

# Step

Energy & Mineral Law Foundation

# INTO HISTORY

## 27th Annual Institute

May 21-23, 2006 • Williamsburg, Virginia





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# Program schedule

## Sunday, May 21

- Noon **Golf Outing (shotgun start)**  
Colonial Williamsburg Golden Horseshoe Golf Club – Gold Course
- 4:30-6:30 p.m. **EMLF Registration – Williamsburg Hospitality House**
- 6:00-8:00 p.m. **Welcome Reception – Inner Courtyard**  
Williamsburg Hospitality House – Sponsored by Annual Institute Patrons

## Monday, May 22

- 6:30 a.m. **EMLF Registration Desk Opens**
- 7:00 a.m. **Board of Trustees Breakfast Meeting**
- 8:30-9:00 **Keynote Address**  
■ The Honorable Jeffery Jarrett, Assistant Secretary for Fossil Energy, *USDOE (Invited)*
- 9:00-9:30 **The Endangered Species Act:  
Protecting Species at Risk, Risking Land Uses**  
The Endangered Species Act is often referred to as the “pit bull of environmental laws.” The Supreme Court has stated the ESA “admits of no exceptions” and has as its “intent . . . to halt and reverse the trend toward species extinction, whatever the cost.” This presentation identifies the reasons why the ESA remains the most stringent and controversial of environmental laws, discusses both the most persistent and the newest ESA issues of greatest significance to landowners and project proponents, and predicts if and how those issues will be resolved, obfuscated, or evaded in litigation, legislation, and regulation.  
■ Steven Quarles, *Crowell & Moring LLP*, Washington, DC
- 9:30-9:45 **Break**
- 9:45-10:15 **Sarbanes Oxley – Parent Liability for Subsidiaries**  
What obligations does SOX impose upon parent corporations for oversight of safety and environmental compliance of subsidiaries? Can the parent be subject to tort actions? This session covers parent liability for subsidiary acts or omissions in light of Sarbanes-Oxley requirements for publicly-traded corporations, and discusses issues relating to management of an ensuing crisis when SOX compliance fails.  
■ Larry J. Rector, *Septoe & Johnson, PLLC*, Charleston, WV
- 10:15-10:45 **Stay Out of My Sandbox! –  
Preventing Third Parties from Interfering with Your Contracts**  
Can your existing or future leases, supply agreements, royalty contracts and other agreements be undermined by meddling third parties? This presentation examines interference with contract claims, particularly in the context of the coal and gas industries. Issues addressed include: What is an interference with contract claim? How are such claims most likely to arise in the coal and gas industries? When should a claim be legitimately considered to protect your existing or prospective contractual rights? What can you do to protect your company from such claims? What defenses are available to defeat the claims?  
■ Kevin K. Douglass, *Babst, Calland, Clements and Zomnir, P.C.*, Pittsburgh, PA
- 10:45-11:15 **The New AAPL Form 610 JOA Coalbed Methane Checklist:  
Making the List and How to Check It Twice**  
In early 2004, the American Association of Professional Landmen (AAPL) formed a task force to determine if a new model form operating agreement should be drafted to address the unique aspects of coalbed methane (CBM), or if some other mechanism to modify the Form 610 operating agreement should be drafted to address this burgeoning area. The task force, comprised of landmen and lawyers with expertise in the various CBM basins of the United States and with input from numerous industry contacts, developed and drafted checklists to work in conjunction with both the 1982 and 1989 versions of the Form 610, which were approved by the AAPL’s governing Board of Directors in September, 2005. Mr. MacDonald, a member of the task force, addresses various issues the task force faced, outlines the salient provisions of the checklists, and gives practical advice on their use. The checklists will be provided and also will be available through the AAPL’s website at [www.landman.org](http://www.landman.org).  
■ Fred MacDonald, *Pruitt Gushee*, Salt Lake City, UT

11:15-11:30 **Break**

11:30-1:00 **The New Mine Safety Legislation – Hasty Pudding?**

Lawyers and safety professionals analyze the state and federal regulatory response to the loss of life in West Virginia and Kentucky mines, and the practical aspects of implementation.

