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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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MY EXPERIENCE AS AN AMERICAN INNS OF COURT PEGASUS SCHOLAR

BY DEVON SLOVENSKY, ESQ.

Every year, the American Inns of Court send two American attorneys to the United Kingdom for an immersive legal experience. I was fortunate to join the American Inns this year as one of these Pegasus Scholars based in London, while also visiting Scotland and Northern Ireland courts. One of the purposes of the Pegasus program is for common-law country practitioners to exchange ideas among our legal brethren.

I had the unique opportunity to discuss legal current events with the United Kingdom's legal elite, meeting with the president of the Supreme Court of the United Kingdom, Lady Brenda Hale, the Lord Chief Justice of England and Wales, Sir Ian Burnett, and the Lord Chief Justice of Northern Ireland, Sir Declan Morgan, as well as many other distinguished jurists and barristers. In addition to candid conversations with these bar and judicial leaders, I spent five weeks placed in two different barristers' chambers involved in civil and criminal cases at all levels of the UK courts.

This year's program began on the eve of the Opening of the Legal Year, an English medieval legal tradition that continues today. I was joined by my fellow Pegasus scholar, four Temple Bar scholars (former U.S. Supreme Court clerks), President of the American Inns of Court, Chief Justice Carl Stewart, and Executive Director, General Malinda Dunn, at Westminster Abbey for this religious ceremony. Judges arrived in their full ceremonial court dress, including full-bottom wigs and scarlet, fur-trimmed robes, and processed into the Abbey. An unusual sermon was delivered, questioning the sinfulness of "those who quite within the law avoid tax or make their money in certain other ways"—a sermon that drew the attention of every subsequent commercial barrister I met on our trip.

The English inns of court are fundamental to British legal structure, but lack an American analogue. Four inns remain today—Inner, Middle, Gray's, and Lincoln's. Every barrister (a trial attorney distinct from a solicitor) is a self-employed practitioner and member of an inn. A barrister may operate her practice from an office within the inn which she may share with other barristers, forming a cost-sharing chambers. Each inn is comparable to a small college campus replete with a full legal reference library, teaching facilities, living flats, and most importantly, a grand central dining hall open for barristers' lunches every day. Inner and Middle Temple abut each other and take their name from the Temple Church (of Knights Templar and *Da Vinci Code* fame), which sits between the two inns. Middle Temple is particularly proud of its connection to the United States, displaying a copy of the United States Declaration of Independence in its library, with five red stars marking the signatures of Middle Temple barristers.

While the legal system in the United Kingdom is permeated with rigid traditions and esoterica, it is refreshingly modern and adaptable in other senses. The Justices of the Supreme Court do not wear wigs or robes in their court rooms and do not sit at a higher elevation than the barristers arguing before them. The Court issues plain English summaries of legal issues in cases before the Court, written for the benefit of observing lay citizens. Proceedings are available for online streaming, and when a decision is released, a plain English summary explains the Court's decision.

Most important for American lawyers to appreciate are the dynamic changes that have occurred in the English legal system over the past decade. British lawyers no longer self-regulate, legal quasi-professionals perform increasingly more law-related work, and nonlawyer ownership of law firms is now ethically permissible. While concerns over nonlawyer ownership of law firms may have been overhyped, as very few UK firms have accepted



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PRESIDENT'S CORNER

BY KEVIN W. HOLT, ESQ.



The 2017-2018 bar year is off to a strong start.

The Young Lawyers Committee with the invaluable assistance of our Executive Director, Diane Higgs, organized a very enjoyable summer social in late August at Soaring Ridge Craft Brewery in downtown Roanoke. Drinking IPAs with fellow members of the bar (and even a few members of the judiciary) was the perfect way to celebrate the end of summer.

The bar luncheons have been well attended, no doubt due to the impressive slate of speakers arranged by Lee Osborne, our Program Committee Chair. Dan Callaghan, Roanoke City Attorney, Bob Goodlatte, Sixth District Congressman, and David Bowers, former Roanoke Mayor, were our fall speakers. Earlier this month, we were treated to remarks by Beth Macy, former *Roanoke Times* reporter and author of *Factory Man* and *Truevine*.

At the November meeting, Dan Brown presented a moving memorial resolution for Carroll D. Rea, a longtime member and leader of the RBA. And in December, Tony Anderson and Al Prillaman delivered a heartwarming memorial resolution for the Honorable John Apostolou, former general district court judge for the 23rd Judicial District. In listening to the resolutions, I was reminded of what I once heard a retired judge say about how you should live your life: think about what you want said about you at your eulogy and work backward.

As the Christmas season is upon us, I am also reminded of the timeless message that "it is more blessed to give than to receive." This fall, the RBA provided numerous opportunities to give. Our members participated in the 19th year of the Barrister Book Buddies program and read to local elementary school students in 26 classrooms. Our members taught "The Rule of Law" in civics classes in the City's middle schools. We served 72 classes this year. Just recently, the Roanoke Law Foundation again organized Santa at the Station. We hosted area children and their families, many from homeless shelters, at the Transportation Museum. They enjoyed food, games, face painting, caroling, meeting Santa, and other fun activities. Most importantly, the children were given an opportunity to make a present to give to their family members. Many of these children and their families otherwise would have had little Christmas cheer this year. Many thanks to all of you who dedicated your time and talents to organize and volunteer for this wonderful event. Special thanks go to Lori Thompson who again flawlessly ran the event (which is largely her brainchild). Thanks also to Ric Scott for his efforts the day of the event.

As the RBA heads into 2018, please consider continuing the spirit of giving. There will be numerous pro bono efforts and events the RBA will sponsor or be involved in with Blue Ridge Legal Services and the Legal Aid Society of the Roanoke Valley. As is our custom, and indeed our very culture, I hope you will take advantage of the innumerable opportunities available to give back to this wonderful community. I look forward to being able to do so myself and to working with you for the betterment of Roanoke in 2018.

