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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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## SHINE AND DINE LUNCHEON FOR HIGH SCHOOL GRADUATES

BY MARTHA "MOLLIE" ELDER, ESQ.

Imagine graduating from high school and your family not having the financial means to celebrate this milestone. Imagine further that you are homeless, and you may not even have a family. Many students graduating from Patrick Henry and William Fleming High Schools are in this situation. When the Roanoke Bar Association Board of Directors wanted to assist Roanoke City Schools with a project this year, I suggested we contact Malora Horn, Coordinator of the McKinney-Vento Program with Roanoke City Schools. Malora supports Roanoke City students and their family's experiencing homelessness. On Malora's wish list was a luncheon for graduating students who are or have been homeless. Malora explained that these students have accomplished so much yet often have no one able to celebrate their graduation. The RBA Board quickly decided to help.



On May 21, 2022, a room at Greene Memorial Church was transformed into a happy and special place to celebrate these graduating seniors. Several board members and Diane Higgs decorated on Friday afternoon, and on Saturday, approximately 23 students and family members were served appetizers and a catered lunch by Board members. An ice cream bar with lots of toppings was the dessert. Malora spoke as did Dr. Patricia Popp, the Commonwealth's Coordinator

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## SHINE AND DINE GRADUATION SPEECH

BY GRACE LINDSEY

*At the Shine and Dine Graduation luncheon, Grace Lindsey, a William Fleming graduate, gave the following remarks. She graciously allowed us to publish her remarks for the benefit our local bar members.*

It is an honor to be speaking with you all this afternoon. My name is Grace, and I graduated from William Fleming High School back in 2014. I went to a four-year college on scholarship, with lots of encouragement and guidance from my many, many people along the way, including my family, my teachers, and Malora – who gathered us here today. I am so grateful to be able to speak with you during a very special time in your lives.

I'll tell you a little more about myself before moving onto the more motivational section of the speech. My family fell on hard times in 2014. My grandmother, who I grew up living with, passed away from breast cancer. Losing her was difficult – in addition to being emotionally painful, we were evicted from our home because of the loss of income. This resulted in a kind of domino effect of instability for years and years. I am blessed to have loving parents, whom I am close with today. Still, it was hard to see the people I counted on the most in pain and there was nothing I could do to help. I started living between friend's houses.

When I began applying for college, I needed a permanent address. I did not

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## PRESIDENT'S CORNER

BY MACEL H. JANOSCHKA, ESQ.



Last summer I spoke on work-life balance to newly licensed attorneys at the Harry L. Carrico Professionalism Course. A portion of my lecture focused on involvement with bar associations, and as my time as RBA President ends, I felt this would be appropriate to share in my last President's Corner. I will caution you that these lectures are frequently shared by the Professionalism Course faculty so portions of the lecture (possibly the well-written

portions) may have been another Virginia attorney's original words.

*Many of us will practice a certain kind of law. That area of law will likely lead you to interact with the same group of attorneys. For the first several years of my practice, I practiced mainly workers' compensation and my practice took me throughout the Commonwealth of Virginia. I also became active early on in my career with the Virginia State Bar's Young Lawyer Conference. My first involvement was as a committee member for the Southern Virginia Minority Pre-Law Conference. I then chaired that committee the following year, and two years later I began serving on the YLC's Board of Governors. I would recommend involvement with the YLC to each of you sitting here today. The YLC will provide a lasting network of contacts throughout the Commonwealth. It is a network that I still rely upon today for referrals and information regarding local court practices.*

*However, while my workers compensation practice and YLC involvement exposed me to many different attorneys throughout the Commonwealth, I still was in the position of not knowing many of my fellow attorneys here in Roanoke. I grew up in Wise County, in far Southwest Virginia, and I was the first attorney in my family. I also went to law school at the University of South Carolina, so I had very few connections to any attorneys in Virginia. I had no connections to Roanoke or its legal community when I moved here in 2006.*

*My lack of knowing many Roanoke attorneys began to improve in 2014. I was appointed to the Roanoke Bar Association's Board of Directors. I currently serve as the President and would share with you that local bar involvement has been one of the best investments of my time since I began practicing. I wish that I had become involved sooner.*

*Whether you participate in a local, statewide, or specialty bar association, I promise that through such involvement you will develop positive relationships with other lawyers; you will find other attorneys with whom you can collaborate and refer cases; you will identify role models and mentors; and you will learn whom to trust. And it's hard to be uncivil to opposing counsel in a court case when you see them monthly at the local bar luncheon, or work with them on a bar committee, or co-write an article with them. Familiarity breeds collegiality.*

*Equally important, involvement in bar associations is vital to the overall practice of law in Virginia. We are privileged to practice in a self-regulated profession, and the key to preserving the high ideals of our profession—and improving our public image—rests with us. Virtually every bar organization strives to*

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## REFUGEE CRISIS IN UKRAINE

BY RACHEL THOMPSON, ESQ.



With Russia's invasion and occupation of Ukraine now going into its fourth month, what has already been deemed Europe's largest refugee crisis since World War II is only worsening. The United Nations Human Rights Council (UNHCR) reports 6,642,659 Ukrainians—about 15% of Ukraine's population—have fled Ukraine since February 24, 2022.

It is estimated that about 90% of Ukrainian refugees are women and children and the average age of the refugee is about 38 years old. Most husbands, fathers, and brothers between the ages of 18 and 60 have stayed in Ukraine to fight. Because the Russian invasion created a humanitarian emergency necessitating the immediate evacuation of Ukrainians, neighboring countries that share a border with Ukraine (Belarus, Poland, Slovakia, Hungary, Romania, and the Republic of Moldova) have responded by opening their borders to admit Ukrainian refugees. An interesting note is that the Russian Federation has taken in many Ukrainian refugees. In fact, according to UNHCR, Russia is the third highest in receipt of refugees with approximately one million refugees as of May 26, 2022. However, the treatment of these refugees varies with some reports of positive experiences from local humanitarian groups and some reports of interrogations and abuse. Ukrainian refugees, though, have migrated across all of Europe and many have settled further west in counties like Germany, Czech Republic, and Italy.

As the influx of refugees has stressed the population and resources of many European countries, there has been mounting pressure by the international community for global leaders to do more. The European Union (EU) has responded by offering the following benefits to persons who were permanently residing in Ukraine on or after February 24, 2022: up to three years of temporary protection which provides refugees with a residence permit, access to employment and housing, medical assistance, education for children, and basic banking privileges, the right to apply for international protection (asylum), repatriation assistance, and open travel within the EU (with Ukrainian biometric passport).

Similarly, the United States also weighed in on opportunities for Ukrainian nationals. On March 24, 2022, the Biden administration pledged to welcome up to 100,000 Ukrainians. On April 21, 2022, President Biden unveiled *Uniting for Ukraine*, a program which creates a process for Ukrainian citizens fleeing due to the war and provides them with an opportunity to come to the United States with Humanitarian Parole. This program provides a temporary parole status of up to 2 years under the financial support of a U.S.-based sponsor. According to USCIS, Humanitarian Parole is a discretionary power which allows the Secretary of Homeland Security to temporarily grant a noncitizen admission into the US for urgent humanitarian reasons. As of May 9, 2022, approximately 6,000 Ukrainians have entered under the program and 19,000 applications from US-based sponsors have been filed. In total, it is estimated over 20,000 Ukrainian refugees have fled to the US since Russia waged war on Ukraine.

From experience, the *Uniting for Ukraine* program took only two weeks for approval. If anyone has ever had to deal with the

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## RONALD M. AYERS: 2022 FRANK W. "BO" ROGERS, JR. LIFETIME ACHIEVEMENT AWARD RECIPIENT



The Honorable David Carson offered the following remarks in presenting this award.

