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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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REMEMBERING JUDGE CONRAD

BY TODD C. PEPPERS, ESQ.

"With the exception of saving lives and saving souls, I am convinced that there is no greater calling than seeking justice for all."

- Judge Glen E. Conrad



United States District
Judge Glen E. Conrad

Former Supreme Court Justice Oliver Wendell Holmes was fond of observing that "no man is a hero to his valet." In short, Holmes recognized that when a young person (like a law clerk) routinely interacts with an older public figure (like a judge), he or she comes to see the flawed humanity and foibles under the robe. While I agree with the general applicability of Holmes' maxim, I am forced to dissent in the case of Judge Glen E. Conrad—who was admired and loved by a generation of law clerks. And in support of my dissent, I would like to briefly share some observations about the life and career of a man that I was lucky to call a teacher, a mentor, and a friend.

But where to start? I guess what is most extraordinary about Judge Conrad was his long tenure on the federal bench—more than forty years. Born and raised in Radford, Virginia, the Judge attended William & Mary for his undergraduate and legal studies. There he first established his reputation as a highly skilled and competitive handball and racquetball player. After graduating from law school in 1974, the Judge spent approximately a year serving as a federal probation officer and law clerk to federal district court judge Ted Dalton before becoming a federal magistrate judge shortly before his twenty-seventh birthday. At the time, he was the youngest federal magistrate in the country.

As a magistrate judge, Judge Conrad proposed a series of reforms designed to improve the administration of justice. One important innovation was centralizing the review of the Western District's *pro se* prisoner lawsuits. Specifically, he adopted the practice of having all such cases filed in the Roanoke division to be handled by a team of *pro se* law clerks working under his supervision. The result of this practice—cases were handled more efficiently and consistently. Judge Conrad himself resolved all non-dispositive matters in these cases, and he worked with the *pro se* law clerks (and often his own law clerks, too) who prepared draft opinions regarding dispositive motions for the assigned federal district court judge to review and sign. This elegant and streamlined system kept *pro se* prisoner cases moving through the court and drew attention from other districts, many of whom adopted similar systems in their own courthouses.

Judge Conrad also had a gentle hand with *pro se* litigants in the courtroom. He took time to explain procedures and use friendly questions from the bench to draw out pertinent facts. *Pro se* cases can take surprising turns during a trial or hearing, but Judge Conrad always remained poised. On one occasion, a deaf inmate appearing as a *pro se* plaintiff in the Judge's courtroom jumped to his feet during the direct examination of a correctional officer and began using American Sign Language to take issue with the testimony. The inmate's interpreter leapt to his feet seconds later to shout, "It's all lies!" Judge Conrad—without blinking—calmly asked the plaintiff, "Is that an objection?" Whenever a jury returned a verdict in favor of the prison official defendants, as most often happens in these cases, the Judge would congratulate both sides on the presentations and remind the inmate that it was quite an accomplishment to pursue his claims to trial.

On one occasion during an evidentiary hearing, the Judge tactfully guided an inmate through a firmly held belief that prison officials were using implants to control

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PRESIDENT'S CORNER

BY MACEL H. JANOSCHKA, ESQ.



It is an honor to serve this year as the Roanoke Bar Association's president. The RBA has not had a "normal" bar year since the 2018-2019 year. Our hope was to return to "normal" this year, but it remains unclear how the Delta variant will affect those plans. As of right now, we plan to conduct our meetings in a hybrid format. We are also pleased to be able to continue to provide a virtual option to members who may have concerns about attending in-person.

After a year of meeting virtually, we want to focus this year on re-engaging our membership. Our Young Lawyer Chair, Sarah Jessee, has been hard at work to find ways to engage our newest RBA members. We are excited to partner with the 23rd Circuit judiciary to hold a New Attorney Orientation on October 7, 2021 at 3:30 p.m. This orientation program will take place in Courtroom 4 on the third floor of the Oliver Hill Justice Center and will be an opportunity for newer attorneys to meet our judges and judicial staff, and to learn more about our local rules and customs. Any attorneys who have practiced for four years or less, or who have moved their practice to Roanoke within the last four years, are welcome to attend this free event. We had planned for this event to occur in 2020, but unfortunately could not hold it given the state of the pandemic at that time. Following the orientation, attendees are invited to join us at the speakeasy inside of 202 Social House for a cocktail hour. The cocktail hour is also free of charge and sponsored by Planet Depos. Additionally, young attorneys should be on the look out for young lawyer happy hours and other events throughout the year.

As for our returning members, we hope to re-engage the membership through programming and other membership benefits. Lori Bentley, our President-Elect, has lined up some great lunch speakers. We began the year with a presentation by Honorable Robert S. Ballou. Judge Ballou gave an exceptional talk about professionalism. I can't speak for others, but I know I left the lunch meeting feeling inspired about our profession and my place within the profession.

We had great success with our virtual CLEs last year, and we do plan to continue to host some CLEs virtually as we recognize that the virtual CLEs are often times much easier to attend given our busy calendars. Our CLE chair, Jonathan Puvak, is hard at work and hopes to have a full schedule of CLE programs ready to be announced later this fall so that members can get these CLEs on their schedules early. Jonathan will also be coordinating our annual Bench Bar Conference which will be held in the late winter.

We have a strong and dedicated board this year and I am proud to be working with our officers Lori Bentley, President-Elect; Christen Church, Secretary/Treasurer, Dan Frankl, Immediate Past President; and our board members, Phil Anderson, Allegra Black, Christopher Dadak, Mollie Elder, Bo Frith, Amy Geddes, Sarah Jessee, Adam McKelvey, Jonathan Puvak, Nancy Reynolds, and Seth Weston. I am also pleased to continue to work with our executive director, Diane Higgs, who did an outstanding job ensuring we could continue to function as a bar association despite the limitations placed upon us by the COVID-19 pandemic.