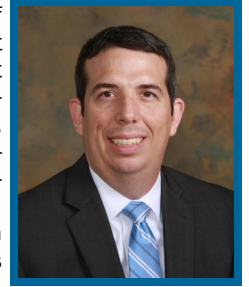
Merry Christmas and Happy Holidays.

Kevin W. Holt is a partner at Gentry Locke.

NOT YOUR FATHER'S (OR MOTHER'S) RULE 34

BY JUSTIN E. SIMMONS, ESQ.

Imagine that you represent the plaintiff in a bet-the-company patent-infringement case in federal court. You have a hunch that the defendant is in possession of the document that will win the case for your client, and so you fire off a number of well-conceived and well-drafted requests for production of documents. Thirty days later, though, you don't have your smoking gun in hand; instead, you have a dozen or so pages splattered with this objection:



Defendant objects to this request to the extent that it is overly broad, burdensome, and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

I'll bet that each of you has seen this objection (or some variation of it) at some point in your career. Heck, I'll even bet that some of you have made such an objection a time or two—I know I have. Well, if you plan to do so in the future, I've got some simple advice: Don't!

I'm not sure boilerplate objections like the example objection above were ever kosher under Federal Rule of Civil Procedure 34, but they certainly aren't now. On December 1, 2015, Rule 34 was "amended to require that objections to Rule 34 requests be stated with specificity" and "to provide that an objection to a Rule 34 request must state whether anything is being withheld on the basis of the objection." Fed. R. Civ. P. 34 cmt.

Rule 34 now reads in relevant part (new language in *italics*):

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state *with specificity the grounds for objecting* to the request, including the reasons. . . .

(C) Objections. *An objection must state whether any responsive materials are being withheld on the basis of that objection.* An objection to part of a request must specify the part and permit inspection of the rest.

Fed. R. Civ. P. 34(b)(2)(B)–(C).

So with the amendments to Rule 34 now fresh in our minds, let's return to the example objection and count the ways in which it falls short. First, it doesn't say which parts of the request are objectionable and for what reasons. Instead, it merely incorporates general objections such as the request is overly broad without saying why that is so. After the amendments to Rule 34, you should stay away from general objections unless you can provide a good-faith explanation for why they apply to the whole request.

Second, the example objection does not say whether any responsive materials are being withheld. You must tell the other side what you're holding back as a result of the objection. Otherwise, your adversary is left wondering whether you're actually withholding any responsive information.

And third, the example objection recites the wrong standard for permissible discovery. Under Rule 34, a party may request the production of documents within the scope of Federal Rule of Civil Procedure 26(b), which was also amended on December 1, 2015. Rule 26(b) no longer includes the phrase "reasonably calculated to lead to the discovery of admissible evidence." Instead, it now says that "[p]

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MY SUPERLATIVE CASE

BY KENNETH J. RIES, ESQ.



This article is the fourth installment in a new series of musings from members of the RBA 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.

The case I write about involves the New Madrid earthquake of 1812, a 1909 capital murder trial in remote Lake County Tennessee, the criminal prosecution of the director of the Hollywood film "The Twilight Zone," the statutory and constitutional prohibition against a juror sitting on a case in which he or she is related to a party within the sixth degree of blood or marriage, and the collapse of a thrift corporation (similar to a savings and loan) resulting in the loss of 1,000 depositors' money and in the criminal prosecution of its organizers.

In the mid-1980s, I was an associate in a law firm in Nashville. The leading lawyer in the firm was called to California, to serve as defense counsel in the criminal trial of the director of the film "The Twilight Zone," in which three cast members (including my childhood hero, Vic Morrow, who had played Sgt. Saunders in the television series "Combat") were killed in an accident while filming. The California court system was such that what was supposed to be a three-month trial ended up as a thirteen-month trial, though it did end in acquittal for the director and his co-defendants.

One of the cases that needed to be handled back home in the absence of lead counsel had to do with a 166-count securities fraud indictment against the three organizers of a failed thrift corporation in a rural county. With only a short period of time remaining before the motion-filing deadline, preceding what would be a three-week trial, I was called upon to draft and file any necessary motions.

During several late-night brain-storming sessions, I and another associate even lower on the totem pole than I creatively drafted motions seeking the dismissal of all the disparate counts of the wide-ranging indictment. (Among these was a motion to dismiss some 30 counts of the indictment based on a theory we invented on the spot, which we could hardly articulate with a straight face; the prosecution, at a later time, conceded that those counts should be dismissed based on our argument.)

So we developed technical arguments addressing all the counts of the indictment, but it was clear that some counts would survive.

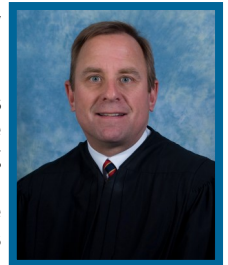
The county District Attorney General was being assisted by a State Securities Enforcement lawyer, as well as by a private lawyer whose office was in the county seat, who represented several dozen of the 1,000 or so depositors in the thrift corporation, who were suing my client and two others, seeking to recover the money they lost in the collapse. The local private lawyer was listed as "Special Prosecutor" on pleadings.

I found case law that prohibited a lawyer with an economic interest in the litigation from serving as Special Prosecutor (or prosecutor at all, for that matter); so I filed a motion to dismiss the indictment based upon prosecutorial misconduct involved in associating this lawyer in the prosecution of the case.

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VIEWS FROM THE BENCH: JUDGE MICHAEL F. URBANSKI

BY D. PAUL HOLDSWORTH, ESQ.



Taking time out of an undoubtedly demanding schedule, Judge Urbanski and his law clerks welcomed me—a stranger by all accounts—into chambers and made me feel right at home from the outset. The feeling was especially fitting considering that the primary takeaway I had from my conversation with Judge Urbanski, whether intentional or not, was that he is a lawyer's judge. He appreciates the challenge of practicing law, and approaches his role as judge with directed diligence to reach the correct outcome in each case.

Those familiar with Judge Urbanski may know that he was actually born in Livorno, Italy, where his father was stationed with the United States Army. After high school, Judge Urbanski spent the next seven years in the shadow of Thomas Jefferson, earning an undergraduate degree from The College of William & Mary and then his Juris Doctor from the University of Virginia.

