



SENIOR LAWYER NEWS

Volume 19—Issue 1

Summer 2009

Frank O. Brown Jr., Editor

NEAL J. PATTEN • A Remembrance

by Donald Patten

MY FATHER, NEAL J. PATTEN retired senior partner with the law firm of Patten, Wornom Hatten and Diamonstein in Newport News, VA, died on May 20, 2009. He was 92.

He received his undergraduate and legal education at the University of Richmond and was admitted to the Virginia State Bar in 1941. He returned to Newport News that year and worked in the local shipyard during the war years. After the war, he associated with the notable law firm of Murray, Ford, West and Wilkinson. In 1949 he established his own law practice and in 1953, along with his lifelong friend and partner I. Leake Wornom Jr., formed Patten and Wornom, the predecessor to Patten, Wornom Hatten and Diamonstein.

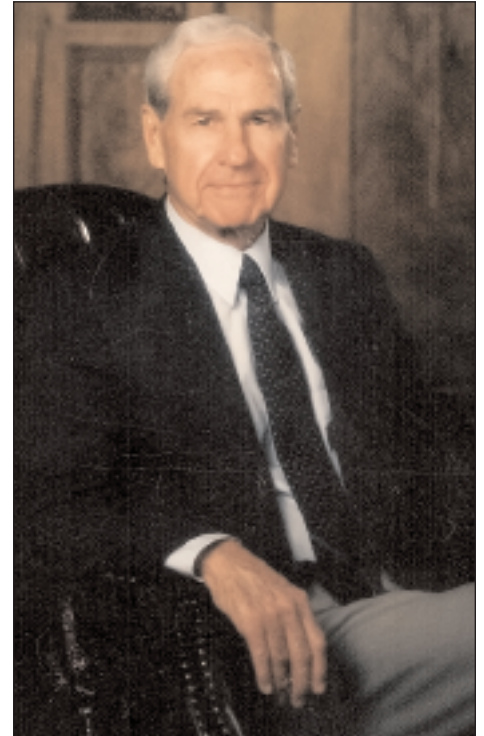
Dad served as an associate judge for the Municipal, Juvenile and Domestic Relations Courts for the City of Newport News from 1953 to 1961 and was a Commissioner in Chancery in the Circuit Court of Newport News from 1963 to 1995. He was a former president of the Newport News Bar Association and was a retired member of the Virginia and American Bar Associations, and the Virginia Trial Lawyers Association.

Dad loved the law and he loved being a lawyer. He did not consider himself a specialist, although in his earlier years, he did develop a reputation for his expertise in personal injury and condemnation cases. Rather, he preferred to be thought of as a general practitioner

of the law. He was comfortable as an advocate representing one of the opposing parties in a criminal or civil trial, as an advisor and counselor to business clients, or as a real estate attorney helping a young couple buy their first home.

He always had the ability to see the big picture in any transaction, yet when the occasion required, he could be relentless in his attention to preparation and detail. Young attorneys under his tutelage, of which I was one, will not likely forget his advice as to the three most important things to remember in trying a lawsuit - preparation, preparation and preparation. His legal skills in and out of the courtroom were superb.

Dad always considered it a privilege to be able to serve the citizens of his community both as a jurist and as a lawyer. He had a sense of justice in the highest traditions of our profession. He understood human frailties and he was passionate in his belief that we as lawyers have a responsibility to serve our society and to help those who are unable to help themselves. He always saw his mission as a way to help people. He was instrumental in the organization and incorporation of Mary Immaculate Hospital in 1952 and served as its general counsel for many years. He was active in various civic organizations, including the Catholic Home Bureau, the Junior Chamber of Commerce and the Community Chest. In the 1950's, he served on the Virginia Milk Commission.



On a personal note, I had a very special relationship with my father. We spent our lives together. My office was always a few steps from his. We worked on legal projects together, went to court together, lunched together, and pursued our passions together. He was my mentor, my boss, my partner, and most of all, my friend. He taught me that our clients are not just file numbers but are real people: people who should and do become our friends. He taught me that, not only are their causes important, but so are their lives, their health and their families. These are the values that we share at our law firm today, and we are all better for it.

