



THE ROCKET DOCKET NEWS

The Newsletter of the Northern Virginia Chapter of the Federal Bar Association

FEBRUARY 2006

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News from the President

On behalf of the Northern Virginia Chapter of the Federal Bar Association ("FBA-NOVA"), I want to wish you all a happy New Year. I hope everyone enjoyed relaxing holidays and had the opportunity to take a break from the pressures of work before starting 2006.

On January 5, 2006, I had the privilege of presenting Don McCoy with a plaque on behalf of the FBA-NOVA at his retirement party honoring his service of more than 30 years as a court reporter for the United States District Court for the Eastern District of

Virginia. As discussed below in the newsletter, the reception was attended by almost all of the judges in the courthouse, including the Honorable Albert V. Bryan, Jr., who came to the courthouse especially for this event. Don was a reliable friend and calming presence in the courtroom for many years and will be greatly missed. We wish him all best in his well-deserved retirement.

I also would like to take this opportunity to pay tribute to my boss, friend and mentor, Frank W. Dunham, Jr., upon his retirement as Federal Public Defender for the Eastern District of Virginia. Frank devoted almost all of his career to the practice of law in the Eastern District of Virginia. After graduating first in his class from Catholic University School of Law, Frank worked as a judicial law clerk for the Honorable Oren R. Lewis. He often recounted stories about Judge Lewis' courtroom, and Frank's unflappable demeanor in court was, I think, in large measure the result of lessons learned during his clerkship. Frank remained in the Eastern District of Virginia for the next seven years as an Assistant United States Attorney and left for private practice after successfully trying some of the most complex and challenging cases of that time period, including the case of *United States v. Humphrey*, an espionage case involving the use of warrantless foreign intelligence wiretaps in criminal prosecutions, a topic which remains very much in the news today.

Frank spent 23 years in private practice at Cohen, Gettings & Dunham, P.C. practicing white-collar criminal defense and civil litigation. I had the honor of working with him there for six years before he was selected by Judge J. Harvie Wilkinson, III, to be the first Federal Public Defender for this district. Frank's accomplishments as Federal Public Defender are too numerous to address here. During the five years he served in this position, Frank was responsible for establishing three offices from scratch and supervising 24 attorneys and 24 staff members who handle more than 2000 cases per year. In addition, he personally argued two cases before the United States Supreme Court, including *Hamdi v. Rumsfeld*, the enemy combatant case which established the rights of U.S. citizens to seek meaningful judicial review of Executive Branch decisions to declare them enemy combatants. He also found time to act as one of the lead counsel in the *Moussaoui* case.

In addition to the accomplishments noted above, Frank was a Past President and loyal supporter of the FBA-NOVA. He delivered a fascinating and humorous speech for the Torrey Armstrong Memorial Lecture in 2004, one of dozens of lectures he gave around the country over the past five years addressing some of the most compelling and high-profile topics in constitutional and criminal law. As a colleague, a lawyer, and a bar leader, Frank has brought good-humor, wit, creativity, and integrity to the practice of law in this district for more than 35 years. We owe him an enormous debt of gratitude for his contributions to this organization, to the defense bar, and to the entire legal community.

Finally, I would encourage you all to attend the upcoming FBA-NOVA CLE on Wednesday, March 1, 2006 from noon until 2:00 p.m. at the Army Navy Country Club in Arlington, Virginia. The topic will be *Daubert* hearings, and we are extremely fortunate to have the Honorable Gerald B. Lee speaking along with the Honorable Royce Lamberth from the District of Columbia and Anthony Trenga of Miller & Chevalier. You will find more information about the program in the newsletter. I am confident that this will be an interesting and useful program, and I hope to see you there.



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Members of the Northern Virginia Chapter are encouraged to submit articles or news information of interest to other members of the Northern Virginia Chapter for possible publication in the Rocket Docket News. Please submit any proposed articles or news information to the Editors at the telephone numbers and e-mail addresses listed above. The Editors reserve the right to decide on publication, and any articles accepted for publication are subject to editing.

