

## INSIDE THIS ISSUE:

Eramo v. Rolling Stone: <i>Reflections from the Case</i>	1
President's Corner	2
Views from the Bench: Judge Glen E. Conrad	2
My Superlative Case	3
Update from the Virginia State Bar Council	3
Roanoke Law Library News and Information	4
Summer Reception	8
In Memoriam	9
Announcements	10

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

## Editors

Justin E. Simmons - 983-7795  
jsimmons@woodsrogers.com

Lori J. Bentley - 767-2041  
lbentley@jamlaw.net

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

Richard D. Scott - 400-7997  
richard@rscottlawoffice.com

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

## ERAMO V. ROLLING STONE: REFLECTIONS FROM THE CASE

BY W. DAVID PAXTON, ESQ., J. SCOTT SEXTON, ESQ., AND  
MICHAEL J. FINNEY, ESQ.

On November 19, 2014, Rolling Stone published "A Rape on Campus." It began in shocking fashion—recounting the gang-rape of "Jackie" at a University of Virginia fraternity. It then explored issues surrounding campus sexual assault, often returning to Jackie's story as its primary prism.

The article created an immediate firestorm, due to the brutality of Jackie's reported assault, the description of UVA's culture, and the seeming lack of action against Jackie's alleged perpetrators. In the weeks that followed, however, Jackie's account unraveled, leading Rolling Stone to apologize and retract the article.

Three defamation lawsuits were filed in its wake: by the fraternity, by three individual fraternity members,\* and by then Associate Dean Nicole Eramo—the UVA administration's primary point of contact with Jackie. Only Eramo's lawsuit went to trial.

It played out over three weeks last fall, in Charlottesville before a local jury and United States District Court Judge Glen E. Conrad. Every aspect was reported on by national and local media in real time. The liability phase was mixed—the Court dismissed certain claims, and the jury then differentiated among the defendants, the statements at issue, and the legal theories. Ultimately, the jury awarded Eramo \$3 million in damages—\$2 million against the author, Sabrina Rubin Erdely, and \$1 million against Rolling Stone. This was less than half of the sued for amount. The case then settled with post-trial motions pending.

We represented Erdely and Rolling Stone. Looking back almost a year later, below are a few thoughts and observations about the experience.

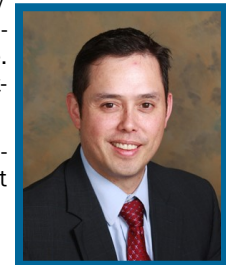
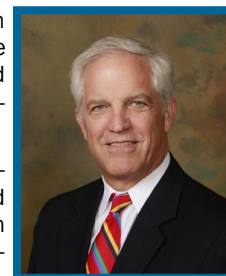
### Western District of Virginia Practice

When the controversy arose, the defendants were represented by Davis Wright Tremaine, an international law firm that specializes in media and First Amendment law, with a long history with Rolling Stone. After the lawsuit was removed to federal court, Gentry Locke was hired as local counsel.

In our experience, striking the right balance in this role can be tricky. On the one hand, you are responsible, just as in any case. On the other, you are the newcomer to an already formed relationship between attorney and client, often one that has existed for years, as was the situation here.

Davis Wright and our clients were always terrific to work with. For much of the case though, we largely acted as traditional local counsel—limited involvement in case strategy, but review of pleadings, filings, discovery, etc. Knowledge of the Western District's Local Rules and case law is central in this role, as is familiarity with local practices.

\* On September 22, 2017, the Second Circuit reversed the district court's dismissal of the fraternity members' lawsuit in part, and remanded the case back to the Southern District of New York. *Elias v. Rolling Stone LLC*, 192 F. Supp. 3d 383 (S.D.N.Y. 2016), *aff'd in part, rev'd in part*, No. 16-2465-CV, 2017 WL 4244625 (2d Cir. Sept. 22, 2017).



## PRESIDENT'S CORNER

BY KEVIN W. HOLT, ESQ.



I am honored and humbled to be the new President of the Roanoke Bar Association. Having grown up in the area and practiced law here for nearly 20 years, I have long viewed the position as one of high distinction and great opportunity.

I would like to thank (in advance) the members of the RBA Board and Executive Committee for their service this year. I am sure I will rely on them all a great deal, perhaps

more than they realize. I am also indebted to the RBA's recent past presidents for their leadership and guidance, particularly Joe Mott and Hugh Wellons. I hope to continue the initiatives begun under their leadership, especially the renewed focus on pro-bono service opportunities spearheaded last year by Hugh.