We can debate the merits of it, but I submit to you that in today's legal profession, our attention seems to get focused on the attorneys who are the most effective at calling attention to themselves. It is rare indeed to find someone who is excellent at what he does, takes enormous pride in the quality of his work, is reliable as the setting sun, and absolutely shuns calling attention to himself – particularly if it might be perceived as being disrespectful to a fellow member of the bar.

There is such an individual, and his name is Ronald Maxwell Ayers.

I could run through Ron's significant personal and professional accomplishments, which would take quite a while, but Ron would not like that. To the extent attention is ever paid to Ron, he wants that attention focused on the quality of his work, not on the man himself. Truth be told, he is happiest either out of the spotlight or focusing on his wife (Jodi), his children (Leigh, Katherine, and Allison), and his many grandchildren. (I am absolutely certain that it was a struggle for Jodi to get Ron here today, and I thank her for that.)

Out of deference to Ron, I promise this will be brief, but suffice it to say that Ron was born and raised by a single mother in the Williamson Road area of Roanoke. He takes great pride in pointing out the paper route he covered from his bicycle on 10<sup>th</sup> Street in the neighborhood where he grew up. He excelled at William Fleming High School, Davidson College, UVA Law School, and the US Army – serving an extended tour in Vietnam. (As an aside, while Ron was serving our country in Vietnam, he of course was unable to see his wife for over a year, missed the birth of his first-born child (daughter Leigh), and in fact did not see his daughter until she was 11 months and 3 weeks old.) Ron started at Woods Rogers, and in 1984, he and his dear friends, Jim Johnson and Joe Matthews, started the law firm of Johnson, Ayers, and Matthews, where Ron dutifully worked every day until he retired in 2021.

As one of the leaders of the firm, and as a mentor to younger attorneys like me, one could not ask for a better role model. I would love to take the time to share the many examples that he provided to us, but I once again know Ron would not like that. Nevertheless, while promising to be brief, I will give you two:

On my very first day with the firm, Ron came into my office, welcomed me, and then gave me a professional tip that he suggested I consider. He pointed out that if I looked at the offices throughout the firm, I would notice that no attorney had up on the walls any diplomas, awards, or recognitions. In words that I am sure were much more polished than what I am going to repeat, Ron said something to the effect of: 'no one cares who your daddy is, where you went to school, where you live, or how many times you have been patted on the back. What is

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## THE LAW OF WAR

BY JOSEPH W. H. MOTT, ESQ.

Recent events in Ukraine raise questions as to whether war crimes have been committed and, if so, what mechanisms exist to punish the perpetrators. This article will give a necessarily brief overview of a complex subject, and address the application of the international law of war to current events.



### Principles of the Law of War

The conduct of war presents a confounding conundrum: acts that would otherwise be illegal in a civil society are legitimized when committed in the name of national interests. The conduct of war has limits, however, under principles developed by the international community.

International and U.S. law of warfare evolved from five broad concepts: *military necessity*, *proportionality*, *humanity*, *distinction*, and *honor*.<sup>1</sup> *Military necessity* justifies certain actions necessary to defeat the enemy as quickly and efficiently as possible. *Humanity* forbids infliction of suffering, injury, or destruction unnecessary to accomplish that object. *Proportionality* weighs the justification for acting against the expected harms to determine whether the harm is disproportionate to the military necessity, for instance, whether the expected incidental damage to a civilian population outweighs the expected military advantage to be gained. *Distinction* describes the parties' responsibility to discriminate, primarily between military personnel and civilian populations, but also within the military, such as medical or religious personnel. *Honor*, historically called *chivalry*, underpins the entire system and encourages compliance with treaties by prohibiting acts that constitute a breach of trust. Examples of conduct prohibited by honor include fighting in the enemy's uniform, or perfidy such as gaining military advantage under a flag of truce or drawing the enemy out of a foxhole by a false promise.

As an example of a perfidy issue, during my time in Iraq, I was called upon to facilitate the prosecution of captured insurgents in Iraqi courts. At the time, the U.S. was promoting a reconciliation program to encourage insurgents to switch sides (and become "Sons of Iraq"). The issue arose whether the program constituted perfidy when the insurgents were not immune from prosecution in Iraqi courts and could conceivably be sentenced to death. Short answer: it wasn't perfidy as implemented.

### Short History and Salient Treaties

The law of war has ancient origins. Beginning with the Code of Hammurabi, various sources contain prescriptions for the conduct of war. The Old Testament, for example, instructs a force seeking to conquer a city to first offer peace terms.<sup>2</sup> The Lieber Code adopted by the Union in 1863 regulated treatment of civilians in occupied areas and was the first code to prohibit execution of those who surrender ("giving no quarter").

The primary source of current international law of war is contained in the Geneva Conventions and associated Protocols. The Conventions consist of four Conventions, the first of which was promulgated in 1864 and the last in 1949, and three Protocols. The four Conventions have been ratified by 194 nations, including all United Nations members. Varying lesser numbers have adopted one or more of the Protocols. The Conventions address, among other things, the conduct of war, the protection of noncombatants, and the treatment of prisoners of war and soldiers who are out of the fight due to wounds or incapacity. The Conventions apply not only to declared wars, but to all cases of armed conflict between signatory nations.

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## SARAH C. JESSEE: 2022 YOUNG LAWYER OF THE YEAR AWARD RECIPIENT



Lori Thompson offered the following remarks in presenting this award.

I am very pleased to present the Roanoke Bar Association (“RBA”) Young Lawyer of the Year award in 2022 to Sarah Jessee.

Sarah is an Associate at Lewis Brisbois where she is a valued member of the Medical Malpractice and Healthcare Practice group, focusing her practice on medical malpractice defense and civil litigation. Prior to private practice, she interned for judges on the Court of Appeals of Virginia and the United States District Court for the Eastern District of Virginia.

Sarah is a native of Roanoke and the daughter of Roanoke attorney, John Jessee. Sarah earned her undergraduate degree from Washington & Lee University in 2014 and earned her Juris Doctorate, *cum laude*, in 2017 from the University of Richmond School of Law where she was a member of the Phi Delta Phi Legal Honor Society.

Sarah is licensed and actively practicing in Virginia and West Virginia. Having worked with Sarah, I can attest that she is an exceptional attorney - extremely diligent with a sharp legal mind, possessing excellent writing skills, and displaying confident advocacy in the courtroom.

Other attorneys around the Commonwealth have become aware of Sarah’s legal acumen - resulting in her recognition in 2020 by Virginia Lawyers Weekly as an “Up & Coming Lawyer,” being named as “One to Watch” in Medical Malpractice Law by Best Lawyers, and by selection of her peers for inclusion in Virginia Business’ Legal Elite Young Lawyer Category.

Sarah’s expertise in the field of medical malpractice is also recognized among healthcare providers in our community who seek her out for counsel. As one example, Radford University engages Sarah to teach “Legal 101: Legal Issues That May be in Your Future” to educate Radford’s senior nursing students on the laws governing Virginia’s healthcare providers.

### Bar Association / Community / Professional Activities:

While managing the demands of her busy legal practice - as well her many important duties as “World’s Best Dog Mom” to her Corgi “Lady” - Sarah has been extremely active in the Roanoke community since returning home to Roanoke in 2017.

