shaw/VBA

VBA Member Dan Mauler and Kathryn Ciano socialize prior to the Gala Dinner.



Courtesy: Marilyn Shaw/VBA

VBA Members Ashlee Webster, Laura Golden Liff, and Nupur S. Bal connect during the Gala Dinner.



Courtesy: Marilyn Shaw/VBA

VBA Members Rhodes B. Ritenour and Alana M. Ritenour enjoy cocktails on the Homestead's garden patio prior to the Gala Dinner.



Courtesy: Marilyn Shaw/VBA

YLD Chair Nupur S. Bal and VBA President Harry M. "Pete" Johnson attend the YLD's Breakfast Meeting.



Courtesy: Marilyn Shaw/VBA



Courtesy: Marilyn Shaw/VBA



Courtesy: Marilyn Shaw/VBA

The historic Homestead Resort traces its roots back to 1766.

Sunset at the Homestead Resort during a weekend of beautiful weather.

Andrew Stockment and his wife, Martha, enjoying the garden patio prior to the VBA Gala Dinner.

## 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](http://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](mailto:editors@openingstatement.org).

# VBA YLD Receives Significant Honors from American Bar Association

By Seth J. Ragosta

This year the YLD received first or second place Awards of Achievement from the ABA in each category in its division under which it submitted an application.

Every year, the American Bar Association Young Lawyers Division presents Awards of Achievement to ABA YLD affiliated national, state, local, and specialty young lawyer organizations. The awards are given within three divisions based on the number of young lawyers that are members of the organization: (1) more than 8,000 members, (2) between 3,000 and 8,000 members, and (3) fewer than 3,000 members (plus an additional division for organizations that have been in existence for fewer than three years). The Awards of Achievement are given in five categories: Service to the Public, Service to the Bar, Newsletter, Minority, and Comprehensive. The Comprehensive category is awarded based on all new or significantly expanded activities and up to five continuing activities carried out by the organization, and the other awards are based on a single project selected by the organization within the category.

The VBA Young Lawyers Division has long been recognized for its outstanding programs and has received 1st or 2nd Place in the Comprehensive category every year for at least the past eight years, including the most recent 2014-2015 bar year.

## AWARDS OF ACHIEVEMENT FOR 2014-2015

In early September 2015, the ABAYLD recognized the VBA Young Lawyers Division with the following Awards of Achievement for 2014-2015. Each of the YLD members who planned and participated in these projects should be congratulated for making these programs a success.

### COMPREHENSIVE: 1ST PLACE

The VBA YLD received 1st Place in the Comprehensive category based on six excellent projects and programs: (1) Open World – Rule of Law Program, (2) University of Richmond Spring Symposium, (3) Lawyers for the Arts, (4) Capital Mentor Program, (5) Legal Food Frenzy and (6) Newsletter - *Opening Statement*. For more information on these and other VBA YLD programs, go to: [vba.org/yldactivities](http://vba.org/yldactivities).

### NEWSLETTER (*OPENING STATEMENT*): 1ST PLACE

*Opening Statement* received 1st Place in the Newsletter category. The goals of the *Opening Statement* newsletter are to provide a forum for young lawyers to share their knowledge and experiences, to highlight the activities and projects of the YLD, to promote a sense of community within the YLD, and to encourage young lawyers to become more involved in the YLD and in the VBA at large. The Communications/Publicity Committee endeavors to create a newsletter that (1) features substantive

articles to help young attorneys develop their practices, (2) highlights past and upcoming YLD events and inspires young lawyers to get more involved, (3) provides rich author profiles with photos and bios to help young lawyers market themselves and foster community within the YLD, and (4) is memorable and has an attractive design containing full color graphics and photos, all with the intention of creating a publication that YLD members look forward to reading.

If you are interested in joining the Editorial Board or becoming a contributor, please contact: [editors@openingstatement.org](mailto:editors@openingstatement.org).

