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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 RANEY TENURE IS PAST AND ITS STANDARD IS CONSIDERABLE

BY ELIZABETH C. BARBOUR

Judge Julian Raney retired on January 1, 2008 to go someplace warm and quiet. After 23 years on the local bench, where he confronted as many as several hundred cases on a daily basis, it was time to leave the 23rd judicial district. He recently described where he is now as "very pleasant." Indeed, there was a palpable sense of calm on the other end of the telephone when I spoke with him at home in Charleston, South Carolina.



The Honorable  
Julian H. Raney, Jr.

Raney, a native South Carolinian and alumnus of UVA and the Marshall-Wythe School of Law at the College of William and Mary, began his legal career in Roanoke as an Assistant Roanoke Commonwealth's Attorney in 1974. Three years later he entered private practice with the law firm Lichtenstein, Weckstein and Raney. He was appointed as a General District Court judge in 1984 in the district which includes Roanoke, Roanoke County and Salem. Upon retirement he was the chief judge of the district, sitting principally in Roanoke County.

Jonathan Rogers, a veteran local trial attorney, knows Raney as a friend in the court room and on the tennis court. He issued a litany of words about Raney: brilliant, fair, patient, and dignified. "Julian Raney followed the letter of the law, fervently believed in the Constitution and the Bill of Rights and was professional in his embracing of the issues before him. I admire him greatly. He wrote meaningful letters of opinion and was the best at grappling with complex issues." Rogers also made it clear that he did not win all of the cases he tried before Raney. "When you lost, he'd explain his rationale to you with a full explanation of his methodology." Rogers concluded our conversation with this statement, "Julian Raney is a paradigm."

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## THE RANEY TENURE IS PAST AND ITS STANDARD IS CONSIDERABLE

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Further comments from Raney's colleagues unequivocally illustrate the extraordinary mark his tenure leaves on the local judicial landscape. Judge William Broadhurst, of the Roanoke City Circuit Court, comments, "Judge Julian H. Raney's service and example was the proverbial rising tide that floated all boats in the General District Court. When I think of him I am reminded of a quote from Virginia Supreme Court Justice Alex M. Harman Jr., who once wrote to an aspiring General District Court judge 'Always remember that 90% of the people have their only contact with the court system at the level where you will sit. As the representative of that system you will, to a large extent, determine the reputation and public image of that system.' Judge Raney's service on our General District Court contributed immensely to the 'reputation and public image of that system,' both in the mind of the public (as substantiated by opinion polls conducted by the Supreme Court) and certainly among his professional colleagues. His humility cloaked an extraordinary intellect and a masterful sense of people. He understood that the American experiment required 'law' to take priority over 'order,' and he combined his keen understanding of both with a profound concern for the common good."

Raney mentioned in an email that followed our interview, "I regret that as a nonresident of Virginia the Chief Justice of the Supreme Court prohibits my sitting as a substitute judge." He listed the rewards of his judgeship as "working with nice people and on occasion cases which required thoughtful analysis." He was attracted to the bench because he "didn't like the business end" of private practice and sought "relief from chasing dollars." Also, there was the pension. And to a "lesser extent, prestige." His ideas serve to explain why six local attorneys raised their hands in a bid for Raney's seat when he announced his retirement last year.

Asked to comment on whether or not, and how, the local courts have changed since the mid-1970s Raney paused and said, "In 1974 Roanoke's only jail was housed on the top floor of the original Municipal building on Campbell Avenue." The facility housed just a few inmates. He continued, "Crack cocaine came to Roanoke about the time I became a judge. The result was we had a lot of drug cases." Also, there was a proliferation of "search and seizure issues the court had to deal with."

"From when I started with the Commonwealth's Attorney's office in 1974 it is remarkable the expansion we've seen in our jail and prison facilities. Both the city and the county have them and we are planning a new one." Raney is a

dedicated researcher of statistics and he notes over the years "Virginia statistics show a decrease in crimes and an increase in incarceration. We are locking a number of people up for drug offenses."

I asked Raney if lawyers have changed during his time on the bench. He laughed and said, "They've multiplied! When I came to Roanoke you could name the members of the bar and get to know them. As a group, I can say they haven't changed dramatically. In the mix you find the abrasive to the courteous ...it's a reflection of the general population."

Has the court room audience changed? Not much according to Raney. "The nature of our defendants has not changed and is made up of 18 to 24 year olds with no impulse control. What is especially disheartening has been seeing a great number of young women who have disputes with other

In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. This discharge of the judicial function as at common law is an essential factor in the process of which the Federal Constitution provides.

—HUGHES, Charles E., in *Herron v. Southern Pacific Co.*,  
283 U.S. 91, 95 (1931)

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## THE RANEY TENURE IS PAST AND ITS STANDARD IS CONSIDERABLE

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young women about a man each is involved with. One will go out of her way to track the other woman down and start a fight. The common theme among all the defendants is alcohol – the petty criminal's drug of choice." Raney ventured his suspicion that his former court hosts his own repeat customers.

When asked what might be done to reverse the cycle Raney moved to the subject of lives being improved and crime being reduced by programs designed "to direct kids' attention to education and long term goals." At the center of Raney's radar is Roanoke's West End Center. "This is a perfect example of what the government – local and national – needs to support. I was disappointed over and over again that appeals to the Roanoke City Council from the West End Center and groups like it yielded such small amounts of funding. From my point of view the West End Center ought to be a priority for city government because this, in contrast to other 'priorities,' is what is important to long term protection of progress in Roanoke." Raney is uniquely qualified to assert the merit of aid to school children as related to the docket and the city because he tutored at the West End Center during each of his 23 years as a judge.

