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The Virginia Bar Association Journal is published quarterly by The Virginia Bar Association as a service to the profession. Contributions are welcome, but the right is reserved to select material to be published. Publication of any article or statement is not to be deemed an endorsement of the views expressed therein by the Association. The office of publication is located at the T. C. Williams School of Law, University of Richmond, Virginia 23173.

Membership dues include the cost of one subscription to each member of the Association. Subscription price to others, $6.00 per year; single copies $2.00. Second-class postage paid at University of Richmond, Virginia 23173.
NOT so many years ago, retiring Presidents of the Virginia Bar Association were charged with delivering an oration on the first evening of the annual meeting, then held at either Hot Springs or White Sulphur. Those evoke fond memories. The occasions were not always well attended but the wisdom was recorded for the ages in the Association’s annual report. The speakers, having labored for days in advance of the meeting, waxed eloquently—and long—on justice, injustice, legal philosophy, legal education and the United States Constitution. Laughter and applause were recorded parenthetically.

We no longer have the President’s address. An outgoing President now reports (I assume in a businesslike manner) to the membership at the business session of the annual meeting. The audience is smaller than in the old days. Relatives and law partners no longer feel an obligation to attend; also, Saturday afternoon speakers are competing with the Wide World of Sports, the ACC Game of the Week, and the Williamsburg athletic facilities for those who prefer playing to watching.

And so on this page I will direct your attention to some of the matters I shall probably be reporting at our annual meeting. The Virginia Bar Association has, I believe, had a good year. We are solvent and our membership is stable. Your Executive Committee continues to examine how to fulfill the lofty language of our purpose “of cultivating and advancing the science of jurisprudence, promoting reform in the law and in judicial procedure, facilitating the administration of justice in this state, and upholding and elevating the standard of honor, integrity, and courtesy in the legal profession.” We particularly hope to play a more effective role in reform in the law and in judicial procedure, and to structure our committees to accomplish this.

I should like to list some of the highlights of our work this year.

1. We have the finest Young Lawyers Section in the nation. This year, with the financial support and encouragement of the Association, the Young Lawyers, as a Law Day project for 1976, produced a film on the Supreme Court. This film is shown regularly at the Court to thousands of visitors, has been shown on educational television throughout the nation, and is in demand for bar meetings everywhere.

2. The findings of the Peter Hart Survey on public attitudes in Virginia toward lawyers were reported to
our membership at Williamsburg this past January. Since then, the Association has shared the results of the survey with other legal organizations in Virginia, with the officers of the ABA and several State associations, and with members of the Judiciary. The findings of the survey have been studied by each of the Association's committees. In addition to this, the Executive Committee authorized the convening of a Lay Leaders' Conference at the Woodberry Forest School in June. The Conference underscored what the Hart Survey showed—that the public knows relatively little about the legal profession.

3. Elsewhere on these pages is a picture of the National Center for State Courts presently being constructed in Williamsburg. Our annual meeting at the Conference Center will be near where the Center is being built. Should you come to Williamsburg, I hope you will ride over and examine the progress of the construction.

Under Tom Monahan's leadership, the Association undertook responsibility for raising $100,000 toward construction of the Center. It is the intention of the Association to pay a minimum of $50,000 toward fulfillment of this pledge and to raise the balance from bar associations and individuals throughout the United States. The Richmond Bar Association, the Norfolk-Portsmouth Bar Association, The Fairfax Bar Association, the Portsmouth Bar Association, the Virginia Trial Lawyers Association and the Virginia Lawyers' Wives have made handsome contributions toward the Center. We have forwarded the Association's check for $25,000 representing the first of four payments to be made toward the construction. Gibson Harris has directed this effort and solicitations among our honorary and judicial members are being made. Hopefully, a new Marshall-Wythe School of Law will be built adjacent to the National Center. The same architect designed both buildings. The Center's directors chose Williamsburg with the understanding that there would be an adjacent law school with library and moot court facilities.

The National Center will be a great force for aiding the administration of Justice in the State Courts of America. The Association is proud of its role in helping to make the Center in Williamsburg a reality.

The Williamsburg meeting is almost upon us. A detailed program appears elsewhere in this issue. You will see that a full and balanced program will be presented, featuring a banquet address by Justin Stanley, President of the ABA. I hope you can be with us.

We have written this report in sadness. In the midst of its preparation, Judge Robert J. Rogers of Roanoke passed away. Had Bob not been chosen for the bench a few years back, he would have been President of the Association this year. Bob first served with the Executive Committee in 1965 as the representative of the Young Lawyers. He was Chairman of the Executive Committee in 1974, and chaired the effort that resulted in publication of The Virginia Bar Association Journal. Bob Rogers epitomized the best in our profession. He understood profoundly the responsibilities of lawyer to client, to the general public, and to himself to do his best. He did that to the very end.
DURING the past decade there has been a substantial increase in the use of written contracts, generally known as separation or settlement agreements, to determine economic and other relationships between a husband and wife following separation and continuing after divorce. In large measure this has reflected the amendment of divorce laws to permit dissolution based upon marital breakdown without regard to who caused it or why it occurred.1

From the attorney’s standpoint this means that in many, if not most, divorce cases greater emphasis now will be placed on negotiating rather than litigating skills. Drafting and explaining separation agreements has become the most important factor in a large percentage of divorces. While an understanding and appreciation of what the courts will do if the parties cannot agree is essential to the attorney who would adequately represent a client in separation agreement negotiations, it is equally important to understand the various alternatives which can be effected only through the contractual approach, so that both parties can reach an agreement which will be best tailored to their specific wants and needs.

In Virginia during the past decade we have also witnessed key changes in the statutory and judicial mechanism which controls the modifiability and enforce-ment of separation agreements after divorce. It is possible that some separation agreements drafted fifteen years ago under the law as it then seemingly existed are the subject of potential confusion today. It is also possible that unless attorneys pay careful attention to the drafting of agreements at this time, the parties to them may end up in litigation many years hence. This article seeks to explain some of the confusion which now exists and to anticipate some of the possible future problems and events which attorneys should have in mind in drafting separation agreements.

Some Relevant, Recent History

There are several basic alternatives to follow when a separation agreement is to be utilized by the parties in most jurisdictions within the United States. One approach is to draft a contract which provides that it will survive any subsequent divorce action, and then make no reference to this agreement and no claim for alimony or support in the divorce action itself. Assuming that the contract is not vulnerable to attack for fraud or overreaching, the parties are relegated to their written agreement after the divorce has been rendered, and this agreement will be controlled by contract law rules. In jurisdictions such as Virginia, where alimony

1 In Virginia, this took the shape of a “breakdown separation” statute which since 1975 has permitted either spouse to obtain a divorce after one uninterrupted year of living separate and apart commencing with the intent of at least one spouse to permanently discontinue marital cohabitation. Va. Code Ann. § 20-91(9) (Repl. Vol. 1975); Hooker v. Hooker, 215 Va. 415, 211 S.E.2d 34 (1975).
cannot be awarded subsequent to a final divorce decree,\(^2\) there is the possible difficulty that a contract might be set aside and there would be no “second chance” for the party scheduled to receive executory payments.

A second alternative is to effect such a written agreement and introduce it to the divorce court for the sole purpose of having its fairness passed upon. In jurisdictions where this can be done, the agreement retains its contract character but the parties avoid the possibility that it may be set aside in the future. In the absence of some special statute to the contrary, this process does not permit later enforcement of the terms of the agreement by contempt.

A third variation is to incorporate the unexecuted but executory portions of the agreement into the divorce decree so that the decree actually supersedes the contractual provisions. This can have the practical effect of transforming the executory portions of the decree into alimony and thereby having them governed by the statutory rules permitting enforcement through contempt and providing for termination upon the death of a payor or remarriage of a payee.

Not so long ago, Virginia law seemingly followed this traditional pattern. For example, in a case which reached the Virginia Supreme Court in 1963, *Durrett v. Durrett*,\(^3\) the court was called upon to determine whether the provisions of a divorce decree confirming a property settlement agreement were to be considered alimony. While the original terms for payment of sums for support and maintenance after divorce were contained in a contract, the prayer for relief had asked the court to confirm and approve the contract “as an award of alimony and support for . . . children.” Noting that the wife had had a choice of remedies before her when she made this request, the court found that she had elected to pursue a remedy of alimony rather than relying on the contract. This was reinforced by the court’s description of the payments in its decree as “not in lieu of alimony but . . . alimony payments.” Accordingly, the court held that upon the death of the payor husband the payments would terminate under Va. Code § 20-107, dealing with alimony and support, even though the original contract had contained no specific language as to its term.


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During the following year (1964), the Virginia Supreme Court in *Martin v. Martin*\(^4\) was called upon to determine whether property settlement provisions incorporated within a divorce decree could be enforceable by a contempt action. The agreement provided that upon divorce the parties would confirm the agreement and request that it be made part of the divorce decree. This was done and in 1959 the trial court “confirmed” the contract and made it “part” of its decree. Later the wife sought to enforce the payment provisions through a contempt action and was successful in the trial court. On appeal, the contempt finding was set aside. The Supreme Court noted that there was nothing to show that either party or the court had intended that the payments become alimony; there was no prayer for such a result in the pleadings and no specific order to pay was included in the decree. The Court therefore held that the parties

were left to their contractual remedies, pointing out that:

There is a conflict in the authorities dealing with the precise question here presented. However, the better rule, which is more in accord with our statement in the aforementioned cases [including Durrett] concerning agreements settling marital and property rights, is that when such an agreement is confirmed and made part of the divorce decree but the decree does not expressly order the husband to comply with the agreement, it is not a decree for the payment of alimony and a failure to perform the obligations under the agreement does not constitute a sufficient basis to hold the husband in contempt.  

Next in the series of key cases was Dienhart v. Dienhart, decided in 1969. Before their divorce the parties had executed a separation contract settling their property rights and providing for monthly “alimony” payments of $125.00 to the wife. In the a mensa et thoro decree, the court stated that the husband should pay $125.00 per month to the wife “by way of alimony” and further stated that insofar as property rights were concerned the written agreement of the parties, which had been filed with the court by the plaintiff wife, was ratified and confirmed. When a decree a vinculo matrimonii later was rendered, the court merged the earlier decree and stated that the provisions affirming the settlement agreement would be continued in full force and effect. A year later the husband requested that his “alimony” payments be eliminated because of changed circumstances. The trial court’s decision terminating the payments was reversed on appeal, the Virginia Supreme Court holding that Code Section 20-109 controlled inasmuch as the payments were ordered pursuant to a settlement contract filed by the parties without objection before either divorce decree was rendered, and § 20-109 barred the court from entering any further order except in accordance with the contract of the parties. While noting that this was contrary to the earlier Virginia rule set forth in Gloth v. Gloth, the court pointed out that the current Section 20-109 was enacted after the Gloth decision. Both Durrett and Martin ostensibly were distinguished, the first as dealing with whether alimony payments ceased at a husband’s death and the second on the basis of whether contempt could be used to enforce provisions of a settlement contract “that had merely been approved by the court.”

The Dienhart case not surprisingly led to some confusion as to the continued vitality of Durrett, despite its attempt to distinguish that case. In 1970, in McLoughlin v. McLoughlin, this inconsistency was urged, though the Supreme Court made no specific mention of Durrett in its opinion. A husband had agreed in a property settlement agreement to pay his wife $100.00 a month for support and maintenance. This was approved and incorporated by reference into an a mensa et thoro decree which later was merged into a decree a vinculo matrimonii in 1968. In addition to approving, ratifying and confirming the agreement, the court specifically ordered the husband to make the monthly payments pursuant to the agreement. Subsequently the wife remarried and the husband sought to have his payments eliminated. Citing Dienhart, the Supreme Court upheld the trial judge’s refusal to modify the agreement which had been introduced to the trial court in accordance with Section 20-109. The Court said that “whether such payments constitute alimony . . . is not crucial,” and added that “the directive to pay pursuant to the terms of the agreement only meant the court could use its contempt power to enforce the agreement.” Significantly, however, Code Section 20-109.1 authorized the court to make the monthly payments pursuant to the agreement. Whether it was the exact situation posed by McLoughlin or not, it would seem that if a fact situation such as Durrett were to surface after 1970 it might receive substantially different judicial treatment than it would have in 1963. The crux of the determination at the earlier date would have been whether the court meant to supersede the executory terms of a separation agreement by making them alimony, yet according to McLoughlin this was no longer critical.