She has served as Chairman of the Young Lawyers Section of the Roanoke Bar Association for several years, and in that capacity, has also served on the Board of the Roanoke Bar Association. In 2020 and 2021, she successfully coordinated the RBA’s Bench Bar Conference, which is vital to keeping practitioners in the Roanoke legal community apprised of current topics of importance to members of our judiciary. This past year, Sarah assisted in coordinating the “Introduction to the Courthouse” program for young lawyers. Among the many RBA programs that Sarah supports, she has volunteered each year (except when volunteers were not permitted during the pandemic) for *Santa at the Station*, which provides a special party for families staying in our homeless shelters during the holidays.

Sarah serves on the North Cross Alumni Board, and will be

## ROANOKE LAW LIBRARY: NEWS AND INFORMATION

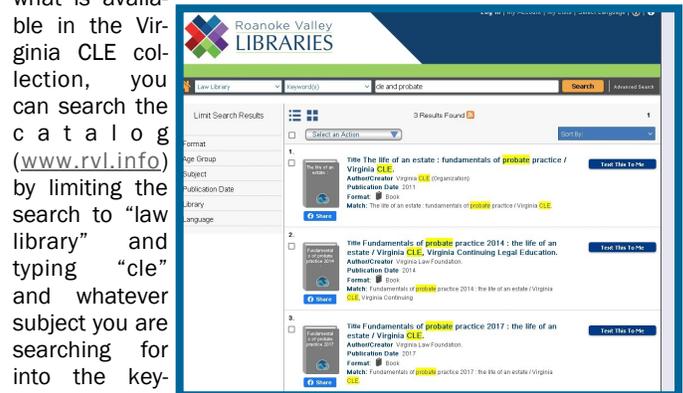
BY JOSEPH KLEIN, LAW LIBRARIAN

2022 is passing at a rapid pace. I am shocked that the school year is over and summer break has begun. I don’t know about you guys, but my kids are signed up for so many camps, shows, classes, and “fun” outings that it is impossible to keep up with them all... and don’t get me started on swim season. My summer “vacation” is the busiest time of year. I hope you all have a much more relaxing summer planned, and that a trip to somewhere fantastic is in your near future.



### Virginia CLE Collection

This is the time of year when I remind you that in addition to all our other legal resources, we continue to purchase the Virginia Continuing Legal Education (CLE) materials and that members of the Roanoke Bar Association are able to check them out. As I am sure you all know, these are fantastic resources that cover most major topics of Virginia law. Most subject-specific CLE materials have in-depth information on a specific topic and provide the most useful forms regarding that topic. I think that in the 18 years I have been working at the Roanoke Law Library, the Virginia CLE Virginia Family Law a Systematic Approach has been by far the most used resource in the entire library, and many of the other CLEs haven’t been too far behind. If you are interested in seeing what is available in the Virginia CLE collection, you can search the catalog ([www.rvl.info](http://www.rvl.info)) by limiting the search to “law library” and typing “cle” and whatever subject you are searching for into the keyword search box. This will give you a list of CLE materials for that subject.



box. This will give you a list of CLE materials for that subject.

### New Location

It has been about a year since the Roanoke Law Library moved to its new location in the Roanoke Public Library Main branch at 706 South Jefferson Street. I think I will always miss working in the Courthouse and was sad to leave, but the new location is growing on me. There are a lot of benefits, most notably the increased access because of added afternoon, evening and weekend hours of operation. Another benefit is that I am better able to serve people virtually because I am working with additional staff, improved technology, and the fact that we now have access to both Lexis and Westlaw. So many of my interactions with members of the Roanoke Legal community are now handled virtually. Most often that is more convenient for both parties, but I am always glad when researchers are able to come here to the library to use the collection and/or access Westlaw and Lexis. So stop by and say hi, or give me a call (540-853-2268) or email ([joseph.klein@roanokeva.gov](mailto:joseph.klein@roanokeva.gov)) with any questions.

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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.

**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)**

## THOMAS H. MILLER: 2022 DISTINGUISHED SERVICE AWARD RECIPIENT



Brett Marston offered the following remarks in presenting this award.

As Macel (Janoschka) noted, this is a special award, given rarely, and only to those most deserving. And for that reason, I suppose, it is kept a tighter secret than an Academy Award.

By virtue of the fact that I have been asked to present this award, it should give the recipient some idea that he or she is being recognized—but it probably doesn't narrow it down too much.

If I added that I have, as of this summer, known this worthy recipient for 30 years, that would eliminate a number of you.

If I said I'd had the pleasure of learning how to try a lawsuit, take a deposition, and evaluate a case with this recipient then the pool is getting much smaller.

Maybe I could suggest that the recipient needs to "sing for his lunch" today. He or she is getting closer to figuring it out, I'm sure.

And of course, if I said that we had the pleasure of traveling with our family and friends to fun locations such as Ann Arbor, Michigan for a UVA football game, and Nashville, Tennessee for a birthday celebration then it could only be one of you.

Yes, and if you have not figured it out yet, the recipient of the RBA's distinguished service award is none other than Tom Miller.

Yes, I have known Tom for now 30 years, having worked with him closely during our mutual time at Gentry Locke, where he was not only a mentor but a good family friend.

But the reason for Tom's recognition here today goes way beyond the many positive experiences that he, I, and our families



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## MY SUPERLATIVE CASE

BY MATTHEW KELLEY, ESQ.

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



A busy litigation practice necessarily drives an attorney's focus to one deadline after another until the case concludes. However, spending the time necessary to build trust with your client is critical, and one recent case reinforced this for me.

My client was a physician accused of providing care that allegedly resulted in her patient's death. Before this case, she had never been sued over the course of a distinguished medical career. She had never experienced the type of stress and self-doubt that comes with having to defend your actions knowing they did not end favorably.

The doctor was confident in her medical care for this patient, and our experts agreed that her care was appropriate. Yet, her thoughts regularly turned to whether she could effectively explain her medical care in front of a jury. She had trouble committing to the idea of having her day in court. She often wondered if settling the case would be easier than defending her care through a verdict.

It might have been easier to resolve the case, but the evidence showed this physician did not do anything wrong. Her legal team felt strongly that she deserved her day in court just as much as any other party. So, our challenge became, how do you convince a client with so much at stake personally and professionally to set aside her anxiety and explain herself in front of people she has never met? We needed her trust – in our legal team, in the process, and in the jury.

I devoted time to explain how the litigation process works so she would trust the system that would resolve her case. We met frequently to cover substantive issues including the likely questions from opposing counsel on cross-examination and more basic things like where everything in the courtroom would be located. Over the course of many meetings, she began to trust that she would be able to explain herself to a jury as she became more comfortable with how testifying in court worked.

She needed to be able to trust a jury to fairly consider and decide complex medical issues. Trusting our jury system to decide the case was difficult for this physician who would have preferred a panel of medical doctors decide the case. Her legal team and I worked to show her how the case would be viewed by a jury. Her initial concerns focused on how we were going to be able to explain complex medical concepts in a short period of time. So, we talked about our trial themes and the evidence that supported those themes. She grew more comfortable that a jury would work to learn the case and eventually trusted them to decide it fairly.

Her legal team and I worked to deepen her trust in us as the trial approached. I found that investing the time to talk not only about the legal issues but also about how the case was impacting her personally helped me understand her concerns. We talked openly about her fears and worked to minimize them as the trial date approached. Listening and communicating

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# VIEWS FROM THE BENCH: JUDGE HEATHER P. FERGUSON

BY CHRISTOPHER DADAK, ESQ.



The Honorable Heather P. Ferguson was appointed to the Juvenile & Domestic Relations Court for a six-year term beginning April 1, 2021. We are pleased to highlight and learn more about one of the newer judges in our circuit. In the forefront, Judge Ferguson thanks her husband Jerry and her family for their love and support.

