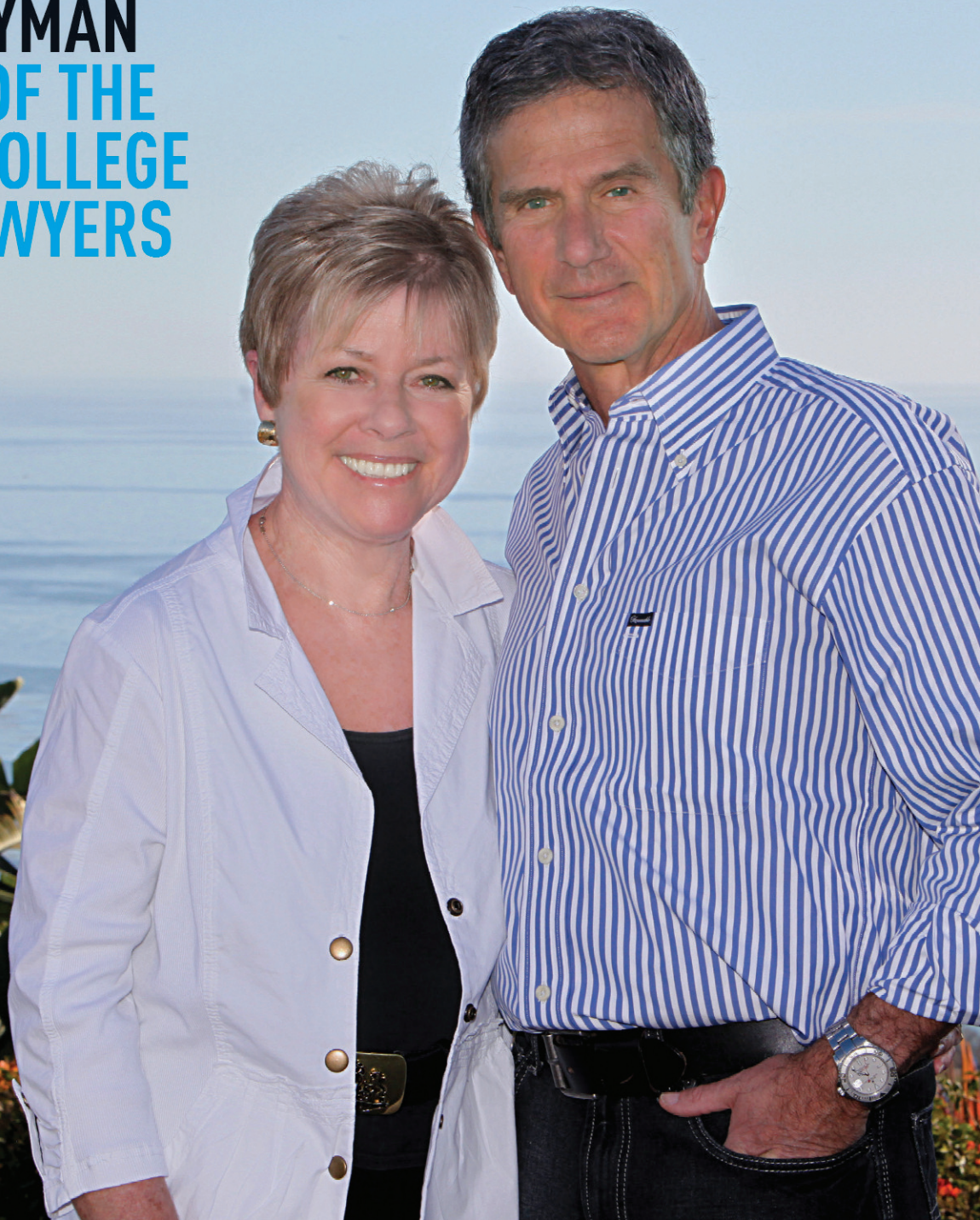




# JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

**ROBERT L. BYMAN**  
**PRESIDENT OF THE**  
**AMERICAN COLLEGE**  
**OF TRIAL LAWYERS**



*Bob Byman and his wife, Jane*



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# FROM THE EDITORS

## THE NEW TECHNO-ADVOCATE

The changes to legal practice in our lifetime have been seismic. Nowhere can we see this more than in the technology explosion, both in quotidian activity—remember answering machines? Of course, you don't; too long ago—and in our professional lives. (Pink telephone slips anyone?)

It has now become *de rigeur* to have technological competence, not just as a matter of one's marketable skill-set but also as a matter our standard of care as lawyers. Now, technological incompetence may lead not only to a negligence claim but also a possible ethics violation. (See, Megan Zavieh, "Luddite Lawyers Are Ethical Violations Waiting to Happen," *Lawyerist*, December 2, 2013). To that end, the ABA amended comment 8 to its Model Rule 1.1 to read:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology...

Hints of these advances could be seen as far back as the dissection of the then "new" DNA evidence in the 1994 O.J. Simpson trial and, more recently, in the superb presentation we saw in our Tucson meeting from the defence counsel in the 2006 Duke Lacrosse sexual assault trial. In the latter, through use of cellphones, digital cameras and the social media, counsel could almost reconstruct the players' and accuser's actions and whereabouts second by second. Fascinating stuff, but maybe old hat by now.



Andy Coats



Stephen Grant

Some of this, too, is generational. Watch an 18 year old type on her computer, the seamless dexterity measured against those of us who learned to type on the old Underwood clunkers. Our typing even *sounds* hard.

Fast forward to 2014 where counsel may well attract liability if, for instance, she fails to discover evidence that might have been available with technological due

diligence. Scanning Facebook, Instagram, LinkedIn, Google, accessing and securing hard-drives and the like are surely now the minimum expectation of the standards to which we will be held by those relying on our litigation expertise.

What about using spy-ware to intercept data? (In Canada, it's unlawful to possess a device knowing it is primarily useful for the surreptitious interception of private communications. In the United States, these restrictions seem to be all over the map, both civilly and criminally.) What about raising constitutional objections on data retrieved, say, from WikiLeaks or collected by the N.S.A.?

The law must now be sprawling with these kinds of issues.

What of jurors' experience in and outside the jury box, both their own ability to access the internet if not sequestered (and maybe even then, who knows?) let alone the pressures brought to bear on them by the social media or other interested persons or institutions. One need read no farther than the compelling "Trial by Twitter" (*The New Yorker*, August, 2013) to see the apparent power of these new, and likely pernicious, forces at work. And, let's not forget, judges can Google, too, again, for better or worse.

Even now, in the broader context of access to justice, what role will cyber-justice play in eliminating the court system? There are already cyber-forums in which disputes are being resolved, often absent counsel. In family law proceedings, parties responding to a survey want more out-of-court processes.

It's a profoundly new legal world in which we live but one to which we have to adapt or face the consequences.



The San Francisco meeting is now a faded, but not forgotten (chilly as it was), memory, but in this issue we have captured the best of the meeting along with a profile of President Bob Byman, the new Regents, regional meeting coverage and previews of the Spring Meeting in La Quinta in March and the Annual Meeting in London.

— Andy Coats/Stephen Grant

Please contact the National Office with contributions or suggestions at [nationaloffice@actl.com](mailto:nationaloffice@actl.com)



# 63rd ANNUAL MEETING HELD IN SAN FRANCISCO

From October 24-27, 2013, Union Square's San Francisco Marriott Marquis hosted more than 1,100 Fellows, spouses and distinguished guests at the 63rd Annual Meeting of the American College of Trial Lawyers. New President of the College, **Robert L. Byman** of Chicago, Illinois, was installed, and 86 new Fellows were inducted.



*The Bymans and Varners backstage after Beach Blanket Babylon*



President **Chilton Davis Varner** greeted speakers and guests, hosted a flurry of receptions, presided over Regents' meetings, general sessions, a banquet and induction ceremony, and installed new officers for the 2013-2014 term. Unwilling to slow down until the very end, President Varner wrapped up her term as president of the College by joining her fellow Fellows at the "sing-along-with-the-piano-player," lasting until well-after midnight on Saturday.

New members of the Board of Regents, **C. Rufus Pennington, III** of Jacksonville Beach, Florida, **Kathleen M. Trafford** of Columbus, Ohio, **W. Francis (Frankie) Marion, Jr.** of Greenville, South Carolina, **Elizabeth N. (Liz) Mulvey** of Boston, Massachusetts, and **William T. (Bill) Hangley** of Philadelphia assumed their positions. Mulvey had earlier stepped into the shoes of **William J. Kayatta, Jr.** of Portland, Maine, who became a Judicial Fellow in March 2013 when he was appointed to a position on the First Circuit Court of Appeals.

On Thursday, the International Committee offered a CLE Program introducing **Rob Boone** of the ABA Rule of Law Initiative in Washington, D.C., **Andra Moss** of the International Senior Lawyers Project in New York, New York, **Samantha Nutt, M.D.**, of War Child Canada and United States in Toronto, Ontario and **Christina M. Storm** of Lawyers Without Borders in New Haven, Connecticut. The presenters provided the histories and goals of their organizations and called on Fellows to become involved as pro bono lawyers to further access to justice in other countries.

Thursday evening, President Varner greeted arriving guests at the traditional President's Welcome Reception at San Francisco City Hall.

The College's general committees met on either Friday or Saturday before the General Sessions.

Friday's general session commenced with an invocation by Past President **Stuart D. Shanor** of Roswell, New Mexico, followed by **Kent Walker**, Senior Vice President and General Counsel of Google, Inc. in Mountain View, California. Walker spoke of *How the Information Revolution is Changing the Law*. Afterward, **Travis T. Tygart**, Chief Executive Officer of the U.S. Anti-Doping Agency in Colorado Springs, Colorado, spoke about *Playing*



*Fair and Winning: An Inside View of Ethics and Integrity from the Lance Armstrong Case*, in which he pointed out the long-term benefits to be gained by cleaning up the sport of cycling.

The Honourable Mr. Justice **Richard Wagner**, Justice of the Supreme Court of Canada in Ottawa, Ontario, accepted Honorary Fellowship into the College. In his witty, yet sincere, acceptance remarks, Justice Wagner spoke of his long-held dream to become a Fellow of the College.

The annual Emil Gumpert Award was presented to Professor **Paolo Annino** of Florida State University College of Law, Tallahassee, who accepted on behalf of the Miller Resentencing Project of the Florida State University College of Law, Public Interest Law Center's Children in Prison Project.

**Michael Moran** of Global Risk Analysis in New York, New York, noted broken promises and brittle truths as he compared the world of the 1960s to the anticipated-world of the future. Friday's general session concluded with an inspiring presentation entitled *Military Sexual Assault: Just and Fair For All?* by Rear Admiral (Ret.) **Marsha J. (Marty) Evans** of Ponte Vedra Beach, Florida.

Friday's night's extravaganza at the host hotel, simply headlined as A San Francisco Tradition, turned out to be a rip-roarin' time of Beach Blanket Babylon, an outlandish show that included dinner and dancing.

Saturday morning's first speaker was author **Eric Metaxas** of New York, New York, who spoke about *Dietrich Bonhoeffer's Ethical Conundrum: The Pastor Who Joined the Plot to Kill Hitler*, a true story of religious freedom and free speech during World War II.



The Samuel E. Gates Award was presented to Fellow **Donald R. Dunner** of Washington, D.C., who provided an excellent primer about the history of patent law by one who was “there” since its inception.

**S. Jack Balagia, Jr.**, of Exxon Mobil Corporation in Irving, Texas, spoke about *The Evolving Profession: A General Counsel’s Perspective*, which included a historical and future perspective of Exxon Mobil and the makeup and culture of its legal department (or, as President Varner described it, telling us “how big is big”). An ethical conundrum presented by Professor **Lawrence C. Marshall** of Stanford University Law School in Stanford, California, entitled *I’m So Conflicted: Navigating Conflicts in the 21st Century*, posed potential challenging conflicts in increasingly global legal practices.

*Intelligence, Surveillance and the Courts* was presented by Judicial Fellow, Hon. **James Robertson** (Ret.), of Washington, D.C. Judge Robertson shared his experiences as an appointee to the court created by the Foreign Intelligence Surveillance Act and the government’s power to conduct surveillance of international communications.

The general session concluded with *A Historic Journey: The Trial Lawyer in America*. Fellow **Robert B. Wallace** of Charleston, South Carolina, shared rousing stories and not-so-gentle encouragement that litigators should take pride in their profession by getting out and making a difference.

Afternoon tours included visits to Alcatraz, Pier 39, Chinatown, Muir Woods and Sausalito. Trips to San Francisco’s remarkable sites were interspersed with museum tours, biking and sailing the Bay and culinary and wine-tasting tours.

Saturday night’s grand finale to the Annual Meeting began with the traditional induction ceremony followed by a banquet, dancing and the traditional sing-along. **Catherine M. Recker** of Philadelphia, Pennsylvania, provided the response on behalf of the eighty-six new Fellows. President Varner presided over the installation of President Robert L. Byman of Chicago, who was joined by family members led by his wife, Jane. After remarks from Byman, the Fellows, spouses and guests enjoyed more than a few twirls on the dance floor. The less-fleet of foot sought out the piano player who accompanied them to songs speaking of memories past and future.





***Chilton Davis Varner, President of the American College of Trial Lawyers, 2012-2013, describing incoming President Bob Byman, 2013-2014:***

Bob is, in a word, a whippet. Webster defines that term as “a small, swift, slender dog developed from a cross between the Italian greyhound and a terrier.” No one moves faster.

Now let’s move to the terrier part. Your new president is, after all, from Chicago. Bob is a fighter. He is a trial lawyer’s lawyer.

But that is not all. Bob is the master of a vanishing art: writing. And not just ordinary writing, but great writing.

Finally, let’s talk about the “small” part of the definition of a whippet. It is not often that I get to look another Fellow of the College straight in the eye. With Bob, I can.

Enough said.

*Chilton Davis Varner  
Height: 5 feet, 3 inches, no smidgens*



- A. Fellow Newal Squyres and Linda Squyres, Boise, ID; Fellow Christine and Robert O’Hearn, Westmont, NJ
- B. Past Presidents face the inductees as Charles Renfrew reads the Charge
- C. Inductee George Knox and Becky Knox, Huntsville, AL
- D. Canadian Foundation President and Special Problems Canada Chair Bruce Carr-Harris, Ottawa, ON; Ontario Chair Sandra Forbes, Toronto, ON; Jane Bachynski, Ottawa, ON
- E. Nebraska Fellows and guests
- F. Hawaii Chair Howard Luke and Annette Luke, Honolulu, HI
- G. Fellows croon at the sing-along
- H. Passing the Maul



# RIDING THE WAVE: A PROFILE OF ROBERT L. BYMAN PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

President **Bob Byman** is a lucky man. At least that is what he told me when we sat down in a barren board room in San Francisco a few months ago, not wavering when I suggested to him Branch Rickey's famous aphorism that "luck is the residue of design."

As we began, I wasn't sure who was warier of whom (he's the President, after all, and the third College President from Jenner & Block, no less). It takes only a moment to encounter Bob's forthrightness and immediacy, and he admits he did not begin with a grand design, at least insofar as a law career was concerned. He thought an academic career as a math professor might be just the ticket to a fulfilling life but calculus proved to be an insurmountable obstacle.

Bob's father had been a lawyer by education. The Depression and a stint serving in WWII left him with no further interest in a legal career. As a result, he actively discouraged Bob from going into law. Despite the fact that he was not contributing financially anyway, he idly threatened withholding tuition but Bob persevered after an undergraduate education in political science.

After graduating from the University of Illinois Law School (the Fighting Illini) and exactly a week after graduation, he married his sweetheart, Jane, to whom he remains devoted to this day. They honeymooned in Bloomington, Illinois, the first town north of Decatur, where they married. He started work the following Monday. Oddly, he met Jane at a bar, but that's not the odd part. The odd part

is that it's the same bar where Jane's parents met each other, perhaps demonstrating that there is a dearth of popular bars in central Illinois.

As we know, having mentors is important. Bob was lucky to have had many, but three stand out: one, a former Jenner & Block partner turned law professor turned judge, Prentice Marshall; two, a law school classmate, Bob's Best Man, who led Bob to Jenner & Block, Al Metz; and three, the long-time Chairman of Jenner & Block, Fellow Jerry Solovy. Apart from two breaks, Bob has worked steadily there for forty-four years. One break was a tour in the Army Reserves and the other, misguidedly as it turned out, as in-house counsel for AC Nielsen. Nice career path.

Unlike today's specialist world, Bob never honed a specialty apart from developing a prodigious skill set and renown as a litigator. He has appeared once before the United States Supreme Court, has first-chaired cases in probably fifteen different disciplines and has had three 10B-5s (securities fraud cases for the Canadians reading this; and, no, I didn't know this either, if it makes you feel better). Yet, the most meaningful cases, the ones Bob told me made the most difference to him, the ones he found most fulfilling, were those in which





he walked two innocent men out of prison. I was fascinated by his recounting of these cases and it's easy to see that, modestly, he felt proud, as he should, in the telling. There's no better feeling, he said, than freeing someone from prison because of one's efforts. We all have visceral abhorrence at wrongful and unjust accusation. That there should be vindication, even once in a while, is something we can all celebrate.

When I asked Bob about his particular advocacy attributes, I found his answer compelling. People, he said, are best persuaded by communicating with them and letting them make up their own minds. No one, he rightly pointed out, was ever persuaded by being told what to do.

He is adept at synthesizing a complex set of facts, distilling them into a cohesive legal theory and, for better or worse, promptly forgetting it the next day. His participation on Jane's and his community theatre board and four-day role as the narrator in "Under Milk Wood," where cadence is all-important, must certainly have honed his oratorical skills or at least allowed him to show them to their best advantage. Naturally, he couldn't recall a word of Dylan Thomas's narrative a week after the run.

Bob's tenure is, as he puts it, almost accidental. Having focused on things other than the College for the first ten years after his induction, his immersion in our activities was roused by an unsolicited call from Past President Warren Lightfoot, calling on advice from Past President Greg Joseph. Thinking that Lightfoot was a telemarketer, Bob was about to hang up on Warren but, fortunately, heard

him out and became chair of the Federal Civil Procedure Committee.

Bob's vision of the Presidency is more as the College's face than as its leader in a *follow me*-sense. He views this time as riding the wave of committee work that preceded him. He finds it a humbling honor, he told me, dealing with the finest, highest calibre of people imaginable.

The challenge facing our profession—is it going to survive at all?—is not lost on Bob but he views the challenge philosophically. Lamenting the vanishing trial is like old generals lamenting the vanishing war: if people can resolve disputes without trial lawyers, it's probably a good thing for society. If, as a result, the College becomes smaller, so be it. Bob sees a clear distinction in heralding trial skills, and not simply persuasive skills. If we are to call ourselves trial lawyers, there has to be trial experience for lawyers to gain admission to the College.

Bob and Jane and their family (no offspring lawyers, alas) spend their free time with friends in the Santa Barbara area where waking up with children, grandchildren and an ocean view make life more-than worth living. Having grown up without permission to spend even the money he earned himself, Bob's extravagances are art and motorcycles. Still, his prized possessions are Jane and their family.

With values like these, Bob's year at the helm should prove rewarding for all of us.

STEPHEN M. GRANT, LSM  
EDITOR





## JEH JOHNSON APPOINTED SECRETARY OF HOMELAND SECURITY

Judicial Fellow **Jeh Charles Johnson** was sworn in as the fourth Secretary of Homeland Security on December 23, 2013. With a mission “to secure the nation from the many threats we face,” the United States Department of Homeland Security’s broad area of responsibility includes preventing terrorism and enhancing security, securing and managing U.S. borders, enforcing and administering immigration laws, safeguarding and securing cyberspace and ensuring resilience to disasters. Secretary Johnson, who was inducted as a Fellow in 2004, addressed the 2011 Spring Meeting in San Antonio on the subject of national security.

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

The College’s Sandra Day O’Connor Jurist Award Committee seeks 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 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 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 someone, visit the Awards and Competitions section of the College website, [www.actl.com](http://www.actl.com), download the Proposal Form and forward it by email to [nationaloffice@actl.com](mailto:nationaloffice@actl.com), attention Chair, Sandra Day O’Connor Jurist Award Committee.

Nancy Gellman, Chair

Charles Patterson, Vice Chair

Sandra Day O’Connor Jurist Award Committee



# THE BULLETIN BECOMES THE JOURNAL

The publication you are reading has a new name. Since 1984, *The Bulletin* has served as the Fellows' primary source of College information. Initially serving as a bulletin board of information about the College's activities and its meetings, the publication has evolved to include other articles of substance.

Following a layout re-design and new editors in 2012, the Board of Regents voted to change the publication's name to the *Journal*. The *Journal* will continue its coverage of College initiatives and events, and it will introduce new and exciting articles of interest to the format. The *Journal* will be published and mailed three times each year, and it will be available in an easy-to-read format on the College's website, [www.actl.com](http://www.actl.com).

**"What's in a name? that which we call a rose.  
By any other name would smell as sweet..."**

*From Romeo and Juliet by William Shakespeare*

## ADJUNCT STATE COMMITTEE SEEKS REFERRALS

The Adjunct State Committee seeks suggestions from Fellows regarding potential nominees for College Fellowship. The Committee's mission is *to consider and make recommendations with respect to nominations of lawyers whose trial experience and trial activities are not known to the State Committee of the particular state where the lawyer resides or maintains his or her office.*

The Adjunct State Committee's task is to identify, investigate and propose attorneys for fellowship who, because of their practice, never hit the radar screen of their respective State Committees. Typically, candidates have a trial practice that keeps them busy in states other than the one where their offices or residences are located. Often, such candidates have an intellectual property or white collar criminal practice, and because of the geographic diversity of their practices, are not well known to the Fellows in their home states.

If you are aware of an attorney who you feel meets the College's high standards and whose practice fits this description, please contact the National Office at [nationaloffice@actl.com](mailto:nationaloffice@actl.com)

David R. Kott, Chair

Paul T. Fortino, Vice Chair

Adjunct State Committee



# COLLEGE ELECTS NEW LEADERS



At the College's 2013 Annual Meeting in San Francisco, the following slate of officers was elected to serve the College during its 2013-2014 term.

## 2013-2014 EXECUTIVE COMMITTEE

President **Robert L. Byman** of Chicago, Illinois

President-Elect **Francis M. Wikstrom** of Salt Lake City, Utah

Treasurer **Michael W. Smith** of Richmond, Virginia

Secretary **Bartholomew J. Dalton** of Wilmington, Delaware

Immediate Past President **Chilton Davis Varner** of Atlanta, Georgia

At the same meeting, five new Regents were elected to four-year terms.

## 2013-2014 REGENTS

**William T. (Bill) Hangley's** jurisdiction as a new Regent of the College includes the states of Delaware, New Jersey and Pennsylvania and the Access to Justice and Legal Services and Complex Litigation Committees. Hangley was inducted at the College's 1987 Annual Meeting in San Francisco and has served as Chair of the Federal Rules of Evidence Committee. He was a member of the Communications, Complex Litigation, Judiciary, Outreach and Pennsylvania State Committees. Hangley also served on the Ad Hoc Committee on Judicial Independence and the Task Force on Discovery and Civil Justice. With a strong emphasis on attorney malpractice defense, Hangley's practice includes issues related to First Amendment, antitrust, intellectual property, estates, franchise, environmental, construction, employment, securities and general business. He and his wife, Mary Dupree Hangley, live in Philadelphia, Pennsylvania.

**W. Francis (Frankie) Marion, Jr.**, serves the Fellows of North Carolina, South Carolina, Virginia and West Virginia. His area of responsibility also includes the Judiciary and Outreach Committees.





From left to right:

William T. Hangley

W. Francis Marion, Jr.

Elizabeth N. Mulvey

C. Rufus Pennington, III

Kathleen M. Trafford

Marion previously served as Chair of the South Carolina State Committee and a member of the National Moot Court Competition and Outreach Committees. Marion was inducted at the 2000 Annual Meeting in Washington, D.C., twenty-two years after his father, **William Francis Marion**, was inducted. A personal injury and business litigation practitioner, Marion and his wife, Beverly, live in Greenville, South Carolina.

**Elizabeth N. (Liz) Mulvey** serves as Regent to the Atlantic Provinces, Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island, and the Emil Gumpert Award and Jury Committees. Mulvey was inducted in Philadelphia, Pennsylvania, at the College's 1999 Annual Meeting. She has chaired the Massachusetts State Committee and the Jury and Outreach Committees, and she served as a member of the Regents Nominating Committee. Mulvey was elected in March 2013 to complete the term of Regent Hon. **William J. Kayatta, Jr.**, when he was appointed to the U.S. Court of Appeals. She practices medical malpractice and personal injury law. Mulvey, her husband, Tom, and their two children live in Hingham, Massachusetts.

**C. Rufus Pennington, III**, serves as Regent of Alabama, Florida and Georgia, and to the Admission to Fellowship and Teaching of

Trial and Appellate Advocacy Committees.

Pennington was inducted at the 2004 Spring Meeting in Phoenix, Arizona, twenty-one years after his father, **Carl R. Pennington, Jr.**, was inducted as a Fellow. Pennington has chaired the Admission to Fellowship and Florida State Committees and served as a member of the Access to Justice and Legal Services, Canada-United States, National Moot Court Competition, National Trial Competition and Outreach Committees. His Jacksonville Beach, Florida, practice is focused on personal injury, wrongful death and business disputes. Pennington and his wife, Cristina Gerdau Johannpeter, live in Atlantic Beach, Florida.

