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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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## UNCERTAIN FUTURE FOR IMMIGRANT YOUTH

BY CHRISTINE LOCKHART POARCH, ESQ.

In the last year, the Trump administration has divested lawful status from over a million previously documented immigrants. Of the populations that face losing legal status by executive fiat in the next year, a group of young people called “DACA-recipients” (referring to the Deferred Action for Childhood Arrivals program, detailed below) have received the majority of public attention. Often mischaracterized as “Dreamers” (a term that references a much larger group of young people brought to the U.S. as children of which DACA-recipients are a small portion), the 700,000 individuals presently on the DACA rolls face an uncertain future. Approximately 12,000 DACA recipients live, work, and study in Virginia.



Deferred Action for Childhood Arrivals (DACA)—a discretionary, limited benefit that temporarily protects a certain class of immigrants from removal—was promulgated by the Obama administration in 2012 to remedy the status of an estimated 1.3 million children and young adults brought to the U.S. as minors. A discrete, identifiable, and sympathetic subset of the larger estimated population of 14–16 million undocumented in the U.S., only approximately 700,000 applicants filed for DACA when the Obama administration promulgated the program in 2012. Opponents of the program’s initial rollout did not challenge it in the courts, even though many believed that the program constituted executive overreach. The Obama administration’s later attempts to expand the program—to include parents of DACA children and expand the limited DACA class to a larger group of beneficiaries—were challenged successfully in 2014.

The program was narrowly created with age eligibility requirements and other rigors that made the group of DACA-recipients from 2012 to 2017 particularly compelling public voices. These young people were not criminals, because DACA contained restrictive prohibitions on criminal grounds, such that even DUIs were disqualifying offenses that prevented initial grant of status or renewal. Moreover, DACA’s educational requirements ensured that DACA recipients are at least minimally high-school educated, though many have exceeded these minimum requirements through ambition and hard work. Finally, while DACA was a temporary program, its recipients are employable, of working age, and can lawfully drive—of critical import in states like Virginia where “legal presence” requirements otherwise prevented their licensure.

Specifically, DACA children and young adults have received work authorization, renewable every two years, but no special path to lawful permanent residency or ultimately, U.S. citizenship. As with participants of similar programs such as Temporary Protected Status, DACA recipients are in a permanent limbo, given certain accoutrements of legal status, protected from removal and deportation as long as they maintain status, but in most cases, prevented from enjoying permanent protections. In fact, the pro-immigrant objection to the program has always been that what is given by executive “stroke of the pen” can be taken away. In 2017, that is just what happened.

On September 5, 2017, the Trump administration “phased out” DACA, advising those who were then enrolled in the program that it would receive renewal applications only through October 5, 2017. Because DACA petitions could be filed only six months before the expiration, this determination effectively meant that only those individuals with DACA status expiring on or before March 5, 2018, could apply to renew their status. Inability to renew DACA status leaves former recipients vulnerable. Employers cannot continue to employ workers unable to renew DACA status without violating the work authorization requirements, licenses would expire, and individual DACA recipients would be subject to removal

## PRESIDENT'S CORNER

BY KEVIN W. HOLT, ESQ.



Notwithstanding the fact that a snowstorm rages outside my window as I write this, Spring is upon us. Signs of hope, joy, and new life are all around us. New buds on the trees are beginning to bloom, the 'Hoos won the ACC Tournament, and the home stretch of the Bar year is right around the corner.

Andrew Gerrish put together a great program for the Bench-Bar Conference. Lauren Davis moderated a forum on "Building a Better Practice by

Knowing Yourself Better." Abrina Schnurman-Crook, Ph.D., Executive Director of the Batten Leadership Institute at Hollins University, and Michael Chigliński, Ph.D., Founding Member of ACA Counseling and practicing mental-health professional, were the panelists. The local judges from the area courts presented the "State of the Judiciary" addresses followed by a question-and-answer session. Many thanks to Andy, Lauren, the judges, and all who participated in this informative conference and annual tradition.

The Honorable Paul M. Black, United States Bankruptcy Judge for the Western District of Virginia, was our January speaker. He spoke about the "financial fragility" of American society. Our speaker in February was Doris Henderson Causey, 2017-2018 Virginia State Bar President. Ms. Causey is a trailblazing lawyer and dynamic leader. It was truly a privilege for the RBA to have her as a guest at our luncheon. Our speaker in March was C.J. Steuart Thomas, III, 2018 President of the Virginia Bar Association. That the RBA hosted the Presidents of both state-wide bar organizations this year speaks to our standing among local bar associations in the Commonwealth of Virginia. I commend all of you for your good work in continuing to elevate the status of our bar association in the eyes of the leaders of the profession from across the state. In April, we will host the Honorable Steven Agee, Judge of the United States Court of Appeals for the Fourth Circuit. Many thanks to our Program Committee Chair and President-Elect, Lee Osborne, for the outstanding slate of speakers and luncheon programs this year.

