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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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THE RBA PRO BONO SUMMIT

As reflected in this issue, in recent months, the Roanoke Bar Association has focused its efforts, through guest speakers and CLE offerings, to encourage and assist members in providing pro bono legal services to the underrepresented population in our area. Together, we can narrow the Justice Gap.

JUSTICE MIMS HIGHLIGHTS THE IMPORTANCE OF PRO BONO SERVICE

BY JUSTIN E. SIMMONS, ESQ.

As part of the RBA's recent Pro Bono Summit, Supreme Court of Virginia Justice William C. Mims spoke at the Association's October luncheon about promoting access to justice through pro bono service. He began his remarks by praising the Roanoke Bar for its pro bono efforts and by explaining that the purpose of his speech was not to convince anyone who was not engaged in pro bono work to start, but rather "to underscore how much I and everyone else appreciate the work that you are already doing."

Justice Mims then proceeded to pose the question: "Why do we perform pro bono service?" He believes that there are three answers. The first, he says, is that pro bono work is a part of our personal DNA. Although we may each have a different motivation for performing the service that we do, he explained, "we all understand that there is a peculiar satisfaction to helping someone else. It connects us with other people, and it connects us with our community in a way that nothing else really does."

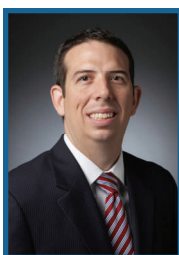
To illustrate this point, Justice Mims discussed two cases from his days as a private practitioner in Leesburg, both of which he handled for less than full compensation. The first involved a widow whose husband had been killed by random gunfire, and the second involved two orphans who lost their parents in a car crash. After working on the cases for several years, he was able to obtain a workers' compensation award for the widow and a settlement for the orphans. Helping these clients whose lives had been broken, he said, gave him an enormous satisfaction. While "I could not put those lives back together," he explained, "I could help them through the brokenness. And that is the heart of what pro bono service means for each one of us, in whatever fashion that we do it."

The second answer, Justice Mims says, is that pro bono work is a duty of our profession. "We do not have an explicit, mandatory pro bono requirement," he explained. But "we do indeed have [an] imperative to give back, to perform pro bono service." This is true for several reasons, he said, including our unusual importance to the health of American society and our unique ability to pursue the public interest.

And the third answer, Justice Mims says, is that pro bono work is a part of our calling. Citing his favorite scripture passages, he explained that we have an obligation to give back and to do justice. We must give back because we have been given much. And we must do justice because we are in a position to defend those who cannot defend themselves. "If we walk the walk of doing justice rather than just talking the talk," he said, "then our greatest responsibility is to those who cannot afford the services that only we can provide."

"Whether your commitment to pro bono is personal, is professional, or is based upon faith, or some combination of any of those three," Justice Mims concluded, "I again want to thank you because the Roanoke Bar is lighting the path and leading the way when it comes to pro bono."

Justin Simmons is an Associate with Johnson, Ayers & Matthews, PLC



PRESIDENT'S CORNER

BY STEPHEN W. LEMON, ESQ., PRESIDENT



As I write this letter, winter is upon us and people's thoughts are turning to the holidays. The leaves have fallen and the first part of the RBA program year is now complete. It has been an active and successful fall for the Association. The RBA pro bono initiative has completed its program stage with the successful October program featuring Justice Mims and the well attended CLE program October 11 presented by John Whitfield of Blue Ridge Legal Services. Another article in this newsletter provides more details on the program to date and future actions in January. I hope that all of you will make time to include pro bono activities in your schedules in the coming year.

The Rule of Law program in the Roanoke City, Roanoke County and City of Salem middle schools occurred on October 22, 23 and 24. I am pleased to report that all classes were filled by volunteers from our judiciary and members of this Association as well as the Salem Roanoke County Bar. I presented at William Byrd Middle School and am struck by how rewarding and scary it is to present to middle school kids. Each year increases my respect for middle school teachers. Thank you to all of you who participated in this meaningful program. Barrister Book Buddies is also off to a successful start with all classes desiring a volunteer being provided with one from our members.

The Santa at the Station program was a big success again this year. We made the lives of a lot of children living in difficult circumstances better for at least one night. Thank you to all of you who supported the program financially and volunteered to assist. Thank you to Lori Thompson for her continued leadership of the program and to Cathy Caddy for her organizational efforts.

I hope that those of you who made our December evening meeting enjoyed yourselves. I thought the night was fantastic and provided a chance for us to socialize in a different way from our normal lunch meetings. Thank you to Nick Leitch and Rich Maxwell. They did a fabulous job presenting the program on "cocktail law." It was easily the most entertaining CLE experience I have ever had.

Tommy Strelka and the young lawyers committee are hard at work planning this year's Bench Bar Conference in association with our local Judges. The event will occur on February 21. Lee Osborne is also hard at work on the winter CLE schedule and we will have details to you shortly.

I wish all of you and yours a safe and happy holiday season.

Stephen Lemon is a Partner at Martin, Hopkins & Lemon, PC



At the December meeting, Nick Leitch and Rich Maxwell present *Cocktail Law—How to Answer Basic Legal Questions from Friends, Neighbors, Clients and Partners* . . . continued on page 13.

HELP US CLOSE THE JUSTICE GAP: JOIN THE PRO BONO INITIATIVE!

BY JOHN WHITFIELD, ESQ., DAVID BEIDLER, ESQ., AND SUSAN PROCTOR, ESQ.

At the Roanoke Bar Association's October meeting, Supreme Court of Virginia Justice William Mims spoke eloquently about pro bono service, as he challenged the bar to build on its record of pro bono achievement to help establish a level playing field for all those unable to afford civil legal assistance. As representatives of the legal aid offices serving the Roanoke Valley, we wholeheartedly endorse Justice Mims' exhortation. We appreciate this opportunity to explain the critical importance of widespread pro bono participation among the Roanoke Bar Association's membership in meeting the civil legal needs of low-income Roanoke Valley residents.



John Whitfield

The Justice Gap.