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Eastern District Honors Don McCoy on his Retirement

On January 5, 2006, a reception was held in the jury assembly room of the United States District Court for the Eastern District of Virginia to honor Don McCoy who has retired after a lengthy career as a court reporter. The event was officiated by Norman Linnell who provided the audience with an amusing account of Don's accomplishments. The reception was well attended by Don's family, past and prior court employees, attorneys who practice frequently before the Court, and most of the current Judges in this District. Judge Bryan, looking very relaxed and happy in his retirement, returned for the event.



Don began his career as a court reporter at the age of seventeen after graduating from high school. Except for a two-year "leisure tour" (as described by Norman Linnell) with the Marine Corps, Don has been continuously employed as a court reporter. Following his discharge from the Marines in 1965, Don became a freelance court reporter. In 1967, he opened his own company, McCoy Court Reporting which he operated until he joined the United States District Court for Eastern District of Virginia. He first worked for Judge D. Dorch Warriner in Richmond, Virginia until a position became available in Alexandria with Judge Bryan. He worked with Judge Bryan until Judge Bryan took senior status. Don transferred briefly to work with Judge Brinkema and then returned to work with Judge Bryan until his retirement. He ended his career with this Court working with Judge Cacheris.

We will all miss Don's soothing demeanor in the courtroom and his inability to hide that little smile that would sneak out during a funny moment in court. His constant reminder, stamped on the paper pad on his desk, "please do not mumble," assisted us all in remembering to speak into the microphone and to stay behind the podium before a court security officer or the judge reminded us. Don will be missed greatly both because of his professionalism and his kindness. We wish him luck in his retirement.





March 1, 2006 Daubert CLE Program and Other Upcoming Events

There are several important upcoming events, including an interesting program next week with two of the most respected district court judges in this area.

On March 1, 2006, from 12:00-2:00 p.m. at Army-Navy Country Club in Arlington, Virginia, the Northern Virginia and D.C. Chapters of the Federal Bar Association will co-host a CLE program entitled "Judicial Perspectives on Daubert in D.C. and Virginia Federal Courts." The Chapters are honored to have, as panelists, Judge Royce C. Lamberth of the federal district court in Washington, D.C. and Judge Gerald B. Lee of the federal district court in Alexandria, Virginia. Anthony J. Trenga, Esq. of Miller & Chevalier Chartered will serve as moderator. CLE approval is pending, and space is still available. After February 24, 2006, persons wishing to attend should contact Board member, Attison L. Barnes, III, Esq., at (202) 719-7385 or abarnes@wrf.com.

On March 17-18, 2006, the Federal Bar Association will hold its Mid-Year Meeting in Washington, D.C. Detailed information and registration materials are available at the FBA's website, www.fedbar.org.

On April 7, 2006, at the federal courthouse in Alexandria, Virginia, the Northern Virginia Chapter will host the annual "Introduction to the Courthouse" program for new admittees to the Virginia Bar and the federal court. Thanks to significant time and effort from the judges, clerks, marshals and staff of the Court, as well as members of the Northern Virginia Chapter, this program is very useful and informative. Please let interested persons in your firms, offices and associations know about the program. Additional information is available from the

Chapter's president, Michael Nachmanoff, Board member, Attison L. Barnes, III, as well as other members of the Chapter's Board.

Additional CLE programs are being planned, including a Bench-Bar Dialogue program with the Magistrate Judges in May 2006 and a possible program on the False Claims Act, the Procurement Fraud Task Force and other procurement-related issues. Please watch the Chapter's website and your e-mails for specific dates and further details regarding future programs. In the meantime, if you have any questions or issues that you think would be appropriate for discussion with the Magistrate Judges at the Bench-Bar Dialogue program, please e-mail your suggestions to Board member, Jack Coffey, at jcoffey@reedsmith.com.