(Continued on page 2)

MY SUPERLATIVE CASE

BY LAUREN M. ELLERMAN, ESQ.



The case is confidential. I cannot tell you who, what, where, or when. I can only share the piece of my heart that will always be held by a young man who was first my client, then my friend, and now my hero.

When I first met this young man, he was quadriplegic – paralyzed from the waist down with no use of his arms. He will spend the rest of his life on a ventilator to assist with his breathing. He requires 24-hour care, or else when the breathing apparatus falls out, he will suffocate. Caregivers must rotate him periodically to prevent pressure ulcers since he lays on his back all day long. Doctors say he will never again walk or use his extremities. He graduated from high school online, using his breath and mouth to type exam and essay answers. His younger sister was able to attend college, but not him.

Our client's deposition occurred at home in his bed. After the deposition, we sent our experts a copy of the deposition transcript and video. One of our experts, who had never before testified on behalf of a patient, called us in tears. He was so moved by our client's testimony that he was destroying the check we sent to pay for his services. He would serve as an expert witness, but for free. He could not imagine taking money from this young man.

The client and I are still friends. I email him, text, and message him monthly. He texts and replies as best he can. I speak to his family with regularity. No lawsuit would ever make his life better or different. No lawyer could change the outcome. But in the years our firm has known this family, the many hard and tearful conversations, he never once complained about his life, his disability, or what happened. In fact, he once told me he was glad it happened to him because he was strong enough to handle it, rather than some other kid who did not have his strength.

I tell him I love him. He blushes. He sends me birthday wishes on Facebook. I tell him I love him in a Facebook message. He replies, "love you too."

Some clients become friends. This one is my personal hero.

Lauren M. Ellerman is a partner at Frith & Ellerman in downtown Roanoke.

THE PRESIDENT'S CORNER

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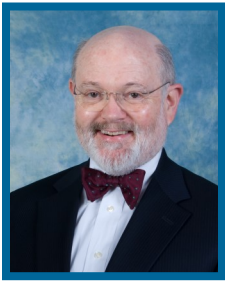
I would also be remiss not to mention Dan Frankl's dedication to the RBA over the past several years and to recognize the incredible success of the RBA's Keeping it Clean project that provided washers and dryers to every Roanoke city public school last year. Dan did an outstanding job leading the bar during an unprecedented year, and I hope to continue to build on his good work.

The RBA's Board of Directors looks forward to the upcoming year. As we make plans for the year, 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.

Macel H. Janoschka is a partner at Frith Anderson & Peake, PC

SPOTLIGHT ON SERVICE

BY JOHN D. EURE, ESQ.



This series aims to highlight community service performed by RBA members and to inspire each of us to find meaningful ways to contribute

“For it is only in giving that we receive” (from a prayer attributed to St. Francis). Service to others, I deeply believe, is essential to leading a flourishing life. My understanding of this truth arose from, and has been nourished by, my parents’ examples, my religious training and participation, my long involvement in Scouting, and the examples set by innumerable others who have led lives of significant service. That service can take many forms –through the job or outside of it, to individuals, small groups, particular activities, organizations, or the wider community. Life circumstances often limit or channel what we can do, but there always seem to be ways we can give back. For me, over the decades and through changing life circumstances, service has taken many different forms. Each has demonstrated, in its own way, how right St. Francis was.

For me, over the decades and through changing life circumstances, service has taken many different forms: service in many different capacities at my church, pro bono legal work, Legal Aid board service, work for the State Bar, the VADA, VaCLE, and the Roanoke Bar Association, committee and board service for civic and social service organizations such as the YMCA and the Public Library Foundation, coaching youth soccer, teaching British literature at CITY School and Community High School, leadership roles in our boys’ and girls’ scout troops, and service to the local scout council and at national and international scouting jamborees.

John D. Eure is a member at Johnson, Ayers, & Matthews, PLC in downtown Roanoke.

CONFEDERATE MONUMENTS AND VIRGINIA COURTHOUSES: AN ONGOING ISSUE

BY THOMAS “BO” FRITH, IV, ESQ.

On July 8, 2021, Roanoke County Circuit Judge Charles Dorsey ordered the removal of a Confederate statute located near the Courthouse. There are 60 courthouses across Virginia with Confederate monuments. Confederate monuments and Virginia courthouses will be a thorny issue for years to come.



Concerning Roanoke County, the Confederate monument in question sits in front of the old courthouse, on the corner of Main Street and College Avenue in Salem. The old courthouse is located directly to the left of the current courthouse. Roanoke College owns the old courthouse and uses it as a classroom. The monument itself is on land subject to a county easement requiring approval of the Roanoke Board of Supervisors in order to be moved to a different location.

Judge Dorsey states in the Order that either the Confederate statute must be relocated or the courthouse itself must be moved. Roanoke College offered to pay for the removal of the monument and to provide assistance in storage and finding a replacement. Roanoke County Attorney Peter Lubeck says the Roanoke County Board of Supervisors is considering the Order and potential next steps forward. Judge Dorsey asserts the Court will defer taking additional action until January 2, 2022. However, while relocation of the monument and determination of its replacement may take some time, he expects the removal of the statute to be “effected quickly.”