In May, our Law Day program will again consist of Senator John Edwards and Delegate Greg Habeeb reporting on the 2018 General Assembly session. We will also announce the winners of the Frank W. "Bo" Rogers, Jr. Lifetime Achievement Award and Young Lawyer of the Year Award. These awards honor the RBA's leaders—past, present, and future.

Please remember to submit your volunteer hours to our Executive Director, Diane Higgs, or online by March 31 in order to participate in the RBA Volunteer Service Awards. These awards recognize those members of our bar who give their time and service to the community in all variety of endeavors. These awards will be presented at our June Annual Meeting along with Roanoke Law Foundation scholarship awards and grants.

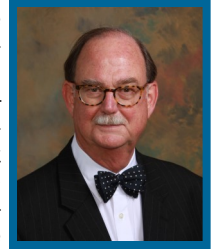
The remaining months of the 2017-2018 bar year promise great programs and meaningful awards and recognitions. Please plan to be a part by attending our luncheon meetings, learning from our speakers, and recognizing the significant achievements of your fellow members of the bar. It is a great time to be an active member of the RBA. Renew your involvement in—and commitment to—the RBA this Spring.

Kevin W. Holt is a partner at Gentry Locke.

## UPDATE: VIRGINIA STATE BAR ACTIONS AND PROGRAMMING

BY GENE ELLIOTT, ESQ., AND BRETT MARSTON, ESQ.

It was excellent to have our Virginia State Bar President, Doris Causey, speak at the February meeting of the Roanoke Bar Association. She provided some great insight on the goings-on of the VSB. As your 23rd Circuit representatives to the VSB Council, it is our privilege not only to serve this circuit but also to provide occasional updates on some of the many issues being considered by Bar Council and the numerous activities and programs offered through the VSB. We hope you will review these items and let us know of any input, questions, or other thoughts on any of them. We appreciate and welcome your input.

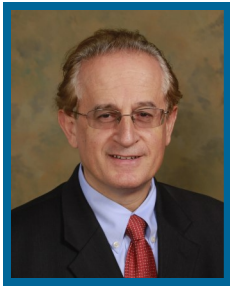


- **VSB Committee Vacancies.** If you are interested in getting involved on a VSB committee, please let us know. President-elect Len Heath is looking to fill spots on VSB committees effective July 1, 2018.
- **Clients' Protection Fund Reduction.** As President Causey advised during her RBA presentation, the VSB is decreasing the assessment for this fund from \$25/year to \$10/year effective July 1, 2018.
- **Medical Malpractice Review Panel Vacancies.** The Supreme Court of Virginia is looking for 20 attorneys to serve on the Medical Malpractice Review Panels (MMRP). These panels are established through Virginia Code § 8.01-581.3. The application deadline is May 31, 2018, and nominations/applications can be made at [nominations@vsb.org](mailto:nominations@vsb.org). The MMRP Rules of Practice are found in Volume 11 of the Code.
- **Emeritus Status with the VSB.** At its meeting in October 2017, the Bar Council voted in favor of a change to Paragraph 3(e) of Part 6, Section IV of the Rule of Court, and the Supreme Court of Virginia has approved this rule change effective March 1, 2018. This change allows VSB members who have practiced 20 years or more to become emeritus members of the VSB, with certain limitations. As President Causey explained at the recent RBA lunch program, this status would allow these members to provide *pro bono* services without being under the direct supervision of a supervising attorney so long as the emeritus attorney certifies affiliation with a qualified legal services provider.
- **Online Attorney-Client Matching Services LEO.** As President Causey commented on during the RBA lunch, the Bar Council voted favorably at its October 2017 meeting on LEO 1885. This LEO concludes that a lawyer may not participate in an attorney-client matching service (under the facts presented in the LEO) as it would violate rules in the Rules of Professional Conduct on fee sharing with non-lawyers, paying for referrals, and safeguarding client funds. The LEO is currently under review by the Supreme Court of Virginia.
- **Lawyer Well-Being & Competence.** There is a proposed change to Rule 1.1 of the Rules of Professional Conduct on Competence. This change would add a new Comment 7 emphasizing that maintaining well-being is also a part of maintaining competence to represent clients. This addition comes on the heels of the much-discussed August 2017 report of the National Task Force

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## MY SUPERLATIVE CASE

BY ROBERT A. ZIOGAS, ESQ.