After graduating from UVA in 1981, Judge Urbanski had the distinct pleasure of clerking for Judge James C. Turk in the same district and courthouse in which he now presides as Chief Judge. Following two years as an associate at Vinson & Elkins in Washington D.C., Judge Urbanski made his way back to the Star City to work for Woods Rogers, where he stayed for 20 years. Judge Urbanski served as a magistrate judge for the Western District from 2004 until 2011, when he was elevated to district judge on President Obama's nomination.

As with the predecessor subjects of this article, Judge Urbanski praised the unique collegiality of the Roanoke Bar. "We are lucky to be here where folks generally try to get along." He explained that he takes great pride in the tradition of collegiality in the district and endeavors to build upon it on a daily basis. That is not to say, however, that some improvements cannot be made. Judge Urbanski offered several suggestions for improving the overall level of advocacy in the Valley.

For example, when I asked Judge Urbanski to identify a particular pet peeve, he stated without hesitation: "Page limits! You'd be surprised how many attorneys fail to follow page limits." Explaining how he has had to go so far as issuing show cause orders to attorneys who fail to follow page limits or who fail to timely file briefs, Judge Urbanski cautions all attorneys to pay attention to pre-trial orders, deadlines, and page limits because "[t]hey matter!"

Having practiced law for more than 20 years, Judge Urbanski reiterated that he knows how hard it is to practice law. There's a lot going on between caseloads, difficult and/or demanding clients, and internal pressures. It's not easy. But heeding the little details is very important.

Judge Urbanski also humbly explained that it is difficult to be a federal judge. The issues are complex and intellectually challenging. Pointing to his law clerks, all of whom actively participated in this interview, Judge Urbanski explained: "We do our homework; we read everything that comes in, and more than just once." Lawyers should assume that the judge has read everything. Regurgitating a brief is often not helpful. Neither is deferring to the brief when at oral argument.

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ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



The year is coming to a close, and I wanted to thank you all for making it a wonderful year. I am so appreciative of the collegial and supportive Roanoke legal community. If you ever need any assistance finding legal information or researching legal issues, please don't hesitate to contact me at 853-2268. (If you haven't been to the Roanoke Law Library in a while, I would be glad to give you a tour and answer any questions about the collection and services we

offer.) As the holidays approach, I hope we are all able to celebrate with friends and family, relax, and reflect on the year just past.

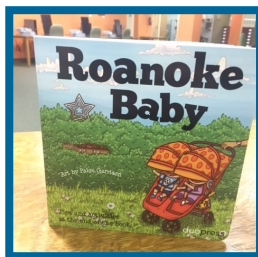
Reopening of Williamson Road Library

After being closed for over a year while undergoing an extensive renovation, the Williamson Road Library branch reopened on Monday, November 13. The entire building, inside and out, has been totally transformed; there are new children and teen areas and a large meeting room that can host community events, accessible after hours if necessary. The library now also features a beautiful outdoor space, brand-new computers and, best of all, a sparkling new collection of books. If you haven't had a chance to check it out, I would highly recommend a visit.

Roanoke Baby Book

If you're like me and always on the lookout for fun holiday gifts, the *Roanoke Baby* book might just fit the bill. This book would make a unique gift for a young child or someone about to have a young child. All City of Roanoke Public Library branches, including the Roanoke Law Library, have copies of *Roanoke Baby* book on sale for \$10.

This cool picture book features scenes we are all familiar with from around the Roanoke Valley and is an excellent gift for anyone who has a connection with our wonderful city.



Save the Date

February 23, 2018
Bench Bar Conference
Roanoke Higher Education Center

VIEWS FROM THE BENCH: JUDGE MICHAEL F. URBANSKI

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"When I ask certain questions in oral argument, it's because I want clarification; I want counsel to explain some things for me." Judge Urbanski reminds that some courts do not even have oral argument, and urges lawyers to emphasize the strong arguments, to concede arguments which are admittedly weak, to be well prepared, and to take full advantage of the opportunity to persuade and expound.

Judge Urbanski then targeted another area of improvement for the local bar (if not for the legal profession nationally): developing young lawyers. "The main challenge young lawyers face," he said, "is lack of opportunity." Whether it is the ability to try cases, take depositions, or argue motions, there is a significant lack of opportunity for young lawyers to grow and develop, he explained. Judge Urbanski hearkened back to his first law firm job, comically stating that if he was tasked with writing even a simple letter during any given week, he considered that to be an eventful and successful week. And if true for him several decades ago, Judge Urbanski mentioned it must be even more true for many young lawyers now given the steady decline in cases going to trial.

One of the suggestions Judge Urbanski proffered to aid young lawyers in overcoming this challenge is to volunteer to assist in the district's pro se prisoner cases. Young lawyers who desire some valuable experience should reach out to Magistrate Judge Robert Ballou and ask whether they could help assist a plaintiff in a trial of one of the district's many pro se prisoner cases. This would allow a young lawyer to gain real experience in trying cases in front of a jury and everything that goes along with it (e.g., familiarizing with the rules of evidence, examining and cross-examining witnesses, etc.). Judge Urbanski also reminds that if the client prevails, then the attorney may recover attorney's fees under the applicable civil rights statutes.

Another point that Judge Urbanski stressed was the often overlooked importance of his law clerks. Not a case goes by where Judge Urbanski does not heavily rely on his law clerks. Lawyers are mistaken if they view the law clerks as an unimportant part of the system, Judge Urbanski said, exclaiming that he considers his law clerks to be his "law partners." It would behoove attorneys greatly to treat the law clerks as their equals in the litigation process. When preparing summary notebooks or specific exhibits for a hearing, Judge Urbanski mentioned that lawyers would be well served by making an extra copy of the material for his law clerks.

During our conversation, Judge Urbanski also stressed the Court's accessibility. He is ready and willing to answer any phone call with counsel about any dispute on which they might need resolution. He said, comically, "Some days I feel like the Maytag repairman; no one needs you. It's a bit lonely." But Judge Urbanski is always willing to answer a call and appreciate when lawyers reach out, provided all counsel are present.