In 1972 the General Assembly modified Sections 20-109 and 20-109.1 by providing, among other things, that if a contract or stipulation for maintenance was affirmed, ratified and incorporated according to these sections then the court should order that such

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5 205 Va. 181, 184, 135 S.E.2d 815, 817 (1964).
7 154 Va. 511, 153 S.E. 879 (1930).
payments would be terminated on the payee's remarriage "unless such stipulation or contract otherwise specifically provides . . ."). It would seem that this may have been designed to deal with cases such as McLaughlin. If so, it could have had the effect of clarifying some of the problems associated with separation agreements drafted earlier under the assumption that the Durrett approach was viable.

The 1972 amendments provided for retrospective as well as prospective application. However just this year, in Shoosmith v. Scott, the Supreme Court held that retrospective application of the section was unconstitutional.10 A property settlement agreement executed by the parties and confirmed in a final divorce decree in 1959 provided for installments for support and maintenance as long as the wife shall live. The wife later remarried. The husband argued that under revised Sections 20-109 and 20-109.1, he should be relieved of payments after the effective date of the amendments. The Virginia Supreme Court held that the statutory changes could not be applied retrospectively because this would be an unconstitutional impairment of contract under both the United States and Virginia Constitutions. The Supreme Court noted that:

In the present case . . . the wife's right to alimony does not depend alone upon the final decree of divorce. Instead, her right arises from a property settlement agreement approved and confirmed by the chancellor in the final divorce decree. Such an agreement creates vested property rights in the parties by virtue of the judicial sanction and determination of the court; it is a final adjudication of the property rights of the parties . . . and it cannot be abrogated by subsequent legislative action.11

The Problems of Child Support

The preceding cases dealt with support and maintenance of a spouse. Do the same rules as to non-modifiability apply to separation agreement terms dealing with child support or custody? Section 20-109.1, which permits enforcement of a judicially ratified contract as though it were a judicial decree, does refer to contracts which include provisions concerning "the care, custody and maintenance" of minor children of parties. However, Section 20-109, dealing with nonmodifiability, refers only to provisions for support and maintenance of a former spouse. This is in keeping with the general rule announced in § 20-108 that the State has power to modify child custody and maintenance awards, and the courts have affirmed that this applies to contractual provisions. But what can a court do if provisions of a settlement agreement refer only to payments for a wife, even though it is obvious that some portion was designed to cover child support? Lumping the whole as "alimony" is not unusual because of the obvious tax benefits which can be achieved.

Separating such a unified separation agreement provision into its individual components was permitted in Carter v. Carter12 in 1975. The settlement agreement provided that the mother should have custody of the children and that the father should pay her a specified monthly sum "in lieu of alimony and as further support and maintenance of said children." All payments were to terminate upon emancipation or majority of the children. Evidence indicated that the drafters sought to avoid apportionment of the payments between alimony and child support for tax reasons. When the father later was awarded custody of the children, an event not contemplated by the parties, the question was whether the payments, or some portion of them, must be continued to the non-custodial mother. The court heard evidence as to intent of the parties and construed the contract, breaking it into parts allocable to the wife and children. It then held that the father need not continue the child support payments to the mother while the children were in his custody. The Supreme Court was careful to note that this was a construction of the agreement and not a reduction of the wife's support payments. Whatever part was designed for her support would be unmodifiable under Section 20-109 except as provided in the contract.

In a subsequent case, Wickham v. Wickham,13 the Supreme Court further clarified its position with regard to unitary awards made pursuant to approved settlement agreements, specifically noting that Carter was based on changed circumstances not contemplated by the parties and stressing its limited application to cases involving substantially similar fact situations.

9 The 1972 changes are regarded by some as being ambiguous, particularly in their reference to the effect of the death of one or the other of the parties as also effecting a termination unless otherwise provided for in the agreement.


11 217 Va. at 292, 227 S.E.2d at 731.


The Law at Present

Except for the possibility that some residue of confusion still remains from Durrett, which has been distinguished but never flatly overruled by the Supreme Court, it now seems clear that spousal support and maintenance provisions of separation or settlement agreements which are introduced to a divorcing court for ratification without objection from the parties will be nonmodifiable except as provided in the agreements themselves. Although this has the advantage of allowing the parties to make their own agreement with assurance that they can rely on its terms without fear of future change, it places a heavy burden on the drafters either to anticipate the many eventualities which may arise and specifically deal with them, or to provide for reopening or renegotiating all or some contractual provisions at certain times or on the occurrence of certain events.

Should the Agreement Be Drafted For Modifiability?

Some obvious situations which should be anticipated in considering whether there should be provision for future modifiability are:

1. Substantial change in economic circumstances of the parties. If the payor's income declines substantially because of ill health or other factors, what method can be used for a downward revision, either temporarily or permanently? Correspondingly, if the payee's fortunes appreciate substantially, can this be taken into consideration? Clearly, the contract should specifically deal with the question of the impact of the wife's remarriage if she is a payee. While this might be covered under the revision of Sections 20-109 and 109.1, nevertheless it is best to specifically speak to this in the contract in view of the past history of legislative modification as well as judicial change.

2. Change in tax laws. If the agreement is drawn under the assumption that a particular tax approach will be followed (e.g., that payments will be taxable to the payee), what should occur in the event that the tax laws change or the agreement is construed under existing laws as not providing the income-splitting or other benefits which the parties sought? A provision for renegotiation to effect the purported desires of the parties would seem to be a desirable safeguard for such cases.

3. Retirement. What will occur when one or both parties reach retirement? An agreement predicated on the assumption that one or both will remarry and payments will thereby terminate, or that normal earnings will continue indefinitely regardless of age, can produce great problems when retirement eventually occurs. Further, if an agreement for payments is based upon a percentage of earnings, the earnings base may change substantially on retirement and there may be definitional problems of deciding what assets or retirement benefits are to be considered. Of further relevance is the fact that both parties may be eligible in many instances for social insurance as well as employee retirement benefits. One method for dealing with this is to provide for a re-opening of the payment provisions at a certain point such as retirement. Another, perhaps more appropriate for the couple of advanced age when the divorce occurs, is to carefully define what assets and receipts will be utilized in determining any payment scale.

4. The “de facto” remarriage. A problem now reaching the courts with increasing frequency (but not widely anticipated just a few years ago) is that of a payee ex-spouse who begins living with someone else in what might best be described as a de facto marriage arrangement. If the agreement provides that payments shall continue until “remarriage,” this can be considered language of rather technical import. Virginia does not recognize common law marriages within its boundaries and the payee has gone through no ceremony with the new mate. Some drafters now seek to insert clauses which would anticipate such “living arrangements” and make them equivalent to remarriage for the purpose of terminating payment obligations.

5. Annulment of subsequent marriage. What happens when a payee ex-spouse remarries but the union later is annulled? The Virginia Supreme Court recently decided, in a case of first impression in this jurisdiction, that insofar as the alimony laws were concerned annulment of a voidable remarriage did not require a resumption of alimony payments by the first

(Continued on page 20)
The clamor and drumbeating from consumer organizations and assorted politicians and propagandists designed to stampede American lawyers into legalizing lawyer advertising climaxed with the filing by the Antitrust Division of an antitrust injunction action against the American Bar Association. We are all labeled criminal conspirators by a flamboyant complaint which avers: "such co-conspirators include, but are not limited to members of Defendant ABA." Basically, the complaint seeks to enjoin the ABA from exercising its First Amendment rights to express the opinion that wide open lawyer advertising is unethical and contrary to the public interest, because it seeks to enjoin ABA from endorsing or advocating a canon strictly limiting lawyer advertising. Obviously, as a voluntary organization, ABA can do nothing more than endorse or recommend, since it has no power to promulgate or to enforce a canon.

Suit was against the ABA instead of the state bars which actually promulgate and enforce the canon with adoption or approval by their supreme courts, because the latter's actions are state action beyond the scope and application of the federal antitrust laws under the well established rule of Parker v. Brown, 317 U.S. 341 (1943). The complaint overlooks the fact that ABA combination to induce such state action is likewise beyond the reach of the federal antitrust laws under Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961) and United Mine Workers v. Pennington, 381 U.S. 657 (1965).

The propaganda push is predicated on Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), which has been wildly inflated beyond its narrow holding that fixing minimum attorney's fees on interstate real estate transactions violates Section 1 of the Sherman Act. Ignored or discounted is the caveat in its footnote 17:

"[I]t would be unrealistic to view the practice of professions as interchangeable with other business activities, and automatically to apply to the profession antitrust concepts which originated in other areas. The public service aspect and other features of the professions may require that a particular practice, which could properly be viewed as a violation of the Sherman Act in another context, be treated differently. We intimate no view on any other situation than the one with which we are confronted today."

Disregarded are the emphatic declarations in Goldfarb "that in some instances the State may decide * * * forms of competition usual in the business world may be demoralizing to the ethical standards of a profession" and that the Court intends "no diminution of the authority of the State to regulate its professions."

In a First Amendment context, the Supreme Court again later emphasized in Bigelow v. Virginia, 421 U.S. 809 (1975), that their decision striking down the Virginia prohibition against advertising the lawful availability of an abortion referral service in New York was "in no way inconsistent with our holdings in the Fourteenth Amendment cases that concern the..."
regulation of professional activity." The Court then cited *Semler v. Oregon Dental Examiners*, 294 U.S. 608 (1935), which sustained a state prohibition against price advertising by dentists against constitutional attack.

Still later, the Supreme Court, in extending First Amendment protection to price advertising of prescription drugs dispensed by retail druggists as standardized products, expressly emphasized in footnote 25 to the majority opinion in *State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 96 S.Ct. 1817, 1831 (1976):

"We stress that we have considered in this case the regulation of commercial advertising by pharmacists. Although we express no opinion as to other professions, the distinctions, historical and functional, between professions, may require consideration of quite different factors. Physicians and lawyers, for example, do not dispense standardized products; they render professional services of almost infinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising."

In his concurring opinion, Chief Justice Burger stressed that "quite different factors would govern were we faced with a law regulating or even prohibiting advertising by the traditional learned professions of medicine or law." He continued: "Attorneys and physicians are engaged *primarily* in providing services in which professional judgment is a large component, a matter very different from the retail sale of labeled drugs already prepared by others." He then quoted at length from *Semler v. Oregon Dental Examiners*, *supra*, including the sentence: "And the community is concerned in providing safeguards not only against deception, but against practices which would tend to demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the opportunities of the least scrupulous."

Chief Justice Burger then concluded:

"I doubt that we know enough about evaluating the quality of medical and legal services to know which claims of superiority are ‘misleading’ and which are justifiable. Nor am I sure that even advertising the price of certain professional services is not inherently misleading, since what the professional must do will vary greatly in individual cases. It is important to note that the Court wisely leaves these issues to another day."

The issue of the prohibition of lawyer advertising under both the antitrust laws and the First Amendment having been wisely left until another day, let us as a profession await and abide that day. Without assuming the arrogance of forecasting with certainty the Supreme Court decision on the issue, it is fair to say that the weather vanes contained in the latest expressions of the Supreme Court point in the direction of sustaining the validity of the canon limiting lawyer advertising. If a new rule is to be written, or if existing prohibitions are to be modified, let it not be brought about by cowardly retreat or craven surrender of the legal profession, but let its doing be entrusted into the hands of the Supreme Court of the United States.

**Hon. Joe Sims**  
*Deputy Assistant Attorney General, Department of Justice*

TWO recent 1976 decisions by the Supreme Court have enormous implications for the legal profession and legal advertising. In the *Virginia State Board of Pharmacy* decision, the Court held that consumers of prescription drugs have First Amendment rights to receive price advertising concerning those drugs. Although disclaiming any intent to decide the First Amendment issues concerning all professional advertising, like those raised in the pending Consumers Union challenge to Virginia rules restricting legal advertising, the Court's reasoning in *Virginia State Board of Pharmacy* suggests that restricting such advertising poses serious constitutional questions. Generally speaking, the Court asserted, so long as we preserve a free enterprise economy, there is a strong public and constitutional interest in assuring a free flow of commercial information so that the allocation of resources through numerous private actors is directed by intelligent and well-informed economic decisions.
In Cantor v. Detroit Edison, the Court, at a minimum, narrowed the antitrust exemption created by the “state action” doctrine in Parker v. Brown. In Cantor, the Court refused to grant antitrust immunity to privately-inspired conduct approved by the Michigan Public Utility Commission. Because no majority opinion was written in Cantor, it is difficult to assess its implications. However, there seemed majority agreement that private conduct does not automatically obtain the protection of Parker v. Brown simply because it is commanded by the State acting as sovereign. That requirement, as noted in Goldfarb, is only the first hurdle to gaining antitrust immunity.