### SERVICE TO THE BAR (UNIVERSITY OF RICHMOND SPRING SYMPOSIUM): 2ND PLACE

This year the Spring Symposium focused on Professionalism and Ethics and was a student driven CLE event hosted by the University of Richmond Law School Council and sponsored by the VBA YLD. With guidance from the YLD, the LSC secured top legal speakers in the Commonwealth as well as sponsorships from the University of Richmond and Richmond area law firms. The event offered 3.0 CLE (ethics) credits to attorneys. It concluded with a cocktail hour encouraging students to network with practitioners while providing an opportunity to discuss the host of professional and ethical issues addressed by the speakers. Over 50 attorneys registered for the event and it has received rave reviews from



#### Seth J. Ragosta

Associate, Lenhart Pettit (Charlottesville)

**Practice Areas:** Family Law, Civil Litigation

**Law School:** University of Virginia (2008)

**VBA Leadership:** YLD Executive Council (2014 - Present); UVa Law School Council (Co-Chair, 2014 - Present); ABA Awards of Achievement Committee (Co-Chair, 2015 - Present)

**Bio:** Seth practiced in Boston, MA for several years before returning to Charlottesville to pursue his love for Central Virginia and trial practice. Seth focuses on family law matters involving all manner of custody, support and equitable distribution issues. His civil litigation practice involves real estate and business disputes, and

Seth appears in courts across the Commonwealth in such matters. Seth and his wife, Lisa, have two children and enjoy camping, reading and board games in their spare time. Seth is a devoted University of Virginia alumnus.

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attendees. The students hope to continue the Symposium as a yearly event at the University of Richmond Law School.

If you are interested in participating in the Symposium, contact **Madelaine A. Kramer** ([madelaine.kramer@wilsonelser.com](mailto:madelaine.kramer@wilsonelser.com)) or **Nancy S. Lester** ([nancy.lester@ogletreedeakins.com](mailto:nancy.lester@ogletreedeakins.com)).

### **SERVICE TO THE PUBLIC (MODEL JUDICIARY PROGRAM): 2ND PLACE**

The Model Judiciary Program (“MJP”) is co-sponsored by the VBA YLD and the Virginia YMCA. The MJP allows high school students to learn about the judicial system by participating in mock jury trials and appellate arguments. Young lawyers coordinate and administer the mock trials and appeal rounds, and volunteer as coaches for the trial teams.

Mock jury trials are organized in three regions of Virginia – Northern Virginia, Richmond, and Tidewater. Actual Virginia state and federal trial court judges, as well as prominent lawyers, preside over the trials. Students participate as lawyers, witnesses, bailiffs, and jurors. The student attorneys are invited to participate in the Model Court of Appeals rounds and prepare appellate arguments based on fact and legal scenarios arising from their trials. Judges at the Model Court of Appeals, with assistance from the MJP regional coordinators, select the best students from the appellate arguments to participate in the Model Supreme Court.

On April 21, 2015 the 40th Annual Model Supreme Court took place in the Virginia Supreme Court building in Richmond. Ten teams from eight high schools around the state presented appellate arguments to a panel comprised of Justices of the Supreme Court of Virginia, including the Honorable Cleo Powell. After the trials and appellate arguments, the Judges and Justices spent time with the students to answer questions and discuss the cases and the judicial system. The Judges uniformly praised the students’ efforts and performances. Following the Model Supreme Court, the VBA YLD hosted a reception where the presiding Justices interacted with the students and their young lawyer coaches.

If you are interested in participating in the MJP, please contact **L. Lucy Brandon** ([lbrandon@wilsav.com](mailto:lbrandon@wilsav.com)).