Traffic Restrictions Resulting from Moussaoui Hearing

The highly-publicized sentencing phase in U.S. v. Moussaoui began on February 6 and will likely continue until May. During that time, several streets near the federal courthouse in Alexandria will be closed to vehicular traffic from approximately 6 a.m. to 6 p.m. on days when proceedings are held in the case. A map of the closed streets and regular case schedule updates are available at <http://www.vaed.uscourts.gov>.

McNulty Nomination Update

On February 2 and 16, 2006, the Senate Judiciary Committee held hearings on President Bush's nomination of Paul J. McNulty to serve as U.S. Deputy Attorney General. At the February 16 hearing, the Committee voted in favor of the nomination, which has now been placed on the Senate calendar for a full vote. No specific date, however, has been scheduled, as of this publication.

The Federal Bar Association's
Mission Statement:

"The mission of the Association is to advance the science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession."

For more information regarding the Federal Bar Association and its activities, please contact the Federal Bar Association at its national offices:

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SPOTLIGHT

Brian Hooper



Brian has been a resident of northern Virginia since moving to the area three years ago. A native of southern California, Brian earned his B.A. in American Studies from Washington and Lee University, his M.Phil in Literary Studies from the Chinese University of Hong Kong, and his J.D. from Harvard Law School. Before law school, Brian

worked as an Aide to Legislative Councilor Martin Lee (Lee Chu-Ming), Chair of the Democratic Party of Hong Kong. While attending Harvard, Brian served as Deputy Editor-in-Chief of the *Harvard Journal of Law & Public Policy* and President of the Harvard Federalist Society.

Following graduation, Brian clerked for the Honorable David B. Sentelle, U.S. Court of Appeals for the District of Columbia Circuit from 2003 to 2004. Today, Brian is a third-year associate at Wiley Rein & Fielding, LLP in Washington, D.C., where he represents clients in the areas of litigation, appellate litigation, communications, and government affairs. In addition to litigating complex federal jurisdiction, preemption, and state-law issues raised in ongoing state and federal litigation and appeals, Brian advises corporations in ongoing disputes arising from government contracts, including those related to the reconstruction effort in Iraq. Brian also counsels clients on compliance with the Ethics in Government Act, the Lobbying Disclosure Act, and state government ethics rules.

After joining the Federal Bar Association, Brian most recently helped organize the FBA program "Judicial Perspectives on *Daubert* in D.C. and Federal Courts." In addition to his participation with the FBA, Brian serves on the Executive Committees for the Federalist Society's Corporations (2002 - present) and International and National Security Law (2003 - present) practice groups, is a member of the American Society of International Law, serves on the national Membership Committee of the American Society of Legal Writers (Scribes), and serves as President of the Washington and Lee University D.C. Alumni Board. Brian lives in Arlington.

Recently Reported Opinions

In this and subsequent issues, *Rocket Docket News* will highlight selected decisions from the Eastern District of Virginia. If you know of any recent court decisions, whether reported or not, that might be of interest or use to fellow Chapter members, please send copies of the decisions (or summaries) to the Editors, as follows: Charles F.B. McAleer, Jr. (cmcaleer@milchev.com) or Rebecca L. Saitta (rsaitta@wrf.com).

In re BearingPoint, Inc. Securities Litigation, 2006 U.S. Dist. LEXIS 1718 (E.D. Va. Jan. 17, 2006) (Alex. Div.). Court certifies class of "[a]ll persons or entities who purchased or otherwise acquired the securities of BearingPoint between August 14, 2003 and April 20, 2005 and who were damaged thereby." Court also appoints class representative and class counsel.

