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THE BULLETIN

RENEWING FRIENDSHIPS AT THE 2013 SPRING MEETING IN NAPLES, FLORIDA

Nearly 800 Fellows and guests joined for fellowship at the Naples Botanical Gardens for President Varner's Welcome Reception

See article on page 2 >>

American College of Trial Lawyers

THE BULLETIN

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FROM THE EDITORS

We are always looking for contributions from Fellows on any timely advocacy related topic, whether a commentary on a judicial decision of note, skills advice or anything else of general interest. We are also looking for Fellow-artist drawings, paintings, photography and anything else we might use to grace our cover and pages. Please send ideas or contributions to nationaloffice@actl.com

THE ILLUSORY RIGHT TO COUNSEL

On March 18, 2013, we arrived at the 50th anniversary of *Gideon v Wainwright* (1963). Just a week later, Anthony Lewis, chronicler of this singular decision in the redoubtable *Gideon's Trumpet*, died. Lewis's book has never been out of print since its publication in 1964.

Lewis wrote of *Gideon* as part of a broader movement by the Court not only to enlarge the constitutional protections of the rights of criminal defendants—enhanced by *Miranda v. Arizona*— but also to expand "the dimensions of individual liberty." Reviewing *Gideon's Trumpet* for the New York Times, Professor Paul Freund heralded Lewis's skill in making us "see the general in the particular, to feel that, in the redemption of a forlorn outcast, the legal process is redeeming itself."

Yet, Clarence Earl Gideon who, believing in the justice of his cause, championed the right to counsel in all, not just capital, criminal cases, might today be just another victim of societal indifference, lack of or under-funding in the criminal justice system, stretched state and federal ancillary resources or any other of the myriad reasons why the right to counsel remains as illusory as it was in 1963.

Well-intentioned and entirely in line with statutory interpretation, the Supreme Court gave all citizens the right to a lawyer if she or he couldn't afford one as part of the "due process" protections under the Sixth (and, by extension to the states, Fourteenth) Amendments. But, as Andrew Cohen highlights in "The Lies We Tell Each Other About the Right To Counsel" (March, 2013, Brennan Centre for Justice, brennancenter@nyu.edu; expanded version found in *The Atlantic*), this was before a time of "mass incarceration and widespread criminalization for non-violent offences."

Cohen notes that as a result of *Strickland v. Washington* (1984) and other decisions, *Gideon* has been so diluted that for most men and women charged with a serious criminal offence, the right to counsel has proven to be hollow. He offers a few solutions (elaborated on in a Brennan Center report released in April), namely: re-evaluate and reclassify the over-criminalization of minor offenses; increase public defender funding; and increase the efficiency of the public defender office by fostering training and expanding the office to include social workers.

The College is obviously a part of the solution, both in Canada (where the *Charter of Rights and Freedoms* provides a similar protection) and in the United States. Our *pro bono* efforts, highlighted in these pages, are the most noteworthy and visible examples perhaps, but the greater foray is the collective and individual will of the College and its Fellows to promote these endeavors. Our presentation of the Emil Gumpert Award to the Southern Public Defender Training Center and Pro Bono Law Ontario over the last few years, along with our Access to Justice initiatives, demonstrate our commitment to this task, the task of eradicating "unequal justice" in both of our countries. Although there is still much more work to be done, this is something of which we, as Fellows, can be proud.

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Those of you who missed the excellent Naples meeting need not fear as we have captured its spirit and substance in these pages along with our regular College news and notices.

We hope you enjoy this issue.

Andy Coats and Stephen Grant

2013 SPRING MEETING HELD IN NAPLES, FLORIDA

Fellows of the College, joined by their spouses and guests, gathered in Naples, Florida, from February 28 through March 3, 2013, at The Ritz-Carlton, Naples, for the College's fifty-ninth Spring Meeting.

A. Officers, Regents and Past Presidents of the College

B. Suzanne Welsh, Judy Frazier, Philadelphia, PA; New York-Downstate Chair Isabelle Kirshner, New York, NY

C. Fellow Andy Levy, Sandy Levy, Baltimore, MD

Before the Spring Meeting, the College's Board of Regents, led by President **Chilton Davis Varner** of Atlanta, Georgia, met to receive reports from the College's fifteen regions and to conduct its ongoing business. The Board approved seventy-five nominees, each individually presented by the Regent who had conducted an investigation of their qualifications for membership. New Regents **James T. Murray, Jr.**, of Milwaukee, Wisconsin, and **Michael L. O'Donnell**, of Denver, Colorado, were warmly greeted by the full Board, which included fifteen Past Presidents of the College. Congratulations, mixed with a large measure of appreciation, were extended to Regent **William J. Kayatta, Jr.**, of Portland, Maine, who resigned as Regent to assume his appointment as Judge on the First Circuit Court of Appeals.

On Wednesday evening before the official commencement of the national meeting, a reception and buffet dinner were held at the resort in honor of all former Regents and current committee Chairs. The Spring Meeting's Wednesday evening reception typically has a theme acknowledging a special interest of the College President. Recognizing President Varner's great love of music and song, the evening included décor and music as a tribute to her non-lawyer life. The grand piano, elevated in the center of the room, ensured that everyone joined in as the old standards were played and joyfully sung.

Thursday evening's President's Reception at the Naples Botanical Garden welcomed arriving Fellows, spouses and guests. The event was replete with chamber music provided by classical Baroque-era-garbed musicians. Despite the unseasonably cool weather, the honorees enjoyed the unique locale and the opportunity to meet and greet College friends.

The College's General Committees and *The Bulletin*'s Editorial Board met on either Friday or Saturday before the morning programs. A breakfast for inductees introduced them to the College, the way in which it functions and to the obligations that accompany membership in the College.

The general sessions on Friday and Saturday mornings were arranged by President-Elect **Philip J. Kessler** of Bloomfield Hills, Michigan, and New York, New York.

The general session on Friday morning commenced with an invocation by Fellow **Benjamin H. Hill, III**, of Tampa, Florida.

Introduced by Regent **Jeffrey S. Leon** of Toronto, Ontario, Honorary Fellowship was conferred on The Honourable Madam Justice **Andromache Karakatsanis** of Ottawa, Ontario. Leon presented the honorary fellowship plaque to Karakatsanis, recently elected Justice of the Supreme Court of Canada. Justice Karakatsanis's remarks to the fellowship included the chronicle of her challenging path, filled with charming anecdotes, to Canada's highest court.

Past President **Robert B. Fiske, Jr.** , of New York, New York, introduced a media law presentation that provided CLE credit to attending lawyers. The panel moderator was well-known media lawyer, **Lee Levine** of Washington, D.C., who introduced the participants, the topic and the concept, *Bloggers, Tweeters and Anonymous Speakers: Has the Internet Changed the First Amendment along with Everything Else?* In a courtroom format, the

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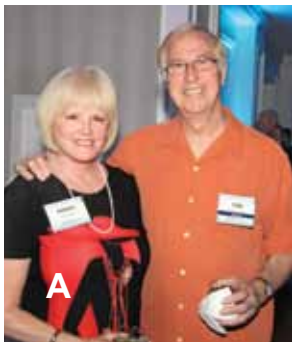
participants argued for and against the concept that the Internet has changed the First Amendment. Fellow **Charles L. Babcock** of Dallas, Texas, argued on behalf of the First Amendment, insisting that it has not changed; Fellow **Gary L. Bostwick** of Los Angeles, California, posited that the Internet has changed the public's perception of its First Amendment rights; **David McCraw**, Vice President and Assistant General Counsel of The New York Times Company served as expert witness for both parties; and The Honorable **Robert D. Sack**, Senior Judge of the United States Court of Appeals for the Second Circuit in New York City, served as judge. As the author of *Sack on Defamation: Libel, Slander and Related Problems*, Judge Sack was an outstanding arbiter to resolve the presented issues. Although all panel participants were experts in media law, they presented their arguments to non-specialists and included excellent arguments, exciting evidentiary documents and more than a little laughter.

Fellow **C. Rufus Pennington, III**, of Jacksonville Beach, Florida, then introduced Rear Admiral **William D. Baumgartner**, of Miami, Florida, who holds triple titles - Commander of the Seventh Coast Guard District, Commander of Maritime Homeland Defense of District Seven and Director of Homeland Security Task Force for the Southeast. Speaking about *Smugglers, Pirates and Terrorists: How the Coast Guard Protects our Maritime Borders*, Admiral Baumgartner introduced the audience to the myriad responsibilities of the Coast Guard, which, like all service branches in changing times, has found its responsibilities expanded as it accommodates the nation's needs.

Friday night's planned beach party on the white sands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of the Gulf of Mexico was a topic of discussion by all the attendees from the time they arrived in Naples to discover temperatures far colder than anticipated. Without a single complaint, the beach party was moved inside to one of the Ritz-Carlton's ballrooms, and the band, sand castles, mood lighting and crowd-pleasing foods magically appeared, minus only the stars and the 50-degree temperatures.

Although the temperatures were cold, cold, cold to most, many of the Fellows and their spouses and guests were determined and committed to make the most of the situation. They engaged in activities that included sailing and shelling, deep sea fishing, bicycle tours or air boat rides in the Everglades and gallery tours with shopping. With so many options, a full contingent of golfers and tennis players also participated in tournaments.

Fellow **Eugene K. Pettis** of Fort Lauderdale, Florida, introduced the first speaker at Saturday morning's General Session. The Honorable **R. Fred Lewis**, Justice of the Supreme Court of Florida in Tallahassee, spoke about his passion and avocation, a state-wide program he founded called Justice Teaching. Introducing Justice Teaching as *Advancing Democracy One Student at a Time*, Justice Lewis offered to assist other states in setting up similar programs to teach civics in their schools. Calling on members of Florida's bench and bar, Justice Lewis has instituted an outreach program for the legal profession that ensures his state's children learn about civics and the rule of law.

James A. Goldstein, M.D., FACC, FSCAI, Director of Cardiac Research and Education at the Department of Cardiology at Beaumont Health System and

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A. Sandy White, Inductee Tom White, Nashville, TN

B. Northern California Fellows and their guests

C. Past President Joan Lukey, Boston, MA; Former Regent and Canada-United States Chair Brian Crosby, Buffalo, NY; Phil Stevenson, Boston, MA

D. Fellow Guy Du Pont, Montréal, QC; Honorary Fellow Justice Morris Fish, Ottawa, ON

E. Former Regent Brian and Ruth O'Neill, Minnetonka, MN enjoy the Naples Beach

F. New Jersey Vice Chair Frank Allen, Carolann Allen, Haddonfield, NJ; Inductee Kathleen Murphy, Roseland, NJ

G. Karen Famularo, Lexington, KY; Regent Jim Murray, Mary Fran Murray, Milwaukee WI; Past President Mike Cooper, Nan Rothschild Cooper, New York, NY

H. Griffin Bell Award Chair Patti Dodge, Fellow Kevin Lucas, Howard Schulberg, Colleen Lucas, Pittsburgh, PA

Professor of Medicine at Oakland University's William Beaumont School of Medicine in Royal Oak, Michigan, was introduced by his good friend, the College's President-Elect, Philip J. Kessler. Dr. Goldstein's topic, *The Golden Era of Cardiovascular Innovation, 1960-2010: Promises and Perils for the Future Pipeline*, was very topical for the audience consisting of those of "mostly a certain age." With fascinating slides and video, Dr. Goldstein took the audience through the history of medicine involving likely heart conditions of middle-aged individuals, and he offered his thoughts about the future of healthcare, particularly in the field of cardiology.

David Lawrence, Jr., retired Publisher of *The Miami Herald* and President of The Early Childhood Initiative Foundation in Miami, Florida, was introduced by Past President of the College, **Warren B. Lightfoot** of Birmingham, Alabama. Lawrence's topic, *What Children are Really Entitled to in America*, dovetailed perfectly with Justice Fred Lewis's earlier presentation. The distinction between the two gentlemen's presentations was that whereas Justice Lewis takes civics education into the schools, Lawrence addresses policy to ensure all children in the Florida school system get the quality education to which they are entitled from an early age. Focusing on reading skills and armed with successful results, Lawrence's life after retirement shares his enthusiasm and love of reading and lifelong learning.

A highlight of the Spring Meeting was presentation of the Griffin Bell Award for Courageous Advocacy, presented by Past President **John J. (Jack) Dalton** of Atlanta, Georgia, to The Honourable **Louise Arbour**, President and Chief Executive Officer of the International Crisis Group in Brussels, Belgium. As a close friend and colleague of the late Past President of the College, Judge and Attorney General of the United States, Dalton had a personal stake in conferring the award, named as a tribute to Griffin Bell. Dalton presented the award to Justice Arbour, who was recognized for her service as Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda. Having also served as a Justice of the Supreme Court of Canada and as the United Nations High Commissioner for Human Rights, Justice Arbour has received a multitude of awards for her service to human

A. Regent Doug Young, San Francisco, CA; Past President Earl Silbert, Washington, DC; Regent Bart Dalton, Wilmington, DE

B. Ramsay Derry, Foundation Director Trish Jackson, Toronto, ON; Oregon Chair Rich Busse, Kathy Busse, Portland, OR; Wendy-Jo Persons, Fellow Ray Persons, Atlanta, GA

C. Former Regent and Communications Chair Dennis Suplee, Inductee Bill Banton, Enid Banton, Patricia Suplee, Philadelphia, PA, Former Regent Frank Dee, Newark, NJ

D. Maura McCool, Inductee Steven McCool, Washington, DC; Linda Jones, Secretary Fran Wikstrom, Salt Lake City, UT

Inductees listen as they are read the Induction Charge

rights, dignity for all individuals and furtherance of the rule of law. In her acceptance remarks, the unassuming Justice Arbour shared her humility and great honor to accept the College's prestigious award.

The capstone of Saturday's general session was a book reading by the Honorable **Antonin Scalia**, Justice of the Supreme Court of the United States and Honorary Fellow of the College, and Professor **Bryan A. Garner**, lexicographer, author and educator, who introduced selected readings from their recently released book, *Reading Law: The Interpretation of Legal Texts*. With humor and repartee, Justice Scalia and Professor Garner spoke of the great need for interpretive canons for legal writings, a task not tackled in more than a century. They shared specific canons, sprinkling their examples of use and mis-use with Scalian banter and Garnerian prose. Justice Scalia and Professor Garner were introduced by President of the Supreme Court Historical Society and Past President of the College, **Gregory P. Joseph**, and members of the audience were invited to remain after the book reading to have their personal copies of *Reading Law* autographed by the co-authors.

A luncheon program for inductees and their spouses or guests followed Saturday's General Session, with President Chilton Davis Varner presiding and Past President Gregory Joseph speaking to the inductees about the process by which they had been selected, their invitations to fellowship and the history and traditions of the College.

The Spring Meeting culminated with a reception and black-tie dinner at which sixty-three new Fellows were inducted into the College. After an invocation by Fellow **N. Karen Deming** of Atlanta, Georgia, Past President **David J. Beck** of Houston, Texas, delivered the sixty-two year old induction charge authored by College Founder and Chancellor, the late Judge Emil Gumpert. Just-inducted Fellow **David E. Dukes** of Columbia, South Carolina, responded on behalf of the new Fellows and spoke of their individual surprise and collective pride in becoming members of the College.

The evening ended with dancing and a sing-along-with-the-piano-player, a tradition established many years ago by Judge Gumpert. President Varner joined other Fellows, front-and-center, at the sing-along.

In the best traditions of the College, the participants at the Spring Meeting returned to their homes throughout North America, by various means of transportation, all with a renewed appreciation for the shared tradition of collegiality and united by their collective experiences.

The Annual Meeting of the College will be at the San Francisco Marriott, October 24-27, 2013. ■

FOOLISHNESS IS GOOD FOR THE SOUL

LIGHTFOOT V. FORTINO

Before the first bang of the maul at Saturday's general session of the 2013 Spring Meeting in Naples, Florida, President Chilton Davis Varner summoned two Fellows to the podium. Both were recognizable to most of the attendees as outstanding litigants who have proven themselves in trial practice. Both were recognized leaders in their local communities. And both possessed that intangible quality of collegiality that speaks to the quality of the "best of the best." Lastly, both *put their money where their mouths were by betting their bottom dollars.*

No one recalls if it was Past President **Warren B. Lightfoot** or former Regent **Paul T. Fortino** who said *Game On!*

To hear President Varner tell the story:

> *In early January, the University of Alabama Crimson Tide defeated the University of Notre Dame in the National Collegiate Football Championship. A matter of days before the event, Warren Lightfoot, an Alabama graduate and Past President of the College, and Paul Fortino, a former Regent of the College and a Notre Dame graduate and fan, made a wager on the outcome of the game. The burden, the loser would wear the winner's jersey at the plenary session of a General Session of the American College of Trial Lawyers Meeting in Naples, Florida, on March 2.*
>
> *May I introduce – can you tell which is which here?*
>
> *Let me introduce Paul Fortino, a Notre Dame graduate. See him, in the words of* ***David Scott****, "adorned" in the Crimson Tide jersey discharging his honor as the losing party, and offering full credit, as a Notre Dame graduate, at least on this day, to a superior team.*
>
> *Ladies and Gentlemen, Warren Lightfoot and Paul Fortino: enthusiastic graduates.*
>
> *Foolishness is good for the soul.*

Like the idioms, the embarrassment is endless. ■

ACTIONS BY THE BOARD OF REGENTS

The *Bylaws* of the American College of Trial Lawyers require a meeting of the Board of Regents before the Spring and Annual Meetings of the Fellows, and at other times, "at the call of the President." (*Bylaws*, Section 5.9) The Board of Regents consists of the President, the President-Elect, the Immediate Past President, the Secretary, the Treasurer and fifteen members elected by the Fellows. In addition, the Past Presidents are ex-officio members of the Board, but do not have the right to vote." (Section 5.1)

With the collective voice of the Past Presidents guiding them, the five-officer/fifteen-Regent-strong Board met in Naples, Florida before the 2013 Meeting of the College and took the following actions:

- The Board approved the election of sixty-seven new Fellows from twelve states and eight provinces

- The Board approved seventy-five candidates for consideration, presented from twenty-six states, one province and the District of Columbia.

- The Board approved Miller Resentencing Project of the Florida State University College of Law Public Interest Law Center's Children in Prison Project as the recipient of the 2013 Emil Gumpert Award.

- The Board approved Honorary Fellowships to Justice *Richard Wagner* of the Supreme Court of Canada and to The Right Honourable the *Lord Neuberger of Abbotsbury*, President of the Supreme Court of the United Kingdom.

- The Board approved an annual dues increase beginning January 1, 2014, from $725 to $800 per year for Full Pay Fellows and from $240 to $320 per year for Emeritus-Age Fellows. The Board agreed that dues for Partial Pay Fellows would be retained at the current amount.

- The Board approved a one-time $25,000 contribution to the Supreme Court Historical Society.

- The Board approved the Foundation Trustees' recommendation that the following individuals serve as Trustees beginning July 1, 2013, to replace Trustees whose terms expire at that time:

John J. (Jack) Dalton, Atlanta, Georgia

Joan A. Lukey, Boston, Massachusetts

Christy D. Jones, Ridgeland, Mississippi

John S. Siffert, New York, New York

James L. Eisenbrandt, Prairie Village, Kansas

Kathleen Flynn Peterson, Minneapolis, Minnesota

- The Board approved the Foundation Trustees' recommendation of the following individuals to serve as officers of the Foundation beginning July 1, 2013, to replace officers whose terms will expire at that time:

President: **David J. Beck**, Houston, Texas

Secretary: **Mikel L. Stout**, Wichita, Kansas

Treasurer: **Charles H. Dick, Jr.**, San Diego, California

- The Board approved awarding the Samuel E. Gates Litigation Award to **Donald R. Dunner** of Washington, D.C., for his significant contributions to patent litigation practice.

- The Board approved amending the description of the Sandra Day O'Connor Award to read:

The Award, named for Sandra Day O'Connor, is to be given from time to time to a judge in the United States or Canada, whether or not a Fellow of the College, who has demonstrated exemplary judicial independence in the performance of his or her duties, sometimes in especially difficult or even dangerous circumstances.

Michael W. Smith of Richmond, Virginia, was introduced to the Board as the Officers Nominating Committee's candidate for Secretary of the College, effective upon confirmation of the Fellows at the 2013 Annual Meeting in San Francisco, California in October. ■

LOUISE ARBOUR RECEIVES GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY

Past President John J. (Jack) Dalton introduced Louise Arbour, President and Chief Executive Officer of the Brussels-based International Crisis Group, to the Fellows assembled in Naples, Florida, for the College's 2013 Spring Meeting. Arbour was no stranger to the group, having been inducted as Honorary Fellow of the College in 2003 when she was a Justice of the Supreme Court of Canada. However, it was Arbour's work on the International Criminal Court that drew the attention of the Griffin Bell Award for Courageous Advocacy Committee.

Excerpts of Jack Dalton's remarks:

> The Award was created in 1964, but in 2008, the Board of Regents re-named the award …in honor of Griffin Bell of Atlanta, a distinguished advocate and a leader of this College. Judge Bell was an advocate. He was a soldier. He was a President of this College. He was a judge of the Fifth Circuit Court of Appeals. He was the people's lawyer, as Attorney General of the United States. The Board of Regents felt that re-naming the award was a fitting way to acknowledge a true leader of the College.
>
> Our process for conferring this award is arduous, and it is thorough. The guidelines say "this award should be reserved for the truly exceptional candidate, whose record leaves no question that he or she should be given the award." As trial lawyers, we understand and appreciate the intense personal commitment, sacrifice, and courage necessary to sustain the extraordinary advocacy that our recipient has demonstrated. In its forty-nine years of existence, the award has been extended previously only thirteen times, indicating the significance and the gravitas of this award in the eyes of the Board of Regents. Today, presentation to the fourteenth recipient, Madam Louise Arbour, will be the first time this award is extended in the name of Judge Bell.

President Varner, Ms. Arbour, President-Elect Kessler

JUSTICE ARBOUR ACCEPTS THE HONOR

Ladies and Gentlemen, I am extremely honored to be here. I come to you, as was mentioned, from the Kingdom of Belgium, where I currently reside and work. I am here to accept this amazing recognition for work for which many people share the credit, including many then-young American lawyers seconded to the enterprise when I was a Chief Prosecutor.

Some of you may be aware of the work that I did on the international scene, but I thought you might be interested in my early judicial work. As a judge in Canada for some fifteen years at all levels of court, I dealt with lofty concepts, such as democracy, federalism, protection of minorities, rule of law, reasonableness, proportionality, participation, accountability, balance, rationality.

But I also dealt with more down-to-earth matters, like the malfunctioning of a John Deere tree harvester, the ownership of a tunnel between Canada and the United States, the illegal raising and selling of chickens in violation of quotas set by the Chicken Marketing Board. I struggled with issues such as a prisoner's right to vote, the integration of children with severe disabilities in mainstream public classrooms, the constitutionality of Canada extraditing people to face the death penalty in the United States, remedies for the imposition of criminal interest rates, and the legality of ten dollar lap dances.

