



JOURNAL

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Attendees gaze at the Friday night fireworks show during the 2020 Spring Meeting in Tucson.

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Hon. Emil Gumpert
(1895-1982)

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LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

So, let me describe our editorial timeline in order to explain why, when you read this, you will undoubtedly think I am completely out of touch. What's the date today? Sometime in mid-June, right? Well, at least that was the plan when I wrote this. It takes roughly sixty days to go from manuscript to publication; I had to submit this in mid-April. So, you are reading what I was thinking sixty or more days ago.

In the old normal, that time lag was no big deal. But we're in the new normal now. Think back sixty days. Put yourself back into your mid-April mindset. And now that you're there, think back sixty days from there to February 15. Could you have envisioned on February 15 what you would be thinking, what you would be doing sixty days later?

On February 15, we knew that there was this Coronavirus thing. Eight hundred people had died, but almost all of them in China. Sad, but not our problem. No Americans or Canadians had succumbed to it, at least not here in North America (a U.S. citizen, visiting Wuhan, died on February 8). Iran had some problems, but that's Iran's problem, right? Italy had yet to see many cases and was still totally open for business and pleasure. We moved around freely. We travelled to Tucson for our Spring Meeting and shook hands and hugged old and new friends. We thought we had enough toilet paper for any contingency.

Sixty days later – as I am signing off on this letter – our world is holding its collective breath. Over two and a quarter million reported cases worldwide, 700,000 in the U.S. Deaths worldwide numbered at 156,000, 37,000 of those in the U.S. The Prime Minister of the United Kingdom and two popular CNN hosts among the confirmed cases. The world in house arrest. The realization that we are millions of protective masks and hundreds of thousands of respirators short of prepared to deal with the medical issues. The world economy destined for full-on, worldwide, nobody-spared recession, if not depression. Toilet paper for sale a distant memory. And the pace of it! I did my first draft of this letter on March 28, when the number of U.S. deaths was a mere (Really? Mere?) 1,800; I did a revised draft a week later, when the U.S. death count had risen to over 8,500. Today, April 18, as I release this, the number of U.S. deaths has quadrupled in two weeks, approaching 38,000. I could not have imagined any of this sixty days ago. In mid-February I could not have sensed what my world would look like today, as I write this in mid-April. So how can I possibly write something today that will be relevant to you as you read this in mid-June?



Yogi Berra was spot-on. "It's hard to predict things. Especially the future."

I can't predict today where we will be in June. But here's the thing. If you're reading this, it means we have actually published the *Journal*. And that is something, that is hopeful. The *Journal* is a trivial thing measured against illness, death, economic hardship, or rationed toilet paper. But if we have been able to make time for that trivial thing, it means that we must have found time for important things as well; it means that "Life goes on!"

If you are reading this, then I can predict with confidence that life is going on, will keep on going on. We will all be fine.

And one of the nice things about the current house arrest Jane and I are serving is that it gives us time to consume the constant news, peppered here and there with stories about the human spirit and human kindness that renew our faith in the future. The stories like the Chef's Brigade, organizing New Orleans' restaurateurs to offer free meals to first responders. The spontaneous balcony serenades to health care workers. The

people who stepped up to adopt abandoned pets. The people sharing their canned goods. The people who have put up Christmas lights to brighten the mood. The heroics of the first responders and medical professionals and transit workers and all the other ordinary people doing extraordinary things to keep us going. My own daughter-in-law, Kylie, a nurse in Omaha, who is washing her mask every day so she can put herself at risk to treat patients with the virus. I am immensely proud of my daughter-in-law. I am proud of my fellow travelers on this planet (well, most of them; not the ones hoarding toilet paper).

We are in self-isolation, social distancing now. I can't predict the future. But I predict we will get through this. Together.

Bob Byman

 **Ashley Hamer**
@smashleyhamer

Seen in my Chicago neighborhood.

Sign says "To help our neighbors affected by the COVID-19 crisis, this Little Free Library is converted to a Little Free Pantry. Take what you need and if you can, please donate what you can spare!"



5,328 6:45 PM - Mar 17, 2020

People Rescue Every Single Animal From Wisconsin Shelter



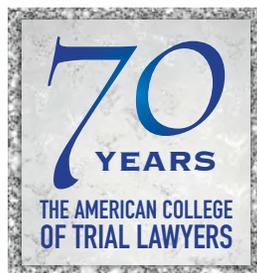
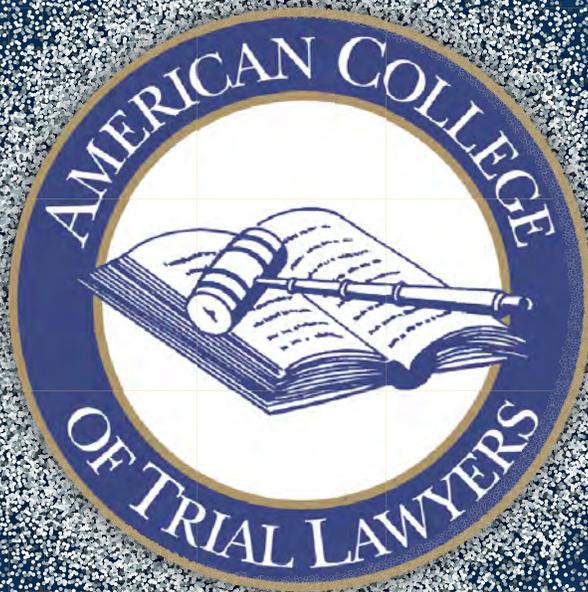
159 ADOPTIONS
160 IN FOSTER
...in just 5 days

Wisconsin Humane Society

Absolutely incredible. We're near tears. On March 15, we let our supporters know we needed help to get as many animals out of our shelters as possible so we could be ready for whatever challenges tomorrow throws at the communities we serve. Despite the chaos and uncertainty of a global pandemic, you adopted 159 animals and took home 160 foster animals through our Rachael Ray™ Nutrish® Foster Program, all in just 5 days – and while three of our campuses were closed, no less! T... See More

1.6K 241 1.9K





SEPT 23-25
2020 ANNUAL MEETING
A VIRTUAL EVENT

PRESIDENT'S PERSPECTIVE

DOUGLAS R. YOUNG

These have been sobering times. It is an understatement to say that the events of the year have offered a “stress test” for our societies and that to survive the test will require courage, discipline, creativity, resolve, and the ability to acknowledge often-unpleasant facts. Platitudes are easy to create and publish, but active listening to voices other than those with which we are familiar, and meaningful engagement in the communities in which we labor, are harder work by far.

The fears generated by the pandemic have been profound, exacerbated by the reality that in those communities where “sheltering-in-place” and “social distancing” have been the norm, their effects have not been uniformly felt: for those privileged to be able to work remotely and experience continuing economic prosperity, days have been marked by conference calls, video-conferenced encounters including in some of our courtrooms, and (a side benefit for many) newly found time for reflection; but for those such as First-Responders, people in “Service” industries, and others whose circumstances do not permit them to work remotely, days have been filled with concerns about potential personal and family exposures, economic stresses, and other risks.

At the same time, and most immediately in the last several weeks, we have tried to comprehend the senseless and very public death of George

Floyd (tragically, not the only such one). The ensuing social unrest, some of it resulting in economic and other damages in communities where such losses can least be afforded, has left many feeling anxious and even angry. What we learn from these events – about ourselves, our relationships, and our justice systems – and what if anything we do about them, will be telling. This cannot be a time for lost opportunities.

Our Fellows have been observing and actively listening, and the ways in which they are responding to the developments of the year provide reasons for hope. Their contributions to justice for all persons and to the Rule of Law in our two countries have continued unabated and, I believe, will be reinvigorated and possibly even “re-positioned” in positive ways. Rather than giving in to dispiriting realities that might have caused some to retreat or look away, our



Fellows are looking for new and creative ways to continue the important work of keeping our justice systems functioning effectively. They are identifying ways to re-think and re-imagine what we do and how we do it. In uniting behind the Rule of Law and Access to Justice, College Fellows are playing important roles where – as is certainly the case – thoughtful changes will be called for in the days ahead. Consider:

DIVERSITY AND MENTORING

The events of 2020 are stark reminders that “diversity” and “mentoring” cannot be just platitudinous concepts. If we are “actively listening” we will learn that they are more essential today than ever and require renewed commitment beyond what we have been able to accomplish so far. This will be hard work, and some of it may be uncomfortable. Among other things, I will be asking the Executive Committee to examine the important issues and calls to action that arise from

the deaths of Mr. Floyd and others in order to evaluate what the College can do, consistent with its mission, to contribute to better relations among our races and those who enforce our laws.

We have long recognized that the work performed by lawyers and judges is highly visible, whether it is for individuals or businesses, or involves overarching disputes concerning social issues and matters affecting constitutional democracy. Public confidence in what we do is enhanced when those who appear in our courtrooms both demonstrate the skills of our craft and reflect the diversity of our communities. It is imperative that we continue to identify a diverse cadre of lawyers who qualify for Fellowship, and recognize the importance of ensuring that younger lawyers are trained appropriately as they develop the skills that may qualify them for Fellowship during their careers. The 2019 White Paper titled *Mentoring the Next Generation of Trial Lawyers – Developing Excel-*

lent Trial Lawyers in an Era of Diminishing Trials (found on the College website) and the requirement that each State and Province Committee have at least one “diversity liaison” to assist in identifying candidates for Fellowship who are from diverse backgrounds, reflect this emphasis. Regents **Joe Caldwell** and **Rick Deane** sponsored four telephone conferences with the diversity liaisons last fall, and I participated in each call. Terry and I also hosted a reception in our suite at the Spring Meeting for those attendees who identified themselves as diverse. I expect these kinds of efforts to continue into the coming years. In addition, under the guidance of Regent **John Day**, Region IX (which includes the states of Kentucky, Michigan, Ohio, and Tennessee) is serving as a test case by assigning Fellows to mentor new inductees following a six-pronged set of guidelines and outreach efforts that begin even before new Fellows are formally admitted. I hope that the results of this ambitious test effort will be reported at the next

Leadership Workshop and incorporated into the future work of our State and Province Committees.

ACCESS TO JUSTICE AND LEGAL SERVICES

The work of our Access to Justice and Legal Services Committee has always been important and will be even more so in the coming months. As reflected in another feature of this edition of the *Journal*, the College now has sixteen Distinguished Pro Bono Fellows, the most recently approved additions being Honorary Fellow **The Hon. Madam Justice Marie Deschamps** and Fellows **Sam Silver** and **Guy Pratte**. In addition to the pro bono work performed by our Distinguished Pro Bono Fellows in connection with the organizations sponsoring their work, the committee now anticipates conducting a symposium in Canada, most likely in 2021, tentatively titled “Making A Difference in the Lives of Others and Your Own – What Lawyers Can and Should Do to Enhance Access to Justice for All, Especially Those Most in Need.” The one-day symposium also envisions a reception for attendees, hosted by the Supreme Court of Canada and supported by the College and The Advocates’ Society.

EMIL GUMPERT AWARD: TULANE LAW SCHOOL WOMEN’S PRISON PROJECT

In April the College announced that the Tulane Law School Women’s Prison Project has been selected as the recipient of the 2020 Emil Gumpert Award. This project will create an inaugural Access to Justice Fellow, who will spend eighteen months dedicated to a project that will expand access to justice for incarcerated women, specifically those who have been imprisoned for defending against an abusive partner or for participating in a crime under duress from an abusive partner. The award recognizes programs whose principal purpose is to maintain

and improve the administration of justice and comes with a \$100,000 grant. It will be formally awarded at the Annual Meeting in September.

COMPASSIONATE RELEASE CLEARINGHOUSE – COVID-19 PROJECT TO ASSIST THE ELDERLY AND CHRONICALLY ILL

The passage of the First Step Act in December 2018 permits prisoners in the U.S. to file compassionate release motions directly with their sentencing courts, which can reduce sentences for “extraordinary and compelling” reasons. Depending upon the circumstances of a particular case, the Covid-19 pandemic may be (and has been) considered appropriate for consideration under the First Step Act. In coordination with other national organizations and the Federal Public and Community Defenders, the College has been helping to identify attorneys and other professionals to work on compassionate release motions for those prisoners most vulnerable to Covid-19: the elderly and chronically ill. The project, which was announced by the National Office in late April, seeks attorneys to draft and file compassionate release motions or to act as counsel or local counsel (e.g., where the attorney who has volunteered to prepare the motion is not admitted). This work is pro bono and is part of the College’s ongoing commitment to access to justice.

FEDERAL STATUTES OF LIMITATIONS TOLLING LEGISLATION RELATING TO THE CORONAVIRUS PANDEMIC

The pandemic and federal and state emergency orders arising from the pandemic pose the risk that individuals with claims that arise under federal law will be unable to obtain legal services and/or file their claims within the time prescribed by the applicable statutes of limitations. To address this issue, the College’s Federal Civil Procedure Committee prepared a letter

to congressional leaders encouraging enactment of legislation tolling applicable statutes of limitation in federal question cases. The letter, approved by the Board of Regents and primarily drafted by Fellow **Fred Buck**, Chair of the Committee, is posted on the College website on the committee’s page and, we understand, is under active congressional review.

BOOT CAMP TRAINING PROGRAMS

The Boot Camp Trial Training Programs Committee has continued its work and has five programs set through May 2021. It is also pursuing two interrelated new projects. (1) Creation of a “Boot Camp Trial Library” containing books, articles, and PowerPoint presentations relating to trial practice. Fellows will be invited to contribute their writings to the library (with appropriate publisher permission), enabling registrants of the Boot Camps to obtain these resource materials from the library free of charge. The library ultimately may include a book that includes stories by Fellows about “lessons learned” in the practice of trial advocacy. (2) Establishment of a new project entitled “Trial Talks,” which envisions Fellows engaging in conversations via Zoom about their experiences, including substantive “trial tips” based upon real-life situations. A pilot program was presented on April 28, with **Secretary-Designate Bill Murphy** serving as the moderator. A further program featuring **Secretary Susan Harriman** as moderator was held on June 9. (I attended both sessions, which were excellent.) As “Trial Talks” evolves, moderators from regions throughout our countries may be selected so that multiple “Trial Talks” can occur on a periodic basis and written outlines of the featured discussions may be posted to the new library. Consistent with College tradition, “Trial Talks” will not be a forum for boasting or other forms of self-aggrandizement.

TASK FORCE ON ADVOCACY IN THE 21ST CENTURY

As noted in the June edition of the *eBulletin*, the pandemic has caused judges and lawyers to consider whether and how to use technology to allow court systems to operate. The ACTL “Task Force on Advocacy in the 21st Century,” created in March, has been actively reviewing the efforts being made in both countries and has developed and distributed “Interim Guidelines” (perhaps to be followed by “Best Practices”) including those related to such developments as the use of remote video for trials and trial preparation. One key goal, of course, is to ensure that jury trials are not imperiled in the name of efficiency. The Task Force’s “Statement of Purpose,” as well as the roster of its members (representing a broad spectrum of practice areas and experience in our two countries), have been described before and can be found on the College website. The Task Force has had several meetings, is working in “overdrive,” and has already issued “Interim Guidelines” in five specific areas with more to come. The “Interim Guidelines” have been distributed to courts throughout our countries. A blog in Oklahoma has already recommended the College link for remote practice guidelines (actl.com/advocacy); other blogs and courts are endorsing the Task Force’s work as well. This Task Force represents a proactive and important response to the unexpected new realities that affect how we fulfill our professional duties, and which must be confronted without delay.

FELLOW ENGAGEMENT SURVEY AND COMMITTEE APPOINTMENTS

Approximately 800 Fellows responded to a recent survey about how Fellows engage with the College. The survey was created and administered by consultants the College commissioned, and the responses and resulting recommendations have just been made available

to the Executive Committee. In the coming months we expect to report on the findings of the survey and how the Board of Regents plans to act on them. Some of the themes that have emerged from the survey include the following: (1) For many, the process by which Fellows become involved in committees is mysterious. This is why I issued an email statement in June highlighting the appointment process, noting that we are working now on committee appointments for the 2020-2021 term, and urging Fellows to contact the National Office if interested in serving. (2) Fellows thinking about volunteer service would appreciate knowing what is expected of our volunteer committee members so that they know what they are committing to when they agree to serve. (3) Fellows want more opportunities to be involved in College activities at their local level. (4) Finally, Fellows continue to place a high value on a diverse membership and want to see more diversity among the ranks of volunteer Fellows. We will focus on these and other areas the coming months, including at the Leadership Workshop to be held this fall.

PLANS FOR SEPTEMBER ANNUAL MEETING AND CELEBRATION OF THE COLLEGE’S 70TH ANNIVERSARY

As you now know, the Annual Meeting and celebration of the College’s 70th Anniversary will be now be a “virtual” event, beginning at 1:00 p.m. EDT on Thursday, September 24. The interactive virtual platform will permit attendees to livestream the noteworthy speakers President-Elect Acker has confirmed as well as showcasing the College’s storied history. A sampling of speakers confirmed for the meeting include: former Maine Senator and Secretary of Defense William Cohen; Former Special Assistant to President Richard M. Nixon, advisor to Martin Luther King, Jr. and personal friend and confidant of Nelson Mandela,

Dr. Robert J. Brown; and a panel discussion on *Comedy In The Age of COVID, Politics and Correctness*. Wednesday, September 23 will feature a CLE program co-sponsored with the Supreme Court Historical Society on *Separate: The Story of Plessy v. Ferguson, and America’s Journey from Slavery to Segregation*. We will also continue the traditions of electing and installing our new national leaders, as well as honoring and celebrating the induction of new Fellows. This virtual event is a byproduct of the limitations on public gatherings imposed by the pandemic and does not foreshadow a change in how the College expects to conduct its meetings in the future. Indeed, Terry and I were looking forward to celebrating the 70th Anniversary in person with as many of you as possible in September, and are disappointed that we will not have that opportunity as we close out the year. Be assured, though, that the National Office staff will make this an event worth remembering.

History will record that 2020 was a “consequential” year in many respects. Hopefully, it will also record that the College played a meaningful and positive role toward addressing the many confluences that are marking the year. In his recent book, *Sailing True North*, Admiral James Stavridis (ret.) declares resilience to be “a central element of character . . .” One could add the need for “active listening,” the courage to ask difficult questions, and the determination not to let opportunities to enhance Access to Justice and preservation of the Rule of Law slip away. As College President during this unique period, I have seen in our Fellows and their families and friends a community of resilient and committed professionals spanning an entire continent and beyond. Thank you for the opportunity to observe firsthand your selfless dedication, creativity, and resolve. ■



Saguaros, sunset, and songs for the Thursday Night President's Welcome Reception.



Fellows gather near the Region 7 banner (Alabama, Florida, Georgia) during the Thursday Night Welcome Reception.



Chairman Austin Nunez of Tohono O'odham Nation opens the first day of General Session with a prayer.

2020 TUCSON

Former Regent Ritchie Berger of Burlington, Vermont; Susie Goodin of San Francisco, California; Inductee La'Verne Edney and Former Regent Christy Jones of Ridgeland, Mississippi; and Former Regent Rob Goodin of San Francisco, California



Tucson-based artist Ignacio Garcia created the Dia de los Muertos mural during the Thursday night President's Welcome Reception.



A scenic fairway during the golf tournament at the Starr Pass Golf Club.



Anne Marie Schubert, District Attorney for Sacramento County, and Marguerite Rizzo, Deputy District Attorney for Los Angeles County, lead the CLE titled “The Power of Investigative Genetic Genealogy to Solve Violent Crime”



President Doug and First Lady Terry Young lead the procession during the Friday night Dia de Los Muertos themed event.



Adele Connors and Fellow Andy Miller of Kennewick, Washington

Fellow Gil and Brenda Gillam of Marshall, Texas at the procession during the Friday Night Dia de los Muertos themed event



Linda and Immediate Past Chair of the Idaho State Committee Newal Squyres of Boise, Idaho



The Friday night event featured a fifteen-minute fireworks display.



Allain and Fellow Pauline Hardin with Claire and Inductee Jerry Glas of New Orleans, Louisiana



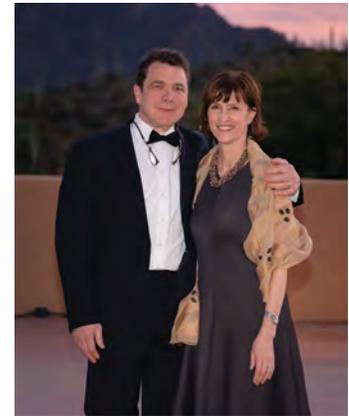
President Young and Inductee Carrie Cinquanto of Philadelphia, Pennsylvania



Ken Arnsten and Inductee Veronica Richards of Warrendale, Pennsylvania with Inductee Raymond Blessey of Manhattan Beach, California

2020 ♦ TUCSON

Inductees Yvan Bujold of Rimouski, Quebec, Bernard Larocque and Quebec Province Committee Chair and Canadian Foundation Director Bernard Amyot, Nick Rodrigo and Frederic Gilbert of Montreal, Quebec



Matt Papajohn and Pennsylvania State Committee Chair Katie Recker of Philadelphia, Pennsylvania



Inductee Luke and Randy Dauchot of Los Angeles, California; Inductee Brian and Beth Sieve of Chicago, Illinois



Regent Larry Krantz, Margie Berman, and Inductee Sean Hecker of New York, New York

Daniele Thibodeau and Fellow Guy Du Pont of Montreal, Quebec





Inductee Robert and Milicent Chambel of Greenbelt, Maryland



Fellow John and Phyllis Tate of Louisville, Kentucky with Catherine and Immediate Past Chair Pat Moloney of Lexington, Kentucky



Inductee La'Verne Edney and Tony Webb of Ridgeland, Mississippi



Fellows continue the celebration during the Sing-Along.



Inductee Charles and Allison Eblen of Kansas City, Missouri



The Kentucky Fellows gather during the Saturday Induction Ceremony and Banquet.



Inductee Marc and Tonya Carlos of San Diego, California

Inductee Reuben Cahn of Irvine, California; Fellow Jeff Rutherford of Los Angeles; Inductee Melanie Morgan of Kansas City, Missouri; Fellow Hilary Potashner, Inductee Luis and Jenny Li of Los Angeles, California



TUCSON MAYOR REGINA ROMERO DISCUSSES HER JOURNEY AND LOVE FOR TUCSON



Tucson Mayor **Regina Romero** warmly welcomed the attendees at the 2020 Tucson Spring Meeting. In his introduction of Mayor Romero, **Regent Peter Akmajian** described the Mayor. “Many politicians tell you they came from humble beginnings. In Mayor Romero’s case, it is the truth. She is from Somerton, Arizona—located near Yuma on the western border of this state. There you will find vast fields of vegetables and other crops that help feed the nation. Her parents were immigrants from Mexico who worked those fields. She worked those fields.”

Mayor Romero summarized her extraordinary life story. She is one of six children. After attending high school in Yuma, she went on to be the first in her family to graduate from college, at the University of Arizona in Tucson, and she holds a post-graduate certificate from the Harvard Kennedy School of Government. She was also the first in her family to vote.

Before being elected to her current office in November 2019, Mayor Romero served on the Tucson City Council starting in 2007 and was elected to three terms on the council. Mayor Romero ran for mayor in 2018, defeated two opponents in the primary campaign and won the general election with 56% of the vote.

Mayor Romero was the first woman elected to represent Tucson’s Ward 1 and is the first woman and first Latina woman to be elected Tucson’s mayor.

Mayor Romero spoke passionately about the City of Tucson, which she has called home



since age seventeen. “Tucson has welcomed me and my family with tremendous educational and economic opportunity. I welcome you all today to the beautiful city that has so much history and culture, more than 4,500 years of archeology and history. I’m very proud to now represent Tucson as Mayor.”

Mayor Romero urged the attendees to take full advantage of Tucson’s many hiking trails, its culinary scene, and its arts and culture. “We were the first UNESCO city of gastronomy in the entire country. . . . We have an absolutely amazing fusion of food; a lot of it coming from the Sonoran Desert itself.”

Mayor Romero expressed great pride in Tucson’s vibrant downtown. “For the first time in decades, we’ve seen this public and private investment, and infusion of funds but also infusion of arts and culture, and locally owned restaurants and shops.”

Mayor Romero acknowledged and appreciated the College’s interest in criminal justice reform. “I know that you will have a robust and thorough

communication and conversation about mass incarceration and how it disproportionately affects black and brown people in this country. I know that you will be talking about sentencing reform, expansion of diversion programs for the addicted and mentally ill, focusing on the root causes of crime, like poverty, lack of opportunity, and access to quality education. These are issues that directly affect every city in this country, including Tucson.”

Her closing remarks expressed her gratitude and pride for having been invited to our meeting. “I’m very happy and proud to have you here in the City of Tucson, to have these conversations happening at the door of our city and to thank the College for all you do to foster this conversation, these important issues and advocate for the justice for all in our legal system. Thank you so much for the opportunity to welcome you. I’m very proud that you’re here. Please feel free to come anytime to the City of Tucson. You are welcome here.”

Peter Akmajian
Tucson, Arizona

// QUIPS & QUOTES //

Tucson has welcomed me and my family with tremendous educational and economic opportunity. I welcome you all today to the beautiful city that has so much history and culture, more than 4,500 years of archeology and history.

Mayor Romero

IMPROPER ASSUMPTIONS: LESSONS LEARNED FROM EXPERIENCE

JUDICIAL FELLOW CHARLES R. BREYER





Judge Charles Breyer began his legal career as an assistant district attorney in his hometown of San Francisco. Within five years, he had tried more than fifty cases to verdict, and by his own account was becoming somewhat bored with that line of work. Fortunately, around that time, the Watergate Special task force was taking shape under the leadership of Archibald Cox.

Judge Breyer became one of five prosecutors on the elite squad known as the Plumbers Task Force, where he led the prosecution of the Fielding burglars and the men who directed it: John Ehrlichman, G. Gordon Liddy, Charles Colson, and many more. After a private practice in which he represented clients such as Grace Slick and the estates of Elvis Presley and William Randolph Hearst, he was nominated in 1997 by President Clinton to the federal bench (three years after Clinton had nominated Judge Breyer's brother Stephen to another judicial position).

In his introduction of Judge Breyer, **Josh Cohen** recounted that Judge Breyer has seen his fair share of marquee cases, "but what sets Judge Breyer apart is the way that he handles the mundane ones: with humor, acuity, and wit. There was the time that the parties to a large intellectual property dispute filed a heavily redacted motion to seal documents that were already heavily redacted. Judge Breyer, in order to make a point, denied the motion in a three-page order, two and a half pages of which he redacted."

Judge Breyer focused on common assumptions in civil and criminal litigation and challenged Fellows during the General Session at the 2020 Spring Meeting in Tucson to rethink them.

Judge Breyer began with the story of "Johnny having breakfast with his mother and complaining about the fact that he had to go to school. And his mother says, 'Johnny, you should go to school because after all, the kids really like you.' And Johnny said, 'No, mom, the kids don't like me. They tease, they make fun of me. They just don't like me at all.' Well, his mother said, 'Look, what about the teachers? They like you, don't they?' 'No. Teachers are even worse, they don't like me at all. They make fun of me.' 'Well, Johnny, I'm afraid you're going to have to go to school.' 'Why do I have to go to school?' 'Well, Johnny, you have to go to school because you're the principal.' ▶

“Now, some of you may have made an assumption. I don’t know. But you see that that may have been unwarranted in that case. So, I want to talk about two assumptions that I made in two substantial areas of the law, that I think were unwarranted.”

A DIFFERENT KIND OF MEDIATOR

“As I’m sure you know, in 2015 it was disclosed that Volkswagen had installed what was called a defeat device in their diesel cars, and this defeat device had a way of operating such that the EPA and state regulators couldn’t detect the fact that a car was spewing forth emissions that were considerably greater than tests revealed – thirty-five to forty times as great as that which is permitted by law.

“It affected approximately 500,000 vehicles in the United States. That’s a large number, and it’s a large number of lawsuits. These lawsuits were filed all over the United States, and the multi-district panel, which is in charge of taking similar lawsuits and coordinating them for trial purposes, assigned them to one court. It happened to be my court.

“So there I was confronted with a situation in which you had approximately 500,000 vehicles on the road spewing forth illegal emissions, and I had to decide what was going to be done about it. I took a look at the parties. Volkswagen was, at that time, nearly the number one auto manufacturer in the world. It was also a substantial part of the German economy and owned [in part] by the German government. And Volkswagen had a very, very successful business with other cars, not just the diesel cars. So, their motivation, after being caught, was to immediately own up to liability. They were motivated to try to resolve this problem as quickly as possible so that they could stay in business. That’s what they wanted to do.

“Then of course you had the plaintiff’s bar. Their motivation was to seek redress, to seek compensation, and to seek it from an entity that would be viable, so that consumers could actually get money to redress the wrong. Consumers were also very

concerned with addressing the environmental damage and how to mitigate that damage.

“But there was a third party, and the third party was the United States government. There were EPA regulators who had been defrauded and state regulators who had been defrauded. They were very concerned about their emissions process and about the fraud that had been perpetrated on them. You also had the Federal Trade Commission protecting consumers, which was concerned about warranties and about how products were being delivered to American consumers.

“So, you had this confluence of forces all in my courtroom, complaining about what had been done, and looking at some kind of pie to try to divide up. They knew, of course, that any type of solution, any type of resolution had to involve the government. And that was the sticking point.

“So, I went back and I had everybody sort of organized in terms of the lawyers and so forth. And I thought, we need somebody who can sit down with all of these different parties and find a way to cut short a three- or five-year litigation. Is there a solution? Is there a way to address everyone’s concerns?