**Kathleen M. Trafford** is Regent to Kentucky, Michigan, Ohio and Tennessee, as well as the Attorney-Client Relationships and Griffin Bell Award for Courageous Advocacy Committees. Trafford was inducted at the 2004 Spring Meeting in Phoenix, Arizona, and has served as Chair of the Ohio State Committee and a member of the Attorney-Client Relationships Committee. Her law practice serves private clients in business and commercial cases and regulatory litigation. Trafford and her husband, Fellow **Robert W. (Buzz) Trafford**, live in New Albany, Ohio.



# CANADIAN JUSTICE WAGNER INDUCTED AS HONORARY FELLOW

The Honourable Mr. Justice **Richard Wagner**, who joined the Supreme Court of Canada in 2012, was inducted as an Honorary Fellow at the American College of Trial Lawyers 2013 Annual Meeting in San Francisco, California. In keeping with tradition, following his induction, Justice Wagner addressed the Fellows and shared his thoughts about the College and its mission in the remarks that follow.

Machiavelli once said, “It is not titles that honour men, but men that honour titles.” So while I’m here to join the ranks of this much esteemed institution as an Honorary Fellow, I cannot help but acknowledge that it is more of a celebration of the achievements and greatness of all the Fellows here today, and of those that could not make the trip. Without all of you who bolster the reputation of the American College of Trial Lawyers, today would not have the same deep meaning and the same sense of accomplishment for me. It is all of your actions and success that bring honour to this institution and to those fortunate enough to be bestowed with the title of “Fellow,” or in my case “Honorary Fellow.” So for that I thank you. I am humbled to be accepted into an organization with such a rich history of influence and prominence and whose membership is a who’s-who of the legal profession. It is truly an honour.

I don’t exaggerate when I say that it has been a lifelong, or at least a career-long, ambition of mine to become a member of the College. While there are many clubs, societies and organizations whose membership carries great prestige, there are few that have the allure of the American College of Trial Lawyers. In fact, as far back as I can remember, there have always been only two organizations which I have had a burning desire to join. The College is one of them. So today I am fifty percent of the way to getting my wish.

Now, I am sure a number of you are wondering what else I could possibly place in a league with





Justice Wagner and President Varner

the College. For those of you here that know me well, it will come as no surprise. But I would love, almost as much as I would have loved to join the ACTL before my induction, to become a member of the Augusta National Golf Club in Georgia. Sadly, unless one of you has an inside track, that dream seems very unlikely.

But I'm not willing to close the door on Augusta just yet. It may seem elusive now, but I would have said the same thing about the College at many points during my career.

Truth be told, I made many a decision in the early stages of my career in an effort to lay the groundwork for a nomination into the College. By way of example, as a founding member of the Canadian College of Construction Lawyers, I tried to build bonds with the American College of Construction Lawyers through conferences and cooperation efforts; hoping that maybe, just maybe, those connections could help me get invited to the table. But that was not enough to garner that coveted nomination; nor were the tireless hours I spent toiling away in my litigation practice, trying to hone my advocacy skills and boost my reputation within the industry.

And just as I thought that I might one day realize my dream of joining the ACTL, I was appointed as a Trial Judge to the Superior Court of Québec.

All those efforts to shore up my candidacy with the College were in vain. Sure, an appoint-

ment to the bench was already something, but it was no invitation to the American College of Trial Lawyers. By accepting my new role on the bench, I thought that I was shutting the door on the College for good; an unsavory prospect, to say the least.

But I was fortunate enough to move from the Superior Court of Québec, to the Québec Court of Appeal, and eventually to the Supreme Court of Canada, making my candidacy just appealing enough to finally get the call which I so longed for.

Now, my reference to Augusta may seem a little out of place. But I feel it is a comparison that aptly captures both my love of golf and the elusive nature of membership here at the College. And with my history of judicial appointments, golf and my induction here are more intertwined than you might expect.

What you have to understand is that before my appointment to the bench, I managed to golf sixty or more rounds of golf every year. I would find ways to take clients out for a round of golf, some drinks and a nice dinner. It was a wonderful release from the stress of the six minute shackles of practice.

But that all ended when I became a judge. Booking off entire afternoons just didn't fit with the Court's schedule, and my tee-times suffered as a result. So did my handicap.





It was during this nine-year lull in my golf game that I got the call to be elevated to the Québec Court of Appeal. Curiously, the appointment came on the heels of a hole-in-one that I had shot only a few weeks earlier in what had become an all too rare game of golf. I mention this hole-in-one not to boast, because any golfer will tell you that it's largely luck, but because a few years before, a good friend of mine, Justice Jacques Dufresne, was also elevated to the Québec Court of Appeal a few short weeks after he had shot a hole-in-one.

I am not a superstitious person, but when it comes to golf, all bets are off. So the only thing I took from that string of coincidences is that holes-in-one lead to judicial elevation. I also knew that if I was elevated from the Québec Court of Appeal to the Supreme Court of Canada, I could finally get my invitation to join the American College of Trial Lawyers. So I did the only logical thing that any reasonable person in my situation would do. I only golfed par threes. I played every pitch and putt I could get my hands on. I replayed the Number Two hole at my home course over and over and over again. I was determined to land that appointment and I was willing to golf my way there if that's what it took.

This may come as a surprise to you, but it turns out you don't need a hole-in-one to get appointed to the Supreme Court of Canada. It's a good thing too, because I haven't had another one since and I couldn't be happier that I found another way to join the American College of Trial Lawyers.

Now that I am an appellate judge, I no longer spend my days in trials, unless you count reading the transcripts of trials that, years later, make their way to my desk. I love my new job. But I'd be lying if I said I didn't also miss the energy running trials, the challenge of developing a creative trial strategy, or the satisfaction of achieving a client's wishes.

After twenty-five years of practice arguing before judges, my time as a Trial Judge at the Superior Court of Québec gave me a new appreciation of the trial process. My role was different, notably, I

no longer had clients calling me at all hours. But my love of good trial advocacy only grew during my time on the bench.

It is this love that makes my induction today so meaningful. I left the practice of trials behind, but the energy is still there. I am energized to join this community of trial lawyers for whom I hold so much respect.

I am also heartened to join a community that recognizes the flaws in its own profession and seeks to remedy them. To wrap up, I'll touch upon two issues of concern for this College, both of which are issues I hold dear: access to justice and judicial independence.

I may love trial advocacy but I am no romantic. Trials can be cripplingly expensive. They can create new problems even as they solve old ones. Most troubling, trials are out of reach to many of the people who most need them. Hard-working Americans and Canadians are denied their day in court. In my previous life as a trial lawyer, my proudest achievement was my involvement in setting up a centre for access to legal information, which was Québec's attempt to respond to the informational imbalance between the big firms in major cities, and smaller firms and sole practitioners in remote areas. I commend the College's work on Access to Justice, and could not be happier to lend my name to this worthy cause.

Finally, before my appointment to Québec's trial court, I had the opportunity to promote independence of both the judiciary and the Bar, as *Bâtonnier*, or President, of the Bar of Montréal. I continued this work as President of the Conference of the Superior Court Judges in Québec. I know that the challenge of judicial independence is different in Canada and the United States, and indeed across each of our countries' states and provinces. Judicial elections, for instance, are quite foreign to my experience as a Canadian jurist. I recall a lunch last month with my law clerks, when one of them asked me what it would feel like to campaign for my own judicial appointment. I must admit, I find this difficult to imagine. I know the preservation of



judicial independence is a sensitive area requiring smart policy and concerted engagement by all parties, not least trial lawyers who live and breathe the process every day. I congratulate the College for its work in this important area.

In fact, I have already begun to reap the benefits of membership. Before my appointment to the bench, I would often travel into the States to meet with clients that had cross-border operations. It never ceased to amaze me how challenging it was to cross the border for the purpose of providing legal services. Customs agents would interrogate and hassle me as though providing legal advice in another country was a criminal offence itself. The inconvenience of crossing into the States grew to the point where I would just consider telling the customs agent that I was travelling for leisure with my three-piece suit and leather suitcase. I am sure many of you here today can relate.

But this week was different. When I crossed the border and the customs agent asked me the nature of my trip, I replied by saying, “I’m being inducted as an Honorary Fellow of the American College of Trial Lawyers.”

To which the agent replied, “well come right through then, sir.”

And that sort of respect for the College is well deserved. Because it is all of you, the Fellows of the American College of Trial Lawyers, that work tirelessly as the backbone of our respective legal systems. Every day you put your reputations on the line and your abilities to the test, all while seeking to shine light on injustices, to provide a voice for those that cannot speak for themselves, to stand up for the weak, and most importantly, to uphold the rule of law. While that is a heavy burden, you all have proven more than capable of carrying the load while demonstrating grace and humility and while instilling confidence in the general public.

Each one of us must remain cognizant of the importance of maintaining justice in our modern

world. Each one of us must find ways that we can contribute to navigating the dynamic realities of changing technologies, changing global arenas, and most importantly, the changing expectations of the public in what justice must deliver.

Remember, the survival of our democracy depends upon maintaining the credibility of the judiciary and the legal profession in the minds of litigants and the public at large. Every citizen must feel that they are able to enforce their rights under fair and reasonable conditions, and every citizen must feel that justice is administered with equity.



So let me close by issuing a challenge to each of you here today. Whatever role you hold within the legal system, find a way to contribute to the goal of maintaining justice in our ever-changing world. Use whatever unique skills you possess and whatever influence you carry to advance the interests of our society and strengthen the foundation of our democracy.

I tip my cap to each of you for not only setting the standard so high, but by living up to it and surpassing it every day in your work. And I thank you for allowing me to join your ranks as an Honorary Fellow.

Thank you. ■



**THOMAS E. DEACY, JR.:**  
**THE PASSING OF A PAST PRESIDENT OF THE**  
**AMERICAN COLLEGE OF TRIAL LAWYERS**





**T**homas E. Deacy, Jr. the twenty-sixth President of the College, died September 23, 2013, three weeks before his ninety-fifth birthday.

He was born October 14, 1918 in Kansas City, Missouri. In a day when a complete undergraduate degree was not a prerequisite for law school, he entered the University of Missouri, Columbia, in 1935 and graduated from its School of Law five years later. A member of Sigma Chi Fraternity, he was president of the Inter-Fraternity Council and a member of QEBH, one of the university's two senior undergraduate honor societies. In law school, he served on the Editorial Board of the Missouri Law Review. He then practiced law with his father, who had practiced in Kansas City since 1916, until he entered the United States Army as an officer in 1942, serving until the end of World War II.

After the war, Deacy practiced law in Chicago for ten years with Taylor, Miller, Busch & Boyden, where he became a partner. While in Chicago, he earned an M.B.A. from the University of Chicago and was inducted into the business school honor society, Beta Gamma Sigma. His willingness and ability to lead emerged early. While in Chicago, he was President of the Juvenile Protective Association of Chicago and the Chicago Council of the Boy Scouts of America.

He was elected to the Board of Regents in 1968, as Treasurer of the College in 1973 and thereafter as its President-Elect. After the premature death of his predecessor, Austin W. Lewis, Deacy presided over the College's Spring Meeting in Acapulco in 1975, where it celebrated the 25th Anniversary of its founding. He also served for twelve years on the College's Committee on Special Problems in the Administration of Justice, including serving as its chair, and on the Task Force on Litigation Issues. For three years in the early 2000s, he chaired the College's Budget and Audit Committee.

Deacy was a member of the United States delegations to the first two Anglo-American Legal Exchanges, which the College sponsored in 1973 and 1977. Chief Justice Warren Burger, who had led the United States delegation to the 1973 Exchange, had made better training for trial lawyers one of his priorities and urged the College to join in that effort. The Emil Gumpert Award

for excellence in teaching trial advocacy, honoring the Chancellor Founder of the College, was created partly as the College's response. It was first presented at the Acapulco meeting by College Past President and Associate United States Supreme Court Justice Lewis F. Powell, Jr.

A member of the newly-created American College of Trial Lawyers Foundation, in the early 1990s, Deacy made one of the first major gifts to the Foundation, expressing the desire that it be used to support efforts to promote civility in trial practice.

In addition to his contributions to the College, from 1975 to 1979 he served as a member of the Committee of the Judicial Conference of the United States on Standards for Admission to Practice in the United States Courts. He also served on the American Bar Association's Standing Committee on Federal Judiciary, charged with independent vetting of every nominee to an Article III judgeship, on the ABA Commission on Standards of Judicial Administration and on the Missouri Bar Commission on Judicial Selection. He was a member of the American Law Institute.

The breadth of his interests was exemplified by his leadership in the civic arena and in the arts. He served as President of the Kansas City Philharmonic Association, Chair of the Conservatory of Music of Kansas City, President of the University of Missouri Law School Foundation, Trustee of the University of Kansas City and Trustee of the Nature Conservancy. In the business world, he was a Director of the St. Louis-San Francisco Railway and Burlington Northern, Inc.

After his father's death, Deacy and his mother established the Thomas E. Deacy, Sr. Trial Lawyer Award at the University of Missouri Law School, to be given annually to a third-year law student who demonstrated trial skills and the attributes possessed by the honoree. In 2008, with a major monetary gift he created the Thomas E. Deacy, Jr. Trial Practice Endowment to support the Law School's trial practice program.

Deacy's published obituary observed, "He loved golfing with his friends and family as long as they could hit the ball more than 100 feet and he was a passionate and skilled duck hunter, always claiming, 'No, I got that one.'"





By reputation one of the most feared trial lawyers in his area, he tried cases until 1996, when he turned 78. A 2005 article in the *Kansas City Business Journal* noted that at age 86 he still occupied his firm's corner office, with a pair of binoculars on his window ledge, a view of the Missouri River from the window and Norman Maclean's short story, *Retrievers, Good and Bad*, a gift from College Past President Charles Renfrew, on his desk. The article noted that, although he no longer went duck hunting, he was still the golfing champion of his age bracket at the Kansas City Country Club and that, "His voice no longer keeps jurors

that they have a voice, but not a vote.

Tom Deacy, who College records show attended forty-seven such meetings after his presidency was over, was an exemplar of that role. He was never reluctant to speak up with his booming voice and dry sense of humor when he saw a proposed change he thought called for more debate or an issue involving a conflict between principle and practicality on the verge of being decided closer to the line between the two than he thought appropriate. He was especially attentive to the way in which the College's funds were being spent and indeed served as chair of a special Budget and Audit Committee from 2000 to 2003

That was the business lawyer side of Tom Deacy. His friends also remember him for his genuine personal interest in them and for his generosity. One past president and his wife recall attending a Fellows meeting in Kansas City, after which the Deacys spent the day with them, took them for a visit to their Mission Hills home, where Tom entertained them in detail about the surrounding fauna and flora, and then to an *alfresco* lunch at their country club. Quite unexpectedly, they were then invited to be the only non-family participants at Tom's eightieth birthday party the next day.

Members of one past group of Regents will long remember an occasion when they were being transferred *en mass* on a bus ride from a Regents meeting at Laguna Beach to the Fellows Meeting in San Diego. Tom and Jean Deacy enabled them to break the long journey by treating the entire group to a sumptuous lunch on the lawn of their West Coast home, perched on a cliff overlooking the bay at La Jolla.

With the passing of Tom Deacy, the twenty-sixth of the sixty-three past presidents of the College, twenty-one past presidents remain, actively carrying out the role that the founders of the College envisioned, a role that in many ways Tom Deacy epitomized.

E. OSBORNE AYSCUE, JR.  
EDITOR EMERITUS



Deacy with Past President of the College Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States, 1990.

alert and entertained, but it can rouse a Kansas City Club waiter from 12 tables away."

Twice married, Deacy is survived by five children, four daughters and a son, from his first marriage to Jean Freeman Deacy— as well as by seven grandchildren and four great-grandchildren. His second wife, Jean Holmes McDonald Deacy, died in 2010 after a long illness.

The founders of the College structured its leadership so that past presidents would remain ex-officio members of the Board of Regents for life, though they would have no vote. Their clear purpose was to make the past presidents the unofficial guardians of the College's traditions and standards. To fulfill that role, they regularly attend meetings of the Board of Regents, where they are free to speak and to make and second motions, so



# AWARDS AND HONORS

**Mathias H. Heck, Jr.**, of Dayton, Ohio, was elected Chair of the American Bar Association's Criminal Justice Section at its annual meeting in August. With a mission to be "the voice of criminal justice," the section's 20,000 members include prosecutors, public defenders, criminal defense lawyers, attorneys general, law students and professors of law. Heck is the Prosecuting Attorney of Montgomery County, Ohio, and was inducted into the College in 1996. He has served as Chair of the National College of District Attorneys Committee (since re-named the Prosecuting Attorneys Committee) and as a member of the Ohio State Committee

The Honorable **Charles R. Breyer** and **Nanci L. Clarence** have been appointed to positions with the U.S. Sentencing Commission. Judge Breyer was confirmed by the U.S. Senate to one of the seven seats on the Sentencing Commission. Clarence will represent the Ninth Circuit as a voting member of the Practitioners Advisory Group. An independent agency of the judicial branch of government, the Sentencing Commission establishes sentencing policies and practices for federal criminal cases. Judge Breyer was inducted into the College in 1989 and has served as a member of the Federal Criminal Procedure Committee. Clarence was inducted in 2005 and is the current Chair of the Federal Criminal Procedure Committee. She has served as Chair of the California-Southern State Committee and as a member of the Regents Nominating Committee.



## DEPUTY DIRECTOR AT NATIONAL OFFICE RETIRES

Ann Walker, Deputy Director at the College's National Office, has announced she will retire on March 31, 2014. Walker joined the College in 2007. She says she has mixed feelings as she leaves and that the Fellows and the College, as an institution, have great meaning for her. "I treasure the relationships, laughs and accomplishments we've shared. I look forward to working with each of you as we transition to this next phase of the College. And I hope you will stay in touch."

# JUST CALL ME MARTY

Incoming President **Robert Byman** introduced the extraordinary Rear Admiral **Marsha J. (Marty) Evans**. Byman recounted how the infamous Tailhook incident, as well as many other documented, serious cases of sexual harassment, assault and abasement pose a serious challenge to the military.

By the time she left the Navy in 1998, she had attained the highest rank ever achieved by a woman in that service. She was the United States Navy's second female Admiral.

In 1998, when Admiral Evans retired from the Navy after thirty years of service, her achievements were legendary. Despite her accomplishments, she invites all who meet her to "just call me Marty."

After she retired from the military, Evans went on to become the Chief Executive Officer of the Girl Scouts of America, Chief Executive Officer of the American Red Cross, and acting Commissioner of the Ladies Professional Golf Association. And she found time to become a scratch golfer.





Evans spoke of familiar military topics, but she primarily opted to provide her personal views on sexual harassment and assault in the military. As she pointed out, “one of the singular joys of retirement” was not having to clear any of her speeches and being able to speak frankly about difficult and ultra-sensitive topics.

She began her remarks by recounting a conversation she had months earlier with a leader in her Florida community who inquired if she, Evans, would recommend an appointment to the Naval Academy to his daughter. For the first time in her life, Evans was unable to unequivocally answer “yes,” notwithstanding the brilliant career she had enjoyed.

Women have served the military in unofficial capacities since the American Revolution. They were officially recruited as nurses during the Civil War, and three hundred thousand females served during World War II. “Since the end of 1970, recruiting more women into the military has been a cost-effective way to fill the ranks. Today, women compose about 14.5% of the active duty forces and more than 18% of the Reserves. There are approximately 365,000 women serving in the military. A hundred have been killed, and more than 900 have been wounded in Iraq and Afghanistan.”

Evans shared her belief that women in the military do not want special treatment. They

want to do the jobs for which they are qualified, without sexual harassment or assault. She recounted that the military leadership has vowed to eradicate negative behavior. Yet today, we still speak of military sexual assault as a crisis and an epidemic.

Admiral Evans provided statistics based on an anonymous survey:

- There were an estimated 26,000 cases of unwanted sexual conduct in 2012, up from 19,000 in 2010, a 37% increase. 6.1% of the women surveyed and 1.2% of the men surveyed had experienced an unwelcomed sexual incident.
- In 2012, only about 3,400 incidents were officially reported, a 6% increase since 2011.

To put a positive spin on it, Evans indicated that “the Department of Defense suggests that the higher number of reported incidents indicates better education and training about reporting options, as well as higher confidence in reporting mechanisms, better case management and reduced stigma about making a report.” She indicated that it is important to protect individuals and ensure opportunities while accomplishing the mission. She emphasized the importance of recruiting high-caliber individuals motivated to serve. “It’s about organizing, training and leading the men and







women who have volunteered to serve this nation into the most-effective fighting force possible to carry out the mission.”

Evans acknowledged that victims may not come forward because “they lack confidence in the system and do not think their complaints will get a fair and impartial hearing.” The DoD has embarked on a “wide-ranging sexual assault prevention and reporting strategy” with a goal of prevention. The strategy includes creating a legal advocacy program. Evans, however, was not convinced that all necessary actions to address the crisis are being implemented. She noted that despite a number of initiatives, the Department has changed neither how the command handles sexual or other serious assaults, nor how the crimes are tried in the military justice system. She noted that in two recent Air Force sexual misconduct cases, the general officer who convened the courts-martial ignored legal advisors’ recommendations and overruled the jury’s findings without subsequent public comment.

Looking forward, Admiral Evans proposed several measures:

Outside support needs to be demonstrated for the men and women in the military. There

should be significant structural change in the military justice system, but necessary cultural change happens in the military “only when outside forces such as the media and opinion-making elite exert unrelenting pressure.”

Lawyers need to provide *pro bono* assistance to members of our military. “When women and men in the military approach [members of this audience] for legal assistance or advice, consider providing it on a *pro bono* basis.” She noted that appointed JAG officers are often the most-junior of the armed forces legal professionals and may lack the necessary experience to provide the assistance required.

Finally, Evans sought support for significant reform in the military justice system. She encouraged the audience to endorse legislation introduced by Senator Kirsten Gillibrand (D-NY) and others to take prosecution of sexual assaults and other serious crimes outside the victim’s chain of command so as to enable victims to report such crimes without fear of retaliation. She exhorted the audience to promote measures that will make the military justice system more independent and impartial, to put legal judgment in the hands of legal experts.

Evans reiterated that protecting military members involves not only the military justice system but, at the end of the day, “it’s about military readiness which should be every citizen’s concern.”

Rear Admiral Evans treated the audience to an insightful insider’s view of the military justice system, and gave the listeners a first-hand look at the best and the brightest the Navy has produced. And by the way ... just call her Marty.

LYNNE D. KASSIE, AD. E.  
Montréal, Québec



# PATENT LITIGATOR DONALD R. DUNNER: RECIPIENT OF SAMUEL E. GATES LITIGATION AWARD

**Donald R. Dunner** of Washington, D.C., was honored as the twenty-third recipient of the Samuel E. Gates Litigation Award, presented at the 2013 Annual Meeting in San Francisco. The College established the award to honor a lawyer or judge, whether or not a Fellow of the College, who has made a significant, exceptional and lasting contribution to the improvement of the litigation process. It is awarded “from time to time” when worthy recipients are known, rather than on an annual or as-designated frequency.



*President Varner, Award Recipient Dunner and Committee Chair Tuohey*

In his introduction, the Chair of the Samuel E. Gates Litigation Award Committee, **Mark H. Tuohey III**, of Washington, D.C., referred to Dunner as a “fellow Fellow and great friend,” and said that Dunner “has spent fifty years at the bar as one of the profession’s experts and great contributors to the development of patent law and other intellectual property legal specialties.” Dunner is the acknowledged architect of patent law, whose fifty-eight years practicing patent law admittedly dipped into “the back waters of the profession.” Dunner spoke of patent law in terms of revolution in the federal courts and its significance to the future.

As he spoke about his contributions to the practice of patent law, Dunner was modest and humble. As he received the Gates Award from President **Chilton Davis Varner** and his friend, Mr. Tuohey, he was enthusiastic and genuine. As he thanked his fellow Fellows for their friendship, Don Dunner’s appreciation was palpable.

# VICTIMIZER OR VICTIM? TRAVIS TYGART TALKS

At the recent 2013 Annual Meeting in San Francisco, **Travis Tygart**, the Chief Executive Officer of the United States Anti-Doping Agency (USADA), spoke about his battle to expose cyclist Lance Armstrong as a serial doper and sporting fraud.

In June 2012, USADA notified seven-time Tour de France winner Lance Armstrong that it was formally charging him with violations of the USADA code involving the use of performance enhancing drugs (PEDs). The allegation was that Armstrong and his cycling team had been involved in systematic use of banned PEDs. The formal charges included allegations of PED possession and trafficking, and aiding and abetting in a cover-up of drug violations. The charges were the result of a several-year-long investigation into allegations about Armstrong and his team, prompted by revelations made to USADA by Floyd Landis, a former Armstrong teammate and disgraced Tour champion who had been stripped of his yellow jersey for using banned substances to win the 2006 Tour. Based on those allegations, USADA went to work, interviewing witnesses and sifting through evidence. Meanwhile, Armstrong, wealthy and well-connected, led a media-based, political and legal assault against cyclists and others who dared to speak to the investigators, against the investigation and against Tygart. Under USADA rules, Armstrong was entitled to a fair hearing, and the matter was headed to such a hearing when, at the eleventh hour, Armstrong announced he would not contest the charges. As a result of his default, in August of 2012, USADA banned Armstrong from all Olympic-sanctioned sports for life and ordered all of his competitive victories from 1998 onward nullified. Later, in accordance with the rules, it issued a comprehensive “reasoned decision” documenting the evidence it relied on for its ban.





