

INSIDE THIS ISSUE:

<i>Investiture of the Honorable Robert S. Ballou</i>	1
<i>Five Unusual (and Somewhat Funny) Virginia Eminent Domain Cases</i>	1
<i>President's Corner</i>	2
<i>RBA Centennial Celebration</i>	2
<i>Virginia State Bar: Update</i>	3
<i>Roanoke Law Library: News & Information</i>	3
<i>Spotlight on Service</i>	4
<i>Operation Family Time</i>	6
<i>Announcements</i>	8

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

Editors

T. Daniel "Bo" Frith - 985-0098
bfrith@frithlawfirm.com

Sarah Jessee - 283-0134
sarah.jessee@lewisbrisbois.com

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

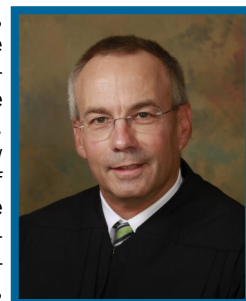
Jonathan Puvak - 983-9399
puvak@gentrylocke.com

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

INVESTITURE OF THE HONORABLE ROBERT S. BALLOU

BY JOSHUA D. GOAD, ESQ.

On July 14, 2023, fellow judges, family members, lawyers, and distinguished guests turned out to celebrate the investiture of the Honorable Robert S. Ballou. Attendees in the Ted Dalton Ceremonial Courtroom were guided through the ceremony by Chief Judge Michael F. Urbanski. John Lichtenstein, of the Lichtenstein Law Group, provided an entertaining introduction with tales of Judge Ballou's formative years. Pamela J. Roberts of the ABA's Standing Committee on the Federal Judiciary delivered a detailed accounting of the guest of honor's outstanding qualifications, and Joe Matthews of Johnson, Ayers & Matthews gave his remarks about Judge Ballou's professional career. Others providing anecdotes included several judges in attendance and David Harless of Christian Barton.



After the speakers, Judge Norman Moon administered the oath of office and Judge Ballou's robe was presented by representatives from the Roanoke Bar Association, the Salem/Roanoke County Bar Association, and Virginia Women Attorneys Association. Finally, Judge Ballou gave his own remarks in which he humbly acknowledged the influence and support of his family and friends. Afterward, many of the guests were able to continue the celebration at a reception in the Poff Federal Building.

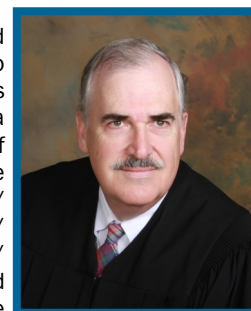
Joshua D. Goad is a partner at Johnson Ayers & Matthews. PLC.



FIVE UNUSUAL (AND SOMEWHAT FUNNY) VIRGINIA EMINENT DOMAIN CASES

BY JONATHAN M. APGAR, JUDGE (RET.)

During 2018 and early 2019, for the William and Mary Law School Property Rights Project, I authored a two-volume case finder on eminent domain. Volume One is the opinions of the Virginia Supreme Court, as well as a number of circuit courts. Volume Two is the opinions of the United States Fourth Circuit Court of Appeals. Volume One has been put on line and is available at <https://law.wm.edu/academics/intellectuallife/researchcenters/property-rights-project/eminentdomaincasefinder/index.php>. During the compiling of Volume One, I found some unusual, and occasionally humorous, cases. Here are the top five.



(Continued on page 4)

PRESIDENT'S CORNER

BY CHRISTEN C. CHURCH, ESQ.



It is with great pleasure that I welcome you back from summer and to the return of our monthly membership meetings as we march toward the 100-year anniversary of the Roanoke Bar Association's existence. I look forward to a productive, inspiring, and fulfilling year.