“And then I had that moment that judges sometimes have, a brilliant idea. My brilliant idea was to turn to my law clerk and say, ‘What do you think I should do?’ And my law clerk said, ‘You have a lot of judges, retired judges, who have become mediators.’ We have all sorts of people out there who have vast experience settling these kinds of very, very large cases.

“But the problem here wasn’t the parties to the case. The problem here was the government. And then my law clerk suggested, ‘Why not Bob Mueller?’ Robert Mueller had just retired as the Director of the Federal Bureau of Investigations. And I said, ‘Brilliant.’ Because I realized that if Bob Mueller made a call to the head of the EPA, that would be a call that would be returned. If retired federal Judge X, or Mediator Y, makes

a call to the head of the EPA, the head of the EPA takes the message slip and hands it down to somebody, who hands it down to somebody else, who hands it down to somebody else and says, 'Return this call and find out what they want.' I thought, that's not going to happen with Bob Mueller.

"And sure enough, Bob Mueller had conversations with the EPA, and the conversations went something like this. Bob Mueller said, 'Well, Volkswagen can modify these vehicles. The plaintiffs want to be paid. So how soon can you test these modifications and determine whether or not they are acceptable to the EPA?' The director of the EPA said, 'Well, this is the process. The process is the lawyers come in, they talk to the lawyers at the EPA, and they bring in their engineers, and there's sort of an exchange of information and testing and so forth. If it's satisfactory, it goes to the next level, and on the next level, another group of lawyers take a look at it and a group of engineers and they all talk about it, and they may do some further testing. And then it goes on and on. And finally it's approved, and then it goes to my deputy director, sometimes my director wants more information. And finally, it'll come to me and I can give approval.'

"Well, how long will that take?"

"Well, a couple of years."

"And then Mueller said, 'This judge is really irrational. He says it's not going to be pretty. What this judge will do, he'll have a big court hearing. And people in Germany and all over the world will be listening to this. And he will accuse the EPA of being insensitive to the fact that there are 500,000 vehicles on the road today spewing forth illegal emissions. Now, you're not suggesting the people who depend on these cars for getting from point A to point B, who drive their kids to school, who drive to work, to do their shopping, whatever, for whom these cars may be their major or sole asset — you're not suggesting that they wait for two years, or that all of these cars be seized?'"

The problem here was the government. And then my law clerk suggested, 'Why not Bob Mueller?' Robert Mueller had just retired as the Director of the Federal Bureau of Investigations. And I said, 'Brilliant.' Because I realized that if Bob Mueller made a call to the head of the EPA, that would be a call that would be returned.

Judge Breyer

"Well,' the director said, 'Maybe we can move a bit faster and avoid that conversation.'

"And they did. It took them four months to go through that process."

"So, the assumption was we ought to get a seasoned mediator. And my law clerk had the smarts to realize that the problem was that the government would have to be brought into the process and pressured to act. And the person who could bring that about was Bob Mueller. And indeed, that was correct. So, the assumption that you go in one direction, I think, is something you have to look at very carefully. What is the problem in the case? The problem in this case was bringing about rapid government action. That required a different kind of mediator."

ASSUMPTIONS IN CRIMINAL LAW

Judge Breyer then turned to the criminal realm, where judges routinely apply sentencing guidelines premised on the assumption that longer sentences reduce crime. Here, too, the judge urged a more thoughtful approach.

"Let me give you an example in the context of criminal matters. I have served for seven years on the United States Sentencing Commission. The Sentencing Commission is in charge of setting policies or guidelines for sentences for federal of-



fenders. The system was set up by Congress in 1984 in order to bring about uniformity and transparency in sentencing. So that somebody who is sentenced to a particular sentence knows what that sentence will be; it's not left up to a parole commission. And also, honestly, that is, that the reasons for a particular sentence would be known.

"The Sentencing Commission has two responsibilities essentially. One is to gather information, statistics, experience on sentences. The other is to promulgate amendments which have to be approved in an indirect way by Congress.

"It became apparent over a number of years that the drug laws, which had mandatory minimums in many cases, were resulting in very, very long sentences. These sentences resulted in mass incarceration throughout the United States. The Commission was impressed by that and decided to reduce sentences by amendments, which were called 'drugs minus two.' In other words, the amendments reduced every sentence of a certain length by two levels under the Sentencing Guidelines, which resulted in approximately, on the average, a reduction of around twenty-nine or thirty months to a defendant's sentence.

"About 35%, I think, of federal prisoners were able to take advantage of that. The Commission left it up to individual judges to decide whether or not, in the cases before them, a reduction was warranted. In the vast majority of cases, a reduction was ordered by the court. In some cases, a reduction was not ordered by the court. So, the Sentencing Commission thought, 'Aha, let's fol-

low these two groups of prisoners after they're released. Let's test the theory, the assumption, that a longer prison sentence results in a safer defendant on the street.'

"The Commission followed these two groups for a period of five years. They looked at the incidence of recidivism. Surprise, surprise, there was virtually no difference in the level of recidivism between the two groups, thereby raising a question as to whether the assumption that longer sentences necessarily result in safer defendants is sound.

"The reason that is so significant today is because we have a very interesting confluence of political forces from both the right and the left looking at the criminal justice system. They believe it is broken by virtue of the fact that there is mass incarceration. One side believes it's simply too expensive, because, after all, each year of a federal prisoner's sentence costs around \$30,000 in California. For state sentences, each year of imprisonment of a state offender costs around \$60,000. So, from an economic point of view, does it really make sense to try to get those one, two, three, five years extra? From another side, from a humane point of view, does it really make sense to keep people in jail longer because it's, quote, 'safer'?

"Once vacant positions on the Sentencing Commission are filled, the Sentencing Commission is going to take a look at a lot of these sentences to make a determination whether or not the longer sentence actually makes sense. I would say that our experiment, our ability to look at these two groups of people, brought into question the assumption that longer sentences result in safer communities."

In closing, Judge Breyer acknowledged how many different assumptions are wired into the practice of law. He urged all Fellows to be conscious of those assumptions and to continually reevaluate them to advance not only individual causes, but a fairer judicial system as a whole.

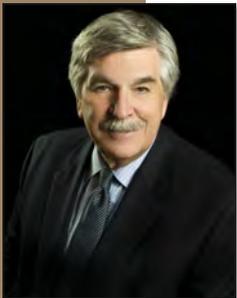
Josh Cohen

San Francisco, California

AWARDS & HONORS



Richard G. Dearden of Ottawa, Ontario, received the John P. Nelligan Award for Excellence. The award is a tribute to a member of the bar in the Ottawa region, recognizing a leading advocate who has demonstrated distinction as counsel and has made a significant contribution to the profession of law and to the well-being of the community at large. He has been a Fellow since 2013.



John (Jack) P. O'Hale of Smithfield, North Carolina, received the Wade M. Smith Award from the Criminal Justice Section of the North Carolina Bar Association presented in part by last year's award recipient, Fellow **Claire J. Rauscher**. The award is named in honor of North Carolina Fellow **Wade M. Smith** and is presented to an outstanding criminal defense attorney. O'Hale has been a Fellow since 2007.



C. Colon Willoughby, Jr. of Raleigh, North Carolina, was sworn in as president of the North Carolina State Bar. He has been a Fellow since 2007.



William C. Hubbard of Columbia, South Carolina, was recognized by the American Bar Foundation (ABF) with the establishment of the William C. Hubbard Law & Education Conference Endowment. The endowment will fund conferences that recognize and disseminate innovative and significant scholarship on law and education. The Hubbard Conference will bring together prominent scholars and practitioners to facilitate the dissemination of research and to stimulate new lines of inquiry. The first conference will focus on the topic of law, education, and democracy, and will be held in Columbia. Hubbard, a past president of the American Bar Association and ABF, has been a Fellow since 2002.

NATIVE AMERICAN JERSEY GIRL — HILARY TOMPKINS



At the Tucson 2020 Spring Meeting, **Former Regent David J. Hensler** conducted a live conversation with his law partner, **Hilary Tompkins**, allowing attendees to listen in as two friends chatted about her impactful life.

Tompkins graduated from Dartmouth and earned her law degree from Stanford. In 2019, Hilary was elected to the Dartmouth Board of Trustees, and this year, Dartmouth awarded Tompkins an honorary doctorate. She was a special assistant U.S. Attorney in the Eastern District of New York and served as chief legal counsel to Governor Bill Richardson of New Mexico. For seven and a half years, Tompkins was the Solicitor of the Department of Interior, supervising 350 lawyers and dealing with an incredible breadth of subjects ranging from mining and Indian affairs to national parks. Her qualifications to oversee Indian affairs include the fact that she is an enrolled member of the Navajo Nation.

Hensler began the interview by asking Tompkins to talk about her family.

FAMILY MEETS IN A FULL CIRCLE

Tompkins: Sure. When I went to Stanford, I met my husband Mike, who's an electrical engineer. He always proudly says, "I'm not a lawyer." We have two beautiful daughters, Harper and Haley, who are six and twelve years old and who are just lovely and super lively. They keep us on our toes.

Hensler: And aren't they also enrolled members of the Navajo Nation?

Tompkins: Yes. They're enrolled in the Navajo Nation and they're also New Englanders on their dad's side.

Hensler: Now you were born on the Navajo Reservation in New Mexico, but you weren't raised there.

Tompkins: Yes. I was born in the late '60s. So that'll give you an idea about my age. During that time there was a federal policy to place Native American children into non-Indian

homes. I'm a product of that policy. I was adopted as a baby and raised in, of all places, southern New Jersey, far from the Navajo Nation. I was raised by my incredible parents Ken and Nancy Tompkins.

It was an interesting experience being a Native person, growing up in the '70s. I didn't meet another Native American until I was fifteen-years-old. It was tough, but I also acquired a lot of strengths and skills from being a Jersey girl.

Hensler: After you graduated from college, you made an effort to find your birth mother. You went back to the Navajo reservation in New Mexico, where you were born. And you met your aunts. Can you tell that story?

Tompkins: On the reservation there's such a grapevine. I went back to live on the reservation for about four years. And my aunts heard about me and we connected. It was a really powerful moment in my life, because we were hugging each other and crying. One of the aunts was holding me and said, "The last time I held you, you were a baby. And we didn't want to let you

leave. We wanted to take care of you." It really filled that empty feeling I had to get reconnected with them. It took a couple years to connect with my birth mother, but my aunts were very clever. They eventually arranged a meeting where, unbeknownst to either of us, they invited me and my birth mom to the same aunt's home at the same time. So, then I connected with my birth mom. It was wonderful. There's a slide showing me with my birth mom. You don't really need a DNA test to know that we're related. For an adopted



person, it's powerful to see someone who looks like you. That is indescribable.

Hensler: You didn't see anybody who looked like you for fifteen years, and then you met somebody who really looked like you?

Tompkins: Yes. So full circle.

BECOMING SOLICITOR GENERAL AND THE *COBELL* LITIGATION

Hensler: After getting your law degree from Stanford, you became an Honors trial attorney at the Justice Department. And you spent some time as a special assistant in the Eastern District of New York. You then served as Chief Counsel to Governor Bill Richardson of New Mexico.

In 2009, you were asked to meet with Ken Salazar, who'd just been appointed Secretary of the Department of Interior. Tell us about that meeting.

Tompkins: I got a call the day before the meeting, when I had just gotten back from the park with my little baby in the stroller. It was totally unexpected. I had left the Governor's office the year before because I had a little one and I couldn't both take care of her and do a very demanding job. The caller said, "Do you want to meet with Ken Salazar, the Secretary of Interior. He'd like to interview you about possibly becoming the Solicitor of Interior?" So, I flew up to Denver from Albuquerque the next day. I had gotten no sleep that night because my baby was sick. I was in the worst condition to do an interview with the Secretary, but I went in and met

with him anyway. I'll never forget that, at one point, he said, "Are you sure you want to be Solicitor? How about maybe 'Deputy Solicitor?'" I think he asked that because I look younger than I am. I looked at him and was so exhausted that I just said, "It's Solicitor or nothing." Later, he told me, "That's when I knew I wanted you as my lawyer." Because I would be a tough negotiator.

Hensler: At that time, the big issue facing the Interior Department was the *Cobell* litigation. Can you tell us about the *Cobell* litigation?

Tompkins: I knew at the time that it was the biggest lawsuit ever filed against the United States by individual tribal members, a class of about 500,000. And everyone in my community, the Indian law community, was aware of it. It was the sentiment in Indian Country that there had been grave injustices, historical injustices, against tribal people. The *Cobell* litigation was about the Interior Department's mismanagement of accounts for tribal members who were supposed to receive monthly payments based on income earned from the land and resources held in trust. But Interior completely mismanaged the trusts, lost thousands, if not, millions, of files and never provided an adequate accounting.

Hensler: Before Hilary was asked to take this job, three cabinet members, two Secretaries of Interior and a Secretary of Treasury, had been held in contempt of court by the so-called "Cowboy Judge" Royce Lamberth. The amount being sought by this class of 500,000 Indians was \$100 billion. That

// QUIPS & QUOTES //

I had gotten no sleep that night because my baby was sick. I was in the worst condition to do an interview with the Secretary, but I went in and met with him anyway. I'll never forget that, at one point, he said, 'Are you sure you want to be Solicitor? How about maybe "Deputy Solicitor?'" I think he asked that because I look younger than I am. I looked at him and was so exhausted that I just said, 'It's Solicitor or nothing.' Later, he told me, 'That's when I knew I wanted you as my lawyer.'

Hilary Tompkins



was the point at which you were asked to become the Solicitor of Interior. Did you have any hesitancy about taking the job?

Tompkins: Oh, yeah. It was a very challenging decision. A lot of my colleagues in Indian Country, who had been my mentors and advisors, said, “Don’t do it or you’ll never work in Indian Country again. You’re going over to the enemy.” But I also thought, given *my* upbringing, that I didn’t fit in anybody’s box. I think, in society, we try to put people into boxes. But I don’t fit in any box, given my life history. I’d also worked as Chief Counsel for Governor Richardson, and states are often viewed as being in conflict with tribes. I thought that I had fared pretty well in that role, and I had gotten some good experience and had developed some good skills. And, I liked the idea of a challenge.

I also think it’s important that Native people take on roles in mainstream society at high levels of the legal profession, and other professions, because we need to be a part of those high-level decisions.

Hensler: The plaintiff in the *Cobell* litigation was an Indian woman, Elouise Cobell. Tell us what you knew about her.

Tompkins: She was amazing. Everyone knew that she was a real fighter, a real warrior for Native people. In the *Cobell* litigation, it wasn’t a Native man - it was a Native woman who had taken charge. Elouise Cobell had founded the first Native American-owned bank - in Montana. She was a member of the Blackfeet Nation. She was

one tough cookie and I was very impressed by her.

Hensler: Elouise Cobell won a MacArthur Genius Grant for her work in establishing the first Native American bank on a Native American reservation. And she used a large part of her \$500,000 MacArthur award to finance the *Cobell* litigation.

Just before you signed on as Solicitor, Judge Lamberth had been replaced by the Court of Appeals because of a concern about whether he was sufficiently objective after having held three Cabinet members in contempt. The Court then appointed Judge James Robertson, a Judicial Fellow of this College, to preside. It didn’t take long for Judge Robertson to conclude that an accounting by Interior was “impossible.” Do you know why he reached that conclusion?

Tompkins: Because Interior had lost a shocking number of records relating to the Indian trusts. A file cabinet is approximately four feet long. It has been estimated that Interior lost more than eight and one-half miles of files relating to the Indian trusts. So, it was impossible for Interior to do a proper accounting.

Hensler: When you became Solicitor, you had a meeting with Secretary Salazar. Did he tell you what he wanted you to do?

Tompkins: Well, in the first meeting I had with him, during my first week on the job, he said, “Hilary, there is one thing I want you to focus on right off the bat. I need you to settle *Cobell*.” And I was like, “Wow, that’s the



thorniest issue facing Interior and now I'm having to settle it." He then said, "It's going to be tough. It's very contentious litigation. Lots of history on both sides. But President Obama wants you to get this done. And I want you to get this done. We will back you to get this done."

Hensler: Did you get it done?

Tompkins: Well, I can't take full credit for getting it done. A bunch of us got it done. I had incredible lawyers at Department of Justice, who had been on the offensive. A new administration comes in and I walk in the door and say, "Okay, now we need to settle." And it's really tough for any litigator to have to switch like that on a dime. But we became fast friends; we built trust among ourselves. The DOJ lawyers saw that I was a tough negotiator. And, sitting across the table from the class plaintiffs, it was important to show that. So, we spent six months and got it done – painstakingly negotiating the settlement line by line.

Hensler: At the outset of the negotiations, you made opening remarks directed toward Elouise Cobell. Can you tell us about that?

Tompkins: It was our first meeting with Judge Robertson in the U.S. District Court courthouse. We all were doing introducto-

ry remarks. We were the only women in the room, both Native women, and we were sitting across from each other. And I just said, "This is not our way. This Western legal system is not our tradition. Our way is to try to find peace and a resolution. I want to heal this wound." And Elouise just looked at me and didn't say much because that's our tradition. You don't react. Then she nodded her head and said, "I know, I never wanted to file this suit, but I had no choice." That established a connection between us.

Hensler: And you did get it settled. You got a \$100 billion case settled for \$3.4 billion. Where did the money go?

Tompkins: \$1.5 billion went to the class plaintiffs. And then \$1.9 billion went to the Interior Department to give to the tribes to reconsolidate a lot of the lands that had been fractionated. Then the most lovely and wonderful part of the settlement was \$60 million for the scholarship fund that Secretary Ken Salazar and Elouise Cobell wanted to set up to enable Native American kids to get a college education. That scholarship lives on and is a great legacy of this settlement.

Hensler: The settlement was funded by Congress in 2010. Subsequent to approval, President Obama met with Elouise Cobell. Sadly, Elouise passed away the following year. There



was an interesting aspect to her funeral. Can you tell us about that?

Tompkins: Elouise also had a light-hearted side. She was the President of the Elvis Presley Fan Club of Montana. During her funeral procession, the car radios were all tuned to the Elvis channel in honor of Elouise. She went out in style.

Hensler: Five years after she passed away, Elouise Cobell was awarded the Presidential Medal of Honor. Her only child, Turk Cobell, accepted the award on her behalf. Turk is the President of the Cobell Scholarship Fund, which now has \$150 million in assets. It grants 1,000 scholarships per year to Native American students, who are unbelievably qualified and unbelievably needy. Next to Turk in the photo is Turk's wife, Bobbie, and Hilary in her beautiful Native garb.

Tompkins: I wore my traditional clothes to honor Elouise Cobell. When I went back to the reservation, I learned a lot about our Navajo traditions. I've been trying to practice those and to pass them on to my girls. Being at the White House with the President was an amazing event. I brought the lead DOJ litigator, who assisted in settling the case. There were celebrities all over the place, and I kept going up to these amaz-

ing celebrities and saying, "I want you to meet Mike, the best litigator in America, who helped me settle the *Cobell* case. I felt in my heart that he was a hero.

Hensler: I saved the best for last. This is my favorite. This photo shows something else that occurred at the Presidential Medal of Honor ceremony.

Tompkins: Yes. I got to meet the Boss - Bruce Springsteen

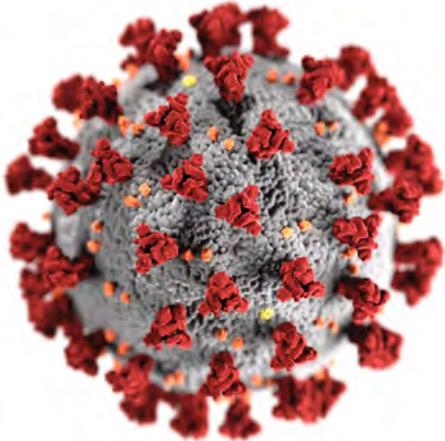
Hensler: So, we're back in New Jersey.

Tompkins: Jersey all the way.

David J. Hensler
Washington, D.C.

Editor's Note: The Website *Indianz.com* reports that three judges presided over the *Cobell* case: Judge Royce Lamberth, Judge James Robertson, and, upon Judge Robertson's retirement in 2010, Judge Thomas Hogan. But notably, the website reports that Judge Lamberth "was removed in July 2006 after the Bush administration said he had become too impartial." Given that it was the Bush administration, it may well have *said* that; but we hope that either the administration or the website got it wrong . . . ■





INFECTIOUS DISEASE EXPERT DR. PIA MACDONALD — WELCOME TO THE PANDEMIC

When the College met in Tucson in early March, attendees had no idea how quickly the COVID-19 pandemic would upend daily life; but **Dr. Pia MacDonald** probably did, and Fellows were fortunate to have her insights. An expert in infectious disease epidemiology and public health preparedness, Dr. MacDonald spent two years in the Peace Corps, stationed in Thailand. She returned to earn her master's degree in Public Health from Yale, focusing on infectious disease epidemiology and studying malaria ecology in Turkey. In 2000, she obtained her Ph.D. from the University of Michigan in Epidemiological Sciences, focusing again on malaria, and conducting primary data collection in rural Kenya.

Dr. MacDonald spent two years with the U.S. Centers for Disease Control and Prevention (“CDC”) as an Epidemic Intelligence Service Officer, leading outbreak investigation teams in North Carolina. Following her CDC work, she was an assistant and then an associate professor at the University of North Carolina’s Gillings School of Global Public Health, conducting research on infectious diseases, working on improving public health practices both domestically and internationally. She also was the director of the CDC-funded Center for Public Health Preparedness at the University of North Carolina. Since 2014, Dr. MacDonald has worked for RTI International, an independent nonprofit research institute. She is a senior infectious disease epidemiologist, serving as the principal investigator, project director, and subject matter expert for large contracts and grants funded by the United States government in the areas of infectious diseases, surveillance, public health preparedness, and global health.

As an epidemiologist, Dr. MacDonald is not a clinician who studies and works on disease in individuals, but rather she studies diseases in populations. Dr. MacDonald has worked on outbreaks related to Ebola, Zika, and now COVID-19, or as it is more widely known, the novel coronavirus.

At the outset of her remarks during the 2020 Spring Meeting, Dr. MacDonald made it plain that the views reflected in her presentation were hers alone, and not those of her organization or the United States government.

COMPARING COVID-19 TO MERS, SARS, OTHER INFECTIOUS DISEASES

COVID-19 is a zoonotic disease, that is, a disease that generally lives in animals and, on occasion, spills over to humans. Zoonotic diseases tend to be more dangerous



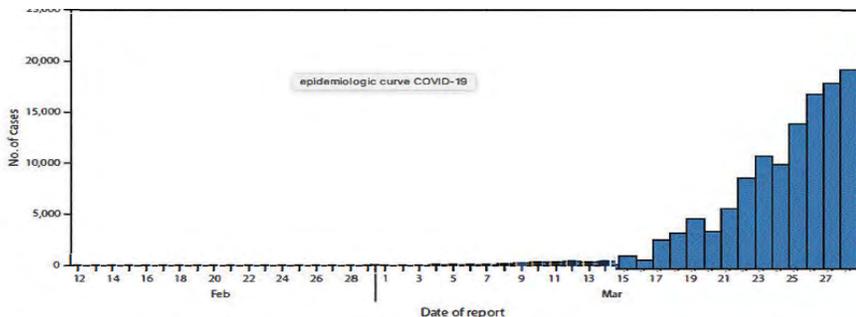
than other infectious diseases. Ebola, anthrax, plague, hantavirus, and some forms of influenza are all examples of zoonotic diseases. Bird flu, which causes sporadic outbreaks in Asia, is a zoonotic form of influenza that could be very dangerous were it to spread widely. There are other forms of influenza that are not zoonotic.

Coronaviruses are a large family of viruses that exist around the world. Some circulate and cause illness in people and others usually only infect animals. From a historical perspective, coronaviruses were considered relatively inconsequential. On average, they cause globally 10 to 30 percent of common colds in people. There are three dangerous zoonotic coronaviruses affecting humans. In 2002, there was the Severe Acute Respiratory Syndrome (SARS) outbreak, which had a case fatality rate of 9 percent. The case fatality rate is the percentage of people who die after contracting the disease. SARS started in Guangdong, China and then spread to Hong Kong, Canada, and beyond.

In 2012, Middle Eastern Respiratory Syndrome (MERS) emerged, which had a significantly higher case fatality rate – 34 percent – making it more dangerous than SARS. MERS still causes sporadic outbreaks, mostly originating in the Middle East, while SARS has disappeared since that first epidemic. The novel coronavirus causing COVID-19 disease is the third of these more lethal coronaviruses to affect humans.

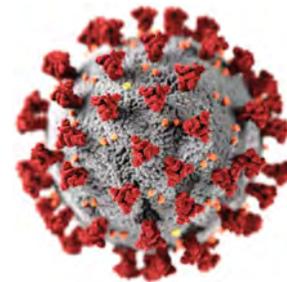
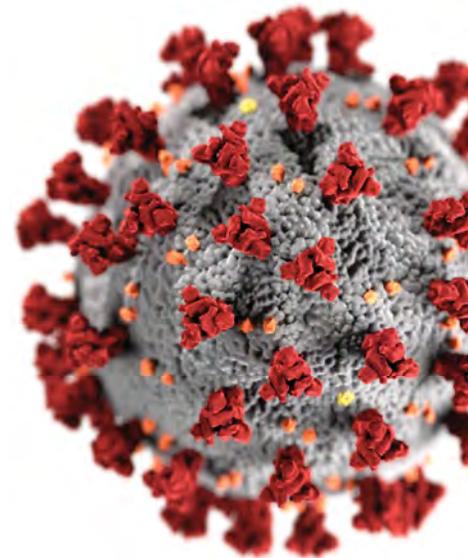
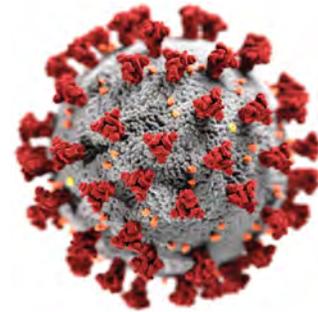
[**Editor’s Note:** Dr. MacDonald spoke to the College on March 8, 2020. Perhaps she saw it coming, but the audience could not have imagined what the next three weeks would bring. This chart was published by the CDC on March 31, 2020:

FIGURE. Daily number of reported COVID-19 cases* — United States, February 12–March 28, 2020[†]



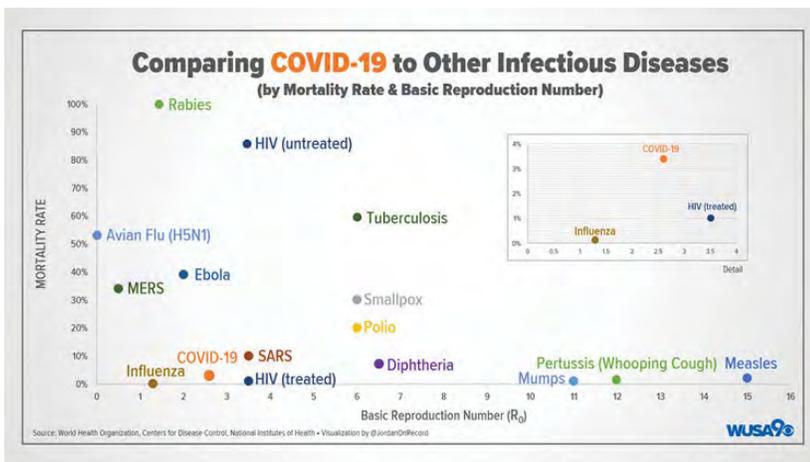
* Cases among persons repatriated to the United States from Wuhan, China, and the Diamond Princess cruise ship are excluded.

[†] Cumulative number of COVID-19 cases reported daily by jurisdictions to CDC using aggregate case count was 122,653 through March 28, 2020.



When Dr. MacDonald gave her remarks in early March, the daily number of reported cases was all but imperceptible; three weeks later there were 17,000 new cases posted per day. As of April 4, when this article was finalized for publication, Johns Hopkins University data showed more than 1.1 million reported, confirmed cases world-wide, with over 60,000 fatalities, more than 7,000 of those in the U.S.]

Dr. MacDonald displayed a graph that compares COVID-19 with other infectious diseases:



The x axis is the transmission rate – the average number of people to whom one sick person gives the disease; the y axis is the fatality rate. Looking at MERS, 34 percent of people with MERS die, but infect less than one other person before they die. Because the transmission rate is so low, MERS outbreaks generally tend to remain small.

Measles, on the other hands, has a high transmission rate; one sick person infects on average fifteen other people. But the fatality rate is small; only one out of 100 will die from the disease. Measles is fairly unique as infectious diseases go, and is highly transmissible, because the virus can remain suspended in the air for quite some time.

In terms of how dangerous a disease is, from a population perspective, infectious disease epidemiologists think about how deadly and how infectious a disease is. The more deadly and the more easily it is transmitted from one person to another, the more dangerous. COVID-19 is more dangerous than seasonal influenza and the swine flu in 2009 and. It likely falls somewhere

between as dangerous as the 1918-1919 pandemic influenza and polio.

Though it is far too soon for a conclusive number, an early estimate of the COVID-19 transmission rate, based on data from China, is that one person with COVID-19 will give the disease to, on average, 2.3 other people.

The World Health Organization announced the global case fatality rate at 3.4 percent. That number varies widely in the general population. And it's important to recognize that the known fatality rate of COVID-19 varies significantly by age. The older a person is, the higher the death rates are. The younger a person is, the lower they are. The 3.4 percent is the average death rate, with the elderly having a higher rate and younger people a much lower rate.

