



# *Fed Tide*

November 2015

The Newsletter of the Hampton Roads Chapter of the Federal Bar Association

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## **PRESIDENT'S FAREWELL MESSAGE**

*Mark Warmbier, Staff Attorney, U.S. District Court*

Welcome to the Fall 2015 edition of the *Fed Tide*! As another year draws to a close and we prepare to usher in our new Chapter leaders, I wanted to thank a number of folks who helped to make this year so successful.

First, thank you to those who graciously agreed to serve as guest speakers at our luncheons. This year, we were fortunate enough to hear from some outstanding speakers, including Dean Davison Douglas of William & Mary Law School, the Honorable Raymond A. Jackson, and the Honorable Roger L. Gregory.

Next, thank you to my fellow Board Members: Erin Ashcroft, Susan Blackman, John Gardner, Robert Stenzhorn, and Lauren Tallent Rogers. This year was jam packed with luncheon events, a Chapter name change, bylaw amendments, training programs, an attorney admission ceremony, and various courthouse events. The hard work of our Board Members certainly paid off, as FBA National recently awarded our Chapter with a 2015 Chapter Activity Presidential Achievement Award. It has truly been a pleasure working with each Board Member to coordinate this year's activities.

A special thank you also goes out to our newsletter editors, Lauren Tallent Rogers and Katie Dougherty. In addition to our standard *Fed Tide* newsletters, Lauren and Katie also coordinated a special edition newsletter this year in honor of the retiring Magistrate Judge Tommy E. Miller. Once again, Lauren and Katie's efforts were recognized by FBA National, who awarded the *Fed Tide* a 2015 Meritorious Newsletter Award.

Finally, thank you to our local judges and court personnel. Our Chapter is so appreciative of your active support of – and participation in – our events, year after year.

I take great pride in this organization. It has been honor to serve as our Chapter President this year and I am excited for what your Incoming President, Erin Ashcroft, has in store for next year.

All the best – **Mark**

### *Inside This Edition of the FedTide:*

- Comments on Constitution Day – The Honorable Jerrauld C. Jones
- Helpful Resources from the EDVA Clerk's Office
- A look at the Recent Changes to the Fourth Circuit Local Rules
- Noteworthy Fourth Circuit Cases
- Upcoming Chapter events– including a Panel Discussion on the Life and Legacy of Walter E. Hoffman

# Introductory Message from Your New Chapter President

*Erin Ashcroft, STHIL, Inc. Corporate Counsel*

Greetings to old friends and welcome to new members! I look forward to working with you, and am honored to be President of our Chapter for the 2015-2016 FBA year.



Our Chapter's mission is to promote the welfare, interests, education, and professional growth and development of the members of the federal legal profession. Our outgoing president, Mark Warmbier, went above and beyond in forwarding the mission of this organization. He worked tirelessly to bring in excellent luncheon speakers and encouraged membership to grow during his year as president. He unexpectedly stepped into his role as FBA president two years early, after unforeseen conflicts prevented the scheduled successors from assuming the role. Mark did not skip a beat in taking over the additional responsibilities of the presidency, and set the bar high for future incoming presidents. I cannot thank Mark enough for his dedication to the organization and to our mission of promoting the federal legal profession in Hampton Roads.

I look forward to working with our Board to continue our stellar member luncheons and the development of programs for new and future attorneys. We would not be able to put on such successful programs without the ongoing support of the Judges, federal court staff, and FBA members who support the FBA by attending and participating in these programs. I'd like to personally thank those at the courthouse who have worked with me over the past years to put on our Introduction to Federal Practice seminar for summer associates and newly admitted attorneys. We hope to continue our outreach to new and future attorneys by getting more involved in the local law schools and encouraging new attorneys to take advantage of the educational programs and networking opportunities the FBA has to offer. We have an exciting line up of speakers for our FBA luncheons again this year, and I encourage you to come out and attend.

There's more in store, so please join us this year, whether you're renewing or signing up for the first time. We look forward to seeing you at future events.