At the end of the day, Judge Urbanski said his focus is on getting it right. "Now, there are times that the Fourth Circuit will say we didn't get it right. That's okay." But the goal never changes, and the process never changes.

In closing, when I asked Judge Urbanski about the best professional advice he ever received from Judge Turk, the tone in the conversation noticeably shifted from jovial to serenely

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MY EXPERIENCE AS AN AMERICAN INNS OF COURT PEGASUS SCHOLAR

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outside capital, anxieties relating to self-regulation and the emergence of new legal quasi-professionals may be prescient. Both British and American legal systems are experiencing mounting



pressure to provide increasingly complex legal services in an environment where a large segment of the public is unable to financially access them. Like their British counterparts, American lawyers will see increased pressure for de- or re-regulation of the legal industry and should prepare themselves to adapt to these pressures. Understanding the experiences of our learned friends across the pond in the face of similar circumstances will be advantageous as we choose how to grapple with these questions in the United States.



Devon Slovensky is the Chairman and Executive Director of the Virginia Nonprofit Law Center, P.C.

 **YOU AND THE LAW**

Watch for the newest edition of "You and the Law" this spring. The Honorable Frank Rogers will be the keynote speaker.

NOT YOUR FATHER'S (OR MOTHER'S) RULE 34

(Continued from page 2)

parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).

Given that the December 1, 2015 amendments to Rule 34 (and Rule 26) now have some age to them, judges are losing their patience with attorneys who continue to use the same old boilerplate objections that their fathers (or mothers) used. Earlier this year, for instance, a magistrate judge in the Southern District of New York issued this wake-up call to the local bar: "From now on in cases before this Court, any discovery response that does not comply with Rule 34's requirement to state objections with specificity (and to clearly indicate whether responsive material is being withheld on the basis of objection) will be deemed a waiver of all objections (except as to privilege)." *Fischer v. Forrest*, No. 14-cv-1304, 2017 U.S. Dist. LEXIS 28102, at *9 (S.D.N.Y. Feb. 28, 2017).

To avoid such ire from our judges in the Eastern and Western Districts of Virginia and the possibility of waiver, I have eliminated boilerplate objections like the example objection given above, and I suggest that you do the same. And while I've still (hopefully) got your attention, I also suggest that you stop using "notwithstanding the above," "without waiving," and "subject to" objections. As one judge has observed: "Such an objection and answer preserves nothing and serves only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting Party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered." *Consumer Elecs. Ass'n v. Compras & Buys Magazine, Inc.*, No. 08-21085, 2008 U.S. Dist. LEXIS 80465, at *7 (S.D. Fla. Sept. 18, 2018). Amen.

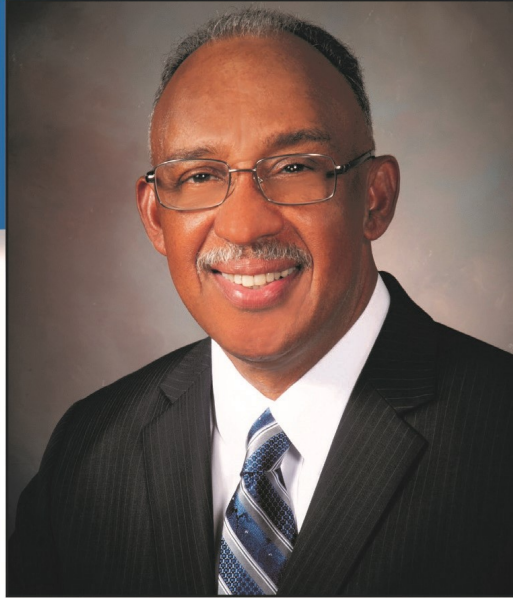
Justin E. Simmons is an associate at Woods Rogers PLC.

Pro Bono Training Opportunity

The annual training for pro bono no-fault divorces will occur on January 25, 2018 at 12:00 noon at Gentry Locke. Susan Proctor, of Blue Ridge Legal Services, will share her knowledge and experience with us for purposes of increasing participation in the BRLS Private Attorney Involvement program. Lunch will be provided. Please sign up with Kathleen Wright at Wright@gentrylocke.com by January 19, 2018.

The McCammon Group

is pleased to announce our newest Neutral



Hon. Joel C. Cunningham (Ret.)

Retired Judge, 10th Judicial Circuit of Virginia

The Honorable Joel C. Cunningham (Ret.) recently retired after nineteen years of distinguished judicial service. Judge Cunningham first served on the bench of the General District Court for the 10th Judicial District then was elected to serve as a Judge on the Circuit Court of the 10th Judicial Circuit. Prior to his service on the bench, Judge Cunningham served for a decade as Highway Condemnation Counsel for the Virginia Department of Transportation, throughout which time he also enjoyed a successful private practice in Halifax County. Judge Cunningham now brings this distinguished record of leadership and achievement to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth and beyond.

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Dispute Resolution and Prevention

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call (888) 343-0922 or visit www.McCammonGroup.com

MY SUPERLATIVE CASE

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The last, and as it proved in the end, most important ground for dismissal of the indictment was one that I had happened upon by chance. While visiting my former college roommate in Ann Arbor, Michigan, where he had won a fellowship in journalism, we were visiting a bookstore when I saw a paperback book on a shelf which caught my interest. The title was *The Night Riders of Reelfoot Lake*. I bought the book, which was written by a college professor at what was then Memphis State University. A brief synopsis is as follows:

- One of the most powerful earthquakes ever to occur in this country, or in the world for that matter, was the New Madrid earthquake of 1812. The epicenter was in Missouri; the force of the earthquake was such that the Mississippi River was actually diverted into a huge area of low-lying land in north-west Tennessee; the ensuing flood formed what is now known as Reelfoot Lake, a very large but not very deep body of water. The fact that one may not own a lake or body of water threw into chaos all land records and deeds in the area of Tennessee where the lake had been formed.
- Timber companies and others attempted to buy up large tracts of the land which now sat in and around Reelfoot Lake, and began efforts to remove "squatters" who were currently occupying these areas, with or without ancient deeds of dubious legal efficacy.
- In 1908, two lawyers visited what has been optimistically described as a "sportsman's lodge," preparing to take action to dispossess the squatters. The local residents (deemed "Night Riders" by the press), angry at this attempted legal aggression, surrounded the sportsman's lodge, torches in hand, urging the lawyers to come outside.
- The two lawyers stepped out the door; someone in the crowd shot and killed one of them. The other, swiftly assessing his options, ran into the swamp and kept running, eventually coming to a place where there was a telegraph.
- The backwoods insurrection became national news. Martial law was declared, and the National Guard was brought into the area to keep order. A number of alleged participants in the lawyer-shooting were indicted, and trial began.
- It did not take long to determine that if the law were to be applied as written, a jury could not be impaneled to try the accused men. Tennessee law (as is the same in Virginia) mandates that a juror may not sit in a case in which one of the parties is related to that juror within the sixth degree of blood or marriage. There may not have been anyone at all in Lake County, Tennessee, in the early 1900s, who was unrelated to at least one of the defendants.
- The exasperated judge eventually fashioned his own solution: he modified the statutory blood or marriage provision to fourth degree rather than sixth.
- A jury was impaneled, a number of the men were convicted, several being sentenced to death.
- On appeal, the Tennessee Supreme Court issued an opinion that stated, in its essence, "what part of sixth degree did you not understand?"
- The case was reversed and remanded for another trial.
- It should be noted that Tennessee had in effect a state constitutional provision, entitling an accused to be tried in the jurisdiction in which the offense was committed. Thus, unless the defendants were willing to waive their rights to be tried in

Lake County, the trial would have to be held there.

- After several failed efforts to impanel a jury, the effort to try the "Night Rider" defendants had to be abandoned, and they were released from custody.

Having, through fortuity, read the foregoing book, I then applied its lessons to the situation at hand. One thousand individuals in a county of 10,000 had lost money in the collapse of the thrift corporation. A number of cases decided during the Great Depression had established the principle that a person who loses money in a bank collapse, where the collapse is alleged to have been caused through criminal conduct, is considered a "victim" of the crime, and therefore a party.

The same principles governing the selection of trial jurors also apply in the selection of grand jurors. The grand jury that had issued the 166-count indictment against the three defendants consisted of 16 individuals, drawn from residents of the county in which the thrift corporation was located. I reasoned that if I could show that one or more of the indicting grand jurors was related within the prohibited sixth degree of blood or marriage to someone who had lost money in the collapse of the thrift corporation, then the indictment would have to be dismissed.

I was pacing in my office, trying to come up with a way of proving the foregoing. I thought perhaps I could hire a genealogist; but I did not know how, in this pre-computer age, I could find a forensic genealogist. A buddy of mine stuck his head in my door, to discuss the issue with me, and in a moment of brilliance suggested that I look in the yellow pages of the telephone directory.

I did so and found that a genealogist was listed. I telephoned the gentleman, who told me that he had had prior experience testifying in a will contest, and had been recognized as an expert by the court in that case.

I dispatched the genealogist to the county seat where the failed thrift corporation had maintained its headquarters; in a few hours' work, he established that four of the 16 indicting grand jurors were related within the prohibited degree to those who had lost money in the collapse of the thrift corporation. I filed a motion to dismiss the indictment on that basis.

The motion hearing was set in the county courthouse, the day before the scheduled start of the three-week trial. At a previous motion hearing, three quarters of the counts of the indictment had been dismissed; but 40-plus counts still remained. The judge had denied the motion to dismiss based upon the employment of the interested Special Prosecutor; I had filed an interlocutory appeal in the Supreme Court of Tennessee, which was pending, to be discussed at a conference of all five of the Tennessee Supreme Court Justices, said conference to occur that very morning.

The purpose of the trial court hearing on this particular day was to consider the motion to dismiss based on the grand jurors' being related within the prohibited degree to those who had lost money in the thrift corporation collapse; I put on my genealogist, and the proof went as well as could be expected.

The mood was tense and electric. The courtroom was packed to capacity, with hangers-on spilling out into the hall-

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LET'S BUILD THE PATH TO LAWYER WELL-BEING

To be a good lawyer, you must be a healthy lawyer. Sadly, the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust. According to a 2016 study that surveyed nearly 13,000 practicing lawyers, between 21 and 36 percent are problem drinkers, while 28 percent suffer from depression and a similar percentage from stress and anxiety. Lawyers also suffer higher rates of sleep deprivation, social alienation, job dissatisfaction, work-life conflict and incivility, and suicide. Most disturbingly, the study found that younger lawyers in the first ten years of practice and those working in private law firms experience the highest rates of problem drinking and depression. A 2016 study of law student well-being reached similarly disturbing results.

To address this evidence of a bleak career future for many lawyers, the ABA National Task Force on Lawyer Well-Being has prepared and issued its comprehensive report: *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*. Supreme Court of Virginia Chief Justice Donald W. Lemons has urged Virginia State Bar members to read and consider this report and to provide the Court with input about the actions it recommends toward improving lawyer well-being. Use the link at the end of this article to access and read the report. The report defines well-being as a continuous process in which lawyers strive for thriving in each dimension of their lives—in the occupational, intellectual, spiritual,

physical, social, and emotional facets of personhood. The goal—complete health for lawyers—is not only the absence of illness, but also achieving and maintaining a positive state of wellness. Achieving this goal is critical: a lawyer's well-being is part of the ethical duty of competence that includes the ability to make healthy work/life choices to assure a quality of life within family and community that, in turn, aids in responsible decision-making for clients.

Law firms, law schools, bar associations, courts, and legal malpractice insurers have, historically, taken a hands-off approach to lawyer wellness issues until confronted with an attorney's serious impairment. Ours is an interdependent profession. We have a joint responsibility for solutions. The report challenges stakeholders to take steps to reduce the level of toxicity in the profession and build a more sustainable culture. And there are good reasons to do so. Improved lawyer well-being is good for business, it is good for clients, and it is the right thing to do.