Judge Ferguson was born in Jamestown, New York and “in the same hospital as Lucille Ball” even though she and her family never lived in New York. Her father “worked for the federal government so obviously [they] moved a great deal” and that particular hospital “happened to be the closest one.” Growing up she lived in Missouri, New Hampshire, Pennsylvania, Wisconsin, Georgia, and then finally during her 8<sup>th</sup> grade year they moved to Salem, Virginia which “became home.”

She attended William & Mary for her undergraduate studies and Wake Forest for law school. She interned between her second and third year with the Legal Aid Society of Roanoke Valley. Before she had “always thought [she] wanted to do corporate law, but [she] spent the summer with Henry Woodward and the other attorneys at legal aid and caught the bug for that kind of work.” She loved being in the courtroom and “felt called to help those people who could not afford an attorney.” She joined legal aid after graduating law school and stayed there a little over five years. She mostly did domestic cases, such as custody, divorces. She was also “the attorney assigned to cover Franklin County [and] loved it out there.” “It was a great place to practice.” After a “split” of legal aid due to federal funding restrictions, she became the managing attorney for Blue Ridge Legal Services here in Roanoke and then moved to Charlottesville for several months to help out.

She “loved the family piece of legal aid” but was then offered a position prosecuting with Commonwealth’s Attorney (CA) Cliff Hapgood in Franklin County. She stayed out there for two years doing “all of the juvenile prosecutions, . . . followed cases to circuit court [and] all the special victim [cases].” A bonus of prosecution was that “completion” of a case: “there’s a trial, there’s a verdict, and there’s a sentencing and that piece is done and you can move on to the next case.” CA Hapgood “did a really good job supporting [her] in that role” and “there was a great group of investigators” in the sheriff’s office. She “loved [her] time working for Cliff and he was an incredible mentor.” The only reason she left prosecuting in Franklin County was because she had gotten married and her husband lived in Salem. She “learned very quickly, that a commuter [she] was not.”

Judge Ferguson has “been incredibly lucky throughout [her] career to have amazing mentors at each place where [she’s] landed.” At Legal Aid, experienced attorneys Robin Dearing and (now Judge) Robin Mayer each took a special interest in Judge Ferguson. “The two of them just really helped mold what [she] became as an attorney.” “They were patient, they listened, they counseled.” “Both had incredible common sense” and modeled the importance of “being able to counsel your client.” CA Hapgood was “an incredible mentor in the criminal sense because he had been a prosecutor for like 500 years.” “He was so

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# SHINE AND DINE LUNCHEON FOR HIGH SCHOOL GRADUATES

*(Continued from page 1)*

for Homeless Education in Richmond. The guest of honor was Grace Lindsey who experienced homelessness in high school and has now completed college. She told her story, which included not having an address to put on college applications.

The RBA touched many people on May 21 by sponsoring this event. Family members with the students were very grateful as were the students. We were able to give the students/families take-home boxes of food so they could make the celebration last even longer.

*Mollie Elder is of counsel at Woods Rogers.*



**Malora Horn speaking to luncheon guests.**



**Grace Lindsey, guest speaker and Dr. Patricia Popp.**



**Decorations**

# LAW DAY 2022: HEARING FROM OUR LEGISLATORS

BY NANCY REYNOLDS, ESQ.



The RBA Law Day Program was held on May 2, 2022 at the Jefferson Center. Nancy Reynolds opened the program with a reminder that the United States Congress designated May 1 in 1961 as National Law Day. The American Bar Association defines National Law Day as a day set aside to celebrate the Rule of Law. To honor National Law Day, Senator John Edwards, Senator David Suetterlein, Delegate Chris Head, and Delegate Joe McNamara spoke to the RBA members present.

Senator Edwards reminded us of the effort to move attorney discipline from the Virginia State Bar to the General Assembly, which was defeated in the Judiciary Committee that he chairs. He spoke on the negative effects of a gas tax holiday on funding infrastructure programs. Senator Edwards also discussed the expansion of voting rights in Virginia to allow greater accessibility to the ballot box.

Senator Suetterlein spoke on his opposition to allowing the General Assembly to change election schedules for localities. His stated belief is that the General Assembly should not interfere in how localities schedule their elections, especially when the effect is to shorten terms of serving public servants. He also shepherded getting absentee ballots counted in the precincts where the voters reside.

Delegate Head introduced himself as the state expert on cryptocurrency. His bill permits Virginia banks to provide crypto custody services as long as adequate protection exists to manage risks and comply with applicable laws. He is also marshalling through the House of Delegates legislation on Adult Protective Services investigations and on identification requirements to preserve election integrity.

Delegate McNamara, an accountant by training, walked us through the Virginia surpluses of \$2.6 billion. He stated that the gas tax holiday and the sales tax exemptions for food purchased for human consumption would not create shortfalls for the infrastructure programs or programs designed to fund our schools. He also spearheaded the effort to return surplus personal property tax funds to taxpayers.

Upon questioning, we learned that the vacancies on the Supreme Court of Virginia may not be filled in the near future, as agreement between the two legislative bodies has been difficult to achieve.

*\*Nancy Reynolds is of counsel at Woods Rogers in downtown Roanoke.*



Macel Janoschka



Nancy Reynolds



Our legislative panel.



Sen. John Edwards



Sen. Chris Head



Delegate David Suetterlein



Delegate Joe McNamara

## SHINE AND DINE GRADUATION SPEECH

*(Continued from page 1)*

have one. So, that's how I ended up meeting Malora through the homeless student program at Roanoke City. Personally, I didn't think of myself as homeless. I thought that I was "in between places." I felt embarrassed for anyone to know, especially at school... I didn't want people to judge my family, or me. When choosing where to go for college, I decided to move 600 miles away. I packed everything into a duffle bag, and got on a plane. I saved the little money I had for two trips a year to visit my family back here in Roanoke. Now, I'm not recommending this to anyone else, but this is what I had to do to find out who I really am without the baggage of the past. I had to leave to come back home. For some of us, that's a necessary part of growing up.

While away, I wondered sometimes why life is so unfair. I found some answers in service to others. Through my work with the Homeless Student Program here in Roanoke during summer breaks, and at Family Promise homeless shelter in Buffalo, New York I learned how many other people go through difficult experiences similar to what we have. I met so many people who had every right to say: "Life is unfair; this is too hard; I give up." Instead, I met people who chose to find hope, who chose to love their families, and who chose to look forward instead of backward. These folks who chose to believe in a better tomorrow – not only to believe, but to know that there will be brighter days. You just have to keep going.

The cost of living continues to rise, increasing the difficulty of providing financially for one's family. The experience of financial hardship is painful to talk about, of course, and I want you to know a couple things going forward – 1. you are not alone. 2. you have a future ahead of you, where you can create your own life and make your own choices. Graduating high school feels a lot like being given the keys to a car you don't know how to drive. There are all these possibilities, but you're not even sure how to get the thing started. I want you to know that, from experience, you're going to figure out how to drive.

This is an exciting time in your young lives – a new chapter is waiting to be written. Many of you have had to grow up quickly, but now you are going to truly be "adults." What being "an adult" means, I'm still trying to figure out myself.

What I do know is that you will begin to understand the power you do have over your life and your future. Graduating high school is a huge accomplishment. You know now you can do hard things. You know now that you are resilient, strong, and determined. Despite hardship, you persevered. The question is: what will you achieve next? Keep striving to find the best version of yourselves, as your lives are only just beginning. Optimism – to be hopeful – is a choice you can make. I have found that knowing darkness makes the bright spots so much greater. You have to look for the bright spots in the darkness. You have to find the hope. Every day that you wake up with breath in your lungs is a gift, another chance. To be honest with you, I used to laugh at people who talked like this. Right? But after years of learning how to be a person on my own—that's what your twenties are going to be all about—I have discovered an important secret. You can't wait for the right time. You can't wait another day to start pursuing your dreams. Don't wait for life to begin because life is happening right *now*.