So, when it came to indicting Slobodan Miloševic, then President of Serbia, I was very well prepared, indeed.

PEACEMAKING THROUGH PROSECUTION

From my early days as a law student, a law clerk in the Supreme Court of Canada and then a law teacher, I have always been particularly interested in criminal law, and the work I do today, to some extent, reflects my lifelong interest in the fine lines between deviance and non-conformism, between confrontation and accommodation, power and abuse of power, liberty and security, good and bad.

The prosecution of war criminals in the former Yugoslavia and in Rwanda in the mid 1990s was an unprecedented effort to seek justice as a form of peacemaking. It was a surprisingly imaginative initiative by the Security Council of the United Nations to expand its conflict resolution toolbox, probably in despair that so little else had worked to stop the carnage.

And yet today, we continue with the same sense of impotence, to see low-intensity wars raging in many parts of the world, and to despair at our collective inability to stop the slaughter, perhaps more pressingly now, but not exclusively by far, in Syria.

Many are calling for Bashar al-Assad, the President of Syria, to be indicted by the International Criminal Court. Others argue that tyrants and dictators responsible for atrocities should be given amnesties if that is the price that must be paid for their departure.

Well, history has shown that peace built on unredressed grievances and injustices is unlikely to be lasting. We have not yet overcome the impasse

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Quips & Quotes

History has shown that peace built on un-redressed grievances and injustices is unlikely to last.

Louise Arbour

that comes from offering only threats of punishment, not rewards to those on whom we must rely to settle the peace.

The tensions between these two legitimate aspirations, to peace and to justice, can only be accommodated in a contextual fashion, and without elevating either as an exclusive absolute. Everything, in my view - peace, justice, truth - can be either pursued with too much zeal or abandoned at too high a cost.

Almost twenty years since it was resurrected from the ashes of Nuremberg, the international criminal justice system is, I think, in need of fresh doctrinal, institutional and operational insights. In my view, it needs to be severed from its early political roots in the UN Security Council; the legal principles that govern personal criminal accountability of military and political leaders for war crimes, genocide and crimes against humanity should not be subservient to political imperatives.

And yet, the political maturity that has sustained the separation of powers and the independence of the judiciary in our democracies is not easily transferable to the international environment where the principles of state sovereignty still reign and where foreign policy is guided almost exclusively by the pursuit of national self-interest.

COURAGE COMES FROM CLARITY

In operational terms, the early years of the International War Crimes Tribunals were enormously challenging. We had to investigate massive crimes with hundreds of victims in foreign countries whose languages most of us did not speak and with none of the traditional investigative tools we're used to, such as search warrants, wiretaps and existing networks of informants. Using a mix of criminal procedure rules woven together from different legal systems, we worked together, international lawyers and criminal lawyers, civil law and common law-trained, few with any expertise at the outset in the laws of war and military doctrine and practice. We targeted powerful and unscrupulous people and we conducted massive forensic operations opening mass graves containing hundreds of bodies with the help of pathologists, anthropologists, archaeologists, and even botanists who could then determine whether the grave was an original one or a secondary reburial site.

I would be asked on a typical day by my fellow lawyers and investigators to decide whether our investigators could wear a body pack to surreptitiously record an interview with a potential witness in Malta or in Cyprus, what our position should be on what constitutes widespread or systematic killings, whether the mens rea of genocide should be fully subjective, and whether we should take the view that the illegality of an arrest does not affect the jurisdiction of the court.

More than anything I have done in my life, in these early days of international war crimes prosecution, I believe that courage comes mostly from clarity. If I was afraid of anything, I was afraid above all of making a big mistake.

In the other institutional environments in which I have worked, there were more opportunities for guidance and more possibilities of redress. And there were, therefore, fewer risks, physical ones included.

INTERNATIONAL CRISIS GROUP

I look to the future of this amazing enterprise with optimism, and I wish the same sense of excitement and accomplishment to those who are moving it forward today.

My work in Canada, first as an academic, then as a

judge, is largely the product of the feminist movement of the '60s and '70s, and of the liberalization of society that followed. The impetus for the kind of change reflected in my professional life is rooted, I think, in the Canadian Charter of Rights and Freedoms, which launched in 1982, a true culture of rights, anchored in ideals of equality and fairness. My international work was a natural extension of these ideals.

After moving from international criminal justice to the broader field of international human rights, I took a dramatic plunge into the unknown to join the International Crisis Group. Crisis Group is a non-governmental organization whose mission is the prevention of deadly conflict. It has intellectual rigor, ethical grounding and practical applications.

And I will pause here, if you will indulge me, shamelessly, to plug this remarkable organization I am very privileged to lead. We are only a hundred and fifty of us. Many of my colleagues are the most remarkable, principled, courageous people, feisty people I have ever had the pleasure of working with. They are on the ground. We cover some fifty conflict situations worldwide. We are totally field-based, and as I speak to you today, we have staff in Kabul, in Jakarta, in Bogotá, in Johannesburg, in Nairobi. We work in Somalia and all kinds of places unreachable for most, including, unfortunately, for many journalists.

From that field work we produce detailed analytical and prescriptive reports on conflict situations, ranging from the well-known conflicts in Syria, for instance, or Mali or the Congo, to some of the less well-known conflicts, such as those raging in Southern Thailand, Nagorno-Karabakh or the Gulf of Guinea. Our work is a reference for decision-makers, largely because we believe that if you don't have command of the facts, you will probably end up in the wrong place. To that extent, I think we are not unlike lawyers. However, we are an entirely non-profit organization, which, to some extent, distinguishes our work from that of what others do. We put all of our work product in the public domain on our website, and we genuinely believe, in a slightly pretentious way, I suppose, that we are there advancing an international public interest in the peaceful resolution of conflicts. We are supported financially by governments and the private sector in the very best tradition of cutting edge American philanthropy.

Even though Crisis Group is for all these reasons a very comfortable and familiar environment for me, I am very conscious that I have now, to a large extent, abandoned the law, which has been my comfort zone and an intellectual framework for my entire career.

I have also abandoned the formal institutional environments in which I spent my entire life: The convent school, the courts, the United Nations. I wore a uniform until I was twenty years old and ready to go to law school. I swore I would never wear a uniform ever. Then I became a judge and I wore a uniform again for the next fifteen years. In retrospect, I think I clearly like the anonymity of it all and, particularly, the sense of belonging.

I travel very broadly and very frequently. When I am asked to fill out a customs and immigration form, I always pause at the question, "What is your occupation?" Although I am the President of International Crisis Group, somehow I find "president" both pretentious and non-descriptive. So I always write "lawyer."

Thank you very much for validating today my true sense of identity. ■

Quips & Quotes

The tensions between these two legitimate aspirations, to peace and to justice, can only be accommodated in a contextual fashion, and without elevating either as an exclusive absolute. Everything, in my view - peace, justice, truth - can be either pursued with too much zeal or abandoned at too high a cost.

Louise Arbour

GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY AS PRESENTED TO LOUISE ARBOUR:

Never content with maintaining the status quo, throughout your distinguished career you, Louise Arbour, have demonstrated independence, courage, perseverance and a love of freedom, often in the face of substantial opposition.

By the time you were appointed Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, you had already established a record in Canada as a champion of civil liberties and basic human rights, first as the Vice President of the Canadian Civil Liberties Association and later, as a Judge at the Ontario High Court of Justice and the Ontario Court of Appeal.

On the international stage when you assumed the challenging position of Chief Prosecutor for the International Criminal Tribunal in Yugoslavia, your devotion to human rights and to individual freedoms faced its greatest test. You launched a hands-on, proactive campaign to indict and prosecute war criminals and perpetrators of human rights abuses and genocide. You enforced the rule of law and insisted on accountability in international criminal proceedings in the former Yugoslavia.

Your work as Chief Prosecutor for the International Criminal Tribunal was both creative and courageous. The International Criminal Tribunal was solely dependent on NATO forces to carry out its arrests. NATO's member states expressed concern that war would break out if their forces were perceived to be actively engaged in apprehending indicted fugitives. With little or no will by NATO's member states to cooperate in the arrests, the Tribunal's credibility and the enforceability of international criminal laws was in danger.

You made the decision to personally deliver sealed indictments and warrants to the NATO commanders. You advised the commanders that the named individuals were to be arrested when encountered. Your actions produced tension at the highest levels of government and the military in NATO countries. Despite pressure by various NATO members to cease your pursuit (including a meeting with the United States Secretary of State), you refused to yield. You responded that you had been appointed to carry out your mandate as independent prosecutor and that you intended to do so.

You brought the first indictment in history against a sitting head of state, then-Yugoslavian President Slobodan Miloševic. You did so despite a lack of support from governments who feared the impact the indictment might have on Miloševic's supporters.

You negotiated with senior government officials in Great Britain, the United States, and France. You endured severe criticism and negative publicity in all three nations.

You refused to surrender to public pressure and intimidation. You successfully challenged the reluctance of NATO countries to instruct their military forces to serve the sealed indictments.

Your strategy and perseverance succeeded. As a result of your efforts, the fugitives the Tribunal had indicted were arrested. The credibility and effectiveness of the

International Criminal Court were restored and enhanced.

Your pursuit of recognized war criminals and perpetrators of human rights abuse and genocide in the former Yugoslavia endangered your personal security. You engaged in a "stand-down" with border guards as you attempted to enter Kosovo to pursue an inquiry into the massacre of forty-five people. When denied entry and despite warnings of security advisors, you personally confronted the border guards to obtain entry.

As Chief Prosecutor in Rwanda, your perseverance resulted in the exposure of substantial evidence of atrocities leading to the successful prosecution of sexual assault as a crime against humanity.

Your commitment to justice and freedom continued after you left your role as Chief Prosecutor in Yugoslavia and Rwanda. You have served as Justice of the Supreme Court of Canada, and you were then appointed as United Nations High Commissioner for Human Rights, where you continue to promote human rights and to champion freedom of speech.

As you have pursued important international causes, you have endured harsh criticism, extreme political pressure and great personal sacrifice. You have passionately defended the rights of those unable to protect themselves. You have spoken for human dignity by prosecuting abusers of human rights. You have demonstrated an unwavering and brave commitment to freedom and justice for all citizens.

We honor you today by bestowing one of the most prestigious awards given by the American College of Trial Lawyers. As trial lawyers, we understand and appreciate the intense personal commitment, sacrifice and courage necessary to sustain the extraordinary advocacy that you have demonstrated. In the forty-nine years since the initiation of this award, you are the fourteenth person upon whom it has been bestowed.

In recognition of your outstanding courage and perseverance in the prosecution of perpetrators of human rights abuses as Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, in the face of personal danger and substantial international pressure, the Past Presidents, Regents and Fellows of the American College of Trial Lawyers proudly confer upon you, Louise Arbour, the Griffin Bell Award for Courageous Advocacy, this 2nd day of March 2013, in the City

INTERPRETING

The Saturday morning General Session of the 2013 Spring Meeting of the American College of Trial Lawyers in Naples, Florida, was the honored locale for a book-reading by the Honorable **Antonin Scalia**, Associate Justice of the Supreme Court of the United States, and Professor **Bryan A. Garner**, lexicographer, author and teacher to lawyers and judges across the country.

Justice Scalia and Professor Garner served as the final act and grand finale to two days of outstanding and scintillating presentations. Each Fellow's registration for the meeting included a copy of Scalia's and Garner's second co-authored book, *Reading Law: The Interpretation of Legal Texts*. After the book-reading that highlighted both substance and humor, Fellows who remained obtained the authors' autographs in their personal copies of the book.

THE TEXTS

WELCOME

Best-selling co-authors, the Honorable Antonin Scalia and Professor Bryan A. Garner, were introduced by Past President of the College and current President of the Supreme Court Historical Society, **Gregory P. Joseph** of New York, New York. In his introduction, Joseph zeroed in on the essence of *Reading Law: The Interpretation of Legal Texts* and its relevance to every lawyer or writer in the room:

"I want to spend just one moment introducing you to the book itself. You all have a copy of this book. I submit to you: set aside all preconceptions about legal philosophy or constitutional views. None of that matters to a practicing lawyer. Every day you are dealing with texts. You're interpreting contracts, interpreting statutes, dealing with insurance policies, reinsurance treaties, indentures, corporate charters, deeds of trust. Whatever they are, they all have one thing in common: they're very badly written. They're cumbersome. They're prolix. They're asyntactical. And you have to make heads or tails of them.

"Prior to this book, there was no concise analytical and complete collection of all major canons of statutory interpretation. There is no ALI restatement on that. Each of these is covered in a few pages with good examples.

"It is a great pleasure and honor for us to welcome Justice Scalia and Professor Garner."

The Fellows and guests in the packed ballroom were initially introduced to the wit, followed by the wisdom of Justice Scalia and Professor Garner. The back-and-forth banter between Scalia and Garner brought to mind other couples -- Burns and Allen, Fibber McGee and Molly or Phil Harris and Alice Faye. But none of those old-time couples tackled writing a book with the depth and scope of *Reading Law*, an endeavor that has not been attempted in over a century.

Scalia and Garner undertook an interpretation of legal texts, drafting more than three dozen canons of construction to be applied and used as guidance by lawyers in drafting their own writings. In the book's preface, the authors explained their goals:

Quips & Quotes

Set aside all preconceptions about legal philosophy or constitutional views. None of that matters to a practicing lawyer. Every day you are dealing with text.

Past President Gregory P. Joseph

Our legal system must regain a mooring that it has lost: A generally agreed upon approach to the interpretation of legal texts. In this treatise, we seek to show that (1) *the established methods of judicial interpretation, involving scrupulous*

The statute says that the criminal penalty applies to anyone who steals horses. Stealing horses is the statutory phrase, so it is in the plural. A man steals one horse. Is he subject to the penalty for stealing horses? Now, we may not deal with horses, but we deal with these problems. The English court held: no. That was in the Year 1278. So how much has changed in the last 850 years?

Greg Joseph

concern with the language of legal instruments and its meaning, are widely neglected; (2) *this neglect has impaired the predictability of legal dispositions, has led to unequal treatment of similarly situated litigants, has weakened our democratic processes, and has distorted our system of governmental checks and balances;* and (3) *it is not too late to restore a strong sense of judicial fidelity to text.*

The following is a portion of the transcript of their reading:

TEXTUALISM AND INTERPRETATION

PROFESSOR BRYAN A. GARNER: Both of your authors are textualists: We look for meaning in the governing text, ascribe to that text the meaning that it has borne from its inception, and reject judicial speculation about the drafters' extra-textually derived purposes. There's a lot packed into that phrase, "extra-textually derived purposes " and the desirability of the fair reading's anticipated consequences. We hope to persuade our readers that this interpretive method is the soundest, most principled one that exists. But even those who are unpersuaded will remain, to a large degree, textualists themselves, whether or not they accept the title. While they may use legislative history, purposivism, or consequentialism at the margins, they will always begin with a text. Most will often end there.

THE HONORABLE ANTONIN SCALIA: Hence the importance, to all of us, of textual meaning. How is that meaning to be determined? By convention. Neither written words nor the sounds that the written words represent have any inherent meaning. Nothing but conventions and contexts cause a symbol or sound to convey a particular idea. In legal systems, there are linguistic usages and conventions distinctive to private legal documents in various fields and to governmental legislation. And there are jurisprudential conventions that make legal interpretation more than just a linguistic exercise.

PROF. GARNER: Anglo-American law has always been rich in interpretive conventions. Yet since the mid-twentieth century, there has been a breakdown in the transmission of this heritage to successive generations of lawyers and lawmakers. Indeed, there has been a positive disparagement of the conventions by teachers responsible for their transmission. The result has been uncertainty and confusion in our systems of private ordering and public lawmaking, and to the extent that judicial invention replaces what used to be an all-but-universal means of understanding enacted texts, another result has been the distortion of our system of democratic government.

JUSTICE SCALIA: The descent into social rancor over judicial decisions is largely traceable to nontextual means of interpretation, which erode society's confidence in a rule of law that evidently has no agreed-on meaning. Nontextual interpretation, which makes "statesmen" of judges, promotes the shifting of political blame from the political organs of government, the executive and the legislature, to the judiciary. The consequence is the politicizing of judges and hence of the process of selecting them and a decline of faith in democratic

Textualism says the judges must play by certain rules and interpret documents according to the meaning that they had to a reasonable reader at the time they were written.

Professor Garner

Quips & Quotes

institutions. It was with characteristic foresight that George Washington declared: "I have always been persuaded that the stability and success of the national government and consequently the happiness of the people of the United States, would depend, in a considerable degree, on the interpretation and execution of its laws."

PROF. GARNER: We are doing nothing different here from what we did when writing the book. We read back and forth to each other endlessly, spending about 200 hours together. Once we had a draft of the book, we worked through the more difficult passages.

We sought to restore sound interpretive conventions. The "fair reading" approach that we endorse will not make judging easy. Easier, perhaps, but never easy. Nor will it produce an absolute sameness of results. But it will narrow the range of acceptable judicial decision-making and acceptable argumentation. It will curb, even reverse, the tendency of judges to imbue authoritative texts with their own policy preferences. It will also discourage legislative free-riding, whereby legal drafters idly assume that judges will save them from their blunders. Many of these interpretive goals can be achieved, especially in fields other than constitutional law, even by a diluted strain of textualism. As for what we called pure textualism, we hope to convince the reader of that as well.

JUSTICE SCALIA: Our approach is consistent with what the best legal thinkers have said and written for centuries. Textualism will not relieve judges of all doubts and misgivings about their interpretations. Judging is inherently difficult, and language notoriously slippery. But textualism will provide greater certainty in the law and hence, greater predictability and greater respect for the rule of law. A system of democratically adopted laws cannot endure. It makes no sense without the belief that words convey discernable meanings and without the commitment of legal arbiters to abide by those meanings. As one commentator aptly puts the point: "It is not too much to say that the preference for the rule of law over the rule of man depends upon the intellectual integrity of interpretation."

PROF. GARNER: Our basic presumption: legislators enact; judges interpret. And interpret is a transitive verb: judges interpret text. We propose to explain how they should perform this task.

JUSTICE SCALIA: One final personal note: Your judicial author knows that there are some, and fears that there may be many, opinions that he has joined or written over the past thirty years that contradict what is written here, whether because of the demands of stare decisis or because wisdom has come late. Worse still, your judicial author does not swear that the opinions that he joins or writes in the future will comply with what is written here. Whether it is because of stare decisis, because wisdom continues to come late, or because a judge must remain open to persuasion by counsel. Yet the prospect of "gotchas" for past and future inconsistencies holds no fear.

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THE CANONS OF CONSTRUCTION

Scalia's and Garner's canons cover how to interpret the myriad of legal texts, from private contracts, to wills, statutes, ordinances, government instruments and the Constitution. If you find yourself confused between one document or textual statement over another, refer to the Principle of Interrelating Canons.

If you need to get your precise point across to your reader, application of the Supremacy-of-Text Principle reminds you that the words of the governing text are your paramount concern: the words mean what they say.

If you have a testamentary document capable of interpretation in two different ways (for example, it may be interpreted so that it either will or will not violate the rule against perpetuities), refer to the Presumption of Validity.

If you are uncertain how to interpret a specific word (for example, consider the many meanings of the word "check"), take a look at the Ordinary-Meaning Canon.

The Fixed-Meaning Canon will guide you through the concept of originalism, with its admonition that the law should not be made by judges.

The Omitted-Case Canon is your common-sense guide as to whether to consider cases not included in a decision, when you wonder whether you might convince a judge to fill in the gap.

The opposite scenario of that is found in the Negative-Implication Canon, where we are warned

that if something is omitted, there's a reason, and it should remain excluded.

The authors remind their readers that qualifying words or phrases refer to the language immediately preceding the qualifier. The canon is appropriately named the Last Antecedent Canon.

The Presumption of Consistent Usage is a reference and reminder to use consistent language. Do not reference "land" at one point in your document and use the words "real estate" at a later point.

The list goes on. The authors claim fifty-seven valid canons and thirteen "hellacious, false canons." The latter are included to make you think about what you write, why you write it, and more importantly, how it will be interpreted.

And if you would like to see *gallimaufry*, *mumpsimus* or the Latin term *ejusdem generis* in print, you should refer to *Reading Law: The Interpretation of Legal Texts*, by Scalia and Garner. ■

Quips & Quotes

There is a legendary story, probably apocryphal, about a piece of zoning legislation, which said, quote, "no drinking saloon may exist within a mile of any schoolhouse." Misapplying this provision, the court decided that a certain schoolhouse had to be moved. That was obviously not the purpose of it.

Justice Scalia

FELLOWS TO THE BENCH

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

Donald H. Burrage, Q.C.
St. John's, Newfoundland

Effective October 2012
Judge
Supreme Court of Newfoundland and Labrador, Trial Division

Timothy J. Sullivan
Baltimore, Maryland

Effective December 2012
Magistrate Judge
United States District Court for the District of Maryland

Gary M. Jackson
Denver, Colorado

Effective January 2013
Judge
Denver County Court

Hope C. Seeley
Willimantic, Connecticut

Effective July 2012
Judge
Superior Court of the State of Connecticut

William J. Kayatta, Jr.
Portland, Maine

Effective March 2013
Circuit Judge
United States Court of Appeals for the First Circuit

Elizabeth A. Starrs
Denver, Colorado

Effective July 2012
Judge
Denver District Court

The College extends congratulations to these newly designated Judicial Fellows.

NEW REGENT

Elizabeth N. Mulvey of Boston, Massachusetts, has been appointed by the Board of Regents to fill the vacancy of Regent, created by William J. Kayatta, Jr.'s elevation to the bench. Mulvey's new responsibilities cover Region 12, composed of the Atlantic Provinces, Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island.

THE GOLDEN ERA OF CARDIOVASCULAR INNOVATION:
PROMISES AND PERILS FOR THE FUTURE

A renowned cardiologist may not seem to be a relevant speaker for a gathering of trial lawyers, but in introducing **James A. Goldstein**, MD, FACC, FSCAI, of Royal Oak, Michigan, President-Elect **Philip J. Kessler** quickly brought Goldstein's topic close to home by describing a scenario to which all attendees of the 2013 Spring Meeting in Naples could relate.

"Is there a doctor in the house?' That anxious cry for medical attention invariably tells us that something, some condition, some life-threatening problem has befallen a fellow human being. It may be a colleague, it may be a friend or even a loved one. And the question of whether there is lifesaving help available on the scene seems to go unanswered indefinitely, as if it is suspended in time."

"In such moments of high anxiety, there could be no more reassuring response than the calm confident voice of our speaker identifying himself as a doctor, and swiftly, methodically taking reflexively sequenced actions honed through decades of experience. He is, indeed, the consummate physician committed to saving lives."

Speaking of a "golden era" of medicine characterized by "miracles from the bench to the bedside," Dr. Goldstein described the promises for the future and suggested remedies for the perils.

