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The views expressed in the *Roanoke Bar Review* do not represent the policy or carry the endorsement of the Association unless specifically noted.

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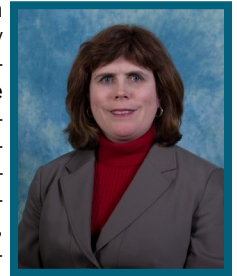
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## PROPOSED CHANGES TO THE VIRGINIA DISCOVERY RULES IN CRIMINAL CASES

BY MELISSA W. FRIEDMAN, ESQ.

There is a new effort to reform discovery in criminal cases in Virginia. The Virginia State Bar Criminal Discovery Task Force, led by Court of Appeals Judge Robert J. Humphreys, has unanimously approved a package of suggested changes and sent the proposal to the Supreme Court of Virginia. Currently, a defendant's access to discovery is limited to the following: the defendant's statements to law enforcement officers; any written scientific reports; any physical or mental examination of the defendant or the alleged victim made in connection with the case; and books, papers, documents, tangible objects, buildings, and places that are material to the defense. The new criminal rules expand discovery in several respects.



First, Proposed Rule 3A:11(a)(2) would recognize the prosecution's constitutional obligation to provide exculpatory and/or impeachment evidence to a defendant by stating that this obligation supersedes any protection or restriction on discovery provided pursuant to the Rule.

Second, Proposed Rule 3A:11(b)(1) would require the prosecution to permit the defendant to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case (commonly referred to as "offense reports"). Notably, the prosecution is not required to provide the defense with copies of such reports, although it may do so. If copies are provided, then the Rule sets forth redaction rules whereby the Commonwealth may redact identifying data regarding any witness or victim. Also, the Commonwealth may designate certain discovery items as "Restricted Dissemination Material," making it subject to protective controls as to how it may be shared by defense counsel. Specific procedures for such redactions and protections are outlined in Proposed Rule 3A:11(c). These procedures appear to balance the safety and security of the Commonwealth's witnesses and victims and the defendant's legitimate need to review such offense reports and other similar material to prepare effectively for trial.

Third, Proposed Rule 3A:11(b)(2)(ii) and (iii) would expand the defendant's access to his or her own statements. Specifically, the Rule would make discoverable any statements by the defendant to any person, not just law enforcement officers, if the Commonwealth intends to use such statements at trial. Additionally, this Proposed Rule would require the Commonwealth to provide statements of co-defendants and co-conspirators.

Fourth, Proposed Rule 3A:11(b)(4) would require the Commonwealth to notify the accused in writing of its intent to introduce expert opinion testimony at trial or sentencing, to provide the accused with the witness's opinions and the basis and reasons for those opinions, and to provide the witness's qualifications and contact information. Proposed Rule 3A:11(d)(4) would also place these same obligations on the defendant.

Finally, Proposed Rule 3A:11(b)(5) would require the Commonwealth to provide the accused with a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing. If the Court orders the Commonwealth to provide a witness list, then it shall also order the Defendant to provide a list of names and, if known, the addresses of all persons known to the accused who are expected to testify on behalf of the accused at trial. Proposed Rule 3A:11(d)(5).

There are also proposed changes to Rule 3A:12 – Subpoenas. The most significant of these amendments provides a process whereby a party may issue a witness subpoena on an *ex parte* basis. Proposed Rule 3A:12(k).

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## PRESIDENT'S CORNER

BY KEVIN W. HOLT, ESQ.



It was my honor to serve as the President of the Roanoke Bar Association in 2017-2018. I thank the membership for entrusting me with this important position and for the privilege of serving. I thank all of the officers and directors for their dedication and service this year. Thanks to them, we achieved the goals I set for the RBA when I assumed the presidency.

Those goals were to increase the representation of women on the Board and in leadership positions. As well, I wanted the RBA to continue its reinvigorated pro-bono training and programs. I want to especially thank Nancy Reynolds, chair of the Pro-Bono Committee, for her leadership in this area. Another goal was to both strengthen and revamp the Barrister Book Buddies program to ensure its continuance. The new affiliation between the Barrister Book Buddies and the Turn the Page literacy program in elementary schools will, I believe, achieve this goal. I thank Lauren Ellerman, chair of the Member Services/Public Service Committee, for her leadership in this matter.

Another goal was, as I said last summer, to bring the RBA kicking and screaming into the 21st century. Thanks to the efforts of Membership Committee chair, Macel Janoschka, the RBA designed and launched its new Facebook page earlier this year. If you have not done so already, please like and follow the RBA on Facebook and encourage your friends and family to do so as well. A final goal was to have interesting programs at our lunches and, in the process, to have fun and informative meetings. I thank Lee Osborne, the new RBA president and last year's Program Committee chair, for his wonderful slate of programs and speakers. And I thank all of you for your attendance at the meetings and for doing your part to make our time together so enjoyable.

Finally, I would like to thank Executive Director Diane Higgs for ensuring the RBA's smooth operation on a day-to-day basis and for her planning and organizational efforts at the meetings each month.

Those of you who know me well appreciate that I am something of a history nerd and political junkie. One of my favorite U.S. Presidents is James K. Polk. To many, Polk is one of those obscure, pre-Civil War presidents located somewhere between Jackson and Lincoln. Most historians agree, however, that he was a "near great" president. He announced only a handful of goals, accomplished them all and left the presidency after serving only one term. With the work of this year's Board, the RBA accomplished its goals. We may not have secured the annexation of Texas, won a war with Mexico and acquired the Southwest. We may not have negotiated a difficult treaty with the United Kingdom and acquired the Oregon Territory. We may not have reestablished an independent treasury. But I think we did pretty well.

