

## INSIDE THIS ISSUE:

<i>Managing COVID-19 in the Western District of Virginia</i>	1
<i>President's Corner</i>	2
<i>The Honorable Jackson L. Kiser (1929 – 2020)</i>	2
<i>G. Michael Pace, Jr.: Frank W. "Bo" Rogers, Jr. Lifetime Achievement Award Recipient</i>	3
<i>Roanoke Law Library</i>	3
<i>Roy V. Creasy: Distinguished Service Award Recipient</i>	4
<i>Andrew S. Gerrish: 2020 Young Lawyer of the Year Award Recipient</i>	4
<i>Views From the Bench: Judge Christopher J. Clemens</i>	6
<i>My Superlative Case</i>	6
<i>Rise of the Remote Firm</i>	13
<i>A Workers' Compensation Practice Affected by COVID-19</i>	14
<i>Impact of COVID-19 on Criminal Defense Practice</i>	15
<i>Announcements</i>	16

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

## Editors

Christopher S. Dadak - 387-2320  
christopherd@guynnwaddell.com

Jonathan D. Puvak - 983-9399  
puvak@gentrylocke.com

Justin E. Simmons - 983-7795  
jsimmons@woodsrogers.com

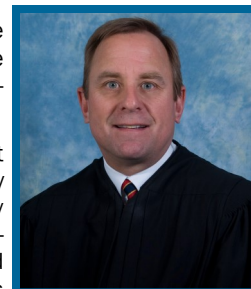
Linda L. Gustad - 857-5100, Ext. 5323  
lindag@vawd.uscourts.gov

Alicha M. Grubb - 983-9361  
grubb@gentrylocke.com

Gary M. Bowman - 343-1173  
gary@garymbowman.com

## LETTER DATED NOVEMBER 12, 2020, FROM THE HONORABLE MICHAEL F. URBANSKI, CHIEF UNITED STATES DISTRICT JUDGE: MANAGING COVID-19 IN THE WESTERN DISTRICT OF VIRGINIA

Thank you for reaching out to me for information for the Roanoke Bar Association newsletter regarding our experience with the COVID-19 pandemic in the Western District of Virginia.



On March 6, 2020, the Western District of Virginia set up a Pandemic Response Committee, which is a multi-agency effort to address the challenges and uncertainties posed by the evolving pandemic. I asked Magistrate Judge Robert Ballou and Clerk Julie Dudley to lead this effort for the court, and they set up a working group that includes representatives from the Bankruptcy Court, Marshal's Service, Probation, Federal Public Defender, U.S. Attorney, Department of Homeland Security/Federal Protective Service, GSA, Veteran's Administration, and Fourth Circuit Space and Facilities staff. Weekly teleconferences were held with these stakeholders to develop a unified approach to the virus.

Although reports out of New York were alarming in late winter, things did not hit close to home until the week of the ACC Tournament in early March. Events escalated quickly the second week of March when the court issued its first of a series of standing orders addressing the pandemic.

One of the first issues we had to address was access to the courthouse by persons who may have been exposed to the virus. An order was entered on March 13, 2020, restricting access to Western District courthouses and probation offices for persons recently returning from the first countries to experience outbreaks, persons diagnosed with COVID-19 or who had become symptomatic, and persons in close contact with them. Information was posted on the court's website and signage was developed and deployed in all seven divisional courthouses. This issue required coordination with other federal agencies as access to federal properties is controlled by the Facilities Security Committee for each federal building in the district. While the court is the principal tenant at most of the federal courthouses in the Western District and thus has the controlling vote in that building's Facilities Security Committee, it is not the principal tenant at the Poff Federal Building in Roanoke. As such, access to the Poff Building required coordination with other agencies, and the court appreciates the teamwork and commitment to protecting the health of our employees and the public demonstrated by our federal partners, especially the Veteran's Administration.

Another early issue concerned naturalization ceremonies. These ceremonies are scheduled in various courthouses and other locations in our district throughout the year, and each ceremony attracts a host of new citizens and well-wishers. Of immediate concern was a ceremony scheduled in Charlottesville in mid-March. On March 16, 2020, the court suspended naturalization ceremonies in the district because of the number of participants and public exposure at these events. So that the naturalization of citizens could proceed during this period of suspension, the court authorized the United States Citizenship and Immigration Service to administer the Oath of Alle-

(Continued on page 8)

## PRESIDENT'S CORNER

BY DANIEL P. FRANKL, ESQ.



With all of the Roanoke Bar Association's usual programs conducted with the Roanoke City Public School (RCPS) system having been extremely modified or discontinued due to COVID, Mollie Elder and I met with Justin McLeod, the RCPS Community Relations Coordinator and Malora Horn, the RCPS Homeless Coordinator to see what the RBA and its members could do to help support the homeless and underprivileged students in the RCPS

system. After much discussion and follow up, it was determined that 21 of the city's schools had a real and pressing need for a washer and dryer set that could be used to clean the clothes of their homeless and underprivileged students. Those discussions and that need led to the RBA's "Keeping it Clean" initiative.

On October 13, 2020, the RBA Board of Directors approved the Keeping it Clean initiative in conjunction with the Roanoke Law Foundation for the purpose of collecting donations toward the purchase of 21 sets of washers and dryers to be installed in various Roanoke City Public Schools where their presence will have a positive impact on students in need. Access to clean clothes not only improves the students' self-esteem, it raises their morale and gives them some dignity that leads to higher attendance rates and, ultimately, to higher graduation rates. Under the initiative, the RBA will provide the machines, and RCPS will install and maintain them.

Even though our fundraising efforts have just begun, we have already raised enough money to purchase fourteen sets of machines. Delivery of the first four sets of machines took place on October 29, 2020 and another three sets were delivered on November 12, 2020. An additional five sets were delivered December 9, 2020. The next two sets will be delivered after the holiday break in January. Since the inception of the initiative, *The Roanoke Times* published an article about the program on October 29, 2020, soliciting public support for our fundraising efforts. After the first four sets of machines were delivered, WDBJ-7 aired a piece on the initiative on their "Good News Here at Home" broadcast, bringing further media attention to our fundraising efforts.



Dan Frankl at Hurt Park with washer/dryer delivery.

(Continued on page 8)

## THE HONORABLE JACKSON L. KISER (1929–2020)

BY SCOTT H. JONES, ESQ.

On October 20, 2020, at the age of 91, the Honorable Jackson L. Kiser passed away after 39 years of faithful service as a United States District Judge for the Western District of Virginia. For the final 10 years of his life, I had the immense privilege to work alongside Judge Kiser as his law clerk. In that role, I had the opportunity to know not just the judge, but the man. And it's safe to say that Judge Kiser was among the best of both.



Born in Welch, West Virginia, in 1929, Jackson Kiser lived a life of service. First to the Army JAG Corps (1952-1955), then to the Army Reserve (1955-1961), then as a United States Commissioner (1956-1958) and Assistant United States Attorney (1958-1961) before going into private practice. In 1956, at the age of 27, Judge Kiser ran for Congress in a political climate where his defeat was all but assured. Before the election, Judge Kiser said: "Of course, a man would be completely blind not to realize it's going to be an uphill fight. But then, it's not an impossible one," a quote that sums up Judge Kiser quite well. Never one to shrink from a fight, he was always prepared to take an unpopular position if that was what he believed the law or justice required.

It's no great observation to say that Judge Kiser was an intellectual heavyweight; that was apparent to anyone who had the privilege to appear in his courtroom. When he was still in private practice, his colleagues often called him "The Professor" as a nod to his encyclopedic knowledge of the law. When he was confirmed to the federal bench in 1981, his former law partner, Bob Mann, said, "We had to start buying law books when he left."



The same was true in chambers. I knew—and I think all his other law clerks quickly learned the same lesson—that Judge Kiser didn't need us to research the answers; he already knew them. I took it as an article of faith that, every afternoon, he would be pouring over appellate decisions that had been released that day. His unquenchable thirst for knowledge, coupled with decades of professional excellence, meant that Judge Kiser was always a few steps ahead of everyone around him. There was no hearing for which he was not prepared, and often more prepared than the attorneys who appeared before him.

Judge Kiser's steel-trap mind was just one of the many facets of his character that endeared him to his law clerks, his court staff, and those who practiced in front of him. In addition to his intellect, he could be wickedly funny and was always exceedingly kind and humble. He was the epitome of a "southern gentleman," both on and off the bench.