Judge Dorsey’s Order may carry the greater legal weight, but his June 23, 2021 Opinion outlines his reasoning. In the six-page Opinion, complete with legal citations and footnotes, Judge Dorsey summarizes the historical, legal, cultural, and ethical reasons for the statute’s removal. Reducing what is a complex argument; Judge Dorsey argues that symbols matter. As he states,

Symbols convey the power of meaning. No one would suggest a Confederate flag or monument has any place in a courtroom. The meaning conveyed by this statute due to its proximity to the Roanoke County Courthouse and being on Roanoke County property, is likewise, completely antithetical to the proper administration of justice.

There are multiple instances of judges ordering the removal of Confederate monuments. In 2015, Judge Martin Clark ordered a painting of Confederate General J.E.B. Stuart removed from his Patrick County courtroom. The same year, Judge Stacey Moreau ordered a display of Confederate memorabilia removed from a Pittsylvania County courtroom. Earlier this year, Fairfax County Judge David Bernhard ruled that a Black defendant would not receive a fair trial in a courtroom lined with pictures of former judges, some of them Confederate officers and slaveholders, and ordered them removed. Last year, a lawyer defending a Black man convicted of drug charges sought to raise “the Confederate defense,” arguing that a jury was influenced by the Confederate statue outside the Giles County courthouse.

Some residents have been critical of the decision to remove the Confederate statute from Roanoke County. In an August 5, 2021 letter to the editor of the Roanoke Times, historian John Long criticized Judge Dorsey’s decision as an example of judicial activism. Mr. Long argued the public, not a judge, should



John Eure portraying Lord Baden-Powell at a Boy Scout Eagle Scout Ceremony



THE PANDEMIC'S EFFECT ON EVICTIONS

BY EMILY JEWETT, ESQ.



To say that the COVID-19 pandemic has affected life as we know it is an understatement. Most likely, every RBA member has clients who have been impacted in one way or another. At Legal Aid Society of Roanoke Valley, the number of clients affected by the pandemic has been astronomical. Between problems with the Virginia Employment Commission processing unemployment claims in a timely manner and the subsequent inability to make rental payments, Legal Aid clients have seen their fair share of life-impacting legal issues.

Evictions in Virginia and specifically, the Roanoke Valley, have been a long running crisis even prior to the pandemic. According to the Eviction Lab, Roanoke ranks third among mid-sized cities in the sheer number of evictions (ranking 48th in the country for rate of evictions). For large cities, Virginia hosts five of the top ten spots for rate of evictions, with Richmond coming in second in the country.

Luckily, over the course of the pandemic there have been many protections at both the federal and state level put into place for tenants to help prevent eviction. Some of these policy and statutory changes have come at a dizzying pace, but local judges and counsel have stayed on top of the changes as we all navigate the housing arena.

On the state level, evictions were essentially postponed due to the judicial emergency and court closures across the state. The Virginia Supreme Court issued its "Declaration of Judicial Emergency" on March 16, 2020, and to date, that has been extended twenty-seven times. The judicial emergency suspended non-emergency and non-essential hearings including evictions. That suspension of evictions ran through June 29, 2020, at which point evictions and writs of possession were permitted to move forward. On August 10, 2020, evictions and writs of possession based upon non-payment of rent were again suspended through September 7, 2020.

In addition to the various statewide suspension of evictions, several other protections were instituted to protect tenants from eviction. Traditionally, a landlord is required to give a five-day pay or quit notice of the total amount due and owing when rent is unpaid. Until July 1, 2022, that notice requirement is now 14 days. Va. Code 55.1-1245. If a landlord owns more than four properties, the landlord is also required to offer the tenant a payment plan "for a period of the lesser of six months or the time remaining under the rental agreement. The total amount due and owed under a payment plan shall not include any late fees, and no late fees shall be assessed during any time period in which a tenant is making timely payments under a payment plan."

Under the current budget through June 30, 2022, landlords are also required to participate in the Virginia Rent Relief Program ("RRP") if attempting to evict a tenant for unpaid rent. Landlords may take no action to get possession or evict for nonpayment of rent if the household has been financially impacted by COVID-19 unless the landlord: (a) gives the tenant a 14-day nonpayment notice informing the tenant about the Rent Relief Program (RRP), and (b) during the 14-day period, applies for RRP on the tenant's behalf unless the tenant pays in full, enters a payment plan, or tenant already has applied for RRP. Landlords can only evict for non-payment if: the tenant is found ineligible for RRP, the tenant refuses to cooperate with the RRP application, the RRP is not approved within 45 days of completion, or the RRP runs out of funds. While the unlawful

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ROANOKE LAW LIBRARY: NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN

After several months of tremendous effort, we have finished moving the Roanoke Law Library from the City of Roanoke Courthouse to the Main Library at 706 South Jefferson Street. I have been working at the Roanoke Law Library since 2004, and while I was extremely sad to leave the Courthouse, I am excited by the possibilities that the new location will present. The most notable change besides the new location will be the increased hours of access to the law library and our resources. The Roanoke Law Library is on the second floor of the Main Library in the Virginia Room and we are open whenever the Main Library is open. Our hours of operation are Monday, Tuesday, and Thursday from 10AM-8PM, Wednesday from 10AM-6PM, and Friday-Saturday from 10AM-5PM. I hope you will stop by and see us.