*Erin Ashcroft*

## The Honorable Tommy E. Miller Retires

On August 14, 2015, the Chief Judge and the Judges of the United States District Court for the Eastern District of Virginia hosted a Portrait Presentation Ceremony in honor of Magistrate Judge Tommy E. Miller's retirement after 28 years on the bench. During the ceremony, kind words and tributes were offered by Judge Miller's current and former colleagues, fellow judges, friends, family and law clerks. The event honoring Judge Miller drew close to 300 attendees. Judge Miller's presence on the bench in the Eastern District of Virginia will be missed and the Hampton Roads Chapter of the FBA wishes him well in his much deserved retirement!

The 2015 Special Edition of the FedTide honoring Judge Miller is available at:  
[www.fedbar.org/Chapters/Hampton-Roads-Chapter/Newsletters.aspx](http://www.fedbar.org/Chapters/Hampton-Roads-Chapter/Newsletters.aspx)

## Fourth Circuit Judge Roger L. Gregory Visits the Hampton Roads Chapter

On June 3, 2015, our Chapter was honored to host the Honorable Roger L. Gregory, Circuit Court Judge of the United States Court of Appeals for the Fourth Circuit. Judge Gregory gave an excellent presentation about justice in the practice of law. The Chapter event was very well attended with over 80 attendees.



*At left: Outgoing FBA President Mark Warmbier thanks Judge Gregory for his insightful remarks and Chief U.S. District Judge Rebecca Beach Smith, U.S. District Judge Mark S. Davis, and U.S. District Judge Raymond A. Jackson for their attendance.*

*At right: Judge Gregory with U.S. District Judge Arenda L. Wright Allen, Judge Allen's chambers staff, and U.S. Magistrate Judge Lawrence R. Leonard.*



# Introduction to Federal Practice

On **July 16, 2015**, the Hampton Roads Chapter hosted its annual summer session of the Introduction to Federal Practice Seminar at the Norfolk courthouse. The summer seminar is tailored to law students who are interning, clerking, or otherwise working in the legal profession during their summer recess. Attendees were welcomed by the District and Magistrate Judges, then heard from representatives from the Clerk's Office, United States Probation Office, the Office of the Federal Public Defender, the United States Attorney's Office, the courthouse librarian, and other courthouse personnel.

This summer's Introduction to Federal Practice Seminar was well-attended – 40 law student interns and clerks were treated to engaging presentations by all speakers and enjoyed a reception afterwards.

## Investiture of Judge Robert J. Krask United States Magistrate Judge

On September 25, 2015, Robert J. Krask officially became the newest United States Magistrate Judge for the Eastern District of Virginia-Norfolk and Newport News Divisions.



Judge Krask was presented to the Court by former Assistant United States Attorney Robert J. Seidel, Jr. Federal Bar Association Vice President Susan R. Blackman presented Judge Krask with his judicial robe, and Norfolk & Portsmouth Bar Association President Mary T. Morgan presented his gavel. Judge Krask was robed by his family members and, after joining the Bench, shared thoughtful and poignant remarks with all in attendance.

**On behalf of the Hampton Roads Chapter, Welcome, Judge Krask, to the Bench!**

*Remarks of The Honorable Jerrauld C. Jones*  
*Circuit Court for the City of Norfolk*  
*United States Immigration and Naturalization Ceremony*  
*Held on Constitution Day, September 17, 2015*

*The Honorable Jerrauld C. Jones presented the following remarks to the candidates for United States citizenship at the United States Immigration and Naturalization Ceremony held at the Norfolk Federal Courthouse on Constitution Day 2015. Constitution Day is an American federal observance that commemorates the formation and signing of the United States Constitution, and recognizes all who have become citizens. Constitution Day is held each year on September 17 – the day in 1787 that delegates to the Constitutional Convention signed the document in Philadelphia, Pennsylvania. Judge Jones' remarks are inspiring, thoughtful, and befitting of this important observance.*

To the candidates for citizenship, I am honored to be with you today, September 17<sup>th</sup>, Constitution Day, as we commemorate the 228<sup>th</sup> anniversary of the execution of our great and venerable United States Constitution and its meaning to us and to our country, but very importantly, the occasion upon which we officially recognize and welcome the newest Americans to our ranks! Of the several important days and dates we all have in our own lives, I am willing to bet that this day is day which you will never forget.