The Roanoke Bar Association is committed to fostering an environment of continuous learning and professional development for our members, as well as offering opportunities to foster the camaraderie that binds us together as legal professionals. We understand the legal landscape is ever-evolving, and our goal is to equip our members with the knowledge, resources, and relationships needed to thrive in this dynamic field.

The Board of Directors continued to meet through the summer and planning is well underway for the bar year, including our monthly meetings, with a great list of scheduled speakers, as well as CLEs and other educational and service opportunities. We have many exciting events and opportunities lined up for the coming months.

In addition to our monthly membership meetings being an opportunity to gather to have a nice lunch and hear great speakers, these meetings are opportunities to connect with fellow legal professionals, share insights, and build lasting relationships. Whether you are a seasoned attorney or just starting your legal career, these meetings provide a platform for growth and collaboration both personally and professionally.

As we look forward to the year ahead, I encourage you to actively engage in our monthly meetings as well as the events and service opportunities organized by our association. If you have a new attorney at your firm or that you meet in the community, consider extending a personal invitation or forwarding an email with information about an upcoming event. Your participation not only enriches your own legal journey but also contributes to the collective strength of our legal community.

Please make it a point to review the email announcements and information about our upcoming meetings and events, including social and networking events. We encourage you to mark your calendars and join us as we come together to learn, share, and grow.

Thank you for being an integral part of our bar association. We look forward to seeing you at our upcoming meetings and events, where we will continue to foster the spirit of quality and collegiality that defines our legal community.

Christen Church is the founding partner at Church Legal, PLLC.

Registration for the Courthouse Welcome Program, on October 18th, continues. Program begins at 4:00 pm followed by a social hour. Thank you to sponsors, Gentry Locke and Woods Rogers Vandeventer Black

THE RBA'S CENTENNIAL CELEBRATION

BY THOMAS H. MILLER, ESQ., CHAIR, CENTENNIAL CELEBRATION COMMITTEE

The Roanoke Bar Association formed the Centennial Celebration Committee to assist in planning the Association's 100-year anniversary, scheduled April 7, 2025. The Centennial Celebration Committee is planning a year of celebrations, fun activities, service projects and more.



A Gala Committee was organized to plan for a special event on April 7, 2025, at the Roanoke Country Club. A history, photograph composite, and commemorative book committee was formed to capture our rich history from our first 100 years. It will show not only where we have been, but also where we plan to go. The plan includes taking photographs of current RBA members for a Centennial composite to commemorate our 100-year anniversary.

A family-friendly day event with an athletic race/walk will be scheduled in May 2025 for our members who have young children. Games, activities, and food trucks will make this day along the Greenway the place to be.

The Young Bar committee is planning "100 Years at the Bar" events each month from September to June to celebrate and encourage interaction between all generations of attorneys.

The Philanthropic Committee is considering ideas for community projects allowing the RBA to give back to our community. A Sponsorship Committee will be formed to help finance our philanthropic endeavors and events.

Join now and be a part of the planning for this wonderful Centennial year to mark 100 years of our Association. There are plenty of opportunities to be involved and we welcome your participation. Should any RBA members be interested in joining one of these committees, I would encourage you to contact Diane Higgs by email at: rba@roanokebar.com.

Thomas Miller is a partner at Frankl, Miller, Webb & Moyer, LLP.



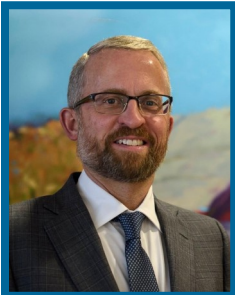
VIRGINIA STATE BAR: UPDATE

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



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

At its meeting on June 15, 2023 in Virginia Beach, Council took the following significant actions. Council unanimously approved proposed Amendments to Part 6, Section IV, Paragraph 13 of the Rules of Court to provide for respondents to elect a three-judge panel in all disciplinary proceedings. The proposed amendments will be presented to the Virginia Supreme Court for approval.