Dr. MacDonald posed the question: how does COVID-19 spread and what's driving the outbreak? The limited data available suggests that COVID-19 spreads in ways very similar to seasonal influenza. The virus that causes COVID-19 is thought to spread primarily through droplets that are released when sick people cough and/or sneeze. Close contact with sick people who are coughing and sneezing will put a person at highest risk. When people cough or sneeze, the droplets go into the air and then they fall down. Six feet is the average distance for spreading a disease transmitted via droplet. Giving a sick person a simple face mask is a good idea, because that avoids the droplets from going past the infected person's immediate area.

Unlike measles, the early data is showing that this virus does not stay suspended in air for long. The data from China shows that most of the disease transmission is occurring within households, not within healthcare settings, or at airports or on planes, trains or on the streets, or in auditoriums like the one in Tucson. **[Editor's Note:** Later anecdotal reports outside of China suggest that may not be the case.] In China, early on, there was transmission occurring within the healthcare setting but when they realized more about COVID-19, they were able to protect themselves and the patients, and the

outbreak grew from infection within the household setting, similar to what it would with seasonal influenza.

The most common symptoms for COVID-19 are fever, fatigue, and dry cough. Some people are experiencing shortness of breath and difficulty breathing as well. Dr. MacDonald addressed the questions that arise from reading the news. For example, why are we closing schools? The issue around school closure is not necessarily about reducing the risk for young children; it's that schools are one of the focal areas in a community, where diseases spread quickly, and then spread back out into the broader community. When kids go to school, they mix with lots of people. Their hygiene practices are tentative at best, and then they go home and hug their parents and grandparents. With schools, it's not about the kids being most at risk for severe disease; it's really about ways to contain any infectious disease in a community.

FACTORS IN TRANSMISSION

As an infectious disease epidemiologist, Dr. MacDonald was not surprised about the emergence of COVID-19, not surprised about Ebola, and not surprised about Zika. The world is changing in ways that are driving the emergence of infectious diseases that are zoonotic in nature, such as Ebola, Zika, hantavirus, and others.

The world's population has doubled since 1960, and it's slated to double again in the next forty years. Major growth for the last twenty years has been in Asia, and the next major areas of growth will be in Africa. Globally, there are thirty-eight mega cities now with over ten million people. By 2050, more than two thirds of the global population will be living in a mega city. Infrastructure will not keep up, resulting in high density, crowding, and inadequate sanitation. The massive population growth will accompany economic growth. With population growth comes high demand for animal protein.

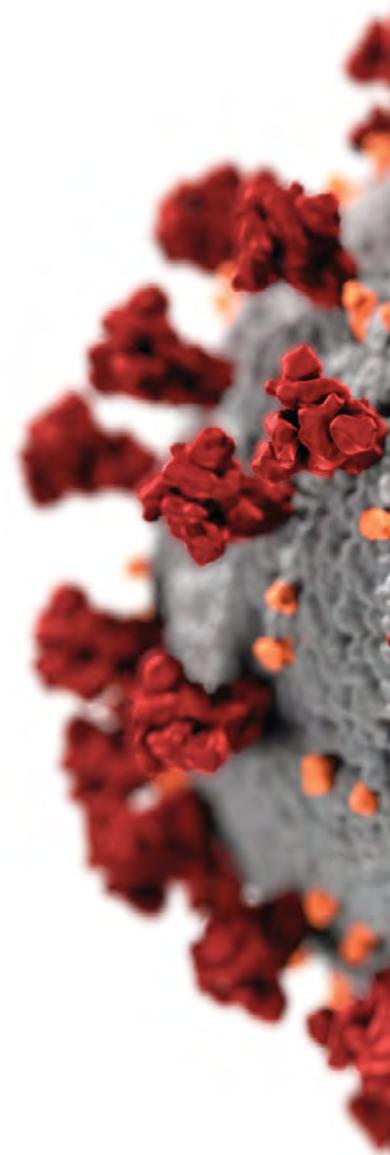
This means that, in the areas with the largest population growth as well as economic growth, there will be many more chicken farms and pig farms. There has been a massive growth in those farms

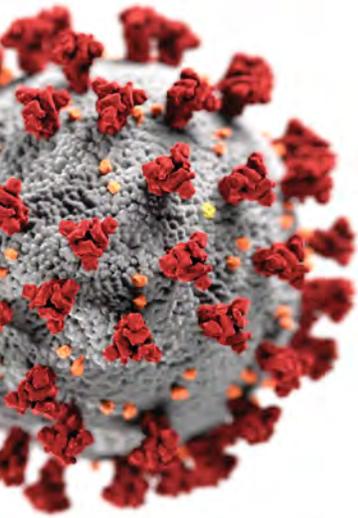
in China and India. There's also further globalization of goods and services and transportation and increased speed at which people move all around our planet. The annual growth rate of just air travel alone in Asia is six percent per year. In Africa, it's five percent per year, and in the Middle East it's seven percent. That's the trend.

Epidemiologists know where the risk of zoonotic and emerging diseases are the greatest. They create great models with available data. Dr. MacDonald showed the audience a map with yellow highlighting of the areas that are at highest risk of zoonotic disease emergence. Wuhan lands in the area at highest risk; it's a mega city with a population of eleven million people. It's also a regional transportation hub, with one million people per month flying out of Wuhan to different places in China and the world. By 2050, there will be many more mega cities and they will be focused in China, India, in Nigeria—exactly where we now know that the risk of emerging diseases is highest.

Some good news. The COVID-19 outbreak in China seems to be waning. The morning of Dr. MacDonald's talk, there were no new cases reported the previous day in Wuhan. By waning, she explained, it means that there were less cases that day than there were the day before. That signifies that an outbreak is on track to be contained. Of note, though, China's response has been the most ambitious, agile, and aggressive disease containment effort ever in history. The Chinese government restricted movement of people into and out of Wuhan and twelve neighboring cities.

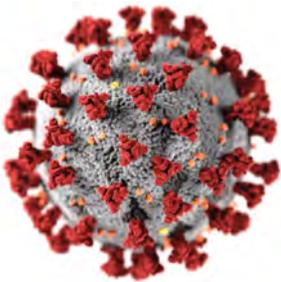
That kind of restriction has not been tried since the Middle Ages during the plague outbreak. In Wuhan, people were instructed to stay home for a month. They implemented social distancing measures, such as closing schools, public transportation, and suspended public gatherings. They had thousands of people tracking sick people and their close contacts to make certain that they stayed isolated from other people. They removed sick people from their homes and placed them in quarantine centers. Again, the good news is that many lessons have been learned from this experience in China. There are more insights now on the best way to treat sick patients so that they are





less likely to die. There is a better understanding of who is at the greatest risk for severe disease. [Editor's Note: As of April 4, eight U.S. Governors have rejected the issuance of stay-at-home directives in their states; President Trump has announced that all Americans are encouraged to wear face coverings in public, while also announcing that he himself will not do so.]

Public health measures that work have been identified—things such as case detection, rapid diagnosis, isolation, early treatment, rigorous contact tracing, and limiting household transmission. In the United States, this is no longer a travel-associated outbreak only. This is a community-acquired infection in the United States, making this a domestic outbreak, as well as a global outbreak. The issue around testing has been challenging. Until the week of Dr. MacDonald's talk, the testing had been limited to the CDC laboratories in Atlanta. And as of the day of her presentation, testing was being rolled out to the state laboratories of public health.



The criteria for whom can be tested also is being extended. Early on, testing was for people who had traveled or had contacts with people who had traveled to certain countries. There will be a lot more testing of people in the United States with no known contact with travelers. This is going to be critical because, as more testing comes online, more cases will be identified that could not be found with limited testing capabilities. The other good news is that vaccine development is moving quickly, and the estimates are that there could be a vaccine available within twelve to eighteen months. That's an unprecedented speed.

Some bad news. Until a vaccine is available, everyone needs to do everything they can to stall the spread and minimize risk. While COVID-19 seems relatively contained in China, it's spreading globally quickly with big disruptions in the global supply chain. Eighty percent of active

pharmaceutical ingredients are manufactured outside of the United States and the majority are in China and India. These disruptions could impact the ability to treat sick people in the United States and Canada.

Turning to the really ugly. The public health measures that are known to work will be difficult to achieve in the United States and elsewhere in the world, where the health care and public health systems are weak. The kind of approach that China took is unprecedented and extremely aggressive. Lower- and middle-income countries will be hit far worse than higher income countries, similar to what was seen in the 1918 pandemic influenza.

Broadly, beyond COVID-19, there are more outbreaks and global epidemics now than ever before, and the number is increasing with each year. Only one third of all countries worldwide have the capacity to detect a dangerous outbreak in their country and report it to the global community faster than it can spread outside their borders. That is a very big deal for which people are not prepared domestically now or for the future. This is true in the United States, Canada, and globally. Prevention, detection, and response to disease outbreaks require an integrated approach from all sectors—public, private, and across the aisles.

Dr. MacDonald asked the audience to talk to as many people as possible who can help make a difference. She asked for fierce advocacy to increase and sustain funding for public health preparedness and global health security. The time to act is now to decrease the risk for the future. Similar to the adage that parents are only as happy as their least happy child from a global health security perspective, we're only as safe as our least safe country.

Susan J. Harriman
San Francisco, California



ONTARIO

Ontario Fellows, in partnership with the Advocates' Society, presented The Advocate Matters: Spring Symposium 2020 on April 29, May 5, and May 7, 2020. Each micro-symposium covered a different topic and was shown via webcast. Module 1: The Civil Advocate looked at civility and professionalism as essential parts of the legal practice as an advocate - not only in the day-to-day practice and interactions with other counsel, but in the way arguments are framed and how it assists the Court during hearings. Participants heard new perspectives on the principles of civility and professionalism in litigation and learned how to effectively respond to questions from the bench on appeal. Module 2: The Skilled Advocate focused on the essential ingredients to be a skilled advocate - knowledge of the law, mastery of court procedure, and proficiency in different types of advocacy. Module 2 dove into the varied perspectives from bench, the public sector, and the private bar on public law issues as well as using demonstrative evidence effectively in court. Module 3: The Well-Informed Advocate discussed developments in case law from the past year with a lightning round on recent Supreme Court and appellate court jurisprudence; how to adapt to a physical distancing environment and effectively argue cases remotely; and how to stay resilient in the face of the pressures of legal practice. The following Fellows participated in the program: Former Ontario Province Committee Vice Chair **Sheila R. Block LSM, ASM**; Honorary Fellow **The Honourable Eleanore A. Cronk**; Former Gale Cup Committee Vice Chair **J. Thomas Curry**; Former Regent **Kathleen Flynn Peterson**; Regent **Sandra A. Forbes**; Former Ontario Province Committee Chair **Peter Griffin**; **The Honourable Justice John B. Laskin**; **Brian J. Gover**; and Beverly McLachlin Access to Justice Award Committee Chair **Guy J. Pratte**.

WYOMING

The Wyoming State Committee issued a comment on the Wyoming Rules of Civil Procedure for the Court of Chancery. The Committee believes that certain aspects of the currently proposed chancery Court rules are of potential concern, "it is of utmost importance that the right to a jury trial is not infringed upon, limited or eroded by the chancery court system. Because parties to a chancery court proceeding are not entitled to a jury trial, it is critical that the rules of procedure clearly allow for any party to have the case removed from chancery court if that party wants a jury trial." The complete text can be found on the College website.

AN ADVOCATE AND EXPERT ON TRIBAL LAW



Treasurer Michael L. O'Donnell introduced **Troy Eid**, a partner at Greenberg Traurig and one of the preeminent lawyers on tribal law in the United States. Eid was a research assistant to former Secretary of State, Condoleezza Rice, while a student at Stanford. Eid met his wife, Allison, at Stanford while standing in line at a dorm cafeteria where she was working as a student food service worker. She went on to become a Supreme Court Clerk, a Colorado Supreme Court Justice, and, currently, a Tenth Circuit Judge. Eid graduated from the University of Chicago Law School and served as Colorado's fortieth United States Attorney and as Chief Legal Counsel for the governor of Colorado. Eid currently serves as the elected President of the Navajo Nation Bar Association. He is the only non-Navajo to ever serve as its Bar President.



Eid runs in monthly races, running from 10 Ks to 100-mile ultra-marathons. He is one of the top runners in the United States in his age group. O'Donnell noted that Eid would be running a fifty-mile ultra-marathon race the next morning in the mountains, observing that fifty miles roughly approximates O'Donnell's lifetime running total.

RIGHTS PREDATING THE CONSTITUTION

Eid told attendees during the 2020 Spring Meeting in Tucson that the "Tribe's rights to self-government pre-date the Constitution. People are surprised to learn, sometimes, that tribes are in the Constitution. In Article One, the Legislative Power, Congress has the power to regulate commerce with the states with foreign countries or foreign states, as the Constitution calls them, and with Indian tribes. There's a recognition of their status. Then, in Article Two, the President's Treaty Power was with foreign states and with tribes. We have this basis, and these roots predate our Constitution. What that means is that tribes do not have delegated sovereignty. When we speak of their rights as governments, they predate our Constitution.

"It also has a phrase that you may never have noticed that says, as they described the different apportionment qualifications: 'excluding Indians, not taxed.' What that meant was that at that time . . . tribes were not part of the bargain. They were not part of the consent of the governed; they were a part of something else.

"The only group of citizens in the U.S. that got their rights, in terms of living on tribal homelands, as U.S. citizens from another source other than the Constitution are Native Americans. They didn't get it from the consent of the governed, because they were never part of the bargain. They're still not part of the bargain. Congress passed a statute in 1924 called the Indian Citizenship Act and said any Indians who are living on reservations get to be U.S. citizens now, by statute. They weren't part of the consent of the governed.

“ QUIPS & QUOTES ”

He is one of the top runners in the U. S. in his age group. Troy just won the master's title in the Louisiana Marathon on Martin Luther King weekend. In fact, he is running a 50-mile ultra-marathon race tomorrow in the mountains southeast of Tucson. Fifty miles roughly approximates my lifetime total of running.

Treasurer O'Donnell in his introduction of Troy Eid



“The rights are inherent. They’re not delegated by any source, and the corollary to this is that state laws don’t apply to tribes . . . unless Congress says they do. Congress has this overarching power, what they sometimes call plenary power, to regulate tribal affairs.

// QUIPS & QUOTES //

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Troy Eid

“You may recall that James Madison . . . did do something very important to the Constitution to fix an error in the Articles of Confederation. Under the Articles, which predated our Constitution, tribes were subject to state authority. There was no central authority recognizing tribes, as I just described to you in Articles One and Two. States cut their own deals with tribes, and often much violence would ensue from that. We still have some states on the East Coast that have recognition of tribes under state law. When the Constitution was ratified in 1789

that all changed. We have a model now where the central federal government has the relationships with tribes. It’s a government-to-government relationship.

“One of the principal reasons for the Constitution was to address this problem in the Articles of Confederation, which have led to so much violence and hardship. Tribes are political and legal entities. The federal government owes what we call a Trust Responsibility as a result of tribes land cession. A cession is when you give up land. It was typically at the end of the barrel of a gun, and the land was forcibly removed, and at one point it was all tribal land. Now, a remnant remains.

“The idea was that when land was given up, there would be the permanent protection of the United States. Chief Justice John Marshall . . . described this in an early Supreme Court decision as the relationship is that of a nation claiming and receiving the protection of one more powerful. The idea would be that one nation, the tribal nation, can give up some power in ex-

change for that protection that they would get. They’d give up land, they’d give up some of their power, but they would have the permanent protection of the United States.

“We have this trust responsibility. It does not fade away, and it will not end. We now have 574 Indian tribes. President Trump recognized another one just about a month or so ago, Little Shell in Montana, so the number is growing in this era. Part of this is what we see both on and off reservation. We see an obligation the U.S. has to consult with tribal governments. What does this mean? In the brief time that we have, it’s important for everyone here to understand that if you ever have a project in this country that needs a federal permit, some kind of federal permission, you’ve got to consult with the tribes affected by that.”

PERMANENT RECOGNITION, PROTECTION OF A TRIBE’S RIGHTS

“Those tribal rights don’t go away. They have the recognition from the U.S. government of their political status. It’s a permanent recognition, a permanent protection. Those tribes have a voice. They must be meaningfully consulted with when the federal government permits a project. . . . In the case of a pipeline, a federal permit to build a natural gas pipeline. In order to get the permits, you’ve got to consult, and if you don’t do it in a meaningful fashion, you might get sued.

“Now, the most famous one in modern times was the Dakota Access Pipeline (DAPL). . . . A crude oil pipeline to be built from . . . the Bakken Basin of North Dakota all the way down to connect into the infrastructure to get to the Gulf, to really serve the central part of the United States, and to take a captive crude oil basin and deliver product, brand new pipeline, brand new right-of-way.

“It’s a crude oil pipeline, so it’s different than a natural gas pipeline. The federal permissions were really two-fold. Number one was the permit you needed from the U.S. Army Corp of Engineers to cross the hundreds and hundreds of streams and rivers with exception of the Missouri River, from start to finish. That’s all done

in a fast-track permit, one permit. The tribes didn't feel they were meaningfully consulted when this was being built, but they didn't prevail in court. They were not successful in challenging the so-called fast-track permit.

"This is the kind of issue that becomes a flash point for protest. Just understand the legal basis. Time and again, I deal with lawyers who have not figured this stuff out.

"This is the law. This has been the law from the get-go, and it's recognized by the statutes. It's recognized by every President now since Richard Nixon for executive orders. Does it matter? Well, you had a \$3 billion project with DAPL. It ended up being more than \$1 billion in project delays. The tribes didn't win one argument in court, but the delay itself cost \$1 billion for the project proponents. You've got to get it right. You've got to understand these issues.

"Now, I'll close with these practice tips for trial lawyers. Everyone should memorize these. Number one, no removal to federal court. . . . Tribes aren't states. . . .

"You've got to go to tribal court. You have to litigate there. You have to exhaust remedies. The U.S. Supreme Court requires it. If you get a case like that, don't think you can come racing to federal court. You've got to go to the tribe first. You better find someone who knows about tribal law, and can exhaust remedies, and can treat that tribunal with respect. Don't show up as so many lawyers do, and say, I'm not an Indian. I don't need to recognize this court. Not a good strategy. Not a good strategy for any judge to be listening to something like that.

"Number two. Tribes have sovereign immunity. . . . There's a whole body of federal law. The U.S. Supreme Court has ruled on this repeatedly, most recently in 2014. You can't sue a tribe without their consent. You can't get them into an action of some sort without their consent. If there's no ability to do that, you're going to have a problem. If you have a contract, by the way, and you don't have a valid waiver of sovereign immunity, you're never going to be able to enforce it in court, now are you? . . .

"Number three, arbitration lives. If you can't figure out the law to apply, we use arbitration now as a stalking horse. It's a terrible thing. In federal land law we use it all the time because we've got sovereigns that can't agree on state law versus tribal law. There's often not a federal question to resolve, so you can't get to federal court, so think about arbitration. Then, consider mediating, as was discussed very brilliantly by Hilary in her presentation. That is a different approach that tribes often have.

"In the Navajo system for example, we have peace making. There are some ways to be more culturally appropriate. Often that should be explored, short of having to do litigation to fight it all out."

A PUMPKIN FARM AND THE TREATY OF 1868

"Now, I close here with this picture of pumpkins, just to give you a war story. I get to tell one, right? I mean you won't be impressed by my fourteen trials to jury verdict. I could give you one story maybe that I thought was pretty interesting.

"I'm driving down the road, on my way someplace, and I get a call. I'm over by Moab, Utah. It's snowing like crazy. Someone I never heard of, and it's like, I want to hire you because I've got a problem. I've got the largest pumpkin farm in the United States. It's on Navajo Nation land, meaning it's federal land, held in trust for the tribe's benefit permanently, but the Navajo Nation has that permanent beneficial interest, and they get to decide how that land is used.

"This guy is a non-Indian. He's leasing thousands of acres from the Navajo Nation. 'I've got a worker who was killed yesterday in a workplace accident. He was run over by a truck. I've got OSHA here. I've got sixteen OSHA agents, and they want permission to come in. I called my lawyer and he said, 'Make sure you make a pot of coffee for them. . . . what do you think I should do?'

"I said, 'Treaty of 1868.' He said, 'What?' I said, 'The Navajo Treaty of 1868. They don't have any ▶



permission to be there. Even the Tenth Circuit, in 1982, in a case called *Donovan* affirms the Navajo Nation. Remember it's not the federal government reserving a reservation of homeland, it's the tribe saying, 'We reserve this for ourselves.' They said the U.S. can only come on here with certain permission. We don't have any permission for OSHA. Well, guess what? The federal courts recognized that.'

"I said, 'Let me talk to the chief OSHA agent.' I'm sitting there. I'm on the right-of-way. It's snowing. I'm kind of crouched over, trying to figure out is there some way I could get this case. I'm trying to remember it. I'm on my phone. There's not enough signal to get it, but I'm thinking I'm getting it. I said, 'You know sir, I'm not going to give you permission. I'm representing this person, this farm. I'm not going to give you permission. I'll be glad to give you instructions, but you don't have any right. You're going to have to stand down. . . . I'll call the solicitor as soon as I can get to a place but it's the Treaty of 1868.'

"He said, 'You've got to be kidding.' I said, 'No. It's the Treaty of 1868, and I'll explain it to you, but in the meantime, I have to ask you, we do not consent. You need to take a pause.' Then, I got my now client on the phone and said, 'I'm

collecting all your files, so do you have any pumpkin trucks that are not full of pumpkins?' He said, 'Yeah, we've got one.' I said, 'Put every single file you have, get it on a truck, start driving toward Denver, I'll tell you where to put it. We'll figure out some place, but I don't want any paperwork in case these guys come in.'

"To make a long story short, within two weeks, he had an apology from the Solicitor of Labor of the United States apologizing for OSHA agents being on his farm. You've got to know what the law is, and that's true in these areas as well.

"You had a client that was willing to essentially give away a business he had spent thirty-seven years building up, that employs thirty people full-time, and more than 1,200 people during the harvest season. He was essentially giving it up to OSHA. It isn't right because it's not the law. It's not the law of the Navajo Nation. It's not the law that came when the Navajo Nation reserved its rights. It's not part of the deal. If I had accepted that out of ignorance, I would have hurt the sovereignty of the Navajo Nation.

"I want to thank you for what you do. You make society better. Thank you so much."

Michael L. O'Donnell
Denver, Colorado

FELLOWS TO THE BENCH

The following Fellow has been elevated to the bench in his respective jurisdiction.

Ted E. Bock
Winnipeg, Manitoba
Justice
Court of Queen's Bench of Manitoba
February 6, 2020

The College extends congratulations to this Judicial Fellow.

CALL FOR SUBMISSION INNOCENCE PROJECT

In a new ongoing series in the *Journal*, we would like to highlight Fellows who have been involved with Innocence Projects in their state or province. Your first-hand account offers a perspective that would benefit the article as well the project you have invested your time with.

Submissions of interest will be taken throughout the year, as the hope is to make this a permanent feature in the *Journal*. If you would like to share your experience, please contact *Journal* Editorial Board Member and Emil Gumpert Award Committee Chair Mark Surprenant, mark.surprenant@arlaw.com.



UBER GUIDE SKIP HORNER

Although he is an adventurer extraordinaire, **Skip Horner's** real vocation is as a guide - an "Uber Guide" as dubbed by National Geographic Adventure. Entering the business nearly fifty years ago, when the adventure tourism industry was just emerging, Horner has developed and honed unique and specialized skills in risk mitigation.





When Horner began guiding in the mid-1970s, today's modern equipment and technologies were not available, even in developed countries. Despite the challenges, by 1992 he became the first person to have guided people to the top of the Seven Summits, the seven highest mountains on the seven continents. A Fellow Emeritus with the Explorer's Club, certified Alpine Guide with The American Mountain Guide's Association, and faculty member of The Wilderness Medical Conference, Horner regaled the audience during the 2020 Spring Meeting in Tucson with stories of two particularly harrowing adventures, complete with photographic evidence, thus "Foot Fangs and Anopheles."

Webster's dictionary defines adventure as "a bold, uncertain, usually risky undertaking." Horner focused on that third adjective as he related two very diverse adventures. On each, he was responsible for clients, who relied on his skills and experience to get them all home safely, which they all did. "It's important to note," Horner emphasized, "that I wouldn't ask my clients to do anything that I wouldn't do."

BETSIBOKA RIVER, MADAGASCAR

Some years ago, he went to Madagascar to guide river trips. The country had not been long open for tourism, so he was one of the first big expeditions to arrive. He went over early, chartered a little aircraft and flew all around the country looking for rivers to run. "The flights were exciting. I got to see a lot of the countryside, but I did notice that the island is mostly deforested. Ninety-eight percent of the island of Madagascar has had its forest cut down and eliminated." What remains is bare hillsides. "Because it gets quite a bit of rain, there are monsoon storms that come through, typhoons blow through, but annual rainfall is quite significant there out in the middle of the Indian Ocean, the erosion is tremendous."

When the rains come, the water washes off the hillsides quickly, causing flash floods. Always a concern if one is on the river, which then turns into muddy torrents even in the ▶



whitewater sections. White waves turn brown, making it very difficult to read the river and run. Despite those anticipated challenges, Horner selected the Betsiboka for the first ten-day run as it presented about one-hundred miles of whitewater running. “There was a client who came along who wanted to be the first person to ride a hot air balloon in Madagascar, so we took the balloon downstream with us, and in fact, we did float the balloon at one point.”

While in the capital planning additional river trips, Horner got a phone call from a man who ran one of the oil companies doing exploration in the country. He was very excited about what Horner was doing and offered to help. Horner went to his office, maps in hand, because he had one river picked out that was going to be the ultimate river trip, except for one issue. There was a massive waterfall about halfway down that was not runnable. The waterfall was guaranteed death.

Horner went in to show him what they had in mind, and said, “What I would really like from you, knowing you have a helicopter, is for you to show up on this particular day, with your helicopter, and fly us over the waterfall, and drop us down the other side.” He said, “Well, I can do that, but I’d like to get some publicity out of this, so I’d like to bring some journalists along.” I said, “Well, that would be great. In fact, Frans Lanting [a famous National Geographic photographer] was in the country as well.” The oil executive was enthusiastic. “Let’s bring him

along too!” And he added that he’d bring along the American ambassador and his wife.

As the ultimate river trip began, the group experienced views of some of the wildlife for which Madagascar is famous. Horner’s magnificent pictures included ringtail lemurs, which are marsupial primates living only on Madagascar, colorful Superb Starlings and flocks of Giant Fruit Bats with three-foot wingspans.

As the river trip proceeded, the weather became very hot and oppressively humid. Horner had a rather fractious group of clients, some of whom were not happy with the others. The guides were acting as mediators. “The two other guides on the trip, Gary, who was crazy, kind of aggressive, terrific guide, but I refer to him as kind of like a psycho. He was really hard to be around, except he rode a boat really well. He was a good cook, and he played a great guitar. The other guide was Jack, who was a Buddhist. Laid back guy, California surfer, everything was all right, kind of loosey-goosey. Together we made a good team because we sort of offset each other on our various skills.”

The group ultimately got to the waterfall, pulled onto the beach, and waited. After about an hour, “Wap, wap, wap, helicopter comes in, offloads the journalists, Frans Lanting, beer, food, and the American Ambassador, Tom Keating in a coat and tie. We’re having a nice time talking, drinking beer on the beach at 10:00 in the morning. I’m really not feeling very good. I thought it was the heat and the humidity that was bringing me down, and probably I wasn’t drinking enough water, but I tried to put on a good show because the Ambassador and Frans was there now. The problem with Frans though was that he could only stay on the trip for a day or two. We had agreed that he would float downstream and then the helicopter would come back for him in a couple of days and fly him out.”

At the end of the cocktail party on the beach, the helicopter came up and the boats were moved downstream below the waterfall. Camp became quiet again, and Horner went to bed with a bad headache and aching body. During



the night, he began to lose consciousness.

Horner became deathly ill, all because of the *Anopheles* mosquito. As the female *Anopheles* sticks her proboscis into skin to suck out blood, she delivers the *Plasmodium falciparum* parasite - malaria. He had been bitten on the first river trip and the malaria had incubated in his body. Malaria goes through a life cycle in the liver, breaking out into blood cells, and attacking the red blood cells so that they can no longer carry oxygen, starving organs of the oxygen they need. People die of multiple organ failure. In those days the Center for Disease Control and Prevention had warned against taking Fansidar, the antidote or the prophylactic for malaria, because of the side effects. The advice was to take it only if one gets sick.

The next morning, the group piled semi-conscious Horner into the boat and headed downstream. They began administering Fansidar. The plan was to leave him on a small island while the group headed further downstream to a place where the helicopter could land. It was scheduled to return the next day to pick up Lanting, so at that time they'd send it back to rescue Horner.

Horner and Dick, the trip doctor, were deposited on a small island with supplies for three days. Water, food, life jackets, and big signal panels to put out on the beach so the helicopter could see them. The island was not very big or very high. Dick left Horner in the tent and walked

the forty yards to the other side of the island. Unexpectedly, he saw tracks as he approached the crest of the beach. They were not alone. He halted in his tracks as six or seven resting crocodiles caught his attention.

Horner had learned from running African rivers that crocs don't like to be hit on the head with rocks. Crocs will sometimes attack a raft in the river floating downstream, but they'll come at it on the surface. Unlike hippos which will come up underneath and bite the boat, one can see the crocs coming. Every boat on every African river has a bucket full of croc rocks. Dick walked around the island, picked up all the rocks he could, went to the tent and waited. Late that afternoon the first croc came out of the river and up onto the beach. Dick began just pounding it with rocks. After about the fifth rock, the croc decided that was enough. He went back in the river. Dick ran down, picked up all the rocks, brought them back up, and got ready for more.