The invitation to speak today caused me to go back and read the historical background of the adoption of the Constitution and, although I had done a lot of studying the Constitution way back in law school and even throughout the years, today's occasion caused me to think about the Constitution in the context of my own life.

**TWO HUNDRED AND TWENTY-EIGHT** years ago, a group of men, men who by the way did not look like me or some of you, spent a hot and stifling summer in a stuffy, Philadelphia government building creating a four-page document that literally changed the world. A set of bylaws, if you will, which remain strong and full of vitality to this day. This document, our original draft of the U.S. Constitution, was signed on September 17, 1787 . . . a day we now commemorate across the country as **Constitution Day**.

And during those past 228 years, we have seen countries and their governments experience revolutions, assassinations, wars, turmoil and chaos in which governments have been toppled, remade, changed and re-formed, along with their constitutions. There have been changes too numerous to recount in governments all around the world.

Yet, here in the United States, with only 27 changes since its adoption, that same, crinkly four pages of parchment paper, miraculously have served as the basis of one of the most successful democracies in the history of mankind; and our United States Constitution continues to provide that strong foundation upon which our free society is laid.

My friends, today more than ever, our citizens– and as of today, I am proud to say that that includes YOU – need to understand and appreciate the true meaning of the Constitution and what it stands for, and how it affects our lives each and every day, if we are to become the contributing and productive citizens we all want to be.

First, however, just a very brief history lesson is in order. Yes, it is necessary to understand where we have been if we want to know where we are and where we are going.... *(continued)*

**Remarks of The Honorable Jerrauld C. Jones (continued)**

America's first constitution, the Articles of Confederation, was ratified in 1781, a time when the nation was a loose confederation of states, each operating like independent countries. The national government was comprised of a **single legislature** called the Congress of the Confederation; there was still no President or Executive Branch nor was there a Judicial Branch, that is, no court system. Eventually, as that proved unsatisfactory and unworkable, a constitutional convention was convened in Philadelphia. And, in the summer of 1787, the plan to establish three branches of government, Executive, Legislative, and Judicial, was adopted. A system of checks and balances was put into place so that no single branch would have too much authority and the specific powers and duties of each branch was laid out in the Constitution the way that we find them today.

Thereafter, George Washington was inaugurated as America's first President on April 30, 1789. And, in June of that same year, Virginia ratified the Constitution, and New York followed in July. On February 2, 1790, the U.S. Supreme Court held its first session, marking the date when the government was fully operative.

Other important events followed, but, a singular event was the adoption of ten amendments to the Constitution on December 10, 1791. The amendments, known collectively as the Bill of Rights, include such things as the freedom of speech, religion, and the press. The right to peaceably assemble and the right to a speedy and public trial by an impartial jury. The kind of trial which occurs in this very place. Thankfully, for you and for me, these rights and freedoms have withstood the test of time, enduring to this very day—the rights and freedoms for which our country is known around the world, and, I daresay the rights and freedoms which bring you to this courthouse today...

Ladies and Gentlemen, I ask you, what makes this document – these four pages on crinkly parchment paper, together with its relatively few amendments – what makes it so universally recognized and honored?

**President Franklin Delano Roosevelt** once said: **“The United States Constitution has proved itself the most marvelously elastic compilation of rules of government ever written.”**

The original draft of the Constitution consisted of only about 4,200 words. It certainly was not dropped down to Earth on the wings of angels or sent down on stone tablets. Indeed, it was flawed. Remember that slaves were still allowed, and were only considered 3/5 of a person. Even among the white landowners, issues of fair representation were still debated and argued; and there were issues of taxation that prevented some of the states from even ratifying it at first.

