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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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## ROANOKE CITY J&DR DISTRICT COURT CHANGES TO BETTER SERVE LITIGANTS AND LAWYERS

BY JUDGE HEATHER P. FERGUSON AND JUDGE FRANK W. ROGERS, III.

*"To improve is to change..." - Winston Churchill*

Lawyers who regularly appear in Roanoke City J&DR District Court have lived through the dust and inconvenience of physical changes to the first floor of the Oliver Hill Justice Center in 2022. Everyone was very understanding, patient and cooperative as the project was delayed by pandemic and material supply chain issues. Obvious improvements include the following:



### Brightened Waiting Area

The area was opened up to outside light. Wall colors were brightened with fresh paint. New floor covering replaced aged, unsightly carpeting.

### Roanoke Students' Artwork

Working through a grant from Roanoke City's Percent for Art Fund, Heather Marshall ran a summer-long project for area students to create works of art for the renovated waiting area. Students were asked to contribute works which would send messages of hope and strength or offer opportunities for welcome distraction. The resulting pieces are hung around the waiting area and have greatly enhanced the waiting experience for litigants.



### Children's Room

A children's room has been added adjacent to the waiting area. A whimsical mural adorns one end of the room. This is a fun place for children waiting to testify in cases or waiting on parents who have business with the court. The Court Appointed Special Advocates (CASA) program of Children's Trust very generously donated the furnishings, games and supplies in the room.

### Resources Center

This area on the waiting room wall opposite the children's room was created with a grant administered by the Supreme Court of Virginia. State and local service providers have contributed materials which might be of interest to J&DR Court litigants.



### DCSE Touch Pay Kiosk

The Division of Child Support Enforcement has agreed to install a kiosk next to the Resources Center. Citizens will be able to make payment of their child support obligations at the courthouse, rather than having to find their way out to DCSE's local office off Peters Creek Road.

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## PRESIDENT'S CORNER

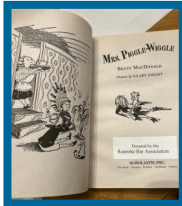
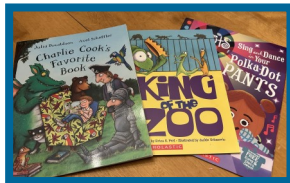
BY LORI J. BENTLEY, ESQ.



As we move headlong into spring, I am happy to report that the RBA has been busy at work supporting both its members and the community. We have just completed another highly successful Bench Bar Conference. The attendees received 1 hour of CLE credit in ethics thanks to the presentation of retired VSB counsel, Prescott Prince, on how to avoid a bar complaint. In addition, the judges of the 23<sup>rd</sup> Circuit provided our members with timely and entertaining updates on their respective courts.

Our CLE committee, under the leadership of Mollie Elder, has presented and planned some wonderful courses. In February, we had a wonderful CLE program presented by Brandon Osterbind through the VSB on the use of technology in the practice of law. In March, we offered another free CLE with 2 hours of ethics credit thanks to the generous sponsorship of the McCammon Group, titled "Ethics for Lawyers in Negotiation and Mediation." In May, the CLE committee has planned its final program of the year titled "Legally Aging," that is designed for everyone with loved ones, or themselves, who are aging. The program will be in-person or virtual and looks to be educational and informative. We are also looking forward to our annual Law Day celebration on May 1, 2023 when our local legislators will update us on the most recent General Assembly session. Our thanks go out to Dinny Skaff for his work planning this year's Law Day presentation.

On the service side, our members have been accepting referrals from Legal Aid to assist members of the community on a pro bono basis thanks to the hard work of RBA board member, Allegra Black. I am also pleased to report that the Rule of Law presentations to local 8<sup>th</sup> graders appear to be back on the calendar for May for the first time since the pandemic. We will be recruiting volunteers shortly to fill these classrooms with volunteers. The Public Service Committee has recently completed a project donating approximately 500 books to the Roanoke City Schools and is exploring the possibility of resurrecting the Barrister Book Buddies program. The Operation Family Time project continues and is moving into high gear to get the Roanoke City DSS visitation rooms upgraded and redecorated. Finally, planning is in the works for the second annual Shine and Dine graduation party for Roanoke City homeless students who are graduating from high school this year.



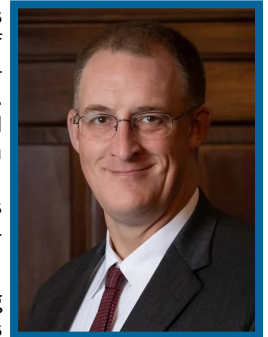
Finally, we will honor our Young Lawyer of the Year and the most recent recipient of the Frank W. "Bo" Rogers Lifetime Achievement Award at the annual meeting in June. Please send your nominations to Gene Elliott, chair of the awards committee, before March 31. As always, the RBA Board appreciates each member's volunteer participation, financial donations, and suggestions for the future. Please do not hesitate to contact me or any of the RBA board members with your thoughts or ideas. We look forward to seeing you at one of the many upcoming RBA events!

