

ROANOKE BAR REVIEW

Roanoke Bar Review March 2011

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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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NLRB APPROVAL OF "BANNERING" -- IT'S ALL IN THE MOVEMENT

BY JEFFREY A. VAN DOREN, ESQ.

In a series of recent cases, the National Labor Relations Board (NLRB) ruled that a union practice of displaying large stationary banners at a neutral employer's business is not coercive and therefore does not violate the National Labor Relations Act (NLRA).

Under the NLRA, it is unlawful for a union to "threaten, coerce or restrain" a secondary employer not directly involved in a primary labor dispute if the object of that conduct is to cause the secondary employer to cease doing business with the primary employer*. According to the NLRB, picketing that seeks a consumer boycott of a



secondary employer is coercive and, therefore, unlawful. On the other hand, stationary handbilling, where union representatives hand out written materials describing their dispute with the primary employer, with that same objective, is not. It's all in the movement.

Recently the NLRB was confronted with the issue of whether stationary bannering was more like picketing (which is illegal) or handbilling (which generally is not). In *Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.*), 355 N.L.R.B. No. 159 (Aug. 27, 2010), union carpenters held 16-foot-long banners near establishments—two medical centers and a restaurant—to protest work being performed for the owners of the establishments by construction contractors that the union claimed paid substandard wages and benefits. Two banners declared "SHAME ON [Medical Center Owner]" while the third urged customers not to eat at the restaurant.

In each case, the message on the banner was flanked with the words "labor dispute." Union representatives held the banners stationary on a public sidewalk or right-of-way in a manner that did not block the flow of traffic. While holding the banners, union representatives offered handbills to passers-by, explaining that the labor dispute was with the contractors and that the union believed that the neutral restaurant's and medical centers' business dealings with the contractors contributed to undermining area wage and benefit standards.

In a 3-2 decision, the majority (all of whom are Democratic appointees and former union lawyers) ruled that, so long as it is done in a non-coercive manner, a union may display banners at a neutral employer without running afoul of the NLRA's prohibition against secondary boycotts. The NLRB majority concluded that the union's actions "lacked the confrontational aspect necessary to a finding of picketing proscribed as coercion or restraint. ..." They noted that the "banner holders did not move, shout, impede access or otherwise interfere with the secondary's operations." The Board also added that, absent any actual or symbolic barrier to entering the secondary employer's site, the banners could simply be ignored by employees or members of the public in much the same way as a billboard could be ignored—by simply averting their eyes.

In dissent, the two Republican members of the NLRB were sharply critical of the majority and pointed out that the bannering at issue differed from illegal picketing only in that the union agents did not march with the banners. Since the banners were otherwise quite similar to pickets signs, the minority accused their colleagues of drawing an artificial line between bannering and picketing which defeated the purpose of the NLRA—to protect neutral employers from being drawn into disputes to which they are not a party.

* NLRA Section 8(b)(4)(ii)(B), 29 U.S.C. $\S158(b)(4)(ii)(B)$

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PRESIDENT'S CORNER

BY FRANCIS H. CASOLA, ESQ., PRESIDENT



For the last few months of the Bar year, there is a full calendar of events. For our luncheons, we will have Justice Lawrence Koontz in March as our speaker to reflect on his years of service on the Bench. For the April luncheon, we have invited our local legislators to recap the recent General Assembly session. In May we will have a Law Day celebration, and in June we will have our annual business meeting.

In recent years we have gotten away from a Law Day celebration because it has fallen about the time we have had the Gala. This year, though, the Board has decided to reinstitute the Law Day celebration because the Gala will not have a program. Law Day will be held at the Shenandoah Club on Monday, May 2, 2011 at noon. It will be a special event because we expect to announce the winner of the Frank W. "Bo" Rogers, Jr. Lifetime Achievement Award, and the Young Lawyer of the Year Award. We also will be recognizing members with Presidential Volunteer Service Award certificates for community involvement and pro bono service. Please take a few minutes and fill out and turn in the Volunteer Service Summary which can be found at http://www.roanokebar.com/news/VolunteerService.html. We would like to recognize all our members who do so much for our community.