*This article is the latest installment in a series of musings from members of the RBA about their superlative cases, legal counseling opportunities, or other law-related endeavors that remind us of why we became lawyers. The RBA invites its members to share stories about their superlative cases.*

It is difficult to rival my friend Ken Ries's superlative case in the previous newsletter, both in interest and magnitude. But having been called to pinch hit for this edition of the newsletter, I share the following:

As a young lawyer, about three or four years out of law school, I inherited a challenging plaintiff's wrongful death case in Pulaski County from another lawyer in the firm.

It involved the death of a 17-year-old passenger. His 18-year-old friend was driving, lost control going around a turn at an excessive speed, left the road and hit a tree, almost splitting the car in two.

Blood tests of the decedent, the driver, and a third passenger in the back seat all revealed high levels of alcohol.

The staunch insurance company, which shall remain unnamed, made no settlement offers, and its stauncher defense counsel proclaimed that the case had no value because the claims were clearly barred by assumption of the risk and/or contributory negligence.

There were no witnesses to the accident. The surviving passenger had no recollection of the events leading up to the accident or of the accident itself. The defendant did not recall the accident, but did recall alcohol consumption, testifying in his deposition that he had had two drinks before picking up the decedent, stopping at a liquor store to buy a fifth of liquor—a good portion of which had been consumed by him and his passengers while driving before the accident.

The defendant also admitted in depositions that before picking up the decedent, he took Nyquil for a cold. He admitted that the decedent did not know of the prior alcohol consumption or the Nyquil before being picked up.

I retained a physician to review the case. After reviewing the defendant's subpoenaed medical records and toxicology reports, the physician came up with three opinions: (1) The defendant was intoxicated to a level that impaired his ability to drive; (2) liver tests revealed cirrhosis of the liver, which for a young man of his age reflected a history of drinking, which would cause him to tolerate alcohol better than a normal person, and would not necessarily exhibit outward symptoms of intoxication as quickly as others; and (3) the consumption of the Nyquil potentiated the effects of the alcohol and added to the impairment. The second opinion did not survive a motion in limine, although the other two survived challenges.

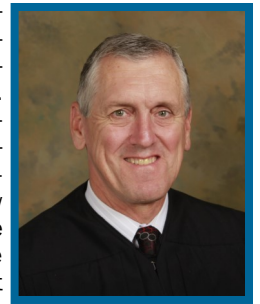
In *voir dire*, potential jurors were asked if any of them had been involved in automobile accidents, had filed personal injury suits, or had family members injured or killed in automobile accidents. A lady raised her hand and, on further probing by defense counsel, stated that her mother had been killed in an automobile accident the year before. I was convinced that she

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## VIEWS FROM THE BENCH: JUDGE WILLIAM D. BROADHURST

BY D. PAUL HOLDSWORTH, ESQ.

Throughout his near 16-year tenure on the circuit court bench (and preceding eight years on the general district court bench), Judge William D. Broadhurst has stayed admirably committed to letting the citizens of our community have their day in court. And following his recent reappointment, I know that the community, and the Bar, are grateful that Judge Broadhurst will be fostering this important ideal for at least another eight years.



Like many of us, Judge Broadhurst did not always have his sights set on a career in the law. For the first few years of his undergraduate pursuits, Judge Broadhurst was much more concerned about maximizing the collegiate life at UNC in Chapel Hill than he was about planning for his future. But as his senior year approached, Judge Broadhurst felt impressed to shift his focus to life after college. It was actually one of Judge Broadhurst's high school teachers, Mrs. Mary Goodale, who first encouraged him to think about law school. His father, a former geologist for Norfolk & Western, likewise nudged him in that direction. So after graduating from UNC, Judge Broadhurst took the LSAT and enrolled at Washington and Lee School of Law.

After Judge Broadhurst graduated from W&L in 1979, he clerked for Justice Alexander Harman, Jr., of the Supreme Court of Virginia. Following his clerkship, Judge Broadhurst practiced in the Roanoke City Public Defender's Office, until joining Joe Bounds and his contemporary Charlie Dorsey in private practice. After leaving Bounds & Dorsey in 1987, Judge Broadhurst returned to the public sector, joining the Roanoke County Commonwealth Attorney's Office where he stayed until his appointment as a general district court judge in 1994.

In my conversation with Judge Broadhurst, he unsurprisingly complimented the general collegiality among the Roanoke Bar and the quality of advocacy within the Bar. Specifically, Judge Broadhurst praised the written work of the Bar. "I have to say that the quality of the briefs submitted to me, on the whole, has been really really good over the last several years," he said. "They are generally very well written, and to-the-point." He explained that the oral advocacy has similarly been excellent.