[continued on page 2]

Senior lawyer Mortimer Caplin receives two prestigious awards

Mortimer Caplin, age 92, a member of the VSB Senior Lawyers Conference, and a founding partner of the firm of Caplin & Drysdale, was made a Chevalier of the French Legion of Honor (France's highest civilian award). On March 2, 2009, the award was presented to Mr. Caplin at the French Embassy in Washington, D.C. by French Minister of Defense Herve' Morin, and it recognizes Mr. Caplin's service as a U.S. Navy Beach Master during the D-Day Invasion at Omaha Beach during World War II. On June 6, 1944, Mr. Caplin, then a Navy lieutenant, was just offshore on a U. S. Navy vessel supporting the landing forces. On June 7, 1944, Mr. Caplin came ashore and his unit's responsibilities included taking care of the wounded and dead, opening lanes for landing craft, repairing damaged boats, engaging in all ship-to-shore communications, and clearing the beaches of battle debris in preparation for the follow-on invasion forces. Chevalier is the highest rank among Legion of Honor awardees. The Legion of Honor was created by Napoleon in 1802 to acknowledge services rendered to France by persons of great merit. The French Ambassador to the United States, Francois Rivasseau, wrote to Mr. Caplin, "The French people will never forget your courage and your devotion to the cause of freedom."

Mr. Caplin was also named as a 2009 Brennan Award Recipient by the University of Virginia's National Trial Advocacy College. The award was established in 1987 in honor of United States Supreme Court Justice William J. Brennan, Jr.. Mr. Caplin was recognized for his invaluable contributions to trial advocacy and the legal profession.

Mr. Caplin is well-known for his years of professional and public service, and for his philanthropic interests. He has served as Professor of Tax Law at the University

of Virginia Law School, and as Commissioner of Internal Revenue from 1961 to 1964. He has served on the boards of the American Bar Foundation, the University of Virginia Board of Visitors, the University of Virginia Law Foundation, and the University of Virginia Miller Center for Public Affairs. He is also the recipient of the University of Virginia's Thomas Jefferson Medal in Law, one the University's highest honors.

"These awards reflect values I've always held dear, such as an unwavering commitment to excellence and public service," Mr. Caplin said. He has certainly set high standards for the profession.



French Defense Minister Morin pinning the French Legion of Honor medal on Mr. Caplin's lapel.

[continued from page 1]

Dad was an active member of the Virginia State Bar for more than 60 years. For all those years, he was respected for his competence, his judgment, his honesty, his integrity and his upright character. He was always dignified, always courteous and always a gentleman. He has left an enduring legacy for future generations of lawyers in Virginia.

ABOUT THE AUTHOR:

Donald Patten is a Senior Lawyer and is a partner in the law firm of Patten, Wornom, Hatten and Diamonstein in Newport News, Virginia.

Members of the Senior Lawyers Conference receive awards in 2009



Family Law Lifetime Achievement Award 2009 Professor Peter N. Swisher

Peter N. Swisher, a member of the VSB Senior Lawyers Conference, a professor of law at the University of Richmond, and a contributor to the development of family law in Virginia, is the 2009 recipient of the Lifetime Achievement Award by the Virginia State Bar's Family Law Section. The award

recognizes persons who have demonstrated excellence and integrity and have made a substantial contribution to the practice of family law in Virginia. The award was presented during the Family Law Section's annual Family Law Seminar on April 24, 2009, in Richmond.

Tradition of Excellence Award 2009 — Judge Marilyn C. Goss

Judge Marilyn C. Goss of the Richmond Juvenile and Domestic Relations District Court has been named the 2009 recipient of the Tradition of Excellence Award by the Virginia State Bar's General Practice Section. The award recognizes more than a quarter century of practice representing Virginia's indigent as an attorney for the Central Virginia Legal Aid Society, before she went on the bench in 2008. Judge Goss becomes a member of the Senior Lawyers

Conference in 2009. The Tradition of Excellence Award recognizes a lawyer who embodies the highest tradition of personal and professional excellence and who has benefitted a community and enhanced the esteem of general practice attorneys in Virginia. It will be presented by the General Practice Section on June 20, 2009, at the Virginia State Bar Annual Meeting in Virginia Beach.



Lewis F. Powell, Jr. Pro Bono Award 2009 Clarence M. Dunnville, Jr.

Clarence M. Dunnville Jr., Richmond attorney and a member of and former Board of Governors member of the VSB Senior Lawyers Conference, whose civil rights work led him from protest demonstrations in

the 1950s, to preserving the legacies of the movement's leaders and continuing courtroom battles on behalf of disenfranchised people in the 21st century, has been awarded the 2009 Lewis F. Powell Jr. Pro Bono Award by the

Virginia State Bar. The award is bestowed by the VSB's Committee on Access to Legal Services to recognize dedication to development and delivery of pro bono services that benefit poor and underserved persons in Virginia. The award was named for the late U.S. Supreme Court Associate Justice from Richmond, Lewis F. Powell, Jr..