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

## HOLDOVER DISCRIMINATION IN VIRGINIA TORT LAW

BY ADAM MCKELVEY, ESQ.

Virginia law, like federal law, has recognized and addressed the need of its disabled and elderly citizens for public accommodations in some respects. We must work to expand those legal protections to address the unfairness in litigation of the reasonable person standard applied to disabled individuals with no accommodation for their disability.



The first federal law addressing disability rights at a national level was not passed until 1973. The recognition of the disabled as a protected class gradually developed as additional state and federal laws were enacted, and society moved past "ugly laws" which punished people for appearing in public when diseased. "Any person who is diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting object, or an improper person to be allowed in or on the streets, highways, thoroughfares, or public places in the city, shall not therein or thereon expose himself to public view, under the penalty of a fine of \$1 for each offense (Chicago City Code 1881)." Virginia's notorious infatuation with Social Darwinism and eugenics in the 1920s manifested itself in the sterilization law enacted in 1927 that authorized the sterilization of persons "afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy...." *Buck v. Bell*, 143 Va. 310, 312, 130 S.E. 516, 516 (1925).

Federal law has, for decades, treated the disabled and the elderly as protected classes. Codified in the Americans with Disabilities Act ("ADA"), Congressional findings on discrimination are spelled out in 42 USC §12101, which states:

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

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## IN MEMORY OF G. MARSHALL MUNDY

BY THE HONORABLE FRANK W. ROGERS, III



*At the March 14, 2023, RBA meeting, the Honorable Frank W. Rogers, III shared the following Resolution in Honor and Memory of the Life and Times of Gardner Marshall Mundy:*

Gardner Marshall Mundy was born on July 19, 1934 to Gardner and Betty Mundy. At an early age he distinguished himself as a good student, an excellent athlete and one having something of a mischievous streak. It seems that young Marshall was utterly unable to resist the temptation of the mean streets of Salem at all hours of the day and night. It was said that one evening he released a jar full of fireflies during a showing at the Grandin Theater—an allegation he would not deny.

As Marshall finished up his secondary education at Andrew Lewis High School, he talked with his father about college options. Gardner told Marshall that he could apply anywhere he wanted, but that he would be going to VMI— as Gardner had before him. At the Institute, Marshall developed life-long friendships. He played varsity basketball, excelled academically, and at every opportunity ran the block with his brother rats. Marshall credited his VMI experience, which he could recall years later in minute detail, with molding him into the man he would become, instilling in his character senses of honor, integrity and leadership. He would later show his appreciation by serving on the boards of the Keydet Club and the Alumni Association, an eight-year term on the Board of Visitors and by establishing the Mundy Scholarship for athletes in need of financial assistance.

Marshall served in the United States Army thanks to the commission he earned at VMI. After his discharge, he attended the University of Virginia School of Law where he was Order of the Coif and Manager of the Law Review. He returned to Roanoke and joined then Woods, Rogers, Muse, Walker and Thornton. There he made a new set of friends, including my father, but it seemed that he didn't precisely fit in. Marshall established his own practice in 1971, and he would be a mentor to and partners with a number of attorneys, myself included. For thirty years I had the privilege of learning aspects of the law and law practice from Marshall. We never exchanged a cross word, which was a tribute to his deserved reputation as being a genuine southern gentleman.

And I submit that I learned from among the very best. Marshall was recognized as all everything as a lawyer. A member of the American Board of Trial Advocates, a Fellow in the American College of Trial Lawyers and the Virginia Law Foundation, and annually listed in the *Best Lawyers in America* and *Virginia Lawyers Weekly's* Legal Elite. He knew the law, and he helped create a piece of it. I expect that many of the Association's litigators have had occasion to read into evidence at trial a part of the adverse party's discovery deposition. Well, you can thank Marshall for that privilege. The case is *Horne v. Milgrim*, 226 Va. 133, 306 S.E. 2d 893 (1983).

Marshall was a great technical lawyer, but what really set him apart were his people skills. Clients loved him, juries loved him, even opposing lawyers loved him. And he loved them. When you spoke with Marshall, you quickly found that he