On the topic of written advocacy, Judge Broadhurst observed that the most helpful arguments are those that are succinct and supported. Briefs which succumb to lawyer's or a litigant's emotions—to the point of demoralizing an opposing party or opposing counsel simply by virtue of their position in the case—are not helpful. Especially in reference to discovery disputes or other non-dispositive motions where the judge, unlike the lawyers, does not have the benefit of the entire context and posture of the case, strong or abrasive tone is a turn-off and simply a waste of emotion and energy.

In terms of oral advocacy, Judge Broadhurst admonishes lawyers to assume that the judge has read the briefs and memoranda. If the judge has not been able to read the briefs or fully digest the written arguments that have been submitted, he will usually let the lawyers know this at the outset of argument. But otherwise, re-reading the brief is usually ineffective and a misuse of time. Nevertheless, to ensure that the judge has a copy of

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## ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



A new year is here! As a matter of fact, we earthlings have already made some serious progress on our annual trip around the sun. I am hoping that it is a productive trip for us all. If there is anything that the Roanoke Law Library can do to make it a more productive year for you, please do not hesitate to contact me. I can be reached by phone at 540-853-2268 or by email at joseph.klein@roanokeva.gov.

### Services

I have almost 20 years' experience working in law libraries, and I am always happy to assist you with your legal research projects. The Law Library has a wonderful collection of legal research materials, and it would be my pleasure to help you find the correct resources to answer your question. We also provide free access to online legal research databases. If you have never (or rarely) used an online legal research database such as Lexis or Westlaw, I will gladly assist you. I would love to set up one on-one training if you desire. If the resource you need is not in our collection, I am often able to borrow that item from another library through Interlibrary Loan. The Law Library also has a conference room that can be reserved for meetings, depositions, or any event of less than 20 people. The Attorney's Lounge in the Law Library has a phone that is available for all members of the Roanoke Bar Association. It also features comfortable seating if you find yourself needing to kill time while you are in the Roanoke City Courthouse. If you would like more information about any of these services, please feel free to stop by and inquire, or contact me by phone or email at your convenience.



### Genealogy Resources and Classes

The Virginia Room is the Roanoke Public Libraries' local history and genealogy collection. This unique research facility is located on the second floor of the Main Library (703 S. Jefferson Street). It has a fantastic collection of genealogical resources, local history books, photographs, and artifacts. It also offers both beginning and more advanced genealogy classes. Its webpage ([www.virginiaroom.org](http://www.virginiaroom.org)) has more information, including links to class schedules, the digital collection that includes hundreds of historic photos and documents, and links to databases. One powerful database that genealogists find very helpful is Ancestry.com. The Roanoke Public Libraries provide free access to Ancestry.com, available at all our library branches, even the Law Library. If you are interested in trying to use it to explore your family tree, I would be glad to assist you.

## VIEWS FROM THE BENCH: JUDGE WILLIAM D. BROADHURST

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the briefs submitted, Judge Broadhurst thinks it is always a good idea to send a copy directly to chambers in addition to the clerk's office for filing.

One area for improvement for the Bar that Judge Broadhurst identified was witness examinations. Particularly when preparing for examination of witnesses that have not been deposed, Judge Broadhurst reminds that it is crucially important for lawyers to ask themselves, "How is this witness going to hear this question?" Judge Broadhurst elaborated, "Sometimes a witness and the examining attorney get onto parallel tracks because the witness perceived or interpreted a question one way when the attorney actually meant to get at something else." This dissonance then becomes difficult for the court to resolve. To avoid this dilemma, attorneys should carefully craft their questions with the witness in mind so as to preclude any possible ambiguities or confusion.

Judge Broadhurst said that if counsel has prepared a summary notebook or a notebook of exhibits, it is helpful when a separate notebook is prepared for the court.

Also, when in court, lawyers should always remember to speak directly to the court, and to avoid over-talking, especially overplaying their strong arguments. Reducing the issues for consideration benefits everyone involved.

Relatedly, Judge Broadhurst's primary suggestion for young lawyers is to recognize the relative strengths and weaknesses of one's case. "Acknowledging that the other side has a strong position shows a great deal of maturity," Judge Broadhurst iterated. Likewise, he said, "Young lawyers should recognize that they do not need to fight everything."

He further explained that young lawyers should always bear in mind the type of motion or pleading they are arguing, and never lose sight of the requisite standard of review. For example, in a demurrer, lawyers may have fallen upon a certain document or piece of evidence that completely destroys the other side's case; however, on demurrer, because the focus is on the sufficiency of the pleadings, discovery has no bearing. Likewise, in discovery disputes, the relevant discovery rules encourage the free exchange of information and so unless a legitimate basis exists for restricting the discovery, judges are generally reluctant to hinder the free exchange of information.