Raney's compassion extends, also, to the mentally ill who for a

number of reasons are more and more the charge of our court system and jails, places ill-served to meet their needs. "I hope the General Assembly will improve how we address this population with their legislation."

Raney left a legacy of caring and a standard of trying to make things better for people. Says Broadhurst, "Ever mindful of the temptation to petty tyranny that wearing the robe can bring, Judge Raney conducted his court 'not of record' as if everything was being recorded and open for public scrutiny. Judge Raney demanded that dignity be accorded to each litigant and witness. Outside of court, he committed himself to a multitude of administrative tasks to improve the operation of the court in the Roanoke Valley. He introduced and implemented in the 23d District the 'segmented scheduling' docket format to reduce the frustration and delays experienced by witness and lawyer alike under the old 'cattle call' format. Less visibly, but no less importantly, he actively sought to improve and coordinate the efforts of his clerks and bailiffs so that they delivered the best service possible to all of those people who had to come through the judicial process. Judge Raney in turn remained a champion of deserving staff causes at the state level."

Randy Cargill, Assistant Federal Public Defender for the West-

ern District of Virginia, visited with Raney in South Carolina in April 2008 and had this to say, "We were most fortunate to have had a judge of Raney's caliber and I think every new judge should be required to observe a judge like him. He never showed any hint of self importance or ego. He possessed the one quality that I think is most important in a judge – humility. Judge Raney cared about each case and each party, treating all with dignity, courtesy and respect. He viewed himself as a servant of the law and followed it wherever it took him, but did what he could to moderate its harsh effects where possible. He spent his free time reading recent appellate cases to stay current in the law."

Cargill also added a telling note about Raney. "He is a wonderful father. Just a quick example: One Sunday we played tennis early and Julian seemed tired. I asked why and he explained that he didn't get much sleep. His son and some friends wanted to attend a concert in northern Virginia the night before. Julian drove them to the concert, sat in the parking lot reading a book, and then drove home arriving about 4 a.m. – and we played tennis at 9 a.m." Raney and his wife, the former Julie McWhorter of Roanoke, have two grown children, a son and daughter.

In retirement the judge is en-

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## THE RANEY TENURE IS PAST AND ITS STANDARD IS CONSIDERABLE

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joying time for tennis, reading, and perfecting his skill on roller blades and will continue as an admirer and student of the Constitution. "I enjoy going to conferences and listening to bright people. I've gone to the Federalist Society Convention for 20 years, although I am not a member. Its liberal counterpart is the American Constitution Society for Law

and Policy with meetings which I've been to and I regularly attend the Supreme Court Preview put on by the Institute of the Bill of Rights Law at William and Mary."

Judge Broadhurst caps this discussion best. "While their legal philosophies differed, I think that Judge Raney was the epitome of what Justice Harman had in mind when he pictured a General District Court 'representative [who]

will determine the reputation and public image of that system.' And while able jurists continue to serve that court, Raney's absence will call to their and our minds the poet Joni Mitchell's observation: 'Don't it always seem to go, you don't know what you've got 'til it's gone.'"

## PRESIDENT'S COLUMN

BY GEORGE A. MCLEAN, JR.



If you missed the Gala, you missed a good time. This year, we changed the format. There were fewer speeches and a band. By all accounts, the new format was a success. We couldn't have done it without the hard work of our Executive Director, Cathy Caddy, and the Gala Committee.

At our last meeting we honored our senior members with certificates of appreciation. We have 21 members who have been licensed to practice law for at least 50 years. We also gave James Kincaid scholarships to five highly deserving students. Each of these scholarships are for \$2,500.00. As I said at the Gala, after giving these scholarships, the Roanoke Bar Association has now given \$76,600.00

in scholarships and charitable grants.

It is with a great deal of relief that I turned over the president's gavel to our new President, Mark Cathey. I know Mark will do a great job.

June 30<sup>th</sup> will mark the end of a great year. We couldn't have done it without the help of so many members who were willing to give their time and energy. To all of you - thank you.

## DRUG SENTENCING REVISITED

BY THOMAS STRELKA\*

March 3, 2008, marked a radical change in federal court in the Western District of Virginia. On that date, Amendment 706 to the United States Sentencing Guidelines ("USSG") effectively became retroactive, opening the door for hundreds of inmates convicted of crack cocaine offenses to receive sentence

reductions. Because the Western District of Virginia has the fourth highest number of crack cocaine convictions of any federal district court in the United States, probation officers, judges, prosecutors, and defense attorneys in the district have been working long hours to review those cases and to manage and address the

slew of motions requesting sentence reductions.

"Because we have so many cases potentially affected, we have developed a protocol that will afford due consideration in a timely fashion to all of these defendants," stated Chief United States District Court Judge James Jones, shortly before the effective

## DRUG SENTENCING REVISITED

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date of retroactivity. “We want to make sure that all relevant information is provided to the judge who is deciding whether to grant a reduction and if so, the amount of that reduction. The Federal Public Defender in this district will handle many of these cases, in order to make sure that a just result is reached for those inmates who are unable to afford private counsel.”

