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THE BULLETIN

Chilton Davis Varner and her husband, Morgan Varner

CHILTON DAVIS VARNER
62nd President of the American College of Trial Lawyers

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American College of Trial Lawyers

THE BULLETIN

Chancellor-Founder
Hon. Emil Gumpert
(1895-1982)

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FROM THE EDITORS

Welcome, Bienvenue, Willkommen.

In the musical, *Cabaret*, we received a delightful invitation to join in a celebration. At *The Bulletin*, Fellows are invited to celebrate the end and the beginning of an era.

The Bulletin owes much of its current appeal to the dedicated and steady stewardship of Past President **E. Osborne (Ozzie) Ayscue, Jr.** Devoting much time and energy, Ozzie has brought vigor to the College's voice, and it is all-the-better for Ozzie's efforts.

Along with a bright, fresh look, we have a new Editorial Board, whose members' names are listed on the previous page. We have enlisted Fellows from across the continent to bring commitment and passion to a journal dedicated to College affairs, advocacy and trial concerns and to the personal side of who we are and what we do.

We aim to forge a new role in this, our first, Fall Issue. As we retain the aspects of *The Bulletin* with which you are familiar, we will continue to capture the best moments and most-profound thoughts of our Annual and Spring National Meetings. *The Bulletin* is intended for Fellows who have attended the national meetings and for those unable to join us. We will recapture the topics covered and the depth of the speakers' presentations. *The Bulletin* remains an invaluable resource, not only for remembering the issues of interest featured at our meetings, but also to remain current on the College's business and relevance.

No publication, especially one with the breadth and scope of *The Bulletin*, exists in a vacuum. We need your help and seek contributions from all Fellows. To capture your comments, opinions and news, we need to know what is happening in your area and at your regional and state or province meetings. We are interested in thought-provoking articles, whether substantive, procedural, acadeic, judicial or practical. Your participation will take *The Bulletin* in interesting directions and make it crackle with currency.

If you are interested in joining *The Bulletin*'s Editorial Board or in making a contribution, please let us know.

In this issue, you will find an array of commentary and news, from the fascinating profile of incoming President Chilton Davis Varner, to teasers about the 2012 Annual Meeting in New York, and continuing through current and upcoming events.

In short, your *Bulletin* will continue to be a must-read, and we have every reason to believe it will become a keepsake.

We look forward to the next chapter in this journey, and we trust you will enjoy the journey with us. We are privileged to serve you in this capacity.

ANDY COATS AND STEPHEN GRANT

MEET CHILTON DAVIS VARNER

President Elect, American College of Trial Lawyers

She...

~ has a three-point focus as the incoming President of the College

~ is the namesake and descendant of a former Alabama State Supreme Court Justice

~ is a member of SPOSH

~ cites two Past Presidents of the College as mentors

~ believes that human capital is the future of lawyers

~ loves hydrangeas and gardening on Nantucket

~ doesn't try to be a role model

~ is ... *Chilton Davis Varner*

>>

Varner (r), with her daughter, Ashley Varner (l), and Hon. Griffin Bell (c).

Recognizing that her predecessors have led the American College of Trial Lawyers to be a strong, sound and highly-regarded institution, President-Elect Chilton Davis Varner pledges, as the first order of business, to *do no harm* to the College. In furtherance of her Hippocratic promise, Varner has a three-pronged focus for her term as President of the College.

WE ARE THE STANDARD BEARERS

Varner believes we must maintain the College's high standards for admission to fellowship "because it is our stock and trade. We are one of the last American meritocracies." She believes the College must continue to seek outstanding lawyers who are "at the top of their game." Varner quoted Regent Bill Kayatta, who commented that the College stands as "one of the last barricades against market forces that seek to drive us to a lowest common denominator approach to the practice of law." A lofty commitment, yes. But Varner is determined to honor her pledge. She herself is an example of the trial lawyer who is highly respected by her peers.

WE BELIEVE IN JUDICIAL INDEPENDENCE

Judicial independence, an initiative emphasized by previous College presidents, will continue as Varner's second focal point. Recent decisions by the Supreme Court of the United States have made judicial independence "even more precious and more endangered," with a huge influx of money being committed to both sides in judicial elections.

WE ARE CONCERNED ABOUT THE DECLINE IN JURY TRIALS

Varner's third focus is to continue to protect the institution of the jury trial as an important exercise in democracy and the hallmark of a civilized, engaged society. Because of the steadily-decreasing number of jury trials, Varner hopes the College will continue to highlight the value of citizen participation and the creation of precedent that such trials provide.

A POSITIVE ASSESSMENT

As she takes on the challenges of her presidency, >>

SPINNING OATMEAL INTO CHOCOLATE

There is a picture in Chilton's office of her as a young girl, maybe six or seven years old, where she is sitting on a Southern porch with a bowl of oatmeal. I asked her what she was doing in that picture, and she told me she was imagining her oatmeal to be chocolate because her mother told her she could not have chocolate because she was allergic to it. I have always been touched by that image which I have called "Spinning Oatmeal into Chocolate." She has had to do that her whole life: to re-imagine the world in which she found herself. And she did it marvelously well, with extraordinary talent and an uncommon affection for people that made her everyone's hero.

— Richard A. (Doc) Schneider, FACTL

Varner was asked to consider the current programs and status of the College. She reported that a recent survey by the Executive Committee establishes that the College is held in extraordinary regard by Fellows and non-Fellows alike. She said that the College "occupies a different category than most other organizations for lawyers. If you are a trial lawyer in the United States or Canada, membership in the College remains the capstone of your career." She also noted that "the best litigators everywhere covet Fellowship in the College." But since the College frowns on self-promotion and lobbying, Varner contends that the invitation to become a member is the finest compliment one can have as a trial lawyer.

Varner took particular notice of the College's competitions committees and the Emil Gumpert Award as existing programs of excellence. The moot court and national trial competitions continue to establish the College's relevance to law students, while the Gumpert Award serves and advances the public interest.

Another area of continuing excellence that deserves support is the College's outreach program. "Sharing what we do, how we do it, and the importance of what we do is of interest to a broader audience."

IN THE BEGINNING ...

It has not always been crystal clear that Varner would end up as a lawyer and President of the College. The truth is that Chilton Davis grew up in the textile mill town of Opelika, Alabama. She admits her public education there was typical of that experienced by children in other small southern towns of the time. After going as far as Opelika could take her, she departed for parts foreign and unknown: Smith College, a women's college (then referred to as a "girls" school) in Massachusetts. Varner acknowledges her freshman year was rocky. If she leaned down to retrieve a dropped pencil, she found herself six weeks behind by the time she started to take notes again.

Varner landed at Smith without knowing anyone; the friends she had, she made there. Her accent alone set her apart. But the Smith experience turned out to be a remarkable, life-changing experience. "I received just an absolutely superb liberal arts education. Learning how to write -- and write well -- was part and parcel of that." She says that her four years at Smith were an excellent platform for the later time when she would become a lawyer.

Her years at Smith also produced the beginnings of SPOSH (the Society for the Preservation of Smith Husbands), a small group of Smith friends -- and their husbands -- who hold reunions on a regular basis. SPOSH remains active today, with the same "girls," extremely close, celebrating successes, watching and helping each other's children grow up, and counseling one another.

She also met her husband Morgan during the Smith years. A Southerner at Princeton, Morgan became her college sweetheart and a future affiliate member of SPOSH. They married two weeks after she graduated, when Morgan was a rising third year law student at Duke University.

After Duke, Morgan fulfilled his ROTC commitment as an Army artillery officer in Germany. Daughter Ashley was born there. Two years in Europe were followed by a return to the familiar scenery of Atlanta. Morgan practiced law, while Chilton served as Morgan's typist, receptionist and bookkeeper. When Varner realized she preferred "Morgan's side of the desk," she entered Emory Law School when daughter Ashley was five years old. Varner gives great credit to both her husband and daughter who have supported her over the years in what was at the time a non-traditional commitment for a woman – to say the least.

AND NOW,

Today, Varner continues her law career where it began, at King & Spalding in Atlanta, a firm founded in 1885, now consisting of more than 800 lawyers in the United States, Europe, the Middle East and Asia. Varner became the first woman, and later the first female partner in the Litigation Practice Group. She was also the first woman elected to the firm's management committee.

Varner's early years with the firm found her practicing law with some of the greatest trial lawyers of the time.

MENTORS:

Varner shared her experiences with both her mentors and those whom she has mentored. She considers herself extremely privileged to have become a trial lawyer during a time when King & Spalding, like other firms in the 60s and 70s, had very few female litigators – or, indeed, female lawyers in any practice area.

It is no surprise that Varner's primary mentors were, all three, Fellows of the College. She

acknowledges that it was a privilege, and not a little luck, that provided on-the-job training with three of the best lawyers in the country. She assimilated everything she could from two Past Presidents of the College, Griffin Bell and Frank C. Jones. She also watched and learned from the leader of her firm's litigation practice group, Fellow Byron Attridge. Her professional values and ethical standards were informed and ingrained by working with these three.

When asked how she latched onto three of the best mentors a young lawyer could ask for, Varner stated simply, "I went to each of them and made it plain that I would appreciate the opportunity and the honor of working with them." She admits timing helped. "I came into the law firm when it was not highly leveraged and there were no more associates than experienced partners. That made it possible for young lawyers to work directly with the senior lawyers in the firm who knew the most." And giving credit to her mentors, Varner said that Bell, Jones and Attridge were not proprietary about their cases, but rather, were "delighted to have hard-working young lawyers help them do a better job." She cites King & Spalding's collegial culture as a great benefit to her early experiences, and she believes that culture continues to this day. She comments that the firm and its lawyers have always believed that "a rising tide lifts all boats."

Thinking back to the days when she was a fledgling lawyer, Varner shared the lessons she learned from her professional advisors:

Griffin Bell:
Solve the Client's Problem

Varner stated that Judge Griffin Bell, former President of the College and Attorney General of the United States, was incredibly generous with his time and experience. As the ultimate client's problem solver, Varner said Judge Bell "never met a problem that he thought he could not lick. And indeed, I don't think Judge Bell ever encountered a problem he *did* not lick." Her explanation: "He thought about the problem from the standpoint of the client: 'What would be the best outcome for the client, and how do you get there in the least amount of time while protecting your own integrity and the interests of the client?' He was wonderful at that."

Varner also cited the tremendous credibility and respect in which Judge Bell was held by a broad range of clients. She believes it was Judge Bell's reputation that helped to catapult her firm, King & Spalding, from being a regional firm to one with a national practice.

Frank C. Jones: Be Prepared

As a young associate, Varner worked closely with former President of the College, Frank C. Jones. At the time, there were usually no younger partners or older associates assigned to the matters on which she worked with Jones, a fact that allowed Varner to follow her senior partner around and to watch him work. From Jones, Varner said she learned "the values of preparation and organization, and the fact that you never appear in court without knowing more about the case than the other side, and usually, more than the judge." Describing Jones as "just a beautiful lawyer," Varner credits him with improving her written work product. She also said that "if you ever had a tough ethical question, you usually stopped by Frank's door to check out whether you had gotten to the right result."

When interviewed about Varner, Jones recalled working together in the representation of a client in federal court in Wilmington, Delaware, in a case that lasted approximately twelve years, including an unsuccessful appeal by the opposing parties in the Third Circuit Court of Appeals and the denial of certiorari by the United States Supreme Court: "The case involved many interesting and challenging issues of law, and included an unusually heavy motions practice that resulted in a large number of printed opinions in the federal reporters, and ap-

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Quips & Quotes

RELATIVES IN HIGH PLACES

To complete a genealogy project for her daughter Ashley's sixth grade class, the family searched through old family records buried in the basement. Although she had believed herself to be the first lawyer in the family, Varner learned that she had an ancestor, four or five generations back, who had served as Chief Justice of the Alabama Supreme Court. William Parish Chilton practiced law in Talladega, Alabama, served as Chief Justice of the Alabama Supreme Court for four years, and established a law school in Tuskegee. Several years later, Varner traveled to Montgomery, Alabama where she was to argue a case before the Alabama Supreme Court. She wandered into the attorneys' lounge, looked up, and there was a large portrait of none other than – William Chilton.

proximately nine months of trials spread over several years. Chilton played a vital role in the representation and deserves a great deal of credit for [its] successful outcome." He stated that she has been unquestionably and eminently qualified as a Fellow and a Regent and is an excellent choice as President of the College. He took particular note of her zealous advocacy on behalf of her clients and her "splendid example of professionalism," a comment echoed by everyone interviewed for this article.

Byron Attridge:
Let New Lawyers Be Part of the Process

Varner credits Byron Attridge as a partner who had a gift for allowing young lawyers to become *lawyers*. "He was one of the best I have ever seen about being willing to put young lawyers in front of our most important clients and letting them be part of the team, not hidden back at the office doing research." She recalled that in her first year of practice, on a conference call with a client, Attridge said, "Chilton, what is your opinion about this issue?" Varner had thought she had been invited to listen in only to inform her continuing legal research for Attridge. Taken aback, Varner says it came home to her at that moment that she was now an adult, a professional, and was expected to have an informed opinion, ready to be examined by others who knew "a heck of a lot more than I did."

Delegating and trusting others has been a lesson Varner has tried to utilize throughout her professional career.

MENTORING OTHERS

Varner addressed the changes in mentoring relationships through the years. Unlike when she started as a lawyer, there are now formal mentoring programs implemented by bar associations, law schools and law firms. While these programs have value, Varner says the best mentoring still comes out of actually working together on hard cases and projects. "That opportunity allows you to help young lawyers think and act as professionals, with concrete examples."

Varner believes that teaching young lawyers is an important skill. It benefits both parties. She believes it is important to remember that "human capital is our future as lawyers. If you've got good human capital, you're going to be a winner, and if you don't have it, you're going to falter."

The King & Spalding lawyers who have risen through the ranks under the tutelage of Varner extol the same characteristics that Varner cited in her mentors: "she lets us take on a responsible role; we are here to solve the client's problem; and we should be prepared."

Colleague Andrew T. Bayman, now a partner at King & Spalding, says that Varner likes nothing more than putting young lawyers in front of clients, and getting out of the way. "She throws young lawyers into deep water and lets them swim, but she only does it with those she knows have the talent to swim." She introduces lawyers to her clients, proud of the fact that a young lawyer will take over the client relationship, allowing Varner to move on to forming other client relationships. "This confidence, unselfishness and lack of territoriality are perhaps the greatest examples she has set. Chilton knows that by introducing other lawyers to her clients, even if it means lessening her role with the clients, she is deepening the clients' relationships with the firm, which makes us a stronger institution. She has always been firm first, herself second."