Throughout the years since then, many battles have been fought over issues of constitutional importance such as voting rights (women could not vote until the 20<sup>th</sup> century), guns, health care, marriage, voting rights, and basic civil rights, just to name a few. Remember what happened to Japanese Americans in this country during World War II! And, of course, we all know about African-Americans and their struggle for freedom and equality. But, it has been the Constitution which has always prevailed over the evildoers. And, despite it all, we continue to move forward in our society as one American family. *(continued)*

**Remarks of The Honorable Jerrauld C. Jones (continued)**

My friends, our Constitution was born by candlelight and in a time of horseback, but it still survives today in a time of smart phones and other amazing technologies. But, that is because the basic tenets that the Constitution addresses are ones that affect each and every person in this country – any time, any day, any century. The Constitution helps us to answer the question of how does an individual and a government co-exist in a way that each one will not only survive but also thrive.

But, make no mistake about it . . . it is **NOT** always easy to do that. Now, I generally try to stay away from quoting movies when I speak in public, but there is a scene near the end of the movie “The American President,” (one of my favorite movies, by the way) where the President – played by Michael Douglas– talks about the Constitution, the Bill of Rights and what it means to be a United States citizen. In responding to some scurrilous charges at a news conference, he says:

“America isn't easy . . . America is advanced citizenship. You gotta want it bad, 'cause it's gonna put up a fight. It's gonna say, ‘You want free speech? Let's see you acknowledge a man whose words make your blood boil, who's standing center stage and advocating at the top of his lungs that which you would spend a lifetime opposing at the top of yours.

You want to claim this land as the land of the free? Then the symbol of your country can't just be a flag; the symbol also has to be one of its citizens exercising his right to burn that flag in protest. Show me that . . . defend that . . . celebrate that in your classrooms.”

It **ISN'T** easy. Being a citizen never has been . . . not if you're doing it right.

Being an American citizen is a **STRUGGLE**. But that's the **good** thing about it. And the Constitution is not just some static mandate of the past. Rather, it provides a living and breathing framework that addresses the needs and responsibilities of the government of the whole, while safeguarding the needs and rights of the individual citizen.

I can truly say that this enduring document is the cornerstone of our American democracy, and preserving that democracy is a tough job. Raising your right hand today and taking the oath of citizenship signifies that you are ready, willing, and able to take on that struggle.

Ladies and Gentlemen, I am indeed honored to welcome you today as the newest citizens of the United States of America. It is a special privilege and an honor for me, and I look forward to your vigorous and full participation in our local community and our society. We desperately need you and we fully embrace you. Join with us so that **every September 17<sup>th</sup>** in years to come, people will still gather together to celebrate the 4,200 words on crinkly parchment paper that were written to guarantee our rights as citizens, and to truly ensure our domestic tranquility.

Finally, I will leave you with one of my favorite quotes about America, and it comes from Gerald Early, a professor and essayist in American Studies at Washington University. In his words: **“I think there are only three things that America will be known for 2,000 years from now when they study this civilization: the Constitution, jazz music, and baseball.”** And believe me, I love all three!

# An Award Winning Chapter!

During the Annual FBA meeting held in Salt Lake City, Utah this September, the Hampton Roads Chapter was honored to receive a Chapter Activity Award, a Chapter Growth Award and a Newsletter Award (for the second year in a row)!

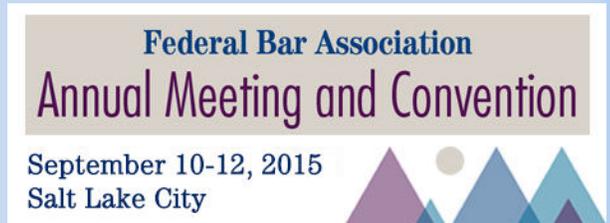


The Hampton Roads Chapter received a Presidential Achievement Award for Chapter Activity which honors the work and accomplishments of the chapter throughout the year. In addition, for the second year in a row, the *FedTide* received a Meritorious Newsletter Award which recognizes the overall sustained quality of the Chapter's newsletter publication.

