

NORFOLK & PORTSMOUTH

BAR ASSOCIATION

BAR BULLETIN

Volume XLI
Number 3

May – June 2016

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See Flyers Inside for
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Preregistration required
for all NPBA Events.
Call 622-3152.

PRESIDENT'S MESSAGE

Faith and the Practice of Law



Mary T. Morgan

As my term as President of this great organization drew to a close, I thoughtfully reflected on the content of my final message. I may be violating the general rule: don't write about what is important to you, but write about what is important to your members, but with the passing of Justice Antonin Scalia, I was reminded of the role that faith plays in our chosen profession and was inspired to offer my observations on this topic. Although I rarely comment on my personal beliefs, especially religious, in honor of Justice Scalia, I considered this topic to be appropriate—especially since in the heart of our community sits a law school whose mission is to provide an excellent legal education from a Christian perspective, to nurture and encourage its students toward spiritual maturity, and to engage the world through Christian legal thought and practice.¹

What role should faith play in the practice of law? The naysayers among us may conclude that faith is not, or should not be, a part of the practice of law. I disagree. A lawyer's calling is not about integrating faith and legal practice but about expressing faith through legal practice.

Even if you disagreed with his views or written opinions, it's almost impossible to dispute that with the death of Justice Antonin Scalia, the nation lost a great man and a great judge - a man of deep and abiding religious faith and perhaps the most influential Supreme Court justice of the past fifty years. In terms of his faith, Justice Scalia was known for emphasizing that his Roman Catholic faith was essentially irrelevant to anything he did in his capacity as a judge - aside from the fact that it required him to act with integrity, honesty, and fidelity to the task to which he had sworn his commitment. This was not at all to deny his faith. It was simply to affirm, he said, that his task as a judge was to interpret and apply authoritative legal texts in accordance with their original meaning, not to propound his views of correct morality or public policy. Justice Scalia was a public, practicing and unapologetic Catholic. His faith, Justice Scalia maintained, made him a better judge and a better citizen. While immersed in the law, Justice Scalia's faith was his compass and his courage. The late Justice's logic on this particular issue is very much on point. Faith provides a lawyer with a moral compass that is indispensable when faced with conflict between a lawyer's responsibilities to clients, the legal system (including the court and other attorneys) and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. Faith binds us together, strengthens our resolve, and helps us find peace in turmoil when we are faced with stress and ever changing pressures. Faith keeps us centered and grounded when we are obliged to carry the most difficult burdens of our clients and to constantly deliver results. We are constantly challenged to learn new things, zealously advocate for clients, do quality work, and abide by ethics rules. With faith, all of this is possible.

(continued on page 2)

UPCOMING EVENTS

ANNUAL DINNER

Wednesday, May 4, 2016
Norfolk Yacht & Country Club
7001 Hampton Boulevard
Social Hour 6:00 PM
Dinner 7:00 PM

YOUNG LAWYERS SECTION

2016 GOLF TOURNAMENT
Thursday, June 30, 2016, 1:00 PM
Bide-A-Wee Golf Course
Portsmouth

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(PRESIDENT'S MESSAGE CONTINUED)

From the smallest act of kindness to the most significant accomplishment, it is my sincere belief that a higher power guides and supports our actions. The specifics of how and what we believe are irrelevant, what matters is that we believe. For if we believe, as we are called to our chosen profession, we are called to seek justice and truth, we are called to engage, we are called to defend, and not in spite of our faith, but because of it.

I thank you all – the members of the NPBA – for allowing me to serve you as President over the last year. It has been an honor, a joy, and an experience that I will always cherish. I have met many new, interesting colleagues, made many new friends, and enjoyed it to the fullest. I look forward to seeing you at upcoming NPBA events.

¹ Regent School of Law Mission Statement



YOUNG LAWYERS SECTION

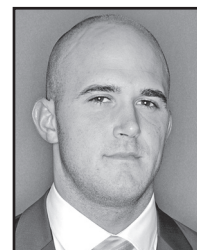
By Zachary Simmons, Chair

YLS has had a great start to spring. On March 3, we held another volunteer night at the Ronald McDonald House. We cooked tacos for the residents, who stay at the Ronald McDonald House as a "home away from home" while their children are being treated at nearby hospitals. Thank you to everyone who came out. YLS volunteers at the Ronald McDonald House frequently, so please be on the lookout for more opportunities.