The report is intended to help lawyers in every sector of the legal profession to recognize the problems and find ways to support lawyer well-being. It centers on five core steps:

1. Identify who can act, and how, to reduce toxicity in the legal culture.

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MY SUPERLATIVE CASE

(Continued from page 7)

way. The judge several times pounded the gavel, calling for order.

After the close of the proof and presentation of arguments, the judge called the lawyers into chambers. To my great surprise, he grabbed his large old-fashioned dial phone, and thrust it on his desk in front of me. He instructed me to call the Chief Justice of the Tennessee Supreme Court, to ask him the result of the conference the Justices were to have held that morning, on the Special Prosecutor issue in this very case.

The judge handed me the telephone number. I called; it was the direct line to the Chief Justice. The Chief Justice answered; I told him the purpose of my call. I made sure he understood that I had been handed the telephone by the trial judge, and that I was in his chambers with all of the other lawyers in the case.

The Chief Justice clearly grasped the situation; he very pleasantly told me that my motion had been carefully considered by the Justices, but that the interlocutory appeal had been denied.

I thanked the Chief Justice, and relayed the news to the trial judge, who looked as if a great weight was bearing down on his shoulders. (It should be noted that trial judges in Tennessee are popularly elected; it can easily be understood why the judge was less than happy that the Supreme Court had failed to take this matter out of his hands.)

We were then instructed to reenter the courtroom. The judge took the bench, and took quite a long time recounting the evidence he had heard that morning, before, in the end, stating that he had no choice under the law but to dismiss the indictment against the defendants based upon the relation within the prohibited degree between four indicting grand jurors and victims of the alleged crime.

The other defense lawyers and I huddled in a corner of the courtroom, attempting to “wait out” the dispersing of the hostile crowd. Eventually, I made my way back to my car, which was loaded to the roof with files relating to the case, and all of my clothing and personal items intended to last throughout the three-week trial.

A second indictment was later handed down, but I retained the same genealogist, and the indictment was dismissed for the same reason as the first.

The defendants were indicted a third time, and by then, the trial judge had engineered a way to get the Supreme Court of Tennessee to appoint a retired judge in his stead, to preside over the case. When we arrived at the courthouse for a hearing, the newly assigned, totally no-nonsense special judge called the attorneys into chambers. The judge looked at the District Attorney General, and told him that it was his understanding that two previous indictments had been dismissed, due to the application of Tennessee law, prohibiting indicting grand jurors from being related within the prohibited degree to victims of the crime. The District Attorney General spoke up, and told the judge that there was “no way” that this could occur this time around, since he himself had personally selected each member of the grand jury, making certain that none of them were related to victims of the thrift corporation collapse.

The judge looked at me; I resisted the impulse to show any

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LET’S BUILD THE PATH TO LAWYER WELL-BEING

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2. End the stigma over seeking help.

3. Emphasize the tie-in between the duty of competence and one’s own well-being.

4. Expand education on well-being issues.

5. Change the tone of the legal profession.

The recommendations supporting these steps are spelled out, first, in broad terms, and then for individual sectors: regulators, employers, bar associations, law schools, judges, and so on.

Leaders in all sectors of the legal profession are encouraged to model a personal commitment to well-being. They can then take other actions: foster respectful relationships at every level, use mentoring, strive for diversity and inclusivity, partner with experts in the well-being field, support the transition of older lawyers, implement training on identifying mental health and substance abuse issues and their causes, facilitate and destigmatize seeking help, use random testing to support recovery, de-emphasize alcohol at social events, and provide education about suicide prevention.

Experiencing work as meaningful is the biggest contributor to work-related well-being. Thus, legal employers, from law firms to federal or state courts or agencies, can play a large role in contributing to lawyer well-being. A work culture that emphasizes power and competition can stifle values important to well-being, such as kindness and building relationships. It can also foster work addiction, with its adverse side effects to health and relationships. On the other hand, when the organization’s values evoke in its employees a sense of belonging and pride, employees are more likely to experience their work as having meaning.

The report recommends that legal employers designate and equip an advocate or committee to evaluate the work environment, identify policies or procedures that create employee distress, formulate best practices to promote a positive state of well-being instead, and track the progress of those practices. An anonymous survey can collect information on employee perceptions. Do they believe supervisors value and support well-being, empathize with others, and welcome suggestions? Do employees know how to seek help? More focused surveys are also available to measure employees’ work engagement, depression, substance use, burnout, and psychological well-being. Organizations can also actively promote well-being with policies or events that encourage and facilitate employees’ physical health, social interaction, and taking personal time away from work.

Regulators—courts and lawyers tasked with regulating the profession—have their own set of recommendations. The report suggests modifying regulations to make lawyer well-being a priority, by including this topic in lawyer admissions standards, in continuing legal education (CLE) requirements, in the Rules of Professional Conduct regarding the duty of competence, and in programming on best business management practices for lawyers. Offering alternatives to attorney discipline for misconduct related to

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THE RULE OF LAW PROJECT

BY JAIME MCGUIRE, ESQ.

Middle school includes many foundational years when adolescents are challenged to learn all they can in their classes, decide what in life is important to them, and potentially make decisions that can affect them for their lifetimes. In the midst of these years, teachers are given daily opportunities to influence their students' way of thinking about the world and to help their students develop what they are passionate about.

Each year, all across the Commonwealth, middle-school students participate in the Rule of Law Project. This program gives students a chance to hear from attorneys and judges about what the rule of law is and how it affects their daily lives. These professionals volunteer their time to explain to students how important the rule of law is to our nation and our judicial system, and how the rule of law affects them and their families in their daily lives.

This year, I had the opportunity to speak to two very different classes of eager students and explain the Rule of Law. I attended a class at Cave Spring Middle School and an English as a Second Language class at Stonewall Jackson Middle School. Students in both classes had myriad questions regarding the law, who the law protects, and what would happen if they or their families were to have an issue with the law. Many students also had questions about becoming an attorney or even becoming a judge and the things they could be doing now to best prepare for success. The Rule of Law Project is a perfect way to present to students the role that we each play in the judicial system, how the judicial system works, and ultimately how the rule of law treats people fairly.

