

JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

MICHAEL W. SMITH

66TH PRESIDENT
OF THE AMERICAN
COLLEGE OF TRIAL
LAWYERS



*Ellen Bain Smith and Mike Smith
in Manakin-Sabot, Virginia*

JOURNAL

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FROM THE EDITORS

Please submit contributions or suggestions to editor@actl.com.

Andy Coats and Stephen Grant



It doesn't really get easier, being a trial lawyer. We think that with age and experience, our ability to handle cases breezily becomes inevitable. Instead, the cases become more complex and sprawling. We are no less anxious or on edge, ever more wanting to leave no stone unturned. And more often than not, the stakes are higher.

We might also think that over time we would become more accepting of unjust or wrong results, despite our best efforts. It's rather the reverse. We feel the results more painfully as we are no longer in any awe of the decision-maker(s) and have an even more finely honed sense of what is just. It's a truly bitter pill when right does not triumph.

The saving grace in all of this is that our justice system allows for the chance, generally, for right to prevail, often against the odds. This is not to say that a deep pocket sometimes trumps a deserving opponent but the chances of overcoming this imbalance are better in our justice system than elsewhere. More to the point, if our courts adopt any or all of the Institute for the Advancement of the American Legal System (IAALS)/College Task Force on Discovery and Civil Justice recommendations on civil justice reform, so much the better and faster for this to happen.

If our justice system and our judges are society's bulwark against arbitrariness and tyranny, trial lawyers are its guardians and standard-bearers, especially of individual rights and freedoms.

Recent world events bring this clearly into focus. *The New York Times* (July 11, 2015) reported that China has detained and denounced several lawyers from a firm specializing in "rights cases," specifically those cases challenging the oppressiveness of state power. The alleged crimes include mobilizing aggrieved citizens and using aggressive courtroom tactics, thus disturbing the social order. Those suspected disappeared into police custody.

Meanwhile, artist and international rights activist Ai Weiwei, after what *The New Yorker* (July 29, 2015) called a "strange purgatory," was given back his passport, possibly allowing for his right to travel abroad. The curious part of all of this development is the same opaque manner in which his freedoms were taken in the first place—"arbitrarily, unannounced, with no formal proceedings... the very force that he has criticized for nearly a decade: the rule of man over the rule of law."

There are cogent and self-evident reasons we zealously defend and trumpet the rule of law, not the least of which is that as trial lawyers, we need not fear this type of capriciousness.

Events such as these also commend us to be even more vigilant about ensuring access to justice. One commentator, Theresa Amato (also in the *Times*, June 17, 2015) has a new theory about achieving this goal. She proposes "matching legal talent to human need," by putting lawyers, especially public interest advocates where they're needed so as to narrow the "justice gap." She offers a number of concrete suggestions as to how we can achieve this, likely to be reflected in her forthcoming book, *Liberated Lawyering: How Lawyers Can Change the World*. In the same way that Dr. Samantha Nutt at the College's Spring Meeting in Key Biscayne encouraged giving a lawyer instead of a goat, any greater contribution lawyers can not only make but be seen to make will only make for fascinating reading. It may also go some way towards lessening our apparently poor public image.

For those in need of some intellectual and social rest and relaxation, you can put the College's Annual Meeting into your agenda. It's "our kinda town, Chicago is." In the meantime, you can enjoy catching up on various regional and other College events and news with this fall issue of the *Journal*.

Andy Coats/Stephen Grant ■

PASSING ON THE JOY, OPPORTUNITY, FELLOWSHIP OF COLLEGE'S LEGACY

A PROFILE OF MICHAEL W. SMITH

A graceful home filled with family heirlooms located just west of Richmond in Manakin-Sabot, Virginia (Goochland County). Rolling hills. Hunt country. A kitchen overlooking a pasture with horses and a Wheaten Scottish Terrier, Rose, on constant patrol for critter invaders.

This is what Mike and Ellen Bain Smith will be missing over the next year or so as they plunge into Mike's new role as the sixty-sixth president of the American College of Trial Lawyers.





Mike will be the fourth lawyer from Virginia to serve in this role, following the late Honorable Lewis F. Powell, Jr., Associate Justice of the Supreme Court (1969-70), the late R. Harvey Chappell, Jr. (1986-1987) and James W. Morris (2004-2005).

Mike grew up in Beech Island, in Aiken County, South Carolina. After the too early death of his mother, he was raised in the country by his maternal grandmother, known to all as “Hart.” The Goochland home pays homage to Hart’s house with a splendid porch, where Mike and Ellen Bain were photographed for this article, a porch deliberately positioned to catch a northerly breeze and made complete by rocking chairs and an old fashioned porch swing.

Hart must have been quite remarkable. She was widowed early in her marriage and raised her four children alone, all of the children completing college. Mike recounts her telling of driving all four children in the 1930s to the Grand Canyon—by herself. Upon the death of her daughter, Mike’s mother, Hart took charge of Mike and his older brother, the others going to live with Mike’s paternal grandparents while their father worked a job that required significant travel.

Mike attended the North Augusta public schools (located on the South Carolina side of the Savannah River, not Georgia). Mike readily admits to his priorities at the time. Football was king, the 1961 State

Championship the prize, and a 1957 Chevrolet school bus bringing the kids from the country into school was the transportation, with Mike receiving \$30 per month walking around money for doing the driving.

In 1962, Mike attended and played football for Presbyterian College in Clinton, South Carolina. After graduation, a history professor and friend encouraged him to consider law school at the University of South Carolina. He abandoned plans to teach and coach in high school and opted instead for a profession that had never been on his radar screen. When asked if Presbyterian College and the University of South Carolina’s Law School had provided a culture shock for a boy from Beech Island, South Carolina, he responded, “No, but I probably provided a culture shock to them,” a fact of which there is no doubt.

Ellen Bain and Mike met at USC. She grew up in Goochland County, Virginia, not far from where they now live. She ended up at USC after rebelling against attending an all girls’ college, having attended a girls’ school since kindergarten. The University of Virginia was an all-male institution at the time, so she chose USC. Mike and Ellen Bain were married in 1968.

After finishing law school a semester early, Mike, who had been deferred while in law school, headed for basic training at Fort Leonard Wood, Missouri. While he was completing his military service, Ellen ▶

Bain taught French and English in the Goochland County Public School system. Mike “luckily” landed the incredible opportunity to come to Richmond to clerk for the Honorable Robert R. Merhige, Jr., a federal judge for the United States District Court for the Eastern District of Virginia, highly regarded as one of the best of the best on the bench, and forever a second father to Mike. Judge Merhige was a recipient of the College’s Samuel E. Gates Litigation Award.

qualities that make a Fellow. Working with Chappell was, according to Mike, the “fourth time lightning struck” for him. (The others: meeting Ellen Bain; his grandmother; and working for Judge Merhige.)

Mike and Ellen Bain have three grown children: Michael Jr. a physician; Ann Maury, a lawyer; and Ashley who heads up an animal rescue organization in Tidewater. Mike and Ellen Bain are also surrounded by people and children they have “adopted” over the years. It is not hard to see where their children get their passion to help others.

Ellen Bain, who is not terribly fond of being the center of attention, will clearly hold her own as she and Mike become the College’s ambassadors as they visit Fellows on their travels over the coming year. Earlier this year, she was asked to introduce Mike at the Sopinka Cup Awards event in front of Fellows and Canadian law school students in Ottawa, Canada. The Sopinka Cup is Canada’s national trial competition. Recognizing Canada’s two official languages, she gave the introduction in fluent French while Mike stood by awkwardly listening to the audience

laugh, not really sure what his “beloved” wife had “told” on him in her introduction.

They will make another great team for the College.

When asked about the upcoming year for the College, Mike quickly expressed the view that serving as president should not be used for the purpose of trying to create a legacy. It is an opportunity to help preserve the enduring legacies established long ago through the hard work and thoughtful efforts of others. By preserving the mission and traditions of the College and its standards, “hopefully the best trial lawyers to follow will experience the same joy and opportunity of Fellowship in the finest organization of trial lawyers ever devised.”

Catharine Biggs Arrowood
Raleigh, North Carolina

QUIPS & QUOTES

Mike does not remember it, but he and I crossed paths in 1978, early in my career. I remember the respect he showed for a young woman lawyer at a time when none was generally forthcoming. Recently, I spoke with the first woman hired at Christian Barton, Rose Kenyon, who happens to practice in Raleigh just a few floors from me. Rose had three strikes against her—she was a woman, she had the wrong accent (she was from the Midwest) and she looked like she was twelve-years-old. Rose says Mike immediately took her under his wing. She will never forget Mike’s kindness and good advice. Rose remembers his running interference for her with a particularly disrespectful male member of the bar and, when doubting herself early by a set of nerves, never forgot his admonition that “if you don’t feel the throw-ups just before calling your first witness, you probably don’t have enough of an edge to be successful.”

Catharine Biggs Arrowood, recalling when she first met Mike Smith early in her law career and the wisdom he shared with another female lawyer

Following his stint with Judge Merhige, Mike joined the Christian & Barton law firm in Richmond and has been engaged in commercial litigation ever since. He came under the tutelage of partner Harvey Chappell, who, according to Mike, finished the job Judge Merhige started “of knocking the edges off a country boy who was right full of himself.” Thankfully, they did not totally knock out Mike’s large personality. In his spare time, he served as President of The Bar Association of the City of Richmond, and later as President of the Virginia State Bar.

And, yes, this is the same Harvey Chappell who was the President of the College in 1986-1987. Chappell, himself an outstanding trial lawyer and counsellor to clients, clearly passed along to Mike the key



AWARDS & HONORS



Judy Clarke of San Diego, California was selected to receive the 2015 Ninth Circuit John Frank Award, which recognizes an outstanding lawyer practicing in the federal courts of the western United States. The award was presented on July 13,

2015 during the opening session of the 2015 Ninth Circuit Judicial Conference in San Diego, California. Clarke has been a Fellow since 1997. She has served on the Washington State Committee and Public Defenders Committee.



William H. Clendenen, Jr. of New Haven, Connecticut was elected to serve as 92nd president of the Connecticut Bar Association. He has been a Fellow since 1996. Clendenen has served on the Access to Justice and Legal Services and Connecticut State Committees.



H. Talbot D'Alemberte of Tallahassee, Florida was presented with the 2015 Florida Supreme Court Historical Society's Lifetime Achievement Award on January 29, 2015. D'Alemberte has been a Fellow since 1980.



Douglass Farnsley of Louisville, Kentucky was inducted as president of the Kentucky Bar Association's Board of Governors. The induction ceremony was held on June 18, 2015 at the KBA Annual Convention in Lexington, KY. Farnsley has been a Fellow since 2004. He is a

past State Chair of Kentucky and served on the Access to Justice and Legal Services and National Trial Competition Committees, as well as the Retreat Task Force on the Future Mission of the College.



John D. Holschuh, Jr. of Cincinnati, Ohio was elected president of the Ohio State Bar Association. He took office on July 1, 2015. Holschuh has been a Fellow since 2005. He serves as Chair of the Ohio State Committee and has been a member of the Emil Gumpert Award Committee, Jury Committee and Ohio State Committee.



John W. Kozyak of Coral Gables, Florida was named the 2015 recipient of the Tobias Simon Pro Bono Service Award. The award, named after noted civil rights lawyer Tobias Simon and created in 1982, is Florida's highest statewide pro bono award. It is presented annually by the chief justice to a private lawyer for voluntary, free legal services to the poor. Kozyak has been a Fellow since 2005. He has served on the Emil Gumpert Award, Florida State and Outreach Committees.



Joseph E. O'Neil of Philadelphia, Pennsylvania was elected president of the International Association of Defense Counsel (IADC) for the 2015-2016 term. The IADC is an invitation-only global legal organization for attorneys who represent corporate and insurance interests. O'Neil has been a Fellow since 2011.



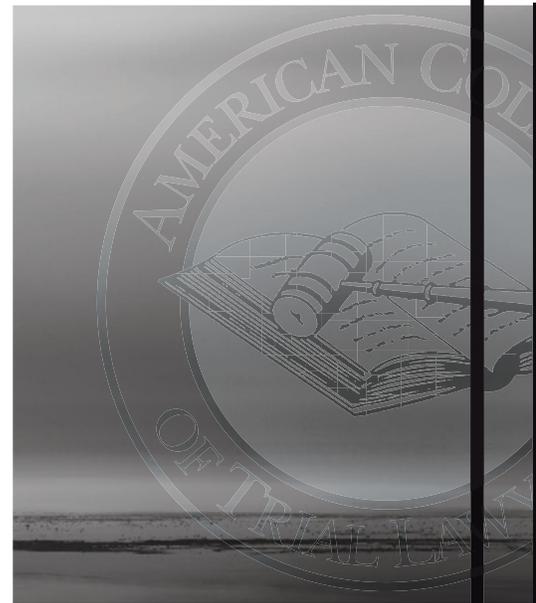
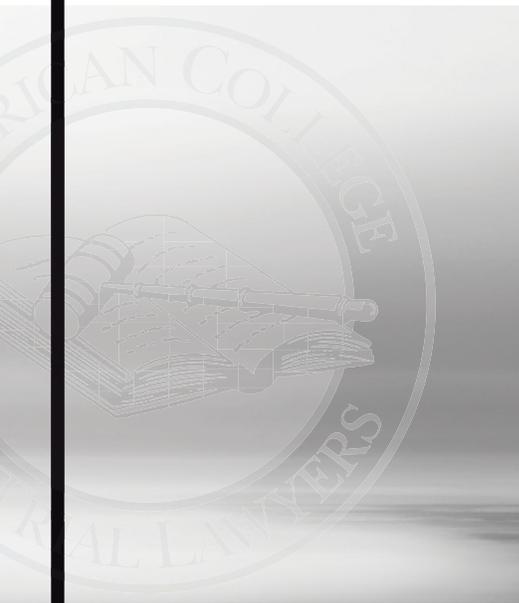
Gordon S. Rather, Jr. of Little Rock, Arkansas was presented the American Board of Trial Advocates highest honor with the Lifetime Achievement Award at the organization's National Board of Directions Meeting in San Francisco, California on May 2, 2015. He joins only

seven others who have received the ABOTA Lifetime Achievement Award. Rather has been a Fellow since 1997. Rather has served on the Teaching of Trial and Appellate Advocacy Committee.

LEON SILVERMAN
1921 - 2015

PAST PRESIDENT LEON SILVERMAN

A MEMORIAL TRIBUTE



"...everyone has a responsibility to make the lot of the less fortunate a little more bearable."

Silverman was born on June 9, 1921 in New York of Jewish Polish immigrants who were political activists in the garment industry. His father died when he was three-years-old, and he was raised in the Borough Park section of Brooklyn by his mother, a seamstress in a garment factory, and his grandparents.

After graduating from Brooklyn College in 1942, Silverman became Youth Director of the Social Democratic Federation in New York City. On his way to Boston to make a speech, he stopped off in New Haven because he wanted to see the campus of an Ivy League school. Wandering into the Yale Law School, he was told by the registrar about the assistance opportunities available for prospective students. Thereafter admitted to the law school on a scholarship, he had completed only one semester when he was drafted into the United States Army in World War II.

LEON SILVERMAN, THE THIRTY-SECOND PERSON TO SERVE AS PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS, DIED PEACEFULLY AT HIS HOME IN GREAT NECK, NEW YORK AT ABOUT MIDNIGHT ON JANUARY 28, 2015 AT AGE NINETY-THREE.

HE HAD BEEN THE FIRST OF THE TWO PRESIDENTS OF THE COLLEGE WHO, AFTER THE APRIL 1982 DEATH OF EMIL GUMPERT, THE COLLEGE'S CHANCELLOR-FOUNDER, WERE CREDITED WITH LEADING THE COLLEGE INTO THE MODERN ERA. THE OTHER, GAEL MAHONY, SILVERMAN'S SUCCESSOR AS PRESIDENT, PREDECEASED SILVERMAN BY TWO AND A HALF MONTHS.