Sentences for crack cocaine offenses have long been quite disparate when compared to other drug offenses. During the war on drugs in the 1980s, Congress confronted the disturbing rise in crack cocaine use by enacting harsher penalties for crack cocaine offenses than for other controlled substances. For example, a defendant convicted of distributing several grams of crack cocaine faced the same amount of imprisonment as an individual convicted of dealing 100 times that weight in powder cocaine. Congress adopted the 100-to-1 ratio because it initially believed that crack was far more dangerous than powder cocaine, despite their identical physiological and psychotropic effects.

Defense attorneys, judges, and activists have repeatedly asked Congress to create more equitable balance in drug conviction sentencing. The American Constitution Society and the American Bar Association

(“ABA”) have urged crack cocaine sentencing reformation because of a perceived racial bias in sentencing. Studies and statistics have shown that the majority of crack cocaine users are African Americans, while powder cocaine has proportionately more Caucasian users.

In May 2007, in response to these demands for change, the Sentencing Commission proposed an amendment to the guidelines, lowering the base offense levels for crack cocaine offenses by two levels. When Congress did not take action to reject the amendment, it took effect on November 1, 2007, for offenders who had not yet been sentenced.

“I believe it was the right thing to do,” commented United States District Court Judge Glen Conrad. “There was a disparity between crack cocaine offenders and powder cocaine offenders. I agree that it had to be reduced.”

The issue of retroactivity was still an undecided and passionately contested matter. According to an October 3, 2007 report from the Sentencing Commission, approximately 20,000 federal drug offenders would become eligible for early release from prison by an average of 27 months if the Commission voted for retroactivity. This number of inmates is equivalent to more than 25% of all federal sentencings conducted in 2006 and

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### Applicable Statutes and Guideline Provisions

- **What are the amendments to the crack cocaine sentencing guidelines?**

Effective November 1, 2007, Amendment 706 to the United States Sentencing Guidelines (USSG) reduced the base offense levels for crack cocaine offenses listed in USSG § 2D1.1 for inmates who had not yet been sentenced. Amendment 713, issued December 11, 2007, and effective March 3, 2008, made these amendments retroactively applicable to inmates who had already been sentenced for crack cocaine offenses. See 18 USSG § 1B1.10(c) (listing all retroactive guidelines amendments); App'x C (listing all amendments to the USSG).

- **How can an inmate seek a sentence reduction?**

An inmate may seek a sentence reduction under

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## DRUG SENTENCING REVISITED

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approximately the same as the number of crack cocaine sentences imposed during the years of 2003, 2004, 2005, and 2006, combined. Given fact that the federal prison system eschewed parole twenty years ago, such a large number of inmates receiving reduced terms of confinement or release in a relatively short period of time would have a huge impact on the federal justice system.

In fact, the United States Department of Justice (“DOJ”) proclaimed that retroactivity would be disastrous. Speaking before the Senate Judiciary Subcommittee on Crime and Drugs, United States Attorney Gretchen Shappert warned that shortening crack cocaine sentences would cause a “loss of the public’s trust and confidence in our criminal justice system.”

In a letter to the Sentencing Commission, written by Assistant Attorney General Alice Fisher, the DOJ argued

that the sheer number of defendants eligible for reduction . . . [and the complex side issues defendants would likely present in seeking reductions] would impose enormous and unjustified costs upon the federal judicial system, including judges’ staffs, probation officers, U.S. Attorneys’ offices, public defenders, panel

attorneys, and the United States Marshals Service. This surge of litigation, much of which may be frivolous, would detract from our ability to investigate and prosecute current crime and will impede the courts’ ability to deal with pending cases, both criminal and civil.

The DOJ also noted that the particular inmates potentially eligible for reduction are associated with a high rate of recidivism.

Writing in direct opposition to the DOJ’s letter, Federal Public Defender Jon M. Sands explained to the Sentencing Commission that the DOJ’s conclusions were “simply not true.” In his November 21, 2007 letter, Sands pointed out that the DOJ’s recidivism statistics were skewed and that drug trafficking accounts for only “a small fraction of recidivating events for all offenders.” In an August 22, 2007 letter to the Honorable Ricardo H. Hinojosa, Chairman of the United States Sentencing Commission, the ABA claimed “that the 100:1 ratio was unwarranted from its inception [and] . . . has a racially disparate impact . . . [that creates] the public perception that our drug laws are racially discriminatory. Making this amendment retroactive is the only fair and principled course.”

On December 11, 2007, the Sentencing Commission

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18 U.S.C. § 3582(c)(2). This section provides that on a motion from a defendant, the government, or the court itself, the court may reduce the defendant’s sentence based on an amendment listed in § 1B1.10(c) as retroactive, if its application reduces the inmate’s sentencing range. Proceedings under § 3582(c)(2) “do not constitute a full resentencing hearing,” USSG § 1B1.10(a)(3), and the court may not consider other guideline amendments unless they are also listed in § 1B1.10(c). Generally, an inmate has no right to a hearing or court-appointed counsel on a motion for reduction of sentence based on a retroactive guideline amendment. See, e.g., *United States v. Legree*, 205 F.3d 724, 230 (4th Cir. 2000).