As a judge, Judge Kiser was exceedingly fair, and no one got special treatment in his courtroom, not even him. He famously cited himself for contempt when he was late to court one day. In recounting the story to me, he said, "No one is above the rules of the court, not even me."

(Continued on page 9)

## G. MICHAEL PACE JR.: 2020 FRANK W. "BO" ROGERS, JR. LIFETIME ACHIEVEMENT AWARD RECIPIENT



*This award recognizes an outstanding lawyer who embodies the highest standard of personal and professional excellence in Southwest Virginia and, in doing so, enhances the image and esteem of attorneys in the region. The Honorable Frank W. Rogers, III, Judge, offered the following remarks at the RBA October meeting.*

Do you have a friend you have known for a very long time? A friend who has always been there for you?

Who would do anything for you? Who has enthusiastically supported your every decision? Who makes you laugh, and sometimes cry? Who is a pillar of consistency in the ever-changing landscape of life? Who you may go weeks or even months without seeing, but when you do, it's like you just saw each other yesterday? I hope you all have the kind of friend. I do, and his name is Mike Pace.

Mike and I met early in our first year at Washington and Lee University School of Law. We found a great deal in common, and we spent a lot of time together, in and out of class. I was often third wheel to Mike and Nancy Hinchee, his high school sweetheart and later spouse. Those were the best of times.

Mike and I finished law school together in 1984; we studied for and took the Bar exam together; and a bunch of us had quite a party afterwards. We came back to Roanoke to work: Mike at Gentry Locke, me with Marshall Mundy.

Being so close to Mike, I had a front row view of his rise to prominence in this community. He immediately distinguished himself as a lawyer, garnering all of the various "Best of" recognitions. From 1999 through 2012 he served as Gentry Locke's managing partner—that alone, I submit, would entitle him to some award. He gave his time and talent to many local civic and community service organizations. He served as President of the RBA 2000-2001. I got to celebrate with Mike when he was inducted as President of the Virginia Bar Association in 2008, and I watched in admiration as Mike deftly handled his law firm duties, the duties of the VBA and his responsibilities at home as husband and father.

While VBA President, Mike developed the idea for the Rule of Law Project. This initiative was piloted in 2009 in our local public schools. But for the pandemic, it continues today. In 2012, Mike retired from Gentry Locke and became counsel to Roanoke College. As part of his plan, he helped establish the Center for Teaching the Rule of Law, where he served as President and CEO for eight years. The reach of the Center's work is truly amazing. The Center has administered the Rule of Law Project in almost 100 school districts in Virginia; it has trained teachers to use the Rule of Law Project in several states; and amazingly the Center has collaborated to present Rule of Law programs in such far-away places as Austria, Spain, Indonesia, Oman, Kuwait, Morocco, Africa, Afghanistan, Mongolia and New Zealand. Think about that, folks.

*(Continued on page 10)*

## SEASONS'S GREETINGS FROM THE ROANOKE LAW LIBRARY

BY JOSEPH KLEIN, LAW LIBRARIAN

I would like to heartily wish you all a wonderful holiday season, full of good times and cheer. A lot of stuff has been cancelled in 2020, and while the holidays will probably be much different this year, they will not be cancelled. Perhaps many of our gatherings with loved ones will be via Zoom instead of in person. Our favorite holiday traditions might be on sabbatical this year, but rest assured they will be back in the future and perhaps we will treasure them even more. One tradition I was able to keep was to bring my daughter, Harper, to work and have her assist me in decorating the Law Library for the holiday season. I look forward to doing it again next year and for you all to see it.



### Current Legal Reference Services

Even though the Roanoke Law Library is not open to the public I am still working here five days a week assisting people with legal research and providing other assistance. I have been receiving reference requests from attorneys and legal staff and have been able to provide information by phone and email in almost every instance. I am able to send items from Lexis Advance or scan materials using our Xerox machine, sending the information as an email attachment. Recently, I set up a workstation for Lexis Advance, which consists of a laptop and a washable keyboard and mouse which I clean after every use. I can wheel the workstation out of the Law Library so even though I am not able to welcome people into the library it is still possible to provide free access to Lexis Advance for anyone who needs it.

### Roanoke Public Libraries Curbside Service

All of the Roanoke Public Libraries are currently providing curbside service. It is possible to search for items in our catalog ([www.rvl.info](http://www.rvl.info)) and request to pick the items up at any Roanoke City library branch, including the Law Library. In addition to having materials from other libraries sent here, I am able to check out legal materials (including Virginia CLE treatise and West's Virginia Practice materials) and bring them out to you in the Courthouse lobby or to your car.

I am not sure when we will be able to reopen and I long for the day when the Roanoke Law Library reopens and you all are able to return. The City of Roanoke and the Roanoke Public Libraries staff and administration are constantly monitoring the Covid-19 situation and are diligently working on a plan to reopen the Roanoke Public Libraries while keeping you safe. In the meantime, if you need legal research assistance, please don't hesitate to reach out to me either by phone or email and I will do my best to provide you with the information you require. Call the Roanoke Law Library at 540-852-2268 or email me at [joseph.klein@roanokeva.gov](mailto:joseph.klein@roanokeva.gov).



## ROY V. CREASY: 2020 DISTINGUISHED SERVICE AWARD RECIPIENT



*Bob Ziogas offered following remarks presenting the award at the RBA October Meeting.*

The Distinguished Service award is reserved for the Association to recognize as appropriate clearly distinguished service. It was established by the Board of Directors in 1998 to "recognize individuals who have distinguished themselves in the legal profession, in the communities in which they live and work, and by their efforts

on behalf of and support of the Association and its various activities.

Prior to this year, it has only been given out on two prior occasions. The Association presented the Distinguished Service award to Roy Creasy in 2020 in recognition of his service to the Roanoke Bar Association, the legal profession, and the community at large.

Roy has been a member of our Association since 1976. He served for a number of years on the Board of Directors. He gave his time and talents to serve as its President. He has been a Member of the Roanoke Law Foundation and served as a Trustee for a number of years. Roy has also served as a Member of the Legal Aid Board of Directors for two decades and its Chairman for several years. Roy was also one of the founding members, president, and longtime member of Board of Directors of the Roanoke Chapter of the Federal Bar Association. He is Chair-Elect for Virginia's Conference of Local and Specialty Bar Associations.



Roy has lectured over the years on topics in his practice areas for Virginia State Bar Continuing Legal Education, Virginia Continuing Legal Education and Local Legal Seminars. Roy is a Fellow of the Virginia Law Foundation. He has been recognized by Best Lawyers in America for a number of years in his practice of Bankruptcy and Creditors Rights. He has

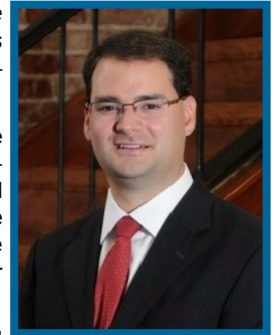
also been recognized as one of Virginia's Legal Elite in his practice area as well as by Super Lawyers in Virginia.

*(Continued on page 10)*

## ANDREW S. GERRISH: 2020 RBA YOUNG LAWYER OF THE YEAR AWARD RECIPIENT

*Phil Anderson, Esq. offered the following remarks in presenting this award to Andrew Gerrish at the October RBA meeting.*

Mr. President, members of the Board, distinguished guests and fellow members it is my privilege and honor to present the 2020 Roanoke Bar Association Young Lawyer of the Year Award to my friend and partner Andrew Gerrish.



In reflecting on Andy's career, I am reminded of the old saying that sometimes the good things in life come when you least expect it. I remember the day that Walt Peake came down to my office and told me that he had been contacted by a fraternity brother whose daughter was in med school here at Virginia Tech Carilion, and whose husband was a young lawyer clerking with the circuit court judges here who was looking for a place to land while his wife was in school. Not unlike the calls that all of us field at various times from friends and family looking for a little help with a loved one. We really were not looking for anyone at the time, and I remember not being overly enthused about bringing someone on from Delaware with no Roanoke roots, who we might not need, for what would likely be a short period of time. But we agreed to give Andy a look, and as they say the rest is history.