Of course, I hope to avoid Polk's fate of dying from cholera (or anything else) three months after leaving office. I hope to enjoy many decades with the best title of all – "Former President." And, invoking the words of another favorite president, I leave you with Richard Nixon's comment from his farewell to staff speech, "Au revoir, we'll see you again."

Kevin W. Holt is a partner at Gentry Locke.

## AMENDED FEDERAL RULE OF EVIDENCE 902 STREAMLINES INTRODUCTION OF ESI EVIDENCE

BY LORI J. BENTLEY, ESQ.

If you are like me—an attorney of a certain *undisclosed* age—you know just enough about electronically stored information (ESI) to be dangerous. In other words, you know that it exists, and that with all the technological advances that have recently occurred vastly increasing the amount of ESI, you are most likely to encounter it at some point in your litigation practice. You may also be slightly intimidated at the prospect of having to deal with it in discovery and at trial. Well, I recently reached the point in my practice when I could no longer avoid ESI and had to dive headfirst into the issues surrounding it. In the course of trying to figure out what to do, I discovered that a recent amendment to the Federal Rules of Civil Procedure makes it much easier than before to present ESI evidence at trial.



All trial lawyers are aware (or should be aware) that Rule 902 of the Federal Rules of Civil Procedure makes certain documents like public records, records kept in the ordinary course of business, notarized documents, and newspapers self-authenticating, meaning that they do not require extrinsic evidence of authenticity in order for the documents to be admitted into evidence. Effective December 1, 2017, Rule 902 was amended to address ESI. According to the Evidence Rules Advisory Committee notes, the purpose of the amendment is to provide "a procedure in which the parties can determine in advance of trial whether a real challenge to authenticity will be made, and can then plan accordingly." The new subsections of the rule are as follows:

### (13) Certified Records Generated by an Electronic

**Process or System.** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

### (14) Certified Data Copies from an Electronic Device, Storage Medium or File.

Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902 (11) of (12).

What types of documents are we talking about? The rule applies to a vast array of electronic records too numerous to name. Practically anything that is storable in a digital format is covered by the amendment. A few examples include copies of web pages, comments or photographs posted to all types of social media, GPS data, downloaded digital photographs or text messages from a cell phone or tablet, downloaded files or emails from a computer, computer logs, metadata, and other types of electronic evidence.

So what does all of this mean for the criminal or civil trial lawyer? The amendment eliminates the need for a separate authentica-

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## J. RUDY AUSTIN: 2018 FRANK W. “BO” ROGERS, JR. LIFETIME ACHIEVEMENT AWARD WINNER



*This award recognizes an outstanding lawyer who embodies the highest standard of personal and professional excellence in South-west Virginia and, in doing so, enhances the image and esteem of attorneys in the region. Monica Taylor Monday, Esq., offered the following remarks in presenting this award to Mr. Austin at the Law Day luncheon on May 1, 2018.*

It is a challenge to summarize in ten minutes a lifetime of achievement, but it is particularly difficult to do so when the subject is J. Rudy Austin. So let me try to do justice to Rudy's achievements.

Rudy practiced law at Gentry Locke for 50 years. During that time, he earned a distinguished reputation among his peers, as evidenced by his invitation to become a Fellow in the American College of Trial Lawyers, the American Bar Foundation and the Virginia Law Foundation. He has also been an Emeritus Master of the Bench in the Ted Dalton American Inn of Court, and was consistently listed in the Best Lawyers, Super Lawyers, and the like. In 2007, Rudy received the Virginia Association of Defense Attorneys' (VADA) highest honor—the Award for Excellence in Civil Litigation Award. These honors illustrate Rudy's commitment to the highest level of professionalism and practice in Virginia, and reflect the esteem and respect of his fellow lawyers.

Rudy has served the Bar in numerous ways. He was President of the RBA and the VADA. He has served as Chair of the Sixth District Ethics Committee and the Virginia State Bar Disciplinary Board, and he has lectured extensively on ethics issues around the state.

Closer to home, Rudy served as Gentry Locke's in-house ethics-Guru for years. For decades, we relied on his counsel on ethics and professionalism matters, and he set aside a significant amount of time to help us on these issues – usually without the benefit of being able to bill that time. And this was not always an easy job – many ethics issues have quick deadlines and complex facts. His advice has helped many of us navigate the intricacies of ethics rules, particularly the grey areas of the rules, and we have valued and respected his wise counsel.

Rudy practiced law in the manner this great Bar expects. He never engaged in sharp practice, and discouraged other lawyers from being tempted to use such tactics. His philosophy about practicing law in this way stems not just from his deep respect for the law and our system of justice, but also from his down-home Bluefield, Virginia values. He was always courteous, friendly, and fair to fellow attorneys. A gentleman lawyer.

But don't be fooled by his cuddly teddy bear exterior. Inside is an aggressive litigator who took on tough battles. And in his long career, he has fought many of them with success.

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## VIEWS FROM THE BENCH: JUDGE SCOTT R. GEDDES

BY D. PAUL HOLDSWORTH, ESQ.

I recently had the honor of sitting down with the Honorable Scott R. Geddes to discuss life and the law. Despite being the newest judge in the 23rd Judicial Circuit of Virginia, Judge Geddes' knowledge of and commitment to the law is patently evident. Likewise, his demeanor, both on and off the bench, is pleasant, accommodating, and collegial. While Judge Geddes would be the first to caution the readers of this article that he has much to learn, it was plainly evident to me that Judge Geddes is a fantastic addition to our judiciary, and will do an exceptional job in the many years to come.



Judge Geddes is a native Midwesterner, raised in Joliet, Illinois, a city on the outskirts of the Chicago Metropolitan Area. After obtaining a bachelor's degree from Northwestern University, Judge Geddes attended law school at Valparaiso University in Indiana. So what brought him to the Star City? No, it wasn't the beauty of the Blue Ridge Mountains. He made his way to Roanoke by following his classmate and future wife, Amy Geddes of OPN Law, who had already lined up a job in Roanoke after law school.