That night was Horner's worst and Dick thought he was watching him die. But by the next morning, Horner was still conscious, and Dick was ready with the croc rocks. The crocs came back. More rocks. Dick went down to pick them up again. They continued watching for the helicopter, but the entire day came and went, no helicopter. The next day came, and again, the day ended. No helicopter. Just crocs. The men were getting low on water, low on food. There was no way to get off the island. They couldn't swim the river because of the crocs, and even



then, they'd have to walk thirty miles to the nearest road. They were there until the helicopter came.

On the morning of the third day, Horner was improving from the drug. The men finally heard the “wap, wap, wap” they'd been listening for. From the far side of the hills, a helicopter was approaching. But it was flying high, not low looking for them on the river as they expected. The chopper flew over and beyond them, almost beyond the far mountain, and then circled back to land. Horner and Dick approached it, expecting to see Lanting in the back seat. Instead there were a bunch of guys they'd never seen before. The helicopter was delivering oil workers from one place to another. As they flew over, one of the fellows in the back seat just happened to look back and saw the signal panels, tapped the pilot and said, “Hey, what's that?”

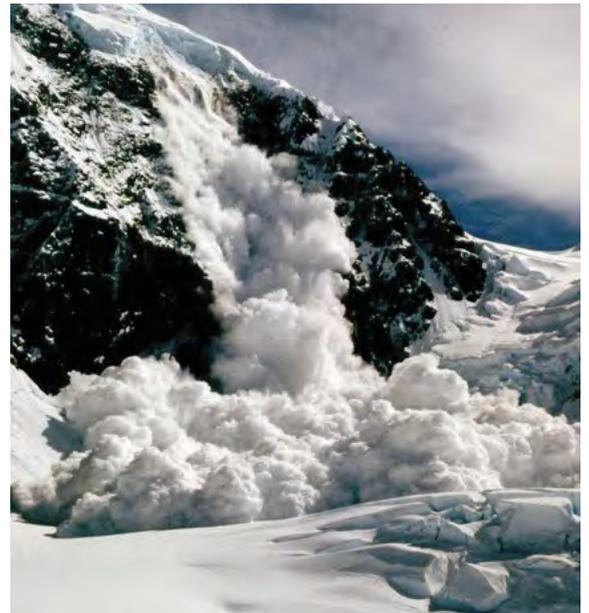
When Horner got back to the U.S. and described his symptoms to a tropical disease specialist in San Francisco, he was told he had been about two hours from death. He had survived because he was young, fit, and strong. Despite how bad he'd gotten while on the island, Horner knew he was going to live. “When you really believe something is going to work out a certain way, and you really believe it to the point where you can't even think about the opposite, you're well on your way to having that actually take place. I think we all understand what that means, but in that case, it saved my life. It never occurred to me that I was going to die in my mind, therefore I didn't die.”

PARCHAMO PEAK, NEPAL

Horner's second tale of risk shifted from the hot low country of Madagascar to the cool high country of Nepal. Despite having already summited Everest, several years ago Horner set his sights on a 20,600-foot peak called Parchamo, a mountain near Everest, off the seldom trekked side valley. Twice Horner trekked that valley but never made it to the pass. The plan this time, with an experienced Sherpa named Ponnuru, was to walk in from the Khumbu side where Everest is and to the top of the Tesi Lapcha pass.

The group, including two clients, camped at 19,000 feet, with only 1,600 feet to climb to the summit. On arrival at camp, Horner, Ponnuru, and Lhakpa, another sherpa, climbed up and fixed ropes on the steep route to about the 20,000-foot level. At that point, they needed to use pickets, metal rods about three feet long in order to secure the rope. Finally, with the fixed rope attached to the mountain, the men slid back down to camp.

The next morning the group began their ascent, using the fixed rope. As Horner reached the 20,000-foot point, Ponnuru went ahead while the clients were right beneath Horner. The climbers were attached to the rope by a mechanical device, which allows the climber to slide up, but it won't let one slide down, so one is belayed to the rope. The device is designed not to come off the rope.



As he stopped, Horner took off his ice axe, stuck it in the snow and sat for a moment waiting, enjoying the view. He glanced up the mountain just as he saw the avalanche, which Ponnuru inadvertently set off, coming down on top of him. He just had time to yell, “Avalanche,” to the guys right below, then he tucked into the mountain and held on. The avalanche hit “with a force of 10,000 pillows,” irresistible yet uncontrollable.

“It just blew me off my stance, and the last thing I remember hearing was the snap of my device popping off the rope, and I was hurled back over my head, down the hill, riding this avalanche.



“Somehow, I got turned around, so I was face down, looking down the hill, roaring down inside this avalanche. I could look up and see the top of the slide was about five feet above me because it got really light up there. I was down here in the deep blue color, doggy paddling like crazy, trying to get my head up, roaring down the hill probably at sixty- miles-an-hour. I knew this is how people die, but I fought for it.”

Everything slowed down. “You concentrate on what you’re doing right at this moment. Everything is clear, and slow, and quiet. As I’m roaring down the hill sixty-miles-an- hour with these big piles of snow all around me. These big blocks of snow next to me were like, in my mind they were like the Pillsbury Dough Boys. ... they were sliding down the hill with me, trying to get up, trying to get up. I reached this neutral buoyancy where the snow is too thick above me to get up, but it was thick enough to hold me up, but I just couldn’t get to the top.”

Suddenly everything stopped, like a truck plowing into a snowbank. Whoof. As he stopped, Horner was five feet down inside the slide. Suddenly, he moved again, as more snow came down, piled in behind. It pushed him up and then down another one-hundred-feet or so, flipping him over in the process. Finally, he landed spread eagle on the top of the snow, looking up at the sun, with sunglasses still on.

Horner described his arms and legs painfully stuck behind him, backpack cemented into the snow. He panicked, realizing that the slow, quiet he’d experienced inside the avalanche was over. There was probably more snow coming down. He knew he needed to move, but he was stuck. He managed to move his right hand a little bit and then shake his arm free from his pack strap. One leg was still buried back underneath and behind, but the other leg was free. Through kicking, he managed to sit up.

“I just sat there. I looked around, and it was dead quiet. Piles of snow all around me. I looked up the hill. I saw people running around up there. There was no way I could go up to help anybody. I was spent. Twenty-thousand-feet inside the avalanche, breathing all these ice particles. My lungs were killing me. I was exhausted. I could not do anything, but I was alive.” Remarkably everybody survived. One man was buried, but the survivors dug him out.

“Afterwards people asked me, ‘Did your life pass in front of you when that was going on? You sort of knew you could be dying and did your life pass in front of you?’ I said, ‘No, it wasn’t my life that passed in front of me. It was just the best things in my life. I thought about [my wife] Elizabeth. I thought about my dad. How sad they would all be if I died. I thought about all the good things I have in my life, and all the things that I wanted to still do.’ These things actually raced through my mind as I was flying down the hill inside the avalanche.”

Horner left the audience with good advice: “Don’t go out looking for near-death experiences, but do enjoy the life we have, because it is so wonderful.”

Skip and Elizabeth left Tucson for Ecuador, their third tour of the Galapagos and hiking in the Andes. Their plan had them going to the Albertine Rift in West Uganda for bird watching, to Kilimanjaro for Skip’s thirty-third ascent and to the Croatian Coast. They intended to end the year in the Patagonian Lake District of Chile enjoying the total solar eclipse. We hope that they have returned home safely and that the current pandemic will not long delay their adventures.

Mona T. Duckett, Q.C.
Edmonton, Alberta

M. DAVID LEPOFSKY – RECIPIENT OF THE SAMUEL E. GATES LITIGATION AWARD

The Samuel E. Gates Litigation Award is presented to honor a person who has made a significant contribution to the improvement of the litigation process. **Regent Sandra A. Forbes** introduced her fellow Ontarian and newest recipient of the Award, **M. David Lepofsky**.

“David rivals Beyoncé as a true influencer,” Forbes began. “He has been an influencer even before we had Instagram, Twitter, YouTube, or TikTok. Most recently, using the power of social media, his ability to force change to improve our justice system seems unstoppable. David’s efforts over decades have resulted in barriers in the litigation process and beyond being removed for those with disabilities, ensuring true access to justice. Because of his tireless efforts, David has made our society and the litigation process more accessible and inclusive. He fights those that defend the seemingly impenetrable walls that exclude the disabled, and he does not quit until they are torn down.”

Forbes summarized Lepofsky’s career. “Before leaving the Ontario civil service in 2015, and joining the faculty at Osgoode Hall Law School, David was Crown Counsel in the Ontario government arguing criminal and constitutional cases. He appeared as counsel before the Supreme Court of Canada over thirty times, and his advocacy was influential to the Court in numerous cases touching upon equality rights.”

Forbes recounted one particular appellate argument. “David was . . . referring to his notes, which were in Braille. Unbeknownst to David, a power outage occurred and the courtroom, which was windowless, became pitch black. Unaware, David continues on with his argument until finally the Chief Justice interrupts him to tell him about the power outage. Without skipping a beat David says, ‘Well, who is operating under a disability now?’

“David was and is a tireless champion of ensuring accessibility to all institutions, including public transit, courthouses, and schools,” Forbes informed. “He has used the power of social media to increase awareness and to garner support for removing barriers. He does not take no for an answer.” Forbes





wrapped up the introduction with David's own words when he was awarded an honorary doctorate: "The cause to which I have devoted volunteer efforts since I started law school forty years ago, is the nonpartisan campaign to make our society one in which people with a physical, mental, sensory, learning or intellectual disability can fully participate."

Lepofsky began his remarks to the audience during the 2020 Spring Meeting in Tucson with a memory. "As a thirteen-year-old with partial vision, I was called to the Torah for the ritual of Bar Mitzvah. Among the words I had to speak that day in Hebrew translate into 'do not place an obstacle in front of a blind person.' The modern concept of the duty to accommodate people with disabilities is not so modern. It has its origins in the Bible itself. Little did I know that day

that those words would define the volunteer cause I have dedicated by life to. But my understanding of those words continues to evolve. It was on my fortieth birthday when I was in the Ontario Court of Appeal where the incident that Sandy referred to took place. The lights went out, and I turned to my opponent, a friend, and said, 'What is it with you photon-dependent people anyway? You expect us to have lights in every room that you might walk into. Do you know what that costs? Half of every day is spent in the dark. Why don't you get used to it?'

"I learned two important lessons from that incident about what those words I had read at age thirteen meant. The first is that when people without disabilities get up in the morning, they don't ask themselves, 'Gee, I wonder if I'm going



to be able to get on the bus I need to take to get to work or to school.’ When they come to a conference they don’t wonder, ‘Gee, are they going to hand out materials in a format I can read?’ Or, when they’re at a microphone speaking, will there be interpretations so I can understand what is being said? They just assume those things as being normal. Equality for people with disabilities would mean that people with disabilities can expect the same thing.

“The second is this - before the lights went out, if you were in that courtroom looking around you might have observed that there was one person with a particular disability. But thirty seconds later, there was only one person in that courtroom who could work and that was me. God had not intervened to restore my eyesight, nor to take anyone else’s away. There was no biomedical change. There was a change in our human created environment - the lights went out. For us, the barrier we face is the world that has been created around us on this implicit premise that it exists only for people without disabilities. While there have been improvements, the fact is that the public transit we ride, the buildings we go to, the schools and colleges and universities where we study, even the laws, are all designed on this implicit premise.

“Let me take a moment to find out how much this touches your own life. I want you to raise your hand if you have no disability now, and if you’re certain you’re never going to have a disability for the rest of your life. *I don’t see any hands.* The reality is that everybody has a disability now or has somebody dear to them with a disability or will have a disability later in life. We are the minority of everyone.

“I’ve had the privilege of doing advocacy on the issue of accessibility, outside my job, over the years of my career as an appeal lawyer, on a wide range of accessibility issues, but I just want to talk for a few minutes about some of the strategies we have adopted in Ontario in terms of access to courts and the court process.

“First, we need to re-engineer our understanding of equality. When I started out in this activity, we adopted the ideas that came from the

Women’s Rights Movement and the Racial Civil Rights Movement. These were great ideas, but they weren’t specifically tailored to the inequalities persons with disability face. It has been more effective to characterize our goal as the desire for full participation and full inclusion in a barrier free society. That’s what equality means. And in implementing it, traditionally, people think about removing barriers and get tied up in the costs associated with doing so. We found out how to change the channel because we say equality, or achieving a barrier free society, does not just mean removing existing barriers, but preventing the creation of new barriers as well. When it comes to preventing new barriers, we should ask what is the cost to prevent them? And usually that is nothing, or at most it is very little. Creating a new barrier should be illegal, unless the cost of preventing it would be an undue hardship. If we prevent those barriers from being created now, then we save the future costs of having to remove them later.

“The next step is to understand and be aware of how pervasive disability is in what we do. Whether you are a personal injury lawyer, prosecutor, or criminal defense lawyer, you are regularly faced with clients or witnesses who have a physical, intellectual, addiction or mental health disability. How do we ensure that the justice system is accessible to all of these people? The court system operates with the involvement of multiple independent players with no one person in charge. Those players include the judges who run the courtrooms, the lawyers who argue the cases, the court facility people who run the courthouse building, and the court services people who provide the registry services. To ensure accessibility, you need a plan, and you need all of these players at the table to oversee the implementation of that plan.

“Let me use what we have done in Ontario as an example. In 2005, then Chief Justice Roy McMurtry appointed a joint committee of the bench, bar, and government to come up with a plan for how to make our court system barrier free. That committee produced a report, available on the Ontario Court of Appeal website, which is a very good action plan for what needs to be done. A critical part of that plan is a per-

manent committee of the bench, bar, government, and persons with disabilities to oversee the progress made and to play a watchdog role. This committee is a platform to call out problems, brainstorm, and broker solutions with the key players. If you do not have one of these committees in your jurisdiction, I encourage you to set one up.

“Through this process, we also recognized the need for judicial education on accommodating people with disabilities in the court system. Each year, Canada’s National Judicial Institute runs a series of educational programs for federally appointed judges, including a judicial bootcamp for new judges. Included in the bootcamp is a dedicated presentation for new judges on how to accommodate people with disabilities in the courtroom. New judges are also given a judicial bench book which is a guide on how to accommodate persons with disabilities in the courtroom. These new judges come into their roles not knowing much about the issues faced by persons with disabilities and leave this program, motivated, as we try to say, to be a judicial barrier buster.

“Training judges is, of course, an important thing to do. But lawyers also have to be trained in this area. We historically have trained law students to serve the legal needs of clients without disabilities. Nobody planned it that way. There may be the odd course on disability rights, which a few people take. That is not enough. We need to mainstream the teaching of disability rights and build it permanently into the legal curriculum including family law, administrative law, tort law and constitutional law. We are working on a report now on how to incorporate disability into the law school curriculum. As well, our Law Society, the self-governing body for Ontario’s legal profession, runs a series of webinars

for lawyers and paralegals on how to accommodate people disabilities.

“It occurred to me early on that trying to solve these barriers we face, one lawsuit at a time is ultimately not going to work. We just face too many barriers. We could spend our entire lives litigating these barriers and win them all, and yet we would still face many, many more. One solution to this is to implement a process where all of these barriers are discussed, and resolutions are negotiated without anybody surrendering their rights to sue. If an appropriate resolution is not reached, there is always civil rights legislation to fall back on. In Ontario, we lobbied hard for and eventually succeeded in having the Accessibility for Ontarians With Disabilities Act passed. This legislation codifies the objective of creating a barrier free society by 2025. While we will not meet this deadline, the legislation has driven positive action. I believe that the ultimate way to achieve this goal is by using this legislation to enact regulations that will prescribe accessibility standards that various organizations must achieve. The regulations would be first negotiated by a committee established with representatives from all interested parties, including persons with disabilities, and provided to the government as recommendations. Think of it like sitting at a table, negotiating the settlement of literally thousands of cases without anybody having to file a single case, and preserving the right to sue if the result is not adequate.

“I have already talked to you about the fact that we are the minority of everyone and that like it or not, you are one of us. Welcome aboard. Join the movement. What can you do? Those of us who have acquired a legal education and the opportunity to practice law have a rare gift. We have the incredible skill of persuasion and the training

in tenacity. Our training is on how to identify a goal, and how to just keep on going until we get there. And I believe that every one of us with that rare gift, if we each took on just one barrier, could make a dramatic difference. So, I invite you to join the minority of everyone to become a barrier buster and to take on just one barrier. Whether you solve it through litigation or through lobbying, don’t stop until you get rid of that barrier. I can tell you that most of these barriers we face are actually legally not very challenging. Sandy told you about how I fought our Toronto Transit Commission to force them to announce subway bus and streetcar stops. They had no defense. They seriously had no defense, and yet they fought every step of the way. That’s the case for so many of the barriers we face. So, don’t look for the cases that necessarily have the tough legal questions. Look for the cases that have the intractable opponent, where we need your skills to dig in, and keep going. If every one of us just takes on one barrier, deploying that rare gift, we can make an enormous difference. And I would welcome the opportunity both to learn from what you are able to do, and to learn ideas of how you’re able to do it, so we can all do it better.

“Let me conclude by borrowing from the words of the late Robert Kennedy, who has always been an inspiration to me, and they are words that he borrowed from George Bernard Shaw.

“Some see the world full of barriers facing people with disabilities and ask why. I imagine the barrier free society that we all need as members of the minority of everyone, and ask to achieve an accessible society, why not? Thank you very, very much for this honor.”

Sandra A. Forbes

Toronto, Ontario



CLIMATE AND THE DEEP BLUE CHANGE ISN'T COMING, IT'S HERE

If your passion is the study of oceans, where else would you choose to locate than Tucson, Arizona? Two hundred miles from the nearest beach. Just ask **Dr. Joellen Russell**, the Thomas R. Brown Distinguished Chair of Integrative Science at the University of Arizona. Dr. Russell received her Bachelor of Arts degree in Environmental Geoscience at Harvard University in 1993, and her Ph.D. in Oceanography in 1999 from the Scripps Institute of Oceanography.

Dr. Russell's research focuses on the westerly winds in the Southern Ocean, also known as the Antarctic Ocean. As part of her research, Dr. Russell's work utilizes the Southern Ocean Carbon and Climate Observations and Modeling project, or SOCCOM, which employs supercomputer models to study the oceans, along with robot floats and satellites to gather real-time data from the sea. That data is then analyzed and published as it is produced on the project's website. This data has shown that one out of every eight carbon molecules coming out of our tailpipes ends up in the Antarctic Ocean.

Thus, her work on the SOCCOM project aims to predict the impact of temperatures on the climate. In addition, her research as part of the project helped solve one of the long-standing climate paradoxes, demonstrating that global warming is really ocean warming.

Dr. Russell's research also includes studies on the Hadley cell, which involves the circulation of air rising near the equator and flowing toward the North and South Poles, before returning back to the equator. The Hadley cell is responsible for tropical, wet environments, as well as dry, arid deserts.

Dr. Russell is leading the way on a proposal to NASA to launch a satellite to gather wind data so that more can be learned about wind changes over the ocean. Such information would allow scientists like Dr. Russell to improve predictions about the future impact of changes occurring today in the air, on land and in the seas. Overall, her research is providing a way to quantify the carbon impact from the world's top ten economies. She hopes to definitively demonstrate the impact of these economies on the world's climate with sufficient certainty to bring about change and commitment to change by these economies.

In 2010 Dr. Russell won the University of Arizona's Provost's Teaching Award for teaching introductory oceanography to over 1,000 undergraduates in a single class, the most popular science class on campus.

Dr. Russell was born and raised in an Eskimo fishing village thirty-one miles north of the Arctic Circle called Kotzebue—north of the Bering Straits. She moved ▶



“ QUIPS & QUOTES ”

There is no way to stop the physics. Every day we burn. Every day, every molecule is adding to how much heat is swallowed by the ocean. Everyone says, ‘Well, what can I do to help?’ Everything.

Dr. Russell

to Alaska because her father worked at the Indian Health Services. And, due to his job, her family eventually moved to northern Montana. In Dr. Russell’s words, growing up in “Native communities,” she was “the only white child” in her classes, but her school peers always demonstrated nothing but kindness to her. At twelve years old, Dr. Russell began working toward her career as a geoscientist, when she realized she wanted to be an explorer. And indeed, due to her research, Dr. Russell has spent more than a year of her life at sea. Dr. Russell considers herself a gladiator in defense of the planet and its people. She received a standing ovation for her remarks, abridged and summarized below:

“Earth is the only blue planet [we have discovered across the expanse of space, there may be others but it is the only one we have found]. Earth is blue because it is 72% ocean.

“My mother likes to say, ‘We are running out of the burning building of the past, into the dark night of the future, with only what we can carry. Only with what you love most.’ What we are trying to do with our math, our measurements, and our science is to shine just a tiny amount of light on the path in front of our feet as we run into this dark future. And we have created a model which has become the new weather model for the National Weather Service here in the United States.

“We have seen a convergence of weather and climate modeling that is extraordinary, and it provides us with a network of global atmospheric carbon monitoring. We know exactly how much carbon dioxide is in the atmosphere, which continues to contribute to greenhouse warming. We also use ERBE, the Earth Radiation Budget Experiment, which is a series of satellites that sits out of the edge of our atmosphere, and it looks in at the earth and out at the sun. ERBE measures how much carbon dioxide is coming in, which is roughly the same every year, and it measures how much is going out. And the answer to that is less every year. Every single year, the energy imbalance, the difference between what comes in and what goes out, grows every single year.

“Last year it did not get quite as warm as it did this year. All that heat went into the ocean, but

not before making us hotter. Arizona is the fastest warming state after Alaska and New Mexico. Tucson is the third fastest warming city and Phoenix is the fourth after Las Vegas and El Paso. What that means in practical terms is that right here in Tucson, I get seventeen more days a year of above 105-degree heat. I have two little kids, and this affects my family, my lifestyle, and my children’s lives. And this should matter to you, too, because it costs money for more air conditioning, and it costs money to improve your infrastructure and to drive cars. It is costing us money.

“Here is what we predict in just ten years: by 2030, we expect to see Arizona and the Southwest getting hotter and drier, which should sound familiar because it has been getting hotter and drier for the last thirty years. And the reason we see such slight differences in the upward trend that shows the Earth getting hotter and drier every year is because our blue oceans are warming up. The ocean takes up 92% of the excess heat every year. That is, global warming is just ocean warming. Only 3% of the heat stays in the atmosphere, meaning it has not left our system; it is not back out in space, but it is here on Earth. The Great Barrier Reef along Australia took one million years to build and in two years, we bleached half of it, and only 15% of it recovered.

“If the Great Barrier Reef does not interest you, then maybe you will be interested in our greatest naval base. Norfolk sits at sea level, and pictures demonstrate where it is underwater at 1.5° warming, at 2° warming, and at 4° warming. If you knew your greatest naval base would be taken by the enemy within the next twenty years, what would you do? What would you sacrifice? What would you pay in order to make sure that that did not happen?

“I will tell you what we are doing about this. Using supercomputers, robot floats, and satellites, we can make better predictions so that we can adapt, change, and potentially use the old fashioned name and shame game to try and get our partners around the world to help us reduce emissions. The worst contributor to emissions in the world is China but the USA follows behind.

“In the 2007 United States Supreme Court case, *Commonwealth of Massachusetts, et al. v. U.S. Environmental Protection Agency (EPA)*, the EPA declined to issue emission standards for motor vehicles based on policy considerations not enumerated in the Clean Air Act. Does the Clean Air Act give the EPA authority to regulate carbon dioxide and other greenhouse gases? We argued yes, . . . and the court ruled in our favor, citing the climate scientists’ brief, and we were thrilled.

“But, the problem . . . [is] estimating emissions. . . . If we did know the ocean really, really well, then, we could infer what is going on in the 28% of the surface that is land. And since particularly high carbon economies in the top ten are big land masses, like the United States, Canada, Europe, Russia, Brazil, China, India, Indonesia—they are huge areas. And what I am trying to do is attribute the carbon emissions for the top ten economies. The problem has been the ocean. The ocean is vast, and it is difficult to measure and we only have so many ships. In fact, we have fewer ships to do research almost every year since the end of the Cold War in 1989. Since then, we have mothballed ship after ship after ship, and we have not replaced them. So, the number of ship days available for an oceanographer to go to sea and make measurements has been reduced.

“Moreover, going to sea is very difficult. I mostly work in the winter around Antarctica when the winds are incredible. I have been sitting strapped into my chair, watching the anemometer flutter at eighty-five knots, roughly ninety miles per hour, and this is not in the middle of a storm. It is just the wind. It is incredible. Because of the incredulity of these winds, we use robot floats. These robot floats are also how I make it easier for my students to actually help conduct the research.

“Why do we go to the Southern Ocean? Because that is where all the mixing happens. The winds are stronger down there because there are no speed bumps. Unlike the Himalayas, the Rocky Mountains, and the Alps in the northern hemisphere, in the southern hemisphere, there is just a little tip of the Andes that pokes out into the Southern Ocean. The rest of the area is just roaring over open water. And it creates these mountains of water, these huge waves, and a churn from the deep ocean. This mixing counts for about two-thirds of all of the excess heat, which goes in around Antarctica. This mixing is always bringing up water that has never seen our human atmosphere. So, the ocean gulps up the heat, it gulps up the carbon, and it sinks back down taking it away from us. The ocean provides a profound service.

“But what we see right now are our currents ramping up, which was not supposed to happen until 2075, which means we are more than fifty years early for this big spin up, and I am worried. So, what we are using is robot floats, supercomputers, and climate models. And now we are adding satellites. I want to get a satellite up. We are creating an earth venture mission proposal to NASA for \$190 million. We are leading it out of the University of Arizona, and our partner is Ball Aerospace. We want to get a satellite up to measure the increased wave height, and the winds associated with those increased wave heights with great precision so that we can better predict why that happened, and how big of a change we can expect. . . .

“I want to tell you a small story because it is what gets me up in the morning, every day to work harder at this. Walter Munk is the most famous oceanographer ever. The reason for his fame is because during World War II, he was the person tasked to actually work on the wave equations to find out at what

wave height the landing boats would swamp. And the reason we needed to know is because you had to have bad weather, low clouds with high winds, to keep the Luftwaffe off the landing. But, at the same time, if the winds were too high, and the wave height got above five to six feet, the boats would turn into the wave and swamp, and everyone in their heavy packs would die. The last phone call Eisenhower made before saying ‘We’re on, go,’ was to Walter Munk, and he stood in front of the ocean. He was one of my professors at Scripps, and he died this last spring. But, at a conference for Ocean Sciences, he stood in front of the room and said to half of the oceanographers in the world, ‘My generation’s great challenge was stopping Hitler. Your great challenge will be climate change.’ You could have heard a pin drop in that room. He continued, ‘I know there has not been funding, and I know that you are tired. I know there are not enough of you. I know that it is hard. I am here with you. But you must hold the line. Help will come. Help will come. It did last time. It took us a long time to get into World War II. But help will come. You must hold.’ And we will. We do. We promise. You should have heard the roar.

“We hold the line, and we wait for help. And we work every day to make this work because it is coming. There is no way to stop the physics. Every day we burn. Every day, every molecule is adding to how much heat is swallowed by the ocean. Everyone says, ‘Well, what can I do to help?’ Everything. Buy your electric car, buy used, buy your house battery, charge it at night when the load would otherwise be wasted. . . . This is how you provide for your grandchildren’s future. This is it. We need to do this all together.”

Richard H. Deane, Jr.
Atlanta, Georgia



AN UNHAPPY STORY THAT MUST BE TOLD: THE U.S. OLYMPIC COMMITTEE INDEPENDENT INVESTIGATION AND LARRY NASSAR'S ABUSE OF ATHLETES



Past President Bartholomew J. Dalton introduced **Joan McPhee** with a cautionary note: “This is not a happy story. Over the past several years, the specter of child sexual abuse in various parts of our society has become just all too evident. It’s uncomfortable to speak about. Who wants to talk about child sexual abuse? The answer is none of us. But we ignore it, not only at our own jeopardy, but we ignore it to the jeopardy of our children and our grandchildren. We need to talk about child sexual abuse and institutions throughout our society that allow predators to work their very dark magic on children. We have to shine a light.”

McPhee is a partner at Ropes & Gray, and was principally responsible for an Independent Investigation of the United States Olympic Committee (USOC) which concluded that the U.S. Olympic Team and USA Gymnastics (USAG) ignored red flags, failed to recognize textbook grooming behaviors, or in some egregious instances, dismissed clear calls for help from girls and young women who were being abused by the Gymnastics Team doctor, Larry Nassar.

The report further concluded that, even allowing for the benefit of 20/20 hindsight, the acute threat of child sexual abuse in youth sport, and especially in elite women’s gymnastics, was present for those in leadership positions to recognize and address throughout the lengthy span of Nassar’s serious serial sexual abuse of gymnasts.

McPhee, a graduate of Princeton and Harvard Law, and a former AUSA for the Southern District of New York, told the audience during the 2020 Spring Meeting in Tucson that when she started her investigation, “There were at least 300 survivors of Larry Nassar’s abuse. By some counts well over 400. There were thou-

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Past President Dalton in his introduction of Joan McPhee

sands of sexual assaults. The abusive acts took place over an almost thirty-year period. Nassar abused some survivors one time, others hundreds of times. He almost always committed his abuse under the guise of performing medical treatments. He groomed his patients by acting as a caring physician and friend in the intensely demanding and often harsh environment of competitive gymnastics. He cultivated a reputation as an exceptional doctor, an expert in the treatment of gymnastic injuries, a perceived essential asset on the road to competitive success and Olympic glory.”

