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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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CHALLENGES IN IMMIGRATION: UGANDAN ORPHANS

A PERSONAL ESSAY BY CHRISTINE LOCKHART POARCH, ESQ.

Reprinted, with permission of the author, from the Federal Bar Association, Immigration Law Section newsletter for April 2013.



His name is Isaac. He's a precocious, smart Ugandan four-year-old. He has lots of questions. He likes eye shadow. He has only ever known one mother and father—"Mama" and "Poppy"—two Caucasian U.S. citizens who have four natural born children. Like so many others, Mama and Poppy were moved to adopt abroad. In this case, Mama is a librarian with an inexplicable love of teen dystopian novels—*Hunger Games* and the like. Poppy is a native New Yorker and a stonemason. Together, they decided to adopt a sibling set—Isaac and his sister, Grace. After two trips and more than 64 days in Uganda, Mama and Poppy returned home to the United States with both children.

When McLane Layton, a fellow attorney and President of Equality for Adopted Children, asked me to accompany her on a twelve-day trip to learn more about issues with international adoption in Uganda, the thought of falling in love with kids like Isaac and Grace was the only thing that made me terrified to travel. Our family travels—a lot—so it wasn't leaving home that gave me pause or the 21-hour in-flight time or even the overnight layover in Dubai. In fact, the prospect of finding a deal at Dubai's famous gold market made me a little giddy. Rather, I was concerned that I would want to adopt.

In the practice of law, we cultivate a necessary and healthy "safety" on our empathy response in order to execute our jobs effectively. We have to be empathic and passionate but also be able to stop ourselves short of becoming enmeshed. I was uncertain whether the emotional boundaries I carefully crafted as an attorney would hold when faced with children—lots of them—who are in desperate need.

I have yet to synthesize everything I learned on our trip, so this article is not intended to be a compendium of action items or conclusions but rather, a simple report of our very brief observations of the inherent difficulties and challenges of international adoption in Uganda.

Disclaimers aside, it's important to first put Ugandan adoptions in context:

Ugandan adoptions in context. While we were in Uganda, the Addis Ababa-based group African Child Policy Forum held a conference during which the organizers called Africa the "new frontier for inter-country adoption," and claimed that 41,000 children were removed from their African home countries since 2004. *Africa: The New Frontier for Inter-country Adoption*. Addis Ababa: The African Child Policy Forum (2012).

I'm not a statistics wonk, and haven't investigated the truth or falsity of the group's assertion, but I am confident that the U.S. Embassy in Kampala has a fairly good count of Ugandan children who have been successfully processed through their ranks as orphans. The number is surprisingly small: only 207 in 2011. FY 2011 Annual Report on Inter-country Adoption (2011).

United Nations International Children's Emergency Fund (UNICEF) alleges that in Uganda alone, there are 40,000 children in *known* institutions. Why *known*? Because it's not uncommon that some well-meaning individuals (and some not) set up impromptu "schools" or "homes" behind churches or residences to care for children. Consultants working with UNICEF in Uganda with whom we met conducted substantial investigation into the circumstances of inter-country adoption in Uganda and assert that only a small number of babies' or children's homes are registered with the local district counsels and estimate that many other unregistered homes exist around Uganda.

PRESIDENT'S CORNER

BY STEPHEN W. LEMON, ESQ., PRESIDENT



as well as service to the Roanoke Valley. It is going to be a great year at the RBA.

Your Board of Directors and Cathy Caddy, your dedicated Executive Director, are working hard to deliver another excellent year of programs, CLE and service opportunities for you to take advantage of. Rich Maxwell is putting the finishing touches on the list of our meeting speakers, and they promise to be both entertaining and informative.

One change from past practice this year is that our December meeting (December 10) will be held in the evening as opposed to our usual lunch format, and will include a social hour prior to the dinner and program. Our regular lunch meetings will occur on September 10, October 8, November 12, January 14, February 11, March 11, April 8 and June 10. Our Law Day lunch meeting will be on May 1. I hope you will place these meetings on your calendar now and join us for another year of great meetings - not to mention fabulous Shenandoah Club food and desserts.

The RBA continues to offer excellent CLE opportunities (both free programs and those with a modest charge) and I encourage you to take advantage of this year's offerings. Early fall programs are scheduled for September 18 and October 11. Both are without charge to RBA members. Details and registration information are available on the website. We will also be presenting the Bench Bar Conference in the spring in association with our local judges.

The RBA Mentor Match program is in full swing this year with all initial mentee requests matched with some of our more seasoned members as mentors. I encourage our young lawyers (three years or less of experience) to register for the program and our more seasoned lawyers (seven years or more of experience) to volunteer as mentors. The program is a fantastic way to assist in the development of our younger lawyers and for the mentors to give a little back to the profession as well as to honor those who took the time to guide them in their earlier years. I view the activity as a duty we owe to our profession, but the more modern among us label this type of activity as "paying it forward." Whatever you call it, I encourage your participation.

Finally, the RBA will continue its tradition of service to our community this year, and I both ask and encourage you to be involved in at least one service program this year. Detailed information on all of the RBA service programs is available on the website. Some highlights include the Rule of Law program, which offers the opportunity to share insights into our legal system with middle school students; Barrister Book Buddies, which offers the opportunity to share a reading experience with elementary school students; and Santa in the Square, which offers the opportunity to provide a positive holiday experience for less fortunate children. We will also be participating in a blood drive this year, and we will be announcing new service programs and opportunities in the fall. All of these opportunities will be highlighted in RBA emails with details on how to participate.

I hope you enjoy the rest of your summer. I look forward to seeing you at RBA programs and events this year.

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

JUDGE CRIGLER TO RETIRE

BY KEVIN W. HOLT, ESQ.