On the evenings of March 9, 16, 23 and 30, at 7:00 p.m. at the Roanoke Higher Education Center, the RBA will be holding its You and the Law seminar series, which is open to the public. Scheduled speakers are Judges Broadhurst and Talevi (the court system), Cheryl Watson Smith and Vicki Weiss (collaborative family law), William Fralin (legislative process) and Police Chief Perkins (law enforcement's role in the legal system), and Henry Woodward (consumer law) and Mike Whitlow (estate litigation). To publicize the seminars, Judge Broadhurst and I appeared for an interview on Cox Channel 9's Round

Roanoke, and Mike Whitlow and I did an interview on Channel 10's Our Blue Ridge. We are hoping for a good turnout from the public.

We are excited about the Casino Night Gala which will be held on Friday, May 6, 2011, beginning at 6:00 p.m. There will not be any program; just an evening of fun and fundraising. The RBA has hired a professional casino group to run the event at the Shenandoah Club. Admission will cost \$100. Individual guests will receive "\$10,000" in casino chips and one raffle ticket. Groups can purchase a VIP package of ten tickets for \$1,250.00, which will get "\$13,500" in chips, two raffle tickets, and access to the "High Rollers Club." Individuals can purchase a VIP ticket for \$135.00. The High Rollers Club will have a martini bar, open bar with premium brands and high stakes tables. Additional casino chips can be purchased during the event. Casino Night also will be available to members of the public. At the end of the evening, participants will be able to "cash-in" chips for raffle tickets for door prizes. Proceeds from Casino Night will benefit the Roanoke Bar Foundation Kincanon scholarships and Roanoke City Public Schools' Teacher's Fund. Please come out and make this event a success.

On June 2, 2011, we will have the Jane Glenn Memorial Golf Tournament, at the Roanoke Country Club. There will be 120 openings for golfers, including clients and friends. There will be a noon shotgun start, followed at 5:00 p.m. with a "19th Hole Social" with light hors d'oeuvres and cocktails for golfers and non-golfers alike. The tournament will benefit scholarships in Jane Glenn's name.

Finally, during July (the exact date/time TBA), the RBA will have its annual picnic at the Mill Mountain Zoo. It will be a catered event with the zoo to ourselves, so plan to bring out the whole family for a good time. Details regarding the zoo / picnic will be published on the RBA website when they become available.

As you can see, your Board has been busy. We hope to see you at these events in the coming weeks.

Francis H. Casola is a Principal at Woods Rogers, PLC

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THE JAMES N. KINCANON SCHOLARSHIP RECIPIENTS: AN UPDATE

BY AARON B. COOK, ESQ. AND BRIDGET M. TAINER-PARKINS, ESQ.



James N. Kincanon

Each year, the Roanoke Bar Association Foundation recognizes a handful of outstanding local high school, college, and law students. Given in recognition of one of the Roanoke Bar Association's long-serving members, the James N. Kincanon Scholarship assists students with the cost of college or law school. We recently caught up with some of the past winners of the Scholarship. Al-

though many have gone on to pursue law school and careers in the legal profession, many of our past winners are serving their communities in other ways.

Carly Humphrey, a 2010 Scholarship recipient, is currently a second-year student at George Mason School of Law. She is a member of the George Mason Law Review and volunteers with the National Youth Alliance in D.C. Last summer, she interned in the U.S. Attorney's Office in Washington, DC.

Alea Bier, who received the Scholarship in 2010, is a student at Roanoke College. She is on the Dean's List and is majoring in Criminal Justice.

Kristopher R. Taylor, a 2010 recipient, will graduate from Morehouse College in May, 2011 with a B.A. in English and a minor in African American Studies. He was accepted into the Teach for America program and will teach English in Washington, DC following graduation.