Andy had distinguished himself at Washington & Lee University where he graduated magna cum laude with a BS in psychology, which has no doubt served him quite well through the years in dealing with and managing yours truly. He stayed in Lexington where he graduated Order of the Coif from Washington & Lee School of Law and served as Executive Editor of the Law Review. He clerked for a year in the First Judicial Circuit in Chesapeake before landing here where he clerked for a year with the judges of the 23<sup>rd</sup> Judicial Circuit. He joined our firm in September 2014 and was promoted to partner in September 2019, well ahead of schedule.

I have practiced law in this area of the state for over 35 years and have crossed paths with a lot of lawyers old and young. Andy is without question in an elite group of the most capable and able lawyers whom I have encountered. No matter the task, he is up to it and makes whatever investment of time and energy is required to be the most knowledgeable person in any room on the topic at hand fighting to insure that his clients' best case is put forward. I always want him in my corner.

But like all smart lawyers, Andy is not flawless. I remember quite vividly being awakened at 2:00 in the morning by our alarm company and learned that our office had a ground floor intruder. This is, unfortunately, not an occurrence without precedent. What was somewhat unusual was that when I arrived and was greeted by two of Roanoke's finest they advised that while the back door to the building was closed upon their arrival it was unlocked, which then prompted in the middle of the night a room-to-room, floor-to-floor to search for the intruder. Finding nothing, I returned home about two hours later in what might be described as a mildly agitated state, tossed and turn for a few

*(Continued on page 13)*

# The McCammon Group

is pleased to welcome our newest Neutral



## Hon. Elizabeth A. McClanahan (Ret.)

*Retired Justice, Supreme Court of Virginia*

The Honorable Elizabeth McClanahan is the President and Dean of the Appalachian School of Law. Justice McClanahan retired in 2019 from judicial service after a combined sixteen years on the Supreme Court of Virginia and the Court of Appeals of Virginia. Prior to her service on the bench, she enjoyed a successful career in private practice and later as the Chief Deputy Attorney General for Virginia. Justice McClanahan has also served as a director on numerous professional and nonprofit boards, including the Via College of Osteopathic Medicine, North American Coalbed Methane Forum, National Chamber Foundation Board of the United States Chamber of Commerce, Energy and Mineral Law Foundation, and Virginia Oil and Gas Association. She now brings this exemplary record of leadership to The McCammon Group to serve the mediation, arbitration, special master, and judge pro tempore needs of lawyers and litigants throughout the Commonwealth.



LEADERS IN DISPUTE RESOLUTION SINCE 1995

For a complete list of our services and Neutrals throughout VA, DC, and MD,  
call 888.343.0922 or visit [www.McCammonGroup.com](http://www.McCammonGroup.com)



## VIEWS FROM THE BENCH: JUDGE J. CHRISTOPHER CLEMENS

BY ALICHA M. GRUBB, ESQ.



The Roanoke Bar Review interviewed Judge Clemens in March of 2015 when he was a judge for the Twenty-third Circuit's General District Court. Just six months later, Judge Weckstein announced his retirement, and the delegation appointed Judge Clemens to fill his seat. I caught up with Judge Clemens again to see just how much has changed over the last few years.

Judge Clemens is sitting in the Salem courthouse right now, so I drove over there to interview him. Upon arrival, I was surprised to learn that the courthouse required masks, because I figured Salem was immune to the coronavirus. Judge Clemens did, however, offer me my very own Salem-monogrammed mask to conduct the interview in complete safety and style.

His office was a buzz. An attorney waited to get an order signed. Dale Hurt, his assistant, answered the phone, setting cases, and keeping everyone in line. An assistant Commonwealth's Attorney came in to discuss the status of a defendant in an upcoming trial. Deputies joked with me as we sipped some coffee, available only to those who know where to look. The courthouse may be small, but it remains busy. I asked Judge Clemens about the things that contribute to his success as a judge, and he quickly and unequivocally replied that his assistant Dale, who also worked for Judge Weckstein, is invaluable.

When it comes to the courtroom, Judge Clemens said that he tries to make sure everyone's voice is heard. Every case is important, and now that he's on the circuit court bench, he sees the more weighty cases—the felonies and the large civil disputes—that can be devastating to a party, depending on the outcome. He takes every case seriously, researching the law to make the right decision. Ultimately, he must make a decision, so someone will go home unhappy, but he always makes sure to listen to each person. Judge Clemens relayed that some of his most rewarding moments have been seeing a losing party or the family of a criminal defendant out in public, and hearing them express their thanks for his demeanor and patience.

I can personally attest to this demeanor, having clerked for Judge Clemens and watching him adjudicate probably the most moving case I have seen. A young mom sat at the defense table with her lawyer, hair wet, clothes wrinkled; it was a parental rights termination hearing. But this one was different. This was a hearing where the mom was a good and loving person but lacked the mental capacity to care for her child. The foster parents who intended to adopt the child were there as was the social worker. Each one had glowing things to say about the mother. At the end of the hearing though, it was clear that the mother's rights needed to be terminated. Judge Clemens took the time to look at the mother, and he gently told her what would happen but reminded her that she would always be the child's mother, that nobody thought badly of her, and the foster parents had agreed to let her be a part of the child's life if she wished. This was compassion.

In addition to the daily docket, Judge Clemens leads the Twenty-third Circuit's Drug Court Program. Drug Court is designed as an alternative to jail for low-level drug and property offenses. If a

(Continued on page 14)

## MY SUPERLATIVE CASE

BY TRAVIS GRAHAM, ESQ.

*This article is the latest installment in a series of musings from local attorneys 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 case.*

Dan Casey of *The Roanoke Times* called Matt Broughton in our office to see if we could assist a gentlemen named Rudy King. Rudy had no ability to pay legal fees, and was at the end of his rope in trying to deal with a problem arising from his father's estate. Since I handle estate litigation, Matt passed the case on to me. I spoke with Rudy, and discovered the problem: someone had stolen his father's house.

I have a good many friends who live in houses that have wheels attached to them. But Rudolph King, Sr.'s house happened to be a nice two-story brick structure located on a large lot in northwest Roanoke. It didn't seem to be the kind of thing that someone could just run off with. But someone had. Rudolph, Sr.'s live-in caretaker, a woman named Tracie, managed to get Rudolph, Sr. to sign a power of attorney. Armed with this, she waited until Rudolph, Sr. was severely ill, and then executed a deed of gift transferring the house to "a friend of hers." She didn't transfer it directly to herself, because she had consulted with a lawyer on that point, and he told her that to do so "might look bad."

So, Tracie deeded the house to her friend for free, reserving a life estate for Rudolph, Sr. When Rudolph, Sr. died, Tracie continued to live in the house, paying no rent, no taxes, and no insurance.

If you've ever been involved in litigation concerning a power of attorney, you know that they are mostly used to do one thing: steal stuff. Occasionally they feature in cases involving false allegations of theft against family members and friends who genuinely want to help an incapacitated person, but mostly they are just for stealing. Fortunately, along with the seemingly irresistible temptation to steal, powers of attorney also come with an extensive body of law setting out the fiduciary duties owed by agents. We relied on this law to file suit against Tracie, and after many months of litigation (during which she did a remarkably good job of defending herself pro se), Caley DeGroote and I tried the case in Roanoke City Circuit Court.

Judge William Broadhurst ruled in our favor. There was an expected delay during which Tracie first refused to leave the house, then claimed she was unable to leave due to COVID-19, then changed her mind and decided to leave and take everything that was not nailed down with her. But, with the aid of a contempt finding by Judge David Carson which I would describe as "clearly articulated," we succeeded in restoring possession of the house and contents to Rudy, Jr. Ownership of the house (his childhood home) has significantly improved his life.

For our part, there is nothing more satisfying than achieving the right result for a deserving individual in a pro bono case.

*Travis Graham is a partner at Gentry Locke.*

**The RBA congratulates the new Juvenile  
and Domestic Relations judge:**

**The Honorable Melissa W. Friedman**



**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)**



## MANAGING COVID-19 IN THE WESTERN DISTRICT OF VIRGINIA

(Continued from page 1)

giance to all applicants for naturalization residing in the Western District. For new citizens requiring name changes, virtual proceedings have been conducted by our magistrate judges. The March 16, 2020 Order has been extended a number of times, and the temporary period of suspension now extends through December 31, 2020.