Tygart is a lawyer. He graduated from Southern Methodist University in 1999, and early in his career worked for Fulbright and Jaworski as a litigation associate, then as a sports lawyer with the firm of Holme Roberts & Owen. In 2002, he went to work for USADA as Director of Legal Affairs and became its CEO in 2007. Tygart explained that while USADA receives funding from the federal government, it is an independent non-profit agency tasked with ensuring clean sport. Unfortunately, USADA's jurisdiction is limited to those sports organizations who have agreed to submit to its rules. Those professional sports that we commonly associate with doping, pro football and baseball, do not accept USADA's jurisdiction. (For all the bad publicity cycling comes in for, it is far ahead of big pro sports in cleaning up its sport. A first violation for a cyclist typically carries a two-year ban and likely job loss; in football, a four-game suspension.) Cycling, though, as an Olympic sport, does come under USADA jurisdiction, as USADA administers drug testing of U.S. athletes for the U.S. Olympic Committee. American professional cyclists are thus subject

to USADA jurisdiction, which is how Tygart and Armstrong came to blows.

Full disclosure: I am a huge fan of professional cycling. I raced bicycles as a master's amateur for many years, and more than once have been among the screaming throngs who line the mountain passes of France as the peloton surges past. When former three-time Tour de France winner Greg LeMond's career prematurely dissolved in the wake of a tragic shooting accident (but not before he'd marked a stunning comeback from the near-death experience to win two more Tours and a second world championship) I, and thousands of other fans, eagerly awaited a new American cycling hero.





We found that hero in Lance Armstrong. What a story! Poor kid from a broken family, raised on the wrong side of the tracks. World class triathlete is a teen. Precocious World Champion in 1993, in Oslo, Norway, in his first year as a pro cyclist, at age 21. Winner of several dramatic stages of the Tour de France in his early 20s. Stricken with advanced metastatic testicular cancer in 1995, and then cruelly let go, basically given up for dead, by the French team Cofidis that had hired him away from his U.S. team. Then, like Lazarus risen, he won the 1999 Tour de France, seemingly better off from his near death experience: leaner, meaner and far better at climbing the brutal mountain stages than he'd been before cancer.



Then, as his successive victories in the great race mounted, so did the rumors of doping. Even the most zealous of Armstrong fans, and I guess I counted myself among them, could not fail to wonder how he could dominate the other great tour riders while riding clean, when year after year, his rivals were implicated in doping. Marco Pantani, Jan Ullrich, Barjane Reis, Joseba Beloki, Ivan Basso, Alex Zulle, Tyler Hamilton, Floyd Landis; all confessed or were at least suspended at some point for drug involvement. (In all, 20 of the 21 podium finishers in the Tour between 1999-2005 have now been directly linked to PED use.) I suppose we all knew, deep in our hearts, that Lance's run of victories was too good

to be true. Yet, Armstrong made a convincing argument: "I am the most tested rider in history. I live in France and train in France, one of the strictest anti-doping countries in the cycling world. I am not a cheat."

Then came Lance's retirement in 2005 at the end of seven straight tour victories. A feat never accomplished before and likely never to be achieved again. He retired as the greatest Grand Tour rider in history. In 2009, he returned for a brief two-year comeback. Now we saw an athlete in the autumn of his prime. More vulnerable, now beatable, less self-assured. No victories this round. Not even any stage wins. Then a second retirement. Fade to black.

So when in 2010 Tygart started investigating Armstrong, many of us were a little resentful and perhaps suspicious of his motives. "Hey, Lance never tested positive. What is the agenda here? A crusade to boost Tygart's own career? Even if Lance did dope, why bother? He's retired now. It's all in the past. Let the man rest. If he did dope, so what? They all doped. He is a national treasure and an icon of the campaign to cure cancer." And much of the press seemed to bend Lance's way, portraying him as a victim of Tygart's crusade. Tygart was perceived by many fans as persecuting Armstrong for unclear but perhaps selfish motives. When I saw Tygart's name on the program as speaker at the fall meeting, I admit I still had some lingering impression that he was persecuting Armstrong.

Travis Tygart's forty-minute presentation to the College lay to rest any doubt as to who was the victim and who the victimizer. Tygart's presentation showed that he was subjected to a multi-fronted attack by the pro-Armstrong camp, a victim of political intimidation, lawsuits, press vilification and even death threats. But more importantly, he made an airtight case for why it matters that PEDs be eradicated from all professional sports.

First, Tygart reminded us that Armstrong was not a retired athlete back home on the couch when the charges were brought; rather, he had become a professional triathlete who was training seriously to win the Ironman World Championship. (USADA has jurisdiction over



triathlon as well.) On the latter point, Tygart reminded us of the tragedy of those clean athletes, like Scott Mercier, who refused to dope and whose careers were cut short. (He could have recounted the story of American pro cyclist David Zabriskie, whose troubled childhood centered around growing up with a father who was a drug addict, who broke down in tears when told that he'd have to start injecting dope if he wanted to succeed in pro cycling. Zabriskie unfortunately acquiesced.) Tygart also explained that even if safe amounts of performance PEDs could be administered, different athletes have markedly different responses to PEDs so that pro sports in a PED-permitted future would be dominated by the best responders, and not the most gifted athletes. He argued too, that even if a safe dose of a PED were permitted, there would always be those who would try to go beyond the permitted safe level, and then the anti-doping agencies would still be chasing the same offenders, but now, instead of asking "if," they would be asking "how much?" Most convincing was Tygart's argument that if PEDs were allowed in pro sports, then it would be even harder to keep them out of college sports which, after all, have become the farm programs for pro teams. And if the college athletes were then permitted to use them, how soon after would high school athletes insist, who, after all, are striving to get onto the top college teams? Tygart stated that he didn't want to see the day that parents had to engage in the difficult conversation about when to start their gifted pre-teen athlete on a drug program so that he could keep up with the other kids.

On the question of who was hounding whom, Tygart recounted being criticized in the national media by Armstrong's powerful friends, examples being articles by Washington Post sports columnist Sally Jenkins, who wrote several pieces critical of Tygart's investigation. Hardly impartial, Jenkins had co-authored two of Armstrong's best-selling books.

Tygart received a letter from a member of the House Judiciary Committee inquiring into the prosecution of Armstrong, and legislation was introduced, aimed at the USADA. Inquiries came from others on the Hill stimulated by lobbyists favorable to Armstrong and his charity. Tygart was never far from recalling that his living might be endangered, given that USADA depends on federal funding.

Tygart described Armstrong's intimidation of his fellow athletes, recounting how he chased down a breakaway made up of cyclists who posed no threat to him in the overall Tour standings, simply to ruin the chances for a win by one cyclist in that group who had agreed to speak to authorities about doping. Tygart recounted his own moment of doubt, describing the morning he was driving his young daughter to school and almost became physically sick after receiving a call from a reporter who broke the news to him that Armstrong had just sued not only USADA, but Tygart himself, in a federal lawsuit aimed at trying to derail the USADA investigation.

Tygart has demonstrated personal bravery. Having received multiple death threats from presumed fans of Armstrong, he went to the FBI, assisted in their investigation, and was pleased to report at the College meeting that two of the threatening fans had recently pled to federal charges and were possibly on their way to prison.

Tygart was credible in his assertion that he is more interested in learning the truth, and getting PEDs out of athletics, than in ruining cyclists' careers. He reminded us that all the cyclists who came forward and admitted the truth during his investigation were rewarded by receiving the lightest possible suspensions. He reiterated his often-repeated offer to Lance Armstrong to come forward and tell all. Unfortunately, he has not.

S. CROCKER BENNETT, II  
Burlington, Vermont

# A STORYTELLER'S HISTORIC JOURNEY: FELLOW ROBERT B. WALLACE SPEAKS

The rousing, crowd-inspiring conclusion to the 2013 Annual Meeting's professional programs was provided by College Fellow **Robert B. Wallace**, of Charleston, South Carolina.

Wallace was introduced to the assembled guests by another native South Carolinian, incoming Treasurer of the College, **Michael W. Smith**, who now resides in Richmond, Virginia. Smith introduced Wallace as “a storyteller ... a raconteur.” More importantly, Smith set the stage perfectly: “As we leave here today, his story, I think you will agree, will remind us of who we are and why we chose to become trial lawyers in the first place.”

Wallace did not disappoint.

He began with a joke; then an admonition: “Never forget that the practice of law is not about file numbers or billable hours. The practice of law is about people.”





### THE INJUSTICE OF IT APPEALED TO ME...

One of Bob Wallace's first cases involved three children, three siblings, whose Jewish father had a breakdown that caused him to become physically incapacitated. After a period of time, the children's mother divorced their father and remarried. Despite the best efforts of the paternal grandparents to maintain a relationship with their son's children, over time, the thread that connected the children with their father and grandparents wore thin. Eventually, they lost contact.

Six years passed, and under South Carolina's parental rights laws, the lack of visitation or support from the father meant his parental rights could be terminated. The grandparents approached Wallace, hoping to reestablish the connection between them, their son and their grandchildren. Wallace acknowledged that the only thing left of the relationship was a very, very thin thread.

"I had this mental image of the judge reaching for a pair of scissors. All I could think was, 'whatever you do, don't cut that thread.'"

And then, miracle of miracles, "that little boy" walked across the courtroom, and he held out his hand and he said, "I want to meet my grandfather." Wallace continued: "The thread was strong enough for a little six-year-old boy to walk on it all the way across the courtroom

to meet his grandfather and to shake his hand."

After the miraculous moment in the courtroom, when the judge left the thread intact, another ten years passed, again with very little contact between the father, the paternal grandparents and the children.

Another opportunity arose. Again, "miracle of miracles." The grandchildren showed up at the grandparents' home, wanting to get to know their father.

Wallace wove his story about the children's reconnection with their father and grandparents into a history refresher – a refresher going back to the fields of Runnymede in 1215, where King John reluctantly guaranteed enumerated rights to his subjects, rights that included one's right to a trial by jury.

King John may have believed he'd gotten the last word with his subjects. After all, their jury trials were to be heard in courtrooms (barns, really) filled with judges, prosecutors, investigators, sheriffs and jurors – all appointed by the king.

In one of the first trials, another miracle of miracles: Despite the king's order for a Guilty verdict, the jurors defied their king (in a whisper, no more). The foreman said Not Guilty (but he got louder when asked to repeat it). As Wallace relates the story, the word of the jury's decision spread across the land, through the

years (500 hundred or so), and across the seas (think immigrants, to America).

By the time the story reached the burgeoning American College of Trial Lawyers in 1950, the trial-by-jury system was well established, virtually unchanged.



Wallace interlaced his stories with his concerns about the future of the jury trial in America today. He worries that tort reform is a sign of government regulation and control. He worries that the government doesn't trust the American men and women who serve on

juries. And he worries that those who serve on juries do so not because they want to, but because they're ordered to do so.

Not a soul in the room missed the connection, the full circle that Wallace wove with his thread. Is our government becoming like King John? Is our government losing trust in its citizenry? Is it

time to revisit Runnymede?

## THE MOODS OF CROWDS AND KINGS

"...who knows the moods of crowds and kings, and priests and suchlike things, runs deep and dreadful as he brings, their warning down from Runnymede."

Wallace quoted Rudyard Kipling, who reminds us of the rights won at Runnymede. And Wallace asked:

*Who, then, will bring the warnings to Americans?*

Whether the question was intended to be rhetorical or if it was a call to action seemed irrelevant. The relevance was in his answer:

*The lawyers of America.*

*If not you, who?*

*If not now, when?*

To read the full text of Bob Wallace's presentation, please refer to the College website, [www.actl.com](http://www.actl.com). Video recordings may be requested from the National Office. ■

What a wonderful, marvelous judicial system we have in America. We have a system that has the means and the ability to resolve the most complex factual legal issues that the human mind can present. And we can determine the guilt of a man accused of murder, whether he will live or die. And we can determine whether that parking ticket you got last week is valid or not. We can determine who gets the custody and control of a multimillion-dollar corporation when the shareholders fight. And who gets the custody and control of a little four-year-old girl when the parents fight.

We can determine the rights and duties of citizens and noncitizens under our constitution, under complex international treaties, under Geneva conventions. And while only God himself can create a baby, through the magic of our judicial system and the laws of adoption, we can create instant parents for every unwanted baby in America.

What a wonderful, marvelous judicial system we have.

*Robert B. Wallace, Charleston, South Carolina*





# LONDON & PARIS

President Bob Byman looks forward to welcoming College Fellows, their spouses and guests to Europe for the 2014 Annual Meeting in London, England and Paris, France.

## 2014 ANNUAL MEETING

### LONDON

September 11-14, 2014

The College's sixth meeting in London promises many firsts for Fellows and their guests. The President's Welcome Reception will be held in the Westminster Abbey Gardens on Thursday, September 11. Attendees will have an opportunity to travel through the rich history of Westminster Abbey before entering the private gardens to enjoy Fellowship, food and drink.

General Sessions on Friday and Saturday will showcase exceptional speakers who will educate and entertain. Confirmed speakers include:

- ◆ **Ronald K. Noble**, Secretary General of INTERPOL
- ◆ **David Green**, CB, QC, Director of the United Kingdom Serious Fraud Office
- ◆ **Lord Peter Goldsmith**, PC, QC, former Attorney General of the United Kingdom
- ◆ **David Feldman**, Professor of English Law at the University of Cambridge
- ◆ **Martin J. Kemp**, Professor, Oxford University

A Continuing Legal Education panel will discuss the 800th anniversary of the Magna Carta. Participants include moderator Sir **Jeffrey Jowell**, KCMG QC, Director of the Bingham Centre for the Rule of Law; Sir **Robert Worcester**, KBE, DL, Chairman of the Magna Carta 800th Committee; Lord **Tom McNally**, Chair of Youth Justice Board; and **Robin Griffith-Jones**, Master of the Temple.

The induction banquet will be Friday night, and the meeting will culminate Saturday evening at the iconic Horse Guards Parade Grounds, where guests will enjoy a show by the Royal Horseguards, followed by dinner and dancing. The Horse Guard Parade Grounds, site of the 2012 Summer Olympics Beach Volleyball competitions, is the location of the annual Trooping of the Colour that officially commemorates the Monarch's birthday. The venue allows only one public event each year, and the College Fellows and guests are the lucky recipients of 2014's exclusive opportunity.

### PARIS

September 14-17, 2014

Fellows who have registered for the meeting in London will be extended first priority to register for the continuation meeting in Paris, France. Panelists will explore Anglo/Franco Criminal Law as they consider the predicament of a disgraced leader in *Suppose You Are Dominique Strauss Kahn and Get to Choose Your Venue – Where Do You Go?* The meeting will conclude with a black-tie dinner at the Paris Opera House.

2014 Annual Meeting registration will open May 1. Watch for email notification from the National Office and a brochure in the mail. Post-tour packages will be offered.

### *Notable Dates:*

**MAY 1** REGISTRATION OPENS

**SEPTEMBER 11-14** ANNUAL MEETING IN LONDON

**SEPTEMBER 14-17** ANNUAL MEETING CONTINUES IN PARIS

PLEASE CONTACT THE NATIONAL OFFICE WITH QUESTIONS,  
TELEPHONE 949-752-1801, OR EMAIL NATIONALOFFICE@ACTL.COM.

# NO MILK ALLOWED

## EMIL GUMPERT AWARD PRESENTED TO MILLER RESENTENCING PROJECT OF FLORIDA STATE UNIVERSITY COLLEGE OF LAW CHILDREN IN PRISON PROJECT

All Jessica Robinson wanted was a glass of milk.

Such a request from a 13-year-old, tiny for her age and thin as a reed, would not be unusual. Jessica, however, was not a typical teenager. She had been sentenced to an adult prison for kidnapping. She now sat in a room at the Jefferson Correctional Institution in Florida with **Paolo Annino**, Director of the Florida State University Public Interest Law Center, and several of his law students. The group from FSU visited Jessica as part of its Children In Prison Project. The meeting had been going for an hour, its focus on Jessica's plight. The discussion centered on legal strategies to be exercised on Jessica's behalf. Jessica barely responded and showed even less understanding of her situation. It was at the end of the meeting, when asked what she wanted, that Jessica quietly replied, "milk." Professor Annino and his students were taken aback. Of all Jessica's needs, including one for freedom, the request for a glass of milk was not expected. It was then that Professor Annino and his students learned that milk was not served in Florida's adult prisons. Jessica's simple request confirmed Professor Annino's belief: children should serve their time in facilities for children, not in prisons for adults.

The Emil Gumpert Award is funded by contributions of Fellows and others to the Foundation of the American College of Trial Lawyers.





Jessica's story was shared by Professor Paolo Annino during his acceptance of the Emil Gumpert Award on behalf of The Miller Resentencing Project of the Florida State University College of Law Children in Prison Project at the meeting of the American College of Trial Lawyers in San Francisco. The interaction with Jessica led the Children In Prison Project to focus on a subset of juveniles sentenced to mandatory life without parole in adult prisons. The Miller Project arose out of the June 25, 2012 United States Supreme Court decision, *Miller v. Alabama*. The Court held that it is unconstitutional to sentence a juvenile to mandatory life in prison without parole, and the juvenile must be provided a hearing before a Judge to evaluate the circumstances and consider if life in prison is appropriate for the child, based on its age and background at the time of the offense. The Miller Project seeks to represent the 260 Florida inmates serving life without parole, who now have a right to be resentenced. In addition to Florida, there are 28 other states with prison populations of approximately 2,700 inmates who are also subject to resentencing.

In presenting The Miller Project to the Gumpert Award, then-President **Chilton Davis Varner** observed that the American College of Trial Lawyers remains committed to its principle "to recognize programs, whether public or private, whose principal purpose is to maintain and improve the administration of justice." The award is the highest honor the College confers on a

program. Each year, the Emil Gumpert Award Committee reviews approximately 50 applications from throughout the United States and Canada. The award is named in honor of the founder and Chancellor of the College, Emil Gumpert. On-site visits by committee members allow face-to-face meetings with applicants and their supporters. Through the generosity of the Foundation of the American College of Trial Lawyers, the winner receives fifty thousand dollars. The Foundation Trustees recently voted to increase the annual award to one hundred thousand dollars in 2014.

The Miller Project was nominated for award consideration by **H. Talbot "Sandy" D'Alemberte**, a Fellow of the College, past President of the American Bar Association, former President of Florida State University and former Dean of its School of Law.

The Miller Project relies on second- and third-year law students who work hand-in-hand with Professor Annino and a growing number of pro bono lawyers. The students identify each inmate through public records. After initial identification, correspondence is sent to an inmate advising them of the Miller Project's purpose and the inmate's possible rights under the *Miller* decision. The students then visit each inmate at a prison in Florida, wherever the incarcerated individual is detained. The students obtain background information from the prisoner and review the underlying court file. The students then conduct face-to-face interviews with family members





The Miller Project seeks to assure the rule of law is followed. This decision is not geared toward the popularity of the client, but for the righteousness of the law.

Professor Anino



and any other available references. A detailed history focuses on factors that may support a new sentence. As the investigation proceeds, the students interview the prison warden and other relevant officials. The students seek potential expert testimony that may include opinions from psychologists and prison officials about the inmate's conduct and possible grounds for a shorter sentence. Once background information is compiled, the students prepare the motion and supporting briefs for the resentencing hearing. Under the supervision of Professor Annino and volunteer *pro bono* lawyers, a motion is filed and argued, frequently in part by the student.

The model for The Miller Project is clear and replicable. A visit with Professor Annino and his students reveals a shared passion and belief in the program's potential. The program offers no thrills, wasted time or effort. It is a lean operation that depends on students' energy, Annino's leadership and *pro bono* lawyers' - and the College's - support. The students have embraced their responsibility as voice of the juveniles and their opportunity to serve as participants in justice and the rule of law. As Professor Annino describes, it is "a project of hope."

Despite The Miller Project's effort to improve the administration of justice, it is not without

controversy. As would be expected, any move to reduce an inmate's sentence is met with resistance. Several states, including Florida, believe the *Miller* decision should not apply retroactively. The issue will be heard before the Florida Supreme Court in March 2014. Professor Annino and his students have joined with *pro bono* attorneys to represent the juveniles on this issue of retroactivity. Public opinion also does not always favor a reduction in punishment. As Professor Annino pointed out, emotions run high, and there will be clear objections by the state and the victim's family at the hearings. Professor Annino observed, "The Miller Project is not an innocence project. Some of these children commit absolutely horrible crimes. It takes courage for the American College of Trial Lawyers to believe these children should be represented and receive a fair sentence." Professor Annino further stated, "the influence of politics and emotion would be expected any time there is an issue to lessen the punishment of a crime committed. However, the United States Supreme Court has issued an opinion that these juvenile prisoners must be allowed a hearing. The Miller Project seeks to assure the rule of law is followed. This decision is not geared toward the popularity of the client, but for the righteousness of the law."

Despite the controversy, there is strong support for



The Miller Project. This support was evident at a September 2013 reception at FSU's School of Law for the award presentation. Then-President Varner presented the Emil Gumpert Award and spoke to a standing-room-only crowd made up of students, faculty, judges and local volunteer lawyers. In addition to President Varner, Fellows of the College were well represented, with Tallahassee Fellows turning out in force, along with incoming Regent **C. Rufus Pennington III**; outgoing Chair of the Emil Gumpert Award Committee, **Gary L. Bostwick**; and incoming Chair of the Committee, **Joe R. Caldwell, Jr.**

Varner described the significance of the Gumpert Award: "The Gumpert Award is the most important and largest award the College can provide. We should ask the questions – who is doing good work and doing it well, and where might the College make a difference. The Miller Project very much satisfies these requirements," she stated. In reflecting on past winners who have represented the diverse needs of clients in areas such as immigration, Indian affairs and poverty, Varner observed "The Miller Project joins a well-distinguished list of recipients who make the world better and the rule of law more humane."

Gary Bostwick noted, "I have had the opportunity over the years of serving on the Gumpert Committee to review over 400 applications. The Miller Project meets all of our criteria. The objective is correct. The means are direct. The skill of the people involved gives The Miller Project a high probability of success in an area that needs to be addressed and can be replicated in other states with the same situation."

Prior to receiving the award, monetary restrictions limited The Miller Project to representation of only four inmates. Since The Miller Project received the Gumpert Award, the project has moved quickly and decisively to address the needs of additional juvenile

inmates. A graduate fellow has been hired to contact inmates and coordinate meetings with students and inmates. Information is being collected to identify each juvenile's age, race, gender, location and individual tolerance to the prison system. The report will be made available to members of the Florida Bar and advocates nationwide.

Professor Annino anticipates dissemination of information and the award's publicity to generate further interest. More than 200 inmates have been contacted; public defenders are on notice to prioritize and prepare the foreseeable resentencing motions; pro bono lawyers have been recruited and are ready to represent the youth; and Professor Annino has reached out to Florida Fellows with positive results.



The impact of the Gumpert Award goes beyond providing financial resources. Recognition has brought prestige and welcomed attention. According to Professor Annino, "having received the Gumpert Award is a tremendous honor – we will use the money wisely and make the lives of these children better. I am very grateful to the American College of Trial Lawyers for its faith in our work."

ROBERT P. MACKENZIE, III  
Birmingham, Alabama





# INTERNATIONAL OPPORTUNITIES ABOUND FOR FELLOWS TO PROMOTE THE RULE OF LAW

According to four experts in North America, it takes trained lawyers and judges to make the world's nascent judicial systems work. The College is a perfect match to provide resources and to train those who make things happen. The connection between providers and those in need was the driving theme of four presentations sponsored by the College's International Committee at the 2013 Annual Meeting in San Francisco. *Teaching Foreign Lawyers About the Rule of Law: Training and Opportunities For Trial Advocacy*, was the Continuing Legal Education program that brought together representatives from organizations that provide worldwide access to justice. The panelists described their programs, they explained the need to train other countries' lawyers, and they called on Fellows to help.





## FOUR EXPERTS SPOKE ABOUT FOUR PROGRAMS, ALL PROVIDING ACCESS TO JUSTICE AROUND THE WORLD.

**Rob Boone**, Director of the American Bar Association Rule of Law Initiative (ROLI), in Washington, D.C., described the ROLI's work using experienced U.S. lawyers to train legal advocates and to promote access to justice while building sustainable legal institutions in almost sixty countries throughout Africa, Asia, Europe and Latin America. The goal of the training is to build capacity so that local lawyers and judges will learn what rule of law means and put it into practice in their own countries. Boone was introduced by Oregon Fellow **Norman Sepenuk**, who has participated in several of the advocacy programs in Moldova, Uzbekistan and Bosnia.