### • Who is not eligible for a reduction?

If the amendments do not reduce the inmate’s guideline sentencing range, then he or she is not eligible for a reduction. Thus, an inmate sentenced to a statutory mandatory minimum sentence or under a repeat offender guideline, e.g. USSG § 4B1.1 or § 4B1.4, would generally not be eligible for reduction. Prisoners with base offense levels of 12 or 43 and any inmate whose offense

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## DRUG SENTENCING REVISITED

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unanimously approved retroactivity for Amendment 706. Beginning March 3, 2008, inmates serving time for crack cocaine offenses, whose sentencing ranges were reduced under Amendment 706, became eligible for a sentence reduction.

Inmates' letters and motions seeking sentence reductions under the "crack amendment" trickled into the court even before the retroactivity announcement. Then the trickle became a stream. Whether or not these pro se submissions mentioned the right statute or amendment number, the clerk's office docketed them as motions for reduction. The sentencing judge then issued an initial order that provided each movant with an information sheet about the amendment, its effective date, the court's intention to consider each case, and the reality that not all inmates would be eligible for reductions. Meanwhile, a "crack" team of probation officers reviewed every crack cocaine case filed in the district from 1988 to the present (nearly 1000 cases in all). For each defendant, the team prepared an addendum to the original presentence investigative report ("PSR"), calculating the amended offense level and sentencing range. If an inmate had received a sentence above or below the original range, such as a reduction for

assisting the government, the PSR addendum also included a comparable departure under the amended sentencing range. To each inmate eligible for a reduction, whether or not the inmate had filed a motion, the sentencing judge then issued a notice of the amended sentencing range or, in many cases, the sentence the court proposed to enter; then, the government and the defendant had an opportunity to respond.

Larry Shelton, the Federal Public Defender for the Western District, worried that many inmates would be disqualified. "Initially," explained Shelton, "we were concerned that many of those writing and calling us would be ineligible for one reason or another. However, when we received the official list from probation, we were able to advise everyone of the protocol of the Court." Shelton explained, "We have proactively contacted eligible defendants and advised them that they can request that this office be appointed to represent them, particularly since the U.S. Attorney's Office is filing objections in every case."

Although Amendment 706 effectively lessened the severity of crack cocaine sentences under the guidelines, a guidelines change cannot reduce statutory mandatory minimum sentences. Under 21 U.S.C. § 841(b)(1)(A)(iii), distribution of fifty grams or more

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involved 4.5 kilograms or more of crack cocaine also generally cannot benefit from the amendment.

- **How big is the average sentence reduction?**

According to statistics released by the Sentencing Commission in mid-May 2008, across the nation and within the Fourth Circuit's jurisdiction, the average sentence reduction granted under Amendment 706 was 22 months. The Western District of Virginia average sentence reduction was 23 months.

- **To learn more about the USSG amendment process, see 28 U.S.C. § 994(a), (o), (p), and (u).**



## DRUG SENTENCING REVISITED

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of crack cocaine (also known as "cocaine base") results in a mandatory sentence of ten years in prison; § 841(b)(1)(B)(iii) mandates a five-year minimum prison term for distribution of five or more grams of crack cocaine. Inmates with mandatory minimum sentences are not eligible for any reduction under Amendment 706. Only Congress, not the Sentencing Commission, can alter these statutorily mandated penalties.

Even for eligible inmates, judicial discretion remains the key component of the amendment's effect. Under 18 U.S.C. § 3582(c)(2), a court may issue a reduction based on a retroactive guideline amendment only after considering a number of factors, including the offender's criminal history, prison record, and need for correctional treatment.

Under the court's protocol, "Whether to grant a reduction in any particular case will be decided only after the government and the defendant have had a full opportunity to respond," remarked Judge Jones. "The judges will consider the defendant's record, as well as the public safety, in making the ultimate decision of whether or not to grant a reduction in sentence."

The district's judges began considering the PSR addendums

as soon as they were completed and the parties had responded. They began issuing reduction orders in February, to take effect on March 3, 2008, at the earliest. By April 14, 2008, the district ranked number one in the country for efficiency in addressing crack cocaine cases under the amendments. By May 13, the court had issued orders in 439 crack cases, more than any other court in the country. Of those orders, 307 granted sentence reductions. In the district as a whole, 27 inmates became eligible for immediate release as a result of a reduction under Amendment 706.

The battle over which judicial measures would best address the nation's drug problems still wages. Attorney General Michael Mukasey urged police officers on February 25, 2008 to join his effort to push Congress to reject the Sentencing Commission's retroactivity decision in order to prevent what he feared would be a dumping of thousands of violent criminal offenders on the streets of U.S. cities in the weeks following the amendment's March 3, 2008, effective date. Meanwhile, Senator Joe Biden (D-Del.) presented to Congress a bill entitled the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act, which would, among other measures, abolish the five-year mandatory minimum sentence for first time possession and increase the amount of crack required for

imposition of mandatory minimum sentences for drug trafficking offenses. Larry Shelton agrees that the disparity still needs revamping. "The two level reduction is a good start but not enough. There simply is no rational and fair basis for any disparity between the Guideline ranges for crack and powder."

Whether retroactively lowering the offense levels for crack cocaine offenses will negatively or positively affect the drug war has yet to be seen. What is certain? The crack cocaine amendments have created greater parity in sentencing for drug offenses, and those in the judicial system have been working long hours to make sure that no inmate will receive a reduction or be released without full consideration of public safety factors.