Of course, the Department’s recently filed suit challenging the ABA’s restrictions on lawyer advertising may also have a profound impact on the legal profession. The pendency of that litigation makes a discussion of the legal merits inappropriate. A more general issue raised by the ABA suit and other challenges to the legal profession pertains to the concept of professional responsibility and merits some good faith dialogue.

There seems a general consensus that codes of professional responsibility should be designed to increase the capacity and motivation of lawyers to perform responsibly and thereby enhance their contributions to society. Adversaries on the question of legal advertising, however, disagree on whether its use will advance or obstruct achievement of this common goal.

One approach to resolving this issue is to consider the similarities and differences between a profession and a business. A traditional distinction between the two is that professionals are primarily devoted to public service rather than to personal gain. Lawyers are thus expected to make some personal sacrifices in performing their work. The practice of law, and a few other vocations, is characterized as a profession largely on the basis of two factors: first, the service provided is relatively complex and demands extensive training; second, lawyers play an integral role in the functioning of democratic institutions in the country. Lawyers are entitled to be called “professionals” only if they meet the public’s need for effective legal services by making it both accessible and understandable whether or not profit is involved.

There are several measures of the status of a profession within the community. Perhaps the best measure is whether society relies on professional responsibility or turns to other controls for regulating the profession. The legal profession at present stands high under this test. However, increasing consumer dissatisfaction with lawyers—over costs, delays, competence, and accessibility—threaten this standing.

One cause of consumer dissatisfaction lies with lawyers’ failure to distinguish between their dual roles as businessmen and professionals. Only in that latter role should concepts of professional responsibility rule.

Mr. Justice Stewart recently questioned whether the ethical standards set for lawyers really reflected anything more than a response to the economic forces of the marketplace. Ethical conduct is commonly found among businessmen whether required by law or by enlightened self-interest. Thus, businessmen, lawyers and other professionals all have an “ethical” responsibility to perform with competence and integrity.

If advertising is acceptable for business, then why not for lawyers, at least to the extent that they act as businessmen in providing information as to the characteristics, quality and price of legal services? Legal advertising is not inherently misleading because of the complexity of service offered. Banking services are as complex as many legal services and yet banking advertising is of great assistance in determining which banks to patronize. Legal advertising will not necessarily involve degrading commercial puffery. Many churches use tasteful and informative advertising concerning the services they provide in their communities.

In the Goldfarb case, the Supreme Court reaffirmed that the pro-competitive values of the Sherman Act were to be fostered throughout American economic life, including the conduct of the professions, unless shown to be inappropriate in specific ways. That puts the burden on those maintaining blanket competitive restrictions to show they would significantly conflict with the public service obligation of the profession. I don’t believe that burden can be carried with respect to legal advertising.

Competition is untraditional; it can be unruly; it can be inconvenient; but it can also increase demand, encourage innovation and efficiency and result in better performance. By making our profession more open and accessible, both for qualified practitioners and for consumers of legal services, competition can help stave off demands by those who would impose more governmental regulation. And there should be no doubt that competition, with all its fears, offers a much brighter promise than pervasive governmental control.
Representing Claimants in Unemployment Compensation Hearings

WHEN you are approached by a prospective client who is a “claimant” for unemployment compensation benefits, the first thing to be cognizant of is the fact that these “benefits” are derived from a tax on payroll paid by employers. It would not be out of the ordinary, therefore, to attend a hearing at which an irate employer, represented by counsel of his own, hotly contested the claim. Unemployment compensation is regarded basically as an insurance program, the premiums having been paid under legal compulsion by the employer. Even attorneys are often unaware that the duration of employment and the need of the claimant are not material considerations.

On the other hand, if an attorney is approached by an employer who wishes to defend a claim for unemployment compensation benefits, he should be cognizant of the fact that the law entitles the employer to contest the claim every inch of the way. Moreover, the Virginia Employment Commission is somewhat dependent upon this contest by the employer in order for a just disposition of the claim to be made.

Initial Considerations

The maximum weekly unemployment benefit amount is now $103. It has in the past been possible to “draw” benefits for as many as 65 weeks, so that a substantial amount of money may be involved. At the same time, if an individual has been declared “ineligible” for a specific number of weeks, there may be very little at stake.

The regulations provide that:

The fee payable by a claimant for benefits, to counsel representing him, after delivery to such claimant of the benefits due him, shall not be more than $25, plus an amount equal to 15% of the benefits awarded the claimant as a result of a hearing in which counsel represented him, except that the Commission may in its discretion adjust any fee where because of special circumstances it is deemed appropriate.¹

Of course, it may be that, for reasons known or unknown to counsel, the amount of money involved may not be a serious consideration. The honor of a party may be involved in a case of separation, or there may be some sort of lawsuit pending. Suffice it to say that close scrutiny of exactly what is at stake, and application of the law of diminishing returns, is desirable before counsel invests time and effort in the case.

The Appeals Process

Allowance or denial of benefits is made by the Virginia Employment Commission in documents called “determinations.” These can be appealed within the framework of the Commission, as provided in Title 60.1 of the Code and the administrative regulations.

The hearing which is the subject of this article occurs after the appeal has been perfected. If the client retains counsel at the determination stage, before the appeal has been made, then counsel has the advantage

¹ Rules and Regulations Affecting Unemployment Compensation, Regulation X(D).
of being able to prepare adequately for the impending hearing.

However, when the matter is thrust upon counsel after the appeal is perfected, it usually comes to counsel's attention in the form of a Notice of Hearing advising the time and the place of the hearing. Immediate action is then required. If postponement is desired, the request must be made promptly and in accordance with the law. When the request is reasonable, granting of the postponement is usually routine.

Every effort is made by the agency to accommodate the parties and to expedite the hearings process. In fact, where there is counsel of record prior to the time and place of the hearing being set, an effort may be made to contact counsel personally in order to set a convenient time and place. Accordingly, it is wise to address a letter of representation to the Commission.

**Timeliness of the Appeal**

Timeliness of appeal is an extremely important concern. It behooves the attorney who receives the matter at the "determination" stage to first inspect the document for the time limit for appeal. Instructions are explicitly given, including relevant dates. Keep in mind that the appeal is "filed" at the date the envelope containing same is postmarked.

The statutory time limit in Virginia is now 14 days, and there is provision for extension if good cause is shown. Whether delay in the outgoing dictation box in the attorney's office will qualify as good cause under the new law is doubtful. The best practice is to have the client go immediately to the local office of the Employment Commission to fill out a form provided for this purpose.

The same time limit is applicable to appeals made directly to the Commission.

**The Hearing**

The appellate authority at this level is called an "appeals examiner." His function is to preside at a hearing which takes place pursuant to the appeal, and to render a decision based on precedent interpretation of statute.

The "hearing" consists essentially of taking testimony under oath on a tape recorder.

The hearings are informal in nature, and may assume the demeanor of a fact finding mission more than a judicial proceeding. There is need to compile a complete and accurate record, in the event of appellate review.

H. C. Rockey received his B.A. from St. John's College in Annapolis, Md., and his LL.B. from the University of Pennsylvania Law School. He practiced law in Florida and has had wide experience in both government and private industry. He is presently serving as an appeals examiner for the Virginia Employment Commission, having formerly served the state of Oregon in the same capacity. He resides in Blacksburg, Virginia.

They are scheduled in any one of approximately 37 places, where local offices of the Employment Commission are located. The appeals examiners travel from office to office, conducting the hearings on schedules made a week in advance by the central office in Richmond.

The parties are always the individual claiming benefits and an employer. If there has been more than one employer, only the one whose account may be "charged" is notified. This is the last employer for whom the claimant has "performed services . . . during thirty days, whether or not such days are consecutive."

**Evidence**

In keeping with established principles of administrative law, any and all evidence is usually admissible at the hearing if material and relevant. An attorney's
objection, e.g., to hearsay, may be well taken, but the evidence may nevertheless be admitted. The status of the evidence will be taken into account by the hearings officer when he arrives at a decision. The Commission will also consider this upon review.

Most documents are admissible. Attendance records can be submitted by personnel officers, but, of course, the extent of their validity is always subject to question. Some documents serve no other purpose than to permit examination by the hearings officer with reference to their contents.

Written medical certifications by an attending physician are admissible, because they are frequently very relevant and because it is next to impossible to obtain sworn testimony from an attending physician at a reasonable price.

Witnesses may be used. Provision is made for subpoena of witnesses as well as of documents. The hearings officer is entitled to know in advance what such testimony will show. Character witnesses are rarely of value at a hearing, since character is rarely at issue.

Ultimately, evidentiary procedure is a matter of discretion of the hearings officer. He is always amenable to a reasonable request. An attorney should not be reticent to contact the hearings officer or the Appeals Section in Richmond if a question arises as to witnesses, documents, etc. These hearings are sometimes conducted back-to-back throughout the course of an eight hour day, so that preliminary disposition of a potential problem is always welcomed by the hearings officer.

**Continuances**

A continuance for production of material evidence, such as a witness, can always be requested. Surprise is also a good basis for a request for a continuance. A hearings officer may ask that such a request be made formally in writing, and counsel’s interests would be best protected by so doing.

**Issues**

Generally, two types of “issues” appear: those wherein the question is whether or not a certain penalty should be imposed (see below), and those which are essentially administrative. In the latter class are matters of timeliness of appeal, failure to report at a stated time, non-compliance with certain requirements of the Code, overpayment of benefits, and meeting “able and available” requirements.

The issue will be stated clearly in the Notice of Hearing, and the applicable section of the law cited. Testimony at the hearing will be restricted to this issue. In some cases, if both parties are present, the examiner can accept “jurisdiction” of other issues, but a hearing record which rambles into areas immaterial to the main issue will be frowned upon by the Commission.

**Separation from Work Issue**

The penalty-type issue usually involves a separation from work, either voluntary or involuntary. If the separation is voluntary, a claimant is “disqualified” from receipt of benefits if it is found that he left work “without good cause.” When the separation is involuntary, the pertinent phrase is “discharge for misconduct connected with his work.” In some cases, it may not be immediately apparent whether the separation was voluntary or involuntary.

For example, a truck driver who is discharged because of losing his driver’s license can conceivably be said to have voluntarily quit work if he pled guilty to a DWI charge. If he was absent from work for two weeks and then dropped from the payroll, a finding of either misconduct (absenteeism) or voluntary separation without good cause would be possible.

If the claimant left work voluntarily, it cannot be found that he was discharged for misconduct. On the other hand, if he was discharged, it may be said that he had good cause for leaving work. A little sleight-of-hand with words can sometimes be detected in decisions, but the end result remains the same: a penalty is or is not invoked.

**Job Refusal**

In a separate class entirely are those cases in which an individual is penalized for failing “without good cause, either to apply for available, suitable work when so directed by the employment office of the Commission or to accept suitable work when offered him.” In these cases, the employer who is notified of the hearing may not always be the employer with whom the job refusal occurred. An employment service representative is often the key witness. He may be called by the hearings officer to provide relevant testimony with regard to working conditions and rate of pay prevailing in the area.

**Burdens of Proof**

While burdens of proof are not strictly adhered to in the decision-making process, it should be pointed
out that if a claimant leaves work voluntarily, and this has been clearly established, the burden of showing “good cause” falls upon him. In the case of discharge, the employer has the burden of showing “misconduct.”

Availability

Keep in mind, also, that in most separation cases, the hearings officer may pass on the claimant’s “availability” for work in the weeks he is claiming benefits. Claimant bears the burden of demonstrating his availability for work, and this often amounts to his sworn testimony as to the exact time and places where work has been sought, and the exact nature of any restrictions he may have on this availability.

Other Issues

The other issues previously referred to as primarily administrative usually necessitate appearance of the claimant only. It is unlikely that an employer would wish to contest such issues, or that he would be in a position to do so. By the same token, it is doubtful that counsel could be of much assistance to the claimant, since such matters are often cut and dried by precedent or regulations. This type of hearing is seldom an adversary proceeding.