Council unanimously approved the slate of candidates to fill vacancies on the Disciplinary District Committees for the 2023-2024 term. The new attorney members of the Eighth District Committee are James W. Curd of Fishersville and Vicki L. Francois of Roanoke. The new non-attorney members

of the committee are Charles S. Coulter of Roanoke and Eric W. Bond of Waynesboro.

Council unanimously approved Unauthorized Practice of Law Opinion 219, "Non-lawyer entity representation in practice before state agency." The proposed opinion will be presented to the Supreme Court of Virginia for approval.

Council approved two proposed changes to its Bylaws. An amendment to Part II, Article VI, Section 3 (removing the authority of the Executive Committee to employ, review annually and fix the duties of certain staff, including the Executive Director) passed 53-7-2. An amendment to Part II, Article VI, Section 4 (providing for the Executive Committee's supervising of a performance review of the Executive Director every two years by a performance review committee) passed 48-14.

Finally, Council unanimously approved a Resolution offering an expression of gratitude and affection to Stephanie E. Grana of Richmond, President of the VSB during the 2022-2023 term.

At the Virginia State Bar Annual Meeting in Virginia Beach from June 15-17, Chidi I. James of Fairfax was sworn into office as its new President. Chidi is the first African American man and first post 9/11 era veteran to be president. Michael York of Reston was also sworn in as President-Elect. Mr. York will assume the presidency of the VSB on July 1, 2024.

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

Dan Frankl is a partner at Frankl Miller Webb & Moyer, LLP and Kevin Holt is a partner at Gentry Locke.

ROANOKE LAW LIBRARY: NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN

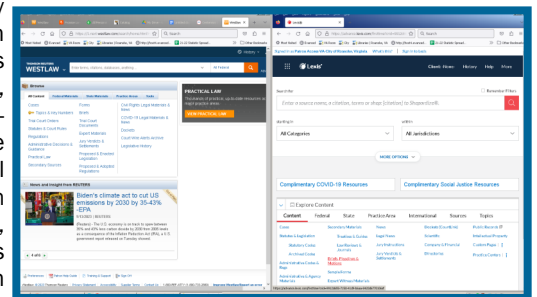
Living in the Roanoke Valley provides so many opportunities to get outside and partake of nature's magnificence; we are truly blessed to live in this wonderful region. I think fall in Southwest Virginia is magical. It is truly my favorite time of the year as the temperatures cool and the landscape changes from green to multicolored splendor. I take every opportunity I get to go outside and soak up the beauty of this place. I have been pleased because lately, I have seen more members of the Roanoke Bar Association here at the Roanoke Law Library. But I still want to extend an invitation to you all to get out and take your opportunity to visit our new location.



I can't believe that next year will be my 20th year working here at the Roanoke Law Library. Serving the public and the Roanoke legal community has been a true joy. I began working in Law Libraries over 25 years ago, and it has been one of the best decisions of my life. I think providing access to legal information is an important role and one that I have truly enjoyed for the last quarter of a century. Now, the Roanoke Bar Association gets ready to celebrate its centennial and as the Roanoke Law Library collection also nears a century of existence. It has been humbling to reflect on those who came before me and the members of the Bar Association who have walked along side me and helped me in my mission for the past 19 years. Whenever I am visited by a member of the Roanoke Legal community, I am truly appreciative. I know that without you and people like you, this job that I love so much wouldn't exist. I truly enjoy serving you all and am so appreciative of all your support over the years.