Despite having no personal connections with the area, Judge Geddes courageously decided to hang out his own shingle—a significant challenge for any lawyer, let alone a recent law graduate. Judge Geddes practiced as a solo practitioner for approximately 15 years before joining OPN himself in approximately 2010.

Intrigued by Judge Geddes' decision to start his own practice right out of law school, I asked what the biggest challenges were for him. He said, “The most difficult thing was learning how to run a business at the same time as learning how to practice law—something that law school just does not adequately prepare you for.” The lack of oversight and direct mentorship also presented significant challenges. Nevertheless, Judge Geddes felt an overwhelming amount of support from the senior lawyers in the bar. “I can't think of a single lawyer that would not have offered advice or went above and beyond to help me if I had a question or an issue.”

Judge Geddes has observed a similar spirit of collegiality in the decades that have followed, which has been a preeminent characteristic of our bar. He continued, “While we have an adversarial system, we are not adversaries. The lawyers in this bar recognize that we are all in this together. So, while I have had lots of opponents over the years, I can't say that I have had any adversaries.”

After having been a substitute judge for several years, Judge Geddes had a general idea of what he was getting into by seeking appointment to the bench. While he greatly enjoyed practicing law, his appointment has been professionally refreshing. He explained that day-to-day lawyering can be very rewarding, but his current position is more rewarding. It has given him a different view of the law. “I can honestly say that I have loved every single day that I have been on the bench. I cannot say the same about private practice.”

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## LINDSEY ANN COLEY: 2018 RBA YOUNG LAWYER OF THE YEAR AWARD WINNER



*Macel H. Janoschka, Esq., and Lauren E. Davis, Esq., offered the following remarks in presenting this award to Ms. Coley at the Law Day luncheon.*

Good afternoon. Today it is our honor and privilege to introduce Lindsey Ann Coley as the recipient of the 2018 Roanoke Bar Association's Young Lawyer Award.

It is hard to believe that almost 11 years ago Lindsey began working at Gentry Locke after graduating from the University of Dayton School of Law and School of Business with her JD and a Master's in Business Administration. She obtained her undergraduate degree *magna cum laude* from Elon University. While she grew up in Franklin County, she decided in high school that Bedford County schools, in particular, Staunton River, would afford her better options so she chose to attend school there. The exact cause of her decision is the stuff of folklore. That in itself, though, is evidence that even at an early age Lindsey had a plan, and the drive to stick to her plan.

We both started practicing with Lindsey as brand new associates at Gentry Locke in 2007. And, oh the stories we can tell! I personally cannot forget the time that Lindsey drove me back from a lunch "off campus," as we called lunches away from downtown. We had taken the route many times before down Church Street, which is a one way street. Lindsey turned the wrong way down that one way street. She laughed it off and remained calm. Meanwhile, I made a point to always drive from that point forward!

When Lindsey started at Gentry Locke she was mom to baby Kaitlyn Faith who had been born just a few months earlier. She studied for the bar exam by listening to bar review lectures on an iPhone so she could stay at home with her daughter. And somehow she still managed to pass the bar! Since then her family has grown, and she is the proud wife to Joe and mother of four beautiful and active children, Kaitlyn, Josie, Jeb, and Graham (Joe Coley IV).

Lindsey stayed at Gentry Locke for eleven years and became a partner with the firm. We've been told that Lindsey made it a point to speak with new associates at Gentry Locke about pro bono opportunities and to stress the firm's commitment to community service. She also modeled such commitment to community service in her own life, as we will discuss in a moment.

Earlier this year, Lindsey took the bold step of opening her own practice at Smith Mountain Lake. Lindsey is a Franklin County native and her friends know her heart is there. Her practice at the lake focuses on estate planning and probate matters, and she also serves as outside general counsel to local small businesses.

Lindsey is one of the most practical and efficient attorneys we know. It is well known that when you ask Lindsey for advice, she will identify the most practical solution. She is also relatable

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## VIEWS FROM THE BENCH: JUDGE SCOTT R. GEDDES

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When I asked generally his view of the lawyers who have practiced before his Court, Judge Geddes could not identify much in the way of critiques. He said that, on the whole, lawyers who regularly practice in front of him are prepared, and are able to spot the factual and legal issues of any given case and avoid unnecessary emphasis on unimportant issues. He explained how being on the bench has widened his perspective. "I have been able to see a lot of lawyers, good lawyers, tackle issues or present arguments in a way that I never would have thought of."

Judge Geddes did make sure to encourage lawyers to try and resolve any resolvable problems ahead of time, whether that be a discovery dispute or a stipulation of fact. He also mentioned that he strives to be accommodating and understanding of the various rigors of practicing law, but admonished that if a lawyer is going to be late to court, he or she should call ahead of time and advise the court of such.

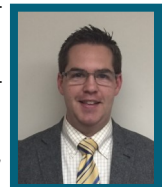
As a young lawyer who has practiced before Judge Geddes, I made sure to selfishly ask for some tips and advice which I thought would be useful for other young lawyers. Judge Geddes reiterated that there's no way to fast-track experience. Practicing law is simply something that you get better at as the months and years go by. He continued: "But while you can't do much about being less experienced, you can always be prepared. You can always out-prepare your opponent." He also observed: "I can't emphasize enough the help that I had from other lawyers. Talk to more experienced attorneys about the issues in your case. Get to know more experienced attorneys. Go to lunch with them. Learn from their experiences."

Judge Geddes also emphasized the importance of learning and internalizing the rules of evidence. He likened litigation, specifically trials, to a sporting event. Be it baseball, hockey or whatever other sport, one may know the general object of the game. But the game is played subject to specific rules, and would make little sense without them. The rules of evidence govern the practice of law. It would behoove every attorney, but especially the young lawyers, to diligently learn and understand the rules of evidence.

