

Q&A with Jack Dempsey: Getting to Know VAB's President

Q What are your thoughts on becoming the VAB President?

I'm a little overwhelmed given the level of leadership the past few years from guys like Bob Willoughby and Brad Ramsey. When you're located in Bristol and you look eastward on a map of Virginia you think, "Wow this state covers a lot of ground, a lot of people and some very significant cities"! I want to represent our membership in the manner to which they are accustomed, be accessible to them when needed and set the tone in terms of urgency and immediacy regarding our issues.



Q Who is your role model? Why?

I've been fortunate to have two in my personal life and two in my professional life so I'll go with the first role model on the scene and that would be my maternal grandfather. Our family moved in with him and my grandmother when we were very young---three of us under the age of 39 months old---they were 61!!!! He was a person who calmly and deliberately went about his business, and ours, with a minimal amount of fuss and drama. He taught me those things that are important in any endeavor:

integrity, your name is really all you have, dependability, people must know they can count on you when you're needed, flexibility, one shoe does not fit all---always take in to serious consideration the person you're dealing with and last of all accessibility, be available to those who need you. But what I admired most about him was his attitude and actions toward women. My grandmother, his wife, was his complete equal in all matters. If she washed dishes, he dried. If she dusted, he mopped. His retirement in those days was \$150 per week. They tithed to the church so \$7.50 went into his envelope and \$7.50 went into her envelope. He didn't make a big deal about it, but we learned by way of observation and his example that gender means nothing when it comes to how people should to be treated and opportunities extended. This equality notion isn't that big of a deal these days, but he was a product of the 19th Century and lived during that time when women weren't even permitted to vote! He was truly generations ahead of his time and not a day goes by that I don't think about him.

Q What are your goals for this year?

Simple. One goal: work with all stations, radio and television, around the state to increase and strengthen our presence with our congressmen and senators on Capitol Hill and once that is achieved increase our dialogue with them regarding those issues important to us and our survival. It has never been more important for us to build good working relationships with our elected officials than now.

Q What major issues do you see facing the broadcasting industry?

For radio I see two that are troubling. First, the performance tax is still hovering in the shadows and there are some pretty powerful individuals bent on seeing that come to fruition. Secondly, connected car is of concern because of what it could do to us and the related unknowns that surround it. For television I see retransmission consent and the attacks that the MVPD's are waging as one, and the spectrum auction and pending re-packing issue as the second. Both media must unite to combat these obvious threats to our livelihood.

Q What song best describes your work ethic?

Oh that's easy! *We Can Work it Out* by the Beatles! ■

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Upcoming

- February 23-25, 2015**
NAB State Leadership Conference
JW Marriott, Washington DC
- April 16-17, 2015**
Best of the Best Session #3
Omni Charlottesville, Charlottesville, VA
- June 25-27, 2015**
78th Annual Summer Convention
Hilton, Virginia Beach

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2015 Best of the Best Class Meet & Greet and Leadership Session



VAB Board members along with past alumni members joined the 2015 class for a dinner to kick off their first Leadership session. The dinner took place at the C&O Restaurant in downtown Charlottesville on October 9th. The next day the class met at the Omni for an all day leadership session with our facilitator Wisé Booker, with Reid Dugger Consult-

ing Group. Class members were asked to take the DiSC assessment beforehand to determine their own leadership styles. The program improves self-awareness in key areas that will help you get better outcomes as a leader. The group will meet together again in February at the State Leadership Conference in Washington, DC. ■



2014 VAB Career Fairs

Career Fair season is in full swing with great member participation to help staff the VAB booth. ■

U.S. Regulators to Vote on Treating Internet TV Like Cable

The U.S. Federal Communications Commission in coming weeks will vote on whether Internet TV should have the same access to television programming as cable and satellite TV providers, which could shake up competition in the video industry.

FCC Chairman Tom Wheeler on Tuesday said he has asked his fellow commissioners to vote on a proposal that would help Internet TV services, such as ones being developed by Dish Network Corp, Sony Corp and Verizon Communications Inc, to compete with traditional pay-TV for digital rights to major network programming.

The potential regulatory change concerns online subscription video services that offer scheduled programming similar to traditional pay-TV providers, and not online video services such as Netflix Inc that stream content on demand.

Satellite provider DirecTV is another company that has indicated plans for an Internet video service and CBS Corp this month revealed a plan for an Internet streaming service that would include scheduled programming.

Time Warner Inc's HBO will also launch a standalone online streaming product but its details are unclear.

Traditionally, the FCC has ensured that cable and satellite TV providers such as Comcast Corp could negotiate for rights to retransmit network programming. Online video services have not had the same regulatory backing because they rely on a different technology and do not have their own video distribution facilities.