Another partner at the firm, Halli D. Cohn, says: "Chilton taught me about the importance of creating relationships with everyone in the court system. It is just as important to befriend the bailiff as it is to impress the judge. In my last trial, I saw first-hand how her lessons worked as my trial team created relationships …. our opposition did not. We received better treatment because we treated the court personnel with nothing but respect and deference."

King & Spalding's Chairman Robert Hays characterizes Varner as not only a close friend and coach, but "a true icon" as well. Another colleague, Philadelphia Fellow Joe O'Neil, speaks of her grace, humility, extraordinary intelligence and work ethic, all in the same breath as stating that her success mirrors that of another iconic legal hero: Justice Sandra Day O'Connor.

And colleague Bayman recalls that Varner told him as a young associate that to be successful, to get and retain clients, you had to be really good at what you do, which meant spending lots of time on your own learning about your clients' business and legal problems. "I watched Chilton do this 'real-time,' as she transformed herself from a commercial litigator to an automotive product liability lawyer, then to a pharmaceutical lawyer. Many nights flying back on the red eye from Los Angeles to Atlanta, the only light on in the airplane's cabin was Chilton's, studying to make herself a better lawyer. She taught me by example." >>

MENTORING OTHERS

As a junior associate, I worked with Chilton during the products liability trial of a difficult post-vehicle collision fire case in which our firm represented the car manufacturer. The plaintiff alleged that his wife died from injuries when, among other allegations, she was unable to escape a burning car due to a defective seat belt buckle.

The trial was extremely emotional. The family was like your favorite next-door neighbors. The wife survived for twenty-eight days, before succumbing to infection from severe burns. During the plaintiffs' case, the jury, visibly distraught, wept about the wife's pain and suffering.

During the trial, Chilton provided an important mentoring lesson that I have never forgotten.

As part of their case, plaintiffs called a disgruntled former employee of our client to provide damaging testimony about the design of the car and the company's approach to safety issues. While an employee of the company, the witness had testified in defense of other vehicle designs in a number of product liability trials. Indeed, Chilton had presented this same witness in a number of cases when he was still employed by the company.

The night before the witness was to be called, Chilton commented that some would say the cross-examination of this witness requested someone who was "a real son of a gun" to show that the anticipated testimony was unfounded. I encouraged that approach.

The next day, plaintiffs elicited the testimony we had expected from the former employee. When Chilton stood up for her cross-examination, there was tension in the courtroom, The former employee looked like he was prepared for an aggressive, hostile cross-examination. Instead, Chilton began with a series of open-ended, non-confrontational questions of the type she had asked the witness when they had been on the same side. Not expecting this approach, the witness agreed with each of Chilton's points. Chilton then walked the witness through the design process for the car, again asking short, non-confrontational questions about the car's safety testing. Again, Chilton obtained agreement from the witness, establishing that the company had exercised due care in its design. By the time she sat down, Chilton had established that the company had focused intently on safety issues before releasing the car for production and that the tests revealed no concerns.

Chilton had turned a plaintiff's witness - an "insider" expected to deliver harmful testimony against his former employer - into a witness who instead established that the defendant company had spent time, effort and resources into carefully designing the car at issue. And she had done it without antagonizing the witness or turning him into an "enemy."

After over two weeks of trial, the jury returned a defense verdict on all claims.

I have never forgotten the lesson Chilton taught me during that trial: As a trial lawyer, you cannot make yourself into something you aren't; you can achieve your goals on a difficult examination if you treat the witness respectfully; and the conventional approach to a witness cross-examination is not always the right one.

- *— Todd P. Davis, Partner, King & Spalding*
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n.b. The plaintiff's lawyer, President of the Plaintiff's Trial Lawyer Association for the state where the case was tried, later wrote a post-verdict article about how he had lost the "case that could not be lost." Mr. Davis said, "Chilton made the difference."

ON BEING A ROLE MODEL TO OTHERS

Discussing whether or not she saw herself as a role model to others, female or otherwise, Varner said her goal has always been to simply do her best. Cohn credited Varner with bringing a female touch to the business of lawyering. She said Varner became a master when few women were doing what she did, when "she would often be the only woman in the room."

Varner's daughter, Ashley, an oncology social worker in Maryland who is studying for her Ph.D., says that growing up, there was never a question that women could succeed in the professional world, "and that we could do so as women – that we didn't have to give up our womanhood in order to succeed." She stated that it never occurred to her that being a woman might hold her back professionally, but that as an adult, she now realizes "this was quite unique, particularly in the Deep South." According to Ashley, her mother's example of doing rather than expounding, continues to teach about humility. "She rarely tells me of her accomplishments. She simply expects them of herself. For that reason, it's been particularly fun to see how much being involved in the College means to her. She just beams when she talks about it."

BELLWETHER CASES MAKE A DIFFERENCE

Varner says that one of the great joys she takes from her work is that she has represented companies in matters that have set legal precedent in "bet-the-company litigation." Her work allows her to put together cases from the ground up, establishing themes, identifying experts, setting the order of proof and developing trial graphics. Her commercial and product liability practice has allowed her to represent the world's largest soft drink company, major automobile manufacturers and top pharmaceutical companies.

Varner's work with her early mentor, Frank Jones, involved a class action brought by more than a hundred independent bottlers against the Coca-Cola Company that challenged the price and composition of Coca-Cola syrup. The case involved a contract entered into in 1921 (in which King & Spalding had been involved the entire time) and required interpretation of the intent of the parties in 1921. The twelve-year litigation literally reconstructed Coca-Cola's, Atlanta's and King & Spalding's history.

Varner was heavily involved with the automotive industry for a period of time, representing General Motors and other manufacturers in crashworthiness cases that resulted in catastrophic injury. It was during one of the GM trials in the 1990s that John Famularo, College Regent from Lexington, Kentucky, received a call from Circuit Court Judge L. T. Grant. Famularo recalls that Judge Grant said "John, you've got to come down here. There is this lawyer from Atlanta defending a wrongful death case for GM, and I've never seen anything like it." Famularo says he watched Varner for two days and that "the College struck gold with this lady from Opelika, Alabama."

Her representation of pharmaceutical companies has been equally extensive, with successful outcomes for GlaxoSmithKline PLC (for its antidepressant, Paxil), Purdue Pharma LP (for the pain medication OxyContin) and Merck, Inc. (for its osteoporosis drug, Fosamax). Varner sees her role as trial lawyer as that of a teacher, helping a jury to understand how things work -- both generally, with regard to the still-developing science and specifically, with regard to the individual plaintiff and his/her medical history. *See page 9*, Mentoring Others.

Varner's enthusiasm for and encouragement of others to become trial lawyers is obvious. She sees the practice of law as "a continuation of the best liberal arts education," giving trial lawyers continuing means to reinvent themselves. "You learn how things work that you would never have encountered had you not had a particular case. It's a fascinating profession to be in. It provides repeated learning experiences that can give you pleasure as well as professional success."

When asked about the apogee of her professional success, Varner said, "I believe that fellowship is the capstone of any trial lawyer's career. And to be President of the organization is an enormous honor and opportunity for me. It puts me in extraordinarily distinguished company, and I am grateful." ■

FELLOWS TO THE BENCH

The following Fellows have been elevated to the bench in their respective jurisdictions:

W. Douglas Parsons
Clinton, North Carolina
Appointed March 27, 2012
Senior Resident Superior Court Judge
North Carolina 4A Judicial District Court

Michel Yergeau, Ad.E.
Montréal, Québec
Effective June 1, 2012
Judge of the Superior Court of Québec,
District of Montréal

The College extends congratulations to these newly designated Judicial Fellows.

NATIONAL OFFICE STAFF CHANGES

The National Office is proud to announce the following:

Geri Frankenstein has been promoted to Membership Manager. Geri previously assisted in the Meetings Department and brings to the membership position a great familiarity of the College and the Fellows. She is responsible for the nominations from the state and province committees and maintains Fellow records, including address and email changes.

Suzanne Alsnauer joined the National Office in July 2012 as the Meetings and Conference Assistant, working with Manager Lindsey Mayfield on a part-time basis. She has extensive meeting organizing experience to enhance Fellows' experience at national and regional meetings.

Geri and Suzanne look forward to working with Fellows in their new positions.

AWARDS & HONORS

Barry J. Pollack of Washington, DC, was sworn in for a second term as Secretary of the National Association of Criminal Defense Lawyers at the Association's Annual Meeting in July. The National Association of Criminal Defense Lawyers, with nearly 40,000 members across the world, seeks to advance the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. Pollack has been a Fellow since 2008 and is a member of the District of Columbia State Committee.

FRANK CATER JONES: THE PASSING OF A PAST PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

Photo by Woody Marshall/The Telegraph Macon, GA

Frank Cater Jones, age 87, the forty-third President of the College, died at his home in Macon, Georgia on August 29, 2012 following a lengthy illness.

Born June 19, 1925 to Charles Baxter and Carolyn Cater Jones, he grew up in Macon, at the time a town of about 50,000 in the geographical center of Georgia. His undergraduate education at Emory University was interrupted by World War II, in which he served as an officer in the United States Navy. He earned his law degree from the Walter F. George School of Law at Mercer University in Macon, where he served as editor-in-chief of the law review.

Frank began practice in 1950 in the Macon firm, now Jones, Cork & Miller, LLP, established in 1872 by his great grandfather, Isaac Hardeman. His grandfather, George S. Jones, his father, Charles Baxter Jones and his older brother, C. Baxter Jones, Jr. also practiced in that firm. Exhibiting the early promise he had shown as an Eagle Scout, over the years he was active in many local civic, community, educational and charitable organizations, including serving as President of the United Givers Fund and the Greater Macon Chamber of Commerce.

A lifelong member of Vineville United Methodist Church in Macon, he was one of the teachers of the George S. Jones Bible Class for a period of sixty years, as well as chairing the church's administrative board and its board of trustees. For more than forty years he was a trustee of Macon's Wesleyan College, serving as board chair for six years, and he was an emeritus trustee at the time of his death. He was also a former trustee of Emory University and in 2011 had been elected a trustee of Mercer University. His family had a long-lasting relationship with Macon's Methodist Home for Children and Youth that dated back to its founding, and he was a trustee of the Home for many years.

In the legal profession, he first served as President of the Macon Bar Association in 1954 and then, in 1967-68, as President of the State Bar of Georgia. He would later serve for twenty-two years as a member of the House of Delegates of the American Bar Association.

In an era when the growing Atlanta firm King & Spalding was aggressively recruiting talented trial lawyers from small Georgia towns, Frank Jones was among those it pursued. His older brother and law partner, Baxter, had died in the 1962 crash of Air France Flight 007 at Paris' Orly Airport. At the time the world's worst single aircraft disaster, 106 arts patrons from Atlanta and surrounding Georgia towns had perished. Citing his obligations to his family and law firm, Frank had gracefully declined King & Spalding's invitation.

He was inducted into the American College of Trial Lawyers in 1971, and starting with the next year, over time he served on the College's Georgia State Committee a total of thirteen years, for two of those years as its Chair.

In 1977, as Past President Griffin Bell was leaving King & Spalding to serve as Attorney General of the United States in the Carter Administration, the firm renewed its pursuit of Jones, and this time Frank accepted its offer, and he and his wife, Annie, moved to Atlanta and lived there for about twenty-five years until his retirement in 2001. Bell announced his success in persuading Jones to come to Atlanta in a communication to his partners which read, "The Eagle has landed."

First elected to the College's Board of Regents in 1986, Jones served two terms as the College's Secretary before serving as its President in 1993-94. During his tenure as president, he began planning for the College's Fiftieth Anniversary in 2000, including commissioning the research and writing of a history of the College. Indeed, it was he who suggested its name, *Sages of Their Craft,* and he arranged for its initial generous publication and printing by the West Group.

He later served for eleven years as a Trustee of the College's Foundation, as well as participating in the ongoing work of the College as a Regent *ex officio* and a member or chair of numerous College committees.

In the mid-1990s, Jones was a member of the United States delegation to an Anglo-American Legal Exchange jointly sponsored by the College and the United States Supreme Court. Building in part on the associations he made with Justices of the Court in the course of the Exchange and on his interest in history, he became active in the Supreme Court Historical Society, serving as its president from 2002 to 2008. In his honor the Historical Society created a series of public reenactments of the oral arguments of important U. S. Supreme Court cases of the past.

During his years in Atlanta, he chaired the Carlos Museum of Emory University. headed the Atlanta Symphony Orchestra League, was a long-time member of the Board of Trustees of The Carter Center and a Director of the Commerce Club. His pro bono service for the State of Georgia included chairing The Great Park Authority, which assisted

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in the location of The Carter Center, and Georgia Public Broadcasting, the entity responsible for public TV and radio in Georgia, and he was appointed as Special Attorney General to represent the State of Georgia in healthcare litigation.

Over a lifetime he had received countless awards, including the Distinguished Service Award of the State Bar of Georgia, an Award for Leadership from the Atlanta Bar Association, the Outstanding Alumnus Award from the Walter F. George School of Law and honorary Doctor of Law Degrees from both Mercer University and Macon's Wesleyan College. In 1998, the Georgia Chapter of the National Society of Fund Raising Executives named him as Volunteer Fundraiser of the Year in recognition of his commitment to numerous charitable causes. From 1995 until his death, he chaired the Bar Center Committee of the State Bar of Georgia. He was also a member of the American Academy of Appellate Lawyers.

Upon his retirement from King & Spalding, he returned to Macon, where he was Of Counsel to his old law firm until his death.

Frank and Annie, his wife of sixty-one years, were the classic southern couple, gregarious, radiating warmth and humor, ever optimistic. Frank's own imposing physical stature was balanced by the demeanor of a classic gentleman, a warm smile and a disarming manner. As his King & Spalding colleague of twenty-five years, College President-Elect Chilton Davis Varner put it, Frank had a way of first complimenting a speaker with whom he disagreed and then saying, "*But*, I would offer this observation." His logic most often prevailed.

In her eulogy at his memorial service, Varner perhaps best described the man: "Frank was the best mentor anyone could have. Indeed, he defined that term .... He was astoundingly generous with his time and advice. All of us watched Frank. As so many have said, Frank was just a *beautiful* lawyer. None of us, not one, can ever remember seeing Frank make a mistake. He was always immaculately prepared, always knew more than the opposing counsel—and, usually the judge—and he always exuded ultimate credibility. I wager that no lawyer in this congregation ever saw Frank 'wing it' as lawyer, not that Frank would not have been good at it—he would have been better than anyone we have ever seen—but because, I think, he believed 'winging it' would have been disrespectful to what we do. People entrust to lawyers their fortunes, their futures, and, sometimes, their liberty. Frank, more than any lawyer I have ever known, understood deep in his bones that this is a precious and valued trust, a stewardship not to be taken lightly, and so he would never have been unprepared. He would never have believed he could or should proceed on his considerable wits alone. *He had to be better*. And he taught that to so many of us.