The next issue to be addressed was how to continue court operations during the pandemic. The court issued a standing order on March 24, 2020, on this topic. In formulating this order, the court coordinated with Clerk Julie Dudley, the members of the Pandemic Response Committee, including Acting US Marshal Brad Sellers, Judge Ballou, Chief Judge David Carson, and other key stakeholders. An informal line of communication was established with fellow chief judges in the mid-Atlantic region, including those serving districts in Maryland, Pennsylvania, Ohio, North Carolina and West Virginia. Leadership of this group was provided by Chief Judge Jim Bredar of the District of Maryland, who served on the national pandemic task force established by the Administrative Office of United States Courts ("AO"). I frequently communicated with my counterpart in the Eastern District, Chief Judge Mark Davis, and we exchanged drafts of orders and ideas for continuing court operations. I consulted as well with Dr. Karen Shelton, Director of the Mt. Rogers Health District of the Virginia Department of Health, and our team evaluated emerging data and guidance from the Governor's office and the CDC and NIH websites.

The March 24, 2020, standing order indicated that while the court would remain open for business, all jury trials and in-person proceedings scheduled before May 1, 2020, were continued unless the presiding judge determined to hold an in-person hearing in a given case. Misdemeanor and petty offense dockets were continued along with Veterans Treatment, Reentry Court, and Drug Treatment Court sessions. Grand jury sessions were also suspended. Public intake counters were closed and drop boxes were established for filings. Most court personnel worked remotely from home.

During this period, our IT staff, led by Keith Newton working in conjunction with the Fourth Circuit and the AO, quickly developed methods to conduct secure internal meetings via Skype and hearings via Zoom.gov. Over the course of the next several months, hundreds of hearings were conducted remotely via videoconference. In order to allow public access to federal court proceedings, telephone lines were established for each judge to allow members of the public to dial in and listen to any video or audio hearing. The videoconference hearings have worked extremely well, and dozens are held each week.

On March 27, 2020, the President signed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") into law. This statute allows federal courts to hold criminal hearings, including change of plea and sentencing hearings, by audio or videoconference upon consent of the defendant after consultation with counsel. A significant hurdle to implementing this procedure was the capacity of local and regional jails to manage the volume of videoconferences for state and federal courts. Throughout our district, local and regional jails, working with Acting U.S. Marshal Sellers, have provided tremendous assistance to the court in scheduling and conducting hundreds of videoconference hearings in criminal cases. The pandemic impacted detained defendants' access to counsel, which complicated the handling of criminal cases. With jails locked down to limit the spread of the virus, defense counsel adapted by meeting with their clients by videoconference. The court set up a procedure to allow secure review of presentence reports with defense counsel by audio or videoconference. To limit the im-

## PRESIDENT'S CORNER

(Continued from page 2)

As a result of the media attention, I was contacted by a local business owner, Beverly Booth, with Wayne's Automotive on Franklin Road. She not only contributed to the initiative, but also volunteered the use of some office space to act as a donation center and to help staff it with volunteers to collect additional donations of clothes, sundries, detergent, dryer sheets, etc. to go along with our Keeping it Clean initiative.

With this momentum, we have already reached more than two thirds of our goal. I would like to thank the RCPS Community Relations Director Justin McLeod and the RCPS Homeless Coordinator Malora Horn for their efforts in bringing this program to fruition. I also want to give a special thanks to one of our members, Mollie Elder, for her efforts in helping coordinate and push the fulfillment of this important initiative as well as her ongoing efforts to coordinate the collection of needed supplies to go along with the equipment purchased and placed in the schools.

We need to capitalize on this momentum to see if we can reach our goal, so that all of the schools that have requested these machines can receive them during this 2020-21 RBA calendar year.

As always, please do not hesitate to contact me or any of the other RBA board members with your thoughts and/or ideas as we move forward in these unprecedented times. Stay safe and healthy.

Daniel P. Frankl is a partner of Frankl Miller Webb and Moyer, LLP.



Principal Fisher at Preston Park



Delivery to Hurt Park



Wayne's Automotive laundry detergent donation

(Continued on page 9)



## MANAGING COVID-19 IN THE WESTERN DISTRICT OF VIRGINIA

(Continued from page 8)

pact of the pandemic on defense lawyers on the Criminal Justice Act court-appointed panel, the court authorized interim billing of fees and expense vouchers.

In a couple of respects, our criminal workload increased as a result of the pandemic. As a result of COVID-19, many detained defendants sought review of detention decisions because of concern over the spread of the pandemic in local and regional jails. Even more frequently, federal inmates incarcerated in the Bureau of Prisons have filed compassionate release petitions under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act, as a result of concerns over exposure to COVID-19.

Throughout the pandemic, Clerk Julie Dudley, Probation Chief Jennifer Williams, and I have participated in a number of internet conferences on managing court and probation operations during the public health crisis. Fourth Circuit Chief Judge Roger Gregory led a program on best practices with other district court chief judges in our circuit. The AO and Federal Judicial Center ("FJC") have conducted a number of programs on court operations during the pandemic, including discussions with panels of health experts, including CDC infectious disease experts and leading epidemiologists. The AO has established a website, updated daily, which provides information on what other courts around the country are doing. These resources have been very helpful in sharing ideas about best practices to protect the court and the public we serve.

Nearly as soon as we suspended in-person operations, the court began planning for reopening. A "Back to Business" subgroup of the Pandemic Response Committee was set up, and it diligently worked on developing a set of Reopening Guidelines which were issued on June 4, 2020. Based on the guidance from the AO, the Governor, the Virginia Department of Health, and the CDC, the court entered Phase I of the court's reopening plan on June 29, 2020, which allowed in-person proceedings to resume, with appropriate face covering, social distancing and cleaning precautions. Grand juries were allowed to resume on May 21, 2020, and jury trials on August 31, 2020.

Painstaking plans were developed to safely conduct jury trials during the pandemic. Public health officials and university epidemiologists were consulted, and some visited our courtrooms to offer suggestions. A criminal jury trial was held in the Abingdon Division in September, but no civil jury trials have been held in the district to date. Given the rise in COVID-19 cases in our district since October 1, 2020, and the accompanying growth of the percentage of positive test results, it is likely that few, if any, jury trials will be held during the remainder of this year. In any event, a presiding judge may conduct a jury trial should the ends of justice so require.

The impact of the pandemic on the judicial system has been staggering, but the court has continued to function to administer justice for the citizens of western Virginia. The court very much appreciates the steadfast cooperation of the Federal Public Defender, the U.S. Attorney's office, and the bar of our district in helping us flexibly continue to handle our constitutional obligations during this crisis.

To give you an idea of where we stand year-to-date, on October 31, 2019, the court had 280 criminal and 1123 civil cases pending. A year later, on October 31, 2020, the corresponding numbers are 313 criminal and 1164 civil cases pending, an in-

(Continued on page 10)

## THE HONORABLE JACKSON L. KISER (1929—2020)

(Continued from page 2)

He often said that he always sought to "temper justice with mercy," and his mercy was often on display. One of my fondest memories of the Judge was one of the first hearings I ever sat in with him. A woman was seeking a sentence reduction, and she had about 12 months left on her sentence for a financial crime. She had an impeccable record while in prison and an employer willing to hire her upon her release. Her attorney asked to have her remaining sentence cut in half. Judge Kiser commented that prison had done all it could do for her and that further incarceration would not serve any useful purpose. Then he spoke directly to her: "Ma'am, I have to send you back to prison so that you can pick up your toothbrush. You're going home." Without anyone asking, he reduced her sentence to time served. Aside from the kindness he showed a woman who made strides to improve herself, Judge Kiser recognized that justice was served by being merciful, not by a slavish adherence to a notion of one-size-fits-all justice. It was that outlook on the law and the litigants that made him one of the best.

In the courtroom, he was exactly what you'd want a judge to be (unless you were late or wanted a continuance—then he engendered a slightly less hagiographic response). In chambers he was a patient and incisive teacher. At home he loved his family deeply. Pat Walker, his longtime assistant, explained to me once why Judge Kiser rarely accepted honorary positions or invitations to serve on boards of directors. "At the end of the day," she said, "he just wanted to go home to Carole [his wife] and the kids."