- Moderator: Timothy M. Biddle, *Crowell & Moring LLP*, Washington, DC
- Robert H. Beatty, Jr., *Dinsmore & Shohl LLP*, Morgantown, WV
- Edward M. Green, *Crowell & Moring LLP*, Washington, DC
- David D. Lauriski, *John T. Boyd Company*, Denver, CO
- Steven P. McGowan, *Steptoe & Johnson PLLC*, Charleston, WV
- John M. Williams, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY

1:00 **Afternoon open to enjoy Williamsburg**

6:30-7:30 **Reception – Williamsburg Hospitality House  
Dine-Around Williamsburg**

## Tuesday, May 23

7:00 a.m.-noon **Registration**

### **Concurrent Session A**

8:00-8:40 **Coal Law Update**

The annual update of cases and regulations impacting the coal industry.

- Robert L. Burns, Jr., *Buchanan Ingersoll, P.C.*, Pittsburgh, PA

8:40-9:20 **Section 110(c) Liability Under the Mine Act:  
A Fresh Look at Theories of Liability, Defenses and Representation Issues**

With recent mine accidents bringing about increased scrutiny of the mining industry, Section 110(c) liability will continue to grow in importance. This topic for both corporate counsel and industry attorneys will address 1) theories of civil liability, 2) available defenses, including a new defense focusing on the ability of an agent to control a situation, and 3) issues of representation of targets of Section 110(c) investigations.

- Mark E. Heath, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

9:20-9:35 **Break**

9:35-10:15 **Permitting Under the Clean Water Act**

The federal Clean Water Act requires a permit to discharge any pollutant into “waters of the United States.” The term “pollutant” includes both “dredged and fill material” as well as most other non-fill substances. The Act establishes two general permitting systems: § 404 permits for discharges of “dredged or fill material,” administered by the U.S. Army Corps of Engineers; and § 402 NPDES permits, which are issued for non-fill pollutants and administered by U.S. EPA and the states. In addition to the permit programs, the Act mandates that “water quality standards” be established for waters within each State. These standards consist of designated water “uses” and pollutant-specific “criteria” regulating the impact or concentrations of the pollutants. Both the § 402 and § 404 permit programs may be delegated to individual states, a fact which reduces the exposure of individual permit applicants to the National Environmental Policy Act. Challenges to permits, both by the permittee and by third parties, can follow a bewildering path. In addition, permit holders can be subject to enforcement action both by regulatory agencies and private citizens. The presentation will explore just some of the pitfalls that the extractive industries face in obtaining and maintaining these permits.

- Robert G. McLusky, *Jackson Kelly PLLC*, Charleston, WV

10:15-10:55 **Federal and State Required Water Replacement – If You Break It, You Buy It!**

Under the common law, recovery for diminution or loss of water supplies by mineral extraction activities was curtailed, difficult to prove and, generally, limited to damages. However, federal and state statutes regulating mineral extraction activities now require operators to replace those water supplies. This presentation will review those statutes and the scope and limitations of “replacement.”

- Timothy W. Gresham, *Penn Stuart & Eskridge*, Abingdon, VA

10:55-11:35 **Out with Section 29 and In with Section 45: Have Synfuel Tax Credits Really Been “Refined”?**

Section 29 of the Internal Revenue Code has been redesignated as Section 45K, and we are likely in the final two years of credits for synthetic fuel from coal. The presentation will explore transitional issues facing the synfuel industry and how the new credit for “refined coal” may or may not fill the gap.

- Daniel L. Kesten, *Greenberg Traurig, LLP*, New York, NY

## ***Concurrent Session B***

### **8:00-8:40 a.m. Compulsory Pooling and Unitization in the Eastern States**

Professor Kramer will explore the historical antecedents of compulsory pooling and unitization as well as how the statutory and common law of the eastern states deal with such issues as unleased mineral owners in both pooling and unitization, the terms under which a compulsory pooling order will deal with the non-cooperative owners, the effective date of the pooled unit or unitized area, the participation formula used in compulsory unitization, the minimum number of consenting owners needed to issue a compulsory unitization order and the judicial review of such orders.