By his own admission an inept GI, he loved to tell how, in his three and one-half-year military career, he had “failed upward” from the infantry to medical technical training, language schools in Russian and Bulgarian, engineering and the signal corps. Looking back, he realized that his high IQ had been used to raise the average test scores of units that needed overall scores of a certain level to be qualified as combat-ready. Near the end of the war, he was shipped out to England, assigned to a medical supply unit that was receiving the wounded from the D-Day invasion. During High Holy Days, he and other Jewish servicemen in his unit were taken to attend services in the nearest town that had a synagogue. Local families often took the American soldiers home with them to lunch. On one such Sabbath, his future wife's brothers brought him to their home in Merthyr Tydfil, Wales. Silverman's typically humorous explanation: “They thought a corporal was an officer.”

Returning to Yale after the war, he was named Editor of the *Yale Law Journal*, graduating in 1948. Six years before the United States Supreme Court decided *Brown v. Board of Education*, he authored a law review note entitled “Segregation in Public Schools: A Denial of Equal Protection of the Law.” He then attended the London School of Economics for a year on a Yale Graduate Fellowship, studying under ▶

former Labour Party leader Harold Laski. While there, he became reacquainted with Rita Schwartz, at whose Welsh home he had had dined five years earlier, and they were subsequently married.

He was admitted to the New York Bar in December 1949 and became an associate in Riegelman, Strasser, Schwartz and Spiegelberg, a firm in which, aside from two interludes of public service, he would spend his entire career. An early Fellow of the College, George A. Spiegelberg later served as a member of its Board of Regents and as chair of its Foundation. It was under his influence that Silverman became a trial lawyer, a role for which he was admirably suited.

Five feet, four inches tall, with poor eyesight and not particularly athletic, Silverman, with typical self-deprecating humor, once remarked, "I have always been a rather adversarial person. Given my physical stature, the disputes in which I was involved could only be resolved in the medium of discussion."

After four years at his firm, Silverman served for three years as an Assistant United States Attorney in the Civil Division of the Southern District of New York. In 1956, he returned to his firm, now named Fried, Frank, Harris, Shriver & Jacobson, as a partner. He again took leave in 1958 to serve as Assistant Deputy Attorney General of the United States, where he was involved in the effort to desegregate the public schools of Little Rock, Arkansas.

His obituary in *The New York Times* noted that at Fried Frank, he supplemented the firm's traditionally genteel commercial practice with an aggressive litigation group. For over twenty years, he was chair of the firm's litigation department, and he served for seven years as co-chair of the firm. In the course of his career, he attracted bright young lawyers to the litigation practice, including persuading young government lawyers to enter private practice. Many of those he recruited have since forged their own high-profile careers in the trial bar, the judiciary or the corporate world. One of the young women that he recruited to his firm remarked that he was an exceptional mentor, especially to young women lawyers in an era when women lawyers were first seeking acceptance among the ranks of trial lawyers.

Silverman was inducted into the College in 1965 and over the years served as a State Chair, as a Regent and as Treasurer before being named President-Elect. He was installed as President of the College in August 1982. The records of the College indicate that over the years he had served on thirteen different College committees and that before his declining health prevented his attendance after 2011, he had attended seventy-nine national meetings and the Board meetings that preceded them. He was a delegate to one of the College-sponsored Anglo-American Legal Exchanges, in which leading jurists and lawyers from the two countries meet periodically to discuss matters of mutual interest, including how our two legal systems deal with common problems.



Leon and Rita Silverman at the 1988 Board of Regents Meeting in Laguna Niguel, California.



Silverman with President Bill Clinton on a trip to the White House during the Anglo-American Legal Exchange in 1995.



Leon and Rita at the Royal Ascot Racecourse in the United Kingdom.

He understood that the strength of the College depended upon both adherence to the unique tradition that sets it apart from other lawyers' organizations and adapting to a changing legal world. In keeping with that adaptation to a changing world, his presidential year saw the creation of a new standing committee, the Committee on Alternative Dispute Resolution, at the time a less than popular innovation among many traditional trial lawyers, and he appointed a woman Fellow as its first chair.

His own practice was highlighted by high-profile cases. His representation ranged from the defense of Ivan F. Boesky, who was accused of masterminding one of Wall Street's biggest insider-trading scandals, to the successful defense of Sears, Roebuck & Company, against antitrust charges. He was appointed by a federal bankruptcy judge to deal with the staggering number of asbestos-related claims asserted against the Manville Trust, a role in which he created a pattern for future dealing with large-scale tort-related restructuring under the bankruptcy laws.

He was perhaps most widely known for his role in the inquiry into allegations of criminal conduct against the Reagan Administration's Secretary of Labor, Raymond J. Donovan. Appointed by a three-judge panel under the 1978 Ethics in Government Act, his role was to determine whether there was sufficient evidence to empanel a grand jury and to prosecute any criminal offenses the evidence might indicate. Silverman

undertook that role in late 1981, a few months after he had become President-Elect of the College. One of his assistants in that investigation was future College President Gregory Joseph. Joseph later pointed out that, in order to ensure public understanding that would enhance confidence in the outcome of the investigation, Silverman arranged to have all of the witnesses interviewed outside a grand jury, so that their testimony would be a matter of public record.

At the end of the investigation, Silverman reported to the court that there was "insufficient credible evidence" to support an indictment. Afterwards, he carefully pointed out that, although his investigation found some of the evidence "disturbing" and that it would be wrong to imply that his investigation had found Donovan innocent, there was simply not enough credible evidence to support an indictment. Donovan, though vocally unhappy with the equivocal finding, later acknowledged that, through five hours of questioning, Silverman treated him with courtesy and professionalism.

Silverman recalled that when he was a child, Sabbath dinners in his home were sometimes heated talk fests about contemporary issues and public figures ranging from Franklin D. Roosevelt to the anti-Semitic radio programs of Father Charles Coughlin to labor leader David Dubinsky. From this experience he gained political awareness, "a feeling that everyone has a responsibility to make the lot of the less fortunate a little more bearable." And, he added, that obligation is even stronger for lawyers.



Silverman, in the first row, fourth from the left, at the 1993 Spring Meeting in Boca Raton, Florida.



His own career in public service exemplified that understanding. Beyond his role in the Donovan inquiry, his commitment was exemplified by his role in the early 1970s as the President of the Legal Aid Society of New York, one of the early organizations devoted to the representation of those who needed, but could not afford, a lawyer. He remained active in that organization for many years, representing it in *Blum v. Stenson*, in which the United States Supreme Court in 1984 unanimously upheld its right to recover fees under the Civil Rights Attorneys Fee's Award Act. He also served as a member of the Board of Directors of the Benjamin N. Cardozo School of Law and was a Trustee and a member of the Executive Committee of the Practicing Law Institute and a Trustee of the William Nelson Cromwell Foundation, devoted to the preservation of American legal history.

In more recent years, Silverman devoted a great deal of his time and effort to the United States Supreme Court Historical Society. He was for eleven years its President and for another twelve years chaired its Board of Trustees. A lecture series devoted to unique and interesting events in that Court's history is named in his honor.

At his death, Chief Justice John G. Roberts, Jr. commented, "Leon's sense of service to the judiciary did not stop at the courthouse door." His April 22, 2015 memorial service included video tributes from three Associate Justices of the United States Supreme Court: Anthony Kennedy, Ruth Bader Ginsberg and Stephen Breyer. In the words of Justice Breyer, Silverman "was a symbol of a lawyer who understands that a lawyer is a fiduciary, not just to his clients, but to society, . . . a model of what every lawyer should be."

Among his numerous honors, Silverman was the recipient of the American Jewish Committee's Learned Hand Human Relations Award, the Federal Bar Council's Emory Buckner Medal for Outstanding Public Service, the United Jewish Appeal's Judge Joseph Proskauer Award for Dedication to the Legal Profession and to his Community and the Brandeis Distinguished Community Service Award.

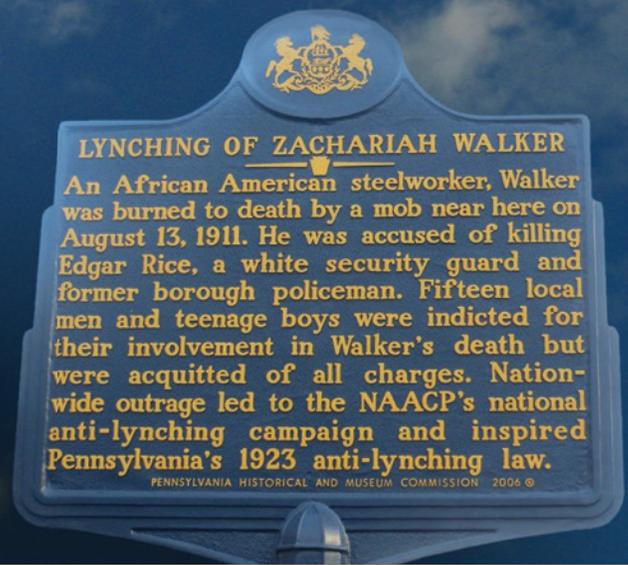
In spite of years of achievement and the honors that went along with them, Silverman never lost his humanity. At his memorial service before a packed house at New York's Century Association, Silverman's combination of irrepressible intellectual energy, studied impertinence and his own brand of droll humor prompted a former law partner to characterize him as "endearing," reflecting on how much fun it had been to practice with him. Everyone who had reached a certain age, but who was younger than Silverman stood in danger of being addressed as "kid." Past President Ralph I. Lancaster, Jr. remembered how in a discussion about his presidency, Silverman had blurted out, "What makes you think I voted for you, kid?"

Past President John C. Elam, a predecessor and close friend of Silverman, was known to enjoy deliberately making an assertion in a meeting of the Board of Regents that he knew would get a rise out of Silverman, while the rest of the Regents and Past Presidents sat back and enjoyed the ensuing debate. At one long-range planning meeting, the presiding officer, then President Fulton "Bill" Haight, began a day's session by announcing that the Past Presidents had had entirely too much to say the day before and that he did not intend to recognize any of them that day. Shortly after eleven a.m., the Regents were discussing a matter about which Silverman had a strong opinion. His right arm began to twitch in an upward direction as if it were attempting to raise itself, while being restrained. Finally, the arm went all the way up as Silverman, with a twinkle in his eye, shouted, "Mr. President, I can't stand it any longer!"

No one walks his life's path alone. For over sixty-five years, Leon Silverman and his wife, Rita, the girl whose brothers thought they had brought home an American officer, were always together, always laughing, always a team. In addition to Rita, his survivors include two daughters, their husbands and four grandchildren.

E. Osborne Ayscue, Jr.
Editor Emeritus

COURAGE DURING “CONSPIRACY OF SILENCE” SYMPOSIUM EXAMINES 1911 LYNCHING CASE



Pennsylvania Fellows **Robert E. Welsh** and **Arthur T. Donato** organized a symposium on the infamous lynching of Zachariah Walker in August 1911, an African-American murder defendant in Coatesville, a mill town in Eastern Pennsylvania. The event was held on May 7, 2015 at the West Chester University Foundation auditorium in West Chester, Pennsylvania, just outside Philadelphia. The event was attended by members of the bench and bar, students and the general public.

The other organizers and speakers included Donato's lawyer daughter **Caroline G. Donato** and Professor **Tonya Thames-Taylor**, a professor of history at West Chester University and a scholar of Frederick Douglass and racial violence. The College was the primary sponsor along with the Pennsylvania Association of Criminal Defense Lawyers.

THE CASE

Zachariah Walker, the victim, was charged with the murder of a police officer and tried to kill himself before he was arrested. He was taken out of his hospital room after surgery and brutally burned to death by a crowd of thousands in what scholars describe as a “spectacle lynching.”

The symposium addressed the phenomenon of such spectacle lynchings but was designed to focus on the courage of the district attorney and the presiding judges. An intense grand jury investigation was energized immediately after Walker's death and more than one hundred witnesses were subpoenaed. Fifteen people were indicted on homicide charges, including the police officer guarding the prisoner and the chief of police on manslaughter charges for their failure to protect the prisoner. The police chief had read Walker's confession to the crowd as it was forming its plan but failed to divulge that Walker claimed he acted in self-defense.

The prosecutor and other public officials aggressively pursued every avenue in the most expensive investigation in the Commonwealth of Pennsylvania until that time. In

each case, the juries declined to convict, even when a defendant had confessed. Jury nullification was the order of the day, even though the defense lawyers did not appeal to such sentiments. When it was all over, no defendant was convicted on any charges, leading the trial judge to lambast the community for its “conspiracy of silence.”

Highlighting the courage of the prosecutors and the court, notwithstanding the political and community pressure to move on and ignore the problem, the presentation then examined the role of the National Association for the Advancement of Colored People (NAACP), which had been formed as an anti-lynching organization only two years before Walker's lynching and which had sent two investigators to Coatesville in order to report on the progress of the investigation. The Zachariah Walker lynching and the NAACP's efforts were instrumental in the passage of anti-lynching legislation in Pennsylvania in 1923.

The symposium is one of a series offered by Pennsylvania Fellows that focus on historical court cases and the manner which important structural issues are often addressed in the judicial branch, echoing Alexis de Tocqueville's observation that in America, “Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”

Robert E. Welsh, Jr.
Philadelphia, Pennsylvania ■

WHERE THERE IS WORK TO BE DONE, WE ARE THERE TO DO IT

REMARKS FROM FORMER CHIEF JUDGE JUDITH SMITH KAYE

At the annual dinner hosted by the Downstate New York Fellows on April 22, 2015, at The Century Association, the Honorable **Judith Smith Kaye**, a Judicial Fellow who served as Chief Judge of the New York Court of Appeals, was presented with the Leon Silverman Award. The Leon Silverman Award was created in 2005 to honor a lawyer or senior judge who exemplifies the qualities of ethics and professionalism embodied in the College's *Code of Pretrial and Trial Conduct* and whose accomplishments manifest a lifetime commitment to advancing the administration of justice. Leon Silverman's recent passing made the evening especially poignant.

Her remarks from the dinner are presented below:

Being the intensive preparer I am, when **Larry Krantz** called me with the wonderful invitation of the Downstate Fellows to accept the Leon Silverman Award, immediately I began thinking of what I might say to this illustrious group of colleagues and friends. But as April 22, 2015, neared, three subjects took the top of the list.

TRIBUTE TO LEON

First, of course, was Leon Silverman—for each of us a celebration of the years we have had alongside this utterly extraordinary individual. No one speaks of Leon in anything but superlatives. My beloved Skadden neighbor **Barry Garfinkel**, for example, one morning took me through Leon's life, from his unmatched marriage to Rita, through Barry's years at Yale with Leon, his role in the transformation of the U.S. Attorney's office, the Supreme Court Historical Society and on and on.

When I first envisioned this evening it began with overflowing words of esteem delivered face-to-face to my dear friend and, yes, I would have to say mentor, since our lives intersected in so many ways—the College, the Legal Aid Society, the Supreme Court Historical Society, the Historical Society of the Courts of the State of New

York, the Century Association and on and on. Every good work had Leon's stamp.

I cannot tell you how strengthening it was—especially back in the 1960s and early 1970s, especially as a woman—to have Leon in your corner, at your table, lending a hand, lending a round of applause. Indeed the year I went on the Court of Appeals – first woman ever – Leon was the President of this great association. What a boost! What a booster!

My remaining two subjects touch on issues of general concern for the College and our profession more broadly, and were inspired—at least in part—by my conversation with the College's President **Fran Wikstrom**, as we were seated together at dinner just now.

DIVERSITY OF MEMBERSHIP

Leon having as well been a proud Centurion – the Century Association having been formed in 1847, approximately a century before the American College of Trial lawyers – I want to move gracefully into my second subject, this magnificent Association where we gather this evening. And I do believe that Leon was in the audience a couple of years ago when I addressed the Century membership at its black tie monthly meeting.