Nassar used a variety of techniques to normalize his abuse. He committed his abuse at various sites including at the Karolyi Ranch and at national and international competitions. “Multiple reports of his abuse went unheeded. Multiple law enforcement agencies failed effectively to investigate when given the opportunity to do so.”

BUILDING TRUST AMIDST ALL THE CHALLENGES

McPhee described her retention by the USOC. “Now, the environment that we stepped into was by all accounts highly fraught, characterized by pervasive mistrust and lack of confidence in USOC and USAG. And it was in this environment that USOC did what almost no company or organization ever does, commission a fully independent investigation. Now it’s worth pausing for a moment on what independence means, because there is a spectrum of independence from zero to full on, from internal reviews by in-house counsel to reviews by outside counsel to board level investigations involving special committees or independent directors all the way over to a fully independent investigation. And our investigation was at the extreme end of the independence spectrum. We formally memorialized as a condition of our engagement, the terms of our independence with the USOC at the outset.

“We were not acting as lawyers for anyone. We were not providing any legal advice. There was no attorney-client privilege. No one would have the authority to direct or guide our investigation or the content of our report. We would release our report to the public in full upon completion.”

Even with those rules in place to ensure the independence of the investigation, MCPhee’s team faced huge challenges stemming from the lack of trust and confidence in USOC. There was significant skepticism from the survivors. How could the survivors trust lawyers retained by the very organization that had failed to protect them? How could this ever be an independent investigation, when USOC was paying Ropes & Gray? MCPhee summed up the challenge: “There was a pervasive expectation of a whitewash.”

“So, we worked hard to build trust in the survivor community. We made no cold calls to survivors out of respect for their privacy. And the very real concern around not re-traumatizing them. Many, but not all survivors were represented by counsel. And those were relationships that we strictly observed. So, as a result, we had no way to reach survivors directly. We invested significant time in a dialogue with counsel, and we engaged extensively with survivor advocacy groups.

“Over the course of our investigation, which spanned ten months, we interviewed over 100 individuals, and we reviewed over 1.3 million documents. And in December of 2018, we issued our report to the public. Two-hundred-thirty-plus pages in all, in five parts. There was, of course, no single answer to what had gone wrong. We started with a high-level overview of what happened from start to finish in Nassar’s criminal career. And we then delved into his multifaceted system of abuse, his medical cover, reputation, position as a doctor, role as a confidant, and the perceived unlikelihood that a successful physician would commit sexual abuse operated to confuse and silence survivors, caused numerous adults to disregard reports of abuse from survivors and contributed to multiple failed investigations.”

The crux of the report was that “while our fact finding was distressing on many levels, among the more disconcerting findings were those pertaining to who knew what when.”

USAG, USOC, and the FBI were all formally on notice of Nassar’s crimes, at senior levels, as of the summer of 2015. And during the one-year period that followed that notice and before the *Indianapolis Star* broke the story and reported publicly on Nassar’s abuse, no warnings were

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The crux of the report was that ‘While our fact finding was distressing on many levels, among the more disconcerting findings were those pertaining to who knew what when.’

Joan MCPhee

issued. “No action was taken by any individual or any institution to stop Nassar from continuing his serial predation, and that inaction headlines brutal consequences. Dozens of children continued to be abused during that one-year period. Estimated to be as high as seventy-five to 100, and perhaps higher still.”

McPhee’s investigation also taught that there remains much to be done in the future. “In the end, though, for all of the work that we did, the hardest and most essential work remains. The mission of the survivors, and the ultimate goal of our work was to hold individuals and institutions accountable, yes, but also to affect meaningful change. To make sure that a tragedy like this can never happen again. That imperative remains as elusive as ever. It has been almost four years since Nassar was apprehended. The survivors, with Bart’s help, are still fighting for redress, and for reforms to protect other children from enduring the harms that they suffered. Even as these intensely brave gymnasts have captured the world’s attention, the headlines keep piling up. George Tyndall, Ob-Gyn, at least 400 survivors over a twenty-seven-year tenure at USC. Richard Strauss, 1,500 alleged instances of sexual abuse over eighteen years at Ohio State. Mark Berndt, an elementary school teacher, at least 140 children assaulted during his thirty-two-year tenure. And of course, there is the Catholic Church, where thousands of clergy have been credibly accused of child sexual abuse involving countless survivors.

“Across these cases, similar patterns present and represent. Those who raised early complaints accused of lying or dismissed out of hand. Complaints held close to the vest, treated as isolated incidents, never escalated. Widespread failure of reporting to child protective services and law enforcement. Failed reviews by medical boards, disciplinary committees, and enforcement bodies. In my thirty-plus years now of investigative and enforcement experience, this pattern of failure uniquely, and pervasively attaches to child sexual abuse. So, what is going on? There are, of course, individual bad actors who must be held accountable. And there are of course, in-

stitutional systemic deficiencies, that must be corrected. And there is of course, the stigma of child sexual abuse that silences survivors, and must be overcome.”

ELEVATING THE VOCABULARY

McPhee concluded by reminding the audience, “As trial lawyers, you grapple with cognitive biases all the time in the courtroom. And as successful trial lawyers, you have to be among the world’s experts at figuring out how to identify and overcome them. How to open jurors’ minds to see new facts that they are predisposed not to see or to consider. So, what is it exactly that you as trial lawyers do, and how do you do it? Can we dissect it? Is it transferable? Is it teachable? Are there lessons to be learned from the courtroom? Might they help to inform how to cut through cognitive biases on a broader plane? Might they inform how to build better guardrails, better education and training and compliance programs to allow for systematic interventions?”

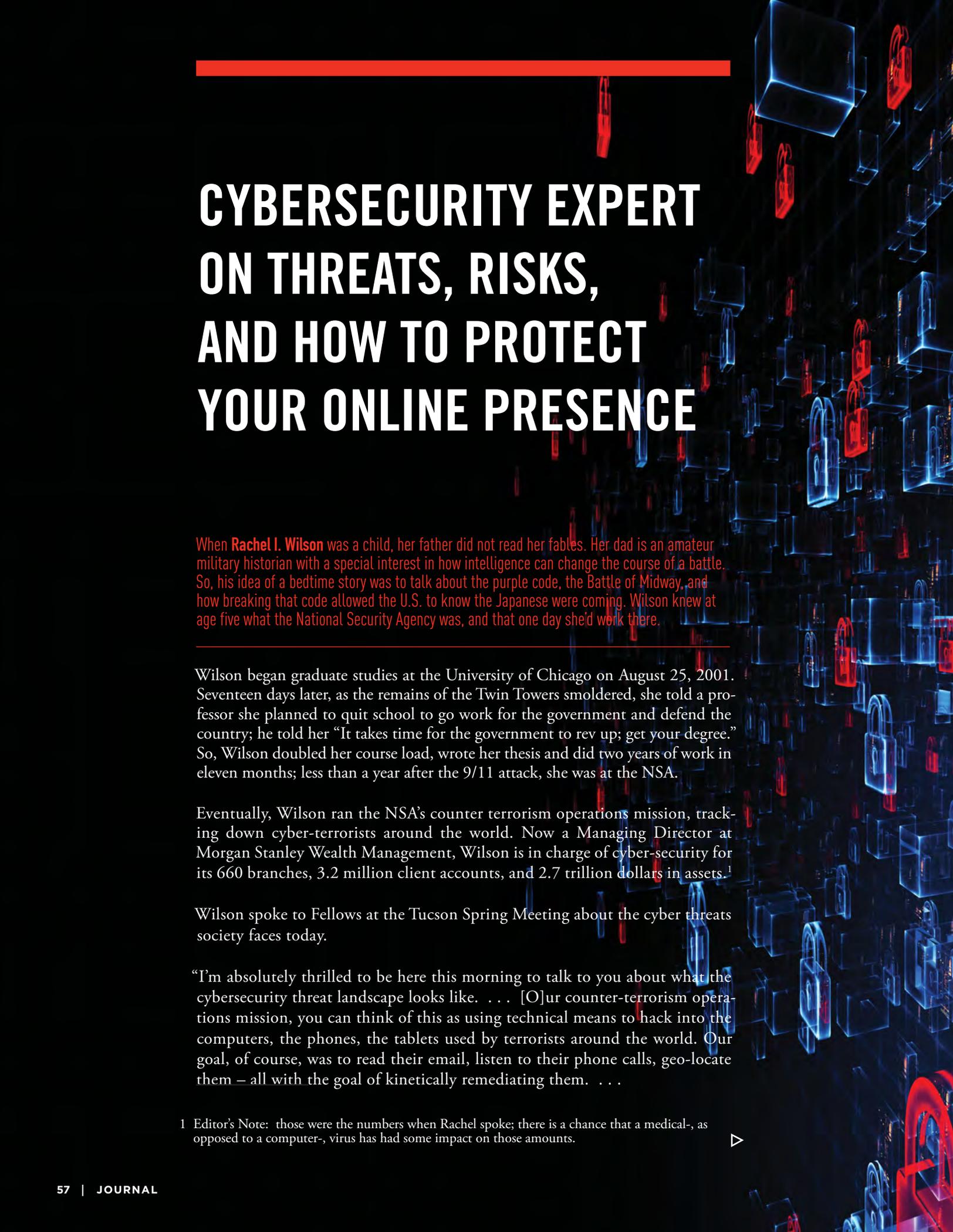
She offered this answer to the questions she posed, referring to the work of Daniel Kahneman, an Israeli American psychologist, in his recent book, *Thinking Fast and Slow*.

“Kahneman expressed a humble goal for his groundbreaking work to enrich what he refers to as the proverbial office water cooler conversation. And to do so by enhancing vocabulary, our vocabulary and the tools available to us to better understand our biases of intuition. With cautious and constrained hopefulness, he offers that in at least some cases, an accurate diagnosis may help suggest an intervention to limit the damage that faulty intuitions, mistaken impressions, and bad judgments all too often cause. So, with the critically important work that you do in the courtroom on behalf of individual clients, and the potential resonance of that work to propel justice and child safety forward on a broader plane, I would urge you to find your way to that water cooler, to help elevate our vocabulary, and the tools at our disposal to better protect our children.”

Bartholomew J. Dalton

Wilmington, Delaware





CYBERSECURITY EXPERT ON THREATS, RISKS, AND HOW TO PROTECT YOUR ONLINE PRESENCE

When **Rachel I. Wilson** was a child, her father did not read her fables. Her dad is an amateur military historian with a special interest in how intelligence can change the course of a battle. So, his idea of a bedtime story was to talk about the purple code, the Battle of Midway, and how breaking that code allowed the U.S. to know the Japanese were coming. Wilson knew at age five what the National Security Agency was, and that one day she'd work there.

Wilson began graduate studies at the University of Chicago on August 25, 2001. Seventeen days later, as the remains of the Twin Towers smoldered, she told a professor she planned to quit school to go work for the government and defend the country; he told her “It takes time for the government to rev up; get your degree.” So, Wilson doubled her course load, wrote her thesis and did two years of work in eleven months; less than a year after the 9/11 attack, she was at the NSA.

Eventually, Wilson ran the NSA's counter terrorism operations mission, tracking down cyber-terrorists around the world. Now a Managing Director at Morgan Stanley Wealth Management, Wilson is in charge of cyber-security for its 660 branches, 3.2 million client accounts, and 2.7 trillion dollars in assets.¹

Wilson spoke to Fellows at the Tucson Spring Meeting about the cyber threats society faces today.

“I'm absolutely thrilled to be here this morning to talk to you about what the cybersecurity threat landscape looks like. . . . [O]ur counter-terrorism operations mission, you can think of this as using technical means to hack into the computers, the phones, the tablets used by terrorists around the world. Our goal, of course, was to read their email, listen to their phone calls, geo-locate them – all with the goal of kinetically remediating them. . . .

¹ Editor's Note: those were the numbers when Rachel spoke; there is a chance that a medical-, as opposed to a computer-, virus has had some impact on those amounts.





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A dream job for me . . . because I got to lead a team of incredibly talented men and women, military and civilian personnel from all across the United States in doing a mission that for us was truly profound. Bringing back what we would call eye watering intelligence, information that was so remarkable that when you thought about the fact that you were going to put it on the President's desk the next morning it brought a little tear to your eye.

Rachel Wilson

“So these really are your American nation state hackers hacking into the networks of our adversaries – the Russians, the Chinese, the North Koreans, the Iranians – stealing the secrets out of their networks, giving them to our policymakers, our war fighters, all with the goal of keeping the United States and her allies safe. A dream job for me . . . because I got to lead a team of incredibly talented men and women, military and civilian personnel from all across the United States in doing a mission that for us was truly profound. Bringing back what we would call eye watering intelligence, information that was so remarkable that when you thought about the fact that you were going to put it on the President's desk the next morning it brought a little tear to your eye.

“. . . Every year they would come to me and say, ‘Rachel, what do you want to do next?’ And I would say, ‘I'm good. Just leave me here, queen of the hackers forever. This is the perfect job for me.’ But after five years, they wanted me to go do a policy job, which really didn't sound like very much fun. And I had decided already that I was going to take what I really see as the next step in my patriotic journey and come to financial services, come to Wall Street. . . .”

QUEEN OF THE HACKERS FINDS A NEW MISSION

“In December of 2012, the Iranians went up against the NASDAQ, the market, and the attacks they conducted were so severe that the NASDAQ actually could not trade. It shut down for multiple days as a result of these attacks. And you can imagine what that was like for those of us in government thinking to ourselves, ‘You know, if the Iranians had been shooting hellfire missiles into lower Manhattan, damn, we would have been doing something

about it.’ But because they were shooting ‘cyber bullets’ at America's banking industry, there really wasn't much we in government could do. And so, it was in that moment that I decided this would be my next phase. . . .

“I would have told you up until probably the second week of January, my greatest source of sleepless nights was without a doubt, North Korea. Why? North Korea, of course is up against staunch international sanctions. They have no domestic economy to speak of and yet they're trying to fund a wildly expensive missile and nuclear program. So how is North Korea doing this? How was North Korea funding their government in 2020? Well, they've essentially made it a plank of their national strategy that they're going to fund their government by hacking into banks and stealing money. It really is. It's your old adage, right? Why rob banks? It's where the money is. . . .

“And what's unfortunate for all of us playing defense is that the North Koreans are very effective with this strategy. They've resourced it at a very high level. Estimates now have it at 7,000 people within the North Korean government who have bank hacking as their full-time job and those ranks continue to grow. . . .

“Also, unfortunate for all of us, the North Koreans are effective with this strategy. Some of you will be familiar with the Bank of Bangladesh heist. A few years back, North Korea successfully hacked into the bank of Bangladesh and made off with close to \$100 million. But what people do not necessarily know about this heist is that the North Koreans were a typographical error away, a spelling mistake away, from that being close to a billion dollars. . . .

“But as I mentioned, North Korea recently slipped to number two on my personal cybersecurity depth chart. Why? It's because we came within a hair's length of going to war with Iran in January. That was probably my most panicked day in this job over the last three years; because the Iranians have long recognized that cyber represents an asymmetric threat. They know that building a nuclear weapon is hard. That sailing

an aircraft carrier into New York Harbor is a decade-long project. But what they have done and what they continue to do is put forty guys in the basement of a building in Tehran and manage to wreak havoc against Wall Street. . . .

“These are criminals. They are using cyber means now to conduct their crimes. This is organized crime in 2020 and what’s fascinating about these cybercriminal syndicate actors is that the trade craft, the tactics that we see them using online for their hacking activities, look a lot like what we expect to see from North Korea, which really baffled us until we thought for a moment about how much those North Korean government hackers are getting paid, right? Next to nothing. Pittance. There’s no money in North Korean government hacking. Now, they certainly are a well-motivated workforce in North Korea because we know the consequences of poor job performance, but they’re not well compensated. So, what’s the perk? What is the bennie to be that North Korean government hacker? Well, it’s that you get to take your cyber toolkit home with you nights and weekends and use it for your own personal betterment. And we see this not just in North Korea, but in Russia, in China, all across Eastern Europe. Hackers that work for their government by day and then work as hackers for hire nights and weekends. . . .

“At a more tactical level, I can tell you banks are experiencing hacktivist attacks every day

of the week. . . . There is a group out there called Money Takers, which you got to love, right? That’s their name. That’s their brand. They are totally unabashed about what they do. They are bank robbers, but they don’t need the mask. They don’t need the gun; they’re simply using cyber means to conduct their crimes. Now, Money Takers, we know for a fact is in the suburbs of St. Petersburg, Russia. They are not sponsored by the Russian government, but of course the Russians are happy to turn a blind eye to this hacking activity because it’s put more than \$150 million stolen from U.S. banks right into the Russian economy. . . .”

DEALING WITH CYBERFRAUD

“What might this cyber enabled fraud at scale look like? Well, imagine a hacker goes out to the dark web, that’s just the part of the internet that’s not indexed. You can’t get there through a Google search. None of you should be worried about accidentally landing on the dark web. Not going to happen, but the hacker goes there because there’s all kinds of nefarious stuff for sale and in this case, he buys ten million credential pairs.

“These are just logins and passwords. These logins and passwords have nothing to do with your bank. These are the logins and passwords that were compromised at the Target breach, the Home Depot breach, LinkedIn, Yahoo, all of



these companies that had been hacked over the last few years. The hacker goes after the database that houses all of the customer logins and passwords, dumps them on the dark web, sells them pennies on the dollar. Why does the hacker want these old logins and passwords from Home Depot? Well, he knows that many of us are victims of that particular form of human frailty that causes us to reuse the same login and password across multiple websites.

“Now, I know the smart folks we have here today, none of you have ever done that, right? I know for a fact from dinner last night that there is a woman in the room today who has been using “kittens25” as her password for every single login for the last decade and last week she added an exclamation point and has decided she is good for the next decade.

“This is not a good approach to be taking because the hackers know that we tend to do this. And so that’s what the hacker’s going to do. He’s going to take those ten million old logins and passwords. He’s going to throw them against your bank’s front door. But how long is that going to take him? . . .

“He goes back to the dark web and rents a botnet; and what’s a botnet? Simply thousands of highly hackable end point devices all over the world. These are your internet of things type devices. They tend to have manufacturer default credentials, which means that I, as the hacker, can very easily script up and attack, have all of these devices do my bidding simultaneously, and that’s what we see. Thousands of devices throwing millions of credential pairs against a bank’s authentication gateway. Now the botnet is not smart, right? All it returns, simple thumbs up, thumbs down. Vast majority of cases, thumbs down. This login and password don’t work for any customer here, but for that non-zero percentage that return a thumbs up, that’s when we see the hacker logging into those accounts, setting up money movements, bill payments, all the kinds of things you would expect to see a traditional fraudster do if they got access to your logins and passwords.

“Now, . . . it’s worth our talking a little bit today as individuals about the security of our mobile devices. So, I’m going to give you a few tips in this space. The first is you want to make sure that you are only downloading apps from your designated app store, not from a third-party app store. You want to make sure you’re only giving those apps the permissions they truly need. I see this all the time. No good will come from giving an app access to your photos if it does not need access to your photos. That ends badly in lots of different ways.

“And lastly, we want to be conscientious about how and where we charge our mobile devices and that means steering clear of openly available car charging cords and USB ports like the ones at airports. This is the Uber driver who says, “Hey, want to charge your phone using my cord?” The answer is always no. You want to stick to your cord, your power supply. And in terms of the risks that I see to all of you in your capacity as lawyers, the two big things that we saw pervasively last year, the first was all around business email compromise. My guess is that most of you in this room have either experienced this or have been on the receiving end of exactly this phenomenon. So, this is where a cyber actor gets access to either your personal or your business email account, reads everything you have ever sent or received and then start sending emails pretending to be you.

“Of course, they’re looking to monetize this access. So maybe they’re sending invoices, maybe they’re requesting hours to be paid back, but in these cases, we’ve seen cyber actors very effectively monetize access to email accounts. The solution here of course, is strong authentication around those email accounts, not relying on simply a login and password to protect them and certainly not using kittens25 as your password for protecting your email.

“The other phenomenon that we’ve seen across the country at law firms last year was around ransomware campaigns and you all have probably read about these because they were the most lucrative form of cyber-attack in 2019. This is where a cyber actor gets into your network,

I tell people all the time, cybersecurity is not about perfection, it's really about not being the sickest gazelle in the herd. So that is my hope. You'll pick the one thing, you'll run faster.

Rachel Wilson

identifies what data, what system, what application you care most about, goes to that data and irrevocably encrypts it. What do you get next? You get a ransom note that says, 'If you would like your data returned, please send us 50,000 in cryptocurrency equivalent.'

"What happens when you pay that ransom? Well, you get another note that says, 'Well, if you'd like any more of your data back, please send us 100,000 in cryptocurrency equivalent. . . .'"

CYBERSECURITY BEST PRACTICES

"So, I'll leave you this morning with a few more best practices, a few things that we can all be doing. Again, I don't have a hope that all of you are going to leave today doing all of the things that we talked about, but I do hope you'll pick one thing. I tell people all the time, cybersecurity is not about perfection, it's really about not being the sickest gazelle in the herd. So that is my hope. You'll pick the one thing, you'll run faster. . . ."

"We want to make sure that we are all keeping our devices, their operating systems, browsers and apps on our phones and on our desktops fully patched and up to date. And what do I mean when I say a patch? These are simply software updates. . . . It seems like Apple is sending us an update almost every week now, and my daughter and I argue about these constantly. She'll look at the update and she'll say, 'Mom, you know there's no new fonts, no new emojis, I can't be without my phone for fifteen minutes so I'm not going to update.' . . ."

"[But] when that patch is released, it is critically important that we go ahead and download it right away because when that patch comes out, we enter into a race condition with the hack-

ers. For us playing defense, that patch is the solution to the security problem we didn't even know we had. But for the hackers, that patch is an opportunity. They'll reverse engineer that patch, discover the underlying vulnerabilities that it mitigates and then work to weaponize those vulnerabilities against those who have not yet patched.

"So, I'll leave you with one last tip this morning. And it's that you consider having a single stand-alone device that you use only for your most high consequence activities. . . ."

Our son, he's going to be fourteen next month. He's a great kid, but he is totally obsessed with online gaming. . . . I would not touch my son's laptop with a ten-foot pole. I would not log into anything on his device knowing how hacked it is. . . ."

"When we moved to New York three years ago, I insisted on three separate WIFI networks in our apartment. One that is for my son's online gaming, our daughter's equally voluminous social media activities. It's for the Alexa and the Google home and the nest thermostat and the smart TV. And that is what we lovingly call the hacked network, right? It's on fire, but I don't care because I would not log in on that network to anything that I cared about, right? Nothing high consequence.

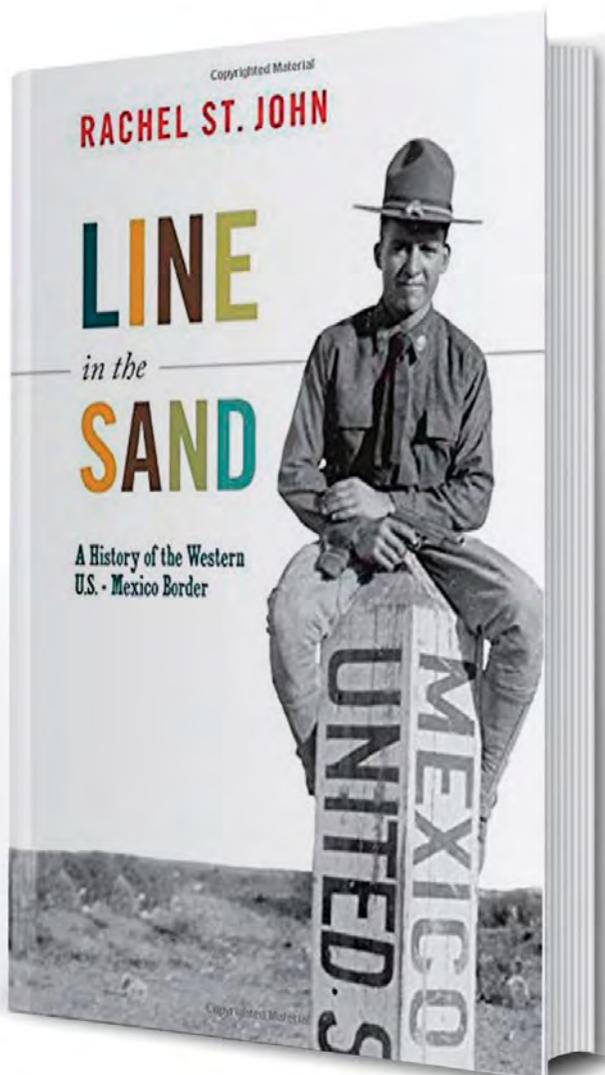
"Second network, completely locked down under a VPN completely only connects to my laptop. That's the only network my laptop ever connects to. And then a third network that is for our guests, because of course I don't trust my guests and you shouldn't either."

Robert L. Byman

Chicago, Illinois

A LINE IN THE SAND SCHOLAR OFFERS HISTORICAL PERSPECTIVE OF THE U.S. – MEXICO BORDER

Dr. Rachel St. John, Associate Professor of History at UC Davis, addressed the 2020 Spring Meeting on the topical issue of the United States - Mexico border. Her area of professional interest is the history of the western United States and, in particular, the western border with Mexico. It is the subject of her book, *Line in the Sand: A History of the Western U.S.-Mexico Border*.



Dr. St. John began by observing that faded documents and old records can have relevance to our daily lives. The documents and records of the location and changes at the border with Mexico are a good example. While politicians on both sides have been talking a lot about the border, few understand its history and are able to put recent events in context. Dr. St. John believes it is important to realize that the border has not always looked as it does today and has not always served the same purposes.

Dr. St. John observed that most people assume the border has always been intended to be a barrier to the movement of people and contraband from Mexico to the United States and seemingly never the other way around. But while the border is seen today as primarily a tool for controlling immigration and drug traffic, this has not always been the case. The border has been many things during its history: a marker of territorial sovereignty, a site of trade, a home to binational communities, a customs and immigration checkpoint, a divide between political and legal regimes and, at times, a battlefield.

The border is inherently a binational space, which the United States, Mexico, and the people who live and move across it have tried to manage ever since the border was established. The physical demarcation of the border is a good tool to highlight the changes that have come to the border during its history.

A BORDER STARTS AS A STONE PILE

The current boundary between the United States and Mexico is primarily the result of a cession of Mexican territory to the United States fol-



Following the Mexican-American War of 1848 and the Treaty of Guadalupe Hidalgo, the treaty added the territories of California and New Mexico to the United States. But some in Washington, D.C. were unhappy with the size of the cession and sent a commissioner to Mexico to purchase more land. They hoped the additional land would allow for the construction of a transcontinental railroad. While authorized to purchase large swaths of northern Mexico, including the Baja peninsula, the commissioner came away with only a small amount of land in what is now southern New Mexico and southern Arizona. That land purchase included, among other things, what is now Tucson, Arizona, and was known as the Gadsden Purchase.

Following completion of the land purchase, Mexico and the United States created a joint boundary commission to travel to the border to survey, map, and mark the boundary line. Despite the difficulties of the terrain, the com-

missioners completed their work but did not leave much behind to mark the boundary. In some places, their monuments consisted of nothing more than piles.



In describing the borderlands, one of the commissioners remarked that the Sahara Desert compared favorably to the sandstorms, lack of water, and barrenness he had encountered during the survey. Another stated that, while

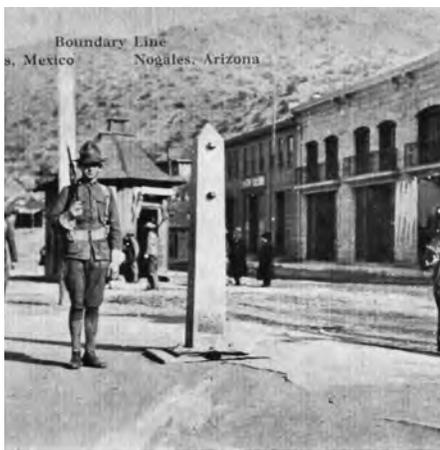
people far removed from the border imagined it to be a perfect paradise, it was in fact a sterile wasteland, utterly worthless for any purpose other than to act as a border or natural line of demarcation between two neighboring nations.

Despite the obstacles, people came to the border and, as they did so, officials realized they needed to mark the border better. Ranchers needed to know whether their cattle were in Mexico or the United States. Soldiers needed to know whether they were operating on their own side of the border. Customs officers needed to know when someone had crossed the border.

By the 1880s, not only were the original monuments insufficient for this more well-traveled landscape, many of them had been destroyed or damaged by the elements or by vandals. In some popular locations, tourists would chip off a piece of a boundary monument to take home as a souvenir. Officials reported in 1892 that ▶

the original monuments were so insubstantial in many locations that by now they were almost obliterated.

Not only were the existing monuments in poor repair, they were often too widely separated to enable people to figure out where the border was. In many locations, the markers were fifteen to twenty miles apart. In one location there was a one hundred-mile gap between markers. The uncertainty was giving rise to disputes among farmers, miners, herders, and others along the border and was making it easy to smuggle goods.



In response to these problems, the United States and Mexico in 1882 established a new joint boundary commission. The first part of its work was to replace the irregular, eroding boundary markers with standardized stone or iron monuments, which were to be placed no more than 8,000 feet apart. In the more settled areas, they surrounded these new monuments with iron fences to protect them from damage.

Now that the border was better marked, officials discovered a new problem. People had come to the border and had built homes and businesses right up to and sometimes on the border line itself. This made it difficult to distinguish between U.S. and Mexican space. In Nogales, a binational town located on

both the U.S. and Mexican sides, one enterprising resident built a bar half in each country. He could then sell U.S. whiskey to Mexicans without paying duty and Mexican cigars to Americans without paying duty. Officials from both countries decried this lawful evasion of customs duties, so they came up with a new plan. They recommended that the governments create a clear space of at least fifty feet on either side of the line. In 1887, President McKinley actually ordered a sixty-foot clear space, but, at least initially, only in the town of Nogales.