While we have fewer books than we once did, we have access to much more up-to-date legal information than ever because we provide free, unlimited access to both Westlaw and Lexis. Our subscriptions to both of these databases provide access to federal statutes and case law and to statutes and case law for all 50 states. They also provide access to the most used

secondary sources such as Michie's Jurisprudence, and the Virginia Practice series, as well as American Jurisprudence, Corpus Juris Secundum and hundreds



of Law Reviews, to name just a fraction of what is available. Additionally, we still provide access to historical Virginia legislative information and, most importantly, to the Code of Virginia dating back into the 1800s. Such historic information is difficult to find anywhere else locally. Not only do we have access to more legal information than we have ever had, but we are also open for more hours than we have been since I started working here. Whenever the Main Library (706 South Jefferson Street) is open, the Roanoke Law Library is also open. Our hours of operation are Monday, Tuesday, and Thursday 10AM-8PM, Wednesday 10AM-6PM and Friday and Saturday 10-AM-5PM. Please email me (joseph.klein@roanokeva.gov) or give me a call (540-853-2268) to let me know how I can serve you.

FIVE UNUSUAL (AND SOMEWHAT FUNNY) VIRGINIA EMINENT DOMAIN CASES

(Continued from page 1)

1. The United States Constitution protects dead horses.

Richmond v. Caruthers, 103 Va.774 (1905). The City of Richmond contracted with a specific individual to remove all dead horses, mules, and cows from the City. The ordinance provided a fine for any person other than the contractor, who removed a dead animal. Caruthers removed his own dead horse and was fined \$20 in the police court. He appealed to the hustings court, which reversed the judgment, holding that the ordinance was in conflict with the Fourteenth Amendment which forbids a person being deprived of property without due process of law. The Supreme Court affirmed. Dead animals are not *per se* nuisances and cannot be made such by legislative declaration. While the public is to be protected from anything likely to become offensive and dangerous, in the absence of such conditions, an owner cannot be deprived of his dead domestic animal without due process of law. The death of a domestic animal does not terminate the owner's property. The owner may be required to make such use of it before the carcass becomes a nuisance, but the municipal authorities cannot deprive him of it by giving it to another. An ordinance which deprives an owner of a dead animal immediately upon its death, by giving it to the public contractor, is violative of the Fourteenth Amendment and is void,

2. When it rains, it pours.

Hampton Roads. Sanitation District v. McDonnell, 234 Va. 235 (1987). The City of Hampton Roads owned and operated a sewage system in conjunction with other cities and counties in Tidewater. The sewage was treated and discharged into various bodies of water. McDonnell owned a tract of land in Virginia Beach between Baltic and Arctic Avenues and bounded by 27th to 29th Streets (a grocery store is located there now). A wastewater pump station was next to McDonnell's property. If the wastewater flow volume become too much, a bypass valve would open and dump the effluent on McDonnell's property. In 1981, over two million gallons of raw sewage was dumped on his property. The Supreme Court dutifully pointed out that the sewage contained "toilet paper, condoms, tampons and solid waste." McDonnell sued in tort for trespass, and the jury awarded \$100,000. The Supreme Court affirmed. The interesting part of the case is that while it was inverse condemnation, the Supreme Court approved the award for tortious trespass, and cited in support the portion of the Virginia Constitution (then art. 1, § 11) that guarantees "to an owner just compensation both where his property is taken for public uses and where it is damaged for public uses, irrespective of whether there be negligence in the taking or the damage."

3. How dry we are.

Wallace v. Richmond, 94 Va. 204 (1897). On April 2, 1865, in light of the advancing Federal troops, the Richmond City Council added to the harm by resolving that all liquor in the City be destroyed. In 1871, a tavern owner brought suit to recover the value of the destroyed property in the amount of \$30,000. The case was not heard until

(Continued on page 6)

SPOTLIGHT ON SERVICE

BY LAUREN E. DAVIS, ESQ.

What's in it for me? That's how my rec basketball volunteer coaching career began. With kids playing on different teams, I could not be in two places at once and, inevitably, games and practices conflicted. So I signed up to coach, knowing I would be able to pick practice times and knowing my two teams would not be scheduled to play at the same time. That plan worked.



Then the real magic happened. About six years in, coaching kids is one of my favorite and most humbling ways to spend time. The kids excite, surprise, and impress me, every single time. I feel more connected to our community – and to a future generation. I have learned to practice more patience, to be more present, and to give more unconditional positive regard. In short, it turns out there is a lot in it for me.