One takeaway that I had from my conversation with Judge Broadhurst was how grounded he was. In the course of our conversation, Judge Broadhurst pointed out two very old books sitting on the bookshelf behind me in chambers. The books were from the old Norfolk & Western library and were given to Judge Broadhurst by his father along with two bookmarks covered in fools' gold. "I keep them there to remind me of my dad, as well as to remind me about the inherent folly of chasing after wealth or prestige."

In addition to this, I gathered that much of Judge Broadhurst's humility was developed during his decades of officiating college football. Judge Broadhurst began officiating in 1982, and climbed as high as officiating Division I (FCS) football. In addition to invariably being the center of scrutiny by players, coaches, and especially fans for every autumn Saturday for nearly 30 years, Judge Broadhurst scrutinized himself in his weekly study of game film.

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# 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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## UNCERTAIN FUTURE FOR IMMIGRANT YOUTH

(Continued from page 1)

from the U.S. In fact, DACA's phase out came after the administration had altered its enforcement priorities to focus on a broader group of undocumented immigrants—targeting not only criminal offenders, but also anyone in the U.S. without a legal immigration status. By default, this group included anyone who was anticipated to fall off the DACA rolls upon expiration of his or her status.

In January and February 2018, two federal district courts enjoined DACA termination. The injunctions, both issued on a nationwide basis, require U.S. Immigration & Citizenship Services to continue to accept DACA applications from young people who have (or have had) DACA status and seek to renew their deferred action and employment authorization. The U.S. Supreme Court recently refused to hear the Trump administration's petition for review in these cases, so review remains with the Ninth and Second Circuits. The Ninth Circuit has set briefing for early April with an expected decision in June 2018. As of this writing, the Second Circuit has not issued a briefing schedule. Other similar cases are pending in district courts around the U.S. and of course, Congress could act to provide permanent solutions for this population. For now, DACA recipients can continue to and should renew their status.

While this article focuses only on Deferred Action for Childhood Arrivals, equal attention should be given to the disruption and difficulty of individuals with Temporary Protected Status (a work authorization-only program and predecessor to DACA) who will lose lawful status and with it, state driver's licensure, educational opportunity, and lawful employment in 2019. Virginia is home to over 20,000 Hondurans and Salvadorans who parent more than 20,000 U.S. Citizen children in our state. Each group was authorized to stay in the U.S. approximately 20 years ago.

*Christine Lockhart Poarch started Poarch Law, an immigration and adoption practice, in 2003 and speaks nationally on immigration law. Poarch Law represents individuals, families and businesses in complex immigration and adoption cases.*

## VIEWS FROM THE BENCH: JUDGE WILLIAM D. BROADHURST

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Applying the lessons from his football officiating days to the bench, he observed: "In this job, particularly, it is really easy to think that your jokes are funny when they actually are not. But that's why it is so critical to constantly evaluate your performance." Referring to his weekly film study, "That process was so invaluable, and the true key to improving both on and off the field." (Not surprisingly, Judge Broadhurst believes the new judicial evaluation program will be a great benefit to the legal profession here in the Commonwealth.)

In sum, as one of the circuit's former law clerks, I can personally say that I am grateful for Judge Broadhurst's humility and his commitment to allowing the citizens of our community have their day in court. Fortunately for the community and Bar alike, we will continue to have Judge Broadhurst's influence for the foreseeable future.

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



## UPDATE: VIRGINIA STATE BAR ACTIONS AND PROGRAMMING

(Continued from page 2)

on Lawyer Well-Being, which reported on the issues in the legal profession with substance abuse, mental health issues, and other well-being stressors facing lawyers today. The change can be found at [http://www.vsb.org/pro-guidelines/index.php/rule\\_changes](http://www.vsb.org/pro-guidelines/index.php/rule_changes).

- **Criminal Case Discovery.** Criminal law practitioners, please be on the lookout for proposals from the Criminal Discovery Reform Task Force. It appears that the task force has agreed to a proposal that it will present to the Rules Advisory Committee of the Supreme Court of Virginia in the near future.
- **VSB Budget Focus.** The Bar Council and VSB staff are looking for ways to make operations more efficient, including reducing the number of Bar Council meetings. Consideration has been given to removing one of the three Bar Council meetings each year (most likely the one in October). That consideration has been tabled for 2018, but discussions will continue.
- **New Digital Updates from the Supreme Court of Virginia.** Be aware that the Supreme Court of Virginia has announced the use of a new digital subscription service that will provide email and text notifications on court opinions, events, etc. This is a free service that you can subscribe to on the front page of the Supreme Court's website. It provides electronic delivery of much helpful and interesting information from the Supreme Court and the Court of Appeals.
- **Bar Council Opportunities.** There will be a Bar Council election for the 23rd Circuit this Spring, as Gene Elliott's three-year term expires at the end of June 2018. Gene is eligible for another three-year term and has expressed his interest and intent to seek re-election. There is also an opening for an At-Large member of Bar Council. Let us know if you may be interested.
- **VSB TECHSHOW Update.** The VSB TECHSHOW is April 23, 2018, at the Greater Richmond Convention Center. Information and registration is available at [vsb.org](http://vsb.org).
- **Plan to Attend the VSB Annual Meeting.** Strongly consider putting this event on your calendar—a trip to Virginia Beach for the VSB Annual Meeting on June 13–17, 2018. This gathering is a great chance to catch up with old friends, to get more involved in your section of the VSB (or a new one), and to enjoy some time on the beach with family and colleagues. Plan now to come and join in this opportunity to get more engaged with the VSB.