Now, the FCC will vote on leveling the playing field with a technology-neutral definition of a "multichannel video program distributor," with the goal of encouraging new competition in the video market.

"Twenty-first century consumers shouldn't be shackled to rules that only recognize 20th-century technology," Wheeler said in a blog post on Tuesday.

"Consumers have long complained about how their cable service forces them to buy channels they never watch. The move of video onto the Internet can do something about that

frustration, but first Internet video services need access to the programs."

A draft of the proposal tentatively concludes that online TV services should have the same access to cable and local TV programs as traditional pay-TV services and seeks comments on whether the obligations imposed on the two types of video services should also be the same.

If adopted, some analysts see the proposal as potentially also creating a new opening for Aereo, a video streaming company whose business model was questioned by a Supreme Court ruling in June that said the company had infringed broadcasters' copyrights by capturing live and recorded programs through antennas and transmitting them to subscribers.

The vote by four FCC commissioners, two Democrats and two Republicans, would formally propose the idea and begin the process of seeking public comments. ■

Article courtesy of Alina Selyukh from Reuters.



MARK YOUR CALENDAR!

VAB 78th Annual Summer Convention

June 25-27, 2015

Hilton Virginia Beach Oceanfront | Virginia Beach, VA



In this issue, the VAB takes a closer look at three members from this year's Best of the Best Leadership Program class.

Meet the VAB's Best of the Best



Krissi Cecil

Where did you grow up/go to school?

Mechanicsville, VA
(It's not as country as it sounds!)

What was your first job in broadcasting?

I got very lucky! My first gig was at Clear Channel as a night co-host in Richmond, VA.

What is your career goal?

I am still working on figuring that out. I would like to grow in the digital department here at Summit Media. I am predicting big things!

What are you most looking forward to learning/taking away from the Best of the Best Leadership program?

I feel that inspiring others is a skill I process while actually leading them is my weakness.

What do you like to do in your free time?

What free time? You can find me in the club DJ booth on the weekends with a mic in my hand! Drinking and getting paid for it!

If you could have dinner with somebody from the past, present or future who would it be and why?

Beyoncé because I am cliché and she has become a legend for my generation.



Rodney Bryant

Where did you grow up/go to school?

Born and raised in Fredericksburg, VA. Attended Chancellor High School and graduated college from VCU.

What was your first job in broadcasting?

My first job in the business was as a sales assistant at WSMJ / Smooth Jazz 101.1FM.

What is your career goal?

My career goal doesn't necessarily have a job title associated with it. My main goal is focused more on the success of those that I work with on a daily basis. I take pride in providing a work environment where employees feel appreciated, where all ideas are welcome and where trust can be built. If I can continue to achieve these daily goals, while surpassing station/group objectives, I'll consider my career a success.

What are you most looking forward to learning/taking away from the Best of the Best Leadership program?

I'm really looking forward to learning more about how I can best maximize my strengths to be a better manager. The DISC management and leadership profile tests have painted a pretty accurate picture of how I manage people, time, deal with conflict, etc... I can't wait to dive deeper in our upcoming sessions.

What do you like to do in your free time?

I have two young boys (10 & 7) so most of my free time is spent throwing footballs, kicking soccer balls and ending arguments. When I'm not chasing them around, I enjoy fishing, golfing and lying out by the pool with friends and family.

If you could have dinner with somebody from the past, present or future who would it be and why?

I'd love to have dinner with George W. Bush, not necessarily to discuss politics but to simply learn what kind of person he truly is. I was always fascinated by how the President of the United States could seem like such a regular Joe at times. Whether he was dancing with representatives of an African tribe as the bongos played or butchering idioms, he always seemed to take criticism in stride and seemingly, never took himself too seriously. My kind of guy!



Parker Slaybaugh

Where did you grow up/go to school?

I grew up in Colonial Heights, VA and went to Colonial Heights High School.

I then went to college at Liberty University in Lynchburg, VA. Working in Richmond I get to cover Colonial Heights quite often so for me it's really neat to be covering news in my hometown. I also get to work with many of my old classmates and teachers and some of them have become by best sources!

What was your first job in broadcasting?

My first job in broadcasting was at WSET in Lynchburg VA. Again, working in a town that I had already lived in for 4 years and was very familiar with was a great experience.

What is your career goal?

You know my career goal changes very often. Sometimes, my career goal is to work my way all the way to the top and work for a network, but other times my goal is to stay in Richmond and become a lead anchor in my hometown. There are a lot of different things that have changed my career goals over the years.

What are you most looking forward to learning/taking away from the Best of the Best Leadership program?