He spoke to me often of his family, in loving and effusive terms, filled with pride for his children's and grandchildren's successes. His office walls were filled not with accolades, but with pictures of him and his family: a husband, smiling while his adoring wife hugged him from behind; a father, holding his infant child in his arms; a grandfather, surrounded by children and grandchildren gathered to celebrate a birthday. In a life filled with successes and accomplishments, his family was the only accomplishment he ever cared to tout. Judge Kiser's love for them was boundless.

The Danville courthouse was always a little quieter whenever Judge Kiser wasn't there, and these days his absence is felt immensely. All of his court family is going to miss him so much.

For me, I think what I will miss most about Judge Kiser was his wit. No one could time or deliver a joke better than him, and sometimes those jokes were delivered so dryly that his wry smile and the twinkle in his eye were my only indication that I'd missed a joke! Some examples of how funny he was: He once described a certain appellate judge as having "all the subtlety of a meat axe." After he cut a long hearing short, he told me afterward: "It's a long joke, but the punchline is I know a load of crap when I smell it." He told an AUSA who signed on to an agreement that was very generous to the defendant: "I think the Christmas spirit got into you a little early." After a particularly misguided argument, he told an attorney: "You've aimed in the general direction of the Constitution with buckshot, haven't you?"

(Continued on page 10)

## G. MICHAEL PACE, JR.: 2020 FRANK W. "BO" ROGERS, JR. LIFETIME ACHIEVEMENT AWARD RECIPIENT

(Continued from page 3)

Tim Isaacs, a Roanoke College professor and Mike's partner at the Center from the beginning, had this to say about Mike:

Mike's time with the Center was always guided by his belief in and advocacy for the rule of law as the well-spring of democratic ideas and institutions, and by his unwavering commitment that we must educate our youth to understand, protect, and promote the rule of law. The rule of law has no better friend than Mike Pace. I have no better friend than Mike Pace.

All this said, if you were to ask Mike about his greatest achievement, he would mention his family—Nancy, his wife of 36 years, and daughters Maggie and Kate. I don't care what we have been talking about, when the topic turns to his girls, Mike's demeanor changes. A smile may cross his face, or he might chuckle out loud, or both. The pleasure with which he approaches this topic speaks to the deep love and extreme sense of pride he has for all of them.

Because we have been such good friends, I got to know Mike's parents and brother, and he got to know my parents and sisters. So, Mikey my friend, as I told you as soon as I learned about you receiving this award, I know my Dad would be pleased. And in my mind's eye, I can see him broadly smiling. Now, whether that is just about this occasion or as a result of some off-color joke your father may have told him, I can't be sure.

What I can be sure of is this—for your many and extraordinary contributions to the legal profession and to your community, for your love of family and friends, and for the example you have set for so many others, as a lawyer, leader, educator, and gentleman—you are richly deserving of recognition as the RBA's 2020 recipient of the Frank W. "Bo" Rogers Lifetime Achievement Award. Congratulations my friend!

*The Honorable Frank W. Rogers, III., Juvenile and Domestic Relations Court.*



## ROY V. CREASY: DISTINGUISHED SERVICE AWARD RECIPIENT

(Continued from page 4)

Roy has also served the community at large as well. He served in a number of leadership positions of his Church, including Chairman of Trustees (Huntington Court United Methodist), Board Member and officer of the Cave Spring Recreation Foundation, Chairman of the Big Lick District of the Boy Scouts of America, Board Member of the Blue Ridge MS Society, and a member of Botetourt Jaycees for a number of years.

The Association is pleased to have presented only for the third time the Distinguished Service Award to a long-standing member, Roy Creasy in 2020.

*Robert Ziogas is a principal at Glenn, Feldmann, Darby & Goodlatte.*



## MANAGING COVID-19 IN THE WESTERN DISTRICT OF VIRGINIA

(Continued from page 9)

crease of only 33 criminal and 41 civil cases. Given the toll that the pandemic has taken on our country and community, it is remarkable that the numbers are not far greater. The fact that we have been able to operate at this high level is a credit to the tireless efforts of our clerk's office, probation, IT, and chambers' staff and our dedicated court security officers and marshals.

As the numbers of COVID-19 cases have resurged in recent weeks, we have begun considering, along with other federal courts in our region and around the country, whether circumstances require that we reinstitute district-wide limits on in-person hearings and jury trials and take other steps to protect the public. We continue to actively monitor the emerging health situation and will respond as necessary to protect the public and court staff, while ensuring that the work of the court continues unabated.

This has been a difficult and challenging year, and I look forward to an end to this debilitating pandemic. All of us at the court appreciate the patience and cooperation of the practicing bar during this trying time. Thank you for permitting me to give you an idea of what has been going on at the court, and please let me know if you have any suggestions for ways to improve how we serve the public. Stay well.

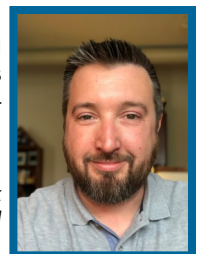
## THE HONORABLE JACKSON L. KISER (1929—2020)

(Continued from page 9)

It has been the honor of my life to serve him. He was a mentor, a guiding beacon of humility, and most of all, a friend. I will never forget his gentle manner, his kindness, his wit, his devotion to the cause of justice, and his never-ending love for his family.

Judge Kiser was a hero to me and many others. He leaves a legal and judicial legacy that will be unmatched in the eyes of all who had the honor to call him colleague and friend. He was loved by all and will be sorely missed.

*Scott Jones is currently career law clerk to the Honorable Thomas T. Cullen, United States District Judge.*



## TRIBUTES TO JUDGE KISER

I recall being present for Judge Kiser's swearing in to the district court in Danville in the winter of 1982. The ceremony was consistent with Judge Kiser's character, modest and brief, yet sufficiently powerful to be memorable. Over the years I had many cases before Judge Kiser in Danville and Roanoke and always knew that I had to be at the top of my game as he was sure to drill down at oral argument on the most difficult issues. As magistrate and district judge, it was a real privilege to work closely with Judge Kiser and benefit

(Continued on page 11)

## TRIBUTES TO JUDGE KISER

*(Continued from page 10)*

from his gracious guidance. Judge Kiser was a true gentleman and a consummate professional.

-Hon. Michael F. Urbanski, Chief United States District Judge

I am fortunate to have practiced law in front of Judge Kiser for many years and to have also served as a judge with him. Judge Kiser embodied strength – strength of character, strength of intellect, and strength of body. He was a kind man who was generous with his time. He taught me to be a better lawyer and a better judge. He will be missed.

-Hon. Elizabeth K. Dillon, United States District Judge

It is a great honor and privilege for me to write in tribute to my long-time friend and colleague, Judge Jackson L. Kiser. When I first started with the court in 1975, one of my jobs was to occasionally chauffeur Judge Dalton as he travelled throughout the district. One of the first people I met was Jack Kiser. Judge Dalton always held Jack in great esteem, and I frequently heard him say that Jack could make an effective argument on just about any issue or about any case. Ted and Jack had many friends in common from their days in politics. Just like Ted, Jack was well-known throughout the district. He had served as Assistant United States Attorney at a time when the district still had divisional grand juries and regular terms of court in each courthouse. Jack was very visible and well-liked by attorneys in each division. Ted always remarked that Jack did a thorough job as an AUSA, and that he did so quickly, without a lot of wasted time.

Years later, after he had become district judge and I had become magistrate judge, Jack gave my career a big boost. During a period when our court was especially busy, Jack would often double book trials. On days when two cases remained set for trial, Jack sometimes transferred civil cases to me to try by consent. Also, when he was Chief Judge, Jack arranged for me to go to Harvard University to participate in an Alternate Dispute Resolution Workshop. Thereafter, I began to mediate cases on a regular basis. I believe that the civil consent trials and the mediations gave me valuable experience, as well as momentum in my later efforts to become United States District Judge.

Jack was a great person to work with and for. As magistrate judge, I did many reports and recommendations for Jack. As was true for many of his law clerks, one of the highest forms of praise was to hear Judge Kiser say that a piece of your work “passed the smell test.”

I can truthfully say that almost all my interactions with Judge Kiser left me with a good feeling. Whether our paths crossed while I was chauffeuring Judge Dalton, or later, as fellow judges at a district-wide judges’ meeting, Jack always greeted me with a friendly smile, a kind word, and a warm handshake. I always like to think of the Western District as user-friendly, and Judge Kiser greatly contributed to the image of our court as a good place to practice law and do business. As a friend, outstanding jurist, and a member of the court family, he will be greatly missed.