Unlike the cases that the media often selects to report, individuals all over the United States receive justice every day because our country is governed by the rule of law. It is essential to share with these forming minds, while they are in middle school, the importance of following the laws that are in place and to explain the protections that follow each of them in the judicial system. As the students left the classroom and went on to their other classes or lunch, it was a joy to see even a little bit more understanding they each had because of our short time together.

Jamie McGuire is an attorney at Poarch Law.



The Honorable Bob Goodlatte speaking at the October Luncheon.



In November the luncheon speaker was Former Mayor, David Bowers, Esq.



Author Beth Macy discussing her current and upcoming works.



Patti Meire, Esq., Coordinator Public Guardianship Program, Virginia Department of Aging and Rehabilitative Services spoke a few words on guardians and conservators in November.

THE VWAA SUCCESS PROJECT FOR WOMEN ATTORNEYS

The Virginia Women Attorneys Association was established in 1981 to assist women attorneys in developing their professional practice and in achieving their potential, to bring about changes in the law and to affect public policy for the benefit of women of the Commonwealth of Virginia. The Roanoke VWAA Chapter is embracing that mission by establishing The Success Project for Women Attorneys.

The purpose of the Project is to improve the status of women, and particularly women of color, in the legal profession, which has not changed significantly over the past 15 years. The ABA Commission on Women in the Profession, the National Association of Women Lawyers, the National Association for Law Placement, the Florida Bar Special Committee on Gender Bias, and the New York State Bar Association, to name just a few, have extensively researched the very real barriers to success that women lawyers confront. The Project's intention is to inform, mentor, train, and support women attorneys while also encouraging positive changes in the legal profession.

The Project will kick off with an evening with former Chief Justice Cynthia Kinser on February 8, 2018, at 6 p.m., at Gentry Locke. Following this event, the Project will conduct quarterly roundtables designed to learn from women attorneys about their successes and frustrations in a variety of topic areas that affect their course through the practice of law. The Project is designed to mentor women attorneys through the barriers confronting women in the practice of law. The plan is to create a model for wider use.

The quarterly roundtables will feature women attorneys in different legal practice arenas around Virginia as speakers on growth strategy, branding, internal and external marketing, maneuvering through office politics, and networking. Topics to be covered include: the difference between mentors and sponsors, creating a game plan, identifying your niche, becoming known, identifying and seizing opportunities, pitching, educating yourself on office dynamics, grit and perseverance, and seeking assistance as a position of strength.

The kick-off event and roundtables are open to VWAA members and require registration. If you have questions about the Project, please contact The Success Project Coordinator, Nancy Reynolds, at nancy.reynolds@leclairryan.com

2017 ANNUAL JUDICIAL RECEPTION, HOSTED BY THE ROANOKE VWAA

BY SUSAN E. B. COOK, ESQ.

On Thursday, December 7, 2017, the Roanoke Chapter of the Virginia Women Attorneys Association hosted its annual judicial reception, honoring local judiciary and their staff, and bringing holiday cheer to the local legal community. Over 70 attorneys, judges, and staff attended the event, held at Blue Five's White Room in downtown Roanoke. The attendees enjoyed casual conversation and complimentary hors d'oeuvres and cocktails. A wonderful time was had by all, and the VWAA thanks its sponsors for making this spectacular event possible.

Planning for next year's judicial reception will begin in the spring. All area attorneys are reminded that they are invited and can attend regardless of whether they are VWAA members. We look forward to seeing you at the December 2018 judicial reception!

Susan E. B. Cook is an associate at Woods Rogers PLC



A special "Thank you" to all the RVLSA members for their assistance with the RBA Luncheon registration.



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MY SUPERLATIVE CASE

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emotion. He then looked at the District Attorney General, and stated something to the effect of “don’t you know that you can’t personally select the members of a grand jury?” The indictment was dismissed for a third time.

I then moved to Virginia and began practicing in Roanoke. I heard, at some point, that somehow the venue of the case involving the collapse of the thrift corporation had been transferred to another county, and that the case had not ended well for the defendants.

Nearly 20 years later, I broke out my copy of *The Night Riders of Reelfoot Lake*, and wrote a letter to the author thanking him for his work and letting him know that it had been put to what might have seemed a very strange practical use. The now-adjunct, mostly retired professor responded; he was very appreciative. He stated, in relevant part, that readers do not often take the time to write authors such nice letters.

And that is my superlative case.

Kenneth J. Ries is a partner at Johnson, Ayers & Matthews.

VIEWS FROM THE BENCH: JUDGE MICHAEL F. URBANSKI

(Continued from page 4)

profound. A solemn silence filled the room, and Judge Urbanski stated unequivocally: “Every human being has value.” He continued, “That was Judge Turk’s mantra. That’s how he lived his life.” And acknowledging his own faults and weaknesses, Judge Urbanski stated, “I’ve tried to pattern my life in the same way.”

Despite that being the perfect note to end on, the baseball fan in me couldn’t help but ask Judge Urbanski about the vintage panoramic shot of Old Comiskey Park hanging above his desk. With pride, he told the story of how he became a White Sox fan. He said that his very first baseball game was a Cubs game at Wrigley Field. However, he remembers the “friendly confines” were not so friendly to him. Whether it was an overabundant consumption of hot dogs or popcorn, the only thing he remembers about that game was how sick he was afterwards. The logical decision for Judge Urbanski, of course, was to become a White Sox fan. And he has been a proud supporter of the South Siders ever since.



D. Paul Holdsworth is an associate at Glenn Feldmann Darby & Goodlatte.

LET’S BUILD THE PATH TO LAWYER WELL-BEING

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mental health issues or substance abuse, and adopting a rule for conditional admission to practice law for recovering attorneys can signal that seeking help will not bar you from the profession.