Boone provided examples of ROLI's activities abroad. In the Congo, ROLI has trained lawyers to combat impunity for gender-based violent crimes, to protect communities from environmental and mining law violations and to assist in excessive pretrial detention cases. In Asia, ROLI has promoted lawyer training programs that combat human trafficking in the Solomon Islands, modernized the judicial system in the Philippines and trained lawyers in domestic violence cases in Fiji. In Europe and Eurasia, ROLI has trained two thousand lawyers about the new criminal procedure code in Georgia, and it has conducted similar e-learning platform training in Serbia. In Latin America, ROLI has assisted lawyers and judges as they have transitioned to a European-style criminal justice system using written evidence from the more-adversarial and confrontational system in Ecuador, Haiti, Panama and Peru. In the Middle East, young lawyer advocacy training is being undertaken in Bahrain and Egypt. Training programs are available through ROLI lasting from several days to several months. Boone said that in all cases except Latin America, it is not necessary to speak the host-nation's language. To become involved, lawyers should register for possible assignments on ROLI's website, [www.abarol.org](http://www.abarol.org).

**Christina Storm**, Founder and Director of Lawyers Without Borders (LWOB), headquartered in Hartford, Connecticut, described the growth of LWOB since its inception in 2000, and its operations today, principally in Africa, Europe and South America. In the last five years, LWOB has placed over 400 lawyers in its programs. In Kenya, it trained criminal procedure and trial advocacy to defense lawyers. In Monrovia, Liberia, a ten-lawyer team completed a one-week trial advocacy training program where they met with Liberian President Ellen Johnson Sirleaf to discuss the

rule of law. Storm emphasized that LWOB's training is dual-purpose, with case-specific applications capable of translating to other applications. Interested Fellows may become involved by going to the LWOB website, [www.lwob.org](http://www.lwob.org).

**Andra Moss**, Director of Communications and Volunteer Development at International Senior Lawyers Project (ISLP), headquartered in New York City, spoke about ISLP's deployment of highly experienced lawyers to promote the rule of law by working with lawyers in other countries. Training programs typically last from one week to several months. Projects are client-driven, with the host identifying its needs to ISLP before an assistance program is developed. Emphasis is placed on building the capacity of local lawyers. Moss was introduced by Regent David J. Hensler, whose firm co-founded ISLP a decade ago.

In Africa, the ISLP has assisted in Liberia, Rwanda and Malawi. Moss used Chicago Fellow **Matthew A. Rooney** as an example of one who has provided trial advocacy training with the South African Human Rights Commission, an administrative body that receives discrimination complaints in its country. Rooney's work was deemed so successful that he subsequently traveled to Myanmar to provide similar training. Moss told of the ISLP's citizenship cases in Nepal and its land-grabbing cases in Cam-

It is never too late to be what you might have been.

*Christina Storm of Lawyers Without Borders, quoting George Eliot*

bodia. The ISLP used a moot court format in Mongolia to train local lawyers as advocates in a mining pollution case that resulted in revocation of a mining company's license. Oregon Fellow Sepenuk shared his experience in an ISLP program in Cambodia in which virtually all criminal defense lawyers in Cambodia were trained in criminal procedure issues, and in which Cambodia's lawyers training manual was written. Moss emphasized that there are many stimulating opportunities for both criminal and civil trial lawyers to promote the rule of law through the ISLP. Additional information is available at [www.islp.org](http://www.islp.org).

Dr. **Samantha Nutt**, Founder and Executive Director of War Child Canada, headquartered in Toronto,



I firmly believe that in the years ahead of us the greatest obstacles to international development and human rights will be met not by doctors, or politicians, or engineers, but by lawyers and judges.

*Dr. Samantha Nutt,  
Founder of War Child Canada*

Canada, spoke of the front-line legal services War Child provides in war-torn areas, including the Congo, Uganda, Afghanistan, Iraq and Darfur. Dr. Nutt was introduced by Fellow **Michael A. Eizenga**, who traveled with War Child last year to observe its local access to justice program in Uganda. Eizenga also assisted with the formation of Advocates for War Child in the Toronto legal community. In his introduction, Eizenga noted that Dr. Nutt was appointed to the Order of Canada, the highest civilian honor bestowed on a Canadian, for her work on the front line of many of the world's worst crises.

Nutt, a medical doctor, spoke of the worldwide famine that has been exacerbated by a climate of absolute impunity, a result of political failure. She indicated that without functioning judicial systems, citizens lack the mechanisms to protect themselves from unimaginable abuses. She shared her belief that the rule of law and access to justice are the next frontier of international humanitarian assistance. "Justice will remain elusive as long as instability exists," Nutt shared, stating that when she left Somalia, she realized that the single greatest obstacle to worldwide peace and development could be overcome if those willing to do so will assist by providing legal protection initiatives. Legal initiatives are imperative to preventing atrocities and holding perpetrators to account. By doing so, the world can reduce the ongoing threat of recurrences. Nutt opined that to deliver legal protec-

tion within a multi-faceted structure involves multiple levels of government and requires legal and social supports, one of which is access to justice.

During the conflict in Uganda from the late 1980s until 2006, more than 30,000 children were abducted or forcibly recruited to fight in the rebel army, the Lord's Resistance Army (LRA), led by the notorious Joseph Kony. After his departure in 2006, the task of rebuilding and maintaining the peace that followed was fraught with challenges. In the midst of chaos, War Child Canada launched a pilot project to focus on legal protection and trained local area lawyers and judges about the laws to protect women and children. Lawyers from Canada and the United States worked with local Ugandan lawyers and prepared legal training manuals, trained trainers and recruited local lawyers, who began administering civil case work out of a small legal aid office. Lawyers went into the community and worked with local officials and elders to help the communities understand the ways the new laws could support them. The results were overwhelming. Nutt said the Ugandan model can be readily replicated in the most-challenging and complex humanitarian environments.

Dr. Nutt said making the rule of law work globally requires a shift in understanding in addition to the support of international aid and development. She said College Fellows are uniquely positioned to champion the shift because they understand the overarching importance of the rule of law, and they understand what it means to foster and cherish a rights-based culture.

War Child now operates internationally, including in Canada and the United States. More information is available at [www.warchild.ca](http://www.warchild.ca) or [www.warchildusa.com](http://www.warchildusa.com).

RICHARD C. BUSSE  
Portland, Oregon

The rule of law is not something that happens at a great distance, in the hands of outsiders, but it is something that must be experienced up close and personal and wielded in the hands of local champions and advocates. The rule of law is something that must be accomplished village-to-village, face-to-face, and lawyer-to-lawyer. Emphasis must be on building local capacity, not on what we do, but on what we can create - through our training - to allow others to do.

*Dr. Nutt*



# 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 Secretary, the Treasurer, the Immediate Past President and fifteen members elected by the Fellows. 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 San Francisco, California, before the 2014 Annual Meeting of the College and took the following actions:

- The Board approved the election of seventy-four new Fellows from twenty-five states, one province and the District of Columbia
- The Board approved seventy-one candidates for consideration, presented from twenty-one states, three provinces and the territory of Puerto Rico
- The Board approved the joint publication of *Working Smarter, Not Harder: How Excellent Judges Manage Cases* with Institute for the Advancement of the American Legal System. The publication is available on the College website, [www.actl.com](http://www.actl.com).
- The Board approved changing the name of *The Bulletin* to the *Journal*
- Treasurer **Robert L. Byman**, now President, presented the 2013 fiscal year-end audit to the Board of Regents. In his report, Byman noted that the College received a clean audit report from Meyer Hoffman McCann P.C. He reported that the College ended June 30, 2013 with positive results. Total assets increased by 11.5% and net assets increased by 19.4%.

## MAYFIELD EARNS INDUSTRY CERTIFICATION

Lindsey Mayfield, the College’s Meetings and Conference Manager, recently earned certification as a Certified Meeting Professional (CMP). In 1985, the world-recognized Convention Industry Council established the CMP designation to identify professionals who have demonstrated excellence as leaders in the meetings, conventions and exhibitions industry. The requirements for certification are based on professional experience and an intensive written examination. Members of the program participate in continuing education in the meetings industry. A graduate of Arizona State University with a degree in Interdisciplinary Studies with concentrations in Business and Mass Communications, Mayfield joined the College’s National Office staff in 2009.





# EIGHTY-SIX INDUCTED IN SAN FRANCISCO

## ALBERTA

Valerie Prather  
David J. Wachowich, Q.C.  
*Calgary*  
Ken H. Lewis, Q.C.  
*Lethbridge*

## ALABAMA

Richard S. Jaffe  
Adam K. Peck  
*Birmingham*  
Gaynor L. St. John  
*Cullman*  
George E. Knox, Jr.  
*Huntsville*

## ARIZONA

Howard R. Cabot  
Winn L. Sammons  
Tod F. Schleier  
*Phoenix*

## CALIFORNIA-SOUTHERN

Matthew S. McNicholas  
*Los Angeles*  
John C. Hueston  
*Newport Beach*  
Rickard Santwier  
*Pasadena*  
Eugene G. Iredale  
*San Diego*

## COLORADO

Lester Nieves  
*Denver*

## CONNECTICUT

Victoria de Toledo  
*Stamford*

## DISTRICT OF COLUMBIA

Charles E. Lipsey  
William D. Nussbaum  
*Washington*

## DELAWARE

Andre G. Bouchard  
*Wilmington*

## GEORGIA

Michael L. Goldberg  
Michael J. Goldman  
Wayne D. (Dan) McGrew, III  
Paul E. Weathington  
*Atlanta*  
Franklin J. Hogue  
*Macon*

## IOWA

Steven J. Pace  
*Cedar Rapids*  
Mark J. Wiedenfeld  
*Des Moines*

## ILLINOIS-DOWNSTATE

Charles E. Schmidt  
*Carbondale*

## ILLINOIS-UPSTATE

Shawn S. Kasserman  
Terri L. Mascherin  
Lynn H. Murray  
Patrick A. Salvi  
*Chicago*

## INDIANA

Eric A. Riegner  
Thomas R. Schultz  
*Indianapolis*

## KANSAS

Don D. Gribble, II  
E. Craig Kennedy  
*Wichita*

## LOUISIANA

Edward E. Rundell  
*Alexandria*  
G. Bruce Parkerson  
*New Orleans*

## MASSACHUSETTS

Page Kelley  
Dennis J. Kelly  
*Boston*

## MICHIGAN

Mark E. Fatum  
Paul L. Mitchell  
Charles H. Worsfold  
*Grand Rapids*  
Michael R. Janes  
*Mount Clemens*

## MINNESOTA

Thomas J. Conlin  
Robert J. King, Jr.  
*Minneapolis*

## MISSISSIPPI

Thomas M. Fortner  
*Hattiesburg*





**J. Cal Mayo, Jr.**  
*Oxford*  
**David W. Upchurch**  
*Tupelo*

**MONTANA**  
**Michael J. Lilly**  
*Bozeman*

**NORTH CAROLINA**  
**M.H. Hood Ellis**  
*Elizabeth City*  
**William P. Daniell**  
**Dan M. Hartzog**  
*Raleigh*  
**James R. Morgan, Jr.**  
*Winston-Salem*

**NEBRASKA**  
**Thomas M. Locher**  
*Omaha*

**NEW MEXICO**  
**Nelson Franse**  
*Albuquerque*

**NEVADA**  
**William B. Terry**  
*Las Vegas*  
**Thomas E. Drendel**  
*Reno*

**NEW YORK-DOWNSTATE**  
**Andrew M. Lankler**  
**Maurice Henri Sercarz**  
**Lawrence J. Zweifach**  
*New York*

**NEW YORK-UPSTATE**  
**Peter T. Rodgers**  
*Rochester*  
**James E. Reid**  
*Syracuse*

**OHIO**  
**James F. Brockman**  
*Cincinnati*  
**William Hawal**  
*Cleveland*  
**Michael J. Rourke**  
*Columbus*  
**John C. Barron**  
*Toledo*

**ONTARIO**  
**Peter K. Doody**  
*Ottawa*

**OREGON**  
**John A. Bennett**  
**Lance A. Caldwell**  
**John F. McGrory, Jr.**  
*Portland*

**PENNSYLVANIA**  
**William H. Pugh, V**  
*Norristown*

**Eric Kraeutler**  
**Lawrence G. McMichael**  
**Catherine M. Recker**  
**J. Denny Shupe**  
**Matthew A. Taylor**  
*Philadelphia*  
**Neal R. Brendel**  
*Pittsburgh*

**QUÉBEC**  
**Robert Bonhomme**  
**Peter Kalichman**  
*Montréal*

**SOUTH CAROLINA**  
**A. Marvin Quattlebaum, Jr.**  
*Greenville*

**SOUTH DAKOTA**  
**Reed Rasmussen**  
*Aberdeen*

**TENNESSEE**  
**Arthur P. Brock**  
*Chattanooga*  
**Les Jones**  
**Daniel Loyd Taylor**  
*Memphis*

**TEXAS**  
**Randy R. Howry**  
*Austin*

**UTAH**  
**Stewart C. Walz**  
*Salt Lake City*

# INDUCTEE RESPONDER CHARTS OWN COURSE

Following the induction of new Fellows, **Catherine M. Recker** of Philadelphia responded on their behalf. Her remarks follow.

I am sure the journey to this stage has been very different for every one of us. Some of us knew that we would be trial lawyers from childhood. Others arrived here through pure serendipity. For me, it has been a journey marked by great luck and an abiding belief that I could make a difference.

As with most worthwhile journeys, mine was made without a roadmap. I started my career as a transactional lawyer, and I quickly realized that I needed to do something more than push paper and edit documents. A clerkship with the Department of Justice during law school opened my eyes to the intense and colorful world of the courtroom and the art of criminal defense. I realized that the courtroom was where I wanted to be, so I left the corporate world to embark upon my journey without much of a clue how to proceed.

Almost right away, I encountered a big break when I met my first mentor, a College Fellow named **Robert E. Welsh**, who ultimately became my law partner and remains a mentor to this day. Soon after we met, he gave me the opportunity to join him in representing a defendant in a high-profile case involving the Philadelphia Mafia.

The client was not the typical mobster in that he wanted to be represented by lawyers who were not part of the “go-to” Mafia defense bar. I was certainly not the typical Mafia lawyer: I had no experience; I was a woman; and I didn’t own a double-breasted, pinstriped suit. To add to the pressure, Bob and the client decided that I would deliver the opening. Boy, was I nervous!

## ROADBLOCKS

Before the trial started, I concluded that the best course of action would be to seek advice from people who I thought could give me insight on





how best to connect with the jury.

I first spoke with a jury consultant. I thought my enthusiasm for his work would pay off with at least some helpful advice and a “good luck, kid.” Instead, he told me that jurors did not find women to be effective courtroom advocates. He said that jurors don’t believe women because women have a very narrow range of acceptability that falls between too aggressive and not aggressive enough. That translated, he said, to women being perceived as too bitchy or too timid, but rarely just right.

With some of the wind knocked out of my sails, I sought out a top-notch criminal defense attorney. He told me that I should reconsider my new, exciting career path. Women criminal defense attorneys, he said, had little or no chance of attracting clients on their own. He suggested I join the public defenders’ office where I would be handed all my clients.

Fortunately, I believed enough in myself not to heed the advice that I was given. I realized that I was going to have to figure out how to win over this jury on my own.

### NAVIGATING NEW TERRITORY

The entire leadership of the Philadelphia underworld was on trial for racketeering. The charges included nine murders, multiple kidnappings and a lot of extortion. The case

was irresistible to the media. Newspaper and television reporters covered it daily, with headlines screaming sordid details that got everyone talking about it. And this was before the trial even started. I knew the press coverage would only intensify once it began.

When the big day came to deliver the openings, I found myself in a courtroom full of men: eight defendants, fifteen defense attorneys, a five-man prosecution team and countless FBI agents, U.S. Marshalls and of course, the judge. Even the jaded crime reporters were men.

I am sure the journey to this stage has been very different for every one of us. Some of us knew that we would be trial lawyers from childhood. Others arrived here through pure serendipity. For me, it has been a journey marked by great luck and an abiding belief that I could make a difference.

*Catherine M. (Katie) Recker  
Inductee Responder*

For the openings, my turn came last. I sat through the government’s opening statement, and then seven opening statements from defense counsel in which one male lawyer after another pounded the table, repeatedly railed against the government and blustered on and





It was at that “little girl lawyer” moment that I realized that the only way I could be effective with a jury would be to use my own voice.

*Katie Recker*



on about what liars the prosecutors had chosen as witnesses. They were loud and brash, playing to the media, their clients and each other. They competed with one another to see who could be the most macho, with each one outdoing the last.

I realized I would have to do something entirely different. Unlike the other lawyers, I didn’t attack the government and its motives. Instead, I calmly spoke about my client. I carefully outlined my defense, which was not predicated on the government’s witnesses being liars. My client was a low-level “soldier” who was a “made man” despite never having “made his bones.” In other words, he hadn’t killed anyone – a first in the history of the Philadelphia Mafia. He was essentially the mob equivalent of a teacher’s pet. He was a “made man” because he was a “yes man.” He told the boss whatever he wanted to hear but behind the scenes, he undermined many of the group’s more-nefarious efforts.

I was well prepared that day, and I nailed the opening. I could tell that everyone in the courtroom believed, at least for a brief moment, that while my guy hung around with a tough crowd and was full of sound and fury (as captured on about 300 tape-recorded conversations), he was not a murderer.

As I walked back to counsel table, I had a *My Cousin Vinny* moment. For those of you who have not seen the movie, Joe Pesci plays Vinny, a freshly minted New York lawyer who, in his very first case, defends his cousin against murder charges in Alabama. Vinny has no idea what he is doing, but eventually, he finds his footing, gets

some traction in the case and knocks ‘em dead when he finally hits his stride. Against all odds, he proceeds to destroy the state’s main witness in a blistering cross examination, which prompts his cousin’s co-defendant to jump up and say “I want that guy!”

After my opening statement, a defendant aptly named Shotsie, the underboss of the Philadelphia crime family, was as impressed as he was deaf. He turned to his fellow mobsters at counsel table and said in a stage whisper loud enough for everyone in the courtroom to hear, “we got to get us a little girl lawyer like that one.”

Wow, I thought. This is working. It was at that “little girl lawyer” moment that I realized that the only way I could be effective with a jury would be to use my own voice.

After the trial, I was anxious to speak to the jurors to get their reaction to my performance. There was an older woman in the jury who smiled broadly as she blurted out, “you go, girl!” It was this spirited affirmation and others like it that inspired me to find my way forward as a trial attorney.

### **FRIENDS ON THE JOURNEY**

Times have changed. I have seen the role of women in the field evolve rapidly. I have benefited greatly from the progress we have made. We could not have done so, however, without the extraordinary efforts of the women who paved our way. I owe a great debt to them and to all of the lawyers who unselfishly gave



me their valuable time and lent their valuable talents to teach me and make me a better lawyer.

Some twenty years later, I'm not only getting my own clients, but my practice has evolved to focus on complex white collar fraud. In my most-recent trial, the composition of the courtroom was very different than it was in the first one. We faced four women adversaries, two women prosecutors and women FBI and IRS agents. My client, aside from several members of the jury, was nearly the only man in the courtroom.

These days, to my great fortune, I have a broad cadre of colleagues and friends who practice at the criminal defense bar. I cherish their advice and count on them to be reliable and insightful sounding boards. Many of them are here tonight. Many of them are women.

In preparing for these remarks, I was touched by reading the comments of Michael Herring, a prosecutor from Richmond who gave the Inductee Response three years ago in 2010. I learned that he and I share an uncompromising belief in the concept of fairness in the criminal justice system. Although we work in apparent contradiction of each other, we both have a tireless dedication to fairness. I am proud to know that even though we arrive at this conclusion from opposite sides of the courtroom, we agree that the system works. When the tenets of fairness are upheld, it becomes possible to resolve a criminal matter in a way that will advance the truth and uphold justice. It is fairness that allows us to provide a vigorous defense for the accused. Criminal defense attorneys play an indispensable role in this process.

## OUR RESPONSIBILITY

Another indispensable component of the process is the client. Frequently, a criminal defense lawyer's first interaction with clients is clouded by the fact that they are facing the overwhelming prospect of the loss of

everything that is dear to them: liberty, fortune and family, especially if they are facing a sustained period of incarceration. It comes as no surprise that in their darkest hour, clients can be quite grim.

It falls upon us, then, to illuminate for the judge and the jury some of the most inspiring aspects of our clients and the human condition, because time and again, clients illustrate for all of us what it means to be confronted with the stark reality of one's mistakes. The legal process challenges the clients in a personal way to move beyond their troubles, to make amends and to dare envision a day when they will not be defined by their darkest moment.

The legal process challenges the clients in a personal way to move beyond their troubles, to make amends and to dare envision a day when they will not be defined by their darkest moment.

*Katie Recker*

There is nothing more professionally fulfilling than hearing a client say, "Katie, I trust you. I know you'll do the right thing for me." It has become abundantly clear to me that my purpose in my professional life is not only to advise but to stand with my clients during their most-challenging times.

On behalf of the Inductees, we thank the many Fellows who have served as mentors and role models to us as we recognize our calling to mentor and guide our younger colleagues. We are thrilled to have discovered the collegiality of the Fellows that we have met this week and to have learned that our shared values are indeed the core values of the College. We pledge to do our best to maintain and improve the standards of the practice, the administration of justice, and the ethics of the trial profession.

# VIRGINIA FELLOWS PROVIDE CONTINUING LEGAL EDUCATION TO PUBLIC INTEREST LAWYERS

A large number of attorneys in Virginia, as in all states, are employees of legal aid and poverty law clinics. In their professional capacities, these attorneys serve as public defenders to those otherwise unable to afford legal assistance. Recent funding pressures have limited those attorneys' access to high-quality continuing legal education programs. These simple facts continue to impact the public interest attorney's ability to provide optimal service to the most-needy residents of their states.

The Chief Justice of the Virginia Supreme Court recently announced an initiative to increase access to justice, including efforts to reach out to the attorneys serving under-represented and under-privileged portions of the population. In response to the initiative and as part of the College's ongoing efforts to provide access to justice, the Virginia Fellows presented a one-day trial skills program to public interest attorneys on October 22, 2013. Funded entirely by the Virginia Fellows, the program was led by Fellow **John D. McGavin** and Fellow **Craig T. Merritt**.

The program was a great success, with one of the most compelling aspects being the closing arguments presentation by Fellows **William D. Dolan, III** and **Blair D. Howard**. Howard repeated his passionate and powerful closing argument recitation used in Prince William County Circuit Court's highly-publicized case of Lorena Bobbitt. Renowned for its unusual facts, the case highlighted ongoing spousal abuse as justification for assault. Other Fellows who participated included criminal defense and civil practice attorneys who provided insight and practice pointers.

At the meeting's conclusion, one of the public interest lawyers approached McGavin to thank the Fellows for providing the program. She wanted to extend her appreciation for the speakers' comments acknowledging public interest lawyers' service to the community and the greater Bar. Stating that she had served more than twenty years as a public interest lawyer, she said she rarely received gratitude or recognition from her colleagues.

The Virginia State Bar has requested that the Virginia Fellows repeat their program, either annually or semi-annually. At the Virginia Fellows Meeting in January, keynote speaker Virginia Supreme Court Justice S. Bernard Goodwyn discussed his court's access to justice initiative, and he noted the assistance provided by the Virginia Fellows.

*Judicial Fellows Hon. Terrence Ney and Hon. Pamela Shell Baskerville, and Fellow John McGavin*





# FELLOWS TRAIN LEGAL SERVICE ATTORNEYS IN JACKSONVILLE

To meet the need of legal service organization staff attorneys for trial practice skills and strategy considerations, the Fellows of Jacksonville, Florida, put together a hands-on, intensive two-day trial advocacy seminar and workshop. The program was organized and led by Fellow **James F. Moseley** and presented to staff attorneys from Jacksonville Area Legal Aid and Three Rivers Legal Services from St. Augustine. Following the program, Moseley commented that “the enthusiasm and dedication of our Fellows was remarkable. Their willingness to contribute their time and experience to benefit attorneys committed to representing the under-served reflects their commitment to the ideals of the College.”

Legal service staff attorneys are faced with challenging cases in various fields of law. Though not lacking enthusiasm or ability, they are often young or relatively inexperienced. With heavy caseloads, they do not have the luxury of learning through observation and tutelage that is often available to attorneys in private firms or government. Moseley recognized that providing training for legal service staff attorneys is an important and valuable way to support and strengthen the availability of skilled representation for low-income persons.

Ten Fellows facilitated the training seminar for sixteen legal service staff attorneys who present-

ed the plaintiff and defendant sides in hypothetical cases, including opening statements, direct and cross-examination and closing statements, each with one-on-one guidance and instruction by the Fellows. Local law students and recent graduates served as witnesses. The final portion of the seminar included a presentation on ethics led by Moseley using video vignettes from the College.

The program began with Chief Judge Donald Moran of the Fourth Judicial Circuit of Florida welcoming the Fellows and participants in his chambers. The workshop portion of the seminar was held in courtrooms at the Duval County Courthouse in Jacksonville.