Finally, I want to thank Diane Higgs, the RBA's tireless executive director. This summer, Diane concluded a highly successful first year on the job. She immediately settled into her position and ran the day-to-day operations of the RBA flawlessly. She is one of those people who seems to have been destined to do her job—and do it exceptionally well. I look forward to having her support this year.

We are already planning for an exciting bar year. President-Elect and Program Committee Chair Lee Osborne has prepared an interesting and varied schedule of speakers for our meetings, beginning with Roanoke City Attorney Daniel J. Callaghan in September. Pro-bono Committee Chair Nancy Reynolds is eager to continue our renewed focus on pro-bono opportunities. She has a number of interesting ideas and initiatives. Macel Janoschka, our Membership Committee Chair, will lead us into the 21st century (better late than never). She will spearhead an effort to develop a social media presence for the RBA. Jay O'Keeffe continues to lead the Continuing Legal Education Committee and has a number of great seminars planned. Justin Simmons continues to do excellent work as Co-Chair of the Communications and Library Committee publishing the *Roanoke Bar Review*. This year he is joined by Lori Jones Bentley. They will continue the committee's excellent work in bringing you the news and developments in the Roanoke legal community. Lauren Ellerman joins the Board as Chair of Service Committee. She will oversee the RBA's numerous service opportunities and programs. Again, I thank all of the Board members for dedicating their time and energy in support of the RBA.

Speaking of service opportunities, please consider taking advantage of the wonderful community service programs and projects that the RBA sponsors. Volunteer for Barrister Book Buddies or the Rule of Law Project, two of RBA's longstanding and most appreciated projects. Participate in the Roanoke Law Foundation's Santa at the Station and help give needy children and their families a Christmas to remember. As members of the legal profession, it is our obligation to serve the community. During my 19 years as a member of the RBA, the opportunities to do so have increased dramatically under the leadership of previous RBA presidents and board members. I encourage you to get involved this year and dedicate yourself to community or public service through one of the many activities sponsored by the RBA. We are all better lawyers and citizens for doing so—and the needs in the community are great.

I look forward to a productive and exciting year. With your help, the RBA will continue to be a positive force for good in our community and for our profession.

Kevin W. Holt is a partner at Gentry Locke.

## VIEWS FROM THE BENCH: JUDGE GLEN E. CONRAD

BY BRADLEY C. TOBIAS, ESQ., AND  
LINDA GUSTAD, ESQ.

For more than 40 years, the Hon. Glen E. Conrad has sought to perpetuate the tradition of the United States District Court for the Western District of Virginia as a forum where all parties can confidently seek and find justice under the law. Judge Conrad is proud of the court's documented reputation for being both user-friendly and efficient in bringing cases to conclusion.

The Western District ranked third out of ninety-four federal district courts last year for the speediest disposition of civil trials, according to the most recent United States Judicial Business report. The district also ranked third in the nation for the highest number of trials completed per judge.

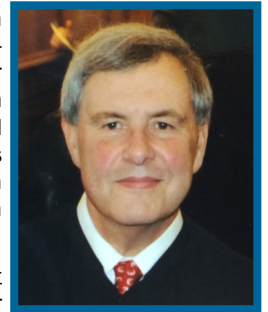
Judge Conrad knows the Western District inside out. He grew up in Radford, and after law school at the College of William and Mary, returned to the district as a federal probation officer and law clerk to District Court Judges Ted Dalton and James C. Turk in Abingdon. In 1976, the district judges appointed Judge Conrad as a magistrate judge. He served in that position for more than 25 years, first in Abingdon and later in Charlottesville and Roanoke. Nominated for district judge by President George W. Bush, Judge Conrad was confirmed to that post in October 2003. From 2010 until July 2017, he served a term as Chief Judge of the Western District, a position now held by the Hon. Michael F. Urbanski.

From the beginning of his time on the bench, Judge Conrad has observed and embraced the Western District's long-standing tradition of keeping standing orders and local rules to a minimum. He worked closely with Judges Dalton and Turk, who felt strongly that attorneys coming to federal court should not be ambushed by local procedural anomalies. The judges wanted attorneys to feel welcomed and respected in the district to develop their cases as they saw fit under the Federal Rules of Civil Procedure.