There are many opportunities to get involved in the VSB through conferences, committees, and programs. If you want to do so, please contact one of us. We would be glad to put you in touch with the right persons within the VSB. Likewise, if there are ever any issues about which you have concerns with the VSB, do not hesitate to contact either or both of us to discuss.

*Gene Elliot is a solo attorney, and Brett Marston is a partner at Gentry Locke.*



## MY SUPERLATIVE CASE

(Continued from page 3)

would be the first peremptory strike of the defense, but three strikes later, there she was on the final panel.

The investigating trooper testified that there were no skid marks, and highlighted the significant physical damage to the vehicle as establishing its excessive speed and absence of evasive action by the driver. With no other witnesses to the accident, and mindful of the fundamental principle that the mere happening of an accident is no evidence of negligence, I called the defendant as an adverse witness. I also offered favorable portions of his deposition testimony to establish the two drinks and the Nyquil consumption before picking up the decedent. And, although being coy at trial in attempting to establish that the plaintiff was contributorily negligent or assumed the risk, the defendant was on record in his deposition of saying that he was not being reckless and did not recall any reckless conduct in his driving, nor could he recall and unequivocally say that the decedent had not asked him to slow down before the accident.

Before my expert testified, I renewed my objection to the exclusion of his second opinion. The late Judge A. Dow Owens in response said that a trial is like a ballgame. Neither is perfect and calls get made as the referees see them. The goal is not to have a perfect trial or a perfect ballgame but to avoid making wrong calls that affect the outcome. He then noted that by not letting my expert render the excluded opinion, I would end up thanking him if I ended up with a verdict, and would also end up thanking him if I did not. It was that close of a call.

At the close of plaintiff's evidence, the judge denied a motion to strike and likewise denied it at the end of all evidence. He ruled that there was a jury question on negligence, assumption of the risk, and contributory negligence, given (i) the evidence of the Nyquil consumption potentiating the effects of alcohol, (ii) the decedent's lack of knowledge of that consumption and the two drinks before he was picked up, and (iii) the defendant's deposition testimony that he did not exhibit reckless behavior. In conjunction with the physical evidence reflecting a very high rate of speed, the case went to the jury.

On the issue of damages, other than the funeral bills, there were no special damages. The decedent was a 17-year-old, high-school dropout, an orphan at a young age, who was all but abandoned by four of his five siblings and had bounced from friend's house to friend's house to live his last days. A fifth sibling, an older married sister from North Carolina, championed his case and testified at the trial of her efforts to stay in touch with him, to visit him as she could from North Carolina. And her tears on the witness stand were genuine.

Defense counsel argued in closing that this was a case of the "kettle calling the tea pot black" and was barred by assumption of the risk and contributory negligence. And, although it was not a case of damages, he pointed to the "gold diggers" (several of the siblings who showed up at the trial) who had not seen their brother in years. I only had the sister from North Carolina testify and his oldest brother who had made some attempts to provide some guidance to the decedent.

In response to the defense's attacks, I argued that the expert's unrefuted testimony showed that the medication potentiating the effects of the alcohol and that the defendant was impaired by the alcohol and medication consumption; that the decedent had no idea that the defendant had consumed the medication or the two drinks before picking him up; and that the defendant had conceded that prior to losing his recollection, he was not exhibiting reckless behavior. As to the damages, surely the young man

had never worked and had no dependents. Still, his life had worth and there were people who loved him. Indeed, the evidence of love flowed from the sister's genuine tears on the stand. And as I was wrapping up my closing in rebuttal, I looked each juror in the eye asking for a verdict and noticed that there was a second person crying in the courtroom—the lady who had lost her mother the year before but was inexplicably not struck by the defense.