### **PREVIOUS YEARS**

In the five years before the 2014-2015 bar year, the VBA Young Lawyers Division received the following Awards of Achievement:

#### **2013-2014**

Comprehensive: 2nd Place

#### **2012-2013**

Comprehensive: 2nd Place

Newsletter (*Opening Statement*): 2nd Place

Service to the Bar (Backpack to Briefcase): 2nd Place

#### **2011-2012**

Comprehensive: 2nd Place

Service to the Public: Certificate of Performance

#### **2010-2011**

Comprehensive: 1st Place

Service to the Bar (C3 ED: Left Brain Advice For Right Brain Professionals): 2nd Place

Minority (Richmond Mentor Program): 2nd Place

#### **2009-2010**

Comprehensive: 1st Place

Service to the Bar (VBA Diversity Job Fair): 2nd Place

Service to the Public (Virginia Hispanic Chamber of Commerce Legal Aid Clinic): Special Recognition

Thanks to all of the young lawyers whose hard work have made the YLD successful over the years! ■

#### **Recent Event:**

### **Law School Council – Washington and Lee School of Law**

This fall, YLD members Patrick Bolling (Edmunds & Williams, Lynchburg) and Doug Pittman (Harman Claytor Corrigan & Wellman, Richmond) set out to revitalize the Law School Council at Washington and Lee School of Law, which had been inactive for a number of years. Student representatives Robinson Hubbard (Class of 2016) and C. Quinn Adams (Class of 2016) spearheaded a membership campaign that has yielded over 50 new members to date.

The highlight of this effort came on October 22 when the Law School Council partnered with the VBA (under the leadership of Cheryl Black, Chair of the VBA Law Practice Management Division) to host an evening of programming geared towards practitioners and students alike. The Law School Council sponsored a networking reception that followed Robert Tyler’s (Associate University Counsel, UVA) CLE presentation, “How Not to Be Stupid on the Internet.” The reception afforded students a great opportunity to interact with local practitioners in a number of different fields. After the social, several students attended a career panel featuring Braxton Hill (Christian & Barton, Richmond), Joe Carpenter (Norfolk Southern, Roanoke), and Victor Cardwell (Woods Rogers, Roanoke).

The Law School Council leadership is working to develop new and exciting programming for the 2016 Spring semester. If you’d like more information on how to get involved with the W&L Law School Council, please contact either Patrick Bolling ([pbolling@ewlaw.com](mailto:pbolling@ewlaw.com)) or Doug Pittman ([dpittman@hccw.com](mailto:dpittman@hccw.com)).



W&L Law School Council Co-Chairs Doug Pittman and Patrick Bolling.

Courtesy: Marilyn Shaw/VBA

## Recent Event: VBA Legislative Breakfast Event Recap

On September 22, 2015, the VBA kicked off the first installment of its Northern Virginia Membership Series—a legislative breakfast at the Tysons Corner office of Hogan Lovells. Over 50 attorneys attended to network over bagels and coffee, while engaging in lively discussions with featured speakers Del. David B. Albo, Del. Richard C. “Rip” Sullivan, Jr., and VBA lobbyist Jeffrey S. Palmore. Delegates Albo and Sullivan (both practicing attorneys) provided their thoughts on the General Assembly elections, the 2016 Virginia legislative session, the judicial appointment process and the declining number of lawyers serving in the Virginia legislature. Jeffrey Palmore described the VBA’s role in non-partisan law reform and how the substantive law sections of the VBA work with our lobbyists to propose legislation. The session was interesting and informative for attorneys of all backgrounds.



Courtesy: Laura Golden Liff

VBA members were treated to breakfast and politics.



Courtesy: Laura Golden Liff

Del. Rip Sullivan, VBA Board Member Tom Connally, David Gogal.



Courtesy: Laura Golden Liff

Kaamil Khan, Del. Dave Albo, VBA President Pete Johnson, Jeffrey Palmore.



Courtesy: Laura Golden Liff

Derek Karchner, YLD Executive Committee Member Laura Liff, Joey Connor.



Courtesy: Dan Mauler

The rolling fields of the Homestead Resort, the venue for the recent 125th VBA Summer Meeting.



Courtesy: Dan Mauler

Mark your calendars now for the 126th VBA Summer Meeting, which will also be held at the Homestead Resort.



Courtesy: Dan Mauler

Visiting the Homestead Resort is an experience in itself, and all young lawyers should attend a VBA summer meeting there at least once (and preferably every year).