Following the seminar, Jim Kowalski, Executive Director of Jacksonville Area Legal Aid said, “it’s really impossible to quantify the value of this caliber of training experience for our legal services attorneys.” He commented that the training by Fellows “made us better advocates for those who can’t afford representation. Everyone in the community benefits, and everyone in legal services is deeply appreciative of the generous sharing of expertise and experience.”

Regent **C. Rufus Pennington III** participated and commented that the program “exemplifies how the mission and ideals of the College can be put into practice by the efforts of active and engaged Fellows.” Moseley has been involved in similar programs throughout the state over the years and stated that similar programs can be organized in other states to meet similar needs.



*Chief Judge Donald Moran, left, and Fellow James F. Moseley, Sr. greet seminar participants.*

# DADDY OF 'EM ALL: CHEYENNE FRONTIER DAYS

The Tenth Circuit Regional Meeting coincided with Wyoming's 2013 Cheyenne Frontier Days and drew an unprecedented gathering from parts far and wide. Referred to as The Daddy of 'Em All, Cheyenne Frontier Days attracted then-President **Chilton Davis Varner** and her husband, Morgan, of Atlanta, Georgia; Past Presidents **Thomas H. Tongue** and his wife, Andrea, of Portland, Oregon; **Stuart D. Shanor** and his wife, Ellen, of Roswell, New Mexico; **John J. (Jack) Dalton** and his wife, Marcy, of Atlanta, Georgia; **Mikel L. Stout** and his wife, LeAnn, of Wichita, Kansas; Treasurer **Francis M. Wikstrom** and his wife, Linda, of Salt Lake City, Utah; former Regent **John H. Tucker** and his wife, Francisanne, of Tulsa, Oklahoma; and current Regent **Michael L. O'Donnell** and his wife, Brett, of Denver, Colorado.





### FELLOWS OF THE 10TH CIRCUIT GATHER

The jam-packed schedule for Fellows and their guests included the world-class rodeo, evening band concerts and two days of meetings and CLE programs arranged by Wyoming State Chair **Corinne E. Rutledge** and her husband, former Wyoming State Chair **J. Kent Rutledge**, both Cheyenne residents.

The many honored guests included former Governor of Wyoming Hon. **Dave Freudenthal**; Governor Freudenthal’s wife, Chief Judge of the United States District Court for the District of Wyoming, Hon. **Nancy D. Freudenthal**; Executive Director of the Institute for the Advancement of the American Legal System, former Colorado Supreme Court Justice Hon. **Rebecca Love Kourlis**; U.S. Attorney for the District of Wyoming **Christopher “Kip” Crofts**; Assistant United States Attorney for the Western District of Michigan and Executive Director of the Indian Law and Order Commission **Jeff Davis**. The non-rodeo presenters all had a connection to, affection for and abiding respect for the scope of Cheyenne Frontier Days and the ranch people who make it work.

### ANIMAL WELFARE: PROTECTED, YET ALWAYS CHALLENGED

Speaking to the assembled Fellows and their guests was **Douglas V. Corey**, a Pendleton, Oregon practicing veterinarian for thirty-six years. Corey’s brother, **Steven**, and his

late father, **George**, are College Fellows. Veterinarian Doug chose to focus his practice primarily on horses, and armed with an extensive knowledge about rodeo, he plays a lead role in crafting many of the Professional Rodeo Cowboys Association’s animal welfare guidelines and programs.

Corey pointed out the distinction between the philosophical view of animal rights versus an ethical responsibility for animal welfare, with the latter encompassing proper housing, management, nutrition, disease prevention and treatment, responsible care, humane handling, and when necessary, humane euthanasia. He emphasized that PRCA-sanctioned rodeos enforce sixty rules to ensure the well-being of participating livestock. The rules include training judges, requiring onsite vets and educating rodeo committees and members on best practices.



Past Presidents Stu Shanor, Mike Stout, Chilton Davis Varner (then President), Jack Dalton and Tom Tongue.





The controversial issues of the PRCA include transporting horses in double-deck trailers, calf roping (now called tie down roping), single steer roping, the electric prod (“hotshot”), the flank strap and spurs. Concerns voiced about non-sanctioned rodeos reflect poorly on the PRCA and other pro rodeos.

Dr. Corey shared some of the tactics used by animal rights activists that he believes are tantamount to domestic terrorism. Corey posited that “our society is increasingly urbanized and the majority of people today consider animals their companions, family members, not work animals. A lot of people nowadays think their roast beef, eggs and milk come from Safeway. They don’t realize they’re raised on a farm.” He further speculated that because we apply human emotions to animals, we frequently equate rodeos with abuse. Although Dr. Corey advocates for the sport of rodeo, more importantly, he serves as an advocate for the animals who do not have the ability to speak for themselves.

### **RIDING AT THE DADDY OF ’EM ALL**

The rodeo community was well represented, with presentations from professionals ranging from a chute boss, to barrel racers, bull and bronc riders and a pickup man. At Cheyenne, a typical performance includes “ninety to a hundred head of bucking stock coming out of the chutes,” explained chute boss, Darrell Barron. It takes over 400 head of steers and a hundred head of bulls to put on the Cheyenne Frontier Days.

A ranch girl and descendant of Wyoming pioneers ponied up information about the history of Cheyenne Frontier Days and its long history of female participants. A rodeo pickup man, acknowledged to be the best cowboy in the arena, explained his responsibility of making sure that all the participants are safely out of the way after being tossed by the animals.

### **CIVIL JUSTICE REFORM IS ON THE MARCH: A REPORT FROM THE TASK FORCE ON DISCOVERY AND CIVIL JUSTICE**

Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System (IAALS), spoke to the Fellows about the accomplishments made by the College and the IAALS through six years of cooperation and

determination. She energized and encouraged the Fellows as she described the work that began as an initial spark of a project that some believed impossible, to today’s realization that with commitment and dedication, even the nation’s civil justice system is capable of reformation. Her message was reported in Issue 73 (fall 2013) of *The Bulletin*, at pages 2 through 4 and is available on the College website at [www.actl.com](http://www.actl.com).

### **WHO’S ON FIRST? ENERGY POLICY IN AMERICA**

Governor Dave Freudenthal, former Governor of the State of Wyoming, presented a CLE session to bring the Fellows and their guests up to speed on energy policy in America. With almost twelve percent of all energy consumed in America originating in Wyoming, the state’s resource-based economy relies primarily on energy mineral extraction, followed by tourism and agriculture. Wyoming was the first state to adopt meaningful regulation on hydraulic fracturing (“fracking”) and is a leader in establishing a legal framework for carbon capture sequestration. Governor Freudenthal addressed current energy-related policies:

#### **“Sue and Settle”**

A popular press topic, “sue and settle” involves an administrative agency that locates a friendly plaintiff with a shared interest in its underlying values. The friendly plaintiff sues the agency. Rather than going to trial, the agency settles the lawsuit. The settlement then serves to modify a standing practice or existing rules or regulations. Fundraising ensures that the practice is out of control.

#### **The Consent Decree**

At the core of the issue raised by sue and settle is whether the resulting consent decree can effectively modify rules and regulations. If not, an agency must go back through the original APA process. Freudenthal says, “the argument has been made over and over again that an agency cannot unilaterally...modify the rules and regulations without public notice and comment and the normal administrative procedures process.”

#### **Hydraulic Fracturing**

Freudenthal stated that fracking cases have mostly, so far, been dismissed at the lower court level.



One Colorado case was thrown out, based on the Lone Pine notion that requires a prima facie demonstration of the elements of the case before discovery. On appeal, the Colorado appellate court reversed, stating that the Lone Pine ruling is contrary to the Colorado Constitution and access to the courts. Both the plaintiff and defense bar are developing various litigation theories around fracking, which will remain a very active issue into the future.

### What Can We Do?

Freudenthal admitted that he has no hard and fast answers. And he's convinced no one else holds a key to the answers. "I actually think we probably ought to do something about climate change. But I don't think anybody has a clue what we should do as a practical matter. Solid information about practical solutions devoid of ideological or financial interest is "as rare as hen's teeth." But in this country, we don't necessarily require information to make decisions. We're about to head off on a whole series of administrative and judicial actions in this area."

### REFRESH YOUR RECOLLECTION: ETHICS CLE

The for-CLE-credit portion of the 10th Circuit's meeting was presented by Dean **Steven D. Easton** of the University of Wyoming's College of Law. A long-time friend of the College, Easton took the Fellows and their guests for a ride through the history of ethics for lawyers, beginning with the short, broad statements known as canons introduced in 1908. The next development, the Model Code of Professional Responsibility, came in 1969, as a response to the not-so-favorable impression of lawyers that led to the Watergate years. Fourteen years later, in 1983,

the ABA presented its Model Rules. And by 2002, the ABA released its Ethics 2000 Statements, with California being the sole state not yet adopting the 2000 rules. The most-recent of the ABA's rules are now being considered by the states. Known as Ethics 2020, the latest version consists of few new rules but introduces significant revisions to comments, particularly those dealing with technology and trans-border lawyering.

Easton spoke about a lawyer's ethical obligations to the court, clients, witnesses and opposing counsel. His overlying recommendation to all lawyers was to print out the Rules, sit down and read them. The Dean's Wyoming refresher course was a reminder that a self-imposed re-reading of the Rules constitutes "best practices" for all lawyers.

### A STRONG AND VITAL COURT SYSTEM: ITS IMPACT ON OUR DEMOCRACY AND THE ECONOMY

The Honorable Nancy D. Freudenthal, Chief Judge of the United States District Court for the District of Wyoming, is the former First Lady of Wyoming and wife of former Governor Dave Freudenthal.

Judge Freudenthal spoke about her perception that the public's general distrust of government is influencing its perception of the courts. She said a recent report indicates less than one in five people report a great deal of confidence in the courts. She invited the attendees to consider if the lack of confidence is justified, and if so, to consider its source.

Unnecessary lawsuits, legal maneuvering and inefficiently run courtrooms cause legal delays. "The reality is that litigation has become a four-



Perhaps the time has come that we are replacing, you and me both, trial by jury with trial by paper; whether we've created a mechanism to speed things up that actually is slowing things down; whether this mechanism is causing costs to skyrocket; and whether the criticism is legitimate that's placed on the judges' shoulders that they are illegitimately taking cases away from the jury.

*Hon. Nancy D. Freudenthal*



letter word.” Quoting author F. H. Buckley, she stated that “wasteful laws are a luxury American economics can no longer afford.” Business regulations, litigation costs, plaintiff-biased procedures, coached witnesses, burdensome discovery, a legal culture that encourages claims and whether product liability awards result in safer products are all problems.

Judge Freudenthal reminded the audience that the recent government sequester plays a part in the “tale of woe.” Without disregarding the taxpayer’s concerns of bloated government, she noted that the courts don’t control the cases they get. And she wondered, “what happens if the sequester cuts roll forward and become the new baseline from which additional cuts are made? Laying off staff and establishing furlough days won’t get matters through the court system.”

Freudenthal shared her experiences sitting by designation at several border jurisdictions: defendants remained in jail for more than half of their recommended guideline ranges because there were no judges to dispose of their cases. “It’s a waste of taxpayer dollars to have a defendant sit in jail 200 days waiting for a time-served sentence when his guideline range was much less.”

Regarding cameras in the courtroom, Judge Freudenthal wondered if civic discussion might be richer if the public had a deeper understanding of the court system and might realize that a trial is not theater, “it’s not Judge Judy.” To provide access, however, brings up issues of security and the literal physical difficulty getting into a federal courtroom.

“So can we bring some transparency into the administration of justice with the same transparency we expect from other branches of government? Perhaps increasing public understanding would build trust and confidence in the administration of justice.”

Judge Freudenthal considers it her pleasure to remind citizens, called as prospective jurors, that “the American rule of law defends our rights, our privileges, our liberties, just as vigorously as our men and women in uniform. Collectively we can and must be better stewards of this wonderful and indispensable American system of justice. It is shameful to consider the American rule of law a luxury, or worse yet, an American illness.”

## FEDERAL JURY TRIALS IN INDIAN COUNTRY: PERCEPTIONS AND EXPERIENCES

Kip Crofts, United States Attorney for the District of Wyoming, served as the governor-appointed representative to Wyoming’s only reservation, Wind River, and as legal counsel to then-Governor Dave Freudenthal. Crofts now tries jury trials in Indian Country.

In Federal Court, felonies are prosecuted under the Major Crimes Act. Most misdemeanors are prosecuted in trial courts. Although “Native American” is considered the usual, politically correct term, “Indian” is the Constitutional term of art found in most federal statutes. As elements of the crime, the Major Crimes Act requires proof both that a crime occurred in Indian Country and that the defendant was an Indian.

### In the beginning ...

Indians have had a very unique legal status different from other minority or brown-skinned people. Article I, Section 8 of the U. S. Constitution gives Congress the power to regulate commerce with Indian tribes under the Commerce Clause. The basis of Indian laws goes back to 1820 to 1832, with principles established in a series of three Supreme Court decisions known as the Marshall Trilogy (named for Chief Justice John Marshall). The three principles involve the relationship between Indian tribes and the states and Federal government. The first principle, under the doctrine of discovery, established that most Indian lands are owned in trust by the United States; the second principle, that Indian tribes, although having some degree of sovereignty, are not foreign nations (Marshall referred to them as “domestic dependent nations” in a relationship similar to guardian and ward); and the third principle established that states have no jurisdiction over Indians (a principle with some exceptions known as Public Law 280).

By statute in 1924, Congress made Indians United States citizens, providing them with a strange version of dual citizenship. This duality presents anomalies and legal questions that remain today. Tribal governments and tribal courts are not covered by the United States Constitution or the Bill of Rights. In 1965, Congress passed the Indian Civil Rights Act that provided significant differences from those that protect non-Indians under the Bill of Rights. Under the ICRA, an



This is a case where the law is sought to be extended over aliens and strangers over the members of a community separated by race, by tradition, by the instincts of a free though savage life from the authority and power which seeks to impose upon them the restraints of an external and unknown code and to subject them to the responsibilities of civil conduct according to the rules and penalties of which they could have no previous warning which judges them by the standard made by others and not for them which takes no account of the conditions which should except them from its exaction and makes no allowance for their ability to understand. It tries them, not by their peers or by the customs of their people or the law of their land, but by superiors of a difference race, according to the law of a social state of which they have an imperfect conception and which is opposed to the conditions of their history, to the habits of their lives, to the strongest prejudices of their savage nature, one of which measures the red man's revenge by the maxims of the white man's morality.

*Ex Parte Crow Dog, 109 US 556 (1883)*

Indian defendant has the right to counsel, but not at public expense. And the ICRA cannot be enforced in Federal court.

Providing a face to the conflict of laws, Crofts spoke of the famous *Crow Dog* case that led to the Major Crimes Act. In 1881, Crow Dog, a sub-chief on the Sioux Reservation, shot and killed another Indian, Spotted Tail, in Dakota territory. The Sioux tribal court, applying traditional Sioux law, ordered “restitution of six hundred dollars, eight horses and a blanket,” a hefty demand, to be paid by Crow Dog to Spotted Tail’s family. The Dakota Territory charged Crow Dog with murder, and after being found guilty in federal court, Crow Dog was ordered to be hanged. Crow Dog appealed to the United States Supreme Court, arguing that crimes committed by one Indian against another Indian were excluded from federal jurisdiction. The Court held that there was no federal territorial jurisdiction for the case; the Court refused to reverse an unbroken policy of respect for Native American sovereignty. [Ed. note: See excerpt from Supreme Court decision in side note.]

### Jurisdiction

Two years after *Ex Parte Crow Dog*, Congress passed the Major Crimes Act of 1885, diluting the promises of self-government and sovereignty. It created federal jurisdiction over seven enumerated crimes when they are committed by one Indian against another. Although the statute is not a racial classification, it is a legal and political one that makes one’s race an element of the crime.

Another Indian-law distinction involves the serious consequences of sentencing disparity. Most violent crimes in the United States are prosecuted in state courts; Indians suffer a disproportionate percentage of prosecutions under the mandatory sentencing guidelines of 18 U.S. Code 924(c). In reality, very few federal defendants are sentenced to probation, with almost all going to prison. Therefore, Indians generally get a more severe sentence in federal court than they would get in state court or tribal court.

### Venue

Economic conditions have caused the closure of many federal courthouses, with remaining courthouses often sited hundreds of miles away from Indian reservations. Taking weather and geography into account (think Wyoming, Montana, Idaho, the Dakotas), it is virtually impossible to get the parties, witnesses, lawyers and the circuit judges to their courthouses on trial day. “Rule 18 of the Rules of Criminal Procedure says, ‘trials must be set for trial within the district with due regard for convenience of the defendant, victim and witnesses.’ It doesn’t say anything about the cost or convenience of the court.”

### Jury Composition

Far more serious to Crofts is the related issue of the jury. Who should be on the jury in an Indian trial? When courthouses are located far from the reservations, most likely the jury pool does not include Indians. Does this preclude a “jury of one’s peers”? The Federal Jury Selection Act says juries should be selected “at random from a

fair cross-section of the community in the district or division where the trial occurs.” Most crimes on reservations are Indians against Indians. However, Crofts learned that Indians fear retribution and ostracism, and they frequently ask to be excused rather than to sit in judgment of their fellow Indians.

### It's Time ...

Crofts clearly agreed with Judge Nancy Freudenthal (see separate section of this article for Judge Freudenthal's message): what the court system does, particularly in criminal cases, is a very important part of our government and our people's faith in the government. Crofts was equally clear that “we have taught the Indians for far too-many years to be dependent on the federal government to swoop in and solve all their problems. It is time to give them more authority, but also more responsibility, to take care of their own problems.”

### DEPENDENCY AND FREEDOM

One of the complaints of the colonists in the American Revolution was that the English government took colonists from America back to England for trial. Obviously, bringing somebody from an Indian reservation to Cheyenne is not quite as bad as taking them across the Atlantic Ocean, but the principle is the same.

*Kip Crofts*

Jeff Davis, on detail from the U.S. Attorney's Office, is Executive Director of the Indian Law and Order Commission, which was created by the Tribal Law and Order Act, charged with developing a report to the President and Congress.

Davis grew up on the Turtle Mountain Reservation and shared the emotional story of a distant cousin who was murdered, shot in the head when outside a bar on the reservation, in full view of no fewer than twenty witnesses, by a non-Indian. When the tribal police were called, they were help-

less. “He's not an Indian. We can't stop him.” The local police contacted the perpetrator and took his gun away. The tribal authorities had no jurisdiction; the state had no jurisdiction; only the federal government had jurisdiction. The FBI, a hundred miles away, eventually received the report and within a week, the man was arrested. The Indians never heard anything more about the incident.

Years later, after Davis became a lawyer, he inquired about the incident at the U.S. Attorney's Office. He learned there had never been a trial. Despite the plethora of witnesses and the blatant provocation, the man pled to “second degree murder or manslaughter” and spent “about three or four years in federal prison for killing our friend.”

Davis spoke about the tribal decision in *Crow Dog*, a decision considered fair by the Indians. The tribe's judicial system did “exactly what it should have done. It prevented future harms between the two families. Crow Dog was ordered to take care of Spotted Tail's family. They maintained the community because they understood that everyone still had to live within that community.”

Davis spoke of the hope that has been generated by the Commission, with tribes asking that trials “be moved closer to Indian Country and encouraging federal courts to look at involving Native Americans more and including Indians in their jury system.” The Commission also directs suggestions to the tribes with aims of enhancing sentencing authority and implementing due process requirements.

At one tribunal council meeting, Hopi community members shared stories of being victimized, of having nowhere to go and the federal government not taking their cases. One lady stood up and said, “I understand and respect our traditions, but what are traditions if you don't have your people to exercise them? You have to first address that.” After she spoke, the council amended the codes to allow enhanced sentencing.

Though the dependency issue “looms large in Indian Country,” the Indians are poised and ready for change.



# FELLOWS TO THE BENCH

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

Effective November 2013

**Ross B. H. Buchanan**  
Second Judicial District of  
Colorado (Denver County)  
Denver, Colorado

Effective December 2013

**Thomas S. Fraser**  
Fourth Judicial District  
of Minnesota  
Minneapolis, Minnesota

Effective November 2013

**Raymond P. Moore**  
United States District Court for  
the District of Colorado  
Denver, Colorado

The College extends congratulations to these newly designated Judicial Fellows.

# FEDERAL CIVIL PROCEDURE COMMITTEE WEIGHS IN

In 2013, the Judicial Conference Advisory Committee sought comment on proposed amendments to the Federal Rules of Civil Procedure including, more specifically, proposed changes to Rule 37. On behalf of the College, **Wilbur A. Glahn, III**, Chair of the Federal Civil Procedure Committee, responded to Jonathan C. Rose, Secretary of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

Glahn's December 19, 2013, letter addressed five issues concerning the proposed amendments to Rule 37 on which the Judicial Conference Advisory Committee sought comment. The five issues considered were related to discovery, sanctions for loss of electronically stored information, issues of prejudice and the standard of culpability for the imposition of sanctions.

Glahn's letter may be read in its entirety on the College website, [www.actl.com](http://www.actl.com).



# BOOK REVIEW

## *The Great Dissent* by Thomas Healy

*Saudi Arabia's Cabinet approved on Monday a new anti-terrorism draft law that criminalizes acts that disturb public order, defame the reputation of the state or threaten the kingdom's unity, raising concerns by activists it could be used to quash political dissent. . . . [The Cabinet statement announcing the law] then describes crimes of terrorism to include "disturbing public order, or undermining the security and stability of the nation, or exposing the nation's unity to danger... or defaming the reputation of the state or its position."*

December 16, 2013, ABC News.

*The Criminal Court [in Thailand] sentenced a red-shirt sympathiser to over 13 years in prison on two counts of lese majeste on Thursday. . . . He was also sentenced to three years and four months for possessing an electronic document with lese majeste remarks showing "an attempt to defame, insult and threaten the King, the Queen, the Heir-Apparent and the Regent."*

December 12, 2013, Bangkok Post;  
<http://www.bangkokpost.com>.

*[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. . . . Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law abridging the freedom of speech.'*

Abrams v. United States, United States Supreme Court,  
Dissent by Justice Oliver Wendell Holmes, Nov. 10, 1919





Do you like a good mystery? Then this book is for you. One thing nags; when you close the cover for the last time, the mystery isn't solved. *The Great Dissent* by Thomas Healy, suffers from a defect I have noted of many books lately: that pesky sub-title promises too much.

Marketing types are probably more to blame than Healy. The sub-title promises that we are in store for "How Oliver Wendell Holmes Changed His Mind - and Changed the History of Free Speech in America." Leaving aside the cavil that Professor Healy should know that "America" is a bigger place than the United States, the main defect with the sub-title is that the book just doesn't come through on its promise.

But, Healy, a Seton Hall law professor, nonetheless has produced a scholarly, informative and engaging read, and it's short. Perhaps it is a character flaw of mine (some would say nerdiness), but if you are allured, as I am, by the topic of why every tribe and nation on earth has struggled, sometimes bitterly and amidst violence, to draw a line as to how much criticism of the tribal leadership to permit (strikingly differentiated in the three quotes at the beginning of this review), then Healy's work will be adventurous and illuminating. Think Julian Assange and Edward Snowden, just to get your analogical juices flowing.

#### WHAT'S THE BIG DEAL ANYWAY?

You may wonder why all the fuss about how Holmes changed his mind. But we should

first ask ourselves whether the old soldier, wounded three times in the War Between the States, a prominent legal scholar who authored *The Common Law*, **did** change his mind at all. Consider the following. In 1907, Holmes wrote the opinion in *Patterson v. Colorado*. A Denver newspaper had been found in contempt of court, accused of intimating that the conduct of the Colorado Supreme Court was in aid of a scheme to seat various Republican candidates, including the Governor of the state, in place of Democrats who had been elected, and that two of the judges of the Supreme Court got their seats as a part of the scheme. The newspaper claimed the right to prove the truth under the Constitution of the United States. The Court, through Holmes, held that: "Judges generally perhaps are less apprehensive that publications impugning their own reasoning or motives will interfere with their administration of the law. But if a court regards, as it may, a publication concerning a matter of law pending before it, **as tending toward such an interference**, it may punish it as in the instance put. . . . [T]he propriety and necessity of preventing interference with the course of justice by premature statement, argument, or intimidation hardly can be denied." *Patterson v. People of State of Colorado ex rel. Attorney Gen. of State of Colorado*, 205 U.S. 454, 462-63 (1907) (emphasis added).

The standard Holmes referred to was the "bad tendency test"; and Holmes was behind it all the way. That opinion is cold water in the face of young students taught today that Holmes is the father of free speech. Holmes also waved





In documentary style, supported by fifty-eight pages of endnotes and bibliography, Healy leads the reader through the traumas that filled the U.S. national consciousness with dread and uncertainty.

aside the claim by the newspaper that its speech was protected by the U.S. Constitution, contrary to an established anchor of today's U.S. freedom of expression jurisprudence. The enormity of this brush-off is best understood by reading the incredulous dissent of Justice John M. Harlan:

By the 1st Amendment of the Constitution of the United States, it is provided that 'Congress shall make no law respecting an establishment of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition the government for redress.' . . . So the 1st Amendment, although in form prohibitory, is to be regarded as having a reflex character, and as affirmatively recognizing freedom of speech and freedom of the press as rights belonging to citizens of the United States; that is, those rights are to be deemed attributes of national citizenship or citizenship of the United States. No one, I take it, will hesitate to say that a judgment of a Federal court, prior to the adoption of the 14th Amendment, impairing or abridging freedom of speech or of the press, would have been in violation of the rights of 'citizens of the United States' as guaranteed by the 1st Amendment; this, for the reason that the rights of free speech and a free press were, as already said, attributes of national citizenship before the 14th Amendment was made a part of the Constitution.