"Frank also taught us never to cut a corner. He said it never paid. We all admired, respected and wanted to emulate Frank Jones. Frank ended up . . . teaching us that enormous professional success can—and must—be coupled with doing the right thing.

"I am told . . . that Frank died peacefully, surrounded by family, enveloped in their love and God's grace. If so, he died as he lived. At the risk of being presumptuous, I think one reason Frank could let go when the time came is because he never undertook anything in his life without giving it everything he had. Frank could never look back and say, 'If I'd only worked harder, been more creative, invested more, I could have gotten a better outcome.' He had already gotten that better outcome, because everything Frank did, he did at 100 percent. There was nothing he could have done better. . . .

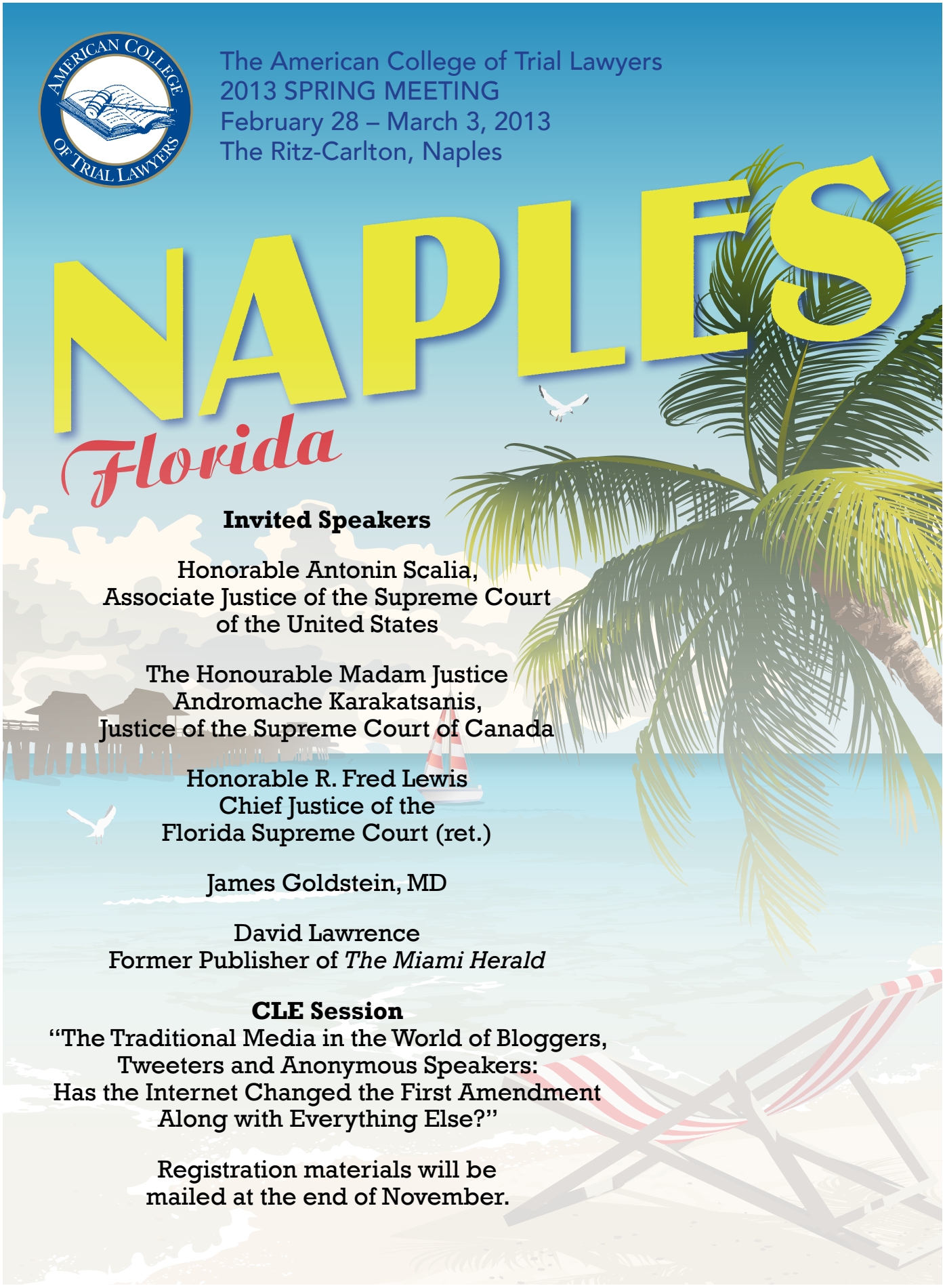
"Frank fought his battle against leukemia in the same way he lived his life, not saving something for tomorrow, but full bore. He fought the emperor of all maladies tooth and nail. And, when he lost, it was not because he lacked will or energy, but only because the options had played out and because he had no regrets, no moments of thinking, 'If I only had a little more time, I could do better,' he could let go."

Frank's survivors include his wife, Annie Anderson Jones, three daughters, Eugenia Jones Henderson, Annie Gantt Jones Blattner and Carolyn Jones Corley, and a son, Frank C. Jones, Jr., seven grandchildren and one great granddaughter. ■

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

Fellows wishing to honor Frank's memory may consider a donation to the Supreme Court Historical Society's Frank C. Jones Supreme Court Reenactment Fund at

Opperman House, 224 East Capitol Street , Washington, D.C. 20003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Honorable R. Fred Lewis
Chief Justice of the
Florida Supreme Court (ret.)
James Goldstein, MD
David Lawrence
Former Publisher of The Miami Herald
CLE Session
"The Traditional Media in the World of Bloggers,
Tweeters and Anonymous Speakers:
Has the Internet Changed the First Amendment
Along with Everything Else?"
Registration materials will be
mailed at the end of November.

PERSPECTIVES ON FAIR TRIAL AND FREE PRESS ISSUES:

The Prosecution Of Dharun Ravi

The Dharun Ravi case is in some ways a perfect storm in terms of the question of what it is about. Is it about cyber bullying? Is it about the persecution of those who are gay? Is it about the vindication of privacy rights? Is it about how we treat young adults in the criminal justice system? In some senses, it is about all those things, but for me, what the case is mainly about is a phenomenon that is relatively recent, and that is a phenomenon that I call viral prosecution, and it's really a product of the 24/7 news cycle, combined with social media and the rise of the internet and stresses that those factors put on various cases that arise that, for whatever reason, capture the public imagination …

— John J. Farmer, Jr. >>

PARTICIPANTS:

Moderators

Bruce I. Goldstein (FACTL)

John P. McDonald (FACTL)

Panelists, speaking as individuals

Steven D. Altman, lawyer,
counsel for Defendant, Dharun Ravi

Bob Braun, lawyer and columnist

Thomas J. Cafferty, lawyer

John J. Farmer, Jr., law school dean

Hon. Roberto A. Rivera-Soto, lawyer and former state Supreme Court Justice

Much has been written about the Fourth Estate and its rights. But what about when the press gets it wrong? What happens when media outlets, in their zealous attempts to be the first to publish, disseminate incorrect information? What happens when a justice-seeking public stimulates overreaching by the prosecutor's office? What happens when a defendant's right to a fair trial is compromised through an attempt to protect the victim - or a witness? Whose rights prevail? How far-reaching are the effects when facts are distorted? And finally, how do we balance the First Amendment right of free press against one's Sixth Amendment right to a fair trial and right to confront a witness or one's accuser.

These are just a few of the issues discussed during a panel discussion at this summer's New Jersey-Pennsylvania-Delaware Regional Meeting, hosted by the College's New Jersey State Committee and held at the new Revel Atlantic City. Fellow-moderators **Bruce I. Goldstein** and **John P. McDonald** gathered a who's who of individuals involved in the September 2010 incidents that garnered national interest leading to *State of New Jersey v. Dharun Ravi,* in February and March of 2012. Panelist *John J. Farmer, Jr.,* former Attorney General of New Jersey and current Dean and Professor of Law at Rutgers Law School coined the term "viral prosecution" for the 24/7-news cycle-phenomenon seen in the Ravi case. There are lessons to be learned from this instantaneous exchange of information. When prosecution goes viral, trial strategy should, perhaps, adapt accordingly.

WHAT WE THOUGHT WE KNEW

The story broke when media outlets learned that the police were searching for a body in the Hudson River after someone jumped from the New York-New Jersey George Washington Bridge. The emotional back story quickly latched onto by the press was that the deceased, Tyler Clementi, had committed suicide after having been "outed" by his

>>

roommate, Dharun Ravi. Farmer reported that it didn't take long for an enraged public to call for Ravi to be tried for manslaughter.

GETTING TO THE TRUTH

McDonald set the stage for discussion by presenting the simple, benign setting and the small act that ignited subsequent events:

> *Two freshman students at Rutgers New Brunswick, our state university in New Jersey, became roommates. One of them became suspicious of the other having a man in the room, something that in the normal course would be two roommates not getting along too well and perhaps [calling for] a dorm room change. Something dramatic happened, and … one of the young men took his life by jumping off a bridge.*
>
> *That began the sequence of events leading to prosecution, opinion of the press, and as McDonald characterized it, "some very, very strong feelings."*

Steven D. Altman

THE DEFENDANT'S STORY

Serving as Defendant Ravi's voice on the panel, *Steven D. Altman* stated that the events unfolded when Rutgers had been in session for three weeks. As Ravi left his dorm room to take a shower one evening, his roommate, Tyler Clementi, asked Ravi if it would be okay to invite a buddy to spend the night in their dorm room. As Ravi left the room, a thirty-ish-year old, (frequently described as "scruffy") individual entered. Ravi went across the hall to Molly Wei's room, and told her about the older, scruffy-looking person going to visit his shy freshman roommate. Being computer savvy, Ravi had a webcam on his computer that could be programmed and monitored from a remote location. Ravi automated his in-room computer's camera, and he and Wei saw the two men in an embrace. Ravi immediately shut down the webcam and sent out a "tweet" to his friends about having seen his roommate making out with another male.

Ravi then left to take his shower. At the same time, seventeen-year-old Wei instant-messaged her friends, telling them what she'd just seen. Four other girls entered Wei's room, and with Ravi back from the shower, the group looked at the webcam a second time, "for about five seconds," when they saw the two men kissing, with their shirts off, but otherwise fully dressed.

Two nights later, Clementi contacted Ravi by text, asking if he could again have use of the room. On this second occasion, Ravi set his computer to allow anyone "calling in" to see what was going on in the room, but no one ever called or gained access.

The following night, Clementi jumped off the George Washington Bridge at about 8:30 p.m.

Subsequent events reveal three victims: Tyler Clementi, the deceased; MB, the unnamed thirty-something visitor; and Dharun Ravi, the student with the webcam.

THE DEFENSE VERSUS THE PROSECUTION

Altman adamantly stated that his client never recorded or broadcast anything from his computer. Ravi, Wei and Wei's friends observed what was going on within the view of the webcam, and they then quickly disconnected and shut the system down. Their only related act was to tweet to friends what they had seen.

At his first meeting with Ravi, Altman knew the case would be a walk in the park, he could get Ravi into a diversionary program, and the entire issue would be closed.

The prosecution advised that Ravi was eligible for a plea bargain of 600 hours'

community service and no jail time.

Altman said that within days the papers were saying that Ravi had "observed, recorded and broadcast over and over, and I knew it wasn't the truth. He didn't record anything. He never photographed anything. He never taped anything. He never saved anything on a website. And the world thought this kid recorded and broadcast his roommate engaged in a homosexual act and sent it out on You Tube." The Ravi family watched as their son was being demonized in the press.

Altman kept calling the prosecutor's office – to find out something. He was repeatedly told the case was under investigation. Weeks passed with the same response, the case was still under investigation. More weeks went by without word from the prosecutor's office. Altman kept asking "why don't you get back with me? For months! What's going on here? Why is this being treated differently?"

THE MEDIA PERSPECTIVE

One of the country's preeminent journalists, and recipient of a 2005 Pulitzer Prize and the 2010 Association Press Management Editor's Award for foreign correspondence, columnist of *The Star-Ledger, Bob Braun,* provided his unique perspective as a member of the media.

When a firestorm hits, Braun said there is a particular media tic (response) whereby everyman is capable of being an expert if journalists are faced with dead air, unable to fill a column with facts or reasoned opinions. The journalists ask somebody, anybody, including random people on the street, to get something to fill the dead air. The situation becomes "like the babbling brook game we used to play in Scouts. By the time things get around, you hear extraordinary descriptions of what happened."

Hon. *Roberto A. Rivera-Soto*, a practicing attorney and seven-year veteran of the New Jersey Supreme Court added, "you don't read about [the truth] in the popular press, because it doesn't sell newspapers or advertising space on the Internet."

Braun said that in the days after Clementi's suicide, "among those who were quoted in the press about the Ravi case were Ellen DeGeneres, the head of New Jersey Garden State Equity, Steve Goldstein, Governor Chris Christie, Senator Frank Lautenberg, Congressman Rush Holt and President Barack Obama."

The public wanted action.

FINALLY, A RESPONSE

When the prosecution finally returned Altman's calls, he was advised that if Ravi pled guilty to a bias crime as well as a number of other crimes, they would recommend 2C probation, which meant Ravi would serve twelve months in the county adult correction

Bob Braun

Roberto A. Rivera-Soto

center. Altman was given a list of charges the prosecution threatened to indict Ravi for if he didn't accept the plea, such as witness tampering and hindering apprehension.

The prosecution gave Altman approximately 800 pages of pre-indictment discovery, just the beginning of an eventual total of 1,600 pages plus CDs. Altman was told that he and his client had two weeks to review and respond to all of it.

Ravi refused to plead guilty, which would have been the easy way out. Although counseled by Altman that he could end up going to jail for ten years, Ravi stood firm on principle because he didn't do the things alleged in the proferred deal.

Ravi was eventually indicted. He was charged with New Jersey's updated version of the common law peeping tom statutes, Invasion of Privacy. He was charged with Bias Intimidation. He was charged with Tampering with or Fabricating Physical Evidence. And he was charged with Hindering Apprehension or Prosecution. The latter two charges represented nothing more than deleting tweets and texts from a cell phone.