Even though we are no longer located in the Courthouse and have less shelf space for books, the Roanoke Law Library still provides all of the same amazing resources and services that were provided in the Courthouse. We made sure that any important materials that we were not able to keep would still be available using our online resources. In addition to our collection of legal materials, including our in-depth collection of primary and secondary Virginia resources, we provide free access to Lexis and Westlaw. We still offer legal reference assistance in person, by phone, or through email which may be sent to joseph.klein@roanokeva.gov. We also have the ability to track down materials from other libraries through InterLibrary Loan. We still provide access to our historical Code of Virginia collection dating back into the 1800's, and historical Virginia legislative materials. We also have current Virginia practice materials, including the ever-popular Virginia Forms set and the Virginia Practice series published by West. Additionally we still provide an extensive collection of Virginia Continuing Legal Education materials that members of the Roanoke Bar Association are able to check out.

I have worked in various law libraries for over 20 years working at both large law firms and in my current position at the Roanoke Law Library. I am always willing to help anyone access legal resources. I am also available to assist anyone with the use of Westlaw and/or Lexis whether that be just helping you log on using our public PCs, schedule formal training sessions, or just a quick suggestion if you are having trouble finding what you're looking for.

The new location will take some getting used to for everyone, but it is my goal to make the transition as smooth as possible and to keep the Roanoke Law Library as viable a part of the Roanoke Legal community as it was previously. Even if you aren't able to make it into the new location, I am always happy to provide you with legal information by email or phone. As always, please don't hesitate to call me at 540-853-2268 with any questions about the collection, the new location, legal research assistance, or just to say hi.

Peace of Mind

Thank you to the following lawyers for volunteering for the Peace of Mind Project, which pairs lawyers with first responders for the creation of simple estate plans on a *pro bono* basis: John Eure, Lee Osborne, Sue Cook, Lindsey Coley, Julianne Naff, Devon Slovensky, Thomas Lloyd, Ann Green, Mark Dellinger, Timothy Kelsey, Chris Desimone

The McCammon Group

is pleased to welcome our newest Neutral



Hon. Beverly W. Snukals (Ret.)

Retired Judge, 13th Judicial Circuit Court of Virginia, Richmond

The Honorable Beverly Snukals recently retired after twenty-three years of distinguished judicial service in the Richmond Courts, most recently serving twenty years as a Judge on the Circuit Court including two years as Chief Judge. Prior to her judicial career, Judge Snukals enjoyed a successful private practice in Richmond. She is a Past President of the Metropolitan Richmond Women's Bar Association and a recipient of their Women of Achievement Award. Judge Snukals is a Former Chair of the Judicial Education Committee for the General District and Circuit Courts of Richmond, a Former Chair of the Judicial Section of the Virginia Bar Association, and a Member of the Lewis Powell Inn of Court. She has served as an Adjunct Law Professor at the University of Richmond School of Law for twenty years. Judge Snukals now brings this record of devotion and accomplishment to The McCammon Group to serve the mediation, arbitration, judge pro tempore and special master needs of lawyers and litigants throughout the Commonwealth.

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A “THANK YOU” FOR GENE ELLIOTT AND AN UPDATE ON VIRGINIA STATE BAR RECENT ACTIVITIES

BY BRETT MARSTON, ESQ. AND DANIEL FRANKL, ESQ.



Before addressing the recent updates occurring within the Virginia State Bar, we ought to pause and recognize the immense and valuable contributions that our fellow 23rd Circuit and RBA attorney Gene Elliott has provided to the VSB on behalf of our region for many years. Gene just recently concluded six years of distinguished service on Bar Council including several years on the Executive Committee for the VSB.



During this time, Gene has been faithful, diligent, and thorough in his interest, preparation, and attendance at numerous VSB leadership meetings. In doing so, he has provided important leadership for our area and the entire Commonwealth to help improve the administration of the bar and its core missions. Even now, Gene is building on that experience to remain involved and to provide

needed insight on several important VSB committees.

Gene, on behalf of your fellow 23rd circuit attorneys, THANK YOU! You have given selflessly of your time and talents and we appreciate that greatly.

In terms of other news from the VSB here are some items of interest and some opportunities:

- Bar Council met in Virginia Beach in June. During this meeting, the VSB installed Jay Myerson as its new President. Stephanie Grana of Richmond is now the President-Elect.
- The Clients' Protection Fund Board is considering raising the cap on losses to former clients due to lawyer malfeasance from \$75,000 to \$100,000. Information is available on the VSB website (www.vsb.org/site/new/item/comments_sought_CPF) and comments can be sent to cpf@vsb.org.
- If you are interested in serving on the 8th District VSB Disciplinary Committee for terms starting on July 1, 2022, information is available on the VSB website (www.vsb.org/site/news/item/disciplinary_board_vacancies) Contact either Dan or Brett for more information about the process and selection criteria.
- At the request of the VSB, the Supreme Court has amended the Rules of Court related to MCLE credits to allow that elimination of bias education can count toward the annual two-hour legal ethics/professionalism requirements, starting effective October 11, 2021. The overall deadline for MCLE compliance is October 31, 2021, with some modifications related to in-person attendance during the pandemic.
- Kudos to Salem-attorney Charles Phillips on being awarded the 2021 Lewis F. Powell Jr. Pro Bono Award for his work with Blue Ridge Legal Services.

As always, it is our privilege to represent the 23rd Circuit on Bar Council. If there are ever questions you have or information you need related to the VSB, let us know.

Brett Marston is partner at Gentry Locke and Daniel Frankl is a partner at Frankl, Miller, Moyer & Webb.

REMEMBERING JUDGE CONRAD

(Continued from page 1)

his daily activities. Hoping to put the inmate's fears to rest, Judge Conrad asked the inmate whether the x-ray machine at the courthouse entrance might reveal the locations of those implants, or the lack thereof. When the inmate demurred on the ground that the implants were made of South American rubber that would not show up in an x-ray, the Judge continued to lend him a sympathetic ear, to give him his day in court and assure him that the world was not against him. So respected and beloved was Judge Conrad among the inmates housed in the Western District of Virginia that some would call him for advice once released from prison, which he generously provided.