I am most looking forward to learning about the government relations, and trying to make a difference in an industry that I love. I believe there are several issues facing the broadcast industry and I hope to be apart of bringing change to our industry to make it work better for everyone. I am passionate about broadcast journalism and I firmly believe in the public's right to know what is going on. I believe sometimes this information flow can be hindered and I hope to be apart of changing that.

What do you like to do in your free time?

I love the outdoors. I love spending time in the outdoors doing just about anything. I enjoy hunting, fishing, hiking, 4-wheeling. I also love sports watching and playing just about anything. I am also a big concert nut. I love country music and I love going to concerts whenever possible. I also enjoy devoting a lot of my time to giving back to my community through various different ways. I take on a lot of speaking engagements and mentoring opportunities at different venues in the Richmond area.

If you could have dinner with somebody from the past, present or future who would it be and why?

You asked for just one person but I have to give you two people. I am being difficult I know. From the past no question I would love to have dinner with George Washington. I love history and I love reading about our country when we were just in our infancy. Think about all the great stories of bravery and determination Mr. Washington would have, not only from his time as President, but also during his time as the Commander-in-Chief of the Continental Army. Would we be the great country we are today if it weren't for Mr. Washington? Some would argue yes because we always had John Adams but no other person, in my opinion, had as much influence and success steering our country in our early days at George Washington. Presently, I would pick Brian Williams because, come on, the man is a phenomenal broadcaster. I did have a brief chat in an elevator with him once but dinner would be a little less awkward. ■

Watch for additional Best of the Best class members in upcoming issues of the newsletter.

Where FMLA Administration and Practicing Medicine Collide A Practical Lesson for Employers

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Although it has been more than two decades since Congress enacted the federal Family and Medical Leave Act (FMLA), many U.S. employers continue to grapple with the intricacies of its requirements. Even if employers are savvy enough to consistently decide whether and when their employees are entitled to FMLA leave, such is only the beginning. Managing the workload in the employee's absence, managing the employee's leave time, and returning the employee to the workforce following leave consume as much (if not more) time than deciding whether the employee is entitled to leave in the first instance. Regrettably for employers, returning an employee to work can be as big a liability trap as the initial decision to grant or deny FMLA leave.

Returning an Employee to Work Can Be a Complex Issue

A recent decision from the Third Circuit Court of Appeals (the federal appeals court for New Jersey, Delaware, Pennsylvania and the Virgin Islands) illustrates how a decision that might appear to be common sense from a practical standpoint may nevertheless violate the FMLA. In this case, the court revived a former employee's FMLA claim, which she filed after her employer refused to allow her to return to her clerical position while wearing a splint on her right hand, which limited the use of that hand to her thumb and forefinger. The employee's fitness for duty certificate indicated she was released to return to work without restriction; however, her employer determined, contrary to the physician's findings and without clarifying the employee's job responsibilities with the physician, that the employee was not fit to return to full duty because she did not have "full use of all of her digits." Overruling the lower court's decision in favor of the employer, the Third Circuit held that the employer improperly substituted its

medical judgment for that of the physician. Accordingly, the court held that the employee had presented enough evidence to take her FMLA interference claim to a jury. See *Budhun v. Reading Hospital and Medical Center*, 2014 WL 4211116 (3rd Cir. 2014).

Background of the Case

The employee worked as a credentialing assistant for a medical facility. Although her job description did not identify typing as an essential job function or set a minimum word per minute expectation, typing accounted for approximately sixty percent of her job. After a non-work related fracture to her right pinky finger prevented the employee from working "full duty," her employer prompted her to take FMLA leave. Shortly thereafter, the employee's physician placed her right hand, except for her thumb and forefinger, in a splint. Although the employee told the physician that her job required typing, she explained that she felt she could sufficiently type with the five fingers on her left hand and her thumb and index finger on her right hand. Based on this representation, the physician completed a FMLA fitness-for-duty certification form stating that she could return to work with "[n]o restrictions in splint."

The employee provided the FMLA paperwork to her employer when she returned to work, and explained that her productivity would suffer because of the splint on her right hand. Thereafter, the court found that the employer informed the employee that she "needed to perform at the 'same capacity' as she did prior to going on leave and that she should have full use of all her digits in order to be considered full duty." Most importantly, the employer wrote "[i]t seems that your physician was incorrect in stating that you could work unrestricted. If you were truly unrestricted in your abilities, you would have full use of all your digits."

Subsequently, the employee eventually exhausted her remaining FMLA leave and was later terminated. After her discharge, the employee sued and alleged, among other

claims, a FMLA interference claim. The lower court ruled in favor of the employer, and the Third Circuit reversed this decision, finding the employee should be able to present her FMLA claim to a jury.