The jury returned a verdict for the plaintiff. It was set aside after post-trial motions because of an erroneous jury instruction. I learned that it is not negligence *per se* to exceed the posted "maximum safe speed" as opposed to the speed limit. While there was a question about the defendant's having adequately raised an objection to the instruction, and about how, in no event, was it prejudicial given the clear evidence of excessive speed way beyond not only the "maximum safe speed" posted for the turn but the speed limit on that stretch of road, the judge felt that the instruction may have affected the result. Notwithstanding, the stingy insurance carrier opened its pocket book thereafter and settled the case before retrial.

There were several lessons I learned as a young lawyer in that case that I have carried with me since. First, I always remember Judge Owens' advice that there is no perfect trial. That holds true for the judges who referee the process, and the lawyers who are trying it, not to mention the witnesses, who notwithstanding detailed preparation do not always perform as we would like and expect. So, prepare for the unexpected. Second, attention to detail can make all the difference. I am convinced that defense counsel thought he had struck the lady whose mother had been killed in an automobile accident, but apparently did not use a seating chart to track the potential jurors and correctly identify them during the peremptory challenge process. At the same time, my altering the model jury instruction to provide that exceeding the "maximum safe speed" is negligence *per se* cost me the jury verdict. Third, I am always mindful that any case can be won or lost. So, never become so emboldened that you believe you have the perfect case or, on the other hand, so discouraged that a case cannot be won when the hurdles seem insurmountable. In sum, hard work, perseverance, and attention to detail will generally lead to the right result, notwithstanding the imperfect process involved in getting there.

Robert A. Ziogas is a partner at Glenn, Feldmann, Darby & Goodlatte.



Thank you to our February and March speakers: Virginia State Bar President, Doris Henderson Causey, Esq. and Virginia Bar Association President, C.J. Steuart Thomas, III, Esq.

## BENCH-BAR CONFERENCE 2018

The 2018 Bench-Bar Conference was a great success. The conference began with a CLE presentation on attorney well-being by Lauren Davis, Esq., of Frith Ellerman & Davis Law Firm, P.C.; Dr. Abrina Schnurman-Crook of Hollins University's Batten Leadership Institute; and Dr. Michael Chiglinsky of ACA Counseling Services. If you attended the CLE, but forgot to take your CLE form with you, please contact Andy Gerrish at [agerish@faplawfirm.com](mailto:agerish@faplawfirm.com).

Following the CLE program, judges from the local courts gave addresses on the state of the judiciary. The Honorable Elizabeth K. Dillion, judge of the United States District Court for the Western District of Virginia, indicated that later this year, the court will be imposing a \$100 pro hac vice fee. The fees collected will be placed in a Bench and Bar Fund, to be used to pay certain litigation expenses in cases where attorneys agree to act as pro bono counsel for indigent plaintiffs in federal civil rights cases. As a general practice, the Western District calls for pro bono counsel volunteers at the point when a civil rights case is ready for a jury trial. Judge Dillon encouraged attorneys to sign up and take advantage of this opportunity for jury trial experience in federal court. Interested attorneys should contact Judge Dillon or Magistrate Judge Robert S. Ballou. Details about the Bench and Bar Fund will be available on the court's website once the fee takes effect.

Judge Dillon also informed the attendees that the U.S. Court of Appeals for the Fourth Circuit has appointed Juval Scott, Esq., as the Federal Public Defender for the Western District of Virginia. Judge Dillon also noted that President Donald J. Trump has appointed local attorney Thomas T. Cullen, Esq., as the U.S. Attorney for the Western District of Virginia.

Judge Dillon was followed by the Honorable Paul Black, judge of the United States Bankruptcy Court for the Western District of Virginia. Judge Black introduced the Bar to James W. Reynolds, Esq., the new clerk of court for the bankruptcy court.

Judge Black also indicated that bankruptcy filings in the Western District were down 1.8% in 2017, with the number of filings falling to just less than 5,500.

Judge Black informed the attendees of some practice changes. New Chapter 13 plan forms became effective in December 2017. In addition, the court will soon use electronic orders. This will allow for the tracking of orders as they are circulated. Attorneys practicing in the bankruptcy court will need software that allows them to print orders to PDF.

Finally, Judge Black encouraged local attorneys to attend a free six-hour CLE on bankruptcy law on June 1, 2018, at the Valley View Holiday Inn.

The Honorable William D. Broadhurst spoke on behalf of the circuit courts of the Twenty-third Judicial Circuit of Virginia. Judge Broadhurst indicated that the judges will continue to rotate through the circuit. Beginning July 1, 2018, Judges Dorsey and Swanson will sit in Roanoke County five days a week. Judge Carson will sit in Roanoke City on Mondays and Tuesdays and in Salem on Wednesdays, Thursdays, and Fridays. Finally, Judges Broadhurst and Clemens will sit in Roanoke City five days a week.