This was a great shock to the residents of the two Nogales. Many homes and businesses had been built in the new reserve strip, including the town railroad station. Residents were given just ninety days to remove themselves and their buildings.

As new border towns came into existence, a strip was cleared in them as well, usually by local authorities, to facilitate their efforts to keep the peace and control the border. In 1907, President Teddy Roosevelt extended the clear space for the entire length of the western border from El Paso to San Diego. This resurfacing of the borderline allowed the nations to claim the border as a space of government surveillance.

The events of the 1910s persuaded government officials that they must do more. The Mexican Revolution began in 1910 and was followed by World War I. Throughout the decade, changes came gradually. On the border, war meant violence. In a number of cases, full-scale battles erupted in some of the border towns. As a result, there were problems with economic and social dislocation, increased suspicion and hostility between Americans and Mexicans, and a range of new border crossing regulations.

FENCES BUILT FOR CATTLE, BINATIONAL SPIRIT

These also led to the construction of the first border fences that government officials built with the intention of controlling human movement. While there had been many fences along the border before, they were actually cattle fences. This fact is often disappointing to reporters who want to tell stories of early fences keeping out immigrants. One of the first long fences was one of barbed wire built between California and Baja California to enforce a quarantine on Mexican cattle, which were suffering from a dangerous epidemic. In fact, for most of the twentieth century, most border fencing was cattle fencing.

However, by the 1910s, U.S. officials began to turn to fences to control the movement of people. Concerns about gun running and international intrigue prompted new restrictions on movement. Suddenly, there was an acute need to channel crossings into just a few locations where they could be more easily overseen by government inspectors and soldiers. Dr. St. John likes to think that the officials were more interested in clearly designated gates than fences but, by building fences, were able to channel traffic into these gates.

Interestingly, these fences were not usually ordered by Washington, D.C. or Mexico City. They were usually thought of as temporary wartime measures and were the result of a series of ad hoc and independent decisions made by Mexican and American officials along the boundary line itself.

Some fences were erected to keep the Mexican revolution on the Mexican side of the border. Americans sometimes went to the border fence to watch the battles occurring on the other side. For example, at the Battle of Naco in 1914, American soldiers placed American flags along the boundary line so Mexican combatants would know where the line was, so the battle would not spill over into the United States.

Both Americans and Mexicans built boundary fences. In August 1918, the presidente municipal (mayor) of Nogales ordered a six-foot high wire fence parallel to the boundary line to be built in order to force traffic into two crossing points. He suggested that it would be a good idea for the Americans to do the same and that it would not offend Mexican sentiment were they to do so. These fences were erected in the spirit of good fences make good neighbors. They had a binational spirit to them.

Unfortunately, the Nogales fence did not prevent problems. Shortly after it was built, an unidentified border crosser failed to stop when ordered to do so. The confrontation escalated and American and Mexican troops fired at each other across the border. At least twelve people were killed, including the presidente municipal. Rather than conclude that the fence was not such a good idea, the U.S. doubled down and built its own fence in Nogales.

Following the Nogales experience, in 1919 the U.S. government built a fence between Calexico and Mexicali after U.S. soldiers shot and killed a Mexican man crossing the border. In that case, the soldiers were so unsure of the location of the border that they had to bring in an engineer to determine if the man had been killed in the United States or in Mexico. Following this unfortunate incident, the governor of Baja California asked the U.S. government to build a fence along the border there. Rather than being antagonistic structures, these fences were intended to be cooperative measures that both governments embraced in the hopes of ameliorating the dangers of wartime crossings.

The border fences were intended to be alternatives to military force. However, once these fences were put in place, they began to be used by the government in many ways. Over the last three decades, they have very much become part of a militarized response to migration.

While the original cattle fences were barbed wire, by the 1940s the U.S. government began to build more chain link fences. The original border fences had been intended to channel people into specific crossings. The newer fences were intended to force would-be illegal crossers into more and more remote and hostile areas where it was believed it would be more difficult for them to cross.

The creation of people barrier fences increased dramatically in the 1990s. Barrier fences became actual walls. By 1998, the length of border barriers in the San Diego sector had increased from about nineteen to forty-five miles. After the September 11 attacks, Congress, with widespread bipartisan

support, passed the Secure Fence Act of 2006. Built at a cost of billions of dollars, this so-called border fence was in fact a patchwork of physical and technological barriers. It included parallel lines of steel mesh with concertina wire on top, cyclone fences, Normandy barriers, vehicle bollards, and an array of surveillance technologies that create a virtual fence.

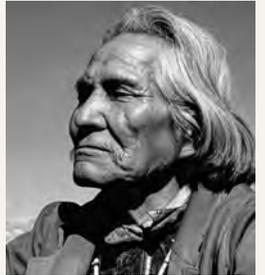
Even before the work was completed, policymakers discovered that these barriers were not necessarily the best approach. In many cases, they were too expensive. They caused problems with landowners and with the environment and they were not the most efficient way to regulate trans-border movement, especially at a time when most migrants were entering the United States through airports and most undocumented people in the United States had simply overstayed their visas.

And yet just ten years later, President Trump was elected at least in part on a pledge to build more border barriers, calling now for a wall in addition to the fences that already exist.

Dr. St. John ably summarized her own remarks in her final few sentences: "Fences first emerged on the border to control the movement of cattle and as a local response to short-term military emergencies. Local officials once hoped that good fences would make good neighbors. Today, border fences have become both symbols of division and structures that are integral to the militarization of government responses to the political demand for border control. They have become part of a pursuit, at least in terms of political rhetoric of a mythic controlled border that has never existed."

William A. Sandweg III

Phoenix, Arizona



Photographs by Barry Goldwater. Courtesy of the Barry and Peggy Goldwater Foundation.

A PICTORIAL HISTORY OF ARIZONA

THE BARRY AND PEGGY GOLDWATER FOUNDATION

Barry Goldwater is probably best remembered as a politician. A member of the family of merchandisers who founded the Goldwater's chain of department stores, Barry's fellow Arizonians elected him to the U.S. Senate five times. He was an outspoken fiscal conservative, credited with the book *Conscience of a Conservative*, written in 1960 before he ran for President in 1964 and was defeated by Lyndon Johnson.

But there is much more to know about Barry Goldwater. He was an avid photographer. Although an amateur, in the sense that he didn't retail his photographs, he was enormously talented. His long family history and prominence in Arizona provided him unparalleled access to the indescribable scenery of Arizona and its native people, including the ancient nations of the Hopi and the Navajo. Senator Goldwater created thousands of photographs and miles of film that provide a priceless record of the history and culture of the Southwest United States.

One person had the vision, initiative, and ability to assemble, preserve, protect, and present this photographic treasure, **Alison Goldwater Ross**, Senator Goldwater's granddaughter. In 2006, she began sharing some of her grandfather's work in various museums around the Southwest. Aware that time, moisture, and heat would all too soon destroy the original photographs and film, Alison set out to conserve them through digitation. In 2017 she established the Barry and Peggy Goldwater Foundation to manage and preserve the collection.

The vivacious and enthusiastic Ross commenced her remarks during the 2020 Spring Meeting by saying:

"Well, this is an honor, and this is chili. I will put it up here just to do some branding."

The family had sold Goldwater's to Associated Dry Goods Corp. in 1963; Associated was acquired in 1986 by May Department Stores, which operated nine Goldwater's locations throughout the Southwest, including Phoenix, Tucson, Albuquerque, and Las Vegas, until it rebranded the stores in 1989. At that point, the family reacquired the Goldwater's logo, to use in Goldwater's Foods. Ross brought gift bags for the entire audience that included a box of "The Senator's Chili." [Editor's Note: we made our gift; it was delicious.]

Ross continued, "Many of you knew my grandfather as a politician. You might not know he was a Ham Radio operator. He was a Renaissance man. I want to first give you a quote that

I absolutely love. It was, 'If I ever had a mistress it would be the Grand Canyon.' And that was surely true with my grandfather. His love affair with the Grand Canyon started at the age of seven, and that was in 1916. He was born in 1909, before Arizona was a state. It was still a territory. And he was madly in love with the Grand Canyon." She estimated that he probably took at least 10,000 photographs of the Grand Canyon itself.

Ross explained that to understand Barry Goldwater one should start with the Goldwater, or Goldvases, family history. Barry's grandfather, Big Mike Goldwater, came from Konin, Poland in 1837 at the age of sixteen. He went to Paris, then London where he met and married his wife Sara. Then they traveled to New York, through Panama to San Francisco to follow the gold rush. Big Mike ended up owning a sa- ▶

loon with his brother, Little Joe. “Big Mike was called Big Mike because he was six foot three. I wish I had gotten that gene but that just passed right over me.”

After the gold rush came to an end, the family moved to Los Angeles, where Baron Goldwater, Barry’s father, was born. At that time, the family business was “schlepping” goods by covered wagon across the desert to Arizona. People would make an order and a year later the goods would be delivered. Over time the Indians learned to leave the covered wagons with the Goldwater Signature on the outside alone so they could haul their goods to the pioneers.

Baron Goldwater was conducting the family business in Phoenix when he met and married Hattie Josephine Williams. “She was diagnosed with TB and didn’t want her parents to know. So, she told her parents that she was accompanying a patient. She was actually a nurse at... She got her nursing degree in Illinois. She was accompanying a patient out to Arizona where they had the TB camps out there. But really, she thought she had TB. So, she hooked a ride on trains and just got out here by herself and it ended up that she didn’t have TB, but she became a nurse in Arizona as well and helped out at the camps.”

Josephine was a real pioneer and taught her children to enjoy the outdoors because she was an outdoors woman. But the oldest child, Barry, was into everything. He built his own ham radio in high school in Phoenix and started taking pictures with his mother’s brownie camera.

Barry met his wife, Margaret “Peggy” Johnson, when he was running Goldwater’s Department Store. He had dropped out of college when his father died, (during his sophomore year). Peggy was from Muncie, Indiana, and her parents were owners of Borg-Warner. The Johnson family spent the winters in Arizona; her parents met Barry and told him “you have to meet our daughter,” and the marriage followed. Barry and Peggy took a lot of camping trips and later took the children on many camping trips in Arizona.

Throughout their lives together, Barry Goldwater continued to take pictures of Arizona and its people. Ross recounted: “He took 15,000 pho-

tographs that are now based at ASU, the Heard Museum, U of A, and we have the personal collection and he took twenty-five miles of motion picture film. So that’s what I’m dealing with right now, which is a complete pleasure. And I’m very honored to be doing this. So, in 1940, he went down the Colorado river. The trip was 1,400 miles and it took forty-seven days... And so, he also took a film, a color film, of that river trip which I’m trying to digitize at this point as well. And that’s an amazing film from 1940. So, after that river trip he ended up going to war and that was 1941... After he filmed that trip down the Colorado river, he went around the state of Arizona, and would show the river trip to anybody who would want to see it. And of course, people all wanted to see the Colorado river trip and that’s really how he got his notoriety within the state of Arizona, which actually launched his political career because everybody knew who he was. His last trip that he took I went down with him in 1993 down the Colorado River.”

Ross showed attendees a five-minute video about the Foundation [it can found at this link <https://goldwaterfoundation.org/wp-content/uploads/2018/12/newbarryvideo.mp4>] which include an explanation of the collection by the photographer himself. “I’m trying to record the history of my state, so that students twenty-five, fifty, 100 years from now can find a picture, say of Pipe Spring, Arizona or if they’re interested in Indians, they can look at my photographs of Indians as they were. And that’s the whole purpose of it.”

Ross explains, in the video, “what I am setting out to do with the Foundation, I am fulfilling his wishes. His wishes were to document Arizona and show the beauty of the landscape and the people, which he did, I think, quite successfully.”

Senator Goldwater stated in the video, “When I was born in Phoenix, Arizona, when it was a territory, there were 10,000 people living in the whole area. Those are the changes. You see a small village and then come back to it now and it’s a big town or a big city and it’s interesting to look at pictures. I think one I took from a dirigible back in the 1930s of Camelback Road, one of our most famous roads and there was

nothing on it. It's a dirt road with orange trees and now there's nothing on it but twenty-story buildings and those things are interesting to look at."

The video continues with this statement by Robert Stieve, Editor, *Arizona Highways*. "Although Barry Goldwater is best known as a politician, a man who dedicated his life to Arizona, he might've been even more passionate about his photography. He was one of our first and most important photographers. He was a contributor for many decades and we still use his photographs today. We use them of course because they're spectacular photographs, but also because they're historically significant. In addition to being a master technician and having a photographer's eye, Mr. Goldwater had access to places that were typically off limits to most photographers, including the Hopi and Navajo Nations.

"He was allowed into those places because he built relationships with the people. He respected them and they respected and trusted him and as a result he was able to make photographs of people, places and things that in many cases had never been seen before. His photographs are some of the most beautiful we've ever published in *Arizona Highways* and also the most important."

The technical effort of the Foundation is further explained in the video. "Since the early twentieth century, film negatives in later slides were made of cellulous acetate, which is a plastic. Over time exposure to moisture, heat, and acids caused deterioration. There is no practical way of halting or reversing this process other than digitizing. The foundation's goal is to work quickly to preserve these important and priceless images before they crumble and turn to dust. It is imperative for us to protect the collection before these images of our history disappear forever."

Stieve concluded, "Whether or not he knew it at the time, Mr. Goldwater was documenting history for future generations."

Seth Hopkins, Executive Director of Booth Western Art Museum of Cartersville, Georgia added, "In my work with Booth Western Art



Museum, I've had the opportunity to work with Senator Goldwater's photography in two different exhibitions. It was interesting we were able to draw on the foreword to the book on Goldwater's photography in which Ansel Adams said he regarded Goldwater to be a very talented and eager photographer. One who also had shot images of historic and interpretive significance, something that he thanked the Senator for and encouraged other people to support. I think it only fitting that perhaps Senator Goldwater's legacy in photography wind up in his home state of Arizona."

The video concluded with this statement of mission, "The Foundation's mission is to preserve and curate the Goldwater photo archives, create exhibits, and develop educational platforms in efforts to promote Arizona's cultural heritage."

And Ross concluded, "It's really important that we don't let this go away forever. We need to really save this history and that's my mission. That's what I'm doing."

After her presentation, President Young commented, "Alison, you have told so much about your grandfather that we did not know. We knew him as a politician, but we did not know his love of photography, nature, and the Native Americans that grace this great state. He was a great man. He was from a great state. And we're honored to have our meeting in a great state. So, thank you so much for your presentation."

Mikel L. Stout
Wichita, Kansas



INDUCTEE LUNCHEON REMARKS — PAST PRESIDENT CHILTON DAVIS VARNER

Chilton Davis Varner was President of the College in 2012-2013. At the luncheon welcoming the new inductees who would be admitted to Fellowship that evening, March 7, 2020, Chilton described the process that brought them there. Her abridged remarks follow:

“Good afternoon and welcome to the College!

“When I first joined my law firm of King & Spalding as a freshly minted lawyer, I came in one morning to find the litigation floor all atwitter. ‘What’s going on?’ I asked. ‘Did someone get a big verdict?’

“‘Oh no,’ came the reply. ‘Much better. **Byron Attridge** has just been invited to join the American College of Trial Lawyers.’ Byron was the leader of our firm’s litigation practice. He was forty-three years old. He was a respected and well-known trial lawyer in Atlanta. Still confused, I asked a senior associate, ‘What the heck is the American College of Trial Lawyers anyway?’ The response came enthusiastically: ‘Just the most prestigious honor you could ever earn as a trial lawyer: the College selects only the very best in the courtroom, and you can’t even apply or campaign to get in. They have to ask you.’ The whole litigation floor was proud that day, and even we fledglings felt a little reflected glory from Byron. I decided then and there that membership in the College was the capstone for any trial lawyer, and that I would work as hard as I could to be worthy.

“That was a long time ago, but some important things stay the same. The College remains today the most prestigious honor any trial lawyer can receive, and you still can’t campaign to get in. So let’s talk about how you did get here.

“It began with your hard work of trying cases. You’ve been doing it for at least fifteen years, because that’s a prerequisite. The College limits its membership to no more than 1% of the lawyers in any state or Canadian province. Well, the limit may be 1%, but in virtually every jurisdiction, the number of Fellows is a very small fraction of 1%. For more than seventy years now, the College has inducted only the very best trial lawyers on this continent. We have ensured that we pick only the best of the best by an extraordinary selection process that the uninitiated can scarcely believe.

So you were noticed. [Chilton went on here to describe in detail the process by which candidates for Fellowship are vetted – a process which is highly confidential that requires redaction. But suffice it to say . . .] “. . . , to quote **Past President Greg Joseph**, I think the conclusion you can reach from all of this is that you may actually approach being as good as you think you are.

“Being a courtroom lawyer is one of the most demanding vocations. Ever. It requires multiple skills, solid judgment, physical endurance, and a certain degree of likeability, so juries won’t mind helping us out. The hours are long, the pressure is ever-present. The buck stops with the first chair trial lawyer. And virtually none of us in this room could have made it here without the greatest understanding, tolerance, and support from those closest to us. So, let me speak for a moment directly to the spouses, partners and guests who are here. The lawyer with whom you entered this room has survived the toughest individual scrutiny any lawyer will ever see. His or her ability has been scrutinized over an entire career and

measured against the finest lawyers in North America. Your lawyer has been found to be at the pinnacle of our profession. He or she has, in case after case, welcomed the most significant responsibility and shown, over and over, that no test is too severe. Your lawyer’s dedication to excellence has never wavered. Your lawyer’s integrity and ethics have been found to be beyond reproach. Judges, competitors, friends, and adversaries have told us your lawyer stands above all the rest. So, we salute today not just the inductees, but you partners as well for your indispensable contribution to the success of this day.

“Before we close these proceedings, let me say that we hope today is a beginning, not an end. The College is busy with so much valuable work: rulemaking, education, reform, finding the best new members for the College – the list goes on and on. When I was inducted, I had a visit from my mentor and law partner **Griffin Bell**, who served as Attorney General under President Carter and who also was a President of this College. Judge Bell told me with the greatest solemnity to get involved with the work of the College. He reminded me that so many had worked so hard to get me into the College. He said that I would let those folks down, if all I did was to hang my plaque on the wall and attend a meeting once or twice. So I urge you to find one of the College’s many initiatives that arouses your interest and your passion – join it, and help us make our profession and our system of justice better than we found it.

“All of this good work goes on in an atmosphere of collegiality – a characteristic that fundamentally sets the College apart. To borrow from one of our former speakers, Ashby Pate, we in the

College are an engine of human connection. On one of my travels for the College, I heard **Former Regent Brian O’Neill** tell his Minnesota colleagues that wherever he went, he found College Fellows to be the best lawyers, the most respected lawyers and HAPPIEST lawyers in their communities. Brian was right. In this day and time, it is no small accomplishment to bring together in one organization the happiest lawyers in America and Canada, lawyers who still love what they do and want to be the best at it. Now THAT is something worth preserving. Let me quote another Fellow. **Judge Bill Kayatta** of the First Circuit Court of Appeals – who was on the College’s Board of Regents when he was appointed to the bench – once told me that the College – with its unabashed commitment to excellence and collegiality and our sheer joy in the pleasure of each other’s company – is perhaps the last barricade in a world where legal practice seems determined to drift toward gray mediocrity. That’s NOT for us.

“After all those seventy years, one still cannot politic one’s way into the College. One cannot purchase admission to Fellowship. One cannot seek it. One must simply earn it and then wait to be asked. What an inestimable honor we all have been given! Induction into the College is truly a blessing pronounced upon a career well-served, a profession accomplished, a life well-lived. To the inductees I say this: we know so much about you in every dimension. Precisely because of that knowledge, we can say, with the most profound pride, respect, and confidence, WELCOME to our revered Fellowship. And we challenge you to make us better.

“Congratulations to you all!” ■



RESPONSE ON BEHALF OF THE INDUCTEES – ASHOK RAMANI

Ashok Ramani is a 1998 *cum laude* graduate of Harvard Law School and a *magna cum laude*, Phi Beta Kappa graduate of UC Berkley. After a year at Latham & Watkins, Ashok clerked for Henry H. Kennedy Jr., U.S. District Court, District of Columbia. He returned to San Francisco in 2000 as an associate at Howard, Rice, Nemrovski, Canady, Falk & Rabkin; in 2003, he moved to Kecker & Van Nest; and in 2018, he moved to Davis Polk, where he is Head of the firm's IP Litigation practice. Ramani gave the response on behalf of the ninety-two new Fellows inducted at the Spring 2020 Meeting.

“January 10 started off like any Friday. I was at work preparing for a trial that was starting the next Monday. I was fiddling with my opening statement and working on a cross and so I asked my assistant to kindly screen my calls, only let in the important ones. So, I’m working away before you know what she ducks her head in and she says, ‘I’m sorry to bother you. This is important. You’re getting a call from Doug Young and he said it’s about the American College of Trial Lawyers.’

“My heart sinks. This was about three months after I received the call out of the blue that so many of you may remember when you received it saying that I was being nominated for induction. I figured at that point they must’ve made a mistake. The only thing I had in my favor is there aren’t that many Ashok Ramani’s in this game. So probably it wasn’t just a John Smith situation.

“But here I am getting this call and I figure, ‘Oh man, it took them awhile to figure it out.’ So, I had known Doug and so they were going to have Doug reach out to me and set things right. So, with a heavy heart reach for the phone, pick it up, and Doug, to my surprise, doesn’t tell me what I expected. Instead, he says that he wondered if I would be willing to make this inductee address. I was flabbergasted.”



Doug asked Ramani to make the address about the entire class.

“That’s my mission this evening. To tell you just a little bit about myself, but much more than that to help introduce you to what I think of as a really rich tapestry of the spring 2020 inductee class.”

He began with a disclaimer. “There are so many of us. I’m on a strict clock. There are only so many folks in so many vignettes I can weave in.” But then he proceeded to his loom.

“There are four common threads that I see in this tapestry of a class. The first is that this is a class of firsts. . . . There are many folks in the class who are the first lawyers in their family. I count myself among that number. I’m the son of immigrants. My parents came to the United States from India. In fact, my dad was born in Rangoon when it was still part of India under

the British Raj, right around the time of hostilities in World War II. . . . So, I’ve been raised from the very beginning to think that every day is a good day and America is a wonderful, wonderful country.

“Beyond just first lawyers though there are a handful of inductees in this class who are the first in their family to attend college, let alone law school. We’re also graced with the first African American head of a County Bar Association, the first African American female State Bar Foundation President. The first native American and female elected Commonwealth Attorney. . . . We have the first female public defender of a large Midwestern city. We have the founder of her States Women’s Trial Lawyers Conference, which I’m happy to report, continues to grow in membership year over year. And then I don’t think this is a first, but hear me out, we have one self-identifying hillbilly in our group. ▶

“Now, just from what I’ve been able to gather over the past two days, he’s not the only one. I know that. However, I do think you will be hard pressed to find anyone else who can claim in this person’s words to have whiled away as many thousands of billable hours up in a duck blind going duck hunting.

“And then finally on this topic of firsts, I think it’s fair to say in our class we have the first inductee who opposing counsel, I think half-jokingly referred to as Dr. Von Doom.”

Ashok moved to his next common thread, that this is a class of competitors. “. . . On the athletic side, I fancy myself something of an athlete; I lettered in a couple of sports in high school, try to stay fit, play a really good game of Connect Four.

“But the rest of my inductees really put someone like me to shame. We have a bushel of former college athletes among the inductees, including an Ivy League Football Conference champion, who when his NFL dreams weren’t to be, turned to this gig as a wonderful backup as it turned out. We have a dozen marathoners, and, of course, with a group like this, you can imagine how many of them decided they needed to share their personal best down to the second. We also have several triathletes, including a couple of Ironman finishers. We have one inductee who has completed a mountain bike race lasting a full week across the Rockies. One inductee who has two black belts in Tae Kwon Do and Tai Chi, two very different arts. We’re going to definitely keep that person’s identity anonymous as long as we can. Just so all of you won’t mess with any of us until you learn.

“We have another inductee who raced up fifty floors in nine minutes and nine seconds for charity. We have amongst our number an Adirondack Forty-Sixer; this inductee has reached the peak of all forty-six Adirondacks that are at least 4,000 feet high. . . .

“We have a McDonald’s All-American band member who proudly played the tuba in Madison Square Garden. We have a recently published author whose agent describes this inductee’s work as border noir. So, crime fiction set on the U.S.-Mex-

ico border. We also have a couple of actors – and acting is about as competitive an endeavor as one can encounter. One who was cast in two movies, including the *Thomas Crown Affair*, and another who was an extra in *National Lampoon’s Vacation*. . . . Unfortunately, this inductee’s scenes hit the cutting room floor, but if you remember, there’s a scene where Christie Brinkley waves to Chevy Chase standing next to a Lamborghini. The inductee’s dad was next to Christie Brinkley.

“There’s one vignette that brings these two threads of firsts and competitors together nicely. And as I think many people in this room will appreciate, it’s about golf. So, this one inductee, this inductee took up an interest in golf when nine or ten years old. The inductee’s father was delighted and rushed to sign up for a local father-son golf tournament. To the father’s surprise they won, and they got a trophy with their names engraved on it that had its prominent place on the family mantle for some number of years. This inductee then went on to make the high school golf team and play in the County and State championships.

“You may be wondering why I’m bringing this up. We should harken back to Judge Breyer’s comments about assumptions. This inductee was a girl. She picked up golf. Her father signed her up for the father-son tournament that they won and, in her words, her tried and true conservative father signing up for that was almost radical. And then she went onto the state championships and blazed the trail for others who came after her.”

Ashok continued to his third thread. “In looking over all the submissions from the inductees, every one of us has had a spouse, a partner, a parent, a sibling, a good friend, a mentor, someone to stand with us along the way as we made this journey.

“In my case, it’s my wife Sangeetha, who’s an accomplished lawyer. She’s general counsel of a startup company. I’ve had the privilege in my career of learning at the feet of some of the greatest trial lawyers in this country, including several Fellows, prominent among them, John Kecker and Bob Van Nest. But my wife Sangeetha gave me the best career advice I’ve received to date. She came and she observed one of my early argu-

ments maybe nineteen years ago, and I asked her how I did. And she said, ‘The substance was okay.’ By the way, those of us who are in long-term relationships, we’re used to that kind of hard grading. But then she said, ‘But why do you have to go putting on airs? Why don’t you just be yourself?’ And that really struck a chord in me then and over time I realized just how profound that advice is and how many lawyers go through their careers never realizing its importance. So, Sangeetha, thank you.

Ashok identified his final common thread: giving back.

“There are of course the number of inductees who have decided to devote their entire careers to public service. And for that all of us are grateful. There are also several inductees who before they went to law school and some while they’d been lawyers have served in the military to keep us safe. And we all thank you very much for your service. But for those of us on the private side and who have stayed private our whole careers, we try and do our part. One of the inductees is the pro bono coordinator for the inductee’s large national law firm. And that might not sound like much, but it has a significant impact because this inductee ensures that hundreds of lawyers all around the country more than meet their commitments to do pro bono work and give back to their communities. There’s another inductee, even though he was a civil trial lawyer, who volunteered to be deputized to prosecute the notorious LDS leader, Warren Jeffs.

“ . . . Finally, there’s one inductee who . . . observed that there was a local family that was having trouble making ends meet and so very quietly without any fanfare, without taking any tax deduction, this inductee would take an envelope with cash and deliver it to that family every month, year over year just to make them help ends meet.”

Ramani concluded: “I’m honored to stand with this fine group, and I can speak on behalf of them that we are humbled and grateful to be invited to join your fellowship.”

Well, no, he wasn’t quite concluded. He had a postscript. “At 5:00 PM today in our room, I went to our closet, and realized I didn’t have a tuxedo. Yet here I am a couple of hours later wearing a tuxedo. You might wonder what happened. There are three people who deserve the credit. One is my intrepid wife Sangeetha. When I told her look, I’ll just wear shorts or a suit and make it a funny joke out of it but she wouldn’t let me do that. She found a local Men’s Wearhouse; so, person number two, George Zimmer, founder of the Men’s Wearhouse, I have to give my thanks to him for having his store open and having a tailor there who could hem pants in on such short notice. And then the third person who I have to thank is Mike O’Donnell, also known as Big Mike. As I was running, racing out into the lobby trying to get a Lyft or an Uber or a cab. There was a fifteen-minute wait and I was really tight on time. And so, Mike pulls up in his car, gets out, chats with the valet and I tell Mike, ‘Hey Mike, I need a big favor. Can I borrow your car?’ Now keep in mind, Mike had just met me maybe two or three hours beforehand, but he without hesitation said ‘Absolutely.’

“ . . . So why am I telling you this story? Well, one, I want all of you to know that you’ve invited an idiot to join your ranks. But, two, and more seriously, I and my fellow inductees have observed the great collegiality and spirit of fellowship amongst all of you just over the last two days. And Big Mike really embodied that in what he did. So Big Mike, thank you very much. I owe you a lot and on behalf of our class, thank you all so much.”