*\*Thomas Strelka serves as law clerk to Senior United States District Court Judge James C. Turk in Roanoke, Virginia. He received his law degree from the University of Richmond School of Law in 2007*

*--Linda Gustad, Pro Se Law Clerk, assisted with this article.*



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## RBA'S TRIAL ADVOCACY CLE WINS VSB RECOGNITION

BY JAMES C. MCKINLEY

Take what you learn in a CLE classroom and immediately put it into practice in the courtroom before a judge and jury, even before you make partner. This concept came to life for twelve young lawyers who participated in the RBA's first Trial Advocacy CLE Program and Mock Trial on April 4, 7 and 8, 2008. The two-part "Trial Ad" program was awarded a Certificate of Merit by the Conference of Local Bar Associations of the Virginia State Bar at the June 2008 VSB statewide meeting in Virginia Beach.

The first lesson of the CLE: learn from the best. On Friday,

April 4, at Roanoke's Higher Education Center, seven of Roanoke's most outstanding trial attorneys shared with the young trial participants and other attendees their views and experience on the essentials of trial practice: Tony Anderson lectured on voir dire; John Lichtenstein's lecture on opening statements stressed the importance of learning a client's story and crafting that story to arm the jury to represent your client in deliberation; Ronald Ayers spoke about the blue ribbon essentials of direct examination, while Roberts Moore presented a companion

lecture on the art of cross examination; Bill Poff presented his unified theory of demonstrative evidence; and James Jennings spoke on the presentation and impeachment of expert witnesses. In the final lecture, Brent Brown stressed the importance of knowing the client so you can convey a moving narrative at closing that persuades the jurors of your client's desired outcome.

Part two of the CLE was: take the learning to trial. On April 7 and 8, United States Magistrate

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## RBA'S TRIAL ADVOCACY CLE WINS VSB RECOGNITION

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Judge Michael F. Urbanski presided over two one-day mock trials of *Brown v. Byrd*, a personal injury case arising from an automobile collision. The fact pattern and evidence packet were developed by the National Institute of Trial Advocacy (NITA). Each day, two teams of three young lawyers participated in pre-trial conferences, voir dire and empaneling of a jury, direct and cross examination, and all other aspects of conducting a trial, including the use of courtroom technology in the presentation of arguments and evidence.

Federal court staff played the parts of plaintiff, defendants, the parties and witnesses, and the proceedings were videotaped to allow for additional feedback and critique. The teams of young lawyers who tried the mock case were: Lauren Davis (Gentry Locke Rakes & Moore, LLP); Joshua Goad (Johnson, Ayers & Matthews, PLC); Josh Johnson (Gentry Locke Rakes & Moore, LLP); Macel Janoschka (Gentry Locke Rakes & Moore,



LLP); Erin Hapgood (Guynn, Memmer & Dillon, PC); Roberta Paluck (Frankl, Miller & Webb, LLP); Beth Burgin (Woods Rogers PLC); Johneal White (Glenn, Robinson & Cathey, PLC); Jay O'Keeffe (Gentry Locke Rakes & Moore, LLP); Margaret Brown (WootenHart, PLC); Charlie Nave (Law Office of Charles Nave); and Wirt Brock (Gentry Locke Rakes & Moore, LLP). Coaches were: John Fishwick (Lichtenstein, Fishwick & Johnson, PLC); Joe Matthews (Johnson, Ayers & Matthews, PLC); Tom Miller (Frankl, Miller & Webb, LLP); and Bill Poff (Woods Rogers PLC).

The two panels of seven jurors, individuals hired through a temp agency, proved to be most educational. In a distinct departure from reality, participants and spectators monitored deliberations via video links. Each day, after briefly discussing and then almost immediately abandoning the guidance provided in the court's instructions, the jury returned a verdict for the defendant. Although the fact pattern on the second day was designed to make a case for the plaintiff under the

laws of the Commonwealth of Virginia, on both days the jurors' discussions indicated that, the merits of the case under the court's instruction notwithstanding, the verdicts were based on the jurors' personal biases and beliefs. Additionally, monitoring the deliberations revealed that, on both days, several jurors had been less than truthful in voir dire in response to direct inquiries regarding their experiences in automobile accidents and the use of prescription drugs, both which figured significantly in the facts of the case. As Mr. Poff noted in remarks at the conclusion of the mock trials, the experience of monitoring the juries' deliberations simply underscores the importance of settling cases.

*James C. McKinley has been a Pro Se Law Clerk at the United States District Court in Roanoke for two years and in August, will move to Lynchburg to serve as Chambers Law Clerk to United States District Judge Norman K. Moon. He holds a law degree from the University of Virginia School of Law. James played the role of the twice unsuccessful plaintiff in the RBA's Trial Advocacy CLE mock trials.*

## BAR ENDORSEMENT OF JUDICIAL CANDIDATES

BY AL MCLEAN

The Roanoke Valley has a new general district court judge—Chris Clemens, former Salem City Council Member. On April 25, 2008, a majority of the Valley's six Circuit Court judges se-

lected Clemens to fill on an interim basis the seat left vacant when former General District Court Judge Julian Raney retired in December 2007.