## FBA Annual Meeting September 2015

*By Steve Jackson*

The Federal Bar Association held its Annual Meeting on September 10-13 in Salt Lake City. The FBA welcomed members from 44 states as well as the Virgin Islands, Puerto Rico and the District of Columbia. Those members represented 73 chapters, including the FBA's newest chapters in South Dakota, the Central District of Illinois and the Northern District of West Virginia.



Mark Vincent was installed as the new national President. The FBA offered those attending a full slate of CLE programs on a wide-range of topics including the use and weight of unpublished opinions among the various federal circuits and Bankruptcy law for non-bankruptcy attorneys. The programs included presenters and moderators drawn from the federal judiciary, private practice, military and government service.

The Hampton Roads Chapter was recognized for its achievements at the Annual Awards Luncheon and received the Chapter Activity Presidential Achievement Award, the Meritorious Newsletter Award for its newsletter, *The Fed Tide*, and the Chapter Membership Growth Recognition Award for significantly increasing its membership in 2015. Steve Jackson was presented with 2015 President's Award at the Annual Banquet for his work on the Law Student Division Task Force.

The Mid-Year Meeting is scheduled for April 1-3, 2016 in Arlington, Virginia.

# EDVA CLERK'S CORNER

*Practical Tips and Announcements  
from the Norfolk and Newport News  
Divisions Clerk's Offices*



## **Clerk's Office General Filing Tips**

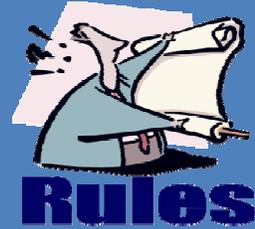
In order to assist attorneys with use of the Case Management/Electronic Case Filing (CM/ECF) system, the Clerk's Office has compiled a list of Frequently Asked Questions with associated answers. From the basic technology one needs to begin working in the CM/ECF system, to what to do if an attorney realizes he has attached the wrong document to a filing event, this resource should enable CM/ECF users to navigate the system with ease and troubleshoot any problems they may encounter. You can review the Frequently Asked Questions and answers at: [www.vaed.uscourts.gov/ecf/cmecf\\_faqs.html](http://www.vaed.uscourts.gov/ecf/cmecf_faqs.html).

## **Code of Pretrial and Trial Conduct**

The American College of Trial Lawyers has developed a Code of Pretrial and Trial Conduct. In recognition that the Code reflects the standards of professionalism that are expected within the Eastern District of Virginia, and in order to foster professional civility and respect for the Judicial Process, the Judges of the Eastern District of Virginia have made the Code of Pretrial and Trial Conduct available on the Court's website at: [www.vaed.uscourts.gov/CodeProbTrial.html](http://www.vaed.uscourts.gov/CodeProbTrial.html).

While attorneys who are beginning their litigation practice or are new to this District might find these guidelines to be of particular value, all members of the Bar of this Court would likely benefit from their review.

# Fourth Circuit Local Rule Amendments



On October 1, 2015, the United States Court of Appeals for the Fourth Circuit adopted eight amendments to its Local Rules. Several rule amendments reflect the Court's growing reliance on electronic filing. For instance, Local Rules 30(b)(4) and 31(d) have been amended to require counsel to file only one paper copy of appendices and briefs, with any additional copies being ordered by the Court as needed.

Additionally, the Court has recently adopted an electronic vouchering system for Criminal Justice Act (CJA) attorneys, thus Local Rule 25(a)(1)(E) has been amended to reflect the introduction of the eVoucher system. Additional amendments include a clarification of the starting times for oral argument under Local Rule 34(c), and guidance in Local Rule 32(b) about word limitations on briefs using the electronic appendix excerpt option.