THE GOLDEN ERA

"The World War II Greatest Generation defeated fascism. They defeated the Nazis and the Japanese imperialists and gave us the free world that we now enjoy. But they succumbed to heart attacks." Dr. Goldstein shared with the audience that both his father and his uncle died of heart attacks in the prime of their careers. When Dr. Goldstein began medical school in 1970, the cause of heart attacks was unknown, and the diagnosis was based only on symptoms and chest x-rays which had not changed in fifty years. "There was no means of prevention, and early detection was unimaginable."

Dr. Goldstein believes he has been part of a "golden era" of medicine, characterized by the growth of academic medical centers, the evolution of specialists and subspecialists, the maturation of clinical science, rigorous training programs and certification, clinician-inspired biomedical innovation, and robust funding sources for research, education and innovation.

Using photographs, Dr. Goldstein described the development of catheterization as a tool to treat patients experiencing heart attacks. Despite the great improvement in patient outcomes, however, heart attacks are still the number one killer in the western world. "How can we do a better job?" Dr. Goldstein asked. Looking at the audience of experienced and aging trial lawyers, he said, "I guarantee you, unfortunately, that there are a lot of people here who have atherosclerosis. They may know it and have a stent, they may even have had a bypass. They may be unaware. But I guarantee you that the vast majority of people in this room do not have normal coronary arteries. They have some degree of atherosclerosis [known as "hardening of the arteries"]. It starts early."

"The underlying culprit that causes heart attacks is a mild narrowing [due to plaque in the arteries] that doesn't cause symptoms until it ruptures. It doesn't limit flow, so it doesn't cause symptoms.... If we could detect these vulnerable plaques that don't show up on stress tests, then maybe we could preemptively stent them or find another novel therapy to prevent these sudden deaths and heart attacks. That is what I, and many other people around the world, am working on."

THE PERILS

"But there is a chill wind blowing. As Dickens said in *A Tale of Two Cities*, 'it was the best of times, it was the worst of times.' We are undergoing evolution and revolution in health care, and we need to. But there are major threats to the pipeline." Dr. Goldstein identified those threats as:

- College and medical school are becoming cost-prohibitive
- Funding for research is drying up
- Novel devices invented in the U.S. are being tested oversees, so investigators in this country do not have the opportunity to conduct research and training
- Bureaucracy is a burden.

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Government is a part of the problem. Dr. Goldstein shared the example of a percutaneous valve developed to help heart patients that was approved by the FDA four years after it was approved in Europe. In that time, 15,000 patients in Europe received the device, while thousands in America died because they couldn't get it. In another example, stents can fix carotid arteries and are approved by the FDA, but Medicare won't pay for them unless the patient is enrolled in a research study. So if the patient is having a threatening stroke, but does not fit into the "research study" protocol, he must undergo surgery.

Dr. Goldstein concluded his presentation by addressing health care delivery. "The reimbursement system for doctors and hospitals is crazy. The more tests we order, the more we make, regardless of whether they are really producing quality. So we have expensive, but not always superior, care. There is a malalignment of physician-hospital synergies. The hospitals must focus on quality and cost control, but the physicians who actually control costs, are not incentivized for efficiency or quality.... So, given these factors, it is not surprising that resource demands are outstripping fiscal sustainability."

"What would I do if I were in charge?

- Align physician-hospital payor interests
- Remunerate and follow the efficiency and hard work
- Focus on structural models like the great universities, clinics, or organizations like Kaiser Permanente, where physicians are employed and everybody's interests are aligned
- Implement systems whereby patients and families

have skin in the game, where we have carrots and sticks to use to encourage them to make better lifestyle choices. Society must realize we have limited resources

- Invigorate the biomedical pipeline and make sure we can improve and get reimbursed for value-based innovations
- Ensure that academic initiative continues."

A COMMON CAUSE

"Finally, why I am telling all of this to a bunch of lawyers? Are we strange bedfellows? Maybe this is a call for common cause. I submit to you that medical and legal societies have commonalities. We share in common noble professionals dedicated to knowledge, truth, and excellence. We share in common dedication to serve our patients and clients, as well as society. We share in common a voice, and influence, should we choose to use it. Most importantly, I think we share responsibility to stand up, solve problems, and assure a better place for the next generation."

To read the full text of Dr. Goldstein's presentation, please refer to the College website, www.actl.com. ■

Quips & Quotes

The World War II Greatest Generation defeated fascism. They defeated the Nazis and the Japanese imperialists, and gave us the free world that we now enjoy. But they succumbed to heart attacks.

James A. Goldstein, MD, FACC, FSCAI,

SAN FRANCISCO
TO HOST 2013 ANNUAL MEETING, OCT 24-27

Mark your calendar now to attend the College's 2013 Annual Meeting in San Francisco, October 24-27.

President **Chilton Davis Varner** will welcome Fellows and guests to San Francisco at historic City Hall, site of Thursday night's President's Welcome Reception. President-Elect **Philip J. Kessler** has arranged an outstanding panel of speakers to address Fellows and guests at the General Sessions on Friday and Saturday, and engaging tours are planned for the interest and enjoyment of all.

2013 Annual Meeting of the American College of Trial Lawyers

October 24-27, 2013

San Francisco Marriott Marquis
San Francisco, California

Registration will open this summer. Watch your email and mailbox for information and materials.

Do you wish you could extend your time with College friends? If so, taste your way through Napa and Sonoma Wine Country on a post-meeting tour. Details will be included in meeting registration materials.

For more information about the Annual Meeting, please visit the College website at www.actl.com

SPEAKERS SCHEDULED AT TIME OF PRINTING INCLUDE:

In a joint CLE* presentation, **William J. Baxley** and **G. Douglas Jones**, both of Birmingham, Alabama, will discuss the prosecution of the civil rights-era bombing of the 16th Street Baptist Church in Birmingham.

College Fellow **Donald R. Dunner** of Washington, DC, will accept the Samuel E. Gates Litigation Award. He will be the ninth recipient of the award, established in 1980, honoring a lawyer or judge who has made a significant contribution to the improvement of the litigation process.

Professor **Paolo Annino** of the Miller Resentencing Project of Florida State University College of Law's Children in Prison Project of Tallahassee, Florida, will accept the 2013 Emil Gumpert Award on his organization's behalf.

Professor **Lawrence C. Marshall**, Stanford Law School, nationally renowned advocate for reform of the U.S. criminal justice system, will speak about issues certain to be of interest to all.

Robert B. Wallace, a Fellow from Mount Pleasant, South Carolina, will talk about the importance of being a trial lawyer.

*The College will apply after the Annual Meeting for course approval in each state. Fellows interested in receiving CLE credit will be required to fill out a form at the beginning of the General Session.

FLORIDA'S EDUCATION: HOPE FOR THE FUTURE

The future well-being of Florida may very well be in the hands of two of the speakers who appeared at the College's 2013 Spring Meeting in Naples. As second chapters in their lives, both took up the challenge of making a difference in the lives and education of Florida's youth.

While Lawrence addressed law and policy to ensure that each of Florida's students received the basic entitlement of a good education, Lewis hit the ground running by creating programs and lesson plans to teach civics to every grade level in the state.

Lawrence and Lewis found value in their own second beginnings. By doing so, they have offered valuable first beginnings to Florida's youth.

DAVID LAWRENCE AND THE CHILDREN'S MOVEMENT IN FLORIDA

David Lawrence had completed a distinguished career in journalism, having served as Editor of The Charlotte Observer, Publisher and Executive Editor of the Detroit Free Press, and Publisher of The Miami Herald. Fifteen years ago, Florida's Governor asked Lawrence to lead a task force on school readiness. With nary a clue what he was getting into, Lawrence was to become President of the Early Childhood Initiative Foundation and leader of the Children's Movement of Florida. David Lawrence, former newspaperman, then made it his goal to ensure that children would be Florida's top priority in terms of spending and decision-making. Florida's children would be entitled to a decent, fair start in life, with a promise from Lawrence and the state that they were and would remain a priority of the state where they lived.

✦ ✦ ✦ ✦ ✦ ✦ ✦

David Lawrence freely admitted that he was not much of a student when he was growing up. However, he possessed a profound love of books, and at a very early age, he read at least a book a week. Lawrence recalled his mother reading *The Little Engine that Could*, and at four years old, he understood the book's metaphor and his own possibilities. Those possibilities, coupled with his love of reading, carried over to adulthood.

All good writers profess that to be a good writer, one has to read. Lawrence's reading lead to a thirty-five-year career as a journalist with more opportunities than he could imagine. Lawrence's name-dropping interviews range from the President of the United States to the dictator of Cuba, the Queen of England and the Pope.

Lawrence's life experiences energized him; his reading inspired him. A lifelong sense of justice and injustice, fairness

and unfairness were informed by reading. The offer from the then-governor of Florida to lead a task force on school readiness provided an outlet to share what he had learned.

Lawrence's research was the beginning of his "entitlement" theory: *All children are entitled to the basics that give everyone a real chance to succeed.* He presented three startling facts about our nation's youth:

- Three out of four young people, ages 17 to 24, cannot enter the American military due to substance abuse or criminal, physical or academic problems.

- The United States ranks 21st in the world in high school graduates; the U.S. ranks 16th in college graduates. Almost one of every four high school students does not graduate.

- At least 30% of U.S. children begin school significantly behind, with most getting further behind. If 100 children leave first grade without knowing how to read, by the end of fourth grade, 88% are mediocre or non-existent readers.

Common sense supports Lawrence's statement that "if children have momentum in first grade, chances are they will have momentum for their entire lives. Children without momentum will be triaged and tracked in school, and they will pay a lifelong price."

Ninety percent of all children attend public schools. More than one-third of third graders have been identified as non-proficient or unable to read at all. Lawrence believes that reforming our public schools begins by preparing and delivering children to kindergarten with the tools to succeed in school and in life. Who and how can we do that? "We must begin with knowledgeable, caring, nurturing and loving parents ... high-quality, brain-stimulating child care ... healthy children with real relationships with doctors and nurses, and ... children who are not hungry."

With a theme of "you get back what you put in," Lawrence opined that if we want responsible, engaged

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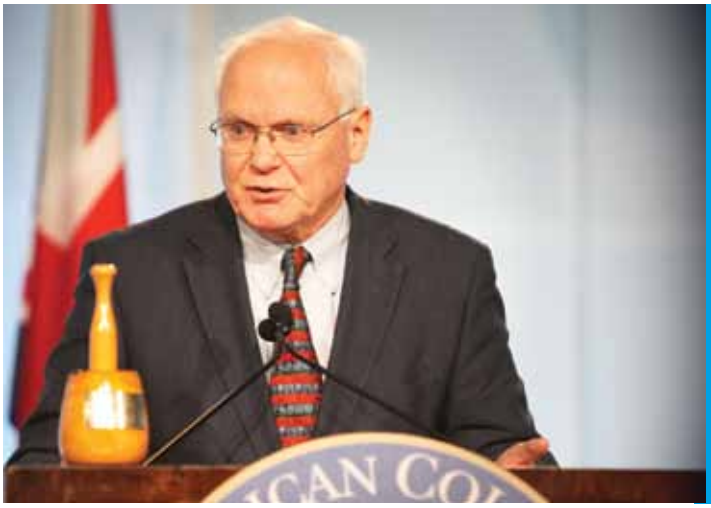

It seems to me that doing right by children remains a mission barely begun, but deserves to be front and center in the new order of things.

David Lawrence

Quips & Quotes

citizens, we must believe in what he calls "the power of early investment." He shared the words of Fred Rogers, who said:

Our goal as a nation must be to make sure that no child is denied the chance to grow in knowledge and character from the very first years. In Mister Roger's Neighborhood, every child is welcomed into the world of learning, not just a few, not just ones from certain neighborhoods, but every child.

Building on realities, Lawrence spends most of his energy on the imperative of school readiness consisting of high quality, early care development and education. He was responsible for a constitutional amendment, passed by the voters of Florida, providing free pre-kindergarten to all four-year-olds in the state.

The constitutional amendment was followed by the Children's Movement of Florida that established the goal of making all children in Florida the state's number one priority for investment. This priority didn't come easily or readily. With priorities frequently leaning toward better roads or prisons, Lawrence stated that "for every dollar [spent] wisely upfront in brain-stimulating care and education, at least seven dollars in money wouldn't have to be spent on police, prosecution and prison. And he admitted that pushing his "basic entitlement" theory as a priority sometimes took "old-fashioned outrage." Other times, facts spoke as loudly as outrage. An example: In the State of Florida, a Pre-K slot costs $2,383. To incarcerate a juvenile costs $51,000.

Lawrence prophetically stated: "If I have any power, if you have any power, it begins with the power of one's self accompanied by the wherewithal to convene good people, to move toward a common cause, blended with vision, the ability to build collaborative relationships and to raise resources. Power at its wisest is about values, accompanied by insistent purposefulness."

Finding purpose in his second act, Lawrence challenged each of us to consider doing the same.

To read the full text of David Lawrence's presentation, please refer to the College website, www.actl.com.

JUSTICE FRED LEWIS AND JUSTICE TEACHING

Fred Lewis, Justice of the Florida Supreme Court, was appointed to Florida's highest court by the late Lawton Chiles, in 1988. As a youth in West Virginia, he was active, engaged and successful in athletics and academics. After graduating from the University of Miami Law School, he remained in the Sunshine State and immediately turned his interest toward giving back, to civic involvement, in his newly adopted home. As early as 2001, Lewis was recognized for his heavy involvement in Florida's children's issues. His love of both Florida and children led him to begin Justice Teaching, a program that he unassumingly describes as "nothing more than a program that provides volunteer lawyers and judges for public schools and private schools in the State of Florida."

✦ ✦ ✦ ✦ ✦ ✦ ✦

Justice R. Fred Lewis has numerous awards under his belt. While serving as justice of the Florida Supreme Court, he has made frequent presentations to students in the Florida school system. The more he spoke to assemblies, classrooms, teachers and individual students, the more he thought about how education had changed since his youth in West Virginia. A seed began to germinate. And Justice Teaching was born.

Justice Lewis says, "while the law may be my profession and has been for over forty years, children are my passion."

This one man's passion has generated a program that involves more than 4,000 volunteers and students in every public school and 400 private schools in the State of Florida. This one man's passion provides interactive programs that supplement the existing Florida school system's curriculum. And this one man's passion introduces civics in a fun, effective manner, to all grade levels in Florida's schools.

The Problem: Justice Lewis came to understand that students wanted more than they were getting, but that high-stakes testing created a hierarchy of subjects that excluded civics as part of the process. He observed that throughout history, during times of crisis, external threats have produced an internal national reaction to our national liberties; these national liberties were then altered by the will of the nation. Lewis felt that, with other members of the bench and bar, democracy could be protected from the inside, and America's liberties could remain strong. He decided that democ-

racy is and should be a work in progress, accomplished through the educational process.

The Idea: Formalize an educational program for Florida's schools involved having faith that others would jump on board. With survey results in hand, Justice Lewis demonstrated to lawyers and judges across Florida that its citizens knew very little about the operation of the judicial system. He pleaded, "how can you vote for judges or how can you operate a system if you don't know what's happening or even what it is?" He explained, "We want to teach principles of a Constitutional democracy in action, in a vocabulary and in a way that our students can see that this thing called the Constitution has relevance, that it has relevance to their lives, and that impacts them every day."

The surveys told Lewis that "if we provide this information, they are more likely to register to vote, more likely to vote, and more likely to engage in civic activities."

The Solution: "Civic education teaches the importance of how to live together within the nation's institutions. The answers are direct involvement with our children." According to Justice Lewis, our college students know less about history, civic institutions and constitutional structures and relationships than ever before. What, he rhetorically asks, *is* being taught? "Political correctness, diversity, secularism, personal rights and global warming." And, "We can talk about all these things all day, but without a basic fundamental structure in which they operate, I fear that we have lost."

Lewis opines that the great knowledge-void in our children, to be passed down to our grandchildren, and beyond, is a terrible legacy to leave for our country. He is convinced that this is why Justice Teaching is important.

Justice Teaching uses information to correct misconceptions. It introduces information through direct use of the source documents. It uses the vocabulary of the students. It targets all grade levels. It has programs and lesson plans aimed at developing critical thinking and problem-solving skills. It is non-partisan. It presents questions and allows the students to reach their own conclusions. It goes into classrooms only, never into large school assemblies. It reduces time demands on the teachers. By providing online lesson plans, it precludes time demands on the volunteers. It offers games to stimulate, puzzles to excite. It suggests, "to teach one, teach many." It continues to grow. It remains relevant. It works.

Justice Lewis reiterates his goal:

We want to reinforce the rule of law. Too many students today don't understand the importance and why we maintain our freedoms and why the rule of law is important. We want to strengthen the trust and confidence in our judicial system and the proper interaction between all branches of government. These are the outcomes we are trying to achieve.

The extensive amount of feedback from Justice Teaching's beneficiaries indicates that the program does, indeed, work. Justice Lewis invites parties interested in replicating Justice Teaching to contact him for assistance in "advancing democracy one student at a time."

To read the full text of Justice Lewis's presentation, please refer to the College website, www.actl.com. ■

My friends, I believe that the strength of this great democracy is in the participation by all who have an interest. It's not reserved for only a few, but for all. This is what civic education is designed and intended to do.

Justice R. Fred Lewis

Quips & Quotes

SMUGGLERS, TERRORISTS AND PIRATES:

HOW THE COAST GUARD PROTECTS OUR MARITIME BORDERS

Florida Fellow **C. Rufus Pennington, III**, introduced United States Coast Guard Rear Admiral **William D. Baumgartner** to the Fellows and guests at Friday's General Session of the 2013 Spring Meeting in Naples. A career "Coastie," Baumgartner graduated from Harvard Law School as part of his Coast Guard service, and went on to serve as Judge Advocate General and Chief Counsel of the Coast Guard.

Baumgartner's command spreads two million square miles across the Southeastern United States and the Caribbean and shares borders with thirty-four nations and territories. He spoke about the Coast Guard's responsibilities and its role in combating smuggling, terrorism and piracy.

ACTIVITIES OF THE U.S. COAST GUARD

Baumgartner began by describing the variety of missions in which the United States Coast Guard is engaged around the world. Much of the critical work of the Coast Guard is done by volunteers, not active duty or reserve personnel. There are about 40,000 active duty personnel, 9,000 civilians, 9,000 reservists, and 34,000 volunteers. Baumgartner noted that the volunteers, "have every authority I do in uniform, except we don't let them shoot people and we don't let them arrest people....They do everything from fly planes to drive boats. Even the orthopedist who sees me for a shoulder injury is a Coast Guard auxiliarist who donates his time."

The Coast Guard is one of the biggest regulatory agencies in the United States government, responsible for the entire shipping industry, including environmental enforcement. The members of the Coast Guard also serve in many humanitarian and search and rescue roles. In the Caribbean they are, "for most purposes, the fire department and the police department for that entire area."

One of the Coast Guard's most important missions is diplomacy. Baumgartner has traveled around the world for negotiations, including those relating to nuclear nonproliferation issues. By capitalizing on the relationships between military leaders, Baumgartner says he can "go into a country that the Defense Department cannot. I can go in as an Admiral and talk with their military. They know who I am, and we don't have the same discomfort level."

Along with diplomacy efforts, Baumgartner and his staff navigate many jurisdictional issues, and he narrated a list of questions they consider when encountering an unidentified boat in the water. "How do we stop them? What kind of law applies if I stop them to get on board? How do I deal with the country whose nationality that ship is? How do I deal with our own court system to make sure that I can do something with that bad guy once we bring him in?" The need to answer those questions "is why we have a lot of lawyers in the Coast Guard, and why a lot of our lawyers go out and...command ships.... It is a lot more complicated that most regulatory or law enforcement agen-

Quips & Quotes

In speaking with some of Admiral Baumgartner's fellow flag officers, I learned that he was given an extra load of extra unpleasant cases to try as a new lawyer. I asked why his superior JAG Corps officers would be so cruel. I was led to believe that it may have been related to the fact that the law school he went to for the Coast Guard was Harvard Law School, and he graduated magna cum laude and served as an editor of the Harvard Law Review. So that was the payback.

Fellow C. Rufus Pennington III, introducing Admiral Baumgartner

cies, and most military organizations. You have to know this stuff, and you have to be well-versed in it."

SMUGGLING

Drug smugglers in the Caribbean have significantly modernized their tactics in recent years, but the Coast Guard has kept pace. Forty years ago, smugglers transported marijuana or cocaine in fishing vessels. Those vessels were slow and fast, so the Coast Guard easily found them. The smugglers then used hidden compartments, but the Coast Guard, using fiber optic cameras and other tools, "figured out ways to account for almost every cubic foot on a vessel that might even be 200 feet in length."

Go Fast boat

For the last fifteen years or so, smugglers have relied on a boat style known as "Go Fast." They are difficult to locate because they are small and fast, and because they stop during the day to avoid producing an easily visible wake.

Once Coast Guard personnel encounter smugglers, they must assess their legal jurisdiction. The Coast Guard partners with other countries patrolling the Caribbean and has bilateral agreements with the major nations in the region. Baumgartner explained that Article 110 of the Law of the Sea Convention contains a provision that allows him to stop a vessel if he believes the vessel might be subject to his jurisdiction. Because many of the vehicles are made surreptitiously, they rarely have registration, which means anybody can exercise jurisdiction over them. In those situations, the Coast Guard can board the vessel and either exercise jurisdiction or collaborate with the appropriate nation.

The latest tool in the smugglers' kit is the Self-Propelled Semi-Submersible (SPSS) boat. This vessel is designed for a one-way trip, to be sunk at the end to hide the evidence. The Coast Guard estimates that while it probably costs about half -million dollars to build an SPSS, one boat can hold six to ten tons of cocaine, worth $150 -$300 million wholesale in the United States, and more than half a billion dollars wholesale in Europe. Without the evidence that sinks with the SPSS, the Coast Guard can't get the intelligence that would help them intercept and prosecute smugglers. The Coast Guard and Congress have worked effectively together to develop laws to address this problem.

STUCK IN TRAFFIC

Another challenge facing the Coast Guard in the Southeastern United States is a history of mass migrations and human trafficking from Cuba, Haiti and other Caribbean nations. Baumgartner's first patrol with the Coast Guard came during the 1980 Mariel boatlift when, in a period of five months, 125,000 Cubans fled their island to find refuge in the United States. Under the "wet foot-dry foot" policy, if Cubans manage to touch U.S. soil, they can stay. If they are interdicted before touching U.S. soil, they are repatriated to Cuba or relocated to another country.

"One of the reasons we are so concerned about migration is simply the cost in lives. The best thing we can do to save lives is to make it very difficult for them to

Referencing photos of SPSS vessels: The one you just saw sank in about seventy feet of water. The one in July sank in about seventy feet of water, fifteen miles from shore and in a mud bottom. The ship turned bow up into the air and went straight down into a mud bottom and stayed like that.