Now, this is a graduation celebration, so I must touch on what it is like to go into the work force full time. Maybe some of you already know what it is like to have a job. It is worth all your effort to find what makes you passionate. Have you dreamt of being something since you were a little kid? Is there a subject in school you've always been great at? Find a pursuit that brings

*(Continued above)*

you joy. Sometimes the path you are on may bring you somewhere you did not expect; be adaptable.

Here's some advice from Steve Jobs. He said:

[T]he only way to be truly satisfied is to do what you believe is great work. And the only way to do great work is to love what you do. If you haven't found it yet, keep looking. Don't settle. As with all matters of the heart, you'll know when you find it.

I want to encourage you to listen to the voice inside your head that says "I can do it." Once you find your passion, lean into it, and inspire others. Believe in yourself. Persevere. Embark on new journeys without fear. Doubting yourself and fearing failure will only hold you back from all the greatness you could achieve. Confidence is learned, not a trait that most are fortunate to come by naturally. "Fake it till you make it," that's what most adults do.

Look around the room. You are surrounded by people who believe in your abilities, who love you, and who will support you. Now go out there and prove it yourself.

Thank you, and congratulations class of '22.

## VIEWS FROM THE BENCH: JUDGE HEATHER P. FERGUSON

*(Continued from page 7)*

passionate about being a commonwealth attorney, that his passion was contagious." He emphasized having a strong relationship with local law enforcement. As a prosecutor, Judge Ferguson would respond to 2 a.m. messages on her pager for search warrants. "CA Hapgood had common sense too. He did not just prosecute every case [just] because." He "was never just out for blood."

After prosecuting in Franklin County, Judge Ferguson applied for a position in Roanoke City representing the local department of social services. In 2002, she became the attorney for the Department of Social Services in Roanoke City and even thought she was a part of the Roanoke City Attorney's Office, physically, her office was in the DSS building. She stayed at that job for over 18 years and "absolutely loved that work." She "represented the community and policy management team which is the funding source in each jurisdiction." "It was a great place to be." "The social workers . . . they [were] just unmatched in their dedication to the families and children in the Roanoke Valley." Judge Ferguson loved the camaraderie and "constant interaction" with DSS workers in her office.

"All of the legal work that [she] has done in her career helped build the foundation that would make [her] a good juvenile judge." She was appointed to the bench back in February 2021 and "it has been awesome." "There are still days that it does not feel real." "There are still times when people say 'Judge' and [she] look[s] around." There are downsides, too, of course. "It is hard to have that line in the sand where that relationship [with friends who are lawyers] changes." "There is [also] a different kind of stress." She "has had cases as a judge that will sit with [her] for the rest of her career even though [she] has only been on the bench for a year." "Custody cases have been a difficult transition . . . because of all the emotions involved."

Judge Ferguson has seen a huge increase in the number of children in need of supervision and in need of services. There has been approximately a 25% increase in the number of children

*(Continued on page 15)*

### RONALD M. AYERS: 2022 FRANK W. "BO" ROGERS, JR. LIFETIME ACHIEVEMENT AWARD RECIPIENT

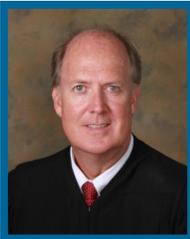
(Continued from page 3)

important to the people who matter is the quality of your work and character.'

I worked with Ron on a pretty big case in which our client ultimately prevailed. This was in the early days of Lawyers Weekly. I had noticed that there was a section in the Lawyers Weekly where you could describe a case and a good result you had achieved. I thought that was a great idea, wrote it up, and ran it by Ron. Ron read it over, remarked that it was a good summary of the case, and then very deliberately wadded up the piece of paper and threw it away. Again, I am sure he said it in a much more polished way than I will relate to you, but he said something to the effect of: 'I find it much more effective to let our results speak to the quality of our work as opposed to our mouths.'

Ron Ayers is the epitome of what we should all strive to be in the legal profession. He is excellent at whatever he does, his word is and always has been as good as gold, he is unflinchingly polite, and he is emblematic of what makes the 23<sup>rd</sup> circuit such a delightful place to practice law.

It is my honor to have nominated Ron for the Lifetime Achievement Award, and I thank the selectors for their good judgment in selecting him.



The Honorable David Carson.



### Scholarship 2022

**Margaret Dupree,  
William and Mary Law**  
Recipient of the Jane Glenn  
Scholarship & the James  
Kincanon Scholarship



### Grants 2022

**Local Office on Aging  
Rescue Mission of Roanoke  
Girl Scouts of Virginia Skyline**

### Virginia State Bar Awards June 2022



Macel Janoschka presenting award to Ron Ayers



Roy Creaey presenting the Local Bar Leader of the Year Award to Dan Frankl.



Hon. David Carson



Ron Ayers



Roy Creaey, outgoing CLSBA Chairman.



RBA receives two Awards of Merit.

## PRESIDENT'S CORNER

(Continued from page 2)

advance principles important to our profession, including access to justice, legal reform, education of the public about legal issues, encouraging the good works of attorneys across the state, and inspiring confidence in the legal profession as a whole. This is all good for society and for our profession.

And once you investigate the opportunities available through bar organizations, I think you will be surprised at the diverse offerings. There is everything from socializing to CLEs to interactions with local judges to leadership opportunities to statewide governance. You should easily be able to find something that is interesting, helpful to your practice, and beneficial to your development as an attorney and leader.

It is exceedingly difficult to meet clients while sitting behind your desk. It does involve networking. I will be the first to admit that the idea of small talk during a cocktail party or other event is not my idea of a good time. It's a much better time, however, when there are folks there that I know and enjoy talking with. And, by expanding your circle you have a greater chance of knowing more people at these types of events. I found my involvement with the RBA to assist greatly with this.

As my time as RBA President ends, I want to thank our amazing Board of Directors and our Executive Director, Diane Higgs, for their support and hard work over this past year as we navigated a return to some form of "normalcy" in our bar activities. We have a strong and vibrant bar in Roanoke, and I know we will continue to be an asset to our community and the local bar. I look forward to seeing how we grow as an Association over the next year with President Lori Bentley leading the way!

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

## REFUGEE CRISIS IN UKRAINE

(Continued from page 2)

Department of Homeland Security, this is blazing speed and uncharacteristic of the usual month-long (if not year-long) delays.

It is important to note that following *Uniting for Ukraine's* implementation, Ukrainian nationals who present at the US Southwest border land ports of entry without a valid visa or without pre-authorization to travel to the US through *Uniting for Ukraine* will likely be denied entry and be referred to reapply through the *Uniting for Ukraine* process.

Given the vast number of Ukrainians who have been displaced, many have entered and will be entering the United States. Consider donating to an organization committed to assisting with Ukrainians or donating to organizations that partner with refugees!

*Rachel Thompson is a partner at Poarch Thompson Law, an immigration and adoption law firm in Salem.*

## THE LAW OF WAR

(Continued from page 3)

The Hague Conventions of 1899 and 1907 took the baton from the Lieber Code and were multilateral treaties that addressed the conduct of land and naval warfare, including humane treatment of the wounded and prohibiting attacks on civilians, the use of poisons (violated during World War I), killing of surrendered combatants, looting, and collective punishment. The Hague Conventions were largely superseded by the Geneva Conventions and other treaties.