The Honorable B. Waugh Crigler, United States Magistrate Judge for the Western District of Virginia, will retire effective September 30, 2013. Judge Crigler has been Magistrate Judge since October 1, 1981, serving four full eight-year terms.

During his long tenure, he worked closely with all of the District Court judges, particularly Judge James H. Michael and Judge Norman K. Moon. Judge Crigler principally heard cases in Charlottesville and Harrisonburg, but handled matters in all divisions in the district over the years. In doing so, he came to know many lawyers in Western and Central Virginia, including many members of the Roanoke Bar Association.

When asked about highlights of his judicial career, Judge Crigler mentioned two complex business litigation and anti-trust cases he worked on, *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Corp.* and *Worrell Enterprises v. Real Estate III, Inc.* He noted that while the cases were complicated and contentious at times, their results provided "healing for the Charlottesville community." He also commented that he had the opportunity over his career to hear cases involving all types of litigants—individuals, businesses and the government—in virtually every type of case that could be heard in Federal Court. The judge stated that cases "are not just about the law, but about the people involved." During his tenure, he strived to treat all people who appeared before him with courtesy and respect.

Judge Crigler is a native of Culpeper County and practiced law in Culpeper prior to taking the bench.

Judge Crigler's plans for retirement include possibly mediating cases, although he has not made any definite plans about joining any mediation company. He will continue to teach a trial advocacy course he has taught for many years at the University of Virginia School of Law. Most importantly, he plans to travel with his wife and spend as much time as possible with their five grandchildren who live in Charlottesville and Washington, D.C.

A celebration to honor Judge Crigler and his long-time judicial assistant, Judy Pace, has been scheduled for September 27 at 4:30 to 7:00 p.m. at the Omni Hotel in Charlottesville. To R.S.V.P. for the event, please contact Julie Dudley, Clerk of the United States District Court for the Western District of Virginia, at (540) 857-5100. See the invitation on page 12.

Kevin W. Holt is a Partner at Gentry Locke Rakes & Moore, LLP



**RVLSA 48th Annual Bosses' Night
September 26, 2013**

**Visit www.roanokebar.com/events
for registration information**

VIEWS FROM THE BENCH: JUDGE SWANSON

BY ROBERT E. DEAN, ESQ.

When you enter Judge Swanson's office, you immediately notice one thing: he's a part-owner of a professional sports team, his beloved Green Bay Packers, the only publicly traded franchise in the NFL. A shareholder certificate hangs framed near his desk, prominently displayed in green-and-gold behind a glass enclosure.

As we talked about the upcoming season, it is easy to imagine Judge Swanson providing the same steady, thoughtful leadership to the Packers that he now provides as a member of the bench.

Undoubtedly, he says, he would rely on the values he learned from his legal mentors in the Roanoke Valley: his first boss, John Lampros, the former Roanoke County Commonwealth's Attorney, whose patient confidence in his assistant prosecutors inspired Judge Swanson as a young trial attorney; and his friends and former law partners, Judge Pat Doherty and Charlie Phillips, whose contrasting styles and compassion for helping clients provided a model for civility and professionalism.

Judge Swanson grew up in Villa Park, Illinois, a suburb of Chicago, in a big family with four siblings. He always wanted to be a lawyer, so he attended the University of Kentucky for college and planned to attend its law school. During his senior year, his parents moved to Beckley, West Virginia, and at the same time, a professor recommended that he consider nearby Washington & Lee University for his legal education. Moving from one Lexington to another was a surprising change of pace. Judge Swanson said more students attended his grade school than went to Washington & Lee, but he cherished the memories he shared with his classmates, including Judge Burkart. Still, he was ready to take the Wisconsin bar upon graduation – perhaps to be closer to his team – when he was offered a Roanoke County assistant prosecutor position.

His time as a prosecutor was among the best experiences of his career. Judge Swanson remembered trying felony jury trials in his first year of practice. Commonwealth's Attorney John Lampros allowed the assistants to learn from their mistakes by taking a hands-off approach. Roanoke County was a different place then—more rural than now, with only three Assistant Commonwealth's Attorneys.

Looking back, Judge Swanson enjoyed working alongside law enforcement, especially because it's where he met his wife, Denise, a Roanoke native who was a deputy sheriff at the time. "At first," he says with a laugh, "we didn't like each other." That soon changed when Judge Swanson moved into private practice, and Denise moved into different employment. They later married. Their daughter lives in Roanoke and provides assistance to individuals with disabilities; their son lives in South Florida, where, according to Judge Swanson, "he stays as far away from snow as possible."

Judge Swanson left the Office of the Commonwealth's Attorney to join Charlie Phillips and Judge Doherty at their law firm as an associate. They formed a partnership three years later that lasted for the next two decades.

"It was a busy practice," he says. On Christmas Eve, he was never surprised to see Charlie Phillips meeting with a client; there was a lot of work to do, and they valued their work together. He had a varied general practice, handling estate planning, business formation, family law, and criminal matters, including capital murder cases.

After many years of law practice, he was surprised to receive a phone call in 2001, asking if he would be interested in serving as a circuit court judge. He was proud to join his former law partner, Judge Doherty, on the bench. He feels lucky to work with a group of

(Continued on page 6)

PRO BONO SUMMIT IN OCTOBER

Justice William C. Mims of the Supreme Court of Virginia will speak to RBA members and guests about the importance of "Pro Bono Service: Promoting Access to Justice" on October 8, 2013, at the monthly RBA luncheon in the Shenandoah Club. As a follow-up to Justice Mims' presentation, the RBA and the Salem/Roanoke County Bar Association jointly present John Whitfield, Executive Director and General Counsel of Blue Ridge Legal Services, for a two-hour Ethics CLE session entitled "Closing the Justice Gap Using Rule 6.1: Ethics and *Pro Bono*." Mr. Whitfield's presentation, to be held on Friday, October 11, at the Holiday Inn - Valley View from 9-11 a.m., is free for RBA members and includes a complimentary breakfast.