Thomas J. Cafferty

John J. Farmer, Jr

As to the Invasion of Privacy statute, Altman explained that "the indictment was more complex than the old peeping tom statues of violating someone's privacy for that moment. The statute stated: Not JUST observe, record or broadcast. It says one's PURPOSE is to see someone expose intimate parts or engage in sexual penetration or sexual contact. And Ravi would never stand up and say that his intent or purpose was to do those things."

Altman explained that the Bias Intimidation charge was particularly strange. Rutgers is a very multi-cultural college and community with approximately sixty percent Asian American and many Jewish students, with others from India and Asia. "The bias statute involves what you want to do – to intimidate. Not what might happen, but what one intends to accomplish, believing it will accomplish. A third part of the statute, however, says it doesn't matter what the defendant's intent is, but if it is reasonable that another person would be intimidated, you have violated the statute. It was this third part of the statute that Ravi was charged with."

THE PUBLIC PERCEPTION

With celebrities and politicians speaking out, public opinion was rampant. Altman's friends and colleagues suggested that he hold a press conference or put out a press release – to let the world know the truth. Believing that the defense doesn't try a case in the press, Altman said doing so was inappropriate. Besides, he had to consider the suffering of the parents of the boy who had just jumped off the bridge.

WITNESS TESTIMONY AT TRIAL

With opinions in place, *New Jersey v. Dharun Ravi* went to trial.

Several of the charges against Ravi also dealt with invasion of MB's privacy, which overlapped with Ravi's right to a fair and open trial. Relying on New Jersey's victims' rights statutes and his federal constitutional right to privacy to trump Ravi's Sixth Amendment rights and the media's First Amendment guarantees, MB and his attorney filed a motion to the trial court:

> *I have a substantial fear that the release of this personal information [name, address and phone number] will result in a total invasion of my privacy.*
>
> *…. It is difficult for me to describe this fear. It is continuous and overwhelming. If my identity is released, the harm will be irreversible.*

Altman countered that MB was the last person with Clementi before his death. MB could have testified about what they spoke about, whether or not anything was said negatively about Ravi or whether Clementi, quite frankly, didn't care. The bias charge, predicated upon intimidation, would be determined by Clementi's state of mind."

The witness was allowed to testify against Ravi under the MB pseudonym.

The press was allowed to report MB's testimony, but it was not allowed information that might reveal his identity. The television stations were allowed to show only MB's hands. Braun and Altman agreed that this was an extraordinary infringement of the press's First Amendment rights and Ravi's ability to con-

front a witness. And Braun felt that when Altman was ineffective in demanding MB's exposure, the media had the next best opportunity.

Braun believed that under the circumstances, the media may have been able to assist Altman when he was stymied by the court's rulings and the public's demands. Braun stated that when a case becomes a media firestorm, the defense attorney must overcome inaccuracies to ensure his client is not railroaded. Braun felt "there should be a way to meet reasonably with media types" by finding someone you could trust and to deal with that person, hoping you will have a trustworthy relationship. He said journalists "get a little nervous when lawyers make noises about what we're doing to their clients." Lastly, Braun stated that because the prosecution has no problem holding press conferences, he believes working with the press "would be effective" for the defense in situations such as the one in New Jersey.

THE VERDICT

Reporting every defense counsel's worst nightmare, Altman said, "I had to sit there and listen to that jury twenty times say 'guilty, guilty, guilty, guilty,' and you've got this kid sitting next to you, and he's a kid, and that's what he is, and you have this family behind you who has supported you and relied on you for all these months. The anger as a trial lawyer remains to this day."

FREE PRESS/FAIR TRIAL?

Thomas J. Cafferty, a First Amendment lawyer specializing in print and electronic media, spoke to the issue of whether a fair trial was obtained in the Ravi case. Generally, fair trial/free press issues are questioned when court proceedings are closed to the press. He explained that closure to the press and public typically requires a balancing test to determine if there is a substantial probability of prejudice to the defendant's fair trial rights and if there are reasonably available alternatives. Cafferty stated that from his perspective, the interesting issue in Ravi's case was that the use of a pseudonym effectively amounted to a form of closure, analogous to a sealing of court records. Cafferty opined that it was significant that the media did not raise the issue when they were denied crucial information.

As Cafferty pointed out, MB's fear hardly rose to the level of the New Jersey Supreme Court's ruling that to seal a record, one "must demonstrate a compelling need to justify the closure." *(Hammock vs. Hoffmann-La Roche, Inc., 142 N.J. 356 (1995))* In the Ravi case, there was a generalized assertion that MB's privacy was going to be invaded if he testified publicly. Cafferty pointed out that it is more common than not that a victim's or witness's very private, very personal, often embarrassing details will be disclosed at trial. As Rivera-Soto later commented, "There was no justification whatsoever for hiding the identity of MB … the subliminal message was that you could do whatever you wanted when you were up there on the stand because you weren't going to be held accountable for it … and this is anathema to the way our system is supposed to work."

An astute member of the audience pointed out that "to some extent, we are confusing two things: One, limitation on cross-examination … and the other is the limitation on publicly using his name. It seems to me that the more important issue is, 'was there an unfair limitation on cross-examination?'" It was suggested that had the judge not protected the witness/victim's (MB's) identity, he would not have imposed restrictions on cross-examination.

To avoid restricting future rights such as this, Cafferty believes the media should be more aggressive and should demand that before

Quips & Quotes

Being a Prosecutor is one of the greatest jobs for a trial lawyer. … [w]hen you stand in front of a jury, you say "I represent the United States of America" … and that means something today.

Hon. Roberto A. Rivera-Soto

someone takes the stand under a pseudonym, the requisite showing should be made in court, with the appropriate record made.

GOVERNMENT RESPONSIBILITY

Rivera-Soto spoke about the prosecution's responsibility to parties and the public:

"There was an elephant in the room and nobody was willing to admit it. The elephant in the room was Tyler Clementi who committed suicide. And all anybody wanted to do was to tie together the fact that he had been observed engaged in a homosexual encounter … and he then committed suicide. So two plus two must mean four." … [n]obody wanted to talk about the fact that Mrs. Clementi had just learned of her son's sexual preferences and had rejected him immediately before he took his life."

Rivera-Soto noted that "[t]he crucible we find ourselves in is in a criminal trial where somebody's liberty is at issue, and to me 99 times out of 100, that trumps everything else, and it has to trump everything else. The fairness of that trial is so integral that I am willing to sacrifice the privacy right of one person, particularly since New York Appellate Courts recently held that accusing somebody of being a homosexual is no longer defamatory."

Quips & Quotes

When looking at the intersection of rights such as free speech and free press - rights that are fundamental to our democracy, to the notion of a fair trial, and speaking in the abstract - everything pales in comparison to when you're the person on trial.

Justice Rivera-Soto

Acknowledging the typical, yet unethical, approach to journalism, Braun ascribed a particular media responsibility to the people in the *Ravi* case. He stated that the press should have demanded to know the identity of the "scruffy stranger" who spent the night in Ravi and Clementi's dorm room. The typical scrum of media and press was present at the trial, yet no one demanded MB's identity. There was an unusual restraint placed on the normal methods of finding facts. Apparently no one objected.

FIRST AMENDMENT AND THE PRESS

Goldstein asked: "Whose rights are we protecting? We have the rights of the government, the rights of law enforcement to pursue those who have violated criminal laws, those who have violated the privacy of individuals, those who have engaged in inappropriate sexual acts; we have the rights of all of us; we have the rights of criminal defendants. How do you protect him or her to make sure that that person receives a fair trial?"

Rivera-Soto asked the rhetorical question, "was Dharun Ravi treated fairly?" and responded to his own question with "the answer is a resounding 'no.'" He went so far as to say that the press coverage in Ravi was much more than a firestorm, it was irresponsible." He noted that the 24/7 news cycle "causes irresponsibility, with financial cutbacks resulting in younger journalists with a lack of maturity and good judgment in reporting. With everyone trying to be there first, everyone covering the story is out to scoop the others." But "the First Amendment is first because it has to be first, because without it, none of the other rights can be protected." With the guarantee comes, however, responsibility, and the press was admonished by Rivera-Soto:

… where I think we have lost our way is the notion that because you have a right doesn't necessarily mean that you can or should exercise it, and in my view, if you are going to exercise that right, you are obligated to exercise it responsibly.

and,

… if they [the public] hadn't pursued the prosecution, there wouldn't have been bad [media] coverage of it."

RIGHT TO PRIVACY

Altman made clear that the overarching rel-

In this case, this young man [Ravi] was charged not because he invaded privacy, because if that's all there was and there hadn't been a follow-up suicide, I doubt this case would have ever found its way to the criminal justice system. So, he was prosecuted not for what he did, which is what is supposed to be the way the system works, but for what happened, as a result of what he did. Well, if that was the case, charge him with murder. ... Before trial, you were willing to have this young man plead in exchange for no jail time, no probation, 600 hours of community service, yet you show up at sentencing and say, by the way, we want five years.

Justice Rivera-Soto

evance of MB's testimony with respect to his client's prosecution was that MB would have been with Clementi within twelve hours of the latter's suicide. Altman was seeking Clementi's state of mind to show the jury that whatever he did afterwards (committing suicide) had nothing at all to do with him being seen kissing or embracing MB two nights earlier.

Several of the charges against Ravi dealt with the invasion of MB's privacy, which overlapped with Ravi's right to a fair and open trial. An additional relevance went to the bias charge dealing with Clementi's state of mind and whether or not Clementi felt intimidated as a result of any behavior or act by Ravi. Altman needed MB's testimony to show that Clementi was aware, after the first and second viewings, that Ravi and others had viewed the two men via webcam. It was important for the jury to learn what Clementi and MB spoke about and for Altman to establish whether or not Clementi was disturbed by Ravi's act. The bias charge, according to Altman, "is a second statute that says once you invade someone's privacy, if it's predicated upon intimidation, the actor is judged upon the state of mind of the victim."

Farmer asked Justice Rivera-Soto to comment on the future of the bias statute. Rivera-Soto stated that he thought it was constitutionally deficient. He explained: "[A]ll of criminal law is tethered to the notion of individual responsibility, and it is the actor's, the defendant's, actions and motivations that define what your penalty is going to be." He went on to say that the bias statute goes to the state of mind of the victim, and "that notion is fundamentally foreign to how we define criminal law" and "if the purpose of the statute is to ascertain individual responsibility and penalize the individual for what that person is responsible for, to say that that person is going to get penalized not because of what he did and why he did it, actus reus versus mens rea, but the state of mind of a third party over whom you have no control, that's a little wacky to me."

EPILOGUE

Dharun Ravi is currently appealing his conviction, but has served his thirty-day sentence so that he can go forward with his life and education. The prosecution is appealing the sentence, based on its belief that it was too lenient. Braun stated that when a *Star Ledger* survey asked New Jersey citizens to react to the sentence, 52% believed it was too lenient.

If the citizens of New Jersey knew the facts, how would the survey differ? If the citizens of New Jersey had not been inflamed by a misinformed media and comments made by celebrities and politicians, how differently would they feel? If the defense had been allowed full discovery and a fair cross-examination, how would that change the verdict? Justice Rivera-Soto expressed the obvious when he said, "[t]ake what you have known from the popular press concerning this case and contrast it with the facts as you were given today. They are two fundamentally different cases." ■

Tri-State Regional Meeting | *Alabama-Florida-Georgia* | *February 9-12, 2012 Sea Island, Georgia*

ALABAMA, FLORIDA AND GEORGIA TRI-STATE MEETING HELD AT THE CLOISTER, SEA ISLAND, GEORGIA

Continuing a long tradition of bi-annual joint meetings, more than 175 Fellows and guests gathered at The Cloister in Sea Island, Georgia from February 9 through 12, 2012. The 2012 meeting was hosted by the Georgia Fellows and continued the tradition of presenting substantive programs, while allowing ample time for fellowship and relaxation. The Cloister at Sea Island was the ideal setting for a Valentine's Day weekend celebration. >>

This page: Former Treasury Secretary Hank Paulson; United States District Court Chief Judge Lisa Godbey Wood, FACTL

Facing page: Former Deputy Attorney General of the United States Hon. Larry Thompson; Superior Court of Chatham County, Eastern Judicial Circuit Hon. Louisa Abbot; United States District Court Chief Judge Lisa Godbey Wood, FACTL; United States District Court Judge Marc Treadwell, FACTL; Supreme Court of the United States Associate Justice Clarence Thomas

Day One of the Tri-State Regional Meeting provided a pro-and-con debate on the constitutionality of the federal health care law. Professor David Oedel of the Walter F. George School of Law at Mercer University took the position opposing the health care law, and Professor Neil Kinkopf of Georgia State University School of Law argued in its favor.

With the assistance of a panel of attending Fellows, Alabama State Chair **Randal H. Sellers** led an ethics program using the American College of Trial Lawyers' videos.

Professor Kent Leslie of Atlanta presented a substantive program on the life and legal battles of Amanda America Dickson, a black woman who inherited her white father's substantial fortune, making her the wealthiest woman in the State of Georgia in the 1870s.

A particular highlight on Friday evening was a reception at the lovely Sea Island home of Fellow **Bobby Lee Cook**.

The substantive portion of the second day included an informal, on-stage conversation with former Secretary of the Treasury Henry Paulson. Secretary Paulson stated in vivid detail how close the United States' and world's economies had come to a complete meltdown during the 2008 financial crisis.

Georgia attorney, Hon. Larry D. Thompson, discussed highlights of his service as Assistant Attorney General and his perspective of the legal profession as General Counsel of Pepsico, a Fortune 500 company.

The final session and highlight of the weekend, was a second informal, on-stage conversation, this time with Georgia native, Honorary Fellow, and Associate Justice of the United States Supreme Court, the Honorable **Clarence Thomas**. Justice Thomas, who attended the entire weekend meeting, left a lasting impression on the tri-state Fellows, spouses and guests with his graciousness and warmth.

The weekend culminated with a reception and dinner at The Cloister.

The Fellows welcomed President and Mrs. **Thomas H. Tongue** of Portland, Oregon. In closing, Brunswick, Georgia Fellow **Terry L. Readdick**, awed the audience with classical piano selections. ■

DAVID E. HUDSON,
GEORGIA STATE CHAIR

Puerto Rico Meeting | *San Juan Puerto Rico* | *August 2012*

PUERTO RICO FELLOWS HOST SEMINAR ON "THE LOST ART OF TALKING"

While we are a college of trial lawyers, we practice in accordance with the College's own *Code of Pretrial and Trial Conduct*. The *Code* provides that … a lawyer must provide the client with the alternatives to trial when to do so would be consistent with the client's best interests. A lawyer should educate early in the legal process about various methods of resolving disputes without trial, including mediation, arbitration, and neutral case evaluation.