There, too, I struggled to find a subject for my remarks, and ultimately settled on – of all things – another personal hero, Benjamin Nathan Cardozo. You surely need no elaboration on that name. “He’s no Cardozo” isn’t even the ultimate insult – it still leaves room for lots of competence in the field of law. Can you believe it, Benjamin Nathan Cardozo was actually an active, involved member of the Century Association!

I was delighted to discover, in casting around for a good subject for that evening membership meeting, not only that Cardozo actually had become a member – he was confirmed on January 9, 1926 – but also that the Century Association played an essential role in his life, as prominent Centurions aggressively promoted his candidacy for Chief Judge of the Court of Appeals of the State of New York in 1927 and then for the United States Supreme Court in 1932. Meticulous in their choice of members, Centurions were hugely promotive of one another. They called it “meddling,” in the best sense of the word. Indeed, when President Hoover referred to a complaint that Cardozo was not “socially acceptable,” Justice Stone quickly replied that “Cardozo was a member of the exclusive Century Club to which the complainant...could never gain admission.”

Believe it or not, the Century Association – a gathering of pre-eminent artists and writers, and then just plain pre-eminent – actually was the place of Cardozo’s choice, the place in New York City he most often frequented for his social life. Indeed, when Cardozo essentially left the City for D.C., it was the writers and artists here who honored him at a dinner, toasting him as a “fellow artist.” Imagine. Fellow artist, the ultimate compliment.

That story reminded me of the analogy between the Century and the American College of Trial Lawyers that gathers here this evening, artists of the law. Both groups are, by very careful choice and phenomenal vetting, the best of the best, masters in the art of delivering justice,

perpetuating our American values. We are dedicated to working together to maintain our great justice system in a changing world – so that in every possible way it is as outstanding as humanly possible.

Just one more story – one more analogue – from that fateful evening when I addressed the Century Association membership about Chief Judge Cardozo. As I collected my papers, feeling relief, even pleasure, a woman came up to the lectern with these words: “How dare you, how dare you – a woman – speak here about Benjamin Cardozo, and not about women?” Frankly, it took a moment for me to absorb that bee-sting. Indeed, the Century was for many years an all-male Association – that hadn’t escaped my notice. But I didn’t say a word. And I don’t want to make that same mistake again.

So I will close this second segment of my remarks to my American College of Trial Lawyers colleagues with just a word or two about how proud and happy I am to be a member of this great organization, women and non-women members. My own admission date in the College catalogue is shown as 1986. Though I recall that I passed muster as a member a couple of years earlier, it was physically getting to that first meeting as an inductee that made the difference. My friend **Amalya Kearse** apparently was the first woman inducted, in 1979. It was a magnificent moment in my own career, to be just a few years behind the very first “firsts.”

How pleased and proud I am, and was, to become a member of the American College of Trial Lawyers, to have the pleasure of association with the best of the bests, and know that we are all “interveners,” “meddlers,” mutual admirers, recommenders, supporters of one another as well. We all want and need to be, don’t we? Indeed, Cardozo’s story is the same for all of us – we have all benefited from mutual supporters, especially through the American College of Trial Lawyers. ▶

I'm also proud to see that the ranks of women are growing into the 300s – we even have two former women presidents. But it is of course a deep concern that, in the year 2015, women comprise only 300 out of our 5,700 members, or less than six percent of the membership. Two former women presidents out of sixty-three – a little over three percent. Yet we know that the ranks of women in law school have for decades hovered around fifty percent, and that about thirty-four percent of lawyers today are women. So the College membership and leadership statistics are not exactly a happy picture.

As we chatted alongside one another at dinner, Fran told me of the upcoming retreat of the Board of Regents where issues such as diversity will be discussed, as plainly they very much have to be. I am confident that with the strong support we offer one another our numbers will continue to grow, as well they should. Where there is work to be done, we are there to do it. And gender diversity – diversity generally – is very much a subject that deserves and demands our attention.

THE VANISHING JURY

Which brings me to my third and final subject – another longstanding concern for the College: the vanishing jury. This subject also permits me to express a few special words of praise for my fabulous introducer this evening, **Greg Joseph**.

Recognizing the importance of the jury to American justice, in New York we have spent a good deal of time and effort improving our jury system. For most people, it's their first (and only) direct contact with the courts.

Though I had known Greg Joseph for many years, as Chief Judge I was able to take advantage of his boundless skills and good heart by appointing him to some of my innumerable commissions. One in particular had generated a good deal of backlash: striking the automatic jury exemption for lawyers. Abolish the automatic jury exemption for lawyers?

Ridiculous. Well, Greg came to the rescue as Commission Chair, with a great report showing – guess what? – that lawyers were being rejected for jury service at the same rate as everyone else. That decisively ended the ruckus. How wonderful that in the decades since, so many lawyers actually have served. Most prominent, most relevant, of all actually is our very first female College member, Second Circuit Judge Amalya Kears, who many years ago actually served to verdict in a criminal trial in New York State Supreme Court. She told me that reaching a unanimous verdict in that case was one of the toughest things she ever had to do.

“Toughest assignment completed” goes as well to Greg Joseph, who actually was able to secure a magnificent jury duty postage stamp from the Postmaster General, the ultimate proof that there is nothing beyond Greg's powers! Many times I had tried unsuccessfully to secure a postage stamp honoring jury service, encouraging my fellow Chief Justices throughout the nation to nudge the Postmaster General as well. The public should be made more aware of the positive value of jury service. Even the Muppets had gotten their own stamp!

But it wasn't until Greg came along that our wish was fulfilled. He knew the magic bullet. Greg filed a Freedom of Information Act request. And though it cost Greg several hundred dollars, in 2007 the Postmaster General folded – he'd had enough – and issued this beautiful stamp. “Jury duty. Serve with Pride.” Brilliant, Greg. Simply brilliant. And rare as well today – since it was issued in 2007, value only 41 cents. But it is otherwise priceless.

It is on that note that I will close my thanks to this great organization of which I am so proud to be a part. Whether it's securing rights, or equal opportunity, or postage stamps, or local counsel, or lifetime friendships, you are the best. Thank you, Leon Silverman. Thank you, Greg Joseph. Thank you all for this great life you have enabled for me, both professionally and personally. ■



NOTES OF INTEREST

History of the Leon Silverman Award

Named after Past President Leon Silverman, the thirty-second person to serve as President of the College, the purpose of the biennial Leon Silverman Award is to honor a lawyer or a senior judge who exemplifies the qualities of ethics and professionalism embodied in the College's *Code of Pretrial and Trial Conduct* and whose accomplishments manifest a lifetime commitment to advancing the administration of justice. Past President Robert B. Fiske, Jr. presented the 2013 award to Patricia M. Hynes at the Downstate New York Fellows dinner spring 2013. Hynes served as President of the New York City Bar and chaired the Board of Directors of The Legal Aid Society, presiding over a financial restructuring that saved the organization from bankruptcy.



TEXAS FELLOWS SPONSOR TRIAL ACADEMY

The Texas Access to Justice Commission was established by the Texas Supreme Court in 2001 to expand access to and enhance the quality of justice in civil legal matters for low-income Texans. In 2005 the Board of Regents of the College approved the Commission's request that the Texas Fellows of the College organize and conduct an annual comprehensive trial academy to augment the advocacy skills and trial techniques for legal aid lawyers to increase their proficiency as effective advocates for their clients.

On June 10-12, 2015, Texas Fellows and the Commission co-sponsored a pre-trial academy at the University of Texas School of Law in Austin, Texas, for thirty public interest and legal aid attorneys. The attorneys who participated in the academy are employed with eleven different public interest and legal aid organizations in Texas and two university-sponsored clinics.

The academy alternates each year between pre-trial and trial matters. This year the academy focused on pre-trial matters including fact and expert witness depositions, summary judgment practice and alternative dispute resolution and mediation. Twenty-three Texas Fellows from across the state served as faculty for this year's pre-trial academy. Many of the same Fellows participate every year, and approximately 65 different Fellows have participated since the Academy's inception. The Texas Fellows presented lectures and conducted demonstrations of fact and expert witness deposition (direct and cross examination)

and a mock mediation, and served as faculty for the participants' taped mock depositions, witness examinations and mock mediations. Professor **Steven J. Goode** of the University of Texas School of Law also lectured on courtroom evidence.

Most of the legal aid attorneys who participated in the pre-trial academy have limited, if any, actual trial or pre-trial experience. In most instances these attorneys have no one who is a mentor or even someone to simply consult for advice. A survey conducted by the Commission following the pre-trial academy showed overwhelmingly that the Academy was an invaluable experience for the participants.

The Texas Supreme Court is aware of the College's participation in the Academy and has issued commendations recognizing the support and dedication of the College and the specific Fellows who give their time to train trial lawyers to represent those who are traditionally underrepresented.

James B. Sales of Houston, a Fellow and a former Chair of the Commission, has said: "Improving the justice system for the poor is not just about raising money. We have endeavored to enhance the legal skills of those who labor in the trenches. We have to equip advocates with the tools and training that will put them on par with their competition. Legal aid programs could not afford to purchase this level of training for their lawyers, but the Texas Trial Academy has empowered legal aid attorneys to provide top-quality representation to those who could not afford it otherwise."

In 2016 the Texas Fellows will again co-sponsor an academy for another group of thirty young public interest and legal aid attorneys in Texas. Anyone interested in learning more about the academy or putting one on in his or her local area should contact the Texas course director, Fellow **Reagan M. Brown**, at Reagan.Brown@nortonrosefulbright.com.

David N. Kitner
Dallas, Texas

CORRESPONDENCE TO THE EDITORS

Issue 78 of the *Journal* prompted responses from two Fellows in different parts of the U.S. The first letter is from a Fellow in Illinois who wrote to express his opinion on a comment made in the letter “From the Editors.” The second letter is from a Fellow who was inspired by the article on Dr. Samantha Nutt, a speaker at the Spring Meeting in Key Biscayne, Florida.

PERCEPTION IS REALITY FOR ILLINOIS FELLOW

Please allow me to make a personal response to your lament in the Summer 2015 issue of the *Journal* that it is a “real shame” that “many Fellows attend their induction and then forgo any further involvement” in the College.

I was honored to be inducted into the College in 1993. I am now 71 years of age and “Of Counsel” to my law firm. Following my induction I was appointed to the Federal Rules of Evidence Committee. Since all of the meetings were held in New York City and I rarely appeared in federal court I did not attend these meetings. I assisted the College when it held a moot court competition in Champaign-Urbana, Illinois, by soliciting local judges and attorneys to serve as judges for the competition. I was the Downstate Illinois Chair of the College in 2003-2005. During that time our committee nominated six “downstate” attorneys for the College – more than were nominated by Chicago during that same time frame.

I do not attend the Spring or Annual Meetings because of the cost. For example, to attend the Annual Meeting in Chicago it would cost me over \$4,000.00 for myself and my wife. If I had to fly to the meeting the cost

would be correspondingly higher. They say that “perception is reality.” My perception is that the College primarily consists of attorneys from large firms in metropolitan areas whose firms can afford to pay the costs associated with College membership. Thanks for listening.

Sincerely,
Robert W. Neiryneck

MONTANA FELLOW BELIEVES LAWYERS ARE SOCIETY’S PROBLEM SOLVERS

Fellow **Larry E. Riley** of Missoula, Montana was deeply moved by one of the speakers from the Spring Meeting: “The longer I practice, the more it has been so clear to me that lawyers are, in fact, our society’s ‘problem solvers.’ And, because of that, I was deeply impressed by the article about the amazing work being done by Dr. Samantha Nutt.” Nutt’s presentation reminded Riley of a presentation he gave to the University of Montana School of Law’s Annual Scholarship Brunch in 2010.

Below is a copy of his presentation:

It is an honor to be asked to share a few thoughts about our profession with you this morning. Over the years this day has become one of my favorite days of the year. It is so impressive and inspiring to look at the list of donors who so generously give back to the law school each year. The term *alma mater* means, as you know, “Fostering Mother.” At some point in our careers, we develop a deep and abiding appreciation for how many of the good things in our lives are in some way connected to the fact that we had the privilege of attending law school at the University of Montana. When we develop that appreciation the term “Fostering Mother” takes on a whole new meaning for us.



We welcome your feedback. Letters to the Editors can be sent to editor@actl.com.

This day is also impressive and inspiring as we listen to the student representatives talk about what the scholarship assistance means to them. And, it is impressive and inspiring to visit with the other student recipients at our tables and come away feeling so good about the new lawyers who will be following in our footsteps.

One of my favorite authors, Harold Kushner, said when he was young he admired clever people and as he got older he admired kind people. I think one definition of a kind person is a person who helps others and in the process makes our society a better place—the kind of thing that a whole bunch of lawyers do every day in our society.

Throughout the history of humankind, or at least so long as there have been lawyers in our society, it has been fair game to criticize and ridicule lawyers. Shakespeare had Dick the Butcher say, “The first thing we will do is kill all the lawyers.” However, it is important to remember that Dick the Butcher was a thug and thugs have never liked lawyers. Many years later Carl Sandburg wrote a poem in which he posed the question, “Why does the hearse horse always snicker when it hauls another lawyer away?” We’ve heard all the jokes and in the work we do it is important not to lose our sense of humor. However, I also want to visit with you about something else that is impressive and inspiring. That is the absolutely essential work that lawyers do day in and day out in our society: finding solutions and solving problems across a broad spectrum of human affairs. And, using their legal education to better society, in a variety of ways—teaching, working with nonprofits, private practice, business, government service, you name it. It is no exaggeration to say that our

democratic way of life could not exist without the work lawyers do. In totalitarian governments disputes are handled by force—whoever has the biggest club; corruption—whoever has the most money; or, by absolute neglect without regard to the human suffering it causes.

One of my favorite aphorisms, and one that I often think of when I hear people criticizing the work lawyers do, is that, “It’s pretty easy to solve a problem—especially when you don’t know much about the problem.” Day in and day out in the United States thousands and thousands of lawyers deal with complex problems for which there is not a simple or easy solution. I keep on my desk, as a constant reminder, a quote about the difficult things lawyers are called upon to do. The quote says, “Life’s difficult questions almost always produce some measure of inconsistency and uncertainty—otherwise they wouldn’t be so difficult.”

Some years ago the district court judges in the Fourth Judicial District in Missoula published written rules of decorum for lawyers to follow during trials in district court. In the preamble to those rules, the judge said in part, “A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner.” I thought that was a very good and succinct statement about a trial. However, I also immediately thought:

- People don’t like the human and societal problems lawyers are called upon to solve.
- The solving of those problems can be time consuming, expensive and stressful.
- And, because lawyers are governed by rules of confidentiality, it is difficult for people to understand

and appreciate the hard work that goes into solving those problems.

We live in a “sound bite” society—and the problems lawyers deal with can’t be understood by “sound bites.” I would say to all those people who like to make fun of lawyers, and all of those politicians who try to make hay by criticizing lawyers, that if you think living in our society with lawyers is a problem—you should try living in our society without them!

My first year in law practice I had the opportunity to go on a fishing trip with the then Chief Justice of the United States Supreme Court Earl Warren. I won’t bore you with the details of how all of that came about other than to tell you that Justice Warren didn’t call to see if I would like to go fishing. At dinner that first night I ended up seated next to Warren. I was bursting with questions I wanted to ask but kept holding off because I knew he had come to Montana to fish and not to talk to some wet-behind-the-ears lawyer. However, finally I just couldn’t constrain myself and I asked him a number of questions. He was very gracious in his answers. One question I asked him, and the answer he gave, was absolutely burned into my memory and has been an invaluable lesson ever since. I’m embarrassed to repeat the question because, in retrospect, it was very naïve. However, having constitutional law in law school, I was impressed by how many of the really important decisions of the United States Supreme Court were decided by votes of 5 to 4, rather than unanimously. So, I asked Warren why that was. He didn’t actually pat me on the head as he answered the question, although he was probably tempted to do so. But his reply was, “Because we decide upon issues which reasonable people can reasonably disagree.” There would be a much greater degree of civility in our country if more people understood that. And, understood that in the process of disagreeing it isn’t necessary to be disagreeable nor is it necessary to demonize the other side.