In the United States, the War Crimes Act, 18 U.S.C. § 2441, punishes war crimes committed by or against U.S. nationals, and defines a war crime as a "grave breach" of the Geneva Conventions or a violation of certain articles of the 1907 Hague Convention. No one has ever been prosecuted under the War Crimes Act,<sup>3</sup> likely because more well-traveled avenues of prosecution exist.

### Adjudication of War Crimes

The most likely venue to prosecute war crimes is the State in which the offense occurred. The evidence and witnesses are there, and a State has a unique and overriding interest in vindicating crimes against its citizens, and may charge offenses either under its law or international law.

The Geneva Conventions provide for universal jurisdiction and require a signatory State to prosecute violations, or turn the violator over to another State or an international tribunal. Thus, an offense committed within a State's territorial jurisdiction may be prosecuted as an offense under the State's law, or as a war crime under international law. Most States also exercise extraterritorial jurisdiction over their own citizens for offenses committed during war, such as the United States prosecuting military personnel or Department of Defense ("DoD") contractors under the Military Extraterritorial Jurisdiction Act ("MEJA") for offenses committed in a war zone. As an example, in Afghanistan, I assisted the arrest and rendering of a DoD contractor accused of sexually assaulting a coworker and, in an odd twist, served on the defense team for Navy SEALs accused in San Diego of abusing Afghan detainees resulting in death.<sup>4</sup>

International tribunals may also be established from time to time for the prosecution of war crimes, such as the Nuremberg and Tokyo tribunals following World War II, and the international tribunals established under U.N. authority for acts committed in the former Yugoslavia, Cambodia, Sierra Leone, and Rwanda. The tribunals have been praised for promoting reconciliation and democratic institutions following a conflict, but are subject to claims of "victor's justice," particularly if not coupled with robust procedural rights and transparency.

The primary international court for adjudicating war crimes, the International Criminal Court ("ICC"), was established in 2002 by a treaty known as the Rome Statute, ratified by 123 nations. Neither Russia nor Ukraine is a party to the treaty, though Ukraine has submitted to its jurisdiction. The United States, Russia, China and India all reject the I.C.C.'s jurisdiction. Although the U.S. helped negotiate the treaty, it is not a party and at times has sought to undermine its work, opposing investigations into its allies, including Israel, and fiercely contesting the court's jurisdiction over U.S. nationals. In 2020, in response to an ICC investigation of war crimes in Afghanistan, including allegations against U.S. forces, the U.S. denied an entry visa to the ICC prosecutor and imposed sanctions on him and another official. Afghan officials asserted in the ICC that Afghanistan could handle prosecutions, and ultimately the investigation was terminated.

(Continued on page 13)

### SARAH C. JESSEE: 2022 YOUNG LAWYER OF THE YEAR

(Continued from page 4)

serving as Secretary of the board for the 2022-23 term. Sarah is active in her local church where, for many years, she taught Sunday School and is a member of the Junior League where she supports and participates in its many service projects that support the Roanoke community.

In addition to being a leader locally, Sarah has assumed leadership roles with several statewide bar associations. Sarah is a member of the Virginia Bar Association Young Lawyers Division and served as a member of its wellness and social committees for Southwest Virginia. She has helped coordinate and participated in local fundraising activities for the VBA's Legal Food Frenzy, which supports our local food bank.

Incredibly, at the same time that Sarah led the Roanoke Bar Association's Young Lawyers Committee, Sarah was also serving as Chairman of the VADA Young Lawyers Section, and consequently, she also served on the VADA Board of Directors. In that capacity, she has helped to coordinate, as well as actively participated in, numerous VADA's programs.

Sarah displays professionalism, dedication to her clients and colleagues, and compassion in all that she does - traits that are evidenced by her selection in 2019 as "Boss of the Year" by the Roanoke Valley Legal Secretaries Association ("RVLSA"). "Boss of the Year" is an honor typically bestowed by RVLSA on a more senior attorney, but Sarah was deemed to be deserving of this honor, and rightfully so, because of the caliber of person that she is and the manner in which she acts so as to engender honor and respect for lawyers.

I reached out to Chief Judge of the Virginia Court of Appeals Marla Graff Decker for whom Sarah interned and she shared the following about Sarah:

"I am thrilled to send my congratulations to Sarah Jessee for being selected as the Roanoke Bar Association's "Young Lawyer of the Year." The Bar's selection of Sarah for this honor is fitting. During her tenure as an intern in my chambers in the Summer of 2015 she excelled. Sarah fit in quickly and was dedicated to tackling complex legal issues. She was a real "go getter," quick to grasp the issues she was researching, and efficient at handling her assignments. It is wonderful to see that Sarah has been recognized as a rising star in the legal community. I look forward to seeing where her career continues to take her, and I wish her all the best. Congratulations to Sarah."

Sarah's exemplary dedication to the Roanoke community and to the legal community is exactly what this award was intended to recognize. We are fortunate to have such a bright, young attorney in the Roanoke Bar Association.

It is my pleasure to present the Young Lawyer of the Year Award for 2022 to Sarah Jessee.

Lori Thompson, is with Spilman Thomas and Battle, PLLC.



### MY SUPERLATIVE CASE

(Continued from page 6)

deepened the trust between client and counsel. As her concerns faded, she focused more on meeting the challenges of a trial and less on what could happen if things did not go well. In the end, she trusted her attorneys to help her present her version of events at trial and we trusted her to rise to the occasion before the jury.

We tried the case, the physician made a tremendous witness for her defense, and a jury found in her favor. She was relieved that these allegations would not impact her professionally. However, the most striking part of the verdict was how much weight this lifted off her personally. She had invested so much of her time to prepare, and she was proud of her efforts. Her focus on improving and learning throughout this litigation reminded me of how important these cases are to the people involved in them.

This experience heightened my awareness of the great deal of trust our clients place in us as their lawyers. Building that trust, and then living up to it, is why practicing law can be so rewarding.

\*Matt Kelley is a partner at Frith, Anderson & Peake in downtown Roanoke.



Sarah Jessee accepting her award from Macel Janoschka and Lori Thompson.



## THOMAS H. MILLER: 2022 DISTINGUISHED SERVICE AWARD RECIPIENT

(Continued from page 6)

have enjoyed. For Tom's impact and influence on this Bar Association, the Roanoke Community, and the lives and practices of many of you run much broader and deeper. His commitment to all aspects of the bar, and practice, and the community and family is boundless. As his wife Robin reminded me: "Tom does not know how to say no" and "when he takes on a responsibility, he is "all in."

I know many of you have seen this first hand. At his core, Tom is an excellent attorney who cares deeply about his cases and his clients. He has built a successful practice in worker's compensation and civil litigation at Gentry Locke and for the last 17 years at Frankl, Miller, Webb & Moyers.

He has also poured his time and talents into this Roanoke Bar Association, having served on the board and in officer positions up to being president from 2006 to 2013. He followed that by being Chair of the Roanoke Law Foundation, and being inducted as one of its Fellows in 2014. On top of that, Tom has poured hundreds of hours into important RBA programs, such as Santa in the Square/Station, Barrister Book Buddies, Rule of Law, and having led the charge on the RBA's award-winning program - You and the Law. As noted, Tom has rarely, if ever, said no when this bar association needed him to jump in.

As if all of that didn't take enough of his time, Tom has been a relentless volunteer in the Roanoke community. Just show up at the Kiwanis pancake day and you are sure to see Tom there flipping pancakes, cooking sausages, or just greeting folks. He was president of that organization in 2000 and continues to actively engage in the group's worthy missions. He has also committed countless effort to Meals on Wheels, the West End Center, and to South Roanoke Methodist Church where he has, for many years, displayed his leadership and outstanding singing talents. Maybe we can get him to sing for us today.