The mandate of the *Code* was the legal and ethical backdrop of a seminar hosted in San Juan, Puerto Rico in August 2012. The Puerto Rico Fellows reached out to the bar and provided a free seminar to highlight and develop necessary skills that may be alternatives to trial. The Puerto Rico Supreme Court approved the American College of Trial Lawyers as a provider of Continuing Legal Education and approved three hours of CLE credit to each attendee. About 350 lawyers and judges attended the seminar, held at the San Juan Marriott Hotel.

Communications skills are critical to the practice of law. Success in civil litigation greatly depends on those skills. With the crowded criminal docket in Federal Court, particularly in Puerto Rico, it is more important than ever to explore alternate ways of resolving civil cases. Practitioners must be actively engaged in specific strategies geared toward case resolution parallel to their efforts to prepare a case for trial.

While wonderful and necessary, technology has muted some of the necessary communication skills previously depended upon by lawyers to move cases toward resolution. We have become less personally connected, yet more electronically connected. Interpersonal skills, however, still play a crucial role in civil case resolution. Moreover, younger lawyers need to become more familiar with techniques, tools and strategies to resolve cases.

Three panel discussions demonstrated alternate methods associated with civil case resolution. The first was a panel of College Fellows who discussed settlement strategies. The second panel consisted of me-

diators who discussed the utility of mediation in case resolution. The third involved a panel of Federal Judges from the United States District Court for the District of Puerto Rico who shared their views on settlement conferences and other ways to resolve cases. All three panels were moderated by College Fellow and Puerto Rico Committee Chair **David C. Indiano**.

SETTLEMENT STRATEGIES

Trial lawyers are advocates. Inherent in the job description is the ability to communicate the client's case, not only to the trier of fact, but to adversaries as well. The purpose of the discovery process is to place both sides of an issue in an informed place where an objective analysis of the strengths and weaknesses of a case are manifest. Discovery, however, is not an end in itself. If lawyers fail to use the information they possess or discover to further communication about a case with an adversary, a critical piece of the advocates' duties remains unfulfilled. Clients suffer. And the court system suffers.

Seven College Fellows participated in the settlement strategy discussion panel: **Eugene F. Hestres Vélez, Héctor Reichard, Francisco J. Colón Pagán, Salvador Antonetti, Eric A. Tulla, Rubén Nigaglioni** and **Francisco Bruno**. Among the issues discussed were:

- know your client
- know your case – preparation
- leveling the playing field
- case valuation
- initiation of settlement discussion
- respect for one's opponent
- the problematic opponent
- the multiple defendant and multiple plaintiff case

MEDIATION

The Federal Court in Puerto Rico's specific, though under-utilized, rule on mediation, Local Rule 83J, has been in place for more than ten years. Four mediators expressed their particular views on the utility of mediation.

Two mediators traveled considerable distances

Moderator David C. Indiano, Eugene F. Hestres Vélez, Héctor Reichard, Francisco J. Colón Pagán, Salvador Antonetti, Eric A. Tulla, Rubén Nigaglioni and Francisco Bruno

to participate in the mediation portion of the forum: *Daniel Wathen*, former Chief Justice of Maine, and *Robert S. (Bobby) Glenn, Jr.* of South Carolina, joined Puerto Ricans *Doel Quiñones*, Professor of Law, and *Diego A. Ramos*, local attorney and court-approved mediator.

The mediators addressed the following issues:

- qualities to look for in a mediator
- the Art of Listening
- candor with the mediator versus legitimate posturing in negotiations
- what a mediator should do when things begin to fall apart
- if and when the mediator should offer an honest assessment of a party's position
- closing the deal

SETTLEMENT CONFERENCES AND RESOLUTION

Before tackling issues of judicial settlement, the three Article III Federal Judges and one Federal Magistrate Judge shared their views and offered advice about of the topics addressed by the first two panels. The participating judges were Judge *Gustavo Gelpí*, Senior Judge *Juan Pérez Giménez*, Senior Judge *Daniel Dominguez* and Magistrate Judge *Marcos E. López*. The entire Puerto Rico bar felt that a seminar of this magnitude is most-often successful when the local judiciary is able to participate.

If a lawyer has been unsuccessful in resolving a case directly with an adversary or through mediation, the final stop on the way to trial is with the Judge or Magistrate Judge.

Like fingerprints, no two judges are alike. Each has his or her own style, preferences and skills. They all, however, have one thing in common: they want to have you resolve your case without a trial.

Lawyers sometimes fail to seek judicial intervention to resolve a case. One or more sides to a lawsuit often appear unprepared or unauthorized to address settlement. Resulting pitfalls can be avoided. Lawyers must know how to best understand the controversy at hand and to properly and more fruitfully utilize the services of the presiding judge in each case.

The judges addressed the following issues concerning judicial resolution prior to trial:

- philosophies about judicial intervention in settlement conferences
- how judicial philosophies change as the judge becomes more involved in the settlement process
- civil case resolution vehicles most likely to benefit during times of a crowded docket
- what members of the bar can do regarding the settlement process and mediation

The seminar's goal, to provide practical methods and ideas for resolving civil cases, was presented to further the stated goals of the College, i.e., *Improving and Elevating the Standards of Trial Practice, the Administration of Justice and the Ethics of the Profession*. The positive feedback received from the bench and bar indicated that the stated goals were advanced through the collaborative efforts of Fellows, mediators and the judges of the Federal Court. ■

DAVID C. INDIANO,
PUERTO RICO COMMITTEE CHAIR

David C. Indiano was inducted in 2008. A native of Euclid, Ohio, he is the Chair of the Puerto Rico Committee and focuses his San Juan, Puerto Rico, practice on personal injury, medical malpractice and commercial matters.

Diego A. Ramos, Doel Quiñones, Robert S. (Bobby) Glenn, Jr., Daniel Wathen, Moderator David C. Indiano

2012 ANNUAL MEETING IN NEW YORK

A record number of Fellows will attend the 2012 Annual Meeting, October 18-21, at the historic Waldorf=Astoria in New York City. President **Thomas H. Tongue** will preside at the sixty-second annual meeting of the Fellows before passing the maul to President-Elect **Chilton Davis Varner**.

Registered Fellows will participate in a variety of tours around the city and will take in a Broadway show during the theatre night on Friday. The traditional induction ceremony will take place on Saturday night in the Waldorf=Astoria's iconic Grand Ballroom. Friday and Saturday mornings will begin with committee meetings, followed by the General Sessions where Fellows and guests will hear from an exceptional array of speakers.

SPEAKER SCHEDULE AT TIME OF PRINTING

FRIDAY

The Hon. Mr. **Dikgang Moseneke**, Deputy Chief Justice of the Constitutional Court of South Africa. Justice Moseneke will be inducted as an Honorary Fellow.

Solicitor General of the United States **Donald B. Verrilli, Jr.**

R. Hewitt Pate, Vice President and General Counsel, Chevron Corporation

Robert S. Mueller, III, Director of the Federal Bureau of Investigation (FBI), FACTL

DeMaurice F. Smith, Executive Director of the National Football League Players Association, FACTL

SATURDAY

The Hon. Madam Justice **Rosalie Silberman Abella**, Supreme Court of Canada, Honorary Fellow of the College

Discussion on *Why History Matters*: **Patrick N. Allitt**, Cahoon Family Professor of American History, Emory University; **Deborah E. Lipstadt**, Dorot Professor of Modern Jewish History and Holocaust Studies, Emory University

The Hon. Mr. Justice **Michael J. Moldaver**, Supreme Court of Canada. Justice Moldaver will be inducted as an Honorary Fellow and will participate in an unscripted, on-stage conversation with Regent **Jeffrey S. Leon**.

Lindsay N. Marshall, Executive Director of the Florence Immigrant and Refugee Rights Project, will accept the 2012 Emil Gumpert Award on her organization's behalf

Robert Corn-Revere, expert in First Amendment law

FOR THE RECORD

Ruling by Judge William Young, United States District Judge for the District of Massachusetts, in the Richard Reid "shoe bomber" case. January 31, 2003.

Prior to sentencing, the Judge asked the defendant if he had anything to say His response: After admitting his guilt to the court for the record, Reid also admitted his "allegiance to Osama bin Laden, to Islam, and to the religion of Allah," defiantly stating, "I think I will not apologize for my actions," and told the court "I am at war with your country."

Judge Young delivered the statement below:

Mr. Richard C. Reid, hearken now to the sentence the Court imposes upon you.

On counts 1, 5 and 6 the Court sentences you to life in prison in the custody of the United States Attorney General. On counts 2, 3, 4 and 7, the Court sentences you to 20 years in prison on each count, the sentence on each count to run consecutively. That's 80 years.

On count 8 the Court sentences you to the mandatory 30 years again, to be served consecutively to the 80 years just imposed. The Court imposes upon you for each of the eight counts a fine of $250,000. That's an aggregate fine of $2 million. The Court accepts the government's recommendation with respect to restitution and orders restitution in the amount of $298.17 to Andre Bousquet and $5,784 to American Airlinesm. The Court imposes upon you an $800 special assessment. The Court imposes upon you five years supervised release simply because the law requires it. But the life sentences are real life sentences so I need go no further.

This is the sentence that is provided for by our statutes. It is a fair and just sentence. It is a righteous sentence.

Now, let me explain this to you. We are not afraid of you or any of your terrorist co-conspirators, Mr. Reid. We are Americans. We have been through the fire before. There is too much war talk here and I say that to everyone with the utmost respect. Here in this court, we deal with individuals as individuals and care for individuals as individuals. As human beings, we reach out for justice.

You are not an enemy combatant. You are a terrorist. You are not a soldier in any war. You are a terrorist. To give you that reference, to call you a soldier, gives you far too much stature. Whether the officers of government do it or your attorney does it, or if you think you are a soldier, you are a terrorist. And we do not negotiate with terrorists. We do not meet with terrorists. We do not sign documents with terrorists. We hunt them

down one by one and bring them to justice. So war talk is way out of line in this court You are a big fellow. But you are not that big. You're no warrior. I've known warriors. You are a terrorist. A species of criminal that is guilty of multiple attempted murders. In a very real sense, State Trooper Santiago had it right when you first were taken off that plane and into custody andyou wondered where the press and the TV crews were, and he said: "You're no big deal."

You are no big deal.

What your able counsel and what the equally able United States Attorneys have grappled with and what I have as honestly as I know how tried to grapple with, is why you did something so horrific. What was it that led you here to this courtroom today?

I have listened respectfully to what you have to say. And I ask you to search your heart and ask yourself what sort of unfathomable hate led you to do what you are guilty and admit you are guilty of doing? And, I have an answer for you. It may not satisfy you, but as I search this entire record, it comes as close to understanding as I know. It seems to me you hate the one thing that to us is most precious. You hate our freedom. Our individual freedom. Our individual freedom to live as we choose, to come and go as we choose, to believe or not believe as we individually choose. Here, in this society, the very wind carries freedom. It carries it everywhere from sea to shining sea. It is because we prize individual freedom so much that you are here in this beautiful courtroom, so that everyone can see, truly see, that justice is administered fairly, individually, and discretely. It is for freedom's sake that your lawyers are striving so vigorously on your behalf, have filed appeals, will go on in their representation of you before other judges.

We Americans are all about freedom. Because we all know that the way we treat you, Mr. Reid, is the measure of our own liberties. Make no mistake though. It is yet true that we will bear any burden, pay any price, to preserve our freedoms. Look around this courtroom. Mark it well. The world is not going to long remember what you or I say here. The day after tomorrow, it will be forgotten, but this, however, will long endure.

Here in this courtroom and courtrooms all across America, the American people will gather to see that justice, individual justice, justice, not war, individual justice is in fact being done. The very President of the United States through his officers will have to come into courtrooms and lay out evidence on which specific matters can be judged and juries of citizens will gather to sit and judge that evidence democratically, to mold and shape and refine our sense of justice. See that flag, Mr. Reid? That's the flag of the United States of America. That flag will fly there long after this is all forgotten. That flag stands for freedom. And it always will. ■

PROFILE IN PERSUASION

Unless he pitches for another major league baseball team this year, but now 50 years old, Roger Clemens is eligible for the Hall of Fame next year, 2013. Despite serious allegations made against him by his former trainer, Roger Clemens has not been convicted of any offence nor proven to have taken performance enhancing drugs. After a mistrial in the first proceeding, he was acquitted of six counts of lying to Congress in the retrial (although why Congress was bothering with baseball in the first place is another matter). Who was the lawyer who steered Clemens through these treacherous shoals successfully? Rusty Hardin, of course. >>

Over a wide-ranging interview, I learned a few things about Rusty Hardin not the least of which was his advice to his client, Clemens. Vilified by other lawyers, as he put it, for letting Clemens testify before Congress, Clemens (and his counsel's advice) was ultimately vindicated by a jury. A number of jurors expressed the view that the prosecution's case was overreaching and an abuse of government authority. What is a person supposed to do, Hardin asked rhetorically, "if you are a public person, with a public reputation, whether you're a ballplayer or a politician or actor or actress, who is accused of something that is totally contrary to the way you led your professional life and you did not do it?" Clearly, according to Hardin, if you did not do it, you deny it; if you did it (as did Andy Petitte), you admit it, apologize and move on. He told Clemens, having already been named in the Mitchell Report, that if he did deny the allegations, having waived his right to take the Fifth Amendment, he would be pilloried in the press and prosecuted by Congressional referral to the Justice Department and that's what happened. After a first mistrial, Clemens was ultimately acquitted and his Hall of Fame eligibility unfettered although one wonders whether baseball's voters, its jurors so to speak, will allow Clemens on the first ballot.

Hardin attributes much of his jury success with being able to relate to jurors, being able to hear and see things the way that average people hear and see them, a quality Rusty attributes to growing up middle-class in a small town in North Carolina. He says this is the best training of all for trial lawyers, that of being an average citizen, an attribute that Hardin not only still values but also actively pursues, even now. Before entering private practice in 1991, Rusty Hardin established an enviable reputation as an assistant district attorney in Houston where he became known for his cross-examination skills and, in 1989, was named Prosecutor of the Year.

In 1994, he was chief trial counsel in the Whitewater Independent Counsel's Office, serving under both Robert Fiske and Kenneth Starr. His high profile clients have included Arthur Andersen (in the Enron Scandal), Rudy Tomjanovich and, most recently, Adrian Peterson of the Minnesota Vikings. He has squared off against Anna Nicole Smith, among others. Rusty is a lawyer you want on your side.