"To this day, we aim for the tone that Judge Dalton created and Judge Turk fostered," Judge Conrad says. "The district's ongoing practice is to minimize the number of occasions when a local procedural rule or standing order dictates the way that the lawyers in a lawsuit or criminal action can approach problem solving." He emphasizes, however, that while lawyers can have certain expectations of the district's judges, the judges also have certain expectations of the lawyers who come before them.

"Always be prepared." While this mantra may seem obvious, it remains at the top of Judge Conrad's list for attorneys. "Know the facts and the issues on both sides of your case, the established case law and the new legal developments. But at the same time, respect opposing counsel and their arguments." He cautions more seasoned attorneys against underestimating or belittling the efforts of younger attorneys on the other side of a case or assuming that experience is automatically a match for preparedness. Judge Conrad also encourages newer attorneys to seek out mentors who can offer guidance on effective strategies and methods, directly or by example.

"On the other hand," he advises, "always be yourself. Consider the advice and experiences your mentors share with you, and then bring your own strengths and creativity to your case as well. Emulate, but do not try to impersonate another attorney whose style you admire."



(Continued on page 5)

## MY SUPERLATIVE CASE

BY MONICA MROZ, ESQ.



*This article is the third 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.*

It was a case that had it all. A university closure, 176 individual clients, multiple class actions, fraud claims, breach of contract claims, consumer protection claims, shifting venues, a mass litigation panel with three dispute judges and three resolution judges, a declaratory judgment action for insurance, association with local counsel, a loose confederation of plaintiffs' counsel to work with, 13 days of mediation over three years, a limited fund class action settlement, and a lot of trips to West Virginia in exceedingly bad weather.

In early 2011, a few nursing students from a private university in West Virginia made the trip from West Virginia in a snow storm to meet with us. They had heard of our firm because of the protracted and ongoing litigation against the Commonwealth of Virginia on behalf of 75 individual nursing students of the Virginia Western Community College (VWCC) nursing program. We were heading toward our first trial in that case on claims of fraud and breach of contract against the school based on its failure to maintain nursing program national accreditation and advise the students of the loss of national accreditation. The students from West Virginia had similar issues and felt like their hard-fought-for education and each student's plan of becoming a BSN prepared registered nurse were in jeopardy. They were right. We eventually settled on behalf of a class similarly situated to our 176 plaintiffs as part of a limited fund class action settlement. Our firm acted as individual and class counsel, and we were heavily involved in developing the settlement terms. The heavy majority of all available assets were transferred to a fund, which was then shared out among the claimants based on a claim process we assisted in developing.

The VWCC case had involved fraud and breach of contract claims on behalf of 75 nursing students, and we brought it under the Multi-Party Litigation Act, which allowed us to join all the VWCC Plaintiffs in one action. Both the VWCC case and the private University case had a lot of moving parts. We took over 20 depositions in the former case and defended over 60 depositions. Based on a pre-trial ruling, our case was divided into multiple trial groups. Our first trial consisted of 16 plaintiffs' cases. We tried it in Roanoke County Circuit Court over two weeks in June 2011. The jury found for each of the plaintiffs on both the contract and fraud claims. Ultimately, our clients universally settled for a total of \$2.4 million.

Between these two cases, we litigated on behalf of higher education students against their schools for eight years. What we have found is that these cases require creativity, tenacity, focus, diplomacy and backbone—all in substantial amounts.

When you take on one of these cases, you quickly realize that there is no map out there for you to follow. Defining the value of a voluntary accreditation, like the national accreditation for a nursing program, required us to research and pin down the effects of what it means to graduate from a program that does

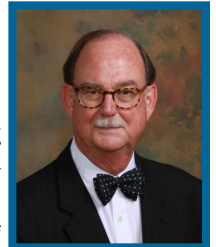
(Continued on page 9)

## UPDATE FROM THE VIRGINIA STATE BAR COUNCIL

BY GENE ELLIOTT, ESQ., AND BRETT MARSTON, ESQ.

As the summer winds down, the Virginia State Bar has a busy calendar of issues and events. As your circuit representatives, we appreciate the chance to represent the Roanoke area attorneys and to provide you periodic updates on some of these VSB activities.