■ Professor Bruce M. Kramer, *Texas Tech University School of Law*, Lubbock, TX

### **8:40-9:20 Legal Issues in Underground Gas Storage – What’s Mine Is Mine, Right?**

This presentation addresses some of the legal problems that arise in the subsurface storage of gas, including ownership of gas once it has been reinjected into a storage reservoir and determining, as between a mineral owner and a surface owner, who has the right to grant storage rights.

■ Debra J. Villarreal, *Thompson & Knight, L.L.P.*, Dallas, TX

### **9:20-9:35 Break**

### **9:35-10:15 Oil and Gas Update**

The annual update of cases and regulations impacting the oil and gas industry.

■ R. Cordell Pierce, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY

### **10:15-10:55 Accounting for Trespassers, Lessees . . . and the Like**

This session covers the obligation of a lessee to provide basic information to a lessor, such as mmbtus produced, sales prices and any deductions from royalty, so that an owner can properly audit and confirm the accuracy of royalty paid. It will also include the obligation of a lessee or trespasser to “account” for minerals taken in an innocent trespass situation or where divided ownership exists and minerals are developed with authorization from some, but not all owners.

■ J. Thomas Lane, *Bowles Rice McDavid Graff & Love, PLLC*, Charleston, WV

### **10:55-11:35 The Future of Oil and Gas Drilling in the Appalachian Basin**

Described by one geologist as the most “over drilled and underexplored” basin in the U.S., the Appalachian Basin occupies more than 180,000 square miles stretching from New York to Tennessee — all of West Virginia, and parts of New York, Pennsylvania, Maryland, Kentucky, Virginia and Tennessee are part of this vast resource. After more than a hundred years of production, how will the Appalachian Basin’s strategic location and still untapped regions impact the nation’s energy future?

■ Hank DeWitt, Vice-President, Geosciences – Eastern Division, *Chesapeake Energy Corporation*, Oklahoma City, OK

### **11:45-1:15 Luncheon Program, Recognition, and Awards**

## ***Tuesday Afternoon – Program Continues at William & Mary Law School – Courtroom 21***

Annual Institute attendees have a unique opportunity to observe William & Mary Law School’s Courtroom 21 Project, with the EMLF afternoon session held in this “most technologically advanced trial and appellate courtroom.” The 2-hour ethics session will include a computer “hacking” demonstration that will cause you to re-think the security of your confidential information, followed by the closing session featuring the Courtroom 21 technology in place, how it’s used, and how it enhances the judicial process.

### **2:00-4:00 Professional Ethics Session – Information Security for Lawyers – An Ethical Obligation**

Attorneys are required to act competently to safeguard client information and confidentiality. Computers and networks, including those used by lawyers, face greater security threats than ever before from viruses and worms, Trojan horses, spyware and rootkits – many of which can compromise confidential information. David Ries will educate you on these threats, providing a live hacking demonstration, followed by a panel discussion of attorneys’ ethical obligations in the context of information security, and current security best practices.

■ David G. Ries, *Thorp, Reed & Armstrong, LLP*, Pittsburgh, PA

■ Nancy M. Snyder, General Counsel, *Penn Virginia Corporation*, Radnor, PA

■ Joseph J. Zaluski, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY

### **4:05-5:00 The Courtroom 21 Project**

Courtroom 21 is an ongoing international demonstration and experimental effort which seeks to determine how technology can best improve all components of the legal system. A joint project of William & Mary Law School and the National Center for State Courts, Courtroom 21 is the world center for courtroom and related technology information and experimentation, and received a Foundation for Improvement of Justice Award for its efforts to improve the administration of justice through technology. The Director of this internationally recognized project will demonstrate the courtroom technology available and discuss its value to the judicial process.

■ Professor Fredric Lederer, Chancellor Professor of Law and Director, Courtroom 21 Project, *William & Mary Law School*, Williamsburg, VA

### **5:00 Adjourn**

# Virginia's Historical Triangle: Jamestown, Williamsburg and Yorktown

Democracy, diversity, liberty, prosperity — these are the principles upon which our country was founded, and here in Virginia's Historic Triangle, visitors discover their American roots. Beginning with the first permanent English settlement at Jamestown established in 1607, through the Colonial period in Williamsburg, and culminating with the Revolutionary victory at the Battle of Yorktown in 1781, the story of our nation comes alive in Virginia's Historic Triangle.