## ROANOKE LAW LIBRARY: NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



Spring seems to be coming early this year, and while I am enjoying the weather my allergies are really driving me crazy; and it is only February as I type this. Speaking of crazy, I am astonished that next year I will have been at the Roanoke Law Library for 20 years. I have over 25 years of experience working as a legal reference librarian. Before I returned to the Roanoke valley where I grew up, I worked in the libraries of large law firms in Atlanta and Washington, DC. While at these large firms I performed complex client driven legal and corporate research. At my first law library job, the week of my library orientation revolved around watching the classic legal research series "Bob Berring's Commando Legal Research." As a history major in college, I remember being amazed at how all the legal research materials worked together, and while it wasn't always that neat and simple it was the birth of a neat and wonderful career for me. I remember a time when before logging in to a database it was common practice to spend time crafting the most efficient boolean search string, and if that didn't immediately bring back results to log off and go back to the drawing board. Now with our unlimited access to Westlaw and Lexis I just log on and search to my heart's content. The internet was in its infancy when I started, and perhaps it still is. While the tools today are so much more powerful and unlimited access makes things seem easier, there are many ways in which finding resources is even more complex because there is so much information out there that it can be overwhelming. Anyway, this trip down memory lane is just my way of saying that I would love to put my many years of experience performing legal research to work to assist you. So, stop by, shoot me an email, or give me a call to find out how I can help.

### Law Library Reference Services

Virtually or in person, I would love to help you by providing materials that will answer your legal questions, make suggestions for resources that might answer those questions, or help you track down hard to find legal resources. The Roanoke Law Library provides free, unlimited access to Lexis and Westlaw here in our computer lab. I would love to assist you with Westlaw and/or Lexis at your convenience whenever the Law Library is open. After over a year of handling only virtual reference requests in 2020 and 2021 I am extremely prepared to assist you with legal research via email ([joseph.klein@roanokeva.gov](mailto:joseph.klein@roanokeva.gov)) and phone (540-853-2268). If you can't make it into the library, it is easy for me to provide you with materials for legal practice in all 50 states and federally, using our legal research databases. In many cases I am also able to track down sections of legal treatises that are not in our collection and not available with our Lexis and/or Westlaw subscription. For non-legal materials the Roanoke Public Library provides inter-library loan services which make it possible for us to borrow materials from thousands of libraries throughout the United States enabling us to track down just about anything.

### Gratitude

Long before unlimited access to Westlaw and Lexis, the Roanoke Law Library was actually the Roanoke Bar Association's library. Almost 100 years ago, in 1925 the Roanoke Bar Association started the Law Library and almost 50 years ago, in 1976 the Roanoke Public Libraries started managing the Law Library



## VIRGINIA STATE BAR UPDATE

BY KEVIN W. HOLT, ESQ. AND DANIEL P. FRANKL, ESQ.



We are pleased to be your representatives from the 23<sup>rd</sup> Judicial Circuit on Bar Council, the governing body of the Virginia State Bar.



At its meeting on October 21, 2022 in Charlottesville, Council took the following significant actions. Council unanimously approved proposed Amendments to Part 6, Section IV, Paragraph 3 of the Rules of Court defining judicial class membership. The proposed Amendments expand judicial membership to judges outside of Virginia with a connection to the Commonwealth, to Federal judges, who were Virginia-licensed lawyers prior to taking the bench, and to Federal judges, regardless of Virginia licensure, if they regularly interpret Virginia law. The proposed changes were presented to the Supreme Court of Virginia for approval.

Council unanimously approved proposed LEO 1899, "Use of Conversion Clauses in Flat Fee Agreements." The proposed Opinion provides guidance on how to determine what portion of a flat fee is earned when the representation is prematurely terminated by the client without cause. The proposed Opinion was presented to the Supreme Court of Virginia for approval.

Finally, Council unanimously approved a Resolution honoring the retirement of Jim McCauley. Jim served the Virginia State Bar since 1989 first as Assistant Bar Counsel and later as Ethics Counsel.

At its meeting on February 25, 2023 in Richmond, Council took the following significant actions. It approved the VSB Budget for Fiscal Year 2024. Total FY 2024 projected revenue is \$13.8 million, \$10 million of which is projected to come from dues. Total projected expenses are \$16.8 million. The projected cash balance as of June 30, 2024 is approximately \$5 million.

Council approved the Committee on Lawyer Discipline's proposed changes clarifying the meaning of "shall" in the Rules of Court, Part 6, Section IV, Paragraph 13. The change arose from the 2018 Memorandum to the Boyd-Graves Conference from the Committee on Using "Shall" in Legislative Drafting. The Committee concluded that "shall" is susceptible to significant ambiguity and the better practice would be...to use the more precise term intended—such as must, may, will, should, is, or is entitled to."

Council approved the Nominating Committee's recommendations for volunteer entity vacancies. Vacancies on the following entities for 2023-2024 were filled: American Bar Association House of Delegates, Clients' Protection Fund Board (Lori J. Bentley to join the board), Council Members at Large, Disciplinary Board (Mary Beth Nash to join the board) and Mandatory Continuing Legal Education Board.