Here are some news items, upcoming opportunities, and programs being brought before or supported by the VSB:



- If you are interested in serving on any of the VSB boards and committees, let either of us know as soon as possible. The nominating committee will be choosing candidates for open spots in these organizations in advance of the late-October Bar Council meeting.
- The Special Committee on Access to Legal Services is planning the annual Pro Bono Conference and Celebration on Wednesday, October 18, in Charlottesville. Held in conjunction with the Virginia Legal Aid Conference, this event will feature CLE sessions, a networking reception, and the Pro Bono Awards Dinner and Ceremony at which the Lewis F. Powell Jr. Pro Bono Award and Frankie Muse Freeman Organizational Pro Bono Award will be presented. You can register now online.
- A reminder that the MCLE Department will no longer be mailing the MCLE Interim Reports. The MCLE deadline is October 31st, so be sure to check your status on line to ensure that you have received credit for all your CLE hours this year.
- Southwest Virginia will be hosting one of the two Solo & Small-Firm Practitioner Forums scheduled this fall. The second of these forums will occur on October 13, 2017, at the Mountain Empire Community College in Big Stone Gap. More information about attendance is available through the website for the VSB Council of Local and Specialty Bar Associations. These programs always provide much valuable and timely content for attorneys, no matter what size your firm is.
- At its meeting on June 15, 2017, in Virginia Beach, the VSB Bar Council approved and sent to the Supreme Court of Virginia for its approval Legal Ethics Opinion 1887: *Duties when a lawyer over whom no one has supervisory authority is impaired*. The Supreme Court of Virginia approved this LEO on August 30. Among other options in such circumstances, the LEO encourages seeking assistance from Lawyers Helping Lawyers, an independent, non-disciplinary, and non-profit organization created to help legal professionals and their families with depression, addiction, and cognitive impairment issues.
- Effective July 1, 2017, the Supreme Court of Virginia approved amended Rules 7.1 through 7.5, which govern lawyer advertising. These rules have been streamlined to try to

(Continued on page 4)



## ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



The slower pace of summer is over, schools around the valley are back in session, and our hectic lives are returning. Our days and evenings are filled with work for us, and classes, sports, and myriad other activities for our children. Fall is my favorite time of year as the weather cools, the leaves change and high school, college, and professional football begins, not to mention Major League Baseball playoffs. This fall as we celebrate the return of

cooler weather, Roanoke will also celebrate the return of passenger rail service as Amtrak resumes service on October 31 after a 38-year absence. Speaking of celebrating, this fall I will be celebrating my 14th anniversary at the Roanoke Law Library, and I would love to assist you with your legal research needs during this busy season; please don't hesitate to contact me if I can be of assistance.

### Federal Resources at the Roanoke Law Library

The Roanoke Law Library has an extremely strong collection of Virginia resources. What some of you might not know is that we also have many wonderful federal resources. Most notably we have a complete and up-to-date United States Code Service. The USCS is a comprehensive set of all United States federal statutes with annotations and editorial commentary. It also provides annotated federal court rules including the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Federal Rules of Evidence, Federal Appellate Court Rules, United States Supreme Court Rules, as well as the rules for many other federal courts. Also included are annotated versions of most major international agreements.



We also subscribe to the United States Code Congressional and Administrative News. USSCAN is an annual publication that reprints all public laws that are to be added to the United States Code. It further provides selected legislative history documents. It can be an invaluable tool for determining legislative intent when researching federal statutes.

Additionally, our Westlaw subscription provides access to the United States Code Annotated (including historical statutes back to 1990), Federal Practice and Procedures, West's Federal Forms, American Law Reports Federal, and lots of other databases of federal-specific resources. Of course Westlaw also provides access to all federal court decisions. Give me a call at 853-2268 for assistance with any of these resources.

*Save the Date*  
**February 23, 2018**  
**Bench Bar Conference**

## UPDATE FROM THE VIRGINIA STATE BAR COUNCIL

(Continued from page 3)

accommodate the changes in advertising, including the enhanced use of social media.

- The Young Lawyers Committee's Professional Development conference titled "Foundations for Your Future" will be held on September 22 in Tysons, September 29 in Virginia Beach and Roanoke; and October 6 in Washington DC and Richmond.

More information on all of these items is available through either of us, or at [www.vsb.org](http://www.vsb.org).

As we prepare for the upcoming meeting of the VSB Bar Council in Charlottesville in late October, please let us know if you have any issues or concerns that you would like to have presented to the VSB for consideration.