Today's visitors to the Williamsburg area can immerse themselves in America's culture and history while enjoying the most modern amenities. Complementing the historic sites, modern adventure and entertainment delight visitors of all ages. All within a few minutes' drive, the points of Virginia's Historic Triangle — Williamsburg, Jamestown and Yorktown — offer more than 20 attractions; world-class golf; outlet and specialty shopping; and memorable and fine dining.

The story begins in Jamestown, the first permanent English settlement in the New World. Visitors can explore Historic Jamestowne, the original site dating to 1607, as well as the foundations of private homes and public buildings. Archaeologists continue to excavate the original James Fort, from which artifacts are displayed.

Nearby Jamestown Settlement traces Jamestown's beginnings through indoor gallery exhibits and life-size re-creations of a Powhatan Indian Village, James Fort and three ships, and a newly developed riverfront discovery area.

A 15-minute drive east from Jamestown takes visitors to Colonial Williamsburg, the world's largest living history museum and the restored 18th-century capital of the Virginia colony, Britain's largest, wealthiest and most populated in the "New World." Colonial Williamsburg tells the story of "Becoming Americans," how diverse peoples evolved into a society that values liberty and equality.

Colonial Williamsburg comprises 301 acres of historic buildings, gardens and public greens where costumed interpreters ply their trades and re-enact and interpret aspects of Colonial life

Guests can walk to Colonial Williamsburg's Historic Area from the Visitor Center across a "Bridge to the Past" that transports them from their 21st-century world into the 18th century. Along the way they encounter "people of the past" at Great Hopes Plantation where guests observe how most 18th-century Virginians lived in the rural countryside — whites and slaves working side-by-side in agricultural activities — rather than the city life depicted in the Colonial capital city.

From the Governor's Palace to the Capitol, guests become acquainted with costumed residents who are eager to share the news of the day. Trades people at some 20 sites throughout the Historic Area invite guests to help them practice their trades such as shoemaking, barrel making or silversmithing. Evening programs complement

Colonial Williamsburg's daytime offerings. Art and antiques lovers enjoy Colonial Williamsburg's exhibits of English and American antiques at the DeWitt Wallace Decorative Arts Museum and Bassett Hall, the Williamsburg home of Colonial Williamsburg's first benefactors Mr. and Mrs. John D. Rockefeller Jr.

Only 14 miles from Williamsburg is Yorktown, site of the last major battle of the American Revolution. A scenic drive along the Colonial Parkway, the 23-mile roadway that connects Jamestown to Williamsburg to Yorktown, brings visitors to the Yorktown Battlefield, including fortification and siege lines, Surrender Field and the Moore House, where negotiations for Cornwallis' surrender took place. The National Park Service Visitor Center offers an orientation film, a museum featuring artifacts from the battle, including the original tents used by General Washington, and maps for a self-guided auto tour of the battlefield and a walking tour of the picturesque town of York. Main Street and its surrounding streets are lined with historic buildings, antique shops and galleries.

At the state-operated Yorktown Victory Center, innovative exhibits and an evocative film chronicle the Revolutionary era from the beginnings of Colonial unrest to the emergence of the new nation, drawing from the perspectives of ordinary men and women.

Just a few blocks away, the Yorktown waterfront offers visitors the peaceful views of the York River from the tree-lined Riverwalk. Opened in 2005, Riverwalk Landing features a collection of retail shops and riverfront dining. The waterscape includes two piers — a large T-shaped pier to accommodate tall ships and a smaller pier to welcome pleasure boaters. Situated midway between Yorktown's two

major historic sites, Riverwalk Landing provides a respite as visitors stroll from the Yorktown Battlefield at the east end of town along the mile-long Riverwalk that ends at the Yorktown Victory Center to the west. Located at the west end of the riverfront, the Watermen's Museum tells the story of Virginia's working watermen and their families, who for generations have harvested the rivers and tributaries of the Chesapeake Bay for its abundant year-round seafood. Outdoor exhibits include a five-log dugout canoe and other examples of boat building.

Though many people lived in towns, the plantation was an important center of life in the 18th century. Today's visitors can get a glimpse of plantation life from three historic properties known as the James River Plantations. West of Williamsburg along scenic John Tyler Memorial Highway lies Berkeley, the site of the first official Thanksgiving in 1619. Visitors can tour the lovely grounds of Sherwood Forest Plantation, home of President John Tyler, 10th President of the United States.