Council approved proposed LEO 1893, "Representing a Child with a Parent as 'Next Friend.'" The Opinion addresses conflicts of interest between a parent, as "next friend," and his or her child. To the extent a conflict arises, the Opinion urges a lawyer to seek appointment of a guardian ad litem to protect the child's interests, seek Court approval of a settlement, or petition

## MINDFULNESS IS AS EFFECTIVE AS MEDICATION IN TREATING SOME ANXIETY DISORDERS

BY RENEE GRUTZIK\*

*This article is reprinted by permission from UVAToday and the original can be found at <https://news.virginia.edu/content/mindfulness-effective-medication-treating-some-anxiety-disorders> published on February 26, 2023.*



New research published in the journal JAMA Psychiatry shows that daily mindfulness practices can be as effective in treating mild anxiety as taking anti-anxiety medications.

The study recruited subjects at three different hospitals in Massachusetts, New York, and Washington, D.C. The participants were divided into two groups. Participants in one group received daily doses of escitalopram, commonly known as Lexapro, while the second group participated in an eight-week mindfulness intervention.

Study subjects in the mindfulness intervention pool reported feeling a decrease in their anxiety symptoms that was statistically similar to the group that received the anti-anxiety medication.

Sam Green, an associate professor of nursing, turned to mindfulness as an alternative to anti-anxiety medication, and has never looked back. Now, Green teaches UVA students the importance of implementing mindfulness into their daily lives.

The results of the experiment come as no surprise to University of Virginia nursing professor Sam Green.

In 1994, before becoming an associate professor of nursing at UVA, Green was a researcher in the University's cell biology department. Green turned to his doctor to relieve the stress he felt in his taxing work environment.

"The first thing [my doctor] said to me was, 'Do you want me to write you a prescription?'" he recalled. Puzzled by his provider's immediate suggestion of medication, Green turned to mindfulness for stress reduction, where he found tremendous relief.

In 2005, Green started teaching mindfulness-based stress reduction classes at the University's Mindfulness Center, a branch of the School of Medicine. He followed that up with a one-credit mindfulness course a few years later, which is now offered in the School of Nursing.

The response to these classes has been extraordinary, with some students describing the course as "life-changing" and a class that "should be required for all students."

For the study, more than 200 participants assessed their anxiety on a seven-point scale. The higher the number, the higher the anxiety. In both groups – the medicated group and the mindful group – scores dropped from an average of moderate anxiety to mild anxiety. That showed, according to researchers, mindfulness was just as good as medicine in many cases.

Leslie Hubbard also believes that.

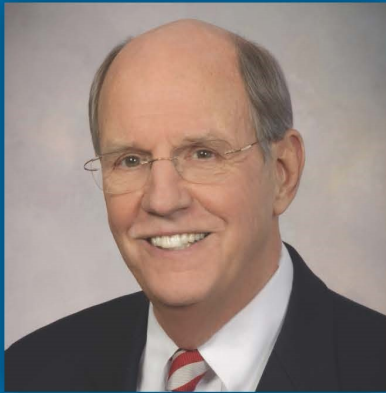
Hubbard is the program director of student engagement at UVA's Contemplative Science Center, which hosts a variety of programs designed to better students' lives, including yoga classes,

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# Leaders in Dispute Resolution

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*Retired Judge, Franklin  
Circuit Court*



Hon. Joel C. Cunningham  
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*Retired Judge, Bristol  
Circuit Court*



Hon. Elizabeth A. McClanahan  
*Retired Justice, Supreme Court  
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## ROANOKE CITY J&DR DISTRICT COURT CHANGES

(Continued from page 1)

### Attorney/Client Meeting Rooms

Two such meeting rooms adjacent to the waiting area have been updated. Additionally, the area previously occupied by the Court Service Unit's Intake Office has been refurbished courtesy of a significant grant from the Roanoke Law Foundation. This suite provides two additional meeting rooms for attorneys and clients, satellite offices for the Court Service Unit and the Department of Social Services, and a sitting area featuring a portrait of former Judge Beverly T. Fitzpatrick, Sr. which was created and donated by his son, well-known local artist Eric Fitzpatrick.

### Clerk's Office Workspaces

The front counter is all brand new. It provides a separate window for those in wheelchairs with business in the Clerk's Office. A dividing wall was removed in the main work area, bringing outside light to the reconfigured work area. For the first time, the clerks now have a break room complete with a sink and running water. Storage has been better organized and improved. The conference room was updated.

### Safe Exchange Zone

Judges are working with Sheriff Antonio Hash to create a Safe Exchange Zone in the parking lot to the west of the building. When completed in March, this area will be well lit at night and video-monitored 24 hours a day. It may be used for parenting time exchanges, or even for the exchange of goods purchased online.

### Open House

An open house for the first floor of the courthouse is being planned. RBA members will receive notice once plans are finalized.

