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THE BULLETIN

JUSTICE O'CONNOR AND PAST PRESIDENT LANCASTER

Speak of Civics, History and the Future

A highlight of the 2012 Spring Meeting was the informal, on-stage conversation between retired United States Supreme Court Associate Justice **Sandra Day O'Connor** and Past President of the College, **Ralph I. Lancaster, Jr.**, of Portland, Maine.

President **Thomas H. Tongue** remarked that Justice O'Connor needed no introduction to the assembled guests, so Lancaster joined O'Connor on the stage for a relaxed, humorous and personal conversation ranging from her favorite horse to her path to the Supreme Court.

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American College of Trial Lawyers

THE BULLETIN

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

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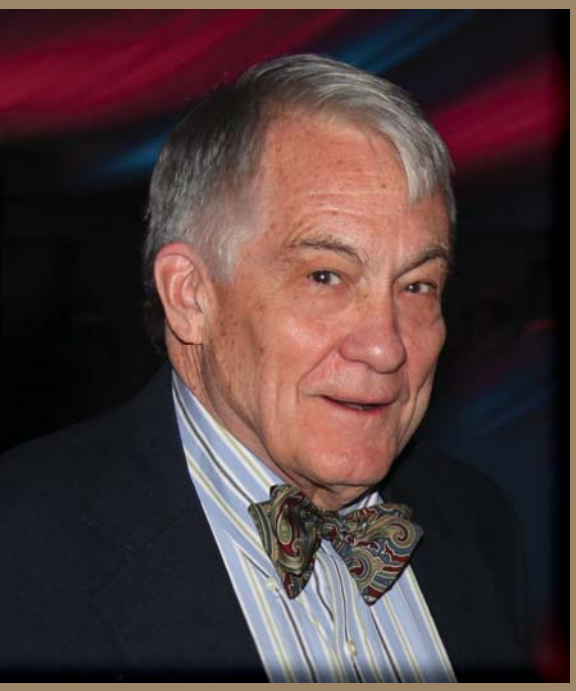
FROM THE EDITORIAL BOARD

Through the end of the 1990s, *The Bulletin* was just that, a newsletter bulletin board devoted to keeping the Fellows abreast of current developments.

Over the years since 2000, as the College began increasingly to rely on its website and the Internet to communicate current matters, *The Bulletin* has evolved into a journal. It now covers in depth the rich substance of national meeting programs, articles on topics of interest to the trial bar and significant activities and achievements of Fellows.

Some years ago, a new In Memoriam section began to celebrate the lives and inspiring life stories of departed Fellows. Collectively, these memorials paint a lasting picture of a remarkable group of trial lawyers, bound together by the enduring values that led to the creation of the American College of Trial Lawyers sixty-two years ago.



E. Osborne "Ozzie" Ayscue, Jr.

Over the years since 2000, *The Bulletin* has been written in great part by Editor **Marion A. Ellis**, who was the co-author of *Sages of Their Craft*, the fifty-year history of the College, and Past President **E. Osborne "Ozzie" Ayscue, Jr.** Marking a transition, this issue of *The Bulletin* and the last were produced by the College staff, who will continue to report on regional and national meetings of the College in future issues. An interim summer issue will be a collective effort of articles reported by Fellows.

Future issues will be under the co-editorship of Past President **Andrew M. Coats** and Canadian Fellow **Stephen M. Grant**. Ozzie Ayscue has agreed to continue writing the In Memoriam section and with his years of experience and expertise will serve as Editor Emeritus.

Andy Coats and Stephen Grant look forward to hearing from the Fellows with ideas, suggestions and assistance as they seek to continue making *The Bulletin* interesting and relevant to our readers. Please contact the National Office with any questions, or to volunteer your service, at nationaloffice@actl.com.

FIFTY-EIGHTH SPRING MEETING HELD IN SCOTTSDALE

Fellows of the College, their spouses and guests gathered on March 8 in Scottsdale, Arizona at the Fairmont Scottsdale Princess for the College's fifty-eighth Spring Meeting >>

A.. Dick Honeyman, Bonnie Honeyman, Wichita, KS

B. Foundation Treasurer Walt Sinclair, Kristin Sinclair, Boise, ID

C. Regent David Hensler, Washington, D.C.; Regent Jeff Leon, Toronto, ON; Former Regent Paul Meyer, Costa Mesa, CA

Over the preceding three days, the Board of Regents, led by President **Thomas H. Tongue** of Portland, Oregon, met to receive reports of various College committees, to deal with the pending business of the College and to consider eighty-seven nominees, each individually presented by the Regent who had conducted an investigation of their qualifications for membership. This was the first board meeting for new Regents **Rodney Acker** of Dallas, Texas, **James M. Danielson** of Wenatchee, Washington, **Michael F. Kinney** of Omaha, Nebraska, and **William H. Sandweg, III** of Phoenix, Arizona. The Board of Trustees of the College Foundation had also met to deal with its ongoing affairs. On Wednesday evening, the Regents hosted a reception and dinner honoring former Regents and current state, province and general committee chairs at the Desert Mountain Club, nestled in the hills above Scottsdale. On Thursday evening, the arriving Fellows and inductees, their spouses and guests and program participants and their guests were treated to a reception at the Fairmont's Pavilion. In keeping with tradition, banners marked separate areas of the Pavilion where Fellows could meet with attendees and greet new inductees from their regions.

The College's General Committees met on either Friday or Saturday before the morning programs. A breakfast for inductees provided an occasion to introduce them to the College, to the way in which it functions and to the obligations that accompany their election to membership.

The morning programs for all attendees and their guests had been arranged by President-Elect **Chilton Davis Varner** of Atlanta, Georgia.

The Friday program commenced with an invocation by **Louis A. Ruprecht** of Milburn, New Jersey.

The first speaker, **Dan McGinn**, Founder and Chief Executive Officer of McGinn and Company, Arlington, Virginia, gave a presentation entitled *America's Changing Perspective on Risk, Loyalty and Litigation*. McGinn explored the dilemmas posed by a world of information overload and constant change.

The Honorable **Alice C. Hill**, Senior Counselor to the Secretary of Homeland Security, Washington, D.C., whose address was entitled *Homeland Security and the Law,* gave an overview of the functions of this newest of the federal agencies, created to coordinate the work of multiple government agencies whose duties involve preventing terrorism and enhancing our domestic national security.

In a presentation entitled *Is My Mind Mine?* **Dr. Paul Root Wolpe**, Director of the Center for Ethics at Emory University of Atlanta, Georgia, explored the impact on the law of modern brain imaging technology. His presentation raised the questions of whether the products of brain imaging are "testimonial."

Author **Melissa Fay Greene** of Atlanta, Georgia, twice nominated for a National Book Award, the wife of College Fellow Donald F. Samuel, shared a chapter from her latest book, *No Biking in the House Without a Helmet*. It is the entertaining and engaging story of their venture in raising nine children, including, in Past President **Warren B. Lightfoot**'s introductory description, "the four who came home from the hospital and the five who came home from the airport."

The last speaker of the morning was *New Yorker* writer-reporter **Nicholas Schmidle** of Washington, D. C. His address, *Getting bin Laden*, was a thoroughly researched account of the night of May 1, 2011, when Osama bin Laden was captured and killed in his Pakistani hideout by a team of Navy SEALS.

On both Friday and Saturday afternoons, Fellows and their guests chose to participate in tours of the various features of the surrounding area and in golf and tennis tournaments.

On Friday evening, the attendees were treated to a reception, dinner and dance labeled *A Taste of Arizona* in the Grand Ballroom of the Fairmont Princess.

The Saturday morning program began with an informal, on-stage conversation between Retired United States Associate Justice and Honorary Fellow **Sandra Day O'Connor** and Past President **Ralph I. Lancaster, Jr.** of Portland, Maine. In a wide-ranging, often-humorous interview the Justice discussed her current passion for reviving education in civics and for judicial selection reform, her childhood and her career.

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In an address entitled *The Interchangeable Body,* Dr. **Linda C. Cendales**, Director of the Emory University Transplant Center VCA Program, Atlanta, Georgia, described how advances in medical science have made possible the transition from life-saving organ transplants to "quality of life" transplants to replace missing limbs.

The Honourable **William Ian Corneil Binnie**, retired Justice of the Supreme Court of Canada, inducted as a Fellow of the College before his elevation to the bench, gave an address entitled, *Getting it Done in the Supreme Courts of the United States and Canada: Different Strokes for Different Folks.* Justice Binnie discussed the differences between the two courts in their approaches to advisory opinions and oral argument.

The last Saturday presentation was a professional program entitled *Theft: A History of Music.* Professor **James Boyle**, Co-Founder of the Center for the Study of the Public Domain at the Duke University Law School in Durham, North Carolina, and Professor **Jennifer Jenkins**, the Director of that Center, used the historical borrowing of music to illustrate the impact of evolving copyright law in an age in which technology has made creative works virtually universally available.

A luncheon followed the Saturday morning program, at which Past President **Joan A. Lukey**

A.. Emil Gumpert Award Committee Chair Gary Bostwick, Los Angeles, CA; Regent Bill Kayatta, Portland, ME; Past President Joan Lukey, Boston, MA

B. Ken Ravenell, Mary Kaye Sullivan, Baltimore, MD

C. Past President Jack Dalton, President-Elect Chilton Davis Varner, Morgan Varner Atlanta, GA

D. And They're Off! Saturday morning 5K run

E. Inductee Jane Moscowitz, Norman Moscowitz, Miami, FL

F. Kathleen Trafford, Buzz Trafford, Columbus, OH

G. Inductee Jane Rigby, Cliff Rigby, Newark, NJ

H. Ohio Fellows

I. Inductee Scott O'Toole, Hon. Lisa Napoli O'Toole Seattle, WA

J. Jane Byman, Regent Bob Byman, Chicago, IL; Regent Rodney Acker, Judy Acker, Dallas, TX

K. Nancy McGregor Manne, Inductee Neal Manne, Houston, TX

introduced the Inductees, their spouses and guests to the process by which they had been selected and invited to fellowship and to the history and traditions of the College.

The Spring Meeting culminated with a reception and black-tie dinner at which the new Fellows were formally inducted into the College. After an invocation by Former Regent **Francis X. Dee** of Newark, New Jersey, Past President **John J. (Jack) Dalton**, of Atlanta, Georgiadelivered the sixty-one year old induction charge authored by College Founder and Chancellor the late Judge Emil Gumpert to the assembled inductees.

Inductee **Paul Michael Pohl** of Pittsburgh, Pennsylvania, responded on behalf of the inductees.

The evening ended with dancing and the traditional sing-along.

In the best tradition of the College, the Spring Meeting sent the participants back home with a renewed appreciation for the College's tradition of collegiality and with substantive ongoing food for thought.

The next Annual Meeting of the College will be held at the Waldorf=Astoria Hotel in New York, New York, October 18-21, 2012. ■


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CONVERSATION WITH SANDRA DAY O'CONNOR: FROM THE RANCH TO THE COURT ... AND BEYOND

After graduating from Stanford Law School, Justice O'Connor returned to her home state to practice law and later went on to serve as Maricopa County Superior Court judge, Arizona Court of Appeals judge, and Arizona State Senator. In 1981, she again left Arizona when called by President Ronald Reagan to serve as the first female Justice of the Supreme Court of the United States.

While on stage at the meeting in Scottsdale, Justice O'Connor and Past President Ralph Lancaster discussed iCivics, an online program that introduces elementary and middle school children to civics and the Constitution with a goal toward more-knowledgeable and engaged citizens of the future.

Although iCivics is Justice O'Connor's current pet project, she carries a catalogue of interests that date to her youth on the family's Arizona ranch. Her childhood memories traveled with the Justice as she served on the nation's highest court for a quarter of a century. Having returned to private life in 2006, Justice O'Connor now shares her childhood memories of life on the ranch and her observations of a life well lived as the author of best-selling books for readers of all ages.

The lightly edited transcript of Justice O'Connor's conversation with Ralph Lancaster follows: >>

IT'S ONLY SEMANTICS

PAST PRESIDENT RALPH I. LANCASTER, JR.:
I have a good friend, Justice O'Connor, who says that retire means re-tire, to put new treads on.

HON. SANDRA DAY O'CONNOR:
Yes, put new tires on, to start over.

LANCASTER: Exactly.

JUSTICE O'CONNOR: Well, that's a good idea.

iCIVICS – A PASSION

LANCASTER: I've been looking at what you've been doing, and I think you've worn out three full sets of tires since you retired. One of the most impressive, to me, is iCivics. As I understand it, you and Justice Breyer hosted a convocation at Georgetown.

JUSTICE O'CONNOR: Yes, and I'll tell you how it came about. When I stepped down from the Court, it seemed to me there was much criticism of judges. I'm sure you read it and heard it too; it was everywhere. Judges were called every bad name I can think of, and they were compared unfavorably to a lot of people. It was reaching the point that several of us on the Court thought it would help to have a conference and invite leaders from around the country to talk about the trend to find out what was going on and what we could do.

We held a conference at Georgetown Law School in Washington. We put our heads together, and I asked all the members of the Court to help me think of the people we should try to get there. We had a very good assembly of people and a marvelous program designed to focus on the criticism of courts and judges, to identify what the problem was, and to talk about it.

The conclusion we reached was that the problem was the product of a lack of education and understanding about the role of courts and the role of judges.

The lack of knowledge seemed odd to us. We're in the legal profession. We know about it. We go to court. We know what it's all about. As members of this organization, you certainly do. But the general public does not, and the extent of the lack of knowledge was very disturbing. So we tried to talk about what we could do. It boils down to education.

And it turns out that about half of the states in the United States have discontinued requiring civics education during the grade school years. I remember having civics every year. I thought it was sometimes dull and boring, to tell you the truth, but at least we had civics instruction and we learned something.

Dull or boring or not, they don't teach civics in many states today, and the results are terrible. About two-thirds of young people getting through eighth grade today cannot name the three branches of government, much less say what they do. And adults aren't much better. It's shocking. You can't imagine how little understanding there is in this country today among people of all generations about our form of government, how it works, how it's organized, and the role of the individual within the system.

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A LITTLE HISTORY

Now, we didn't start out, as you know, with the right to a public school education under the Constitution. It wasn't until the early 1800s that people started saying we should have public schools in this country; that we should educate young people about our system of government. Since that time, the country has decided to have public schools; to educate students; to teach civics; to teach how the government is structured, what the Constitution provides, and how it works.

In recent years about half the states have stopped making civics and government a school requirement. Now we're focused on math and science and a little reading, but not civics. The results have been frightening. That was what stimulated me and a few others to start a website covering civics.

IT STARTED WITH OUR COURTS

LANCASTER: As I understand it, you started something called Our Courts, and that has morphed into something called iCivics.

JUSTICE O'CONNOR: At first we were dealing only with the court system, because that's what the Justices who came to that first meeting thought we ought to focus on. Goodness, you ought to hear the members of Congress talk about the courts. They're neither informed nor enthusiastic about judges and courts.

Our first effort was to put up a web program called Our Courts. What I did initially was to contact teachers of young people through the eighth grade. We found out from every state what the requirements were for teaching, and then we designed a program to teach young people how courts and judges operate and what they do.

It was pretty good. We taught by using games that young people could play on a computer. We know that young people through the eighth grade spend, on average, seventy hours a week in front of a screen, whether it's a TV or a computer. I just need an hour or two. I don't need seventy hours, and I can teach them something.

"BRANCHING" OUT

After two or three years using Our Courts, I decided that we should expand our teaching of civics beyond the judicial system to the other two branches of government. We hired some great designers of computer games for young people, and we consulted a group of teachers for the lower grades across the country about what subject matter ought to be encompassed. We had good guidance and we put together some marvelous games. We now have eighteen different games on the website.

I encourage everyone to look at the iCivics website. If you have children or grandchildren in your household, encourage them to look at it. The games are fun, and they effectively teach as they go. I am very enthused about it. I now have at least one chairperson in all fifty states. We are trying to work with each state to get the schools well acquainted with the program and to get them to use it. *[Editor's Note: See* www.icivics.org.*]*

A few states have started passing Sandra Day O'Connor laws to require it. I think that's a good idea. So you can tell your legislators to do the same thing, because iCivics really works. It's fun. We've tested young people before and after they've played the games. They learn a lot, and it's fun for them to do. How could you go wrong? They're learning something.

WE CAN ALL MAKE A DIFFERENCE

LANCASTER: What can we do to advance the cause for you and iCivics?

JUSTICE O'CONNOR: You can be helpful because you know people in each of your states who control the education system in your state. If you get your State Secretary of Education familiar with the iCivics program and get her commitment to use iCivics in the grade schools, you will have done your part.

Many of you probably know the person to contact in your state. If not, get acquainted and see what you can do. You can make a difference, you really can. And I would love it if you would be interested enough to get iCivics in use in your state.

LANCASTER *[to the audience]*: I wouldn't want to suggest that if you don't follow that direction, you'll be found in contempt, but it's a real possibility.

A NEW CIRCUIT RIDER

[to Justice O'Connor]: Now, in addition to your absorption with iCivics, you've been sitting on circuit courts around the country?

JUSTICE O'CONNOR: I have. Some of the circuits seem to think it's good to have a visit from a retired Justice. So I've been sitting around the country with some of the circuits, and my next sitting will be in the Fourth Circuit. I follow that with a visit to the Third Circuit in Philadelphia.

I've sat with the Fourth Circuit two times already, and I must say, I think it is one of the best-run of all the circuits in the country. I like the Fourth Circuit very much; I think they're organized quite effectively.

LANCASTER: Now, I can't resist asking this question of you.

JUSTICE O'CONNOR: Okay.

LANCASTER: I may be in contempt. But I'm assuming that as a result of sitting on the various circuits, and you've sat on a lot of them, that there has come a time when you were faced with an issue which had been decided by the Supreme Court, and a Justice O'Connor had dissented from that opinion, and you had to either author or join in that opinion...

JUSTICE O'CONNOR: No, I really haven't had to face that head on yet. I think most of the circuits, when they're figuring out what to assign the panel, have avoided that situation.

LANCASTER: I was going to follow up by asking you if you ever wrote one of those opinions and it began something like "x years ago I dissented in such-and-such a case. The others were wrong then. They're wrong now."

JUSTICE O'CONNOR: Well, that sounds all right to me, but I haven't faced that situation.

OUTDOORSMAN O'CONNOR

LANCASTER: Let me ask you, on a personal side, are you still riding horses?

JUSTICE O'CONNOR: A horse? Not if I can help it. Before I could walk, they had me sitting on a horse. And I rode all those years on the ranch and many years later for recreation. But it gets you kind of sore when you're old and creaky like I am.

LANCASTER: Are you still fishing?

JUSTICE O'CONNOR: Yes, absolutely.

LANCASTER: Are you still playing tennis?

JUSTICE O'CONNOR: Very little, because I don't run fast enough to get the ball.

LANCASTER: Still playing golf?

JUSTICE O'CONNOR: Yes.

COWGIRL O'CONNOR AND THE RANCH

Justice O'Connor as a young girl, astride her beloved Chico.

JUSTICE O'CONNOR: Well, the photograph of me on a horse was at an age when I could ride. I had a wonderful little horse. My favorite horse when I grew up on the ranch was one named Chico, which means "small" in Spanish. It was a horse that we found in a wild horse herd. You don't often get a good riding horse out of a bunch of wild horses, but Chico was fabulous, and I loved him. If I fell off, he would stop and wait for me to get back on. No other horse would do that, so Chico quickly became my favorite.

LANCASTER: Was this on the Lazy B Ranch where you rode Chico?

JUSTICE O'CONNOR: Yes.

LANCASTER: And wasn't that ranch in excess of 100,000 acres?

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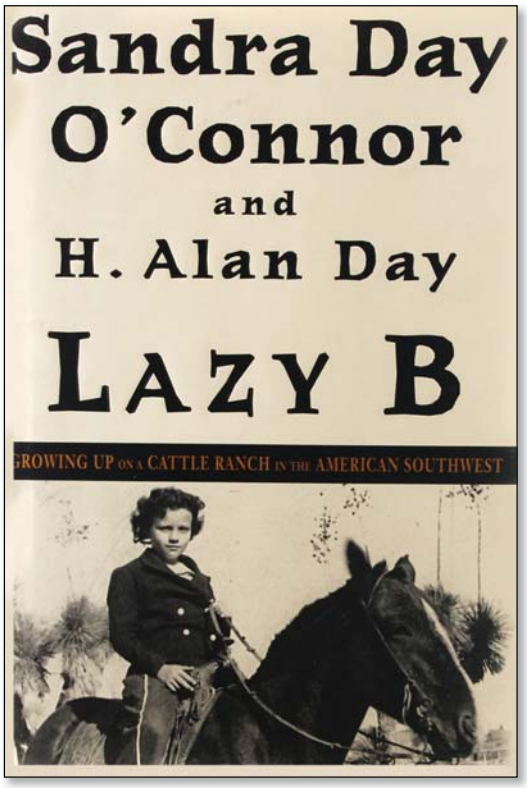
JUSTICE O'CONNOR: Well, it was approximately 300 square miles in size. It was on the New Mexico-Arizona border, along the Gila River. My grandfather, Henry Clay Day - how do you like that? - founded it and established the ranch there in 1880 when New Mexico and Arizona were joined as one entity. He had to buy cattle for the ranch. When he went down to Mexico to buy a herd of cattle, the cattle he bought had a *Lazy B* brand on them. That's a *B* lying on its side. A brand, if it's lazy, is lying down. So we just used the name for the ranch, *Lazy B*, ever after, and it's still called the Lazy B Ranch.

LANCASTER: We have a book called *Lazy B*.



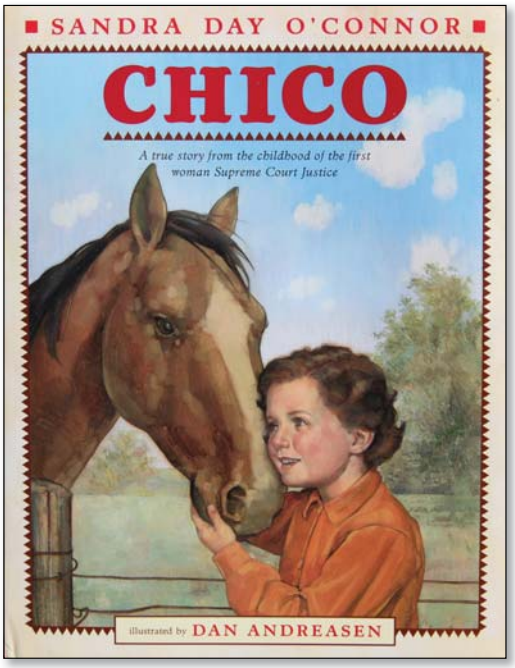
Cover of Lazy B, *published 2002*

JUSTICE O'CONNOR: That's right. That's pretty fun. My brother and I wrote that, and it tells stories from the ranch about how it worked and some of the characters and some of the happenings. I think it's a lot of fun, to tell you the truth.

LANCASTER: And you wrote about Chico?

JUSTICE O'CONNOR, THE AUTHOR

JUSTICE O'CONNOR: I did. I wrote a children's book called *Chico*, and that was fun. It's a good little book for children or grandchildren.



Cover of Chico, *published 2005*

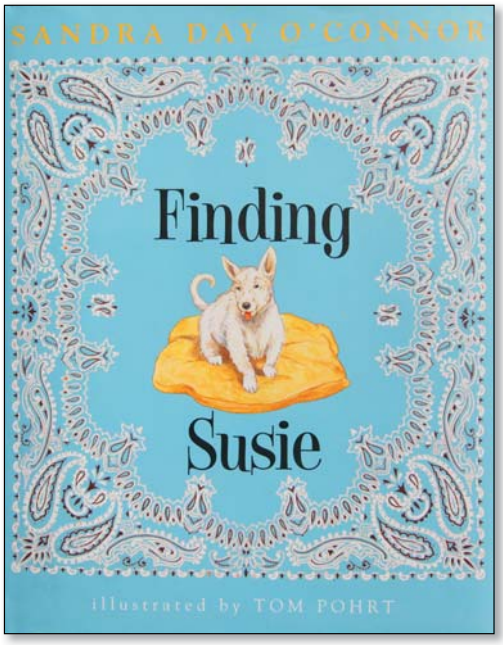
LANCASTER: Now, the heroine is a woman named Sandra.

JUSTICE O'CONNOR: How could that be?

LANCASTER: So is that sort of autobiographical?

JUSTICE O'CONNOR: Yes, it's about my favorite little horse, Chico.

LANCASTER: Then you wrote one called *Finding Susie*.



Cover of Finding Susie, *published 2009*

JUSTICE O'CONNOR: That was our little dog at the ranch, and that's a good story, too. And then I wrote *Majesty of the Law*.

I have a new book contract.

LANCASTER: I was just going to ask you about that. The rumor mill is that you have a new book coming out.

JUSTICE O'CONNOR: I do, and it's more about the Court, but I hope it will be of interest and entertaining.

And then I'm going to get busy and write one called *How the Cowgirl Got to the Court*. So I'll get busy on that soon.

ELECTED OR APPOINTED?

LANCASTER: Let me ask you your opinion of an elected judiciary?

JUSTICE O'CONNOR: You already know or you wouldn't ask. I have to say, I've been very outspoken on this issue. About half the states still try to elect some of their judges. Arizona was one of the states that elected its judges.

When I was in the State Senate in Arizona, one of the things that I tried to do was to put together an Amendment to the Arizona Constitution to provide that judges would not be popularly elected. And what we did was to apply the condition to the big counties, such as where Phoenix and Tucson are, but leave the other counties alone. We then provided for a merit selection plan for both trial and appellate courts in other areas of the state. This plan has worked out well.

LANCASTER: Before we leave the topic of elected versus meritbased judges, is your opinion based in any way on the fact that you were elected to the Superior Court?

JUSTICE O'CONNOR: No. I was away from the law for a while, as I was doing County Attorney things, and John and I moved to Arizona where they elected their judges. I had been plodding along in Arizona. I had a partner, and we had just opened shop in a shopping center in Maryvale, Arizona, hung up a shingle and took what we could get. We did not have the kinds of problems usually solved in the U.S. Supreme Court. We took a bunch of criminal appointments because it was in the days before public defenders, and we just did whatever we could to scratch out an existence.

After a time, I thought that it was time to maybe get back to the law and try to become a judge. I ran for a position, because Arizona still elected its judges, and I ran for a seat on the Superior Court. I had competition, but darned if I didn't win. And so I became a judge.

LANCASTER: Did you have to go out around raising funds?

JUSTICE O'CONNOR: Yes, and the people who contributed then, as now, I think, largely were the lawyers who would appear before me.

LANCASTER: I take it there were no Super PACs in those days?

JUSTICE O'CONNOR: I don't think so. That came a little later.

LANCASTER: That leads me to *Citizens United*. You're aware of the fact that a Montana court has said, "I don't care what the Supreme Court said. That is wrong, and we are not going to follow it."

JUSTICE O'CONNOR: Good for Montana.

LANCASTER: As I was doing research, I noted that the Supreme Court has issued a stay on the Montana decision.

JUSTICE O'CONNOR: No doubt.