Money doesn't motivate him, he says. Rather, fear of failing his client, a quality you certainly cherish in a lawyer. Contrary to popular tenets of advocacy, Rusty breaks any number of rules. He told me that trial counsel must ask the difficult question, the one jurors want to know, and take calculated risks at trial including asking open-ended questions, then follow the flow before you get to the leading, narrow questions at the end of your cross-examination. Maximize surprise at trial, limit discovery, is another Hardin maxim. And finally, train yourself to listen, all the better to intuit the sense of a courtroom and gauge judge and jurors' reactions.

Rusty Hardin will be speaking at the May 2013 Region 15 (Upstate New York-Ontario-Québec) Meeting in Cooperstown, New York.

The best advice he can give, especially to younger lawyers, is to enjoy what you do because none of it is worth doing if you aren't having fun.

A persuasive advocate is Rusty Hardin. ■

STEPHEN GRANT, LSM,
CO-EDITOR

***Stephen Grant**, LSM, is Chair of the Ontario Province Committee and Co-Editor of* The Bulletin. *Inducted into the College in 2003, he practices family law and mediation/arbitration in Toronto, Ontario.*

SOLICITOR GENERAL TO ADDRESS FELLOWS AT 2012 ANNUAL MEETING

A highlight of the Fall Meeting in New York will be our guest, *Donald B. Verrilli, Jr.*, the 46th Solicitor General of the United States, who personally argued eight cases before the Supreme Court this past term, including some of the most important cases of our day.

You win some, you lose some. Although General Donald B. Verrilli, Jr. lost some of the cases he argued, his wins were huge, including the critically important Affordable Healthcare Act and the Arizona Immigration Act cases.

If you have ever argued in the Supreme Court, you know this: there just isn't enough time between the grant of cert and the oral argument to be completely prepared. And that is if you have a single argument to prepare for. General Verrilli prepared for and delivered an astonishing *eight* arguments over the course of seven months – leaving him only a few weeks for each.

On October 5, 2011, General Verrilli gave the winning argument in *Golan v. Holder* – which affirmed the right of the Government to grant copyright protection to foreign works previously in the public domain, in order to advance the Government's interest in protecting US copyrights by conforming to the Berne Convention.

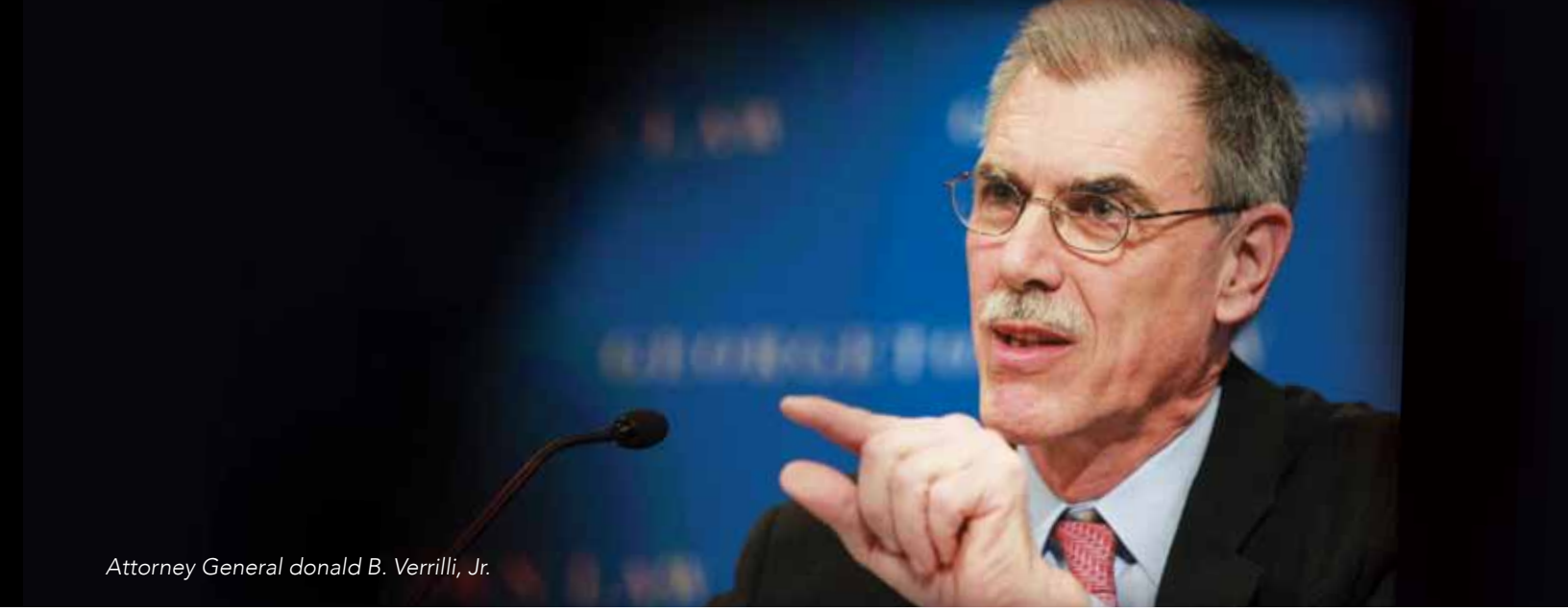
A few weeks later, on November 7, 2011, General Verrilli argued *two* matters – *Zivotofsky v. Clinton*, a case involving the Government's decision to deny the petition of an applicant who was born in Jerusalem to have his birth certificate reflect that he was born in Israel; and *Kawashima v. Holder*, questioning the right of the Government to deport aliens who had been convicted of filing false tax returns.

Weeks later, on December 7, General Verrilli argued as special amicus in *Mayo v. Prometheus*, which revolved around the patentability of laws of nature.

A few days into the new year, on January 10, 2012, General Verrilli argued *FCC v. Fox*, arising out of the FCC's rulings, without prior notice of a change in policy, that fleeting expletives and nudity were indecent.

On February 22, General Verrilli argued the Stolen Valor Act case, *United States v. Alvarez,* arguing for the Government that the Act could permissibly criminalize a false claim that a person had received a military medal. The Court found that the First Amendment equally protects speech we embrace and abhor. So, the Court reasoned, Mr. Alvarez' public lie that he had received the Congressional Medal of Honor was poor taste but not a crime.

All of that was merely warming up. Barely 30



Attorney General donald B. Verrilli, Jr.

days after his six non-stop back-to-back arguments, General Verrilli argued what was unarguably the most important case of the term – maybe of any recent term – the Healthcare Act case, *National Federation of Independent Business v. Sebelius.* The case was so important that the Court scheduled six hours of argument over three separate days, on March 26-28.

Most lawyers who had endured such a schedule would take some time off. But not Don Verrilli – he waded right back to prepare for his next argument, on April 25, in the vitally important Arizona Immigration Law case, *Arizona v. United States*.

Healthcare. Immigration. Patents. Copyrights. Public Indecency. Stolen Valor. But that was last year; maybe he'll tell us about what is on his plate for the 2012-13 term. We need not worry that General Verrilli might not have the material for an entertaining speech.

Don Verrilli received his undergraduate degree from Yale University and his J.D. from Columbia Law School, where he served as editor-in-chief of the Columbia Law Review. He served as a law clerk to the Honorable J. Skelly Wright of the United States Court of Appeals for the D.C. Circuit and to the Honorable William J. Brennan, Jr. of the United States Supreme Court.

On January 26, 2011, President Obama nominated General Verrilli to succeed Elena Kagan as Solicitor General after she was sworn into the position of Associate Justice of the Supreme Court of the United States. On June 6, he was confirmed by the Senate in a 72–16 vote. Verrilli was sworn in as Solicitor General of the United States on June 9, 2011.

General Verrilli previously served as Deputy Counsel to President Obama and as an Associate Deputy Attorney General in the U.S. Department of Justice. Prior to his government service, he was a partner for many years in Jenner & Block, and co-chaired the firm's Supreme Court practice. He has participated in more than 100 cases in the Supreme Court and has personally argued seventeen, including *MGM Studios, Inc. v. Grokster*, which established that companies building businesses based on the unauthorized distribution of copyrighted works can be liable for inducing infringement; and *Wiggins v. Smith*, which established principles governing the right to effective assistance of counsel at capital sentencing.

Don is married to his Yale classmate, Gail W. Laster, who is Deputy Chief Counsel for the Committee on Financial Services of the U.S. House of Representatives and who served as General Counsel for the Department of Housing and Urban Development in the second Clinton Administration.

ROBERT L. BYMAN,
CHICAGO, ILLINOIS

Robert L. Byman was inducted in 1992 and is the incoming Treasurer of the College. He practices with Jenner & Block in Chicago, Illinois, and represents clients in complex commercial cases. ■

FIRST AMENDMENT LITIGATOR TO SPEAK AT ANNUAL MEETING IN NEW YORK

Every society throughout history has hammered out a set of rules for controlling speech, in other words, has grappled with the issue of censorship.

Picture a condominium complex. Imagine a resident couple fighting inside their unit on an otherwise quiet Sunday afternoon. Their words become louder and cruder, escalating to profane. Upright neighbors are mortified by the scatological and sexual terms. Children hear the vulgarities.

At the next residents' meeting, neighbors object, not just to the noise, but to the vulgarity. The couple – now reconciled and calm – asserts their rights to use whatever words they choose in talking to one another, even if someone else is scandalized. Freedom, someone's freedom, is going to suffer, whatever the outcome.

Who can tell someone how to speak? Who can speak in ways offensive to listeners? Where is the line drawn? What role does the government have in this dispute? How did cavemen and tribes in grass huts centuries ago solve the problem of unwanted speech?

Bob Corn-Revere, former Chief Counsel to Chairman James H. Quello, Federal Communications Commission, has been struggling intellectually and professionally with questions as fundamental as these for most of his career. Now, as a partner of the Washington, D.C. office of Davis Wright Tremaine, he is in the middle of the turbulence relating to controls on broadcast "indecency" and profane language.

Bob represented CBS Corporation in challenging the $550,000 penalty levied by the Federal Communications Commission (FCC) as a result of the Commission's finding that the 2004 Super Bowl halftime show featuring Janet Jackson and Justin Timberlake was indecent under its rules. On June 29, 2012, the U.S. Supreme Court let stand a 3rd Circuit decision to throw out the $550,000 indecency fine imposed for the airing of the "wardrobe malfunction". Although Chief Justice Roberts agreed with the denial of the

appeal, he grumbled that Timberlake and Jackson "strained the credulity of the public by terming the episode a 'wardrobe malfunction'" and added, "As every school child knows, a picture is worth a thousand words, and CBS broadcast this particular picture to millions of impressionable children."

In a second case before the Supreme Court this year, Bob also represented CBS Corporation in a consolidated appeal challenging the FCC's application of broadcast indecency rules to "fleeting expletives" in live awards shows and brief nudity in the program *NYPD Blue*. On June 21, 2012, the U.S. Supreme Court held that FCC decisions targeting "fleeting" broadcasts of allegedly indecent material were unconstitutional under the Due Process Clause.

To round out his June, Bob enjoyed a decision on the last day of the Court's announcement of decisions in *United States v. Alvarez,* in which he had submitted an amicus brief on behalf of the Reporters Committee for Freedom of the Press and twenty-three media organizations urging the Supreme Court to hold that the Stolen Valor Act violates the First Amendment and that the government should not be empowered to be the arbiter of truth. Alvarez was a candidate for minor office in California when he falsely claimed he had won the Medal of Honor. The Supreme Court cited Corn-Revere's amicus brief and held that the Stolen Valor Act was unconstitutional, nullifying the criminal conviction under that Act.

Quite the month! Overshadowed, of course, by the fact that two of the decisions came out on the same day as, or the day after, the Court's ruling on the Affordable Care Act. Borrowing a media phrase, it was not a slow news day! But Bob, a former journalist with a master's degree in communications, understands that as well as anyone. He took it in stride.

One of his cases in 2003, however, was not like any other. That was the year Bob received a call from Governor Pataki's office in New York about his petition, pro bono, to the Governor for a posthumous pardon for Lenny Bruce. Bruce, a groundbreaking comedian, had been convicted in 1964 of violating a New York state obscenity law for three stand-up performances at a Greenwich Village coffeehouse. Rather than serve a prison term, Bruce lit out for California, but died soon thereafter. In his petition on behalf of Bruce and his family, Bob said, "Bruce's raw, free-form comedic style. ... covered a wide range of topics, including racism, organized religion, homosexuality and social conventions about the use of language.... [A] pardon

>>

It is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to air indecent programming or profane language on non-cable channels during certain hours, but one profane word (beginning with "F") is proscribed at all times on those channels.

The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities."

would be an important reaffirmation of the basic principles upon which a free society is based." The Governor agreed, granting the first posthumous pardon in the State of New York.

The passion of Bob's words in the Bruce petition may shed some light on the origins of his name. He started out in Illinois as just Bob Corn. Then he married his great love, Sigrid Fry, today an accomplished scholar, a former Director of Bioethics Studies at the Cato Institute and an expert in the field of Bioethics and Health Policy. Both kept their own surnames. But as kids arrived, Bob and Sigrid wanted them to have a common last name. "Whether you call yourself Corn-Fry or Fry-Corn, it sounds like something off a menu. So, we decided to give the kids a new last name, which we legally added to our names." And what name did they choose? Why, after studying names at the Library of Congress, Revere was just the thing! An early crier for this nation's freedom, a rebel and a man of passion. So now he's Corn-Revere, Sigrid is Fry-Revere and the four children are just the Reveres.

Bob is not afraid of being unconventional. He has been heard to say, "Anyone who is afraid of representing an unpopular view should consider another line of work." And he lives that creed even when close to home. He was lead counsel, again pro bono, in a case about the libraries in his own county in Virginia. In *Mainstream Loudoun v. Board of Trustees of the Loudoun County Public Library* plaintiffs prevailed in the first case to hold that mandatory content filtering of public library Internet terminals violates the First Amendment. "I live there and my kids use those libraries. It doesn't help our children to tell them the First Amendment doesn't apply in libraries."

But how would Corn-Revere come out on the condominium crisis posed at the beginning of this piece? The vulgar couple versus the outraged families, some with tender-eared children? Hard to predict. Some insight can be gained from his comments about testimony he was called upon to give before Congress on the Internet and the Fourth Amendment. He said that it was much more complicated than arguing in court, citing the multitude of emotional factors. But he added, "A lot of people, when they talk about the issue, talk about how they approach it as parents. Now, I'm a parent, but I don't confuse my role as a parent with what I think the law is."