David Beidler

A 2007 Citizens Survey undertaken by the Office of the Executive Secretary of the Supreme Court of Virginia found that a clear majority of the public perceives that the poor fare badly in Virginia's court system, compared to other groups. Why would the public hold that perception? Our hunch is that it stems from the poor's endemic lack of representation in civil cases. With lawyers metaphorically holding the "keys to the courthouse," those who cannot afford an attorney are effectively locked out of our system of civil justice. Despite a court's best efforts to treat pro se litigants fairly, the tilted playing field that results when one side has counsel and the other does not is impossible for the court to rectify. Recent studies have suggested an error rate as high as 33% may result from tenants' lack of representation in eviction proceedings, for example.

You might ask, isn't that Legal Aid's responsibility, to provide representation to those who cannot afford an attorney? Regrettably, by all accounts, the current efforts of legal aid programs and pro bono attorneys can meet only 20% of the civil legal needs of low income Virginians. The other 80% are left without the legal representation they need to help them negotiate the complicated court procedures we lawyers struggle to master. They cannot get the legal advice they need to fully understand and protect their rights under the law. High error rates for pro se litigants struggling on this tilted playing field, multiplied by this overwhelming level of unmet need, results in a critical flaw in our system of civil justice: to-wit, the "Justice Gap."



Susan Proctor

This Justice Gap stands in stark contrast to the ideals we espouse about equality under the law. Since the very first written legal code — the Code of Hammurabi — was promulgated by the king of Babylon in 1700 BC, a primary stated purpose of the Rule of Law has been to protect the powerless from the powerful. More recently, Virginia's greatest jurist of the last century, the late Justice Lewis Powell Jr., observed:

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BLUE RIDGE LEGAL SERVICES DIVORCES – STRANGE BUT TRUE

BY KENNETH J. RIES, ESQ.



Since 1989, I have represented individuals seeking uncontested divorces in cases referred to me by Blue Ridge Legal Services ("BRLS"). I generally have two or three cases pending at any one time. These are simple divorces, with an occasional name change; no custody fights, no child support issues, no visitation disputes. The cases are pre-screened by BRLS. Unless a winning lottery ticket shows up, the client's economic situation and mine will be unchanged throughout the brief representation. But my efforts are, nevertheless, rewarded—by the client's gratefulness and my own satisfaction at having filled a vital need.

Now that I look back on the last 24 years, I am amazed at the sheer number of cases, but even more by the variety of situations and fact patterns. I have been involved in cases in which one side or the other involved a citizen or former citizen of Austria, Germany, Mexico, Venezuela, the Hashemite Kingdom of Jordan, Iraq, Jamaica, Haiti, Barbados, and the Turks and Caicos Islands, among other places.

Many of the clients are so eager to proceed with their divorces that, after having found themselves on a waiting list for a period of weeks or months, they telephone me immediately after having opened the envelope sent to them by BRLS. It is often the case that I, too, am only opening the envelope by which the case has been referred to me when I receive that first call from the client.

The following is a non-inclusive list of the "strange but true" situations I have encountered in handling literally dozens, perhaps hundreds, of Legal Services-referred divorces:

1. A Venezuelan woman seeking a divorce from an Austrian husband. The husband was cooperative and sent back a waiver form containing a notary seal consisting of a number of colorful ribbons and seals.
2. A husband who took advantage of the ability through a Legal Services divorce to change his own name. He had been adopted as a small child and had taken the name of his stepfather. In the meantime, as he grew up, he came to know his natural father and developed a much closer relationship with him than he had with the stepfather. Now, in his twenties, he sought a divorce, and changed his name back to the name he had at birth.
3. A woman born and raised in this country who became disenchanted with her Middle Eastern husband after he returned to his home country and took on yet another bride, which was permissible under his country's laws, but not favored by his American wife.
4. An eight-month pregnant woman seeking to hurry up the divorce, so that she could marry the father of the child she was carrying before the child arrived. We were successful in getting the divorce entered quickly.
5. A husband who had been separated for 27 years, whose wife responded to the request for a signed waiver form that she would refuse to acquiesce in the divorce unless the husband paid her the \$5,000 she insisted he had owed her

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FEDERAL TRIAL EXPERIENCE AS PRO BONO COUNSEL

BY LINDA L. GUSTAD, ESQ.

Hypothetical: You are a recent law school graduate, working as an associate at a Roanoke law firm, looking for chances to get courtroom experience in a world where most civil actions settle to lessen the skyrocketing costs of litigation. You picture yourself before a seven-member jury in federal district court, grilling a defense witness or painting a verbal picture of the evidence that supports your client's position at closing.



The hypothetical can become a reality. The United States District Court for the Western District of Virginia has pro se, indigent litigants whose civil rights claims need to be tried and, in exceptional cases, a responsibility to seek volunteer counsel for them. Western District judges, the Roanoke Bar Association, and the Federal Bar Association have been working together to meet these needs, and they need your help.

Western District Need for Pro Bono Counsel

A surprising percentage of the civil actions brought in the Western District are filed by indigent individuals proceeding pro se. In 2012, for example, 620 of the 1394 civil cases filed (more than 40 percent) involved pro se plaintiffs, most of whom are also indigent. A majority of the court's pro se litigants are state or federal prisoners, suing prison officials for alleged constitutional violations under 42 U.S.C. § 1983 or its federal equivalent action for damages, under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The inmate plaintiff in a § 1983 action or *Bivens* case asserts that prison officials have violated his constitutional rights in some respect, by using excessive force against him, refusing to accommodate his sincere religious beliefs, failing to provide adequate medical care or to protect him from violence by other prisoners, or interfering with his right to access the courts. Generally, these claims and clients rank rather low on the public sympathy meter. Nevertheless, courts have a constitutional obligation to ensure that even the least of these claims, if potentially meritorious, is not lost because of the plaintiff's incarceration, economic status, or lack of legal expertise.