LANCASTER: Justice Ginsburg was quoted as saying that a petition for cert will give the Court an opportunity to consider whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway. Do you want to comment on that?

JUSTICE O'CONNOR: Well, I don't have any business commenting on what the Court is doing now, and I try not to. But maybe the Court will have an opportunity, by virtue of that petition, to look at the question again. I certainly would not be shouting, "Oh, you can't do that."

LANCASTER: I thought you might, as a citizen, suggest how you felt about *Citizens United*.

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JUSTICE O'CONNOR: I have tried to keep my mouth shut when it comes to telling the Court what to do since I left it.

THE SCHOOL OF HARD KNOCKS AND FUN - THE EARLY YEARS

When I was first starting out, I practiced law. None of the firms would give me a job. *[To the audience:]* And I have to tell you this story, you need to hear it:

I got out of law school in 1952, and I had done very well in law school. I had all the honors and made the *Law Review* and all that stuff, and that was fine. It hadn't occurred to me that it would be hard to get a job after getting out of school. I just assumed I would be able to find something.

My husband, John, and I were engaged at that time to be married. He was a year behind me in school. We both liked to eat, and that meant one of us had to earn some money, and that person was me. There were notices on the bulletin board at Stanford: "Stanford Law Graduates, call us. We would be happy to talk to you about a job." I called at least forty firms on that bulletin board at Stanford. Not a single one of them would even give me an interview. They said, "Oh, you're a female. We don't hire women." I mean they wouldn't even talk to me.

I had an undergraduate friend at Stanford whose father was a lawyer in Gibson, Dunn & Crutcher in California. That was a big firm in those days and still is. I said, "Could you talk to your dad and maybe get me an interview there?"

She did, and I made a trip to Los Angeles to interview. You know, my friend's father looked like he belonged to the American College of Trial Lawyers, he was that distinguished. We had a nice conversation, but he said, "Miss Day, this firm has never hired a woman lawyer. I don't see the day when we will." I looked kind of shocked, and he said, "Well, our clients wouldn't stand for it." So that was the end of that. I looked dejected, and he said, "Well, now, would you like me to explore whether we could find a place for you here as a legal secretary?" And I said, "No, I don't think so. Thank you."

So I went off from that and I didn't know where to turn, because we were going to get married that Christmas at the Lazy B Ranch and I really did need a job. And I heard that the County Attorney in San Mateo County, California, had once had a woman lawyer on his staff. I wrote him a letter and made an appointment to see the County Attorney. He was very nice.

In California, they still elect the county attorney. It's an elected job, so they're gladhanders. They're always glad to meet you, hoping for a vote or something. I don't know.

We had a very pleasant conversation, and he said, "Yeah, I had a woman lawyer here and she did fine, and I would be happy to have another one. Your qualifications are good. I would be willing to have you, but I get my money from the Board of Supervisors, and I'm not funded to hire another deputy right now. The supervisors determine how much to give me, and I've used the money I have, and that's it for now." And he said, "Let me show you around the offices," and he walked me around, and he said, "As you can see, I don't have an empty office to put another deputy in right now."

So I went back to the Lazy B Ranch to finish making plans for our wedding, and I wrote him a letter and said, "I really enjoyed meeting you and seeing your offices. I know you don't have any money, but I would be willing to work for you for nothing until such time in the future as you get a little more money. I also know you don't have an empty office, but I met your secretary and there's room there to put a second desk, if she wouldn't object."

That was my first job as a lawyer. I received no pay, and I put my desk in with the secretary. But you know what? I loved the job. I really did. I had the best time. I got all these legal questions from county officials and boards and commissions asking about problems and asking for opinions. I got to do the research and draft up something, and if the county attorney approved it, off it went. I was having a good time.

My classmates, ninety-nine percent of whom were male, had some good-paying jobs in the law firms, and they were taking depositions and doing research. They weren't having the fun I was having. So I liked my first job, such as it was.

THE RIDE TO THE HIGHEST COURT

LANCASTER: Let's return to how the cowgirl

got to the Court. So you're sitting in your chambers. You're now on the Appellate Court in Arizona, and the phone rings and somebody named William French Smith is on the line and asks to speak to Judge O'Connor. Were you surprised, or had you been waiting for the call?

JUSTICE O'CONNOR: No, I had not been waiting for the call. It's hardly likely that some cowgirl from Arizona and some State Court Judge in Arizona would be considered for the nation's highest court. It had not been my aspiration. It had not been my expectation. And it was actually frightening to get a call and be asked to come to Washington and talk to people about a potential Supreme Court seat. It was not anything that had been on my list of goals and objectives, because I thought it was so unlikely.

And it was amazing. I did go, out of curiosity, if nothing else, and met with the people in the Cabinet there closest to President Reagan. When he had been campaigning for the presidency, trying to get the nomination, he thought he was not getting enough support from women and he started saying, "Now, if I become President and if I have a chance, I would like to put a qualified woman on the U.S. Supreme Court."

And little did he know he was going to get elected and have that chance, and in the process his Attorney General, William French Smith, asked me to come back. Bill Smith told me sometime later that when he took the job as Attorney General, he knew he would probably be consulted in the event there were a vacancy on the Court. He started keeping a list of names that he hand-wrote, and he kept it under the telephone in his office at the Department of Justice. And he said my name ended up on that list.

I'm still not sure how. I don't think he was sure how. But it ended up on that list. And it's partly because there were so few women judges in those days, and of those that were serving, almost none of them were Republican. So being a Republican woman judge caught their attention. That's probably how my name got on the list, but I thought it was so unlikely.

We already had a wonderful justice from Arizona in Bill Rehnquist. Bill Rehnquist had moved to Arizona after getting out of law school at Stanford. He and his wife were happily living in Phoenix and enjoying life there, when he had taken some kind of a job back in Washington because he still had political interests.

I just thought it was very unlikely, but I went back and met with the Cabinet members. They had taken a hotel suite in a place in downtown Washington and they spent the morning giving the various people around President Reagan a chance to talk to me, as a group and then individually, if they wanted. And after everyone had asked their quota of whatever it was, we left and William French Smith said, "Now, I would like you to come down to the White House tomorrow. Would you do that and be there at *x* hour?" And I said, "Well, fine. Where is it?" I hadn't been to Washington.

So I had him tell me where it was. He took pity on me, and he said, "Well, I'll have my secretary pick you up. She drives an old green Chevrolet." And so I stood on the corner at Dupont Circle and looked for the car, and sure enough, here she came, and she took me down to the White House. We sat and waited until the President had time, and then I went into the Oval Office. And if you haven't seen it, it's small. You don't expect to go into the Oval Office and have it be such a small space. But it was, and there was President Reagan, looking fine.

I had met him a time or two because Nancy Reagan's parents lived in the Biltmore Circle here in Phoenix. Ronald Reagan came with Nancy several times to Arizona, and he had spoken at Republican events in Arizona a time or two. So I said, "How do you do," but I didn't know him.

And so we sat and had this nice conversation in the Oval Office, and frankly, he was more interested in horses and ranch life than he was in legal issues. So we didn't spend much time on the law, and we spent a lot of time on horses. The time went by very quickly and pretty soon it was up and it was my time to leave. So I did.

I went to the airport that evening to fly back to Phoenix, and I remember sitting down in my seat on the plane and breathing a big sigh of relief and saying, "Well, that was interesting, but thank goodness I don't have to go back there and do that job."

And I was sitting in my chambers at the Court of Appeals in Arizona some days later and the phone rang, and it was President Reagan on the phone, and he said, "Sandra?"

"Yes, sir, Mr. President."

>>

"I would like to announce your nomination for the Court tomorrow. Is that okay with you?"

[*Editor's note: Justice O'Connor jumped to indicate her surprise.]* Well, to tell you the truth, it wasn't; but what am I going to say? I mean it's wonderful to be asked to be the first to do something. I have a certain spirit of adventure. But I didn't want to be the last woman on the Court, and if I took that job and messed it up, that might happen. I was very concerned about it. I called John O'Connor and we chatted,

and he said, "Well, of course you can do it. You'll do fine. You'll do fine. Just don't give it a thought."

Well, I did give it a thought, but as you know, I ended up doing it with all my concerns about qualifications. But it was a very interesting, wonderful place to be, and the Court worked, I thought, quite well as an institution and still does. It's amazing, and the Justices handle the cases well. They really do prepare. They read all the briefs, precedents, and cases, and they address the issues directly. And they don't always agree, but they know how to disagree agreeably. That's the main thing I like to teach young people in school today: to learn how to disagree agreeably.

CIVILITY REIGNS

We're living in an age where it's considered good politics to shout and scream at each other, to insult each other, and to be confrontational, rather than constructive. We really need to move to constructive engagement in public life.

[Editor's note: Enthusiastic applause from the audience.]

[addressing the audience]: I think that's where you come in. I really admire this organization of yours, the American College of Trial Lawyers. You're the best. You really are. You have a great membership. And there's so much discord and so much confrontational politics today. Every one of us needs to get in the business of making people 'cool it' and have reasonable discussions and learn how to disagree agreeably.

That's what our message needs to be, and I know we can do it. You're the people who can most effectively teach that, because you learned that a long time ago. That's what you have done and it's made you successful. That's what I want our nation's politicians to do, and it's what I want our young people to learn. So that's my hope.

LANCASTER: There's a wonderful excerpt from William French Smith's memoirs about this whole episode. As I recall it, he sent people out to interview you.

JUSTICE O'CONNOR: He did, including Ken Starr. I didn't know that at the time. I learned it later.

NEW FRIENDS

LANCASTER: Now the seat you took [on the Court] was Potter Stewart's seat.

JUSTICE O'CONNOR: Yes, Potter Stewart had been serving and he had done a great job. He was a very good Justice, I think, and he decided to retire about four months after President Reagan had taken his oath of office.

LANCASTER: Yes. I stumbled across a little limerick that read:

> A toast to Potter Stewart.
> His chivalry can't be beat.
> The first Supreme Court Justice
> to give a lady his seat.

But it was, as I understand, really Lewis Powell who was your mentor on the Court.

JUSTICE O'CONNOR: Well, he was my closest neighbor. I was put in a chambers on the main floor of the Supreme Court and my closest neighbor was Lewis Powell. He was a man who really enjoyed visiting with his colleagues on the Court. He didn't mind taking time to do it, and he was full of Virginia grace and personality and just nice and polite. Maybe that was it. But I would frequently stop in, and we would end up sometimes chatting about one of the cases that was coming up or something we had to decide. He was great.... I would say that Lewis Powell was the friendliest.

I had gone to school, as you know, with Bill Rehnquist and we were great friends in law school. He liked to play charades and so did I. We had a group where I lived, and we often played charades, and he would participate. We went to lots of movies, and he and I both liked to play bridge. We did all that stuff in law school. That was fun.

MAY I HAVE THIS DANCE?

LANCASTER: Now, my memory is, also, that at some point you said that Lewis Powell was a great dancer.

JUSTICE O'CONNOR: Oh, he was, and he said that on his tombstone it was going to read "The first Supreme Court Justice to dance with another Justice." I haven't been down there to check the tombstone, but I'll bet it's not there.

LANCASTER: Well, I think the total quote was, "The first Supreme Court Justice to dance with another Justice, so far as we know."

JUSTICE O'CONNOR: I've never heard that latter phrase. But he was wonderful. Was he ever a member of the American College?

LANCASTER: He was Past President of the College.

JUSTICE O'CONNOR: Past President. He just couldn't have been a nicer man.

LANCASTER: Tell me – you've served as a trial judge and a state appellate judge.

JUSTICE O'CONNOR: Right.

LANCASTER: Supreme Court Justice. And now you're sitting on the circuits. Have you sat on district courts, too, or just—

JUSTICE O'CONNOR: No, I'm not going to sit on a district court and do a trial. I think I wouldn't know the ins and outs of some of those rules these days, and the sentencing is a nightmare in criminal cases. I don't want to do that.

LANCASTER: Give us a sense, if you will, of the various experiences you have had as a judge and a Justice, the pluses and the minuses of all of those

different roles that you have played as a jurist.

JUSTICE O'CONNOR: Well, I don't find many minuses in being on the United States Supreme Court. It's a wonderful court and the members take their position very seriously, and they really try to do the best they can. I think it's a good system, and our system of having written opinions is a good one. I think we can be very proud of our United States Supreme Court and the system that produced it. I enjoyed being part of it.

There are times when you feel the majority reached the wrong decision, but you can say so in your own writing, if you feel strongly about it. I think the system works well, and we're lucky to have it.

SECURITY AND THE JUSTICES

LANCASTER: Tell me a little bit about the security >>

for the Supreme Court Justices and retired Supreme Court Justices. Does it depend upon the Justice, as to what he or she wants for security?

JUSTICE O'CONNOR: I guess, in part, it does. I never had any or asked for any security in connection with where I lived. If you travel to give a speech or something, the United States Marshals can provide the transportation and get the Justice or the judge into the entity. I was brought here today by somebody from the U.S. Marshals Service, which was great.

LANCASTER: I saw them, and I made up my mind that I would not make a sudden move as I sat here this morning. They're huge.

JUSTICE O'CONNOR: I don't think they all are huge. But they're so well qualified and so decent and so nice, and I've been grateful that I can get some of their help sometimes, even as a retired Justice.

LANCASTER: Well, I asked because I think we're all aware that Justice Souter was mugged when he was running from his condo ... at the end of the day.

JUSTICE O'CONNOR: And then recently...

LANCASTER: ...Steve Breyer.

JUSTICE O'CONNOR: Yes, Justice Breyer down in Nevis.

LANCASTER: St. Kitts.

JUSTICE O'CONNOR: He was on Nevis. Well, I visited down there, so I know where he was. And he was...

LANCASTER *[to the audience]*: The newspapers got it all wrong.

JUSTICE O'CONNOR: There was a robbery, and he was confronted by somebody with a machete or something.

LANCASTER: Yes. Happily, no one was hurt. He was robbed of only about $1,900 – so pocket change.

JUSTICE O'CONNOR: Yes, thank God no one was hurt. But that's scary.

LANCASTER: Well, it is... I know they talked to Dave Souter, because I've talked to him about it. And he was adamant that he wasn't going to change.

iCivics
www.icivics.org

Justice Sandra Day O'Connor founded iCivics in 2009 to reverse Americans' declining civic knowledge and participation. Securing our democracy, she believes, requires teaching the next generation to understand and respect our system of governance. Through the use of its comprehensive and educational standards-aligned curriculum, iCivics prepares young Americans to become knowledgeable, engaged 21st-Century citizens. The fun and interactive instructional games are available free online, at www.icivics.org.

The College has heeded Justice O'Connor's call to improve access to civics education for school-age children. In 2011, the Foundation of the American College of Trial Lawyers donated $35,000 to iCivics. This grant will support the development of a teaching tool for middle and high school teachers to educate students on the importance of the jury system and the perils to our democracy from the disturbing trend of vanishing jury trials.

Through the work of the Jury Committee and the State Committees, the College is identifying Fellows who will assist iCivics by volunteering to teach middle and high school students about the dangers associated with the demise of the jury trial. Fellow **Terry O. Tottenham** is spearheading the College's efforts.

If you are interested in volunteering with this project, or learning more about it, contact the College's National Office at nationaloffice@actl.com

JUSTICE O'CONNOR: No, he didn't want anybody tracking him down from the Marshals Service.

LANCASTER: And that was not a good neighborhood he was living in down there.

JUSTICE O'CONNOR: No, he didn't live in a perfect neighborhood.

LANCASTER: No. The first time Mary Lou [Mrs. Lancaster] and I went shopping for groceries down there, we went in, and I saw him pushing his shopping cart. I came up behind him and pushed my cart into his. "Oh, Ralph," he said, "you're here, you shop here? I shop here every Friday night." But he said that when he first went down there, when he went into the supermarket, there was the outline of a body in the entrance.

JUSTICE O'CONNOR: He lived in a very tough part of town....

LANCASTER: Well, we hope that you won't go back to St. Kitts.

JUSTICE O'CONNOR: Or wherever.

LANCASTER: Or wherever. Well, you know, I'm about out of topics.

IN CLOSING ...

JUSTICE O'CONNOR: Well, let me just say once more that you have a great organization here. I've been a guest here several times through the years – at least four – and I just had such a wonderful time each time and thought the programs were of interest and the members were all so well qualified and interesting. You have a great organization and you stand for the best in our legal profession, which matters to me.

That's why I hope some of you will really follow up on the iCivics, and get schools in your state to start using it. I've kept it free; it costs the schools zero to use it. So they can't say, "Oh, it costs too much money, we can't." That's no excuse. If you can do some of that, it would be great.

LANCASTER: Justice O'Connor, we're deeply grateful to you for your willingness to take time from your busy schedule to join us today. I found our visit to be both entertaining and wonderful. ■

Concept sketch for the upcoming iCivics juries game

DIFFERENT STROKES FOR DIFFERENT FOLKS:

CANADA'S RELIANCE ON ITS SUPREME COURT FOR GUIDANCE IN TIMES OF POLITICAL CRISIS

Retired Canadian Supreme Court Justice **William Ian Corneil Binnie**, inducted as a Fellow of the College in 1993, discussed some of the differences between the approaches of the Canadian Court and that of the United States Supreme Court in matters such as rendering advisory opinions and the role of oral argument.

In introducing Justice Binnie, Past President **David W. Scott,** O.C., Q.C., highlighted Justice Binnie's fourteen years' work on the Court: "Justice Binnie's judgements have been universally described by the judiciary and the Bar in Canada as reflecting a very high level of intellectual vigor, coupled with a relentless commitment to the rule of law, the rights of the accused, and the ordinary citizen. In the history of the Court, Justice Binnie will undoubtedly be regarded as one of its giants."

A lightly edited transcript of Justice Binnie's remarks follows: **>>**

INTRODUCTORY QUIPS

I have been given a topic which attempts to bring insight into our respective Supreme Courts. Some years ago, I engaged in a series of debates with Justice Scalia on the topic of originalism. The first occasion we met, he had just returned from Australia and New Zealand and he said, "You know, Americans just love Australians and New Zealanders. They're like Canadians without the chip on their shoulders." Not a bad description...

Sandra Day O'Connor has also been a great friend in Canada. She has attended our various Bar functions from year to year, and we have all noted with great interest that there are now three women judges on the U.S. Supreme Court. Our Chief Justice is a woman, and when she was appointed, she was also the third woman on the Court. She was taken aside by one of her female colleagues and told, "Three down, six to go." So we're now up to four women and counting. . .

BIG IDEAS

In determining what to talk about today, I decided to choose a couple of instances where the United States went to war and the Canadians resorted to the courts. As David Scott said, one thing about the College is that it doesn't like small ideas. The Fellows like big ideas. And, therefore, the two events I have chosen for comparison are surely significant even by College standards. They are the American Revolution and the Civil War. Canada left it rather late in the game to break its formal ties to the British Parliament. Up until 1982, our Constitution was an ordinary British statute called the *British North America Act of 1867* (or, as it might have been called, the *What's Left of British North America Act, 1867*). As to my second example, the Civil War, many of you will appreciate that the secession of Québec is an issue that potentially is still with us. The fact that both of these issues wound up before our Supreme Court, and how they were handled once they got there, says much about the difference between our respective Supreme Courts.

The first point to make is that all of this litigation came to our Court by way of a government request for an advisory opinion. I appreciate that the current view is that the Supreme Court of the United States does not have the jurisdiction to give advisory opinions because, it is said, there is no case or controversy within the scope of Article III of the *U.S. Constitution*. However, this was not always the accepted view. Certainly, the early Presidents thought they could call on the Supreme Court for advisory opinions, including President Washington, who had famously asked the Jay Court to answer a list of twenty-nine questions. As late as 1822, Chief Justice Marshall, the greatest of the Chief Justices, provided President Monroe with something akin to an advisory opinion. He clearly thought there was nothing inappoprriate in doing that. In Canada, these opinions are not infrequent

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and represent an important part of our docket.

Quite often we have bills pending before Parliament that are referred to us for an opinion on their constitutional validity, as is frequently done in European systems. In our case, these references have included a bill dealing with gun control, another dealing with a national securities regulator that just came down a few months ago, and, of course, the issue of same-sex marriage.

The Court is not obliged to answer questions put by the government. In the same-sex marriage case, it was put before us that the government planned to introduce a bill calling for the legitimacy of same-sex marriage. They added a question, asking, "if we had a different policy and we wanted to prohibit same-sex marriages, would such a policy be consistent with the Constitution?" And the Court said, "We are not going to answer because that is not your policy. It would be overreaching our function to pontificate on legal matters that have nothing to do with the government bill."

THE AMERICAN REVOLUTION AND CANADA: INDEPENDENCE

Samuel Adams wrote to the members of the legislative assembly in 1768 saying, "Let us unite against the British," and at the time, there was a good deal of dithering — as I understand American history, views differed among the colonies — and eventually, of course, opinions crystallized and the revolution went forward.

In Canada, we dithered somewhat longer than you did. We dithered up until 1980. Although Canada had evolved considerably in terms of its constitutional status, our Constitution was still only capable of amendment by the British Parliament.

By 1980, Great Britain's George III had been replaced by Margaret Thatcher, whose attention was focused on the Falklands, and who was embarrassingly open to the idea of cutting whatever legislative links remained with Canada. Unfortunately, the provinces and the Canadian federal government were still dithering. They could not reach agreement on an amendment process or a proposed *Bill of Rights*. So the federal government took the view that it could go to London unilaterally and simply say, "Pass a bill abandoning your jurisdiction."

The provinces claimed a veto. In the United States, under the Articles of Confederation following the Revolution, there was a Rule of Unanimity, and that is what the provinces claimed in our case in 1980.

The United States Supreme Court would likely say not only do we not give advisory opinions, but political questions should be resolved by politicians not judges.

But there was a very significant legal component. The provinces said, "By what right can the federal government, taking a unilateral initiative, impose on us a Constitution that we do not agree with?" A large part of the disagreement focussed on the proposed *Bill of Rights* (we call it a Charter) and they said, "this cuts down our powers. We are not prepared to accept it; we do not have to accept it; we can veto any constitutional change. So there."

There were a number of interveners, including Indian bands, who said their treaties were made with Queen Victoria and that present arrangements could not be altered without their consent.

The eventual hearing in the Supreme Court of Canada was quite unique, lasting for a number of days. Our hearings are not compressed

Quips & Quotes

He has an extraordinary list of interesting cases with which he has been engaged in his glittering career, including representing Canada before the International Court of Justice against the United States of America in the Gulf of Maine Dispute in 1984. As with the War of 1812, I leave it to your own research to determine who won.

— Past President David W. Scott, O.C., Q.C., in his introduction of the Hon. Mr. Justice William Ian Corneil Binnie

to the extent those in the U.S. Supreme Court are. One of the leading counsel for the federal government, **Michel Robert** [FACTL], is here today. It's like having Benjamin Franklin in the audience. In fact, without his beard, he looks a bit like Benjamin Franklin.

There are very few "originalists" in Canada. We do not have a huge treasure trove equivalent to the Federalist papers and the writings of Jefferson and Madison and others. Our constitutional talks in 1867 were short and businesslike, held at Québec City, with the most memorable comment coming from our first Prime Minister, Sir John A. McDonald, who said that "too much whiskey was just enough."

The Supreme Court essentially turned originalism on its head by saying, "Let's look at how the constitutional actors, the government and the provinces have behaved *since* Confederation." There had been a number of amendments to the Constitution in Canadian history. They were, said the Court, almost invariably preceded by some form of consensus. There had never been a unilateral initiative by the federal government to go to London on its own on a matter of comparable importance.

Our Court eventually came down with a middle ground worthy of Justice Sandra Day O'Connor. The Court said, "We agree with the federal government that, as a matter of law, you may go unilaterally to London. However, we agree with the provinces that it would be contrary to constitutional convention to do so in light of the manner in which political actors have behaved and considered themselves obliged to behave since Confederation. And, therefore, unilateral action is lawful, but it is unconstitutional."

HOW DO YOU FIGURE THAT OUT?

The politicians went back to the negotiating table and worked out a substantial consensus. What was sufficiently substantial was left to them to determine. The Court's role was limited to setting out the legal framework excluding unilateral federal action but, at the same time, rejecting any requirement of provincial unanimity. The issue had sharply divided the country, and yet, the Court was generally thought to have laid down sensible rules by which the controversy could be resolved by the politicians, not by the courts.

WHAT ABOUT QUÉBEC?

The problem was that the Government of Québec continued to maintain that the entire exercise was illegitimate. Thus, as many of you know, in 1995 there was a referendum in Québec calling for sovereignty, for Québec unilaterally to walk out of Canada. The referendum was lost by about one percent, an absolutely razor-thin margin. The federal government understandably asked, "if there were a successful referendum result authorizing the government of Québec to secede from Canada, what would we do? What is the law?"

In the United States, when the issue of secession began to ferment in the South and crystallized with the election of Lincoln, there was no question about asking the Supreme Court of the United States about its legality. A decision was made: we go to war.

But 1860 was different than 1998. Ottawa had no Army of the Potomac. If a democratic vote in an area comprising twenty-three percent of our country opts to secede, there must be rules regarding the legality of that which is proposed.

The federal government, like President Lincoln, contended that Canada was and is one and indivisible; but Québec said, "Just a minute. Under international law, there is a right of self-determination. If Québec determines democratically, on a clear question, that it wants to leave Canada, then it must be lawful to secede."

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Quips & Quotes

Regarding the use of cameras in the courtroom: *It comes back to what Justice O'Connor was saying about the lack of civics understanding in the population, how the government works [see elsewhere in this issue]. Well, what better way of teaching that than for people to see history in the making, living history in a courtroom, watching lawyers presenting arguments about issues that are absolutely crucial to the future of the country?*

– Justice Binnie

Think what this means. Twenty-three percent of Canada's population seceding is as though California and New York collectively decided to leave the Union at the same time.

In Canada's case, the outcome would be even more awkward because you cannot travel from Eastern Canada to Western Canada without going through or over Québec. We would have a situation similar to Bangladesh. The stakes were extremely high. The issue was sent to the Supreme Court for an advisory opinion and led to an epic oral argument before the judges carried on national television.

I am a great believer in oral argument. Some Justices of the United States Supreme Court, including Justice Kennedy, say that the role of the lawyers in a hearing is just to facilitate discussion among the Justices. However, it seems to me that this view understates the potential contribution of the lawyers — at least from the Canadian point of view.

It was agreed among the Judges that we would not ask questions during the initial presentations. We did not want commentators (and stock markets) to misinterpret judicial questions as judicial positions. I understand in the United States, the record for an uninterrupted speech was the opening eight minutes in *Planned Parenthood v. Casey*.

From a Canadian perspective, regularly televised proceedings in the Supreme Court have greatly enhanced the public confidence in the judiciary. When ordinary citizens can watch such explosive issues as a potential breakup of the country discussed in the serenity of a courtroom, with opposing lawyers and judges actually listening carefully to the legal arguments that suggest that indeed there is a different legal point of view which is entitled to be heard, it impresses the public that government institutions including the courts are attempting to address even the most controversial issues in a constructive fashion.

The scene reminds me of what Justice O'Connor said [during her previous presentation] about the lack of civics understanding in the population, how the government works. What better way to teach than for people to see history in the making — living history in a courtroom, watching lawyers present arguments about issues that are absolutely crucial to the future of the country?