And his cases prove it. In addition to those discussed, he has been involved in:

United States v. Stevens
Co-counsel for respondent in case challenging the constitutionality of a federal law prohibiting depictions of "animal cruelty." The Court ruled 8-1 that the law violates the First Amendment.

United States v. Playboy Entertainment Group, Inc.
Lead counsel for Playboy Entertainment Group in a successful challenge to a provision of the Telecommunications Act of 1996 that restricted Playboy Television. This case established that cable television networks are fully protected by the First Amendment.

Ashcroft v. ACLU
Submitted an amicus brief in case challenging the constitutionality of the Child Online Protection Act. The Supreme Court held that the Act violates the First Amendment.

Reno v. ACLU
Submitted an amicus brief for Playboy Enterprises, Inc. in case challenging the constitutionality of the Communications Decency Act. The Supreme Court held that the Act violates the First Amendment, and that the Internet receives full constitutional protection.

Berger v. City of Seattle
Counsel for appellant in successful First Amendment challenge to restrictions on use of the public forum in the Seattle Center, a multipurpose cultural and entertainment venue.

Fellows of the College will have the opportunity to hear Corn-Revere give an inside view of some of the latest disputes regarding free speech, indecency, wardrobe malfunctions, fleeting naked bottoms, and maybe even the Do Not Call Registry at the Annual Conference in New York in October. ■

GARY BOSTWICK,
LOS ANGELES, CALIFORNIA

Gary L. Bostwick was inducted in 1997. He is the Chair of the Emil Gumpert Award Committee and focuses his Los Angeles, California, practice on First Amendment and media issues.

IN MEMORIAM

In this issue, we record the passing of another thirty-two Fellows of the College, half of them members of the Greatest Generation ✦ Twenty-two had lived to age 80 and beyond ✦ The longevity of many of their marriages is striking ✦ One was a Past President of the College, another a former Regent ✦ Their war experiences ranged from piloting a B-29 Superfortress in the air war over Japan, to leading a group of Apache Scouts behind enemy lines in the South Pacific to returning to law school from the battlefields of Europe with a Bronze Star and a Purple Heart ✦ They came from varying backgrounds — the Rhodes Scholar son of a United States Senator, the son of an immigrant refugee rug merchant, the son of a Chicago policeman, the son of a Virginia railroad man, the son of a Chicago plumber ✦ The careers of many reflect the impact of the GI Bill in creating the seismic shift in the legal profession from an inherited calling passed down from lawyer to lawyer, often from father to son, to a more egalitarian one ✦ The generation that came home from World War II determined to make theirs a better world changed the profession ✦ Each of their careers was unique ✦ Several were United States Judges ✦ Several had led their state Bar organizations ✦ Some spent their years simply serving their clients in their own communities ✦ One regularly deposited money in the prison account of an indigent lifer he had saved from the death penalty thirty years earlier ✦ One participated in the March on Selma ✦ One managed the Department of Justice's preparations for the March on Washington, at which Rev. Dr. Martin Luther King made his famous "I have a dream" speech ✦ One was instrumental in dismantling Tammany Hall's stranglehold on New York City Democratic politics ✦ One was a career public defender in the nation's oldest such office ✦ One led the commission that laid the groundwork for Illinois' abolition of the death penalty ✦ The names of some of their cases evoke recollection of legal landmarks: the Hillside Strangler, the Green River Killer, Charles O. Finley, Jr. vs. Commissioner Bowie Kuhn, the admission of women to Virginia Military Institute ✦ One joked that he would be forever remembered by everyone struggling to open the tamper-resistant cap on a medicine bottle, the product of a class action involving Tylenol ✦ Their interests were varied ✦ Several had been Eagle Scouts ✦ One had been a national officer of Trout Unlimited ✦ One played guitar in a jazz band ✦ Several had been college athletes ✦ One was an Academic All-American, a starter on the number one football team in the nation ✦ One earned a degree in theology in his spare time, finishing first in his class

Collectively, they stand both as a rich example of the College's proud personal and professional standards and a challenge to those who come after them.

— **E. OSBORNE AYSCUE, JR.,** EDITOR EMERITUS

The date following the name of each deceased Fellow represents the date of his or her induction into the College.

Lyle Wallace Allen, '70, a Fellow Emeritus, retired from Heyl, Royster, Voelker & Allen, Peoria, Illinois, died March 3, 2012 at age 87. Serving in the United States Army 87th Infantry Division in the European Theater in World War II, he earned a Bronze Star and a Purple Heart. After the war, he received his undergraduate degree from Northwestern University and his legal education from Columbia University and the University of Wisconsin, from which he graduated. He was President of his county Bar and then the 96th president of the Illinois State Bar Association, and he served in the American Bar Association House of Delegates. He had served on the Board of Directors of the American Judicature Society and as President of the Association of Insurance Counsel. A widower, his survivors include a son and a daughter.

Don Mike Anthony, '96, Hahn & Hahn LLP, Pasadena, California, died June 1, 2012 at age 73 after a long illness. A graduate of Occidental College and of the UCLA School of Law, where he was Associate Editor of the Law Review and a member of the Order of the Coif, he was a Fellow of the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers and had served as President of the Los Angeles County Bar Association, of its Bar Foundation and of the Pasadena Bar Association. He had also been Vice-President of the State Bar of California. He had served as Chair of the College's Southern California State Committee. His survivors include his wife of fifty years and a son.

David Edward Beckwith, '76, a Fellow Emeritus, retired from Foley & Lardner, Milwaukee, Wisconsin, died April 14, 2012 at age 84. A Phi Beta Kappa graduate of the University of Wisconsin at Madison and of its School of Law, where he was a member of the Order of the Coif and Leading Articles Editor of the Law Review, he had been President of that University's Board of Regents. A leader in civic affairs, he had served as National Secretary of Trout Unlimited. His survivors include his wife of sixty-three years and three sons.

Anthony Preble Brown, '73, a Fellow Emeritus, retired from Pillsbury, Madison & Sutrow, San Francisco, California to Pacific Grove, California, died July 21, 2012 at age 85. His undergraduate education at California Institute of Technology was interrupted by service in the United States Navy in World War II. After the war, he entered and graduated from Harvard, with a degree in physics and earned his law degree at Stanford University School of Law. His survivors include his wife and five children.

Frederick Jean Buckley, '73, a Fellow Emeritus, retired from Buckley, Miller & Wright, Wilmington, Ohio, to Cutler Bay, Florida died April 2, 2012 at age 88. After a year at Wilmington College, he had transferred to Ohio State University, where his education was interrupted by service in the United States Army in England and France in World War II. After the war, he enrolled and completed his undergraduate degree at the University of Michigan, from whose School of Law he also earned his law degree. Thirty years after his law school graduation, he studied for and passed the Florida Bar. An Eagle Scout, he also later became a Scoutmaster. He was the recipient of an Honorary Doctor of Laws from Wilmington College, for which he had served as counsel and trustee. An outdoorsman, he also played guitar in a jazz band. His survivors include his wife of sixty-two years, two sons and a daughter, all of whom are lawyers.

Donald Victor Bulleit, '84, a Fellow Emeritus from St. Petersburg, Florida, retired from Fowler, White, died May 24, 2012 at age 76. A *cum laude* graduate of the University of Notre Dame, he attended Vanderbilt Law School and graduated from George-

town Law Center. President of several civic organizations, he was a founding member of the South Pinellas Medical Trust. His survivors include his wife of fifty-two years, a daughter and two sons.

John Everett Busch, '98, a Fellow Emeritus, retired from Busch, Zurbuch & Thompson, Elkins, West Virginia, died November 11, 2011 at age 73 of Parkinson's Disease. He was a graduate of The University of West Virginia and of its College of Law. He began his practice as an assistant prosecutor, then served with the West Virginia Division of Highways before helping to found the law firm that bore his name. He had been President of the West Virginia State Bar and had served in the American Bar Association House of Delegates and on the Board of Governors of that organization. Active in a number of civic organizations, he had served on the vestry of his Episcopal Church and had received a Lifetime Achievement Award from the Elkins-Randolph County Chamber of Commerce. His survivors include his wife of fifty-one years, two daughters and two sons.

Richard Watson Campbell, '73, a Fellow Emeritus, retired from Campbell, Erickson, Ferance & Hall, LLC, Ogden, Utah, died August 14, 2012 at age 84. After service in the United States Navy in World War II, he began his undergraduate studies at Weber State College, then graduated from the University of Utah, where he also proceeded to earn his law degree. He had been President of his county Bar and had been honored as Trial Lawyer of the Year by the American Board of Trial Advocates. The Utah State Bar had honored him with a Professionalism Award. His survivors include his wife of sixty years, a daughter and a son.

Philip H. Corboy, '64, Corboy & Demetrio, P.C., Chicago, Illinois, died June 12, 2012 at age 87 of Alzheimer's Disease. The son of a Chicago policeman, he grew up over a tavern, attended a variety of undergraduate schools and earned his law degree from Loyola University School of Law, finishing first in his class. After a year as Assistant Corporation Counsel for the City of Chicago, he was in private practice for the rest of his career. A legendary pioneer in plaintiffs' personal injury practice who largely transformed that practice, as he put it, to level the playing field, he was a prolific writer and lecturer. He had been President of the Chicago Bar Association and of the Illinois Trial Lawyers Association, which had given him its Lifetime Achievement Award, and had chaired the American Bar Association's Litigation Section. He had also served as counsel to the Illinois Democratic Party. It was his representation of Tylenol poisoning victims that led to the use of tamper-resistant packaging. He had received Honorary Doctor of Laws degrees from John Marshall Law School and St. Ambrose University. His survivors include his wife and three sons.

Edward N. Costikyan, '72, a Fellow Emeritus, of counsel to Paul, Weiss, Rifkind, Wharton & Garrison, LLP, New York, New York, died June 22, 2012 at his retirement home in Mt. Pleasant, South Carolina, at age 87. His father was an Armenian refugee from Turkey, a rug merchant, and his mother a teacher at the Horace Mann School. His undergraduate education at Columbia College was interrupted by World War II, in which he served as an officer in the United States Army, seeing action on Okinawa and for a time acting as military governor of a small district in Korea. After graduating from Columbia Law School, he became law secretary to United States Judge Harold R. Medina, after which he joined Paul Weiss. In the 1950s he became involved in Democratic politics, ending up a member

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of Tammany Hall's executive committee. In 1960, he joined other reformers in calling for the ouster of party boss Carmine G. De Sapio, a move supported by then Mayor Robert F. Wagner. After De Sapio was deposed, Costikyan was elected leader of Tammany Hall, and during his two-year tenure the political boss system of Tammany was replaced by the modern-day structure of the party in New York City. Over his lifetime, leaders of both political parties sought his help. In 1972, Republican Governor Nelson A. Rockefeller chose him to chair a commission to decentralize New York City government. Republican Mayor Rudolph W. Giuliani appointed him chair of a commission to draft a plan to place the New York City School System under mayoral control, something that was accomplished in the administration of Mayor Michael R. Bloomberg. Twice divorced, his survivors include a daughter and a son.

Hon. Thomas John Curran, '73, a Judicial Fellow from Milwaukee, Wisconsin, Senior Judge of the United States Court for the Eastern District of Wisconsin, died July 17, 2012 at age 88. A graduate of Marquette University and of its School of Law, he had served as an officer in the Pacific Theater in World War II. Upon graduation from law school, he joined his family law firm, Curran, Curran and Hollenbeck in Mauston, Wisconsin. He was for many years the city attorney and he had been President of the State Bar of Wisconsin before his 1983 appointment to the federal bench. A widower, his survivors include two daughters and six sons.

John Woolman Douglas, '78, a Fellow Emeritus from Washington, District of Columbia, died June 2, 2012 at age 88 of complications following a stroke. The son of two college professors, he was a Phi Beta Kappa graduate of Princeton University. Enlisting in the United States Navy in World War II, he served as a PT boat officer in the Mediterranean and the Pacific. After receiving his law degree at Yale Law School, he had earned a PhD at Oxford, which he attended as a Rhodes Scholar, after which he had clerked for United States Supreme Court Justice Harold H. Burton. He served as Assistant United States Attorney General in charge of the Civil Division in the Kennedy and Johnston Administrations. In 1963, he was designated by Attorney General Robert Kennedy to represent the government in five months of planning for the August 28 March on Washington, attended by approximately 250,000 people, during which Rev. Dr. Martin Luther King, Jr. gave his historic "I Have a Dream" speech. He left the Justice Department in 1966 to help manage the fourth and last Senate campaign of his father, Paul H. Douglas of Illinois. In the fall of 1970 he was co-chair of the Lawyers' Committee for Civil Rights Under Law when it sent lawyers into the South to take legal action against "in school" segregation of black children in newly integrated school systems. As a partner in Covington & Burling, he had been President of the District of Columbia Bar, of the National Legal Aid and Defender Association and of the Yale Law School Association. He had also served in the American Bar Association House of Delegates. For eight years he had chaired the Carnegie Endowment for International Peace. In the 1980s he had joined human rights and election-monitoring missions to foreign countries, traveled in 1985 with Senator Edward M. Kennedy to demonstrate against apartheid in South Africa and to Chile in 1986 to protest the dictatorship of General Augusto Pinochet. He had traveled to Namibia three times as a member of a group that observed elections leading to its independence from South Africa. He had chaired the College's Federal Judiciary Committee. A widower whose wife of sixty-two years had predeceased him, his survivors include a son and a daughter.

Thomas Walter Elke, '86, a Fellow Emeritus from Napa, California, died June 3, 2012 at age 82. In June 1945 at age fifteen, he had received the highest score ever achieved in the Pepsi-Cola National Scholarship Competition. He boarded a train at New York's Penn Station bound for Stanford University, from which he graduated at age eighteen. Graduating from Stanford Law School in 1952 at age twenty-two, he served for two years in the United States Army Judge Advocate General Corps, then practiced law in Fresno, California. In 1962, he joined with Frank Farella and Jerry Brown to form the firm then known as Elke, Farella & Braun. He marched in Selma, Alabama during the Civil Rights movement and later provided legal services to those arrested or detained. In 1964, without neglecting his duties in his firm, he enrolled in the San Francisco Theological Seminary, graduating in three years as valedictorian of his class. He later served as assistant pastor at Presbyterian churches in East Oakland and Richmond, California. In 1969, he left his firm and thereafter practiced alone or in smaller firms. In the mid-1980s, working with Stanford Law Professor Gerald Lopez, he helped to create a public interest law curriculum at Stanford called Lawyering for Social Change. A non-conventional lawyer, he undertook cases in which he saw a moral principle at stake, including pioneering prosecution of several large consumer fraud cases. His survivors include his wife of thirty-five years and two sons.

