# HISTORY OF THE VIRGINIA ASSOCIATION OF DEFENSE ATTORNEYS 1994–2006

## Terrence L. Graves\*

In 1993, Richard Wright West, a former president of the Virginia Association of Defense Attorneys ("VADA"), wrote an article for the JOURNAL OF CIVIL LITIGATION entitled A History of the Virginia Association of Defense Attorneys 1968–1993.<sup>1</sup> This article was recently "rediscovered" by a current member of the VADA Board of Directors and brought to the attention of the other members of the board. As a result of this "rediscovery," it was suggested that it would be a good time to update the association's history in writing for prosperity. This article is a result of those recommendations and will cover significant accomplishments achieved by the association during the past twelve years.

## Administration

Many of VADA's accomplishments can be traced directly to its stable administrative condition. Leigh Farmer was hired as the administrative director in January 1992. In March 1994, the board of directors renamed the position "executive director" to better reflect its responsibilities and scope. Leigh Farmer continues to fill that position. In 1998, it was recognized by Ms. Farmer and the board of directors that the job of executive director had grown considerably to the point where it should be split into two separate jobs with distinct responsibilities. Accordingly, the board of directors determined that a second administrative position be created. This administrative position was designated as the "director of meetings and communications." The primary responsibilities of this position would be planning and coordinating the various seminars and meetings sponsored by the association.

Judy Davis was hired to be the first director of meetings and communications for the VADA. In 2005, Ms. Davis resigned and she was replaced by Molly McClellan, who had formerly served as the administrative director of the association until 1991.

Theodore F. ("Trey") Adams III served as VADA's lobbyist until 2002. During that year, the board of directors hired William Axselle after a competitive bidding process.

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<sup>&</sup>lt;sup>1</sup> This article can be viewed on the VADA web site at www.vada.org.

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The association has continued its tradition of having strong, active leaders on its board of directors. The board of directors of the association has always strived to and continues to represent a cross-section of the state's defense bar in many ways, including, geography, gender, race, and firm size. A listing of the boards of directors from 1993 through 2005 is attached as Addendum A.

## Advocacy Role

In the past twelve years, the VADA has taken a very active role in representing the interests of its members before the General Assembly and in interacting with the judicial branch of the Commonwealth. In 1996 and 1997, the legislative committee of the VADA, with the assistance of the association's lobbyists, began looking at what was commonly referred to as "tort reform" legislation. The legislative committee began its effort by organizing a meeting of business associations and other interested groups to discuss a potential "tort reform" package. While no formal coalition for "tort reform" was formed, this meeting was nonetheless the beginning of VADA's increased role in advocating for change in legislation before the General Assembly.

In addition, emphasis was placed on actively tracking issues discussed at the Boyd-Graves Conference that would potentially affect the practice of law by members of the defense bar. This included a study of comparative negligence systems then in use in other states that the Boyd-Graves Conference was considering. Other issues followed by the VADA include the merger of law and equity procedures, amendments to section 8.01-399,<sup>2</sup> proposed changes to the Rules of the Supreme Court of Virginia regarding the taking of depositions, and procedures related to removal of cases from general district court to circuit court.

In addition to its efforts before the General Assembly and its monitoring of issues at the Boyd-Graves Conference through individual members, the VADA developed policies and procedures by which applications could be made to the board of directors for filing amicus briefs with the Supreme Court of Virginia. In 2000, the board of directors approved a policy that would allow the VADA to file amicus briefs on issues of wide interest to the membership of the association, and that involved fundamental fairness in the judicial system to the extent recommended by the executive committee of the board of directors and approved by the board. Subsequent to the approval of that policy, the VADA has filed three amicus briefs.<sup>3</sup>

 $<sup>^2</sup>$  Section 8.01-399 deals with the evidentiary aspect of the doctor-patient privilege and defines what contacts can be had with a physician during litigation.