Recently I was listening to an interview of a United States Senator on NPR. The Senator was talking about a thorny problem before Congress and at one point said, “I don’t think Congress has the will to deal with this problem—so we will have to turn it over to the courts.” There is an endless list of problems in our society which

people cannot solve on their own—so they, too, have “turned them over to the courts.” And, without those solutions our society would implode.

When we are at our best we understand that we are society’s problem solvers. Former Federal District Court Judge Russell Smith liked to say that lawyers were “society’s oilcans.” Also, when we are at our best, and especially when the obligations of what we do, or are called upon to do, are at their most challenging, each of us needs to remind our self, “This isn’t something I have to do—this is something I get to do.” And in the process we need to understand that we can either view our daily responsibilities as burdensome obligations or as blessed opportunities. The attitude we adopt influences the quality of our legal services.

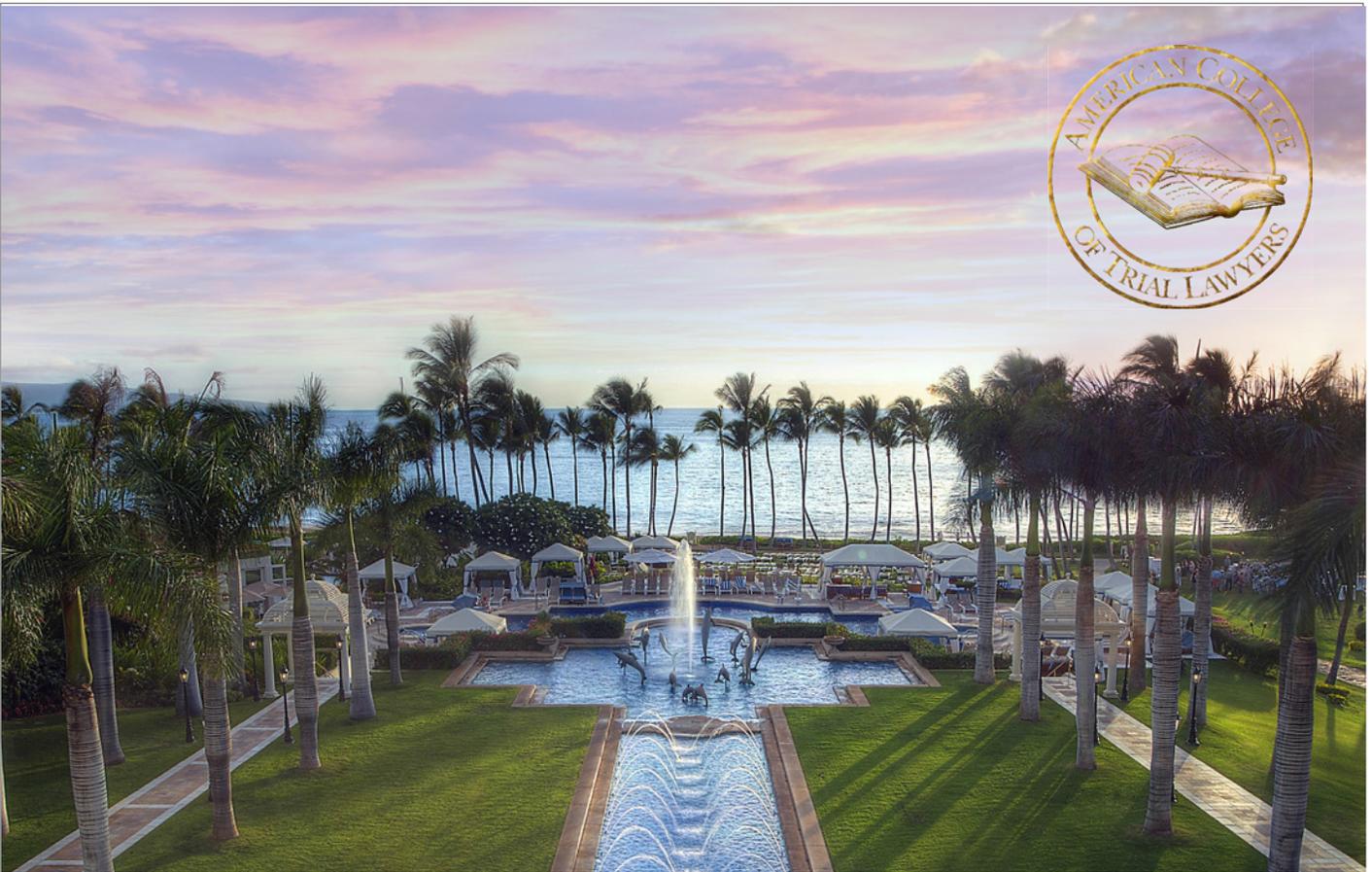
And, what about the charitable work and the charitable giving done by lawyers? Go to any city or town in the United States and you will find lawyers involved in a wide range of endeavors that can be best characterized as “compassionate responsibility.” Lawyers who understand, as Winston Churchill so insightfully reminds us, that “We make a living by what we get. We make a life by what we give.”

So, for all of us today this is a day to rejoice. Not in a boastful and self-centered way, but in a humble and private way. But to rejoice about the good we do in our society, in our local communities and in the lives of our individual clients. In doing that it is important we never lose sight of an invaluable reward we receive when we do good work. That reward was summed up nicely in the important new book entitled *The Happy Lawyer* where the authors said:

Aristotle used the words “good spirit” to describe the feelings that accompany a life well lived—engagement and immersion in activities that contribute to a better society. Aristotle believed that happiness came not simply from feeling good—but from feeling good for good reasons—a feeling that generally comes from doing good.

When we are at our best we know all about that—don’t we!

Thank you. ■



AMERICAN COLLEGE OF TRIAL LAWYERS SPRING MEETING MARCH 3-6, 2016, GRAND WAILEA, MAUI, HAWAII

CONFIRMED SPEAKERS INCLUDE:

Ovie Carroll

Director, Cybercrime Lab
Department of Justice, Computer Crime
and Intellectual Property Section

The Honourable Madam Justice Suzanne Côté
Supreme Court of Canada

The Honorable Alex Kozinski

U.S. Court of Appeals for the Ninth Circuit

The Honorable R. Ashby Pate

Supreme Court of Palau

The Honorable Mark E. Recktenwald

Chief Justice
Hawaii Supreme Court

SAVE THE DATE

Atlantic Provinces, Maine,
Massachusetts, New Hampshire,
Puerto Rico, Rhode Island

May 15-17, 2015

Brewster, Massachusetts

REGION 12 NEW ENGLAND REGIONAL MEETING

Nearly 70 Fellows and guests enjoyed a spring weekend on Cape Cod at the New England Regional meeting, held at the Ocean's Edge resort in Brewster, Massachusetts, on May 15-17, 2015. The annual event rotates among the states and provinces in the region, and has recently been hosted by New Hampshire, Maine, Puerto Rico, Rhode Island and the Atlantic Provinces. The Massachusetts State Committee welcomed Fellows from Massachusetts, New Hampshire and Maine, as well as one visitor from Vermont. President **Fran Wikstrom** also attended.





The weekend opened on Friday night with a traditional New England clambake with all the trimmings. Fellows and guests had an opportunity to socialize in a relaxed setting while wearing plastic bibs and squirting their neighbors with seafood juice. President Wikstrom presented Massachusetts State Committee Vice Chair **Thomas M. Hoopes** with a football suitable for use by Tom Brady, complete with necessary equipment (a needle).

On Saturday morning, Massachusetts State Committee Chair **Martin F. Murphy** welcomed Fellows and guests to the general session. The morning featured an outstanding professional program, highlighted by an inspiring talk by the Honorable **Michael A. Ponsor**, a Senior Judge on the U.S. District Court for the District of Massachusetts. Ponsor, who is well known to Massachusetts Fellows as a brilliant, thoughtful and compassionate jurist, is also the author of a book entitled *The Hanging Judge*, loosely based on his 2001 experience with the first federal death penalty trial in Massachusetts in fifty years. Ponsor's observations about presiding over the trial of nurse Kristen Gilbert, who was charged with murdering patients at the Veteran Affairs Medical Center where she was employed, were particularly timely, as they came during the high-profile trial of Dzhokhar Tsarnev for his role in the Boston Marathon bombing. Of the Gilbert trial, Ponsor said, "It was one of the most intense professional and personal experiences I have ever had."

Drawing on his background as an English major and writer, Ponsor spoke about law as "fiction, not in the sense that it is false or untrue, but because in the etymological sense we might call it 'fictive' from the Latin verb *facere*, to make." He distinguished the rule of law from the rule of nature, noting that our important constitutional principles are of human invention and agreement. "Our system of law both expresses and embodies our deepest yearning to make—that is, create out of the most powerful recesses of our imagination—a fair, sensible and predictable world. It

is a powerful dream, filtered through very fallible human beings, very much a work in progress, and by no means inevitable. But, such as it is, we as a community hold up these principles of due process and equal protection by the sheer power of our continuing belief in them, nothing but the breath coming from our upturned faces."

Ponsor's remarks covered a wide variety of topics, but centered on what he called his "deep anguish at the cruelty and capriciousness particularly of our criminal justice system as it has evolved over the last thirty years." Ponsor spoke about his frustration with the federal mandatory sentencing guidelines and his dismay that, despite the United States Supreme Court's holding in *United States v. Booker*, "many of the defendants that I sentenced in compliance with an unconstitutional sentencing system are still today in prison serving out the excessive sentences I imposed." Particularly compelling was Ponsor's reading of a letter he received from a former defendant, one half of a couple he had sentenced for drug offenses more than ten years ago. Noting their difficult upbringings and responsibility for several children between them, Ponsor visited their apartment, and then made a dramatic downward departure from the guidelines, sentencing both defendants with terms of supervised release. Their recent letter explained that the woman was now working as a psychiatric nurse and pursuing a doctorate degree, while two of the children were starting college, and another had just received a scholarship to a prestigious boarding school. None of the family had had any subsequent involvement with the criminal justice system. Writing to thank the judge, the woman wrote, "You believed that we were much more than criminals. We were people that made mistakes and needed someone to have faith in us."

Local author **Michael Tougias**, who followed Ponsor, had a difficult act to follow, but soon engaged the audience with his lecture on a daring Coast Guard rescue that occurred off Cape Cod in 1952. Tougias recounted the story of four young servicemen who braved seas over sixty feet high in ▶

a 36-foot wooden boat in an attempt to rescue the crew members of two oil tankers that had both broken apart in the force of a February nor'easter. Navigating around the Chatham sandbar, the rescuers crammed their tiny boat with thirty-two survivors, and, having lost their compass to a crashing wave, managed to find their way back to shore.

According to Tougias, February 18, 1952 began as an ordinary day for Boatswain's Mate First Class Bernie Webber. Webber "held a hot mug of coffee in his large hands as he stared out the foggy window of the mess hall. The cup of mud wasn't half bad. The minister's son from Milton, Massachusetts watched with growing curiosity and concern as the storm continued to strengthen outside." Before nightfall, two tankers, the *Pendleton* and the *Fort Mercer* had split in half, and Webber and his young crewmates would be engaged in one of the most daring rescues in Coast Guard history. Their bravery during the ordeal was surpassed only by their modesty afterward. "My dad always said it was no big deal," one of the crew's daughters said years later. "He said it was just his job and he did what he had to do. Once I heard the story told, I was a bit in awe of my father and of the other three men."

QUIPS & QUOTES

The sea is master here—a tyrant, even—and no people better than ours, who have gone down to the sea in ships so often in so many generations, understand the subtle saying... "We conquer nature only as we obey her."

Author Michael Tougias quoting E. G. Perry, 1898

Tougias accompanied his talk with dramatic pictures of the storm and the vessels involved. His research included an interview with Webber, who at age twenty-four, had been the senior member of a rescue crew that included two teenagers. Tougias's book on the rescue, *The Finest Hour*, has been acquired by Disney, which is set to release a movie version next year. Massachusetts Fellow **John P. Pucci** was so inspired by the story that he spent his afternoon visiting the rescue boat, which has been restored as a museum and is moored in Orleans, about ten miles from Ocean's Edge.

The final presentation of the morning featured a panel discussion on the new Massachusetts voir dire statute. Regent **Liz Mulvey** moderated a group discussion among the Honorable **Edward P. Leibensperger**, Associate Justice for the Massachusetts Superior Courts and Honorary Fellow,

Fellow **James M. Campbell**, jury consultant **Jocelyn Cinquino** and pending inductee **Mark Mandell**. Campbell, who has a national practice, shared his experiences with voir dire in other states, while Cinquino added her insights into jury psychology.

Cinquino explained that jurors "instinctively use cognitive shortcuts" to process the information they receive during trial, drawing upon their life experiences, attitudes and preconceptions to do it. Because the jurors are placed into an unfamiliar situation with "new language, new rules and a considerable task," their tendency to rely on these "shortcuts" becomes even stronger as they struggle to make sense of a new and complicated environment. Cinquino recommended that lawyers focus on "attitudinal" questions about what prospective jurors believe, and "experiential" questions to elicit their life experiences that may be relevant to the decision-making process. In the end, the attitudes and life experiences that the jurors bring to the courtroom will influence their decision far more than demographic factors.

Mandell spoke about the Rhode Island perspective, where extensive and wide-ranging voir dire has long been the practice. Before beginning the process, it is essential for the lawyer to identify the issues in the case that are most likely to provoke strong instinctive reactions—what Mandell calls the "I just can't get over it" issues. He reminded participants that the purpose of voir dire is not so much to persuade jurors as to identify people who cannot be objective about the case. Mandell also recommended the use of written jury questionnaires to shorten the oral questioning process and encourage jurors to disclose personal experiences that they might be reluctant to mention in the group voir dire setting.

The conversation was lively, as the many local Fellows who have practiced their entire careers with no real voir dire struggled to understand the implications and limitations of the new procedures.

Fellows and guests scattered for the afternoon to enjoy the beautiful resort golf course and tennis courts, the scenic bicycle trails and the charming art galleries and shops in nearby Chatham. The group reconvened for cocktails and dinner at historic Chillingsworth restaurant, one of the Cape's oldest and most famous dining spots. The weekend concluded Sunday morning with a buffet breakfast in full view of the ocean.

Elizabeth N. Mulvey
Boston, Massachusetts

FELLOWS TO THE BENCH

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

Chantal Chatelain
Montreal, Quebec
Effective June 2015
Judge
Quebec Superior Court



Marie-Josée Hogue
Montreal, Quebec
Effective June 2015
Judge
Quebec Court of Appeal

The College extends congratulations to these newly designated Judicial Fellows.

FELLOWS IN ACTION

ARIZONA FELLOWS SHARE EXPERTISE IN ONE-DAY CLE

More than 100 attendees participated in *Escape from the Briar Patch Between Discovery and Trial*, a CLE program presented by the Arizona Fellows on May 15, 2015 at the Phoenix Convention Center. Led by program chair **Ted A. Schmidt**, the all-Fellow faculty lectured, discussed and demonstrated discovery and trial issues concerning: the obstreperous witness and opposing counsel; impeachment; sham affidavits; special problems with experts; spoliation; social media; technology in the courtroom; threatened criminal prosecution and bar complaints; and thorny disclosure issues.

The program was enhanced by the integration of videotaped vignettes performed by students from the James E. Rogers College of Law at the University of Arizona. The students were provided with the trial and deposition transcripts from actual cases the faculty had handled and recreated the testimony in the Pima County Superior Courtrooms and conference rooms. The faculty showed the vignettes to illustrate real-life drama in discovery and trial and then explained how to handle these situations before revealing the actual outcome in the real case being illustrated.

“The seminar was very well-received, while the student performances were impeccable, entertaining and instructive,” Schmidt said.