So we had, at that point, I feel safe to say, the most attractive scuba diving opportunity in the world. One hundred and eighty million dollars worth of cocaine in less than seventy feet of water, only fifteen miles from shore. We made sure that we, along with an FBI dive team, got there first. We were able to recover all of the cocaine.

Now when I get a call in the middle of night telling me I've got one of these, my watch officer knows to tell me right away how deep the water is.

Rear Admiral William D. Baumgartner, U.S. Coast Guard

leave Haiti and to leave Cuba, which is a very tough thing, because conditions are so terrible there and you just see people that are so desperate." This desperation has spawned ingenuity, including several reported incidents of would-be immigrants building boats out of cars.

TRACKING TERRORISM AND PIRATES BEYOND THE CARIBBEAN

The Coast Guard's mission to safeguard America's maritime interests extends beyond the shores of the country. Baumgartner explained that Coast Guard personnel are stationed around the world to prevent problems before they can reach U.S. shores.

"People from all over the world that mean harm to us can get into the Caribbean fairly easily, and the islands are easy stops. We have some countries that, for a fee, will issue you a passport under their nationality, regardless of your actual nationality. One problem, for example, is it's only an hour or two in a quick boat ride to get from the Bahamas into south Florida. And on any given weekend, there may be 5,000 to 10,000 boats of people just out having a good time in that area. A smuggler mixing in with them, whether he's bringing in people, weapons or terrorists, is pretty hard to find. That is one reason why we push out to get things as far away from the U.S. as possible."

The Coast Guard is particularly concerned about smuggling in the Caribbean because of the large number of American port facilities, cruise ship capitals, nuclear power plants and other sites that require protection.

Piracy is another threat the Coast Guard regularly confronts. While piracy is becoming a grave concern in places like the Gulf of Guinea, there has been notable improvement in some areas of the world. For example, the International Ship and Port Facility Security Code was passed after the terrorist attacks of September 11, 2001, and it includes measures to enhance the security of ships and port facilities. This has directly improved the previously dangerous piracy problem in the Straits of Malacca. The piracy problem in Somalia has improved recently as well, due to increased security on boats traveling in the area, as well as increased governmental stability.

Admiral Baumgartner's presentation opened Fellows' and guests' eyes to the multitude of duties assumed by the United States Coast Guard as national and international maritime laws must adapt to meet new challenges.

To read the full text of Admiral Baumgartner's presentation, please refer to the College website, www.actl.com. ■

BLOGGERS, TWEETERS AND ANONYMOUS SPEAKERS:

HAS THE INTERNET CHANGED THE FIRST AMENDMENT ALONG WITH EVERYTHING ELSE?

Media Panel Discussion for CLE Credit

The Fellows and guests attending the Friday morning General Session at the College's 2013 Spring Meeting in Naples, Florida, were treated to a different, yet very familiar, format for a CLE session about the Internet and the First Amendment.

A portion of the dais was transformed into a courtroom, complete with judge, bailiff, plaintiff's counsel, defense counsel and a singular expert witness. The audience served as courtroom observers. The defendant was (drum roll, please): the First Amendment. The plaintiff, the Internet.

Introducing the parties in order of appearance was, first, the bailiff: **Lee Levine** of Washington, D.C., preeminent First Amendment Lawyer and "Dean of the First Amendment Bar," served as moderator. Levine explained the concept, kept time, summarized the trial and introduced its participants:

> **Gary L. Bostwick** of Los Angeles, California, College Fellow and distinguished First Amendment trial lawyer, served as plaintiff's counsel, arguing that the Internet has changed the First Amendment;
>
> **Charles L. (Chip) Babcock** of Dallas, Texas, College Fellow and one of the foremost First Amendment lawyers in the country, defended the First Amendment, arguing that it has resisted attempted change by the Internet;
>
> **David E. McCraw** of New York, New York, Assistant General Counsel of The New York Times Company, who is "responsible for all newsroom legal affairs, both print and digital," served as expert witness for both parties;
>
> **Hon. Robert D. Sack** of New York, New York, Judge of the United States Court of Appeals for the Second Circuit since 1988 and author of the seminal treatise on the law of defamation, *Sack on Defamation: Libel, Slander and Related Problems*, now in its Fourth Edition, served as judge;

... and you, the audience, served and continue to serve as the ultimate trier of fact.

Left to right: Gary Bostwick, Charles Babcock, Lee Levine and Robert Sack

WILL THE COURT PLEASE COME TO ORDER?

It became clear from the beginning that Judge Robert D. Sack's resolve would be challenged if he hoped to control this courtroom. Perhaps it was due to the collective onstage expertise, perhaps it was the mix of their (dare we say it?) unusual personalities. More likely, the courtroom's atmosphere was thrown off-balance by the unseasonably cold Florida weather, the threat of sinkholes in Hillsborough County or the fact that both parties were inanimate, very important concepts. How do you challenge or defend an idea? With humor, Your Honor.

Judge Sack lost no time admitting that he could laugh with the best of 'em by confessing that he came to the Spring Meeting and *this* courtroom "to network."

THE EXPERT WITNESS: SWORN AND QUALIFIED

The First Amendment

Chip Babcock, setting the tone and following the rules, made sure that everyone knew that David McCraw, the expert witness, was well qualified through education, experience and knowledge to testify about the First Amendment and media law. Babcock not-so-subtly made sure that McCraw understood that his role as expert was to serve as the foil for Babcock's leading and suggestive questions.

The consistently agreeable McCraw followed along as Babcock walked the courtroom observers through the First Amendment's history, from submission to the states in 1789 in an agrarian society, to the "lonely pamphleteer" on his soapbox, to (as McCraw explained) the wish that "there was a major newspaper in New York that would reach millions of readers that would shape world events, change elections and leak national security secrets to the world."

THE INTERNET

Moving to the history of the Internet posed a different challenge for Babcock. Try though he might with his leading questions, Babcock was unable to get McCraw to admit that Al Gore invented the Internet, even when presented with a video of the former Vice President making an express statement to the fact. The expert witness simply averred that "I haven't heard him say that." When cornered by the question as to whether or not he was calling the Vice President a liar, McCraw held his ground, merely admitting, "I stand corrected."

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Let's focus on the early 1990s. That was when Al Gore said he invented the Internet. Did he not say that he created the Internet?"

Charles L. Babcock, questioning expert witness, David E. McCraw

Quips & Quotes

Gary Bostwick, Chip Babcock, Robert Sack and David McCraw

Rapidly moving along through stipulated facts, McCraw stated that the First Amendment has never been amended, changed, ratified, or "whatever" since its inception, and that the text has remained the same. He testified that the United States Supreme Court, in *Reno v. ACLU*, applied the First Amendment to the Internet in an attempt to limit certain kinds of speech on the Internet, invalidating certain parts of statutory law related to indecent speech.

TYPES OF SPEECH

Using slides to guide the expert witness along, Babcock noted areas of speech related to media and the First Amendment: 1) Anonymous Speech; 2) Libel Tourism; 3) Third-Party, Content-Privacy Interests; and 4) What is the Press?

Expert McCraw testified that in both post- and pre-Internet cases, the courts ruled that an individual has a right to remain anonymous when speaking, citing particularly *McIntyre v. Ohio Elections Commission* in 1995, an instance involving individuals circulating political pamphlets and *Doe v. 2themart.com*, in 2001, when the same issue was applied to speech on the Internet.

With wit intact, Babcock introduced Libel Tourism, admitting that he visualized a "bunch of people on a Carnival Cruise speaking badly about each other." Bringing the examination back to reality, McCraw explained the concept as being when someone is defamed in one jurisdiction by a publication or broadcast, the plaintiff utilizes forum shopping to sue in another jurisdiction with more-favorable laws. As with Anonymous Speech, Libel Tourism laws remained unchanged both pre- and post-Internet.

Citing additional cases, counsel repeatedly succeeded in getting McCraw to admit that the First Amendment had not changed since the advent of the Internet.

Babcock concluded his questioning of the expert witness by turning the questioning to the delineation of who is and who is not a member of the press, whether the information posted is factual reporting or an opinion piece written by a blogger. Is there or should there be special protection for the press, whether it be as to content or the confidentiality of one's sources? Do these protections apply to major news organizations as well as to "street corner bloggers"? McCraw testified that the current line of thinking is that any writer is protected "if one is an *active journalist*, [whose] acts are important for the public to get information in, [and whose] confidentiality sources are an important part of the vehicle to getting the information out there."

When asked, finally, "Has the Internet changed the First Amendment, the answer would be no, true?"

McCraw responded with a simple "no." With time called by Moderator Levine, it was not clear if Mr. McCraw's one-word response indicated agreement with Mr. Babcock, or if the response constituted a double-negative, resulting in conflicted thinking.

Cross-Examination

Gary Bostwick, counsel for the Internet, must have realized that coming to trial without the benefit of evidentiary, or otherwise entertaining, slides, put him at an immediate disadvantage. In his best, well-worn Matlock-ian demeanor, he sauntered up to Mr. McCraw and asked, "... you know I'm just a country boy from Wyomin', dontcha?" And McCraw, in his best deadpan response, replied, "Al Gore is not from Wyoming, I will stipulate to that."

Moving to more germane material, Mr. Bostwick asked a series of questions, and McCraw agreed that although the exact language of the First Amendment has not changed in 250 years, as a living set of principles, it has been interpreted in different ways. McCraw acknowledged that the First Amendment was applied to the states in 1925 and that the government has made laws abridging freedom of speech, specifically, the classic exceptions of slander, libel, obscenity, national security, fraud, etc.

Using obscenity as an example, the gentlemen agreed that speech which the government allows in auditory form (over the public airwaves, for instance) may be more heavily regulated than that which is in written, published form. And with the extended shelf life of the Internet, defamatory speech that is published on the Internet allows people to know about something said or done "for forever." Counselor Bostwick attempted to make the point that "there has been a change in the way the First Amendment has been applied to the law of obscenity, simply by the fact that the Internet makes it possible to see or read obscene material" to which one would not have previously been exposed.

Mr. McCraw clarified the questioning by stating that although there has been no change in the law, there has been "a change in the distribution and availability" of obscene material.

Finding a point of agreement, Mr. Bostwick restated McCraw's analysis with a leading comment, noting that "the First Amendment therefore no longer has the same complete vigor it had before." And, "we can see obscenity, we can pass-on defamation, and we can do all kinds of other things that we couldn't do before with the same First Amendment, which seems to have changed without changing one word, isn't that right?"

McCraw, while agreeing in concept, disagreed as to obscenity, noting that the government is capable of passing an anti-obscenity act, for which the First Amendment provides guidance

Quips & Quotes

Libel tourism to me raises the image of a bunch of people on a Carnival Cruise speaking badly about each other. I don't think that's exactly what it is.

Chip Babcock

The First Amendment Makes its Closing Argument

In his closing argument, Chip Babcock referred to Judge Sack's treatise, *Sack on Defamation: Libel, Slander and Related Problems*. He also quoted Yale University's Professor Balkin, who theorized that First Amendment issues of free expression in the digital age would be technical regulatory questions rather than decided by judges. As an example, Babcock referred to Mr. Bostwick's comments about immunization of bloggers on the Internet, where protection is afforded by private contractual agreements between the Internet service providers and the users, rather than First Amendment concerns.

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The Constitution is, in my view, a living set of principles.

David McCraw

With a multitude of survey results, Babcock made it clear that the public overwhelmingly believes that blogging is protected by the First Amendment, with the percentage of believers increasing every day. The cited surveys also indicated that the majority of respondents agreed that people should be able to say whatever they choose in a blog; people should be entitled to blog about their opinions; a person cannot be defamed by another unless the defamatory statement is made with intent; and blogs need not contain the truth.

Babcock stated that younger people view the Internet in a "First Amendment way," validating free speech rights by returning to a belief in the agrarian town hall meeting-concept previously discussed by Mr. McCraw. And Babcock conceded that with the rapid expansion of private data unleashed on the internet, any attempt to stem the tide is daunting, if not pointless. He stated that attempts must be made through a mix of legal, social and technological solutions:

"The First Amendment hasn't changed, but the challenges posed by the Internet, we are going to have to solve by legislation, we are going to have to solve by agreement. The First Amendment hasn't changed. It will continue to be a robust protector of the rights of free speech and the rights of the press. It will not condone obscenity, I predict. It will not be any different than it has been in the past."

Turning to commercial speech and a video, Babcock introduced "The Texas Hammer," a car salesman who markets his dealership on local-area television. In what has become the most-humorous, sixty-second snippet of one of the College's national meetings, Babcock's video attempted to sell *Sack on Defamation: Libel, Slander and Related Problems* to the crowd, with a closing pitch from none other than David Beck, Past President of the College.

The point? Probably not to sell books. Babcock sold more than a few laughs. And he sold a first-rate example of a satirical parody. And it was protected. Even from David Beck.

Bostwick Returns to Revive the Internet

In another excellent closing argument, Gary Bostwick, on behalf of the Internet and its change to the status quo, pointed out that the actual words of the First Amendment remain relevant. He emphasized, however, that whether or not the Internet has changed the First Amendment comes down to what common people, common jurors, think about what is happening with the law.

If an individual can go onto the Internet and see or hear obscene material at a moment's notice, that person understands and believes that the Internet, as a resource, is different than that which he or she has come across before. "Normal juries" believe something has changed. They don't worry about the language. Bostwick posed a powerful analogy:

They just say to themselves, "I don't like this and something has got to happen." And in many different ways what has happened is that the First Amendment has taken a seat, kneeling at the foot of the Internet, and [the First Amendment] has allowed the Internet to do all kinds of things that it never has, that no publisher before was able to do.

Bostwick noted that David McCraw was in a difficult position as he represents both the website and hard copies of *The New York Times*. Whereas there has been a great deal of freedom allowed on the website, the same freedom has not been allowed to the print version of the publication. We see this every day. When a businessman goes to his lawyer complaining of a blogger making disparaging comments about the businessman's dealings, the lawyer has to admit that they are dealing with something new, something not addressed in Judge Sack's first edition.

With exponential changes in examples and possibilities, we should anticipate unforeseen changes in the law and new reactions by juries and laypersons who acknowledge that the law has not kept up with these changes. Bostwick stated, "To say that there has been no change and no effect in how the First Amendment is applied by way of common law, by way of judge decision or otherwise, doesn't stand up over the course of the last few years."

Judge Sack Rules

Jumping into the controversy, Judge Sack advised the courtroom that the question is one largely of semantics. Is the First Amendment changing? No. The only change has been when >>

Quips & Quotes

So we have the same First Amendment application pre-Internet and post-Internet, as far as the First Amendment goes, correct?

Charles L. Babcock, questioning expert witness, David E. McCraw

There may not have been a change in the law, but in some form, some way or another, the First Amendment no longer has the same complete vigor it had before, isn't that right?

Gary L. Bostwick, questioning expert witness, David McCraw

The First Amendment hasn't changed, but the challenges posed by the Internet, we are going to have to solve by legislation, we are going to have to solve by agreement. The First Amendment...will continue to be a robust protector of the rights of free speech and the rights of the press. It will not condone obscenity, I predict. But it will not be any different than it has been in the past.

Chip Babcock

Whether or not the Internet has changed the First Amendment or whether the First Amendment has changed the Internet really relates to what common people think. People sitting on normal juries think something has changed. They don't worry about whether the language has changed. They don't worry about whether or not the First Amendment has been amended. The First Amendment has taken a seat, kneeling at the feet of the Internet and has allowed the Internet to do things that no publisher was able to do before.

Gary Bostwick

The question for the...First Amendment...in every one of these contexts: has the newest medium become too effective, too powerful, to be free as its predecessors have? At every one of those junctures in our history, with one exception, broadcast, the answer to the question is that the First Amendment says no. There is no such thing as being too powerful to be free. That's what the First Amendment is about. It protects speech, no matter how powerful it is.

Lee Levine

the Fourteenth Amendment applied it to the States. The words remain the same.

Meanwhile, constitutional law has changed, as has everything else. All things evolve, and with technology, society has evolved. "The longer period of time and the more important the statute, the more the change becomes evident. It is and has been changed by judges deciding specific cases. So the answer is clearly yes, the Constitution changes."

The progression from the advent of telephone and telegraph in the 19th century, wire services in the '30s, the release of the Pentagon Papers in the early '70s, the moment-by-moment media coverage of modern wars, limitations on broadcast content, cable television, and now the Internet and bloggers, in all these situations the courts have been required to apply the law to fit new situations.

So the conclusion of the court, which will be put in an order that will be utterly incomprehensible for you, is ...

To read Judge Sack's decision, and the complete transcript of the media panel's discussion, please refer to the College website, www.actl.com.

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THE LAW REVIEW ARTICLE

Moderator Lee Levine's analysis of the trial was analogous to an after-the-fact law review article, similar in both fact and opinion. Like all good law review writers, he congratulated Judge Sack on the Court's opinion, and then acknowledged that he would "now talk about whatever I want to talk about that is related to the issue." The significant distinction between Levine and others was that *this* reviewer happened to be an expert in the area being discussed.

Levine noted that the answer to whether or not the Internet has changed the First Amendment is neither yes or no. With the release of each new medium of communications technology comes more power, more breadth and more responsibility. He questioned if future media sources will, perhaps, become too powerful to be free. With the unique broadcasting exception of *Red Lion,* Levine declared: "There is no such thing as being too powerful to be free. That's what the First Amendment is about. It protects speech, no matter how powerful it is."

Qualifying his own authoritative statement, Levine wondered if phenomena not yet known might raise the question of whether the medium is too powerful to be free. Would we, at some time in the future, need limitations that we can be comfortable with, that are also consistent with the First Amendment? Levine's response:

Stay tuned ...

To read the full text of Mr. Levine's analysis, please refer to the College website, www.actl.com. ■

AMERICAN COLLEGE OF TRIAL LAWYERS SEEKS CANDIDATES FOR SANDRA DAY O'CONNOR JURIST AWARD

The Sandra Day O'Connor Jurist Award Committee seeks your help in identifying candidates for the Sandra Day O'Connor Jurist Award. The Award, established in 2007, is given from time to time to a judge who has demonstrated exemplary judicial independence in the performance of his or her duties, sometimes in difficult or even dangerous circumstances. This prestigious award has been given to two judges: Florida State Court Judge George W. Greer, who presided over the Terri Schiavo 'right-to-life' case, and Texas Federal Judge Sam Sparks, who presided over the trial of multiple members of the Texas Syndicate on racketeering and conspiracy charges involving robbery, kidnapping and murder.

If you would like to nominate a candidate for the Award, please go the College website at www.actl.com, download the Proposal Form for the Award and forward it to the attention of the Chair of the Sandra Day O'Connor Jurist Award Committee at nationaloffice@actl.com.

Thank you.

Nancy Gellman, Chair
Charles Patterson, Vice Chair
Sandra Day O'Connor Jurist Award Committee

2013 EMIL GUMPERT AWARD WINNER ANNOUNCED

The Miller Resentencing Project of the Florida State University College of Law Public Interest Law Center's Children in Prison Project, of Tallahassee, Florida, has been announced as the winner of the 2013 Emil Gumpert Award. The Foundation of the American College of Trial Lawyers funds the $50,000 first-place cash prize, and a representative of the Miller Resentencing Project will present remarks at the October 2013 Annual Meeting in San Francisco. As the torch-bearer of minors who have been incarcerated for homicide crimes, with no chance of parole, the Public Interest Law Center addresses the *Miller v. Alabama* 2012 Supreme Court decision and provides legal representation and a model for replication in all states

CANADIAN SUPREME COURT JUSTICE ANDROMACHE KARAKATSANIS INDUCTED AS HONORARY FELLOW

The College is the only organization in which all Justices of the United States Supreme Court and all Justices of the Supreme Court of Canada are honorary members. The College is privileged to make this statement because every Justice has elected to accept Honorary Fellowship in the College and to address the College at one of its national meetings.

At the College's 2013 Spring Meeting in Naples, Florida, Regent **Jeffrey S. Leon**, LSM, introduced Canadian Supreme Court Justice **Andromache Karakatsanis**, a long-time public servant with a background in criminal law. Describing the path that led to her appointment in October 2011, to Canada's highest Court, Leon said, "this ascension is tribute to her knowledge of the law, her understanding of policy issues and her well-recognized judgment. She has those valued qualities of common sense and compassion, and she brings them to judging."

In a nod to Justice Karakatsanis's heritage, Leon concluded his introduction with a message in Greek that, when translated, was a sentiment that would apply to all new Fellows. "We welcome you warmly to fellowship and hope that you will participate in our organization for many years to come."

I am most honored to be here today among so many talented trial lawyers. As you have heard, my own legal journey started in the courtroom and has settled in the courtroom, but it has taken a number of detours over the last thirty years.

As a young litigation lawyer, I hoped that one day I would be inducted as a Fellow of the American College of Trial Lawyers. However, I had to take a more circuitous route here than the rest of you. I am really thrilled to be an Honorary Fellow of this illustrious College.

My journey to the Supreme Court of Canada, and thus to this stage, has been a somewhat unconventional but wonderful journey. My career in the law has opened many interesting and unusual doors, in both private and public law, and I have had a variety of relationships with the courtroom. So today I thought I would reflect on the fundamental role that the courtroom and its professionals play in our society.

As I look back on my legal career, I have been privileged to view the courtroom from several different and broad perspectives. I have seen the law at work in the courtroom and tribunal hearing rooms, in public consultation, in negotiations with Aboriginal people, and negotiations with three levels of government. I have provided direction to government lawyers working for the Ontario government, to the public servants who support those courtrooms. I have overseen the policy choices and the drafting of legislation.

My passion for the law developed over time as I witnessed the profound impact of the law as an instrument of social policy and as I saw the fundamental way in which the law shapes our society, our values, our relationships with each other, and our relationships with the state. It defines the very fabric of our society.

One thing has remained constant in my evolving relationship with the law: the significance of an open and public courtroom to the individuals involved, to the public, and to our democratic way of life. The courtroom is the window to the law in action.

EARLY YEARS

As Jeff told you, for a few years I practiced law in a small law firm in litigation. During my first five years after my call to the bar, I spent most days in the courtroom. And before my appointment to the appellate court I was a trial judge for seven and a half years, conducting criminal, civil, family, and commercial litigation. That makes twelve years on the front lines in a trial courtroom. While my trial experience as a trial lawyer was relatively brief, at least by your terms, I would like to think it was quite intense.

There is nothing in law that is like the excitement of the courtroom with its range of factual and legal issues and the sheer human drama. Then there are those rare, but raw, moments when you're witnessing that naked truth, and the thrill when we are told that the jury has a verdict. The courtroom always demands your personal best. I loved being in court >>

Quips & Quotes

The courtroom is the window to the law in action.