<sup>&</sup>lt;sup>3</sup> The first case in which the VADA filed an amicus brief was *Lombard v. Rohrbaugh*, 262 Va. 484 (2001), in which the Supreme Court considered whether it was error to allow the mention of liability insurance during the cross-examination of an expert witness. The second amicus brief was filed in the case of *Stottlemyer v. Grahmm*, 268 Va. 7 (2004), in which the Supreme Court of Virginia considered whether the trial court committed error by refusing to permit the plaintiff to cross-examine the defendant physician regarding his alleged prior acts of negligence and misconduct during a medical malpractice case. A third amicus brief was filed in 2006 in *Baker v. Poolservice Co.* and can be found at 18(3) J. CIV. LITIG. 259 (2006).

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As a result of these advocacy efforts, the visibility of the association and its members has been greatly increased in the General Assembly, the judiciary, and other statewide bar groups. This is exemplified by the attendance, by invitation, of members of the VADA Board of Directors at the mandatory judicial conference held in the spring of each year, VADA's invitation and subsequent participation in the Virginia Commission on Women and Minorities, the invitation of various VADA members to testify on issues of interest before the General Assembly, and the April 2004 face-to-face meeting of the executive committee of VADA with Chief Justice Leroy Hassell, at his request, to discuss various issues of importance that affect all statewide bar organizations.

## SPECIALTY SECTIONS AND COMMITTEES

In 1994, it was suggested that the organization should form a committee aimed at newer lawyers. It was initially suggested that members of this committee be 35 years old or younger, and in practice for six years or less. Subsequently, it was determined that the requirements for membership in this committee would be that the lawyer would be 35 years of age or have six years or less in practice. Thus, the Young Lawyers Division was born. Benjamin Boyd was appointed the first chair of the Young Lawyers Division and H. Robert Yates III was appointed the first vice-chair.

By 1996, membership in the YLD had grown to 120 members. In 1997, the bylaws were amended to allow the chair of the YLD to sit as a voting member of the Board of Directors of VADA. H. Robert Yates III became the first chair of the YLD to sit on the VADA Board of Directors in this capacity.

In 1998, it was determined that the association would be well served by the development of a plan for carrying out its mission, handle growth, and manage the finances of the association over the long term. As a result of these discussions, the long-range planning committee was created. Brad Stillman, a former president of the association, was the first chair of the committee.

One of the many suggestions enacted by the association that came from the long-range planning committee was the suggestion that a standing committee on budget and finance be established. This committee was established in 2000 via a change in the association's bylaws. In addition, the long-range planning committee suggested the creation of an automobile defense and premises liability section. It was also recommended that the commercial litigation section be renamed the Commercial and Technology Law Section.

In 2002, the long-range planning committee made recommendations to the board of directors in several areas. In fact, it was as a result of these recommendations that many of the accomplishments discussed in this article were realized. The recommendations include changing the mission statement of the association to read: "The mission of the Virginia Association of Defense Attorneys is to assist Virginia attorneys in the professional and ethical representation of their clients in civil litigation through education, communication and fellowship." In addition, the long-range planning committee recommended that the VADA

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should adopt the following position on advocacy: (1) to increase the general advocacy role of the VADA, including taking, where appropriate, a proactive role; and (2) increase the efficiency and effectiveness of our current lobbying efforts by increasing contributions to JUSTPAC . . . . "

### Seminars and Meetings

The mid- to late-1990s saw the VADA annual meeting continue in the same format as it had for years. The general format involved meeting for two-andone-half days in a different location each year. The meeting would culminate with a Saturday morning program that usually focused on an ethics topic. After some study and debate, it was determined that although the membership was generally pleased with the overall quality of the CLE programs offered at the annual meeting, they also wanted to see something different in terms of overall format and packaging. As a result, at the 1998 annual meeting, which was held in Charlottesville, a new format was unveiled. The format involved a general session on Thursday afternoon, a general session on Friday morning, followed by specialty section meetings on Friday afternoon, and a general session on Saturday morning.

In 1999, the association held its twenty-fifth annual meeting. This meeting included a silver anniversary formal dinner-dance held in conjunction with the meeting in Roanoke.

In 2001, it was determined that the two-and-one-half-day format was not working as well as the association would like. Consequently, it was decided that the annual meeting would be changed to a two-day format, beginning with the 2003 annual meeting.