Kathryn Lawryszek, who was a recipient of the Scholarship in 2009 and 2010, is a second-year student at the University of Virginia. She is an Echols Scholar, and is on the Dean's List. Last summer, she was a legal intern at Refugee and Immigration Services of Commonwealth Catholic Charities in Roanoke.

Lila E. Nieves-Lee, a 2009 recipient, is currently a student at Harvard University.

Brian Burks was a Scholarship recipient in 2009. He is currently a third-year student at the University of Richmond School of Law. Last summer, he worked as a law clerk for DurretteBradshaw PLC (now DurretteCrump PLC).



Aaron Cook, who was awarded a James N. Kincanon Scholarship in both 2008 and 2009, graduated *magna cum laude* from Washington and Lee School of Law in May 2010. He was a member of the Washington and Lee Law Review and Order of the Coif. Aaron currently clerks for the Honorable James C. Turk and plans to practice law in the Roanoke

Valley after his clerkship.



Bridget Tainer-Parkins, a Scholarship recipient in 2008, graduated from Washington and Lee School of Law in May 2009. After growing up in the Roanoke Valley, she could think of nowhere better to practice law, so she and her husband made the long journey from Lexington to Salem. Bridget then spent a year clerk-

(Continued on page 6)

MEMBERS IN THE NEWS

BY KEVIN W. HOLT, ESQ.



President Obama has re-nominated United States Magistrate Judge Michael F. Urbanski for a United States District Court judgeship in the Western District of Virginia. The President had nominated Judge Urbanski during the last Congress, but Congress did not act on the nomination. Judge Urbanski had his confirmation hearing with the Senate Judiciary Committee on February 16, 2011.

Monica Taylor Monday is an announced candidate for the vacancy on the Supreme Court of Virginia created by the retirement of Justice Lawrence L. Koontz, Jr. Following interviews with various bar associations, Monica was found "highly qualified" by both the Virginia State Bar and the Virginia Trial Lawyers Association. Justice Koontz will continue on the Court as a Senior Justice.





Greg Habeeb was elected to the Virginia House of Delegates to represent the 8th District in a special election on January 11. Greg fills the seat vacated when former majority leader Morgan Griffith was elected to Congress in November 2010 to represent the 9th Congressional District.



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SPECIAL THANKS TO OUR SANTA IN THE SQUARE SPONSORS

BY LORI D. THOMPSON, ESQ.

On December 13, 2010, the Roanoke Bar Association Foundation, together with the Science Museum of Western Virginia and the History Museum of Western Virginia, hosted the 5th Annual Santa in the Square. Over 40 members of the RBA volunteered to help share some holiday spirit with some very deserving children.



Children and their families currently served by Head Start, The Transitional Living Center, Roanoke Valley Interfaith Hospitality Network, Trust House, and Head Start came to Center in the Square for two hours of unlimited exploration in the Science Museum and History Museum. They also enjoyed every kid's favorite treats, including pizza, chicken nuggets from Chick-fil-A, and cakes and munchies from Kroger. Clowns, carolers, and face painters entertained, along with the Chick-fil-A Cow who dropped by to share the fun. Of course, no holiday would be complete without pictures with Santa. The children were also invited to stop by "Santa's Workshop" where they created holiday arts and crafts, under the able leadership of Lauren Ellerman, and "Santa's Sack" where they selected and wrapped a special holiday gift to give to family members and care providers this Christmas.

Because it was one of the coldest nights of the year, attendance was down from last year – but this enabled the Association to share some holiday spirit with others. Following the event, Tracy Giles and Lori Thompson delivered left-over pizzas and sodas to the Rescue Mission which helped provide lunch for their residents the following day.

This event is one of the highlights of the year for those participating, and it would not be possible without the volunteers and the sponsors. We hope to continue expanding the number of deserving children and families served by this event in 2011. For more information on how you can get involved, please contact Lori Thompson.