The Hearings Officer

The hearings officer is charged with the duty of inquiring fully into all of the facts and of examining all of the parties present. Therefore, even if counsel neglects a certain point the hearings officer is duty-bound not to ignore it. Since this person is obviously thoroughly familiar with the unemployment compensation laws, it may be prudent in some cases for counsel to permit him to proceed with the hearing in his customary fashion. Counsel can then pick up the loose ends as he sees fit.

Note that the hearings officer is not bound by findings made on a lower level. His decision is based on testimony under oath at the hearing.

Unemployment Compensation Law

Beyond the statutory language, which on some issues is very brief, the decision will have to conform with precedent decisions of the Commission. Court decisions are controlling, of course, but these are few and far between. An attorney may be given access in Richmond to the records of the Commission’s prior decisions, but it is usually not worth counsel’s time and trouble to research them. An almost infinite diversity of facts and circumstances coupled with a stupendous volume of appeals on most issues might confront counsel with a week-long project for an hour’s fee. Common sense is a much swifter expedient, and will not lead one far afield, particularly where the issue is misconduct or good cause. For example, in order for there to be a finding of misconduct, some deliberate act on the part of the individual must be shown. Mere incompetency, inefficiency, inability, or poor judgment is not enough. Even a substantiated allegation of negligence by the employer may not warrant such a finding. Condonation and lack of warning by the employer can be a valid defense.

Absenteeism can be found to constitute misconduct. Of relevance are the reasons for the absence, and whether or not the claimant called in to notify the employer in each instance.

Unsuitable working conditions are always good cause for leaving work. If the reasons for voluntary separation are unrelated to work, they are generally termed personal. Such reasons must then be shown to be compelling and necessitous, leaving one without any reasonable alternative.

Substantial changes in the terms of a contract of employment, the “prevailing rate of pay” in the labor market area, exact language exchanged by the parties at the time of separation, letters of resignation, efforts to secure other employment before quitting work, means of transportation to and from work, and the distance to work can all be relevant, depending on the issue and circumstances.

 Needless to say, counsel should be prepared to pinpoint the exact details of an incident, e.g., the exact times and places of absence or tardiness.

The Liable State

The laws of the “liable state” are always applied. This is the state in which the last employer whose account will be charged pays unemployment tax. A claimant may have recently moved to Virginia and is now claiming benefits here. If you represent him at a hearing your only communication with the other state’s hearings officer, who actually makes the decision, will most likely be via a cassette tape sent to him by the Virginia Appeals Examiner who conducts the hearing in Virginia as an agent for the other state.

The law of the liable state may vary greatly from Virginia law. One common situation in which there

(Continued on page 20)
GUY FRIDDELL

EDITOR’S NOTE: The following article is reprinted with the permission of The Virginian-Pilot, Norfolk, Virginia. It appeared in The Virginian-Pilot’s edition of Sunday, October 24, 1976.

THE portrait of John W. Eggleston now hangs in the Virginia Supreme Court where he served nearly 35 years, wrote more than 600 opinions, and presided 11 years as Chief Justice.

Amid handsome tributes the other day at the unveiling in the Court’s Richmond chambers, nobody went so far as to say that Chief Justice Eggleston was a handsome man.

Tall, spare, with a long, oval face and large features—a prow of a nose, a wide, thin mouth, and big ears—he looked, when his face was in repose, like a Presbyterian elder; which, in fact, he was, at the Rev. Andrew Bird’s First Presbyterian Church.

But it never would have occurred to anybody either to call Judge Eggleston homely. His face, lightened by humor or focusing knife-like in thought, was rarely in repose. It was keen, alert, alive, a listening face. His narrowed, slightly quizzical eyes gave it a probing look even in conversation. It had, off the bench, an expression of pleasant expectation, as if the Judge thought he was about to hear some diverting news.

Looking at Chief Justice Eggleston, one felt he was an individual—thoroughly learned in the law and human nature and absolutely independent—before whom one wouldn’t mind taking one’s chances in court.

He had no side about him, no pretense. He was, as people say, plain as an old shoe, the old-fashioned high-top kind with character.

His first inquiry on meeting a friend was, as Governor Darden noted the other day: “What’s going on in politics?”

* Special writer, Landmark News Service.
Mrs. John W. Eggleston, wife of the deceased Chief Justice Eggleston, Virginia Governor Godwin and Justice Lawrence W. l'Anson of the Virginia Supreme Court, with portrait of the late Chief Justice in the Supreme Court Building.

During World War II, former Gov. Colgate Darden, Jr. recalled at the unveiling, Justice Eggleston would come over to the Capitol from the Court in the late afternoon and the two would go for a walk around the Capital Square.

"It was then," said Darden, "that I realized how deep his interest was in politics. He would always inquire as to what was going on in politics, and I would reply that a very great deal was going on in politics but that I couldn't tell him about it. As his face grew solemn and he looked puzzled, I would say, 'You fellows on the high court are aloof from politics and not supposed to be concerned about the odds and ends that concern those of us who labor in the vineyard and get together the taxes to pay your salaries.' Then we would have a good laugh and I would tell him all I knew about what was likely to happen or what those of us in charge wanted to see happen."

His interest in politics grew from his roots in Charlotte County, where the question was the rural way to pass the time of day. Then, too, his father was a State Senator for two terms and Secretary of the Commonwealth.

At any rate, his relish of the political scene never affected his independent judgment on the beach, nor, for that matter, when he went to the State Senate in 1932.

In young Eggleston's first session he and Darden, a second-termer in the House of Delegates, proposed that highway funds be given to the localities to keep open the schools that were closing for lack of money during the Depression.

"One gigantic roar of opposition went up from the highway people," Darden recalled. "You would have thought, listening to their observations which at times were utterly lacking in civility, that we were proposing the disestablishment of Christianity. We had run head on into a cyclone."

But the school people rallied behind the two Norfolkiens, and, as a compromise, the General Assembly authorized the state to take over the highways and even granted modest sums to the cities for highways passing through them. That left more money for the localities to devote to schools.

In 1933-34, following the end of prohibition, Eggleston headed the commission that drafted the Alcoholic Beverage Control Act that became a model for other states. In 1935 he was appointed to the Virginia Supreme Court.

Judge Eggleston, observed Darden, ranked among "state justices who in character, learning, and dedication to the administration of justice stood side by side with the ablest members of the Supreme Court of the United States."

Representing the Virginia Bar Association, former Justice Thomas C. Gordon, Jr. said, "No one else of our memory can claim equal impact on the common law of the Commonwealth."

Chief Justice Eggleston often amazed his colleagues by his memory, said his successor, Chief Justice Lawrence l'Anson.

"He would recall cases which had been decided years before, identify them by name, give the number of the volume in the Virginia Reports where they
could be found, and state succinctly what the court held, all from memory.

"He was extremely helpful in assisting new members of the Court... His wisdom and experience made him a great Chief Justice."

Eggleston deplored encroachment of the federal government on the rights of the states, observed Gov. Mills Godwin, "and, at the same time, he could hold in formal opinions that even his beloved Virginia could not infringe upon the Constitutional rights of her citizens."

In his dedication to the law he ruled out any partisan and political activities, said Robert G. Doumar of the Norfolk-Portsmouth Bar Association. He declined to serve on any boards. The law was all to Chief Justice Eggleston.

In a major opinion in 1936, *Hunton v. Commonwealth*, he upheld the right of the state to levy a tax on dividends received from public service corporations. His 1941 opinion in *Henrico v. Richmond* broadened the doctrine of Virginia annexation.

In a precedent-making opinion in 1953, *United Construction Workers v. Laburnum Construction Corporation*, he held that a state court might entertain suits against labor unions for damages for injury to business by unfair labor practices. In 1955 in *Almond v. Day* he held that the state could not pay tuitions for children in private schools—which led to an amendment to the Virginia Constitution in 1956. In *Hunter v. Norfolk Redevelopment and Housing Authority* in 1953, he upheld the constitutionality of Virginia's Urban Redevelopment Act.

The two opinions from which he drew the most satisfaction dealt with public education. In 1959 in *Harrison v. Day* he wrote the Court's majority opinion holding that public school closings under Virginia Massive Resistance to desegregation violated the State Constitution.

"The cool and compelling logic of Virginia's highest court, speaking through the Chief Justice, made inevitable a change in the Commonwealth's position concerning our public school system," said Darden. "The decision rendered in a period of great social and political turbulence was in truth a landmark. It was in the great tradition of Virginia. It was the law at its best."

Then, standing alone in 1963, he refused in *School Board v. Griffin* to sanction the closing of public schools in Prince Edward County.

"That dissenting opinion, like other great dissents in American legal history, has become the guiding star in matters affecting our school system," said Darden.

In Eggleston's childhood, Charlotte Court House was a village of 250 people. They had lived through the Civil War and lost everything, the Judge once told a reporter. Everybody was sympathetic with everybody else.

In a big garden the Eggleston's raised enough for their stock and their table. On a seven-acre field between the house and the road they grew tobacco, corn, and hay. In a large house next door was the girl, Ella Watkins Carrington, whom the Judge would marry and call "my lovely lady."

Eggleston attended Hampden-Sydney College two years and then graduated from Washington and Lee University in 1906. He received a master's degree from W&L in 1907. After teaching a year at McGuire's Preparatory School in Richmond, he returned to Lexington and obtained his law degree in 1910.

At W&L he played tennis and won in 1923 the singles and doubles championship in Virginia and the doubles crown in 1924 with Hugh Whitehead. The two traveled to tournaments all around the country. Eggleston had a well-coordinated, lanky physique, toughened by farm chores, and he brought tennis the same fierce concentration he gave every undertaking.

When he gave up tennis because of high blood pressure, he turned to golf and in his 80s he shot his age. As he played less golf, he devoted more time to his garden and his grandchildren and great-grandchildren.

He retired in June, 1969, but continued to work in his office in Norfolk City Hall on the Court's business, processing appeals and forwarding them to Richmond. In January, 1975, he gave up that chore. He died on May 18, 1976, toward the end of his 90th year.

A reporter remembers the Judge in retirement walking slightly stoop-shouldered across Norfolk's civic plaza of monolithic buildings, while the sunlight played lingeringly on the unassuming face. The Judge, the reporter thought, looked neither handsome nor homely. In his wisdom and independence the old man with the shy smile looked just plain beautiful.
John William Eggleston, the late Chief Justice of the Supreme Court of Virginia. How can we recall him to family and friends and describe him for posterity? At least we have two guiding maxims:

- We must not waste words. He abhorred long wind. We may not be concerned here with his voice before we are through, saying “your time is up” or “that’s about your case, isn’t it.” But to ramble about him would surely violate his memory.

- And we must not be saccharin. Of overwhelming love and sentiment, Jack Eggleston never descended to the maudlin.

This giant of the Virginia bench served almost thirty-five years, outstripping all other justices of the Court in this century and all except four since the Court first convened in 1778.

His opinions reflect the scholarship fostered by studies at Hampden-Sydney College and the graduate and law schools of Washington and Lee University and his stint of teaching at McGuire’s School. They reflect unceasing study on his own during his years as lawyer and judge. The opinions also reflect his incisive and penetrating mind, ever striving for perfection.

No one else of our memory can claim equal impact on the common law of the Commonwealth.

His insatiable curiosity and compulsion to master things attempted went hand in hand. He attempted much with singular success.

He was malcontent on seeing something new until he had garnered its secret. Hearing an automobile case, he insisted on knowing the precise turn on the road where the accident happened. Seeing a new thrashing machine in his host’s field, he insisted on knowing what made it thrash.

State tennis champion, he turned to golf on doctor’s orders. In his eighties he shot his age.

An avid gardener, he studied horticulture. The man in charge of Virginia’s most respected golf course said that Judge Eggleston knew more about grass than any other person he had met.

On retiring at age eighty-three, he professed real interest in a course of postgraduate study. But he hardly had time for academics because he became busily engaged, by designation of the chief justice, in considering and making recommendations to the Court on petitions for appeal.

Essentially shy, Jack Eggleston’s warmth and sense of humor was shielded from those who knew him only in line of duty or casually. To a brother on the Court or to a friend he was warm, witty and attractive. To his wife, a mighty bulwark and counselor through the years, he was the embodiment of love. To a great grandchild, separated by more than seventy years, he was like an adoring father in his twenties.

Judge Eggleston retained remarkable vigor of mind and body until shortly before his death. He suffered a massive stroke in May 1976 and died a few days later, a month before his ninetieth birthday.

We are grateful for his heritage to us and future generations.

Thomas C. Gordon, Jr.