The Honourable Madam Justice Andromache Karakatsanis

Quips & Quotes

So why do I say that the courtroom and its professionals are fundamental to our democratic way of life? The courtroom is often the intersection of economic, social, legal and political currents. Our job is to navigate those currents and to listen to the cacophony of voices in our society, assessing and balancing what we hear, engaged in a dialogue to ensure that the rule of law bends toward justice.

Justice Karakatsanis

every day, thinking on my feet. And even as a trial judge, you are thinking on your seat as you are giving those rulings from the bench. The courtroom brings out and fosters and demands your personal best.

Often facts are stranger than fiction. I have always found that trial lawyers have the best stories. I remember when, as a young lawyer I was defending a charge of fraud. My client, an alleged witch, had charged a very large sum for a love portion. I won't give you the details of the gruesome ingredients of that potion. The love potion worked, apparently. But the complainant eventually tired of his love interest and wanted his money back. Our defense was successful, I would like to think, because under able cross examination, the complainant agreed that he had gotten more than he bargained for.

ETHICAL LAWYERING

In the courtroom, it is the advocates and the judges who are the face of justice, who breathe life into the law, who take the abstraction and apply it to real people and real situations. They are the ones who take the legal principle and find the practical and the just result. The courtroom calls for your intelligence, your skill, your humanity and your integrity.

In the forewords to a book on ethical lawyering published last year called *Why Good Lawyers Matter*, George Elliott Clarke, a poet and playwright and current faculty member of the University of Toronto, painted a vivid picture of the public image of lawyers. The quote is a little long, but I think worth it.

The figure of the lawyer is for the laity. One of dread and awe. She is an intermediary between opposing parties, yes, but the lawyer is also an emissary of fate itself. Destinies and fortunes hinge on the talent, the art, the ability of this learned person to describe the complexity of a conundrum and to proffer its most just resolution. In Canadian courts, in his black robes, the lawyer even shows a gothic cast and blends in decorum and diction, the majesty of monarchy and the mystery of clergy. In turn, lauded and scorned. Laurelled in one instance, tarred and feathered in another. The lawyer is never viewed as an innocent apparition. No, she is material, consequential to the public constitution and private conduct, to affairs of state and the accounts of enterprise. In every dispute or potential conflict, the figure of the lawyer emerges, perhaps vague at first in a letterhead statement, but possibly later as a gesticulating actor in court.

Too often, the public expresses its dread and awe with awful lawyer jokes. Too often the practice of law resembles a grueling business enterprise. In ancient Greece, lawyers pleading a case were prohibited from charging fees. But in the courtroom, the craft of the lawyer is sublime, often sheer magic, and absolutely critical to the adversarial system. The adversarial system works best when all parties are well represented. We all have important roles to play.

As a trial lawyer, I learned that mine was an ancient and honorable profession. I had the duty of loyalty to my clients, but I also had my ethical responsibility to the profession and to the administration of justice as an officer of the court.

As a trial judge, I learned the need for humility and humanity if you must sit in judgment of others. As professionals of that justice system, we have the responsibility to embody and protect the fundamental values of our society. The integrity of lawyers and judges sustains the legitimacy of our justice system.

DIALOGUE BETWEEN THE BRANCHES

My public service career has helped me to see the role of the courtroom in a broader way. When I was a Deputy of the Attorney General in Ontario, it was our constitutional responsibility to ensure government acted within the law. But government actions and laws are constantly tested in the courts and sometimes the courts are given the responsibility to confront difficult policy issues that the government has failed to resolve.

As a senior public servant and a judge of three levels of courts, I have come to deeply respect the independent roles and capacities of the executive, the legislature, and the judiciary, the three pillars of our constitutional democracy. We must respect the expertise and the functions of those separate roles, but we must also respect their limits. That requires a fearless and

independent judiciary supported by a fearless and independent legal profession.

The courtroom is where the three branches of government come together for the administration of justice and our constitutional order. Our Chief Justice has described those interactions as a dialogue between government and the courts. I will single out two examples of that dialogue in which I participated.

In the late 1990s, our highest courts in Canada concluded that discrimination against same sex couples was prohibited by our constitution. I then oversaw revisions to dozens of Ontario statutes in order to extend spousal rights and benefits to same sex couples.

Fifteen years later, in my first written reasons as a Justice of the Supreme Court of Canada, our Court ruled that the emergency wiretap provisions in our criminal code violated the Canadian Charter of Rights and Freedoms. The federal government, being responsible for criminal law in Canada, has just introduced legislation to remedy the breach identified by the court. Those are just two examples of that ongoing dialogue.

THE VOICE OF THE PUBLIC

There is, however, another speaker in this dialogue and that is the public. The system of justice only works because the public accepts its legitimacy. And, as we know, that is not true everywhere in this world.

For the public, our courtrooms are the windows to the very soul of justice. That is why the principle of an open courtroom is so important in our common law tradition. It is also why we need a strong, ethical, and independent media. I believe that the public has a strong sense of justice; when well-informed of objective and fair information, it rarely gets it wrong.

As a trial judge, I never ceased to be amazed how six or twelve men and women from different walks of life came together as a jury, reached a unanimous decision, and rarely got it wrong. Although, I'm not sure that all trial lawyers would agree.

So why do I say that the courtroom and its professionals are fundamental to our democratic way of life? The courtroom is often the intersection of economic, social, legal and political currents. Our job is to navigate those currents and to listen to the cacophony of voices in our society, assessing and balancing what we hear, engaged in a dialogue to ensure that the rule of law bends towards justice.

THE JUST RULE OF LAW

Of course, justice is more. It is about so much more than rules and laws. As Martin Luther King, Jr. reminded us, everything that Hitler did in Germany was legal. Lawyers and judges must ensure that the law is just and tempered with humanity. It is not just the rule of law, it is the just rule of law.

The well-known American legal philosopher, Ronald Dworkin, stated in *A Matter of Principle*, "We have an institution that calls some issues from the battleground of power politics to the forum of principle. It holds out the promise that the deepest, most fundamental conflicts between individual and society will once, someplace, finally, become questions of justice. I do not call that religion or prophecy. I call it law."

In closing, I say that our courts are the custodians not only of a just rule of law, but of the values that form the foundation of our society, the responsibilities, the fundamental rights and freedoms of individuals. The courtroom both reflects and anchors our values as a society. A just rule of law allows us to live together in freedom and in harmony.

It is the courtroom that is the window to the law in action, and the trial lawyers are the key actors gesticulating, on that stage, the emissaries of justice itself.

Thank you very much. ■

[When Karakatsanis was] Chair and CEO of the Liquor Licensing Board of Ontario, she had both adjudicative and administrative responsibilities. It was in that capacity that she became a hero to Toronto baseball fans. You may remember the 1992-1993 Toronto Blue Jays winning back-to-back World Series. Justice Karakatsanis, under her wise guidance, brought Toronto into the Twentieth Century by allowing the bars to stay open an hour later, until two a.m. She became more popular than Joe Carter. And, I, for one, thank her for that.

Regent Jeffrey S. Leon, LSM, introducing Justice Karakatsanis

Quips & Quotes

SIXTY-THREE INDUCTED AT SPRING MEETING IN NAPLES

ALABAMA
S. Shay Samples
Birmingham

ARKANSAS
Timothy O. Dudley
Little Rock

ARIZONA
Thomas P. Burke, II
Phoenix

CALIFORNIA-NORTHERN
Anthony P. Capozzi
Marshall C. Whitney
Fresno
Robert M. Dowd
Hanford
Timothy J. Halloran
San Francisco

CALIFORNIA-SOUTHERN
James L. Sanders
Los Angeles
Bryan R. Reid
William D. Shapiro
San Bernardino
Don G. Rushing
San Diego

COLORADO
Michael W. Jones
Denver

CONNECTICUT
Richard T. Meehan, Jr.
Bridgeport

DISTRICT OF COLUMBIA
Steven J. McCool
Washington

DELAWARE
Craig A. Karsnitz
Georgetown

FLORIDA
Ky M. Koch
Clearwater
Gordon James, III
Fort Lauderdale
Richard M. Dunn
Miami
Jerome M. Novey
Tallahassee
Roy E. Fitzgerald, III
West Palm Beach

GEORGIA
James C. Grant
Atlanta

ILLINOIS-UPSTATE
Mark J. Lura
Chicago

MASSACHUSETTS
Juliane Balliro
Robert L. Sheketoff
Edmond J. Zabin
Boston

MARYLAND
Jefferson M. Gray
James D. Mathias
Thomas V. Monahan, Jr.
Baltimore
K. Donald Proctor
Towson

MISSOURI
Steven W. White
Independence
Roy C. Bash
John E. Turner
Kansas City
Matthew J. Padberg
St. Louis

MONTANA
Anthony R. Gallagher
Great Falls

NEBRASKA
John P. Passarelli
Omaha

NEW HAMPSHIRE
Arnold Rosenblatt
Manchester

NEW JERSEY
Kathleen S. Murphy
Roseland
Scott A. Parsons
Westfield

Christine P. O'Hearn
Westmont

NEW MEXICO
Victor A. Titus
Farmington

PENNSYLVANIA
William L. Banton, Jr.
Philadelphia

SOUTH CAROLINA
David E. Dukes
Columbia

TENNESSEE
Paul Campbell, III
Chattanooga

Thomas D. Forrester
Covington
Charles T. Herndon, IV
Johnson City
David M. Eldridge
Knoxville
Thomas V. White
Nashville

TEXAS
Robert C. Alden
Austin
David Berg
Kathleen A. Gallagher
David Gerger
Michael P. Morris
Houston

VIRGINIA
Terrence L. Graves
Richmond
Anthony P. Giorno
Roanoke

WASHINGTON
John Wentworth Phillips
Patrick C. Sheldon
Philip J. VanDerhoef
Seattle

WEST VIRGINIA
Stephen G. Jory
Elkins

ATLANTIC PROVINCES
Michael E. Dunphy
Halifax

ONTARIO
Norman Douglas Boxall
Richard G. Dearden
Ottawa
Scott C. Hutchison
Jonathan C. Lisus
Toronto

*****

Louis P. Huot, Ad.E., of Québec City, Québec, was inducted by President Chilton Davis Varner on February 15, 2013, in Montréal, Québec.

BEYOND THE PINE CURTAIN

Cold weather did not dampen the spirits of the sixty-three new Fellows inducted on Saturday night at the College's 2013 Spring Meeting in Naples. Past President **David J. Beck** presented the Induction Charge that has been used at all inductions since the College's meeting in San Francisco in July 1951.

David E. Dukes of Columbia, South Carolina, was chosen to speak on behalf of his fellow inductees.

It is a wonderful privilege to be here tonight to offer remarks on behalf of our class of new Fellows. I am humbled by the accomplishments of the new Fellows I have met this week.

I would like to set the scene for some remarks about something most of you have probably never heard of, called the Pine Curtain. A proper title for my remarks would be, "The End of Regionalism."

What is the Pine Curtain? For our purposes tonight, let's call it those miles of pine trees you pass coming south down I-98 that for many years separated the Deep South from reality. For decades, including the early years when I practiced law, the Pine Curtain also separated the justice system in the Deep South from the rest of the country.

Make no mistake – that was intentional. Southern trial lawyers delighted in sharing southern justice tales with our northeastern colleagues. You see, before there was lawyer advertising, and before there were law firm marketing departments, there was the Pine Curtain. It was a carefully calculated Deep South law firm marketing strategy.

Many of you probably experienced the Pine Curtain marketing strategy in action. Properly executed, it ensured a robust practice for lawyers who practiced in the Deep South. Even the boldest New York lawyers were wary of crossing the Pine Curtain without a proper southern lawyer escort.

Everybody had a role to play behind the Pine Curtain. It benefited plaintiffs' lawyers, it benefited defense lawyers, and it benefited prosecutors. A few state court judges had even left their law practices to become state court judges, so they could dispense justice in their former partners' cases. And sometimes those judges retired back to those same law firms.

BEHIND THE CURTAIN

Like any effective marketing strategy, the Pine Curtain plan used sophisticated psychological techniques. As a young lawyer, I once saw this technique executed masterfully. I was deep behind the Pine Curtain, in a courthouse where very little sunlight came in. I was a young associate charged with escorting a New York City national counsel - a powerful and highly

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Quips & Quotes

Trying to be a good host, since I hadn't been much of a local counsel, I tried to console my national counsel by explaining that Mark Twain was fond of observing that "South Carolina was too small to be a Republic, and too big to be an insane asylum."

David Dukes

I'd like to begin my remarks by sharing with you part of the letter that I received from the National Office about tonight.

What really caught my attention was the third paragraph of this letter. It said:

"Mr. Dukes, your response on behalf of the Class of Inductees should be no longer than fifteen minutes."

But here's the important part: "Please bear in mind that from the time guests are seated at the banquet, through the completion of your remarks, food and wine will not be served."

Now, I have been cut off in closing arguments before by Federal Judges when I ran out of time, but this was different. I was struck with this frightening vision of all of you staring longingly at empty wine glasses for the duration of my remarks. As you would expect, that visual image provided great motivation to craft these remarks with brevity.

Inductee Responder David E. Dukes

regarded senior lawyer - into a motions hearing in a rural county. We arrived at the antebellum courthouse and were invited back into the judge's chambers. The judge informed us he had gotten a call from our opposing counsel, who we'll call Tom, and Tom had decided not to drive up from his vacation home for this particular motions hearing, but rather to rely on his brief in opposition.

This was before speaker phones, so the judge called Tom on the black rotary telephone on the corner of the desk and let Tom know we were in the chambers about to argue our motions. The judge left the telephone on the desk so Tom could listen to this argument.

The New York national counsel argued passionately about the confidentiality of our client's documents. The judge listened politely without asking a question. At the end of the argument, the judge leaned back in his chair and said, "Mr. Dukes, if you'll pick up the telephone Tom will explain my ruling to you." Tom, who had been practicing behind the Pine Curtain many more years than I had, said, "David, welcome to my county." With that, I handed the telephone back to the judge who instructed Tom to get his order in by the end of the week.

We exchanged pleasantries with the judge and left the courthouse for the forty-five minute drive to the airport. All my national counsel could do was mumble, "Unbelievable, unbelievable." And I've eliminated some of the adjectives for tonight's purposes.

Even before large law firms had discovered the power of leverage created by a pyramid of associates, the Pine Curtain lawyers had recognized that by the time that one New York national counsel had told his story to his friends and colleagues, literally hundreds of northeastern lawyers would know you only crossed the Pine Curtain at your and your client's peril.

THE END OF REGIONALISM

By the early 1990s, changes were taking place in our profession. The IBM Selectric typewriter

was being replaced by large boxes on our desks called desktop computers. The teletype machines in our file rooms were being replaced with a new technology called facsimile machines and a legal industry futurist predicted that the day would come when telephone messages were no longer written on pink memo pads and impaled on thin spikes on lawyers' desks. Here in the New South, the future looked scary without the protectionism of the Pine Curtain. But we are a resilient profession, and many positive changes began to occur.

My own path suggests some of those changes that came with the fall of the Pine Curtain. I moved from Edgefield County to Columbia, the State Capitol. I worked closely on General Motors products cases with great trial lawyers like **Chilton Varner** and her partner **Byron Attridge**. I saw Judge **Griffin Bell** speak several times at our Inn of Court in Columbia on professionalism.

I spent nine weeks on a trial in Oakland, California, with Fellow **Kevin Dunne**. I worked on trials in Texas with Fellow and DRI President **John Martin**. I got to know College Past President **Jimmy Morris**, who had recently finished serving as president of DRI. I learned from past American College President **David Beck** as he led the International Association of Defense Counsel.

I tried a case in West Virginia with Baltimore Fellow **Charlie Goodell**. I tried cases in Little Rock with Fellow **Lyn Pruitt**. And, in the ultimate nod to the demise of the Pine Curtain, I spent a month in trial far above the Pine Curtain in state court in Philadelphia and another month in trial in federal court in Bridgeport, Connecticut. The fall of the Pine Certain had truly knocked down regional barriers.

As I prepared these remarks I was struck by the influence that Fellows of this College have had on my twenty-eight years of practicing law. I have stayed with one firm, in one office, in one city. But I have been taught by, mentored by and become friends with lawyers and Fellows from across this country.

I speak on behalf of our Class of new Fellows when I say that we have all been profoundly influenced by our friends and colleagues in this College. We look forward to giving back to our profession as we teach and mentor the next generation of trial lawyers.

Fellows of the American College will, as you have done for decades, play a key role in working to overcome the challenges facing our profession. Our Class of new Fellows looks forward to working to ensure that years from today the Fellows in this room will represent the values, the experience, and the leadership reflected in this room tonight. ■

As I prepared these remarks I was struck by the influence that Fellows of this College have had on my twenty-eight years of practicing law. I have stayed with one firm, in one office, in one city. But I have been taught by, mentored by and become friends with lawyers and Fellows from across this country.

David Dukes

Quips & Quotes

INSPIRING THE JURY

Many American citizens may view jury service as a chore, something they try to escape.

Past President **David J. Beck** submitted recent comments to a jury made by the Honorable Keith P. Ellison, United States District Court Judge for the Southern District of Texas, Houston Division. Beck stated that Judge Ellison's instructions "not only address the importance of jury service, but also the historical importance and value of the jury trial. ...I don't know how anyone would ask to be disqualified from jury service after his comments."

Ladies and gentlemen, good morning, and welcome. In asking you to join us this morning, we are fully sensitive to the disruption we represent in your lives. I know we have interfered with work schedules, school schedules, leisure time activities. I know the traffic is bad, and the parking is worse. I know that we have made it more difficult to honor obligations at your children's schools, with their sports practices, ballet lessons, choir practice. We have introduced significant complications into family meal times and car pools. The list goes on. We know we are an intrusion; we acknowledge it, and we apologize for it.

We ask you to be here this morning, however, because we have important work for you to do. And it will not get done without a jury. Despite all the inconveniences to which we have already put you, I am going to impose on your good will yet again. I am going to ask you to approach jury service with a particular frame of mind, one that may not be intuitive.

That is, I think you very well could look at jury service as a form of tax, like the income tax we pay the federal government, or the property tax we pay the county or school district in which we reside. In other words, your service can be seen as a tax on the privilege of being an American paid not at least not directly -- with dollars and cents, but with time and effort. If that is the way you want to look at this, there is not a whole lot I can do about it. Still, let me suggest that you need to lift your eyes off of that vista and take a new look, a different perspective. I suggest this because, as we are met this morning, we are doing so much more than simply discharging a duty. We are performing, all of us, the most important secular sacrament ever performed by citizens in peacetime America. You are going to resolve an issue between two litigants that has been ongoing for years, that has occupied an enormous amount of time of the clients, of the lawyers, and of this Court.

In the course of this proceeding, you will see a cumulative total of perhaps two centuries of legal experience. This is, for example, my fortieth year of involvement in the study, the practice or the administration of law. The attorneys from whom you will hear have similar experience. But at the end of the day, this case is going to be decided not by me and not by the lawyers, but by you.

Apart from the solemnity of the act itself, we join a lengthy generational continuum this morning.

At least metaphorically, your parents and your grandparents sat where you now sit. If we do our job right, someday our grandchildren and our grandchildren's grandchildren will sit where you are.

My parents lived long enough to see me become a judge. Although they have now been gone for years, they still speak to me often in my dreams. Mom and Dad had no legal background at all and knew little about the legal system. But, they were always fascinated by the juries that I had. My parents would ask me: Were the jurors interested in the subject matter of the case? What different occupations did they represent? Was there a good balance between the two genders? Was there an age range? Did the jury consist of both native born and foreign born? My parents were always so eager to hear how the jury functioned, because they in their turn had served as jurors many times, and – before that – had watched their own parents report for jury service.

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When I am tired or when I am burdened with other work, I frequently think of my parents and their keen interest in our juries. If they were still here, I think, would I really like to be in the position of reporting to them that we had had a jury trial, and I had done less than my best? That thought always quickens my pulse, sustains me, and ensures that I never do one inch less than my absolute best in every jury trial. If you are wondering how much effort you are willing to commit to this trial, I hope you will likewise think that you are heirs to a tradition that includes your forebears, and includes millions of other good and decent people. To the extent you do not do your best, you let those people down. You let down all who have sat where you sit, all who have been asked to make the decision you will be asked to make.

This generational continuum that includes our parents and grandparents stretches back at least 11 generations. It stretches back all the way to the founders. When the fifty-six men who became signatures gathered in that warm and humid summer in Philadelphia in 1776, they knew how important the right of jury trial was. And one of their chief grievances with King George III was, in the words of the Declaration, that he had long been "depriving us, in many Cases, of the Benefits of Trial by Jury."

The demand for jury trial rights was frontal in the list of grievances that those fifty-six men ascribed to George, III. And to remedy that defect of justice and others, the signatories of the Declaration pledged their lives, their fortunes, and their sacred honor.

A decade later, thirty-nine men signed the Constitution. They were in no doubt whatsoever about the importance of jury trials. It is the only constitutional right, the only one, mentioned both in the body of the Constitution and the Bill of Rights.

John Adams spoke of jury trials as the heart and lungs of liberty. More recently, Justice Antonin Scalia, who sits on the Supreme Court, said, "When judges interpret the right to jury trial, they touch the spinal cord of American democracy."

Think of jury trials as an inconvenience, if you must, but please understand it is so much more than that. It is our chance to convene with those who have come before us. It is our chance, if not to pay the debt we owe to our country, at least to acknowledge it. It is our chance to remember that the burden we are asked to carry, no matter how heavy, is not so great as the goal we seek, that of an ideal justice, absolute and complete.

But if you must, if you must, feel terribly sorry for yourselves, and resent every intrusion we have made on your daily lives, let us at least reflect on the sacrifice that others have made and are making. I hope you have had a chance to visit the blog known as My Fallen Soldiers. I have checked it often in recent years. It lists the soldiers and sailors who have lost their lives in Afghanistan and Iraq. The list now extends to more than 6,500 names. Let us pause to remember just a few of them:

> Navy Gunners Mate 2nd class, Dion R. Roberts, age 25, North Chicago, Illinois
>
> Army Private 1st Class John Townsend, age 19, Claremore, Oklahoma
>
> Army Specialist 1st Class Kyle Rookey, age 23, Oswego, New York.
>
> Army Chief Warrant Officer Thalia Ramirez, age 28, San Antonio, Texas.

Now, what do they these young men and that young woman have to do with us? Quite a lot, actually. They did not get to debate whether our country was going to invade Afghanistan or Iraq. They did not get to discuss when we would invade or with what armaments. They went where their country asked them to go, when their country asked them to go there.

And that, ladies and gentlemen, is what is being asked of you. You did not to debate what kind of trial you would hear, or what judge you would be in front of, or who the lawyers would be. You went where your country asked you to go when your country asked you to go there.

Beyond that, when we think of what it is to be an American, when non-Americans around the world think of the concept, surely among the most prominent features are how we conduct our foreign policy, including our wars, and how we resolve disputes between citizens, including this one. Before we conclude that too great a sacrifice is being asked of us, let us think of the sacrifices others have made. Let us look at this trial as an opportunity to demonstrate some of the reasons that these young people felt our country was worth dying for.