*Gene Elliot is a solo attorney, and Brett Marston is a partner at Gentry Locke.*

## YOU AND THE LAW

You and the Law, a Roanoke Bar Association community education program, will be one of the service projects from around the state to be featured at the annual Bar Leaders Institute (BLI), conducted by the Virginia State Bar's Conference of Local and Specialty Bar Associations. At last year's BLI, the most popular sessions were the presentations by six members of different local bar associations discussing projects their associations had offered to benefit their communities. Continuing with that format this year, the BLI has invited the following bar associations to make presentations:

- Hill-Tucker Bar Association – Annual Turkey Drive
- Loudoun Chapter, VWAA – The Hon. Julia T. Cannon Memorial Color of Justice Program
- Metropolitan Richmond Women's Bar Association – Mentorship Programs
- Roanoke Bar Association – You and the Law: A Look Inside Your Juvenile and Domestic Relations Courts
- Virginia Beach Bar Association – Seatack Elementary Second Grade Swim Program: "Students on the Swim"
- Multi-bar project: The Prince William County Bar Association, Inc.; The Prince William Chapter, VWAA; and Old Dominion Bar Association – *The Loving Story* Documentary
- Tidewater Bankruptcy Bar Association – Twenty-Fifth Annual Hal J. Bonney, Jr. Seminar on Bankruptcy Law and Practice

Thomas H. Miller, Esq. will make the presentation on behalf of the RBA. The RBA started You and the Law in 2010. The program is designed to educate the public and to make citizens' interactions with courts more efficient and less frustrating. You and the Law presentations strive to promote understanding of basic procedures in the courts and to provide substantive information on commonly encountered legal issues. Videos of all You and the Law presentations are available for viewing on the RBA's website.

## ERAMO V. ROLLING STONE: REFLECTIONS FROM THE CASE

(Continued from page 1)

Our friends at Davis Wright often commented positively about the practice of law in the Western District in comparison to other jurisdictions. One notable aspect was accessibility to the court, not only in terms of hearings but also with respect to informal communications about logistical matters. While the plaintiff and defendants certainly had sharp disagreements and there were a lot of moving pieces in this case, things progressed smoothly.

### Transitioning to Trial

As the case went forward, our role expanded. Following summary-judgment arguments in mid-August, the clients decided that we would serve as lead trial counsel. During the liability phase, Scott handled *voir dire*, opening and closing arguments, as well as examinations of Erdely (which spanned five days) and the primary editor. David was responsible for the cross of most of the plaintiff's witnesses, other than Eramo. In the damages phase, David did the opening and closing arguments.

Preparation for a trial of this size would have been intense no matter the circumstances. But it was particularly acute given our more limited initial role. For example, we had not attended a single deposition. And Scott only got involved after the summary-judgment hearing.

Again, the strong relationship developed with Davis Wright was critical in managing this shift. There was a true partnership between the two law firms and people involved.

### Trial Technology

Both sides retained trial presentation consultants. We relied on ours at every step—creating slides for opening and closing argument, cutting and playing the audio/visual evidence, and displaying exhibits on the fly.

Much of the prep work was done in our “war room,” located at an adjacent hotel's conference room. This was our 24/7 remote office throughout the trial, housing all of the necessary technology, paperwork, and supplies. With such a long trial day (typically from 8 a.m. to 6 p.m.), preparation time was scarce. The efficiency provided by this set-up mattered.

We also ordered real-time and daily final transcripts. The daily transcripts proved invaluable, allowing precise citations and quotations for our motions and arguments at trial.

### Trial Strategy

This was not an easy defense. Jackie's account had been completely discredited. Rolling Stone itself commissioned a review by the Columbia School of Journalism into what went wrong. Although Columbia did not find intentional misconduct, its report detailed many journalistic errors and red flags. And the case was being tried in Charlottesville, home of UVA and an outraged community, during the three weeks before the 2016 presidential election.

Our clients had to own their mistakes to the jury, but we had to try to distinguish between those errors and the standard for defamation. Although multiple legal elements were challenged at trial, we focused on subjective intent. Because the court had found that Eramo was a limited-purpose public figure, she had to prove, by clear and convincing evidence, “actual malice”—that the defendants knew the alleged defamatory statements were false or that the defendants themselves had a high degree of awareness of their probable falsity.