A full list of the recent amendments to the Local Rules can be found at:  
<http://www.ca4.uscourts.gov/docs/pdfs/amendmentslocalrule6etc.pdf>

## Upcoming National FBA Events

- **The 17<sup>th</sup> Annual DC Indian Law Conference** – November 10, 2015, Washington D.C.
  - **The 2016 Fashion Law Conference** – February 12, 2016, New York, NY
  - **The Federal Bar Association Tax Law Conference 2016** – March 4, 2016, Washington D.C.
  - **FBA Women in the Law Conference** – April 21, 2016, New Orleans, LA
  - **FBA 2016 Annual Meeting and Convention** – September 15 – 17, 2016, Cleveland, OH
- Visit [www.fedbar.org/Calendar.aspx](http://www.fedbar.org/Calendar.aspx) for more details about these and other events.

## 2016 Federal Bar Association Supreme Court Admissions Ceremony

Each year the FBA Young Lawyers Division hosts a Supreme Court Admissions Ceremony. In years past, the applicants for admissions attend an admissions ceremony and then the Justices are invited to join the new admittees for a breakfast reception. The 2016 YDL Supreme Court Admissions Ceremony will be held on **Monday, June 20, 2016**. The deadline for applications is Monday, May 9, 2016. Attorneys must have been admitted to practice in the highest court of the State for at least three years in order to be admitted before the Supreme Court of the United States. The ceremony is limited to 50 applications and the applications are processed in the order they are received. For more information regarding the application process go to:

<http://www.fedbar.org/Divisions/Younger%20Lawyers%20Division/Calendar/Youngers-Lawyers-Division-2016-Supreme-Court-Admissions-Ceremony.aspx>.

**SAVE THE DATE - November 19, 2015**

*A Panel Discussion on  
The Legacy of the Honorable Walter E. Hoffman*

On November 19, 2015, the Hampton Roads Chapter is excited to host, in conjunction with the Historical Society of the United States District Court for the Eastern District of Virginia, a panel presentation on the legacy of the Honorable Walter E. Hoffman. The panelists will include the Honorable Henry Coke Morgan, Jr., Hunter Sims, Conrad Shumadine, and “Stretch” Weiss (Judge Hoffman’s court reporter).

Judge Hoffman was appointed to the bench in 1954 and served as a district judge in the Eastern District of Virginia for over forty years. Judge Hoffman is credited with creating the “rocket docket” administrative system that made the Eastern District of Virginia one of the most efficient federal courts in the country – an accolade that Eastern District of Virginia still carries today. Judge Hoffman’s many achievements on the bench include presiding over Vice President Agnew’s 1973 tax evasion trial and his rulings to implement the Supreme Court’s mandated school desegregation.

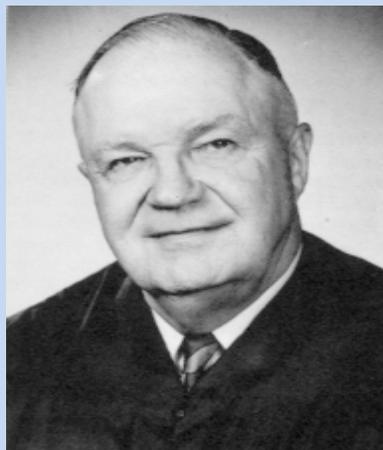


Photo credit: <http://law2.wlu.edu/alumni/bios/hoffman.asp>

**See attached flyer for further details and registration information.**

**ALEXANDRIA  
MAGISTRATE  
JUDGE ANDERSON  
REAPPOINTED**

The Judges of the Eastern District of Virginia have announced the reappointment of Magistrate Judge John F. Anderson for another eight-year term. Judge Anderson, who sits in the Alexandria Division, was originally appointed to this position on January 22, 2008.