On March 29, YLS hosted its latest installment of Breakfast with the Bench with Judge Lyn Simmons of the Norfolk Juvenile and Domestic Relations Court. This event had a fantastic turnout. Judge Simmons shared insights from her perspective as a newly appointed judge and stressed the importance of professionalism and volunteer work. Thank you Judge Simmons for taking the time to participate with Breakfast with the Bench and thank you to everyone who attended.

As a section, YLS coached Lakewood Academy in the annual Middle School Mock Trial program. On April 15, the students had their final "mock trial" at Norfolk Circuit Court where they were matched up against a team from another school. The students did an outstanding job and made me proud to have shared the experience with them. Thank you to everyone who participated and volunteered. I'd also like to give a special thanks to Kim Phillips and Wayne Williams for working so hard to organize this event and for making it such a success.

Please mark your calendars for June 30th when YLS will be holding its annual



Golf Tournament at Bide-a-Wee Golf Course in Portsmouth. Thank you to Kyle Martin and Brianna Weber-Wakelam for putting this event together. The Golf Tournament is always a blast, so please be on the lookout for more details.

It has truly been an honor serving as YLS Chair this past year. Thank you to all the YLS members for working so hard to make this year such a success. We accomplished a lot this year, including various volunteer nights, social events, fundraisers, and CLEs. None of this would be possible, however, without the assistance of Donna Bausch and her staff. Thank you so much, Donna, for all of your help this year and for everything you do. Finally, I'd like to give a special thanks to Mary Morgan and the NPBA Executive Committee for supporting the YLS and for continuing to make the NPBA such a wonderful organization. I can honestly say that my involvement with the NPBA has been one of the best decisions I've made as a young attorney.

Congratulations to Jennifer Fuschetti and Andrea Ruege who will be taking over this year as YLS Chair and Treasurer. I have no doubt that they will do a wonderful job and that this will be another exciting year for the YLS.

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NARROWING THE JUSTICE GAP IN HAMPTON ROADS

The Judges of the Norfolk Circuit Court

Engraved across the iconic west pediment of the U.S. Supreme Court Building are the words “Equal Justice Under Law,” showcasing a fundamental ideal of the American legal system. Although the Supreme Court recognized an indigent criminal defendant’s right to appointed counsel in *Gideon v. Wainwright* more than fifty years ago, indigent civil litigants have no similar right. Beyond the equity consideration that everyone—including those with the fewest resources—deserves access to justice, judicial efficacy and public confidence in the legal system are best served when all have the benefit of legal counsel.

The success of the American adversarial system is predicated on each side having a competent advocate—one who understands the law and how to apply it to the facts of the case. *Pro se* cases therefore present unique challenges to the judicial process; although judges may respond by relaxing, to a certain extent, the rules of procedure and evidence, this cannot compensate for a litigant’s failure to produce or reference probative evidence that might ensure justice. More problematic are cases in which one side is represented by counsel and the other is not. Confronted with only one advocate in an adversarial system, judges often struggle to ensure justice for the unrepresented while acting as impartial factfinders.

Indigent individuals need the courts for the same reasons as other citizens in the community. A domestic violence victim may seek a protective order. A father facing termination of his parental rights may not fully appreciate his situation. A laid-off worker may need advice on how to deal with relentless calls from creditors. A low-income couple may not understand how to

obtain a no-fault divorce. An elderly woman facing eviction may not know her options. Indigency should not blockade the courts and thereby deny access to justice.

Unfortunately, this country faces a substantial “justice gap,” where the level of legal assistance available is far short of that necessary to meet the needs of low-income Americans. Although there are available resources to combat this shortcoming—including legal aid offices, clinics run by law schools and bar associations, and revenue from Interest on Lawyer Trust Accounts (IOLTA) earmarked for indigent legal aid—steady federal and state funding reductions and longstanding low interest rates have greatly diminished their impact. At the same time, Virginia’s poverty population has grown significantly—more than 32% over the past decade. Simply stated, the need for *pro bono* legal work in our local community has never been higher.