The focus on lawyer well-being must begin in law school. The 2016 study found troubling rates of alcohol abuse, depression, anxiety, and illegal drug use by law students around the country. Equally concerning was the students’ high rate of failure to seek help for such issues. Law students report that the stressors triggering these problems are heavy workloads, competition, and grades. The well-being report urges legal educators to identify and adjust practices that magnify these stressors, to accept responsibility for student well-being, and to make it a part of the law school experience to build healthy lawyers. Suggestions include implementing a uniform attendance policy to aid early detection of students in crisis, peer mentoring, publicizing well-being resources and their benefits in every course syllabus, including well-being topics in professional responsibility courses, conducting well-being forums on campus, and discouraging alcohol-centered social events. Most importantly, educators must emphasize that student well-being supports improved study habits, better cognitive function, enhanced academic and test performance, and long-term academic and professional success.

Bar associations are called to spread and support the report’s recommendations. Suggested actions include sponsoring high-quality CLE programs on well-being topics, creating educational materials on best practices for legal organizations that include a well-being component, and training bar members about available resources to refer to an attorney who needs help, or knows someone who does.

What can individual RBA members do? Justice Lemons urges each of you to read the report, including the state action plan in Appendix A. Share the report with others and work to put its recommendations into action wherever you serve in the legal community. We have the capacity to create a better future for our lawyers. Link to report:

<http://roanokebar.com/wp-content/uploads/2013/10/ThePathToLawyerWellBeingReportFINAL.pdf>

IN MEMORIAM

The following are the Association’s losses since September 2017:

Richard C. Rakes (April 13, 1927 –
December 12, 2017)

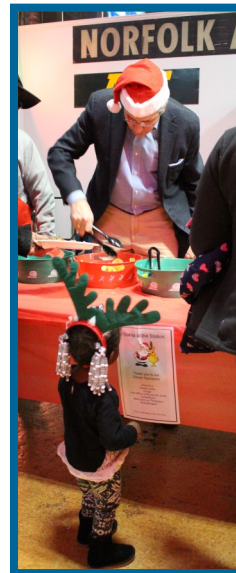
In grateful recognition of the contributions of Mr. Rakes to our profession, and his contributions to our Association, the Association laments his passing.

SANTA AT THE STATION BRINGS CHRISTMAS CHEER TO LOCAL FAMILIES IN NEED

The Roanoke Law Foundation sponsored its 12th annual Santa at the Station on the night of Monday, December 11, at the Virginia Transportation Museum. As in every year since the event's inception, Lori Thompson organized the entire evening, from lining up sponsors, purchasing food and gifts for the guests, and enlisting volunteers. Lori's efforts ensured that the night was once again a tremendous benefit to less fortunate families in the Roanoke Valley, and thanks to the more than 48 volunteers from the Association who donated time and financial support to the night.

More than 186 children and family members visited the Transportation Museum this year for Santa at the Station. The number of guests was reduced from last year's attendance, due primarily to a stomach bug that hit the largest organization that participates in the event, the Roanoke Rescue Mission. While the numbers were somewhat lower, those guests who attended enjoyed similar attractions as in years past. The children visited Santa Claus (and received a family photograph), chose a small gift that they could give to a parent or guardian from Santa's Sack, made crafts at Santa's Workshop, and enjoyed a buffet of food and drinks. Association volunteers applied temporary tattoos, painted faces, handed out gifts, and sang Christmas carols.

Members of the Association and corporate sponsors who provided generous financial support to the event were: LeClair-Ryan, Miller Frankl Webb & Moyer, LLP, RVLSA, Roy Creasy, Lori Thompson, John Fishwick, Stephen Kennedy, and Easter Moses. Thank you to all of the sponsors and volunteers who provided so much enjoyment for the guests, and help put all of the volunteers in the holiday spirit!



ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS
<p>The Roanoke Bar Association welcomes the following new Active members:</p> <p>Effective December 12, 2017</p> <p>Zachary S. Agee Woods Rogers PLC</p> <p>T. Daniel “Bo” Frith, IV Frith & Ellerman</p> <p>Alicha Grubb Gentry Locke</p> <p>Benjamin Johnson Johnson, Ayers & Matthews</p> <p>Emma M. Kozlowski Glenn Feldmann Darby & Goodlatte</p> <p>Nathan Moberley Frith Anderson & Peake</p> <p>Joseph A. Piasta Johnson, Ayers & Matthews</p> <p>Ariel S. Wossene Gentry Locke</p> <p>Associate Members: Amy L. Tracy Munson Rowlett Moore& Boone</p> <p>Life Members: G. Marshall Mundy</p>	<p>Roanoke Bar Association Meetings 2017 - 2018</p> <p>September 12, 2017</p> <p>October 10, 2017</p> <p>November 14, 2017</p> <p>December 12, 2017</p> <p>January 9, 2018</p> <p>February 13, 2018</p> <p>March 13, 2018</p> <p>April 10, 2018</p> <p>May 1, 2018 (Law Day)</p> <p>June 12, 2018 (Annual Meeting)</p> <p>Go to www.roanokebar.com for more information on all upcoming events.</p>	<p>Kevin W. Holt President 983-9377</p> <p>J. Lee E. Osborne President-Elect 983-7516</p> <p>Patrick J. Kenney Secretary-Treasurer 982-7721</p> <p>Hugh B. Wellons Past President 512-1809</p> <p>Diane Higgs Executive Director 342-4905</p> <p>BOARD OF DIRECTORS</p> <p>Lori Jones Bentley 767-2041</p> <p>Christen C. Church 983-9390</p> <p>Lauren M. Ellerman 985-0098</p> <p>Daniel P. Frankl 527-3500</p> <p>Andrew S. Gerrish 725-3770</p> <p>Macel H. Janoschka 725-3372</p> <p>James J. O’Keeffe 983-9459</p> <p>Devon R. Slovensky 523-1150</p> <p>Nancy F. Reynolds 510-3037</p> <p>Melissa W. Robinson 767-2203</p> <p>Justin E. Simmons 983-7795</p>



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