Since Judge Raney announced his retirement more than ten-months ago, the Roanoke Valley's five state legislators have deadlocked along party lines on choos-

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## BAR ENDORSEMENT OF JUDICIAL CANDIDATES

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ing a permanent replacement. (see "Take the Politics Out of Judgeships," April 2, 2008; "Lawmakers at Impasse Over Judge Nomination," March 8, 2008; "Leaders Split Over Choice of Judge," March 3, 2008). The three Republicans have favored Clemens, while the two Democrats have supported Roanoke Commonwealth's Attorney Donald Caldwell. All agree that either candidate would make a fine judge, but the decision has been mired in political positioning. This stalemate has left the job vacant and the Valley's judicial system overburdened, with no measurable gain achieved for either party. How can the legislators rise above partisanship in the selection process? There is a way.

On November 13, 2007, the membership of the Roanoke Bar Association met and conducted a vote by secret ballot to select among six well qualified candidates one individual to receive the RBA's endorsement for the judgeship. This painstaking process took several rounds of ballots over several hours to reach a majority vote, with approximately one-third (156 attorneys) of the RBA membership participating. Those voting came from a wide cross section of political parties and practice areas: plaintiffs' lawyers, defense counsel, corporate counsel, prosecutors, public defenders, and criminal defense attorneys.

RBA bylaws set forth the voting procedures (see [www.roanokebar.com/bylaws](http://www.roanokebar.com/bylaws)). All RBA members in good stand-

ing may vote. When a judicial vacancy occurs, individual attorneys announce to the RBA members their interest in the judgeship, their desire to be considered for endorsement, and their qualifications for the job. Candidates' political affiliations are not at issue. When the membership meets for the vote, each member writes his or her choice on a ballot and then turns it over to the tellers, made up of RBA board members. Any candidates not receiving at least five percent of the votes are dropped out of the next round. When a round results in a majority vote for one candidate, he or she receives the RBA endorsement. The Salem-Roanoke County Bar Association follows a similar endorsement procedure. Upon completion of this process, the bar associations communicate their endorsements to our legislators to aid their selection process.

Bar association members make the effort to complete the time-consuming endorsement procedure because selecting the right candidate for a judgeship is so critical to the well being of the Roanoke community. Judges protect the integrity of the legal system, which in turn protects the individual rights of people in all walks of life. The endorsement procedure enables RBA members, as attorneys, to lend to the selection process our unique knowledge of the job and the candidates. As attorneys, we practice law in front of judges and experience, first hand, what character traits, temperament, and abilities help a judge to achieve effective justice. We practice law as colleagues and fellow members of the bar with those individuals who become can-

didates for a judgeship. We have witnessed and gathered information about a candidate's professional ability and experience, work ethic, temperament, character, intellectual capacity, judgment, honesty, objectivity, community respect, integrity, commitment to equal justice, communication skills, and biases.

One local legislator has suggested that a conflict of interest exists when attorneys endorse a candidate to the General Assembly. On the contrary, as you can see, an endorsee has been evaluated by all sectors of the bar and selected by secret ballot. It is no more a conflict of interest for the bar as a whole to vote to endorse a judicial candidate than it is for our legislators as a group to elect individuals to leadership positions in the General Assembly.

While there is no perfect method to select judges, the Bar's system balances all of the competing interests. Through the years the system has been instrumental in the final selection of the judges appointed. Our community has benefitted from the wisdom and service of the outstanding, respected judiciary so created. The Bar endorsement deserves the strong consideration of the legislative delegation in selecting judicial candidates.

*George A. McLean, Jr. is the President of the RBA and publication of this article was approved by the unanimous consent of the RBA's Board of Directors. This opinion editorial was published by the Roanoke Times on June 1, 2008.*

# ROANOKE LAW LIBRARY NEWS & INFORMATION

BY JOSEPH KLEIN



## Law Library News

I'm truly blessed to be able to live close enough to work to

walk. As I walk around this time of year dodging rain storms and enjoying the return of green leaves and the colorful blooms of spring, I am reminded of how lucky we all are to live in such a beautiful place. I am also lucky to have an enjoyable and challenging job here at the Law Library where I have day to day contact with the wonderful people of the Roanoke legal community. The staff of the Roanoke Law Library is here to serve you, so never hesitate to ask us a question. As long as we are open, someone is always here to answer your questions, provide you with a tour, or assist with our print or electronic resources. If you require specialized training to search one of our resources, I will be more than happy to sit down with anyone for however long it takes. With only a phone call, our conference room can be reserved for depositions, meetings, interviews, or just as a quiet place to get some work done. Best of all, every service we provide is free (save printing and photocopying which cost \$.10 a page). If you have any question about other services we provide, or suggestions about services that you wish we provided, please give me a call at 853-2268.

We look forward to working with you.

## Computer Training

As mentioned above, I am always available to give training on the electronic databases and software that we have here at the Law Library. I also wanted to remind people about the more general computer training classes that the Roanoke Public Library offers. These classes are offered at the Main Branch on Jefferson Street and also at the other neighborhood branches during the day and in the evenings. These classes can be as basic as how to use the mouse or search the internet, while others offer more specific instruction on software packages such as Microsoft Word and Excel. A listing of the classes offered each month is available in The Spot, the Libraries' monthly information newsletter, which you can pick up at the Law Library (or any City of Roanoke branch), or online at the Libraries' web page (<http://www.roanokeva.gov/library>).