An indigent, criminal defendant enjoys a constitutionally protected right to court-appointed counsel. The court is also authorized by statute to hire counsel for the indigent habeas corpus petitioner, if the judge determines that the interests of justice so require. See Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A(a)(2)(B). An indigent, civil rights litigant, on the other hand, has no constitutional or statutory right to court-appointed counsel. Such individuals do have a limited constitutional right to access the courts. As part of the court's responsibility to preserve access for these litigants, under exceptional circumstances, when an indigent, civil plaintiff has a colorable claim, but lacks the capacity to present it, the court will seek legal assistance for her. The court has no CJA funding for appointments of counsel in civil actions, however. When the exceptional case arises that calls for counsel, the court must appeal to attorneys to undertake the representation, pro bono.

The Exceptional Case

Prison inmates do enjoy constitutional protections, balanced against the state's legitimate penological interests, such as the safety, health, and security of the prison population and staff. Strict legal standards have evolved to measure claims in light of this balance. For example, negligence is not actionable, supervisory liability

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ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



2013 is almost in the books, and it was a productive and positive year for me and also for the Roanoke Law Library. The holidays are fast approaching, and once again, I am reminded of all the wonderful things to be thankful for and all the reasons I have to celebrate. I am especially thankful for my wonderful relationship with the members of the Roanoke legal community. I enjoy coming to work every day and interacting with you all, learning about your lives, discussing sports, politics, or current events. At times, I am even called upon to help with legal research. Thanks to you all for making the Roanoke Law Library the valuable resource that it is. Thanks for all the questions, comments, advice, and conversation.

Closing of the Main Library and Extension of Law Library Hours

As most of you have probably heard, the City of Roanoke's Main Library on Jefferson has closed for renovation, and will remain closed until sometime in late 2014 or early 2015 for a much needed update to a facility that is heavily used. I cannot wait for all of us to see the results. Most afternoons at noon, when the Law Library closes, I work in the Virginia Room at the Main Library. The Virginia Room houses the Roanoke Public Library's local history and genealogy collections, including historical newspaper archives, county records, local historical documents, and genealogical materials. Beginning December 3, 2013, the Virginia Room will be accessible to researchers by appointment, even though the rest of the library is closed. If you would like to visit the Virginia Room during the renovation, call 853-2268 to make an appointment and for information about access.

As a convenience while the Main Library is closed, several branches, including the Law Library, will be open for additional hours. Beginning December 4, 2013, the Law Library will be open on Mondays and Wednesdays until 4:30 p.m. Thereafter, as long as the Main Library is closed, the Law Library hours of operation will be:

Monday	8:00 AM - 4:30 PM
Tuesday	8:00 AM - 12 Noon
Wednesday	8:00 AM - 4:30 PM
Thursday	8:00 AM - 12 Noon
Friday	8:00 AM - 12 Noon

Please feel free to call me at 853-2268 with any questions about this change or any other topic.

Pro Bono Resources

With the Roanoke Bar's emphasis on pro bono practice this holiday season, I would like to remind you of some of the great resources we have available for you to check out from the Roanoke Law Library. If you find yourself in a case outside your area of expertise, the Roanoke Law Library has a variety of resources that can help. First and foremost, I would like to remind you about our circulating CLE collection—hundreds of up-to-date Virginia Continuing Legal Education binders. There are Virginia CLEs available on a variety of subjects, including domestic relations, landlord and tenant, and probate. You can also check our large collection of the West Nutshell series of primers on a variety of subjects. Another useful resource is the Virginia Practice Series. These comprehensive treatises, published annually by West, cover major areas of Virginia law, and most volumes can be checked out. To reserve a specific item you need for your newest pro bono assignment, go to URL www.rvl.info and define your search, using the desired practice area and "law library." Or you can give me a call at 853-2268, and I will be happy to assist you.

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VIEWS FROM THE BENCH: U. S. MAGISTRATE JUDGE ROBERT S. BALLOU

BY JUSTIN E. SIMMONS, ESQ.

The judges previously featured in this column have all had at least one thing in common (okay, two, if you count the black robe): they each had more than a decade of experience on the bench. So for this issue, I thought that I would mix it up a bit and interview one of Roanoke's newest judges—The Honorable Robert S. Ballou, who was appointed as a Magistrate Judge for the U.S. District Court for the Western District of Virginia in October 2011.



In his life before the bench, Judge Ballou was a partner at the Roanoke firm of Johnson, Ayers & Matthews, P.L.C., where his practice focused on civil litigation and construction law. Prior to joining Johnson Ayers, he practiced with a Richmond firm, clerked for a federal district court judge in Louisiana, and obtained undergraduate and law degrees from the University of Virginia.

Although his father, the late and beloved Ernest W. Ballou, was a long-time member of the Virginia circuit court bench, Magistrate Judge Ballou did not begin his legal career with the aspiration of one day donning the black robe, too. Rather, the interest came many years later when Judge Urbanski's appointment to the district court opened up a magistrate judge position. Magistrate Judge Ballou was drawn to the position because of its mediation aspect. The "opportunity to be involved on behalf of the court in resolving cases," he explains, "is what intrigued me most about this particular spot."

Over the past two years, Judge Ballou has mediated numerous cases. While some cases are more complex than others, he approaches each one with the same premise: "The case belongs to the lawyers and the clients," he says, "and the mediator is there to help the lawyers and the clients find a way to settle their case." But the tactics that he employs to accomplish this goal vary from case to case, depending on the parties' needs. If "the parties are moving in a constructive way toward getting a case settled," then "I try not to get in the way of that," he explains. "If it then begins to bog down," however, "I will try to figure out what the right pressure points are to get it back on track, either to be evaluative or to push on whatever side I view is beginning to slow down."

As for the parties who are still unable to reach an agreement, Judge Ballou finds it important to follow up with them after a little time has passed. "A lot of cases don't settle on the first day," he notes. "They settle down the road after people have had a chance to think about it some more and had a chance to appreciate what the next steps will be to get the case ready for trial." It is only then, he observes, that some parties "realize that perhaps settlement is a wiser path than not."

With respect to what lawyers can do better to prepare for mediation, Judge Ballou has several pointers. To begin with, he recommends that lawyers prepare for mediation like they would for trial. This includes, he says, "mak[ing] sure that the client is informed about how the process works, about the strengths and weaknesses of the case, and about realistic values of the case."