The Virginia Supreme Court responded to the state’s justice gap in 2013 by establishing the Virginia Access to Justice Commission, whose mission is “to promote equal access to justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents.” The Virginia State Bar has an Access to Legal Services Committee with a similar mission. The Virginia Bar Association has an ongoing “Firms in Service” project to locally organize Virginia lawyers and law students to better integrate *pro bono* resources, and a fledgling Firms in Service project emerged in Hampton Roads a few years ago. The Norfolk & Portsmouth Bar Association has a *Pro Bono* Committee, which recruits volunteer attorneys and identifies *pro bono* opportunities. In recent months, there has been a focused effort to promote *pro bono* legal services through the local legal aid

office, the Legal Aid Society of Eastern Virginia (LASEV), which is understaffed and unable to meet the growing demand for its services. Without the support of *pro bono* attorneys, these programs can only achieve limited success.

While assisting litigants in their quest to access justice, *pro bono* attorneys also contribute positively to the justice system. Their training and skills allow them to recognize which claims are cognizable—and viable—and which are not. Attorneys contribute to judicial efficiency by conducting discovery, narrowing issues, and settling disputes, but they also hold the keys to the courthouse for low-income citizens. So not only is equal access to justice fundamental to preserving American ideologies; its existence—or the lack thereof—largely determines how the public perceives the judicial process, the legal profession, and those privileged enough to call themselves attorneys.

Although making counsel available to all of Virginia’s indigent civil litigants is aspirational, this goal can be achieved with the appropriate effort. As members of the local bar, you are the prospective *pro bono* attorneys who can close the Hampton Roads justice gap. With the resources available to you, including the courts, may you rise to the occasion.

The views advanced in this Article represent commentary “concerning the law, the legal system, [and] the administration of justice” as authorized by Virginia Canon of Judicial Conduct 4(B) (permitting judges to speak, write, lecture, teach, and otherwise participate in extrajudicial efforts to improve the legal system). They therefore should not be mistaken for the official views of the Norfolk Circuit Court or the opinion of any judge in the context of any specific case.

PRO BONO REPRESENTATION: EVERY CASE MAKES A DIFFERENCE

A Message to the Members of the Norfolk & Portsmouth Bar Association

The concept of attorneys contributing their time and talents *gratis* is not a new one. Studies have shown that attorneys are among the most generous professionals, and they consistently demonstrate their commitment to serving the most vulnerable among us. In fact, there are many organizations—including local legal aid societies and law school clinics—and in-

dividuals that provide legal services to the needy at no cost. Although typical *pro bono* representations may not be glamorous or newsworthy, they are vital to preserving our sacred American principle of justice for all.

There currently are not enough *pro bono* attorneys in Hampton Roads to meet

the demand. There is a pressing need for Hampton Roads attorneys to volunteer their time and talents to those without the resources to pay for legal representation. Unlike some states, Virginia does not have a mandatory requirement to provide *pro bono* services. Rather, the Virginia Rules of Professional Conduct provide that “[a]

(continued on page 5)

(PRO BONO REPRESENTATION CONTINUED) lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services." The most obvious—and perhaps easiest—choice to give back is through the Legal Aid Society of Eastern Virginia (LASEV). Due to continued funding reductions, LASEV is significantly understaffed. To combat this shortfall in attorneys and corresponding hours, LASEV established a program that makes it easy for volunteer attorneys to accept relatively simple cases, which allows staff attorneys to focus their efforts on more complex cases. If all Virginia attorneys satisfied the two-percent aspirational goal, we could easily bridge the gap between needed *pro bono* hours and available *pro bono* hours.

Legal Aid cases are accessible. Don't let the thought of taking a case outside of your practice area intimidate you. Many of the cases LASEV receives are relatively straightforward legal matters such as uncontested divorces, simple landlord-tenant issues, guardianship petitions, and basic consumer protection questions. LASEV will provide you with both free training to understand the subject matter and sample pleadings for your case. After completing training, you can sign up for cases as your

schedule allows by using LASEV's convenient online portal.* You don't have to worry about receiving random case assignments, which would inevitably fall on the most hectic week of the year, because you have the flexibility to decide which cases to accept and when. Your first case will likely take some time as you get comfortable with the procedures and subject matter, but after that your efficiency will increase and the cases will be much easier. And if you have questions, there is always someone at LASEV willing to assist.