Next, the Honorable Scott R. Geddes updated the attendees on the state of the general district courts of the Twenty-third Judicial District of Virginia. The general district courts handled approximately 75,000 cases in 2017. There was a pronounced 45% increase in the number of traffic infractions filed in the Salem General District Court. To meet this in-

creased demand, the court added a Friday afternoon traffic docket on the first and third Fridays of each month.

Judge Geddes provided attorneys practicing in the district a closing word of advice: A filing faxed to the clerk's office the night before a proceeding will probably not be seen by a judge before that proceeding unless the attorney follows up with the clerk's office the next morning to make sure that filing makes it into the file.

Last—but certainly not least—the Honorable Onzlee Ware, chief judge of the juvenile and domestic relations district courts for the Twenty-third Judicial District of Virginia spoke on behalf of those courts. Chief Judge Ware announced that in July 2018, the Honorable Frank W. Rogers III will take over as chief judge.

Chief Judge Ware also encouraged young attorneys to sign up to serve as court-appointed attorneys in juvenile and domestic relations general district court cases. In addition, attorneys interested in serving as faculty members for the Harry L. Carrico Professionalism Course should contact Chief Judge Ware.

The conference closed with an interactive question-and-answer session with judges from all of the local courts.

The Roanoke Bar Association owes tremendous thanks to a number of people for their efforts and support. Diane Higgs, the Association's executive director, did the heavy lifting needed to make the conference possible. Cindy Krcmaric, Monica Williams, and Melinda Childress-Dearing helped with on-site registration. Lauren Davis and Drs. Schnurman-Crook and Chiglinsky put together an enlightening and engaging program on attorney well-being. And Attorneys Liability Protection Society (ALPS) provided a generous grant that allowed the RBA to keep the cost of attendance down while also inviting law clerks and law students to attend the conference for free. Finally, the Association must thank all of the judges who attended this year's conference. Without the judiciary's unflagging support, this conference would not be possible. Many thanks to everyone who made this year's conference a great success.



Lauren Davis



Dr. Abrina Schnurman-Crook  
and Dr. Michael Chiglinsky



Judges Black, Swanson, Broadhurst, Roe, Dillon, Ballou, Talevi,  
Ware, Rogers, Geddes and Clemens.





Judge Weber and Kevin Holt



Judge Dillon



Judges Talevi, Griffith, Geddes and Swanson



Judges Rogers and Ciaffone



Andrew Gerrish



Judge Black



Hugh Wellons and James Reynolds,  
Clerk, U.S. Bankruptcy Court



Judge Clemens and John Lichtenstein



Judges Geddes and Ware



The Legal Aid Society of Roanoke Valley, a non-profit law firm for people with limited income, seeks an attorney admitted to practice to serve clients in Roanoke City and surrounding counties. Experience and interest in landlord-tenant and consumer law are the best credentials for the anticipated work, although the full range of civil poverty law practice is relevant. Generous benefits include paid holidays, vacation and sick time, health, dental, life and disability insurance and LRAP (Law School Loan Repayment Assistance Program). A hiring date of summer 2018 is expected. Interested applicants may mail or email a resume, cover letter, writing sample, and references to Henry Woodward, LASRV, 132 Campbell Ave SW Ste 200, Roanoke VA 24011, or [henry@lasrv.org](mailto:henry@lasrv.org). LASRV is an Equal Opportunity Employer.

# ANNOUNCEMENTS

NEW MEMBERS
<p>The Roanoke Bar Association welcomes the following new Active members:</p> <p>Effective March 13, 2018</p> <p>Stephen C. Huff Crandall &amp; Katt</p> <p>Kathleen L. Taylor Glenn Robinson Cathey Memmer &amp; Skaff</p>

UPCOMING EVENTS
<p>Roanoke Bar Association Meetings 2017 - 2018</p> <p>September 12, 2017</p> <p>October 10, 2017</p> <p>November 14, 2017</p> <p>December 12, 2017</p> <p>January 9, 2018</p> <p>February 13, 2018</p> <p>March 13, 2018</p> <p>April 10, 2018</p> <p>May 1, 2018 (Law Day)</p> <p>June 12, 2018 (Annual Meeting)</p> <p>Go to <a href="http://www.roanokebar.com">www.roanokebar.com</a> for more information on all upcoming events.</p>

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Patrick J. Kenney Secretary-Treasurer	982-7721
Hugh B. Wellons Past President	512-1809
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**DON'T FORGET TO CHANGE YOUR ADDRESS!**

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**Complete and Forward to:** Roanoke Bar Association, P.O. Box 18183, Roanoke, VA 24014  
Email: [rba@roanokebar.com](mailto:rba@roanokebar.com)