On the fourth day of the hearings, finally there were questions, all put through the Chief Justice. This was to avoid giving a hint of the direction in which individual Judges were inclined. In our system, the Chief Justice does not claim the Olympian perch enjoyed by the Chief Justice of the United Sates. Our present Chief Justice is fond of saying that her reins of power are not attached to anything. Nevertheless, when the Court speaks it is the Chief Justice who gives it voice.

The questions were put. The lawyers answered. It was a civics exercise on a massive national scale. In the end, the Court concluded that yes, the democratic principle is fundamental to Canada, but it is not the only relevant constitutional principle. Canada had had 130 years of integration — economic integration, social integration. There is such a thing as the rule of law. You don't just walk out on a federation and say, "sayonara" and leave it to the rest of the country to pick up the pieces. There is such a thing as federalism. The vote took place only in Québec. It didn't take place in the rest of Canada.

The Court said that Québec could no more ignore the interests of the rest of the country in the hypothetical situation than the rest of Canada could simply ignore a democratic vote in Québec in favour of leaving. Accordingly, a positive vote in favour of independence in Québec would require the rest of Canada to sit down at the bargaining table and attempt to work out either an accommodation to keep Québec within Canada or an orderly transition to a Canada without Québec. The judgment made it very clear that the political question would be answered by politicians, not by judges. The Court's role was strictly limited to delineating a framework within which those political decisions could be made.

Most of the elected representatives from all sides of the political spectrum welcomed the Court's decision. Important elements of uncertainty had been removed by the establishment of an orderly process by which the question of

Justice Binnie's extensive curriculum vitae notes, "He appeared as counsel before the Supreme Court of Canada in many civil, criminal and constitutional cases."

Let me tell you about one such case: In 1980, I appeared in the Federal Court of Canada on behalf of a Superior Court Judge in an important judicial pension case. On behalf of the plaintiff, I enjoyed resounding success at trial before a single judge, followed in the Court of Appeal before a panel of three judges. The decision was the subject of much public comment, favorable, and my personal involvement with it as the plaintiff's counsel did not go unnoticed in the media, including photographs nirvana.

Then came the appeal to the Supreme Court of Canada. The appellant, the Government of Canada, was represented by William Ian Corneil Binnie, Q.C. From my point of view, the experience and the result was a disaster. Using his extensive infantry of persuasive techniques, he took a perfectly good record in my client's favor, deconstructed it, and persuaded five of the nine judges that he was right and I was wrong. Every advocate's worst nightmare. In three levels of courts, eight judges with me and five against me, yet I lost. Certainly not a win win situation. More like a win loss situation.

The loop in my Binnie experience in the courts is closed by a money laundering case which I was dealing with less than a month ago. Early in the piece, the responsible lawyer in the Department of Justice telephoned and introduced himself, Max Binnie. Indeed, the son of the father. And in the twilight of my career, unable and unwilling to risk further mortification at the hands of a Binnie, I delegated the entire file to a young, unsuspecting lawyer and went on my way.

Justice Binnie's response: I have to say that through all of those cases that we had together, I never really knew how you felt about me. Either that or the College's new rules on civility have worked miracles.

— Past President David W. Scott, O.C., Q.C., in his introduction of the Hon. Mr. Justice William Ian Corneil Binnie

secession (if it ever gained the support of the majority of Québecers) would be resolved. Legal uncertainty is usually a bad thing. On such an issue as secession it would have been disastrous.

Faced with crises of this magnitude, ordinary people are not concerned about whether opinions are advisory or worry themselves with technical debates about justiciability. They see a serious problem and they expect those responsible for the governance of the country, including the judges, to be practical about it. The judges played very much a secondary role in the resolution of these great controversies, but nevertheless a role that enhanced the rule of law and the public's respect for our government institutions.

THE POWER OF ORAL ARGUMENT

It is evident, from what I have said, that I am a great believer in oral argument. I do not believe the role of lawyers, even in the highest Appellate Courts, should be seen as simply facilitating discussion among the judges. Oral argument can focus issues and drive home the point, especially in the great constitutional cases, far beyond what can be achieved by written submissions. When the oral argument takes place in full public view, especially when it is televised, the public's confidence in the courts is enhanced. We can now watch on television or over the internet the great speech of Justice Robert Jackson acting as the Chief United States Prosecutor in the war crimes trial at Nuremburg. Drawing liberally on Shakespeare, he concluded his presentation with the words: "If you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime". No piece of paper could carry such conviction. On issues of high importance—and high emotion—such as those I have been discussing, perhaps Justice Jackson was right. Perhaps we need a little less paper shuffling and a little more Shakespeare. ■

HIDDEN IN PLAIN VIEW: SOCIETAL SHIFTS IN AMERICA

In a presentation entitled, "Americans' Changing Perspective on Risk, Loyalty and Litigation," **Dan McGinn**, founder and Chief Executive Officer of McGinn and Company, Arlington, Virginia, explored the dilemma posed by a world of information overload and constant change in which we too often miss the important things and consequently too often lack the insight we need to anticipate the unexpected and to make informed decisions.

Introducing Dan McGinn, Past President **Joan A. Lukey** stated that "it's difficult to describe to you precisely what McGinn and Company, or for that matter, Dan, himself, does. We can't pigeonhole him. You couldn't look up the firm in the Yellow Pages and find an advertisement, because they don't advertise. All of their clients are by word-of-mouth. It is a consulting firm... but that doesn't begin to tell the story of McGinn and Company and Dan McGinn."

A consultant to almost forty percent of Fortune 100 companies, McGinn was a familiar face to many Fellows attending the 2012 Spring Meeting in Scottsdale. McGinn "deals with anyone who has a problem serious enough to know that they need help with their strategy and with the preservation of their brand name." The client list on his website reads like a "Who's Who?" of national and transnational corporations.

McGinn introduced the Fellows and assembled guests to the statistics of societal trends, with a promise: "I'm going to provoke you. I hope to entertain you." >>

McGinn immediately grabbed everyone's attention by introducing a simple, short video showing basketball players, on a basketball court, passing the basketball from one to another. The on-screen announcer told the viewers to count the number of times the basketball passed between the players. Simple. Even the most undiscerning viewer could handle that.

As predicted, at the end of the clip, the narrator asked how many people counted thirteen passes. The perspicacious viewers in the room all raised their hands, quickly lowering them when the narrator asked: "But did you see the moonwalking bear?"

McGinn rewound the video, and amazingly, when one stopped focusing on the basketball subterfuge, he could see a person dressed as a bear, moonwalking from right to left through the middle of the players in the middle of their drill.

McGinn said, "All right, so let's be honest. Who didn't see the moonwalking bear? How did you miss the moonwalking bear? How is that possible? Now when I play the tape back, what's the only thing you see? The moonwalking bear."

McGinn calls his business "hidden in plain view." He and his team study shifts and changes in society and find the trends that are "hidden in plain view." He said, "At the heart, what I look at is loyalty. Why do you believe what you believe? Why do you buy what you buy? Why do you support a cause, a company, a brand? Why do you change? When do you become a critic? When do you become a fierce defender?"

GENERATIONAL CHANGES

Driver Licenses
Highlighting a major shift in generational characteristics, McGinn pointed out that unlike the Baby Boomer generation, which included most of the Fellows and their guests, a majority of seventeen-year-olds in America today do not have a driver license.

A Dollar Bill
A dollar bill now lasts forty months in circulation. Forty years ago, that same dollar circulated for a mere eighteen months.

Personal Computers
One of the inventors of the personal computer has reportedly said that PCs are now as relevant as incandescent light bulbs, vacuum tubes and cassette players.

Students' Success
And another surprise: 43% of all grades given today in universities are – As! Cs, Ds and Fs have declined, while, thankfully, the issuance of Bs remains.

Absorbing these changes can be, at times, perplexing. Most likely, though, it takes "a McGinn" to truly interpret the trends. To underscore the bizarre-ness that accompanies

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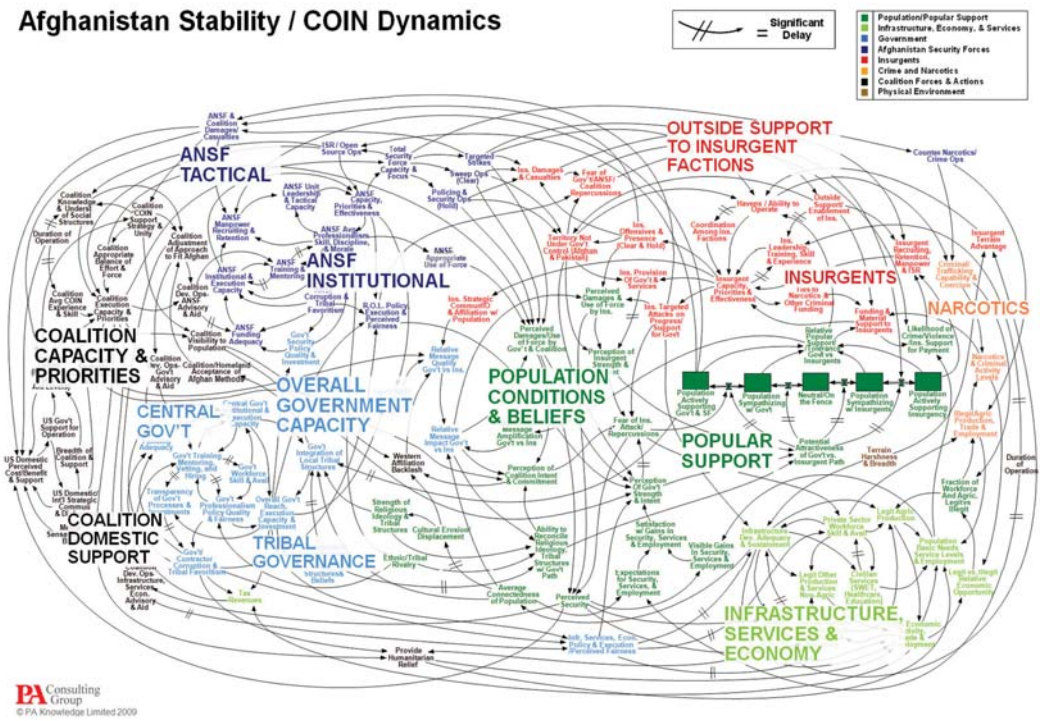
the confusion, McGinn displayed a chart representing the Pentagon strategy for the Afghan war. Duplicated on Page One of *The New York Times*, General Stanley McChrystal confided to McGinn, "If we can figure out this slide, we're going to win the war in Afghanistan."



Information Overload

McGinn believes that "the value of information has gone to zero. The value of expertise and the ability to interpret information will some day go to infinity....We're drowning in information, we're drowning in noise, we're drowning in demands, we're drowning in time on our schedules.... We are overwhelmed. My clients really have three questions for me: What do I need to know? What does it mean? What should I do about it?"

Ironically, to answer these questions, McGinn and his team must gather more information. They look at "firsts" and milestone events in society. McGinn offered a reality check of things that have never happened before in history:

There are more people on the planet today over sixty years old than under four.

There are more obese people on the planet today than malnourished people on the planet.

Women now, for the first time ever, hold a majority of jobs in America.

In the latest Gallup Poll, 53% support gay marriage – the first time in forty years that there has been a majority.

Despite the fact that his surveys show we live with a tremendous amount of fear, McGinn believes we live in the safest time ever. More facts:

Murder rates are down in New York City by 78%. Infant deaths are down 78%.Highway fatalities are down 75%.

We are fearful, McGinn posits, "because of the way we get information about risk. The most sensational things are publicized. The most dramatic stories are there. We don't know who to turn to. We're confused and we're frightened."

Changing Communities

Changing family and community demographics are of particular interest to McGinn. In 2011, forty-seven percent of births were to single mothers. He said, "Sometime this year [or] next year, we'll pass the point where [more than] half of all children born in America will be born to a single mother. This is not African American children, it's not Hispanic children, it's not white children. Half of all children born in the United States will be born to a single mother. My purpose is not a moral comment or a political comment. It's a fact of life. When you think how many changes that causes in our society, whether it's housing, daycare, school, work routines, this is a fundamental shift and we're not going back."

Americans spend $15 billion per year on babies.

Americans spend $45 billion per year on their pets.

One third of children under the age of two have televisions in their bedrooms. McGinn wondered, "If we think we're the saturated generation, what are these kids going to be?"

The number of mosques in the United States in the past twelve years has increased by 74%. Globally, Muslims outnumber Catholics for the first time.

Girl Scouts, Boy Scouts and Masons have all seen their numbers drop by 25% since 1996.

Several years ago, sports fans watched the first World Series since Jackie Robinson played when there was not a single African American on either team. In the early 70s, 27% of Major League players were African American. Now, they are only 9% of the League.

Opinions About the Legal System

Transitioning to talk about society's view of the legal system, McGinn pointed out the continued historical dominance of legal shows on television, such as *Perry Mason*, *CSI* and *Law and Order*. McGinn's nationwide survey of about six hundred people resulted in interesting results about lawyers, the courts and litigation today:

Regarding ethics, trust and confidence in lawyers

71% reported having a great deal or some respect for lawyers. 29% indicated little or no respect.

Regarding confidence in the legal system

44% believe television lawyers have better ethics than real ones. Only 15%, though, believe television lawyers' ethics are worse.

Regarding the judiciary and retention of Article III judicial appointments, appointed by the President and approved by the Senate

58% said Article III judges should be elected.

Regarding the nation's current problems

64% believed our current problems cannot be worked through with patience and support the idea of a Constitutional convention to re-write the Constitution.

Dan McGinn delivered on his promise to provoke and to entertain. "I've talked to you about what's changed. What hasn't changed?

We want to believe.
We want to believe in the future.
We want to believe in the country."

McGinn challenged the audience to also believe in the future. "The Courts and the lawyers of this country provide help. The people want to believe, want someone to inspire us to be what we know we can be.

"Our cynicism today isn't that we don't want to believe. It's that we're worried. We're genuinely worried. What we hope is that real leaders will emerge." ■

McGinn compartmentalizes trouble, shrinks it out and crushes it until it blows away in the wind. What's left is the preservation of one's reputation.

McGinn ensures that in times of trouble, reputations are not left in shreds on the ground.

McGinn tracks and analyzes societal trends that affect exactly how others perceive his clients' reputations.

— Past President Joan Lukey, trying to pigeonhole Dan McGinn.

Quips & Quotes

HOMELAND SECURITY AND THE LAW

Representing the Department of Homeland Security (DHS), the Honorable **Alice C. Hill**, Senior Counselor to Secretary Janet Napolitano, addressed the Fellows at the General Session of the 2012 Spring Meeting in Scottsdale, Arizona. Ms. Hill was introduced by Regent **William H. Sandweg, III**, of Phoenix, who provided a brief history of DHS and named some of the agencies that were linked together to form the Department. Some of those agencies included the Immigration and Naturalization Service, U.S. Customs Service, Transportation Security Administration, U.S. Coast Guard and the Federal Emergency Management Agency (FEMA). The DHS's agencies form the third largest department in the United States government, working collectively to "prepare for, prevent, and respond to domestic emergencies, especially terrorism."

Judge Hill's legal expertise includes service as a superior court judge, an international lawyer in France, a corporate litigator in the United States, and working in the United States Attorney's Office for the Southern District of California. She joined DHS in 2009 at the request of her law school classmate and moot court partner, DHS Secretary Napolitano.

Judge Hill's remarks focused on the legal challenges of DHS, which is composed of approximately 1,700 attorneys. Her presentation follows: >>

EXTREMISM

Underscoring the growing trend in homegrown violent extremism, Judge Alice C. Hill warned, "al-Qaeda and its affiliated groups try to recruit Americans or inspire them to carry out attacks in the United States. We are seeing them focus their plans on smaller-scale attacks that minimize the opportunities for law enforcement and the intelligence community to disrupt them." Such small-scale attacks mean that "our officers on the street are often in the best position to notice first any tactics or techniques that indicate an imminent attack."

Judge Hill said the Department believes "in the end, it's going to be our local authorities and community members who are best able to identify those individuals or groups residing within our communities who exhibit dangerous behaviors and who might be planning an attack. It's those local authorities and community members who will be best able to intervene, to stop someone from committing a violent act or being drawn in by extremist ideology."

U.S. BORDERS

The effort to manage and secure the borders of the United States includes monitoring air, land and sea, as well as facilitating travel and trade within the United States. Judge Hill reported that the number of Border Patrol agents has doubled since 2004, and crime rates on the United States side of the border with Mexico have remained flat or fallen, with illegal immigrant traffic at its lowest point since the 1970s.

HUMAN TRAFFICKING

Despite these gains, however, Judge Hill expressed concern about the continuing issue of human trafficking. This form of modern slavery "involves the use of force, fraud or coercion to obtain some type of labor or commercial sex act. [It] occurs in virtually every country in the world and it occurs right here in the United States." She went on to note that many people are surprised to learn that there are native-born victims as well, and not all victims are from outside the United States.

This surprise may be due to the fact that the crimes of human trafficking often remain hidden. "We simply do not recognize the signs of human trafficking," Judge Hill explains, "partially because we are not educated, and that's one of the focuses at DHS, to increase the knowledge of both the public and state and local law enforcement … in recognizing the signs of human trafficking." The Department is collaborating with lawyers and judges across the country to better organize the fight. Judge Hill invited the Fellows to join them.

TRAVEL SCREENING

Judge Hill acknowledged the frustrations many travelers feel when passing through security screening checkpoints at U.S. airports. "TSA [Transportation Security Administration] is more than aware of your concerns," she maintained, "as is everyone at DHS, about how we can do a better job at getting all of us through the screening functions that TSA must conduct." She exhorted the audience to "remember that our adversaries,

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at least alQaeda, continue to focus on air security and focus on air travel. That's just a known. So every time you ... wish we would just get rid of everything we do, just remember that. They are bound and determined to do something to bring down an airplane, and that's what TSA's function is, is to prevent it from occurring.

Quips & Quotes

The DHS has created a "trusted traveler" program called PreCheck, where travelers can avoid many of the delays of security checkpoints by signing up, in advance, for prescreening. Judge Hill describes the screening process as "a little bit like looking for a needle in a haystack, and in our new approach, what we're trying to do is reduce the haystack. We're trying to remove more pieces of hay so we have less to look at."

Different situations require different actions when it comes to terrorist threats, and Judge Hill said the Department recognizes that "not every traveler or piece of cargo poses the same level of risk to our security." She said "the key to evaluating potential risk is information. We need to share and leverage information so that we can make informed decisions about how to best mitigate the risk. The more we know, the better we'll be able to provide security that is seamless and efficient."

CYBER SECURITY

Cyber warfare has recently increased dramatically, and DHS's responsibilities also include safeguarding and securing cyberspace. With much of the nation's infrastructure, economic systems and government agencies relying on cyber infrastructure, security is critical. "DHS plays a key role in the cyber security effort," Judge Hill explained, "both in protecting federal civilian networks and working with owners and operators of critical infrastructure to secure their networks through risk assessments, mitigation, and incident response planning." She pointed out the local consequences of a possible cyber attack with the example of a crippling power outage in a location such as Phoenix, whose citizens would be left without electricity, and therefore air conditioning, during the hottest days of the summer.

LEGAL AND CONSTITUTIONAL CONSIDERATIONS

Examining the legal ramifications of the Department's work, Judge Hill noted that "to date, appellate courts have ruled that searches for electronic devices at our borders fall under the category of property searches, and the devices being sought are deemed functionally and qualitatively equivalent to other closed containers. CBP [Customs and Border Protection] officials may continue to search laptops and other electronic equipment in an effort to keep our nation safe." She said while these types of searches are instrumental in preventing terrorism activity, "they also raise a host of other legal issues primarily related to privacy concerns. What's the authority to share the information? What are the various uses of the information we find on a laptop? What are the redress options for citizens whose information is subject to sharing?"

Judge Hill cited the recent Supreme Court decision in *United States v. Jones* that determined that police power to track people using GPS devices is limited. She noted that "this ruling has already altered how we do business at the federal government. We've removed thousands of GPS trackers, and we are now in the process of developing new guidelines for the use of GPS in our work."

DHS has created the position of a privacy officer and an Office of Civil Liberties whose lawyers are busy trying to "reach the proper balance in considering security measures and civil liberties." The staff members "work to ensure that methods like watch lists, GPS trackers and other counterterrorism measures are implemented in a manner that achieves counterterrorism goals, yet does not erode the privacy and civil liberties of the public."

BALANCING THE BENEFITS AND THE BURDENS

Acknowledging that achieving this balance is a continuous process, she concluded that "we may not sacrifice our privacy or civil rights and civil liberties in the name of security. We must make sure that we mesh these interests without trading away the core tenets of the law that guides this country." ■

AWARDS & HONORS

Leon J. Daidone, of Dayton, Ohio, the Criminal Division Chief of the Montgomery County Prosecutor's Office, was named the 2011 Outstanding Assistant Prosecutor of the Year by the Ohio Prosecuting Attorneys Association. Daidone has been an Assistant Prosecuting Attorney since 1981 and was appointed Chief of the Criminal Division in 2007. He became a Fellow in 2008 and is the Vice Chair of the Prosecuting Attorneys Committee (formerly the National College of District Attorneys Committee).

Michael A. Kelly, of San Francisco, California, was installed in April 2012 as President of the International Society of Barristers (ISOB) for the 2012-2013 term. The ISOB was created in 1965 and is dedicated to preserving trial by jury, the adversary system and an independent judiciary. Kelly has been a Fellow since 2002.

Theodore L. Kessner, of Lincoln, Nebraska, was recognized with the 2012 Lifetime Achievement Award from the Nebraska State Bar Foundation in recognition of his significant contributions to the legal profession and to his community. Kessner has been a Fellow since 1980 and was the Nebraska State Chair from 1995 through 1997.

The Honorable Barbara M. G. Lynn, of Dallas, Texas, was honored at the November 2011 inauguration of an Inn of Court named in her honor. Judge Lynn serves in the United States District Court for the Northern District of Texas and has been a Fellow since 1998. The Inn will focus on the growth and enrichment of the intellectual property legal community.

President-Elect **Chilton Davis Varner**, of Atlanta, Georgia, and **Janet I. Levine**, of Los Angeles, California, were recognized in *Law360's* recently issued list of the top fifteen female trial attorneys in the United States, determined by each lawyer's number of trials, the significance of those trials, and the number of wins at trial. Varner was inducted into the College in 1995 and will become the College's second female President when she is installed at the 2012 Annual Meeting in New York. Levine became a Fellow in 2002 and served for five years on the Southern California State Committee.

IS MY MIND MINE?
NEUROSCIENCE AND THE LAW

The constantly developing field of neuroscience as it affects the legal system was highlighted by Emory University scholar **Paul Root Wolpe**, PhD, at the 2012 Spring Meeting of the College in Scottsdale, Arizona. Root Wolpe focused on mind reading and its potential effects on the legal system.

Past President **E. Osborne Ayscue, Jr.**, introduced Root Wolpe as "a futurist" who focuses on the "what next" while understanding the challenges to traditional ethical norms. With a doctoral degree in the sociology of medicine, Root Wolpe has concentrated his research on the "social, religious, ethical and ideological impact of technology on the human condition." Ayscue stated that Root Wolpe's research has led him to "the intersection between neurotechnology, mind imaging and our traditional notions of privacy and self incrimination." Root Wolpe serves as NASA's senior bioethicist and is a Past President of the American Society of Bioethics and Humanities. >>

MIND READING

Quoting a German folk song that says, "My thoughts, they roam freely. Who can ever guess them?" Root Wolpe began by suggesting that "we are at the point now where we can guess [another's thoughts], maybe even know them." He explained that, "until now, throughout all of human history, without a single exception, all the information we got from another human being we got through their peripheral nervous system. That is, expression, language, blushing, sweating, galvanic skin response, heart rate – that's all peripheral nervous system activity. Until now, we could never get information directly from the brain, directly from the central nervous system."

Referring to the sciences of phrenology and craniometry, Root Wolpe argued that while studying other applications has been helpful, we have not learned anything qualitative about human beings by studying different functions or brain size. However, our desire to understand the workings of someone else's brain is now beginning to be fulfilled. "My thesis," he said, "is that for the first time in human history we can get information, not just trivial information, directly from the brain through brain imaging technologies." To support his theory, Root Wolpe launched into a list of experiments where scientists have bypassed the peripheral nervous system, the traditional route to understanding brain function, in order to retrieve information directly from the brain. He provided examples of the application of brain imaging for various purposes:

Traits
Brain scan studies have demonstrated that a specific area of the brain encodes activation of fear or excitation when extroverted people view an animated face, while the same part of the brain is inhibited when introverted people see the same animated face. A simplified analysis of this study concludes that scientists can loosely group people by whether they are extroverted or introverted.

Attitudes
Root Wolpe recalled a study where participants were given a standard protocol to test racist ideation. The test would not determine whether the participants acted in a certain manner, but rather, the test showed one's mental processes related to race. When the individuals' brains were scanned and they were shown four sets of photos that included photos of famous people, both white and black, and strangers, both white and black, the results showed that a specific area of the brain that registers fear was activated when the white men saw unfamiliar black faces

Acknowledging that the legitimacy of the imputation requires additional study, Root Wolpe suggests that, "theoretically, we could

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take large groups of white males, put them into a scanner and flash the four sets of faces. We could look at the levels of amygdala activation when the study participants look at unfamiliar black male faces and get an idea of each participant's racist ideation. Without knowing anything about the participants, without talking to them or having them take a written test, we might be able to determine who among them has racist ideation."

Judgment

"A long-standing philosophical problem presents a trolley car traveling down a track, about to hit five people. You are standing at the switch with the ability to switch the trolley onto another track where the trolley would hit and kill only one person. Eighty percent of respondents say they would pull the switch. They would take responsibility for personally killing one person in order to save five on the other track.

"If you ask the same eighty percent who would pull the switch, 'Now you're standing on a footbridge over the track. The same trolley is coming down the track, the same five people are again on the track. This time, you are standing next to a very large individual. If you push the large individual off the bridge onto the track, in front of the trolley, you can stop the trolley from killing those five people. Would you push the person off the bridge?' Of the eighty percent who would earlier pull the switch, now eighty-five percent say they would not push the man off the bridge.

"Why not? In either case, you are causing the death of one person to save five. In one case you would do it, in one case you wouldn't. Obviously you are not using the same ethical calculus in each situation. What is the difference? The researchers realized that we possess two ethical decision-making processes in the brain: one rational and one emotional, also known as one personal and one impersonal. In the first case [pulling the switch], the rational calculus is used. In the second case [pushing the individual off the bridge over the tracks], the emotional calculus comes in. These two are often in conflict with one another."

Abilities

Brain imagery now allows scientists to look at the brain to determine the part of the brain that lights up, is activated, when someone is reading. By looking at someone's reading center and seeing that it is activated when shown words in a particular language, we can determine if a person speaks a certain language, even when the individual claims not to speak or read that language.

Perception

Scientists now are able to show one hundred pictures to a person, and the scientists are able to later determine, through brain imagery, which of the hundred pictures the person is looking at. Even if unable to reproduce the picture in great detail, scientists have the ability to know that the person is looking at, for instance, a landscape versus the picture of a figure at a table.