These brave young people have shown, now we must show, that the flag is still there.

I look forward to working with each of you. ■

FOUNDATION TRUSTEES MEETING, NAPLES, FLORIDA

Michael Cooper

Led by College Past President and Foundation President **Michael A. Cooper** of New York, New York, Foundation officers and Trustees (Past President **E. Osborne Ayscue, Jr.** of Charlotte, North Carolina; Past President and Foundation Secretary **David J. Beck** of Houston, Texas; **Paul D. Bekman** of Baltimore, Maryland; **Charles H. Dick, Jr.** of San Diego, California; **Alan G. Greer** of Miami, Florida; Past President **Michael E. Mone** of Boston, Massachusetts; Past President **James W. Morris, III** of Richmond, Virginia; Past President **Mikel L. Stout** of Wichita, Kansas; and **Camille Sarrouf** of Boston, Massachusetts), met before the Spring Meeting in Naples in late February 2013. Adding a new dynamic and dynamism to the meeting, the Trustees were joined by several incoming Trustees whose terms begin July 1, 2013: Past President **John J. (Jack) Dalton** of Atlanta, Georgia; Past President **Joan A. Lukey** of Boston, Massachusetts and **Kathleen Flynn Peterson** of Minneapolis, Minnesota.

THE TRUSTEES APPROVED THE FOLLOWING:

- **The $50,000 grant to the first-place winner of the 2013 Emil Gumpert Award, as recommended by the Emil Gumpert Award Committee and the College's Board of Regents, was approved. The 2013 Emil Gumpert Award recipient is the Miller Resentencing Project of Florida State University College of Law's Children in Prison Project. The funds will be disbursed at the beginning of FY2013 (after July 1, 2013).**

  The grant will enable the Children in Prison Project to provide legal representation to children who are incarcerated in adult prisons in the wake of Miller v. Alabama. 132 S.Ct. 2455 (2012). The Miller decision holds that mandatory sentences of life without the possibility of parole in homicide cases are unconstitutional for juvenile offenders.

- **The Emil Gumpert Award will be increased to $100,000, effective 2014.**

  The award, considered to be the highest honor conferred by the College on a program, recognizes a program each year, whether public or private, whose principal purpose is to maintain and improve the administration of justice.

- **A $25,000 grant was approved to Cabrini Green Legal Aid's Expungement Project.**

  The Expungement Project creates universal access to the Cook County legal process by expunging or sealing eligible criminal records of persons who have successfully rehabilitated themselves. The program is intended to assist individuals as they attempt to obtain meaningful employment and re-engage as productive members of society.

- **A $6,842 grant was approved to The NITA Foundation.**

  The NITA Foundation, of Tampa, Florida, conducts a public service lawyers' teacher training program, tuition free, at Stetson University College of Law. The requested funds are to cover a portion of the tuition for the attendees.

- **A $5,000 grant was awarded to the Teaching of Trial and Appellate Advocacy Committee.**

  On behalf of the committee, Chair Sylvia Walbolt of Tampa, Florida, and Vice Chair John Aisenbrey of Kansas City, Missouri, presented the request for funds to develop a DVD deposition training program.

The Foundation has grown in both corpus and visibility during the tenure of President Cooper, whose term expires June 30, 2013. The Trustees extend their appreciation to Mike Cooper for his commitment of time and expertise during his tenure as Trustee and President of the Foundation.

BOARD OF REGENTS LOOKS TO THE FUTURE

Part II of III

At the October 2012 Annual Meeting in New York City, the College's Board of Regents discussed various strategic issues confronting the College and assessed current commitments against potential growth and possibilities.

The dialogue on each of the three strategic issues discussed was led by a different officer of the College, with input provided by the past presidents and current regents.

Part I of the strategic discussion was reviewed in Issue 71, the Spring 2013 issue of *The Bulletin*. It addressed the question, *What are the types of trials that are likely to take place in the future on both national and local levels?*

Part II, considered here, addresses the issue of *Perceived Value of College Fellowship to Fellows and their Firms: Possible Options for Enhancing Value.*

Part III, the final discussion *(the five-year projection of revenues and expenses and recommended plan)*, will be presented in The Bulletin, Issue 73.

The subcommittee considering the value of membership in the College has identified the following questions for further discussion:

- What are appropriate forms of recognition of Fellows in leadership positions in the College? Are paid announcements in national trade publications appropriate? What about local print announcements?
- What appropriate announcements should be made of College projects, such as white papers and/or programs?
- What is the appropriate involvement of judges who are not members of the College at state and provincial, regional or national meetings?

PERCEIVED VALUE OF COLLEGE FELLOWSHIP TO FELLOWS AND THEIR FIRMS: POSSIBLE OPTIONS FOR ENHANCING VALUE

Prior to the October 2012 meeting, President-Elect **Chilton Davis Varner** chaired a subcommittee to consider the impact and value placed on participation in the College by Fellows' firms, and considered how that value might be enhanced by the College. As with the question presented in Part I, the College hopes that by looking at the past, we may put together a vision to the future.

The Executive Committee of the College agreed that the question of how to assure Fellows, and equally important, their firms, that Fellowship in the College has a fundamental value, is of increased interest to the College. The subcommittee considered the question without predispositions and addressed it in three parts:

- How do we demonstrate that Fellowship is worth the time and financial investment?
- How do we guarantee a steady flow of talent into the ranks of committee chairs, project leaders, Regents and Officers?
- How do we encourage firms to allow their leading partners to divert time to the College?

The discussion quickly spilled over into issues of outreach. Fellows are members of a profession, not a business. The College is an all-volunteer force, participating without expectation of remuneration. Recognition outside the College frequently serves to reward Fellows' efforts. It also has the potential to persuade law firms and clients that Fellowship possesses market value.

Since its inception in 1950, the College has neither self-promoted nor promoted market value, either in its candidates or itself as an entity. These are two of the reasons that Fellows cherish being part of the organization.

Publicity by inductees and Fellows is carefully regulated. The College has recently engaged in systematic outreach to the increasingly larger and more-diverse legal community. The College is aware that without outreach, we risk becoming disconnected from the larger institution of law. A question to be discussed in depth is how can the College improve its recognition without cheapening the institution or losing its distinctiveness?

To formulate a concrete understanding of how the College is currently regarded by law firms and their management, the committee asked Board members and Past Presidents (all of whom have been active in the workings of the College) to respond to questions about the value of "extracurricular" activities in their own firms, and specifically, the American College of Trial Lawyers. The results of the questionnaire were reassuring, and they overwhelmingly confirmed the College's continuing highly regarded reputation. ■

- What type of CLE activities should the College engage in and at what level?
- Must CLEs always be without participation of another legal organization?
- How and where should CLE activities be carried out? At law schools, locally, or in association with other College meetings?
- What efforts, if any, should be made to distribute *The Bulletin* outside of the Fellowship?
- How, and with which organizations, if any, should we maintain or establish relationships – The Federal Judicial Center, National Center for State Courts, Federal Rules Advisory Committees, the Institute for the Advancement of the American Legal System, the Judicature Society, others?
- Should the College participate in social media? If so, how?

These questions have been referred to the Outreach Committee for further study and recommendations.

BRIDGING THE GAP IN MARYLAND

Recognizing the gap between law school and law practice, Maryland's Fellows put together an innovative program to introduce the different stages of litigation to future trial lawyers at Maryland's two law schools. The practical approach to trial advocacy was put together, introduced and moderated by Fellow **Richard C. Burch** of Towson, Maryland, and presented to students at the University of Maryland and University of Baltimore Schools of Law. At the conclusion of the series of sessions, Burch stated, "Our Fellows embraced the program with incredible enthusiasm. It is remarkable that our most distinguished and accomplished Fellows are anxious to share their precious time and talents with the next generation."




Facing page: Richard Burch This page, left to right: Paul Beckman, James Chason, James Gleason and Kenneth Thompson

An aspect of the University of Maryland School of Law's curriculum that has evolved over a period of time, the Maryland Trial Skills Program, taught by Fellows of the American College of Trial Lawyers, involves "the efforts of many Maryland Fellows who have gone into bringing [the course] where it is today," said Fellow **James P. Gleason, Jr.**, of Rockville. Gleason provided a letter from Jerome E. Deise, Law Professor and Director of the Trial Advocacy Program at the University of Baltimore, in which Deise effused, "... the Fellows introduced the law students to a much higher level of ability, skill and professionalism...to which they will now aspire." Speaking on behalf of himself and Judge Frederic N. Smalkin (who served as the courtroom judge), Deise used a slew of words to describe his impressions: "truly outstanding...mesmerized...persuasive...passionate...masterful...powerful... disarming...and insightful."

The course syllabus divided litigation training into seven specific categories introduced over a seven-week period: Jury Selection, Discovery, Questioning Techniques, Expert Witnesses, ADR, Evidence and Closing Argument.

Kristi Tousignant, writing for the *Maryland Daily Record*, observed the session on ADR, presented by Fellows **Kenneth L. Thompson** of Baltimore and **James R. Chason** of Towson. The session established that alternatives to trials can frequently be both emotionally and financially costly. The exercise was adapted from a real-life case and illustrated the minute distinctions between trial litigation and alternative dispute resolution.

The concluding session of the course, Closing Argument, was presented by former Secretary of the College, **Paul D. Bekman,** and Fellow **E. Dale Adkins, III**, both of Baltimore. Afterward, Bekman spoke of the law students' opportunity to observe closing arguments from members of the College whose practices involve giving closing arguments on a regular basis, "not just run-of-the-mill closings, but detailed closings with the use of technology and different perspectives of presenting" the information. He emphasized that "as trial lawyers, we learn our craft from outstanding lawyers who have tried cases against other outstanding lawyers, and that's how you learn."

In addition to trial skills, the students also learned that the adversarial system need not always be adversarial. One of the tenets of the College, the ethics of the profession, was taught to be of primary importance.

Bekman reflected that "as lawyers, our job is to educate fledgling lawyers, and what better way to do so than to reach down and show them how it's done." Treasurer of the College, **Robert L. Byman** of Chicago, has stated that training "future superstars of the profession" offers the best outreach for the College to a generation of future lawyers.

As an outstanding example of one of the most important things the College does, i.e., advancing its mission and improving the system of justice, Burch believes the Maryland State Committee's trial skills course can be readily replicated in other states. To discuss ways in which your state committee can launch a similar program, contact the National Office, nationaloffice@actl.com, for additional information. ■

COLLEGE COMMITTEES ENGAGED

Over twenty percent of the College's Fellows are engaged in committee service, contributing their time and expertise to further the College's mandate to "improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession."

Examples submitted by three committee chairs demonstrate how one state committee and two general committees are advancing the College's mission. For additional information, contact the specific committee chairs:

FEDERAL CRIMINAL PROCEDURE COMMITTEE

Chair: **Nanci L. Clarence**, San Francisco, California

WAIVERS IN PLEA AGREEMENTS

The Federal Criminal Procedure Committee has an active docket of projects sparked by its members with experience practicing on both sides of the aisle in federal criminal courtrooms across the nation, along with our judicial Fellows who bring a critical and unique perspective to these issues. The Committee's goal is to address practices that may undermine the letter of the Rules by severely restricting their intended use.

Topping the Committee's agenda is the use of waivers in plea agreements. The Committee will be addressing how these waivers contribute to the erosion of the fair administration of justice, even when the defendant withdraws from the plea agreement and proceeds to trial. For example, some waivers prohibit the enforcement, at trial, of F.R.Crim.P.11(f) and FRE 410 if the defendant withdraws from a signed agreement or withdraws a guilty plea. Some waivers require a defendant to forego the right to discovery authorized under F.R.Crim.P.16. Many waivers eliminate the right to appeal a disputed sentence, to later withdraw a guilty plea based upon ineffective assistance of counsel, or to raise any Eighth Amendment claim. In short, the Committee will examine how the pervasive use of waivers impedes development of the law and threatens due process in a system where, already, 96% of all prosecutions end in guilty pleas. The Committee looks forward to working with other committees of the College including the Prosecuting Attorneys Committee, the Federal Rules of Evidence Committee and the Legal Ethics and Professionalism Committee on this project.

Other projects on the Committee's docket include monitoring possible reform to the problem of excessive mandatory minimum sentences, especially in cases where defendants are not "leaders and managers of drug enterprises" as defined by the United States Sentencing Guidelines. The Committee is also discussing the need for reform of federal discovery rules.

OREGON STATE COMMITTEE

Chair: **Richard C. Busse, Portland**, Oregon

Project Leaders: **Walter H. Sweek**, Portland, Oregon; **Dan Skerritt**, Portland, Oregon

OREGON TRIAL EXPERIENCE PROJECT

The Oregon chapter of the College began addressing the problem of the vanishing jury trial several years ago. The State Chair at the time, **Chris Kitchel**, appointed a committee of Fellows to develop programs that would generate trial opportunities for younger lawyers, as well as develop expedited rules designed to get smaller cases to trial with less discovery and fewer motions.

The Fellows on the committee called on leading judges and leaders of different niches of the trial bar. They worked with the District Attorney and the Public Defender in Oregon's largest county to develop an internship program for firms to second younger lawyers to gain trial experience. The District Attorney (DA) program is a four-week commitment, while the Public Defender (PD) option staggers the time commitment over a number of months on a part-time commitment for those who cannot take a long block of time away from their firms. The state committee has now expanded the program to additional counties around the state. The response from the novice lawyers has been terrific. One participant said that she "came away with confidence in my jury skills as well as a new understanding of how the court works." Another described being assigned eighteen cases for trial in a month, with four actually going to trial. The program is running well, thanks to great cooperation from the DA's and PD's offices and the volunteer work of Fellows who keep the program on track.

The Oregon State Committee also successfully proposed that the Oregon Supreme Court adopt rules to allow expedited trials. If both parties agree to forego pretrial motions and to limit discovery to two depositions, a case can get to trial before a six-person jury in four months. The agreement allows the flexibility for the parties to negotiate additional discovery. The program is evolving, and changes are still being considered that will improve the adoption rate, such as an opt-out rather than an opt-in approach and making the program mandatory for some cases.

The Oregon Fellows would be happy to share its experiences with Fellows from other states and are anxious to learn from those who have tried other approaches.

OUTREACH COMMITTEE

Chair: **Walter W. (Billy) Bates**, Birmingham, Alabama

RAISING THE PROFILE OF THE COLLEGE

The Outreach Committee develops communication initiatives to raise the external profile of the College. The Committee takes the excellent work product created by our Fellows (publications, turn-key CLE's, etc.) and coordinates with state and province committees in efforts to create outreach opportunities using College materials and Fellows for presentations to the bar, bench and public.

One initiative under way is an effort to raise the profile of the College with the judiciary. A number of Fellows have conducted one-on-one meetings with state and federal judges. The Outreach Committee has put together a Judicial Resources notebook that may be tailored to a given jurisdiction for presentation to a judge during a meeting. This notebook is available upon request from the College's National Office, nationaloffice@actl.com.

The Outreach Committee is also tracking CLE-type presentations that use American College of Trial Lawyers' materials or that are presented by Fellows. The committee requests that Fellows provide information on any CLE or other presentations that their states or provinces completed in 2012 or 2013 as well as those planned, to allow the Outreach Committee to update its records. If your state or province is brainstorming presentation ideas, visit the College's website, www.actl.com, to view what others are doing. There are a wide variety of options available, and the Outreach Committees hopes your state or province will see a project where it can help.

If you would like to submit information about your committee's work for possible inclusion in The Bulletin, *please email nationaloffice@actl.com* ■

Continuing Series:

FELLOWS PROVIDE ACCESS TO JUSTICE

College Fellows are serving their communities in numerous pro bono cases. The Access to Justice Committee, co-chaired by **Charles A. Weiss** and **Guy J. Pratte**, has contributed several examples of recent work done by Fellows.

HELPING THE HOMELESS

On any given day, Columbus, Ohio's Franklin County has about 8,000 homeless men, women and children. While there are a number of independent agencies that provide shelter and assistance to this disenfranchised population, during the winter months, service agencies are filled to capacity or overfilled. Together with the YMCA, for several years the Community Shelter Board (CSB) has provided a temporary overflow shelter, which typically accommodates 190-200 men and women during the winter months.

When the facility used during the winter of 2011-2012 was sold, the Community Shelter Board and the YMCA undertook a search for an alternative site. After considering more than sixty-five possible locations, they ultimately located a facility that could be utilized for the following winter, and they obtained a Certificate of Zoning Compliance from the Franklin County Development and Planning Department. Creative Childcare, Inc. immediately filed suit against the Franklin County Commissioners, the Franklin Township Trustees, the Community Shelter Board and the YMCA, challenging the zoning and seeking to prevent the temporary shelter from opening at the chosen location.

Retired Fellow **John C. McDonald** of Columbus was retained to represent the Community Shelter Board on a pro bono basis. He successfully defended a Temporary Restraining Order hearing in late November. After meeting with County and Township officials and CSB and YMCA personnel, numerous documents were produced and a deposition of the childcare center operator was taken. A written Motion to Dismiss for failure to exhaust administrative remedies was filed on behalf of the Community Shelter Board and taken under advisement by the Court, which then conducted a day-long Preliminary Injunction Hearing. After hearing from six witnesses, the Common Pleas Court denied the injunction and dismissed both the Shelter Board and the YMCA as defendants.

The overflow shelter was opened in January 2013 and provided service to those who had nowhere else to turn during the coldest months.

John McDonald

Larry Hammond

ARIZONA FELLOWS TAKE THE LEAD

Led by Fellow **Lawrence A. (Larry) Hammond** of Phoenix, Arizona, Co-Founder of the Arizona Justice Project (AJP), Arizona Fellows have taken on tough post-conviction cases with questionable or wrongful convictions with favorable outcomes

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for its clients. The following two cases illustrate the project's success stories.

THE DRAYTON WITT CASE (SHAKEN BABY SYNDROME)

In 2000, Steven Witt, four-month-old son of Drayton Witt and his wife, Marie, died at Phoenix Children's Hospital (PCH). During his short life, Steven was continuously ill and had suffered seizures. There were many trips to the hospital and numerous visits to doctors' offices. Drayton Witt was watching the child while his wife was away, and Steven had a seizure. The Witts met, and rushed the baby to Paradise Valley Hospital from where he was immediately transferred to PCH. There he deteriorated and died.

The attending physicians suspected abuse because Steven had retinal hemorrhages and subdural bleeding, and Drayton Witt did not have an explanation that satisfied them. An autopsy showed no signs of abuse, but the local medical examiner ruled Steven's death was a homicide based on hemorrhages and subdural bleeding. The cause of death on the death certificate was Shaken Baby Syndrome (SBS). Based on that, Drayton Witt was charged with second degree murder. At the 2002 trial in Maricopa County Superior Court, the medical examiner and several PCH staff doctors opined that Steven's death was due to SBS. The jury found Witt guilty of second degree murder and sentenced him to a twenty-year term at state prison.

In late 2011, Fellow **Randy Papetti** of Phoenix was asked by Hammond and AJP to lend a hand and serve as lead counsel in the defense of Drayton Witt. Hammond and AJP had already filed a post-conviction petition with success, and there was to be a retrial.

Randy Papetti

Eighteen months earlier, Papetti had handled a pro bono post-conviction proceeding in a rural Arizona county that included a six week trial. Hammond knew Papetti had gained experience in evolving SBS science and was a good choice to take the lead in the Witt case.

Since Witt's imprisonment, a measurable amount of new research and literature cast serious doubt as to the reliability of the SBS diagnosis. With the assistance of a firm colleague and based on this new scientific evidence, Papetti drafted and filed a motion to vacate Witt's conviction. Affidavit testimony was obtained from the medical examiner who made the 2000 diagnosis. ME's new testimony stated that he had been previously mistaken about the cause of death.

Papetti and his team obtained other expert testimony from leading experts in the field that agreed thaSteven had likely died as a result of a condition with symptoms that mimic those associated with SBS. The prosecution planned to call the PCH physician who had made the initial diagnosis and who had testified in 2002. The Court had been made aware earlier that the defense *Daubert* motion would be forthcoming. Papetti also had filed a motion to compel the State to disclose its own expert or expert witnesses for the two-week retrial set in December.

Papetti filed a fifty-two-page *Daubert* motion loaded with scientific fact and legal argument that detailed the SBS scientific evolution that had taken place since 2002. In response to the *Daubert* motion, the State promptly filed a motion to dismiss its planned retrial without prejudice. At the motion hearing, Papetti objected to dismissal without prejudice and moved for dismissal with prejudice. The State had no expert witnesses, and the 2002 witnesses could not qualify. After argument, the Court ordered the case dismissed with prejudice for the reasons stated by the defense and vacated all pending dates. Drayton Witt was released and resumed his life.

THE LOUIS TAYLOR CASE (PIONEER HOTEL FIRE)

Just after midnight on December 26, 1970, the multi-story Pioneer Hotel in downtown Tucson caught on fire. Twenty-nine people perished. The ladders of the Tucson Fire Department were not long enough to reach the top several floors. Louis Taylor, a sixteen-year-old African-American youth with a history of juvenile delinquency, was at the scene. Some witnesses said Taylor was helping with the rescue work, knocking on doors, escorting guests outside and helping with the injured. Taylor was taken into custody when

a hotel employee later reported seeing a suspicious African-American youth at the hotel.

Taylor did not give a satisfactory reason for his presence, although he later claimed he was there to cadge food and drinks from holiday parties taking place there. Police knew Taylor frequented the downtown area. Some felt race played a role in Taylor's arrest. Cyrillis Holmes, a fire investigator hired by the State, presented a profile to the effect that the fire was caused by arson, and a young Black man would have likely set it. Taylor was charged with twenty-eight counts of murder. Another person died months later of smoke inhalation, which raised the death toll to twenty-nine. The trial was moved to Phoenix because a Tucson judge ruled that Taylor could not get a fair trial in a city that had lost so many of its prominent citizens and a downtown landmark.

During the 1972 trial, a second investigator for the State testified that an accelerant had been used to ignite the flames. Laboratory tests run on hotel debris did not support that testimony, but Taylor's defense lawyers were not made aware of those tests. Taylor took the stand on his own behalf and asserted his innocence. After the Phoenix jury found him guilty on all twenty-eight counts of murder, the trial judge told a reporter that, "While the evidence supported a conviction, I would not have convicted him myself." Taylor was sentenced to serve twenty-eight life sentences. He entered prison on March 30, 1972, just before his eighteenth birthday.

Since the turn of the century, the National Academy of Sciences (NAS) had focused on the misuse of science in courtrooms across the nation. NAS concluded that pseudo-scientific theories had often been used to convict people of crimes they may not have committed. On the subject of arson, a small group of professional fire engineers had started to discredit many of the assumptions used in fire investigation. Among other things, the concept of using the amount of heat radiated by a fire to accurately determine if an accelerant had been used was deemed to be flawed.