(Continued on page 7)

## VIEWS FROM THE BENCH: JUDGE GLEN E. CONRAD

(Continued from page 2)

“Always emphasize your strongest points,” Judge Conrad continues with his list. “Avoid distracting the court with scattershot briefs that discuss multiple minor issues before getting to the heart of your case.” This advice applies to facts and legal issues alike. “Keep away from platitudes in your briefing and oral arguments, and do not ignore your opponent's valid legal points or facts harmful to your side. Instead, identify the application of the law to **all** the facts that will resolve the case in your favor. If you keep the focus on the resolution you hope to achieve and how to get there, you can then expect the court to address those facts and issues.” Says the judge, with a smile, “Then, if this progression does not happen, you can file a motion for the court to reconsider.”

“Always strive for excellence in the case at hand, even when it is not the legal practice area you feel most strongly about,” Judge Conrad counsels. He offers as an example his former law clerk Elizabeth Peiffer and points to her among the law clerks pictured above his desk. During her clerkship interview, Peiffer told Judge Conrad that she hoped for a career serving as habeas corpus counsel in capital cases. Soon after she started work, however, a complex patent case landed on her desk that consumed much of her time and attention during her clerkship. It was not an area of the law that interested her, but “she made it her own,” says the judge. “She immersed herself in patent issues and the facts of that case and grew into a capable expert on that topic. And she is remembered here for her work on that case. I also believe that experience of meeting a thorny issue head-on has served her well in her career,” as a senior staff attorney for the Virginia Capital Representation Resource Center.

“The key is to make yourself ready for the opportunity whenever it knocks,” he says. “In the meantime, meet today's obligations with your personal best. Become the go-to person on a topic that you believe in that fits your abilities.”

Judge Conrad firmly believes that all participants in federal court proceedings should strive to create a friendly and collegial environment for counsel and clients, while not sacrificing the sharp debate and intellectual discourse that characterize proceedings in any court. To conclude, he says, “I hope all counsel find the Western District of Virginia a good place to do business.”

Bradley C. Tobias is an associate at Wiley Rein LLP, and Linda Gustad is a pro se law clerk for the United States District Court for the Western District of Virginia

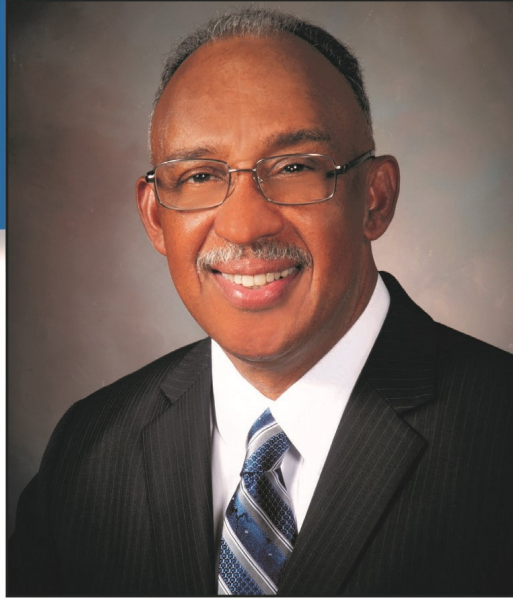


**Rule of Law**  
**October 24, 2017**

Watch for more information coming soon

# 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.

THE  
MCCAMMON  
GROUP

### ***Dispute Resolution and Prevention***

---

For a complete list of our services and Neutrals throughout VA, DC, and MD,  
call (888) 343-0922 or visit [www.McCammonGroup.com](http://www.McCammonGroup.com)



## **ERAMO V. ROLLING STONE: REFLECTIONS FROM THE CASE**

(Continued from page 5)

We aimed to show the jury our case, not just tell. Hours of audio recordings from Erdely's interviews of Jackie (sometimes with her friends present and participating) were played, as well as an interview of UVA President Teresa Sullivan. Erdely also took contemporaneous, near transcript level notes of all of her interviews (even those that were not recorded), which were compiled chronologically in her voluminous 441-page reporting file. There were also Rolling Stone's mark-ups of the article drafts, as well as emails between Rolling Stone and Erdely throughout the editing process. Thus, the jury could review the article's raw materials, putting themselves in the defendants' heads at the relevant times.