Lori D. Thompson is a Shareholder at LeClairRyan

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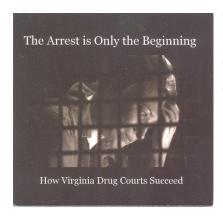






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TWENTY-THIRD JUDICIAL CIRCUIT'S AWARD-WINNING DVD



The DVD documentary prepared and released the Twenty-Third Judicial Circuit's Drug Court Advisory Board in January 2010 entitled "The Arrest is Only the Beginning: How Virginia Drug Courts Succeed" is now an award-winning documentary. The DVD received the prestigious 2011 Telly Award in the category of Television Documentary.

Founded in 1978, the Telly Awards are a widely known and highly respected national and international competition that typically receives over 13,000 entries annually from all 50 states and many foreign countries. The "Telly" is a premier award honoring outstanding local, regional, and cable television commercials and programs, as well as the finest video and film productions and web commercials, videos, and films. The Telly Awards annually showcase the best work of the most respected advertising agencies, production companies, television stations, cable operators, and corporate video departments from all over the world and are among the most sought-after awards by industry leaders, from large international firms to local production companies and ad agencies.

All Telly Awards judges are top advertising and production professionals. The judges evaluate entries to recognize distinction in creative work — entries do not compete against each other. Instead, entries are judged against a high standard of merit and excellence.

The Drug Court's award-winning DVD is available for free viewing and downloading at::

- The Supreme Court of Virginia's website: http://www.courts.state.va.us/courtadmin/aoc/djs/ programs/dtc/home.html
- The City of Roanoke's website: http://www.roanokeva.gov/85256a8d0062af37/ vwContentByKey/N2579L8V962CFIREN
- Roanoke County's website: http://eservices.roanokecountyva.gov/video/



THE JAMES N. KINCANON SCHOLARSHIP RECIPIENTS: AN UPDATE

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ing for the Hon. James C. Turk. "As the members of the Roanoke Bar Association can imagine, and as many of them know personally, clerking for Judge Turk was a remarkable experience," she remembers. "I learned so much, about both our legal system and the past fifty or so years of Roanoke history." Bridget completed her clerkship in August and is currently an associate with the law firm of Frith Anderson & Peake PC in Roanoke.

Michael Wakefield was a Scholarship recipient in 2007 and 2008. He graduated from the University of Virginia School of Law in May 2010. After taking the Virginia bar exam in July, he worked in Washington, DC at the general counsel's office at the Republican National Committee for almost six months. Mike was accepted into an honors program with the Army JAG Corps. He will ultimately end up back in D.C. in the general counsel's office at the Army Corps of Engineers Headquarters, but for now he is in JAG officer basic training.

Gregory Scott Binnings appears three times on our list of scholarship recipients – he received the Scholarship in 2005, 2006, and 2007. He graduated from Tulane University Law School in 2008 and is a member of the New York Bar.

Allison Monger (nee Perry), a 2007 winner of the Scholarship, graduated magna cum laude from the University of Richmond School of Law in 2008. She is currently an associate at LeClairRyan focusing her practice on employee compensation and benefits.

Brooks Duncan was a 2006 winner of the Scholarship. She studied English and Psychology at the University of Virginia and graduated in 2010.

Josh Dietz was a recipient of the Scholarship in 2006. He spent the first semester of his third year in law school studying abroad at the Bucerius Law School in Hamburg, Germany. He graduated from Washington and Lee University School of Law in May of 2007. Since March 2008, Josh has been an Assistant Commonwealth's Attorney for Roanoke City. He recently tried his first murder case. The defendant was found guilty of first degree murder. Josh lives in Roanoke with his wife, Carolyn, daughter, Diana, and two dogs, Chloe and Carmen. He is active in the Ted Dalton American Inns of Court and is a member of the Roanoke Bar Association.