For more information, go to [www.visitwilliamsburg.com](http://www.visitwilliamsburg.com) for help in planning your stay in this historic area.



*Colonial Williamsburg. At the Peyton Randolph site, visitors lend a hand as historic trade carpenters reconstruct eight outbuildings that comprise Randolph "urban plantation." Carpentry is one of more than a dozen historic trades that are preserved and demonstrated at Colonial Williamsburg.*



*Colonial Williamsburg Golden Horseshoe Golf Club. Designed by celebrated golf architects Robert Trent Jones Jr. and his son, Rees, the Golden Horseshoe Gold and Green courses provide ample challenges for golfers of every skill level. Gold Course pictured.*

## Annual Institute Accommodations

The host hotel for the Annual Institute is the Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, VA 23185-3536. The hotel is located within two blocks of Colonial Williamsburg and across the street from the College of William & Mary. Special EMLF rates of \$139 Single and \$149 Double plus taxes are available for reservations made through April 20.

Call 800.932.9192 and identify yourself with the EMLF room block. After April 20, rooms will be confirmed on a space available basis at the prevailing rate. One night's deposit is required and will be refunded for cancellations received at least seventy-two (72) hours prior to scheduled arrival. If notification is not received by the deadline, there will be a charge of one night's room and tax.

Check in is 3:00 p.m. and check-out time is 11:00 a.m. Guest amenities include two full service restaurants, room service, outdoor swimming pool, fitness center, gift shop, complimentary underground parking — all in unparalleled Colonial style and sophistication .

## Golf outing

Reservations have been made for 32 players at the Golden Horseshoe Golf Club in Colonial Williamsburg for a shotgun start at noon on Sunday, May 21. Golf reservations must be paid in full to the EMLF by Monday, April 3 to guarantee play. Due to Golf Club cancellation policies, no unpaid reservations will be held after April 3. *No refunds will be made after April 3*, but every effort will be made to help find a substitute if you cannot participate as planned. For more information, go to [www.goldenhorseshoe.com](http://www.goldenhorseshoe.com) and browse through the information for the Gold Course.

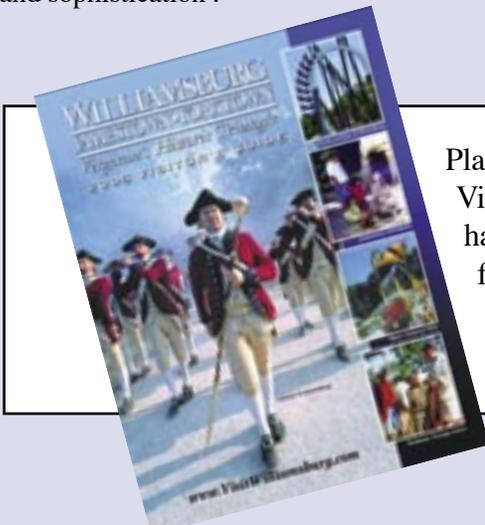
### The Gold Course

The year was 1963, the designer was Robert Trent Jones, Sr. and the place was Williamsburg, Virginia. Constructing more than 350 golf courses in 45 states and 35 countries, Trent commented the Williamsburg course is “my finest design.” It was thirty-three years ago that Jack Nicklaus played the course, posting a record low of 67 that still stands today. After playing Nicklaus remarked, “I was most impressed. It’s very interesting, very challenging. It’s not a course you can get careless with.”

This past December, the National Association of Golf Tournament Directors (NAGTD) included the Golden Horseshoe in the “Top 10” venues preferred by executives and meeting planners for golf outings. This award was mentioned in the December issue of *Business Golf* magazine. The criteria for ranking resorts around the country is quality, value and service. The Golden Horseshoe was the only golf destination in Virginia that was named.