Special Committee:
Alan J. Hofheimer, Chairman
Edward L. Breeden, Jr.
B. Purnell Eggleston
Thomas C. Gordon, Jr.
William B. Parker
Carrington Williams
Separation and Settlement . . .
(Continued from page 8)

husband. The court reserved any explicit opinion on the case of an absolutely void second marriage, though their reasoning that the first husband should be able to rely on a remarriage would seem to justify a similar result for void and voidable situations. Such eventualities should be anticipated in contracts providing payments to a former spouse until remarriage because, as we have seen, the rules concerning alimony are not automatically applicable to ratified contractual payments. It can be handled simply by indicating that a declaration of nullity of a second marriage by the payee spouse will not have the effect of renewing the payor's obligation, which shall terminate by the act of going through a marriage ceremony.

Mechanisms For Modification

A possible concern with having too many instances in which the contract can be reopened is the question of the mechanism for dispute settlement when the reopening occurs. One possibly helpful device in such


Unemployment Compensation
Hearings . . .
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is apt to be great variance is when a spouse leaves work to accompany the other spouse to a new place of employment. Virginia usually holds that there is good cause, but most other states do not.

Split Hearings

An embarrassing situation may arise where counsel attends a hearing expecting to confront the other party. While the hearing is usually scheduled initially at the current place of residence of the claimant, it may be continued to another time and place so that the employer can have the opportunity to be heard. Such a situation arises frequently when the claimant has moved from his place of employment. If the employer has requested a split hearing under such circumstances, the Commission is obligated to comply. Similarly, if in the Commission's opinion the employer's sworn testimony is necessary for a decision to be arrived upon, a split hearing will be arranged.

For these same reasons, the fact that an employer will not be present at the scheduled hearing does not necessarily mean that the claimant's testimony will be unrebuted, for a split hearing may provide the employer with a subsequent opportunity to be heard.

Briefs and Arguments

The appeals examiner's decision can always be appealed within the Commission. This right is provided by statute, and is at no additional expense. It may be that additional representation for such appeals is neither desirable nor necessary. In many instances, mere review by the Commission will achieve the desired results.

On the other hand, if counsel wishes to file a brief or make an argument, it may be a wise choice to do this on appeal at this highest level. Since the hearing level decision can always be taken higher, no pressing urgency exists for such preparation at the original hearing. Briefs are often more effective at the higher level.
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LEIGH B. MIDDLEDITCH, JR. is a partner in the Charlottesville firm of McGuire, Woods & Battle. Mr. Middleditch received his undergraduate and legal education at the University of Virginia. He is presently a lecturer at the School of Law and the Colgate Darden Graduate School of Business Administration at the University. Mr. Middleditch has served on numerous committees of the ABA and as Vice Chairman of the Charitable Trusts and Foundations Committee of the Real Property Probate and Trust Section, and Chairman of the Exempt Organizations Committee of the Tax Section. He has been an advisor to the National Conference of Commissioners on Uniform State Laws on the Uniform Gifts to Minors Act. His articles have appeared in numerous professional journals, including the ABA Journal, the Journal of Taxation, and the proceedings of all the major tax institutes. Mr. Middleditch is on the planning committee of the Virginia Conference on Federal Taxation. He also is a consultant in the revision of Virginia civil procedure statutes (Title 8 of the Code of Virginia).

JUSTIN A. STANLEY is President of the American Bar Association and a senior partner in the Chicago law firm of Mayer, Brown & Platt.

He was born January 2, 1911 in Leesburg, Indiana. He received his A.B. from Dartmouth College in 1933 and his LL.B. from Columbia University School of Law in 1937. Dartmouth awarded him an honorary A.M. in 1952 and John Marshall Law School of Chicago awarded him an honorary LL.D. in 1975. He also received an honorary Doctor of Laws degree from Suffolk University of Boston in 1976.

Mr. Stanley has experience as a practicing lawyer, a law teacher, a college administrator and civic leader. He is immediate past chairman of the ABA Special Committee on Youth Education for Citizenship. He has been a member of the ABA's policy-making House of Delegates since 1972, representing the Chicago Bar Association.

ABRAM CHAYES was born on July 18, 1922. He graduated magna cum laude and Phi Beta Kappa with his A.B. from Harvard in 1943. He received his LL.B. (also magna cum laude) from Harvard Law School in 1949 where he was first in his class.

Mr. Chayes is presently Professor of Law at Harvard Law School. He was from 1961 until 1964 the Legal Adviser to the U.S. Department of State.

He was Director of Foreign Policy Task Forces during the McGovern Campaign in 1972. He is a member of the American Law Institute, the American Society of International Law and the Association of the Bar of the City of New York. He is also a member of the Bars of Washington, D.C., Connecticut and Massachusetts.

The 1977 Annual Winter Meeting of The Virginia Bar Association will be held January 14-16 at the Conference Center in Williamsburg, Virginia. The Program of the Meeting is provided to the Journal by the Secretary-Treasurer of the Association, Mr. A. Ward Sims.

**PROGRAM**

**FRIDAY, JANUARY 14, 1977**

**Morning**

9:00 Registration—Fee $25—East Gallery

9:30 Meetings of Association Committees (old and new membership) Meetings are open to all Association members and their guests—The Virginia Room

9:30 Conference of Local Bar Associations—Room A

Presiding: Herndon P. Jeffrey, Jr.

**Afternoon**

12:00 Luncheon Meeting of Executive Committee and Chairmen of Association Committees—Room B

Presiding: Edward R. Slaughter, Jr., Chairman, Executive Committee
2:00 General Session—Auditorium

Presiding: A. Hugo Blankingship, Jr., President-Elect

"Judicial Activism"

Panelists:
Abram Chayes, Professor of Law, Harvard Law School
M. Caldwell Butler, Congressman, Sixth Congressional District, Virginia

3:30 Presiding: Thomas R. Watkins, Chairman, Judiciary Committee

"Judicial Selection"

Panelists:
James Eisenstein, Associate Professor of Political Science, The Pennsylvania State University
Earl B. Hadlow, Past President, Florida Bar Association
William F. Parkerson, Chairman, Virginia Senate Courts of Justice Committee
Chief Justice Edward E. Pringle, Colorado Supreme Court

Moderator: Daniel J. Meador, Professor of Law, University of Virginia

Evening

6:00 *Reception—All Galleries—The Conference Center

Tendered to Members and Their Guests by The Michie Company

7:00 Banquet—The Virginia Room

President William B. Spong, Jr., Presiding

Invocation

Report of Admissions Committee, Vincent L. Parker, Chairman

Speaker: Justin A. Stanley, President, American Bar Association

* Black Tie

William F. Parkerson, Jr. was Commonwealth's Attorney for Henrico County, Virginia from 1957 until 1961 and a Member of the General Assembly, serving in the House of Delegates from 1962 until 1963. In 1964 he became a member of the Senate of Virginia. His Committee Assignments include the Courts of Justice (Chairman), Rules, Finance, Local Government and Commerce and Labor. He is a member of the Judicial Council and the Committee on District Courts, of which he is Vice-Chairman.

Mr. Parkerson was graduated from the University of Richmond with his B.A. in 1941 and Washington & Lee University with his LL.B. in 1947.

Lockhart B. McGuire, M.D. was born on May 8, 1934 in Richmond, Virginia. His education includes premedical courses at the University of Virginia and an M.D. from the University of Virginia in 1957. He was a Research Fellow of Harvard Medical School (U.S.P.H.S. post-doctoral) from 1959 until 1961, and a medical resident at the University of Virginia Hospital from 1963 until 1964. He was certified by the American Board of Internal Medicine in Internal Medicine in 1965, and by the Sub-specialty Board in Cardiovascular Diseases in Cardiology in 1966.

Dr. McGuire is a member of the American Federation for Clinical Research, American Heart Association and AOA Medical Society. He was president of the Albemarle County Medical Society in 1973. He is a fellow of the American College of Physicians and the American College of Cardiology, of which he was Governor for Virginia from 1973 until 1976.

United States Representative M. Caldwell Butler is serving his second full term in the House of Representatives.

He was born in Roanoke, Virginia on June 2, 1925. He received an A.B. degree at the University of Richmond, where he was elected to Phi Beta Kappa in 1948. In 1950, he received an LL.B. degree from the University of Virginia School of Law.

He practiced law in Roanoke from 1950 until his election to Congress, and was a partner in the firm of Eggleston, Holton, Butler and Glenn.

Representative Butler is a member of the House Committee on the Judiciary. He participated in the impeachment inquiry of Richard M. Nixon during the summer of 1974.
T. Munford Boyd was born in Roanoke, Virginia in 1899. He received his B.S. degree in 1920 from the University of Virginia and his LL.B. in 1923. He was admitted to the Virginia Bar in 1922. Mr. Boyd was Chairman of Appeals Board National Production Authority in Washington, D.C., from 1951 to 1952. He retired as Professor Emeritus and returned to private practice in 1970. He is presently a member of the firm of Paxson, Boyd, Gilliam and Gouldman in Charlottesville, Virginia. He is a member of the Virginia State Bar, Virginia Bar Association, American Bar Association and a Fellow of the American Bar Foundation. Currently, he is serving as a consultant to Virginia Code Commission on revision of Title 8 of Virginia Code.

Henry K. Silberman, M.D. was born and reared in Germany. He left Germany after Hitler’s advent to power and studied at Italian universities, but had to leave because of the Rome-Berlin pact. He emigrated to the USA in 1940 and after serving in the Army he resumed his medical education at the New York University College of Medicine in 1946. He was graduated in 1950 with his M.D. degree. After serving his internship and residency in Psychiatry, he obtained his M.S. in Psychiatry in 1955 from the University of Colorado Graduate School.

Dr. Silberman is now Acting Chairman of the M.C.V. Department of Psychiatry.

Earl Hadlow was born in Jacksonville, Florida on July 19, 1924, a fourth generation Floridian. He attended Clemson College from 1941 until 1943, received his A.B. from Duke University in 1947, and was graduated from Duke University Law School with highest honors. He was admitted to the Florida Bar in 1950.

He is currently a partner in the firm of Mahoney, Hadlow, Chambers & Adams of Florida.

His many civic and professional activities include Fellow of the American Bar Foundation, Chairman of the Federal Judicial Nominating Commission of Florida and Secretary to the ABA Section on Bar Activities. He served as a member of the Board of Governors of the Florida Bar from 1967-1972, and as President of the Florida Bar in 1973-1974.

Saturday, January 15, 1977

Morning

9:00 Registration—(Continued)—East Gallery

9:00 Meeting of the State-Federal Judicial Council of Virginia—Room D

Presiding: Chief Justice Lawrence W. P'Anson, Supreme Court of Virginia

9:30 Morning Session—Auditorium

“How Tax Reform Act”

Presiding: Edward R. Slaughter, Jr., Chairman, VBA Executive Committee

Speaker:

John E. Donaldson, Professor of Law, Marshall-Wythe School of Law, College of William & Mary

10:30 Program presented by the Young Lawyers Section

“How Lawyers Can Cope With Stress”

Panelists:

Arthur E. Davis, Jr., M.D.

Lockard B. McGuire, M.D.

Henry K. Silberman, M.D.

Mrs. Richard L. Williams

Moderator: T. T. Lawson, Attorney

Afternoon

12:00 Pre-luncheon Reception—First and Merchants National Bank, Host—The Virginia Room

1:00 Luncheon Independently

2:30 General Session—Auditorium
Presiding: William B. Spong, Jr., President

“Proposed Revisions for Title VIII, Code of Virginia”

Panelists:
T. Munford Boyd, Attorney
F. Award S. Graves, Attorney
Leigh B. Middleditch, Jr., Attorney

3:30 Annual Business Meeting—Auditorium

Presiding: William B. Spong, Jr., President

Greetings:
Joseph E. Spruill, Jr., President of Virginia State Bar
Robert M. Richardson, President of West Virginia Bar Association

Report of Committee on Honoring Members and Judges—Stuart B. Campbell, Jr., Chairman

Annual Report of President

Election of Officers:
President-Elect
Secretary-Treasurer
Executive Committee Members

Report of New President
A. Hugo Blankingship, Jr.

4:15 Business Meeting of Young Lawyers Section—Auditorium

4:30 Meeting of Executive Committee of the Association—Room A

Evening

7:00 Dine Separately

9:00 After-Dinner Dancing—Sponsored by the Young Lawyers Section

Daniel Meador is James Monroe Professor of Law at the University of Virginia. He was formerly Dean of the School of Law at the University of Alabama and a Fulbright Lecturer in England. He served as Director for the Appellate Justice Project at the National Center for State Courts from 1972 to 1974.