Less noticeable initiatives are under way to improve outcomes for children and families, including:

### Best Practice Team

Judge Ferguson leads the Roanoke City J&DR District Court Best Practice Team. This multidisciplinary team meets quarterly to discuss current issues. It hosts quarterly breakfast meetings for court stakeholders where speakers present on topics of interest to the court and the people it serves. And, the team annually presents a day-long workshop on topics of interest to lawyers, guardians *ad litem* and social workers.

### NCJFCJ Site Implementation Team

The good work of the Best Practice Team led to Roanoke City's applying to the National Council of Juvenile and Family Court Judges to be an implementation site for national best practices in child dependency cases. Roanoke City was selected and became only the second such site in Virginia (Chesterfield County J&DR being the other). A site team was formed- Sammi Rader (CASA), Jennifer Crook (DSS counsel), Julie Payne (CSA Administrator), Steve Martin (DSS Director), Joe Vannoy (GAL) and Judges Ferguson and Rogers. With the assistance of the National Council, the team conducted a self-assessment of its foster care processes. A representative of the National Council has observed in our courtrooms and conducted focus groups for court partners. This work resulted in acknowledgement that in most areas our court performs quite well and in accordance with national

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## SPOTLIGHT ON SERVICE: LORI D. THOMPSON, ESQ.

Whether you draw inspiration from the Bible (see e.g., Luke 12:48: "From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked."); or whether Marvel comics is more to your liking (i.e. Uncle Ben's sage wisdom for a young Peter Parker that "with great power comes great responsibility")—the message is the same: If you have the ability to contribute, you have a responsibility to contribute.



This may be part of the rationale underpinning Rule 6.1 of the Virginia Rules of Professional Conduct, which admonishes members of the legal profession that: "A lawyer should render at least two percent of the lawyer's professional time to pro bono public legal services," which includes "poverty law, civil rights law, public interest law, and volunteer activities designed to increase availability of pro bono legal services."

I have enjoyed organizing the Roanoke Law Foundation's *Santa at the Station* holiday party for those living in the shelters for the past 16 years. It is an integral part of my Christmas tradition, and while it is a significant time commitment, it truly makes the season brighter. And there are many other wonderful ways to volunteer our time to benefit the public—but the ability to go into Court and represent a member of our community who could not otherwise afford to hire an attorney is an ability uniquely owned by lawyers. And we don't have to be seasoned experts in the specific area of practice; just willing to learn.

Pro bono matters account for many of the most rewarding cases that I have handled during my career. Right now, I am representing a parent in a contested custody dispute, a mother seeking a coming-of-age guardianship for her autistic child, and a member of the armed forces in a creditor dispute. Each case was referred to me through a legal aid organization that provided me with guidance, sample pleadings, and a list of members of our local bar who possess both subject-matter expertise and a willingness to share their knowledge (thank you, Ross Hart). I am grateful that my law license gives us this unique ability to contribute to our community.



**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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## HOLDOVER DISCRIMINATION IN VIRGINIA TORT LAW

(Continued from page 2)

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Many people experiencing the effects of advanced age will eventually fall under the ADA's definition of disability based on newly developing physical ailments, reduced ability to perceive, process and react with the same acuity as did their younger selves, or both. "Age-associated impairments in mobility-related physiological systems are compensated and overt limitations of mobility only occur when the severity can no longer be compensated. Mobility loss in older persons usually results from multiple impairments in the central nervous system, muscles, joints, and energetic and sensory physiological systems." Zaslavsky, Oleg, et al., *Glucose Levels and Risk of Frailty*, *The Journals of Gerontology. Series A, Biological sciences and Medical Sciences*, 71(9), 1223-1229, available at <https://doi.org/10.1093/gerona/glw024>

With all of the progress, Virginia's tort law, especially in the context of premises cases, continues to embody the disability discrimination of years past in a critical respect: in determining negligence, it does not account for physical or mental disabilities. "The test for negligence is always objective. With adults, all of whom are presumed by the law to have adequate experience, intelligence, and maturity to act reasonably, the objective test is normally stated simply in terms of the reasonably prudent person." *Va. Elec. & Power Co. v. Dungee*, 258 Va. 235, 252, 520 S.E.2d 164, 174 (1999). By its own terms, this test presumes a common mental and physical condition for all adults.

Modern tort law models as well as the law of other jurisdictions fairly compensate in two ways for disability. "The conduct of an actor with a physical disability is negligent only if the conduct does not conform to that of a reasonably careful person with the same disability." *Restat 3d of Torts: Liability for Physical and Emotional Harm*, § 11(a). This model preserves the objective standard while taking into account the physical ability of the disabled. The Restatement comments acknowledge that "even

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## ROANOKE LAW LIBRARY: NEWS AND INFORMATION

(Continued from page 3)

collection. There are still many books in this collection that are stamped "Property of Roanoke Bar Association." That is quite a history, 100 years of this collection answering the legal research questions of the legal community of this beautiful valley. I am so thankful to the Roanoke Bar Association for starting this library, and I am so proud to be working here. It is an honor to serve the Roanoke legal community that started this library, and to provide access to legal information to anyone who needs it free of charge.