Magistrate Judges Glen E. Conrad and B. Waugh Crigler

As a magistrate judge, Judge Conrad also demonstrated regularly his skill as a master mediator of civil cases. Magistrate Judge Robert S. Ballou remembers, “Judge Conrad not only pioneered the use of mediation in federal court but also made the use of mediation mainstream for the practitioner. He had a keen sense for when a case had reached the right point for a mediation. He had a terrific ability to understand what it took to settle a case and to persuade the parties that the time was right to resolve their differences.” Judge Ballou continues, “Even after moving to the district court bench, Judge Conrad would gently lead the parties to find meaningful solutions to their legal dispute rather than resort to trial.”

George Vogel III clerked for Judge Conrad during his last year as a federal magistrate judge, and he had the opportunity to watch the Judge in action as a mediator. “It was a rare occasion that Judge Conrad was unable to negotiate a settlement the day of the mediation,” recalls Vogel. What especially struck George was the Judge’s “artful dance” as he met with the individual parties. “He would tactfully disclose information that he had been authorized to share and he intuitively knew exactly how to convey that information,” Vogel explains. “Sitting in those mediations was the most impactful learning experience during my time as clerk.”

Judge Conrad’s long overdue elevation to the federal district court bench came in October of 2003 after a unanimous confirmation vote by the United States Senate. Ironically, while Judge Conrad sat as a federal magistrate judge for over twenty-five years, his tenure as a federal district court judge was almost short lived. In the spring of 2008, President George W. Bush nominated him to the Fourth Circuit Court of Appeals. Unfortunately, President Bush’s second term in office expired before the Judge’s nomination could be considered. Judge Conrad served as chief judge of the Western District of Virginia from 2010 to 2017, taking senior status in December of 2017.

When government officials serve in the public spotlight as long as Judge Conrad did, it is inevitable that he or she will suffer the slings and arrows of disgruntled attorneys and dissatisfied litigants. One is hard pressed, however, to find such critics when it comes to the Judge. Instead, those who knew him speak of his humility, kindness, work ethic, and mastery of the law.

When I clerked for Judge Conrad, I remember being struck by the manner in which he ran his courtroom. While he never raised his voice, there was no doubt who was in charge. This observation is shared by a host of attorneys who appeared before the Judge over the years. Former Assistant United States Attorney Donald Wolthuis describes Judge Conrad’s judicial temperament as

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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.

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REMEMBERING JUDGE CONRAD

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“congenial, patient, and respectful of all who appeared in his court,” although he quickly adds that the Judge’s “gracious demeanor was never to be confused with weakness or lack of control over any proceeding. Any attorney who attempted to make frivolous claims or arguments not supported by the facts or the law found their positions promptly brushed aside.”

While Judge Conrad made short shrift of baseless arguments, he did not hesitate to offer a helping hand to struggling attorneys. United States Attorney Anthony Giorno recalls an occasion when a new attorney appeared before the



Judge Glen Conrad in 2003, with former law clerks Kris Arend & Matt Warren (“the Maestro”) & pro se law clerks Sarah Hawkins & Linda Gustad

Judge and incorrectly stated the law regarding a statutory presumption. “But rather than chastising the new [Assistant United States Attorney], Judge Conrad simply said, ‘Well, I know you said that the presumption applies, but what you meant to say is that it did not apply . . . is that okay with you counselor?’” Concludes Giorno: “Of course it was. Lesson learned and no yelling, screaming, or belittling the attorney.” Perhaps former law clerk Ashley Peterson best sums up the Judge’s courtroom behavior. “His patience on the bench seemed to know no bounds.”

Gently nudging counsel in the right direction and tolerating missteps was only part of a larger teaching role that the Judge played. “He mentored a generation of lawyers on how to effectively represent their clients,” explains Judge Melissa Friedman. “He led by example with his intellect, knowledge of the law, civility, and ability to treat people from all walks of life with respect and concern.” This respect for all was perhaps best exemplified by the Judge’s long tradition, adopted from a previous generation of judges, of leaving the bench and shaking the hands of all attorneys and parties at the end of a court case.

It was more than the Judge’s demeanor, however, that commanded the respect of counsel. “He was a careful listener and observer of witnesses,” explains Wolthius. “He had a clear eye to weigh the truthfulness of a witness’s testimony or the weight it should be given.” Moreover, nobody in the courtroom doubted the Judge’s command of the procedural and substantial law applicable to the dispute before the Court. But most of all, in Wolthius’s opinion, counsel respected the Judge’s “dedication to do justice. To follow the law, of course, but beyond that, to get it right.” This devotion to justice has led to a mantra that long-time *pro se* law clerk Linda Gustad asks herself with every opinion she drafts: “What would Judge Conrad do?”

Assistant Federal Public Defender Randy Cargill remembers how hard the Judge worked to “get it right,” especially during guilty plea hearings. “There was never any doubt that a defendant who made it through a guilty plea hearing in Judge Conrad’s court was pleading guilty knowingly and voluntarily,” says Cargill.

He would tell the defendant that this was a “very important day” in his life and ask more than once whether he or she was

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REMEMBERING JUDGE CONRAD

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“sure” about pleading guilty. He would tell the defendant that it wouldn’t bother him or anyone else in the courtroom if the defendant wanted to plead not guilty and have a trial . . . Judge Conrad would describe the government’s burden to prove the case beyond a reasonable doubt as a “mountain, a barrier, an obstacle, a wall” that it had to overcome before the defendant could be convicted.