One of the positive developments related to the annual meetings has been the increase in sponsorship by various vendors in the legal support fields. As a result of these sponsorships, the annual meetings have gone from being either loss events or breakeven events to profitable ones. In addition, the membership has had the benefit of expanding its available resources for various types of litigation.

With the genesis of the Young Lawyers Division in 1994, the members of that group were tasked with the responsibility for producing two seminars. They were responsible for the "Orientation for New Lawyers Entering a Civil Defense Practice," which was held biannually in conjunction with the Virginia CLE, and a trial tactics seminar. The orientation seminar was designed as a basic primer course for associates new to civil defense practices, coming either from another area of the law or from law school. The trial tactics seminar was designed as a trial advocacy program that dealt with all aspects of trial preparation, culminating in a mock trial before real circuit court judges, using the skills of senior VADA members as mentors and "critiquers."

The first trial tactics seminar was held in 1996 and involved the use of four judges presiding over four separate courtrooms at the T.C. Williams School of Law at the University of Richmond. Sixteen individuals participated as counsel

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with fifteen others participating as witnesses. Nine senior VADA members served as coaches. Originally, the trial tactics seminar used "canned" materials obtained from the National Institute for Trial Advocacy ("NITA"). Eventually, the seminar used materials generated by VADA members. The first use of non-NITA materials was in 2005.

Beginning in 1997, the Orientation for Lawyers New to a Defense Practice Seminar went from a biannual format to an annual format. In 2003, there were further changes in this meeting. It was determined that the association had sufficient resources to take over sole sponsorship of this seminar from Virginia CLE and, beginning that year, the VADA Young Lawyers Division sponsored this seminar. The name of the seminar was also changed to the "Right Start Seminar."

The association continued its tradition of holding a joint spring meeting with the Virginia State Claims Association ("VSCA") through 2000. With the change in the number of claims personnel in Virginia, as well as the growth in the various specialty sections of the VADA, it was determined that it would be more beneficial for the association to hold midyear meetings of its various specialty sections instead of holding the joint VADA/VSCA event. Consequently, in 2001, the VADA held its first midyear section meetings. These meetings were conducted in Charlottesville over the course of three separate days in April and May. Each day consisted of two to three meetings of various sections each lasting half a day. Ultimately, these meetings became known as the "Spring Section Series," and the format was changed to two consecutive days involving meetings throughout each day. These meetings have been very successful, and in addition to Charlottesville, they have been held in Richmond and at Keswick.

At the recommendation of the Long-Range Planning Committee, the association began preparations for its first telephone CLE in 2000. In June 2001, a telephone CLE was held on the recent changes in the Federal Rules of Civil Procedure. There were forty-four attendees and the event was considered a success. Other VADA-sponsored telephone seminars were held in 2003 and 2005. Each of these seminars was successful, well organized, and helpful to the membership.

The VADA has continued its association with the DRI, the national defense lawyers organization. The association has had representatives at DRI's annual meetings in New Orleans, Charleston, Baltimore, San Francisco, New York, Chicago, and Washington, D.C. The association has had representatives at DRI's regional meetings in Greensboro, Hilton Head, Asheville, Williamsburg, Washington, D.C., Charlotte, Chapel Hill, Charlottesville, Charleston, and Annapolis. It is worthy of note that the two meetings hosted by the VADA in Charlottesville and Williamsburg were the best-attended regional meetings held by the Mid-Atlantic region. It is also worthy of note that Robert B. "Chip" Delano, Jr., was elected to the DRI Board of Directors as the Mid-Atlantic Regional Director during a contested election in 2004. This is the first such, and to date

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only, contested election for a regional director's position during the entire history of the Mid-Atlantic region of DRI.

Not to be forgotten are regional meetings held in various locations across the Commonwealth of Virginia. The first VADA regional meetings were held in 1996. The purpose of the meetings was to gather in an informal setting and to share fellowship and information about recent developments in the specific regions and across the Commonwealth. Generally, these meetings took place over dinner or lunch, and included some type of CLE offering.