## ROANOKE CITY J&DR DISTRICT COURT CHANGES

(Continued from page 6)

best practices. The team did identify a few areas for improvement, and it split into two teams to work on these initiatives.

Judge Ferguson and her team have worked on engaging foster care youth in court. Literature tells us that involved youth realize better outcomes and generally feel more invested and heard in the foster care process. This team has developed a trauma-informed protocol for children coming to court in their cases. The team has even produced an informative video to share with children attending court for the first time, this to reduce anxiety that may come with uncertainty of the experience. The work of this team has caught the attention of the National Council. Judge Ferguson will be presenting on this topic at the National Council's Conference on Juvenile Justice in Dallas, Texas in March.

Judge Rogers and his team recruited additional team members from Roanoke City DSS to work on improving time between children in care and their families. Research suggests that regular, quality time improves the likelihood of family reunification. The team has suggested a change in terminology from "visitation time" to "family time" to more accurately describe what children and families should expect. The team is working on a guide for DSS workers to consider alternatives to the traditional time in DSS offices. As part of this effort, the Roanoke Law Foundation has partnered with the RBA to launch "Operation Family Time". Funds raised by this initiative will be used to make badly needed upgrades to outdated family time/observation rooms at DSS.

### Learning Lunches

Every other month, the judges buy lunch for the clerks and present a speaker on a topic suggested by the clerks or otherwise of interest to the work of the court. The judges believe that shared knowledge is power, in this case the power to improve outcomes for children and families.

### Facility Dog

Jennifer Crook has made application for a facility dog. If successful, the dog would spend most days on site to help ease the tensions of litigants and anxiety of children waiting to testify in cases.

### New Judge

The General Assembly has appointed Adam H. Moseley to succeed Judge Melissa Friedman as a judge of the Juvenile and Domestic Relations District Courts for the 23<sup>rd</sup> Judicial District. His term will begin May 1.



## HOLDOVER DISCRIMINATION IN VIRGINIA TORT LAW

(Continued from page 8)

though the plaintiff's mental disability is ignored in considering whether the plaintiff is contributorily negligent at all . . . that disability can be considered in the course of the more open-ended process of apportioning percentages of responsibility between the plaintiff and the defendant." Accordingly, the plaintiff whose contributory negligence is in part explainable in terms of mental disability can be expected to receive an award that is larger than the awards received by other plaintiffs who engage in seemingly similar acts of contributory negligence." This standard also accounts for old age via consideration of the specific disabilities affecting the aged individual.

Virginia's failure to enact provisions like these in its tort law that account for those with disabilities continues to perpetuate the attitudes of the 1920s. A pure contributory negligence standard as a complete bar to recovery, compounded with the completely objective standard imposed on adults, deprives the disabled of equal protection under Virginia's tort law, rendering them responsible for physical and mental limitations over which they have no control. Legislative adoption of the Third Restatement standards applicable to disability and/or a comparative fault scheme for those proven to be disabled, would solve this problem, mirror modern values, and most importantly acknowledge the disabled's inherent worth as people.

*Adam McKelvey practices at Crandall & Katt.*

## VIRGINIA STATE BAR UPDATE

(Continued from page 4)

the Court to appoint a substitute "next friend." The proposed Opinion will be presented to the Supreme Court of Virginia for approval.

Finally, Bar Council approved the 2023-2024 Disciplinary Board Chair and Vice Chair recommendations.

As ever, please contact either of us with any questions, issues, or concerns. It is our privilege to represent you on Council.

*Daniel Frankl is a partner at Frankl Miller Webb & Moyers, LLP and Kevin Holt is a partner at Gentry Locke.*

### Operation Family Time Project

The Roanoke Bar Association has been asked to assist with a Site Implementation Project headed by the Roanoke City Juvenile and Domestic Relations District Court. This Project is through the National Council of Juvenile and Family Court Judges. The RBA will participate in the area of improving visitation time for kids in foster care with their biological families. Specifically, the upgrading of the three visitation rooms, waiting area, and the observation rooms at DSS. More details on how to donate

tion can be found on the RBA Website at

<http://roanokebar.com/wp-content/uploads/2022/10/Operation-Family-Time-Donation-Form.pdf>

## MINDFULNESS IS AS EFFECTIVE AS MEDICATION IN TREATING SOME ANXIETY DISORDERS

(Continued from page 4)

meditation groups and more. She also knows firsthand how stress-reducing exercises can temper a student's anxiety.

As a professional dancer during high school and college, "I was performing and auditioning, and I had a lot of anxiety about it," she said. "I started doing mindfulness practices to help me be a better dancer ... and I found it helped tremendously for me to be more present in what I was doing."