Outside of his work in the community and the legal profession, Tom has been married for many years to his wife Robin and is the proud father of two sons, Hunter and Bryce. If you think back, you know Tom spent a lot of time with them around the soccer fields all around the state, coaching and supporting them all the way to successful college soccer careers.



I can bear witness that along the way, Tom has found plenty of time to get to know people for who they are, to form lasting friendships, to share a joke, and to travel to some fun destinations, some even to struggle through watching his beloved VA

Cavaliers attempt to win a football game. You can ask him later about the van-trip all the way to Ann Arbor just to have VA lose on the last play of the game. Great memories.

So on behalf of the Roanoke Bar Association, it is my pleasure to present this much-deserved Distinguished Service Award to my good friend, Tom Miller. Please join me in recognizing Tom for all he has done and continues to do.

Brett Marston is a partner at Gentry Locke



## THE LAW OF WAR

(Continued from page 11)

The Biden administration then dropped the sanctions.

The ICC has jurisdiction to investigate four categories of crimes that fall within the ambit of international humanitarian law: (1) *war crimes*; (2) *crimes against humanity*; (3) *genocide*; and (4) *the crime of aggression*. *War crimes* include offenses against international law committed in war time, most of them patterned after the Geneva Convention, including torture, mutilation, corporal punishment, hostage taking, acts of terrorism, rape and forced prostitution, looting, and execution without trial. *Crimes against humanity* are acts committed as part of a widespread or systematic attack directed against any civilian population, such as murder, deportation, torture, and rape. They need not be committed in time of war. *Genocide* includes acts committed with the intent to destroy a national, ethnic or religious group. *Aggression* prohibits the leaders of any country from "the planning, preparation, initiation or execution" of an attack on another country in violation of the United Nations Charter,<sup>5</sup> in essence making it illegal to invade another country. For reasons too nuanced for this article, it is unlikely there will be any prosecutions for aggression any time soon.

Unlike many other tribunals, the ICC focuses on holding individuals accountable for these crimes, as opposed to a nation-state. Individuals found guilty of any of these crimes face penalties including imprisonment, fines, and forfeiture. The ICC's jurisdiction generally extends only to those countries that have become parties to the Rome Statute establishing the ICC. A non-party State may, however, accept ICC jurisdiction, and Ukraine did so in 2014.

Based in the Hague, the ICC is a court of last resort. It acts only when national governments cannot or will not investigate and prosecute offenses. Its jurisdiction is intentionally narrow. It is also a slow, cumbersome and expensive form of justice. Despite an annual budget of approximately \$166 million and 900 staff, it has successfully punished only four individuals of the dozens it has prosecuted since its inception.<sup>6</sup>

### War Crimes Prosecutions in Ukraine? Practical Limitations

In addition to the cumbersome procedural limitations of an ICC prosecution, collection and preservation of evidence is difficult in a war zone, and necessarily takes away from the military effort. In Afghanistan, I was tasked to determine if Afghan members of ISIS captured on the battlefield in Syria could be successfully prosecuted under Afghan law in Afghan courts, in an effort to reduce the population of prisoners held by our Kurdish proxies. After consulting with Afghan judges and prosecutors, the surprising answer was yes, despite thorny authentication, chain of custody, and other evidential obstacles that would have likely been insurmountable in U.S. courts.

To minimize these obstacles, the Ukrainian prosecutor's office, with international assistance, is endeavoring to collect evidence for use in later prosecutions. On May 17 the ICC announced "the largest ever single deployment" to Ukraine since its inception in 2003.<sup>7</sup> The 42 investigators, forensic experts, and support staff will support the ICC investigation and assist in ongoing Ukrainian investigations.

If the evidence is effectively collected and preserved, a war crimes prosecution is still no slam dunk. If a hospital is shelled, was it mistaken for a military target? Had it treated combatants? Did it store weapons in the basement? If an apartment complex is bombed, were targeting coordinates scrambled? Were spotters on the roof? Were military defenses in the area? Horrific killings of civilians that are not disproportionate to the military objective are not war crimes. Such defenses are very difficult to disprove. War

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## SPOTLIGHT ON SERVICE

BY PATRICK J. KENNEY, 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 the past several years I have volunteered on the Board of the Kirk Family YMCA. Serving on the Board has allowed me to stay connected with a wide range of citizens within our community. I discuss what is going well within our community, and what aspects of our Valley need improvement. I believe this allows me to serve my diverse clients more effectively.

*Patrick Kenney is a solo attorney.*



### RBA 97th Annual Meeting, June 2022



**Macel Janoschka presents RBA grant to Shannon Honaker, RVPA president.**



**Lori Bentley accepting the gavel.**



**Macel Janoschka accepting the past president plaque.**

## THE LAW OF WAR

*(Continued from page 13)*

is a bloody business, and civilian casualties are expected. In many cases, proving that the killing of civilians constitutes a war crime requires showing the attacker's intent to harm civilians or strike forbidden targets such as hospitals and schools. The line between civilian targets and military becomes blurred when civilians take up arms, man checkpoints, make Molotov cocktails, and the like.

An even more difficult task is to prosecute individuals, assuming available evidence establishes an offense. If Russia refuses to cooperate and Russian defendants do not travel abroad, there is little a Ukrainian or international court can do. The difficulties will only escalate if authorities try to go "up the chain" against higher officials. The evidential links will undoubtedly become more tenuous the further removed a defendant is from the actual offense. Holding higher-level officials accountable typically requires intercepting communications up the chain of command.

As of this writing, one Russian sergeant held by the Ukrainians has entered a guilty plea in a Ukrainian court to killing a 62-year-old civilian.<sup>8</sup> He was sentenced to life imprisonment. Two other Russian soldiers are charged with shelling civilian targets in the Kharkiv region. Trying combatants during the course of a war is unusual. It is also problematic, and runs the risk of a tit-for-tat escalating spiral as each side charges its prisoners with offenses that could keep the prisoners incarcerated in a foreign land long after the conflict is over, or render them pawns in a prisoner exchange game. The current prosecutions are against defendants in Ukrainian custody, an unlikely event for higher-ranking officers or civilian officials.

### Summary

The conduct of Russian forces in Ukraine likely makes out offenses against international law. Collecting evidence to sustain criminal prosecutions will be a challenging endeavor, but one already underway. Bringing offenders to justice, particularly high-level officials, is unlikely unless there is regime change, and there is little chance we will see Vladimir Putin in the dock anytime soon.

*Joe Mott worked in private practice and at the Franklin County Commonwealth Attorney's Office, and retired after 32 years at the U.S. Attorney's Office. He taught prosecutorial development and trial advocacy courses in Pakistan, Bangladesh, Indonesia, Bosnia, Iraq, and Afghanistan. From 2007-2009, he was the Rule of Law Team Leader on a Provincial Reconstruction Team in Tikrit, Iraq. He was the Justice Attaché at the U.S. Embassy in Kabul, Afghanistan from November 2018 to November 2020.*

<sup>1</sup>Department of Defense Law of War Manual, §2.1.2.3 (June 2015, Updated December 2016)

<sup>2</sup>Deuteronomy, 20:10-12.

<sup>3</sup>Jennifer Elsea, Cong. Research Serv., *War Crimes: A Primer 2* (2022).

<sup>4</sup>See Kulish, N., Drew, C., and Rosenberg, N., *Navy SEALs, a Beating Death, and Claims of a Coverup*, N.Y. Times, Dec. 17, 2015, <https://www.nytimes.com/2015/12/17/world/asia/navy-seal-team-2-afghanistan-beating-death.html>.

<sup>5</sup>Rome Statute of the International Criminal Court art. 8 bis, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002), rev. 2010.