And the impact of Judge Conrad’s efforts to make sure that a defendant fully understood his or her rights? “More than once . . . clients would turn to me and wonder about pleading guilty because this judge is ‘on my side,’” concludes Cargill. “I remember a Spanish speaking client whispering to me in Spanish during a plea hearing (in a surprised tone): ‘He thinks I’m not guilty.’”

Judge Conrad’s law clerk family was excited when he was nominated to the Fourth Circuit Court of Appeals. I am confident that the Judge would have thrived on the appeals court bench, an opinion shared by one of the Fourth Circuit’s most senior members. Judge J. Harvie Wilkinson III writes:

Glen’s love of the law and his passion for justice would serve him well in any judicial capacity. He was that special combination of a true scholar with the most practical and empathetic common touch. Steve Agee has been such a wonderful representative of the Western District on our court, and my fond wish would have been to sit on an appellate panel with them both. Every judge on the Fourth Circuit regarded Glen with warm affection and held him in the highest esteem. He distinguished the Third Branch with his presence.

As disappointed as we were when the Judge’s nomination was not taken up, I must confess that I wondered if it was for the best. Judge Conrad was born to be in a courtroom, where his empathy and keen instincts could be applied to the diverse individuals who appeared before him.

It is impossible to write this tribute without talking more about the Judge’s family of law clerks and court personnel. Whether you were his term law clerk, *pro se* law clerk, or on staff with him in chambers or through the Clerk’s Office, he made you feel an essential part of “Team Conrad.” That team included his long-time courtroom deputy, Susan Moody, his long-time judicial assistants, Linda Draper and Jan Taylor, and, for nearly eighteen years, his career law clerk, Jennifer Willis. The Judge sought input



Team Conrad members: front row (left to right) career law clerk Jennifer Willis, Judge Glen Conrad, law clerk Allison Davis Trunk; back row, deputy clerk Linda Bright, judicial assistant Jan Taylor, and courtroom deputy Susan Moody.

from everyone on Team Conrad for issues big and small, from tweaking the wording in opinions or speeches to unraveling computer frustrations, and he never minded questions from the team. He and Mary Ann entertained “Team Conrad” at their home many times. And when the Judge traveled for court, the team members involved in the case rode in one car, stayed at the same hotel, and ate meals together.



Long-time colleagues & friends: District Judge Glen Conrad & Mary Ann Conrad, with Senior District Judge James C. Turk & Barbara Turk.

Those of us who served as law clerks or *pro se* law clerks on Team Conrad became better lawyers because of our time in the Judge’s chambers. The Judge was a dedicated teacher (like his beloved mother before him) who helped us not only “learn the law,” but to think carefully about complex legal issues. “Our more philosophical conversations about the law . . . were some of the most enjoyable and fascinating parts of working with Judge Conrad,” writes former law clerk Carrol Ching. “One of the things I loved most about law school was the chance to reflect more broadly on legal issues. Clerking with the Judge was a wonderful opportunity to continue that type of thinking and to be able to share those ideas with a judge who has so much experience in so many different types of cases.”

While much of our education was on the substantive law, the Judge also taught his law clerks how to write. “I so appreciated Judge Conrad’s thoughtful word-smithing, painstakingly honed to communicate just the right connotation in every setting,” writes Linda Gustad. And woe to the clerk who had the occasional typographical error in his or her work product. One former clerk remembers a time when she wrote “wonton negligence” rather than “wanton negligence” in a draft opinion, prompting Judge Conrad to ask, with a sparkle in his eyes, what Chinese food had to do with the case.

The Judge’s interest in his clerks extended beyond the clerkship itself. The bookcases in his office were filled with pictures of his extended court family, and a steady flow of former clerks returned to his chambers. I believe that his affection for the clerks was reflected in the carefully considered nicknames he bestowed on us. “The Maestro.” “The Wook.” “Gumby.” “Whispering Wind.” “Toddy.” In turn, several clerks lovingly nicknamed the Judge “El Hombre.”

“I think I might have started calling him ‘El Hombre’ first because that’s who he was at the Poff Federal Building—The Man,” recalls former law clerk Matt Warren. “Everyone knew it. He was even better at nicknames, as it turns out. He gave me the name ‘The Maestro’ because, knowing what a huge fan of *The Godfather* he was, I tried to insist that he call me *consigliere* as a condition of renewing my term as a *pro se* law clerk. Alas, he was also a fan of *Seinfeld*, so he thought anyone who made such a demand was just like the conceited conductor character on that show who required that everyone call him ‘Maestro.’”

Often the memories that burn the brightest for the former law clerks are those involving our one-on-one time with the Judge—be it in his chambers, on the racquetball court, at the movie theater, over Thai food, or during long car rides to distant courthouses. It was during one of these drives that former law

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REMEMBERING JUDGE CONRAD

(Continued from page 9)



Former law clerk Todd Peppers with Senior District Judge Glen Conrad & his dog Max, headed to the movie theater in 2018.

Van Stempvoort nicknamed Judge Conrad “the Chief Keeper of the Oral History of the Western District of Virginia,” and the Judge regaled us often with tales of his time as a young magistrate judge, his memorable cases, and his judicial colleagues (if we were lucky, Judge Conrad would fondly impersonate a judge or two). And, of course, we heard stories of when a young Glen Conrad worked—in costume—as a tour guide at Colonial Williamsburg.