A story about common threads; and about formal threads. Well done, Ashok. ■



92 NEW FELLOWS INDUCTED AT THE 2020 SPRING MEETING IN TUCSON, ARIZONA

ALABAMA

Montgomery
Kendall Dunson
Beasley Allen

ALASKA

Anchorage
Kimberlee A. Colbo
Hughes White Colbo Wilcox & Tervooren, LLC

ARIZONA

Phoenix
Richard S. Plattner
Plattner Verderame

ARKANSAS

Fayetteville
Christy Comstock
Wales & Comstock

Little Rock

Scott H. Tucker
Friday Eldredge & Clark LLP

CALIFORNIA - NORTHERN

Menlo Park
Ashok Ramani
Davis Polk & Wardwell LLP

CALIFORNIA - SOUTHERN

Irvine
Reuben Camper Cahn
Keller Anderle LLP

Los Angeles

Luke L. Dauchot
Kirkland & Ellis LLP

Christopher E. Faenza
Yoka & Smith LLP

CALIFORNIA - SOUTHERN (Cont'd)

Los Angeles (Cont'd)
Luis Li
Munger, Tolles & Olson LLP

Rahul Ravipudi

Panish, Shea & Boyle, LLP

Manhattan Beach

Raymond L. Blessey
Reback, McAndrews & Blessey LLP

San Diego

Marc Carlos
Marc Carlos Law, A.P.C.

Paul J. Pfingst

Higgs, Fletcher & Mack LLP

Santa Monica

Geoffrey S. Wells
Greene, Broillet & Wheeler, L.L.P.

COLORADO

Denver
Timothy R. Macdonald
Arnold & Porter

Jack R. Sperber

Faegre Drinker Biddle & Reath LLP

CONNECTICUT

Bridgeport
Robert O. Hickey
Ryan Ryan Deluca LLP

West Hartford

D. Lincoln Woodard
Walsh Woodard LLC

DISTRICT OF COLUMBIA

Washington
Brandi J. Harden
Harden & Pinckney PLLC

FLORIDA

Orlando
Vincent A. Citro
Law Offices of Horwitz & Citro, P.A.

ILLINOIS - UPSTATE

Chicago
Mark M. Burden
Donohue Brown Mathewson & Smyth LLC

Mark E. Ferguson

Bartlit Beck LLP

Brian D. Sieve

Kirkland & Ellis LLP

INDIANA

Highland
Daniel B. Vinovich
Hilbrich Law Firm

IOWA

Cedar Rapids
Kimberly K. Hardeman
Lederer Weston Craig PLC

Des Moines

Valorie Wilson
Des Moines Adult Public Defender's Office

KANSAS

Kansas City
Melanie S. Morgan
Morgan Pilate LLC

KANSAS (Cont'd)

Wichita
Holly A. Dyer
Foulston Siefkin LLP

KENTUCKY

Edgewood
Robert B. Cetrulo
Cetrulo Mowery & Hicks

Lexington

John G. McNeill
Landrum & Shouse LLP

Lou Anna Red Corn
Office of the Fayette Commonwealth's Attorney

Ashley W. Ward

Stites & Harbison PLLC

Louisville

Rod D. Payne
Boehl Stopher & Graves, LLP

LOUISIANA

New Orleans
John Jerry Glas
Deutsch Kerrigan LLP

MAINE

Bangor
Edward W. Gould
Gross Minsky & Mogul, PA

Lewiston

Benjamin R. Gideon
Berman & Simmons

Portland

Thomas S. Marjerson
Norman, Hanson & DeTroy, LLC

Darcie N. McElwee
US Attorney's Office, District of Maine

MARYLAND

Baltimore
Philip M. Andrews
Kramon & Graham, P.A.

Kelly Hughes Iverson

Goodell, DeVries, Leech & Dann, LLP

Greenbelt

John Chamble
Federal Public Defender, Southern Division of Maryland

MASSACHUSETTS

Boston
John F.X. Lawler
Prince Lobel Tye LLP

Springfield

Nancy Frankel Pelletier
Robinson Donovan, P.C.

MICHIGAN

Marquette
Karl P. Numinen
Numinen DeForge & Toutant

MINNESOTA

Minneapolis
Jeffrey S. Paulsen
U.S. Attorney's Office

Saint Paul

Karen J. Kingsley
Kingsley Law Office, PA

MISSISSIPPI

Ridgeland
Andrea LaVerne Edney
Butler Snow LLP



MISSOURI

Kansas City
Charles C. Eblen
 Shook, Hardy & Bacon L.L.P.

Martin M. Meyers
 The Meyers Law Firm, L.C.

NEBRASKA
Lincoln
Peter C. Wegman
 Rembolt Ludtke

Omaha
Steven D. Davidson
 Baird Holm LLP

NEW JERSEY
Florham Park
Sandra D. Grannum
 Faegre Drinker Biddle & Reath LLP

Newark
Jeffrey Lawrence O'Hara
 Connell Foley, LLP

Peter J. Torricollo
 Gibbons P.C.

William D. Wallach
 McCarter & English, LLP

Union
Rowena M. Duran
 Vasios, Kelly & Strollo

NEW YORK – DOWNSTATE
New York
Sean Hecker
 Kaplan Hecker & Fink

NEW YORK – UPSTATE

Buffalo
Hugh M. Russ III
 Hodgson Russ LLP

NORTH CAROLINA
Raleigh
Kirk G. Warner
 Smith Anderson Blount Dorsett
 Mitchell & Jernigan, LLP

OHIO
Cincinnati
Kelly Mulloy Myers
 Freking Myers & Reul

Sandusky
Donald J. Moracz
 Reminger Co, LPA

OKLAHOMA
Oklahoma City
L. Earl Ogletree
 Wiggins Sewell & Ogletree

Tahlequah
Donn F. Baker
 Donn F. Baker, Attorney at Law

OREGON
Portland
Sarah J. Crooks
 Perkins Coie LLP

PENNSYLVANIA
Philadelphia
Frank A. Chernak
 Montgomery, McCracken, Walker &
 Rhoads, LLP

Caroline Goldner Cinquanto
 The Law Firm of Caroline Goldner
 Cinquanto

PENNSYLVANIA (Cont'd)

Philadelphia (Cont'd)
Mark W. Tanner
 Feldman Shepherd

Warrendale
Veronica A. Richards
 Richards & Richards, LLP

SOUTH CAROLINA
Greenville
Clark Price
 Roe Cassidy Coates & Price, P.A.

TEXAS
Houston
Fields Alexander
 Beck Redden LLP

UTAH
Salt Lake City
Julianne P. Blanch
 Parsons Behle & Latimer

VERMONT
Brattleboro
Tracy Kelly Shriver
 Windham County State's Attorneys'
 Office

Burlington
Michael L. Desautels
 Federal Public Defender, District of
 Vermont

VIRGINIA
Charlottesville
M. Bryan Slaughter
 Michie Hamlett, LLC

Richmond
John R. Walk
 Hirschler Fleischer

WASHINGTON
Everett
Natalie A. Tarantino
 Snohomish County Public Defender

Seattle
Jeffrey A. Beaver
 Miller Nash Graham & Dunn LLP

Malaika M. Eaton
 McNaul Ebel Nawrot & Helgren PLLC

WEST VIRGINIA
Morgantown
Traci M. Cook
 Law Offices of Kelly R. Reed

WYOMING
Cheyenne
Robert C. Jarosh
 Hirst Applegate L.L.P.

Sheridan
Kim D. Cannon
 Davis & Cannon, LLP

Jay A. Gilbertz
 Yonkee & Toner, L.L.P.

CANADA

BRITISH COLUMBIA
Vancouver
Brock Martland, Q.C.
 Martland & Saulnier

MANITOBA
Winnipeg
Garth H. Smorang, Q.C.
 Myers LLP

ONTARIO
Hamilton
Robert J. Hooper
 Grosso Hooper Law

Toronto
Ian M. Hull
 Hull & Hull LLP

Peter J. Osborne
 Lenczner Slaght Royce Smith Griffin
 LLP

QUÉBEC
Montréal
Frederic P. Gilbert
 Fasken Martineau DuMoulin LLP

Bernard Larocque
 Lavery, de Billy

Nick Rodrigo
 Davies Ward Phillips & Vineberg LLP

Rimouski
Yvan Bujold
 Cain Lamarre

Ted E. Bock of Winnipeg, Manitoba
 was inducted by Past President
 Douglas R. Young on February 25,
 2020 in Winnipeg.



MEET OUR NEW INDUCTEES

Ninety-two new Fellows were inducted at our 2020 Spring Meeting in Tucson, and another was inducted in a private ceremony just before he was invested to the bench. Our ninety-three new Fellows live and work in forty-two different states and provinces. Twenty-four are women; eight identify as minorities; two are Native American. Nine are currently in public service – one judge, four prosecutors, and four public defenders – though many have devoted substantial parts of their careers to public service before their current gigs. We have two Fellows who were high school teachers and another who was a medical school professor before their legal careers. Many of our new Fellows are marathoners and triathletes; one completed the six-day, 420-mile “Ride Across the Rockies.” [I myself once did the RAGBRAI (the Des Moines Register Great Bicycle Ride Across Iowa), which was 500 miles that year. But, um, the cumulative vertical changes in my ride couldn’t have been much more than fifty feet – it was Iowa, after all – while the Rockies Ride requires more than 26,000 feet of vertical change, at least half of that pretty much straight up. The Rockies Ride is a feat.] We have a licensed building contractor, a licensed train engineer, and a Fellow licensed to kill – he has a black belt in martial arts. We have a fruitcake. No, wait, she isn’t a fruitcake; she makes them every holiday season. We have multiple new Fellows who are now or were Presidents of their State, County, or local bar associations. Our new Fellows’ hobbies range from kayaking to Harleys to mountain climbing to rock climbing to youth sports coaching and refereeing, and all points in between. One made an unassisted triple-play (or so he says; it was either a fantastic play or a fantastic story, or maybe both). It is a group with real practices and real lives outside of the law. We are happy to call them Fellows.

A few words about this impressive class:

ALABAMA

Kendall Dunson. Kendall is a partner in the Montgomery office of Beasley Allen and a 1996 graduate of the University of Alabama School of Law. In his product liability and personal injury practice, Kendall has been involved in several multi-million-dollar lawsuits, including a verdict for \$151 million. Kendall has served as President for both the Alabama Lawyers Association and the Capital City Bar Association, and he was the

first African-American President of the Montgomery County Bar Association. The common adjective used to describe Kendall is “gentleman.”

ALASKA

Kimberlee A. Colbo. After graduating from University of Washington School of Law in 1992, Kim began practice in Alaska, focusing on insurance, products liability, employment, and family law matters. Kim has tried nearly thirty cases to verdicts before juries in both state and federal courts in Alaska and has had seven-



teen appeal decisions published by the Alaska Supreme Court. Kim finds time to volunteer outside the firm as a Board of Director member for Life Alaska Donor Services and the Alaska Bar Foundation. She is also active with the Rotary Club of Anchorage Russian Jack, having served two terms as its President.

ARIZONA

Richard S. Plattner. Richard went to Michigan State University undergraduate and obtained his law degree at Arizona State University in 1977. Richard represents injured parties in personal injury litigation, and he has argued multiple cases before the Arizona Supreme Court, the Arizona Court of Appeals, and the Ninth Circuit Court of Appeals. For many years, Richard has summarized Arizona appellate highlights for *The Advocate*, the monthly journal of The Arizona Association for Justice/Arizona Trial Lawyers Association. Richard loves golf and playing the guitar. He and his wife Susan have two children.

ARKANSAS

Christy Comstock. Christy lives and practices in Fayetteville, Arkansas, focusing on the litigation of transportation matters for motor carriers nationwide. She is the founder of the Arkansas Trucking Seminar, the largest meeting of transportation lit-

igation professionals in the United States. Christy has one son, Ezra, who is twenty-five and a newly licensed lawyer.

Scott H. Tucker. Scott practices railroad law and represents Union Pacific and other carriers. In the course of his work for Union Pacific, he received classroom and hands-on training as a locomotive engineer, and he held an engineer's license



for one day. Scott is an avid outdoorsman and ran his Labrador retriever, who he trained, in the United Kennel Club field trials. His retriever received enough points to earn the title of Hunting Retriever Champion, the second highest retriever title. Scott and his wife, Shelly, have a daughter and a son who are both students at the University of Arkansas.

BRITISH COLUMBIA

Brock Martland, Q.C. Brock is primarily engaged in criminal trial and appellate work, mostly on the defense side, but he takes occasional Prosecution briefs, in the tradition of the British Barrister. He has appeared at the Supreme Court of Canada more than six times. He has also acted as Commission Counsel at Public Commissions of Inquiry. He is committed to pro bono work and supports the Innocence Project and the Supreme Court Ad-

vocacy Institute. Brock's father is an Emeritus Alberta Fellow and his grandfather sat on the Supreme Court of Canada.

CALIFORNIA

Raymond L. Blessey. Ray is a 1994 graduate of the Southwestern School of Law, but law is his second career. He graduated from Ithaca College in 1969 and worked in medical research for eighteen years, studying premature atherosclerosis and the health effects of air pollutants. In addition, after law school, he was a Clinical Assistant Professor at the University of Southern California School of Biokinesiology and Physical Therapy from 1994-2001. For the past twenty-four years, Ray's practice has focused on the defense of healthcare providers.

Reuben Camper Cahn. A graduate of Yale Law School, Reuben has spent most of his career as a Federal Defender, including over ten years as Executive Director of the Federal Defenders office in the Southern District of California. He has tried a variety of criminal cases, including serving as lead defense counsel in numerous federal capital cases, and argued appeals before Federal Circuit Courts and the United States Supreme Court. Now in private practice in Irvine, he concentrates on commercial litigation, white collar criminal defense, and appeals.

Marc Carlos. After graduating from Santa Clara University School of Law in 1986, Marc served as a Public Defender in Los Angeles and San Diego Counties, trying serious felonies, homicide, and capital homicide cases. Now in private practice in San Diego, he handles complex state and federal criminal defense and civil rights cases. Remarkably, Marc has tried over 200 jury trials in his career.

Luke L. Dauchot. Luke graduated from Case Western Reserve University School of Law in 1986. He has focused his practice on complex commercial, antitrust, RICO, and intellectual property matters, trying cases all over the United States. Early in his career, he was a protégé of a Fellow of the College, who later became a well-respected judge. An opposing counsel said, "He has extensive trial experience, is superb both inside and outside the courtroom, and treats everyone collegially and with respect."

Christopher E. Faenza. Chris is a civil trial lawyer specializing in wrongful death/catastrophic injury defense, class action and complex tort actions, contracts and commercial litigation for both plaintiffs and defendants, and products liability defense. He graduated from Rutgers Law School in 1994. Since that time, he has tried over seventy-five Superior Court jury trials in New Jersey and California. One trial judge described Chris as "...an outstanding trial lawyer who represents the very best of the legal profession."

Luis Li. After graduating from Berkeley, Luis was admitted to practice in California in 1991. As a federal prosecutor, he has obtained criminal convictions in cases ranging from murder to fraud to racketeering. In civil practice, he has handled complex disputes ranging from defending the NCAA in a complex antitrust case to the trial of the Deepwater Horizon oil spill case.

Paul J. Pfingst. Paul graduated from St. John's University School of Law, Queens, New York, in 1976. In a varied career centered on trial work, Paul has been a line prosecutor in both New York and San Diego, the elected District Attorney of San Diego County, California, and a partner in San Diego's oldest law firm, where he currently focuses on complex litigation, white collar crime, and professional licensing matters in both state and federal courts. He has tried more than ten murder cases, some as prosecutor, some as defense counsel.

Ashok Ramani. Ashok specializes in intellectual property litigation in Menlo Park and heads his firm's intellectual property practice. Within the College, he is now (after giving the Inductees' Response at the 2020 Spring Meeting) best known for a mad dash to the local Men's Wearhouse, aided by "Big Mike" O'Donnell, in order to rent a tuxedo in the nick of time for the banquet. Outside of the College, Ashok must be a little less forgetful. A judge before whom Ashok tried several cases says that while he remembers virtually no lawyers from that time period, he vividly recalls Ashok as superb.

Rahul Ravipudi. Rahul has devoted his legal career to representing plaintiffs in catastrophic injury and wrongful death cases involving

commercial vehicles, pedestrians, industrial or construction accidents, as well as dangerous conditions of public or private property. He also represents consumers in class actions involving claims of unfair and illegal business practices, and public entities in cases where corporations have endangered the safety, health, property or comfort of the public. Rahul is a 1999 graduate of Loyola Law School, Los Angeles.

Geoffrey S. Wells. Geoff graduated from Pepperdine University School of Law, Malibu, CA, in 1985. He began his legal career as a defense attorney, but soon transitioned to the plaintiff's side, where he has focused his practice since 1988. He primarily handles medical malpractice, legal malpractice, products liability, and other catastrophic personal injury and wrongful death matters. He was described by an opposing counsel as a "highly skilled advocate for his clients who at the same time is a model of civility and professionalism."

COLORADO

Timothy R. Macdonald. Tim tries complex commercial cases in states across the country. Tim was born and raised in Manhattan, Kansas, to a Canadian father and a New Zealand mother. He obtained his J.D. and a Master's in Public Policy from the University of Michigan. In his free time, Tim enjoys mountain biking, road biking, skiing, backpacking, and triathlons. Tim and his wife Jodi have three children.

Jack R. Sperber. Jack has tried eminent domain cases all around the country for more than twenty-five years. He primarily represents private owners, ranging from Fortune 100 companies to individuals. He met his wife Susan when they were both law students, and they are the proud parents of Isabel and Ben. Jack loves the mountains. He spends as much of his free time as he can riding bikes, running, skiing, and traveling with his family.

CONNECTICUT

Robert O. Hickey. Bob defends high-exposure complex claims of wrongful death and catastrophic injuries. Bob is affiliated with the Defense Research Institute as well as the National Association of Railroad Trial Lawyers, and sat on the Board of Directors for the Fairfield County Bar Association.

Bob argues that one of his greatest achievements is scoring two holes-in-one in golf (wait – isn't that two achievements?), unless it's managing to have worn a tuxedo only three times in his life (senior prom, his wedding, and the ACTL induction ceremony); his wife would argue it's marrying his high school sweetheart.

D. Lincoln Woodard. Prior to putting down roots in Connecticut, Linc practiced in New York and spent years prosecuting domestic violence and sex crime cases for the Dutchess County DA's Office. His practice is now devoted to personal injury, medical malpractice and legal malpractice cases. Linc frequently lectures at seminars on trial tactics, municipal liability, and medical liens. Fortunately, his litigation skills are better than his fishing skills, as Linc believes there's no one who's read and thought more about fly fishing who has caught fewer fish.

DISTRICT OF COLUMBIA

Brandi J. Harden. Though practicing in D.C., Brandi's roots are in Texas. Brandi and her partner, also a Fellow in the College, have their own small firm in Washington, D.C. Their practice is criminal and civil litigation and family law. After stints with the Department of Justice Antitrust Division, the Department of Labor, and the Southern Center for Human Rights, Brandi served as a supervising attorney of homicide cases at the District of Columbia Public Defender Service. Brandi has tried more than thirty cases to conclusion, the vast majority of which were jury trials. She has taught trial advocacy at Harvard, New York University, American University, and Howard University. One judge said, "She has the gift."

FLORIDA

Vincent A. Citro. Vince is a 2000 graduate of Stetson University College of Law and practices in Orlando. Before going into private practice, Vince was a federal prosecutor in the United States Attorney's Office from 2002 – 2010 and served as the USAO's first National Security Cyber Specialist and its Anti-Terrorism Advisory Council Coordinator from 2011 – 2015. In 2016, after nearly five years of convincing, Fellow Mark Horwitz finally persuaded Vince to leave the government and join him in private practice, gaining

a law partner who also happened to be a fellow Harley-Davidson enthusiast.

ILLINOIS

Mark M. Burden. Mark's trial work centers upon the defense of professional liability cases involving doctors, medical personnel, and health-care institutions. Two of Mark's current partners, both Fellows of the College, asked Mark to join the firm at its creation in 1995 when Mark was just three years out of law school.

Mark E. Ferguson. Mark's trial work involves a wide range of subject matters, including complex computer hardware, software and semiconductor patents, financial and securities issues, civil rights, and employment cases. Mark is an Adjunct Professor at Northwestern in trial advocacy.

Brian D. Sieve. Brian tries cases involving a mix of topics, including patent, trade secret, product liability, securities, and contracts. His client base includes financial service companies, hedge funds, and private equity companies. Brian also is heavily involved in training young lawyers, having both headed his firm's internal trial advocacy program and having taught at the University of Chicago Law School.

INDIANA

Daniel B. Vinovich. Dan has represented plaintiffs in medical malpractice and other personal injury lawsuits throughout his career. He has been with his firm for thirty years. He is heavily involved in bar work, having served as President of the Indiana State Bar Association and currently serving as the Indiana Bar Association's representative to the American Bar Association House of Delegates.

IOWA

Kimberly K. Hardeman. Kim is an Iowa native, but she attended college in Minnesota on a volleyball scholarship. She spent most of her childhood in sports camps/academies, including several directed by Hall of Fame basketball coach Pat Summit, who Kim credits with helping her to develop a thick skin and rigorous work ethic. She is the first in her family to become a lawyer, and Kim now is proud to mentor a niece who is attending

law school. Any free time is spent with her husband, their two dogs, her greenhouse, and their wooded acreage on the outskirts of Cedar Rapids.

Valorie Wilson. Val is the first and only female Chief Attorney of the Des Moines Adult Public Defender's Office in Polk County, Iowa. She started there while still in law school and, with the exception of four years in the juvenile office, it is the only place she has worked as an attorney. Kim saved variety for her personal life. She has swum in the Nile (not on purpose – her tour boat caught fire), has been chased by a marauding band of rhesus monkeys in Nepal (because she chose a bad moment to peel a banana), and was touched by an infant mountain gorilla in Rwanda (just lucky). She rode a horse for the first time at the age of fifty, and now she owns and rides them in hunting and equestrian competitions.

KANSAS

Holly A. Dyer. Holly handles commercial, complex, and general litigation involving a wide range of issues including contractual disputes, trade secrets, and business torts. Holly served as President of the Wichita Bar Association, during which they received the Kansas Bar Association's Phil Lewis Medal of Distinction for its 2016 "Clean Slate Day" expungement program. Holly has also served on numerous community boards and committees including with the Wichita Regional Chamber of Commerce, Wichita State University Alumni Association, League 42, and the Tallgrass Film Association. Holly enjoys running, movies, and cooking (including homemade fruitcake every holiday season).

Melanie S. Morgan. Melanie is the managing partner of a boutique criminal defense law firm in Kansas City. She primarily appears in federal court, defending individuals accused of a wide range of offenses from complex fraud schemes to political corruption to drug-related conspiracies. A highlight of her career is the successful defense of an elderly gentleman accused of genocide for which she won the Kansas Bar Association's Courageous Attorney Award. In her free time, Melanie loves to cook, ski, and hike.

KENTUCKY

Robert B. Cetrulo. Bob and his wife Susanne have worked together as lawyers for over twenty-five years. They started their own firm, in 2001 in Edgewood, a city in Northern Kentucky near Covington and across the river from Cincinnati. Bob defends FELA and other types of personal injury cases. Bob was named the most prolific trial lawyer in the state in 2007 and 2014 and had the most trials to verdict in Kentucky between 2005 and 2015.

John G. McNeill. John defends all types of personal injury cases in Kentucky. He and his wife Jeannetta are active in community service, particularly related to mentoring young people and minority college and law students. He enjoys reading, studying antiquities, and African-American history. He loves traveling throughout the American West including hiking, fishing, and camping when possible. He enjoys being called “Mr. Chef” by children at Children’s Church lunch, where he presents creative meals of chicken nuggets and tater tots.

Rod D. Payne. Busted flat in Baton Rouge, Rod joined the Marine Corps in 1985 at seventeen. After a tour of Hawaii and the Far East, Rod left Waikiki and enrolled in college in Kentucky. After law school, Rod began trying to verdict all manner of civil litigation with cases ranging from trade secrets to railroad injuries to toxic torts. Rod has been married for over thirty years and is the proud father of two sons.

Lou Anna Red Corn. Lou Anna is the elected Commonwealth’s Attorney (DA) for Lexington, the state’s second largest city. She has tried over 230 felony cases to juries, including fifty-five homicide cases. She has a special interest in child victim cases, especially child fatalities, child sexual abuse, and child exploitation. She is the president-elect of the National Children’s Alliance, the organization that accredits the nation’s Child Advocacy Centers, and a board member of the National District Attorney’s Association. She is an enrolled member of Osage Nation and participates in tribal activities on the Osage Reservation in Oklahoma.

Ashley W. Ward. Ashley defends personal injury and medical malpractice cases. Ashley had the privilege of trying his first jury trial with, and being mentored by, former ACTL Fellow and Former Regent John Famularo. Ashley has served on the board of the Urban League of Lexington and is an avid University of Kentucky sports fan. He is married to Julie and has two children, Chloe and Christopher.

LOUISIANA

John Jerry Glas. Jerry has tried 114 trials, including seventy-five jury trials, and authored three book chapters for the ABA’s “From the Trenches” series. Jerry is a former high school teacher with a master’s degree in philosophy from the University of Toronto. Before joining the firm in 1999, Jerry cut his teeth as a Senior Assistant District Attorney in Orleans Parish.

MAINE

Edward W. Gould. A native of Rhode Island, Ed moved to Bangor after graduating from Boston University Law School in 1982 and never looked back. His practice focuses on medical malpractice defense. Ed successfully represented a local volunteer environmental organization opposing the development of a big box department store near an environmentally sensitive marsh. He is the former President of the Penobscot Bar Association and devotes much of his time to service on community boards. He is currently Chair of the Big Brothers, Big Sisters of Mid-Maine. Ed and his wife, Lynn, have four children.

Benjamin R. Gideon. After graduating from Yale Law School, Ben clerked on the First Circuit began practice in New York and returned to Maine in 2003 to practice as a plaintiffs’ personal injury lawyer. In 2014, he obtained a \$22.5 million verdict—one of the top 100 plaintiffs’ verdicts in the United States that year—on behalf of a utility company lineman who suffered a devastating telephone injury while working on a switch on a high voltage power line. Ben and his wife, Sara (who is the Speaker of the Maine House of Representatives and a candidate for the United States Senate seat now held by Susan Collins), have two sons and a daughter.



Thomas S. Marjerison. Tom began his career as a prosecutor in the Maine Attorney General's office, and now splits his time between personal injury and criminal defense. In 1998, Tom was appointed to serve as a Legal Specialist to the International Criminal Tribunal for the former Yugoslavia in The Hague, where he worked on the prosecution of war criminals in Bosnia-Herzegovina. In 2014, Tom co-founded the non-profit Casco Bay Hockey Arena, raising money to transform a decrepit outdoor rink to a center of youth hockey in the Portland area. Tom and his wife, Kirsten, have a son and a daughter.

Darcie N. McElwee. Darcie is a career prosecutor. After graduating from the University of Maine Law School—where she was an ACTL scholarship recipient—she served in the Cumberland and Penobscot County District Attorney's Office before moving to the United States Attorney's Office Portland in 2002. She prosecutes some of Maine's most serious federal criminal cases. She has served as the President of the Maine Women's Fund—an organization dedicated to raising funds and making grants to disadvantaged women and girls and as President of the Cumberland County Bar Association.

MANITOBA

Hon. Theodore Bock. Ted Bock was approved for fellowship in 2019 and registered to attend the Spring 2020 Meeting in Tucson in order to be inducted. On February 5, he received a life-changing telephone call from the Minister of Justice in Ottawa; Ted would be sworn in as a Judge of Her Majesty's Court of Queen's Bench for Manitoba (the general trial bench for the province) at the end of February. So President Doug Young traveled to Winnipeg for the sole purpose of inducting soon-to-be Justice Bock into fellowship. Ted was surprised and moved by that gesture (he should not have been; it's what we do whenever a soon-to-be Fellow is tapped for the bench). Ted enjoyed a civil litigation practice at what is now a regional law firm in Winnipeg for thirty years. Away from his practice, he has enjoyed the rich cultural offerings within the city and outdoor activities from his cottage on Lake Winnipeg. Ted has been involved in the leadership of numerous charitable and community service organizations.

Garth H. Smorang, Q.C. Garth focuses on employment and labor litigation on the employee side. He is the managing member of his thirty-lawyer firm, and one of his three children is a relatively new lawyer in the firm; Garth believes that both of them are adjusting well to their new relationship. Garth is one of only three Manitoba lawyers who has served as President of both the Manitoba Bar Association and the Law Society of Manitoba. Away from the office Garth travels to his lake cottage in western Ontario, where he is outnumbered by the fish, but frequently prevails in his negotiations with them. He also enjoys carpentry and "fixing things."

MARYLAND

Philip M. Andrews. While Phil's practice is commercial litigation, he is best known as "the premier procurement lawyer in the State of Maryland." He has tried more than eighty cases to conclusion and has argued more than fifty appeals. One judge said, "I wish I could be like Phil - that is, by taking a little of Phil, rubbing it between my fingers, and then being able to speak as persuasively as Phil." Phil serves as Chair of the Board of the Maryland Food Bank, and Co-Chair of the Equal Justice Council of the Legal Aid Society Law Firm Campaign.

John Chamble. John is Branch Chief of the Southern Division of the Federal Public Defender in Greenbelt, Maryland, a position he has held for twenty-three years, after two years as a Federal Defender in the U.S. Virgin Islands, and eight years in Washington, D.C. He has handled cases from international trafficking to homicides. Judges say he "is really an exceptional lawyer," "We are lucky to have him," and "He is smooth as silk." John chairs the Annual Martin Luther King Breakfast in Montgomery County, and has taught trial practice at the International Forum of Justice in Sao Paulo, Brazil, and at the DOJ Overseas Prosecutorial Development and Training Program in Jakarta, Indonesia.