"To aid the promotion of justice" stands first in the purposes of the RBA as stated in our bylaws. These presentations by Justice Mims and John Whitfield will help you prepare to play your role in carrying out that purpose.

THE YLC THROWS SUMMER SOCIAL AT THE RIVER AND RAIL

On Monday, July 22, over 60 judges, lawyers, and summer associates gathered at The River and Rail, a South Roanoke bistro, for an evening of fun. The private event, which was organized by the Young Lawyers Committee ("YLC"), was a celebration of the RBA's unmatched congeniality and professionalism.

Guests enjoyed beer, wine, cocktails, and a host of appetizers from The River and Rail's kitchen. Thanks to the generous sponsorships of Woods Rogers, LeclairRyan, Gentry Locke Rakes & Moore, Strickland Diviney & Strelka, and Frith Anderson & Peake, the drinks and food did not cost the RBA or its members a cent.

The event was a tremendous success by any measure. "It was fun to see new and old faces," said Lauren Ellerman, a partner at Frith & Ellerman and a part owner of The River and Rail. "The event was a great opportunity to get to know other lawyers," added Josh Johnson, a partner at Gentry Locke. "It represents the collegiality of our Bar."

"It was truly a summer highlight," raved Tommy Strelka, a partner at Strickland Diviney and the chair of the YLC. "Everyone had a blast, and The River and Rail did a fantastic job with its wonderful offerings. I'm looking forward to making this an annual event."

FOUR SUBSTITUTE JUDGES TO BE APPOINTED

The judges of the Twenty-third Judicial District will select four local attorneys to serve as substitute judges in the general district courts. Attorneys interested in applying for one of these positions must complete and submit an application, providing information about their education, practice areas, and court experience. Go to the RBA website to download the application and instructions, at <http://www.roanokebar.com/events>. The deadline to apply is September 27, 2013.

ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



The wettest summer I can remember is almost over, and school is back in session for area youngsters. After a hopefully relaxing summer, fall is a time to refocus on our goals and try and get things done. My goal is to provide high quality legal research services to the Roanoke Legal community. As always, if there is anything that I can do to assist you with your legal research needs, please do not hesitate to contact me at 853-2268.

Legal Information on the Internet

There are thousands of sources of free legal information available on the internet. You can find federal, state, and municipal codes, regulatory information, case decisions, and court information, and it is available for free to anyone who has access to the Internet. While law libraries pay lots of money to subscribe to Westlaw and Lexis, most questions I am asked can be answered with a simple Internet search. The problem is, with so many legal resources available at the moment, sometimes it is hard to decide which ones are the best. I have tried to make it easy by compiling a list of the webpages that I use most frequently for legal research, and putting them on the Roanoke Law Library webpage at <http://bit.ly/13Dl0e5>. While this is by no means an exhaustive list, it includes links to the most-used Virginia and federal resources for which I am asked. If you have links that you use regularly and think would be valuable for me to add to my list, please shoot me an email at Joseph.Klein@roannokeva.gov.

Zinio



The Roanoke Valley Libraries have recently began offering a fantastic new service, Zinio. Using Zinio, you and other Roanoke Valley Library card holders can check out and view current magazines on your computers, tablets and other mobile devices. You can check out as many magazines as you want, and you can keep them on your devices for as long as you want. The City of Roanoke Public Libraries subscribe to over 100 titles including The Economist, Newsweek, Forbes, Field and Stream, Cosmopolitan, and Popular Mechanics. To check out a magazine, go to <https://www.rbdigital.com/roanokecityva/zinio>, register with your library card, and then create a username and password. If you download the Zinio app for your tablet or mobile device, you will have to create a username and password for that program as well (you can use the same username and password for both). Once you have taken these simple steps, you can download and read your magazines wherever you go.

JOINT BAR BASEBALL PICNIC SPOTLIGHTS *RULE OF LAW*

BY JOHN S. KOEHLER, ESQ.

Members of the Roanoke Bar Association and the Salem/Roanoke County Bar Association joined together on Sunday, August 18 for an end-of-summer fundraiser at Salem Memorial Ballpark. This fundraiser for the Roanoke Law Foundation and the SRCBA's scholarship funds came about as a result of a presentation made to the Salem/Roanoke County Chamber of Commerce by Mike Pace and Tim Isaacs of the Center for Teaching the Rule of Law. At the meeting, a member of the Salem Red Sox front office suggested that the Red Sox would like to recognize the Center and the local bar associations for their work on the Rule of Law Project.

The SRCBA has held a fundraiser at a Red Sox game each year for the past several years and offered to combine this year's event with the RBA and the Center to make the Rule of Law recognition a valley-wide event. Funds raised came not only through individual admission fees, but also through sponsorships by individuals and firms from both associations, including John S. Koehler, Rick Buchanan and Patty Powell, LeClairRyan, Daniel L. Crandall, Richard Maxwell, and Joe Obenshain.

Rain on Saturday night forced the cancellation of that scheduled game and the subsequent rescheduling of Sunday's game as a doubleheader. Despite early morning rain and gray skies in the afternoon, the Sox met the Carolina Mudcats, dropping the opener, but coming back to take the nightcap. The Center had a display in the concourse where "The Law Rules" wristbands were distributed to Red Sox fans.