Mr. Meador is a member of the American Law Institute, American Judicature Society, the American Society for Legal History and several other legal organizations.

He was born December 7, 1926, received his LL.M. from Harvard University in 1954, his J.D. from the University of Alabama in 1951 and his B.S. from Auburn University in 1949.

Edward E. Pringle was born on April 12, 1914. He received his undergraduate degree from the University of Colorado and was graduated from the University of Colorado Law School with his LL.B. in 1936. He was admitted to the Colorado Bar that same year and practiced law in Denver from 1936 to 1957. He is now Vice President of the National Center for State Courts.

Mr. Pringle is a member of the American Judicature Society and received their “Herbert Lincoln Harley Award” in October of 1973. In 1975 he received the William Lee Knous Award as Outstanding Alumnus from the University of Colorado Law School and in 1976 was awarded an honorary degree.

Arthur E. Davis, Jr., M.D., has been Pathologist at Franklin Memorial Hospital in Louisburg, North Carolina since 1970. He was graduated from the University of Minnesota with his B.S. in 1948 and the University of Minnesota Medical School with his M.D. in 1952.

After serving his internship and residency in Pathology, he began his career as an Instructor of Pathology in 1957. Dr. Davis is a member of nine medical societies and served on the Board of Directors of the North Carolina Division of the American Cancer Society. He holds certifications in Anatomical Pathology and Clinical Pathology.

Dr. Davis was born in St. Paul, Minnesota.
THOMAS T. LAWSON was born in Roanoke, Virginia on January 8, 1938. He was graduated from the University of North Carolina with his A.B. in 1960, and received his LL.B. in 1965 from the University of Virginia. He belonged to Phi Beta Kappa, Omicron Delta Kappa and Phi Alpha Delta fraternities and the Raven Society. Mr. Lawson was also Virginia Editor of the Virginia Law Review during 1964-1965. He was admitted to the Virginia bar in 1965 and is now a member of the Roanoke, Virginia and American Bar Associations.

JAMES EISENSTEIN was born on February 3, 1940 in St. Louis, Missouri. He was graduated from Oberlin College in Ohio with his B.A. in 1962 and received his Ph.D. from Yale in 1968. His many graduating honors include Phi Beta Kappa, Magna Cum Laude and the Government Department Honors Program.

Mr. Eisenstein has held teaching positions at Yale, Michigan, and Wisconsin. He is now an Associate Professor of Political Science for The Pennsylvania State University. He has received a grant from the University of Michigan Center for Research on Learning and Teaching to undertake a thorough revision of the teaching of American Government, and has published numerous books and papers.

EUGENIA WILLIAMS was born in Athens, Georgia. She was graduated from William and Mary in 1944. For five years she worked in the Electrodeposition Section of the Bureau of Standards and for a short while on Single Metal Crystals at the University of Virginia.

She is now married to Richard L. Williams, partner in the law firm of McGuire, Woods & Battle in Richmond and former Judge of the Circuit Court of the City of Richmond. Mrs. Williams is also the mother of four children, ages seventeen, twenty-two, twenty-five and twenty-seven.

She has done volunteer work with the Friends of the Library, The Virginia Museum and Offender Aid and Restoration. She pursues hobbies of pottery and photography.

EDWARD S. GRAVES was educated at Washington and Lee University (A.B. 1930, M.A. 1931) and Harvard Law School (J.D. 1935). He served in the Legal Division of the Puerto Rico Reconstruction Administration and the United States Navy, in addition to practicing law in Lynchburg, where he is now a partner in the firm of Edmunds, Williams, Robertson, Sackett, Baldwin & Graves. Since 1948 he has been a visiting lecturer in law at Washington and Lee.

He is a member of the Lynchburg, Virginia, American, Inter-American, and International Bar Associations and the Bar of the City of New York. His scholastic honors include Phi Beta Kappa, Omicron Delta Kappa, and Order of the Coif.

SPECIAL EVENTS

Saturday

1:00 The Virginia Lawyers' Wives cordially invite all wives and their guests to attend a luncheon at the King's Arms Tavern Registration Desk—East Gallery

OFFICERS

President William B. Spong, Jr.
President-Elect A. Hugo Blankingship, Jr.
Past President Thomas V. Monahan
Secretary-Treasurer A. Ward Sims

EXECUTIVE COMMITTEE

Edward R. Slaughter, Jr., Chairman; R. Harvey Chappell, Jr.; Frank O. Meade; Jack E. Greer; William W. Wharton; Jesse B. Wilson, III; L. Lee Bean; Archibald A. Campbell; Roy L. Steinheimer, Jr.

Ex-Officio: The President, the President-Elect, the Past President, the Secretary-Treasurer, and J. Robert McAllister, III, Chairman, Young Lawyers Section.

WILLIAMSBURG

The Winter Meeting in Williamsburg has become a tradition for members of the Association. The Colonial Capital provides an appropriate setting for a meeting of the professional descendants of Jefferson, Wythe, and Marshall.

In addition to its superb conference facilities, Williamsburg offers almost limitless opportunities for free-time activity, including shops, theatres, athletic facilities, and the extensive restored area.

Those visiting Williamsburg for the first time may obtain complete details about tours and exhibition buildings from the Information Center, located near the restored area. Colonial Williamsburg buses operate throughout the restored area, and may be boarded at the Conference Center by those wishing to visit the Information Center or the exhibition buildings.
Allen Family Endows Law Professorship

The sons of the late George E. Allen, a Richmond attorney who built a national reputation as a trial lawyer, have given $150,000 to the University of Richmond to establish a law professorship in his memory.

The George E. Allen Chair will be the first endowed chair in the 105-year history of the T. C. Williams School of Law.

The Allen sons, George Jr., Wilbur and Ashby, indicated in a letter to University President E. Bruce Heilman that they hoped the gift would "inspire others to do likewise and create an atmosphere for even further successful funding of the law school and the university, thus highlighting the importance of the university and the T. C. Williams School of Law in its service to the community, the state, and nation."

George Allen, Sr., was the first president of the Virginia Trial Lawyers Association, from 1959 to 1960; president of the Richmond Bar Association from 1950 to 1960; and vice president of the American Trial Lawyers Association from 1951 to 1953.

He served as a faculty member of the Law-Science Institution from 1953 to 1954, and was a Fellow of the American College of Trial Lawyers. He was a Fellow and co-founder of the International Academy of Trial Lawyers, and served as a dean of the IATL in 1966. He was a member of the American Bar Association.

Allen was a native of Lunenburg County and was a graduate of the University of Virginia Law School. He began the practice of law in 1910 in Victoria. He came to Richmond in 1931.

Legal Secretaries' Seminars Scheduled

In line with its policy of encouraging continuing legal education, two nationwide seminars are scheduled by the National Association of Legal Secretaries (International) for 1977. The first seminar is scheduled for Saturday, March 19, in Indianapolis, Indiana, at the Marriott Hotel. Early arrivals will have the opportunity to tour points of interest in the city.

The second seminar is to be held in New Orleans, Louisiana, on Saturday, April 2, at the Monteleone Hotel. An added feature of this seminar on Friday, April 1, will be a Leadership Conference for all members of NALS. This will provide the chapter members with an opportunity to exchange ideas, discuss various topics, and learn many new leadership techniques. NALS President Thelma M. Bambauer, PLS, Tucson, Arizona, will moderate the conference.

These seminars are being sponsored by the 23,000 member National Association of Legal Secretaries, which has its headquarters in Tulsa, Oklahoma. Ms. Kay Aoki, NALS Continuing Legal Education Chairman of Salt Lake City, Utah, is chairman for the seminars.

It is contemplated that topics covered will include Legal Research, Law Office Management and Economics, and Probate. Additional details on registration information and fees may be obtained from NALS Headquarters, 3005 East Skelly Drive, Suite 120, Tulsa, Oklahoma 74105.
Young Lawyers Section Sponsors Regional Moot Court Competition

For the past twenty-five years, the Association of the Bar of the City of New York, with the assistance of the American College of Trial Lawyers, has sponsored the National Moot Court Competition. The competition is an exercise in appellate advocacy, testing both brief writing and forensic ability. The event is truly national in scope; it involves teams representing law schools from every section of the country. In order to participate in the final eliminations held in New York, teams must survive their respective regional competitions.

On October 28, 29 and 30, 1976, the elimination for Region IV, encompassing the states of Virginia, West Virginia, Kentucky, and North Carolina, was held in Richmond, Virginia, under the sponsorship of the Young Lawyers Section of the Virginia Bar Association. Twenty-two teams, representing the College of William and Mary, the University of Richmond, University of Virginia, Washington and Lee University, University of North Carolina, Duke University, North Carolina Central University, Northern Kentucky State College, University of Louisville, the University of Kentucky, West Virginia University, and Wake Forest University competed in Richmond. The preliminary rounds were held at the University of Richmond, with semi-final and final arguments in the courtrooms of the Fourth Circuit Court of Appeals.

Each team submitted a brief on behalf of either petitioner or respondent in the hypothetical case of Leisure Equipment Corporation v. Securities Commission of the State of Northwest, et al., which was before the Supreme Court of the United States on a writ of certiorari. The case arose from an action by a plaintiff corporation seeking injunctive relief to enjoin the enforcement of a state tender offer statute. The plaintiff alleged that the state statute had been preempted by the Williams Act. The case is particularly relevant because of litigation over a similar statute in Virginia.

The briefs were read and graded by a panel comprised of seven members of the Young Lawyers Section, including John S. Graham, III, Larry D. Hunter, Douglas R. Maxwell, R. Terrence Ney, Daniel A. Carrell, Robert Dean Pope and Edward F. Rodriguez. A total of sixty-two members of the Virginia Bar Association participated in the competition as judges. Judges in the semi-final and final rounds on October 30, 1976, included the Honorable Williard I. Walker, Judge of the Circuit Court of the City of Richmond, Robert L. Burruss, McGuire, Woods & Battle, Lewis T. Booker, Hunton & Williams, James C. Roberts, Mays, Valentine, Davenport & Moore, John H. Shenefield, Hunton & Williams, and Charles W. Laughlin, Christian, Barton, Epps, Brent & Chappell.

Significantly, for the first time, pictures were taken inside the Fourth Circuit Court of Appeals Courtroom when WXEX-TV in Richmond did a news feature about the competition.

By 4:00 p.m., October 30, 1976, twenty-two teams had been narrowed down to the University of Rich-
mond and Duke University. The panel judging that final argument included the Honorable Harry L. Carrico, Justice, Supreme Court of Virginia, the Honorable Robert R. Merhige, Jr., Judge, United States District Court of the Eastern District of Virginia, and the Honorable D. Dortch Warriner, Judge, United States District Court of the Eastern District of Virginia. The quality of the competition was illustrated by a split decision, two-one in favor of Duke University.

Immediately after the final arguments, the Bar Association sponsored a cocktail party and awards ceremony at the Downtown Club of Richmond. Awards were presented on behalf of the American College of Trial Lawyers and the Virginia Bar Association to the winning school and best oralist. Another award was also presented to the University of North Carolina Law School for submitting the best brief.


Among the many participants, special recognition is given to Gregory N. Stillman, Chairman of the Committee, and also to Lawrence H. Framme, William F. Etherington, Virginia H. Hackney, D. Alan Rudlin, and Stuart W. Settle, all members of the National Moot Court Committee. The success enjoyed by this year's competition is directly attributable to their time and efforts.

YLS Youth And The Law Committee To Participate In ABA Regional Conference

With law-related education courses having been implemented in many areas of the state, the Youth and the Law Committee is now emphasizing two new methods of interesting other school districts in legal studies. It is hoped that showing the film “A Tour of the U.S. Supreme Court” (produced by the Section) will generate increased interest in law-related education among students and school administrators. This technique has been employed in Danville where the film was shown to all junior high school students (700 pupils) and approximately 350 senior high students. The film was extremely well received and, following each showing, stimulated lively question and answer sessions concerning the Supreme Court and its functions. The groundwork has now been laid for law-related education courses in the Danville Public Schools to begin in February, 1977.