In February 2009, VSB President Manuel A. Capsalis also presented Dunnville with a special VSB President's Award in recognition of his many contributions to the legal profession in Virginia. The Powell Award was presented during the VSB's Pro Bono and Access to Justice Conference on April 20, 2009, in Richmond.

TRIAD and Senior Law Day Programs

The Senior Law Day Programs and TRIAD are outstanding examples of efforts being made by lawyers and law enforcement agencies for the benefit of our senior citizens.

by Frank Overton Brown, Jr.

TRIAD is a cooperative effort of law enforcement agencies (police/sheriffs), senior citizens, senior organizations, and other providers, focused on reducing crimes against our elderly citizens. TRIAD was begun in 1988 as a partnership by the American Association of Retired Persons (AARP), the International Association of Chiefs of Police (IACP), and the National Sheriffs' Association (NSA). TRIAD means a three-way commitment among law enforcement, senior citizens, and service providers to work together to reduce the criminal victimization of the elderly and to enhance the delivery of law enforcement services to older persons. Virginia TRIAD's motto is "Reducing Crime Against The Elderly." A major purpose of TRIAD is to develop, expand and implement effective crime prevention and education programs for older community members. Activities center on both pre-victimization (preventive) and post-victimization (victim/witness assistance) aspects. Among the goals of TRIAD are to reduce the fear of crime and victimization among senior citizens: by increasing awareness of scams, frauds and other crimes tar-

getting them; by strengthening communications between law enforcement communities and seniors; and by educating seniors about local and state resources that are available in their communities. Virginia has a statewide coordinating office in the Office of the Attorney General of Virginia, and Virginia has the highest number of active local groups in the United States, with more than 225 cities, counties and towns being covered by signed TRIAD agreements and programs. For more information and to locate the TRIAD program in your community, go to:

www.oag.state.va.us/Consumer/TRIAD/index.html.

In addition, Virginia's TRIAD Handbook may be found at:

www.oag.state.va.us/CONSUMER/TRIAD/TRIAD_Handbook.pdf.

Senior Law Day Programs are based upon a format developed by Past Senior Lawyers Conference Chair William T.



Frank Brown addressing the meeting in Prince George County.

Wilson, who planned and implemented the first program with the Alleghany-Bath-Highland Bar Association in Covington. Since then, the programs have been successfully presented all over the Commonwealth and continue to be presented. As Bill Wilson has said, "In my judgment, the programs are 'win-win-win.' The senior citizens win because they are receiving information about legal issues affecting their lives which they otherwise might not receive. If you have been present for or have participated in one of these programs, you know how attentively and appreciatively the senior citizens receive the program and how interested they are in the subject matter. The program is also a 'win' for the lawyers and their bar associations because it is impossible to be a part of one of these programs and not see the enormous good that is being accomplished. To be able to give information to senior citizens and know that they are receiving information vital to their well-being is a rewarding and professionally satisfying thing to do. The program is also a 'win' because it raises the image of the lawyers, the legal profession, and the bar associations in the eyes of the public." The purpose of the Senior Law Day Programs is to provide senior citizens with important information about their legal rights and responsibilities on a wide variety of topics of interest to senior citizens, such as Social Security, SSI, Pensions, Veterans' Benefits, Railroad Retirement Act Benefits, Food Stamps, Federal Tax Relief, Real Estate Tax Reductions for the Elderly, Medicaid, Medicare, Medigap and Medicare Supplemental Insurance, Long-Term Care Insurance, Nursing Homes, Assisted Living Facilities, Adult Day Care, Home Care, Continuing Care Retirement Communities, Landlord-Tenant Issues, Rental Assistance, Reverse Mortgages, Divorce and the

Elderly, Estate Planning and Probate, Advance Directives, Powers of Attorney, Guardianships, Funeral Services, Protection of Legal Rights, Age Discrimination, Grandparental Visitation Rights, Elder Abuse, Alternative Dispute Resolution, and Agency Contact information. The "blueprint" for this program (which is built around the Senior Citizens Handbook) can be obtained by calling Mrs. Patricia Sliger, VSB Liaison, at (804) 775-0500.

Cooperative efforts between TRIAD organizations and Senior Law Day Programs can result in a synergism which magnifies the benefits to our Senior Citizens.