The two bar associations congregated in the third-base-side pavilion for a traditional ballpark picnic of nachos, popcorn, hot dogs, hamburgers, grilled chicken, and more. Among those attending were two of the winners of the Roanoke City Rule of Law Essay Competition and their families. Although the weather may have kept a few of the ticketholders away, those who did come all agreed that the event was a success and further proof of how the Rule of Law Project is continuing to build strong ties between the two associations as they strive to bring the message of civil rights and civil responsibilities to the youth of our valley.

John S. Koehler is Corresponding Secretary of the Salem/Roanoke County Bar Association and Law Clerk for Senior Justice Lawrence L. Koontz, Jr., of the Virginia Supreme Court

PAUL M. BLACK DESIGNATED AS NEW U.S. BANKRUPTCY JUDGE

The Fourth Circuit Court of Appeals has designated RBA member Paul Markham Black, subject to satisfactory completion of standard background checks, as U.S. Bankruptcy Judge. Mr. Black will succeed the Honorable William F. Stone, Jr. following Judge Stone's retirement.

Mr. Black is a native, and near life-long resident, of Roanoke. He graduated from Washington and Lee University in 1982, and received his law degree from the T. C. Williams School of Law of the University of Richmond in 1985. He served as law clerk to the Honorable Blackwell N. Shelley, United States Bankruptcy Judge for the Eastern District of Virginia, in Richmond.

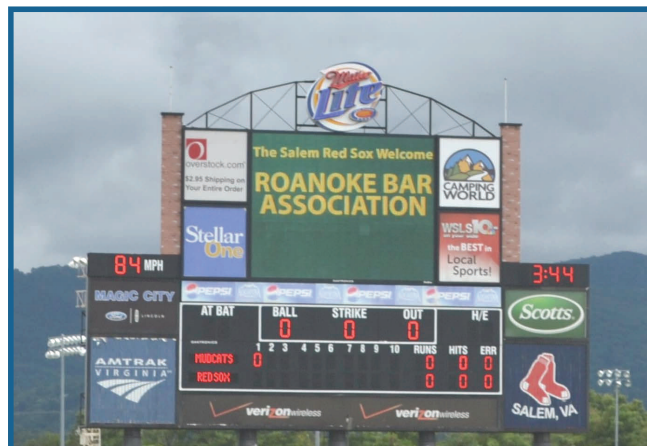
Mr. Black is a member of Spilman Thomas & Battle, PLLC in the firm's Roanoke office, where he is co-chair of the firm's bankruptcy and creditor's rights practice group. He has been a member of the Virginia State Bar Disciplinary Board since 2007.

Mr. Black is expected to take the bench late this year or early in 2014.

TAKE ME OUT TO THE BALLGAME!



Tim Isaacs, John Koehler (seated), and Mike Pace of the Center for Teaching the Rule of Law greet Salem Red Sox fans and explain the Center's efforts to bring the Rule of Law Project to the schools of the Roanoke Valley.



The Salem Red Sox welcome the Roanoke Bar Association to a fundraiser picnic for the Roanoke Law Foundation, hosted jointly with the Salem/Roanoke County Bar Association



Bar Association members and their families enjoy a traditional ballpark picnic.



The kids prefer clowning about in the picnic pavilion to watching the game!



Mike and Nancy Pace with Frank and Doris Rogers



Bar Association members and their families enjoy a traditional ballpark picnic.

CHALLENGES IN IMMIGRATION: UGANDAN ORPHANS

(Continued from page 1)

U.S. Adoptions from Non-Hague Countries Like Uganda. Prior to leaving on this trip, I was frequently asked to help families marshal evidence and draft support for orphan petitions when the families encountered snags with either the Department of State or U.S. Citizenship and Immigration Services. An orphan petition, once predicated and properly proven on one of seven statutory grounds, permits a foreign child to enter the U.S. as a child of a U.S. citizen adoptive parent. This process allows the child to claim lawful permanent residence and automatic U.S. Citizenship under the Child Citizenship Act—a law that McLane Layton initially drafted in the late nineties when she was Legislative Counsel for former U.S. Senator Don Nickles of Oklahoma.

Absent true, willful “fraud”—which I believe is rare—snags are usually easy to resolve once the family understands their legal burden and how to best demonstrate that their child is an “orphan” under U.S. law. Attorneys like McLane and I are a bit like Poppy the stone mason. We chisel away the inessential facts of the case to sand and polish the facts that are relevant to support that a child meets the definition of an “orphan.” We can’t rely on a thin factual veneer to carry the case. The legal burden is high.

To qualify as an orphan in non-Hague Convention countries, the applicant-child must have been unequivocally abandoned or deserted by, lost or separated from his parent. INA § 101(b)(1)(F). The parent may also simply have died or disappeared. *Id.* Each of these six grounds has a specific meaning in U.S. regulations. 8 C.F.R. § 204.301, et seq. Alternatively, a single or surviving parent who is unable to provide proper care for the child may, in writing, irrevocably release the child for emigration and adoption. INA § 101(b)(1)(F).

Typical Problems Proving the Non-Hague Case. Issues arise in non-Hague adoptions independent of the country in which they originate and the issues are almost always related to the sufficiency of evidence based on the clarity or obscurity of the relevant underlying facts. In Uganda, any number of cultural and historical issues complicate the adjudication of these petitions and the necessarily meticulous identification of facts surrounding the child’s origins.

First, there is a persistent problem of accurately documenting the number of births or deaths in the northern part of the country where intense fighting and displacement are common. We have seen cases where a baby was found beside a slaughtered parent and others where the fathers could not be identified because they were separated from the family by regional conflicts. Prostitutes don’t always know who fathered a child or the father is reluctant to come forward. In all of these cases, there is a problem of proof and notice. For the purpose of procuring a U.S. adoption, the family has the burden of demonstrating one of the seven statutory grounds and must demonstrate that they tried to find missing parents by advertising or hiring private investigators to prove that the mother isn’t lying about the father’s absence.