**JUDGE DUNCAN TO  
LEAD FEDERAL  
JUDGES  
ASSOCIATION**

Circuit Judge Allyson K. Duncan has been selected to serve as president of the Federal Judges Association, a voluntary group of over 1,100 Article III judges dedicated to preserving the independence of the judiciary. Judge Duncan, who sits in Raleigh, North Carolina, has served on the Fourth Circuit Court of Appeals since 2003.

***Noteworthy Decisions from the Supreme Court, the Fourth Circuit, and the EDVA***

**The Fourth Circuit Rejects the “Manager Rule” in Title VII Cases**

In *DeMasters v. Carilion Clinic*, the Fourth Circuit reversed a Western District of Virginia court’s dismissal of J. Neil DeMasters’ suit against Carilion, holding that the “manager rule” did not prevent an employee whose job duties included reporting discrimination claims from also seeking protection under Title VII’s anti-retaliation provision.

Plaintiff, an employee assistance program consultant, helped an employee of Defendant form a plan to report sexual harassment in the workplace for investigation, which ultimately resulted in a Title VII suit against the Defendant. Thereafter, the Defendant fired the Plaintiff alleging that he had not taken the Defendant’s side in the investigation and placed the company at risk. The district court dismissed the Plaintiff’s complaint on the grounds that under the “manager rule” the plaintiff had not engaged in protected activity because reporting discrimination was part of his job duties. The Fourth Circuit reversed, holding that the “manager rule,” which was derived from cases under the Fair Labor Standards Act, did not apply to Title VII cases. The court instead adopted a “holistic approach,” looking at whether the Plaintiff’s “course of conduct as a whole” was protected activity. The Fourth Circuit found that to hold otherwise would render “the categories of employees best able to assist employees with discrimination claims – the personnel that make up EAP, HR and legal departments – . . . [with] no protection from Title VII if they oppose discrimination targeted at the employees they are duty bound to protect.” *DeMasters v. Carilion Clinic*, 796 F.3d 409, 423 (4th Cir. 2015).

**Insurer Not Required to Defend Insured Against Allegations of Direct and Vicarious Liability Arising from Alleged Kidnapping Scheme**

Janet Jenkins sued Liberty University alleging that the school participated, both directly and vicariously, in a scheme to kidnap her daughter and interfere with court visitation orders and to take the daughter to Nicaragua. The Plaintiff Janet Jenkins alleged that Liberty conspired with its employee, the Plaintiff’s former spouse through a Vermont civil union who later converted to Christianity and renounced her homosexuality, to defy visitation orders by a Vermont court and abscond with the child to Nicaragua. (*continued*)

## Hampton Roads Chapter Membership

Our Chapter's new Membership Chair is Suzanne V. Katchmar, and she can be reached at [Suzanne\\_Katchmar@fd.org](mailto:Suzanne_Katchmar@fd.org). We ask our current members to encourage their colleagues or associates to join the FBA. Please contact Suzanne with any membership questions!

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Members of the Hampton Roads Chapter are encouraged to submit articles or news information of interest for possible publication in the *Fed Tide*. Please submit any proposed articles or news information to the Editors at the e-mail addresses listed below. The Editors reserve the right to decide on publication, and any articles accepted for publication are subject to editing.

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## Kidnapping Liability (Continued) –

The Fourth Circuit held that Liberty's insurance company had no duty to defend Liberty University under its CGL or educators' legal liability policies. Despite allegations that employees of Liberty solicited donations to aid the absconding partner to defy court orders, the court held that the complaint did not allege an "occurrence" that triggered the policy's coverage exclusions. Specifically, the Complaint did not allege that Liberty was responsible for its agents' intentional acts. Applying Virginia law, the Fourth Circuit held that "an allegation of a principal's liability under a theory of *respondeat superior* for the intentional acts of an agent does not state an 'occurrence.'" Thus, the defendant-insurers had no duty to defend and the Fourth Circuit reversed the decision Western District of Virginia's decision. *Liberty University, Inc. v. Citizens Ins. Co. of America*, No 14-2254, (July 10, 2015).