The following Fellows also participated as faculty: **Neil C. Alden**; Arizona State Vice Chair **Peter Akmajian**; **Thomas P. Burke, II**; **Howard R. Cabot**; **James R. Condo**; **William G. Fairbourn**; **Robert J. Hirsh**; **William R. Jones, Jr.**; **Barry A. MacBan**; **Ron Mercaldo**; **Michael J. Rusing**; **Winn L. Sammons**; **Tod F. Schleier**; **Robert E. Schmitt**; **Georgia A. Staton**; **Thomas J. Shorall, Jr.**; **James A. Teilborg**; **Timothy J. Thomason**; and **Lonnie J. Williams, Jr.**

ERRATA/ CORRECTION

In issue 78 of the *Journal* an article titled, “A University President’s Perspective,” incorrectly stated the amount of private funds Donna Shalala raised during her fourteen years as the President of the University of Miami. Shalala raised a total of \$3 billion, not \$3 million.

Delaware, New Jersey,
Pennsylvania

May 29-31, 2015

Bedford, Pennsylvania

REGION 13 THIRD CIRCUIT REGIONAL MEETING

Fellows from, Delaware, New Jersey and Pennsylvania commenced the annual Third Circuit Regional Meeting with an outdoor welcome reception on May 29 at the beautiful Omni Bedford Springs Resort and Spa in Bedford, Pennsylvania overlooking the grounds of the picturesque resort against a backdrop of the Pennsylvania Laurel Mountains.





The Friday night outdoor cocktail reception and dinner included two of the three featured speakers – **Jack Sheehan** of the John Heinz History Center of Pittsburgh and **Robert A. Creo**, Esquire, attorney, author, arbitrator, mediator and educator.

Regent **William T. Hangley** and Pennsylvania State Chair **Samuel Braver** welcomed all Fellows and guests to the historic and scenic location, which was for many their first experience with the hotel that has housed presidents, dignitaries and many others of public interest and importance.

REPATRIATING BOY SOLDIERS

The first speaker on May 30, in a program that combined international, national and historical topics of interest, was Creo, who was not there to speak to Fellows and guests about his professional exploits, but the compassionate commitment that he and others like him, primarily all Pittsburghers, as part of Mediators Beyond Borders, made in traveling to Africa on multiple occasions to help repatriate eighty-five former child soldiers who were at one time in refugee camps in Liberia.

Creo's extremely emotionally gripping presentation started with a seven-minute video reflecting the team of mediators and various snippets of their interaction and work with the former "boy soldiers" and the Third World conditions in which Creo and his colleagues worked to help better the lives of these young men, trying to give them hope and a reason to believe in a future that is not

tarnished by guerilla warfare, the death of parents, siblings and family members and the ravages of civil war.

Creo recounted the tragic events that these young boys faced such as watching members of their communities being assembled for slaughter in a village church and escaping by hiding under massacred bodies and then traveling at night for miles through the bush country to safety. He recounted the shunning and isolation that some faced when they returned from their forced guerilla militarism.

Using their own funds and additional funding from United Nations agencies, Creo's team spent weeks educating as well as training these young men to help them learn such things as farming, to work with tools so they could develop not only a trade but help restore villages and farms.

Creo's passion and those of his fellow mediators whose efforts to personally connect with those with whom they were trying to restore "humanness" held Fellows and guests in rapt attention, and resulted in extended questioning of the experiences and successes that Mediators Beyond Borders derived from the efforts of a group of Pittsburgh lawyers to improve the lives of former boy soldiers in Africa.

CONFRONTING CYBERCRIME

Fellow **David J. Hickton** took center stage following Creo's presentation and turned to a different serious ▶

concern; that of working to protect others from the egregious realities of cybercrime.

Hickton was nominated for United States Attorney for the Western District of Pennsylvania by President Barack Obama and was confirmed by the U.S. Senate and sworn into office in August 2010.

Hickton's presentation focused on the sophistication of the cyber "hactivists," the depth of their penetration into all aspects of society in order to syphon off the fruits of technology, research and financial success and in response the massive public and private resources that are combating this threat and the several accomplishments that have occurred in this cyber war.

A key focus of Hickton's PowerPoint presentation was that the Pittsburgh area was key in the battle to confront cybercrime. Hickton described 2014 as a watershed year in that his office led the prosecution of economic espionage, charges against individuals who attacked several domestic companies, as well as bringing an end to the efforts of the "Ice Man" who was responsible for one of the largest computer fraud schemes to date, as well as the success in confronting the Chinese government in similar commercial espionage.

Hickton described in detail that cybercrime is a borderless threat, involving quickly evaporating evidence, and that because of its sophistication cannot be attacked linearly like traditional crime solving. Despite this backdrop, Hickton spoke confidently about the progress being made in large part due to the public and private resources resident in Western Pennsylvania, such as the Department of Homeland Security, Carnegie Mellon University, Hickton's team of U.S. Attorneys, the Department of Justice, the FBI and other crime-fighting specialists.

A HISTORY LESSON

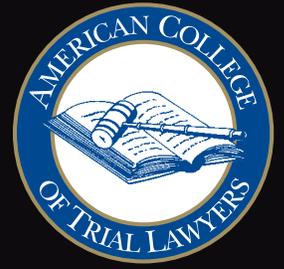
The last of the speakers, who provided a history lesson for the Fellows and guests, was Jack Sheehan, Volunteer Ambassador of the Senator John Heinz History Center located in Pittsburgh, Pennsylvania and affiliated with the Smithsonian Institution. Sheehan, who has clocked over 3,300 hours at the Center, spends much of his time as a docent for both school and adult tour groups providing history lessons about Western Pennsylvania, including the historical events centering around the locale of Bedford Springs that changed and occurred in Western Pennsylvania.

Sheehan began his history lesson back in the mid-1700s discussing local aspects of the English/French conflict. He provided an in-depth and light-hearted commentary involving the French/English/Indian conflict that took place within close proximity to the Bedford Springs Hotel. This history lesson included the results of several local battles between the French and English and then progressed into an interesting trivia lesson of the innovation that has its roots in Western Pennsylvania, which included various video clips of the accomplishments of those such as Andrew Carnegie, Henry J. Heinz, Alcoa, U.S. Steel Corporation, the Mellon family and other local pioneers, innovators and industrialists.

Following the presentation by the three speakers, all of whom tied their presentations to the Western Pennsylvania area as part of the theme for Pennsylvania's hosting the meeting, Fellows and guests participated in the resort's golf, spa and tour activities and relaxed until the Saturday evening reception and dinner. A significant portion of Fellows and guests concluded the meeting by lounging late into the evening having cocktails with the Laurel Mountains in the background.

Samuel W. Braver

Pittsburgh, Pennsylvania



TEACHING OF TRIAL AND APPELLATE ADVOCACY COMMITTEE OFFERS DEPOSITION TRAINING PROGRAM

“Depositions play an extremely important role in the American justice system.”
GMAC Bank v. HTFC Corp., 248 F.R.D. 182, 184 (E.D. Pa. 2008).

The College’s Teaching of Trial and Appellate Advocacy Committee has produced a deposition training program for aspiring trial lawyers in their first five years of practice.

The video deals with the practical realities that confront every interrogator and defender, including:

- Deciding upon your objectives with a witness
- How to ask questions to exhaust the knowledge of the witness
- Various approaches to obtaining admissions from the witness
- How to use exhibits effectively
- How to deal with the tight-lipped uncooperative witness
- How to deal with an obstreperous opponent
- Which objections are proper, which are not
- In what circumstances may the defender properly instruct the witness not to answer
- In what circumstances may counsel confer privately with the witness during the course of the deposition
- How to apply to the court to obtain rulings on disruptive behavior, objections and instructions
- How to ethically and effectively prepare the witness so that he/she will do a better job of testifying
- Tips on taking video depositions
- How to use deposition testimony effectively at trial

The training video is user-friendly and consists of a series of video vignettes of lifelike deposition excerpts, followed by commentary from participating Fellows, as well as series of panel discussions on various deposition topics. Each vignette, commentary and discussion is a separate clip, so that viewers may pick and choose what to use in their own training program. The written materials complement the video, and include a discussion of Rule 30(b)(6) depositions, which are often a struggle for even the most experienced trial lawyers.

Fellows who participated in the program are:

Commentators:

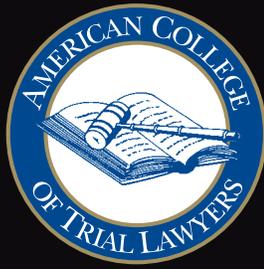
David B. Markowitz, Dennis R. Suplee

Participating Fellows:

**John C. Aisenbrey, Lynn R. Johnson, Mary Lee Ratzel, Paul L. Redfearn, III
George H. Robinson, Jr., Lonnie J. Williams, Jr.**

Fellows who have reviewed the program uniformly praise its excellence and usefulness.

The video is available on a flash drive, without charge, to Fellows who wish to use it as part of the College’s project for training public interest lawyers. It is also available to Fellows to purchase for \$50 for use in training lawyers in Fellows’ own law firms. Copies can be purchased through the College by contacting the National Office at nationaloffice@actl.com.



ACTL FOUNDATION ISSUES NEW GRANTS

ORGANIZATIONS TO RECEIVE \$50,000 TO HELP FUND PROGRAMS

The Foundation of the American College of Trial Lawyers has selected the Education Law Center's School-to-Prison Pipeline Project in Philadelphia, Pennsylvania, and the Immigrant Legal Resource Center's Legal Relief for Unaccompanied Immigrant Minors Program in San Francisco, California, as recipients of its two most recent grants.

The Education Law Center and Immigrant Legal Resource Center were chosen from a wide field of applicants from throughout the United States and Canada who are seeking grants to promote programs that strive to provide needed legal assistance to unrepresented persons. Such programs not only serve their existing clients, but also offer the potential for growth and replication in other locations. Both of the programs of these two grant recipients meet the criteria and objectives of the Foundation.

The Education Law Center's (ELC) School Discipline Advocacy Service School-to-Prison Pipeline Project began in 2011 in response to the growing number of suspensions, expulsions and arrests of Philadelphia area public school students, especially poor African-Americans and Hispanics, stemming from the zero discipline tolerance policy enacted in 2008 by the then Philadelphia Superintendent of Schools. Born out of the need to assist those in the Philadelphia public schools with no one else to help them in regard to school disciplinary matters, the ELC has established a quick response process to these school proceedings by using Temple University Law School students and ELC staff attorneys to provide immediate legal assistance to unrepresented minor students. According to ELC, "The students and families we represent have no other advocates in their corner, yet the stakes for these children are high."

The Immigrant Legal Resource Center (ILRC), created in 1979 and based in San

Francisco's Mission District, is a national resource center that provides training, technical assistance and written resources on immigration law. ILRC will develop the Legal Relief for Unaccompanied Immigrant Minors Program. The program will increase access to legal relief for unaccompanied immigrant minors in active deportation proceedings by ensuring that the attorneys who represent these youth have the necessary resources, training and tools. Even experienced immigration lawyers encounter challenges when representing unaccompanied immigrant minors because immigration laws and procedures for these youth are markedly different than those applicable to adults.

FOUNDATION SUPPORTS CIVIL JUSTICE SUMMIT FOR FIRST TIME

The College continues its support of the Institute for the Advancement of the American Legal System (IAALS) with a \$50,000 grant awarded by the Foundation to sponsor the Fourth Civil Justice Reform Summit: Creating the Just, Speedy and Inexpensive Courts of Tomorrow from February 25-26, 2016. The Foundation has funded other IAALS projects in the past, but this is the first time it has sponsored a Civil Justice Summit.

"IAALS' work with the ACTL Task Force on Discovery and Civil Justice over the years has been foundational to the momentum for reform that exists today. It is in no small part due to the ACTL work that we find ourselves as a nation on the verge of seismic reforms," said Rebecca Love Kourlis, Executive Director of IAALS. "Foundation sponsorship of the Civil Justice Reform Summit is a meaningful and strategic investment in the effort to ensure that the changes actually happen and actually lead to improvement in the American legal system."



The goal of the summit will be to bring together all those invested in the work of civil justice reform at both the state and federal levels—including judges, lawyers, court administrators and academics—to discuss achieving impact and implementing change on a national scale.

Following the release of the IAALS/ACTL Task Force on Discovery and Civil Justice Final Report in 2009, the Advisory Committee on Civil Rules hosted the 2010 Civil Litigation Conference at Duke University to explore the issues of cost and delay identified in the final report, and to discuss possible solutions. Since 2010, many steps have been taken toward reforming the system in ways suggested by the final report. The Supreme Court has approved amendments to the Federal Rules of Civil Procedure, which are expected to go into effect on December 1, 2015. At the state level, building on the lessons learned from the pilot projects around the country, IAALS expects recommendations from the Conference of Chief Justices Civil Improvements Committee at the beginning of 2016. In addition, IAALS and the College's Task Force released an updated report, *Reforming Our Civil Justice System: A Report on Progress and Promises*, which amplifies the report from 2009 and calls for further action.

The summit is strategically scheduled in February at the culmination of all these efforts. "Just as the Duke conference provided a critical forum for defining the issues and developing solutions back in 2010, it is our goal that this summit will serve the same purpose. We hope to mark a passage into a new phase, where we must move from defining new rules and procedures to implementing them on a national scale," Kourlis said. "A focus in implementation

and culture change is essential to ensure that the changes go into effect in such a way as to have maximum impact, as intended. The work of IAALS spans the state and federal systems, and thus IAALS is in a position to bring everyone together at this critical time for a dialogue about the future of our civil justice system in the United States."

COLLEGE EXTENDS PRO BONO WORK THROUGH PARTNER PROJECT

Capitalizing on the long track record of Fellows providing pro bono services on significant legal matters, the College and the National Legal Aid & Defender Association (NLADA) have partnered on a joint pro bono project. The project works to identify cases of major impact where outside counsel is needed, and coordinate those assignments with willing Fellows who can handle the case either as counsel or as co-counsel.

In addition, the Foundation provided \$2,000 to support the project.

To assist in this effort, the NLADA engaged the services of a law clerk during the summer of 2015. The law clerk worked in coordination with **John P. Gilligan** and **Ian Francis Kelly**, Co-Chairs of the Access to Justice and Legal Services Committee, to solicit from member organizations of NLADA significant impact cases where outside counsel is needed. These cases dealt with systematic problems where the relief, either through injunction or class action, would apply to many similarly situated individuals. The initial effort focused on matters from states where the Access to Justice Committee membership was strongest: Florida, New York, Pennsylvania and Texas.

The purpose of the project was to match the needs (cases raising systematic issues) identified by NLADA members with Fellows who have the appropriate skillset and time to commit to these significant cases. Members of the Access to Justice Committee worked with the law clerk to help recruit the appropriate Fellows to handle the engagement. The NLADA law clerk then acted as the liaison contact between the volunteer Fellow and the member agency of NLADA. ■

IN MEMORIAM

The *In Memoriam* feature had its birth in Issue 40, the third issue of *The Bulletin* published under the editorship of Marion A. Ellis, who had been co-author of the fifty-year history of the College, *Sages of Their Craft*, which focused on the College as an institution and on its successive leaders. In the course of undertaking to expand the scope of what was then *The Bulletin*, adding features such as *Fellows to the Bench; Awards, Honors and Elections*; and *Fellows in Print*, Ellis and the Chair of the Editorial Board asked the College staff to begin to send us a list of the Fellows reported to have died. We had traditionally published tributes to deceased Past Presidents, but when we began to see in the lists we were sent Fellows whose names were household words—former Regents of the College, war heroes, Cabinet Secretaries, Governors, Judges, Past Presidents of the American Bar Association—we realized that a part of our history was going unrecognized.

The essence of the College's rich heritage lay not merely in its institutional history and in the lives of those chosen to lead it, but more importantly in the lives of every one of those whose stature in the profession led to their being invited to become Fellows. The record of that part of our heritage was being lost.