Behavior

Scientists have shown "very strong brain morphological correlations with severe violent offenders." This has raised tremendous ethical questions, one dangerous idea being that, "maybe we should be brain imaging all of our adolescents and finding those with these traits, those with less white matter in the orbitofrontal cortex and other characteristics of this, and track them or watch them more carefully." Some might believe, Root Wolpe observed, that it would be nice if we could take a picture of someone's brain and say "that's the criminal, and that's not the criminal." Root Wolpe believes that "we are not too far from [these identifications] in certain areas of thought. Root Wolpe, however, stated that he believes doing so raises more problems than it provides solutions.

Preference

Neuromarketing is a new area of study in which individuals' brains are monitored while they express preferences. Root Wolpe said neuromarketing is becoming a very popular service, with companies now paying millions of dollars to look at a person's brain while he considers a product the company sells.

Words

Although still in its preliminary stages, scientists have used brain imagery to read simple words being thought about by their test subjects. Mind reading through imagery can indicate that "Jane is thinking about a hammer. Now Jane is thinking of a bicycle." Mindreading in the subject matter sense can be a powerful and usable technology. The Bar Association of New York wrote an article about the ability to read one's mind more than a decade ago.

NEUROPRIVACY AS A RIGHT

After presenting the many ways scientists are able to "read" someone's mind with increasing accuracy, Root Wolpe stated his belief that "we have to suggest that the skull, that the workings of our brain, should be an absolute inviolable zone of privacy.

"Neuroprivacy is becoming an important issue," he asserted. "We believe and treasure our minds as a private domain where none can enter, and that's just not true anymore. We need to think about a world where others might have access to the actual content of our thought. This is not science fiction. It's not a pipe dream. It is happening right now. It's happening crudely, and while we are currently unable to obtain extremely robust information, we can get far more information than most people realize."

LIE DETECTION AS A BUSINESS

There are companies now who promise brain-based lie detection. One, Cephos, is a company whose owner claims it to be "the only company licensed to perform brainbased lie detection."

A different company, No Lie MRI, says it "represents the first and only direct measure of truth detection in history."

One scientist holds a patent for a wand with electromagnetic pulses that inhibit brain activity. Its intended use is to inhibit a person's ability to lie.

BRAIN IMAGING AND THE FIFTH AMENDMENT

Root Wolpe concluded his talk by considering how this rapidly growing technology may affect evidence, testimony and one's rights under the Fifth Amendment.

"The question I want to ask is: What about brain imaging? If the State can look into my mind, pull out a brain image about what I'm thinking, use that image information as evidence in my case in the courtroom – claiming that it is just like DNA or a blood test – is that evidence admissible?

"[Brain imagery is] a physiological measure. Blood flow to discrete areas of the brain is measured and shows what particular areas of the brain you are using. From this measurement, we may impute very sophisticated things, as I have shown. We measure one physiological state versus another, and the resulting product is a brain image that can be taken into the courtroom. So is this more like a blood test or a DNA test?"

Alternatively, this "is trying to get a piece of what we otherwise would think of as testimonial evidence by looking at cognitive content. Perhaps most importantly, the average person thinks of it as testimony. I think there will, in the future, be a powerful public push not to let the State move into our brains.

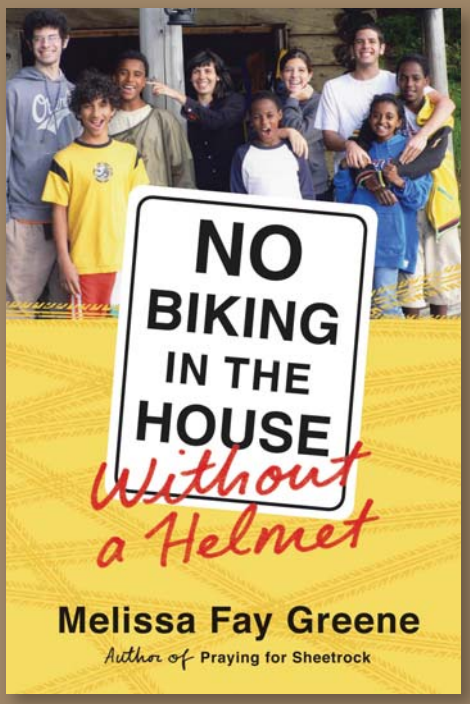
"Maybe we will come to the point where this 'testimony' will be considered unreliable and it will not violate the first rationale. Maybe we will still be able to prevent its admission because of the second rationale, even if we ask the question, which I always get, 'What about the terrorist with the bomb in Manhattan; wouldn't you want to brain image that person?'

"Extreme cases make bad law. As Lou Seidman said, we might need to protect this zone of privacy even if it ultimately means that we can't make some of the decisions we want to make." ■

THE MORE THE MERRIER: THE GAME OF LIFE WITH NINE CHILDREN

Melissa Fay Greene of Atlanta is the mother of nine children from three continents. The author of several nonfiction books about historic events, she recently authored a lighthearted family memoir entitled *No Biking in the House without a Helmet*.

Greene is married to Fellow **Donald F. Samuel**, a criminal defense attorney. Five of their nine children were adopted: four from Ethiopia and one from Bulgaria. Greene's book describes the emotional and exciting process the family underwent as they grew beyond the boundaries of a typical family. In his introduction of Greene, Past President **Warren B. Lightfoot** described the book as "a story of the transcendent human spirit and how it can be observed in times of black despair, as well as in times of great jubilation. Sometimes wrenching, it is oftentimes laugh-out-loud hilarious."



Drawing both laughter and red-faced sympathy, Greene entertained the audience with tales from the book's fiftieth chapter, "Everything You Always Wanted to Know About Sex, but Couldn't Spell." The following are lightly edited stories she shared. >>

HOW TO OUTMANEUVER YOUR CHILD – AND LOSE

On a fine spring day in 2008, surprising words cropped up on my computer. I had searched on Google for some biographical information about the United Nations Special Envoy Stephen Lewis, of Toronto. I couldn't remember for a moment if he was Steven with a "v" or Stephen with a "ph," so I typed in the letter "S" and then paused. Helpfully, a dropdown menu offered recent "S" searches conducted on my computer, including the words "sax," "saxing," "saxing boys and girls," and "saxing Brintnte sprs."

But no one in the family plays saxophone, I chuckled to myself. They must have meant trumpet or trombone. *I wonder if one of the boys is thinking about switching instruments*. Then I remembered: they can't spell.

I returned to the Google search bar and hit a few random letters. Every letter key I touched produced a little spurt and cascade of misspelled dirty words and phrases. I went back to the beginning of the alphabet and I did this in alphabetical order. There were male body parts, female body parts, and in the "Cs" and "Fs," a few correctly spelled popular four-letter words.

I cheered up momentarily in the "Vs" when the word "Virginia" appeared. *All right, so sometimes they actually do use my computer to do their homework*, I thought with relief. I glanced down the list for hints of Jamestown, the royal colony and Thomas Jefferson. But then I recalled, not for the first time, that they can't spell.

Perhaps our older sons had looked into erotica, but they had come of age in an epoch closer to the lifetimes of Thomas Edison and the Wright Brothers. When they were young teenagers, computers were slow and black and white, more toaster or window fan than science fiction portal into every crevice of the known universe. When they were young, sexy and forbidden images arrived in the mail, in the *Sports Illustrated* swimsuit issue or the *Victoria's Secret* catalog. To conceal testosterone-fueled research from mother, a twentieth-century boy shoved magazines deep under the bed, in the moldering twilight company of old socks and lost homework. No electronic trail lingered. Twenty-first century boys are unlucky in this way.

But I felt confident in my ability to protect my twenty-first century boys from pornography on the internet. By sundown I had purchased and downloaded a software product called Net Nanny. Any attempt to visit a website featuring a female other than Indira Gandhi, Julia Child or Prime Minister Margaret Thatcher was blocked by the sudden appearance of a British housekeeper in a white apron, starched collar and little peaked hat. In her hand she held up, victoriously, a computer mouse that she had evidently just cheerfully, yet violently, yanked out of a teenage boy's hard drive.

I felt really smug about Net Nanny for about two months. The four younger boys were then ages twelve, thirteen, fourteen and fourteen. They were stymied by Net Nanny for a day and a half. A clever friend of theirs secretly taught them how to turn off my computer, turn it back on, and quickly create a guest account. My computer guest was named after our elderly rat terrier, Franny. On Franny's guest account, there was no Net Nanny and there was no mother, but there were plenty of fleshy, top-heavy, rouged and outgoing young women.

I may not be of the internet generation, but even I know that a rat terrier would have no interest in a

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computer guest account. Wordlessly, I retaliated with stricter software than Net Nanny. The new protective software was named Safe Eyes. Safe Eyes stops young teenage boys from accessing any website other than one called www.FunWithFractions.com.

SMALL SCREEN SCHEMES

One day a $767 bill arrived from our cell phone carrier. Close scrutiny revealed that the excess charges arose from the boys' cell phone numbers. Hardcore sex scenes had been downloaded from the internet onto their tiny screens. "I didn't know they had internet access on their phones," I protested to Customer Service, not wanting to mention I didn't know you could fit two female breasts on such tiny screens. "They told me they needed cell phones so they could call me when soccer practice was over."

Hadn't each child portrayed himself as at risk of abandonment, alone and fearful on a darkening and vast soccer field as darkness closed in, long after the parents of boys with cell phones had come and gone? Customer Service waived the charges because the boys were not supposed to have internet access on their mobile phones. That portal was closed.

BIG SCREEN BLUNDERS

But the boys journeyed on. A cable TV bill arrived charging us for a pay-per-view purchase of an x-rated movie about pole dancing. Pole dancing is not, I recently learned, the festive springtime event of European folk culture in which young girls hold ribbons and weave in and out around a central post, wrapping it in a rainbow of pretty colors while adult white men in short pants and kneesocks whistle into wooden flutes. That is *maypole* dancing. Pole dancing is another thing entirely. I was learning so much.

When I checked the date on the cable bill, I realized I'd had a middle school son home sick on that very day. At the precise hour of the movie screening, he had been napping on the basement sofa, in front of the big rec room TV, upon which non-maypole dancing was being anthropologically examined.

Furious with the twenty dollar fee, I bounded down the stairs, found this son, and held the bill out to him. "This was the day you were home sick. This was your movie and it cost us twenty dollars! What are you going to do about it?"

"Oh, okay," he said mildly. He slipped into his bedroom, removed his wallet from a drawer, took out a twenty and handed it to me. Mollified, I couldn't think of anything to say other than, "Hey, thanks!"

Back upstairs in the kitchen I had misgivings, which I shared with my husband, criminal defense attorney Don Samuel. "I'm not positive, but I think I just sold our fourteen year-old son pornography."

SIBLING SOLIDARITY

Of course we tried parental controls on the television. Parental controls should have the subtitle "Ask your children to show you how to install these things." The only parental controls Don and I ever successfully installed completely

Quips & Quotes

WHAT'S IN A NAME? Greene's book is titled No Biking in the House Without a Helmet, which she says "is part of a series of absolutely ludicrous things that you would never say if your children didn't force you to say it. Years ago friends of ours composed a list of the things you never thought you would hear yourself saying, and two of my sayings early on, back in the early '80s, went into their list. One was, 'I want you to hit each other outside.' And the other was, 'Please don't wrestle with the scissors near the baby.'"

Here are some of the alternative titles friends and family members suggested for her book:

- *The Phylogeny of My Progeny*
- *Why My Babysitter Should Be Eligible to Get Peace Corps Credit*
- *Leveraging Love: How to Choose Your Favorite Child During These Harsh Economic Times*

blocked our ability to watch the *PBS NewsHour*. So it should not have been an enormous surprise when, on a Saturday afternoon in August, another cable TV bill arrived, this one charging $120 for unsanctioned pay-per-view purchases, through the cable box in the basement, of xxx-rated movies involving lingerie, lesbians and Las Vegas.

This time I was really mad. We had had the excruciating and one-sided discussions about relationships, true intimacy and respect for women. I had held these conversations, or monologues, with our daughters and I had held them with our sons, because my husband, the criminal defense attorney, is incapable of allowing such delicate topics to cross his pure lips.

On the afternoon that the pay-per-view bill arrived, the four younger boys and their friends were lounging around the kitchen table eating cold cereal and Popsicles. "I need to talk to the Samuel boys *right now*," I said. The bill was shaking in my grip.

The boys' friends evacuated. Our daughter Helen peeked in, wondering if she were needed. "I said the Samuel *boys*," I roared. Helen fled. I smashed the fluttering bill flat onto the table. "$120!" I roared. "Who's going to pay for this?" Daniel and Yosef, who had only been in America for six weeks, immediately lost all English-speaking ability. Sol put up both hands in self-defense and shook his head no. He glanced around with a shocked expression, as if concerned to find himself in such low company.

But Jesse sighed and coolly raised one finger as if signaling a waiter to bring the check. "It was me," he said.

"Really?" I said, stunned at the rapidity of the confession. "All the movies? You?"

He sighed again. "Yep."

"Jesse, that is a ton of money."

He "tsked" in regret at his own behavior. "I know." He had a look on his face as if to ask "what am I going to do with myself?"

"Go get your allowance book," I said.

He handed over the account register, while his three brothers watched expressionlessly. "Jesse, this will take you till December to pay back," I said. "You've got no spending money till then."

"Okay, Mom."

"Can we go?" asked Sol, eager to put distance between himself and this distasteful subject.

"Go." I waved the Ethiopian boys away.

In a moment, Sol was back. For the second time in a three-month period, he was removing a twenty dollar bill from his wallet and handing it to me. "What's this for?" I asked.

"To help Jesse."

"Really?" I said, startled. I was so touched.

"Here, Mom," said Daniel, having regained a few

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EMBEDDED JOURNALISM

When people ask me what I'm working on, I prefer to say, "I am writing about a pivotal moment in the civil rights movement." I prefer not to say, "I have just written a chapter in which my ten year old son comes dancing out of the bathroom stark naked, dripping wet, and wearing nothing except for a pair of underpants over his head."

"What kind of book would that be?" they ask. I hedge. "You've heard about journalists embedded with our troops in Iraq and Afghanistan? This is kind of an embedded journalism project."

"Oh, really," they say. "And where were you embedded?"
And then I have to admit, "In my own bed."

words of English, "Help Jesse." He gave me a ten.

Yosef then produced forty dollars. "Yosef, Sweetie, you don't have to do this." He shrugged modestly as I kissed him. "Jesse, you've got such nice brothers," I said. "You'll be able to pay off the rest of your bill easily."

With a lump in my throat and tears in my eyes from these fraternal kindnesses, I made my way to the front room, where Don reclined in his overstuffed chair reading his law books. "You will not believe what just happened," I said. "We have incredibly sweet boys." I told him about the money they had donated to Jesse's cause without anyone asking.

Don glanced up from the *Eleventh Circuit Criminal Handbook* and said, "They watched the movies, too," and went back to his reading.

Why? Why am I such an idiot? I've been raising children for decades, and this insight would never have occurred to me.

The next day I found Jesse eating a bowl of Froot Loops alone in the kitchen. "Jesse," I said, "those movies, did the other boys watch them with you?"

"Mom, are you kidding me? I didn't watch any of them. Did you see the time those movies were ordered? Five o'clock in the morning. They watch them before school. I don't get up that early."

It was true. Our three sons who had once been goatherds still got up at dawn every day. I sputtered to reply. "Well, why did you say it was you?"

"Did you see their faces? They were terrified," he said, and returned to his Froot Loops.

When I relayed this news to Don, he laughed and said, "They must have been thinking 'Jesse's always in trouble. Jesse can take the heat.'"

I'm a sucker for sibling solidarity.

HOME TEAM ADVANTAGE

What I learned through the course of writing the book was that Don and I feel most alive, most thickly in the cumbersome richness of life with children underfoot. The things we like to do we would just as soon do with children.

Is travel really worth undertaking if it involves fewer than two taxis to the airport, three airport luggage carts with children riding and waving on top, a rental van and a hall's length of motel rooms? Can sleep be as sweet when it is wrested from those who would interrupt it? I love the Atlanta Symphony, but it's a sixth grade band that moves me to tears when the children play the C scale together for the first time.

Of course we have careers, friends, functions to attend, holiday parties to dress up for. But by about the mid 1980s we noticed that our favorite part of social events was dressing up for them, while small children bounded in and out of the room in excitement.

I remembered from my childhood the sense of anticipation kindled by shower steam wafting into the parents' bedroom at night, mixing with the golden scent of aftershave and the astringent odor of black shoe polish, while a mother sits on the bed in satin underthings pulling on stockings, and a father requires a small girl's help to insert his cufflinks. Compared to this buildup, this breathless anticipation of the exclusive and bejeweled affair the children think we're going to, the actual party feels a little anticlimactic.

When we reach our destination at the summit of a long brick walkway across an expensively maintained green lawn and the massive door opens to us and we're swept into champagne-colored candlelit rooms, no one gasps, "Ah, you both look so pretty!" We circulate, chuckle with friends, nibble canapés, remember a funny thing that happened years ago, and return home before the children are all asleep, so we can be greeted like returning global celebrities. The children peek down from the top of the stairs. "Are they really home? Is it really them?" They then slide and leap into our arms while I remove from my purse the chocolate meringue puffs and key lime shortbread cookies I've wrapped in cocktail napkins and smuggled out of the party for them.

Don and I loved these times and wanted them to continue. When the clock started to run down on the home team, we brought in ringers. We figured out how to stay in the game. ■

Actions Taken at Board Meeting

The Board of Regents met March 6-8, 2012 in Scottsdale, Arizona and approved the following:

Honorary Fellowship to be conferred on The Honourable **Michael J. Moldaver** of the Supreme Court of Canada.

Honorary Fellowship to be conferred on The Honourable **Andromache Karakatsanis** of the Supreme Court of Canada.

Griffin Bell Award for Courageous Advocacy to be awarded to **Louise Arbour**, former United Nations High Commissioner for Human Rights and former Justice of the Supreme Court of Canada.

2012 Emil Gumpert Award to be awarded to Florence Immigrant and Refugee Rights Project of Florence, Arizona.

Name change of the National College of District Attorneys to Prosecuting Attorneys Committee.

Support the Federal Rules of Evidence Committee's letter to the Federal Advisory Committee on Evidence Rules regarding Rule 801(d)(1)(B), addressing hearsay exemption for prior consistent statements. A copy of the letter may be viewed on the College website, www.actl.com.

Support the Federal Rules of Civil Procedure Committee's letter to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States regarding Rule 45 of the Federal Rules of Civil Procedure. The committee's letter regarding notice, consent and the unintended consequences of proposed rule changes also indicates that party depositions are governed by Rule 30, and that existing jurisprudence on the issue should remain intact. A copy of the letter may be viewed on the College website, www.actl.com.

GETTING BIN LADEN

News of the capture and death of Osama bin Laden a little more than one year ago seized the world's attention. At the 2012 Spring Meeting of the College, Fellows and their guests listened with rapt attention as journalist **Nicholas Schmidle** recounted the story of "Getting bin Laden," excerpted from his article published in *The New Yorker* in August 2011. Walking the audience step by step through the meticulous preparation of the Navy SEALs for their mission and the President's agonizing last-minute decision to proceed, he left the audience with the sense that both he and they had been there on May 1, 2011.

Nicholas Schmidle and his wife, Rikki, lived for two years in Pakistan while Schmidle was a Fellow of the Institute of Current World Affairs. In his introduction of Schmidle, Past President **Gregory P. Joseph** said, "he learned the language, he learned the customs, he wore the clothing. He went around Pakistan like a Pakistani - sort of a tall, blonde, American version of a Pakistani - until one night, several hooded men from the military came to deport him." Schmidle shared his story and the story of how Navy SEALs captured and killed bin Laden. His story follows: **>>**

OUR LIFE IN PAKISTAN

My wife, Rikki, and I were fortunate to immerse ourselves in Pakistani life and culture for two years when I was sent there on a fellowship to report on the country's conditions and the lives of its people. Part of the stipulation of my fellowship was that I not return home once we arrived. I was to remain in Pakistan to take a "cultural bath." Rikki, however, returned home several times to recharge her batteries before returning to our new life where she found many opportunities: she secured a position as host of a reality TV show, in Urdu, performing makeovers of Pakistani women; she was promoted to spa manager at a Pakistani hotel; she was preparing to travel to Thailand, staying in five-plus star hotels across Southeast Asia to learn how to run a spa; she became the nutrition counselor at the Serena Hotel; and she became the first non-Muslim American to attend the International Islamic University.

When the police arrived to tell us we were to leave, a part of me thought, "This is going to be nice. Even though deportation is not exactly how I thought we would leave, I can't wait to sit at a bar and eat some pork." Rikki's thoughts, meanwhile, were "You've got to be kidding me. It took me a long time to get used to this place. I now have a television show, I'm going on a spa trip and I have my University plans." At the time, Rikki was only a few months away from completing her master's degree, which would be curtailed by a return to the United States.

And so, it was a bit bittersweet.

THE FIXER

Part of the reason we were asked to leave Pakistan was because I had spent a great amount of time with the Pakistani Taliban during the latter half of 2007, working on a story for *The New Yorker* at the same time I was writing a book. One of the people with whom I had become close was a fascinating and very-complex individual named Abdul Rashid Ghazi, the head of the Red Mosque in Islamabad.

One of the things I have tried to do during my years reporting has been to locate people like Abdul Rashid Ghazi, who on the surface seem to have nothing in common with you or me. It is easy to report about the world and describe individuals as being very foreign and to evoke their sense of foreign-ness. One of the things I've tried to do is find people that we can empathize with. Abdul Rashid Ghazi was a great example. He had a foot both in the world that I understood and a foot in the jihadi world. He spoke fluent English, and he had a master's degree in international relations from the University in Islamabad. In 1998, he had been working at both UNICEF and with his father, who was at that time the imam of the Red Mosque in Islamabad.

And, he had visited Osama bin Laden in Kandahar, Afghanistan.

Ghazi was incredibly fluent, and being versed in both worlds, he was receptive to my willingness to spend hours at a time with him. I listened as he told stories and tried to figure out what was true and what was not. There was a keen sense of vanity

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having a foreign journalist sit at one's feet. Doing so also allowed Ghazi to get his ideas out to others.

I talk about Abdul Rashid Ghazi years later in a somewhat empathetic voice, mainly because of the time he dedicated to me. One of the things he did that made our relationship so special was that he acted as a "fixer." Fixers are local journalists or others around the world that foreign journalists hire as translators and who also arrange appointments before we go to their countries. Every time you open a newspaper or magazine and see an exceptional article written by an American journalist in a foreign country, ninety-five percent of the time the article is good because the reporter had a fixer who did the advance legwork.

Abdul Rashid Ghazi served as my fixer. He made phone calls in advance of my trips, telling individuals, "Listen, I'm going to send this journalist. He's a really open-minded kid. You should talk to him." Getting a reference from Ghazi was like having a golden ticket. When Abdul Rashid Ghazi was killed in July of 2007, the Pakistani Army surrounded and stormed his mosque, and after ten days of siege, killed him. Afterward, as a way of saying "we got him," the army paraded his bloated, dead body by broadcasting it across the area's television screens.

The time during which Ghazi was killed was a very bizarre time for me. Rikki was traveling overland across China. She had left our home in Pakistan and took a series of buses and trains across China to reunite with my parents in Japan, who were living there at the time.

After Ghazi's death, I was alone, having a strange bittersweet moment, when I wrote a story for *Slate* magazine, an online sort-of quirky, left-leaning magazine. I wrote of my relationship with Ghazi, which *Slate* titled, "Farewell, My Jihadi Friend." It was a great title, kind-of offbeat.

APPREHENSION

The Washington Post owns *Slate*, and *The Washington Post* decided to republish my article in its Sunday paper, which for an aspiring freelance journalist, is normally very thrilling. In my case at the time, though, I thought, "Oh, man, I don't know if I want that story disseminated to such a large audience." On the Sunday morning the story came out, Rikki was at my parents' house. *The Washington Post* had titled the story "My Buddy, The Jihadi." At the time, my brother was serving in Iraq, fighting jihadis. Also at the time, my father was the Commander of the Marine Corps Air Wing for the Western Hemisphere, a two-star General. And Rikki sat at my parents' dining room table and communicated, "I've got to tell you, it's a very tense breakfast with your parents right now."

I continued reporting through the summer and fall of '07 about the Taliban inside the tribal areas and in the Swat Valley.

STARTING OVER

We were eventually deported. I returned to the United States and did a few speaking gigs around Washington, talking about the internal dynamics of the Taliban. I was increasingly introduced to and became acquainted with people from the intelligence and Special Operations communities. I casually maintained these relationships. We lived in D.C., and I worked on a number of stories, although none focused on Pakistan since I no longer traveled there.

One of these new relationships, however, I particularly maintained. In the middle of May 2011 after bin Laden's death, I had a feeling that one of my new acquaintances might know something about the bin Laden raid. I reached out and asked if we could grab lunch.

We sat down, and I began to ask questions.