The jury ended up considering the actual malice issue carefully. It found that Rolling Stone did not have "actual malice" when the article was published, but subsequently did on December 5 when the article's statements about Eramo were "republished" online with an appended editor's note. As for Erdely, the jury found that she had actual malice for some, but not all, of the statements when the article was published and afterwards.

The jury rendered its liability verdict on a Friday afternoon, with the damages phase to begin the following Monday. We had a short window to interpret this verdict and figure out how to best approach damages. In the interim, we filed six new motions *in limine*, most of which were granted. Although not a defamation case, on everyone's mind was the recent \$140 million judgment for Hulk Hogan against the media company Gawker. Was our jury out for blood?

We concluded that it was not. Though we were genuinely disappointed by the liability verdict, it was nuanced and made after two and a half days of deliberations. During damages, we explicitly put our trust in the jury to come to a fair measure of Eramo's harm. While the jury award was significant, we believe that it was restrained, and a measured outcome under the circumstances.

*W. David Paxton, J. Scott Sexton, and Michael J. Finney are partners at Gentry Locke.*

### **September 12, 2017 Luncheon**



Kevin W. Holt, president, welcomes everyone to the first meeting of the 2017-2018 year. Lee Osborne, president-elect introduces speaker, Daniel J. Callaghan.



# SWVM

## **SOUTHWEST VIRGINIA MEDIATIONS**

**Hon. Jonathan M. Apgar (Ret.)**

Twenty-third Circuit Court Judge for 16 years  
National Judicial College Certification in Civil Mediation

**All types of Civil Mediation and Arbitration**  
**Case Evaluation      Judge Pro Tempore**

[www.swvmediations.com](http://www.swvmediations.com)

540-556-4296

## A SUMMER RECEPTION CELEBRATING CONGENIALITY AND PROFESSIONALISM

For this year's summer social, the Roanoke Bar Association Young Lawyers Committee found a new location, Soaring Ridge Craft Brewers in downtown Roanoke. On Tuesday, August 29, 2017, members of the RBA, including members of the local judiciary, gathered at Soaring Ridge to enjoy food, refreshments, and mingling outside the pressure of the courtroom or office.

Soaring Ridge is normally closed on Tuesdays and since it opened just for the event, RBA members had free reign over the large, modern-industrial chic brewery on Shenandoah Avenue. Attendees enjoyed beer and non-alcoholic offerings, along with light fare that included sandwiches, cheeses, fruit, and other desserts. Reports indicate that the beers were delicious, particularly the IPA. A warm thank you to Soaring Ridge for opening its doors to the RBA outside of its usual operational hours.

Paul Thomson, of Thomson Law Firm, commented that because his "office is no longer downtown," he enjoyed the "opportunity to get to see lawyers that [he] may not have seen in a long time, in a social setting." He added that visiting Soaring Ridge for the first time was an additional pleasure that he intends to repeat. Jason Whiting, an associate at Johnson, Ayers & Matthews, noted: "It's great to see colleagues in a relaxed setting and get to know them on a more personal basis."

This event was complimentary to all RBA members thanks to the generosity of sponsors Frith Anderson & Peake, Gentry Locke, LeClair Ryan, Spilman Thomas & Battle, and Woods Rogers. Thank you for your kind support of this event.





## MY SUPERLATIVE CASE

(Continued from page 3)

not have the accreditation. There were multiple variables that affected this valuation piece, and we worked with two independent experts to build this valuation. In both cases we had to use existing law and economics to develop a model for damages that provided a stream-lined pathway for seeing and quantifying the damage each student suffered. In the West Virginia case, we had multiple competing classes consolidated under a mass litigation panel. As in the VWCC case, we had to develop a formula for valuing the damages suffered by each individual client, but, because we were dealing with a limited fund class action settlement, we had to further define a formula for how to share out the proceeds among claimants. There was no template or case precedent; creative problem solving was required.

Taking 75 or 176 clients through years of litigation requires high-test tenacity. In the VWCC case, we scheduled, prepared our clients for, and attended depositions for over 60 of our clients. We answered written discovery on behalf of all our clients, including individual and group document productions. In the West Virginia case, we toured the state to meet with clients in groups, did individual discovery submissions through the mass litigation panel, and completed the claims process for each individual client. Our clients were consumed with life beyond the litigation—working full-time, caring for children, caring for parents, trying to keep a roof over their heads, trying to keep a car working so they could get to work, and trying to keep bill collectors at bay. The last thing many wanted to do, was spend time revisiting the circumstances which had led them to the mountain of student loan debt many had and could not pay. We had a systematic process for reaching out to clients by email, phone call, text message, and letter. There were times when we had to find clients who had dropped off the grid or changed their contact information without letting us know. Every single employee of the firm was involved in client outreach. With multi-party client cases such as these, consistent outreach is paramount.