In closing, Judge Geddes reiterated that experience has taught him that a commitment to putting forth a genuine effort, to learning from mistakes, and to doing things the right way will take a lawyer much further than mere experience, legal talent, or technical skill.

Profound wisdom from our circuit's newest judge.

*D. Paul Holdsworth is an associate at Glenn, Feldmann, Darby & Goodlatte.*



**Lindsey A. Coley, Young Lawyer of the Year**

# The McCammon Group

is pleased to announce our newest Neutral



## **Hon. Malfourd W. "Bo" Trumbo (Ret.)**

Retired Judge, 25th Judicial Circuit Court of Virginia

The Honorable Bo Trumbo has joined The McCammon Group after twenty-seven years of distinguished public service. He most recently served for thirteen years as a Judge of the 25th Judicial Circuit Court, including several years as Chief Judge. Prior to his tenure on the bench, Judge Trumbo was elected to serve in the Virginia General Assembly, first as a Member of the House of Delegates and then as a Member of the Senate, throughout which time he also maintained a successful private law practice in western Virginia. Among his many credentials, Judge Trumbo is a former member of the Commission on Courts in the 21st Century, the Advisory Committee on Intergovernmental Relations on the Condition and Future of Virginia Cities, and the Blue Ridge Economic Development Commission. He now brings this distinctive record of service and leadership to The McCammon Group to serve the mediation, arbitration, and judge pro tempore needs of lawyers and litigants throughout the Commonwealth.

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## PROPOSED CHANGES TO THE VIRGINIA DISCOVERY RULES IN CRIMINAL CASES

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As a whole, the proposed reforms to the Rules would promote fundamental fairness and equality in the criminal justice system. I hope that our members who focus on civil law will see the need for these reforms. There are no depositions, interrogatories, or requests for admission in criminal cases, and defendants and defense counsel must rely on these Rules to prepare a defense. Many Commonwealth's Attorneys have been voluntarily implementing many of these proposed changes. This is certainly the case in the Roanoke Valley. However, other Commonwealth's Attorney's offices only provide what is required by the current Rules. Such inconsistencies would be resolved by these proposed Rule changes.

*Melissa W. Freidman is a partner at Anderson & Friedman.*

## ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



I am having a hard time coming to grips with the fact that we are almost half-way through 2018. It seems like the holidays were only a few weeks ago, maybe because of all the early spring snow storms? Regardless, I hope you are all having a productive year and that you have wonderful summer vacation plans—sitting by the beach, boating on a lake, or touring exotic lands.

As I often do this time of year, I would like to remind you about the wonderful collection of popular fiction that the Roanoke Law Library has. If you are looking for books to read while on vacation, please stop by the Law Library when you're next in the Courthouse and browse our fiction collection. If you have a particular author that you're fond of, please check our catalog at [www.rvl.info](http://www.rvl.info). Simply choose the "Law Library" and search to see if we have the book you desire. Even if we don't have the book, you can request it to be sent to and held at the Law Library for pickup. Just log in with your library card number and place the book on hold. Most books will arrive within a few days, and you can pick them up whenever the Law Library is open.

### 2018 Summer Reading Program

Every summer thousands of Roanoke youth participate in the Roanoke Public Library's Summer Reading Program. The Roanoke Public Library encourages all youth to participate in this entertaining and educational event. Studies have shown that school-age children who read during their summer vacation maintain or improve their reading skills. The theme of the program this year is "Reading Takes You Everywhere." The program features special presentations that are educational and fun, fantastic cultural events like the Taiko Drummers, a reading log to record the titles of books read, suggested book lists, and reading incentives and prizes, including a huge celebration to cap off the whole summer. You won't want your kids to miss it. To see our events calendar that lists all events at the Roanoke Public Libraries, including the Summer Reading Program, go to <https://bit.ly/1NZI5mA>. Additionally, we have an Adult Summer Reading Program, which allows you to log any book you read and gives you a chance to win prizes.

## AMENDED FEDERAL RULE OF EVIDENCE 902 STREAMLINES INTRODUCTION OF ESI EVIDENCE

(Continued from page 2)

tion witness to introduce an electronic record at trial. Instead, a litigant will simply submit an affidavit of a "qualified person" who certifies in writing that the electronic document or record was obtained in conformity with the requirements of Rule 902(11) and (12). Before the amendment, a proponent of ESI would have to present two witnesses at trial—one to authenticate the information, and another to testify to the contents. The amendment also shifts the burden to the opposing party to raise authenticity issues prior to trial upon receipt of notice. However, be aware that the rule only addresses authentication of the evidence—the trial lawyer will still need to be prepared to address accuracy, relevance, ownership or control, and hearsay challenges.

You may be wondering—who is a "qualified person" to execute the affidavit and what should the affidavit say? Unfortunately, neither the rule nor the committee notes provide substantial guidance in this regard. The committee notes only say that the certification must "contain information that would be sufficient to establish authenticity were that information provided by a witness at trial." Rule 902(11) and (12) provide additional guidance for the contents of the certification itself. Most commentators agree that the affidavit should be executed by a forensic technician or other professional to verify that the process of recording the information will produce an accurate result. See Hon. Paul W. Grimm, et al., *Best Practices for Authenticating Digital Evidence* 24–25 (West Pub. 2016).

For purposes of Rule 902(13), any person familiar with the "electronic process or system that produces an accurate result" will likely be considered a "qualified person." An example would include a network administrator or forensic technician who provides a printout or a USB copy of documents, downloads or username/password actions from a particular computer. For Rule 902(14), the certification will be a little more complicated because it must explain the "process of digital identification" that was used to recover and verify the data in question. According to the committee notes, this is typically done by examining and comparing the "hash values" of the original and the copy to determine they are identical. However, the rule also accounts for technology other than comparison of hash values that could provide "other reliable means of identification." For evidence of this nature, you will need a forensic technician to copy the information and to execute the affidavit establishing that the copy has an identical hash value to the original.