-Hon. Glen E. Conrad, Senior United States District Judge

Along with our United States District Court family, the United States Attorney’s Office mourns the loss of Judge Kiser. He served this district well for over four decades as a champion of justice and a fixture on the federal bench. While Judge Kiser was kind to attorneys appearing before him and had a reputation for being eminently fair, it was also known that he could be demanding. When I was a

new AUSA, a court security officer pulled me aside before my first hearing with Judge Kiser and told me it was a good thing I was early, and that I should make a habit out of that! Judge Kiser’s quick wit and efficiency were also hallmarks of his courtroom. His true enjoyment in participating in the cases that came into his court was often on display. For instance, during hearings, Judge Kiser would regularly lean forward on the bench with a wry grin, take out a sharpened pencil, and jot down some questions of his own that he proceeded to ask the witness. While we will miss Judge Kiser, we appreciate the care and concern he showed for people regarding matters big and small. This could be seen in conversations in chambers, difficult hearings, and the relationships that were evident throughout the halls of the Danville courthouse. Judge Kiser adroitly trained many young lawyers during his decades of service on the bench, and this legacy will endure long after his passing. We offer Judge Kiser’s family, both inside and outside the courthouse, all the very best during this time of reflection upon his life.

-Daniel P. Bubar, Acting United States Attorney, Western District of Virginia

During my 12 years as the Federal Public Defender for the Western District of Virginia, I never experienced an unpleasant moment in Judge Kiser’s courtroom. He was always kind and courteous to me and my clients. He was a man of compassion who appreciated the effort of my office to vigorously defend our clients. I join the entire legal community in mourning his passing.

-Larry Shelton, former Federal Public Defender, Western District of Virginia

Judge Kiser was a judge that any probation officer would be honored to work with. I had that privilege for almost 12 years. He valued my position with the court and respected my input concerning cases we shared. He once told a defendant that he was not going to revoke their probation because he did not want to “ruin the probation officer’s faith in humanity.” If I believed in someone, he believed in them because he believed in me. I will miss that immensely.

-Kristy Burton, Senior U.S. Probation Officer

It is with the deepest respect and affection that we honor the memory of United States District Judge Jackson L. Kiser. I had the privilege of trying numerous cases before Judge Kiser for more than thirty years. During that time, I was a witness to Judge Kiser’s mastery of the law and his unwavering sense of fairness in the unrelenting pursuit of the truth. Judge Kiser liberally exercised his ability to quickly cut to the heart of any controversy and rarely concealed his sharp wit and warm humor. Judge Kiser carried an enormous pride in the critical role of the court while maintaining his genuine personal humility.

Lawyers who appeared before Judge Kiser soon learned that he did not suffer fools lightly and when it was trial time, you best bring your “A” game. Judge Kiser’s high standards made us all better lawyers, and he never let us forget our duty as officers of the court.

Judge Kiser’s monumental contribution to the equitable administration of justice in the Western District of Virginia has left an indelible imprint on the culture of our court. One that

*(Continued above)*

*(Continued on page 12)*



## TRIBUTES TO JUDGE KISER

(Continued from page 11)

demands that we continue to litigate with vigor, honor, candor, and collegiality.

-Donald R. Wolthuis, Assistant Commonwealth Attorney

I have so many fond memories of Judge Kiser: The time he followed up my cross examination of a government witness about his ability to hear a conversation between my client and another from a great distance and understand every word. I stumbled around. Judge Kiser cut to the chase, asking: "So you, sir, must have the ear of a virtuoso." The time he granted a motion for judgment of acquittal and was noticeably happy to set my client free. "You are free to go. You owe us nothing further in this case." The times he advised juries that my clients were presumed innocent and that when they look over at my table they should be thinking: "There sits a person who is falsely charged." (I've actually had judges interrupt me when I tried to say that during *voir dire*.) The time I watched a *pro se* defendant insult him relentlessly. Judge Kiser took it all in stride and gave the guy a break in the end. The time he pronounced a sentence considerably below the recommended range in a revocation case and explained his reasoning, noting that my client had only been convicted of possession of methamphetamine. The prosecutor interrupted him and pointed out that my client actually had been convicted of distribution of methamphetamine. Judge Kiser paused, thought about it, and responded with: "You are correct. I made a mistake. But it would be exceptionally cruel to tell a man he is getting one sentence and then increase that sentence. So, I'll stick with my sentence." I'll never forget that exchange.

I will miss his courtesy ("Good morning, folks"), his humanity, and yes, his warmth. I've heard many describe Judge Kiser as a no-nonsense judge. He was that—which is a good thing in my view. But he always listened; he saw the issue immediately; he never accepted anything on faith and he possessed the quality I most admire in a judge—humility.

I know how highly everyone who worked with Judge Kiser thought of him. You could see it whenever visiting the Danville courthouse. I was hoping to see him on the bench again. I will miss him.

-Randy P. Cargill, Assistant Federal Public Defender, Western District of Virginia

I worked with Judge Kiser from June 2006 until my retirement in June 2020 and have countless fond memories of his intellect, wit, and kindness, both in and out of the courtroom. One memory will always shine in my heart and mind as a reminder of how I can best remember Judge Kiser and honor humankind. Early in my career as a deputy clerk, I confessed to Judge Kiser that I made a mistake and had prepared a new document for his review and signature. He pointed to one of the many pencils on his desk and said, "You see those erasers on the tips of the pencils? We all make mistakes." It's been said that mistakes have the power to turn a person into something better than she was before. Judge Kiser was the best teacher that I was privileged to call both "Your Honor" and my friend.

-Martha Hupp, Deputy Clerk (retired), WDVA Danville Division

Judge Kiser had high expectations of himself, and for all those who worked with him and appeared before him. He never raised his voice, understood complex matters in a single reading, and explained complex matters in a patient and understandable way. Before hearing argument on any issue, he made a point of reviewing anything that had been submitted so that he was fully prepared for whatever came before him. He was, in fact, the kind of judge every lawyer wants and every judge wants to be.

When I was sworn in as a circuit court judge, there was only one person I wanted to administer my oath, and that was of course Judge Kiser. Several minutes before the swearing-in ceremony, Judge Kiser joined my parents, my wife, and me outside the courtroom. We exchanged pleasantries, and as we were getting ready to enter the courtroom, Judge Kiser stopped and faced me. He pointed his finger at my chest and uttered a piece of judicial advice that I try and follow every single day. He said: "David, do not ever forget that you as a judge are here for the litigants; it is NEVER the other way around." He said that because he believed it, and he embodied it.

It is difficult to overstate the influence Judge Kiser had on my personal and professional life. Because of him, I stayed in Virginia, met my wife, joined the superb law firm with which I practiced for 23 years, and learned the kind of judge I wanted to be if I was ever so honored. I will miss him terribly.

-Hon. David B. Carson, Chief Judge, Roanoke City Circuit Court (former law clerk)

I had the privilege to clerk for Judge Kiser during the 2005-06 term. I applied for a clerkship with Judge Kiser on a whim and had basically forgotten I'd put the application in the mail until I got a call from his secretary about scheduling an interview. As it turned out, receiving that clerkship and spending a year with a man who had been a judge almost exactly the same amount of time that I had been alive would be one of the top honors of my life.

Judge Kiser was a great role model for me then and he remains so just as much today, if not more. Judge Kiser was a professional in every way. He was courteous and friendly to his staff and everyone who entered his courtroom but also held us all to an appropriate level of accountability. He did not suffer excuses but neither was he vindictive or petty when he could have been. He cared very much about the cases he heard and the lives impacted by them and did what he thought was appropriate without concern or thought to his own personal beliefs or whether he might be reversed on appeal. He was intellectually curious and well read on many topics, but far too humble and private to advertise the fact that he was smarter than you could hope to be. Judge Kiser lived a simple, honest life and did not take advantage of his status. Judge Kiser was a great friend and mentor to me and so many others and while he is already greatly missed, he provided us a great model for how to be a good lawyer and decent person.