GETTING TO THE TRUTH

One of the great things about the bin Laden raid from a reporting perspective was that so much had already been written, some of it semi-accurate, some of it totally inaccurate, some of it spot on. I sat down with my new contact and said, "You know *The New York Times* says that it happened like this, and CBS says it happened like this, and ABC says it happened like this." He had been intimately involved in planning and overseeing the execution of the raid that night, so he corrected me. "No, it didn't actually happen like that. There were no helmet cams, for instance, as has been previously reported, and these guys did this, and these other guys did this." I had a recording device in my bag and said, "Do you mind if I record this, and we'll see where it goes?" He didn't mind, and from that account, I took his story, then went around Washington and spoke

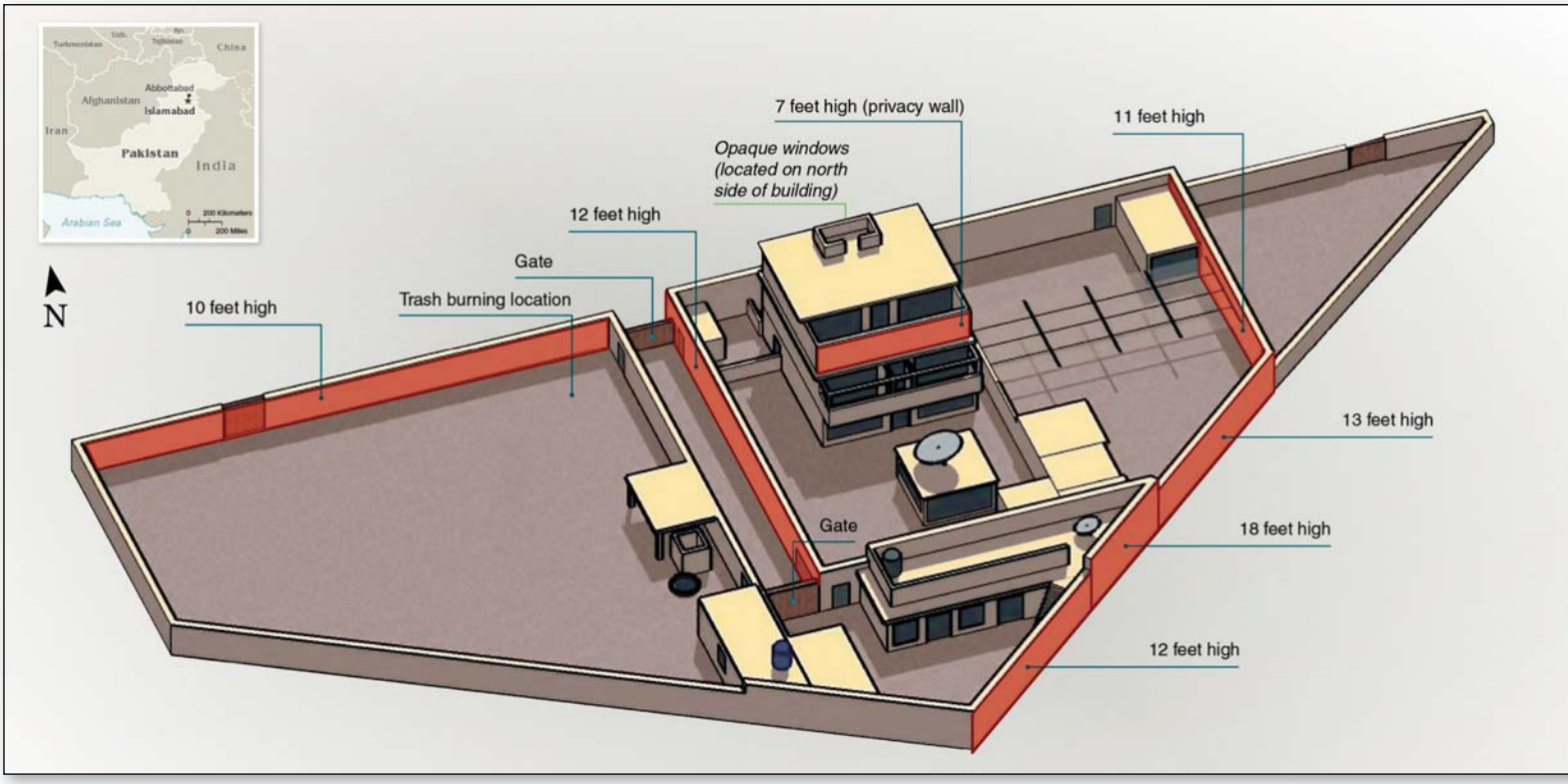

Illustration of the Abbottabad compound of Osama bin Laden

with others, from the White House and the agencies such as the CIA, etc. I fact-checked his account. From other reliable resources, I built the story.

This is, I believe, the definitive account of the story so far. I know there are other books being written that will probably improve upon the story in the future, but from what we know now and what has been confirmed by a number of senior, senior, senior officials, this is what happened.

MAKING PLANS

In the spring of 2009, shortly after President Obama took office, he met with the new CIA director, Leon Panetta and asked what programs and plans were in place to find bin Laden. At the time, the agency's drone program in Pakistan had intensified and was enjoying great success. We had intercepted communiqués between al Qaeda leaders talking about the fact that they were "on the ropes," but despite their vulnerability, Panetta admitted we had no real idea where bin Laden was.

The President asked Panetta to prepare a detailed report and indicated that a plan was a national security priority. About a year later, in October 2010, CIA Director Panetta returned with good news. He said we knew that bin Laden's courier was an individual named Abu Ahmed al-Kuwaiti. Our intelligence had located what they believed to be al-Kuwaiti's vehicle parked in the carport of a house in Abbottabad, Pakistan. Panetta reported that we didn't know much more at that time, but we "know enough. We will keep an eye on it." And of course, the President said, "Okay, let's move ahead."

In December 2010, the President gave Panetta approval to proceed with options, what courses of action, could be taken. Panetta turned to the head of JSOC, the Joint Special Operations Command, which is the super-secret black operations group, and asked Admiral William H. McRaven, who was then the head of JSOC, to begin thinking about raid options, what could be done, how it could be done, and how the operations group could get in.

The next month, Admiral McRaven assigned a former deputy of Navy SEAL Team Six, known as the Development Group (DEVGRU), to move into CIA headquarters to begin flushing out a plan. So within CIA headquarters, in a discrete corner of another utmost discrete center of the U.S. government is the printing press at CIA headquarters. Brian, as I called him in the *The New Yorker* story, moved into the printing press with about a half- dozen other individuals, and with maps of Pakistan on the walls, they began planning how they could conduct

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a raid and get into bin Laden's compound. The planners looked at water tables to see if there was a chance there might be tunnels leading out from underneath the house. If the possibility existed, they considered the possibility of tunneling into the house. They weighed all options, not just one. In addition to a SEAL Team Six raid, one of the alternate plans was an air strike.

In March 2011, the President met with his top security advisors to consider a raid versus an air strike. Each plan carried a rider, with or without support from the Pakistani government or cooperation from the Pakistanis. At a March 14 meeting, it was decided that bringing the Pakistanis into either plan was too great a liability, and the raid and the planning would progress without Pakistani cooperation.

One of the strongest opponents of the raid was Secretary of Defense Robert Gates, who had been at the White House during the planning of Operation Eagle Claw, the failed attempt to rescue the hostages in Iran. Gates repeatedly advised that when he was in the Situation Room in 1980, everyone said the plan at that time sounded like a good idea also. The result of that rescue attempt was a huge failure, with eight U.S. soldiers killed.

When the air strike was determined to be the best option, the Air Force estimated it would take thirty-two 2,000-pound smart bombs to destroy the compound and ensure that we had penetrated any underlying tunnels while also killing occupants in the buildings. Dropping smart bombs of that size on Abbottabad was comparable to instigating an earthquake. Of greater concern was the prospect of flattening an entire Pakistani town without the ability to identify or confirm that bin Laden had been killed. The risk was too great and provided a public relations nightmare. It was with these considerations that an air strike was shelved. The President advised that the raid option, using the SEAL team, should move ahead.

PREPARATION AND PRACTICE

One of the amazing things I learned was the active manner in which the mission was planned and simulated in the month leading up to the raid. The members of the Red Squadron of SEAL Team Six staged two simulated raids by running through the exercise during an entire night, then planning and rehearsing again the following night.

The simulated exercise was initially held in the forests of North Carolina during the week of April 10. The team built a mock-up of the bin Laden compound: they built the wall around the compound with a chain link fence, and they ran through all possibilities where they believed there might be trap doors or other hazards. They used pre- and post-construction satellite imagery of the house bin Laden was believed to live in. Satellite imagery was not available over interim periods of time, however, so the SEAL Team did not know where the stairs or specific rooms were located. They had no way of knowing if the buildings had false doors or other structural anomalies, so the SEALs planned for every contingency. The team ran through the plan for an entire week.

The following week, the team flew to Nevada where they had the ability to fly across 160 miles of government land to get a sense of how much fuel would be needed and how long the aircraft would be airborne. They flushed out exactly how the exercise was to work.

THE PLAYERS

There would be two Black Hawk helicopters. The first Black Hawk helicopter, called Helo One, would transport twelve SEALs from SEAL Team Six. The second helicopter would carry eleven SEALs, a Pakistani-American translator, known here and in *The New Yorker* as "Ahmed," and a Belgian Malinois dog named Cairo. Ahmed was neither a SEAL nor a JSOC operator, but, rather, an analyst from the intelligence community with security clearance high enough to be trusted. His task was to translate.

THE PROCESS

The first helicopter was to fly over the top of the compound and hover while the first twelve troops dropped into the compound's courtyard. This first helicopter would then land at the northeast corner of the compound. As the first helicopter moved through, the second helicopter was to fly over the house and drop the next seven SEALs onto the roof. Because they believed bin Laden lived on the third floor of the house, they expected to find bin Laden in the first few minutes after dropping the seven SEALs on top. After dropping the last seven SEALs on the roof, Helo Two was to land on the ground alongside Helo One. The remaining four SEALs would then exit Helo Two along with Ahmed, the translator, and

Cairo, the dog. These final team members were to secure the perimeter and prevent entry by locals.

Ahmed had been called off his desk job as an analyst and trained in only one or two days to "fast rope" from the helicopter to the ground with twenty-three of the nation's most elite warriors. Perfection was important; no one wanted Ahmed flying off into the middle of the night because he had not accomplished the technique of descending from Helo Two.

Since the raid was at night, the troops wore dark camouflage. They knew to proceed without communicating loudly to one another in English. If it became necessary, the person to engage with the local population was Ahmed, who was to state in the local language, either Urdu or Hindko, that a security operation was in progress. If things got out of hand, Cairo was trained and ready to scare people away. Preparations had taken place during the second and third weeks of April. In the last week of April, the team boarded an airplane from the SEAL Team's base in Dam Neck, Virginia.

Destination Jalalabad.

THE ODDS

As the team departed Virginia, President Obama still had not given the go-ahead for the raid. He wavered, with a sense that his top national security advisors believed the success of the mission was fifty-fifty. Certainty that bin Laden was in the identified house was also fifty-fifty. Intelligence indicated that the courier was there, and they strongly believed that bin Laden was there, but there had been no sightings of bin Laden himself. A tall individual, dubbed "the Pacer," had been seen pacing the courtyard. Judging from the shadows seen on satellite images, the Pacer looked to be approximately bin Laden's height, but additional information was missing.

Panetta reminded the White House planners that from Tora Bora in December 2001 until the day before the raid, certainty that bin Laden was in a specific location had been about one to two percent. On the day of the raid, certainty rose to fifty percent. Based on these figures, Panetta recommended to the President that the opportunity now was once in a lifetime. Without knowing what would happen the following day, Panetta suggested that the raid proceed.

THE DECISION

The President went around the room polling his top national security advisors, one-by-one, asking each person's opinion. They voted. The President decided to sleep on it. The next morning, the President woke up, called John Brennan, his counter-terrorism advisor, and Thomas E. Donilon, the National Security Advisor, and advised both that he was going to move ahead with the raid. He then called Admiral McRaven, whom he ordered to proceed. It was then McRaven's decision to determine the night they would actually launch.

GO!

On Sunday evening, May 1, Admiral McRaven gave the green light. The two teams in two helicopters left Jalalabad and flew across Pakistan. It remained uncertain if the Pakistani air defenses would pick up the helicopters on radar as they entered Pakistani territory, and if they did, whether or not the Pakistanis would attempt to shoot our aircraft down. The majority of Pakistan's most-sophisticated air defenses were directed eastward, where an invasion or incursion from the Indian Ocean seemed more likely.

The SEALs slipped behind the mountains into Pakistani territory. The two Black Hawks went first, with four Chinooks, larger, slower helicopters, going behind. The first two were equipped with stealth technology, although with the sound of whirring blades, a stealth helicopter belies its name.

WAIT AND WATCH

As the mission began, the nation's top national security advisors gathered in the White House Situation Room. The individuals in the room were watching action that was not projected from helmet cams as has been commonly assumed, but footage from a single drone flying 20,000 feet above Abbottabad. They watched as the helicopters approached the compound, Helo One in the lead. As the eleven troops prepared to descend into the courtyard, the helicopter experienced a unique aerodynamic phenomenon known as "settling with power" or a "ring vortex core," which occurs when an aircraft becomes hostage to its own rotor wash. A subsequent investigation confirmed that this wash was the cause of Helo One's crash. The simulated exercises had been practiced with a chain link fence, but the compound's twelve-foot walls created a rotor

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wash that created a cone as the helicopter descended, causing the helicopter to lose control.

At the White House, the helicopter was seen wavering, peeling off to one side, and then crashing. Helo Two, watching from the northeast corner of the compound, made the quick decision to land on the ground rather than drop their seven men on the roof.

The bin Laden Compound

At the Situation Room, someone, perhaps Secretary Gates, noted that in the first two minutes, two helicopters were on the ground stranded on either side of the compound and one helicopter had crashed. No one had entered the buildings in the compound. No one knew if bin Laden was in the compound. The crews had already created a ruckus that would likely have attracted the attention of the locals and the Pakistani Security Services. It is believed that this was the moment when Secretary of State Clinton was photographed with other advisors at the White House, mouth agape, during this tremendous time of trepidation in the room.

For the SEALs, this was not an overly risky mission. There had been twelve other missions conducted by JSOC that same evening in Afghanistan. One SEAL said afterward, "This is like flying an operation in McLean, Virginia. There was nothing that was overly difficult about this. It was the strategic significance of the target, but there was nothing overly significant about the way we were going to get into the house."

The SEALs continued despite the crash. The twelve troops moved into the compound as planned. Three broke off to engage with the courier, Abu Ahmed al-Kuwaiti, who ran into the house, retrieved a weapon and returned. Before he had a chance to fire, al-Kuwaiti was killed.

The troops then broke off into three-man fire teams and went inside. They immediately killed al-Kuwaiti's brother and al-Kuwaiti's brother's wife. As they moved up the stairs from the first to the second floor, they had a sense that there was someone of high value in the house. At the base of the first floor was a massive metal cage blocking access to anyone going from the first to the second floor.

They blasted through various gates and the metal cage before proceeding up the stairs. As they began to go up the steps, bin Laden's twenty-three year-old son, Khalid, came down the stairs, firing. The SEALS shot and killed Khalid and continued on.

Outside, the four remaining SEALs, Ahmed and the dog were on the perimeter of the compound. After ten or fifteen minutes, Abbottabad locals began to approach, asking what was going on. Ahmed, the intelligence community translator-analyst, was dressed like a local, wearing a shalwar kameez. None of the team's members appeared to be American or on a mission to kill bin Laden.

As local citizens approached, Ahmed told them, "This is a security mission. Go back to your homes. Everything is under control. Don't worry about it." The local Pakistanis had no reason to believe otherwise. Because he was speaking Hindko or Urdu, they returned to their homes. Afterward, when journalists went around the neighborhood and asked if the people had heard anything that night, several said, "Yes, we went up to the house, and a man told us that there was a security mission going on, so we turned around and went home."

Back in the house, after the team had killed bin Laden's son, Khalid, three SEALs progressed from the second to the third floor. There was still another gate, which, again, they blasted, arriving at the top, the third floor. At the end of the hall they saw a tall, rangy Arab with a long beard, peeking out of the door. They immediately realized the man as likely to be bin Laden.

Proceeding down the hall, they pushed the door open and saw two women standing in front of bin Laden. One was bin Laden's twenty-three year-old Yemeni wife, Amal. The second was and remains unknown, perhaps a sister or daughter.

One of the more-exceptional moments of the raid occurred when the first SEAL to arrive at the door realized one of the women might be wearing a suicide vest. The SEAL ran, grabbed both women in a bear hug and pushed them against the wall. As he charged, he realized that if either woman was wearing a bomb-laden vest, he would be the human shield to absorb the blast and allow the mission to continue.

With the two women out of the way, the second SEAL lowered his weapon and fired once into bin Laden's chest and a second time into his head.

Bin Laden fell over.

The SEALs used an alphabetized list of Native American-themed code words for the mission. Geronimo, itself, was not a nickname for bin Laden. It was the sequential, alphabetized code word that meant they found the target. The nickname given to bin Laden by JSOC and SEAL Team Six was Crankshaft. After bin Laden was killed, the shooter announced on his radio, "Geronimo, Geronimo, Geronimo. For God and country, Geronimo."

Bin Laden's body was then brought downstairs, and the team processed the house, looking for evidence that could be brought back into the United States - computer disks, hard drives, flash drives and other information that might be useful to the intelligence community.

The remaining women and children were zip-tied at the wall outside the house.

By this time, one of the backup Chinook helicopters had landed. The SEALs were to board and depart using Helo Two and the Chinook. Helo One still needed to be destroyed to avoid leaving the stealth-teched-out helicopter in Pakistani hands. The pilot of Helo One smashed the instrument panel, using a hammer stored under his seat for this eventuality. His work was a low-tech application to destroy a considerable amount of extremely high-tech information. The other SEALs then returned with a demolition team and C4 cartridges and thermite grenades disabled the remainder of Helo One.

The team then boarded the two helicopters with bin Laden's body and headed back to Jalalabad.

Once there, the CIA Station Chief and Admiral McRaven confirmed that the body was that of bin Laden. Bin Laden's body was then flown to the the U.S.S. Carl Vinson aircraft carrier stationed on the Arabian Sea. After the necessary formalities, bin Laden's body was thrown overboard, where it sank to the bottom of the Arabian Sea.

MISSION ACCOMPLISHED

On May 6, four days after the raid, al Qaeda issued a statement acknowledging that bin Laden was dead and "for our fallen leader, we're going to seek revenge."

That same day President Obama flew to Fort Campbell, Kentucky, for his first in-person meeting with the SEALs. One of the President's advisors said afterward that the team members were well aware that the President had staked his presidency on them, and that Obama knew that the SEAL team had clearly staked their lives on him. They shared a casual final meeting, and the SEAL Team members used a scale model of the compound as they recounted the raid for the President. They then went into a larger room where the team took photographs with the President and presented him with the U.S. flag that had been carried aboard the rescue helicopter, the Chinook. The flag had been stretched, ironed and framed, and on the front of the frame was imprinted, "From Joint Task Force Operation Neptune's Spear," (the name of the mission), "For God and Country, Geronimo." On the back of the frame, each member of the SEAL team signed his name. It was presented to President Obama as a gift and in remembrance of the historic events on May 1 and 2, 2011.

THE UNKNOWN

It has often been asked if there was mention of the identity of the person who fired the kill shot. It is remarkable that neither the President asked, nor did any one of the team members volunteer information as to who fired the crucial shot.

The President of the United States and the members of SEAL Team Six went their separate ways. Neither you nor I will know if they have since met again. ■

THE INTERCHANGEABLE BODY AND QUALITY OF LIFE TRANSPLANTS

"The work she has done has played a vital role for the young men and women who have served this country abroad, been the targets of explosive devices and have lost a limb. Her work is enabling them to regain entry into civilian life and to begin to live a more normal life. . . . She says of her work that she is simply giving back to those who have given so much to their country."

Introducing Dr. **Linda C. Cendales**, the only surgeon in the United States with formal training in both transplant surgery and hand surgery, Past President **Charles B. Renfrew** described the amazing international path of her education. After growing up in her native Colombia, Cendales did her undergraduate work in South Africa, then completed medical school and a medical residency in Mexico before coming to the United States. A member of the 1999 team that performed the first hand transplant in the United States, she is now a professor at the Emory University School of Medicine in Atlanta, Georgia, where she is director of the Vascularized Composite Transplantation and Microsurgery Laboratory of the Emory University Transplant Center. >>

Renfrew called on the audience at the College's 2012 Spring Meeting in Scottsdale to look at their own hands: "Lift your hand, move your fingers, extend them, pick up a paper, pick up a pencil. It requires many moving parts to do all of those things." In 2009, Dr. Linda C. Cendales conducted the first clinical trial of vascularized composite transplantation (the re-transplantation of multiple tissues, including skin, muscle, bone, nerves and tendons as a functional unit) in hands. In 2011, she led a multidisciplinary team that performed the first hand transplant at Emory, a procedure she described in her address, that took nineteen hours.

The idea of transplants, the concept of moving parts from one place to another, is not a recent one, Dr. Cendales noted. It is an obvious solution to a complex problem. She acknowledged the work of those whose advances made today's transplant surgery possible—including microsurgery, plastic surgery and manipulation of the immune system to avoid tissue rejection—many of them honored for their work with the Nobel Prize in Medicine.

IMMUNOSUPPRESSION AS THE KEY

The development of increasingly effective immunosuppression drugs (drugs that suppress the immune system's tendency to reject tissue from a donor) has, Cendales observed, opened the door to seeing beyond organ transplantation as a lifesaving exercise to what she called "quality of life transplants." Improving the quality of life involves not just the replacement of a hand, but also reduction in the amount of medication necessary to avoid rejection. As an illustration, she pointed out advances that had already enabled a kidney transplant patient to survive on one pill a day,

Illustrating her presentation with slides of former patients, she stated that after participating in two hand transplants in the late 1990s (one of which remains the world's longest surviving functional hand transplant), she recognized that "the technical aspects of the procedure were not problematic. Immunobiology and the immune response were." She therefore studied at the National Institutes of Health to learn more about the immune system and how to manipulate it during the quality of life transplantations she envisioned. From her experience there, she developed the vision of a "clinical center within a vibrant academic environment" which could both support research and take care of complex patients, and she found that combination at Emory.

Cendales named more than a dozen disciplines that work together as part of the vascularized composite allotransplantation program at Emory. They include participants from the fields of surgery, immunology, neuroscience, infectious disease, pharmacology, radiology, rehabilitation, mental health and bioethics, all collaborating to continue to improve the outcomes for recipients of hand transplantations.

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Today, the necessary immunity from rejection can be achieved with one injection per month.

HOPES AND DREAMS FULFILLED

Recounting the story of one of her patients, Cendales described a young woman who had lost her left hand and both legs as a result of a systemic disease when she was one year old. The woman grew up without all three limbs and sought Cendales' help "for the possibility of having something that she lost, that she thought she would have never had otherwise. In a remarkable and memorable nineteen hours, we gave her a new hand."

One of the challenges of the young woman's case was that she had not had a left hand for twenty years. The team wondered, "Will it be possible for the brain to adapt to a hand that she's never had before, that she has never used before? She gave us the opportunity, and now we know that it *is* possible."

The patient received therapy four hours a day for six days a week, and her Saturday sessions with Dr. Cendales allowed them to get to know one another well. For the young woman's first occupational therapy in a kitchen, she chose to make brownies because she had learned that Dr. Cendales liked brownies. "I do not know how to cook," Cendales observed, "but I do appreciate eating with both hands three times a day, picking up things with both hands, hugging somebody that I care about." The transplantation gave her patient that same opportunity, one she has enjoyed and that is opening doors, both figuratively and literally. The patient now enjoys simple pleasures such as walking her dog using her left hand. One night after an evening out, she sent a text message to Cendales that said: "For the first time in my life, I was able to eat with both hands, because I was able to hold the steak with the fork in one hand and cut it with the knife in the other hand."

Focusing on quality of life in transplant patients, Cendales and her team, recognizing the importance of body image, "how we look at ourselves, which is a projection of what we are reflecting to others and how others look at us," seek a match for skin pigmentation, size, gender and blood type.

The possibilities created by Cendales's work generate hope that was unrealistic just a few years ago. She shared the story of visiting the mother of a six-month-old baby who had just undergone an amputation. "The mother held the baby in her arms as she welcomed me. What I saw in her face was not a mother welcoming Dr. Cendales into the room, but a mother welcoming hope – hope that I could give her daughter something that she lost."

Hope encourages not only children who have lost limbs. Hope also encourages members of our military. The changing dynamic of war and the development of more-sophisticated body armor have resulted in many members of the armed forces returning from war with devastating injuries involving traumatic amputations. Indeed, the Department of Defense is funding her further research into graft rejection.

Back in Atlanta, one of Dr. Cendales's next patients is a veteran who lost his right leg, right hand and left thumb in Iraq. On the waiting list for a new hand, he waits for her – with hope. ■

Quips & Quotes

"I do not know how to cook, but I do appreciate eating with both hands three times a day, picking up things with both hands, hugging somebody that I care about."

— Dr. Linda C. Cendales

2012 Annual Meeting at The Waldorf=Astoria

President Thomas H. Tongue will preside at the sixty-second Annual Meeting of the College, October 18-21, 2012.

President-Elect **Chilton Davis Varner** has arranged an extraordinary array of speakers for the General Sessions.

Honorary Fellowship, reserved for the highest members of the judiciary, will be conferred on two individuals at the meeting. The Hon. Mr. Justice **Michael J. Moldaver** was elevated to the Supreme Court of Canada in 2011 after more than twenty years as a judge in the courts of Ontario. The Hon. Mr. **Dikgang Moseneke** is Deputy Chief Justice of his nation's highest court, the Constitutional Court of South Africa. The 2012 Annual Meeting marks the first time the College has bestowed Honorary Fellowship on anyone outside of the United States, Canada and the United Kingdom. Both Justices will address the Fellows after they have been conferred with Honorary Fellowship in the College.

Other speakers scheduled at the time of printing include:

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

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

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

DeMaurice F. Smith, Executive Director of the NFL Players Association, FACTL, will review the recent NFL lockout and contract negotiations.

Robert Corn-Revere, an expert in First Amendment law, will discuss the Supreme Court case, *Federal Communications Commission v. Fox Television Stations*.

In a joint discussion on *Why History Matters*: **Patrick N. Allitt**, Cahoon Family Professor of American History, Emory University, specializing in religious, intellectual, and environmental history; and **Deborah E. Lipstadt**, Dorot Professor of Modern Jewish History and Holocaust Studies, Emory University.

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. ■

62nd Annual Meeting of the
American College of Trial Lawyers
October 18-21, 2012
The Waldorf=Astoria New York

Meeting registration information will be mailed in July. Reserve your room now to take advantage of the ACTL-negotiated rate by visiting http://actl.com/newyork2012 or by calling 1-877-GROUP-WA. Our Group Code is ATL, or mention "ACTL 2012 Annual Meeting."

Continuing Legal Education Series ~

THEFT: A HISTORY OF MUSIC

To demonstrate the need for compromise in copyright regulation, Duke University Professors **James Boyle** and **Jennifer Jenkins** presented a timeline of borrowed music to demonstrate that government regulation must protect the borrower without stifling the creative process.

In introducing Boyle and Jenkins to the assembled guests at the 2012 Spring Meeting in Scottsdale, Past President **David J. Beck,** of Houston, Texas, prefaced their presentation with the fact that in ancient times, music was believed to be a gift from the gods. Through evolution, music began to be treated as property with all the rights and obligations typically suggested by today's copyright law.

"Borrowing music" may involve appropriating for one's own use an entire musical composition or as little as "maybe one note." Professor Boyle asserted that "we are trapped in a heated debate about culture and technology and the way the two interact. Music is at the center of this debate."

On the one hand, there exists a generation of lawbreakers, pirates, who are downloading films and music without regard to the artists or the companies that developed them and with no concern that doing so is against the law. On the other hand, entertainment and content companies are using harsh legal threats and technologies to change the way the internet works.

To resolve the tension between artists, casual users, for-profit users and borrowers, it is helpful to understand the evolution of music-borrowing from the earliest times in history to the present. >>

Plato believed that musical innovation was dangerous to the State and should be prohibited. Because music elicits strong feelings such as fear, Plato and the leaders of ancient times wished to regulate and control music, whether accomplished legally, culturally or aesthetically. Jenkins' and Boyle's research indicates that as long ago as 400 B.C., there was "an urge to police the boundaries of musical forms."

Because the Greeks interpreted music as a reflection of the balanced order of the cosmos, there was a strong feeling that the way music was *made* should be regulated. The relationship between geometry and musical form was considered to be mathematically encoded deep within the nature of what is today known as physics. The classical Greeks saw music as a part of the structure of society, and Plato spoke to the mixing of ancient musical modes, which is different than the remixing done in contemporary times.

Boyle explained: "Music could jump the firewall of rationality that protects the brain, going directly to work inside. You have something that simultaneously is so deep that it is part of the structure of the universe, and yet it is so seductive that even the most rational person can be subverted by it. No wonder Plato wanted to regulate it."