If you intend to introduce self-authenticating ESI information at trial, you must give notice to the opposing party and provide the document or ESI and the authenticating affidavit. The burden then shifts to the opposing party to challenge the authenticity of the proposed ESI. Both subsections (13) and (14) reference the notice requirement in 902(11), which states that "the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them." The committee notes also say that a challenge to authenticity "may require technical information about the system or process at issue, including possibly retaining a forensic technical expert at trial."

Early planning by the trial lawyer is the key to utilizing the self-authenticating provision of Rule 902 for ESI at trial. The careful attorney should ensure, in cases where ESI could play a significant role at trial, collection of ESI using forensically sound

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## J. RUDY AUSTIN: 2018 FRANK W. “BO” ROGERS LIFETIME ACHIEVEMENT AWARD WINNER

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Rudy's legal knowledge is amazing. He is a virtual encyclopedia of legal knowledge.

When it comes to matters involving UM/UIM, insurance coverage disputes, structured settlements and infant settlements, insurance relationships, workers' compensation, and other issues of importance to lawyers defending insurance companies and their insureds, there are few more knowledgeable and experienced Virginia lawyers.

Rudy kept a little black book of information about cases and important legal principles, but he could usually recall cases and their cites without reference to the book. One time, I walked into his office to get his advice on trial preparation for a case and, after hearing the facts, he said: “Well that is the *Hale v. Fawcett* case,” and proceeded to give me a lesson on the black letter law principles of that case that ultimately helped me to win my case. I know that I am not the only lawyer who benefitted from Rudy's encyclopedic knowledge of the law.

Rudy has been a mentor to virtually every associate in the litigation section of our firm. His door was always open, and he has given literally thousands of hours of advice to lawyers in our firm. His guidance was consistently thoughtful, ethical and practical.

Although Rudy achieved the distinction of “wise elder statesman” at our firm, he was not intimidating. So, he was always one of the first people many young lawyers visited for questions and guidance on litigation matters, particularly those involving insurance defense and ethics matters. He was always extremely generous with his time, even with the busy pace of an insurance and workers' compensation practice. I cannot count the number of times he stopped what he was doing to help me with a sticky legal matter, give me advice on how to deal with a difficult opposing lawyer, or help me to get a case resolved.

A case in point. When I went out of work on maternity leave, I left a serious pharmacy malpractice case in his hands. I had emphatically told the client this case could not be settled because the plaintiff was unreasonable, which he was. In fact, we had already had a failed mediation where the plaintiff's demands increased as the mediation went on, rather than decreased. Before my son was one month old, Rudy had settled the case, and settled it for less than its value. I thought he was a hero.

All the young lawyers in our firm (and not-so-young ones too) have benefited from Rudy's wisdom and generosity.

Now let me take a moment to share with you some less-serious comments about Rudy.

Rudy has kept up with technology, but I don't think technology has kept up with Rudy. Everyone knows that we have a Help Desk at the firm—a phone number we can call to have someone in Georgia help us with computer or technology problems. Well, when the Help Desk was new at the firm, Rudy became frustrated, asking, how can one of those Help Desk folks in Atlanta put toner in a printer in Roanoke?

Rudy distinguished himself at Gentry Locke by his way of speaking. Brett Marston has kept a collection of some things Rudy has said over the years, and I went through that file to pull out some of what we call Rudy-isms:

A difficult legal issue is a “Woolly Booger.”



**Kevin Holt presents 2018 Lifetime Achievement Award to J. Rudy Austin.**

To a weak legal argument, he says—“it's a sad dog that won't even wag its own tail,” or “it's rotten in the hole.”

A difficult opposing counsel is—“hard as nails and tough as shoe leather.”

As to the difficulty of unringing the bell at trial when bad evidence is introduced to the jury: “That's like the camel's nose in the tent—there's no way you're gonna keep the rest of the camel out.”

As to a lawyer he trusts: “If I was in a foxhole, I would want that guy with me.”

A legal argument that misses the point: “That's like leaving Hamlet out of the play.”

He once said to Judge Honts during a hearing: “Sanction motions are like a turd in a punchbowl—they are always unwelcome.”

As to someone with a very poor outlook on life: “I think his optic nerve is attached to his butt.”

There are a lot of Rudy-isms for the word “confused,” including “woolgathered,” “bumfuzzled,” and “bolted up.”

Then there are a collection of country-isms, most of them having to do with animals:

“the harder you stick a pig, the harder he squeals”;

“an egg sucking dog”;

“that's as hard as pulling hen's teeth”; and

“all hat and no herd.”

But, getting serious again, a time when Rudy's words brought awe, rather than southern county wisdom, was when he served as our spiritual leader. For countless years, Reverend Rudy led our prayers and blessings at firm gatherings and occasions. Those blessings were meaningful, and were delivered with true faith and inspiration.

Rudy stands up for people. Let me give you an example. Many years ago, we were in the middle of our summer associate program. Jimmy Robinson, an African-American associate, took an African-American summer associate to a Henry County Circuit Court hearing. They also had to go to the clerk's office to check on a document. Jimmy and the summer associate felt that they had been treated unprofessionally by the clerk, and Jimmy was very upset that this had occurred during his efforts to provide the summer associate with an off-campus experience.

Jimmy came to me to let me know what happened and together we went to Rudy. Because that's what I usually did.

(Continued on page 11)

**MEDiation**

**ARBITRATION**

**JONATHAN M. APGAR**



Having previously served twenty-one years as both a full time and a retired, recalled circuit court judge, Jonathan M. Apgar has successfully mediated scores of cases. He is also certified in civil mediation by the National Judicial College. He offers skilled mediation and arbitration at a modest cost.