The second method for building interest in legal studies in Virginia's public schools is the Section's involvement in a five-state Conference on Law-Related Education slated for February, 1977. This Conference, which will follow much the same format as the Section's own Conference in October, 1975, is being arranged by the Young Lawyer's Section of the A.B.A. and will be held in Baltimore, Md. The VBA has provided funding for this project and has been asked to invite members of the Section's Youth and the Law Committee to attend the Conference. Due to the knowledge gained in conducting the October, 1975 Conference, the Section has been instrumental in planning the A.B.A. Regional Conference. The ideas to be exchanged at the upcoming Conference should give added impetus to the institution of law-related courses throughout the Commonwealth. The Section continues to emphasize the necessity of such education in the public schools and to work closely with the State Board of Education to insure that today's generation of students is exposed to the legal and constitutional basis of our country's heritage.
The Young Lawyer's Section has been particularly active during 1976, building upon past accomplishments and adding some significant new ones. As in the past several years, the primary emphasis of Section activities has been on education and public service projects.

The most spectacular project of the Section was the production, with the assistance of the American Bar Association, Young Lawyer's Section, of a thirty-minute color film on the United States Supreme Court, featuring interviews with Chief Justice Warren E. Burger, Associate Justice Lewis F. Powell, Jr., and Associate Justice Tom C. Clark (Retired). The film was the major project of the Law Day/Liberty Bell Award Committee, chaired most effectively by Al Byrne of Richmond. Under Al's leadership and with the able assistance of Jeff Jones of the Committee and the help and cooperation of the Court, WCVE-TV and Ernest Skinner, the Committee surmounted the many hurdles, financial and otherwise, that confront anyone undertaking such a project. The details of how the film was made appear in an article in the Summer, 1976 issue of the Journal, entitled "The Making of a Movie" and the reader should refer to that article for further information.

The making of the film, exciting as it was for all of us who participated, has proven to be only the beginning of the success of this project. First shown around the State over public broadcasting stations for Law Day, the film is now being distributed around the country through the newly created Federal Judiciary Committee of the ABA/YLS chaired by none other than Al Byrne and Jeff Jones. Distribution of the film is one of the major projects of the ABA/YLS this year. In addition, the Supreme Court, as of the end of October, 1976, is continuously showing the film at the Court for the public during normal visiting hours. The Court has constructed a theatre adjacent to its other exhibits and has purchased special projection equipment to permit continuous viewing. I hope that those of you who travel to Washington will include a trip to the Court and a viewing of the film on your itinerary. Also, the national public broadcasting network has agreed to air the film nationwide at some time during the winter of 1976. The Navy Department is providing film and video tape cassette copies to the VBA/YLS, the ABA/YLS and the Supreme Court free of charge, in exchange for the privilege of using the film as a part of its orientation program for Navy JAGC officers. We expect the film to be popular for years to come, inasmuch as it is a unique insight into the day-to-day workings of the Supreme Court and the role which the Court plays in American life.

We are truly proud of this film and believe, as Justice Lewis F. Powell, Jr. said in a recent letter, that "the film has been a genuine contribution to public knowledge about the Court."

In addition to the film, the Committee provided assistance and coordination for various Law Day activities around the State and investigated the best method for presenting the Liberty Bell Award, sponsored nationally by the American Bar Association as a way to recognize laymen for community service which strengthens the effectiveness of the American system of freedom under law. The Section has not given the award in some years. We have now reestablished our commitment to give the Award, and we shall establish a separate committee next year for that purpose.

Another important accomplishment of the Section was its First Place Award in Division ID of the Award of Achievement Competition of the ABA/YLS held at the annual meeting of the ABA in Atlanta in August, 1976. The Section's award was for its statewide conference on law-related education held in Richmond on October 3 and 4, 1975. This YLS project was the biggest single undertaking of the Section during the term of office of last year's Chairman, Jack Pearsall, who along with Jim Daniel, currently Section Secretary, contributed greatly to its success. Jim and Jack collaborated on the application, which was highly complimented by the Judges. We are already beginning to prepare an application on the Supreme Court film for submission in the 1977 Award of Achievement Competition in Chicago, and are optimistic that the film will win another top award for the Section.

We have also capitalized on the Law-Related Education Conference by using it as a foundation on which to build a further expansion of law related education courses in the public schools of Virginia, a major project of the Section for the past several years. During 1976, we have continued and expanded existing programs in Richmond and Henrico County (Dan Carrell, Chairman), Norfolk-Tidewater (Dubby
Wynne, Chairman), Martinsville and Henry County (Bill Stone, Chairman) and Danville (Jim Daniel and Charles Majors, Co-Chairmen). In Northern Virginia, our Youth and the Law Regional Committee, under the leadership of Tom Brown, significantly assisted the State Bar Young Lawyers with a teacher training conference (The George Mason Institute on Law-Related Education) held in Alexandria from June 21-July 9, 1976, and is following up to assist teachers in the classrooms in Alexandria. In addition, the Section has initiated, or will initiate within the next several months, law-related education programs in Lynchburg (Ray Snead and Frank Morrison, Co-Chairmen), Isle of Wight County (Roddy Delk, Chairman), Wytheville (Tom Hodges, Chairman) and Petersburg (Ben Cummings, Chairman). The most comprehensive new program is in Roanoke, where under the leadership of Tom Lemons, and now Sam Darby, a program began in November, 1976 for fourth, fifth, seventh, eleventh and twelfth graders.

The regional committee structure for law-related education, effectively coordinated statewide this year by Jim Daniel, has worked well and given us a good vehicle for meaningful expansion into many new areas. In some parts of the state, the committees are utilizing the Supreme Court film to generate interest in law-related education with the hope that a new program can then be started. The Section also hopes to build interest in law-related studies by its active participation in a five-state conference to be held in Baltimore in February, 1977. The conference will follow much the same format as our 1975 conference in Richmond. Expansion and development of Section programs will continue in the future, for we remain committed to an on-going statewide law-related education program.

Another significant project of the Section which has greatly expanded and developed during 1976 is the Model Judiciary Program, under the able leadership of Jerry Baliles and Sandy Rowe of Richmond. Mock Trials were held in February in five pilot areas of the state, and the arguments on appeal were held in the Supreme Court of Virginia courtroom in April, 1976, the first time the Court has permitted the use of its courtroom for such a purpose. The Committee held a planning conference after the competition and determined to establish the program on a statewide basis for the 1976-1977 school year. Chief Justice Lawrence W. L'Anson of the Virginia Supreme Court and Andrew P. Miller, Virginia Attorney General and a past chairman of the Young Lawyers Section, are serving as State honorary co-chairmen, and have written a joint letter to all local bar association presidents encouraging the participation of the various associations in the Program, which is jointly sponsored statewide by the Virginia YMCA and the Section. A Model Judiciary Advisory Committee has been established to assist with the Program. A manual and other materials have been prepared for use around the state based upon successful procedures developed during the pilot year. This Program is set up to continue on a statewide basis for years to come, and is a great accomplishment for the Section and a valuable program for the participants.

The Environmental Law Committee, a new Section committee which was initiated with the assistance of President Spong and is under the effective leadership of Rob Goodman of Norfolk, has made impressive progress in its first year. Established in early 1976 with six members, the Committee has expanded to 23 members and is currently engaged in assisting the Council on the Environment for the State of Virginia in an in-depth study of the problems and needs with respect to Virginia Water law. This project is in keeping with the basic purpose of the Committee, which is to offer its services on a non-partisan basis to the Executive and Legislative branches of the Commonwealth in analyzing proposed legislation and assisting state agencies. Specifically, the Committee has met with the Council on the Environment and representatives of
the Attorney General's office and State Water Control Board, planned an approach to the study and assisted in interviewing various state and local agencies and private parties about water resource management. The Committee members then reviewed summaries of the interviews and a subsequent draft report of the Council, and forwarded their comments for use in connection with the preparation of the Council's final report. The Committee has already established itself as an important committee of the Section, and will undoubtedly continue to make great strides during the coming year.

Membership has again occupied a position of top priority among the activities of the Section. The membership effort has proceeded through the vehicle of four regional committees: Richmond (Cliff Cutchins, Chairman), Norfolk (John Franklin, Chairman), Northern Virginia (John Ariail and Bill Artz, Co-Chairmen) and the Valley and Southwest (Donnie Moses, Chairman). The activities of the regional committees have been coordinated by Chairman-Elect Ed Russell. As in the past, the Section contacted all lawyers who successfully completed the Virginia Bar Examination, soliciting those eligible to join the Association. Included in the second of these mailings this year was a new and attractive Section Membership brochure developed by Cliff Cutchins. The brochure contained a brief history of the Association, pictures of Section activities and a complete list of the seventeen Section committees. Also, the committees continued the policy of coordination with local bar association presidents and attendance at their meetings to solicit members. Special representatives of larger firms were designated in various regions to solicit members in their respective firms, and members of the Committees served with the Law School Liaison Committee which presented panel discussions at law schools in Virginia and the District of Columbia. At the conclusion of the University of Virginia panel, the Membership Committee sponsored a reception with refreshments. This concept is being explored for possible expanded use next year.

The Membership Committees sponsored other membership socials. John Ariail and Bill Artz organized and conducted a tennis party with refreshments at the Arlington Y Tennis and Squash Club and John Franklin, in cooperation with the Norfolk and Portsmouth Bar Association, held an oyster roast on the shores of the Chesapeake Bay. The Membership Committees of the YLS and Senior Association worked together effectively. Individual members of the Section not on the Membership Committees have assisted with membership solicitations. All in all, we have concluded a highly successful year in membership activities and results.

The Criminal Law and Corrections Committee, under the capable leadership of Bud Schill of Richmond, has concluded another successful year, implementing its pilot project in Henrico County in the field of youth corrections. Members of the Committee have worked as volunteers on a "one-to-one" basis with youth offenders in any one of four stages of the juvenile justice system: pre-probation, investigative stage, probation and aftercare. The volunteers basically act as "big brothers" or "big sisters," offering such things as companionship, recreational activities and tutoring. In certain instances, however, the volunteers have been asked to assume the role of probation officers, thus taking full responsibility for the youngster. Each volunteer is asked to spend approximately one hour per week with his or her assigned youth. Volunteers are matched with offenders, giving consideration to individual schedules, preferences, backgrounds and geographical location. Each volunteer is expected to submit monthly written reports of his or her interactions. Committee members have also given some assistance of a general administrative nature to the Henrico Volunteer Coordinator, and two Committee members, Neil Stevens and Paul Turner, attended the 6th National Forum on Volunteers in Criminal Justice in Atlanta on October 17-20. The Committee has contacted the Henrico Bar Association for assistance with the Henrico project. In addition, Committee members have met with Richmond Juvenile and Domestic Relations Court officials who are most interested in assistance with their existing volunteer program. The Committee plans to solicit help from members of the Richmond Bar Association YLS. Furthermore, the Committee is actively soliciting local YLS organizations around the state with the plan of expanding this important program statewide.

The Disaster Legal Aid Committee, under the Chairmanship of Guy Tower of Richmond, has remained organized on a statewide basis and ready to respond with free legal assistance from local lawyers when a disaster is declared by the Governor or President. Fortunately, there have been no such disasters during this year. The Committee works closely with state and federal disaster agencies.

The Legal Services and the Public Committee, under the chairmanship of Duke Bumgardner of Staunton, has had an excellent year. Last year, the Com-
committee conducted for the public without charge a series of classes at Blue Ridge Community College on "Law Everyone Should Know," including sessions on wills, real estate, torts, contracts, domestic relations and criminal law. The program was highly successful, being presented to approximately 140 people. This year marked the expansion of this important project to other areas of the state, using materials developed by the Committee. In the Tidewater area, Ron Marks, Chairman of the YLS of the Norfolk-Portsmouth Bar, initiated classes in the fall at the Chesapeake campus of Tidewater Community College. The classes were given by members of the local bar association. Due to space restrictions at the school, attendance was restricted to a group of approximately 45 persons. Ron was advised that approximately 100 applications were rejected for space reasons. Beginning this month, Ron will be initiating classes at the Portsmouth campus of Tidewater Community College. These classes have all followed the same format as those presented at Blue Ridge. In addition, Tom Grant of Richmond has completed arrangements for the presentation of the program beginning this month at the J. Sargeant Reynolds Community College in Richmond. Classes are scheduled every two weeks through March '23. In Danville, Jim Daniel has contacted Patrick Henry Community College officials and scheduled sessions for the spring semester.