## Summer Programs for Children, Teens and Adults

As always, the Roanoke Public Library will be offering exciting programs for your children this summer. The Summer Reading program will be kicking off soon and this year's theme of Metamorphosis promises to be the most exciting yet. There will be programs, contests, and prizes for all ages so be on the look out in The Spot or contact the Youth

Services Department at 853-2955. Additionally, Salem Avalanche players will be making the rounds to the neighborhood branches to read books and meet with the children. The Teen Center at the Main Library on Jefferson is sure to offer some fantastic programs as well, so keep your eyes peeled. Finally, don't forget that there will be an adult summer reading program as well. Just come to any library branch, including the Law Library, fill out an entry form, and you could win a great prize.

## Movie Checkout at the Law Library

We have been checking out Movies here at the Law Library for two years, but I am still often approached by people who are surprised to notice our selection of DVDs. Our collection is now better than ever because we have started to receive Hot Flicks. Hot Flicks are new release movies that can only be checked out for two nights and cannot be sent to other branches (but they can be returned to any Roanoke Valley Library branch). So if you are in the neighborhood come by and check it out. All you need are your library card and a few free hours (which for me is usually much harder to find than my library card).



*Joey Klein is the law librarian and can be reached at (540) 853-2268; [joseph.klein@roanokeva.gov](mailto:joseph.klein@roanokeva.gov)*

# RBA FOUNDATION & CASA GALA



*Brett Marston, Cathy Caddy, and Al McLean*



*Ann & Bill Hackworth*

The Roanoke Bar Association Foundation held its annual Gala on Friday evening, May 16, 2008 at the Hotel Roanoke in conjunction with the Roanoke Valley CASA Foundation. The Court Appointed Special Advocates mission is to serve the abused and neglected children in the Roanoke Valley who come before the Juvenile and Domestic Relations Court for protection. The purpose of CASA is to humanize the complicated, unfamiliar, and frightening legal and child welfare systems for the child victim by providing a trained



*RBA Directors*

volunteer who will act as a consistent advocate in the court system.

The proceeds of this event benefitted the Roanoke Bar Association Foundation, and go primarily to fund the Foundation's James N. Kincanon Scholarships, given annually to outstanding students who express an interest in pursuing a career in law. Proceeds also benefitted CASA in their crucial mission.

At the Gala, the Bar Association honored William B. Poff of Woods Rogers, who received the lifetime



*Judge Philip Trompeter*



*Justice Lawrence Koontz, Jr.*



*Elizabeth Guilbert Perrow,  
Young Lawyers Award Recipient*



*Bill Poff (Award Recipient), Judge James Turk (Presenter),  
and Al McLean*



*Bill Poff  
Frank "Bo" Rogers Lifetime Achievement Award*

achievement award for outstanding service to the Bar Association, named in honor of Frank W. "Bo" Rogers. The Honorable James C. Turk, Senior United States District Judge, presented the award to Mr. Poff. Mr. Poff was also recently honored by the Bar Association for his 50 plus years of service as an attorney and bar member.

The Bar Association also honored the contributions of one of its young lawyers with the Young Lawyer of the Year Award, this year honoring Elizabeth Guilbert Perrow, a partner at Wooten Hart.

By all accounts, the Gala was another success story. Special thanks goes the Gala Committee (including Tracy Giles for his insistence on having a band, BS&M, instead of a keynote speaker!) and to Cathy Caddy for her tireless service, organization and commitment!



*Linda & Jim Joyce,  
Melinda & Dave Cohan*



*Bill Poff & Spring Cho,  
Grandchildren, Ryan and Carter Wilson*



# IT'S TIME TO DANCE!



BS&M ([www.bsandm.com](http://www.bsandm.com))





*Doug Densmore & Bill Rakes*



*Malissa Giles & Lori Thompson*



*Wade Anderson, Steve and Kendra Roberson*

# THE GALA CONTINUES



*Helen Dean, President of CASA, Zip and Vince Basile*



*Gina Anderton and Mike Norton*





*Kimberly Boyer, John Neal White, Geoff White, Chris Banta*

# FUN TIMES AT THE GALA



*Barbara and Roy Creasy*



*Linda and Rod Gustad*



*Nick Conte, Judge Michael Urbanski, and Ellen Urbanski*



*Brett and Colleen Marston, Whitney and Todd Leeson*

## AGEE CONFIRMED FOR FOURTH CIRCUIT JUDGESHIP

Justice G. Steven Agee of the Supreme Court of Virginia was unanimously confirmed by the Senate on May 20, 2008, to the United States Court of Appeals for the Fourth Circuit. Agee, a Salem resident, has served on Virginia's highest court since 2003. From 2001 to 2003, he served on the Court of Appeals of Virginia. Prior to becoming a judge, Agee worked for more than twenty years in private law practice. He was a named shareholder in the law firm of Oster-

houdt, Ferguson, Natt, Aheron, and Agee from 1980 to 2001. From 1982 to 1994, he represented the City of Salem and parts of Roanoke and Montgomery Counties as an elected Delegate to the Virginia General Assembly. Agree holds an undergraduate degree from Bridgewater College, a law degree from the University of Virginia School of Law, and an LLM degree in Taxation from the New York University School of Law.