Jenkins added that "some musical modes were believed to empower a warlike vigor in men and others were believed to enfeeble the mind. In other words, Plato thought that if you messed with the musical modes, the consequences could be dramatic."

400-1400 A.D.

During the Middle Ages, belief in music's subversive power and the inherent danger crossing musical boundaries remained. Jenkins stated that these enduring boundaries could be religious, cultural or even racial. During this period, the practice of contrafactum was common. In vocal music, contrafactum constituted substitution of one musical text for another without substantial change to the tune. Sacred-secular borrowing of religious music often took popular tunes and layered religious themes on top of them. One example is the Christmas hymn, "What Child is This," which was set to the medieval tune "Greensleeves." Likewise, popular songs during this time were often the result of borrowing from sacred music. A more-recent cultural example is the Beatles' use of weaving classical music into such songs as *Blackbird or All You Need is Love*.

800

The introduction of musical notation around 800 A.D. was revolutionary. Prior to that time, music had existed as an oral tradition with complex polyphonic compositions. Building on the music of others was difficult. The ancient Greeks and Persians used musical

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notation that was subsequently lost for many years and rediscovered or reinvented in the West in the middle of the ninth century.

Prior to the reemergence of notation, a reference choir traveled to the cathedrals to teach the local people the correct way to sing the Mass. Notation was strongly supported by the Holy Roman Empire, whose leaders wanted "uniformity and control over sacred music: One mass, one Church, one Empire." The Church believed uniformity would prevent heresy and fracturing that might undermine its power. With notation came efficiency. The Church believed only one tune should be sung, that is, music with one dominant melodic voice, known as monophony. Instruments were not permitted.

By contrast, polyphony, a texture consisting of two or more independent melodic voices, such as soprano and tenor, would later be sung as one piece of music. Polyphony today usually refers to music of the late Middle Ages and Renaissance.

As musical notation continued, the consequences were the opposite of that which the leaders of the Holy Roman Empire intended. Composers began to use notation as a way to create polyphonic music for many instruments. They were able, for the first time, to distribute the different parts to various musicians. "And so the very thing designed to control music," Boyle said, "turned out to let the genie out of the bottle and allowed musicians and composers to experiment."

One of three sample illustrations from the book ***Theft! A History of Music***

1300 – 1600

During the Renaissance, those who wished to reproduce music did so under specific musical printing privileges. Petrucci, a publisher, obtained an exclusive right to print music in Venice. He obtained the right not because of his musical talent or the talent of the composers, but because Petrucci was knowledgeable about the innovative technology known as the musical printing press.

1710 - 1777

The first copyright law was the 1710 Statute of Anne in Great Britain. The statute gave authors of books exclusive rights to their writings. These rights were extended to music in 1777 in a case involving J.C. Bach, the eighteenth child of Johann Sebastian Bach. The court found that musical composition was a type of writing, and a composer should therefore enjoy the same copyright privilege as that of the author of a book.

This early copyright law applied to reprinting an entire piece of music only. Musical borrowing and the performance of music were not included in the decision. Full-scale copying

or public performances and later, recordings of compositions, were regulated. According to Boyle, "With few exceptions, the law left the smaller stuff like musical borrowing alone."

1906

As the inventors of technology allowing users to listen to recorded, not live, music, the makers of gramophones and player pianos created a new market. When challenged by the composers of the music they reproduced, the inventors argued, "Composers did not have the recorded music market before our inventions, so they haven't lost anything." Philip Mauro of the American Gramophone Association argued that "The composers and publishers have not contributed to this change, yet the publisher doesn't scruple to demand radical change of legislation to give him the entire monopoly of the benefits resulting from these changed conditions."

Jenkins said that when technology changed the "patterns of costs and benefits, people turned to the government for resolution. When new technology included phonographs, gramophones and player pianos, copyright law covered only printing and public performances of musical compositions. Those who made mechanical reproductions such as piano player rolls or cylinders for a phonograph were not obligated to pay the composers. "It was no more a violation of copyright than singing someone's song in the shower," according to Jenkins. The recording industry denied that their reproductions were the subjects of theft, arguing that their products were no different than playing music on a piano.

Congress was now faced with two arguments. The composers believed the new technology was appropriating their property. Well-known composer, John Philip Sousa, complained (vociferously) that "These companies take my property and put it on their records. That disk as it stands, without the composition of an American composer on it, is not worth a penny. Put the composition of an American composer like me on it and it's worth $1.50." "With these new technologies," Jenkins explained, "people could hear music without the intermediary of a human voice or a musical instrument."

To resolve the dilemma, Congress struck a compromise.

"The revenues (the $1.50 John Philip Sousa mentioned), did not go automatically to the existing copyright holders, that is, the composers and the music publishing companies. Rather, there was a policy debate that took into account the dangers of monopoly, the benefits of technological progress, the public interest in this new surplus, the benefit created by new technologies and the encouragement of arts and culture."

Congress' compromise was to issue a statutory license stating that once a composer allowed a song to be recorded, anyone could record it. A composer could not say no to someone wishing to record his music, but the recorder had to pay a flat fee for the right. At that time, the fee was two cents per piano roll. Both sides received a benefit.

"In other words, in 1906, the recording industry said, 'When you must choose between intellectual property rights and technology, go with technology.'"

According to Boyle, from the 1906 debates came "compromise, something that is missing in today's debates. So who won? Both sides won." Composers were guaranteed an income stream to compensate for their creativity, and the music technologists were assured that composers were obligated to allow them to make the recordings. They could compete on the quality of their recordings. It was a good compromise.

1920-1930

The Jazz Age presented a cultural problem of its own. Originating in the dance rhythms of the African cultures, it was believed by some that when jazz was adopted by the "highly civilized white race, it tended to degenerate toward primitivity. That is to say, jazz would actually cause the races not simply to be mingled, but to degenerate." Thus, "the jazz problem." However, the great American jazz trumpet player, bandleader, composer and occasional singer, Dizzy Gillespie, put a positive spin on the act of borrowing music

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when he said, "you can't steal a gift." Imitation may, indeed, be the sincerest form of flattery.

1950-1960

The racial overtones of the Jazz Age grew into a larger controversy about the effects of music on culture. Boyle explained, "Music is frequently portrayed as a virus that can carry something past the immune system of the society or of the brain, carrying with it overtones which are actually dangerous." In the 1950s and 1960s, segregationists wanted to ban rock and roll music, believing that the resulting mixing of the races would lead to a decay of culture. As it turned out, jazz and rock and roll music became a common ground, a medium that crossed racial boundaries.

"Music has a long, rich history of borrowing. As a species, we have always taken and recombined the music around us," Boyle reminded the audience. Consider blues and rock and roll. The blues "is a uniquely American creation that borrows a set of standard forms, the one-four-five chord progression, the use of suspended sixths and sevenths, the particular patterns of licks. All were assumed to be common property, building blocks for every blues musician to build on." Musicians did not pay a licensing fee for a one-chord progression, and rock and roll was the same.

1970s

Before his death in 1980, Beatle John Lennon stated that "if you tried to give rock and roll another name, you might call it Chuck Berry." Also speaking of Chuck Berry, the rock and roll great, musician Keith Richards said, "It's very difficult for me to talk about Chuck Berry 'cause I've lifted every lick he ever played. This is the gentleman who started it all!"

The quotes of Lennon and Richards are considered homage, recognizing a worthy forebear who had no need for licensing.

1978

In 1978, a new copyright law went into effect, with the copyright term being twenty-eight years with an option to renew for another twenty-eight years. This law resulted in one being free to use musical works from 1955 and earlier.

1984

When Hollywood companies, including Universal Studios, tried to regulate the video cassette recorder (VCR) as the product of guilt of contributory copyright infringement, *Sony v. Universal* went to the Supreme Court. Justice John Paul Stevens' 1984 ruling, paraphrased by Jenkins, is that "you cannot hold someone liable for making a copy as long as the technology is capable of another substantial non-infringing use." The VCR makers were therefore held not liable. Within five years after the ruling, more than fifty percent of Hollywood's revenues were attributed to videotape rentals. "The technology they tried feverishly to squelch…ended up saving them."

1990s

Jenkins cited two cases that have shaped America's modern copyright law. In 1991, *Grand Upright Music, Ltd v. Warner Bros. Records Inc.*, in the United States District Court for the Southern District of New York, the court granted an injunction against the defendants to prevent copyright infringement of the plaintiff's song

by sampling. The rap artist Biz Markie had sampled heavily from Gilbert O'Sullivan's song, "Alone Again (Naturally)." Jenkins said the judge announced the decision by pronouncing: "'Thou shalt not steal' has been an admonition since the dawn of civilization." The court ruled that sampling was theft. Even though Biz Markie's actions may have been copyright infringement, the case did not discuss copyright law.

Because copyright covers only expression, it has its limitations. Copyright "doesn't cover ideas and facts. The *scènes à faire* doctrine allows one to copy stock elements of genres." As Boyle explained, no one owns the blues scale and no one owns the one-four-five chord progression. "These elements are free to be borrowed and used. The fair use privilege of copyright allows the use of copyright expression for purposes such as education, news reporting, criticism and commentary, as long as the use is limited and does not interfere with legitimate markets for the copyrighted work." Exceptions and limitations exist to allow creativity and freedom to build on past expression, not to "unduly stifle the creative practice copyright is designed to foster." Whether these limitations and exceptions apply to sampling is still being debated. Jenkins says "there has been no case definitively addressing whether certain kinds of sampling can qualify as fair use, and it would seem that sampling a tiny fragment might have a pretty good fair use argument. But what about sampling a really tiny bit of another song?"

How much might count as de minimis copying? In a footnote, the Court said, "Maybe one note. Maybe." Professor Jenkins, referring to Bridgeport Music, Inc. v. Dimension Films, in which a rap group called N.W.A. digitally sampled a two-second, three-note riff from a Funkadelic song. They changed the pitch and tempo of the arpeggiated chord to make it sound like a police siren. The judge ruled that no reasonable juror would recognize the police siren sound as the original riff.

2005

In 2005, the Sixth Circuit heard *Bridgeport Music, Inc. v. Dimension Films,* a case in which N.W.A., a rap group, called a digitally sampled two-second, three-note riff from a Funkadelic song a violation of its rights. They changed the pitch and tempo of the arpeggiated chord to make the riff sound like a police siren. A federal judge ruled that no reasonable juror would recognize the police siren sound as the original riff.

One might think two or three seconds too minimal to care about, but Jenkins pointed out the *de minimis* doctrine in copyright law, which addresses issues "too trivial to care about." The Sixth Circuit, however, "disagreed and famously announced categorically, 'Get a license or do not sample. We do not see this as stifling creativity in any significant way.'"

TODAY

Cultural anxiety has led to a desire for governmental intervention. Boyle posited a similar concern about cultural decay resulting from rap music, which may be the modern version of "the jazz problem." He suggested that in forty or fifty years, society may allude to "the golden days of rap" and the "wonders of rap creativity." Throughout history, composers have been inspired by the music of others and have used others'

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themes in new creative pieces. At certain times in history, musical borrowing was considered an acceptable compositional technique. Jenkins offered examples of this musical borrowing by pointing out that John Williams' theme for *Star Wars* was modeled on Holst's *The Planets*. Tchaikovsky's *1812 Overture* included themes from the French and Russian national anthems.

The history of music and the often-tense relationship that music has shared with technology, morality and law remain relevant today. The struggle to control music has especially applied to musical remixes, which are alternative versions of recorded songs. Boyle pointed out that until recently, the law did not interfere in the relationships among musicians. With the advent of sampling, however, all musicians have been required to license or clear even tiny samples of fragments they use from other songs. Sampling, which is the reuse of existing sound recordings to create new works, was previously considered creative sharing. Now it is more likely viewed as theft.

CENTER FOR THE STUDY OF THE PUBLIC DOMAIN

In their role as historians, Boyle and Jenkins study music reproduction and the various transmission technologies of the past as well as the policy makers' and public's response to the changing technologies. Boyle admits that it is difficult to predict the effects of technologies, and throughout history, leaders have frequently tried to regulate something they did not understand. During recent Congressional hearings about the Stop Online Piracy Act, "Congressperson after Congressperson boasted that they did not understand the technology they were about to regulate. They boasted, "We're not geeks." Boyle wondered, "Couldn't you get a geek in the room?"

TECHNOLOGY EVOLVING

Boyle pointed out that "The technology of music includes everything from musical notation to musical printing, from the late 1400s through the invention of player pianos, gramophones, eight-track tapes, tape recorders, CDs, MP3s, the internet and peer-to-peer file sharing systems." Not only do views change drastically, but new technology changes the "patterns of costs and benefits" from the production and distribution of culture. This results, Boyle said, in the "incumbent industry saying, 'we should get all the new gains, and someone else should bear the costs and losses.'" Boyle believes "We are the first generation in history, as a legal matter, to deny our culture to ourselves."

Jenkins continued, stating that "the current copyright term outlasts the commercial life span of the vast majority of cultural works, lasting for the life of the author plus seventy years and for ninety-five years after publication of corporate-owned works. Studies have shown that only two percent of the works between fifty-five and seventy-five years old actually maintain commercial value. The other ninety-eight percent after that period of time are not commercially exploitable. No one wants to pay for them."

For the ninety-eight percent of works not commercially viable, no one benefits from continued copyright protection, but the works are off limits because it is presumptively illegal to digitize them without permission. The regulation of music at the atomic level and the way the length of copyright terms is outpacing the commercial life span of most works has upset the traditional balance in copyright law, between what is owned and what is free for future creators to use and build on.

THE FUTURE OF COPYRIGHT FOR MUSICAL WORKS

"We have a paradox," Boyle believes. "New technologies now offer unprecedented opportunities for musicians to create and share their works. We could be in the most creative period in history, with more people able to create, listen to or watch their own or the creations of others.

"At the same time, the law is tightening and making more activities related to creativity illegal, subject to payment or the focus of licensing. We have a split personality, with technologically mediated freedom

fighting increasing demands for legal control. This explosion of creativity is being frowned upon by the law. The paradox here is that new work is not making its way into mainstream culture, onto the radio or into television. Like jazz and the blues that were once the purview of the speakeasy, today's works will take time to become mainstream art."

Jenkins and Boyle posed a broad philosophical question to the audience: *Will copyright be a membrane that keeps the creative music of tomorrow from entering the mainstream?* In closing, the speakers responded to their own question: There are those who claim downloading is a human right," Jenkins said, "but I don't think so. The basics of the copyright system are sound, but the system needs to be modified for balance. The term should more-accurately approximate the actual commercial life span or the useful value of works. Copyright should not regulate music at a granular atomic level when regulation gets in the way of musical creativity. I don't want to sacrifice our traditions of free speech, creativity, or privacy in the process of defending a business model." ■

Professor James Boyle is a graduate of Harvard Law School and co-founder of the Center for the Study of the Public Domain at Duke University Law School. He is one of the original board members of Creative Commons, which works to facilitate the free availability of art and culture materials, and last year he served as chairman of the board of that organization. His teaching skills have been well-recognized. The Duke Bar Association presented him with its coveted Distinguished Teaching Award. He has taught at American University, Yale Law School, Harvard Law School and Pennsylvania Law School. He is the author of the book, *The Public Domain* and also the book, *The Shakespeare Chronicles*, a novel about the search for the true author of Shakespeare's works.

Professor Jennifer Jenkins is the director of the Duke Center for the Study of Public Domain. She received her Bachelor of Arts in English from Rice University in Texas. She received her J.D. from Duke Law School and her M.A. in English from Duke University. She is the co-author with Professor Boyle of the novel, *Bound by Law*, which addresses copyright, fair use and documentary film.

Bound by Law, by Boyle and Jenkins, is presented as a graphic novel, or comic book, and presents the history of musical borrowing from Plato to rap. When queried about the comic book format, Boyle stated that "We realized that the world of the internet and of digital tools meant that an entire generation of creators were being subject to a law, copyright law, about which they knew nothing and which they found mystifying, which to be honest, many lawyers do, also. And so we produced a nice little comic book on fair use and documentary film." Jenkins added, "Our intended audience for the comic book included the artists being affected by copyright law, students. But what we've heard is that the book, which has been downloaded over 500,000 times, has been turning up in some unusual places, in lawyers' offices and in large entertainment companies. Nothing inspires confidence in your lawyer like seeing a comic book among the reference materials in the lawyer's office!" *Bound by Law* may be downloaded online at http://www.law.duke.edu/cspd/comics/.

Boyle's and Jenkins' presentation at the 2012 Spring Meeting in Scottsdale was based on their next (comic) book, *Theft! A History of Music*, a 2,000-year study of music and the technologies and norms that regulate it.

College Inducts 69 at Scottsdale Meeting

CALIFORNIA-NORTHERN
Matthew S. Conant
William C. Johnson
Oakland
Noël M. Ferris
Sacramento
Teresa M. Caffese
Lawrence Cirelli
Jon B. Streeter
San Francisco
Robert J. Kahn
Walnut Creek

CALIFORNIA-SOUTHERN
John C. Kelly
Long Beach
Chad S. Hummel
Steven G. Madison
Stephen M. Nichols
Frank A. Silane
Bart H. Williams
Los Angeles
Thomas H. Bienert, Jr.
San Clemente
Barton H. Hegeler
San Diego

COLORADO
Ross B. H. Buchanan
Denver

DISTRICT OF COLUMBIA
David Lloyd Douglass
Washington

FLORIDA
Robert B. Parrish
Michael G. Tanner
David M. Wells
Jacksonville
Jane W. Moscowitz
Miami

INDIANA
Robert F. Parker
Merrillville

KANSAS
Robin D. Fowler
Overland Park
Jeffrey D. Morris
Prairie Village
Craig W. West
Wichita

KENTUCKY
Kenneth Williams, Jr.
Ashland
Perry M. Bentley
Donald P. Moloney, II
Lexington

MAINE
Karen Frink Wolf
Portland

MARYLAND
Harriet E. Cooperman
Baltimore
Frank F. Daily
Hunt Valley
Catherine Whitehurst Steiner
Towson

MONTANA
John G. Crist
Billings

NEBRASKA
Thomas F. Hoarty, Jr.
Omaha

NEW JERSEY
John C. Whipple
Chatham
Robert A. Baxter
Haddonfield
Jane Annick Rigby
Newark

Robert M. Hanlon, Jr.
Princeton

NEW MEXICO
Gary D. Alsup
Clayton

NEW YORK-DOWNSTATE
Daniel J. Thomasch
Richard I. Werder, Jr.
New York

OKLAHOMA
Greg D. Givens
Oklahoma City

PENNSYLVANIA
Kate J. Fagan
Paul Michael Pohl
Pittsburgh

SOUTH DAKOTA
Mark W. Haigh
Sioux Falls

TENNESSEE
Timothy R. Discenza
Nashville
James D. Wilson
Memphis

TEXAS
Robert B. Wagstaff
Abilene
Thomas Monroe Bullion III
Austin
Kathryn Snapka
Corpus Christi
Mike McKool, Jr.
Michael V. Powell
Dallas
R. William Wood
Denton
Richard Andrew Bonner
H. Keith Myers
El Paso
Neal S. Manne
D. Ferguson McNiel, III
Houston
Thomas J. (Johnny) Ward, Jr.
Longview
George Chandler
Lufkin

WASHINGTON
Andy Miller
Kennewick
Parker C. Folse, III
Kevin J. Hamilton
Scott M. O'Toole
Rebecca S. Ringer
Seattle

WEST VIRGINIA
David J. Romano
Clarksburg

WISCONSIN
Steven B. Goff
River Falls

BRITISH COLUMBIA
James Kenneth McEwan, Q.C.
Vancouver

ONTARIO
Bryan A. Carroll
Ottawa
W. Danial Newton
Thunder Bay

INDUCTEE RESPONDER REFLECTS ON JOINING THE "BEST OF THE BEST"

One inductee is asked to give a response on behalf of the new Fellows at each induction ceremony. At the 2012 Spring Meeting in Scottsdale, **Paul Michael "Mickey" Pohl** of Pittsburgh, Pennsylvania, offered his thanks and reflections on behalf of all the new Fellows. His remarks follow: >>

BEST OF THE BEST

I joined Jones Day's litigation group in 1976 in Cleveland. I noticed quickly in the Jones Day offices, and in the offices of many other firms I was privileged to visit, that the lawyers I admired most were, of course, the trial lawyers, and they seemed to have certain things in common. First, there were few introverts among the great trial lawyers. The star lawyers were usually, even if serious by nature, great storytellers. And some of the stories great trial lawyers tell young associates might even be true!

What I also saw was that those I will call the "best of the best," had these curious little plaques on the walls of their offices indicating that they were Fellows of the American College of Trial Lawyers. I would hear them speak about "The College."

I did not exactly know what that was about at first. I thought "The College" was perhaps just another prestigious law school that I did not get into. But over time, I saw that the best of the best who had these plaques had an unfailing respect for the court system, even if it occasionally misfired. They had a refreshing civility and, above all, integrity.

I have concluded that a wonderful culture has been created by the College in the sixty-two years of its existence. That culture seems rooted in a profound respect for our system and for we officers of the court who are daily engaged in this adversarial process.

CAUSES AND COMRADES

Civil War historian James MacPherson wrote a wonderful book called *For Causes and Comrades* that focuses on what motivated soldiers on both sides in the Civil

War to commit such extraordinary acts of bravery and heroism, to endure such hardship and violence, to support each other so magnificently in so many ways and then so peaceably to go home to a re-united nation.

MacPherson speaks eloquently of two factors he found in examining thousands of letters written by soldiers on both sides. First was the "Cause," the sense of purpose that one is engaged in something important and noble and bigger than one's own agenda. He called the second factor "Comrades," the small-group loyalty and the strong bond that comes from the love, respect and trust that develops in good people who are jointly engaged in what they see as a worthy venture.

Alexis de Tocqueville wrote in his book *Democracy in America* in 1835: "Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate." I believe that is more true now than it was when he wrote it. Unfortunately our legislative branch seems sometimes polarized and paralyzed. Thus, the great issues of our day too often begin as court cases with the decisional record being developed in trial. What we do as trial lawyers affects not only the life, liberty and property of our clients, but also how we live and, I believe, the future of our nation. As trial lawyers, we have a true cause. We understand that we must endeavor to preserve and improve the litigation and trial system.

For some in our profession, it seems to have become all about zero sum warfare, Rambo tactics, money or ego. But I have seen, by watching Fellows of the College for about three decades, that our adversarial proceedings play out best when they are conducted with civility, decency and peer group respect. If we can help make the noble aspects of our system flourish and endure, then we, the Fellows of the American College of Trial Lawyers, have given our nation, the judiciary and ourselves a great gift. We new inductees pledge ourselves our Cause and with you, and to each other, as loyal Comrades in that pursuit.

Many of the great courtroom lawyers I saw had courtroom-artist drawings of themselves on the walls of their offices from publicized trials earlier in their careers. I learned two things from that: either the quality of courtroom artists is not that good, or people's appearances change over time if they're in the trial business.

Quips & Quotes

A MOMENT TO CHERISH

At a few moments in my life, I have stood in a place and gotten an absolute rush about how blessed I am to be standing where I am, to be experiencing a breathtaking moment, usually with wonderful people around me. Everyone has courtroom memories: the first time he hears his own voice say, "May it please the court," or the first time in a closing or summation she sees jurors nodding their heads when she makes her points. We cherish those moments.

I have that feeling of a rush when I look out and see you, many of you who have been my role models. You set the bar for us. This weekend I had that rush. I got it when we were being read the induction charge, and I know my fellow inductees shared that feeling.

Thank you all for allowing us, the new Fellows of the College, to walk among you as "Sages of our Craft."

"Long and happy may our years together be!" ■

COLLEGE COMMITTEES ARE ALIVE AND WELL

The American College of Trial Lawyers has sixty-one State and Province Committees and thirty-seven General Committees, all actively and continuously engaged in a variety of activities. Each committee chair submits a status report to the Board of Regents immediately before each national meeting. The summaries below provide a sampling of the committees' recent work: >>

STATE AND PROVINCE COMMITTEES

ARIZONA:
Michael J. (Mick) Rusing, Chair
Approximately fifty Arizona Fellows served as judges in the November 2011 Jenckes Competition, an annual final argument competition between teams from the University of Arizona and Arizona State University. The University of Arizona team won, and each team member received a $1,000 scholarship.

CALIFORNIA-SOUTHERN:
Robert K. (Bob) Warford, Chair
The committee chair met with seventeen superior court judges, all of whom were aware of the existence of the College but were unfamiliar with specifics of the College's mission and works. The chair provided each judge various College publications, including copies of the Code of Pretrial and Trial Conduct, White Paper on Judicial Elections, and a list of local Fellows. The judges expressed great interest in the Code of Conduct for Trial Lawyers and Judges Involved in Civil Cases with Self-Represented Parties (available at www.actl.com).

COLORADO:
Gordon W. (Skip) Netzorg, Chair
Local Fellows recently conducted trial practice CLE programs, Winning at Trial – Tactics and Skills, for more than 130 lawyers. The program included ten scholarships for public service lawyers, generously funded by the College's Foundation. Colorado has initiated the Civil Access Pilot Project, which is modeled on the principles adopted by the College in the Joint Task Force Report of the College and the Institute for the Advancement of the American Legal System (IAALS).

OHIO:
Harry D. Cornett, Jr., Chair
For the fifth year, Ohio Fellows are assisting the Supreme Court of Ohio's Judicial College as it trains new judges and magistrates. Twice per year, approximately a dozen Fellows serve as counsel and witnesses in mock trials challenging the new judges and preparing them for difficult courtroom situations. The program includes the Fellows' critiques after the mock trials. Typical comments from the judges indicate that the Fellows add realism and breadth to the mock trials. To further the extent of the program, the committee has added the College's Ethics and Professionalism teaching materials and videos to the training program.

OREGON:
Dan Skerritt, Chair
The Oregon State Committee is currently promoting and expanding two programs addressing issues of the vanishing jury trial. An internship program for local district attorneys and prosecutors has been very well received and is highly touted by the participating public service lawyers. An expedited trial program with limited discovery and no motion practice is proving to be an outstanding project, capable of replication in other jurisdictions.

PENNSYLVANIA:
Gerald Austin (Jerry) McHugh, Chair
Pennsylvania Fellows have raised more than $26,000 toward their $50,000 goal in a "challenge grant" issued by the College's Foundation. The Foundation granted $25,000 toward establishment of a pilot project under the auspices of the Pennsylvania Legal Aid Network Committee. The funds helped establish a SeniorLAW Center of the Civil Gideon Task Force of the Philadelphia Bar Association. The task force's purpose is to assist Philadelphia's unrepresented low-income tenants in civil proceedings where basic human needs are at stake, particularly in cases involving the potential loss of shelter and child custody. The project began in February and in the first three months of operation has assisted more than 150 families with issues ranging from tenants illegally locked out of apartments to compelling landlords to make essential repairs.

VIRGINIA:
Thomas E. (Tom) Albro, Chair
To further the College's outreach efforts, the Virginia Fellows have formed a law school liaison subcommittee; the College's Codes have been posted on the website of the U.S. District Court for the Western District of Virginia; and personal visits are being made with newly approved candidates for Fellowship, welcoming each to the College.