In Issue 49, we added to the list of the names of those who had died a brief obituary note about the deaths of four of them, three former Regents and a Past President of the ABA. In the process, we discovered that the College maintained in its archives both the Statement of Qualifications each Fellow had submitted in connection with his or her induction and a record of their subsequent participation in the College, each meeting attended, each committee membership, each office held. Beginning with Issue 50, we thus began to publish a memorial tribute to every Fellow who had died, adding to what we found in the College archives information from published obituaries and tributes, successive annual editions of the College *Roster*, also known as the *Blue Book*, that traced their changing addresses and law firms, biographical information from legal directories and, as it became progressively more accessible, research on the Internet.

Through the current issue, the thirtieth since we began this effort, we have over the past ten years thus celebrated the lives of almost 1,220 departed Fellows.



In this issue, we celebrate the lives of forty-nine Fellows who have passed from among us, forty-eight of whom are included in the entries that follow and the other in a separate tribute to Past President Leon Silverman. We also note the passing of two wives of Past Presidents who both played a special role in the College's history.

As to their careers as lawyers, these Fellows ranged from those who were pillars of their communities to those whose names invoke recollection of events in our two nations'—the U.S. and Canada—histories. That they had been invited to become Fellows of the College speaks for their professional standing and accomplishments. The tributes that follow speak more broadly to who they were as human beings.

They came from all sorts of backgrounds. One, fatherless at age fourteen, carried multiple jobs during the school year and worked as a seaman in the summers to earn his way through undergraduate and law school at Columbia University. One worked as a Maine Guide. Two worked by day, one with an insurance company, the other teaching a fifth grade class, while attending law school at night. One earned both bachelor's and master's degrees in four years while working to pay for his education.

Two had been Eagle Scouts. Three were college football players. One was captain of his college's wrestling team. One was both a football captain and student body president. The educations of many were

paid for by the GI Bill. Another was one of three survivors of the crash of an airborne glider far behind enemy lines on D-Day, who, armed with only one pistol, spent ten days finding their way to safety. Two, injured in combat, came home with Purple Hearts. One, flying a carrier-based fighter-bomber, won a Distinguished Flying Cross for sinking a Japanese ship. One was reputed to have been the youngest Master Sergeant in the United States Army. Several participated in combat in South Pacific places with names lost to history, names such as Tarawa, Kwajalein and Okinawa.

In law school, many were editors of their law reviews, several were valedictorians. One was the runner up in the National Moot Court Competition. One, who with a friend, set up practice in a one-room office without a secretary and with only two clients, went on to create a nationally known law firm. One, two years out of law school, became one of Thomas E. Dewey's "boy scouts," organized to root out crime in New York City. One was appointed a state court judge at age twenty-three. Ten others went on to become judges. Many led various local, state or province law-related organizations. At least nine came to lead their local bars; four led their state bar organizations. One led the American Bar Association and later came out of retirement to act as Independent Counsel in the Iran-Contra investigation. One, in retirement, became a leader in his state's unique grand jury system. One was characterized as the face of the Canadian judiciary in its dealings with the public and the Canadian government.

One was a Past President of the College, one a former Regent. At least seven had been State or Province Chairs; three had chaired national committees.

They gave back to their communities as both leaders and contributors. Many served on the boards of their colleges and universities. Many led their churches and synagogues. Many continued that part of their lives in retirement. One led a national Roman Catholic organization that afforded him the honor of introducing his family to Pope John Paul II. Their obituaries were full of tributes from grateful families for the meaning of their private lives.



The statistics we have come to cite in each issue are not without significance. As we go to press amidst celebration of the seventieth anniversary of the end of World War II, we find that nineteen of these departed Fellows were among those who interrupted their education to serve in that war and who came home a generation determined to make theirs a better world. Among the forty-nine departed Fellows, thirty lived into their eighties, twelve into their nineties and one to 102. The six who died in their sixties or seventies were victims of diseases we have not yet learned how to cure. Twenty-five of those the length of whose marriages were recorded in their obituaries, had been married for fifty or more years, fifteen of them for over sixty years, one for seventy.

Another statistic that we would do well to ponder is that of these forty-nine Fellows, eleven had practiced for only fifteen to twenty years at the time of their induction; seventeen had practiced from twenty-one to twenty-five years and fourteen from twenty-six to thirty years. Only seven had practiced for over thirty years at the time of their induction, and only one of those had practiced as long as forty years. Their average age is at least three years below the College's current admission statistics.

One need only to read the tributes that follow to see that our predecessors in the College took seriously their mandate to identify, and to bring into the College as soon as they were identified, those who met its high qualifications.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

THE DATE FOLLOWING THE NAME OF EACH DECEASED FELLOW REPRESENTS THE YEAR IN WHICH HE OR SHE WAS INDUCTED INTO THE COLLEGE.



Fred Calvin Alexander, Jr., '83, a Fellow Emeritus from Alexandria, Virginia, died May 9, 2015 at age eighty-three. He began his undergraduate education at Davidson College, graduated from the University of Virginia, served for two years in the United States Army in Korea and then returned to earn his law degree from the University of Virginia in 1959. He spent his entire career with the Alexandria firm Boothe, Dudley, Koontz, Blankenship & Stump (now McGuireWoods LLP), retiring in 1996. A Past President of his local Bar, he served on the boards of several local organizations and served the College as its Virginia State Chair. Divorced and remarried, his survivors include his wife of thirty-three years, three daughters, a son and two stepsons.

Hon. Orville A. (Jack) Armstrong, '83, a Judicial Fellow from Los Angeles, California, retired from the California Court of Appeal, died December 22, 2014 at age eighty-five. The oldest son of a Texas electrician and a seamstress, he was the first member of his family to attend and graduate from college. After finishing high school in three years, he entered the University of Texas, but after one semester enlisted in the United States Army Air Corps at age seventeen. Trained as a radar technician, he was discharged as a Sergeant in 1949. He then worked for a private radar company on Okinawa, Japan, instructing flight crews in ground control approach. After a wedding in Manila, Philippines to the head of civilian personnel for the military in the region where he had performed his military service, he returned to Texas and, taking advantage of the GI Bill, finished his undergraduate work, graduating *cum laude* from the University of Texas in 1953. He then enrolled in law school at the University of Southern California, selling insurance to support his growing family. A member of the Board of Editors of his law review, he graduated in 1956 and entered private practice in Los Angeles. He practiced with a series of firms, the last of which merged with Baker & McKenzie, whose Los Angeles

litigation department he headed. He served for four years on the Board of Governors of the State Bar of California and was elected its President in 1987, dealing with a difficult time in that organization's history. In 1989, he was appointed to the Los Angeles Superior Court, serving as a juvenile court judge. In 1993, he was appointed an Associate Justice of the California Court of Appeal, where he served for twenty years before retiring in 2013. His wife of sixty years predeceased him. His survivors include a daughter and two sons.

William Boyce Baggett, '81, a member of Baggett, McCall, Burgess, Watson & Gaughan, LLC, Lake Charles, Louisiana, died May 20, 2015, thirteen days short of his eighty-sixth birthday. A Texas native, he was a 1950 graduate of Louisiana State University, which he attended on a football scholarship. An All-American halfback who led the LSU Tigers in rushing yards for two years, he set two one-game records, one for total yards gained, the other for yards per carry, which stood for decades. He played in the 1951 Blue-Gray Football Classic and was inducted into the LSU Football Hall of Fame. The twenty-second draftee in the 1951 NFL draft, he was drafted by the Los Angeles Rams and traded to the Dallas Texans, where he played for the one season that franchise existed. After graduating from law school at Louisiana State, he served three years as an officer in the United States Air Force during the Korean Conflict. He had been President of the Southwest Louisiana Bar Association, the Louisiana Trial Lawyers Association and the Louisiana State Bar Association and had been a member of the Board of Governors of the Association of Trial Lawyers of America (ATLA). He had also been President of an ambulatory surgical center and raised thoroughbred racehorses. His survivors include his wife of sixty-two years, a daughter and two sons.

Raymond Muirhead Berry, '82, a Fellow Emeritus from Salt Lake City, Utah, died February 20, 2015 at age ninety. The son of a western novelist father

and a Protestant missionary mother, he began his education at San Diego State University, then joined the United States Army in 1943. On D-Day, June 6, 1944, as a paratrooper with the 101st Airborne Division, 327th Glider Infantry Regiment, his glider crash-landed in a flooded zone well beyond the Normandy beaches. Those in the front of the glider drowned. He and two companions, armed only with a single pistol, were not reunited with other United States forces for ten days. Later assigned to the 376th Infantry Regiment, he participated in preventing the German forces in St. Nazaire, France from breaking out of the L' Orient Pocket. While assigned to break through a portion of the Siegfried Line, he was wounded while crossing the Moselle River in a rubber raft. Resuming his education at Montana State University for both his undergraduate and law school education, he then became a claims adjuster and trial counsel for United Pacific Insurance Company before moving to Salt Lake City and entering private practice. For most of his career he was a member of the Salt Lake City firm Snow, Christensen & Martineau. A widower whose first wife of almost fifty years died, he had remarried. His survivors include his wife, three sons and a stepson.

Dort S. Bigg, '79, a Fellow Emeritus, retired from Wiggin & Nourie, P.A., Manchester New Hampshire, died August 17, 2012 at age eighty-two. Working as a registered Maine Guide to help finance his schooling, he earned his undergraduate degree from Dartmouth College, where he was captain of the wrestling team while pursuing his passion for public speaking and dramatic arts. He went on to earn his law degree *cum laude* from Boston University, where he was Editor of the law review and took second place in the College-sponsored National Moot Court Competition. He served as Assistant Attorney General of New Hampshire, as an Assistant United States Attorney and as Chair of the New Hampshire Ballot Law Commission. One of his high-profile cases resulted in regulations

governing the use of flammable fabrics in children's clothing. He was the recipient of a number of professional awards and served the College as New Hampshire State Committee Chair. He was widely known as a skin diver and scuba diver, exploring shipwrecks around New England and in the Caribbean, including that of the sunken *Andrea Doria*. Also well known as a hunter, he published numerous stories in magazines such as *Sports Afield* and *Field & Stream*. His survivors include his wife of thirty-two years, four sons and one stepson.

John E. Bliss, '76, a Fellow Emeritus from Schofield, Wisconsin, died January 28, 2015 at age ninety. He served in the United States Navy in World War II, then earned his undergraduate and law degrees from Marquette University. He was a partner in the Wausau, Wisconsin firm Smith, Bliss, Patterson, Richards and Hessert until his retirement in 1988. His survivors include his wife of sixty-nine years, two daughters and a son.

Harold Alfred Bowron, Jr., '84, a Fellow Emeritus from Mobile, Alabama, retired from Balch & Bingham, LLP, Birmingham, Alabama, died June 6, 2015 at age eighty-seven. After beginning his college education at Georgia Tech and Auburn Universities, he became a pilot in the United States Navy, serving for four years in World War II before entering Vanderbilt University, where he earned his undergraduate and law degrees. Retiring in 1998, he moved to Fairhope, Alabama, where he became an active community volunteer. His survivors include his wife of sixty years, a daughter and three sons.

James Edmund Brennan, '79, a Fellow Emeritus retired from Brennan Steil S.C., Janesville, Wisconsin, where he practiced until his retirement in 1999, died May 19, 2015 at age ninety-one. Entering the United States Army in World War II, he spent a year at the University of San Francisco and was then stationed in the South Pacific on Okinawa, Japan. After the war, he earned his undergraduate

and law degrees from Marquette University. For five years after graduation, he was a claims adjuster for St. Paul Fire & Marine Insurance Company in Milwaukee, Wisconsin before entering private practice. President of the national Roman Catholic Serra Club, he delivered an address at the Vatican and had the honor of introducing his family to Pope John Paul II. He was also his golf club's champion fourteen times. His survivors include his wife of sixty-two years, three daughters and four sons.

Ralph William Brenner, '83, a former Regent of the College and a Fellow Emeritus, retired from Montgomery McCracken Walker & Rhoads, LLP, Philadelphia, Pennsylvania, died May 5, 2015 at age eighty-eight. A graduate of Pennsylvania State University and of Temple University Beasley School of Law, he served in the United States Marine Corps during the Korean Conflict. In his early career, he was assigned by his firm to see to the needs of the lawyer in the office next to his, retired U. S. Supreme Court Associate Justice Owen J. Roberts, a founder of the firm. He went on to serve as Managing Partner and as Chair of the litigation department of his firm. The longtime Chair of the Board of Trustees of St. Christopher's Hospital for Children, an endowed chair bears his name. He served as President of the Philadelphia Bar Foundation, as a Judge Pro Tem of the Philadelphia Court of Common Pleas and as a member of the Federal Arbitration Panel of the Eastern District of Pennsylvania. He also served on the Board of Directors of the International Academy of Trial Lawyers. Pennsylvania State University honored him with its Alumni Fellow Award. In addition to his service as a Regent of the College, he also served as State Chair and chaired the College's Complex Litigation Committee. His wife of fifty-eight years died in 2012. His survivors include a daughter and two sons.

Brady Ried Bridges, '75, a Fellow Emeritus, retired from Bonne, Bridges, Mueller, O'Keefe & Nichols, PC, Los Angeles and living in Carson City, Nevada,

died February 5, 2015 at age eighty-seven. The son of a Hearst Newspaper engineer, he served in the Merchant Marine for three years before earning his undergraduate and law degrees at the University of Southern California. He was also a member of the American Academy of Forensic Sciences. In the absence of an obituary, online research discloses that in 1998, two years before his retirement, he made a major gift to his law school, that his wife had predeceased him and that he was survived by a son.

Pablo R. Cancio, '78, a Fellow Emeritus, one of the original Fellows from Puerto Rico, retired from Cancio & Cancio-Reichard, Aguadilla, Puerto Rico, died in June 2015. Born in 1931, he was a graduate of the University of Puerto Rico and of the University of Michigan Law School. He served as a member of the Board of Governors of the Puerto Rico Bar Association and on various other bar-related and civic committees. He participated in drafting the local Rules of Evidence. He served the College as Puerto Rico State Committee Chair. His survivors include his wife, a historian, and two sons, both lawyers, one of whom is in private practice, the other a professor.

Theodore Osman Creason, '11, Lewiston, Idaho, died April 8, 2015 at age sixty-six, of acute myeloid leukemia. A graduate of the University of Idaho and of its law school, he began his practice with his grandfather and uncle in Rupert, Idaho. Moving to Lewiston, he began practice there, also serving as a part-time deputy prosecutor. By the time of his death, the firm with which he practiced had become Creason, Moore, Dokken & Geidl, PLLC. He served in a variety of organizations, including the Idaho Commission of Pardons and Parole, and the local library foundation. He led the state's Republican Central Committee, the Northwest Children's Home and his local Rotary Club. His survivors include his wife of thirty-nine years, two daughters and two sons.

Thomas D. Dolan, '75, Peabody, Massachusetts, died May 5, 2015 at age ninety. Enrolled in a Naval ROTC program at the College of the Holy Cross, he graduated with honors and was stationed in the South Pacific Theater in World War II. After the war, he earned his law degree *cum laude* from Harvard Law School. He began to practice law in Lynn, Massachusetts, ending his career in Peabody. A Past President of his county Bar, which awarded him its John J. Jennings Advocacy Award, he served on the local planning board and was a member of the first parish council of his church in Peabody. At age seventy, he ceased trial work and divided his time between Peabody and New Port Richey, Florida, where he worked daily from his home office. A widower whose wife of over fifty years predeceased him, his survivors include two daughters and two sons.

Edward Wood (Jack) Dunham, '99, New Haven, Connecticut, died May 1, 2015 at age sixty-one after a long bout with Multiple system atrophy. An honor graduate of Trinity College and a member of Phi Beta Kappa, he earned his law degree from New York University, where he was an Editor of the law review. After a clerkship with a judge of the United States Court of Appeals for the Fifth Circuit, he joined New Haven firm Wiggin and Dana LLP, where he chaired the firm's executive committee and then its litigation department. A national figure in the rising field of franchise law, he served as Editor-in-Chief of the *Franchise Law Journal* and as a member and then as Chair of the Governing Committee of the American Bar Association Forum on Franchising. His survivors include his wife, a daughter, two sons and a stepson.