Michael Piccarreta

Late in 2002, the CBS television program *60 Minutes* raised questions about Taylor's case, and the story caught the attention of Hammond and AJP staff. Hammond put together a team to investigate the Taylor case and began to work toward a reversal of Taylor's 1972 conviction. By the time the matter concluded, Hammond had involved Phoenix lawyer Edward F. Novak and Tucson Fellow **Michael L. Piccarreta**, as well as a former Supreme Court Justice and a former Court of Appeals judge, both of Tucson.

Novak took the lead and requested the Superior Court vacate the original conviction and give Taylor another trial on the basis of the new evidence focusing on the advances made in fire science since the 1970s. The theme was that by the standards applicable today, there is no evidence that arson caused the hotel fire. Novak took the deposition of Cyrillis Holmes, who had testified the fire was caused by arson set in two spots in a fourth floor hallway of the hotel. Holmes testified he had told the Tucson officials on day one of his investigation that their suspect was likely an African-American who was eighteen years old. He explained: "Blacks, at that point, their background was the use of fire for beneficial purposes." In the motion for a new trial, Taylor's team argued that Holmes' assertions were flawed and unacceptable. They also presented their own experts that questioned whether the Pioneer Hotel fire could conclusively be called arson. The insurance company investigator who had testified in 1972 that the fire had been intentionally set on the fourth floor, on re-examination now said he could no longer say arson was the cause.

Although filings in opposition to the new trial motion were submitted, the prosecution reached an agreement with the Taylor team in which he pleaded no contest to the twenty-eight counts of murder in exchange for being sentenced to the 42 years he had served. After a plea hearing on April 2, 2013, Taylor was released from prison. His no contest plea permits him to continue asserting his innocence. ■

COLLEGE PROMOTES NEXT GENERATION OF LITIGATORS

In keeping with its outreach efforts, each year the College sponsors four competitions for law students. The College's competition committees partner with other organizations to administer the competitions, and a key contribution is Fellows' donation of time and expertise serving as judges in the regional and final rounds. Participating students receive either the American or bilingual Canadian *Code of Pretrial and Trial Conduct* and a brochure describing the College and its work.

Eric Durnford, Q.C, of Halifax, Nova Scotia, is Chair of the Canadian Competitions Committee. **Thomas W. Hill** of Columbus, Ohio, chairs the National Moot Court Competition Committee, and the National Trial Competition Committee is chaired by **T. John Ward** of Longview, Texas.

CANADIAN COMPETITIONS

Gale Cup

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

The 2013 Gale Cup was awarded to Osgoode Hall Law School. Team member Phi Nguyen received a Dickson Medal as the Exceptional Oralist of the final round. Other team members were Ian Perry, Chris Kinnear Hunter and Lara Kinkartz. All the students were honored by the Ontario Fellows at their June gathering.

College Secretary **Francis M. Wikstrom** attended this year's competition, held on February 22 and 23, and presented the College's awards and spoke about Chief Justice Brian Dickson, for whom the medals were named. Fellows serving as judges included the **Hon. Allan Hilton**, Québec Court of Appeal; the **Hon. Stephen T. Goudge**, Ontario Court of Appeal; and

Gale Cup winners Phi Nguyen, Lara Kinkartz, Ian Perry, Christopher Kinnear Hunter

Jury of Fellows listens during the National Trial Competition

Honorary Fellow the **Hon. Mr. Justice Thomas Cromwell**, Supreme Court of Canada.

Sopinka Cup

The annual Sopinka Cup national trial advocacy competition began in 1999 and was 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, with the final rounds traditionally held at the Ottawa Court House.

Dalhousie University of Halifax, Nova Scotia, was honored as the recipient of the 2013 Sopinka Cup, held March 15-16. President **Chilton Davis Varner** offered feedback to the students and presented the College awards at a banquet attended by five justices of the Supreme Court of Canada. Dalhousie University team members Michele Charles and Suzanne Kittell and their coaches were honored by local Fellows at a dinner hosted by Canadian Competitions Committee Chair Eric Durnford and Atlantic Provinces Committee Chair **Clarence A. Beckett**, Q.C. Marie-Pier Emery-Rochette of the Université d'Ottawa was acknowledged as the Best Overall Advocate and will be recognized by the Québec Fellows at a later date.

Sopinka Cup winners Suzanne Kittell, Michele Charles

Quips & Quotes

Nothing does more to advance our mission of improving the system of justice than helping to train and flourish a generation of future trial lawyers. There is no better outreach for the College than to expose the best future superstars of the profession to the College and current superstar Fellows who make up this Committee. We have 310 teams of future trials lawyers who now know what the College is about and who have started silent countdowns on the fifteen-year clock so they might join our ranks.

Treasurer Robert L. Byman in his report to the Executive Committee following the National Trial Competition final rounds

AMERICAN COMPETITIONS

National Moot Court Competition

Held annually since 1951, the National Moot Court Competition is organized by the New York City Bar and has been sponsored by the College for decades. Fifteen regional rounds were held around the country in November, and regional winners were sent to the final rounds, held January 28-31, 2013, in New York City. More than a dozen Fellows volunteered to serve as judges of the elimination rounds, and College President **Chilton Davis Varner** served on

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Quips & Quotes

I do not take lightly the challenges you face in trying to maintain a bilingual society. For us, as lawyers, words are the tools of our profession. We spend hours crafting the language we will use when we appear in court. As Justice Dickson noted, of what use is that effort if the judges we appear before do not appreciate the nuances we have so carefully selected?

Secretary Francis M. Wikstrom in his address at the 2013 Gale Cup awards banquet

the panel of judges for the final round.

Stetson University College of Law won the 2013 National Moot Court Competition, and team members Andrew Harris, Julia McGrath and Victoria San Pedro were presented plaques at the College's Spring Meeting in Naples. Michael Coleman Gretchen of the University of Georgia School of Law was named Best Oral Advocate and recipient of the Fulton Haight Award. He will be recognized by the Georgia Fellows at a later date.

National Trial Competition

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

This year more than 320 teams from more than 150 law schools participated in regional rounds held around the country. With the indispensable involvement of local Fellows who served as judges, that number was whittled down to the twenty-eight teams who competed at the final rounds in San Antonio, Texas, April 3-7, 2013. Members of the National Trial Competition Committee served as jurors, and College Treasurer **Robert L. Byman** presided over the final round and presented the College's awards.

The team from Georgetown University Law Center was declared the winner of the 2013 competition. L. Lars Hulsebus, who was recognized as the Best Oral Advocate and recipient of the George A. Spiegelberg Award, and his teammate, Amanda Tuminelli, will be honored at the May meeting of the Washington, D.C. Fellows.

Fulbright & Jaworski L.L.P. provides plaques for each student on the winning team, and a silver bowl and $10,000 are presented to the winning school in honor of Past President of the College, Kraft W. Eidman. Loyola University Chicago School of Law, the runner-up, will receive a $5,000 cash award from Beck Redden LLP, and the semifinalist teams will receive $1500 each from Polsinelli Shughart, P.C. ■

National Moot Court Competition winners receive plaques in Naples. Andrew Harris, Julia McGrath, College President Chilton Davis Varner, Victoria San Pedro

College Treasurer Robert L. Byman with National Trial Competition winners Amanda Tuminelli and L. Lars Hulsebus, Texas Young Lawyers Association President C.E. Rhodes

COLLEGE COMMITTEES: AN OPPORTUNITY TO SERVE

The College's work is accomplished, in large part, by its thirty-five general committees and sixty-one state and province committees. General committees have specific mandates that guide their work, while state and province committees focus on local outreach and the nomination of new Fellows. The work of the committees is the backbone of the College.

Each summer, the President-Elect and Treasurer begin the process of appointing members to the College's committees. Committee members typically serve for five annual terms unless there is a specific reason to remain longer on a committee.

Fellows are encouraged to inquire about serving the College through committee participation. A list of the College's committees and their mandates is available on the website, www.actl.com. If you are interested in committee work, please email the National Office for more information, nationaloffice@actl.com.

ROSTER UPDATE

Preparations for the 2014 edition of the College's Roster, commonly known as the "Blue Book," are under way. Requests for updates were mailed to all Fellows in June. Please advise the National Office by July 31, 2013 if your contact information needs changes or corrections. We will gladly update your listing.

FELLOW TO LEAD SEC

Fellow **Mary Jo White** of New York City was confirmed on April 8, 2013, by the United States Senate as the head of the Securities and Exchange Commission (SEC). Inducted into the College in 1993, White served as Chair of the National Moot Court Competition Committee and has been a member of the Access to Justice Committee, the Federal Criminal Procedure Committee and the Downstate New York State Committee.

PENNSYLVANIA FELLOWS PROVIDE ACCESS TO JUSTICE

In late 2011, the Foundation of the American College of Trial Lawyers received an interesting proposal: on behalf of the Fellows of the Pennsylvania State Committee, then-Chair **Gerald A. McHugh, Jr.** of Philadelphia submitted a request for matching funds to support a pilot project. Under the auspices of the SeniorLAW Center, $25,000 was sought as seed money to establish a program to assist Philadelphia's unrepresented, low-income tenants who faced eviction and who needed assistance navigating the legal system.

NEED SPARKED AN IDEA

The Landlord-Tenant Help Center, as proposed by the Civil Gideon Task Force, a project of the Philadelphia Bar Association, was becoming more than a dream.

The Task Force's goal was to study problems related to access to justice. A cross-section of the bench and bar supported the concept of a help center that could provide a right to counsel in civil cases that involved serious problems. Its housing subcommittee estimated that approximately 95% of tenant litigants were unrepresented. Landlords overwhelmingly appeared with counsel. Providing a balance, the new program offered assistance with the most basic of needs: the ability to stay in one's home.

Building on the earlier work of Philadelphia's public interest community, the Task Force supported creation of a help center on the Municipal Court's premises. The location would offer easy access to the many unrepresented tenants. The center would provide direct representation for some tenants, pro bono referral for others and in-depth support to pro se litigants. Once inside the courthouse, all unrepresented litigant tenants seeking help would be provided with information about their legal rights.

AN IDEA SPARKED ENTHUSIASM

Fellow Jerry McHugh served as the mobilizing force to get the Help Center up and running. By

promising the College's Foundation that the Pennsylvania State Committee would raise $25,000 to match $25,000 being sought from the Foundation, McHugh established a new way to obtain Foundation funds. The Pennsylvania Fellows rallied to the cause, and the Philadelphia Landlord/Tenant Legal Help Center opened at the Philadelphia Municipal Court.

ENTHUSIASM BROUGHT FORTH RESULTS

The court embraced the Help Center, providing space, furniture and notices to litigants. Staffed by an outstanding experienced housing lawyer, in its first year the program provided assistance to over 1,000 families. Evictions were often prevented that previously would have resulted in homelessness. Even attorneys representing landlords referred opposing parties for assistance.

In its first year, the Help Center was a success, but as the Help Center entered its second year, the nation's economic situation remained dour. With the unthinkable possibility of closure, McHugh launched a second challenge: he approached Regent **Bartholomew J. Dalton** of Wilmington, Delaware, whose College jurisdiction covers the Third Circuit. Dalton and McHugh each donated $10,000, to keep the project afloat. Stepping into the shoes of the Foundation, Dalton and McHugh then challenged the Pennsylvania Fellows: match that!

Without hesitation, more than fifty Pennsylvania Fellows responded with donations of their own. The Pennsylvania Fellows saved the Help Center, and the commitment to equal access to justice became a reality.

RESULTS CAN AND SHOULD BE REPLICATED

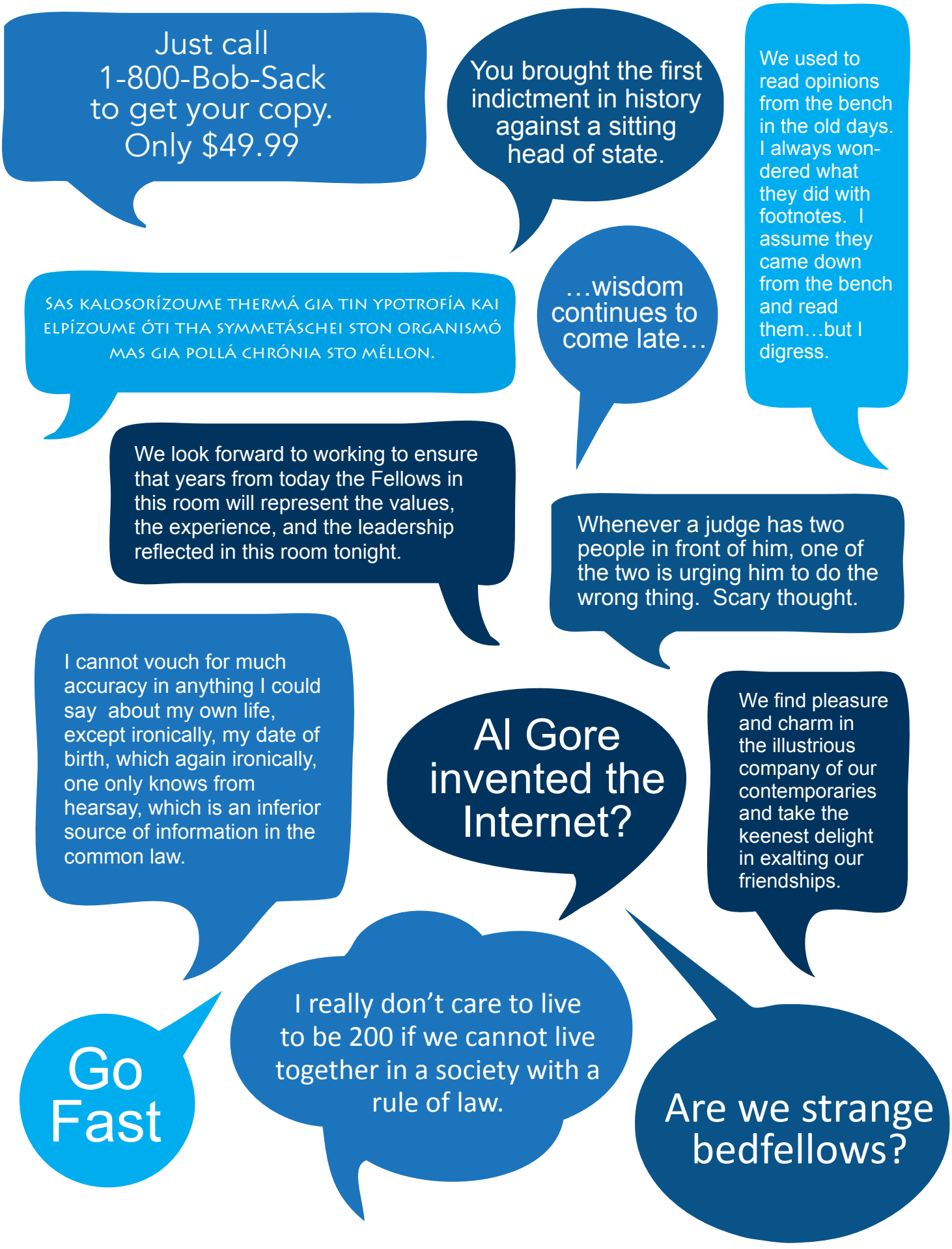
Fellows in other states and provinces are challenged to seek initiatives in which access to justice is supported and delivered to individuals and groups through efficient, affordable processes. Mechanisms that protect the rights of others, prevent or solve disputes and that control an abuse of power can be implemented. It begins with an idea that leads to enthusiasm, that results in action. ■

Quips & Quotes

Approximately 95% of tenant litigants were unrepresented. Landlords overwhelmingly appear with counsel.

THE LAST WORD: WHO SAID IT?

The final words shown here, were heard at the College's 2013 Spring Meeting in Naples, Florida. The editors hope you enjoy identifying "who said it." Your attendance at the Annual Meeting in San Francisco will make it easier to identify "who said it" in the Spring 2014 Issue of The Bulletin. The answers? … We'll never tell.


Just call 1-800-Bob-Sack to get your copy. Only $49.99
You brought the first indictment in history against a sitting head of state.
We used to read opinions from the bench in the old days. I always wondered what they did with footnotes. I assume they came down from the bench and read them…but I digress.
Sas kalosorízoume thermá gia tin ypotrofía kai elpízoume óti tha symmetáschei ston organismó mas gia pollá chrónia sto méllon.
…wisdom continues to come late…
We look forward to working to ensure that years from today the Fellows in this room will represent the values, the experience, and the leadership reflected in this room tonight.
Whenever a judge has two people in front of him, one of the two is urging him to do the wrong thing. Scary thought.
I cannot vouch for much accuracy in anything I could say about my own life, except ironically, my date of birth, which again ironically, one only knows from hearsay, which is an inferior source of information in the common law.
Al Gore invented the Internet?
We find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships.
Go Fast
I really don't care to live to be 200 if we cannot live together in a society with a rule of law.
Are we strange bedfellows?

IN MEMORIAM

In this issue we honor the passing of another twenty-eight remarkable Fellows of the College ✦ Five had lived into their nineties, the oldest to ninety-seven, and fourteen into their eighties ✦ Twenty-one had military service, including fourteen in World War II, two in the Korean Conflict and two during the Cuban Missile Crisis ✦ There were Combat Infantryman's Badges, Air Medals, Distinguished Flying Crosses, Bronze Stars, Silver Stars and a Purple Heart ✦ One had been a prisoner of war ✦ One was severely wounded in the invasion of Okinawa ✦ Fifteen had been married for over fifty years, one of them for over seventy, and nine for over sixty ✦ One finished high school at age fifteen, received his undergraduate degree on the eve of his twentieth birthday and his law degree on the eve of his twenty-third ✦ One earned his college tuition working in a coal mine, entering college at age twenty-one ✦ One had been an infant in his crib five blocks away from the 1917 Halifax Explosion that killed over two thousand people ✦ One had lost his father to a drowning accident when he was a year old and later lived with his mother who worked as a traveling sales representative to support him during the Great Depression, attending public schools in nine different places ✦ There were a number of college athletes, including the quarterback of the first Gator Bowl team ✦ One was the first woman elected a local district attorney in New York, who reported on her statement of qualifications for the College that the only interruption in her then-thirty-five years of law practice had been three weeks away from the office when her daughter was born ✦ At least four had been State or Province Chairs in the College ✦ One had been a Regent and Secretary of the College ✦ Several had led their State Bars ✦ One had been President of the American Bar Association and the International Bar Association ✦ One had been Justice of the British Columbia Court of Appeals ✦ One had been Deputy Attorney General of the United States ✦ A number had been professors or adjunct professors, including one in Australia and one in Italy ✦ Several had led their law classes academically ✦ One had been a Rhodes Scholar ✦ Their interests were varied ✦ Several were prolific writers ✦ One raised prize Egyptian Arabian horses ✦ One was an artist who owned a flea market ✦ One was known as the "protector of the sand" for his vigilance in preserving the ocean front in his community ✦ One was a big band musician in his younger years ✦ One owned and flew antique planes that are now in a museum ✦ One was still playing tennis into his nineties ✦ One was using Google to satisfy his curiosity in his ninety-fifth year.

Collectively, they represent the best of their chosen profession and indeed of their generation.

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

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

Robert Smith Allen, '68, a Fellow Emeritus from St. Louis, Missouri, retired from Lewis & Rice, died March 23, 2013, at age eighty-nine. A high school valedictorian, his college education, which he began at the University of Missouri, was interrupted by World War II, in which he was a pilot in the United States Army Air Corps. After the war, he enrolled at Washington University, where he completed his undergraduate education and earned his law degree, graduating at the top of his class. After clerking for a federal district judge, he joined the law firm with which he practiced for fifty years. He had served on the Missouri Appellate Judicial Commission. His survivors include his wife of sixty-four years, two daughters and three sons.

Marshall A. Bernstein, '71, Philadelphia, Pennsylvania, retired from Bernstein, Silver & Gardner, died March 19, 2013, of complications from a fall at age eighty-seven. A graduate of the University of Pennsylvania and of its School of Law, he joined his father's law firm, where he practiced for forty-five years. He was a member of the Inner Circle of, and he had taught as an adjunct professor or lecturer at the law schools of, Temple University, the University of Pennsylvania and Villanova University. A Past President and member of the Board of Congregation Adath Jeshurun in Elkins Park, Pennsylvania, he had served in several capacities in the Federation of Jewish Agencies. His survivors include his wife of over sixty-five years, a son and two daughters.

Paul Campbell, Jr., '95, retired from Campbell & Campbell, Chattanooga, Tennessee, died October 5, 2012, at age ninety-seven. He was a graduate of Union College in Schenectady, New York and of the George Washington School of Law. While in undergraduate school, he played varsity football and baseball, and while in law school, he worked as a clerk in the United States House of Representatives. At the onset of World War II, he first joined the Federal Bureau of Investigation as a special agent and later joined the United States Navy. He was still playing tennis regularly into his nineties. He had taught Sunday School and served on the Board of his Methodist Church. A widower who was married for over seventy years, his survivors include three sons who had practiced law with him and a daughter.

John Phillip Carroll, '80, a Fellow Emeritus from Little Rock, Arkansas, retired after sixty-three years from the Rose Law Firm, died March 9, 2013, at age eighty-seven. He was still maintaining a regular daily office schedule until the week of his death. Entering the United States Army upon his graduation from high school in 1943, he first served as an instructor, teaching military tactics in an Army Specialized Training Program. After D-Day, he was sent to Strasbourg, France as a nineteen-year-old Staff Sergeant and squad leader. On a bitter snowy day in January 1945, he, along with his unit, was captured in a last-gasp effort by a German Panzer Division shortly after its defeat in the Battle of the Bulge. Marched across Germany, loaded in a rail car with no ventilation or sanitation and with little food, he ended up spending four months in Stalag IV B, south of Berlin. Although the camp was "liberated" in May by the Russian Army, his unit unexplainably remained prisoners. One night he and two others appropriated bicycles and eventually made their way to freedom. He earned his undergraduate and law degrees from the University of Arkansas on the GI Bill. Shortly after finishing law school, he was recalled to active duty in the Korean Conflict, serving in the Pentagon. In the course of his career, he served as President of his County Bar Association, the Arkansas Bar Association, the Arkansas Bar Foundation and the National Conference of Uniform Law Commissioners. A charter member and Secretary of the Arkansas Supreme Court Jury Instruction Committee, he had also served as a Special Chief Justice of that Court. He served in the American Bar Association House of Delegates and had been the College's Arkansas State Chair. He had also taught evidence, trial practice and communication law. He had been honored with numerous awards, including the Outstanding Lawyer of Arkansas Award and the University of Arkansas Outstanding Alumnus Award. He served as a lector and as President of the Parish Council at Holy Souls Catholic Parish, as well as President of several local church-related organizations. He also served as President of the local chapter of the National Conference of Christians and Jews and of his county's Health and Welfare Council. His survivors include his wife of almost sixty years and three daughters.