America Online, Inc. v. Smith, 2006 U.S. Dist. LEXIS 4813 (E.D. Va. Jan. 24, 2006) (Alex. Div.). Court grants summary judgment against defendant because he "willfully used Plaintiff's computers and computer network with the intent to obtain computer services 'without authority,' as that term is defined in [the Virginia Computer Crimes Act, Va. Code § 18.2-152.2], by transmitting [unsolicited bulk e-mail] messages in contravention of the authority granted by Plaintiff and in violation of Plaintiff's UBE Policy."

Lewis v. City of Virginia Beach Sheriff's Office, 2006 U.S. Dist. LEXIS 1543 (E.D. Va. Jan. 17, 2006) (Norfolk Div.); *Cameron v. Potter*, 2006 U.S. Dist. LEXIS 3217 (E.D. Va. Jan. 10, 2006) (Alex. Div.); *Cuffee v. Tidewater Community College*, 2006 U.S. Dist. LEXIS 1541 (E.D. Va. Jan. 17, 2006) (Norfolk Div.); *Johnson v. Metropolitan Washington Airports Authority*, 2006 U.S. Dist. LEXIS 4814 (E.D. Va. Jan. 24, 2006) (Alex. Div.). In four unrelated cases, and on dispositive motions, Court dismisses employment discrimination cases.

Tao of Systems Integration, Inc. v. Analytical Services & Materials, Inc., 2006 U.S. Dist. LEXIS 3139 (E.D. Va. Jan. 23, 2006) (Newport News Div.). In a case involving claims and counterclaims for trade secret misappropriation and Lanham Act violations, Court denies parties' competing bills of costs because there was no prevailing party.

The Christian Broadcasting Network, Inv. v. Busch, 2006 U.S. Dist. LEXIS 1868 (E.D. Va. Jan. 9, 2006) (Alex. Div.). In declaratory action filed after a "parallel" Texas action asserting claims for alleged misappropriation of personal image and violation of right to publicity, Court holds that personal jurisdiction exists over defendant but, under the "first-filed" rule, grants motion to stay pending Texas court's determination of proper venue.



Recently Reported Opinions (continued)

A.T. Massey Coal Co. v. Rudimex GmbH, 2006 U.S. Dist. LEXIS 1882 (E.D. Va. Jan. 9, 2006) (Richmond Div.). In a dispute over an alleged sale of coal supplies, Court denies motion to dismiss contract claim arising under the U.C.C., finds no personal jurisdiction over corporate office of defendant-company under “fiduciary shield doctrine,” dismisses actual and constructive fraud claims under “economic loss” rule and confirms that Virginia does not recognize tort of negligent misrepresentation.

BP Products North America, Inc. v. Dagra, 2005 U.S. Dist. LEXIS 27452 (E.D. Va. Nov. 8, 2005) (Richmond Div.). Court grants motion for alternative service pursuant to Fed. R. Civ. P. 4(f)(3), permitting plaintiff to serve defendant through an attorney who is currently and actively representing defendant in another lawsuit pending before the Court.

Harper Hardware Co. v. Powers Fasteners, Inc., 2006 U.S. Dist. LEXIS 3821 (E.D. Va. Jan. 17, 2006) (Richmond Div.); *Eplus Technology, Inc. v. National Railroad Passenger Corp.*, 2005 U.S. Dist. LEXIS 40214 (E.D. Va. Nov. 28, 2005) (Alex. Div.). In separate cases, Court grants Rule 12(b)(6) motions and dismisses U.C.C. and tortious interference claims. In *Harper Hardware*, Court also dismisses claim for statutory business conspiracy.

Aventis Pharma Deutschland GmbH v. Lupin, Ltd., 2006 U.S. Dist. LEXIS 2612 (E.D. Va. Jan. 18, 2006) (Norfolk Div.). In patent infringement action, Court grants Rule 12(c) motion on plaintiffs’ willful infringement claim and dismisses claim without prejudice “to the Court’s ability to consider the ‘totality of circumstances’ should the Court determine [the case] is an ‘exceptional case’ and fees are merited pursuant to 35 U.S.C. § 285 as the conclusion of [the case].”