Judge Ballou also suggests that lawyers remember that "mediation is a collaborative process." Thus, he stresses, "there is really no place in a mediation for a lawyer to be bombastic, for a lawyer to draw a line in the sand, or for a lawyer to tell the other side

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THE VIRGINIA ACCESS TO JUSTICE COMMISSION

The Supreme Court of Virginia announced in September of 2013 the Court's establishment of the Virginia Access to Justice Commission. The Commission, comprised of judges, lawyers, and others to be appointed by the Justices, will strive to promote equal access to justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents. Virginia joins 28 other states with Access to Justice Commissions charged with expanding access to civil justice for low income and disadvantaged persons.

"In simple terms, access to justice means that courts must be accessible to every person who desires or is required to use them," said Cynthia D. Kinser, Chief Justice of the Supreme Court of Virginia. "The Virginia Access to Justice Commission will help the judiciary fulfill its mission to provide an independent, accessible, responsive forum for the just resolution of disputes."

Chief Justice Kinser, as the administrative head of Virginia's Judicial System, is charged with overseeing the efficient and effective operation of the Judicial Branch. In early 2013, the Supreme Court convened an Access to Justice Planning Committee, funded by an Access to Justice Commission Expansion Project Grant from the American Bar Association. Chaired by Justice S. Bernard Goodwyn, the Committee debated the need for an access to justice commission in Virginia and what direction such a commission should take. The Committee recommended to the Court the creation of the Virginia Access to Justice Commission. The Commission's goals include coordinating access to justice activities among various groups, mobilizing legal professionals to provide legal services to low income individuals, and encouraging the development of auxiliary resources for underserved populations.

"Establishment of an Access to Justice Commission will benefit all Virginians by maximizing existing resources to facilitate increased access to courts and legal services," said Committee Chair Goodwyn.

The formation of the Commission is consistent with Vision 3 of the current Strategic Plan for Virginia's Judicial System, adopted in 2009, which states that Virginia's courts will "maintain human dignity and provide effective access to justice for all persons." The establishment of the Commission ensures that an entity is actively coordinating and promoting access to justice efforts in the Commonwealth.

For more information about the Virginia Access to Justice Commission, please contact Pat G. Davis, Office of the Executive Secretary, Supreme Court of Virginia, at (804) 225-3213. See also Strategic Plan for Virginia's Judicial System (2009), Virginia's Courts in the 21st Century: To Benefit All, To Exclude None http://www.courts.state.va.us/courtadmin/aoc/judpln/reports/2009_strat_plan.pdf

ROANOKE LAW LIBRARY NEWS AND INFORMATION

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Older Books available

There were several hundred volumes of older legal books that were discovered while cleaning out the basement of the Main Library. These include Acts of the Assembly and other legislative history volumes from the early to mid-1900's, Virginia legal treatises, Virginia Executive agency reports, and other miscellaneous materials. The Roanoke Law Library had copies of most of these materials. We do not have space for duplicates and will eventually be getting rid of them. Please contact me at 853-2268, if you are interested in any of these materials.

HELP UP CLOSE THE JUSTICE GAP: JOIN THE PRO BONO INITIATIVE!

(Continued from page 2)

Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.

But while even the United States Supreme Court has recognized that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has," (*Griffin v. Illinois*, 1956), such inequality – where one party can afford representation by an attorney, but the opposing party cannot – is rampant in our courts, resulting in a heightened potential for a miscarriage of justice despite the courts' best efforts.

The Justice Gap cannot be simply shrugged off as "Legal Aid's problem." Ultimately, it is the problem of our entire civil justice system, for it fundamentally undermines the Rule of Law. If we want the poorest in our society to "play by the rules," we must be able to assure them that "the rules" work FOR them as well. Society ignores this fundamental problem of access to justice at its moral peril. Dismissing the issue as "just the way things are" is no more legitimate in this context than it was when asserted by opponents to civil rights reforms 50 years ago, by opponents to female suffrage a century ago, or by apologists for slavery a few generations earlier.

Legal Aid has chronically suffered from inadequate funding and staffing to meet the legal needs of low-income Virginians. However, this condition has deteriorated since the economic downturn of 2008. Virginia's legal aid programs have been hit by a double whammy of collapsing IOLTA revenue and federal funding cuts. The overall impact has resulted in a 20% loss in our funding. Across Virginia, legal aid offices have lost 61 positions (19% of our entire staff compared to 2009) and 34 lawyers (21% of our total attorney staff). Meanwhile, the poverty population in Virginia has increased 32% over the last decade. From a global perspective, on the World Justice Project's Rule of Law Index, using various factors to measure the strength of the rule of law in 97 countries, the United States ranked 68th in terms of the availability of civil legal assistance. With that ranking, the US is tied with Uganda and behind Russia, China, and Pakistan, to name a few of the more embarrassing comparisons.

Under current conditions, Legal Aid cannot realistically meet even the most critical civil legal needs of the poor without the help of the bar. If "Justice for All" is going to be more than an empty phrase at the close of the Pledge of Allegiance, we need to drum up a dramatic increase in pro bono assistance.

The Pro Bono Challenge.

Statewide, only about 4% of Virginia's attorneys participated in pro bono work through their local legal aid offices last year, while perhaps another 4% participated in pro bono work through pro bono programs not affiliated with legal aid. On average, it is estimated that Virginia's attorneys donated just 1.5 hours of pro bono work through organized pro bono programs last year. In the Shenandoah and Roanoke Valley region, it was a bit higher – slightly more than 2 hours per attorney on average.

Granted, these statistics obscure the fact that some lawyers donate a hundred hours or more of their time pro bono each year – while many others aren't participating in any organized pro bono work. Moreover, a recent ABA study suggests that attorneys on average undertake as much pro bono work on an ad hoc basis as they do through organized pro bono programs.

Extrapolating from that finding, we estimate that Virginia lawyers are, on average, performing about 3 hours of pro bono service annually, and that Shenandoah and Roanoke Valley lawyers might be donating as much as 4 hours annually on average. (Without any for-

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VWAA HOSTS ANNUAL HOLIDAY RECEPTION

On December 5, 2013, the Virginia Women Attorneys Association, Roanoke Chapter, held its annual holiday reception honoring the local judiciary and their staff and, as always, both spirit and attendance were high. More than 70 attorneys, judges, and staff mingled and enjoyed fellowship in a festive setting at Schaal's Metamorphosis downtown.