On May 28, 2009, I had the privilege of participating in the Prince George County TRIAD meeting and of presenting a mini Senior Law Day Program, titled "Getting Your Personal Affairs In Order". The meeting was coordinated by Prince George County Sheriff H. E. (Bucky) Allin, and was hosted by and held at Unity Baptist Church on Mt. Sinai Road in Prince George. My participation was arranged by Prince George County Senior Lawyer Carol Dois Woodward, who will coordinate a full scale Senior Law Day Program at a future Prince George County TRIAD meeting. At the May 28 meeting, which was very well-attended, copies of the 2009 edition of the Senior Citizens Handbook were distributed to the attendees who were oriented on the contents of the Handbook and were told of the upcoming full Senior Law Day Program being coordinated by Carol Woodward. My presentation covered the Basics of Estate Planning, including protecting yourself against being taken advantage of, protecting your own best interests, Wills, Durable General Powers of Attorney, Durable Health Care Powers of Attorney,



An attendee reading the revised 2009 Senior Citizen's Handbook.

Advance Medical Directives, and the importance of getting your personal affairs in order with the assistance and advice of a lawyer. There was a good question and answer period at the end of my program.

As local bar associations continue their plans to present Senior Law Day Programs to Senior Citizens in our communities, I recommend cooperative efforts with the TRIAD Programs in those communities, in order to complement and to enhance the outreach to our Senior Citizens.

ABOUT THE AUTHOR:

Frank Overton Brown, Jr. is Past Chair of the VSB Senior Lawyers Conference and practices law in Henrico County, Virginia.

GRANDPARENT VISITATION RIGHTS

by Andrew H. Hook, CELA, CFP

The relationship between a grandparent and a grandchild can be one of great joy and importance for both grandparent and youngster. But sometimes an event such as a parent's death, divorce or estrangement can tear families apart, and alter or sever relationships. After such events, the child's parents or guardian may block any further contact with grandparents, who may then take legal steps to maintain contact with the grandchildren they love.

As such situations became increasingly common, in the 1970s state legislatures began enacting "grandparent visitation" statutes to protect the visitation rights of grandparents and other caretakers. Today, all 50 states have some type of grandparent visitation law. These statutes allow grandparents to ask a court to give them the legal right to maintain their relationships with their children's children. Visitation statutes, however, do not give a grandparent an absolute right to visitation, and the laws vary widely from state to state on crucial details such as who may petition for visitation rights, under what circumstances a grandparent may file such a petition, and on what legal grounds the petition will be granted.

States differ on the extent to which parents have a right to control their children's upbringing. Some states have viewed visitation by grandparents as only a small infringement on the right of a parent to raise a child. These states focus on what is in the "best interest of the child" in making decisions about whether or not to allow grandparents to visit. In these "permissive" states, even unrelated caretakers can often petition for visitation rights, and grandparents can seek visitation even in cases where the family is intact (i.e., there has not been a divorce or a death in the family). In these states, courts may award grandparents visitation rights even if the parents object. Other states are more protective of a parent's right to decide what is best for the child. These states have "restrictive" visitation statutes, meaning that generally only grandparents, not other caretakers, have visitation rights, and these rights may be pursued only if the child's parents are divorcing, one or both parents have died, or the child was born out of wedlock. In other words, in these states the parents in intact families have the final word on whether or not grandparents are allowed to visit. Still, the "best interest

of the child" is the legal standard in most states for determining whether grandparents should be granted visitation.

There are no firm rules for determining when a court will grant visitation; every case is decided on its own facts and merits. Grandparents, however, can take steps to improve their chances of gaining visitation rights. In deciding visitation cases, courts often consider the previous relationship between the grandparent and grandchild, and they look favorably on evidence of a consistent and caring relationship. For this reason, a grandparent should try to build a meaningful relationship with a child from the outset. If the child's parent rejects the grandparent's efforts to visit, the grandparent should keep a record of the grandparent's attempted contacts and continue to make a reasonable effort to preserve the relationship with the grandchild, like sending gifts and cards. When it comes time to meet with an attorney, grandparents should have documentary evidence and names of witnesses to support their claim that visitation is in the best interest of the child.

The Virginia Code specifically names grandparents as persons with a "legitimate interest" in custody and visitation cases. The Virginia Code requires the court to give "primary consideration to the best interests of the child," and sets a higher standard of proof for persons other than parents, by providing that: "the Court shall give due regard to the primacy of the parent/child relationship but may upon a showing by clear and convincing evidence that the best interests of the child would be served thereby award custody and/or visitation to any other person with a legitimate interest." The Virginia Code sets out ten factors that the court must consider in determining custody and visitation, and does not give grandparents a legal right to visit a grandchild, but a right to petition for visitation.

In June 1998, the Supreme Court of Virginia, in the decision of *Williams v. Williams*, denied parental grandparents' visitation with their granddaughter that was opposed by both of the child's parents. The court affirmed the decision of the lower court that the right of parents in raising their children is a fundamental right protected by the United States Constitution. The court held that "...before visitation can be ordered over the objection of the child's parents, a

court must find an actual harm to the child's health or welfare without such visitation. A court reaches consideration of the best interests standard in determining visitation only after it finds harm if visitation is not ordered."