# TECHNOLOGY AND PUBLICATIONS

In 1995, the board of directors of the association established the Electronic Communication Committee. The initial purpose of this committee was to take a look at how the association could make use of the Internet for administrative purposes and for purposes of disseminating important information to the membership.

In 1996, the committee developed requests for proposals that were sent out to companies seeking bids for development of the VADA web site. In 1997, the association determined that it would be to its benefit to purchase and use a fax broadcast system, which would allow dissemination of information to the entire membership with greater efficiency and less administrative time. It was also in 1997 that the VADA membership directory was printed on both a computer diskette and in paper format. 1997 was also the year that the board of directors approved construction of the VADA web site.

By the latter part of 1997, the association's web site was up and running and being used by the membership. The web site has been renovated several times, up to the present date. Other technological advances by the association include switching from bound paper CLE handouts that were distributed at the registration for the meetings to CD-Rom formatted materials that were mailed out prior to the meetings. In 2004, the association placed its CLE materials on the web site and members went on-line and downloaded them and printed them at their leisure. Another technological advance saw the association base its registration for seminars on the web site beginning in 2004.

With the access to more advanced technology, the publications generated by the association were handled differently. In 1997, a study of the *Bulletin* was undertaken by the association. It was determined that the *Bulletin* should be available both on the web site and in standard paper format. In addition, it was determined that it would be appropriate for the Index of THE JOURNAL OF CIVIL LITIGATION to be made available on the web site.

In 1998, the Young Lawyers Division created a section called "Associates Notes," which was made part of the *Bulletin*. The Associates Notes was made available on-line and in the paper format version of the *Bulletin*.

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## Membership

As with any organization of its type, membership has been and will be the life blood of the VADA. The membership numbers have tracked upward over the past twelve years, while experiencing some negative growth due to circumstances beyond the association's control. In 1995, the membership stood at 705 individuals. By the end of calendar year 2000, the membership roll had grown to 870. Beginning in 2002, the association began to experience a trend of members from larger firms declining to renew their membership in VADA. It soon became evident that the larger firms were abandoning polices of reimbursing or paying the membership dues of their lawyers in voluntary bar associations such as VADA. The implementation of these policies varies from firm to firm; however, the overall effect was to reduce the number of members of the association. In fact, the number of members dipped to a recent low of 763 in 2004; however, by the middle of 2005, the membership rolls had swelled to 821 individuals.

## Awards

In 1994, it was decided that the association would give an award titled "Virginia Association of Defense Attorneys Award for Excellence in Civil Litigation." The board determined that it would be appropriate to announce the creation of this award in the next issue of the *Bulletin*, along with the criteria for the award. The criteria as established were as follows:

- (1) The highest standards of ethics, demeanor, and temperament;
- (2) Exemplary conduct inside and outside of the courtroom;
- (3) Courtesy and fairness in dealing with others;
- (4) Produces work of the highest quality;
- (5) Such other criteria as the Board from time to time may determine are appropriate.

Other factors that may be considered are community involvement; involvement in judicial, bar-related, and educational activities; and participation in activities that improve the civil justice system.

The first individual determined to meet these criteria was Phil Stone. The first award for excellence in civil litigation was presented to Mr. Stone at the association's 1994 annual meeting. Mr. Stone was followed by a equally distinguished list of jurists and attorneys. The entire list is attached to this article as Addendum B.

# JUDICIAL APPOINTMENTS

The last twelve years have seen a number of the association's members appointed to judicial positions throughout the Commonwealth. These judicial positions range from general district court positions to a position on the United States Court of Appeals for the Fourth Circuit. Each of these individuals served

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the association well during their tenure as members, and brings a certain sense of pride to the association as a whole, due to their accomplishments.

# CONCLUSION

The last twelve years have been exciting for the association and its members. It has been a time of growth in the membership, technological advances, improvement in the visibility and effectiveness of the association on a statewide and national scale, as well as an increase in the number and types of services made available to the membership. The association is to be complimented on its achievements during the past twelve years, and it is hoped this article will spur the membership to remember these accomplishments and to go forward with a sense of purpose in achieving greater things in the future.