The timing of a child’s placement in a children’s home also causes serious heartburn to U.S. officials adjudicating these cases. These problems arise from the realities of Ugandan life. Police, who may literally receive the child from someone who found them in the street, do not routinely engage in an exhaustive search for the parents. There is no “Department of Social Services” agency that will undertake such an inquiry either. Rather, the police simply deliver the child to the children’s or

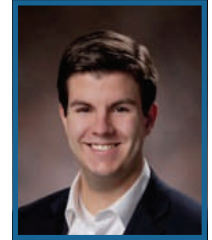
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VIEWS FROM THE BENCH: JUDGE SWANSON

(Continued from page 3)

judges who share the same dedication to working efficiently, even as the number of cases has increased in recent years. “We all pull the wagon in same direction,” Judge Swanson says.

He’s still waiting for one last phone call: the chance to purchase Packers season tickets. Some people have been on the waiting list for 43 years and counting. Apparently, it’s easier to own the team than to have a seat in the stadium. Until he sets foot in Lambeau, he says, he will have to follow the action from his Virginia home.



Robert E. Dean is an Associate at Frith & Ellerman Law Firm, PC

VOLUNTEER MENTORS NEEDED NOW

Big Brothers Big Sisters of Southwest Virginia, along with Roanoke City Public Schools and the Oliver Hill Foundation, has launched the Oliver Hill Mentoring Program (“OHMP”). This weekday afternoon program is designed to provide elementary students with the opportunity for personal development, improved academics, and, most importantly, a one-to-one relationship with a caring adult mentor.

The OHMP needs volunteers like you to serve for one hour, weekly, for one year. The program runs Monday through Thursday from the end of the school day until 6:00 p.m. Special interest speakers are also needed to speak about careers, Rule of Law, and other topics. A more detailed article about this mentoring program and its specific volunteer needs was included in the March 2013 edition of this publication (www.roanokebar.com/news). For more information, please contact Jessica Scaggs at jscaggs@bigslittles.org, 540-345-9604 (office), or 540-798-2043 (cell).

SWVM Southwest Virginia Mediations

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MEMBERS IN THE NEWS



Annual Meeting of the Virginia State Bar - June 2013



Lori Thompson was recognized as a 2013 Local Bar Leader of the Year by the Virginia State Bar Conference of Local Bar Associations, presented by David Harless, then-President of the Virginia State Bar, and George Eliades, then-Chairman of the Conference of Local Bar Associations.

Tom Miller was presented with an Award of Merit for the Roanoke Bar Association project *Handling Section 1983 Civil Rights Cases in Federal Court*.

Gene Elliott was installed as the Chair of the Conference of Local Bar Associations for 2013-2014.

Upper left: David Harless, Lori Thompson, George Eliades

Upper Right: David Harless, Tom Miller, George Eliades

Lower Left: George Eliades, Gene Elliott

Judicial Investiture Ceremonies - June 2013



Stephen Lemon (RBA), Judge Carson, Ann Green (SRCBA) and Jennifer Munsey (VWAA)



Stephen Lemon (RBA), Kai Memmer (VWAA), Judge Ciaffone, and Ann Green (SRCBA)

At their investiture ceremonies in June, Hon. David B. Carson and Hon. Leisa K. Ciaffone were presented robes by the Roanoke Bar Association, the Salem/Roanoke County Bar Association, and the Roanoke Chapter of the Virginia Women Attorneys Association.

CHALLENGES IN IMMIGRATION: UGANDAN ORPHANS

(Continued from page 6)

babies' home they know or that is closest to them. Depending on the home, that investigation into the circumstances of the child's abandonment may or may not take place prior to referring children to prospective adoptive families.

Likewise, there are issues in which the parent or another relative arranges ahead of time to leave a child at a children's home and the home refers the child to an adoptive parent before the child's feet have even pattered across the threshold. Bad practices in making referrals of children result in serious problems once the case arrives at the U.S. Embassy for processing of the orphan determination.

By the time most families encounter a hiccup or a course-changing wrench in their child's case, they have often not only met their prospective adopted child, but have been granted guardianship or adoption by the local court in-country. Not being able to bring their child "home" creates financial and emotional strain and stress in families, resulting in spouses and families straddling oceans waiting for issues surrounding the child's proper relinquishment or identity to be resolved in non-Hague countries. The dichotomy between the family's complete legal rights over the child in-country and the family's inability to get the visa to bring the child to the U.S. results in a strong sense of entitlement and inevitable frustration in most families, even when the Embassy or regional USCIS is properly exercising its authority.

Before exploring some possible solutions, however, it's important to understand and identify the various interested parties to an international adoption in the context of the international adoption process from start to finish.

The International Adoption "Players". In every case, there are a number of institutional and individual personalities at play from the time the adoptive family decides to adopt until they actually succeed in bringing their child home to the U.S.

The prospective adoptive parent(s) normally chooses an agency in the U.S. to help facilitate the adoption of a child from a country of their choice. Most agencies only work in specific countries where they have established a program and have developed relationships with one or more orphanages in that country.

The parents go through a process with U.S. Citizenship and Immigration Services (USCIS) stateside in which they are "approved" as having the qualifications that the U.S. requires to adopt a child including the ability to support the child, a current home study, fingerprinting, criminal background check and other requirements.

Typically, after the U.S. family is "approved" by USCIS for advanced processing of the adoption, the U.S. adoption agency in conjunction with the local (Ugandan) children's or babies' home, refers a child to the parents. The parents then accept that referral and begin the process of adopting the child in Uganda.

The best agencies properly qualify a child as an orphan prior to this referral by conducting their own thorough and independent investigation into the child's history and parentage prior to referring that child to the prospective parent, but even the best agencies have cases that go awry.