A focused approach is also necessary, but may seem counter-intuitive. With a case burgeoning with diffuse elements—multiple defendants, multiple claimants, multiple classes, numerous counsel, and hundreds of variables—focus is not always the first thing that comes to mind. However, being able to strip distraction away and focus in on the priority was the pathway to success. For example, in the West Virginia mass litigation, our firm and two others realized after the first three days of unsuccessful mediation, that the priority was forcing the insurer to the table—a task no one else was pursuing. So, in our litigation on behalf of nursing students against their school, we took a targeted detour and filed a declaratory judgment action into the coverage issue. We filed the action, conducted discovery including numerous depositions, and successfully staved off summary judgment, which brought us into a position with the insurer where it was willing to tender proceeds to the settlement fund. This focused action was the key to unlocking the future successful settlement negotiations.

Also, with these cases, focusing on the common denominator became a touchstone. To develop a damages theory, to execute a discovery strategy, to develop the formulae for compensating claimants and creating the claims process, we had to pare down to a baseline from which we could work. Finding the baseline allowed us to build a framework that would support us through the process. In the West Virginia case, we had to develop a basic measurement for awarding claimants as there was not enough money in the fund to make the claimants whole. Would you do it by number of years, amount of tuition, number of semes-

ters? Ultimately, we decided the rock-bottom baseline measurement would be attempted credit hour. From this measurement, we could build the claims award process.

Diplomacy was involved daily. We had strategies for developing strategies. Literally. Our firm worked with two other firms representing their own groups of nursing students, and our three firms had to work with other attorneys working with non-nursing students. And that was just the plaintiffs' side. Also, we had six judges to work with and defense counsel for the defendant school, plus counsel for the school that had entered into a teach-out agreement with the defendant school, and counsel for the insurer. Being able to tag-team within the firm our interactions with various other lawyers and judges became crucial. Sometimes a different voice carrying the same message can gain more ground. Learning when to defer and when to push for ground was integral to success.

Finally, backbone. All litigation requires strength. However, it is really difficult to be the only impediment in a room full of strong-willed, intelligent individuals all vying for what they believe is best for their clients. Nevertheless, we found ourselves in that position on more than one occasion, because our gut was telling us this direction or that strategy was not the right path for our clients. Bluster or standing on principle alone was ineffectual—when we took a stand, it had to be strong, well supported, and appropriate considering the backdrop of dwindling assets and mounting claimant numbers.

Working for higher education students was incredibly rewarding. Our clients in both cases were strong, caring individuals who were willing to fight for justice. Their cases involved unique factors that we had to recognize and solve to be successful. These cases challenged us in ways we could not have imagined when we sat down to meet with our first nursing student from Virginia Western in 2007, but after litigating these two cases for eight years, the path is now a little clearer for each of our clients, and for that, we are thankful.

*Monica Mroz practices with Fishwick & Associates.*

## IN MEMORIAM

The following are the Association's losses since June 2017:

The Honorable John L. Apostolou

August 16, 1930 – August 21, 2017

Frank N. Perkinson, Esq

January 31, 1927 – June 24, 2017

In grateful recognition of their contributions to our profession, and their contributions to our Association, the Association laments their passing.

# ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS
<p>The Roanoke Bar Association welcomes the following new Active members:</p> <p>Effective September 12, 2017</p> <p>Elizabeth C. Barbour Legal Aid Society</p> <p>Susan Cook Woods Rogers PLC</p> <p>Katherine DeCoster Frith, Anderson &amp; Peake, PC</p> <p>Dirk D. Padgett Dirk Padgett Law PLLC</p> <p>Heather R. Parsons Giles &amp; Lambert, P.C.</p> <p>Katherine A. Waibler Spilman Thomas &amp; Battle, PLLC</p> <p>Amy P. Wheeler CowanPerry, P.C.</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 <a href="http://www.roanokebar.com">www.roanokebar.com</a> 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><b>BOARD OF DIRECTORS</b></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>



**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)