Now, the 14th Amendment declares, in express words, that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' As the 1st Amendment guaranteed the rights of free speech and of a free press against hostile action by the United States, it would seem clear that, when the 14th Amendment prohibited the states from impairing or abridging the

privileges of citizens of the United States, it necessarily prohibited the states from impairing or abridging the constitutional rights of such citizens to free speech and a free press. But the court announces that it leaves undecided the specific question whether there is to be found in the 14th Amendment a prohibition as to the rights of free speech and a free press similar to that in the 1st. . . . In my judgment the action of the court below was in violation of the rights of free speech and a free press as guaranteed by the Constitution.

I go further and hold that the privileges of free speech and of a free press, belonging to every citizen of the United States, constitute essential parts of every man's liberty, and are protected against violation by that clause of the 14th Amendment forbidding a state to deprive any person of his liberty without due process of law. It is, I think, impossible to conceive of liberty, as secured by the Constitution against hostile action, whether by the nation or by the states, which does not embrace the right to enjoy free speech and the right to have a free press.

*Id.*, 205 U.S. at 463-65.

## IT'S BEEN A ROUGH FEW YEARS

Jump ahead twelve years to the advent of 1919. In documentary style, supported by fifty-eight pages of endnotes and bibliography, Healy leads the reader through the traumas that filled the U.S. national consciousness with dread and uncertainty. The flu epidemic of 1918; national hair-pulling about entering World War I as a combatant; the Espionage Act of 1917 enacted shortly after answering yes to that question (banning passing on information in time of war with the intent to interfere with the armed forces or support its enemies or falsely stating anything tending to cause disloyalty or insubordination in the armed forces or interference with recruitment); the first effective national military draft; the Sedition Act of 1918 that made it illegal to utter "disloyal, profane, scurrilous, or abusive language" about the United States government, its flag, or its armed forces or language that caused the audience to view the government or its institutions with contempt; and, as the war came to an end, the "racial violence, labor disputes, terrorist attacks, red-baiting,



fearmongering, and a bitter struggle over the nation's role in the postwar world." When I said documentary style, I mean you can see it happening. It's one of the strengths of the book. By the time New Year's Day 1919 rolls around, you are ready for the denouement.

Multiple cases tested the two Acts' suppression of speech. They provide the stage for the drama of how the "history of free speech," trumpeted in the book's sub-title, got changed.

*Schenck v. United States* was the first case. Two "fervent and starry-eyed socialists" published crude leaflets, some sent to draftees ("If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain."). And here's how Holmes, in writing for a unanimous court, maneuvered around two major jurisprudential problems in finding that the First Amendment applied, but the convictions were still justified:

**His opinion in Patterson that the First Amendment did not apply to the suppression of speech?** "[The circular] is protected by the First Amendment to the Constitution. Two of the strongest expressions are said to be quoted respectively from well-known public men. It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in [*Patterson v. Colorado*]." *Schenck v. United States*, 249 U.S. 47, 51-52 (1919).

**If the First Amendment says Congress shall make no law, does it mean no law whatsoever?** "We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case

is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced."

*Id.*

Throwing Patterson in the dustbin was astounding. It has stayed in the dark and dank ever since. Saying that the First Amendment had force in this case and inventing the standard of "clear and present danger" was more astounding, but it took years for that finally to stick.

... in the Epilogue, which I refuse to spoil for the reader, Healy includes a 1922 letter to Zechariah Chafee, Jr., another free-expression icon, in which he explains in four diffident words why the two opinions are so different.

How does Healy say these changes occurred? With much documentation of the type that allows historians to infer what their subjects were thinking, including personal letters to and from friends and critics as well as notes, Healy shows how the theory espoused in Patterson had taken a public beating over the past year or so and that men of intellect Holmes admired had a different view, critical but respectful of Holmes's thinking. Better yet, in the Epilogue, which I refuse to spoil for the reader, Healy includes a 1922 letter to Zechariah Chafee, Jr., another free-expression icon, in which he explains in four diffident words why the two opinions are so different.

## CHANGE IS COMIN'

As to the second question, Holmes felt the convictions were justified, so the Common Law scholar had to play the distinguishing game, and to answer “No,” that free speech was not absolute. To do that, he had to devise a brand new line to protect the state, while protecting its citizens at the same time. He got away with it because of his stature. No member of the Court dissented. In two other cases (*Frohwerk and Debs*) decided that same day dealing with the same Acts of Congress, “he didn’t so much as mention the words ‘clear and present danger.’” Yet the die was cast, and change was, if not in the air, in Holmes’s mind.

And it is in the next seven months of 1919 that Healy finds a continental divide in Holmes’s thinking. “How Oliver Wendell Holmes changed his mind.”

Here is the change Healy points to. On November 10, 1919, Holmes, even in the face of a personal visit by three other justices hoping to change his mind, dissented in a case so similar to *Schenk* that scholars ever since have been mystified. Arguably, it was a better case for the prosecution than *Schenck*. Five Russian Jews in New York City had been convicted for the publication of two leaflets thrown to the street from a building in New York City. The leaflets criticized Woodrow Wilson’s sending of American troops to Russia and, in a leaflet written in Yiddish, denounced the war in general and U.S. opposition to the Russian Revolution. It shouted: “Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest best, who are in Russia and are fighting for freedom.” This seems more dangerous than the words in the leaflets in *Schenck*. The Supreme Court agreed and upheld the convictions.

But Holmes was eloquent in dissent and in brushing off that concern:

I never have seen any reason to doubt that the questions of law that alone were before this Court in the Cases of [*Schenck and Frohwerk*], were rightly decided. I do not doubt for a moment that by the same reasoning that would

justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.



Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas - that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

*Abrams v. United States*, 250 U.S. 616, 627-30 (1919)

## JUST THE FACTS, SIR

Holmes obviously saw no contradiction between *Schenck* and *Abrams*; he was just doing what all



judges trained in the common law, about which he was the leading U.S. expert, have always done: distinguish facts. Hence, he never admitted to anything supporting the “change” hypothesis. His biographer, Sheldon Novick has written: “What are the chances that criticism from friends would cause him to change his mind over the course of the summer? If the hypothesis is put this way, it has always seemed to me that the chances that Holmes would change his mind are close to zero.”

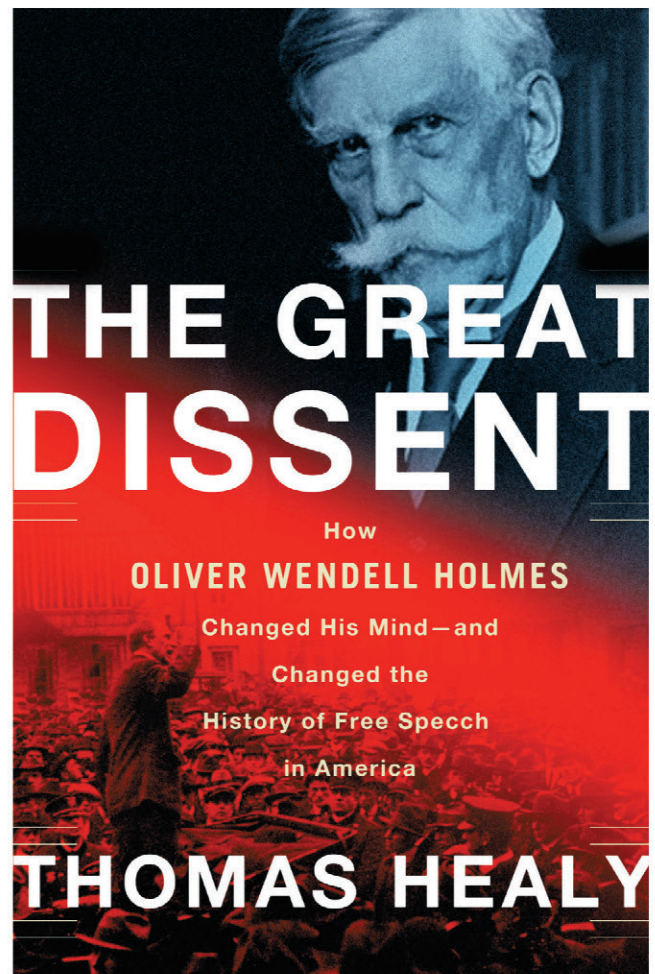
And here is where the book is least persuasive while being enormously engaging. Healy says the book “is a story about an intense behind-the-scenes effort to change the mind of a legal icon. It is a story about the unlikely friendships between an old soldier and the ‘young lads’ who rescued him from loneliness and despair, urging him on to the crowning achievement of his career.”

### OLD FRIENDS MEET AGAIN

He’s convincing about the friendships, and the telling of the “rescue” is fun. The dramatis personae of the efforts include Felix Frankfurter, Learned Hand, Louis Brandeis, Benjamin Cardozo, Zechariah Chafee and Harold Laski, whose personalities and conflicts cannot help but intrigue. Healy’s assiduous research and lively descriptions of meetings on trains and in drawing rooms, interviews, abundant personal letters and insights are so compelling that it hardly matters that one might not come to the same conclusion as the author about whether Holmes changed his mind and how. I hesitate to use the word page-turner, but I do say that once begun, I wanted to keep on to the end to solve the mystery. Healy goes further, to chart the post-Abrams history and how Holmes’s ideas have fared in later jurisprudence. That summary stands on its own two feet as something worthwhile.

As a final example of the drama Healy gives life to, he tells this tale: On the very day in 1919 that Holmes circulated his dissent in Abrams to the other justices and three days before its publication, “a convoy of police cars quietly ap-

proached the headquarters of the Union of Russian Workers on East Fifteenth Street in Manhattan. . . . Swinging blackjacks and shouting commands, [the agents] rounded up the two hundred occupants and dragged them into the street, many injured and covered with blood. . . . The roundup in Manhattan was just one of a dozen carried out that night by the Department of Justice. . . . [M]ore than 500 people were arrested nationwide. . . . Although authorized by Attorney General Palmer (and hence known as the Palmer Raids), the operation was actually the work of a twenty-four-year-old official named J. Edgar Hoover.”



GARY L. BOSTWICK  
Los Angeles, California

*Book reviews are the opinion of the individual writer and do not necessarily reflect the position of the College, its Board of Regents or the Fellows.*

# ANNUAL CHAIRS WORKSHOP HELD IN CHICAGO

Committee Chairs and Regents gathered for the Chairs Workshop in Chicago from November 14-16, 2013. Held annually, the workshop provides an opportunity for committee Chairs and Regents to interact with each other as they learn about the College and explore their leadership responsibilities.

President **Bob Byman** opened Friday morning's general session and summarized the College's recent and ongoing initiatives. Byman reminded the Fellows of the College's continuing efforts to increase diversity among the Fellowship, whether diversity is measured by practice type, gender, geographical location, ethnicity or other characteristics. Regent **C. Rufus Pennington, III** shared examples of successful efforts to emphasize diversity on watch lists.

CLE credit was offered on Friday afternoon for a presentation entitled *Recent Law and Ethical Issues*. In a nod to local talent, the presenters were current or past Chairs of the Upstate Illinois Committee. **James R. Figliulo** spoke about ethical issues related to firm websites and social media, and **William F. Conlon** discussed two recent ABA formal opinions: *Money Laundering and Terrorist Financing* and *Division of Fees with Other Lawyers Who Can Lawfully Share Fees With Non-Lawyers*. **Dan L. Boho**, current Upstate Illinois Committee Chair, reviewed application of the attorney-client relationship to communications by a lawyer with another firm's general counsel. **William D. Heinz**

warned of the traps that can befall foreign in-house counsel.

**Brett Wangman**, a website consultant to the College, introduced the re-launch of The Fellow Connection, a private, online, only-for-Fellows community. Initially debuted in 2011, the site has been revamped and is ready to be used by Fellows and committee members to connect and collaborate. Additional information about The Fellow Connection is provided elsewhere in this issue. To access The Fellow Connection, Fellows should log in to the College's website at [www.actl.com](http://www.actl.com) and click "The Fellow Connection" at the upper right-hand portion of the page.

Breakout sessions for the workshop's attendees focused on admission criteria, the candidate investigation process, planning regional meetings and organization of outreach activities. In a simulated Board of Regents meeting, Regent **Douglas R. Young** of San Francisco presented a mock slate of candidates and fielded questions from Regents and Past Presidents to demonstrate the process by which the Board makes decisions





about candidates for Fellowship. A video recording of a similar mock meeting is available to state and province committees by request to the National Office.

General committee chairs discussed current projects and explored cross-committee collaboration. Chairs addressed the group to share information about current activities, including:

#### **TEACHING OF TRIAL AND APPELLATE ADVOCACY COMMITTEE**

**John C. Aisenbrey**, Chair

The committee completed a deposition training video, available by request to the National Office. The committee is planning a mock trial demonstration to focus on differences in trial techniques between the United States and United Kingdom, to be held at the College's 2014 Annual Meeting in London.

#### **SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE COMMITTEE (U.S.)**

**John A. Chandler**, Chair

With its recent focus on judicial independence, the committee compiled an informational packet and established a list of volunteer Fellows to assist judges under attack. In addition, the committee is exploring ways Fellows can help mitigate the Veterans Appeals Board's massive delay of submitted claims by disabled veterans who

have returned from Iraq, Afghanistan and other overseas assignments. There are more than 45,000 pending appeals, with an average delay of 1,419 days (3.9 years) before resolution. The committee's two identified levels of concern include intractable delays and inadequate formulation and documentation of benefits. Fellows have offered their support, and the Committee is identifying ways to assist.

#### **OUTREACH COMMITTEE**

**John Kendal Cook**, Vice Chair

Fellows considered why outreach is important to the College, and they discussed existing and proposed outreach activities. With a mandate to "develop, through appropriate communication initiatives, the external profile of the College so that it may serve more effectively and improve and elevate the standards of trial practice, the administration of justice, and the ethics of the trial profession," the committee disseminates the work of other committees and reaches a broader audience. Vice Chair Ken Cook described the available College outreach materials, including a series of judicial vignettes and a teaching syllabus to use with the *Code of Pretrial and Trial Conduct*.

A post-workshop survey to the attending Fellows indicated universal appreciation for the opportunity to share ideas and become acquainted with other Fellows. The next Chairs Workshop will be conducted after the 2014 Annual Meeting.

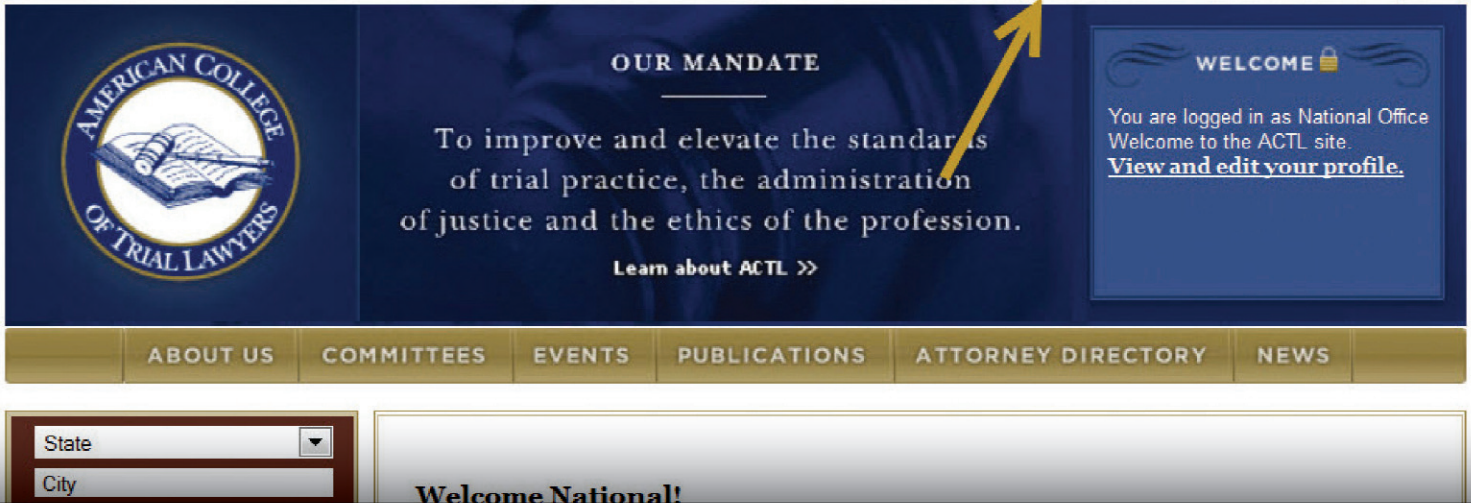


# THE COLLEGE EMBRACES NEW TECHNOLOGY: NO BLUE BOOK REQUIRED

The College Fellowship spans several generations, and the National Office is keeping pace with technology as it maintains the personal service Fellows have come to expect through the years.







The College Fellowship spans several generations, and the National Office is keeping pace with technology as it maintains the personal service Fellows have come to expect through the years.

### THE NEW DATABASE AND WEBSITE

The National Office will implement a new Fellow-records database, with anticipated implementation in summer 2014. The current database, in place since 2005, is incapable of supporting the increased pace of changing technology. “Our goal is to build a system that will meet the current needs of Fellows while ensuring we are ready to address future demands,” explained **Dennis Maggi**, the College’s Executive Director.

Along with the new database providing behind-the-scenes information, Fellows will benefit from the debut of a re-designed, easy-to-use website. Information will be current, easier to access and online meeting registration will be streamlined. Much of the information in the “Blue Book” roster, published annually, will be available instantaneously, simply by logging in at [www.actl.com](http://www.actl.com).

### THE FELLOW CONNECTION

In fall 2013, the College re-launched The Fellow Connection, an online community where Fellows can communicate and collaborate. Benefits include online libraries to share files and easy electronic communication that does not require quickly-outdated email lists.

As part of the College’s pilot program, the Emil Gumpert Award Committee members have used The Fellow Connection for more than two years. **Gary L. Bostwick**, past Chair of the Emil Gumpert Award Committee, observed that, “with the Fellow Connection, the Emil Gumpert Award Committee entered the modern age. A few years back, each member received seven or eight three-ring binders containing the many applications that needed review. Now, on the fly, even during telephone conference meetings, members log on almost effortlessly, view any of several applications under discussion and participate in the vital voting. It’s one of those things that you wonder how you ever lived without.”

To access The Fellow Connection, log in to the College website, [www.actl.com](http://www.actl.com), and click The Fellow Connection in the top right corner of the page.

# THE FOUNDATION IS READY, WILLING AND ABLE: PLEASE HELP US TO HELP OTHERS

Before the 2013 Annual Meeting of the College in San Francisco, the Foundation of the American College of Trial Lawyers met, led by new Foundation President **David J. Beck** of Houston, Texas.

Beck worked alongside Foundation Secretary **Mikel L. Stout** of Wichita, Kansas, Foundation Treasurer **Charles H. Dick, Jr.** of San Diego, California, and Trustees **Paul D. Bekman** of Baltimore, Maryland, **J. Bruce Carr-Harris** of Ottawa, Ontario, **John J. (Jack) Dalton** of Atlanta, Georgia, **Kathleen Flynn Peterson** of Minneapolis, Minnesota, **Alan G. Greer** of Miami, Florida, **Christy D. Jones** of Ridgeland, Mississippi, **Joan A. Lukey** of Boston, Massachusetts, **Michael E. Mone** of Boston, Massachusetts and **John S. Siffert** of New York, New York. A representative of Farr, Miller & Washington, the Foundation's investment management firm, participated by telephone during the investment portion of the meeting. Trustee **James L. Eisenbrandt** of Prairie Village, Kansas, was unable to attend.

The Foundation meets prior to all national meetings, and the Trustees ensure that its corpus is not only invested wisely, but that its funds are consistently spent on worthy causes according to the Foundation's bylaws and policies.

With the past year's contributions mirroring the nation's economy, the Trustees brainstormed ideas to raise the visibility of the Foundation and its activities. Fellows can expect to see new and innovative ideas to highlight the Foundation's works and make contributing to the Foundation easier.



## FOUNDATION GRANTS MADE POSSIBLE BY FELLOWS' DONATIONS INCLUDE:

- \$50,000** to provide legal representation to Florida inmates who were juveniles at the time they committed crimes, subsequently sentenced to mandatory life sentences without parole for their involvement in homicide cases, since ruled unconstitutional in *Miller v. Alabama* - to Miller Resentencing Project of the Florida State University College of Law Children in Prison Project, as winner of the 2013 Emil Gumpert Award.
- \$50,000** to provide basic legal rights and education to immigrants in Arizona's detention and immigration courts system - to the Florence Immigrant and Refugee Rights Project, as winner of the 2012 Emil Gumpert Award.
- \$30,000** to provide pre-mobilization legal assistance to active and reserve military personnel and families in a wide variety of civil legal matters - to the Texas Lawyers for Texas Veterans and the Rhode Island Bar Association's U.S. Armed Forces Legal Service Project.
- \$25,000** to decrease the likelihood of recidivism and reduce the likelihood of employment discrimination - to Cabrini Green Legal Aid's Expungement Project, which expunges or seals criminal records in Illinois.
- \$25,000** to advance a more accessible, efficient and accountable legal system - to the Institute for the Advancement of the American Legal System, to collect data and people to develop recommendations to empower stakeholders to implement measurable models in their jurisdictions, creating a cycle of improvement.
- \$25,000** to assist unrepresented tenants in municipal court, with matching funds being raised locally - to staff a resource/help center established by the Philadelphia Bar Civil Gideon Task Force.
- \$20,000+** to train public interest lawyers - \$10,000 each to the National College of District Attorneys and the National Criminal Defense College, amounts donated annually; plus smaller sums as requested by states' committees for ongoing training courses and seminars.
- \$10,000** to establish a symposium to examine the vanishing trial - to the Connecticut Bar Foundation, for its Judge Mark R. Kravitz Symposium Series on the Administration of Justice
- \$9,749** to fund a teaching training program for judges - to the NITA Foundation.
- \$8,250** to provide legal ethics and professionalism training to Fellows - to the College's Legal Ethics and Professionalism Committee to produce a video teaching tool, available to committees and Fellows on request.
- \$5,000** to fund a deposition training project - to the College's Teaching of Trial and Appellate Advocacy Committee, to develop a syllabus and video teaching tool for training public interest lawyers, available to committees and Fellows on request.
- \$2,000** to teach trial advocacy skills to practicing lawyers - to the University of Montana, to be used at its law school.

The list is long and the need is great. The Foundation's Trustees are ready, willing and able to make a difference.

**PLEASE HELP US TO HELP OTHERS. ■**

# IN MEMORIAM

The fifty-eight departed Fellows remembered on the pages that follow are a composite of the best of our profession. ♦ The names of some were widely known in the profession: the oldest living Past President of the College, two former Regents, two Past Presidents of the American Bar Association, at least six former State or Province Chairs, a former member of the United Nations Human Rights Council and leaders of other state and national organizations. ♦ The names of others, who had chosen a different path, were known mostly to the communities they had served. ♦ Eight lived into their nineties, twenty-seven into their eighties. ♦ Twenty-one died too soon—in their seventies or, in two cases, in their sixties. ♦ With each passing year, fewer of them represent what we have come to call the Greatest Generation. ♦ Though at least thirteen had served in World War II, fourteen had served in the Korean and Vietnam eras and another eight had seen peacetime military service. ♦ Their World War II service ranged from seventy missions piloting a bomber for one and fifty-nine missions as a fighter pilot for another to serving as waist gunner in a slow-moving “flying boat” in the Pacific for another. ♦ One was injured in a kamikaze attack on his ship. ♦ One had the unique experience of helping to organize, command and prepare to participate in the invasion of Japan a group of black soldiers in the then-segregated United States Army, an experience that made him a civil rights advocate for his entire career. ♦ They came from many different backgrounds. ♦ One was the son of an Associate Justice of the United States Supreme Court who moved his family from his native Birmingham to Florida to insulate his children from the venom that followed the decision in *Brown v Board of Education*. ♦ Another, the son of an American businessman, had sat with his family in the shadow of Adolph Hitler’s viewing box, watching as Jesse Owens won four gold medals in the 1936 Olympic Games. ♦ The lives of several began in poverty, an experience that shaped their careers. ♦ One, born in a barn, sometimes skipped a meal so that his four younger brothers could eat. In later life, a well-known philanthropist, he carried dog biscuits in his car to give to the pets of homeless people he encountered on the street. ♦ One rode a horse to a one-room schoolhouse the first eight years of his education. ♦ One left school at age twelve and went to work after his second parent died. ♦ Later, after service in World War II, he found his way into college without a high school diploma. ♦ One who had polio at age sixteen, leaving him with two withered legs, went on to a career unencumbered by his handicap.