<sup>6</sup>ICC, Convicted Defendants, [https://www.icc-cpi.int/cases?%5B0%5D=accused\\_states\\_cases%3A358](https://www.icc-cpi.int/cases?%5B0%5D=accused_states_cases%3A358) (last visited May 29, 2022).

<sup>7</sup>Claire Parker, *ICC announces "largest ever" field deployment to probe war crimes in Ukraine*, The Washington Post, May 17, 2022, <https://www.washingtonpost.com/world/2022/05/17/russia-ukraine-war-news-live-updates/#link-DCEN5Z3NQBAJVE3HV2HP4WHE5A>.

<sup>8</sup>Associated Press, *Russian soldier pleads guilty in war crimes trial*, The Washington Post, May 18, 2022. [https://www.washingtonpost.com/world/russian-soldier-pleads-guilty-at-ukraine-war-crimes-trial/2022/05/18/b4cf9ebe-d6a9-11ec-be17-286164974c54\\_story.html](https://www.washingtonpost.com/world/russian-soldier-pleads-guilty-at-ukraine-war-crimes-trial/2022/05/18/b4cf9ebe-d6a9-11ec-be17-286164974c54_story.html)

# BENCH BAR CONFERENCE 2022

BY JON PUVAK, ESQ.



Each year, the Roanoke Bar Association carries on the tradition of joining with the judiciary to discuss current developments. The 2022 event was held on Friday, March 25<sup>th</sup> at the Roanoke Higher Education Center. After lunch, the attendees participated in a CLE program called “Ethical Duties Lawyers Owe to the Court” and “New and Hot Topics in Legal Ethics”, presented by James M. McCauley, Ethics Counsel for the Virginia

State Bar. This year’s Bench Bar was well attended by the judiciary and each Roanoke court system was represented. A Judge from each court presented a “State of the Judiciary” address.

Chief Judge Michael Urbanski and Magistrate Judge Robert Ballou represented the U.S. District Court. Judge Urbanski discussed both the return to in-person proceedings and some of the continuing use of virtual proceedings. Chief Judge Paul Black presented for the U.S. Bankruptcy Court and highlighted some recent rule changes.

Chief Judge Christopher Clemens delivered the address for the 23rd Judicial Circuit. Judge Clemens was joined by Judge David Carson. In his inaugural address, Judge Clemens applauded the efforts of Judge Carson and touched on several points about the operations of the court.

Chief Judge Jacqueline Talevi delivered the address for the General District Court. Judge Francis Burkart III, and Judge Thomas W. Roe Jr., were also present for the General District Court. Judge Talevi spoke about the increased workload and movement of the judges between courthouses to handle the workload.

For the Juvenile & Domestic Relations Court, Judge Heather Ferguson presented in place of Chief Judge Hilary Griffith who could not be present, and she was joined by Judge Leisa Ciaffone and Judge Frank Rogers III. A question and answer session followed the Judges’ addresses.

In keeping with the tradition, this event provided an excellent opportunity for attorney and judicial members of the RBA to spend time together. We look forward to the Bench Bar Conference next year!

*Jon Puvak is a partner at Gentry Locke.*

**Virtual Speaker,  
James McCauley.**



**Judicial Panel**



## VIEWS FROM THE BENCH: JUDGE HEATHER P. FERGUSON

*(Continued from page 9)*

that DSS has taken in foster care. Also, the mental health needs of the youth in the Roanoke Valley are really under served. “There is a lot of work being done to identify gaps.” Significant wait lists for services have “been a challenge in terms of trying to figure out how to serve these families.”

Judge Ferguson lauded Judge Rogers for the J&DR court’s handling of the pandemic. She could “not give him enough praise.” “Foster care for example is driven by federal timelines.” Yet, our court “did not miss a single deadline during COVID because [Judge Rogers] made sure every case was heard when it needed to be heard.” Compared to other courts in the Commonwealth, “that was a rarity.” The court has also been flexible in allowing parties to appear virtually.

Judge Ferguson was kind enough to share some of her wisdom for new attorneys in our area. She emphasized the importance of being prepared. She “cannot say that enough.” “Knowing how to properly submit exhibits, knowing how to object and . . . the basis for an objection.” She recommends that new lawyers observe more experienced attorneys in court. “Go see how others do it because you are going to learn good and bad.” She also emphasized the importance of civility “even when you are advocating on behalf of your client.”

*Chris Dadak is a principal at Guynn, Waddell, Carroll & Lockaby, P.C.*



**Judge Swanson, Judge Talevi, Judge Clemens and Judge Black.**



**Judge Friedman, Judge Ciaffone and Judge Ferguson**



# ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS																																		
<p>The Roanoke Bar Association welcomes the following new members:</p> <p><b>Active Members</b></p> <p>Effective June 14, 2022</p> <p>None</p>	<p>Roanoke Bar Association Meetings 2021 - 2022</p> <p>September 14, 2021</p> <p>October 12, 2021</p> <p>November 9, 2021</p> <p>December 14, 2021</p> <p>January 11, 2022</p> <p>February 8, 2022</p> <p>March 8, 2022</p> <p>April 12, 2022</p> <p>May 2, 2022 (Law Day)</p> <p>June 14, 2022</p> <p>Go to <a href="http://www.roanokebar.com">www.roanokebar.com</a> for more information on all upcoming events.</p>	<table> <tbody> <tr> <td>Macel H. Janoschka President</td> <td>725-3372</td> </tr> <tr> <td>Lori Jones Bentley President-Elect</td> <td>767-2041</td> </tr> <tr> <td>Christen C. Church Secretary-Treasurer</td> <td>983-9390</td> </tr> <tr> <td>Daniel P. Frankl Past President</td> <td>527-3515</td> </tr> <tr> <td>Diane Higgs Executive Director</td> <td>342-4905</td> </tr> <tr> <th colspan="2" data-bbox="1065 766 1546 808">BOARD OF DIRECTORS</th> </tr> <tr> <td>Phillip V. Anderson</td> <td>725-3361</td> </tr> <tr> <td>Allegra M.C. Black</td> <td>857-7111</td> </tr> <tr> <td>Christopher S. Dadak</td> <td>387-2320</td> </tr> <tr> <td>Martha W. Elder</td> <td>983-7535</td> </tr> <tr> <td>T. Daniel "Bo" Frith, IV</td> <td>985-0098</td> </tr> <tr> <td>Amy H. Geddes</td> <td>989-0000</td> </tr> <tr> <td>Sarah C. Jessee</td> <td>283-0134</td> </tr> <tr> <td>D. Adam McKelvey</td> <td>342-2000</td> </tr> <tr> <td>Jonathan D. Puvak</td> <td>983.9399</td> </tr> <tr> <td>Nancy F. Reynolds</td> <td>983-7605</td> </tr> <tr> <td>Seth C. Weston</td> <td>342-5608</td> </tr> </tbody> </table>	Macel H. Janoschka President	725-3372	Lori Jones Bentley President-Elect	767-2041	Christen C. Church Secretary-Treasurer	983-9390	Daniel P. Frankl Past President	527-3515	Diane Higgs Executive Director	342-4905	BOARD OF DIRECTORS		Phillip V. Anderson	725-3361	Allegra M.C. Black	857-7111	Christopher S. Dadak	387-2320	Martha W. Elder	983-7535	T. Daniel "Bo" Frith, IV	985-0098	Amy H. Geddes	989-0000	Sarah C. Jessee	283-0134	D. Adam McKelvey	342-2000	Jonathan D. Puvak	983.9399	Nancy F. Reynolds	983-7605	Seth C. Weston	342-5608
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**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)