-Michael J. Hertz, Woods Rogers PLC (former law clerk)

(Continued above)

## ANDREW S. GERRISH: 2020 RBA YOUNG LAWYER OF THE YEAR AWARD RECIPIENT

(Continued from page 4)

hours only to return to the office committee to solving the mystery of the unlocked door and to exact the punitive consequences it deserved. As I looked through the surveillance video, I came upon the intruder. As shocked as he was to find an unlocked door, he was even more shocked by the Battlestar Galactica alarms, sirens and flashing lights that were prompted the second his head passed the threshold. He never entered. He wisely concluded that there was nothing of any value worth all of that. So I was advised that if I continued to rewind the video I would likely see who had exited the building. All of a sudden, Andy appeared and was standing behind me looking over my shoulder seeming to have more than a passing interest in my activities. He inquired as to what I was doing to which I replied "I am looking for the person I am going to fire for leaving that door unlocked last night that brought me down here at 2:15 in the morning." After a few uncomfortable seconds, Andy fessed up and said, "I think it might have been me." And sure enough the video reflected that about 6:00 PM that same night Andy had exited that door, left it unlocked with plans to return that somehow got sidetracked. I exited the surveillance review and sheepishly returned to my office, all forgiven and never to speak of it again until today or maybe on a few other occasions.

Andy is so much more than just an exceptional lawyer. He understands the importance of sharing his gifts and talents with others both at the bar and in the community. In addition to serving as the Young Lawyers' Chair for the Roanoke Bar Association in 2018-2019 where he led two very successful Bench Bar Conferences, he has been a member of the Ted Dalton Inn of Court.

Statewide, Andy has served as a member of the 2017 Virginia Association of Defense Attorney's Annual Meeting Committee. He has been appointed to the Virginia State Bar's Lawyer Insurance Committee and serves as a District Representative to the Virginia State Bar's Young Lawyers Conference.

Recognition of Andy's accomplishments goes beyond this Association in that he was recognized statewide in 2018 by the Virginia Lawyers Weekly in its annual Leaders of the Law section as one of Virginia's Up and Coming Attorneys. Earlier this year received the Virginia State Bar's Young Lawyers Conference Significant Service Award. Unfortunately, that award could not be presented in person.

He has served as a board member for Apple Ridge Farm since 2017 and also serves on the Board of Directors for CYP, Community Youth Program which provides enriching after-school, summer and leadership programs for at-risk Roanoke-area youth.



(Continued on page 14)

## RISE OF THE REMOTE LAW FIRM: A 2020 NECESSITY BECOMES AN UNEXPECTED BENEFIT

BY LEIGH R. STRELKA, ESQ.

2020 caught me off guard. I remember the first week in March, sitting down quietly by myself with a cup of tea and really thinking through how our small, boutique firm of 12 people would handle staying open in the midst of an increasingly concerning pandemic. I was very worried about the practicalities. Like many firms, almost all of our attorneys and staff spent time in a physical office space where we regularly interacted, discussed matters, and handed documents back and forth. We met with potential new clients during face-to-face initial consultations in one of our conference rooms where we would hand them Fiji waters and tissues as they shared their important legal problems with us. We completed depositions and most hearings, in person. We regularly enjoyed heading out to lunch as a group.



I initially felt very panicked, as all of our attorneys and staff were either primary caregivers of children, had obligations to aging parents, or were high risk individuals due to prior health issues. As I thought through the logistics and poured a shot of Bourbon in my tea, I realized that we were already poised to move towards complete remote work and that, as an employer, it was my responsibility to keep us all safe by providing an environment where we could all continue to work while reducing in-person interactions. "We can do this," I assured my shaky self.

We already had two attorneys who practiced purely remotely (one way out in North Carolina), so that was informative. Our practice has long had the goal of being paperless, so we already heavily utilized a very robust scanning system (as an example, if a new client came in with a notebook of potentially relevant documents, we scanned it into our system regardless of whether we needed to hold on to the hard copies or not). All attorneys and staff already had laptops, not desktops. We all regularly utilized Microsoft TEAMS (an internal instant messaging and video conferencing system) and Microsoft Sharepoint (a document sharing system, so we all had real time access files and document revisions). And we had a cracker jack IT contractor on call 24/7. The thing I had to let go of was seeing people doing their work and speaking with them in person on a daily basis.

I did, and it's worked more beautifully than I ever could have imagined. We are not going back.

My first order of business during that first week in March was to invest a considerable amount of financial resources getting all of our staff set up at home just like they were set up in our office (our attorneys were already set up in this manner so that was a good start). We each enjoy 2-3 monitors, so I utilized Amazon to have identical set ups shipped directly to their homes. We coordinated with our internet phone system provider to transfer office phone numbers directly to either personal or work cell phones, depending on preferences. We also recognized that none of this transformation was going to work without strong internet capacity at home. So our IT contractor worked

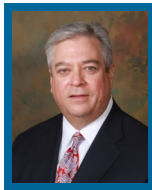
(Continued on page 15)

## ANDREW S. GERRISH: 2020 RBA YOUNG LAWYER OF THE YEAR AWARD RECIPIENT

(Continued from page 13)

And when not attending to his clients, his family or his many volunteer responsibilities, Andy might be found enjoying a round of golf. On at least one occasion, he scored an albatross at the Homestead, which I understand is something of a big deal.

It is rare to find a lawyer who takes delight in being wrong, but today you stand witness to that rare occurrence. I have never been more excited to be wrong about the boy from Delaware and his wife choosing Roanoke as their home. Ashley, a surgeon with Carilion Clinic and Andy could have chosen anywhere to launch what promises for both of them to be exceptional careers. But they chose Roanoke as the place they call home personally and professionally, and earlier this year, they welcomed Charlotte Lee. Our firm, this Bar and this community are better places because of their decision. It is my immense pleasure and honor to present the 2020 Roanoke Bar Association Young Lawyer of the Year Award to my friend and partner Andrew Gerrish.



Phillip V. Anderson is a partner at Frith Anderson and Peake, PC.

## VIEWS FROM THE BENCH: JUDGE J. CHRISTOPHER CLEMENS

(Continued from page 6)

person qualifies for Drug Court, he or she must follow a rigorous set of requirements, including finding work, frequent drug testing and community service. If the person fails to complete a requirement, they can be sent to jail for a couple days; and if they continue to struggle with addiction, they can be required to complete the jail's ALPHA program. Of course, addiction recovery is not a one and done kind of program; those who struggle with addiction usually require multiple treatments. Once a person successfully completes Drug Court, they can have their charges dismissed or reduced. A few years ago, the circuit made an award-winning video about Drug Court that is currently available on YouTube. Drug Court is a great resource for our community.

When Judge Clemens steps away from the bench, you can find him completing a honey-do list of home renovations, coaching basketball for his sons, and hitting the golf course, though not as much as he used to. You may also find him and Judge Carson trading pranks.

Judge Clemens' final reminder to me was that he encourages partners to let younger lawyers take the lead in arguments and witness examinations in order to get the practice they need. Next time you're in Salem, be sure to stop by his chambers to say hello, and maybe see if they still have some of those Salem masks available.

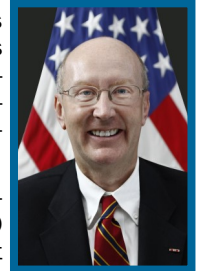
Alicha M. Grubb is an associate at Gentry Locke.



## A WORKERS' COMPENSA- TION PRACTITIONER'S PER- SPECTIVE OF HOW COVID-19 AFFECTED HIS PRACTICE IN 2020

BY GARY M. BOWMAN, ESQ.

Wayne Haig, a sole practitioner who has represented workers' compensation claimants in Roanoke since the mid-1990s, saw significant changes to his practice during the COVID-19 period, but not all the changes he expected.



The number of new clients who contacted Wayne's office declined somewhat in 2020 compared to recent years, which is consistent with the statewide trend of a slower increase in claims. Wayne saw fewer claims for workers in some industries, such as restaurants, but not surprisingly had more calls from local delivery workers.

Wayne explained that COVID-19 significantly impacted his clients' physical recoveries as many could not proceed with surgery – which essentially put their treatment (and their claims) on hold for months. In addition, Wayne's ability to communicate with treating physicians in complex cases has been much more difficult as in-person meetings have largely been suspended. This has, for example, caused logistical difficulties in reviewing medical reports with doctors during telephone conferences.