One, whose high school basketball coach was drafted in World War II, took over and at age sixteen became the youngest high school coach in the United States. ♦ One worked his way through law school while supporting his family by working as a night policeman; another worked on campus construction projects, another worked for a local judge. ♦ One entered law school with one dime in his pocket and finished at the top of his class. ♦ They included college varsity athletes and scholars. ♦ The honors thesis of one who was both was included in his college's style manual for over forty years. ♦ One was an Eagle Scout. ♦ One had entered undergraduate school at age sixteen. ♦ Another got his law license at age nineteen. ♦ Two, one still in high school, had used their reporter's credentials to gain access to the historic 1948 Democratic National Convention. ♦ Their careers were equally diverse. ♦ One authored a paper that became a seminal document in the victim's rights movement. ♦ One defended the first murder case under Canada's Legal Aid Plan. ♦ One helped assemble the team that gained a global settlement with the tobacco industry. ♦ One won the outstanding teaching award at two law schools. ♦ One was the judge who tried the Microsoft antitrust case. ♦ One began the representation of a man on death row as part of a law school project and stayed with the case through a successful appeal to the United States Supreme Court. ♦ They were not without a sense of humor. ♦ One prosecuted a case on behalf of the local school board against striking teachers that resulted in his teacher wife's jailing for contempt. ♦ Another once filed a Motion to Spank against opposing counsel who had pursued obstructive discovery tactics. ♦ Their interests outside the profession evidenced rich lives. ♦ They ranged from photography and singing in a barbershop quartet to owning ranches and raising prize cattle. ♦ One was given credit for resurrecting the "Iron Bowl," the annual Alabama-Auburn football game, after a forty-one year hiatus. ♦ One was a consultant in his son's well-known Paul Newman movie. ♦ One played on a wheelchair basketball team. ♦ And finally, one who was told that he had a few days to live, insisted on going home from Hospice and lived four more months, visiting with his friends, while another died in his sleep on vacation in Cancún. ♦ 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

**Terrill D. Albright**, '90, Indianapolis, Indiana, died October 6, 2013 at age 75. A graduate of Indiana University and of its School of Law, he had practiced his entire career until his retirement in 2010 with Baker & Daniels. A Past President of the Indiana State Bar Association and a leader in alternative dispute resolution, he was a Fellow of the American College of Commercial Arbitrators and co-founder of Project Peace in the Indianapolis public schools. He had also served as Chair of his local YMCA. A widower, his survivors include a daughter and a son.

**Michael Ash**, '96, Milwaukee, Wisconsin, retired from Godfrey & Kahn, S.C., died August 24, 2013 at age 74 of complications from an infection. Stricken at age sixteen with polio that paralyzed both legs, he returned to high school to become president of his graduating class and a nationally competitive debater. A graduate of Marquette University, he earned an MA from the Harvard School of Government, which he attended on a Woodrow Wilson Scholarship, and his law degree from Harvard Law School. In his spare time, he taught himself to play the ukulele. After clerking for a Federal District Judge, he joined the local Milwaukee District Attorney's office, first as an Assistant and then as Deputy. Taking a leave of absence, he worked for the Federal Law Enforcement Assistance Administration, focusing on ways to improve the treatment of witnesses and victims in the court system. His published paper, *On Witnesses: A Radical Critique of Criminal Court Procedures*, became a seminal document in the victim's rights movement. He

later joined the law firm where he practiced until his retirement. He served on the Boards of Sacred Heart Rehabilitation Hospital and Independence First and sang in his church choir. After navigating for most of his life with braces, crutches and a hand-operated automobile, playing on a wheelchair basketball team and auditing courses in history, music and religion, by the time of his retirement he was confined to a wheelchair, having had two shoulder replacements and a hip replacement. His philosophical reflection on his handicap: "The way I look at it, . . . everybody starts out with some handicap. Some are not as smart as others. Some don't have as good a personality, maybe. God gives everybody obstacles. . . . This life is just preparation for the afterlife. Your success in that afterlife depends on what you do here. The afterlife is the one that counts." His survivors include his wife and two sons.

**George Alexander (Alex) Bartlett**, '83, Jefferson City, Missouri, retired from Husch Blackwell, LLP, died July 30, 2013 at age 75. A *summa cum laude* graduate of Central Missouri State University, where he was valedictorian of his class, he earned his law degree from the University of Missouri Law School, where he was a member of the Board of Editors of his law review and of the Order of the Coif. His law practice was interrupted by three years of service in the Vietnam era as an officer in the United States Army Judge Advocate General's Corps, serving at the Pentagon. He had served as President of his county Bar and as the College's Missouri State Chair and was a recipient of the Missouri Bar Foundation's



Smithson Award and of the Missouri State Bar's President's Award. He had retired in 2012 on account of ill health. Twice married, his survivors include his second wife, a daughter, a son and a stepson.

**Hugo Lafayette Black, Jr.**, '83, a Fellow Emeritus from Coral Gables, Florida, died July 22, 2013 at age 91. His education at the University of Alabama had been interrupted by service in the United States Army in World War II. After returning to finish his undergraduate degree, he earned his law degree at Yale Law School, where he was second in his class, President of the Law School Association and a member of the Board of Editors of the Yale Law Journal. He began his law practice in Birmingham, Alabama. Knowing that the United States Supreme Court would soon be considering controversial school segregation cases, his father, an Associate Justice, had warned him away from his intent to enter politics. In the wake of the unanimous decision in *Brown v. Board of Education*, threats to his family and taunts to his son prompted him to move his practice from Birmingham to Coral Gables, where he practiced for the rest of his life. He was the author of *My Father: A Remembrance*, and of two practice-related publications. Known for his representation of the underdog, he was still active at the time of his death. A widower, whose only son, a lawyer, also preceded him in death, his survivors include two daughters.

**Eugene Paul Bradt**, '84, a Fellow Emeritus from Red Wing, Minnesota, died August

29, 2013 at age 76 of cancer of the brain. A graduate of Marquette University and of the William Mitchell College of Law, he had practiced for forty-two years with the St. Paul firm Hansen, Dordell, Bradt, Odulag & Bradt, retiring in 2005 and continuing to work as a mediator and arbitrator. He had served as President of the Minnesota Defense Lawyers Association, as a Special Municipal Judge and as the College's Minnesota State Chair. A widower who had remarried, his survivors include his wife, a daughter and two sons.

**Edmund M. Brady, Jr.**, '91, a Fellow Emeritus from Grosse Pointe Shores, Michigan, died November 9, 2012 at age 71. He had earned his undergraduate degree from John Carroll University and his law degree from the University of Detroit School of Law. He had served as President of the Detroit Metropolitan Bar Association, President of the Michigan Association of Defense Trial Counsel and President of the State Bar of Michigan. A former Trustee and President of the Village of Grosse Pointe Shores, he had served in leadership roles in numerous civic and charitable organizations, including chairing the Board of St. John Hospital. In 2003 he had been chosen as Alumnus of the Year by his law school. His survivors include his wife, one daughter and two sons.

**Leslie R. Brimmer**, '86, a Fellow Emeritus from West Simsbury, Connecticut, retired from the Hartford firm, Kenny, Brimmer & Mahoney, died March 7, 2012 at age 82. A graduate of Fairfield University and of

Boston College Law School, he had served as an officer in the United States Marine Corps in the Korean War. His survivors include his wife, two daughters and a son.

**Harl Dalton Byrd**, '84, Albuquerque, New Mexico, died February 15, 2013 a week short of his 87th birthday. A graduate of the University of New Mexico and of its School of Law, he had served in the United States Navy at the end of World War II before entering college. He had been appointed to the state court bench and had served as house counsel for the Zia Corporation in Los Alamos before entering private practice. As a member of the Board of County Commissioners, he had been instrumental in having Los Alamos, site of the World War II Manhattan Project, become an open community. He concluded his career acting as Special Master to the local federal court. His survivors include his wife of sixty-three years, three daughters and three sons.

**John Pannill Camp**, '88, Fort Worth, Texas, retired from Camp & Warren, died September 14, 2013 at age 87. Volunteering for the United States Navy at age seventeen, he served as an aerial gunner on PBY Flying Boats and Grumman Avengers in the South Pacific in World War II. After the war, he earned his undergraduate and law degrees from Baylor University. A recipient of the Fort Worth Bar's Blackstone and Liberty Bell Awards, he was a frequent continuing legal education lecturer. A widower, his survivors include two daughters and three sons.

**Alan Ray Carlson**, '05, Bartlesville, Oklahoma,

a member of Garrison, Brown & Carlson, died February 2, 2013 at age 65. A graduate with honors from Oklahoma State University and of the University of Tulsa School of Law, he was a frequent continuing legal education speaker and a recipient of the Oklahoma Trial Lawyers Certificate of Meritorious Service. His survivors include his wife of forty-two years and two sons.

**S. Thomas Chandler**, '56, Tucson, Arizona, a former Regent of the College, retired from Chandler & Udall, LLP, died November 29, 2013, of prostate cancer, at age 94. Born in a barn to an impoverished family, one of five siblings who often went hungry during the Great Depression and who himself occasionally skipped meals so that his younger brothers could eat, he spent much of his life quietly helping people in need. He was even known for carrying dry dog food in his car to hand out to homeless people to feed their pets. At his death, he was lauded as one of Tucson's most dedicated philanthropists. Landing at the University of Arizona in 1938, he eventually entered law school with one dime in his pocket and graduated at the top of his class. He founded or co-founded several organizations, including the Arizona Adopt-a-Classroom Project to assist teachers, Southern Arizona Legal Aid, the Conquistadores, which has raised millions of dollars for youth sports, and the Arizona Center for Law in the Public Interest. He was a past member of the Arizona Board of Regents, which oversees the state's public universities. Among his many honors was a lifetime achievement award from Greater Tucson Leadership. In his honor, the University of Arizona College of Law



established the S. Thomas Chandler Public Service Award to provide scholarships to students pursuing careers in public service and serving the public interest. A staunch Democrat, Chandler had worked in many state and national political campaigns and was a confidant and adviser to numerous public officeholders. In addition to serving the College as a Regent, he had three times chaired the Arizona State Committee, as well as the Emil Gumpert Committee. In keeping with his aversion to the limelight, he left instructions that no public service be held upon his passing. His survivors include three daughters and three sons.

**Eddie N. Christian**, '89, a sole practitioner from Fort Smith, Arkansas, died December 16, 2013 at age 72. A graduate of the University of Arkansas and of its School of Law, he had once served as a Special Justice of the Arkansas Supreme Court. His survivors include his wife of over fifty years and a daughter. A son, with whom he had practiced law, preceded him in death.

**Morton Hutchinson Clark**, '87, a Fellow Emeritus from Williamsburg, Virginia, retired from the Norfolk, Virginia, firm Vandeventer, Black, Meredith & Martin, died October 7, 2013 at age 80. A graduate of the University of Virginia and of its School of Law, he had served in the United States Navy in the Pacific during the Vietnam era. A maritime lawyer, he had served on the Executive Committee of the Maritime Law Association of the United States and had both taught

maritime law and written on the subject. He was a Past President of his Inn of Court. His survivors include his wife of fifty-two years, three daughters, two of whom live in England and one in Hong King, and a son.

**Nathaniel Ragsdale Coleman, Jr.**, '80, a Fellow Emeritus, retired from Milligan & Coleman, Greeneville, Tennessee, died August 13, 2012 at age 89. Born in Hamburg, Germany, where his father had established a tobacco brokerage business after service in the United States Army in World War I, his mother was a London-born lyric soprano who sang leading roles in the Dresden Opera in the 1930s. At age six, Nat was placed in a boarding school in England. At age fourteen, he, with his parents and younger brother, sat in the shadow of Adolph Hitler's viewing box, cheering as the legendary Jesse Owens earned four gold medals at the 1936 Berlin Olympic Games. Prevented from returning to England by the outbreak of World War II, he was accepted as a student at the College of William and Mary at age sixteen. An aide to the president of the college, a member of the varsity tennis team and president of his fraternity, upon graduation, he entered midshipman school and, upon receiving his commission in the United States Navy, first served on the destroyer escort USS *James E. Craig*, DE-201, in the Pacific Theater and then commanded an AVR, a launching platform for radio-controlled target drones. After graduating from the University of Virginia School of Law, he went to work briefly for a tobacco merchant company in Salonika,

Greece, a venture soon made impossible by the Greek civil war, then established a practice in Greeneville. In addition to practicing law, he helped to form a paper-processing machinery company, whose general counsel he was for many years. He also served on the board of two banks and, a “cradle Episcopalian” who traced his Virginia ancestors back to the late 1600s, he served his local church in various capacities for sixty-three years. A widower who had cared for his wife of sixty-six years for the last ten years of her life after she had suffered a massive stroke, his survivors include two daughters.

**John William Conger**, '03, Oklahoma City, Oklahoma, Hartzog Conger Cason & Neville, died January 1, 2013 at age 67. A graduate of the University of Oklahoma and of its School of Law, he worked as general counsel for a local corporation for two years before entering private practice. He had served as President of the Oklahoma County Bar Association and of the Oklahoma Bar Association, which had honored him with its John E. Shipp Award for Ethics and its Award for Outstanding Service. He was one of the founding members of his local Inn of Court. In his later years, along with his private practice, he served as General Counsel to Oklahoma City University and as a Distinguished Lecturer at its School of Law, whose students had voted him Professor of the Year. The University had awarded him an Honorary Doctor of Laws Degree and he had received his law school's Marion P. Opala Lifetime Achievement Award. Before his death, the law school had announced plans to name the courtroom in its new downtown

facility the J. William Conger Courtroom. His survivors include his wife and three daughters.

**Austin Morley Cooper, Q.C.**, '91, Cooper, Sandler, Shime & Bergman LLP, a fellow Emeritus from Toronto, Ontario, died September 4, 2013. Born in 1929, he was a graduate of the University of Toronto and Osgoode Hall Law School. A criminal lawyer, he had received the Criminal Lawyers Association's highest honor, the G. Arthur Martin Medal, and the Law Society of Upper Canada had bestowed on him an honorary Doctor of Laws. A strong advocate of legal aid, he had defended the first murder case under the Legal Aid Plan. His survivors include three sons and their mother.

**Eugene Crew**, '89, Kilpatrick, Townsend & Stockton, San Francisco, California, died August 15, 2013 at age 82. A graduate of the University of Portland and of the University of San Francisco School of Law, he had served as an adjunct professor of antitrust law at the University of San Francisco School of Law and the Hastings School of Law at the University of California. The State Bar of California had named him Antitrust Lawyer of the Year in 2009 and he had received the Alumnus of the Year Award from the University of San Francisco in 2008. His survivors include his wife and a daughter.

**John Joseph (Jack) Curtin, Jr.**, '73, Bingham McCutchen LLP, Boston, Massachusetts, died November 25, 2013 at age 80. A graduate of Boston College and the Boston College Law School, he had earned an L.L.M. from Georgetown University Law School while



working as a trial attorney in the Antitrust Division of the Department of Justice. He later served as Assistant United States Attorney for the District of Massachusetts. A past President of both the Boston Bar Association and the American Bar Association, he founded the Massachusetts Legal Assistance Corporation in 1983. He had taught trial practice at the Boston College Law School for over four decades. He and his wife had founded the John J. and Mary Daly Curtin Center for Public Interest Law and its Curtin Fellowship Program for students working in public interest law. He was also instrumental in founding a program that for many years placed the school's law students at the International Criminal Court in The Hague. The Curtin Award is given each year to a lawyer who has shown commitment to *pro bono* work and whose work exemplifies the school's mission to train lawyers who are both good lawyers and who lead good lives. He had received a lifetime achievement award from the American Lawyer and the Boston College Law School's St. Thomas More Award and its 75th Anniversary Celebration Award. His survivors include his wife, two daughters and three sons.

**Thomas E. Deacy, Jr.**, '60, Deacy & Deacy, LLP, Kansas City, Missouri, the twenty-sixth President of the College, died September 23, 2013, at age 94. His life is the subject of a separate article in this issue.

**James J. Duffy**, '73, Inge, Twitty & Duffy, Mobile, Alabama, died October 19, 2013 at

age 82. After his undergraduate education at Marion Military Institute and the University of Alabama, he served as an officer in the United States Army during the Korean Conflict, then returned to earn his law degree at the University of Alabama. He had served as President of his local Bar and as the College's Alabama State Chair. A former member of the Vestry and Junior Warden of his Episcopal Church, his survivors include his wife of sixty years, a daughter and a son.

**William Dexter Douglass**, '79, Douglass Law, LLC, Tallahassee, Florida, died September 17, 2013 at age 83 of cancer. A graduate of the University of Florida and of its School of Law, with a stint in the military in between during the Korean Conflict, he was described in a news account of his death as "among the last of a breed of Florida public servants who guided the state from its rural roots to the diverse, multicultural mega-state that it is today." He had served as chair of the Florida Constitution Revision Commission that updated and reshaped the Florida Constitution. As General Counsel to Governor Lawton Chiles, he was instrumental in putting together the legal team that led to the landmark settlement against the tobacco industry. In the 2000 presidential election, he served as lead counsel in Florida to Vice-President Al Gore. Those who were present at the College's 2000 Spring Meeting may remember his folksy participation about his role. Remembering his family struggles growing up in the Great Depression, he prided himself in finding ways to represent clients, even if they could not pay. The Florida Bar had

awarded him its Foundation Medal of Honor for “a career spent providing legal services for the powerless.” Among the numerous boards on which he served was that of the Florida School for the Deaf and Blind, on which he served for sixteen years as both a member and Chair. His passion outside the law and the civic arena was raising prize Polled Hereford cattle. His survivors include his wife and three daughters.

**Joseph G. Finnerty, Jr.**, '81, a Fellow Emeritus from Baltimore, Maryland, retired from DLA Piper, died September 5, 2013 at age 76 of Alzheimer's Disease. The son of a judge, he had earned his undergraduate degree at Loyola University, Maryland. After a year of graduate study at Cornell and a tour of duty as an officer in the United States Army, he earned his law degree in the evening division of the University of Maryland School of Law while clerking for a local judge. He stood first in both the evening and day law school, was a member of the Order of the Coif and had the highest score on the Maryland bar exam in his year. Over his career, he had practiced with two law firms, had been Executive Director of the Maryland Catholic Conference, general counsel to a publicly-held corporation, chairman of Piper & Marbury's litigation department and managing partner of DLA Piper's then newly established New York office. Among his more noteworthy cases were defense of General Motors in a major set of brake design cases and successful defense of the inventor of the Dalkon shield. As a member of the Baltimore City Liquor Board, he was given credit for initiating strict regulations that ended racial segregation in

Baltimore city bars. His survivors include his wife, five daughters and two sons.

**The Hon. Mr. Justice Peter Foley**, '95, a Judicial Fellow from Saskatoon, Saskatchewan, died August 12, 2013 at age 71. A graduate of the University of Saskatchewan and of its School of Law, he had practiced with Gauley & Co. before ascending to the bench in 2000. His survivors include his wife of thirty-nine years, a daughter and three sons.

**John Thorson Foss**, '75, a Fellow Emeritus, retired from Foss, Whitty, Littlefield, McDaniel & Bodkin, Coos Bay, Oregon, was recently reported to have died May 21, 2008 at age 79 of pneumonia. A graduate of Augustana College, Sioux Falls, South Dakota, where he played varsity football and baseball, he saw combat in the Korean Conflict as a Sergeant in a mortar company. While awaiting the call to active duty, he had played minor league baseball. After graduating from the University of Iowa School of Law, he worked for a year in the Oregon Legislative Council's Office before entering private practice. He had served as President of his county Bar. His survivors include his wife of fifty-six years and three children.

**William F. Gallagher**, '90, Gallagher Law Firm, New Haven, Connecticut, died December 25, 2013 at age 76. A graduate of Fairfield University and of the University of Connecticut School of Law, he had been President of his county Bar, the Connecticut Trial Lawyers Association and the Connecticut Bar Association. The author of numerous



articles and a frequent lecturer, he was a member of American Arbitration Association National Panel of Arbitrators. He had served as a State Trial Referee. He had also been Assistant Corporation Counsel of West Haven and Special Assistant State's Attorney for New Haven County, as well as serving on numerous professional committees and commissions. He was the recipient of an Award for Excellence in Mediation from Community Mediation, a Lifetime Achievement Award from the New Haven County Bar Association, the University of Connecticut Law School's Medal of Excellence, the Publishers Award from the Connecticut Law Tribune and a Community Achievement Award from Yeshiva of New Haven. His survivors include his wife, a daughter, a son and six stepchildren.

**G. Hunter Gibbons**, '84, a Fellow Emeritus, retired from Dickinson & Gibbons, P.A., Sarasota, Florida, died October 19, 2012 at age 88. He began his education at the University of Florida, leaving to enlist in the United States Army Air Corps when he turned eighteen, six months after the bombing of Pearl Harbor. An officer, he piloted a B-25 Billy Mitchell bomber on seventy missions in Italy, earning a Distinguished Flying Cross and several Oak Leaf Clusters. Working on construction jobs to support his family while he completed his legal education at the University of Florida School of Law, he then joined the United States Air Force Judge Advocate General's Corps. Stationed in at least nine different places during his

military career, including participating in the national security aspects of the Cuban Missile Crisis, he left the military after a twenty-year career to enter private practice. He retired from active practice at age eighty-three. General Counsel to two hospitals, he had served as Chair of the Board of Blue Cross and Blue Shield of Florida, which has honored him with a scholarship in his name. He had served as President of the Sarasota Bar Association and was a charter member of the local Inn of Court. Twice a widower, his survivors include a daughter.

**Richard Scott Hawkinson**, '82, a Fellow Emeritus, retired to Monterey, California, died January 28, 2013 at age 85. A graduate of the University of Kansas and of the University of Michigan Law School, he had served in the United States Air Force as a JAG officer before joining the San Francisco firm, Bronson, Bronson & McKinnon. He was a former President of the National Association of Railroad Trial Counsel. A widower, his survivors include three daughters.

**Thomas Penfield Jackson**, '81, Washington, District of Columbia, Of Counsel to Jackson & Campbell, P.C., died June 15, 2013 at age 76 of cancer. A graduate of Dartmouth College and of Harvard Law School, after years of practice with the firm his father had helped to create, he had served as United States District Judge for the District of Columbia. At the time of his appointment, he had been elected President of the District of Columbia Bar. A fellow judge had described him as a

larger than life figure who presided over some of the most complex and difficult cases in the court's history, noting that, "With his white hair and stage-quality deep voice, he was once described as being sent from central casting for the part." Among the cases over which he had presided were the criminal prosecution of Washington Mayor Marion Barry for cocaine possession and *United States v. Microsoft*. In the latter case, his ruling that Microsoft had violated the antitrust laws was affirmed, but his order breaking up the company was reversed on appeal by a court that sent the case back to another judge for partial retrial on account of Jackson's comments to the press after his role in the case was over. In a presentation to the 2002 Spring Meeting of the College, he had defended his reasons for undertaking to explain to the press the issues involved in a case with international significance whose import was widely misunderstood by those unfamiliar with United States antitrust law. In a later article in the *National Law Journal* he defended the right of federal judges to speak publicly about their cases to make sure that the press accurately reported court proceedings so as to contribute to a better public understanding of what a case was about. Taking senior status in 2002 and retiring in 2004, he returned to his old law firm to establish an international arbitration practice. His survivors include his wife and two daughters.

**Donald L. James**, '80, a Fellow Emeritus, retired from Brown & James, P.C., St. Louis, Missouri, of which he was a founder, died May 3, 2013 at age 80 after a long illness. A graduate of Cardinal

Glennon College, Saint Louis University and Saint Louis University School of Law, before law school he had been a seminarian, served in the United States Army and worked as a funeral director and as an insurance claims adjuster. The Lawyers Association of St. Louis had given him its Award of Honor, given each year to an outstanding trial lawyer whose service to the profession and the community merits reward as an example to inspire others to similar service. The Missouri Organization of Defense Lawyers had honored him with its Ben Ely, Jr. Defense Lawyer Award. His survivors include his wife of fifty-eight years, two daughters and two sons.

**Henry Little (Buck) Kitchen**, '94, a Fellow Emeritus, retired from Kitchen, Neal, Webb, Webb & Farrell, Rockingham, North Carolina, died August 29, 2013 at age 74 after a long illness. An Eagle Scout and an All-State high school running back, he was a graduate of Wake Forest University and of its School of Law. After active duty as an officer in the United States Army during the Vietnam War, he began his practice in Charlotte, North Carolina, then moved to Rockingham. An active outdoorsman, hunter, fisherman and conservationist, he was a former President of the North Carolina Chapter of the National Wild Turkey Federation who had also served as a member of the North Carolina Wildlife Resources Commission, where he helped to create the North Carolina Natural Heritage Endowment Fund. He later served on the board of the North Carolina Natural Heritage Trust Fund. His survivors include his wife, a daughter and a son.



**John W. Leskera**, '84, Dunham, Bowman & Leskera, Collinsville, Illinois, died July 26, 2013 at age 82. An honors graduate of the University of Illinois who then earned his law degree at its School of Law, he served as an officer in the United States Air Force Judge Advocate General's Corps before entering private practice. For thirty years, he served as attorney for his local school district. He once made national headlines in procuring an order of contempt against striking teachers who defied the court's return to work order. One of the teachers selected for jail for contempt was his wife. A widower, his survivors include two daughters and a son.