Every case makes a difference. There is a prevalent misconception in our society that one person cannot make a difference. Many of us use this as an excuse—or perhaps a justification—for our inaction. Certainly, in some instances, the impact of one individual is hard to measure. When working with LASEV or other legal aid entities, however, nothing could be further from the truth. *Every* case really does make a difference. LASEV connects volunteer attorneys with individuals who really do need legal services. When you meet and work with your LASEV clients, you will understand how much your small donation of time means to them and how such a simple act can truly affect their lives.

You too benefit from providing *pro bono* services. There are also significant benefits

to attorneys—especially newer attorneys—who provide *pro bono* services. By taking a legal aid case, you can gain experience, knowledge, and skills in areas of the law in which you don't normally practice. You will have direct client contact. You likely will expand your relationships within the legal community and enhance your reputation in the process. You also will gain the satisfaction of knowing that you gave back to your community. But most importantly, you ultimately will provide access to justice to those who otherwise would not benefit from this fundamental American principle.

The current need for *pro bono* attorneys is desperate and the opportunities to volunteer are plentiful and easy to access. Regardless of why you choose to provide legal services to the underserved, your services are needed and will be appreciated. The profound impact that each of us can have as members of the local bar should not be underestimated. Contact LASEV (via Tameeka Williams at TameekaW@laseva.org) or the NPBA Pro Bono Committee (via Nicole Harrell at njharrell@kaufcan.com) today to see how *you* can make a difference.

* Attorneys can access LASEV's online portal at: <http://www.kempscaseworks.com/helplinks/pbiv16/pbilawyer/Default.html>



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FOLLOWING IN THE FOOT STEPS OF GRISHAM: Q & A WITH TRIAL LAWYER/FICTION AUTHOR RICHARD N. SHAPIRO by Patrick J. Austin

Some lawyers are content to practice by day and relax by night, not R. N. (Rick) Shapiro. He is a partner at a busy, thriving law firm in Virginia Beach, a prolific inventor holding 18 U.S. patents, a husband, a father, and most recently, a published author.

Rick authored a fiction thriller titled *Taming the Telomeres*. Telomeres are the protective tip of the human chromosome and are involved in cell division, and the aging of all our cells. What prompted Rick to sit down and engage in the arduous task of writing a full-length fiction novel dealing with biology, national security, and the law? Let's find out...

WHAT INSPIRED YOU TO BEGIN WRITING A NOVEL? It was on my bucket list to write a fiction thriller. I co-authored a treatise on railroad injury law. I then wrote a non-fiction book entitled *Faceplant*. Nevertheless, I had no idea how much harder it was to write a fiction thriller because every aspect and every character has to be created from whole cloth. However, I really enjoyed the creative process, and I know a thing or two about that from inventing, designing, and developing consumer products.

WHAT HAVE YOU INVENTED? My design company Pancake Wheel LLC has focused exclusively in one area of patent art relating to folding wheels and folding wheel axles, and I now hold 18 United States patents. All of my inventions fold and collapse flat; I've licensed a folding-handle design to Radio Flyer wagons, and I just recently co-developed a state-of-the-art folding baby stroller for a European brand called "Nikimotion" that is being introduced in Europe during 2016.

BACK TO YOUR NOVEL, WHAT INFLUENCES LED TO THE STORYLINE BEHIND TAMING THE TELOMERES? I worked on Capitol Hill before law school, and I clerked for a federal judge after completing

law school, so I sprinkled Washington D.C. and Capitol Hill in the storyline. One of the main characters is an attorney named Andy Michaels. He works at a boutique law firm in Georgetown. Having clerked for a judge, I wanted to explore the human side of judges and included what happens behind the scenes for a D.C. Superior Court judge as well as for a judge on the top-secret Foreign Intelligence Surveillance Act Court. These judges face some ethical and moral dilemmas in the book as well.

HOW HAS THE BOOK BEEN RECEIVED BY CRITICS AND READERS? The majority of the reviews on Amazon are between four and five stars, and that's after more than 50,000 downloads, so I couldn't be happier with the response from readers.