My original reason for coaching is gone now. One of my kids has aged out of rec basketball. The rec schedule for my younger one inevitably interferes with the older one's school team schedule. At this point, coaching is actually inconvenient. Will I be coaching next year? Without a doubt.

Lauren Davis is the founder of First Truth Law, PLLC.

RBA September 12, 2023, Luncheon



Christen Church, pres.



Dr. Todd Peppers,



The McCammon Group

is pleased to announce our newest Neutral



Hon. C. Randall Lowe (Ret.)

Former Chief Judge, 28th Judicial Circuit Court of Virginia, Washington County

The Honorable C. Randall Lowe recently retired as the Presiding Judge of the Circuit Court of Washington County after twenty-two years of distinguished judicial service, including eleven years as Chief Judge. As a lawyer, he enjoyed a successful career in private practice, litigating a wide range of civil cases. Judge Lowe is the 2022 Recipient of The Honorable Harry L. Carrico Outstanding Career Service Award and the 2022 Recipient of the Virginia Mountain/Valley Lawyer's Alliance, Roscoe Boler Stephenson Jr. Lifetime Service to Justice Award. He is a Past President of the Washington County Bar Association, Former Chairman of the Washington County Planning Commission, and Former Chairman of the Virginia Judicial Conference Education Committee. Judge Lowe now brings this record of dedication and accomplishment to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth.

THE
MCCAMMON
GROUP

For a complete list of our services and Neutrals throughout VA, DC, and MD,
call 888.343.0922 or visit www.McCammonGroup.com

FIVE UNUSUAL (AND SOMEWHAT FUNNY) VIRGINIA EMINENT DOMAIN CASES

(Continued from page 4)

1893, and the jury found for the City. The Supreme Court affirmed. The City Charter only authorized eminent domain for the taking of private property for streets or other public purposes. There was no power given for the destruction of liquor. Additionally, there was no authority in the Charter that allowed Council to bind the City with a promise to pay for liquor destroyed and any attempt to do so was *ultra vires* and void.

4. No wonder he won.

New River, Holston & W. R. Co. v. Honaker, 119 Va. 641 (1916). In the first suit to gain the owner's property for the Railroad, the owner was awarded \$900. The case was reversed on appeal due to evidentiary problems, and the matter was dismissed. The Railroad went ahead with improvements of roadbed, track, and other improvements, and later refiled its condemnation petition. The Railroad asserted that the value of its improvements not be considered in setting just compensation. The commissioners returned a report awarding \$5,300 to the landowner (worth \$148,355 today when adjusted for inflation). The commissioners were examined about their report and it was revealed that during the trial, the landowner provided them with free lodging, meals, and a quart of whiskey. The Supreme Court reversed and remanded. As a matter of public policy, the proceedings needed to be kept free of any appearance of influence. Further, the award was excessive.

5. The Big Bang Theory.

Davenport & Morris v. Richmond City, 81 Va. 636 (1886). In 1866 and 1867, the City sold two lots to the appellants for use as powder magazines. By 1882, the City Council had second thoughts about storing explosives within the City limits, and passed an ordinance declaring such magazines as a danger to life and property. The landowners were required to remove the magazines at their expense to a remote location. The owners were found in violation and fined. They appealed to the Supreme Court, which affirmed their convictions. The landowners argued that the ordinance was unconstitutional because it impaired the rights the City had previously granted and took property without compensation. The Supreme Court held the ordinance was a valid exercise of police power. The owners were not due any compensation as there was no taking of property, only a change in the mode the chartered rights were to be exercised. It was not a taking for public use, but a restraint of an obnoxious use. The Court quoted the time-honored maxim "*sic utere tuo ut alienum non laedas*" (use your own property as not to injure another's property).