At UVA, Hubbard has been coordinating, designing and teaching programs for student engagement for more than seven years. One of Hubbard's outreach projects included instructing a course in the College of Arts & Sciences called "The Art and Science of Human Flourishing."

Although participants in the recent mindfulness study took a class, Hubbard said you don't need in-person instruction to benefit. There are two types of mindfulness exercises, Hubbard said. Formal practices are scheduled mindfulness exercises, typically performed with an instructor, while applied practices can be implemented throughout a day.

"For example, for me, applied practices can be done when I'm driving or walking around," she said. "If I set an intention that I want to use it as my mindfulness practice, I tell myself to be fully present when I go from point A to point B."

The Contemplative Sciences Center, which soon will be housed in the new Contemplative Commons building being constructed in part with a \$40 million gift from Paul and Sonia Jones, offers a virtual course called Mindfulness Meetup. It's a weekly program to teach students how to implement mindfulness into their daily lives, and maybe eschew anxiety medicine.

Hubbard said UVA's Student Flourishing app is a great starting point for anyone seeking resources to try mindfulness.

The Contemplative Sciences Center "launched the Flourish app for first-year students in orientation last summer," she said. "There are meditations and modules on there that are very easily accessible."

Today, the Flourish app is free for UVA students and faculty and features 10 prerecorded mindfulness classes instructed by Green.

"Sessions on the app are really easy to follow along and include modules to learn the basics of meditation and mindfulness," Hubbard said.

The University of Virginia has several resources available for students to learn about mindfulness and how it can benefit their lives. For students and community members interested in participating in an organized mindfulness intervention, check out the resources from UVA's Mindfulness Center.

*Note from the Editors: With the continued focus on lawyer wellbeing, the editorial board provides some mindfulness resources:*

*Mindful.org and Mindfulness Exercises provide a host of free resources*

*Free app such as Mindfulness Coach*

*Free yoga at Elmwood Park and the Taubman Museum*

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## G. MARSHALL MUNDY, MEMORIAL RESOLUTION

(Continued from page 3)

wanted to know about you. His interest was keen, and genuine. People were just plain drawn to that wispy gray hair, his blue eyes, his physical presence and that playful streak he had honed since childhood. People like Clyde “the Glide” Frazier, Hall of Fame guard for the New York Knicks. Marshall and Clyde met during one of Marshall’s many and varied vacations and became very good friends.

Marshall loved this community, and he supported it. He served as President of this Association, and in 2014 he was awarded the Association’s Frank W. (“Bo”) Rogers, Jr. Lifetime Achievement Award.

He served on the boards of various organizations, and he gave generously of his time and money to support their work. He attended Second Presbyterian Church.

Marshall had an excellent sense of right and wrong, and he did not hesitate to right a wrong. He formed and coached an all-girl recreational basketball team because there were few organized sports for girls. He was appalled by the racial segregation he witnessed growing up, so he supported organizations and candidates who were committed to the pursuit of racial justice and social progress. He once sued a towing company for badly treating an older woman who spoke only broken English. He got a judgment in her favor, and then called his friend Dan Casey with the *Roanoke Times* to have him publish an article about the ordeal so as to deter future misbehavior by towing companies. All at no cost to the client.

Marshall’s humor and wit was legendary. He loved to laugh, and he was often entertained by practical jokes he played on family, friends and office staff. You never quite knew what to expect from him. For example, Marshall was known to assume a character he called “Marcel the Magnificent”. Marcel was obviously French, and he would regale children with stories in a horrid French accent and magic tricks. When he decided to ask wife Monika to marry him, he threw a party and in front of guests asked her to “take the plunge with him.” Obviously, she did.

In a letter dated August 14, 2017, then Chief Justice Donald Lemons of the Virginia Supreme Court, a co-chair of the National Task Force on Lawyer Well Being, wrote “To be a good lawyer, one has to be a healthy lawyer.” Thus began the lawyer wellness movement which continues today. Marshall had this figured out for himself decades before the movement. He understood how to balance work and pleasure in his life. He was an avid tennis player, and he ran marathons. He was a member of the YMCA’s health club where, I’m told, that on a given day more lies were told than in all of courtrooms of the 23rd judicial district combined. He traveled, a lot. He worked hard, and played hard, but the time he spent with family was his favorite time. And he dearly loved his family. Wife Monika, sons Stephens and Marshall, Jr., daughters Liza and Natalie, grandchildren, a niece and nephew, various and sundry animals and best friend Doris Rogers. Yes, Mar-



shall very much considered Doris a member of his family. Talk to him for any length of time, and you would inevitably hear about his family. He was so very proud of all of them.

Were Marshall standing here beside me, he would be appreciative and humble, and he would think the whole of this occasion to be WONDERFUL—his favorite word. This word defines Marshall’s spirit as a lawyer and as a person.