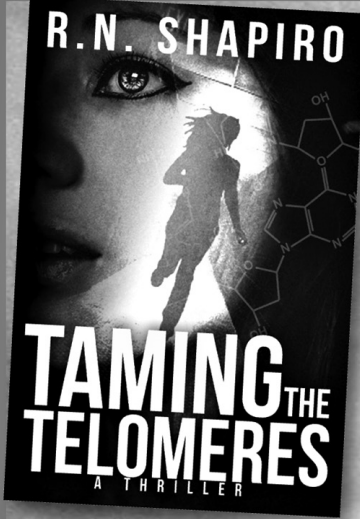
HOW DID YOU EFFECTIVELY BALANCE PRACTICING LAW FULL-TIME AND WRITING THE BOOK? You have to be very good at compartmentalizing your time. I typically wrote in the evenings at home and then on weekends, but for many months I toyed with the overall outline and storyboard of the book before I started writing. Everyone has a different schedule, but being organized is super important.

DID YOU DRAW ON YOUR OWN CAREER AS AN ATTORNEY TO DREAM UP THOSE ETHICAL DILEMMAS HE FACES? You take a little bit of something here and there, but Andy Michaels faces much bigger issues than I ever have faced, such as the interjection of national security during his representation of victim's families after a commuter jet crash. I don't want to spoil anything for potential readers, but the intersection of terrorism and national security, biological secrets the government is developing, and how they impact Andy Michaels as a trial attorney is central to the plot because Michaels ends up representing several of his own family members, along with other clients.

I UNDERSTAND YOU TRAVELED TO MIAMI RECENTLY TO ACCEPT THE GOLD AWARD FOR TOP THRILLER IN THE 2015 READERS FAVORITE INTERNATIONAL BOOK AWARD CONTEST FOR TAMING THE TELOMERES. HOW DID THAT GO? The event was incredible. It included insider lectures and an awards ceremony. I met some very interesting authors, both from the United States and abroad. We exchanged tips and ideas on everything from software for authors to ideas for promoting our novels. In a bit of irony, the silver-medal winner in my category turned out to be a judge from the West Coast who writes under the pen name Garrett Holmes.

WHAT ADVICE WOULD YOU GIVE TO AN ATTORNEY WHO MAY SECRETLY HOLD ASPIRATIONS TO BE A PUBLISHED AUTHOR? As attorneys, we already have something going for us because most of us should be decent at formal writing. The problem is you have to really forget most of what you learned as an attorney and return to a simple and direct writing style. One of my reviewers said that I write for the proletariat, which I took as a huge compliment because I'm trying to write at a very basic level to appeal to the broadest spectrum of readers possible (not like when writing a legal brief). There are number of books outlining the most common story structures for successful novels. Any aspiring author, including an attorney, should review at least one of these articles or books before setting off to write the next great novel. Learn more about *Taming the Telomeres* at Amazon. To learn more about Rick, visit his author site: rnshapiro.com.

Patrick J. Austin works in the Office of Information Policy with the U.S. Department of Justice. *Note: Patrick practiced law with Rick prior to joining the USDOJ.*



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ANNOUNCEMENTS

Three attorneys at **Cooper Hurley Injury Lawyers** have been named again as either Virginia Super Lawyers or Rising Stars in personal injury law for 2016-2017. Founding partners, **John Cooper** and **Jim Hurley**, were selected as Virginia Super Lawyers while **Bill O'Mara**, who joined the firm in 2014, has been again named a Rising Star.

Crenshaw, Ware & Martin, P.L.C. is pleased to announce that ten of its lawyers were included in the 2016 Virginia Super

Lawyers and Rising Stars. They are: Virginia Super Lawyers: **James L. Chapman, IV** – Transportation/Maritime, **Donald C. Schultz** – Creditor Debtor Rights, **W. Ryan Snow** – Business Litigation and **Steven M. Stancliff** – Transportation/Maritime. Virginia Rising Stars: **Steven L. Brinker** – Business & Corporate, **Delphine G. Carnes** – Tax, **Darius K. Davenport** – Civil Litigation: Defense, **C. Wiley Grandy** – Business Litigation, **David C. Hartnett** – Business Litigation and **Elaine Inman Hogan** – Employment & Labor.

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BENCH BAR CONFERENCE 2016



NPBA President Mary T. Morgan and Keynote Speaker The Hon. LeRoy F. Millette, Jr.