Daniel T. Flaherty, '70, La Crosse, Wisconsin, died June 14, 2013 at age eighty-nine. He began his college education at the University of Wisconsin-Madison, then attended United States Navy V-12 programs at Dartmouth College and Northwestern University before serving in the later stages of World War II as an officer on the *USS Cottle*, an

attack transport. After earning his law degree from the University of Wisconsin Law School, he began his career as an Assistant District Attorney. He then practiced for over sixty years with the firm that became Johns, Flaherty & Collins SC. A Past President of his county Bar, he served on a number of boards and commissions, including thirty years' service on the City of La Crosse Equal Opportunities Commission. A Past President of the University of Wisconsin Alumni Association, he served on the Wisconsin Natural Resources Board and as a Director and as President of the Natural Resources Foundation of Wisconsin. He was a Wisconsin Trustee of The Nature Conservancy. He was predeceased by his wife of almost sixty-three years, whom he first met when her debate team defeated his team in the Wisconsin State High School Debate Championship. His survivors include three daughters and a son.

John Francis Gionfriddo, '83, a Fellow Emeritus from Vienna, Virginia, died May 25, 2015 at age eighty-seven, of pneumonia. His undergraduate education at Pennsylvania State University was interrupted by World War II service in the United States Army in the Philippines. He earned both his law degree and a masters degree from the Georgetown University Law Center and also worked for the Central Intelligence Agency. After practicing for a few years in Washington, D.C., he established a solo practice in Vienna, Virginia. An expert in municipal law, he chaired the local Board of Zoning Appeals and served as an Associate Judge in the municipal court before becoming part-time town attorney. In 1990, he closed his private practice to become the full-time town attorney in a growing city, retiring in 2002. A widower whose wife of forty-five years predeceased him, his survivors include two sons.

William Lee Hughes, Jr., '75, a Fellow Emeritus from Arlington, Texas, died March 9, 2015 at age eighty-three. A graduate of the University of Texas and of its law school, his law school career was interrupted for two years by service in the

United States Army during the Korean Conflict. Serving for nine years, first as an Assistant District Attorney in Fort Worth, Texas and then as an Assistant United States Attorney, he joined what is now the Arlington firm, Cantey Hanger LLP. He later served for ten years as a state court judge before returning to that firm. He was a life member of his Presbyterian Church, where he served as both a Deacon and an Elder. His survivors include his wife of fifty-nine years and a son.

Sheldon Karon, '86, Highland Park, Illinois, died April 26, 2015 at age eighty-five, following a long illness. A Phi Beta Kappa graduate of Northwestern University and of the Harvard Law School, he began his career at the Chicago firm now known as Jenner & Block. He then became Chair of the litigation group at Chicago's Friedman & Koven, where he was a partner of future U.S. Supreme Court Associate Justice Abe Fortas. He later founded his own firm, Karon, Morrison & Savikas and ended his fifty-year career at Foley & Lardner LLP. An Eagle Scout, he was also a founding member of Congregation Solel in Highland Park. His survivors include his wife of sixty-four years and three daughters.

Kenneth Lewis Keith, '69, Ottumwa, Iowa, died May 21, 2015 at age eighty-eight. After high school, he served in the United States Navy in World War II. While in the Navy, he attended the University of Chicago and Texas A&M University. Graduating with highest distinction from the University of Iowa College of Law, he clerked for a federal judge before entering private practice. Instrumental in starting the University of Iowa Law School Foundation, he served as President of his local Rotary Club and was the founder of the Iowa Simmental Cattle Association and Grand Patriarch of the Keith Equestrian Center. He served the College as Iowa State Committee Chair. A widower whose wife of sixty-three years predeceased him, he remarried. His survivors include his second wife, two daughters and two sons.

James Patrick Kennedy, '82, Vorys, Sater, Seymour and Pease, Columbus, Ohio, died July 13, 2015 at age eighty-three. Earning dual undergraduate degrees from Washington University in St. Louis, Missouri where he was a running back on the football team and a member of Omicron Delta Kappa, he served as an Anti-Aircraft and Guided Missiles Officer in the United States Fourth Army during the Korean Conflict. A graduate with distinction from the University of Michigan Law School, he spent his entire career with Vorys, Sater. He taught for ten years in Ohio's Intensified Anti-Trust Law Course and served on a number of law-related and civic boards. He also authored a number of books on criminal practice and procedure. His survivors include his wife and two sons.

Andrew J. Kilcarr, '85, a Fellow Emeritus living in Arlington, Virginia, died December 21, 2014 at age eighty-two. His wife of sixty years preceded him in death by four weeks. After graduation from Manhattan College, he served in the United States Marine Corps during the Korean Conflict. After earning his law degree from Georgetown University Law Center, he became a trial attorney in the Antitrust Section of the United States Department of Justice. He then joined Donovan, Leisure, Newton & Irvine in New York City, later moving to Washington, D.C. to head its office there. He had moved to Hogan & Hartson (now Hogan Lovells) before retiring in 2000. He handled the administrative litigation regarding the start-up of the Trans-Alaska Pipeline System through to the United States Supreme Court, as well as a number of other major cases. His wife of sixty years preceded him in death. His survivors include a daughter and a son.

Philip Mansour, Sr., '86, a Fellow Emeritus retired from Mansour & Mansour, Greenville, Mississippi, died June 23, 2015 at age ninety-five. After graduating from the University of Arkansas, he served in Italy in the United States Army in World War II, where he was injured, earning a Purple

Heart. He received his law degree from Tulane University Law School, where he was a member of the law review, graduating *summa cum laude*. He had served as President of this county Bar and on a number of other bar-related bodies. A widower, his survivors include four daughters and seven sons.

Kirk Martin McAlpin, '73, a Fellow Emeritus, retired from King & Spalding, Atlanta, Georgia, died November 21, 2014 at age ninety-one. Joining the United States Army at age seventeen, he saw World War II service in North Africa and Europe. He was reputed to be the youngest Master Sergeant in the Army. After the war, he earned enough undergraduate credits at the University of Georgia to gain admission to its law school, from which he earned his degree. He also completed graduate work at Columbia Law School, Columbia University. He began his law practice in Savannah, Georgia, then joined King & Spalding in Atlanta, where he spent the rest of his career. A Past President of the Georgia Bar Association, he had represented Georgia in the American Bar Association House of Delegates. A widower whose wife of forty-nine years predeceased him, his survivors include a daughter and two sons.

John Mason McCollam, '83, Gordon, Arata, McCollam, Duplantis & Eagan, LLC, New Orleans, Louisiana, died January 13, 2014 at age eighty after a long illness. He was a graduate of the University of North Carolina at Chapel Hill and of Tulane University Law School, where he was Editor of his law review and a member of the Order of the Coif. Between undergraduate and law schools he served overseas in the United States Army during the Korean Conflict. For twenty years he taught courses on mineral law at Tulane Law School, and he chaired the Mineral Law Institute at Louisiana State University. The author of a primer on Louisiana oil and gas law, he testified frequently as an expert witness in the field of energy law. His survivors include his wife of fifty-seven years, a daughter and two sons.

William B. McGuire, '75, Newark, New Jersey, Tompkins, McGuire, Wachenfeld & Barry, LLP, died May 31, 2015 at age eighty-six. A graduate of Fordham University, he served in the United States Army during the Korean Conflict. Attending Seton Hall University School of Law at night while employed as an accountant by Hanover Fire Insurance Company, after receiving his law degree, he went on to earn an LLM in taxation at New York University Graduate School of Law. He was then an Assistant County Prosecutor under New Jersey Governor-to-be Brendan Byrne. The Association of the Federal Bar of New Jersey honored him with its William J. Brennan, Jr. Award. Seton Hall gave him its first Thomas More Award and in 1984 named him its Distinguished Alumnus of the Year. The Trial Attorneys of New Jersey had given him its Trial Bar Award for Distinguished Service, and Legal Services of New Jersey awarded him its Debevoise-Easley Award. A Past President of both his county Bar and of the New Jersey State Bar Association, he also served as President of the New Jersey State Bar Foundation and of the Association of the Federal Bar of New Jersey. He held numerous offices in other legal organizations and served on the Board of Trustees of St. Barnabas Medical Center and as Chair of the Board of Irvington General Hospital. A widower who remarried, his survivors include his second wife, a daughter and three sons.

John Bofinger Miller, '63, a Fellow Emeritus, retired from Hunter Maclean Exley & Dunn, PC, Savannah, Georgia, died November 7, 2014 at age ninety-three. A *summa cum laude* graduate of the University of Georgia, he served in the United States Army Air Force in World War II. He then earned his law degree *magna cum laude* from the Walter F. George School of Law at Mercer University. He practiced with Jones, Jones & Sparks in Macon, Georgia until his recall to active duty as an officer in the Air Force Judge Advocate General Corps during the Korean Conflict. Returning to civilian

life, he joined the staff of Central of Georgia Railway Company as a member of its Board of Directors and Vice President of Law. He later returned to private practice in Savannah. A former Vice-President of the Georgia Bar Association, he was also Chair of the Georgia Campaign Ethics Commission, Chair of the Georgia Board of Bar Examiners, Chair of the County Board of Education and Chair of the Board of Savannah Country Day School. He received the Herschel V. Jenkins Award for outstanding contribution to the field of education and the Georgia State Bar's Justice Robert Benham Lifetime Achievement Award for Community Service. Senior Warden of his Anglican Church, he also served as Chair of the Board of Directors of SunTrust Bank, Savannah. His survivors include two daughters and a son.

Hon. Arthur M. Ney, Jr., '86, Cincinnati, Ohio, a retired judge, died May 11, 2012 at age eighty-eight. A graduate of Xavier University and of the Salmon P. Chase College of Law, he served in the United States Marine Corps in World War II. He began his career as an Assistant County Prosecuting Attorney and gradually worked his way up to become the Prosecuting Attorney of Hamilton County, Ohio. He served as a judge on the Hamilton County Court of Common Pleas before retiring. During his career, he prosecuted two serial killers including one who, claiming to be an "angel of mercy," killed more than two dozen elderly patients in a treatment center. His unsuccessful prosecution of the local Contemporary Art Center and its then director on obscenity charges arising from the controversial 1990 Robert Mapplethorpe photo exhibit cast Cincinnati into the national spotlight in the debate over art and obscenity. His survivors include his wife, three daughters and two sons.

Gerald Brenner O'Connor, '88, O'Connor, Parsons, Lane & Noble LLC, Westfield, New Jersey, died May 29, 2015 at age seventy-two. After earning his undergraduate degree at the

University of Notre Dame, he taught fifth grade classes in the Newark, New Jersey public schools for four years while attending night law classes at Seton Hall University School of Law. Over the years he taught trial litigation at the law schools of both Rutgers University and Seton Hall and was a frequent continuing education lecturer. He served on various committees appointed by the New Jersey Supreme Court, and was a charter member of the New Jersey chapter of the American Board of Trial Advocates. A long-time board member and President of the Trial Attorneys of New Jersey, he was honored with its Trial Bar Award for "distinguished service in the cause of justice." His survivors include his wife, three daughters and a son.

Hon. John James O'Neill, '75, St. Johns, Newfoundland and Labrador, Canada, a retired Judicial Fellow, died February 2, 2015 at age eighty-three. He completed his undergraduate studies at St. Bonaventure's College and Memorial University of Newfoundland and earned his law degree from Schulich School of Law Dalhousie University. He was named Queen's Counsel in 1971. As a practicing lawyer, he was Chair of the Newfoundland and Labrador Law Reform Commission had represented the Attorney General of Newfoundland in the 1981 constitutional reference that established the necessity of provincial agreement before the Canadian Parliament could amend the Canadian Constitution. Appointed to the Supreme Court of Newfoundland and Labrador, Appellate Division in 1986, he served for sixteen years before retiring. As President of the Canadian Superior Court Judges Association, he became, in the words of Chief Justice of the Supreme Court of Newfoundland and Labrador, J. Derek Green, "the face of the Canadian judiciary in its dealings with the public and the Government of Canada and in the promotion of the role of the judiciary in Canadian society." In 2006, after his retirement, he was appointed Chair of the Electoral

Boundaries Commission, charged with the study of possible changes in electoral districts. Known among his peers for his attention to protocol, he was widely known as the model of appropriate dress for a lawyer and a judge. A widower, his survivors include two daughters and a son.

Charles Coolidge Parlin, Jr., '69, a Fellow Emeritus from Silver Bay, New York, retired from Shearman & Sterling, LLP, New York, New York died, apparently in October 2012 at age eighty-four, after having been in failing health for several years. The College records indicate that he graduated from the University of Chicago at age nineteen and from the University of Pennsylvania Law School at age twenty-two. He served as Chair of the College's National Moot Court Committee. In the absence of any published obituary, the only information available is that his survivors include three sons.

Eugene Gartley Partain, '77, a Fellow Emeritus, retired from King & Spalding, Atlanta, Georgia and living in Asheville, North Carolina, died March 7, 2015 at age eighty-four. He earned his undergraduate and law degrees from Duke University and a master's degree from Northwestern University. He served in the United States Army in the Korean Conflict in airborne and special military units. His survivors include his wife of sixty-three years, one daughter and one son.

Jack Wesley Plowman, '78, Pittsburgh, Pennsylvania, died November 20, 2013 at age eighty-four. A graduate of the University of Pittsburgh and a *cum laude* graduate of its law school, where he was Editor of the law review and a member of the Order of the Coif, he practiced law for over fifty-six years. He established his own firm, Plowman & Spiegel, PC, and in his later years practiced as of counsel with Bentz Law Firm PC in Mt. Lebanon, Pennsylvania. A Past President of his county Bar, and of the Pennsylvania Supreme Court Historical Society, he served as an adjunct professor

at Duquesne University Law School and as Editor-In-Chief of the *Pittsburgh Legal Journal*. He served his Methodist Church in many capacities, including serving for many years as Chancellor of the Western Pennsylvania Annual Conference of the United Methodist Church. His survivors include his wife of sixty-one years and two daughters.

Odell Pollard, '86, a Fellow Emeritus, retired from Odell Pollard, PA, Searcy, Arkansas, died March 12, 2015 at age eighty-seven. He entered law school without an undergraduate degree, graduating from the University of Arkansas law school in 1950 and practicing in Searcy for fifty-five years. He served as Chair of the Arkansas Republican Party and a Republican National Committeeman during the decade from 1966 to 1976. A widower who remarried, his survivors include his wife of twenty-four years, two daughters and a son.

Richard Eldredge Poole, '99, a Fellow Emeritus, retired from Potter Anderson & Corroon LLP, Wilmington, Delaware, died April 24, 2015 at age seventy-four. A graduate with high honors from Swarthmore College who spent a year abroad in Scotland at the University of St. Andrews, he earned his law degree from the University of Chicago Law School. After serving a clerkship with Fifth Circuit Court of Appeals Judge Collins J. Seitz, he began practice with the firm with which he spent his entire career, ultimately rising to the chairmanship of the firm. After his retirement in 2000, he and his wife opened an art gallery. He had served as President of Planned Parenthood of Delaware and of the Delaware Historical Society and served on the boards of numerous art-oriented organizations. He and his wife were honored by the Delaware ACLU with its Kandler Memorial Award for their active defense of civil liberties. He served the College as Delaware State Committee Chair. His survivors include his wife of fifty-one years, two daughters and a son.

Hon. Henry Ray Pope, Jr., '69, a Fellow Emeritus, retired from practice in Clarion, Pennsylvania and living in retirement in North Fort Myers, Florida, died June 12, 2014 at age ninety-seven. A graduate of Pennsylvania State University and of its law school, he earned both a bachelor's degree and a master's degree in four years without going to summer school while working his way through college. After a year of practice, he became highway counsel for the Pennsylvania Department of Highways. He was later named Assistant Counsel to the Pennsylvania Public Utility Commission. He entered private practice in Clarion in 1945, and served as Solicitor for the county and for three surrounding boroughs. A Past President of his local Bar, he was also a Fellow of the American College of Probate Counsel. He served as a leader in his church and community, including being President of the Board of Trustees of Clarion State College and had been named Clarion's Citizen of the Year. Appointed to the bench as a judge of the Clarion County Court of Common Pleas, he retired in 1980 and moved his principal residence to Florida, returning to Clarion in the summer. The author of three books, all in part biographical, he was a widower whose wife of over sixty years died in 2004 at age eighty-eight. His survivors include two sons.