The VWAA was most appreciative of its generous sponsors for the event which included Anderson & Friedman, Gentry Locke Rakes & Moore, Guynn Memmer & Dillon, LeClair Ryan, Moss & Rocovich, The McCammon Group, The Poarch Law Firm, the RVLSA, Strickland Diviney & Strelka, the VBA Young Lawyers Division, and Woods Rogers.



Jennifer and Rob Dean with Norah Demleitner, Dean of Washington and Lee University School of Law

RVLSA NAMES 2013 BOSS OF THE YEAR AND MEMBER OF THE YEAR

The RVLSA . . . the association for legal professionals held their 48th Annual Bosses' Night on September 26 at Metamorphosis. We are pleased to announce that Benjamin D. Byrd, Esq., an Associate at Gentry Locke Rakes & Moore, was named the 2013 Boss of the Year. Melinda C. Childress-Dearing, PP, PLS, a legal assistant at Gentry Locke Rakes & Moore, was named the 2013 Member of the Year. Congratulations to Ben and Melinda and to the RVLSA on another successful Bosses' Night!



Ben Byrd and Melinda Childress-Dearing

TROMPETER IS CARRICO WINNER

BY PETER D. VIETH, ESQ.

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Roanoke Valley Juvenile and Domestic Relations Judge Philip Trompeter has been honored with the Harry L. Carrico Outstanding Career Service Award. The 2012 Carrico award was presented in September by the Judicial Council of Virginia.


Trompeter, 60, is the first district court judge to receive the Carrico award. He has served on the J&DR bench in the 23rd District since 1985.

The award annually honors a judge who demonstrates "exceptional leadership in the administration of the courts while exhibiting the traits of integrity, courtesy, impartiality, wisdom and humility."

Trompeter embodies those traits both on and off the bench, said Chief Justice Cynthia D. Kinser of the Supreme Court of Virginia. "His career and public service are an inspiration to all of us in the judiciary," Kinser said.

Trompeter was nominated by a group of attorneys from the Roanoke area and his nomination was endorsed by the Virginia Council of Juvenile and Domestic Relations District Court Judges, according to a Supreme Court news release.

Peter Vieth is News Editor at Virginia Lawyers Weekly



The VWAA Roanoke Chapter invites you to join them for their 2014 Spring Chapter events

January 8
202 Market


February 6
Blue Apron, Salem

March 5
The Quarter

April 16
Schaal's Metamorphosis
Immigration Law CLE

May 8
Carlos Brazilian International Cuisine
VWAA Roanoke Chapter Elections

All Chapter Luncheons Begin at Noon



IN MEMORY

Former United States Magistrate Judge for the United States District Court for the Western District of Virginia, Roy V. Wolfe, Jr., of Gate City, Virginia passed away on October 29, 2013. He was 85. Born in Scott County, Wolfe served in the United States Army during the occupation of Japan in World War II. During his legal career, he held the offices of Deputy Clerk of the Scott County Circuit Court and Scott County Commonwealth's Attorney. He was also a member of the Virginia State Senate. In September of 1982, the judges of the Western District appointed Wolfe as Magistrate Judge, and he served in that role in Abingdon and Big Stone Gap until his retirement in March of 1990. Judge Wolfe was a Deacon of Community Fellowship Baptist Church, a member of the Gideons, and a 50-year member of the Masons, as well as a member of several other civic organizations in the community. Judge Wolfe is survived by his wife of 55 years, Mary Ruth Nickels Wolfe, of Mason, Ohio, two sons and a daughter and their families, and many other family and friends.



OLIVER HILL HOUSE MENTORING PROGRAM IN PROGRESS



Big Sister Gwen Mason works with her Little Sister and others at the Oliver Hill House on Gilmer Avenue. The Oliver Hill Mentoring Program is an after school, site-based program that gives underprivileged kids the chance to build a one-to-one relationship with an adult mentor while playing games and getting help with homework.



Bigs and Littles get a jump on Christmas during a craft session at the Oliver Hill House. The mentoring program, which is seeking more adult volunteers, requires a weekly commitment of only one hour, but can be expanded to suit the parties.

VIEWS FROM THE BENCH: U. S. MAGISTRATE JUDGE BALLOU

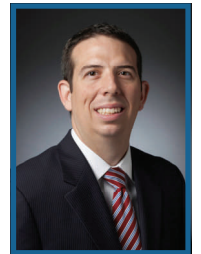
(Continued from page 4)

about how bad they're going to beat them." This behavior, he observes, "doesn't help trying to get the other side to accept your offer or respond meaningfully to your demand."

Finally, Judge Ballou proposes that lawyers approach mediation in a nonlinear fashion. Rather than looking at a case as simply side A versus side B, he explains, lawyers should look at the case from multiple angles, trying to comprehend the motivating factors behind the parties' different positions. By understanding those factors, he says, lawyers can help the parties to "get[] . . . out of those positions," which "is what leads a case to being settled."

Judge Ballou also offers tips for younger lawyers. First, he advises, build new relationships by "find[ing] a way to communicate meaningfully, effectively, and productively with [others]." To do this, he explains, often requires you to leave your desk. "Go out and meet witnesses, go up to court and find things in the clerk's office, go back and meet the judges' secretaries," he urges. Second, echoing the advice once offered to him by a former partner at Johnson Ayers, he submits, "Treat everybody as though they will become a judge one day." (I hope this last tidbit isn't coming too late for any of us who interacted with our newest judges before their ascent to the bench.)

At some point during our conversation, Judge Ballou shared with me something his father used to say: "Judges are there to serve lawyers, not for lawyers to serve judges." While Judge Ballou is rather new to the bench, it is plain that he already takes this mantra to heart. So I guess the judges who have been featured in this column have all had at least one more thing in common.



Justin Simmons is an Associate with Johnson, Ayers & Matthews, PLC

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SANTA AT THE STATION- DECEMBER 9, 2013



Thanks to the First Responders from Fire Station #1 for bringing their fire truck to Santa at the Station!