The Legal Services and the Public project seems to be an excellent way to educate the public in general areas of the law, and has been extremely well received. It increases public awareness and appreciation of the many ways in which the law affects daily living. It is submitted that the program is a great service to the public and an important means of enhancing the public's appreciation of the Bar as a whole. For these reasons, the Section will continue to offer this fine program in the schools mentioned, and make every effort to expand it into every community college in the state.

The Special Issues and Projects Committee, under the chairmanship of Murray Wright of Richmond, has continued with its function of developing new programs for the Section. The previously mentioned Environmental Law Committee, for example, has been a direct outgrowth of a recommendation from this Committee. Other projects proposed by the Committee are now under consideration. In addition, the Committee has developed some social outings for the Section, and is planning a tennis weekend for the Spring of 1977. Further information on this event will be available shortly.

The Bridge-The-Gap Committee, under the leadership of Tom Cawley of Fairfax, has completed another successful year of sponsoring classes designed to assist young lawyers in "bridging the gap" between law school and law practice. During this year, successful classes have been conducted in Richmond (Fred Bernhardt, Chairman), Martinsville/Danville (Junius Warren and Martin Donaldson, Co-Chairs), Norfolk (Jon Wilkins, Chairman) and Winchester (Eric Adamson and John Prosser, Co-Chairs). In addition, programs will begin in Newport News (Gary Nachman, Chairman) and Charlottesville (David Landin, Chairman) this month and Northern Virginia (Ed Rodriguez, Chairman) next month. The Northern Virginia program was delayed for several months to obtain the George Mason University facilities, location of last year's highly successful program. In addition, the Committee has discussed with local young lawyers the establishment of a program in Lynchburg, and it is expected that such a program will soon be conducted there. It is noteworthy that Winchester and Charlottesville are having programs for the first time this year.

The Section remains committed to an extensive Bridge-The-Gap program, including annual offerings in Northern Virginia, Richmond, and Tidewater and in all other appropriate areas of Virginia. We believe that added emphasis on the ability of localities to tailor the presentations to their individual situations will result in further expansion of the program into the less populated areas of the state.

The Public Relations Committee, under the chairmanship of Section Treasurer Chuck Midkiff of Richmond, has made good progress during its first year. The Committee provided valuable assistance to Association Secretary-Treasurer Ward Sims in connection with publicity for the Summer Meeting at the Homestead. In addition, a statewide network of interested persons is being established to enable the Section to better publicize its many activities through state and local news media. This publicity, we believe, will help improve the public image of lawyers through more general awareness of the many worthwhile activities we conduct which benefit the public.

The Moot Court Committee, under the able leadership of Greg Stillman of Richmond, conducted on October 28-30 in Richmond a most successful Region IV elimination round in the National Moot Court competition sponsored annually by the Association
of the Bar of the City of New York with the assistance of the American College of Trial Lawyers. The competition is an exercise in appellate advocacy testing both brief writing and forensic ability, and involves law schools from every section of the country. Region IV consists of the states of Virginia, West Virginia, Kentucky and North Carolina. The Section was indeed fortunate to host this competition in 1976, having just acted as host in 1974. Please refer for further details to the interesting separate article on the Region IV competition which appears in this issue of the Journal. This Section is proud to act as host for the Moot Court competition, which this year consisted of a total of twenty-two teams representing the four states of the region.

The Law School Liaison Committee, under the effective direction of Bob Powell of Norfolk, has concluded a most successful year which saw more law schools being served by these panel discussions than ever before. The purpose of the panels is to acquaint law students with law practice in Virginia. This year all four law schools in Virginia and six of the seven law schools in the District of Columbia elected to participate in the program. All panels were held in the month of September, ahead of the “interviewing season” at the law schools, and all were well received by the students who attended and placement officials at the various schools. The panels were organized by the following persons: Randy Sutliff (District of Columbia), Michael Montgomery (Marshall-Wythe), David Redmond (Washington & Lee), John Franklin (T. C. Williams) and David Landin (University of Virginia).

The panel discussion that was the best attended was the panel at the University of Virginia. This panel departed from the standard format and limited discussion to the area of criminal law at the suggestion of the university. This specialized presentation together with well coordinated publicity in the form of posters at the law school and announcements in class by the Criminal Law professors produced a standing room only audience of approximately 150 persons. This attendance is in great contrast to the very low attendance at the Charlottesville panel last year. The Section, as previously stated, sponsored a membership social after the panel. In view of the success of this panel, consideration is now being given to more general future use of the Charlottesville format.

The Virginia Lawyer Committee, chaired by Hullie Moore of Richmond, has completed during 1976 another important revision of this useful and informative publication. The chapters on “Domestic Relations,” “Defending a Criminal Case” and “Workmen’s Compensation” have been revised and printed by the Michie Company. A fourth chapter, “Intellectual Property,” is being revised and is expected to be available soon. The Section remains committed to keeping the Virginia Lawyer a current and high quality publication of general use to the Bar.

In addition to his other duties, Section Treasurer Chuck Midkiff has completed another fine year as Editor of Young Lawyers Section contributions to the Virginia Bar Association Journal. Assisted by Edward Barnes of Richmond and Robert Miller of Norfolk, Chuck, working closely with Journal Editor Charles Friend, has contributed a significant amount of material on Section activities, and he and Bob Miller have been responsible for obtaining several articles for the Journal this year. In addition, he and Bob have arranged for some future articles. The post of Editor of Young Lawyer’s contributions to the Journal is one of the most important jobs in the Section, and Chuck Midkiff has performed admirably in this position for several years.

The Williamsburg and Homestead meetings were greatly enhanced by the Section’s programs, social events and sports activities under the general chairmanship of Chairman-Elect Ed Russell of Norfolk. Welly Sanders of Richmond has again performed yeoman service as Section Program and Social Chairman. Welly organized the highly successful panel on the Constitution presented at the Homestead, which was very well attended despite the Friday night scheduling, and has coordinated effectively the panel on “How Lawyers Can Cope With Stress” to be presented in Williamsburg. This panel promises to be most interesting and timely. In addition, Welly has provided us with a second year of top-flight social events. The dance sponsored by the Section at the Homestead meeting was a tremendous success, and enjoyed by all who attended. The plan for Williamsburg is another program of the same high quality, featuring a “name” group and scheduled for Saturday night, January 15. Mark your calendars now and plan to attend. More information will be available soon. Tournaments chairman Eric Adamson of Front Royal performed admirably in organizing and, with the help of his capable assistants, conducting the tournaments at the Homestead. The tournaments were a high point of the Summer meeting.

The ABA/YLS Liaison Committee, under the chairmanship of Ed Russell, has maintained the Sec-
tion’s close and active working relationship with the ABA/YLS. Ed participated as one of the judges in the Award of Achievement Competition in Atlanta (he did not judge our application!), and he has participated along with your Chairman in meetings of the ABA/YLS during 1976. In addition, the Section has maintained a close tie with the ABA/YLS through joint participation in the production and distribution of the Supreme Court film. We are also privileged to have had Dan Piliero, the current Chairman of the ABA/YLS, and his wife, Joyce, join us at the Chairman’s reception in conjunction with the Fall Executive Committee meeting of the Section in Alexandria in September. We intend to maintain this close relationship during 1977.

I believe we have had a most exciting and productive year. None of our accomplishments could have been realized without the initiative, hard work and full cooperation of all my committee chairmen, Executive Committee and officers, Chairman-Elect Ed Russell, Secretary Jim Daniel and Treasurer Chuck Midkiff, all of whom carried out their assigned tasks in a highly commendable fashion. Also, I want to thank all the young lawyers throughout the state who carried out our many projects. Without you, nothing of significance could have been achieved. Finally, I want to thank President Spong, President-Elect Blankingship, Secretary-Treasurer Sims, and the entire Executive Committee of the Association for their assistance and support.

I urge everyone who may be interested in some project or committee, or who has any ideas for improvement of the Section, to write now to C. Edward Russell, Jr., Chairman-Elect, 1710 Virginia National Bank Building, Norfolk, Virginia 23510.

It has indeed been an honor and great pleasure for me to have served as Chairman of the Young Lawyers Section during 1976. It has been a rewarding experience I shall never forget.

Respectfully submitted,

J. ROBERT McALLISTER, III
Chairman

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In Memoriam

William Alexander Stuart
1889-1976

William Alexander Stuart was born October 24, 1889, at Abingdon, Virginia, the first son and child of Judge John J. Stuart and Kate Greenway Preston Stuart. He died on August 10, 1976, at the age of 86.

On April 29, 1922, he was married to Ellen Bodley and they had two children; William A. Stuart, Jr., who operates the family estate in Russell County, and George Rogers Clark Stuart, a prominent attorney practicing in Abingdon.

Mrs. Stuart preceded her husband in death, and both are buried in the Sinking Spring Cemetery in Abingdon, in the Stuart and Preston family plot.

Mr. Stuart was a lifelong member of the Sinking Spring Presbyterian Church and was regular in attendance when in Abingdon, and supported it regularly and was especially generous in supporting it in its capital improvements.

Mr. Stuart attended and graduated from Emory and Henry College and then studied at the University of Virginia and was a Rhodes Scholar at Oxford Uni-
versity. In college he was a member of Beta Theta Pi fraternity and the Raven Society. He was called to the Bar in 1916 and began the practice of law in Big Stone Gap, Virginia, in the firm name of Irvine and Stuart, but soon was appointed Assistant U.S. District Attorney. After a somewhat brief term as such he returned to Abingdon to join the firm of White and Penn, which then became White, Penn and Stuart (now Penn, Stuart, Eskridge and Jones), of which Mr. Stuart was for many years the senior member.

After he moved to Abingdon he confined his practice to civil cases. Mr. Stuart was blessed with a remarkable mental ability and his most prominent characteristic was his thoroughness and determination to do his very best in all his work and his ability to discern the vital issues and principles of the cases he accepted—and he accepted only those cases which he believed in and could honestly argue—and his research of his cases was thorough and complete.

The writer of this memorial became associated with Mr. Stuart in 1924 and thereafter became his partner in the firm name above mentioned until the writer retired from active practice in 1960. It is his belief that Mr. Stuart established a record among the lawyers of Virginia in the number of cases which he had in the Supreme Court of Appeals of Virginia and that he never lost a case in that Court!

He was a public spirited person and took an active part in the life of his community.

He was an active member of the Rotary Club and a member of the Board of Trustees of the Johnston Memorial Hospital and for several years he was the Chairman of that Board; he was a member of the Boards of Emory and Henry College, the Virginia Museum of Fine Arts, Virginia State Library, Virginia Historical Society and the Virginia Public School Authority.

He was a close friend of Robert Porterfield, Founder and Director of Barter Theatre and Mr. Stuart was a strong and forceful backer of Barter Theatre, always ready, able and willing to promote it in many and varied ways.

In the first World War, Mr. Stuart volunteered in the Artillery branch of the service. At the conclusion of the War he was a Major.

Afterwards, he took an active part in the American Legion, serving in various capacities in the local unit and also serving as State Commander.

His reputation as a sound and capable lawyer was recognized by his fellow lawyers, who elected him President of the Virginia Bar Association in 1941.

He was a scholar and student of wide horizons and had accumulated an extensive library, in addition to his law library, covering a wide range of subjects. He spent many hours immersed in his books, accumulating information and knowledge on many subjects.

His passing has left a void among his family, his community and his many friends and acquaintances, which will remain for many, many years.

THOS. C. PHILLIPS
Memorials

The Association notes with deepest regrets the passing of the following members:

Coleman, William P. .......... 1911 - 1976
Coles, Honorable George M. .......... 1911 - 1976
Earp, Thomas Spencer .......... 1919 - 1976
Eggleston, Honorable John W. .......... 1886 - 1976
Fox, Charles D., Jr. .......... 1923 - 1976
Godwin, Wrendo M. .......... 1906 - 1976
Hunton, Eppa, IV .......... 1904 - 1976
Light, Charles P., Jr. .......... 1902 - 1976
Martin, James Drury .......... 1915 - 1976
McCusty, Bernard V. .......... 1921 - 1976
Morison, H. Graham .......... 1906 - 1976
Roberts, Bradley .......... 1908 - 1976
Rogers, Honorable Robert J. .......... 1928 - 1976
Smith, Honorable Herbert G. .......... 1895 - 1976
Spratley, Honorable C. Vernon .......... 1882 - 1976
Stuart, William A. .......... 1889 - 1976
Wolcott, James M. .......... 1894 - 1976