**John D. Liber**, '90, retired from Spangenberg, Shibley & Liber, LLP, Cleveland, Ohio, died July 23, 2013 at age 74. He rode a horse to a one-room schoolhouse for his first eight years of school. After attending Purdue University on a football scholarship, he earned his law degree at the Ohio State University College of Law. A Past President of the Cleveland Bar Association, the Cleveland Bar Foundation, the Ohio Metropolitan Bar Association and the Ohio Academy of Trial Lawyers, he was also a Past President of the International Society of Barristers. He was the founder of "Education Initiative," which brought members of the Cleveland Bar into public schools to teach "Street Law." His survivors include his wife of fifty-three years, a daughter and two sons.

**J. Duke Logan**, '79, a Fellow Emeritus, member of Logan & Lowry, LLP, Vinita, Oklahoma, died December 22, 2013 at age 82. He was a

graduate of the University of Oklahoma and of its College of Law. He financed his legal education by working nights as a policeman. A Past President of his local Bar and of the Oklahoma Bar Association, he had served as City Attorney, as General Counsel for the Grand River Dam Authority and an electric cooperative. He had also been a director of two banks, was a founding member and director of Cattlemen's Life Insurance Company and at the time of his induction into the College, owned five ranches. He had served both as Chair and as General Counsel of the Oklahoma Council on Judicial Complaints. A widower, his survivors include two daughters and two sons.

**Bruce G. Lynn**, '65, a Fellow Emeritus, retired Senior Counsel of Bricker & Eckler, LLP, Columbus, Ohio, and a former Regent of the College, died March 31, 2013 at age 96. A graduate of Ohio State University and of Harvard Law School, he had been President of the Columbus Bar. He had also served as the College's Ohio State Committee Chair and was a recipient of the Columbus Bar Association Service Medal. A well-known photographer, several of his books on the Caribbean had been published and his photos had appeared in numerous publications, including *The New York Times*. He was also a barbershop quartet singer. A widower, his survivors include two daughters and a son.

**Kenneth Bruce McConnell**, '71, a Fellow Emeritus, retired from McConnell & Palmieri, Bloomfield Hills, Michigan and living in McMillan, Michigan, died September 28, 2013

at age 84. Born on a small farm in Ontario, the third oldest of six children, he was forced to leave school at age twelve upon the death of his second parent. Working until he was old enough to join the United States Army, he served in World War II, earned his United States citizenship and entered Hope College on the GI Bill without a high school diploma. He earned his law degree at the University of Michigan. An Irishman with a sense of humor, he once became so annoyed with the delaying tactics of an opposing counsel that he filed a Motion to Spank. Once when he had a case called by the Michigan Supreme Court on a day when opposing counsel had been held up from arriving by bad roads, after the court denied his motion to move the case to the end of the docket, he proceeded to argue the case for the opposing counsel and then to argue his own case. He had served the College as Chair of the Michigan State Committee. His survivors include three daughters, a son and their mother.

**James Herbert McConomy**, '85, retired from Meyer, Uncovik & Scott LLP, Pittsburgh, Pennsylvania, died August 27, 2013 at age 76. A graduate of Harvard College and the Harvard Law School, he had served briefly in the United States Army during the Vietnam War. Twice married, his survivors include his wife, two daughters, three sons and a stepdaughter.

**John Brooks McCrory**, '73, a Fellow Emeritus, retired from Nixon, Peabody, LLP, Rochester, New York and living in Kennett Square,

Pennsylvania, died June 17, 2012 at age 86. His undergraduate education at Swarthmore College interrupted by service in the United States Navy in World War II, he thereafter earned his law degree from the University of Pennsylvania School of Law. An early participant in the emerging field of media law, for fifteen years he taught on the annual Practicing Law Institute program and wrote on the subject. He had been both Clerk of the Session in his Presbyterian church and Moderator of the Presbytery. A widower, his survivors include a daughter and a son.

**James Glover McGhee**, '69, a Fellow Emeritus from Darien, Georgia, retired from Atlanta's Swift, Currie, McGhee & Hiers, LLP, died July 25, 2013 at age 88. His undergraduate education at The Citadel had been interrupted by World War II, in which he enlisted in the United States Army Shore Artillery, was then commissioned in the Horse Cavalry and served as Combat Engineer in North Africa and Italy. He earned his law degree from the Emory University School of Law. A pilot who specialized in aviation law, he had been President of the Lawyer-Pilots Bar Association, as well as of the Lawyers Club of Atlanta. In retirement, he spent his last fourteen years on the Georgia coast, pursuing scuba diving, winemaking, beekeeping, carpentry and flying, exploring North and South America with his wife, also a pilot, in their own plane. His survivors include his wife of sixty-three years and a daughter.



**Oakley Webster Melton, Jr.**, '76, a Fellow Emeritus, retired from Melton, Espy & Williams, P.C., Montgomery, Alabama, died November 10, 2013 at age 86. When his high school basketball coach was drafted in World War II, he became, at age sixteen, the youngest high school basketball coach in the United States. When he finished high school, he enrolled in a Specialized Officer Training Program and became a pilot in the United States Navy. After the war, he completed his undergraduate and legal education at the University of Alabama. In undergraduate school, he was President of the Student Government Association. A confidant and advisor to five Alabama governors, and numerous other officeholders, he had served as President of both the Montgomery County Bar and the State Bar of Alabama. During his State Bar administration he successfully proposed a mandatory continuing legal education program. He chaired the committee that created the current Alabama Rules of Civil Procedure. He is best known outside legal circles for his role in negotiating the successful resumption of the "Iron Bowl" game between Auburn and Alabama after a forty-one year hiatus and he had thereafter attended sixty-three consecutive Iron Bowl games. Legal counsel to the Alabama Soft Drink Association for over forty years, he was a member of the Beverage World Hall of Fame. He had endowed a scholarship fund for deserving students at the University of Alabama. He had also served as Chairman of the Administrative Board and the Board of Trustees of his local Methodist Church, and he had served the College as Alabama State

Chair. His survivors include his wife of sixty-two years, three daughters and two sons.

**George Thomas Miller**, '75, Dillsburg, Pennsylvania, died July 3, 2013 at age 90 of congestive heart failure. A graduate of Gettysburg College, he served as an officer in the United States Third Army in Normandy and later in the 28th Division in the Korean Conflict. He received his law degree from Dickinson School of Law, where he was Editor of the law review and later was a member of its Board of Trustees. His children established the Miller Center for Public Advocacy in his honor. He had begun his legal career with two judicial clerkships, served as Assistant County District Attorney and as an interim county judge, practiced with two law firms and, upon retirement from the second, practiced in partnership with his son until shortly before his death. He had been President of the Pennsylvania Association of Defense Counsel and had served on several public legal-related and local governing boards. His survivors include his wife of sixty-three years, two daughters and a son.

**Eugene J. Mulcahy**, '91, a Fellow Emeritus, retired from the Springfield City Law Department, Springfield, Massachusetts, died August 30, 2013 at age 84. A graduate of American International College, he had served in the United States Army in the Korean Conflict before earning his law degree at Boston University School of Law. A former Assistant Secretary to the Governor of Massachusetts, he had served as Chief Public

Defender for a three-county area before joining Brooks, Mulcahy, Sanborn & Williams, and, after retirement from his law firm, had remained Chief Trial Counsel for the City of Springfield until 2000. His survivors include his wife, a daughter and three sons.

**Wayne Munday**, '81, a Fellow Emeritus, retired from Munday, Sturman & Everson of Towson, Maryland, and living in Asheville, North Carolina, died October 1, 2013 at age 82. A graduate of Lenoir Rhyne College, Hickory, North Carolina, he served as an officer in the United States Marine Corps in the Korean Conflict before earning his law degree from Georgetown University School of Law. He had practiced first in La Plata, Maryland and then founded the firm where he spent the rest of his career, from which he had retired to return to North Carolina. He had served as a Trustee of St. Mary's College of Maryland, which had inducted him into its Order of the Ark & the Dove. A widower who had remarried, his survivors include his second wife, two daughters and a son.

**Donald Franklin Paine**, '84, Knoxville, Tennessee, a founding member of Paine, Tarwater & Bickers, LLP, died November 17, 2013 at age 74. A graduate of the University of Tennessee and of its School of Law, where he also simultaneously earned an MA, he was Editor of his law review. He then served as an officer in the United States Army Judge Advocate General's Corps. After four years as an Assistant Professor at the University of Tennessee School of Law, he thereafter

simultaneously practiced law and taught there for a total of almost thirty years, also teaching for a short time at the Vanderbilt University School of Law. He is the only person to have won the Outstanding Teacher Award at both institutions. The Tennessee Law School, where he won that award three times, had bestowed on him its Chancellor's Award for Teaching. A prolific writer, his *Tennessee Law of Evidence* is in its fifth edition. For thirty-five years he was a member of the Advisory Commission to the Tennessee Supreme Court on Practice and Procedure, serving at various times as Reporter and as Chair, and upon his retirement from that body, being named Chair Emeritus. He had served as President of his local Bar and of the Tennessee Bar Association. The recipient of *pro bono* awards from both his local and state bars, Legal Aid of Southern Tennessee had created the Donald F. Paine Law Student Volunteer of the Year Award in his honor and the Young Lawyers Division of his local Bar had awarded him its Law Through Liberty Award. A widower, his survivors include a daughter and a son.

**Herbert Warren Peterson**, '65, a Fellow Emeritus, retired from Rives & Peterson, LLC, Birmingham, Alabama, and living in Tuscaloosa, Alabama, died August 2, 2013 at age 96. He had earned his law degree from Birmingham School of Law, from which he graduated at age 19. He had served in the United States Army Judge Advocate General's Corps in England during World War II and remained an active reservist for



some thirty years. He had served as President of the Birmingham Bar Association. He had also served as a municipal city judge in Vestavia Hill, Alabama, for many years and had served as Chairman of the Administrative Board of his Methodist Church. After retirement from law practice, he served as a Professor of Law at Cumberland School of Law at Samford University. Upon his retirement, he was named Professor Emeritus, and the Herbert W. Peterson Scholarship in Trial Advocacy was established in his honor. He had served the College as Alabama State Chair. A widower who had remarried, his survivors include his second wife and three sons.

**William S. Reynolds**, '75, a Fellow Emeritus, retired from O'Shea, Reynolds & Cummings, Buffalo, New York, died July 30, 2013 at age 84. He was a graduate of Cornell University, which he attended on a merit scholarship, and of its School of Law. His law school education was interrupted by service in the United States Air Force during the Korean Conflict. He had been named the Western New York Defense Trial Lawyers Lawyer of the Year in 2004. A widower whose wife of fifty-eight years had preceded him in death, his survivors include a daughter and two sons.

**Daniel T. Roach**, '75, Buffalo, New York, died October 21, 2013 at age 84. A graduate with honors of Williams College, where he was a two-way starter of the varsity football team, he earned his law degree from the University of Buffalo School of Law, where he was a member of the law review. His honors thesis at Williams

was included in the college's style manual for more than forty years. After law school, he had served as a Sergeant in the 28th Infantry, 8th Infantry Division, in the Korean Conflict. He had taught a course in trial technique at his former law school for many years. His county Bar had named him its Lawyer of the Year and later he was recognized as its Defense Lawyer of the Year. He had tried cases into his eighties. He had served on two local library boards and on the Board of the Buffalo Seminary, had been recognized as a Distinguished Alumnus of the University of Buffalo Law School and had received the Western New York Trial Lawyers Award for Civility. A widower whose wife of fifty-nine years had preceded him in death, his survivors include two daughters and two sons.

◆ **Royce Glen Rowe, Jr.**, '78, a Fellow Emeritus, Wilmette, Illinois, retired from the Chicago firm McKenna, Storer, Rowe & Farrug, died November 12, 2011, at age 85 of lung cancer. After joining the United States Navy near the end of World War II, he earned his undergraduate degree from Northwestern University and his law degree from the Cornell University School of Law. A Defense Tactics Seminar that he had organized in 1964 in response to similar plaintiffs' lawyers' seminars, led to the organization of the Illinois Association of Defense Trial Counsel. A widower, his survivors include three daughters.

**Arthur M. Rude**, '70, a Fellow Emeritus, retired from Parmenter, Forsythe & Rude, Muskegon, Michigan, died September 19, 2013 at age 93. Between undergraduate and law schools at the University of Michigan, from which he received >>

his undergraduate degree with honors, he served as an officer in the United States Army in World War II. He was one of six officers in charge of a unit of black enlisted men in the then-racially segregated military who were being prepared on Okinawa for the invasion of Japan when the bombing of Hiroshima and Nagasaki ended the war. That experience led him to become a civil rights activist. Over his career he had volunteered to accept the defense of over a dozen innocent black defendants in first degree murder trials. He had served as President of the Urban League, as President of his local Bar, as President of his Congregational Church, as Chair of the local adult mental health clinic and as Chair of the local employment advisory committee, which focused on equal employment opportunities. He had been honored with distinguished service awards by the local chapters of both the Urban League and B'nai B'rith. His survivors include his wife, two daughters and a son.

**Albert E. Schoenbeck**, '58, retired from Lathrop & Gage L.C., St. Louis, Missouri, died December 19, 2012 at age 96. He had received both his undergraduate and law degrees from Washington University at St. Louis. He had begun his career on the legal staff of a railroad company before entering private practice. He had been Chair of the Missouri Savings and Loan Commission and of the St. Louis County Board of Election Commissioners. The headquarters building of the Missouri Optometric Association, which he represented for over sixty years, is named for him. He

had been awarded an Honorary Doctor of Humane Letters from the Illinois College of Optometry and the Chancellor's Medallion by the University of Missouri at St. Louis. He was a long-time Deacon, Elder and Elder Emeritus of his Presbyterian church. His wife of sixty years having preceded him in death, his survivors include three daughters.

**Jerome J. Shestack**, '80, retired from Schnader Harrison Segal & Lewis, Philadelphia, Pennsylvania, died August 18, 2011 at age 86. A graduate of the University of Pennsylvania and of Harvard Law School, where he was a member of the Order of the Coif, he was President of the American Bar Association in 1997-98. As Editor of the *Harvard Law School Record*, he had covered the 1948 Democratic National Convention when Senator Strom Thurmond had led a group of "Dixiecrats" from the convention over a civil rights plank. A veteran of World War II, he had served as a gunnery officer on the carrier USS *Ticonderoga*, CV-14 in the South Pacific Theater. Injured in a kamikaze attack, he later explained that he had escaped more serious injury because the meal that day was pork, which for religious reasons he did not eat, so that he was away from the mess deck, where the most casualties were sustained in the attack. Early in his legal career, he had served as Deputy City Solicitor of Philadelphia. He had been a member of the Democratic Party's Platform Committee at the 1984 national convention. He had chaired the ABA's Center for Human Rights and was appointed to the United Nations Human Rights Council



by President Jimmy Carter. Active in Jewish affairs, he had served on the board of the American Jewish Congress and the American Jewish Committee and was a former President of Har Zion Temple, Philadelphia's largest Conservative temple. He was also Chair of the American Poetry Center and a Director of the American Poetry Review, which awards a prize in his honor. His survivors include his wife, Marciarose, who in 1971 became the first woman to anchor a prime-time newscast in a major market, a daughter and a son, Jonathan, a movie producer whose credits include *The Young Philadelphians*, which starred Paul Newman, on which his father acted as a consultant.

**Bruce Gilbert Soden**, '85, a Fellow Emeritus, retired from Greene, Hershendorfer, & Sharpe, Syracuse, New York, and living in Fayetteville, New York, died in his sleep on February 10, 2013 at age 74 while on vacation in Cancun, Mexico. A high school All-American football player, he played on an undefeated Princeton University football team and was a member of the varsity heavyweight crew. He earned his law degree at Columbia University School of Law. He was an officer in the New York National Guard Judge Advocate General's Corps for six years, served as President of his county preservation society, as an Elder and Sunday school teacher in his Presbyterian church and a judge referee for the United States Rowing Association. In retirement, he was a volunteer for his local Bar's Volunteer Lawyer Project, providing *pro bono* legal services. A widower who had remarried, his survivors include his second wife, two daughters and four sons.

**John Woodward Sognier**, '73, retired from Chamberlain, Hrdlicka, White, Williams & Martin, Savannah, Georgia, died September 6, 2013 at age 93. He had attended Columbus University (now Catholic University) Law School in Washington, D.C., leaving in 1941 to enter the United States Army, then transferring to the Army Air Corps, where he flew fifty-nine missions as a fighter pilot in the European Theater and later commanded a fighter squadron in the India-Burma Theater. He was recalled to active duty in the Korean Conflict, earning a Distinguished Flying Cross and several Air Medals. Admitted to the Georgia Bar without a degree upon his discharge, he later earned an L.L.M. in Taxation from Emory University School of Law. While in private practice, he served in the Georgia General Assembly, as County Registrar, as County Attorney and as a member of the Georgia Board of Bar Examiners and of the Fitness Committee. In 1980, he was appointed to the Georgia Court of Appeals, where he served, ultimately as Chief Judge, until his retirement in 1992. He thereafter practiced law for nine years, then acted as a mediator and arbitrator until his retirement in 2005. He was a former Senior Warden of his local Episcopal church. His survivors include his wife and a daughter. His son was killed in action in Vietnam in 1967.

**John A. Sturgeon**, '95, White & Case LLP, Los Angeles, California, died December 12, 2013 at age 77 of ALS. A *cum laude* graduate of Stanford University who earned his law degree at its School of Law, he had served in the United States Navy between

undergraduate and law schools. A founder of the Association of Business Trial Lawyers and a passionate supporter of the arts, he had served as Overseer of the Huntington Library and Chairman of the Getty Museum Conservation Council. He had also been President of the San Marino Community Church Foundation, Chairman of both the Wine and Food Society of Southern California and the California Vintage Wine Society. He had successfully represented authors Joseph Wambaugh and Joe McGinnis in high-profile libel suits. His survivors include his wife, a daughter and a son.

**Gerard Francis Treanor**, '92, a Fellow Emeritus, retired from Venable, LLP, Washington, District of Columbia, died October 30, 2013 at age 70. A graduate of the College of the Holy Cross and of Catholic University School of Law, he had first clerked for a federal district judge, then served as an officer in the United States Navy Judge Advocate General's Corps and as an Assistant United States Attorney in the District of Columbia before entering private practice. A white collar defense attorney, he had led Venable's *pro bono* department. He had been the recipient of the Benjamin R. Civiletti Pro Bono Award for Excellence. His survivors include a daughter and a son.

**Robert Joseph VanLeuven**, '74, a Fellow Emeritus, retired from Libner, VanLeuven, Evans & Portenga, P.C., Muskegon, Michigan, died October 12, 2013 at age 82 of Parkinson's Disease. A graduate of Wayne State University

and of the University of Michigan School of Law, he had served in the United States Army during the Korean Conflict before entering law practice. His survivors include his wife, a daughter, two sons and three stepdaughters.

**John H. Westover**, '79, a Fellow Emeritus from Phoenix, Arizona, died November 23, 2013 at age 85. Serving in the United States Navy after high school until the end of World War II, he was a graduate of the University of Arizona and of its School of Law. His father and uncle had been in the first class at the University of Arizona School of Law. After initially practicing with his family firm in Yuma, Arizona, he moved to Phoenix to join a firm that eventually bore his name. In his later years, he practiced as a sole practitioner. He had been inducted into the Maricopa County Bar Hall of Fame. His survivors include his wife and two sons.

**Larry Farish York**, '92, Of Counsel to McGinnis, Lochridge & Kilgore L.L.P., Austin, Texas, died December 8, 2013 at age 72, from pancreatic cancer. A graduate of the University of Texas and of its School of Law, he was an Associate Editor of his law review and was selected as the Outstanding Senior in his class. After eight years in private practice, he became Assistant Attorney General of Texas under the late John Hill, appearing in a number of high-profile cases. He had thereafter practiced with several firms. An adjunct professor at the University of Texas Law School and an instructor in the Actual Innocence Clinic, he participated in the



exoneration of two men unjustly accused of murder. A recipient of his local Bar's Distinguished Lawyer Award, he served on and chaired the Texas Youth Commission. That organization's halfway house in Corpus Christi is named in his honor. At his death, the Austin Bar announced the creation of the Larry York Mentoring Award to recognize veteran lawyers who take a special interest in assisting young lawyers. His survivors include his wife, a daughter and a son.

**Jacob Dean (Jack) Zeldes**, '86, a Fellow Emeritus, founder of Zeldes, Needle & Cooper, P.C., Bridgeport, Connecticut, died September 18, 2013 at age 85 of cancer. At age fourteen, he had become a reporter for the local newspaper. At age eighteen, he hitchhiked from his Illinois home to Philadelphia and, using his press credentials to gain access to the Democratic National Convention, managed to be seated behind Harry S. Truman as he gave his speech accepting the presidential nomination. Upon graduating from the University of Wisconsin, where he edited the college newspaper, he entered the United States Navy during the Korean Conflict, seeing combat duty aboard the USS *Missouri* BB-63. While earning his law degree at Yale Law School, he headed the Public Defenders Program. Still a law student, he undertook the representation of a convicted felon scheduled to be executed, ultimately pursuing his representation to a

successful conclusion in the United States Supreme Court in a case that set a new standard for forced confessions. After clerking for a federal district judge, he entered private practice, ultimately founding the firm with which he practiced until his death. Regarded as the Dean of his criminal bar, he had been selected to represent the Select Committee of the Connecticut House of Representatives in its first ever impeachment proceeding against a sitting judge. His peers later selected him to be the first-named plaintiff in a class action against the then-Governor to prevent his transferring \$2 million from the Client Security Fund to the state's General Fund. Diagnosed with cancer and sent to a hospice facility after being told that he had only a few days to live, he insisted on returning home, rallied to the point that he could ride his exercise bicycle and spent his last four months receiving so many visitors that his daughter had to set up a schedule for their visits. He had served on the Executive Committee of the Yale Law School and had received the Connecticut Criminal Defense Lawyers Association Award, the Connecticut Law Tribune Honors for Service to the Profession, the Federal Practice Center Millennium Award, the Connecticut Bar Association Professionalism Award and the Greater Bridgeport Bar Association Career Service Award. His survivors include his wife of sixty years, two daughters and a son.

# WHO ARE THEY NOW?

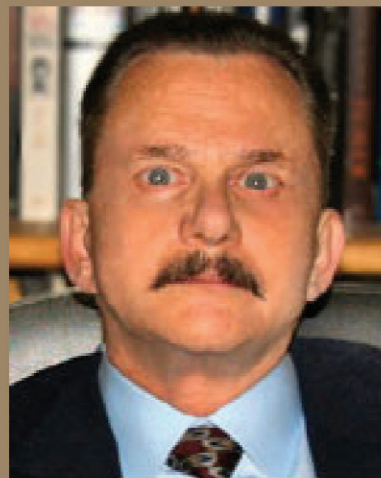
Issue 73 of *The Bulletin* (Fall 2013) featured a hip musician sporting long curly locks and a barely-there mustache. Readers were asked to connect the dots from the 1974 bell-bottomed, Fender-guitar-playing band member to the 2013/2014 Fellow of national distinction.

Did you recognize the face? The “man in the sepia-toned photo, graced with age” is none other than **Robert K. (Bob) Warford**, recent chair of the California-Southern State Committee.

No prizes were awarded to those who guessed, and the band harmed no animals during its years of activity. Thanks to all who participated.



1974



TODAY

## 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 each have a specific mandate that guides 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](http://www.actl.com). If you are interested in committee work, please email the National Office for more information, [nationaloffice@actl.com](mailto:nationaloffice@actl.com).



# UPCOMING EVENTS



Mark your calendar now to attend one of the College's upcoming gatherings. More events can be viewed on the College website, [www.actl.com](http://www.actl.com).

## NATIONAL MEETINGS

**2014 Annual Meeting**  
 London, England  
 September 11-14, 2014  
 Paris, France  
 September 14-17, 2014  
 Registration opens May 1



**2015 Spring Meeting**  
 Miami Beach, Florida  
 February 26-March 1, 2015

## REGIONAL MEETINGS

| Region 6                                   | Region 5  | 3rd Circuit                          | Northwest  |
|--|---|--------------------------------------|--|
| Arkansas, Louisiana,<br>Mississippi, Texas | Iowa, Manitoba,<br>Minnesota, Missouri,<br>Nebraska, North Dakota,<br>Saskatchewan, South<br>Dakota | Delaware, New Jersey<br>Pennsylvania | Alaska, Alberta, British<br>Columbia, Idaho,<br>Montana, Oregon,<br>Washington |
| April 25-27, 2014                          | May 16-17, 2014   | May 30-31, 2014                      | August 7-9, 2013   |
| Capital Hotel                              | K Bar S Lodge   | Hotel du Pont                        | Suncadia Resort  |
| Little Rock, Arkansas                      | Keystone, South Dakota  | Wilmington, Delaware                 | Cle Elum, Washington   |

# JOURNAL

**American College of Trial Lawyers**  
19900 MacArthur Boulevard, Suite 530  
Irvine, California 92612

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“In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships.”

— **Hon. Emil Gumpert**  
*Chancellor-Founder*  
*American College of Trial Lawyers*

## Statement of Purpose

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