So please access the case finder website for your Virginia eminent domain research, as the William and Mary Law School has made it available for public use. A cumulative supplement will soon be online to bring the Virginia Supreme Court opinions, and numerous circuit court opinions, up to the current year. Thanks!

OPERATION FAMILY TIME

BY LORI J. BENTLEY, ESQ.

I am pleased to report that Operation Family Time is now complete. As part of the Site Implementation Project through the National Council of Juvenile and Family Court Judges, Operation Family Time was a partnership between the RBA and Summerdean Church to update and freshen the visitation rooms at the Roanoke City Department of Social Services (DSS) office.



These rooms are used for visitation for kids in foster care to spend time with their biological family in a supervised setting. Summerdean has a strong volunteer program that provides many foster parents to Roanoke City DSS. Our hope was to work together to update the rooms, making them inviting for the families and children so they could enjoy spending time together.

Thanks to the many generous donations from our members, the RBA was able to provide funds for a much-needed video surveillance system, fresh paint, new furnishings, changing stations, toy storage, rugs, and many other necessary supplies. Summerdean Church provided volunteers who, through hard work, converted the spaces into happy and bright areas.

These rooms will hopefully provide a cheerful place for family visits to take place for many years to come. An open house will be held on September 28, 2023, from 3:00 to 6:00 p.m. to showcase the revamped spaces.

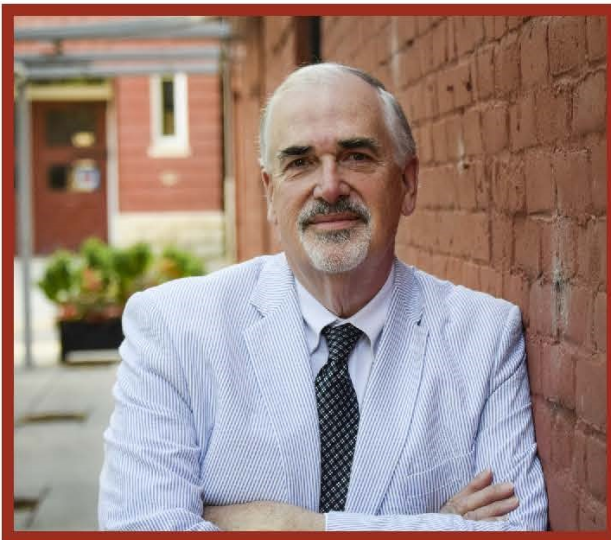
Thanks to all RBA members who contributed to Operation Family Time to make it a tremendous success!

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



Operation Family Time finished spaces



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 540 556 4296 jmitcalfe99@aol.com



ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new members:

Active Members

Effective September 12, 2023

Logan Bartley, Glenn Robinson,
Cathey, Memmer & Skaff

Autumn Visser, Woods Rogers
Vandeventer Black

UPCOMING EVENTS

Roanoke Bar Association Meetings 2023 - 2024

September 12, 2023

October 10, 2023

November 14, 2023

December 12, 2023

January 9, 2024

February 13, 2024

March 12, 2024

April 9, 2024

May 1, 2024 (Law Day)

June 11, 2024

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

OFFICERS

Christen C. Church 566-5653
President

Amy H. Geddes 989-0000
President-Elect

Jonathan D. Puvak 983-9399
Secretary-Treasurer

Lori Jones Bentley 767-2041
Past President

Diane Higgs 342-4905
Executive Director

BOARD OF DIRECTORS

Allegra M.C. Black 857-7111

Christopher S. Dadak 387-2320

Martha W. Elder 983-7535

T. Daniel "Bo" Frith, IV 985-0098

Alicha M. Grubb 983-9361

Sarah C. Jessee 283-0134

D. Adam McKelvey 342-2000

John M. McNeil, Jr. 853-2626

Mona A. Raza 344-2088

Victor S. "Dinny" Skaff, III 767-2217

Daniel R. Sullivan 628-7529



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