## CONRAD NOMINATED FOR FOURTH CIRCUIT JUDGESHIP

United States District Judge Glen E. Conrad has been nominated by President Bush in early May for a judgeship on the United States Court of Appeals for the Fourth Circuit. His nomination must now be confirmed by the Senate. Conrad began his legal career as a law clerk for Judge Ted Dalton and Judge James C. Turk in the District Court for the Western District of Virginia. Then, for nearly thirty years, he served as United

States Magistrate Judge for the Western District, in the Abingdon, Charlottesville, and Roanoke Divisions of the court. When Judge Turk took senior status in 2002, President Bush nominated Conrad for the District Court judgeship, and the Senate unanimously confirmed that nomination in 2003. Conrad received his undergraduate and law degrees from the College of William and Mary.

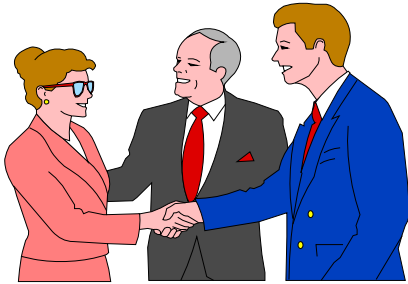
## BROWNLEE ANNOUNCES RUN FOR VIRGINIA ATTORNEY GENERAL

John L. Brownlee, on May 17, 2008, declared himself a candidate for the position of Attorney General of Virginia in the November 2008 election. Just weeks earlier, Brownlee had resigned his position as United States Attorney for the Western District of Virginia, effective May 16, 2008, after seven years in that position. He previously served as an Assistant United States Attorney for the District of Columbia and as Law Clerk to United States District Judge Samuel

G. Wilson. Brownlee is a graduate of Washington and Lee University and the College of William and Mary. Prior to entering law school, Mr. Brownlee served as an infantry officer in the United States Army and successfully completed the Army's Airborne and Ranger programs. John and his wife, Lee Ann Necessary Brownlee, have two daughters and reside in Roanoke, Virginia.

# ANNOUNCEMENTS

## NEW MEMBERS



The Roanoke Bar Association welcomes the following new active members: Joshua T. Dietz, Esq., Office of the Commonwealth Attorney; Lena S. Hill, Esq., Office of the Public Defender; Joshua C. Wykle, Esq., Woods Rogers PLC; Trevor Moe, Woods Rogers PLC; Jordan C. Pennington, Office of Public Defender; and Joanna B. Willert, Office Public Defender.

## UPCOMING EVENTS

Annual Golf Tournament and Picnic  
August 14, 2008  
Roanoke Country Club  
(Details to follow.)

## PRESIDENT'S BLOG

RBA President Mark Cathey has set up a blog at

[www.roanokebarpresident.blogspot.com](http://www.roanokebarpresident.blogspot.com)



Please check it out. A link is also available at the top of the "News" page on the Association's site, [www.roanokebar.com](http://www.roanokebar.com).

## OFFICERS:

<i>George A. McLean, Jr.</i> <i>President</i>	982-8430
<i>Mark K. Cathey</i> <i>President-Elect</i>	767-2205
<i>Francis H. Casola</i> <i>Secretary-Treasurer</i>	983-7716
<i>K. Brett Marston</i> <i>Past-President</i>	983-9391
<i>Catherine L. Caddy</i> <i>Executive Director</i>	342-4905

## BOARD OF DIRECTORS:

<i>Thomas H. Miller</i>	527-3510
<i>Lori D. Thompson</i>	510-3011
<i>Samuel F. Vance</i>	224-8013
<i>Roy V. Creasy</i>	342-0729
<i>Elizabeth G. Perrow</i>	343-2451
<i>Linda L. Gustad</i>	857-5100 ext. 5323
<i>Alton L. Knighton, Jr.</i>	983-7632
<i>Tracy A. Giles</i>	981-9000
<i>Bryson J. Hunter</i>	983-9325
<i>Robert S. Ballou</i>	767-2038
<i>David A. Bowers</i>	345-6622

## ACHIEVEMENTS



On June 20, the RBA will receive a Certificate of Achievement for the Trial Advocacy Program from the Conference of Local Bar Associations of the Virginia State Bar.

## RBA Members With 50+ Years of Service

At its Annual Meeting on June 10, 2008, the RBA honored its members who have performed over 50 years of service to the Association and the legal profession. These members are:

The Honorable James P. Brice, J. Albert Ellett, Stanford L. Fellers, Jr., Charles D. Fox, III, Robert E. Glenn, Kossen Gregory, Wilbur L. Hazlegrove, William B. Hopkins, Harvey S. Lutins, Leroy Moran, The Honorable H. Clyde Pearson, Frank N. Perkinson, Jr., T. L. Plunkett, Jr., William B. Poff, Richard C. Rakes, Carroll D. Rea, Ben M. Richardson, Frank K. Saunders, J. Glenwood Strickler, The Honorable James C. Turk, John M. Wilson, Jr.

## RBA Presents Five James N. Kincannon Scholarships

Also at its Annual Meeting, the Roanoke Bar Association Foundation presented five deserving students from the Roanoke Valley with a James N. Kincannon scholarship in the amount of \$2,500. The scholarship recipients are: Aaron Bruce Cook, a first year law student at William & Mary; Karen R. Harshfield, a senior at Northside High School; Bridget Marie Tainer-Parkins, a second year law student at Washington & Lee; Meredith Louise Tenison, a first year law student at Harvard; and Michael Ryan Wakefield, a first year law student at William & Mary.