## SCOTUS Invalidates Unconstitutionally Vague "Residual Clause" in the Armed Career Criminal Act

Normally, a person convicted under 18 U.S.C. § 922(g) (felon-in-possession of a firearm) is subject to a statutory maximum term of imprisonment of 10 years. However, the Armed Career Criminal Act ("ACCA") enhanced this penalty to 15 years to life if the person had three prior convictions for a "violent felony" or a "serious drug offense." "Violent felony" was defined as any crime punishable by imprisonment for a term exceeding one year that: "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another [elements clause]; or (ii) is burglary, arson, or extortion, involves use of explosives [enumerated offenses clause], or *otherwise involves conduct that presents a serious potential risk of physical injury to another [residual clause]."*

On June 26, 2015, the Supreme Court held in *Johnson v. United States* that the ACCA's residual clause is unconstitutionally vague under the Fifth Amendment's due process clause. 135 S. Ct. 2551, 2556-62. "[T]he residual clause leaves grave uncertainty about how to estimate the risk posed by a crime. It ties the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements." *Id.* at 2557. The holding has potential wide ranging impacts in other contexts which use definitions similar to the "violent felony" definition in the ACCA. For example, the sentencing guidelines currently contain a similar residual clause in the definition of "crime of violence" which is used to subject offenders to career offender and firearms guideline enhancements. USSG §§ 4B1.2(a), 2K2.1(a). Many district courts across the country have found that the Supreme Court's holding in *Johnson* applies to the residual clauses in the career offender and firearms guidelines. The holding will also have the potential to impact many clemency and post-conviction relief claims where a convicted defendants' sentences were increased based on a prior offense that qualified as a "violent felony" or "crime of violence" under the residual clauses.

# **LOOKING AHEAD**

## **Panel Discussion on the Legacy of The Honorable Walter E. Hoffman**

Co-sponsored by the Historical Society for the United States District Court for the  
Eastern District of Virginia and the Hampton Roads Chapter of the FBA

**November 19, 2015**

## **Election of Chapter Officers**

**November 19, 2015**

## **Introduction to Federal Practice Seminar and Admissions Ceremony for Newly Admitted Attorneys**

**January 28, 2016**

## **Luncheon Meeting Featuring The Honorable Steven Agee, Circuit Judge of the United States Court of Appeals for the Fourth Circuit**

**Spring 2016**

**THE HAMPTON ROADS CHAPTER OF THE  
FEDERAL BAR ASSOCIATION**

**AND**

**THE HISTORICAL SOCIETY OF THE  
UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA**

*Invite You to Attend*

**A Panel Discussion on the Legacy of the Honorable Walter E. Hoffman**

**Panelists:** The Honorable Henry Coke Morgan, Jr.  
Hunter Sims  
Conrad Shumadine  
"Stretch" Weiss (Judge Hoffman's court reporter)

**Moderator:** Scott Kezman

**When:** Thursday, November 19, 2015 at 12:00p.m.

**Where:** Kaufman & Canoles, P.C.  
150 West Main Street  
Norfolk, Virginia 23510  
21<sup>st</sup> Floor Tenant Room

**Cost:** \$15.00 (FBA Members)  
\$20.00 (Non-FBA Members)

To register, complete the form below, detach and return with a check payable to  
"Hampton Roads Chapter of the Federal Bar Association," c/o Erin Ashcroft,  
STIHL Inc., 536 Viking Drive, Virginia Beach, Virginia 23452,  
no later than **November 12, 2015**.

*To join the FBA, please visit [www.fedbar.org](http://www.fedbar.org)*

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**Registration for the November 19, 2015 Annual Meeting Luncheon**

Name(s): \_\_\_\_\_

FBA Member(s):      \_\_\_\_\_ Yes      \_\_\_\_\_ No

Amount Enclosed:    \$ \_\_\_\_\_ (\$15 for FBA members/\$20 for non-FBA Members)