NOW, THEREFORE, BE IT RESOLVED, that the members of the Roanoke Bar Association by this resolution reflect upon the life of Gardner Marshall Mundy with admiration and fondness, and we celebrate his life well and fully-lived;

AND BE IT FINALLY RESOLVED that copies of the resolution be furnished to the Circuit Courts of the City and County of Roanoke, the City of Salem and the County of Montgomery, as well as the United States District Court for the Western District of Virginia, Roanoke, Division, with motions that this resolution be spread upon the permanent common law order books of those courts; and that copies of this resolution be furnished to Monika Mundy, Marshall’s wife, and to his children, to communicate the esteem in which the Roanoke Bar Association holds him and his memory.

GIVEN under the hands of the President and Secretary of the Roanoke Bar Association and seal of the Association this 14<sup>th</sup> day of March, 2023.



**Judge Rogers  
presenting the  
Frank W. “Bo”  
Rogers, Jr. Life-  
time Achievement  
Award to Mr.  
Mundy. Law Day  
2014**

## MINDFULNESS IS AS EFFECTIVE AS MEDICATION IN TREATING SOME ANXIETY DISORDERS

(Continued from page 9)

*Local public schools have mindfulness resources for students, staff, and families*

[Permission to Feel: Unlocking the Power of Emotions to Help Our Kids, Ourselves, and Our Society Thrive](#) by Marc Brackett, Ph.D.

*Paid apps such as Headspace and Calm*

[Practicing Mindfulness](#) by Matthew Sockolov

*\*Renee Grutzik is a University News Associate at the Office of University Communications at UVA.*

(Continued above)



## 2023 BENCH BAR CONFERENCE

Each year, the Roanoke Bar Association carries on the tradition of joining with the judiciary to discuss current developments. The 2023 event was organized by Young Lawyer Chairwoman, Caley DeGroot and held on Friday, February 24<sup>th</sup> at the Roanoke Higher Education Center. After lunch, the attendees participated in a CLE program called *"Avoiding A Bar Complaint"*, presented by Prescott L. Prince, retired Assistant Bar 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.



**Caley DeGroot**

A special thank you to the judges who presented for their respective courts; Judge Thomas Cullen, U.S. District Court; Judge Paul Black, U.S. Bankruptcy Court; Judge Christopher Clemens, the 23rd Judicial Circuit; Judge Scott Geddes, the General District Court; Judge Frank Friedman, The Court of Appeals; and Judge Heather Ferguson, Juvenile & Domestic Relations Court. A Question-and-Answer session followed the Judges' addresses.



**Prescott L. Prince**

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



**Judge Clemens**



**Judges Friedman, Black, and Cullen**



**Judges Ferguson, Geddes and Ciaffone**



**Judicial Panel**





# 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 March 14, 2023</p> <p>Jessiah s. Hulle, Gentry Locke</p> <p>Timothy J. Lovett, Woods Rogers Vandeventer Black, PLC</p> <p>Matthew J. McCartin, Office of the Public Defender</p> <p>Charlie D. Morrison, Gentry Locke</p> <p>Olivia Moulds, Woods Rogers Vandeventer Black, PLC</p> <p>Harrison E. Richards, Gentry Locke</p> <p>Jared A. Tuck, Gentry Locke</p> <p>Rachel Elizabeth Tucker, Office of the Public Defender</p> <p>Ryan Vaughn, Office of the Public Defender</p>	<p>Roanoke Bar Association Meetings 2022 - 2023</p> <p>September 13, 2022</p> <p>October 11, 2022</p> <p>November 8, 2022</p> <p>December 13, 2022</p> <p>January 10, 2023</p> <p>February 14, 2023</p> <p>March 14, 2023</p> <p>April 11, 2023</p> <p>May 1, 2023 (Law Day)</p> <p>June 13, 2023</p> <p>Go to <a href="http://www.roanokebar.com">www.roanokebar.com</a> for more information on all upcoming events.</p>	<p>Lori Jones Bentley President 767-2041</p> <p>Christen C. Church President-Elect 983-9390</p> <p>Amy H. Geddes Secretary-Treasurer 989-0000</p> <p>Macel H. Janoschka Past President 242-1210</p> <p>Diane Higgs Executive Director 342-4905</p> <p><b>BOARD OF DIRECTORS</b></p> <p>Allegra M.C. Black 857-7111</p> <p>Christopher S. Dadak 387-2320</p> <p>Caley A. DeGroote</p> <p>Martha W. Elder 983-7535</p> <p>T. Daniel “ Bo” Frith, IV 985-0098</p> <p>Sarah C. Jessee 283-0134</p> <p>D. Adam McKelvey 342-2000</p> <p>John M. McNeil, Jr. 853-2626</p> <p>Jonathan D. Puvak 983.9399</p> <p>Victor S. “Dinny” Skaff, III 767-2217</p> <p>Daniel R. Sullivan 628-7529</p>



**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)