Wayne also noted that meeting with clients has been “drastically interrupted.” It has, of course, been more difficult for Wayne and new clients to “lay eyes” on each other, and he expressed concern that this social distancing has impacted his ability to get to know his clients and establish a greater sense of rapport with them. For example, it has been difficult to discuss clients' medical and wage records without meeting with clients in-person. Wayne has also found it more difficult meeting clients outside his office as many coffee shops and restaurants have limited their business to “take out” only.

With respect to hearings, on April 6, 2020, the Virginia Workers' Compensation Commission ordered that hearings be conducted by video conference due to COVID-19. On May 21, the Commission entered an Order allowing in-person hearings to resume on June 1. On August 7, the Commission ordered that the Deputy Commissioner handling a claim had discretion to determine the form of hearing (whether it be video, in-person or a hybrid of the two). In-person workers' compensation commission hearings have been proceeding in Roanoke with the participants taking safeguards such as wearing masks and social distancing. Many members of the Commission's staff have been working remotely as well. The Commission therefore does not appear to have suffered the same degree of interruption and slow-down that has occurred in most courts.

Wayne explained that the availability of mediations actually improved in one respect because mediators (Deputy Commissioners and at least one retired Commissioner serve as mediators in workers' compensation cases) were available to assist parties throughout the state either by telephone or video-conference. Prior to COVID-19, mediations were held in-person,

(Continued on page 15)



## RISE OF THE REMOTE LAW FIRM: A 2020 NECESSITY BECOMES AN UN-EXPECTED BENEFIT

*Continued from page 13)*

with employees individually on their own home and cell phone systems (for security purposes as well as internet speed). We also provided everyone with a generous monthly stipend to cover any potential additional Cox Cable or Wi-Fi expenses. We also all have standing desks and ergonomic chairs/keyboards. As we progressed throughout the spring, I communicated frequently about what additional individual needs were required in all home offices. During this process, I even left my standing desk at our physical office space and upgraded my home office space to a walking treadmill desk, which is probably one of the healthiest moves I have ever made during my career. I adore it and find that I walk at a 3.0 speed (not too fast) for 2-5 hours daily. I haven't yet fallen off while reading a surprising email from opposing counsel, but I'll be sure to circulate the video if (when) that happens.

During March-May of 2020, we were extremely cautious and issued a directive that everyone was required to work remotely. I would pop into the office two times a week and go through mail/scan any items required etc., but that is the only time anyone was in our office. This summer and fall, we have loosened a bit and simply given everyone the option to proceed as their comfort levels permit. A few attorneys and staff have been coming into the office once a week. Most, I have not seen in person since March. If people choose to come in to work in person, they are required to wear a mask if they are outside of their own office spaces, all of which are significantly more than 6 feet apart. Our main front desk staff member is now firmly ensconced in person during her regularly scheduled work hours to answer phones and collect packages and the mail, but she rarely interacts with anyone in person. We have transitioned to ZOOM or TEAMS for all initial client consultations, current client meetings, interoffice pow wows, depositions, mediations, and even hearings. We trained two staff members to become e-notaries so clients or witnesses can avoid coming into the office in person. It has all been fabulous and worked very seamlessly. Again, I am not sure we will ever go back to in-person contacts for these types of things if we can help it.

I understand it takes a certain amount of trust and a hefty dose of technology to transition employees/co-workers in this manner. But I can affirmatively assure you that any potential concern related to individuals not getting work done in a timely manner went out the window immediately. If anything, I have had to remind folks not to work too hard and to "turn it off." I am not above forcing a Friday staycation on an attorney or staff member and have done so. My point is, you attorneys who are worried about your support staff or less experienced attorneys taking advantage of the situation and not doing their good work as they normally would, need to revisit that perception. You have got to let go of the antiquated notion that in-person face time is a requirement for good legal work or support from your group. Technology easily fills this gap. My observations have been that everyone in our firm has had a better quality of life with this new structure, they have been extremely appreciative of the same, they have worked just as hard as normal (if not harder), and we have streamlined our communications. Even after the pandemic is over, we are going to continue to offer flexible in-person/remote working situations.

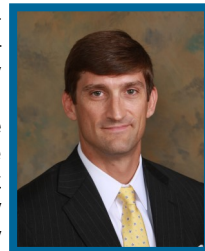
I do really miss Alexander's lunches on Wednesdays though. Even if we do not ever fully go back to the way things used to be, I am definitely reinstating those!

*Leigh R. Strelka is a partner at Strelka Employment Law.*

## THE IMPACT OF COVID-19 ON CRIMINAL DEFENSE PRACTICE

BY PATRICK J. KENNEY, ESQ.

For me, as a solo practitioner specializing in criminal defense, the Covid-19 pandemic has affected the daily routines of my practice. Like many firms, we have been limiting our in-person meetings and have relied on video conferencing and phone calls for intake appointments and client meetings. Other than the limitations on jury trials, the greatest Covid-19 impact on my practice has centered on jail visits.



Before Covid-19, I visited area jails several times a week for face-to-face meetings with potential and existing clients. Shortly after the pandemic began, the local jails limited face-to-face meetings, requiring lawyers to meet with clients "through the glass" or over the phone.

As the pandemic continued, many local jails added secure video conferencing to facilitate contact with our clients.

Face-to-face meeting will always be the best method to build relationships and communicate with clients. I believe that once the threat of the pandemic lifts, video conferencing with jails will remain an effective and efficient way to communicate with incarcerated clients about smaller and routine issues. The video conferencing at jails will be a silver lining of Covid-19 as we search for ways to improve our services to our clients.

*Patrick J. Kenney is a solo practitioner in Roanoke, Virginia.*

## A WORKERS' COMPENSATION PRACTITIONER'S PERSPECTIVE OF HOW COVID-19 AFFECTED HIS PRACTICE IN 2020

*Continued from page 14)*

and this meant that mediators were generally available for assignment to cases only within their geographic areas (although some mediators would travel from other parts of the Commonwealth on occasion). All of Wayne's mediations have been conducted by telephone during the pandemic, and he believes at least one was expedited due to the availability of a Virginia Beach mediator. Wayne reflected that this has been one positive outcome of the COVID-19 pandemic.

Wayne has not handled a claim relating directly to COVID-19. However, according to the Commission, throughout the state, there were 7280 COVID-19 related workers compensation claims (through October 1), which included 13 death cases. There were 119 COVID-19 claim awards and 1327 denials.

*Gary M. Bowman is a solo practitioner.*

# ANNOUNCEMENTS

## NEW MEMBERS

The Roanoke Bar Association welcomes the following new members:

Effective December 8, 2020

### Active Members

John S. Koehler, Solo

Ramsay McCullough, Medical Facilities of America

Mark C. Popovich, Guynn, Waddell, Carroll & Lockaby

Madalene Y. Simpson, Lewis, Brisbois Bisgaard & Smith LLP

Jarryd Smith, Legal Aid Society

### Lifetime Members

Gordon H. Shapiro, Shapiro Law Firm

### Honorary Members

Deborah W. Blevins, Deputy Commissioner, Virginia Workers Compensation Commission

## UPCOMING EVENTS

### Roanoke Bar Association Meetings 2020 - 2021

October 13, 2020, virtual

November 10, 2020, virtual

December 8, 2020, virtual

January 12, 2021, virtual

February 9, 2021, virtual

March 9, 2021, virtual

April 13, 2021

May 3, 2021 (Law Day)

June 8, 2021

Go to [www.roanokebar.com](http://www.roanokebar.com) for more information on all upcoming events.

## OFFICERS

Daniel P. Frankl 527-3515  
President

Macel H. Janoschka 725-3372  
President-Elect

Lori Jones Bentley 767-2041  
Secretary-Treasurer

Patrick J. Kenney 982-7721  
Past President

Diane Higgs 342-4905  
Executive Director

## BOARD OF DIRECTORS

Christen C. Church 983-9390

Christopher S. Dadak 387-2320

John P. Fishwick, Jr. 345-5890

Amy H. Geddes 989-0000

Sarah C. Jessee 510-3019

Talfourd H. Kemper, Jr. 983-7552

D. Adam McKelvey 342-2000

Jonathan D. Puvak 983-9399

Nancy F. Reynolds 983-7605

Devon R. Slovensky 492-5297

Seth C. Weston 342-5608



**DON'T FORGET TO CHANGE YOUR ADDRESS!**

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)