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See all the pictures (children and volunteers)
 from Santa at the Station 2013

www.roanokebar.com/events/Santa.html
 (click on Photos)

BLUE RIDGE LEGAL SERVICES DIVORCES – STRANGE BUT TRUE

(Continued from page 3)

for that entire period of time. The husband's response was that she could wait 27 more years; to which her response was, "Okay, never mind, where do I sign?"

6. A woman for whom I obtained a divorce who later went to work for a local business and then persuaded the company to look to our firm for representation in a number of matters. That actually does not happen very often.
7. A female divorce client who, when told she could change her name without cost to her, stated that she would like to change her name to "Marilyn Monroe." Whether or not a local circuit judge would have permitted such a name change was never decided, as the husband prematurely passed away before the issue came to a head. Suffice it to say that the court could not have relied on confusion between the two women as a reason to deny the name change.
8. A succession of Franklin County natives who were unhappily married to Mexican nationals.
9. A husband who fled a notoriously oppressive Middle Eastern regime, afraid for his life, but could not persuade his wife to accompany him. Some 22 years later, he sought a divorce, after having had no contact with the wife for almost that entire period of time.
10. A husband who, in the midst of divorce proceedings, broke his leg so badly he had to be placed in a body cast, necessitating a "home visit" to conduct depositions – with his bride-to-be as his witness.
11. A wife married to an uncooperative German husband who had gone home and was willing to communicate by email but would not sign a waiver of service – Tailor made for an order of posting.
12. A wife seeking to speed up the divorce proceedings, so that she could marry the current man in her life to head off his deportation to a Caribbean island nation. We were successful in heading that off.
13. A wife for whom I was successful in getting a divorce returned later, after her economic situation had improved, and retained me to represent her in custody proceedings. Again, this does not often happen.
14. A husband who persuaded his soon-to-be ex-wife to come into our office to sign a Waiver of Service, where the wife was so taken with yours truly that she urged her husband to fire me so that she could have me represent her. Obviously, her plan did not succeed.
15. A wife seeking her third divorce; all three marriages had been to different men, who shared the common characteristic of being named "Charles." This resulted in a passing reference by a somewhat jaded legal assistant to the client as "Bride of Chucky."
16. A husband, serving a 60-year sentence at Wallens Ridge State Prison in Wise County, which was at that time considered a super-max prison. Okay, I volunteered for this one. The wife was represented by another BRLS-affiliated attorney, and it appeared that this was the only way to complete the divorce timely. When I went to see the client, I found him behind the fourteenth successive electronically controlled door from the entrance.
17. A wife whose pants were positioned from the rear view in such a way as to qualify her for a position as a plumber, causing my

(Continued on page 13)

HELP UP CLOSE THE JUSTICE GAP: JOIN THE PRO BONO INITIATIVE!

(Continued from page 5)

mal system in place for reporting pro bono work, this is the best we can do in gauging the level of pro bono work undertaken.)

Even if we were to double these numbers to allow for the fact that they are rough estimates, they fall miserably short of the aspirational goal set in the Rules of Professional Conduct. Rule 6.1 establishes the principle that ensuring "Access to Justice" for those unable to pay is a key responsibility of the bar. The first section of the Rule states:

A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.

Comment 1 to the Rule echoes the very personal statement made by Justice Mims at the Roanoke Bar Association's October luncheon meeting about his own pro bono work:

Every lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

If every lawyer in the Roanoke Bar Association, "regardless of professional prominence or professional work load," were to achieve the aspirational goal set by Rule 6.1 (rendering at least 40 pro bono hours annually), we would make a dramatic difference in the ability of low-income Roanoke Valley residents to have meaningful access to our civil justice system. By closing the Pro Bono Gap – the difference between the aspirational goals of Rule 6.1 and the actual performance of the bar as a whole in undertaking pro bono work – we could make significant inroads in closing the Justice Gap.

To that end, we will soon be sending each of you a personal request to help us close the Justice Gap, by means of a simple on-line survey. In that survey, we will ask you to commit to doing your part in ensuring that the least fortunate in our community have meaningful access to our civil justice system. We will ask what sort of legal matters you are comfortable handling and whether you are willing to attend some free CLE training to handle other types of matters where there is the greatest need. We will not ask you for a minimum time commitment, nor will you be committing to take just any case we might refer to you. Indeed, there is such a range of legal issues facing low-income folks in the Roanoke Valley, we can try to tailor referrals to your areas of expertise and comfort zone as necessary. We also carry professional insurance to cover you during each pro bono assignment, and we have specialized legal resources and mentors at your disposal upon request.

Please step up to the plate – the Rule of Law needs your pro bono support. Your legal expertise, your time, or your financial donations are vital to our joint efforts to narrow the Justice Gap in the Roanoke Valley.

The survey will be available online until Thursday, January 30, 2014, at https://www.surveymonkey.com/s/Roanoke_Pro_Bono.

*John Whitfield is Executive Director, Blue Ridge Legal Services
David Beidler is General Counsel, Legal Aid Society of Roanoke Valley
Susan Proctor is Managing Attorney, Blue Ridge Legal Services*

FEDERAL TRIAL EXPERIENCE AS PRO BONO COUNSEL

(Continued from page 3)

requires evidence of personal involvement, mail can legally be screened for contraband, and prison officials necessarily have discretion to adjust housing assignments and privileges without notice, as security needs dictate. Prison officials also enjoy qualified immunity against claims for damages. To put it mildly, the legal hurdles a pro se inmate must clear to get past summary judgment are high.

"Most of the prisoners' allegations of unconstitutional conditions or treatment, even taken as true, just do not meet the prevailing constitutional standards," says Chief Judge Glen E. Conrad. "Consequently, our prisoner case docket is paper-driven, meaning that most of these cases are resolved in a written opinion on a motion to dismiss or motion for summary judgment."