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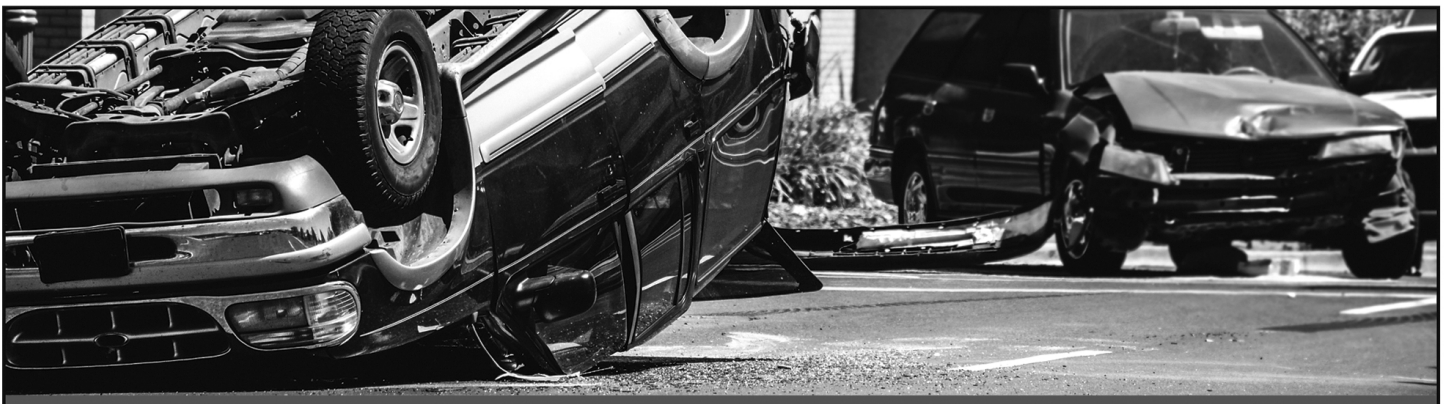
Stephen M. Smith, Esq.

Out of thousands of trial lawyers in the United States, Stephen M. Smith was one of the select few invited to be trained in the Neuro-Anatomical Dissection of the Human Brain and Spinal Cord at Marquette University College of Health Sciences. This advanced medical training, coupled with his 42 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

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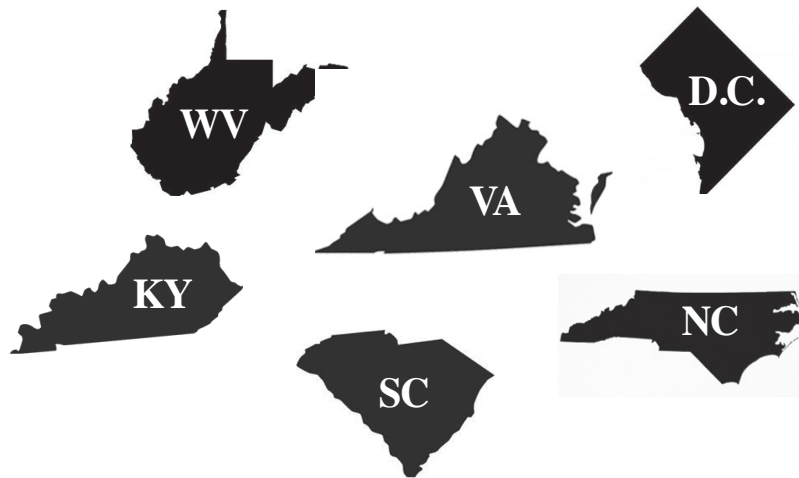


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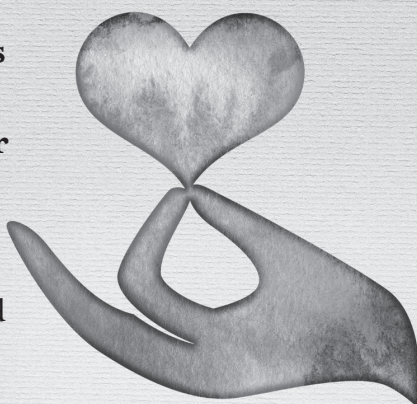


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