The parents typically arrive in country to appear in the local Ugandan court and procure the necessary guardianship order to permit them to take custody of the child in Uganda and hopefully (if the order is properly crafted) travel with the child and formally adopt him or her in the U.S.

This process can be tedious because the local Ugandan courts do not simply rubber-stamp these cases. The judges sometimes engage in aggressive questioning of the biological mother or father regarding the child's origins and their reasons for relinquishing or

abandoning the child. The Ugandan courts then issue a guardianship order that meets the necessary legal predicate in Uganda. If the Ugandan attorney handling the case is not aware of the U.S. requirements, however, the Ugandan order may fall short of the U.S. legal standard. This often occurs when the order fails to include the necessary language about the purposes of the guardianship, which is to permit the child to emigrate to the U.S. and be adopted. As a result, it is not uncommon for a local Ugandan family court judge to bristle upon being informed that his or her order doesn't meet U.S. legal requirements. Moreover, it's not hard to imagine why he or she might buck a foreign sovereign (the U.S.) rejecting his or her authority. This leaves the family (and the local attorney) stuck in the middle, unable to always secure better, satisfactory language in the order without angering a judge who has his or her own opinions of the propriety of international adoptions in general.

The most obvious institutional personality from the point of view of the adoptive family is the U.S. Embassy (Department of State) and the regional U.S. Citizenship & Immigration Services Field Office, which, for western Africa, is in Nairobi, Kenya. The families do not often deal with USCIS personally because the Department of State has been delegated authority to adjudicate orphan cases that are clearly approvable. 8 CFR 204.3(k)(2). If the Embassy personnel believe that the case is not clearly approvable, then the Department of State in West African Nations like Uganda refers the case to USCIS-Nairobi for adjudication that often results in issuance of a Request for Evidence (RFE) or Notice of Intent to Deny (NOID). 8 CFR 103.2(b)(8). The most difficult dynamic in the relationship between the U.S. Embassy and USCIS is that the Embassy may take statements, marshal evidence or otherwise make factual findings without notifying the petitioning parents, who are not aware of all of the issues identified by the Department of State until they receive an RFE or NOID from Nairobi. This is problematic because the family has severely prescribed time periods (typically 87 days for RFEs, 33 days for a NOID) within which to respond to either an RFE or a NOID. Moreover, the family must sometimes defend a case without access to the complete record of facts on which the U.S. Embassy based its referral to USCIS.

Even if one sets aside the obvious points of friction between these individual and institutional "personas," it still does not account for the wide divergence of perspectives on the problems and challenges facing international adoptions in Uganda.

Perceptions of International Adoption in Uganda. Within hours of landing in Entebbe, I was wading knee-deep into a river of opinion running with all sorts of currents, undertones, rumor and innuendo. I can't begin to reconcile all the opinions and serve up some Pollyanna synthesis of the ideals and opinions we encountered because there are issues on which there is little congruence of opinion. Those who believe that foreign families are adopting children for organ harvesting or slavery (long-promulgated myths about international adoption in nearly every country) are not easily dissuaded. Likewise, those who are motivated by religious ideals to protect the orphan are also resolute. Although these beliefs represent extreme viewpoints, there are areas of agreement.

First, there is a fundamental definitional difference about the meaning of "orphan" compared to the U.S. legal definition. Second, underlying social issues that necessitate adoption, like poverty and victimization of women, contribute to the perception that international adoption is an economically coerced culling of future generations. Third, allegations of corruption undermine the designation of children as "adoptable." Fourth, there is a strident debate over where international adoption should fit in the hierarchy of child welfare options—specifically whether international adoption should be considered before or after foster care and other in-country options. Although there are countless other issues, these were the

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CHALLENGES IN IMMIGRATION: UGANDAN ORPHANS

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ones that were most prominent in our discussions with leaders and others in Uganda. I'll take each on in turn.

Who Is the Orphan? The U.S. defines orphan broadly to include not only children without living parents, but also "homeless" children who are no longer being actively cared for by a biological parent. 58 Fed. Reg. 59200-01 (1993)(codified at 8 C.F.R. 204 et. seq.). The original legislation, drafted after World War II to assist abandoned and deserted immigrant children torn from their homes and families, places the law's fundamental purpose in historical context. *Id.* While later legislation added certain safeguards, such as a required home study of prospective adoptive parents, Congress nonetheless continues to refer to the orphan statute as "pertaining to homeless children," thereby distinguishing it from the provisions of the adopted child statute under section 101(b)(1)(E) of the Act (adopted under age 16 with two years of physical and legal custody). *Id.* The very terms that are the basis for orphan status—voluntary written relinquishment by a sole parent or abandonment, desertion, disappearance, separation, and loss of both parents—emphasize "the permanent severance of all ties between an orphan and his or her parents." *Id.*

On the other hand, few Ugandans and perhaps, few Africans, would define a child who was institutionalized in a children's home but with living parents as an "orphan." Moreover, culturally, many Ugandans we spoke with objected to the idea that children with no parents were "orphans" because of the strong cultural tendency to provide for other relatives' children. In spite of this semantic objection, these individuals acknowledge that there are a number of children without any parent or relative willing to care for them who can and even should be adopted.

While the word "orphan" may be part of the Luganda lexicon, the Ugandan culture simply doesn't embrace the Oliver Twist archetype. In fact, it is offensive to Ugandans that the U.S. labels these children "orphans." Even once these children are adopted, there is an expectation that any biological relatives will carry on a relationship with the child. Some adoptive families are fine with this expectation. Others are eager to cut ties, thus further cementing what many call the adoption "lie"—that the child's name change, and the separation of the child from his or her original country—is the lie at the fundamental heart of the individual's history.