In this district, then, it is the denial of summary judgment and the need for a hearing or trial that ordinarily identifies the exceptional civil case in which the court will seek pro bono counsel. "When a case presents a material factual dispute on which the inmate's evidence could persuade a factfinder to rule in his favor, and a hearing becomes necessary, having counsel assists in the presentation of that evidence," says Judge Conrad. "At that point, the court will consider sending out the request for pro bono representation." Thus, an attorney coming into such a case will know that the court has vetted the evidence and sees a potentially viable claim, and counsel can focus her efforts accordingly.

1983 Pro Bono Counsel List

District Judge Michael F. Urbanski and Magistrate Judge Robert S. Ballou have spearheaded an effort in recent months to recruit counsel ready and willing to take on pro bono representation of indigent, pro se prisoner litigants, post-summary judgment. A relatively low number of cases reach this stage—normally ten to fifteen cases per year. Some litigants invoke their right to a jury trial, some cases can be decided through an evidentiary hearing or bench trial, and others may be resolved without trial through counseled settlement negotiations or mediation.

"The court needs attorneys who are willing to step up and provide pro bono representation for indigent, civil plaintiffs with viable claims that survive summary judgment," says Judge Ballou. "We see these cases as win-win situations . . . an indigent litigant gets counsel, and a young attorney gets invaluable trial or mediation experience."

Of course, the court recognizes that prisoner civil rights litigation presents a unique set of legal issues that may seem foreign and offputting to attorneys who specialize in other areas of the law. Last fall, to bridge this knowledge gap, the court hosted a Roanoke Bar Association CLE on civil rights litigation under 42 U.S.C. § 1983. This free program featured Professor Sheldon H. Nahmod, Distinguished Professor of Law at Chicago-Kent College of Law and an expert in § 1983 litigation, as well as Roanoke's own John Fishwick and Elizabeth Dillon, both long-time practitioners on opposing sides of prisoner litigation under § 1983. All three presenters discussed different issues that arise in § 1983 litigation, and offered their advice and tips for counsel taking on such cases. More than 30 attorneys attended the program.

In June of 2013, the Conference of Local Bar Associations awarded RBA President Tom Miller with an Award of Merit, recognizing the RBA § 1983 CLE conference as a bar association project that benefits the bench, the bar, and the people of Virginia. The court retains a video version of this § 1983 CLE that attorneys may view, free of charge, for background information on trying § 1983 cases.

"Our hope is that the CLE participants and any other interested attorneys would be willing to place their names on a rotation list,"

says Judge Ballou. The tentative plan is for the clerk's office to maintain a data base of the volunteer attorneys' names and contact information and to track which attorneys had handled pro bono prisoner assignments. "When the court finds the need for counsel for a § 1983 prisoner plaintiff ready for trial, a deputy clerk could call the next attorney on the list to see if he or she is able to take the case."

"We know these cases are not typically big money makers for the attorney," says Judge Ballou. "On the other hand, they require a significant commitment in time and resources. The court can help."

Communicating with an incarcerated client and his potential witnesses, who are also likely to be inmates or prison staff members, presents particular challenges. The court offers resources to help attorneys meet these challenges and minimize costs and effort. Court personnel can assist attorneys in making initial contact with prison officials to arrange for attorney-client telephone consultations and visits. If these measures are not effective, the court can set up video conferencing sessions between counsel and client, where practicable. The clerk's office can also provide pro bono counsel with free access to PACER, the court's electronic filing system. And if the inmate prevails, recovery of some attorney's fees may be available under the applicable statutes governing prisoner civil rights litigation. See 42 U.S.C. §§ 1988(b), 1997e(d).

"We hope that by creating a pro bono counsel list, we can enable local firms and attorneys to enjoy more equal shares of the potential benefits, over time," says Judge Ballou, "without any one firm or attorney being overly burdened with the extra costs of taking on such cases several times a year."

The judge suggests a hypothetical: "Imagine if most or all of the law firms in the Roanoke Valley or throughout Southwest Virginia would commit to providing pro bono representation to a prisoner litigant once a year, if called on to do so. With such a system, we believe we can adequately cover the court's needs and spread the opportunities these cases offer for young attorneys to gain valuable negotiation and trial experience without great financial burden."

Voices of Pro Bono Experience

Justin Lugar, of Gentry Locke Rakes and Moore, and Charles Carter Lee, of Woods Rogers, recently undertook pro bono representation of inmate plaintiffs. They agreed to share their impressions and their advice about the special strategic challenges they faced. "As a newer associate, I would definitely recommend [taking a pro bono prisoner case] as a great way to get trial experience," said Lee.



Charles Carter Lee represented Jeremy Carter, an inmate at Keen Mountain Correctional Center, who sued several prison officials for failing to protect him from another inmate's violent assault. After an unpleasant verbal exchange with inmate Roger Parker, Carter allegedly asked several officers to be transferred to another area of the prison because he felt threatened by Parker. On March 9, 2009, Parker attacked Carter in the dining hall. Carter suffered multiple fractures to his nose, jaw, and eye socket. After Judge Urbanski denied summary judgment as to six defendant officers, Carter's § 1983 suit was set for a jury trial in Big Stone Gap.

Lee's primary motivation in accepting the pro bono appointment to represent Carter was not making money. Rather, he welcomed the opportunity for federal trial experience. He found the learning curve fairly high, but manageable with help from available resources. Lee noted some difficulties that can arise from taking over a pro se plaintiff's case so late in the proceedings. Litigating his

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FEDERAL TRIAL EXPERIENCE AS PRO BONO COUNSEL

(Continued from page 11)

case by himself for months, maybe listening to unhelpful advice from other inmates he trusts, the inmate plaintiff can become convinced of the merits of each claim and grow emotionally invested in trial tactics he has developed. As a result, counsel's suggestions to drop one claim to focus the case on a stronger one or to change a strategy may meet with resistance. Carter was not interested in settlement negotiations, despite counsel's advice that a settlement likely offered him a better chance of recovery than trial.

Other issues that arose and required extra time and strategic planning included learning about and working under prison regulations; arranging for the surgeon who repaired Carter's face and now lives in Texas to testify via video deposition; having the client appear in court, wearing shackles and a jumpsuit with prison guards beside him; and trying to select a panel of impartial jurors in a region where state prisons are among the largest employers, and almost everyone seems to know someone who works in law enforcement or corrections. While Lee found prison staff to be cooperative, he said that the experience "opens your eyes up to conditions in the prison system."