## ADDENDUM A—VADA BOARDS OF DIRECTORS 1993-2005

### **BOARD OF DIRECTORS 1993/94**

Executive Committee John M. Claytor, President John M. Oakey, Jr., President-Elect Howard C. McElroy, Treasurer F. Bradford Stillman, Secretary J. Rudy Austin Immediate Past President

Directors at Large Thomas G. Bell, Jr. S. Bernard Goodwyn Mary Louise Kramer Benjamin J. Trichilo John W. Zunka

Regional Directors Bruce D. White, Potomac G. Edgar Dawson III, Blue Ridge James C. Joyce, Jr., Southwest James A. Gorry III, Tidewater Robert L. Morrison, Jr., Southern W. Joseph Owen III, Capitol

Directors Emeriti James E. Brydges, Jr. John D. Epps W. Charles Waddell III

Directors Ex-Officio Thomas C. Palmer, Jr. DRI State Chairman Ralph L. Whitt, Jr. SLDO/DRI Representative

### **BOARD OF DIRECTORS 1994/95**

*Executive Committee* John M. Oakey, Jr., President Howard C. McElroy, President Elect F. Bradford Stillman, Treasurer John D. Epps, Secretary John M. Claytor, Immediate Past President

Directors at Large Thomas G. Bell, Jr. John P. Cattano S. Bernard Goodwyn Mary Louise Kramer Benjamin J. Trichilo

Regional Directors James A. L. Daniel, Southern G. Edgar Dawson III, Blue Ridge James A. Gorry III, Tidewater W. Joseph Owen III, Capitol William P. Wallace, Jr., Southwest Bruce D. White, Potomac

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Directors Ex-Officio Thomas C. Palmer, Jr. DRI State Chairman Ralph L. Whitt, Jr. SLDO/DRI Representative

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BOARD OF DIRECTORS 1995/96

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Directors at Large Pamela S. Baskervill John P. Cattano Robert B. Delano, Jr. C. Franklin Hilton Julia B. Judkins

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Director Ex-Officio Thomas C. Palmer, Jr. DRI State Representative

### **BOARD OF DIRECTORS 1996/97**

Executive Committee F. Bradford Stillman, President John D. Epps, President Elect James E. Brydges, Jr., Treasurer James C. Joyce, Jr., Secretary Howard C. McElroy Immediate Past President

Regional Directors John P. Cattano, Blue Ridge David P. Corrigan, Capitol James A. L. Daniel, Southern Randolph C. DuVall, Tidewater Julia B. Judkins, Potomac William P. Wallace, Jr., Southwest

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### BOARD OF DIRECTORS 1997/98

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Regional Directors Charles Franklin Hilton, Blue Ridge Randolph C. DuVall, Tidewater Robert Barnes Delano, Jr., Capitol Julia B. Judkins, Potomac Pamela S. Baskervill, Southern Jane S. Glenn, Southwestern

Directors at Large Benjamin S. Boyd Calvin W. Fowler, Jr. Roger L. Gregory Melissa W. Robinson J. William Boland R. Craig Wood

Directors Ex-Officio Thomas C. Palmer, Jr. DRI State Representative Terrence L. Graves-1998 YLD Chairman

#### **BOARD OF DIRECTORS 1998/99**

*Executive Committee* James E. Brydges, Jr., President James C. Joyce, Jr., President-Elect David P. Corrigan, Treasurer Charles Franklin Hilton, Secretary John D. Epps Immediate Past President

Regional Directors John T. Cook, Blue Ridge Terrence L. Graves, Capitol Randolph C. DuVall, Tidewater John D. McGavin, Potomac Jane S. Glenn, Southwestern 347

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Director Emeritus Robert Barnes Delano, Jr. DRI State Representative

Director Ex-Officio Heather K. Bardot 1998-99 YLD Chairman

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DRI State Representative Robert Barnes Delano, Jr.