WYOMING:
Corinne E. (Corey) Rutledge, Chair
The Wyoming State Committee is engaged in a partnership with the Wyoming College of Law to reprise the Summer Trial Institute, an accredited course at the law school.

GENERAL COMMITTEES

ALTERNATIVE DISPUTE RESOLUTION
Sydney Bosworth McDole, Chair
The committee-drafted Criteria for Consideration of Arbitration Experience in Connection with Admission to Fellowship in the College was recently approved by the Executive Committee. The Criteria assists State and Province Committees and Regents to evaluate a candidate's arbitration experience in much the same way as one would evaluate his or her trial experience by taking into consideration the complexity of the matter, advocacy skills, mastery of the facts and the law, and the conduct of the candidate.

EMIL GUMPERT AWARD
Gary Bostwick, Chair
The 2012 Emil Gumpert Award was awarded to The Florence Immigrant and Refugee Rights Project in Florence, Arizona, for its work providing free legal services to unrepresented men, women and unaccompanied children who are detained and awaiting hearings or deportation in Arizona. The first-place $50,000 cash award, in honor of the late Honorable Emil Gumpert, Chancellor-Founder of the American College of Trial Lawyers, is funded by the Foundation of the American College of Trial Lawyers.
2012 Emil Gumpert Award Finalists were Texas Lawyers for Texas Veterans and The Rhode Island Bar Association's United States Armed Forces Legal Services Project. Both finalists' programs provide pro bono legal assistance to military veterans and their families.
The Emil Gumpert Award is the highest honor conferred by the College on a program (rather than an individual), with its mission to recognize programs, whether public or private, whose principal purpose is to maintain and improve the administration of justice.

FEDERAL RULES OF EVIDENCE
James R. (Jim) Asperger, Chair
The committee submitted a letter to the Federal Advisory Committee on Evidence Rules providing the perspective of those in favor and those opposed to the proposed change to Rule 801(d)(1)(B), the hearsay exemption for prior consistent statements. The committee's letter to the Advisory Committee may be viewed on the College website, www.actl.com, under the News tab.

GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY
James L. (Jim) Eisenbrandt, Chair
After extensive investigation of candidates, the committee recommended that Louise Arbour, retired Justice of the Supreme Court of Canada, receive the Griffin Bell Award for Courageous Advocacy. Justice Arbour will be recognized for her courageous work as Chief Prosecutor at the International Criminal Tribunal for the Former Yugoslavia during 1996-1999. Justice Arbour is scheduled to receive the award at the College's 2013 Spring Meeting in Naples, Florida.

JUDICIARY
James P. (Jim) Schaller, Chair
A white paper on judicial elections, prepared by the Judiciary, Jury and Special Problems in the Administration of Justice (U.S.) Committees, has been approved by the Board of Regents. The paper is available on the College website, www.actl.com. The work of the Task Force on Discovery and Civil Justice is now included in the workings of the Judiciary Committee, and the chair and members of the task force are actively managing the ongoing pilot projects being studied.

JURY
Elizabeth N. (Liz) Mulvey, Chair
The Jury Committee is developing "best practices" for courts or jurisdictions to establish programs for cost-effective jury trials in smaller cases.
The committee is also actively engaged in raising awareness about iCivics, an online civics program developed by Justice Sandra Day O'Connor. Last year's chair, Terry Tottenham, seeks liaisons from all states to assist with this outreach effort.

OUTREACH
Walter W. (Billy) Bates, Chair
The Outreach Committee is working with state and province committees to raise the profile of the College by using available College resources. The committee encourages Fellows to request copies of the College's training aids for CLE and other projects. Available resources are:
DVDs: **Case Management Scenarios and Discussion** produced by the Jury Committee and the Federal Judicial Center; **Judicial Demeanor and Courtroom Practices**, produced by the Federal Judicial Center.
DVD with accompanying printed materials: **Persuasive Advocacy Through Effective Writing**, 3-disc set, produced by the Teaching of Trial and Appellate Advocacy Committee.
Flash drive: **NITA Housing Authority v. Ladonna Johnson**, produced by the Teaching of Trial and Appellate Advocacy Committee.
Flash drive with accompanying printed materials: **Code of Pretrial and Trial Conduct Teaching Syllabus**, produced by the Legal Ethics and Professionalism Committee.
Teaching and training materials may be obtained by emailing the National Office at nationaloffice@actl.com.

The Outreach Committee is also collaborating with the College's award committees to educate Fellows on the requirements for College awards and to promote candidate submissions who meet the criteria.

PROSECUTING ATTORNEYS / NATIONAL COLLEGE OF DISTRICT ATTORNEYS
Wm. Paul Phillips, Chair
The Board of Regents approved a name change of the former National College of District Attorneys Committee to Prosecuting Attorneys Committee to more accurately reflect the makeup of its membership.

PUBLIC DEFENDERS
Paul B. DeWolfe, Chair
The Public Defenders Committee sent a letter, approved by the Executive Committee, to the Fourth Circuit Court of Appeals to discourage the proposed cap on fees paid to CJA attorneys handling death penalty cases. The committee's letter may be read in its entirety on the College website, www.actl.com, under the News tab.

TASK FORCE ON DISCOVERY AND CIVIL JUSTICE
Paul C. Saunders, Chair
With pilot projects in place nationwide, the Civil Access Pilot Project of the College and the Institute for the Advancement of the American Legal System (IAALS), the work of the Task Force on Discovery and Civil Justice is being subsumed by the Judiciary Committee for follow up and additional work as needed. ■

COLLEGE CONTINUES SUPPORT OF LAW STUDENT COMPETITIONS

The American College of Trial Lawyers sponsors four law student competitions each year. In addition to financial support, all participating students receive a copy of either the American or bilingual Canadian *Code of Pretrial and Trial Conduct* and a brochure about the College and its work. Fellows participate as judges in both regional and final rounds. Each competition is managed by the committee chair, with the assistance of very active and enthusiastic committee members. The chairs of the competition committees for the 2011-2012 term are:

Thomas W. Hill, Columbus, Ohio: National Moot Court Competition
Hon. T. John Ward, Longview, Texas: National Trial Competition
Eric Durnford, Q.C., Halifax, Nova Scotia: Gale Cup and Sopinka Cup

This year's competitions have generated extremely talented future litigators. The following is an update on the 2011-2012 competitions: >>

NATIONAL MOOT COURT COMPETITION

Since shortly after the competition began in the mid 1950s, the College has sponsored the National Moot Court Competition. Teams from more than 150 law schools participate in fifteen regional rounds held across the United States.

The 2012 final rounds were held at the competition's traditional location at the House of the Association of the Bar of the City of New York. President **Thomas H. Tongue** served as a judge in the final rounds.

Texas Tech University was recognized as the winner for the second consecutive year. Winning team members, *Brandon Beck, Allie Hallmark* and *Elizabeth Hill*, are being recognized at the Texas Fellows' annual luncheon. *Grace Yang* of Berkeley Law was named Best Oral Advocate and recognized by committee member **Paul D. Gutierrez** at a ceremony at Berkeley Law School.

The panel of judges for the final round in New York also included: Hon. *Paul G. Gardephe*, United States District Court for the Southern District of New York; Hon. *William F. Kuntz, II*, United States District Court for the Eastern District of New York; Hon. *Raymond J. Lohier, Jr.*, United States Court of Appeals for the Second Circuit; Hon. *Rosalyn H. Richter*, New York State Supreme Court Appellate Division, First Department; Hon. *Jane R. Roth*, United States Court of Appeals for the Third Circuit; *Samuel W. Seymour*, President, New York City Bar Association.

NATIONAL TRIAL COMPETITION

Since the inception of the National Trial Competition in 1975, the mock trial competition has been co-sponsored by the College with the competition's administrator, the Texas Young Lawyers Association.

More than 300 teams participated in the recent regional rounds held across the United States, with twenty-eight schools participating in the final rounds in Austin, Texas. The National Trial Competition Committee played a key role in recruiting Fellows as judges at the regional rounds. Committee members and President Thomas H. Tongue traveled to Austin to judge the finals.

President Tongue presided over the final round, and committee members served as jurors. In an unusual matchup this year pitting a husband and wife against each other, a Baylor University team took home the prize in a close round with a second team from Baylor.

Members of both teams will be recognized by the Texas Fellows at their annual luncheon in June. Students *Mark E. Walraven* and *Steven Lopez* comprised the winning team, with *Mark E. Walraven* hailed as the Best Oral Advocate.

GALE CUP

Founded in 1974, the Gale Cup Moot, Canada's premier bilingual law student moot court competition, is held annually at Osgoode Hall in Toronto, Ontario.

The 2012 Gale Cup was awarded to the University of British Columbia, with team member *Lisa Jørgensen* being awarded a Dickson Medal as Exceptional Oralist of the final round. Other team members were *Bryan Badali, Guy Patterson and Patrick Williams*.

College Treasurer **Philip J. Kessler** attended the final round and presented the awards. The Hon.

>>

Allan Hilton, Québec Court of Appeal, and the Hon. **Stephen T. Goudge**, Ontario Court of Appeal, both Fellows served as competition judges. Judges for the final round were Honorary Fellow the Hon. Mr. Justice **Thomas Cromwell**, Supreme Court of Canada; the Hon. *François Doyon*, Court of Appeal of Québec; and the Hon. *Holly C. Beard*, Court of Appeal of Manitoba.

SOPINKA CUP

The Sopinka Cup's national trial advocacy competition began in 1999. Named in honor of the late Hon. Mr. Justice **John Sopinka**, Justice of the Supreme Court of Canada and Honorary Fellow of the College, the competition is administered by The Advocates' Society. The final rounds are traditionally held at the Ottawa Court House.

This year's competition participants were treated to a tour of the Canadian Supreme Court by Honorary Fellow the Hon. Mr. Justice **Thomas A. Cromwell**. President **Thomas H. Tongue** attended the competition as representative of the College and provided feedback to the participating students.

A.. The Hon. Mr. Justice Thomas A. Cromwell, Supreme Court of Canada, with the 2012 Gale Cup winners from the University of British Columbia

B. President Thomas H. Tongue presides over the final round of the National Trial Competition as Baylor Law student Chaille Graft Walraven speaks to the Fellow-packed jury.

C. Fellows who participated as judges in the National Trial Competition final rounds surround the presiding judge, President Tomas H. Tongue.

D. College Treasurer Philip J. Kessler with Gale Cup Exceptional Oralist Lisa Jørgensen

E. President Tongue with Baylor Law students. l to r: Joel Towner, Chaille Graft Walraven, Thomas H. Tongue, Mark Walraven, Steven Lopez.

F. College President Thomas H. Tongue with the 2012 National Moot Court Competition winners from Texas Tech University

G. Sopinka Cup winners Lauren M. Ignacz and Jared D. Epp

For the second consecutive year, the team from the University of Saskatchewan won the competition. Team members *Lauren M. Ignacz, Jared D. Epp, Andrea Johnson, Riley Potter* and their coach, *Ashley Smith,* were honored by local Fellows at a dinner in April hosted by Manitoba/Saskatchewan Province Committee Chair **Maurice O. Laprairie**.

Queen's University student *Zoë Marszewski Paliare,* daughter of Fellow **Chris G. Paliare,** LSM, was acknowledged as the Best Overall Advocate and will be recognized by the Ontario Fellows at their annual dinner in June.

COMMITTEE MEMBERS SOUGHT FOR 2012-2013

The law student competitions remain an integral part of the work of the College and have proven to be of great value to both students and Fellow participants. Fellows interested in serving on the competition committees should contact the National Office by email, nationaloffice@actl.com. ■


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NATIONAL MEETING FEEDBACK ASSISTS LEADERSHIP

The College seeks Fellows' input as it plans future interesting national meetings.

Following the three most-recent national meetings, the National Office distributed an online evaluation survey to all attending Fellows to learn their preferences for future speakers and meeting locations. When asked to identify locations that would draw them to meetings, the top five cities suggested were New York, San Francisco, Chicago, London and Hawaii. Within the next four years, the College will hold a national meeting in each of these most-requested milieus. The College website, www.actl.com, provides a list of upcoming national meetings.

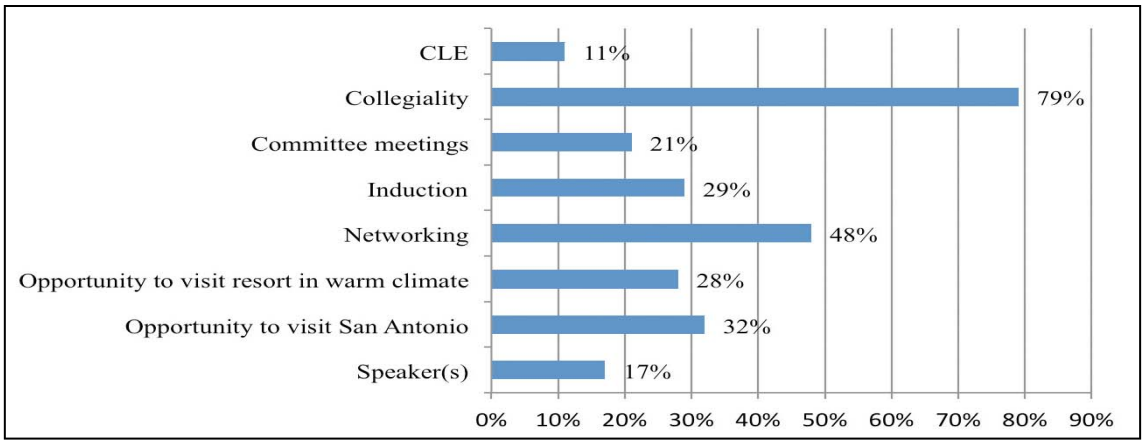
Survey respondents overwhelmingly favored the existing format and scheduled time allotments at national meetings. Fellows who did not attend the 2011 Spring Meeting identified schedule conflicts as the primary reason they were unable to attend. Many Fellows also indicated the meeting registration fee was excessive. In contrast, the vast majority who attended felt they received good value for their money.

The College values the opinions of Fellows, and we will continue to seek input to guide future plans. The results of recent surveys about the 2011 Spring, the 2011 Annual and the 2012 Spring Meetings are provided: **>>**

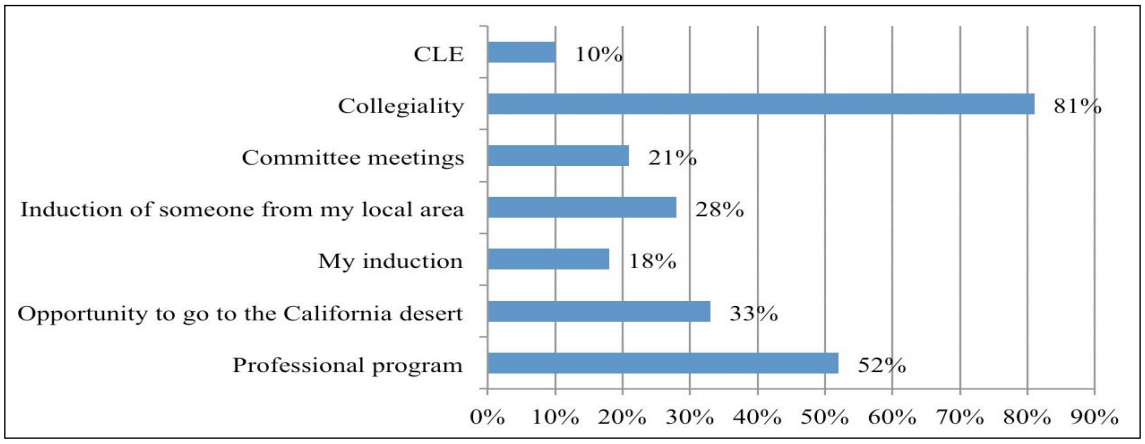
Why did you attend this meeting? *Choose all that apply.*

(Selected Responses)

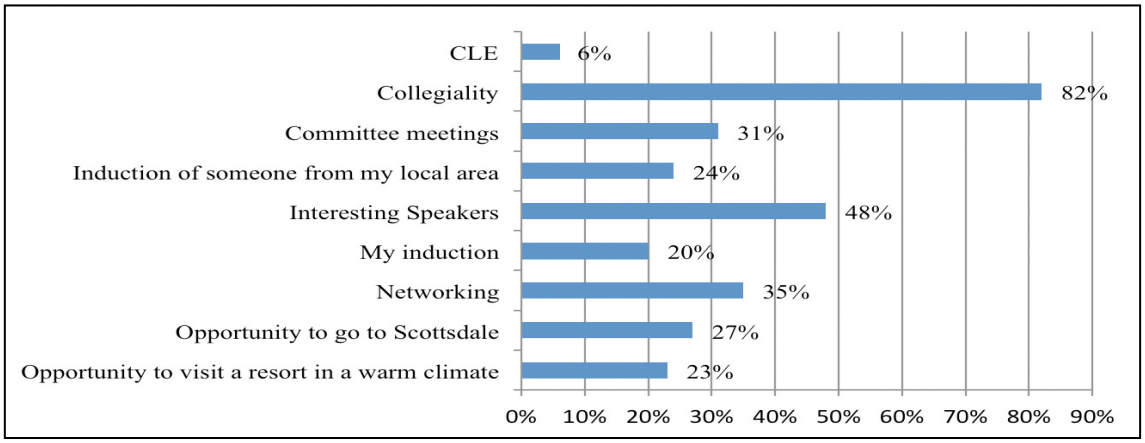
San Antonio:



La Quinta:



Scottsdale:



Considering the reasons why you attended the meeting and your overall opinion of the event, do you feel you received a good value for you money?

2011 Meeting in San Antonio	2011 Meeting in La Quinta	2012 Meeting in Scottsdale
▪ Yes – 89% ▪ No – 11%	▪ Yes – 96% ▪ No – 4%	▪ Yes – 95% ▪ No – 5%

FELLOWS TO THE BENCH

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

Donna S. Pate
Gurley, Alabama
Effective February 24, 2012
Madison County Circuit Court
Huntsville, Alabama

J. Edward Gouge, Q.C.
Salt Spring Island, British Columbia
Effective February 27, 2012
Provincial Court of British Columbia
Nanaimo, British Columbia

Dana L. Christensen
Kalispell, Montana
Effective December 6, 2012
United States District Court,
District of Montana
Missoula, Montana

The College extends congratulations to these newly designated Judicial Fellows.

NEW REGENT SELECTION IN PROGRESS

As required by the College Bylaws (found in the *Roster*, commonly referred to as the Blue Book), the fifteen Regents of the College each serve staggered four-year terms. At the upcoming 2012 Annual Meeting in New York City, **Francis M. Wikstrom** and **Robert L. Byman** will complete their terms. Wikstrom represents the Fellows of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming, which compose Region IV. Region VIII, under the leadership of Byman, is comprised of Illinois, Indiana and Wisconsin.

Article 5 of the *Bylaws* of the American College of Trial Lawyers determines how new Regents are selected. Section 5.4 addresses the nomination and election procedure. In March each year, each Fellow is mailed a notice identifying the members of the 2012 Regents Nominating Committee, who are appointed by the president of the College.

This year's Chair is Regent **Samuel H. Franklin**. Past Presidents **Earl J. Silbert** and **John J. (Jack) Dalton** are members, along with Regents **Douglas R. Young** and **Trudie Ross Hamilton**, and State Committee Chairs **Kathleen Flynn Peterson** and **Stephen G. Schwarz**.

Each Fellow is mailed a notice of the committee's recommendations in the summer. A vote of all Fellows is then taken at the Annual Meeting to confirm the newly elected Regents

ROSTER UPDATE

Preparations for the 2013 edition of the ACTL Roster are under way. Address change notices were sent to all Fellows in June. Please return changes to the National Office by July 31, 2012 so we may update your listing. If you have changed firms or moved, please be sure to include your new email address, telephone and fax number.

RESOLUTION PRESENTED TO FORMER COLLEGE SECRETARY J. DONALD COWAN, JR.

At the North Carolina Fellows Meeting held in Charleston, South Carolina, March 22-25, 2012, President-Elect **Chilton Davis Varner** presented former College Secretary **J. Donald Cowan, Jr.** with a plaque honoring his commitment and dedication to the College for more than three decades. Cowan resigned as Secretary and as a member of the Executive Committee after suffering a stroke in the spring of 2011. Throughout the ensuing challenges, Cowan and his wife Sarah have demonstrated great courage and perseverance. The Board of Regents passed a resolution in October 2011 to honor Don and Sarah Cowan and their many contributions to the College. At the presentation of the award in Charleston, the Cowans were enthusiastically received by a standing ovation from their College friends.

President-Elect Chilton Davis Varner and Regent Mike Smith stand behind former College Secretary Don Cowan and his wife, Sarah.

THE BULLETIN SEEKS VOLUNTEERS

President **Thomas H. Tongue** has appointed Past President **Andrew M. Coats** and Canadian Fellow **Stephen M. Grant** as new Co-Editors of *The Bulletin*. Past President **E. Osborne (Ozzie) Ayscue Jr.** will bring his years of experience to serve as Editor Emeritus.

The Bulletin, the College's three-times-per-year print and online publication, highlights the College's Annual and Spring Meetings in its winter and spring issues. A third issue, with publication in late summer, includes articles of general interest to all Fellows.

Coats and Grant hope to continue Ayscue's tradition of excellence and add new features in the coming years. Input from Fellows is invited as the Co-Editors look to broaden the scope of *The Bulletin* to complement its status as a remarkable historical record of the College's activities.

Requests to write one-time articles or to serve on the Bulletin Committee should be submitted to the College's National Office at nationaloffice@actl.com.

INTERESTED IN SERVING ON A COMMITTEE?

Each summer, the College's President-Elect and Treasurer appoint members to the state, province and general committees for the upcoming term.

As a rule, committees have a fixed number of members. When it is believed that an additional member would benefit a committee's work without overburdening its existing projects, the officers of the College make interim assignments. State and province committee members typically serve for five annual terms unless there is a specific reason to remain on the committees longer. General committee members' terms are, as a rule, for three years. In all cases, these five and three-year rules do not apply to service as vice chair or chair of a committee.

A report of the activities of some general, state and province committees can be found elsewhere in this issue of *The Bulletin*. You are encouraged to inquire about participation in the College's committees. If you would like to serve, please contact the National Office by email, nationaloffice@actl.com, for additional information.

STATE AND PROVINCE COMMITTEES

The College is composed of regions which are loosely based on the jurisdictions of the U.S. circuit courts. Within the fifteen North American regions, the College operates in all fifty U.S. states and nine Canadian provinces. With the District of Columbia and Puerto Rico included, the College has sixty-one state and province committees.

The state and province committees contribute by providing legal education programs for public service lawyers, participating as judges in College-sponsored regional law student competitions, acting as liaisons to the general committees when needed and identifying and investigating potential candidates for Fellowship. The latter function is essential to the maintenance of the College's high standards and furtherance of its goals.

The state and province committees meet regularly in person to conduct College business, and social events are conducted within the regions, states and provinces each year.

GENERAL COMMITTEES

General committees' functions and identities may vary from time to time based on need. These standing committees identify recipients of College awards, promote collegiality of trial lawyers in the different litigation specialties and generate timely publications as needed. In addition to the College's own publication, The Bulletin, general committees have taken a stand on non-political issues of importance to the trial bar and published suggested jury instructions, codes of conduct for both Canada and the U.S. and a white paper on the use of cameras in the courtroom. Publications may be accessed on the College website (www.actl.com, under the Publications tab). The mandates of the thirty-seven general committees are also available online and in the College Roster (the "Blue Book").

The general committees generally meet in person two times per year, during the annual and spring meetings. Other committee work is accomplished by conference calls and email as needed.

IN MEMORIAM

In this issue, we record the passing and celebrate the lives of thirty-five Fellows of the College ✦ Ten of them lived into their 90s, another eighteen into their 80s ✦ Only two did not reach age seventy-five ✦ Nineteen are known to have seen service in World War II ✦ Two volunteered the day after the Japanese attack on Pearl Harbor ✦ Two won Bronze Stars for Valor in the Pacific Theater ✦ One was the navigator on the command plane for five different Air Force Generals who among them crafted the strategy that won the air war in Europe and the Pacific ✦ One took General George S. Patton aloft in his reconnaissance plane to survey a battle area ✦ One United States Marine officer used his knowledge of the Japanese language to interpret maps of the fortifications on Iwo Jima's Mount Suribachi that led to the flag-raising that became the iconic symbol of the Marine Corps ✦ Another seven saw military service in later years ✦ A number had been judges at various levels ✦ Two were Chief Justices of their state Supreme Courts ✦ One was the first Alaskan to sit on the United States Court of Appeals for the Ninth Circuit ✦ One had been President of the National Conference of Chief Justices ✦ Three were presidents of their state bars. Many were members of College committees; eight had chaired state, province or national committees ✦ One had been a delegate to a Canadian-United States Exchange ✦ Four were the fathers of Fellows who had followed in their footsteps ✦ Three were published authors of widely-recognized treatises in their area of the law ✦ Several handled engagements that were landmarks in our history ✦ One represented the owner of one of the ships in the Andrea Doria-Stockholm collision and later was an arbitrator in a controversy arising from the Exxon Valdez oil spill ✦ One represented White House Chief of Staff H. R. Haldeman in the wake of Watergate. ✦ Their interests were varied ✦ One was a Bronze Life Master in bridge who placed second in a national online bridge competition nine days before his death at age eighty-five ✦ One was a cattle farmer, one a national debating champion ✦ They were college athletes— a baseball player, a basketball player, a tennis player, three football players ✦ One took up running at age seventy-three, skied until he was eighty-nine and, a cancer victim, walked a 5K at age ninety-four not long before his death ✦ One saw his love of skiing reflected in a granddaughter who was a three-time World Cup champion in that sport ✦ One was the mayor of his large city in a significant time of transition ✦ One was the Peace Corps Director in three Central and South American countries.

— ***E. Osborne Ayscue, Jr.,*** *Editor Emeritus*

Many of their published obituaries were so modest that only research on the Internet disclosed significant facts about their rich lives. For some, even that left us knowing too little about them.

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

Robert Marshall Austin, '75, a Fellow Emeritus from Eden Prairie, Minnesota, retired from Austin & Abrams, Minneapolis, died in an accident on November 22, 2010 at age eighty-seven. He was a graduate of the University of Minnesota and of its School of Law.

T. Edward Austin, Jr., '85, a Fellow Emeritus from Jacksonville, Florida, died April 23, 2011 at age eighty-four, several weeks after undergoing heart surgery. He earned his undergraduate degree and a master's degree in education at Duke University and taught school before entering the United States Army as a paratrooper with the 101st Airborne. Discharged after an injury, he entered the University of Florida College of Law, and upon graduation served as Assistant County Solicitor for Duval County. He was then appointed his judicial district's first public defender. Thereafter he served for about twenty years as State Attorney before being elected Mayor of Jacksonville. Described as a "strapping John Wayne kind of a guy," his tenure as mayor was marked by the River City Renaissance, an urban redevelopment project that revitalized the city's downtown, and the awarding of a National Football League franchise, the Jacksonville Jaguars. His first wife, a nurse he met while recuperating from his injury, predeceased him. His survivors include a son and two daughters.