Peter Jonathan Rubin, '89, Bernstein, Shur, Sawyer & Nelson, Portland, Maine, died April 16, 2015 at age seventy. He was a graduate of Duke University and of the Harvard Law School, where he was a member of the law review and from which he graduated *magna cum laude*. After a clerkship for a federal district judge, he joined the Portland firm with which he practiced for his entire career. He twice served the College as Maine State Committee Chair. His survivors include his wife of forty-seven years, a daughter and a son.

John Britton Russell, '73, Sands Anderson PC, Richmond, Virginia, died January 14, 2015 at age ninety-one. His undergraduate education at Randolph-Macon College was interrupted by

service in the United States Navy in World War II. After completing his undergraduate work, he earned his law degree from Washington & Lee University School of Law. He practiced law for sixty years and represented the Medical College of Virginia in a high-profile heart transplant case. An active Methodist layman, he served on the Board of the United Methodist Publishing House. He served the College as Virginia State Committee Chair. A widower, his survivors include a daughter, a son and a stepdaughter.

Hon. Jack P. Scholfield, '72, a Fellow Emeritus from Mercer Island, Washington, died December 11, 2014, twenty-four days short of his ninety-fifth birthday. Beginning his education at Fort Scott, Kansas, Community College, he earned his undergraduate degree from Kansas State Teachers' College and worked briefly for Retail Credit Company before volunteering for naval aviator training in World War II. He flew a carrier-based Grumman *Avenger* torpedo bomber in the Solomon Islands in the South Pacific, winning a Distinguished Flying Cross for skip bombing and sinking a Japanese ship. He was re-trained for night flying in a Grumman *Hellcat* fighter and flew night patrol and strafing missions for the rest of the war from the carrier *Bon Homme Richard* (CV-31). He earned his law degree from the University of Washington, where he was Business Manager of the law review. He was a Past President of the Washington Association of Defense Counsel and of the Seattle-King County Bar Association. Appointed to the King County Superior Court in 1977, he was elected to the Washington Court of Appeals in 1982 and served a term as Chief Judge of his Division before retiring from the Court in 1995. He then worked in the Judicial Arbitration and Mediation Service (JAMS) from 1995 until 2011, also serving as a volunteer attorney for the Eastside Legal Assistance Program, where he was its 2003 Volunteer of the Year. A widower, whose wife of

seventy years, whom he met during flight training, died earlier in the year, his survivors include a son.

Jerrold Scoutt, Jr., '81, a Fellow Emeritus, retired from Zuckert, Scoutt & Rasenberger, L.L.P., Washington, D.C., died February 27, 2015 at age ninety-three, of Alzheimer's Disease. A *magna cum laude* graduate of Carleton College, where he was a member of Phi Beta Kappa, he earned a master's degree from the Fletcher School of Law & Diplomacy and his law degree from Harvard Law School. He and a fellow lawyer began practice in 1949 in a one-room office with no secretary and two clients, perhaps a less daunting challenge for someone who had been an Eagle Scout. At his death, one of his partners noted that he refused to complicate his life with technology, leaving him with more quality time. He did his research from the leather-bound books in his firm's library and dictated his letters to a secretary, who took them in shorthand. The firm, one of whose members was a former Secretary of the Air Force, developed a national practice in aviation law. Scoutt was for fifteen years Chair of the Board and the Chief Legal Officer of World Airways, once serving for a time as its interim President. A Trustee of Carleton College, and President of the Board of The International Student House and The Kingsbury Center, he was a member of the Washington Institute for Foreign Affairs. A strong supporter of civil rights, when he retired in 1992, his firm created the Jerrold Scoutt Prize, a fund that annually awards a cash prize to a member of the local Bar employed by an area non-profit organization that provides hands-on services to the poor and disadvantaged. He was a former Senior Warden and a lay Eucharistic minister in his Episcopal church. His survivors include his wife of sixty-three years and three daughters.

Leon Silverman, New York, New York, the thirty-second person to lead the College, died January 28, 2015 at age ninety-three. A tribute to his life may be found elsewhere in this issue of *The Journal*.

Clarence Simmons, Jr., '76, a Fellow Emeritus, retired from practice in Gadsden, Alabama and living in Demopolis, Alabama, died May 2, 2015 at age eighty-nine. Beginning his undergraduate education at Auburn University, he enlisted in a United States Navy preflight program in World War II, undergoing his training at Emory University and returning to Auburn after the war. He earned his law degree at the University of Alabama. Appointed by Governor Gordon Persons as Judge of the Cherokee County Law and Equity Court at age twenty-three, he was the youngest district judge in Alabama history. He then served as Assistant Director of Civil Defense for the state of Alabama before moving to Gadsden, where he established a law firm from which he retired in 1994, returning to his family farm in Jefferson, Alabama. He served as Chair of the Board of Coosa Federal Savings and Loan and as a Trustee of his Methodist Church. His local Rotary Club named him a Paul Harris Fellow. His survivors include a son and three daughters.

Norman Frederick Slenker, '75, a Fellow Emeritus retired from Duff, Slenker & Brandt, Arlington, Virginia, to Hilton Head, South Carolina, died June 26, 2015 at age eighty-five. He earned his undergraduate degree at Ohio Wesleyan University and his law degree from George Washington University Law School. He served the College as Virginia State Committee Chair. He is survived by his wife.

Daniel J. Francis Stoops, '78, a Fellow Emeritus, retired from Mangum, Wall, Stoops & Warden, P.L.L.C, Flagstaff, Arizona, died June 15, 2015 at age eighty-one. He earned his undergraduate and law degrees from Washburn University. He served as a member of the Arizona Bar Association Board of Governors and was a Past President of his local school board. He served the College as Arizona State Committee Chair. His survivors include his wife of fifty-four years and two daughters. ▶

William Howard Sutton, '81, a Fellow Emeritus, retired from Friday, Eldridge & Clark, Little Rock, Arkansas, died July 2, 2015 at age eighty-four after an extended illness. A graduate of the University of Arkansas, where he was both captain of the Razorback football team and student body president, he served in the United States Air Force before returning to earn his law degree from the University of Arkansas. In his first year of practice, he was Assistant Prosecuting Attorney for Pulaski County, Arkansas. Upon the death of his senior partner, he assumed the management of his firm, retiring in 2005, but continuing as of counsel. A Past President of his county Bar, he had been honored as the Arkansas Bar Foundation's Lawyer of the Year. He also won the Arkansas Association of Defense Counsel's Outstanding Defense Attorney Award and the National Conference of Community and Justice's National Humanitarian Award. He served as a Director of Dillard's, a national department store chain, for fourteen years. Active in his Baptist church, he taught Sunday school for over fifty years, served as President of the Arkansas Baptist State Convention, served on the Board of the Ouachita Baptist University and on the Baptist Health Board of Trustees and received the Brooks Hays Memorial Christian Fellowship Award. A widower who remarried after his wife of fifty-two years died, his survivors include his second wife, a daughter and two sons.

Max Thelen, Jr., '75, a Fellow Emeritus, retired from Thelen, Marrin, Johnson & Bridges, San Francisco, California, and living in San Rafael, California, died February 13, 2014 at age ninety-three. A graduate of the University of California, Berkeley where he was valedictorian of his class, he left Harvard Law School at the beginning of World War II to join the United States Navy, serving on the destroyer *USS Heermann*, DD-532 in the South Pacific Theater, participating in actions that included the landings on Tarawa Atoll and

Kwajalein Atoll. After returning to Harvard and finishing law school, he went to work with the firm with which he spent his entire career. In the course of his career he was President of the World Affairs Council and the S.H. Cowell Foundation. In retirement, he became Executive Director of the Cowell Foundation, devoted to improving the lives of children living in poverty. Active in civic affairs, he and his wife were co-founders of the Marin Ballet Association and Art Works Downtown. They were honored by the city of San Rafael as its Citizens of the Year. His survivors include his wife of sixty-three years, whom he met through their mutual support of the United World Federalists, two daughters and two sons.

William Ellsworth Trautman, '87, a Fellow Emeritus from Napa, California, died December 9, 2014 at age seventy-two, of lung cancer. A dual graduate of the University of California, Berkeley, and of its School of Law, he practiced much of his career with the San Francisco firm Brobeck, Phleger & Harrison LLP, and for his last few years, with Morgan Lewis & Bockius LLP. He was a Past President of the Boalt Hall Alumni Association – Berkeley Law, the Legal Aid Society of San Francisco and the Oakland Museum Association. He also served as an Examiner for State Bar Disciplinary Proceedings and on the State Bar Committee on Professional Responsibility and Conduct. In retirement to Napa after forty-two years of practice, he remained active as a mediator and arbitrator and a frequent lecturer at continuing education programs. He served two terms as foreperson of the Napa County Grand Jury, which, under California law, has criminal, civil and governmental watchdog functions. He served as President of the California Grand Jurors' Association and edited a compendium of California grand jury law. That Association created a fund to honor his leadership. His survivors include his wife of over fifty years and two daughters.

Lawrence Edward Walsh, '61, a Fellow Emeritus from Oklahoma City, Oklahoma, died March 18, 2014 at age 102. Born in a fishing hamlet in Nova Scotia, he was two-years-old when his parents moved to New York to seek a better life. His father died when he was fourteen, and he set about to pay for his education in the depths of the Great Depression, working his way through undergraduate and law school at Columbia University clerking in a bookstore, working two hours a day in a cafeteria, working for the post office over the holidays and spending his summers working as a seaman. He began his career as a Special Assistant Attorney General of New York. He moved on to be a Deputy Assistant District Attorney for New York County, one of the army of "boy scouts" assembled by Thomas E. Dewey to pursue racketeers and corrupt Tammany Hall politicians. From there, he entered private practice with New York's Davis Polk & Wardwell LLP. When Dewey was elected Governor of New York, he became his Assistant Counsel. He went from there to serving as Counsel to the New York Public Service Commission and then General Counsel to the Waterfront Commission of New York Harbor, investigating organized crime in the port's docks. In 1954, President Dwight D. Eisenhower appointed him to fill a new seat on the Federal Court for the Southern District of New York. He resigned three years later to become Deputy Attorney General of the United States under William P. Rogers, with whom he had worked in his second public job. In that post, he oversaw the selection of federal judges and participated in the integration of the public schools of Little Rock, Arkansas. In 1960, upon the election of John F. Kennedy, he returned to Davis Polk, where he remained until 1981. In 1969, he served briefly as a deputy to Henry Cabot Lodge in the Paris Peace Talks during the Vietnam War. He chaired the American Bar Association's Standing Committee on Federal Judiciary and then in 1975-76, he served as President of the American Bar Association. In

1981, approaching his firm's mandatory retirement age, he moved to Oklahoma City, Oklahoma, his second wife's hometown, where he joined Crowe & Dunlevy. In 1986, he came out of retirement to accept appointment as Independent Counsel in the long-running Iran-Contra investigation, an investigation that uncovered a plot involving the clandestine sale of arms to Iran to secure release of Western hostages in the Middle East, using the profits to support Nicaraguan rebel forces who were attempting to overthrow its Marxist rulers, the Sandinistas. Congress had forbidden such support. The controversial investigation of a Republican Administration by a public servant, himself a lifelong Republican, resulted in indictments and convictions, virtually all of which were later set aside, either because an overeager Congress had earlier granted immunity to the defendants in return for their testimony or, in some instances, through presidential pardons. Among those indicted were Lt. Col. Oliver L. North, Admiral John Poindexter and Secretary of Defense Caspar W. Weinberger. Walsh later wrote his version of the saga, *Firewall: The Iran-Contra Conspiracy and Cover-up*. He also published his memoirs, entitled *The Gift of Insecurity: A Lawyer's Life*. Twice a widower, Walsh's first wife of twenty-seven years died and his second wife of forty-seven years died two years before his death. His survivors include three daughters, a stepdaughter and a stepson.

Jerrold Gladstone Weinberg, '01, a Fellow Emeritus, retired from Weinberg & Stein, Norfolk, Virginia, died June 12, 2015 at age eighty-seven. He earned his undergraduate and law degrees from the University of Virginia and served as President of the Norfolk and Portsmouth Bar Association and of the James Kent American Inn of Court. His survivors include his wife, a daughter and a son. ▶

James B. Wilber, '73, a Fellow Emeritus, retired from Bond, Schoeneck & King, Syracuse, New York and living in Naples Beach, Florida, died December 5, 2014 on his eighty-ninth birthday. After finishing high school on 1943, he entered the United States Navy V-12 program in World War II, studying at the University of Rochester. After receiving his commission as a naval officer, he was based on Saipan, the largest island of the Northern Mariana Islands, serving as an aide to the Island Commander. After the war, he attended Syracuse University on the GI Bill, serving as student body

president in his senior year. He then earned his law degree from Syracuse University. A former Chair of the trial lawyers' section of the New York State Bar, he was a frequent lecturer at continuing education programs and professional training sessions at Syracuse Law School. Admitted to the Florida Bar, he continued to practice with his firm from Boca Raton, Florida before retiring to Naples Beach. He served the College as a State Chair before moving to Florida. His survivors include his wife of sixty-seven years, four daughters and a son.

Additional Losses to the College Family



Margaret Cross (Peggy) Clare, Basking Ridge, New Jersey, the widow of Past President Robert L. Clare, Jr., died May 6, 2015. The two had met and fallen in love when Bob Clare, a widower, was one of the College's delegates to the second Anglo-American Legal Exchange, held in London in 1973. Peggy, a Londoner, was in charge of the arrangements for the British hosts. A year later the two were married, and four days later they spent a part of their honeymoon in Boca Raton, Florida at the College's Spring Meeting, over which he presided. Bob Clare had been accorded the rare privilege of being made an Honorary Bencher of the Inner Temple, and his and Peggy's annual dinners in London and the friendships they perpetuated were for many years a major factor in the College's continuing relationship with the British judiciary, many of whom were, or became, Honorary Fellows of the College. A polished amateur photographer, Peggy became the College's unofficial photographer, and her work comprises a major part of the College's photo archives.

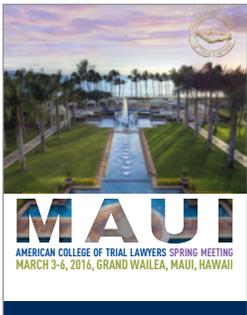


Connaught O'Connell Mahony, widow of Past President Gael Mahony, who saw him through the difficult last years of his life, then led the procession from his memorial service through the streets of Boston on a cold day this past January, died May 30, 2015 at age eighty-five. Those who read the memorial tribute to Gael Mahony in issue 78 of *The Journal* will quickly recall that it was as much a tribute to his remarkable wife as it was to him.

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.

NATIONAL MEETINGS



2016 Spring Meeting
Grand Wailea
Maui, Hawaii
March 3-6, 2016



2016 Annual Meeting
Philadelphia Marriott Downtown
Philadelphia, Pennsylvania
September 15-18, 2016

REGIONAL MEETINGS

Region 7

Tri-State Regional Meeting
Alabama, Florida, Georgia
The Windsor Court Hotel
New Orleans, Louisiana
January 21-24, 2016

Region 6

Arkansas, Louisiana, Mississippi, Texas
Venue TBA
Austin, Texas
April 22-24, 2016

COMMITTEE CHAIR WORKSHOPS

Eastern Chairs Workshop

The Ritz-Carlton
New Orleans, Louisiana
October 15-18, 2015

Western Chairs Workshop

Hotel del Coronado
San Diego, California
October 29-November 1, 2015

JOURNAL

American College of Trial Lawyers

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

*Hon. Emil Gumpert
Chancellor-Founder
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.