Victimization or Depletion of a Nation. The assertion that adoption creates a preconscious "lie" with which the child must struggle into adulthood is not unique to Uganda and is compounded by local resistance to international adoption on the basis that it culls away future generations from a country. This was an issue that arose frequently in our conversations with a number of individuals opposed to international adoption. There was a palpable distaste and fundamental distrust of family members who relinquish rather than raise their own children or their children's children. Sometimes the presumption was that the family succumbed to economic "coercion" or that the family had been duped into relinquishing the child. While there have been cases in which this has occurred, one of which was publicized in the local papers during our stay, these cases are the exception and not the rule.

Moreover, economic "coercion" is itself a strange concept in this context because the coercion, by definition, must have a source. In the context of international adoptions, economic coercion of a certain kind is necessary for a sole parent to relinquish a child—U.S. law requires that the sole parent must be "incapable of providing the proper care." INA §101(b)(1)(F). If the adoptive family and the various agencies are not paying the

parents, then it's possible we're not talking about economic coercion, but merely the inconceivably difficult choices parents living in poverty make in order to allow their child a chance at survival.

While it is unfortunate that every parent cannot properly care for his or her child and myriad programs are underway in Uganda to assist parents in economic distress avoid family separation, what about the parents who simply reject their obligation to parent? Certain individuals we spoke with still objected to the adoption of these "unwanted" children. As one official stated, "They are still ours and they should stay here."

Institutional Inadequacies and Alleged Corruption. Part of the reason that we were in Uganda was to address potential Ugandan legal reform that would effectively shut down international adoptions from Uganda by requiring a two-year residency requirement prior to permitting judicial guardianships. The proposal was in response to, but did not address, the perceived underlying falsification of documents that made international adoptions suspect to Ugandans in the first place.

The problem is simple when understood by comparison to the American system of child welfare. In the U.S., if a child is found on the street, the state's department of child services immediately places the child with a temporary custodian and begins to investigate the identity and parentage of the child. A social worker is paid a salary by the state and gets a per diem for gas and incidentals to investigate the child's history by contacting everyone with connections to that child. The child's history is known for the vast majority of cases because birth records are kept for all children born in the U.S. If the police originally found the child or if the child was in need of services (let's say, removed from an abusive home) then the social worker undertakes a different investigation. The Court holds a removal hearing within a certain period of time, witnesses are called, and the Department of Social Service must prove the abuse, neglect, or abandonment.

By contrast, there is no similar process in Uganda. If a child is identified by a local police officer, the child may be taken directly to a children's home with little to no documentation of the child's identity and parentage. There is no database of children in the care and custody of private babies' or children's homes. If the social welfare officer (known as a probation officer) is asked to investigate the child's parentage and prepare a report for the Court, they will do so. Even then, the investigation is dependent on the payment of what some would call bribes and Ugandans call "gas money." Probation officers do not have a per diem or an expense account and their pay is very low. To provide the same level of effort as their American counterparts, probation officers would have to spend what they earn to investigate the circumstances of a child's abandonment. Consequently, they often do not make the effort because no one would specifically underwrite their efforts. Often they will rely on information provided them by orphanage or the adoption attorney handling the case.

In response to these issues, two solutions immediately arose in our discussions with Ugandan officials. First, the investigatory aspect of a child's history should be delegated to guardians *ad litem*. Even though Ugandan code permits the Court's appointment of attorneys in this capacity, there is no money in the Court's chest to pay them. Because the determination of adoptability (or eligibility for guardianship) usually only occurs in the context of children who are internationally adopted, foreign adoptive parents should be required to pay a "filing fee"—let's say \$500—to the Court or other treasury to be held and used to pay the guardians *ad litem* to investigate the circumstances of the children's birth, orphan status and eligibility under Ugandan law for guardianship or

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CHALLENGES IN IMMIGRATION: UGANDAN ORPHANS

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adoption.

The second solution requires greater resources from the babies' and children's homes, but can be done because we have seen it in practice. The best babies' and children's homes involved in international adoptions conduct their own investigations, document the child's circumstances, the parent's identity and location, any police reports, history of parental visits, parental intent to unconditionally relinquish, refusal to parent and the like. Given that the reputation of foreign and U.S. adoption agencies are at stake, they should take responsibility if they refer a child for adoption. Documents created contemporaneously with the child's abandonment or desertion or relinquishment are always more compelling than those created months later to fill the vacuum of actual records in a particular case. I believe agencies that do a better job of preemptively documenting and investigating the children in their care have fewer problems with the U.S. Embassy.

As for the issue of true corruption and fraud, that is a matter of human nature and can't be solved. It can, however, be minimized by lending credibility to the process between the time of the child's appearance at a home and an international adoption by undertaking the two proposals above.

The Hierarchy of Care Options. Everyone agrees that absent abuse or neglect, the best thing for a child is to remain with his or her family in his or her home country. The debate occurs when one considers what options follow from this ideal. Proponents of international adoption would place it as an option after domestic adoption but before foster care and other institutionalized placement. Because of national and ethnic interests, not all Ugandans feel the same. For example, groups of huts called "children's villages" are growing in popularity and offer what many Ugandans consider an attractive alternative to international adoption. These villages allow eight to ten children to live in a house run by a Mama. The children live in that house until they turn eighteen and then they are released. A number of individuals in Uganda put institutionalized placement above international adoption on the care hierarchy, presumably because it keeps the children in their home country. Foster care and domestic adoption do not exist in Uganda in the same form as they do in the U.S., but even here, peer-reviewed studies confirm the long-term harm of foster care and domestic adoptions of older children from foster care are infrequent. Accordingly, a preference system that places temporary in-country solutions over permanent international placements raises strong sentiments from both Ugandans and adoption agencies and other interested organizations.