Matthew McDowell, a Scholarship recipient in 2004 and 2005, graduated Phi Beta Kappa from UNC-Chapel Hill in 2006 with a dual degree in Business Administration and Political Science. While at UNC, he served as the Student Attorney General for the Undergraduate Student Body. Following graduation, Matt worked as a business consultant in the Washington DC office of Navigant Consulting, Inc., where he assisted with numerous engagements related to the investigation of alleged fraudulent behavior, ranging from internal company investigations to high-profile litigation matters. In order to get a better foundation in accounting, he left Navigant in 2010 and enrolled in the Master of Accounting program at The Ohio State University; he expects to graduate in June, 2011. Matt was married in October 2009.

Applications for the James N. Kincanon Scholarship are being accepted through March 31. Details at www.roanokebar.com.

ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



Things have relaxed after the excitement of the Holidays as winter truly sets in. Though Roanoke was spared from the devastating storm that shut down most of the country, we continue to monitor weather reports and wait for spring to roll in bringing its thawing and regenerative powers. Hopefully we are able to recharge and prepare ourselves for

what is sure to be an extremely busy year. The Virginia Continuing Legal Education texts are flying off the shelves as attorneys refresh their memories or learn new skills. We receive new CLE texts all the time and they are available to borrow for two-week loan periods to all Roanoke Bar Association members with your RVL library card. To see which CLE texts are available go to our catalog at URL www.rvl.info and do a keyword search with "CLE" as the subject of interest and select "Law Library" as the library to be searched.

Historic Legal Research

Most of us are using electronic resources for our every-day legal research needs, but it's nice to remind oneself of the way legal research used to be done. Not that I miss having to look through umpteen *Shepard's Citator* volumes to check the validity of a case. I recently taught a class at the Virginia Room of the Roanoke Public Library regarding researching historic legal information. I decided to focus on the landmark Loving v. Commonwealth of Virginia United States Supreme Court case (388 U.S. 1, 1967) regarding interracial marriage. Using electronic resources it was not only possible to track the case through the judiciary, but also to look at the legislation that this decision challenged. It also was necessary to use the historic Virginia statutes and the *Acts of the General Assembly* from the early 1900's that are only available locally at the Roanoke Law Library.

Our Westlaw subscription provides instant access to the Code of Virginia for every year back to 1987, but as you may or may not know, we have Virginia statute volumes as far back as 1819. These, coupled with the Acts of the General Assembly volumes going back to 1839, allow users to track legislative changes on a yearly basis. From 1950 to the present we have almost every volume of the Code of Virginia, and from 1974 to the present we have yearly pocket part supplementation along with annual indexes dating back to 1976. Additionally, we have Virginia General Assembly House Journals, House Documents, Senate Journals, and Senate Documents as far back as 1874. This treasure trove of historical legislative information is accessible whenever the Roanoke Law Library is open and there is always staff available to assist you. If you have any questions about what resources we have, please give us a call at 853-2268.



Casino Night Gala May 6, 2011 Be There!

NLRB APPROVAL OF "BANNERING" -- IT'S ALL IN THE MOVEMENT

(Continued from page 1)

In a decision issued earlier this month, Carpenters Southwest Regional Council, Locals 184 and 1498 (New Star General Contractors, Inc.), 356 N.L.R.B. No. 88 (February 3, 2011) the NLRB extended its earlier decision in Eliason to bannering cases involving employers who have set up so-called "reserved gates" at private construction sites in an attempt to shield themselves from becoming involved in labor disputes between a union and other employers.

Employers who share a common worksite may restrict union picketing by setting up a specific "reserved" gate designated for the employer with which the union has a dispute. Employees and suppliers of the employer with the union dispute are directed to use the reserved gate only while the employees and suppliers of neutral employers are directed to enter the worksite through other entrances. Historically, if the union picketed the gates of neutral employers, the picketing was unlawful under the secondary boycott provisions of the NLRA.

In New Star, the union declared a strike against two general contractors, and wrote letters to property owners urging the owners not to do business with either contractor. The owners set up reserved gates at their construction sites and directed the union to confine any picketing to the gates reserved for the general contractor. The union instead displayed large banners in areas not immediately proximate to the reserved gate, and proclaimed "SHAME ON" the owner rather than the general contractor against which the union was striking. Relying on Eliason, the same three Member majority ruled that bannering of a neutral gate is not picketing and is therefore is permitted by the NLRA.