Macdonald Flinn, '77, a Fellow Emeritus, retired from White & Case LLP, New York, New York, died May 24, 2012 at his retirement home, Lakeside, Michigan, at age 88 of cardiac arrest. His undergraduate education had been interrupted by World War II, in which he flew a United States Army Air Corps B-29 Superfortress in the air war over Japan. A *magna cum laude* Phi Beta Kappa graduate of Princeton University and a graduate of the Harvard Law School, he had been recalled to duty during the Korean Conflict, serving as a JAG officer. While practicing in New York, he had served as an elder in his Presbyterian Church in Scarsdale. Retiring in 1990, he moved to his summer home in Lakeside. A few hours before his cardiac arrest, he had delivered a program to a group of men who met monthly to discuss subjects of importance to them. His survivors include his wife of fifty-six years, a daughter and two sons.

Donald J. Goldberg, '78, a Fellow Emeritus, retired from Ballard Spahr, LLP, Philadelphia, Pennsylvania died April 7, 2012 at age 81 of esophageal cancer. A graduate of the University of Pennsylvania and of the Harvard Law School, he had practiced criminal law alone for thirty years before becoming Special Counsel in the litigation department of Ballard Spahr, He had been an adjunct professor at the University of Pennsylvania Law School. Although one leg had been weakened by polio, he had continued to play tennis until two months before he died. His survivors include his wife of fifty-five years, a daughter and a son.

Robert Huel Harris, '83, Harris, Caddell & Shanks, PC, Decatur, Alabama, died August 2, 2012, at age 82 after a brief illness. A graduate of Auburn University, where he was a member of Omicron Delta Kappa, and of the University of Alabama School of Law, he had clerked on the Alabama Supreme Court, then attended the United States Army Judge Advocate General Corps School at the University of Virginia, thereafter serving two years on active duty. He had been attorney for the local board of education and President of his local Bar and had served eight years in the Alabama State Senate. He had chaired the 1975 committee that re-

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vised Alabama's code of civil procedure. He was also a member of the Board of Trustees of Auburn University. His survivors include his wife, three daughters and two sons.

Bayard Zabdial Hochberg, '75, a Fellow Emeritus, retired from Levin, Hochberg & Chiarello, Towson, Maryland, died May 2, 2012. Born in 1932, he was a graduate of the College of the City of New York and of the University of Virginia Law School, where he was a member of the Editorial Board of the Law Review and of the Order of the Coif. He had served in the Judge Advocate General Corps of the United States Army, retiring from the reserves as a Major. He had been a member of the Board of Governors of the Maryland Trial Lawyers Association. After his 2002 retirement from the practice, he had lived in Charlottesville, Virginia. His survivors include his wife of fifty-nine years and two daughters.

Philip Edgren Howes, '85, Milligan Pusateri Co, LPA, Canton, Ohio, died August 8, 2012 at age 76 of cancer. A graduate of Penn State University and of Case Western Reserve School of Law, he had been President of his county Bar and was active in several religious organizations. His survivors include his wife of almost fifty-two years, two daughters and a son.

John Joseph Hurley, '72, a Fellow Emeritus from Stockton California, died August 10, 2012 at age 88. He had attended Santa Clara University until he entered the United States Marines V-12 program at the University of the Pacific during World War II. While there, he earned his undergraduate degree and played football for Amos Alonzo Stagg, earning All-Coast honors. After boot camp and further training, he spent the last year of the war on Guam. He earned his law degree at the University of San Francisco School of Law and practiced with the Stockton firm Honey & Mayall. He had served as President of his county Bar. His survivors include his wife of sixty-two years, three sons and two daughters.

Frank C. Jones, '71, Macon, Georgia, the forty-third President of the College, died August 29, 2012 at age 87 of leukemia. His life is the subject of a separate article in this issue.

Louis Koutoulakos, '77, a Fellow Emeritus from Arlington, Virginia, died November 24, 2010. Born in 1917, he had begun college in the late 1930s and after serving in the United States Navy in World War II, he finished his undergraduate education at George Washington University and earned his law degree from George Washington University School of Law, where he graduated at the top of his class and was a member of the Order of the Coif. He was a noted criminal defense lawyer in the Greater Washington area. His survivors include his wife of twenty-eight years, a son, a stepdaughter and a stepson.

David Oscar Larson, '84, San Francisco, a former Regent of the College, died May 6, 2012, at age 76 of cancer. A graduate of Stanford University and of its School of Law, after service in the United States Marine Corps Reserves, he practiced for years in Oakland, California before joining the San Francisco firm Lewis, Brisbois, Bisgaard & Smith, LLP. He had chaired the College's Northern California State Committee before becoming a Regent. After his term as Regent was over, he chaired the College's Communications Committee that reorganized the way in which the organization communicates with its members, including the creation of a website and the regular use of the Internet to communicate with Fellows, which allowed *The Bulletin* to become a more substantive journal of the College's affairs. His survivors include his wife and two sons.

Wilbur Forrest Littlefield, '84, a longtime Los Angeles County, California, public defender, died June 9, 2012 at age 90. In World

War II, he served in the Pacific Theater as a leader of the Alamo Scouts, an elite all-volunteer unit of the Sixth United States Army consisting of 127 men organized in small teams to operate behind enemy lines. Predecessors of today's Special Forces, they performed 106 known missions, mainly in New Guinea and the Philippines, without the loss of a man and were credited with the liberation of 197 Allied prisoners of war in New Guinea and the capture of 84 Japanese prisoners of war. Many of his exploits are recounted in Larry Alexander's 2010 book, *Shadows in the Jungle*. After the war, he graduated from the University of California at Los Angeles and from the University of California's Hastings College of Law. He once told a reporter that he decided to become a lawyer after seeing scores of Filipinos suspected by their countrymen of being Japanese agents executed without trial. After seven years in private practice, he joined the Los Angeles County Public Defender Office, the nation's oldest, spending four decades there, the last seventeen as its chief. Among his more notable cases was the defense of serial killer Kenneth Bianchi for his role in the Hillside Strangler murders. A widower, his survivors include two daughters and two sons.

William Hillyer Mays, '81, a Fellow Emeritus from Gig Harbor, Washington, died August 21, 2012 at age 79. A graduate of Whitman College and of the University of Washington School of Law, he began practice with Gavin, Robinson, Kendrick, Redman & Mays in Yakima, Washington and later headed the Tacoma office of Williams, Kastner & Gibbs. He was actively involved in a number of golf-related organizations. His survivors include his wife of thirty-four years, three daughters and a son.

Frank James McGarr, '68, a Fellow Emeritus, former Judge of the United States Court for the Northern District of Illinois from 1970 to 1988 and its Chief Judge for five years, died January 6, 1990 at age 90 of Parkinson's Disease. The son of a Chicago plumber, he was a graduate of Loyola University and of the Loyola University School of Law. Between undergraduate and law school, he had served in World War II as Executive Officer of a destroyer escort, the *Howard Clark*, DE-533, participating in combat in the Philippines and in the invasions of Iwo Jima and Okinawa. He had taught at the Loyola law school before serving as an Assistant United States Attorney in Chicago, first as Chief of the Criminal Division and then as First Assistant, before entering private practice. He had taken leave of his firm in 1969 to become the top deputy to the Illinois Attorney General and the next year was confirmed to the federal bench. His tenure on the bench was marked by several high-profile cases, including Oakland A's owner Charles O. Finley's lawsuit against then major league baseball commissioner Bowie Kuhn, involving Finley's voided sale of three players to the Boston Red Sox and the New York Yankees. He had rendered what was at the time the largest award ever assessed in an environmental case arising from a 1978 oil spill off the coast of France. After his retirement from the bench, he joined the Chicago firm, Phelan Pope & John. In 1997, he had served as special counsel to the Illinois House of Representatives in impeachment proceedings against then Illinois Supreme Court Chief Justice James Heiple, who resigned after being censured by the Illinois Courts Commission. In the early 2000s, he had been appointed by then Governor George Ryan to head his Commission on Capital Punishment that paved the way for the state's 2011 abolition of the death penalty. His survivors include his wife of sixty-eight years, three sons and two daughters.

Chandler Robinson Muller, '98, Muller & Somerville, P.A., Winter Park, Florida, died

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August 27, 2010 at age 68. A former Eagle Scout, he was a graduate of the University of North Carolina, where he lettered in varsity lacrosse, and of the University of Florida School of Law. A sole practitioner whose primary practice was criminal defense, he was a founding member of the Florida Lawyers' Assistance Program. Until the time of his death, he had made quarterly contributions to the Inmate Account of a death row inmate whom he had represented pro bono thirty years earlier and who had no other resources. A member of the vestry of his Episcopal Church, he served as a Eucharistic Minister, delivering the sacraments of communion to the sick and hospitalized. A past President of the Orange County Bar Association, whose Professionalism Award he had received, and a past member of the Florida Bar Board of Governors, he had been honored with a Jefferson Award for Public Service. His survivors include his wife, a daughter and a son.

Knox Dillon Nunnally, '95, Vinson & Elkins L.L.P., Houston, Texas, died July 16, 2010 at age 69 of cancer of the brain. Attending the University of Texas on an athletic scholarship, he played in two Cotton Bowls and an Orange Bowl under legendary coach Darryl Royal on a team that over three years won thirty games, lost two and tied one. The team was ranked the top college football team of 1963, defeating then top-ranked Alabama in a goal-line stand in the 1964 Orange Bowl. A unanimous All-Southwest Conference defensive end in 1964, he was named to the Academic All-America Football Squad. He was also a member of ODK and graduated with honors from the University of Texas School of Law. He spent his entire forty-year career at Vinson & Elkins. One of his notable cases was his successful pro bono defense of a Marine officer in a seventeen-day court of inquiry arising out of an ambush near the Kyber Pass in Afghanistan. He was a recipient of the Texas Bar Foundation's Ronald D. Secrest Outstanding Trial Lawyer Award and had served as Chair of the College's Texas State Committee. His survivors include his wife of thirty-eight years and a son, a lawyer who before entering law school had served three tours of duty in Iraq.

William J. O'Brien, '88, Conrad O'Brien PC, Philadelphia, Pennsylvania, died May 7, 2012 at age 77 after a long illness. A graduate of LaSalle University and of the Villanova School of Law, he began his career at Pepper, Hamilton & Sheetz, where he became a partner. He had left that firm in 1982 to form his own firm, Conrad O'Brien, where he practiced for thirty years. A Past President of the Philadelphia Association of Defense Counsel and a recipient of its Distinguished Service Award, he had lectured extensively on trial advocacy, including serving as an adjunct professor of trial advocacy at Temple University School of Law. His survivors include his wife, a daughter and a son.

Robert Hobson Patterson, Jr., '75, a Fellow Emeritus, retired from McGuireWoods LLP, Richmond, Virginia, died July 21, 2012 at age 85. The son of a railroad man and a nurse, he was the last survivor of the nine original members of what is now McGuireWoods LLP, of which he was chairman for ten years. His undergraduate education at Virginia Military Institute was interrupted by World War II, in which he served in the United States Navy. Turning down an appointment to Annapolis, he returned to VMI and then earned his law degree at the University of Virginia School of Law, where he was a member of the law review and president of his class. One of a dying breed of generalists, he handled major cases in many area of the law. He is perhaps best remembered for his ultimately unsuccessful defense of his alma mater, VMI, against a suit brought by the United States Department of Justice that challenged that state-supported institution's 150-year old

males-only admission policy. He had been President of the Richmond Bar Association and the Virginia State Bar and President of both the VMI Alumni Association and its Board of Visitors. VMI had honored him with its Distinguished Service Award and the New Market Medal. He had also been president of the Virginia Home for Boys and the Commonwealth Club. A widower who had remarried, his survivors include his wife, also his law partner, Anne Marie Whittemore, herself a Fellow of the College, two daughters, a son and a step-son.

Anthony Savage, '96, Seattle, Washington, died January 3, 2012 at age 81 of cancer. An Eagle Scout, the son of a former United States Attorney, a graduate of Wesleyan University, Middletown, Connecticut, where he was a member of the football team, and of the University of Washington School of Law, he had served as a prosecuting attorney before launching a career as a criminal defense lawyer. Six and one half feet tall, he was an imposing presence. Among his high-profile defendants was Gary L. Ridgway, the Green River Killer. He had also served as attorney for the 1962 Seattle World's Fair. His wife had predeceased him.

Sidney Oslin Smith, Jr., '80, a Fellow Emeritus from Gainesville, Georgia, died July 14, 2012 at age 88. A graduate *cum laude* of Harvard College, where he played varsity football and was elected to Phi Beta Kappa, his undergraduate education had been interrupted by World War II, in which he served as a Captain in the United States Army. A *summa cum laude* graduate of the University of Georgia School of Law, he had first practiced for thirteen years in Gainesville, Georgia, also serving as an assistant prosecuting attorney. He served for three years as a Judge of the Superior Court and then for nine years as United States District Judge for the Northern District of Georgia, the last six years as Chief Judge. Leaving the bench in 1974, he became a partner in Atlanta's Alston, Miller & Gaines. Long interested in education, he had chaired the Gainesville Board of Education and the State Board of Regents and was a trustee of Brenau University for over thirty-five years. The graduate school at that institution is named for him. He had served as Senior Warden and in numerous other positions in his Episcopal Church, in which at his death he was the longest serving member. A widower who had remarried, his survivors include his wife, two daughters, a son and a stepson.

Jay Ward Wason, '75, Cazenovia, New York, died April 3, 2012 at age 85. Enlisting in the United States Navy in World War II, he served on the *USS Beaver* in the Pacific Theater. After the war, he earned his undergraduate degree from Syracuse University, where he was a member of the boxing and cross country teams, and his law degree from the Syracuse University School of Law. He spent his career with the Syracuse firm, Mackenzie Hughes LLP, retiring in 1999. He had chaired the College's Upstate New York Committee. A former President of the Syracuse Law Alumni Association, he had served as a member of the Law School's Board of Visitors and had been honored with an Alumni Distinguished Service Award. Long active in support of Syracuse athletics, he had been President of the Varsity Club and had been named a Letter Winner of Distinction and was an honoree of the Ernie Davis MVP Award. A supporter of Le Moyne College, he had served as a trustee and a member of its Board of Regents. He and his wife were also generous supporters of Cazenovia College, whose Board of Trustees he had chaired. He had been honored with that institution's Distinguished Service Award. His survivors include his wife of fifty-seven years, a daughter and two sons. ■

THE BULLETIN

American College of Trial Lawyers
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"In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships."

— Hon. Emil Gumpert,
Chancellor-Founder, ACTL

Statement of Purpose

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.