Lee suggests working with co-counsel, to share the duties. Another associate from Woods Rogers, Daniel Sarrell, assisted him with the Carter case. Lee also spoke appreciatively of a deputy clerk who suggested the option of consulting with Carter via telephone and video conferencing. Lee consulted criminal attorneys for jury selection tips and browsed legal resources like AmJur Trials and AmJur Proof of Facts.

After the two-day trial, the jury deliberated late into the night, which Lee viewed as a small victory. The next morning, however, the jury returned a defense verdict. "Even though he lost," says Lee, "Carter told us that having his day in court and shaking hands with the judge at the end made it all worthwhile." And Carter wrote a nice thank you letter to his attorneys.



Justin Lugar shares the following summary of his pro bono experience, along with his tips for future pro bono counsel to prisoner plaintiffs:

Tom Bondurant [partner at Gentry Locke] and I served as pro bono counsel for an inmate suing prison officials at Wallens Ridge State Prison under § 1983 in connection to a sexual assault by his cellmate, a known Gangster Disciple. Our client was of Lebanese descent and had

been at the center of an international crime thriller involving the brutal murder of his wife and her lover/rapist (depending on which story you believe). After the murders, the authorities in Virginia Beach declined to file charges, because our client admitted to shooting and killing his wife's rapist, and the evidence appeared to back up his story.

Our client moved to Massachusetts, then Lebanon, then Syria, and ultimately to Russia. Several years after the murders, an NCIS blood spatter expert looked at the case again, and the prosecution indicted our client. Shortly thereafter, our client voluntarily returned to Virginia Beach to face a jury, though he was immune from extradition in Russia. He was convicted and sentenced to two life sentences. Several years passed, and after no less than three Discovery Channel documentaries aired on his case, he filed his § 1983 suit alleging that numerous guards and supervisors at Wallens Ridge had been deliberately indifferent to his repeated complaints about sexual and physical assaults, culminating in a significant beating and rape by his then-cellmate.

While there were numerous challenges in the case, I quickly learned how difficult it is to build rapport and trust with a client who is several hours away, has little access to any modern form of communication, and has an inherent distrust of any officer of the court. I ended up spending many hours at Keen Mountain with our client, building his trust and working through the surprisingly voluminous factual record. I found that it took several meetings for the client to understand what information I needed and for me to understand how to elicit relevant information from him.

TIP: Plan to spend a lot of time with your client (more than you ever expected) and call the prison at least 10 days in advance to provide all the required paperwork for visits—state prison is not like a local jail.

Second, obtaining reliable information from potential witnesses (e.g., other inmates) is incredibly difficult. If you want a lesson in body language or gang behavior, walk into a prison to discuss the alleged beating and rape of another inmate. **TIP:** Take a pen and paper to the interview and have the inmate draft and sign a declaration under 28 U.S.C. § 1746. You may later need that declaration to treat him as a hostile witness or refresh his recollection.

Third, you are usually suing prison officials. They do not like you. They have hard jobs and view you as someone who is complicating their routine. **TIP:** Go out of your way to build rapport with all prison guards and officials. They can make your life more manageable or go out of their way to make it difficult.

Finally, figuring out prison bureaucracy and record keeping is an impossible task, even for those who work within the system. **TIP:** Use the knowledge of the lawyer representing the guards (usually an Assistant Attorney General who handles only prison litigation) to help you find information informally (and early), so you can obtain discovery in an efficient manner. The AG is just as interested as you are (or should be) in fleshing out the truth.

As may be apparent, representing a § 1983 prisoner client has been one of the most rewarding and instructive experiences of my career. In the past, I worked pro bono on the Sudanese Abyei border arbitration and on a bilateral investment treaty dispute between British farmer investors and an East African country. Strangely enough, spending time in Keen Mountain Correctional Facility and in the beautiful Big Stone Gap federal courthouse for trial far surpasses those experiences. The thank-you card that we received from our client said: "If you had not stood by me I would have had a nervous brake [sic] down and gone into a very deep depression." Even without the professional trial experience, that short statement was benefit enough.

I highly recommend that every young lawyer volunteer to take a case and be the first chair. It is, personally and professionally, one of the most rewarding things you can do.

Attorneys interested in placing their names on a pro bono counsel list for the Western District may contact Frances McNulty, Chief Deputy Clerk, by emailing her at francesm@vawd.uscourts.gov, or calling her at the Clerk's Office at (540) 857-5100.

Linda L. Gustad serves as a pro se law clerk at the United States District Court for the Western District of Virginia

BLUE RIDGE LEGAL SERVICES DIVORCES – STRANGE BUT TRUE

(Continued from page 10)

flustered legal assistant to drop her notary seal at first glance.

Every client has a unique situation. A great number of these folks are people I would not have encountered in my regular law practice; thus, handling these cases has been a uniquely enriching situation for me, while at the same time providing a service that these clients really needed. Most of them are actually grateful.

Please rest assured that you do not have to know how to do divorce work to take on these cases. The folks at BRLS will walk you through the process and will answer any question you may have. I would encourage anyone who has not done this work to sign up and take on a few of these divorces. You will not regret it.

Kenneth Ries is a Partner at Johnson, Ayers & Matthews, PLC



DECEMBER RBA MEETING

Those who attended the premier RBA evening meeting on December 10 at The Shenandoah Club enjoyed a relaxing cocktail hour, an excellent dinner, and an educational and entertaining CLE program, led by Nick Leitch and Rich Maxwell, who provided answers to those perplexing legal questions you might hear at a cocktail party. All in all, the RBA's first dinner and CLE meeting was an enjoyable venture we may want to repeat.



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NEW MEMBERS

The Roanoke Bar Association welcomes the following new Active Members:

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UPCOMING EVENTS

Roanoke Bar Association Meetings 2013 - 2014

January 14, 2014

February 11, 2014

March 11, 2014

April 8, 2014

May 1, 2014 (Law Day)

June 10, 2014

Bench Bar Conference

February 21, 2014

Red Cross Blood Drive

May 20, 2014

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

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