**SOUTHWEST VIRGINIA MEDIATIONS**

**P.O. Box 576, Salem, Virginia 24153**

**[www.swvmediations.com](http://www.swvmediations.com)   540 556 4296   [jmitcalfe99@aol.com](mailto:jmitcalfe99@aol.com)**



## YOU AND THE LAW – FOSTER CARE: THE ROAD TO PERMANENCY

Last year's *You and the Law* presentation, "A Look Inside Your Juvenile and Domestic Relations Courts," was such a success that the Roanoke Law Foundation decided to feature a sequel for this year's event. On March 27, the RLF hosted its program "Foster Care: The Road to Permanency." This year, the event was held at the Higher Education Center and for the second year in a row, the event attracted over 80 attendees.

The program began with Judge Leisa Ciffone sharing local statistics on the impact of substance abuse on foster care. She has compiled data from both Roanoke City and Roanoke County/Salem from 2007, 2012, and 2017, comparing the numbers of children entering foster care as a result of substance abuse on the part of their parents or custodians. Sadly, the data revealed that from 2007 to 2017 in Roanoke City, the percentage of children entering foster care as a result of a parent's or custodian's substance abuse has increased from 28% to 31%. In Roanoke County over the same ten-year span, the percentage of children entering foster care as a result of a parent's or custodian's substance abuse has risen from 35% to 48%. The statistics also reflect the rise in opiate abuse in the Roanoke Valley.

Judge Frank Rogers then presided over a mock termination of parental rights trial. For purposes of the mock trial, James P. Cargill was the guardian *ad litem*, Heather P. Ferguson was the Assistant City Attorney representing the Department of Social Services, Rachel Lower was the foster care worker, Brittany Furr was the court-appointed counsel for the mother, Carrie Guzman was the biological mother, and Katie VanPatten was the Court Appointed Special Advocate. The mock trial scenario began 12 months after the removal of the mother's biological children by the Department of Social Services, a case example that was presented at the 2017 *You and the Law* program. Thanks to Carrie Guzman's wit and incredible acting skills, the mock trial was both informative and entertaining! After the presentation of evidence, Judge Rogers polled the audience to ask if the termination of parental rights should be granted. Most participants felt the Department of Social Services had met its burden of proof, but there were a few audience members that felt the mother should have been granted more time before her rights were terminated.

The program concluded with Judge Hilary Griffith and Senior Police Officer Todd Cheyney of the Salem Police Department presenting on Social Media and Internet Safety. This topic is certainly germane to the children and families of our communities. Audience members were appreciative of the expertise and information that was presented.

## YOU AND THE LAW



Parental Rights Mock Trial Panel

## PRO BONO GUARDIAN AND CONSERVATOR TRAINING PROGRAM

The Roanoke Bar Association recognizes the importance of equal access to justice for individuals at all levels of the economic spectrum. In accord with this principle, the RBA provides training on pro bono services in the areas of no-fault divorce, guardians and conservators, criminal records expungements, and driver's license reinstatements. On May 11, Nancy Reynolds and Devon Slovensky taught the pro bono guardianship and conservatorship program to members of the RBA.

The program focused on how to petition for and obtain guardianships and conservatorships for clients referred from Blue Ridge Legal Services. The materials provided included the case initiation forms, checklists for initial client meetings, sample pleadings, and information provided from the probate clerk. The program was chocked full of practical pointers and suggestions, such as what should be accomplished to have all documents signed for filing on the day of the initial client meeting and the benefits of setting the probate clerk appointment for immediately after the hearing on the petition.

Ms. Slovensky provided insights on serving as a guardian *ad litem* in cases requiring more than the standard assessment of the respondent's abilities and surroundings. And Ms. Reynolds focused on the role of the attorney for the petitioner and how that differs from the role of the guardian *ad litem*.

The names of the attendees were provided to BRLS for case assignments through the BRLS Private Attorney Involvement program. The program was approved for 1 hour of live CLE credit.

The RBA's next training program will be in September 2018. Patrick Kenney has agreed to a repeat performance of his training program about criminal records expungements and driver's license reinstatements.



Judge Leisa Ciffone



Judge Frank W. Rogers, III



Thomas Miller,  
Chairman, You  
and the Law.

## LINDSEY ANN COLEY: 2018 YOUNG LAWYER OF THE YEAR AWARD WINNER

(Continued from page 4)

and down to earth. Her former colleague at Gentry Locke, Christen Church, remarked that clients enjoy working with Lindsey because she uses plain English. Christen shared that she and Lindsey would sometimes sit in client meetings together and Lindsey would translate Christen's legalese for the clients.

President Harry Truman is credited with the quote: "It is amazing what you can accomplish if you do not care who gets the credit." This quote perfectly embodies Lindsey Coley. We could spend the better part of the day sharing with you the many ways she has impacted the Roanoke Valley and Virginia through her community service and legal contributions, and you would be surprised at all she has accomplished. Don't worry; we won't spend that long. We've cut our remarks to just under an hour. Simply put, she doesn't brag and she doesn't seek credit. Instead, she simply acts and the community and her clients are better for it.

Lindsey's dedication to the community is apparent even if she does not boast about it. She serves and has served on numerous non-profit boards and professional organizations. Her non-profit board service began back in 2009 when Mr. Dick Rakes volunteered her to provide pro bono legal services when the Children's Advocacy Center and CASA (Court Appointed Special Advocates) merged to create Children's Trust. The director of Children's Trust told us Lindsey's assistance was instrumental to the success of the merger. Lindsey then served on the board from 2009 through 2012. The director also told us that Lindsey continues to be a big help to Children's Trust as she continues to provide legal assistance about personnel issues and policies.