Hon. Robert Boochever, '61, a retired Judicial Fellow living in Pasadena, California, the former Chief Justice of the Alaska Supreme Court and Senior Judge on the United States Court of Appeals for the Ninth Circuit, died October 9, 2011 at age ninety-four. He was a graduate of Cornell University, where he was a member of the football and tennis teams, and of the Cornell School of Law. After serving as an officer in the United States Army in the 10th Mountain Division during World War II, he settled in Juneau, Alaska, where he served as Assistant United States Attorney before entering private practice. He practiced for twenty-five years in Juneau with Faulkner, Banfield, Boochever & Doogan and was for nine years Chair of the College's Alaska State Committee. Appointed to the Alaska Supreme Court in 1972, in 1975 he became the fourth Chief Justice of that Court. In 1980, he became the first Alaskan jurist appointed to the Ninth Circuit Court of Appeals. He had been named Juneau Man of the Year, held an honorary Doctorate from the University of Alaska Southeast and had been honored with a Cornell Law School Distinguished Alumnus Award. One of his former law clerks had honored Boochever and his own parents by endowing the Boochever and Bird Chair for the Study of Teaching of Freedom and Equality at the University of California, Davis School of Law. He was an adventurous outdoorsman, skier, fly-fisherman and birdwatcher and a member of the Explorers Club. Twice a widower, his survivors include four daughters and numerous grandchildren, one of whom, alpine skier Hilary Lindh, was a three-time World Cup champion and a silver medalist in the 1992 Winter Olympics.

Frederick Jean Buckley, '73, a Fellow Emeritus retired to Cutler Bay, Florida, died April 2, 2012 at age eighty-eight. A graduate of the University of Michigan and of its School of Law, his undergraduate education had been interrupted by service in the United States Army in England and France in World War II. He had practiced law in Wilmington, Ohio in the firm he founded, now Buckley, Miller & Wright. An Eagle Scout and later a scoutmaster, he had been Assistant Prosecuting Attorney and then Solicitor in Wilmington. Wilmington College, where he had served as counselor and a trustee, had awarded him an Honorary Doctor of Laws degree. Licensed in both Ohio and Florida, he was an early advocate of alternative dispute resolution. In retirement in Florida, he became an active civic volunteer. A widower whose wife of sixty-two years had predeceased him, his survivors include a daughter and two sons, all lawyers, one of whom, Daniel L. Buckley, is a Fellow of the College.

Frank Claybourne, '77, a Fellow Emeritus from Wyoming, Minnesota, died July 28, 2011 at age ninety-five. A graduate of the University of Minnesota and of its School of Law, he was a member of the Order of the Coif and

Note Editor of the Minnesota Law Review. He practiced with Doherty, Rumble & Butler in St. Paul, Minnesota until his retirement at age eighty. He had served as President of the Minnesota State Bar Association. A widower, his survivors include a daughter and a son.

Richard B. Costello, Q.C., '10, Partner/Director of McInnes Cooper, Saint John, New Brunswick, died March 12, 2012 at age sixty-one. A graduate of the University of New Brunswick and of its School of Law, he had served as a member of the Town of Rothesay Council and of the Rothesay Police Commission and for four terms as a member of the Council of the Law Society of New Brunswick. His survivors include his wife of thirty-two years, two daughters and two sons.

Edmond Francis DeVine, '69, Of Counsel to Miller, Canfield, Paddock & Stone, PLC, Ann Arbor, Michigan, died February 15, 2012 at age ninety-five. A graduate of the University of Michigan, where he was a member of the track team, and of the University of Michigan School of Law, where he was Editor of the Michigan Law Review, he had earned an LLM degree from Catholic University of America. After serving as a special agent of the FBI for two years upon his graduation, he joined the United States Navy in World War II and was an Air Combat Intelligence Officer with Fighter Squadron VF29, assigned to the USS Cabot. Operating with the Fast Carrier Task Force in the South Pacific, his squadron saw action off the Philippines, Formosa, Iwo Jima and Okinawa. He was awarded a Bronze Star with Combat V for valor. Appointed Chief Assistant Prosecuting Attorney for Washtenaw County, he subsequently served three terms as the County Prosecutor, during which time he served as President of the Michigan Prosecuting Attorney's Association and a Director of the National Association of District Attorneys. In 1957, he joined his father's law firm, which later merged with Miller, Canfield. For thirty years he taught criminal law and trial practice as a lecturer and then as Adjunct Professor at Michigan Law School. He also served as Chair of the College's Michigan State Committee. At age 73, he took up competitive running, training daily. He competed every year until he was ninety-four. In 2007 the USA Track & Field Association presented him with the Paul Spangler Award, given to the nation's "outstanding master's long-distance running athlete in the oldest age category." In 2011, while battling cancer, he walked a 5Kand was the first and only finisher in the 95-99 age group. He also skied every March until he was eighty-nine. In 2003 he transferred his one hundred thirty-seven acre farm, now known as the DeVine Preserve, to a natural areas program. Predeceased by his wife of forty-five years, his survivors include two daughters and two sons.

John Edward Doran, '74, a Fellow Emeritus from South Bend, Indiana, retired from Doran & Blackmon, died December 14, 2011 at age eighty-three. A graduate of the University of Notre Dame and of its School of Law, he had served in the United States Army between high school and college. He had been President of his local bar and for eighteen years was President of the local Board of Elections. His survivors include his wife, four daughters and two sons.

Hon. Peter Collins Dorsey, '76, a Judicial Fellow from New Haven, Connecticut, died January 21, 2012 at age eighty. A graduate of Yale University and the Harvard Law School, he served on active duty as an officer in the United States Navy and remained in the Naval Reserve for an additional ten years, retiring as Lieutenant Commander. In private practice in New Haven, Connecticut for fifteen years, he then served as United States Attorney for the District of Connecticut for three years before returning to private practice. He was later appointed a Judge of the United States Court for the District of Connecticut. In private practice, he had been President of the Connecticut Defense Lawyers Association, a member of the American Bar Association House of Delegates, President of the Connecticut Bar Association and President of two American Inns of Court. He had also been a Boy Scout leader and a Little League coach. While on the bench he served on the Judicial Conference of the United States Courts. He was the recipient of the Connecticut

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Trial Lawyers Association's Judiciary Award, the Connecticut Bar Association's Judiciary Award and the Quinnipiac Law School Baldwin Award for Public Service. His survivors include his wife of fifty-eight years, two daughters and two sons.

John Travis Edwards, '82, a Fellow Emeritus, retired from Monnet, Hayes, Bullis, Thompson & Edwards, Oklahoma City, Oklahoma, died April 29, 2012 at age eighty-five. A member of the Osage Nation of Oklahoma, he was a graduate of the University of Oklahoma and of its School of Law. He was a founding member and past president of his local Inn of Court. He was an Elder in his church and a member of its Board of Trustees. He played bridge through his adult life and was a Bronze Life Master who placed second in an online bridge tournament nine days before his death. His survivors include his wife of fifty-two years and two daughters.

Milton Eisenberg, '84, a Fellow Emeritus, retired from Fried, Frank, Harris, Shriver & Kampelman, Washington, District of Columbia, died December 22, 2011 at age eighty-three. The son of immigrant parents who fled Russia during the pogroms of the 1900s, he was a graduate of Cornell University and of its School of Law, graduating at age twenty-one and editing the Cornell Law Quarterly. His career involved service in all three branches of government. He had clerked for a Judge of the United States Court of Appeals for the District of Columbia and served as an Assistant United States Attorney for the District of Columbia, as Minority Counsel for the Judiciary Committee of the House of Representatives and as Administrative Assistant and Counsel for New York Senator Kenneth Keating. After his government service, he joined Fried Frank, serving as chairman of its Washington litigation department for twenty-five years. He chaired the first ABA National Institute on White Collar Crime. He was a founder and served several terms as President of the Edward Bennett Williams Inn of Court. For several years he taught a seminar on Constitutional Law as an Adjunct Professor at Georgetown Law School. He had been an officer in an Air Force Reserve unit led by Brigadier General Barry Goldwater. He had served on several local civic organizations and was a member of the Board of Trustees of the Washington Hebrew Congregation. His survivors include his wife, a daughter, three sons and two step-daughters.

Edgar M. Elliott, III, '83, Of Counsel to Christian & Small, LLP, Birmingham, Alabama, died February 27, 2012 at age eighty-three. A graduate of Birmingham Southern College and of the University of Alabama School of Law, where he was Editor in Chief of the Alabama Law Review, he had then served in the United States Army Judge Advocate General Corps. A former President of the Birmingham Bar Association and of the Alabama Defense Lawyers Association, he had chaired the College's Alabama State Committee. He was honored with the Birmingham Bar's Nina Miglionico Paving the Way Leadership Award for his efforts to advance the careers of women lawyers. He taught a church school class for over forty years and had chaired the Administrative Board of his church. After his retirement from active practice, he had been General Counsel for Litigation of Liberty National Life Insurance Company. A widower who had remarried, his survivors include his second wife, three sons and two stepsons.

Hon. Donald Easter Endacott, '77, retired District Judge from Lincoln, Nebraska, died April 26, 2010 at age seventy-six. A Phi Beta Kappa graduate of The University of Kansas, a varsity football player and a member of Omicron Delta Kappa, after serving as an officer in the United States Marine Corps, he had graduated from Harvard Law School. A former partner in the Lincoln firm Knudson, Berkheimer, Endacott & Beam, after his elevation to the bench, he had served for twenty-one years before retiring. In retirement, he had co-founded a program called Angel Dogs, in which volunteers trained their dogs to visit and relieve the anxiety and loneliness of patients. His survivors include a son and three daughters.

David B. Fawcett, Jr., '74, Dickie, McCarney & Chilcote, PC, Pittsburgh, Pennsylvania, died April 14, 2012 at age eighty-four. A graduate of Bucknell

University and of the University of Pittsburgh School of Law, he had served in the United States Navy during World War II before entering college. He had been President of both his county bar and the Pennsylvania Bar Association and was a long-time member of the ABA House of Delegates. A founder of the local Neighborhood Legal Services office, except for a brief stint as a judge on the Allegheny County Court of Common Pleas, he had practiced in the same law firm since 1953. He had been an Adjunct Professor at his law school for a number of years and then served for seventeen years as a member of the Board of Trustees of the University of Pittsburgh and as a member of the Executive Committee of the University of Pittsburgh Medical Center. With his wife, he had devoted a local tract of land, called Fawcett Fields, to preserve green space and provide a public recreation area. His survivors include his wife of fifty-nine years, two sons, one, David B. Fawcett, III, a Fellow of the College, and two daughters.

Ralph Dewar Gaines, Jr., '76, Gaines, Gaines & Rasco, PC, Talladega, Alabama, died January 25, 2012 at age eighty-six. His college education was interrupted by service in World War II as an officer in the United States Navy. Completing his undergraduate education at Tulane University, he was a graduate of the University of Alabama School of Law. He had been President of his county bar, of the Alabama Defense Lawyers Association and of the Alabama Law School Alumni Association. He organized and was the first President of the Alabama Lawyer's Referral Service and co-authored the Tort Reform Acts of Alabama. A long-time counsel of both his city and county Boards of Education and a Chairman of the former, he had served as President of the Alabama Council of School Board Attorneys. A deacon in his church, he had led several local civic organizations and had served on the boards of directors of two local banks and as a Trustee of the Alabama Institute for Deaf and Blind. His secondary occupation was that of a cattle farmer. He and his wife had been named Citizens of the Year by the Talledega Chamber of Commerce. His survivors include his wife of sixty years, two daughters and three sons, one of whom, Charles P. Gaines, is a Fellow of the College.

Arthur M. Gilman, '77, a Fellow Emeritus, retired from Gilman, McLaughlin & Hanrahan, Boston, Massachusetts and living in Naples, Florida, died February 25, 2012 at age eighty-six. He was a graduate of Harvard College and of the Northwestern University School of Law. His survivors include his wife, two daughters and a son.

Hon. David Michael Mills Goldie, '82, a Judicial Fellow, associated at the time of his death with Fasken, Martineau, DuMoulin LLP, Vancouver, British Columbia, died March 21, 2012 at age eighty-eight. His education at the University of British Columbia was interrupted by service in the Canadian Army in World War II. After the war, he earned his law degree at Harvard Law School. His career had embraced private practice, followed by several years as General Solicitor of British Columbia Electric, after which he returned to private practice. A Founding Governor of the Law Foundation of British Columbia and a participant in the Cambridge Lectures of the Canadian Institute for Advanced Legal Studies, he had served as Chair of the College's British Columbia Province Committee and the Canada-United States Committee and as a delegate to a Canada-United States Legal Exchange. In 1991 he was appointed to the British Columbia Court of Appeal. A widower whose wife of fifty-eight years had predeceased him, his survivors include two daughters and two sons.

Robert J. Hallisey, '68, a Fellow Emeritus from Boston, Massachusetts, died January 30, 2012 at age eighty-eight. His undergraduate education at Harvard College was interrupted by service in the United States Navy and the Merchant Marine in World War II. After graduating from Harvard Law School, he practiced briefly in New York City before returning to Boston, where he practiced admiralty law with Bingham, Dana & Gould. Appointed to the Superior Court Bench in 1973, in retirement in 1990, he joined the Boston firm of Sally & Fitch, from which he had retired in

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2008. He had taught at both Suffolk Law School and at Boston University as an Adjunct Professor. While in his seventies, he had earned a Masters Degree in Judicial Studies at the University of Nevada, Reno and had studied and taught at the Harvard School of Learning. A lifelong sailor, he had been a Boston Harbor Pilot Commissioner. Predeceased by two wives, his survivors include one daughter, two sons and a step-daughter.

Laurence Philip Horan, '86, a Fellow Emeritus retired from Horan, Lloyd, Karachale, Dyer & Schwartz, Law & Cook, Inc., died January 23, 2012 at age eighty-two. Enlisting in the United States Marine Corps after high school, when his tour of duty on Guam was over, he did his undergraduate work at the University of California at Berkeley, where he was a member of the basketball team, then earned his law degree at Boalt Hall. After working as a Deputy District Attorney, he entered private practice. Four years later, at the request of Sargent Shriver he became, successively, the Peace Corps Director in El Salvador, Costa Rica and Colombia. Then for two years he was Western Regional Director of the Office of Economic Opportunity's War on Poverty before returning to private practice. Years later, he established and chaired the Northern California Chapter of the Special Olympics. He was a long-time Trustee of the Monterey Institute of International Studies and had chaired its Board. He and his wife established the Jean and Larry Horan Peace Corps Scholarship Fund at the Monterey Institute. His survivors include his wife, three daughters and two sons.

William E. Kimble, '75, Tucson, Arizona, retired from Kimble, Gothreau & Nelson, PC, died April 26, 2012 at age eighty-five. Enlisting in the United States Navy after high school, he was a sonarman on the destroyer *USS J.C. Owens* in the Pacific Theater in World War II. Graduating from the University of Arizona and from its School of Law, he was for a year a special agent in the Federal Bureau of Investigation before entering private practice. He served a term as a Commissioner of the Arizona Oil & Gas Conservation Commission and two years as a Superior Court Judge. Returning to private practice in Tucson, he was for over twenty years an adjunct professor at the University of Arizona College of Law. He was the author of the treatise *Federal Consumer Products Safety Act* and the co-author or editor/publisher of several other publications in the product liability field. Running on the Republican ticket, he lost his race against Morris Udall for the United States House of Representatives in 1964. Eighteen years later, he was Udall's honorary campaign co-chair, observing, "We have our philosophical differences, but I think he's been good for the district." His survivors include his wife of sixty-one years and six sons. A seventh son predeceased him.

The Honorable Justice T. David Little, '04, London, Ontario, died December 15, 2011 at age seventy-one of a heart attack. A graduate of Bishops University and the University of New Brunswick School of Law, he had practiced in St. Thomas, London and Toronto. A cancer survivor, since 2005, he had been a Judge of the Superior Court. His survivors include his wife, a daughter and two sons.

Thomas Owen Malcom, '01, a Fellow Emeritus, retired from Malcolm & Riley, West Chester, Pennsylvania, died February 16, 2012 at age seventy-nine. He was a graduate of Dartmouth College and the Georgetown University School of Law. A widower, his survivors include two daughters and three sons.

Ralph H. Nutter, '69, a Fellow Emeritus from Santa Barbara, California, died January 28, 2012 at age ninety-one. A graduate of Harvard College, he left Harvard Law School three months into his first year to volunteer for the United States Army Air Corps the day after the Japanese attack on Pearl Harbor. Discharged at the end of the war as a Lieutenant Colonel, he had served in both the European and Pacific Theaters as navigator for five generals, including General Curtis LeMay and General Haywood Hansell, two architects of the aerial bombing strategies that were a major factor in ending World War II, an experience he described in his 2002 book, *The Possum and the Eagle, The Memoir of a Navigator's War Over Germany and*

Japan. In a varied career, after returning and completing his law degree at Harvard, he was a law clerk for a federal judge in New York and then for three years a trial attorney for the National Labor Relations Board. After seven years in private practice in Los Angeles, California, he served as a Judge of the Los Angeles Municipal Court, and then of the Los Angeles Superior Court and then briefly as Justice Pro Tem of the California Court of Appeal for the 2nd Appellate District. At the time of his induction in the College, he was a partner in the Los Angeles firm, Pacht, Ross, Warne, Bernhard, Sears & Nutter. In 2001, at age eighty, he was appointed Special Assistant Attorney General of Guam. His survivors include his wife of thirty-eight years, a daughter, two sons a step-daughter and a step-son.

Walter H. Piehler, '70, a Fellow Emeritus, Of Counsel to Piehler & Strande, S.C., Wausau, Wisconsin, died March 8, 2012 at age eighty-eight. His education at Valparaiso University, where he earned both his undergraduate and law degrees, was interrupted by World War II, in which he served with the 453rd Bomb Group of the 8th Air Force, based in England. He practiced with the same law firm in Wausau for forty-five years, retiring in 1993. He helped to found several community organizations and served on his county's Civil Service Commission. His survivors include his wife of sixty-five years, two daughters and a son.

Ronald S. Rosen, '99, TroyGould PC, Los Angeles, California, died March 21, 2012 at age seventy-nine. A cum laude graduate of Stanford University, he had also studied at the London School of Economics and had earned his law degree at the Stanford University School of Law. He had begun his career as an Assistant United States Attorney. Specializing in entertainment and intellectual property law, he was the author of *Music and Copyright*, published by the Oxford University Press. A lifelong student of music, he assisted clients in revising and rewriting musical scores to avoid infringing other works. He had lectured at four different law schools and for seventeen years gave annual lectures on Litigation Copyright Trademarks and Fair Competition Cases for the Practicing Law Institute. He had also lectured for the Association Littéraire at Artistique Internationale, Antwerp, Belgium and at the 1998 Cannes Film Festival. For over twenty years, he was actively involved in the Los Angeles Chamber Orchestra, serving as both President and Chairman Emeritus. His survivors include his wife and two sons.

Robert J. Sheran, '60, a Fellow Emeritus, retired from Lindquist & Vennum, PLLP, Minneapolis, Minnesota, and a retired Chief Justice of Minnesota, died January 25, 2012 at age ninety-six. A graduate of St. Thomas College, where he was a national debate champion, and of the University of Minnesota School of Law, where he finished at the top of his class, he was a law clerk for the Chief Justice of Minnesota, then served as a special agent in the Federal Bureau of Investigation during World War II. He then began practice in Mankato, Minnesota. He served two terms in the Minnesota House of Representatives and served twice on the Minnesota Supreme Court, first as an Associate Justice and later as Chief Justice. He left the Court in 1970 to form the Minneapolis firm from which he was retired. A national leader in court reform, he served as President of the National Conference of Chief Justices and led several pioneer court reform initiatives in his own state. In his later years he had also served as Interim Dean at the Hamline University School of Law. A widower, his survivors include a daughter and three sons, one of whom, John M. Sheran, is a Fellow of the College.

Edward Preston Acker Smith, '75, a Fellow Emeritus, retired from McDonald Kuhn, Memphis, Tennessee, died February 28, 2012 at age eighty-six. His undergraduate education interrupted by World War II, he served in the United States Navy and, remaining in the Naval Reserve, he flew regularly for years, commanded a fighter squadron and then an attack squadron, served as Commander of the Naval Air Reserve Staff and retired with the rank of Captain. After the war, he earned his law degree at Vanderbilt University School of Law. He served for two years as an Assistant Attorney General and served a term in the

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Tennessee State Senate. A widower, his survivors include a daughter and four step-daughters.

Frank H. Strickler, '81, a Fellow Emeritus from Chevy Chase, Maryland, died March 29, 2012 at age ninety-two. A graduate of George Washington University and of its School of Law, from which he graduated with honors, he had worked as a fingerprint clerk in the Federal Bureau of Investigation during undergraduate school and, after finishing law school, joined the Merchant Marine for the duration of World War II. He was the law clerk for a Federal District Judge in Washington, D.C. and then an Assistant United States Attorney for seven years before entering private practice. A partner in Whiteford, Hart, Carmody & Wilson at the time of his induction in the College, in the aftermath of the Watergate break-in, Strickler and his partner, John J. Wilson, represented H. R. Haldeman, President Richard Nixon's Chief of Staff through the resulting investigation and Haldeman's trial and conviction. For the last five years before his retirement, Strickler was General Counsel of Washington Gas Light Company. His survivors include his wife of fifty-seven years two daughters and two sons.

Kenneth H. Volk, '90, retired Of Counsel to McLane, Graf, Raulerson & Middleton, PA, Portsmouth, New Hampshire, died March 19, 2012 at age eighty-nine. His college education at Cornell University was interrupted by World War II. Joining the United States Navy, he was later appointed to the United States Naval Academy. After serving on a destroyer in the Sixth Fleet, he resigned his commission and earned his law degree at Yale Law School, graduating with honors. Beginning his practice with Shearman, Sterling & Wright in New York City, he later joined Burlingham, Hupper & Kennedy, a firm specializing in maritime law. He participated in many high-profile cases, including representing the Italian Line in connection with the 1956 Andrea Doria-Stockholm collision. He had served as president of the Maritime Law Association of the United States. In retirement, he had moved to Portsmouth, where he continued to practice. He was appointed by Lloyds of London as one of the three arbitrators in its dispute with Exxon over insurance coverage of the 1989 Exxon Valdez oil spill in Alaska. His survivors include his wife, a daughter and a son.

Julian Onësime von Kalinowski, '63, a Fellow Emeritus from Los Angeles, California, retired from Gibson, Dunn & Crutcher, died February 11, 2012 at age ninety-five. A cum laude graduate of Mississippi State College, which he attended on a partial football scholarship, also playing baseball, and a graduate, with honors, of the University of Virginia Law School, he had taught at Loyola University before entering the United States Navy in 1941. He served as a supply officer on the amphibian assault command ship *USS Biscayne* and remained in the Naval Reserve, retiring in 1971 with the rank of Captain. He is best known for his multi-volume treatise *Antitrust Laws and Trade Regulation*. He had chaired the American Bar Association's Antitrust Section and had chaired both the College's California State Committee and its Complex Litigation Committee. In retirement from law practice, he became Chief Executive Officer and then Chairman Emeritus of the jury consulting firm Litigation Sciences, Inc. He was also Chairman Emeritus of Dispute Dynamics. As a member of the Board of Directors of the W. M. Keck Foundation, he helped to develop the feasibility study for the twin telescopes on Mauna Kea. He also served on the Los Angeles Metropolitan Advisory Board of the Salvation Army. His survivors include his wife, a daughter and a son.

Paul Webb, Jr., '85, retired from Holland & Knight, Atlanta, Georgia, died April 15, 2012 at age ninety. After attending North Georgia College for two years, he had enlisted in the United States Army Air Corps the day after Pearl Harbor. As a liaison pilot, he had directed artillery fire for the Third Army during the invasion of Europe, once taking General

George S. Patton aloft for a better view of the area. After the war, he participated in the occupation of Austria. He then completed his undergraduate education at Emory University and earned his law degree from Harvard Law School. After practicing by himself for a number of years, he formed Webb & Daniel with his son-in-law, College Fellow Harold T. Daniel, Jr. The firm later merged with Holland & Knight. He had served as President of the Atlanta Legal Aid Society and as Chair of the Disciplinary Board of the State Bar of Georgia, as well as serving on the Judicial Council of the United Methodist Church. An adventurer, he flew small planes until he turned eighty. His survivors include his wife of sixty-one years, three daughters and two sons.

John Jerome (Jerry) Weigel, '78, a partner in Jones, Walker, Waechter, Poitevent, Carrère & Denègre, LLP, New Orleans, Louisiana, died January 29, 2012 at age seventy-nine. A graduate of Tulane University and of its School of Law, after law school, he had served in The United States Army Judge Advocate General Corps. He had served as the College's Louisiana State Chair and had been honored with the Louisiana State Bar Association's Curtis R. Boisfontaine Trial Advocacy Award. A widower, his survivors include a daughter and two sons.

Richard Stephen White, '79, Helsell & Fetterman LLP, Seattle, Washington, died January 17, 2012 at age ninety-two. A graduate of Hamilton College and of the Yale Law School, he was a member of the Yale Law Journal. He was a Marine Combat Intelligence Officer in the Pacific Theater in World War II, serving in the 28th Marine Regiment, which captured Mount Suribachi on Iwo Jima. A graduate of the U.S. Navy Language School, he played a vital role in interpreting a captured Japanese map that disclosed details of the defenses on that mountain, whose capture is memorialized in the iconic flag-raising sculpture that has come to symbolize the Marine Corps. He won a Bronze Star for his efforts in talking Japanese soldiers on Iwo Jima to come out of their caves and surrender. In his honor, his firm had established a second-year law school scholarship focused on encouraging diversity in the law. Twice a widower, he is survived by four daughters and a son.

Max Edward Wildman, '69, a Fellow Emeritus, Of Counsel to Wildman, Harold, Allen & Dixon, LLP, Chicago, Illinois, died September 16, 2011 at age ninety-one. A graduate of Butler University, he served in the United States Army Air Corps in World War II, then earned his law degree from the University of Michigan School of Law and his MBA from the University of Chicago. Beginning his career at what is now Kirkland & Ellis, in 1967 he left to establish the firm with which he practiced until his death. He had served as a Special State Attorney General in 1957 and was an unsuccessful candidate for Congress in 1962. He had received the Judge Learned Hand Human Relations Award from the American Jewish Congress in 1982. His survivors include his wife of sixty-three years, a daughter and a son.

Raymond F. Zvetina, '87, a Fellow Emeritus from San Diego, California, died February 8, 2012 at age seventy-nine. A summa cum laude graduate of Loyola University in Chicago and a graduate of the Harvard Law School, he served for four years as an officer on a destroyer in the United States Navy. After serving for four years as Assistant United States Attorney, Criminal Division, in the Northern District of Illinois, he practiced law for three years with his father, then moved to San Diego, where he joined the office of the United States Attorney for the Southern District of California as Chief of the Civil Division. Thereafter for eighteen years he was in private practice in San Diego, for the last twelve of those years as a partner in Haskins, Nugent Newnham, Kane & Zvetina. Appointed in 1989 to the San Diego Superior Court Bench, he served for twelve years and then joined JAMS as a mediator and arbitrator. His survivors include his wife, a daughter and three 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.