Harold G. Christensen, '74, Snow Christensen & Martineau, Salt Lake City, Utah, died November 14, 2012, of cancer at age eighty-six. Joining the United States Navy at age seventeen, he served as a medic in World War II. Beginning his undergraduate education at Southwestern University, he earned his undergraduate degree from the University of Utah, began his legal studies there, then transferred to the University of Michigan School of Law, from which he graduated with honors, serving as Assistant Editor of the Michigan Law Review. Returning to Salt Lake City, he began his career as an unpaid assistant to a partner in the firm of which he eventually became Chairman. In 1988, he was appointed Deputy Attorney General of the United States, and upon Attorney General Edwin Meese's res-

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ignation, served briefly as Acting Attorney General. His first wife of thirty-six years having died two years earlier, in December 1988, he married the assistant Dean of the Utah College of Law in the Deputy's Conference Room at the Department of Justice, reportedly the only such ceremony ever performed there. After leaving Washington, he taught at University of California Hastings College of Law, as Distinguished Visiting Professor of Law at Bond University in Queensland, Australia and as Practitioner in Residence at the Utah College of Law. He then led the Litigation Division of the Office of the Utah Attorney General before returning to his old law firm. In the course of his career he served as President of his County Bar, of the Utah State Bar and of the local Inn of Court. He had also been a Trustee of the American Inns of Court Foundation and the College's Utah State Chair, and he chaired the transition team that coordinated the consolidation of the Utah trial courts. He had received the Utah State Bar's Award for Exceptional Service, its Lawyer of the Year Award and its Lifetime Achievement Award, the Amicus Curiae Award for Service from the Utah Judicial Council and an award for Distinguished Service to the Federal Bar in Utah. He had also been named Utah Trial Lawyer of the Year. A prolific writer, he had recently published a book on being a trial lawyer entitled *Samarai Lawyer*. His survivors include his wife, a daughter, two sons and three step-children.

William K. Christovich, '76, a Fellow Emeritus from New Orleans, Louisiana, died April 10, 2012, of cancer at age eighty-five. After serving in the United States Navy in World War II, he earned his undergraduate and law degrees from Tulane University, then joined his father's firm, Christovich & Kearney, where he practiced until 2010. He and his wife were described as a natural partnership in helping to launch a number of civic organizations in New Orleans. His survivors include his wife of over sixty-three years, two daughters and two sons.

Donald H. Clark, '02, a member of Williams Mullen, Virginia Beach, Virginia, died October 28, 2012, of leukemia at age 75. A graduate of the United States Naval Academy, he served on active duty for five years on the destroyer *USS Stormes*, going head-to-head with Soviet warships during the Cuban Missile Crisis. A graduate of George Washington University School of Law, he began his career with the Norfolk, Virginia firm Kellam & Kellam, later forming his own Virginia Beach firm, which eventually merged with Williams Mullen. Known locally as "protector of the sand" for his efforts on behalf of the City of Virginia Beach and its beaches, he had served as President of his local Bar Association, which had honored him with its Distinguished Service Award. He had been Chair of the Board of Sentara Health Care, Virginia Beach General Hospital and Tidewater Health Care and served on the Boards of Priority Health Care Inc. and Bay Primex Insurance Company. He also served two terms as Senior Warden of his Episcopal Church. His survivors include his wife of over fifty years, a daughter and a son.

Robert L. Conason, '78, Gair, Gair, Conason, Steigman & Mackauf, New York, New York, died February 13, 2013, at age eighty. A graduate of New York University and of its School of Law, with service in the United States Army in between undergraduate and law schools, he had later served that institution for ten years as an Adjunct Associate Professor of Law. A prolific writer, he had been author or co-author of six legal texts. A noted plaintiff's lawyer, a member of the Inner Circle of Advocates, he was at the time of his death a director of the New York State Trial Lawyers Association. His survivors include his wife of thirty-eight years, two daughters and a son.

Willis Huling Flick, '65, a Fellow Emeritus from Miami, Florida, died February 11, 2013, at age ninety-six. Born in a family of six children in a Pennsylvania coal mining community, he worked in a coal mine to earn his college tuition, entering Ohio University at age twenty-one. In early 1941, he enlisted in the United States Army Air Corps and became a multi-engine flight instructor and eventually Director of Training at Moody Army Air Field. Sent to the China-Burma-India Theater in World War II, he flew many hazardous missions over "the Hump," as pilots called the Himalayas. Discharged in 1946 as a lieutenant colonel with an Air Medal and a Distinguished Flying Cross, he enrolled at Duke University, where he resumed his undergraduate education and then earned his law degree. He practiced with Blackwell Walker Gray Powers Flick & Hoehl until his retirement in 1985, serving as the managing partner at a time when it was Florida's largest law firm. He and his wife raised some of the world's finest Egyptian Arabian horses, training and showing them all over the United States and Canada. He had been an organizer of Key Biscayne Presbyterian Church, which he had served as an elder. Remarkably, he was still pursuing his love of learning by "Googling" well into his ninety-fifth year. A widower whose wife of sixty-seven years predeceased him, his survivors include three sons and two daughters.

Horace Frank Foster, III, '76, retired from Bienvenu, Foster, Ryan & O'Bannon, New Orleans, Louisiana, died February 7, 2013, at age eighty-seven. His undergraduate education at Louisiana State University was interrupted by service in the United States Army Air Corps in World War II. Returning, he earned his law degree from Louisiana State University School of Law. He had

served as President of the Louisiana Golf Association. His survivors include his wife of sixty-three years, two daughters and a son.

Thomas J. (Jerry) Greenan, '79, a Fellow Emeritus, retired from Gordon Thomas Honeywell, Seattle, Washington, died January 29, 2013, at age seventy-nine. A graduate of Gonzaga University and of its School of Law, he had served his alma mater as a member of its Board of Regents and then for twenty years as a member, and for a term Chair, of its Board of Trustees. He had begun his practice as Assistant Attorney General of Washington, handling condemnation proceedings, including those related to the construction of Interstate 5 through downtown Seattle. He had served the College as Washington State Chair, as a member of the Board of Regents and as Secretary of the College. He taught three years as a visiting Professor at Gonzaga's Florence, Italy Program, the last year as Acting Director of the school. The Thomas J. "Jerry" Greenan Reading Room at Gonzaga Law School is named in his honor. In recent years he undertook numerous pro bono cases through the legal aid department of Catholic Community Services of Seattle. His survivors include his wife of fifty-five years, two daughters and three sons.

Harvey Johnson Grey, Q.C., '77, a Fellow Emeritus, retired from Harper Grey LLP, Vancouver, British Columbia, died February 8, 2013, at age eighty-nine. Trained in England as a gunner, he served in World War II, then earned his law degree from the University of British Columbia. He had been President of the Vancouver Bar Association, served three terms as a Bencher of the Law Society of British Columbia and served as Chair of the College's British Columbia Province Committee for three terms. He was made Queen's Counsel in 1984. His survivors include his wife, three sons and a daughter.

William A. Helsell, '69, a Fellow Emeritus, retired from Helsell, Paul, Fetterman, Todd & Hokanson, Seattle, Washington, died December 20, 2012, at age eighty-eight. His undergraduate education, which he began at Princeton, was interrupted by World War II, in which he was a pilot in the United States Navy. He then enrolled at the University of Washington, where he completed his undergraduate and legal education. Remaining in the Naval Reserve, he was recalled to active duty in both the Korean Conflict and the Cuban Missile Crisis. He had served as an Assistant United States Attorney in his early career. An avid flier, he owned a 1937 Stagger-wing Beechcraft and a 1940 Gull-wing Stinson, both of which are now in a museum. He had been active in a number of community organizations. Thrice a widower, his survivors include the eight children of his three marriages, four daughters and four sons, twenty-two grandchildren and eleven great-grandchildren.

Edmund Cutler Hurlbutt, Jr., '69, a Fellow Emeritus from Visalia, California, retired from Hurlbutt, Clevenger, Long Vortmann, Rauber & Nelson, whose death had been previously unreported, died September 26, 2006, at age eighty-five of Parkinson's disease. The son of a cowboy who had sailed from Northern California to Alaska at a young age to seek his fortune in the Klondike Gold Rush, young Ed's family returned to California when he was an infant. He entered the University of Santa Clara on an athletic scholarship but earned an academic scholarship by the end of his freshman year. He was a member of both the varsity tennis and basketball teams, edited the student newspaper and was president of the student body. Commissioned an officer in the United States Army Artillery with the 33rd Division in World War II, he participated in campaigns in New Guinea and the Philippines, earning both a Bronze Star and a Silver Star for gallantry in action. Attending law school at Santa Clara on the GI Bill, he graduated at the top of his class. He had been President of his County Bar and of the Visalia Chamber of Commerce, and he was active in numerous local civic and charitable organizations, including his church and the local school district. He had been both Visalia's Young Man of the Year and later its Man of the Year. His survivors include his wife of sixty years, a daughter and three sons.

Harold L. Jacobson, '82, a Fellow Emeritus retired from Lord, Bissell & Brook LLC, Chicago, Illinois and living in Sun Lakes, Arizona, died March 8, 2011. Born in 1926, he was a graduate of the University of Illinois and of Loyola University School of Law. His practice was focused on medical malpractice defense. Five of the young attorneys to whom he had been a mentor are now Fellows of the College. His survivors include his wife of over sixty years and two sons.

Murray Joseph Janus, '81, Bremner, Janus & Stone, Richmond, Virginia, died January 20, 2013, at age seventy-four. A graduate of Dartmouth College and of the University of Virginia School of Law, he was a criminal defense attorney. He served as President of the Richmond Bar Association and of the National Association of Criminal Defense Lawyers, as a National Commissioner of the Anti-Defamation League and as President of the Nuremberg Courtroom Committee of the Virginia Holocaust Museum. His survivors include his wife, two daughters, one a lawyer, the other a Rabbi, and three stepsons.

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John Smiley Key, '86, a Fellow Emeritus retired from Eyster, Key, Tubb, Roth, Middleton & Adams, LLP, Decatur, Alabama, died February 6, 2013, at age seventy-two. He was a graduate of the University of Alabama and of its School of Law, from which he graduated at the head of his class. He had served for twenty years on the Board of Decatur General Hospital, including service as its Chairman. His survivors include his wife, a daughter and a son.

Patrick W. Kittredge, '87, Of Counsel to Thorp Reed & Armstrong, Philadelphia, Pennsylvania, died June 19, 2012, at age seventy-five. After graduating from the University of Notre Dame, he became an officer in the United States Navy, serving on the amphibious attack transport *USS Chilton*, and was a boat group commander during the 1958 invasion of Lebanon. A graduate of Temple University School of Law, he clerked for a federal district judge before entering private practice. He served as President of the Historical Society of the United States District Court for the Eastern District of Pennsylvania and as Chairman of the Magistrate Judge Merit Selection Panel of that district. He had served on the alumni board of Notre Dame and then on its Advisory Council, and had been Chair of the College's Pennsylvania State Committee. His survivors include his wife, two daughters and three sons.

Donald R. McKay, '81, Hermitage, Pennsylvania, died March 11, 2013, at age eighty-four. He was a graduate of Allegheny College, where he lettered in varsity football, basketball and track, and of the University of Pennsylvania School of Law. A former member of the Allegheny College Board of Trustees, he had been instrumental in transforming Hickory Township, in which he practiced, into a city, Hermitage, and he had served as solicitor of many local political subdivisions, including the local school district, for which he had been honored as Pennsylvania's longest-serving solicitor. He was a founding member of his Methodist Church, a member of the Disciplinary Board of the Pennsylvania Supreme Court and served on the advisory boards on a number of local civic organizations. His survivors include his wife of sixty-two years, a daughter and a son.

Bruce MacLean Nickerson, Q.C., '84, a Fellow Emeritus from Halifax, Nova Scotia, died August 9, 2012, at age ninety-five. A five–month-old in his crib at home, five streets away, he was a survivor of the 1917 Halifax Explosion. That event, resulting from the collision of two ships, one of which was loaded with explosives in the Halifax Harbor, killed 2,000 people and injured an estimated 9,000 more. It was regarded as the largest man-made explosion until the development of nuclear weapons. After high school, Nickerson had gone to work in the business world. On the day World War II was declared, he enlisted in the Nova Scotia Highlanders, rose through the ranks to become an infantry lieutenant, serving as an instructor at bases in Canada and England and then served in Holland and Germany. After the War, he earned his law degree from Dalhousie University and became a founding member of Blois, Nickerson & Bryson. A Queen's Counsel, he had been a member of the Canadian Conference of Uniformity Commissioners, Chair of the Election Commission of Nova Scotia and President of the Nova Scotia Barristers' Society. In retirement, he served on the Board of Commissioners of Public Utilities. His survivors include his wife of seventy-one years, a daughter and a son.

William Beverly Poff, '75, Woods, Rogers PLC, Roanoke, Virginia, died September 5, 2012, at age eighty. The son of the owner of a country store and a school teacher, he finished high school at age fifteen, earned his undergraduate degree from Virginia Polytechnic Institute and State University shortly before his twentieth birthday and graduated from the Washington & Lee School of Law, where he was Editor-In-Chief of the Law Review and a member of the Order of the Coif, shortly before he turned twenty-three. He then entered the United States Army Judge Advocate General's Corps, ultimately serving on the JAGC School's staff, before joining the firm in which he practiced his entire career. Over the course of his career, he was President of the Virginia Trial Lawyers Association, President of the Virginia State Bar, a member of the Board of Governors of the American Bar Association and a founding member of the Virginia Association of Defense Attorneys. He had been honored with the Roger Groot Professionalism award from his local Inn of Court. He had also been deeply involved in civic affairs over the course of his career. A widower who had remarried, his survivors include his wife and four stepdaughters.

Romaine R. Powell, '77, a Fellow Emeritus retired from Powell & Powell, Bemidji, Minnesota, died March 10, 2012, eight days short of his eighty-eighth birthday. When he was one year old, his father had died in a triple drowning while trying to save Romaine's two aunts. His mother became a traveling saleswoman to support herself and her son during the Great Depression, and he lived with his grandparents and an uncle until he was twelve years old. He then began to travel with his mother, attending public schools in nine different places along the way. Rejected when he tried to enlist in the United States Army in World War II, he took a part-time job at Fort Snelling while attending the University of Minnesota, where he earned both his undergraduate

and law degrees. After clerking for a Justice of the Minnesota Supreme Court, he worked for the Beltrami County Attorney for four years before entering private practice. He served as a Special Municipal Judge for four years and thereafter for four years as a United States Magistrate. A widower whose wife of fifty-four years predeceased him, his survivors include two sons.

E. Glenn Robinson, '75, a Fellow Emeritus, Of Counsel to Robinson & McElwee PLLC, Charleston, West Virginia, died February 28, 2013, at age eighty-nine. After one year of undergraduate education, he enlisted in the United States Army, serving in the 96th Infantry Division. Landing in the first assault waves on the island of Leyte in the Philippines and then on Okinawa, he was severely wounded in the latter engagement and spent seven months in military hospitals. He was awarded the Combat Infantryman's Badge, a Bronze Star and a Purple Heart. He graduated with honors from Ohio State University and after one year in that University's law school, transferred to the University of West Virginia School of Law, where he finished first in his class and was a member of the Order of the Coif. In his early years, he had been a big band musician. He had been President of his County Bar, the West Virginia State Bar and the West Virginia Bar Association. He was a charter member of the West Virginia Defense Counsel, of the West Virginia Chapter of the American Board of Trial Advocates and of his Inn of Court. He had twice been awarded the West Virginia State Bar's highest award. He had served as a trustee of his Presbyterian Church for thirty years and had been President of the Children's Home Society of West Virginia. He had served the College as Chair of the West Virginia State Committee. His survivors include his wife of sixty-five years, two daughters and two sons.

Charlotte Smallwood-Cook, '91, a sole practitioner from Warsaw, New York, who had retired after sixty-five years of practice three months earlier, died January 26, 2013, at age ninety. A graduate of Cornell University and of the Columbia University School of Law, she began a small-town practice with her husband, whom she met in college. Three years after she completed law school, she was elected District Attorney of her county at age twenty-six, the first woman in New York to be elected to that office. A former President of her County Bar and a member of the New York State Bar Association House of Delegates, she was a long-time Chair of the Wyoming County Republican Committee. She had been honored as the New York State Bar Woman of the Year and had received the New York District Attorney's Association's Lifetime Achievement Award. The occasion of her retirement prompted the declaration of Charlotte Smallwood-Cook Day in Wyoming County and the placing of a plaque honoring her in the local courthouse. An accomplished artist, in her early years she started and ran a local flea market. Her response to the College's statement of qualifications at the time of her admission indicated that the only interruption in her law practice in the thirty-five years since she had entered the profession was a three-week break on the occasion of the birth of her daughter. Twice widowed, her survivors include a daughter, a son, three step-daughters and a step-son.

William Reece Smith, Jr. '69, Chair Emeritus of Carlton Fields PA, Tampa, Florida, died January 11, 2013, of cancer at age eighty-seven. He received his undergraduate education at the University of South Carolina, where he was the starting quarterback for South Carolina in the first Gator Bowl. In World War II, he served in the Pacific Theater as an officer in the United States Navy on the light cruiser *USS Columbia*. After the War, he earned his law degree with high honors from the University of Florida School of Law, finishing first in his class and serving as Editor in Chief of its law review. He then attended Christ Church, Oxford University on a Rhodes Scholarship. A highlight of his time abroad was meeting then-Princess Elizabeth on a double date. In one of the most accomplished professional lives of his generation, he was President of his County Bar, the Florida State Bar, the Florida Bar Foundation, the National Conference of Bar Presidents, the American Bar Endowment, the American Bar Foundation, the American Bar Association and the International Bar Association. He was the first lawyer from the United States to head the latter organization. He had served the College as Florida State Chair. In the world of education, for over twenty years, he was an adjunct professor at Stetson University College of Law. He served a term as Interim President of the University of South Florida and served as a Trustee of several institutions of higher learning and on advisory boards of at least five others. In the civic arena, he chaired the Tampa Chamber of Commerce, was the Founding President of the Florida Orchestra and President of the Tampa Philharmonic Orchestra Association. As a young city attorney in the 1960s, he helped to defuse race riots growing out of the police shooting of a black man. The Bi-Racial Committee he helped to organize in the aftermath of that incident continues to this day to serve as a community forum. A lifelong supporter of legal services for the underserved, he was the founder of Florida Legal Services and the American Bar Association Center for Pro Bono Legal Services. He is perhaps most remembered for his successful stand as President of the American Bar Association when the

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Reagan Administration attempted to defund the national Legal Services Corporation that had been created under President Nixon. The list of the countless honors bestowed on him includes the ABA Gold Medal, the ABA Pro Bono Publico Award, the American Judicature Society's Herbert Harley Award and the American Inns of Court Professionalism Award. At least two professionalism awards bear his name, as does a classroom at Stetson School of Law. He was the recipient of eleven honorary degrees. His biography, *A Consummate Lawyer*, was published in 2010. He practiced for fifty-nine years with the same firm and was still coming to the office until a few weeks before his death. His survivors include a son.

Hon. Wilfred J. (Bea) Wallace, Q.C., '77, a Fellow Emeritus from Vancouver, British Columbia, died February 12, 2013, at age ninety-four. After earning his undergraduate degree from the University of Toronto, followed by a brief career in engineering, he served in World War II as Engineering Officer on the *HMCS Prince Robert* in the Pacific Northwest, the Aleutians and Europe. Taking his law degree from Osgoode Hall School of Law after the War, he moved to Vancouver, where he practiced for thirty years with Bull Housser & Tupper. In 1979, he was appointed to the Supreme Court of British Columbia and in 1986, to the British Columbia Court of Appeal. After leaving the bench, he returned as Associate Counsel to his old law firm, where he practiced mediation and arbitration for another ten years. A widower whose wife of sixty-two years predeceased him, his survivors include two daughters and two sons.

Dan Gibson Walton, '08, Hogan Lovells US LLP, Houston, Texas, died February 7, 2013, at age sixty-two. Attending the University of Virginia on a football scholarship, he graduated with honors, was a member of Phi Beta Kappa, served on the Honor Committee, lived on The Lawn and was a member of the Raven Society. He earned his law degree with honors from the University of Texas School of Law, where he was a member of the Law Review and the Order of the Coif. After a clerkship on the District of Columbia Court of Appeals, he joined Vinson & Elkins, where he ultimately headed the general litigation section and was a member of the management committee. In 2009, he joined Hogan Lovells as co-leader of its global projects, engineering and construction practice. He served as President of the Houston Bar Association and the State Bar of Texas and had been Chair of both the Houston Bar Foundation and the Texas Bar Foundation. He served on the Board of the Methodist Hospital for fifteen years, chaired the Board of Stewards and the Board of Trustees of his church, and at the time of his death was serving his third term as Chancellor of the Texas Annual Conference of the United Methodist Church. He had been honored with the Anti-Defamation League's Karen H. Susman Jurisprudence Award, the Phi Beta Kappa Outstanding Alumnus Award and both the President's Award and the Michael J. Crowley Award from the State Bar of Texas. His survivors include his wife of forty years, a daughter and a son.

Andrew Grey Williamson, '76, a Fellow Emeritus, retired from Williamson, Dean, Williamson, Purcell & Sojka, LLP, Laurinburg, North Carolina, died March 20, 2013, at age eighty-seven. His undergraduate education was interrupted by service in the United States Naval Air Corps in World War II. A graduate of the University of North Carolina and of its School of Law, he began his career as Solicitor of the local Recorder's Court before becoming the co-founder of a Laurinburg law firm. His service to the profession included long-time representation of his district on the North Carolina State Bar Council and a term on the Board of Governors of the North Carolina Bar Association. He had been President of the local Chamber of Commerce and an elder in his Presbyterian Church. A lifelong behind-the-scenes civic servant, he was a prime mover in the creation of a local industrial development program and was the principal spokesman for his city when it was awarded its unprecedented second designation as an All-American City. He chaired the Board of Trustees of the local hospital, twice served as a member of the Board of St. Andrews Presbyterian College and had been a Trustee of the North Carolina Cancer Institute. He was one of the prime movers in the creation of a local retirement home where he and his wife later lived out their lives, an original member of its Board and twice its President. A widower whose wife of fifty-two years had predeceased him, his survivors include a daughter and a son.

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Correction: The last issue of *The Bulletin* included an obituary for **Edwin Martin Kowal, Jr.**, '06, a partner in Campbell Woods PLLC, Huntington, West Virginia that was apparently erroneously based in part on the obituary of an aeronautical engineer of similar age and name and thus contained some incorrect information. Mr. Kowal died November 28, 2012, at age sixty. A graduate of Washington and Lee University and of its School of Law, he had practiced in Huntington for thirty-five years. He was the founder and the first coach of a local high school swim team that included his son and daughter, both of whom, along with his wife, survive him. We apologize for the error.

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