In May 1999, the Court of Appeals of Virginia, in the decision of *Dotson v. Hylton*, granted the paternal grandmother visitation with her granddaughter. The visitation was favored by the child's father, but was objected to her by her mother. The significant difference in facts between the *Williams* decision and the *Dotson* decision was that in the *Dotson* decision one of the parents favored the visitation. Where both of the living parents of a child object to visitation, the Virginia courts require that a grandparent show actual harm to the child without visitation. This is a restrictive standard.

One way to avoid a court battle is to try professional mediation. In mediation, the disputing parties engage the services of a neutral third party to help them hammer out a legally binding agreement that all concerned can live with. The disputing parties can control the process, and they have a chance to explain their perspectives and feelings. In a court, on the other hand, the judge will ultimately make a decision based on laws that may seem unfair to one or both sides.

ABOUT THE AUTHOR:

Andrew H. Hook is an Attorney at Law and Shareholder in the law firm of Oast & Hook, P.C., in Portsmouth, Virginia, concentrating in Elder Law.

PROJECT 2025: ENHANCED ACCESS TO LEGAL ASSISTANCE FOR OLDER AMERICANS IN VIRGINIA

Virginia Department for the Aging/Virginia Poverty Law Center FREE Elder Law CLE Programs

In the Summer and Fall of 2009, as part of Project 2025, the Virginia Poverty Law Center will be presenting, at no charge to attendees, four CLE programs to lawyers who commit to handle for the elderly on a pro bono basis, either three drafting cases (wills, powers of attorney, advance medical directives) or one nursing home transfer/discharge case, working with a local Legal Aid Organization.

For more information, including dates and locations of the CLE Programs, contact the Project Coordinator: Robert Gardner, MPA, Virginia Poverty Law Center, 700 East Franklin St., Suite 14T1, Richmond, VA 23219, Tel: (804) 782-9430, Ext. 32; Fax: (804) 649-3746, e-mail: Robert@vplc.org. Your help is greatly needed.

VISIT THE SENIOR LAWYERS CONFERENCE WEB SITE

The Senior Lawyers Conference has updated its web site in an effort to continue to serve our membership of 13,473 lawyers, 55 years of age and older, who focus on issues of interest to senior lawyers and promotion of the welfare of senior citizens, as well as provide resources for the public.

The new SLC site has a number of benefits including faster page loading and automated expiration for time-sensitive items. Please take a look at <http://www.vsb.org/site/conferences/slc/>.

**NEW
WEB SITE**

Protecting your and your clients' interests in the event of your disability, death or other disaster



Photo 1: Luray

On behalf of the VSB Senior Lawyers Conference, Frank O. Brown, Jr., Esquire presented his Ethics Program, "Protecting Your And Your Clients' Interests In The Event Of Your Disability, Death Or Other Disaster" in Luray on March 26, 2009, arranged by the Page County Bar Association for lawyers in their geographic region (see photo 1), in Abingdon on March 31, 2009, arranged by the Smyth County Bar Association for lawyers in their geographic region (see photo 2), and in Harrisonburg on May 13, 2009, arranged by the Harrisonburg/Rockingham County Bar Association for lawyers in their geographic region (see photo 3).



Photo 2: Abingdon



Photo 2: Harrisonburg

If your bar association wishes to have Frank Brown's program presented to your members, please call Patricia Sliger, VSB SLC Liaison, at (804) 775-0500. Frank presents this program at no charge to local and specialty bar associations, and it may be presented as a one hour, one and one-half hour, or two hour program, all of which qualify for full MCLE ethics credit.

Now available online: the 2009 Edition of The Senior Citizens Handbook

The Senior Citizens Handbook is a resource for seniors, their families, and their caregivers to provide an overview of and contact information for opportunities and choices facing senior citizens today.

<http://www.vsb.org/docs/conferences/senior-lawyers/SCHandbook09.pdf>

Updated and completely revised, the Senior Citizens Handbook guides seniors with a summary of how specific laws affect Virginia's elder citizens and practical advice on issues facing seniors today with extensive resources, opportunities, and services available to senior citizens.

Opportunities for seniors? It's all right here.

Programs presented by the Senior Lawyers Conference utilizing the Senior Citizens Handbook are available to the public. For more information, to schedule a program, or to order copies of the Senior Citizens Handbook please call (804) 775-0576.

Production of the Senior Citizens Handbook is made possible in part with the generous support of the Virginia Law Foundation.