As long-time law clerk Jennifer Willis points out, however, sometimes the clerks found themselves the subject of the Judge’s stories. Writes Willis:

One of the stories he enjoyed sharing about me was based on something that occurred shortly after I began working for him. Judge Conrad entered the office one morning with a hobble (probably after playing racquetball) and complained about feeling old. With complete innocence and sincerity, I responded, “Judge Conrad, you’re not old! You’re the same age as *my dad* and he’s not old!” He never let me live that down. He proceeded to share that story (or a slightly embellished version) at a mediation a few weeks later and at least once a year thereafter. And it provided a lot of laughs between the two of us over the years.

A number of the law clerks tried to compete with Judge Conrad on the racquetball court, only to be easily vanquished (including this author). Former clerk Vogel played against the Judge both during and after his clerkship before a protective spouse called an end to their matches.

While I never could truly compete with his skill on the racquetball court, I surely tried. As a young guy in my mid-twenties, I was sure I could get good enough to compete with the middle-aged Judge. Therefore, there was no holding back or taking it easy. I was going to win. That included causing multiple collisions a match and many hard-hit balls to the back of the Judge’s thigh. He always took it with stride and loved the competition. I was even awarded and given a plaque as the “Best Racquetball Playing Clerk” for the 2001-2002 year. We continued to play for many years after my clerkship and as the matches became few and far between, my racquetball skills dwindled while his remained the same. I was able win some games over the years and the Judge finally stopped having to spot me points, but I never could truly compete with his skill and knowledge of the game. Finally, Mary Ann [the

clerk Elizabeth Kohler Maya witnessed a simple act of kindness. She recounts that the Judge suddenly pulled over to the side of the road, jumped out of the car, and then ran out into the highway. “I saw him bend down and seemingly pick up something which he proceeded to put on the side of the road and then quickly get back in the car to drive. When I asked him what happened he said there had been a turtle in the road and he didn’t want” anyone to run over it.

Time in chambers or during car rides also introduced us to the Judge’s considerable talents as a storyteller. Former law clerk Steve

CONFEDERATE MONUMENTS AND VIRGINIA COURTHOUSES: AN ONGOING ISSUE

(Continued from page 3)

decide the removal of a public sculpture.

Earlier this month, the Roanoke County Board of Supervisors filed their response with the Supreme Court of Virginia. The county board of supervisors argues Judge Dorsey exceeded his authority and that the circuit court does not have jurisdiction over the monument. The supervisors’ attorneys request the Virginia Supreme Court issue a writ of prohibition to prevent Judge Dorsey from taking further action on the monument’s removal. As of the date of publication of this article, the Court has not issued a response.

In Botetourt County, the Board of Supervisors recommended in a 2020 announcement that the county move the confederate monument from the front of the courthouse. Due to public backlash, Botetourt County tabled the project. In June of 2021, Botetourt County announced a courthouse renovation plan that included moving the monument from the front of the courthouse.

In Nelson County, the Chair of the Board of Supervisors called for a public discussion about the removal of the confederate statute in front of the Lovingston courthouse. The August 2021 discussion became increasingly contentious. The Board did not reach a final decision, but invited additional public feedback.

In Floyd County, attorney Alan Graf called in a July 2021 letter to remove the confederate statute in front of the Floyd County Courthouse. Mr. Graf states in the letter that he became a member of the Virginia Bar to bring a lawsuit to remove the Confederate monument. It does not appear Mr. Graf has initiated such a lawsuit or the grounds of such a lawsuit. Floyd County Circuit Judge Michael Fleenor has not offered a response to Mr. Graf’s letter.

Although not an exhaustive list, the following are Confederate courthouse monuments in Southwest Virginia:

- Bland Co.: Courthouse Common Soldier Monument, erected 1911
- Botetourt Co.: Courthouse Obelisk, erected 1904
- Buchanan: Courthouse Tablet, erected 1998
- Carroll Co.: Courthouse Common Soldier, erected 1907
- Craig Co.: Courthouse Monument, erected 1912
- Floyd Co.: Courthouse Common Soldier, erected 1904
- Franklin Co.: Courthouse Monument, erected 1910
- Giles Co.: Courthouse Common Soldier, erected 1909
- Grayson Co.: Courthouse Common Soldier, erected 1911
- Montgomery Co.: Courthouse Obelisk, erected 1883
- Nelson Co.: Confederate Monument, erected 1965
- Russell Co.: Courthouse Common Soldier, erected 1914
- Roanoke Co.: Courthouse Monument, erected 1910
- Smyth Co.: Courthouse Common Soldier, erected 1903
- Tazewell Co.: Courthouse Common Soldier, erected 1903
- Washington Co.: Courthouse Common Soldier, erected 1907

There are over twenty monuments dedicated to Confederate soldiers in Southwest Virginia, many at courthouses. This issue will continue to be debated and discussed in localities across our part of Virginia.

Thomas “Bo” Frith IV is an associate at Frith & Ellerman in downtown Roanoke.

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REMEMBERING JUDGE CONRAD

(Continued from page 10)

judge's wife] forbade us from playing anymore when she pulled me aside and told me someone was going to get hurt out there on the court.

Judge Conrad loved the naturalization ceremonies conducted regularly in the Western District, one of the few truly happy occasions that occur in a courtroom. Like Judge James C. Turk, Sr., his long-time colleague and friend, Judge Conrad reveled in surprising attendees by asking them to speak. He would announce, with a classic grin, "I believe the United States Marshal (or one of our law clerks, Linda Gustad, or Probation Officer Poe Cobb, etc.) would like to say a few words to the new citizens." The selected victim would then stand and manufacture on the fly some patriotic message for the citizenship candidates and their families. Once warned, law clerks penned their messages ahead of time, to be ready in case the Judge called on them one day.