The Court's Rationale

The FMLA prohibits employers from interfering with employees' exercise of their FMLA rights and requires employers to reinstate employees to the position held or an equivalent position when they return from FMLA leave. It also protects employees from being required to take more FMLA leave than necessary.

On appeal, the employer claimed that the employee never attempted to return to work the first time she came to the worksite, because shortly after she arrived she left and sought a doctor's note requesting additional FMLA leave. However, the Third Circuit found a genuine dispute of material fact regarding whether the employee attempted to invoke her right to return to work when she presented her FMLA paperwork, which returned her to work with "[n]o restrictions in splint," and scheduled her return to work date. In doing so, the court stated that, while employers may request that an employee provide a fitness-for-duty certification before permitting an employee to return to work, an employee's healthcare provider must merely certify that the employee is able to resume work. To require more information from the healthcare provider, such as whether the employee can perform the essential functions of her job, the employer "must provide a list of essential functions to the employee at the time that the employer notices the employee that she is eligible for FMLA leave." Because the employer never provided the employee with a list of essential job functions to present to her physician, the court found that the physician's paperwork returning her to work with "[n]o restrictions in splint" was sufficient to invoke the employee's rights despite the inconsistent nature of the physician's representation.

The court further found that the employer failed to utilize the methods provided in the FMLA's regulations for situations in which clarification might be needed before returning an employee to work based on a physician's fitness-for-duty certification. Specifically, the court noted that if an employer requires

clarification of the fitness-for-duty certification, the employer can, with the employee's written prior permission, contact the employee's health care provider. The court found that, instead of following the regulations, the employer "(who is not a doctor) seemingly overruled [the employee's physician's] conclusion (albeit reached without an employer-provided list of essential job functions) by telling [the employee] that if she was 'truly unrestricted,' she 'would have full use of all of [her] digits.'" Based on those facts, the court determined that the record was sufficient to allow a reasonable jury to conclude that the employee attempted to invoke her right to return to work, and that her employer interfered with that right when it refused her return.

The court also rejected the employer's argument that it still would have sent the employee home on the day in question because she could not perform the essential functions of her job, noting "[t]he FMLA regulations place the onus on an employee's health care provider – not her employer – to certify whether the employee is unable to perform any essential function of the job." The court further reiterated that although the employer could have provided the employee with a list of the specific functions that were essential to her job so that her physician could determine whether she could perform them, it did not and, instead, "unilaterally determined, . . . that [the employee] could not perform an essential function because she had use of only seven fingers."

Takeaway for Employers

Employers should ensure that their job descriptions accurately reflect the essential functions of the jobs described. Additionally, they should make sure that their FMLA leave process permits them to require fitness-for-duty certification forms that specify an employee can perform the essential functions of the job. Employers should also become familiar with the FMLA's process for clarifying confusing or inconsistent fitness-for-duty certification forms. Finally, employers should avoid substituting their opinion for that of a physician when returning an employee to work from an approved FMLA leave. ■

Article courtesy of John G. Kruchko, and Kevin B. McCoy of FordHarrison LLP.

Employers should ensure that their job descriptions accurately reflect the essential functions of the jobs described.

How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- ▶ Go to www.vabonline.com. Login with your user name and password.
- ▶ Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

Position	Locations	Type	Department	Organization
Database Administrator	Norfolk, Virginia	Full Time	(Other)	Hampton Roads Educ. Telecomm. Assoc. Inc.
Local Sales Assistant	Roanoke, VA	Full Time	Sales	Grant Broadcasting System II
News Director	WCAV CBS19/ Charlottesville, VA	Full Time	News	Gray Television
Anchor/Reporter	WHSV	Full Time	News	WHSV-TV
Account Executive	Richmond, VA	Full Time	Sales	WWBT, Inc.
Marketing Producer	Richmond, VA	Full Time	Promotion	WWBT, Inc.
Director	Richmond, VA	Full Time	News	WWBT, Inc.
TV News Video Editor – Part-Time	Norfolk/Portsmouth/ Virginia Beach	Part Time	News	LIN Television-WAVY
Sales Representative	Roanoke, VA	Full Time	Sales	Mel Wheeler Inc.
Production Assistant	Roanoke, VA	Part Time	Production	WDBJ Television, Inc.
Producer	Roanoke, VA	Full Time	News	Media General
Sports Reporter	Roanoke, VA	Full Time	News	WDBJ Television, Inc.
Meteorologist	Norfolk/Portsmouth/ Virginia Beach	Full Time	News	LIN Television-WAVY
Multimedia Journalist	Danville	Full Time	News	WSET, Incorporated
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