Director Ex-Officio Stacy C. Taylor 1999-2000 YLD Chairman

### BOARD OF DIRECTORS 2000/01

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Director Ex-Officio Mary Beth Nash 2000-2001 YLD Chairman

#### BOARD OF DIRECTORS 2001/02

Executive Committee Charles Franklin Hilton, President Robert Barnes Delano, Jr. President-Elect Thomas G. Bell, Jr., Treasurer John D. McGavin, Secretary David P. Corrigan Immediate Past President

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#### HISTORY OF THE VIRGINIA ASSOCIATION OF DEFENSE ATTORNEYS: 1994-2006

Directors at Large George J. Dancigers Tara M. McCarthy Charles Wm. McIntyre, Jr. Ramesh Murthy Walter H. Peake III Mary M. H. Priddy Monica Taylor Monday Richard W. Zahn, Jr. Director Emeritus Terrence L. Graves

DRI State Representative Robert Barnes Delano, Jr.

Director Ex-Officio John R. Owen 2001-2002 YLD Chairman

### BOARD OF DIRECTORS 2002/03

*Executive Committee* Robert Barnes Delano, Jr., President Thomas G. Bell, Jr., President-Elect John D. McGavin, Treasurer Mark D. Loftis, Secretary Charles Franklin Hilton Immediate Past President

Regional Directors James W. Barkley, Blue Ridge Jennifer Lee Parrish, Capitol Anisa P. Kelley, Potomac Walter H. Peake III, Southwestern Glen A. Huff, Tidewater

Directors at Large George J. Dancigers Tara M. McCarthy Ramesh Murthy Mary M. H. Priddy Robert T. Ross Monica Taylor Monday Stanley P. Wellman Richard W. Zahn, Jr. Director Emeritus Kevin L. Keller

DRI State Representative Terrence L. Graves

Director Ex-Officio Jimmy F. Robinson, Jr. 2003 YLD Chairman

### BOARD OF DIRECTORS 2003/04

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*Executive Committee* Thomas G. Bell, Jr., President John D. McGavin, President-Elect Mark D. Loftis, Treasurer Richard E. Ladd, Jr., Secretary Robert Barnes Delano, Jr. Immediate Past President

Regional Directors James W. Barkley, Blue Ridge Glen A. Huff, Tidewater Monica T. Monday, Southwestern Jennifer Lee Parrish, Capitol Dennis J. Quinn, Potomac

Directors at Large George J. Dancigers Ramesh Murthy Mary M. H. Priddy Marshall H. Ross Robert T. Ross Cynthia L. Santoni Stanley P. Wellman

DRI State Representative Terrence L. Graves

2004 YLD Chairman Jennifer Cremins Markley

#### BOARD OF DIRECTORS 2004/05

Executive Committee John D. McGavin, President Mark D. Loftis, President-Elect Richard E. Ladd, Jr., Treasurer Terrence L. Graves, Secretary Thomas G. Bell, Jr. Immediate Past President

Regional Directors James W. Barkley, Blue Ridge Glen A. Huff, Tidewater Jonnie L. Speight, Southwestern Dennis J. Quinn, Potomac Stanley P. Wellman, Capitol

Directors at Large Lisa F. Clement Michael H. Gladstone Mark B. Kilduff Katherine C. Londos Marshall H. Ross Robert T. Ross Cynthia L. Santoni 349

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DRI State Representative Terrence L. Graves

2005 YLD Chairman Patrick D. Blake

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# BOARD OF DIRECTORS 2005/06

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DRI State Representative Marshall H. Ross

Director Emeritus Glen A. Huff

2006 YLD Chairman Humes Jefferson Franklin III

# Addendum B—List of VADA Excellence in Civil Litigation Award Recipients

Phillip C. Stone, 1994 James W. Morris III, 1995 Chief Justice Harry L. Carrico, 1996 The Hon. Albert V. Bryan, Jr., 1997 Ronald D. Hodges (posthumously), 1998 The Hon. Nicholas E. Persin, 1999 John M. Oakey, Jr., 2000 Frank B. Miller III, 2001 Russell H. Roberts, 2002 William B. Poff, 2003 The Hon. Robert R. Merhige, Jr., 2004 The Hon. Terrence R. Ney, 2005 Henry H. McVey III, 2006