One constant theme in chambers was the Judge's love of the University of Virginia's athletic teams. "I learned pretty quickly that if we were in court in Charlottesville on a day Virginia had a home basketball game—court would not be running late," recalls assistant United States Attorney Ronald M. Huber. Long-time attorney Jimmy Turk told the *Roanoke Times* that the Judge was "the most rabid UVa fan that I think has ever lived," and he was right. Shortly after I started with the Judge, he expressed his dismay that I had not regularly attended football games when I was a student in Charlottesville. I had grown up in Nebraska, and I flippantly told the Judge that I "only watched college football teams that competed for national titles." Shocked silence followed. Now that Nebraska and Virginia have changed places in the football world, I have come to regret those words.

While the law clerks thought of themselves as the center of the Judge's universe, that position was occupied by only one person, namely, his beloved wife, Mary Ann. Shortly after Judge Conrad passed, John Fishwick told the *Roanoke Times* that "you can't talk about Glen without talking about his wife, Mary Ann." John described them as "an incredible couple," and he is right. The clerks enjoyed hearing tales of their adventures on cruises and at ACC tournament games, and we were moved by her steady and constant support during the Judge's recent health struggles.

When Judge Conrad was diagnosed with brain cancer in 2017, a collective wave of shock was felt by his family of law clerks. While we were stunned by the news, we were not surprised by the courage that the Judge demonstrated in fighting the disease or by his decision to keep an active civil docket. We rejoiced when the disease went into remission, and we grieved when it returned. But until the very end, Judge Conrad remained our teacher and continued to teach us about grace, faith, service, and love. He will be missed.

Judge Conrad's law clerks are raising money to create a scholarship in his honor. The scholarship will financially support William & Mary Law students who are working in unpaid judicial internships. If you are interested in contributing to this scholarship, please contact Todd Peppers (peppers@roanoke.edu).

Todd C. Peppers is the Fowler Professor of Public Affairs at Roanoke College and a visiting professor of law at the Washington & Lee School of Law. He had the privilege of clerking for Judge Glen Conrad in 1996.



THE PANDEMIC'S EFFECT ON EVICTIONS

(Continued from page 4)

detainer is allowed to remain on the docket, the landlord and the tenant both must cooperate with the process to obtain rental assistance through the Rent Relief Program.

The RRP is operated through the Department of Housing and Community Development and has \$524 million in Emergency Rental Assistance funds to assist tenants and landlords with unpaid rent. As of August, 2021, the RRP has paid out over \$311 million in rental assistance.

Separate from the RRP process, tenants are also entitled to a 60 day continuance of their unlawful detainer proceeding if they have suffered a loss of income due to COVID-19. This option is available through September 28, 2021. Tenants must appear in court and make the request, and must have written proof of loss of income suffered during the pandemic period.

Federally, there have been various protections. Initially, the CARES Act prevented landlords from filing new eviction actions for non-payment of rent. It also prohibited the charging of late fees, until the moratorium period had lapsed and a 30-day notice had been given upon the termination of the moratorium period. The moratorium ran from March 27 through July 24, 2020.

After the CARES Act moratorium ended, the Center for Disease Control (CDC) issued a nationwide eviction moratorium on September 4, 2020, based upon 42 U.S. Code § 264, which allows the CDC to institute regulations aimed at controlling the transmission of communicable disease. This moratorium was applicable only to evictions that were based on unpaid rent and was not applicable to any other basis for termination such as a lease nonrenewal or a non-monetary breach of the lease. The CDC moratorium was repeatedly extended and expired on July 31, 2021. There was much litigation on the CDC moratorium all the way up to the U.S. Supreme Court, and there was a close 5-4 decision in June to allow the moratorium to naturally expire on July 31st.

Amid intense pressure to institute another moratorium, President Biden implemented a targeted moratorium within days of the CDC order expiration that was to last through October 3, 2021. President Biden's CDC moratorium was recently struck down by the U.S. Supreme Court, ruling it was beyond the scope of the Public Health Service Act and leaving the issue to Congress to address.

After reading all of this, you might be wondering to yourself where exactly landlords and tenants stand on evictions here in Virginia. Essentially, landlords can evict for non-payment of rent only AFTER they've given a 14-day notice, informed the tenant of the RRP, applied for the RRP and allowed the 45-day application period to run for RRP. Legal Aid Society of Roanoke Valley has not had any RRP applications rejected to date. Landlords are getting the funds they need to pay bills and tenants are able to maintain housing and reduce the spread of COVID-19, so the process is a win-win for landlords and tenants alike.

Emily Jewett is a staff attorney with the Legal Aid Society of Roanoke Valley.

Peace of Mind Project

The RBA is seeking lawyer volunteers to assist the 7 remaining first responders with a simple estate plan on a pro bono basis. Please contact Adam McKelvey at dmckelvey@crandallllaw.com if you are able to assist.

¹Unless otherwise noted, all quoted materials are taken from email exchanges between said individuals and the author.

ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new members:

Active Members

Effective September 14, 2021

Andrew Stover,

OPN Law

Bradlee Suggs,

Rob Dean Law

UPCOMING EVENTS

Roanoke Bar Association Meetings 2021 - 2022

September 14, 2021

October 12, 2021

November 9, 2021

December 14, 2021

January 11, 2022

February 8, 2022

March 8, 2022

April 12, 2022

May 2, 2022 (Law Day)

June 14, 2022

Go to www.roanokebar.com for more information on all upcoming events.

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