Lindsey currently serves as a board member for Lake Christian Ministries, the Virginia Women Attorneys Association, and the Roanoke Valley Society for Human Resource Management. She is a former member of the Board of Governors for the Virginia State Bar Young Lawyers Conference. She also demonstrated her commitment to pro bono work by chairing the Blue Ridge Legal Services Pro Bono Hotline for eight years—from 2009 through 2017.

As a native of Franklin County, and as part of a family with close ties to Smith Mountain Lake, the lake is near and dear to Lindsey's heart. Lindsey has served on the Smith Mountain Lake Regional Chamber of Commerce since 2011. She currently serves as the Chair-Elect and will take the reins as Chair next year.

We spoke with Vickie Gardner, the executive director for the Chamber, about Lindsey. Vickie shared the following with us,



Macel Janoschka and Lauren E. Davis

"Lindsey is dedicated to everything she has done. When she lays out plans, that is the way it is going to be." Macel and I know that to be true. Lindsey decided several years ago that she wanted a new house. And she decided she didn't want just any old house. She wanted her realtor's house, which happened to not be for sale. Nevertheless, Lindsey persisted, and she now lives in that beautiful house!

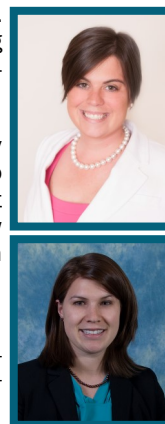
Vickie also shared that Lindsey takes after her dad. She works behind the scenes, she doesn't brag, and she helps anyone and everyone. Vickie commented that Lindsey is such a good listener and is very astute. Whenever Lindsey speaks at a board meeting, everyone listens. The board knows whatever Lindsey has to say will be profound and on point. Vickie added it didn't take long for Lindsey to gain this respect; it was the case even when Lindsey was a newcomer to the board.

Lindsey also performs extraordinarily well under stress. For example, when tragic events happen with her clients or close to home, Lindsey identifies ways to take action. Perhaps the most public instance of this skill deals with the horrible incident that occurred at Bridgewater Plaza in August of 2015, killing Alison Parker and Adam Ward, and injuring Vickie Gardner. This incident touched Lindsey personally given her close relationship with Vickie Gardner, the SML chamber, and her family's connections to Bridgewater Plaza.

Lindsey stepped into action within hours. She and her sister started the #SMLstrong motto to promote healing and show community solidarity. They also arranged the Day of Remembrance held at Bridgewater Plaza to honor the lives of Alison Parker and Adam Ward and to encourage the continued recovery of Vickie Gardner. The day began with the dedication of a permanent memorial. Attendees then surrounded the plaza joining hands, and boats lined up in the cove to complete the circle and "embrace the plaza."

We know that one of the things Lindsey does not like is a big fuss made about her, no matter how much she deserves it. So, that being said, we will stop here and just add how proud and excited we are to present her with this very well-deserved award.

Macel H. Janoschka is a partner at Frith, Anderson & Peake, PC; and Lauren E. Davis is a partner at Frith, Ellerman & Davis, PC.



## AMENDED FEDERAL RULE OF EVIDENCE 902 STREAMLINES INTRODUCTION OF ESI EVIDENCE

(Continued from page 6)

methods on the front end so that authenticity issues can be avoided at trial. Often, a forensic expert will be vital to obtaining and utilizing ESI at trial. If you have clear records of how the information was collected that allow comparison of hash values between the original and the copy, a great deal of time and expense will be saved. The ultimate result will be what all trial lawyers strive for—a smoother and shorter trial requiring fewer witnesses.

Lori J. Bentley is a partner at Johnson, Ayers & Matthews, PLC.

**J. RUDY AUSTIN: 2018 FRANK W.  
“BO” ROGERS LIFETIME  
ACHIEVEMENT AWARD WINNER**

*(Continued from page 7)*

Rudy listened to Jimmy's story, asked a few questions, and then picked up the phone and called Judge Martin Clark, who was the Chief Judge at the time in that Circuit. Rudy told him what had happened, and told him in no uncertain terms, that we expected more from the clerks and that such conduct was detrimental to our attorneys, to our summer associates, and to the local bar. He even reminded Judge Clark about his authority over the Clerk's office. I was completely in awe. In a word, Rudy demanded that the judge address this issue to his satisfaction.

And Judge Clark did just that. The clerk later sent our lawyers a letter of apology.

Rudy is loyal to the core. He worked at Gentry Locke for 50 years.

He had the same secretary for 20 years . . . Arlene Carter. To this day, he still calls her “Ms. Carter.” Both are total class acts!

Rudy went to the University of Virginia (UVA) for undergrad, and returned for law school. He has been a devoted UVA fan, attending

many sporting events and supporting the athletic programs over the years.

He had an old Cadillac for 20 years that his father gave him at his death.

Rudy has been married to his wonderful wife, Betty, for over 50 years. They have three children—Bethany, Scott and Andy. With Rudy's love and respect of the law, it is not surprising that his two sons—Scott and Andy—have become successful lawyers. And Bethany did not stray too far from the mold. Following in her mother's footsteps, she is an insurance broker with Scott Insurance, dealing with many of the same insurance issues Rudy mastered during his lengthy career handling insurance matters.

In short, Rudy has been a model not only for the lawyers in our firm, but for everyone he has had contact with. Rudy, we are proud of the honorable way that you practiced law for 50 years. You are a most deserving recipient of the RBA Lifetime Achievement Award.