The majority stressed that for conduct to be in violation of the secondary boycott provisions of the law, two elements must be established: (1) the union engaged in picketing or other activity that induced or encouraged the employees of a secondary employer to cease work; and (2) an object was to compel that employer to cease doing business with the struck or primary employer. The majority found no evidence that the banner displays were "'a prearranged or generally understood signal' to any employees to cease work." It also noted that there was no evidence that any employee actually stopped work, including the employees of the one union subcontractor on both job sites.

In dissent, the NLRB's sole remaining Republican Member** accused the majority of being "bent on undoing through administrative adjudication the restrictions imposed by Congress on unions' ability to involve neutral employers and employees in a labor dispute." He argued that the "predominant element of such bannering is confrontational conduct, rather than persuasive speech, designed to promote a total boycott of the neutral employers' businesses, and thereby to further the objective of forcing those employers to cease doing business with the primary employers in the labor dispute."

Decisions of the NLRB may be appealed to the U.S. Courts of Appeal and it remains to be seen whether *Eliason, New Star* and other recent cases distinguishing bannering from traditional picketing will be upheld by the appellate courts. The Courts of Appeal are not hesitant to overrule the NLRB when it fails to provide a reasoned explanation for its decisions and in these cases the Board has not cogently explained why giant banners held by numerous union representatives are less confrontational or coercive than a single traditional picket sign. In the absence of court reversal or an about-face by the Board, however, neutral employers—especially those on common worksites—are far more likely to find themselves enmeshed in others' labor disputes than they have been in the past.

Jeffrey A. Van Doren is a partner at LeClairRyan

**The term of the other Republican member who had dissented in Eliason expired and a replacement has not yet been confirmed by the Senate.

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MYOUANDTHELAW

The second series of the **You and the Law** program will begin on March 9, 2011, and run for 4 consecutive Wednesday evenings at the Roanoke Higher Education Center. This program was designed to educate the public about the legal system in order to make citizens' interaction with the system more efficient and less frustrating. **You and the Law** covers basic information relating to practices and procedures in general district courts and the circuit courts, issues where there may be misunderstanding or a lack of understanding, and substantive information relating to specific areas of the law. The 2011 **You and the Law** series will feature the following speakers and topics:

March 9 Ten Things You Need to Know About the Court System

The Honorable William D. Broadhurst and The Honorable Jacqueline Ward Talevi

March 16 Ten Things You Need to Know About Divorce and Collaborative Law

Chervl Watson Smith and Vicki L. Wiese

March 23 Ten Things You Need to Know About the Legislative Process

William H. Fralin, Jr.

Ten Things You Need to Know About the Police and Law Enforcement

Roanoke Chief of Police Christopher C. Perkins

March 30 Ten Things You Need to Know About Consumer Law

Henry L. Woodward

Ten Things You Need to Know About Will and Estate Litigation

Michael S. Whitlow

We would appreciate your help in publicizing You and the Law and ask that you invite the members of your church and community organizations. More information is available on the RBA web site (www.roanokebar.com), including a link to a printable poster. Seating is limited and reservations are required - call 265-8111.

Volunteer Service Hours Due by March 31

Information and Forms
Available at
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Click on News and Awards

Nominations Wanted!

Frank W. "Bo" Rogers, Jr.
Lifetime Achievement Award

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Nominations due by March 31

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ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new Active Members:

Aaron B. Houchens Woods Rogers, PLC

Bridget M. Tainer-Parkins Frith Anderson & Peake, PC

UPCOMING EVENTS

Roanoke Bar Association Meetings 2010 - 2011

March 8, 2011
April 12, 2011
June 14, 2011 (Annual Meeting)

Law Day Luncheon May 2, 2011

Roanoke Bar Association Foundation Casino Night Gala May 6, 2011

Go to www.roanokebar.com for more information on these and other RBA events.

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