Conclusion. Since I've been home, a number of people asked me to describe my trip—what we saw, what we learned and our perceptions. I am not known for being laconic, but I have no words to describe our experience. I can share what happened and express my intellectual observations but I didn't return home with a steely resolve toward any end. I believe intense experiences have to settle before we can articulate them clearly.

The shadow—and the light—of this experience is simply still too fresh to gain any real perspective on what it all means or what my next work will be in this arena. I was only in Uganda for twelve days—hardly enough time to formulate entrenched positions on the social issues affecting international adoption in that country. I can only articulate what I have already assimilated as truth.

I believe that where there are true orphans—cases where both parents are dead or terminally ill or mentally ill or cases in which the parents are harming children or simply do not want them—every child is better served by a family rather than an institution. Beyond that, I am only certain that as much as I guard myself against it,

children—especially children in need—have a natural and effortless bypass of one's "guard."

Raising a child who is not "yours" is truly a calling. Whether one believes the source of the desire to adopt is a biological mandate of the human heart or a more divine inspiration, my husband was relieved that I didn't return home seized with that particular calling. I was right, however, that in spite of my professional commitment to the importance of international adoption, my stoic emotion boundaries did not hold up against the deeply personal and honest conversations we had with judges, lawyers, government leaders, NGO representatives, babies' home directors and adoptive families. When discussing the needs of Ugandan children and the contentious structure in place to help them, I found it impossible to remain unaffected.

Fortunately for me, Isaac and Grace live only four hours away and they, along with McLane, are visiting later this month for a mini-Ugandan reunion. We will gather seven thousand miles away from the hills of Uganda but empathy and compassion create a kind of breach in the normal rules of proximity making far away things feel close. Like all meaningful travel, a small piece of me remains behind with the strangers turned friends and the strange sights that over two weeks became familiar. As I sit at home and stare at Twelve O'Clock Knob looming large over what I know of home, the adobe-tiled roofs and tin houses and clapboard lean-to's may as well still be in sight.

In addition to her adoption policy work and orphan advocacy, Christine Lockhart Poarch manages Poarch Law, a full service immigration law practice in Salem, Virginia. Poarch Law assists individuals, families and businesses with affirmative petitions for immigration benefits, defends individuals in complex removal proceedings and aids underserved populations like battered women, victims of crime and unaccompanied children.

IN MEMORIAM

William Elbert Anderson, United States Bankruptcy Judge, died at Duke University Medical Center in Durham, N.C., on June 20, 2013. He was 83. Bill, as he was known to his family and friends, was a graduate of Virginia Polytechnic Institute (Virginia Tech) and received his law degree in 1959 from the T.C. Williams School of Law at the University of Richmond. He practiced law in Danville for 21 years, served a term as Assistant Commonwealth's Attorney, and served in leadership positions in numerous civic and state organizations. He was appointed United States Bankruptcy Judge for the Western District of Virginia on December 5, 1982, and was later reappointed to two consecutive 14-year terms. Judge Anderson regularly held court in Lynchburg, Danville and Charlottesville, and served as Chief Bankruptcy Judge from January 1, 1991, to December 31, 1993. His many honors for excellence as a Bankruptcy Judge include election as a Fellow in the first class of the American College of Bankruptcy. In addition, he served on the Board of Governors of the American Bankruptcy Institute, on the Committee on the Administration of the Bankruptcy System of the United States Judicial Conference, as President of the National Conference of Bankruptcy Judges, and, from 1991 to 2001, as Chair of the Bankruptcy Advisory Committee for the Administrative Office of the United States Courts. His colleagues bestowed on him their highest honor: the Herbert M. Bierce Distinguished Judicial Service Award. This was only the fifth time the award had been given since its creation in 1926. Judge Anderson is survived by his wife of 28 years, Carolyn, and his sister, Katherine A. Fulton.



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UPCOMING EVENTS

Roanoke Bar Association Meetings 2013 - 2014

September 10, 2013

October 8, 2013

November 12, 2013

December 10, 2013

(evening meeting)

January 14, 2014

February 11, 2014

March 11, 2014

April 8, 2014

May 1, 2014 (Law Day)

June 10, 2014

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September 18, 2013

October 11, 2013

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

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Retirement Celebration!

Please join as we celebrate the distinguished careers of the Honorable B. Waugh Crigler, U.S. Magistrate Judge, and his Judicial Assistant, Judy Pace.

When: Friday, September 27, 2013
4:30 p.m. - 7 p.m.
Presentations at 5:30 p.m.

Where: The Omni Charlottesville Hotel - Preston Ballroom
212 Ridge McIntire Rd.
Charlottesville, VA 22903

Light hors d'oeuvres will be served. Cash Bar available.

**Please RSVP to CindyH@vawd.uscourts.gov
by September 20, 2013.**

If you would like to contribute towards gifts for Judge Crigler and/or Judy Pace, please send your check made payable to Cindy Hamilton to:

Cindy Hamilton
U.S. District Court
Office of the Clerk
210 Franklin Rd., SW, Suite 540
Roanoke, VA 24011

Be sure to indicate who the contribution is for. Please call Cindy if you have any questions at 540-857-5100 ext. 5370.



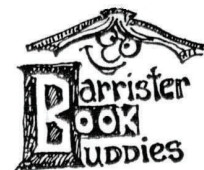
Save the Date!

Rule of Law Project

October 22 - Roanoke City

October 23 - Salem City

October 24 - Roanoke County



The 14th year of **Barrister Book Buddies** has begun and we are looking for volunteers! Please consider joining this award-winning program and agree to read to a classroom for at least one hour each month.

You may register at www.roanokebar.com/events. We would greatly appreciate your help in continuing this worthwhile program . . . plus, you are guaranteed to have a great time!