*Monica Taylor Monday is the managing partner at Gentry Locke.*



## 2017 VOLUNTEER SERVICE AWARDS

### President's Volunteer Service Awards

#### Gold Level 500+ Hours

Nancy F. Reynolds

Hugh B. Wellons

#### Silver Level - 250 - 499 Hours

Roy V. Creasy

Kevin W. Holt

Patrick J. Kenney

#### Bronze Level - 100 - 249 Hours

David N. Cohan

Daniel P. Frankl

Lauren Davis

Martha W. Elder

Lori Thompson

Henry L. Woodward

### RBA Certificates of Commendation

#### 50 - 99 Hours

William E. Callahan, Jr.

Christen C. Church

John D. Fishwick, Jr.

Stephen W. Lemon

Kenneth J. Ries

#### 25 - 49 Hours

Lori J. Bentley

Lalita Brim-Poindexter

David J. Damico\*

John D. Eure

Joshua D. Goad

Victor S. Skaff, III\*

Devon Slovensky\*

Bruce C. Stockburger\*

Kathleen L. Wright\*

\*Includes 25 or more hours of pro bono legal services provided through Blue Ridge Legal Services

## 2018 ROANOKE LAW FOUNDATION GRANTS AND SCHOLARSHIPS



Hugh B. Wellons, Chairman of the Roanoke Law Foundation, presented the 2018 grant and scholarship awards at the Annual Meeting of the Roanoke Bar Association.



David D. Beidler accepted the 2018 Roanoke Law Foundation Grant for The Legal Aid Society of Roanoke Valley.

The James N. Kincanon Scholarship was established in recognition of Mr. Kincanon's 50 years of service as Secretary/Treasurer of the Association. The 2018 recipients of the James N. Kincanon Scholarships are: John Christian Blackwell, a 2016 graduate of Patrick Henry High School, who attends the University of Virginia; and Alston Wellsley Carson, a 2018 graduate of Patrick Henry High School, who will be attending Princeton University.



John Christian Blackwell with Hugh B. Wellons.



Alston Wellsley Carson with Hugh B. Wellons.

With the 2018 awards, the Roanoke Law Foundation has awarded over \$172,900 in scholarships and grants since it was established in 1997.

## THE 93RD ANNUAL MEETING OF THE ROANOKE BAR ASSOCIATION



Nancy Stewart receives the RBA donation to RVLSA.



Kevin W. Holt presents the RBA Law Library donation to Shelia Umberger.



Lee Osborne presents Kevin with a plaque recognizing his service to the RBA.



Outgoing president, Kevin W. Holt passes the Roanoke Bar Association gavel to new President J. Lee E. Osborne.



Kevin with a more personal gift from Lee.

***Save the Date!***  
**Join us for the Annual**  
***Summer Social***  
**July 26th 5:30 pm until 7:30 pm**  
**at Big Lick Brewery.**  
**Registration is open!**

# ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS																																		
<p>The Roanoke Bar Association welcomes the following new Active members:</p> <p>Effective June 12, 2018</p> <p>Jonathan Gonzalez</p> <p>Effective July 1, 2018</p> <p>Sarah C. Jessee</p> <p>LeClairRyan</p> <p>Risa Katz-Albert</p> <p>Legal Aid Society of Southwest Virginia</p>	<p>Roanoke Bar Association Meetings 2018 - 2019</p> <p>September 11, 2018</p> <p>October 9, 2018</p> <p>November 13, 2018</p> <p>December 11, 2018</p> <p>January 8, 2019</p> <p>February 12, 2019</p> <p>March 12, 2019</p> <p>April 9, 2019</p> <p>May 1, 2019 (Law Day)</p> <p>June 11, 2019 (Annual Meeting)</p> <p>Go to <a href="http://www.roanokebar.com">www.roanokebar.com</a> for more information on all upcoming events.</p>	<table><tr><td>Kevin W. Holt President</td><td>983-9377</td></tr><tr><td>J. Lee E. Osborne President-Elect</td><td>983-7516</td></tr><tr><td>Patrick J. Kenney Secretary-Treasurer</td><td>982-7721</td></tr><tr><td>Hugh B. Wellons Past President</td><td>512-1809</td></tr><tr><td>Diane Higgs Executive Director</td><td>342-4905</td></tr><tr><th colspan="2">BOARD OF DIRECTORS</th></tr><tr><td>Lori Jones Bentley</td><td>767-2041</td></tr><tr><td>Christen C. Church</td><td>983-9390</td></tr><tr><td>Lauren M. Ellerman</td><td>985-0098</td></tr><tr><td>Daniel P. Frankl</td><td>527-3500</td></tr><tr><td>Andrew S. Gerrish</td><td>725-3770</td></tr><tr><td>Macel H. Janoschka</td><td>725-3372</td></tr><tr><td>James J. O’Keeffe</td><td>983-9459</td></tr><tr><td>Devon R. Slovensky</td><td>523-1150</td></tr><tr><td>Nancy F. Reynolds</td><td>510-3037</td></tr><tr><td>Melissa W. Robinson</td><td>767-2203</td></tr><tr><td>Justin E. Simmons</td><td>983-7795</td></tr></table>	Kevin W. Holt President	983-9377	J. Lee E. Osborne President-Elect	983-7516	Patrick J. Kenney Secretary-Treasurer	982-7721	Hugh B. Wellons Past President	512-1809	Diane Higgs Executive Director	342-4905	BOARD OF DIRECTORS		Lori Jones Bentley	767-2041	Christen C. Church	983-9390	Lauren M. Ellerman	985-0098	Daniel P. Frankl	527-3500	Andrew S. Gerrish	725-3770	Macel H. Janoschka	725-3372	James J. O’Keeffe	983-9459	Devon R. Slovensky	523-1150	Nancy F. Reynolds	510-3037	Melissa W. Robinson	767-2203	Justin E. Simmons	983-7795
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Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Complete and Forward to:** Roanoke Bar Association, P.O. Box 18183, Roanoke, VA 24014

Email: [rba@roanokebar.com](mailto:rba@roanokebar.com)