### Course Ratings and Awards:

- Selected for 4 consecutive “Golf Medals” as one of the best golf resorts in the country — *Golf Magazine*
- Selected one of the Top 30 best resort golf courses — *Golf Digest Magazine*
- Named among Golf Digest’s 2005 list of the top 100 public courses — *Golf Digest Magazine*



Plan on extending your stay in Williamsburg, taking time to explore what Virginia’s historical triangle of Williamsburg, Jamestown and Yorktown has to offer. Known for cultural museums and historic sites, the area also features shopping, dining and golfing. To learn more, simply call the toll-free number, 800.368.6511, to request a free guide, or go to the website, [www.visitwilliamsburg.com](http://www.visitwilliamsburg.com).

Join the Foundation at a reduced rate and register at the Member Rate! 2006 individual membership dues \$425. Combined individual membership dues and Annual Institute registration \$800 by April 14, \$900 after April 14.

 **Yes, I want to attend the 27th Annual Institute May 21-23, 2006 at Williamsburg Hospitality House, Williamsburg, Virginia**

Registration fee includes all educational sessions, meeting materials and handbook, and Sunday and Monday evening receptions. Guest registration includes Sunday and Monday evening receptions. Separate fee for Tuesday luncheon; guests are welcome to attend the luncheon program at a separate \$25 fee.

<i>Registration fees</i>	<i>Early Bird (by April 14)</i>	<i>Regular</i>
EMLF member.....	\$550 .....	\$620
New membership/Annual Institute registration.....	\$800 .....	\$900
General Registration .....	\$770 .....	\$840
Government.....	\$350 .....	\$420
Law Faculty, Young Lawyer, Retiree, Landman.....	\$350 .....	\$420
Guest registration.....	\$50 .....	\$50

Multiple registrants from the same firm or company can deduct \$50 for the second registrant and each registrant thereafter.

<b>Additional events</b>	
Golf outing (per person).....\$160	Number of golfers ..... _____ Sunday, May 21
Board of Trustees breakfast meeting.....\$20	I will attend ..... _____ Monday, May 22
Luncheon program.....\$25	Number of tickets..... _____ Tuesday, May 23

Name \_\_\_\_\_ Title \_\_\_\_\_

Organization/firm \_\_\_\_\_ Daytime phone \_\_\_\_\_

Address \_\_\_\_\_ Fax # \_\_\_\_\_

City, state, zip \_\_\_\_\_ Email \_\_\_\_\_

Guest name(s) \_\_\_\_\_

Fees:

Conference registration \$ \_\_\_\_\_

New Membership/Registration \$ \_\_\_\_\_

Guest registration \$ \_\_\_\_\_

Additional events \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

**Mandatory CLE and Professional Credit:** EMLF programs are presumptively accredited for mandatory Continuing Legal Education credits in most states and by the AAPL. This program has 585 minutes, including 160 ethics minutes. Full attendance of the program provides a total of 11.7 hours of CLE in states which calculate 50-minute hours and 9.75 hours of CLE in states which calculate 60-minute hours. Use the space below to indicate states where you are requesting MCLE credits and/or other organizations where you are requesting professional education credits. Reimbursement of application fees may be required for certain states/organizations.

\_\_\_\_\_

You may pay by \_\_\_\_\_ check or \_\_\_\_\_ credit card. EMLF accepts MasterCard, VISA or American Express.

Card # \_\_\_\_\_ Expiration date \_\_\_\_\_

Signature \_\_\_\_\_

**Cancellation policy**

Refunds less a \$75 administrative fee will be given for written registration cancellations received by April 14. No registration refunds will be made thereafter, but substitutions can be made without charge. Persons cancelling after April 14 are not entitled to any refund but will receive the handbook and all course materials. *No refunds will be given* for the golf outing after April 3 but every effort will be made to find a substitute if you cannot participate as planned.

**Four ways to register**

- If registering online, go to [www.emlf.org](http://www.emlf.org)
- If registering by phone, call 859.231.0271
- If registering by fax, call 859.226.0485
- If registering by mail, send form and payment to EMLF, 340 South Broadway, Suite 101, Lexington, KY 40508

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- Greg A. Walker, Foundation Coal Corporation, Linthicum Heights, MD

**Website — <http://www.emlf.org> • E-mail — [emlf@aol.com](mailto:emlf@aol.com)**

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# **27th Annual Institute**

**May 21-23, 2006**

**Williamsburg**

**Hospitality**

**House**

**Williamsburg**

**Virginia**