Kelly Hughes Iverson. Kelly is a medical malpractice defense trial lawyer in Baltimore. Judges say "she knows the medicine and the law," "is top of the line, certainly one of the best," she is "among the top-tier of trial lawyers who ever ap-

peared before me,” and she is a “poster lawyer, everything a lawyer should be.” One of her opponents said, “I was so impressed, I nominated her for Super Lawyers.” Kelly currently serves as President of the Baltimore City Bar.

MASSACHUSETTS

John F.X. Lawler. John served for twenty-seven years as a Marine, on active duty and in active reserves as a judge advocate and infantry officer, service that included travel to the Democratic Republic of the Congo—which, John points out, was neither “Democratic” or a “Republic”—to teach the rule of law. He has been recognized twice by *Massachusetts Lawyers Weekly* for obtaining top ten defense verdicts. He and his wife, Kathy, who live in Milton, have five children, including three sons who, like John, were college football standouts.

Nancy Frankel Pelletier. Nancy’s practice focuses on representing cities and towns in western Massachusetts in tort cases brought against them. Her track record in the defense of claims against police officers is one outstanding feature of her work in court. Over the years, Nancy has played an important role as an advisor in the selection of state court judges in Massachusetts. She and husband, Jim, live in East Longmeadow. They have two adult sons.

MICHIGAN

Karl P. Numinen. Karl represents people accused of serious crimes, going through difficult divorces, or who have suffered catastrophic personal injury. He has obtained acquittals in many criminal trials ranging from murder to sexual assault, successfully defended businesses in bet-the-company litigation, and has the distinction of obtaining the highest jury verdict in a personal injury case in Marquette County. Karl is an accomplished

trumpet player and active in the local community theatre. A cigar aficionado, Karl opened a private cigar club in Marquette.

MINNESOTA

Jeffrey S. Paulsen. With the exception of a two-year clerkship for a United States District Court judge and a single year in private practice, Jeff’s career has been spent in the Department of Justice, in Washington, D.C., and as an Assistant United States Attorney in Minnesota since 1988. One of his more notable criminal prosecutions was the subject of a documentary film, “Better This World,” in which Jeff played himself. Outside work, Jeff is an accomplished mountaineer. He has two summits to Kilimanjaro to his credit. He also says that he made an unassisted triple play in lawyer softball, but we have been unable to verify the claim.



Karen J. Kingsley. Karen has devoted her thirty-five-year professional career to the representation of plaintiffs in personal injury lawsuits. Karen has been a sole practitioner in St. Paul for the last twenty of those years. She served as President of the Minnesota Association for Justice in 2012-2013. She co-founded the Women Trial Lawyers Conference in Minnesota three years ago. Karen volunteers in food service at homeless shelters and raises money for organizations assisting the homeless and single mothers living in poverty. Her hobbies, home improvement and antiquing, arise from the fact that she and her husband reside in a home that is 120-years-old.

MISSISSIPPI

Andrea La’Verne Edney. La’Verne was the first African-American female Presi-

dent of the Mississippi Bar Foundation. La’Verne also directed her church choir for fifteen years before retiring from that post ten years ago. From 2009 – 2011, La’Verne took a sabbatical from practicing law to serve as General Counsel of the Mississippi Volunteer Lawyers Project. La’Verne was recognized as Outstanding Woman Lawyer of the Year by the Mississippi Lawyers’ Association in 2011 and received the Lifetime Achievement Award from the same organization.

MISSOURI

Charles C. Eblen. Charlie is a native Midwesterner who has lived in Kansas City for most of his life. He was a three-sport high school athlete and a discus thrower in college. His first job was as a salesman in a jewelry store, which he believes helped him with issue framing as a trial lawyer because some products lacked many positive attributes. He enjoys the challenge of practicing on both sides of the v. He serves as the chair of the pro bono department of his law firm and on the board of a non-profit entity dedicated to recruiting and pairing young aspiring trial lawyers from private firms with public defenders to ease the crunch of public defense caseloads.

Martin M. Meyers. Marty comes from a family of trial lawyers. His father and his uncle were trial lawyers before becoming trial-level judges. Marty has seven siblings, three of them lawyers. Marty started working at a law firm while still in college. One of the first cases he worked on was the litigation that arose from the collapse of the walkway in the Hyatt Hotel in Kansas City; the accident occurred as Marty was taking the bar exam. He attended scores of depositions and had the priceless opportunity to watch legendary trial lawyers in action. Marty met his first wife, a lawyer, at one of those depositions, and he proposed at dinner in the

same Hyatt several years after the accident. Marty eventually started his own plaintiff's employment practice, a firm he has kept small. Marty lost his wife to cancer and has remarried and now has six children in their blended family.

NEBRASKA

Peter C. Wegman. Pete started clerking at his law firm in Lincoln while he was still in law school. He has been there ever since, but his practice has taken an unexpected turn. In law school he planned to specialize in estate planning, tax law, and transactional work. Instead, he has represented injured or deceased persons in injury or death actions and parties in divorces involving farmland on a statewide basis. Pete resides in the hills of Seward County, about twenty-five miles west of his office. Part of his land is virgin prairie, and part is a vineyard, so Pete is a naturalist. He maintains forty bluebird boxes on his property. Pete's favorite recreational activities are duck hunting and golf.



Steven D. Davidson. Steve attended the University of Nebraska where he earned his B.A. and J. D. degrees. When he served as a law clerk for Chief Judge C. Arlen Beam, he answered the phone when the White House called as President Reagan notified Judge Beam of his nomination to the Eighth Circuit. Steve has enjoyed a commercial litigation practice in his native Omaha. Steve is proud of his service on the Board of Directors and as President of the Catholic Charities for the Omaha diocese. Steve's personal claim to fame is that, as a high school tuba player, he was selected to the McDonald's All-American Marching Band, which marched in the Rose Bowl Parade and the Macy's Thanksgiving Day parade and played in a concert at Carnegie Hall.

NEW JERSEY

Rowena M. Duran. Rowena has been a Jersey girl her whole life. After working for an insurance

company as an investigator and supervisor in liability claims after college, she went to Syracuse Law School, the brief foray out of state. She has focused her practice on the defense of medical and nursing malpractice claims. She loves the medical part of the practice and tries very hard not to diagnose anyone. Her physician husband, whom she did not meet defending cases, is a great resource when sounding out cases. In addition to law, Rowena is an avid gardener, spends as much time as possible in Cape Cod (we didn't know it was part of the Jersey shore), and is involved in her church.

Sandra Dawn Grannum. Sandy, a Harvard Law graduate and a former in-house Wall Street counsel, concentrates on the securities industry, including broker-dealer arbitration, litigation, mediation, and regulatory defense. She has tried more than sixty arbitrations before the Financial Industry Regulatory Authority (FINRA) as well as the American Arbitration Association and JAMs. Sandy serves on her firm's governing board and has been honored for her efforts to promote diversity in the profession and to advance the professional development of other female lawyers.

Jeffrey Lawrence O'Hara. After a fledgling college basketball career and the realization that the life of a Vail ski instructor, while plentiful in joy, is difficult on \$7 per hour, Jeff followed his father's footsteps into the law. Ancillary to a national trial practice focused predominantly on the defense of catastrophic injury claims, Jeff is co-founder of One Vet @ A Time, Inc., a non-profit entity providing medical and legal support at no cost to select veterans in the Special Operations community pursuing VA disability claims. His inspiration in all endeavors are his wife, Lisa, and their children.

Peter J. Torricollo. Peter is a cum laude graduate of Bucknell and received his law degree from Rutgers. Peter has a broad-based commercial litigation practice with substantial trial experience in a variety of forums. Drawing on his former experience in the construction industry, Peter handles construction-related disputes, including contract claims, construction defects, liens, and design issues. Peter is a musician and avid outdoorsman, who will rarely say "no" to a fishing trip. He is

a past President of USA Climbing, the National Governing Body of the sport of competitive rock climbing. He and his wife Paula enjoy spending as much time as possible with their family.

William D. Wallach Bill focuses his practice on business litigation, with a special emphasis on representing members of closely-held/family-owned businesses and companies in commercial disputes. Bill takes pride in the fact he has guided many clients for extended periods of time as they try to work through their business and interpersonal issues. He handles matters in Delaware, New Jersey, and New York in their Chancery Courts and Commercial Divisions. Bill's primary release from work is playing hockey; he is the captain of his team not because of his skills, but because he knows the league rules and does not mind arguing with the referees.

NEW YORK

Sean Hecker. Sean is nationally recognized as a white-collar criminal defense lawyer. He was a trial lawyer with the Federal Defenders of New York before private practice. Sean represents everyone from employees to corporations to officers and directors in grand jury and regulatory investigations. Sean actively participates in pro bono work, including representing the Federal Defenders in suing to restore attorney visitation/consultation rights at the Metropolitan Detention Center in Brooklyn. Now a confirmed New Yorker, Sean's twin sister, who is his polar opposite personality type, remains in their San Diego hometown.

Hugh M. Ross III. Hugh is a fifth generation trial lawyer in Buffalo. He has tried a broad range of high-profile business disputes ranging from arson and fraud to environmental class actions. His notable cases include acting as counsel in the Love Canal insurance

coverage litigation and prosecuting claims in the multi-district litigation arising out of the crash of Continental Flight 3407. He devotes his spare time to pro bono initiatives and acting as a director of numerous charitable organizations.

NORTH CAROLINA

Kirk G. Warner. Kirk practices in Raleigh. He serves as national, regional, and statewide lead litigator for multiple automotive and consumer products manufacturers. Colonel Warner served in the U.S. Army for thirty years as a Company Commander and later as a Judge Advocate, acting as Deputy Legal Counsel to three different Chairmen of the Joint Chiefs of Staff. Kirk was Founding Chair of the North Carolina Bar Association's Military and Veterans Affairs Committee. For the past thirty years Kirk has refereed high school football games.

OHIO

Donald J. Moracz. Don practices out of his firm's Toledo and Sandusky offices, defending medical malpractice cases, as well as transportation matters. He has tried over eighty jury trials as first chair, in over twenty-five different counties in the state. After hanging up his own cleats, Don has enjoyed becoming very active in coaching youth sports (including his own kids - ages fourteen to twenty-five) for the past twenty years.

Kelly Mulloy Myers. Kelly's practice in Ohio and Kentucky largely consists of representing plaintiffs in all types of employment law disputes; she was one of the first attorneys in Ohio to be certified by the Ohio Bar Association as a Specialist in Labor and Employment Law. She is the Immediate Past President of the Cincinnati Bar Association and a Past President of the Cincinnati Bar Foundation. Kelly loves traveling with her husband, Todd, and their daughter.

OKLAHOMA

Donn F. Baker. Donn was a teacher before going to law school. Donn graduated from Oklahoma City University School of Law and returned home to Tahlequah, where he is a fifth-generation Oklahoman, to a practice in criminal defense, family law, and general civil litigation. Donn is also proud to be a Cherokee, whose family was forced from their home in northern Georgia and threatened at gun point to walk to Oklahoma in the dead of winter on what became known as the Trail of Tears. He and his wife, Sharon, have two children, five grandkids and three grandkids. Sharon owns the Tahlequah livestock auction and operates a 300-head cattle ranch.

L. Earl Ogletree. Earl, a graduate of the University of Oklahoma College of Law, focuses on medical and dental malpractice, as well as trucking, employment, and product liability cases. Earl lives with his wife, Ronni, and three children on an angus cattle ranch. He spends his free time team roping, bow hunting, and cheering for his Oklahoma Sooners.

ONTARIO

Robert J. Hooper. Robert is with a plaintiffs' personal injury boutique firm in Hamilton. He is renowned for taking the most difficult cases to trial and winning. Robert devotes significant time to supporting various charitable organizations in his community, particularly those focused on helping youth.

Ian M. Hull. Ian is one of Canada's top estates trial lawyers. He was successful counsel in the recent *Moore v. Sweet* appeal in the Supreme Court of Canada, a seminal case on the issue of constructive trusts. He is a prolific author and teacher in the areas of wills and estates and has been at the forefront of making in-

formation easily understandable and accessible to the public.

Peter J. Osborne. Peter has been counsel in some of the most significant insolvency proceedings in Canada (including Sears, Hollinger, Air Canada, and JTI-Macdonald Corp.), and is frequently retained by the Government of Canada to represent it in high-profile litigation.

OREGON

Sarah J. Crooks. Sarah clerked at the Court of Appeal and the Supreme Court of Oregon as well as the U.S. District Court before moving to a position as staff attorney for the Legal Services Corp. She then transitioned to private practice and now does business litigation. Sarah has won numerous awards for her professionalism, pro bono work, and her efforts in promoting women in the legal profession. She has served as President of the Multnomah Bar Association and the National Conference of Women's Bar Associations.

PENNSYLVANIA

Frank A. Chernak. Frank is a Temple Law graduate. In October 2019, *The Philadelphia Business Journal* selected Frank to its Best of the Bar: Philadelphia's Top Lawyers list for Employment Litigation. In 2019, Frank tried cases to verdict in federal courts in Baltimore, Philadelphia, and Chicago. Frank's practice focuses on defending employers and municipalities in constitutional, Title VII, race discrimination, sexual harassment and retaliation, reverse-gender and retaliation, age discrimination, national origin, hostile work environment, FMLA, and ADA cases.

Caroline Goldner Cinquanto. Carrie joined the U.S. Navy JAG Corps straight out of law school, in part so she wouldn't have to deal with the whole "skirts or slacks" thing. Free of that burden, she developed her love for trying cases. Four years later Carrie moved home to her family and the Defender Association of Philadelphia. She returned to reserve duty after 9/11, and then she took a turn as the Director of the Trial Advocacy LL.M. Program at Temple Law School. In 2007 Carrie left academics to open both her federal criminal defense practice and

an e-discovery company. Today she focuses exclusively on her practice, comfortable in her work-wardrobe choices. Carrie regularly teaches courtroom skills courses in Africa, China, Poland, and throughout the United States.

Veronica A. Richards. Veronica is both an attorney and a nurse-practitioner, giving her the ability to review medical documents and understand the jargon used by health care professionals. Veronica is selective about the cases she agrees to take. Her clients generally come to her with the most severe types of injuries and suffer some long-term disability as a result of medical negligence, yet she takes on only a small percentage of the 250-300 cases she reviews each year.

Mark W. Tanner. The driving principles behind Mark's trial practice originated in a decade of contests on the rugby pitch: fight hard, fight fair, never give up, and remain collegial with your adversary after the last whistle sounds. Mark handles complex and catastrophic plaintiff's claims, with a focus on medical malpractice, insurance bad faith, trucking, and products liability cases. He has served as a Child Advocate for the Support Center for Child Advocacy for the past fifteen years, representing neglected children at trial and through arguments before the state Supreme Court. Mark is an avid traveler, SCUBA diver, a proud father of his adult children, Ned and Katie, a loving husband to his wife, Kathleen, and a struggling golfer.

QUEBEC

Yvan Bujold. Yvan has a broad civil and commercial trial practice. He frequently represents various governments and government agencies before all levels of court, including the Supreme Court of Canada. Yvan is very involved in his community, sitting on the boards of a variety of charitable organizations.

Frederic P. Gilbert. Frederic is one Canada's leading trial lawyers in franchise litigation. Frederic speaks four languages (French, English, Spanish, and Creole). Frederic sat on the Board of Directors of Promis, an organization dedicated to helping immigrant populations integrate into the workplace, and teaches a graduate

course in franchise law at the University of Montreal.

Bernard Larocque. Bernard has tried numerous defamation cases, both for plaintiffs and defendants, and also defends clients in significant class actions, including a billion-dollar class action related to contaminated soil. Bernard is the Vice-President of ProBono Quebec and volunteers his time on several community and arts related boards.

Nick Rodrigo. Nick has a general commercial trial practice, with a focus on class action defense in securities, anti-trust cases, and consumer law. He has represented some of Canada's most significant companies, including Barrick Gold Corporation and Rogers Communications. Nick is a frequent lecturer on trial advocacy and has taught a seminar for prosecutors at the International Criminal Tribunal for Rwanda.

SOUTH CAROLINA

Vincent "Clark" Price. Clark practices in Greenville specializing in healthcare and medical malpractice defense. He also serves as the primary defense attorney for the City of Greenville, which has involved high-profile litigation in civil rights matters. Clark is known as a lawyer who has worked hard to master his craft since the first day of his career. As a result of years of experience and honing his courtroom skills, he maintains a superb reputation in all South Carolina courtrooms.

TEXAS

Fields Alexander. Fields is by choice a trial lawyer who handles a wide range of matters on both sides of the docket for both individual and corporate clients. In 2015, Fields was lead counsel in a will contest seeking to undo a will in which an elderly spinster had given virtually her entire estate to her stockbroker. Fields was successful in having

about fifteen wills rendered invalid by a jury on the basis of undue influence, resulting in the enforcement of a much earlier will that gave the entire estate to the family. In 2011, Fields was deputized as a prosecutor so he could serve as part of a team that prosecuted Warren Jeffs for multiple counts of sexual assault of minors.

UTAH

Julianne P. Blanch. Juli's best decision was attending Harvard Law School because that is where she met her husband, who spends much of his time making people laugh but also serves as a state court judge. Her practice is a mix of commercial litigation, product liability defense, and plaintiffs' personal injury cases. In her free time, she likes to run, drink wine and Manhattans with friends, and read military history and biographies.

VERMONT

Tracy Kelly Shriver. Tracy has served in the Windham County Vermont State Attorney's Office for the past twenty years, rising to become the head of the office. As State's Attorney, she not only oversees the office, but handles many cases herself, including homicides and domestic violence cases. When she's not prosecuting state crimes, Tracy likes to spend her time cooking and, in fact, is a huge aficionado of "Top Chef" -- to the point that she has been to *seven* of the finalists' restaurants and plans to attend more.

Michael L. Desautels. Mike was recently reappointed for a new four-year term as the Federal Public Defender for the District of Vermont, a position he has held since 2006. Prior to moving to Vermont, Mike was in private practice in New York for almost twenty years and also worked as a Federal Defender in West Virginia. Mike regularly presents at bar association trainings and federal defender seminars. When he's

not representing those in need, you can find Mike outside, skiing, hiking, playing tennis, or cycling. Mike is also one of the "Adirondack 46'ers," meaning he has climbed all forty-six of New York State's highest peaks.

VIRGINIA

M. Bryan Slaughter. Bryan practices in Charlottesville. He specializes in representing clients who have experienced catastrophic personal injury or wrongful death. He has obtained some of the largest plaintiff verdicts and settlements in Central Virginia. He is past President of the Virginia Trial Lawyers Association and has served on its Board of Governors since 2001. Bryan has special interest in pro bono service and access to justice issues and serves on the Virginia Supreme Court's Access to Justice Commission. When not practicing law, Bryan spends time with his wife, Jennifer, (also an attorney) and their four children often playing ice hockey.

John R. Walk. John specializes in land use, eminent domain, zoning, tax, and general business litigation. John has served as a member of the Boyd Graves Conference as well as its Chairman for two years. This prestigious group is composed of Virginia judges and lawyers who study and make recommendations for the improvement of Virginia's civil justice system. John has many outside interests including marathons, sailing the Chesapeake Bay on his boat the *Jolly Mon*, and playing guitar in his band, the "Usual Suspects."

WASHINGTON

Jeffrey A. Beaver. Jeff is engaged in condemnation and other commercial litigation; he served as a law clerk in the U.S. Court of Appeals, Ninth Circuit. He is very active in CLE, making regular presentations on a diversity of topics. His many awards include the 2019 Frohnmayer Award for Public

Service for his work training and assisting Sudanese lawyers as they represent victims of the Darfur conflict.

Malaika M. Eaton. Malaika is engaged in complex commercial trial work including defense of legal malpractice, prosecution of breach of fiduciary duties, and defamation. She served as board member of the Mother Attorneys Mentoring Association (MAMA), Seattle and President of MAMA USA, having gained the skills necessary to mentor other mother attorneys while busily trying significant cases and raising three active children.

Natalie A. Tarantino. Natalie joined the Snohomish County Public Defender Association (SCPDA), a private, non-profit law office, incorporated under the laws of the State of Washington that provides public defender services, in 1995 after working as a volunteer attorney at the Lake City Legal Clinic. Natalie earned her B.A. at Miami University in Oxford, Ohio and her J.D. at DePaul University College of Law. During law school, Natalie worked as a volunteer instructor at Chicago Legal Aid to Incarcerated Women and as a volunteer at the Illinois Clemency Project. She also worked as a legal intern at the Society of Counsel Representing Accused Persons. In Natalie's own words, "*I became a public defender because I wanted to be in court, arguing and trying cases. I have stayed a public defender because I strongly believe that all people regardless of resources or income deserve quality counsel.*"

WEST VIRGINIA

Traci M. Cook. Although Traci spent much of her time in law school studying to become a tax attorney, once she participated in a mock trial, she realized her path needed to be litigation. After a brief stint as a public defender, she became Assistant Prosecuting Attorney in a central West Virginia county. In 2016, she became Assistant U.S. Attorney for the Northern District of West Virginia where she handled the most difficult felony cases involving murder, sexual assault, drugs, and pornography. Traci has recently transitioned into private practice where she will stay busy litigating on both the civil and criminal side. A true outdoor and animal lover, Traci spends her free time traveling, kayaking,

and paddle-boarding with her golden retriever by her side.

WYOMING

Kim D. Cannon. Kim has handled a wide variety of cases ranging from products liability defense to catastrophic personal injuries for plaintiffs, securities cases representing plaintiffs, professional malpractice defense, large trust and estate litigation and natural resource litigation representing ranchers and other landowners. He has served as the Chair of the Wyoming Environmental Quality Council and the Wyoming Commission on Judicial Conduct and Ethics. Kim lives in Big Horn and his place on the Upper Green River north of Pinedale is where he can be found on horseback or fly fishing.



Jay A. Gilbertz. Jay is a Wyoming native who grew up on a cattle ranch near the Middle of Nowhere. [. . . There actually is such a place, at least according to the *Wall Street Journal* – as the crow flies, Middle of Nowhere WY is 42 miles northeast of Moran, 31 miles due north of Dubois, 41 miles west of Meeteetse, and 35 miles south of Wapiti; but you knew that . . .] In 1996, Jay obtained his law degree from the University of Wyoming. He defends doctors and hospitals and litigates fire and explosion cases. Jay also works for both plaintiffs and defendants in a wide variety of injury cases and business litigation matters and occasionally acts as a mediator. Jay is active in anything to do with the outdoors, other than golf.

Robert C. Jarosh. Rob handles commercial, employment, and other litigation in Cheyenne. He graduated from the University of Wyoming College of Law in 2001, is a past President of the Wyoming State Bar, and in 2018 received the State Bar's Pro Bono Award for Community Service. Rob, his wife, Cathy, and their two children enjoy traveling and sports. ■



Original hermit and horse
design created by
Former Regent John S. Siffert




"We know that your attainment of the front ranks of the bar has not been without its costs, and we recognize that our specialty exacts much of those who win its favor. Truly, we are, in Lord Eldon's words, the hermit and the horse."

— from the College Induction Charge

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1942 – 2020

TRIBUTE TO PAST PRESIDENT
MIKE MONE



At the 60th Annual Meeting of the College in 2010 in Washington, D.C., Past President **Mike Cooper** asked us to turn our minds back five years to 2005. “There were about 700 individuals detained at the Guantánamo Naval Station. They came from many different countries. They had been apprehended in many different circumstances, very few in the field of battle. . . . Forty-three Fellows have represented detainees in habeas corpus proceedings.” Mike Cooper was one of those, as was **Mike Mone**, our fiftieth President.

Mike and his son, Michael E. Mone, Jr., represented Oybek Jabbarov, a refugee from Uzbekistan who was living in Afghanistan in 2001 with his pregnant wife and one-year-old son. In the chaos that followed the 9/11 attacks and the U.S. incursions against Al Qaeda and the Taliban, the U.S. offered substantial bounties for combatants and terrorists. Oybek was turned over for bounty at Bagram Air Force Base in December 2001 and transferred to Guantánamo in the spring of 2002, despite the fact that U.S. civilian interrogators had determined that he was not in fact a foreign fighter. And despite that benign determination, Oybek was subjected to “enhanced interrogation” and was held for more than seven years, most of it in virtual solitary confinement. Mike and Michael were paired with Oybek in 2006 and worked tirelessly for his release and relocation.

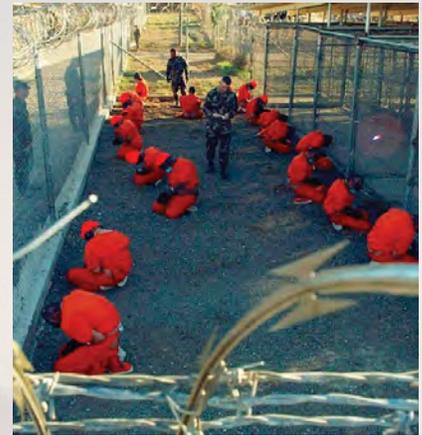
It took three years. In Spring 2009, a plane carrying Oybek and another detainee landed in Ireland, shackled hand and foot. The Irish government representative who got on the plane was told by the guards that the shackles would be removed only when they deplaned. The Irishman said, “No, these men are not going anywhere until you take off the shackles and the handcuffs, because when these two men step off this plane onto Irish soil, they will do so as free men.”

The Mone’s weren’t finished. Months of further work resulted in another landing, just before Christmas 2009. Michael sent out an email to all of the lawyers on the Guantánamo listserv, entitled “Home for The Holidays.” “Yesterday evening in Dublin, a plane touched down, carrying a young woman and her two sons. After they were . . . ushered through Customs . . . waiting for them on the other side of the door was their husband and father, Oybek Jabbarov. After eight years of separation and unimaginable anguish, the Jabbarov family is finally reunited.”

Mike summed up the deed he and Michael had performed. “Ladies and gentlemen, the Talmud teaches us that to save one life is to save the whole of humanity.”

Having saved the whole of humanity, Mike Mone passed away peacefully in his sleep in the early morning of March 30, 2020.

If you knew Mike, I’m sorry for your loss. If you did not know him, I’m even more sorry for your loss. Oh, oh, you should have known him. Mike was the kind of guy who walked into a room and you just immediately liked him. You wanted to meet him. He could quote the Talmud with ease, but he was as Irish as Guinness. His Boston accent wasn’t merely part of him – it defined him. He joked – well, no, he wasn’t joking – that he sounded so much like Ted Kennedy that he could get almost anything done in Boston over the phone. The only time his accent wasn’t an asset was when he bought a fancy new car that responded to voice commands – you could start it, stop it, speed it up, slow it down just by speaking. That is, you, or I, could do that; Mike could





not, because the poor car had no idea what to do with the command, “Ca-a-a-aw, sta-a-a-awt.”

“The law, for him, was an opportunity to do good,” said William Delahunt, a former U.S. Representative and a friend since college. “To me, he was one of the great, great legal counselors in the very best sense of the word,” said Margaret H. Marshall, a retired Chief Justice of the state Supreme Judicial Court.

Born in Brockton, Massachusetts, in 1942, Mike was the second of four sons. His older brother, **Peter**, is also a Fellow of the College – in fact, they were inducted together, in 1984 (at the same meeting when brothers **David** and **Ian Scott** were inducted). Mike played football at Middlebury College in Vermont, where his friends included Rep. Delahunt and Ron Brown, who would later serve as U.S. Commerce Secretary before dying in a 1996 plane crash. The three met in a campus organization that supported John F. Kennedy for president, and they drove to Burlington, Vermont, during the 1960 campaign. Michael recalled that Mike “remembered shaking Kennedy’s hand and thinking how thin and frail he looked, and how calloused his hand was from shaking so many hands.”

Mike graduated from Middlebury in 1964 and from Boston College Law School in 1967.

In 1965, he married Margaret Supple, Margie. Their families had spent summers in the Onset village of Wareham in homes a street apart, but they didn’t meet until their late teens. “It was a Cape Cod summer romance,” she recalled, adding that, at first, she set him up with friends. Those relationships didn’t last. Theirs did. Margie worked as a nurse while Mike attended law school.

“He absolutely worshipped her,” Michael observed. “He adored her.”

After law school, Mike took a job at Schneider & Riley in Boston, representing victims of personal injury. Within two years, he secured a \$100,000 jury verdict – a notable amount in those days. His career path was set, and Mike went on to be one of the best known and most highly respected members of the plaintiffs’ bar in the country. Mike was proud of the fact that while he was the fiftieth President of the College, he was the first plaintiffs’ lawyer to hold the office.

When the College met in Dublin in 2006, Mike and Margie met the President of Ireland,

Mary McAleese. Hearing Mike’s name and brogue, she noted that Mone was a “Keady” name – Keady is a small town in County Armagh. Mike responded, “Yes, I googled Mone to see if I still had relatives there, and up came the Clontibret Gaelic Football Club and one Liam Mone, who was described in the team brochure as ‘A typical Mone - a know it all!’” Mike added, “We need not wait for DNA results to see if we are related!” [*There are still Mone’s in Keady. I found a funeral notice for Phelim Mone of Keady, County Armagh posted in 2019. It says (really, it says this, you can’t make this stuff up) “Deeply regretted by his loving wife, sons, daughters grandchildren, great grandchildren, brother Plunkett, sister Margo and the entire family circle.”*]



In 1973, Mike joined Esdaile, Barrett & Esdaile, where he spent the rest of his substantial career. In the late ’70s, Mike represented Peter Franklin and his wife Joan. In January 1974, Peter was admitted to Massachusetts General Hospital, complaining of chest pain. A chest X-ray was ordered. Two days later, Peter was discharged from the hospital by Dr. Thomas W.

Albert, who noted in the discharge summary that the X-ray was normal. But it was not. The X-ray report actually noted “apparent left superior mediastinal widening,” concluding that “further evaluation of this is recommended.”

Four years later, in January 1978, with severe flu-like symptoms, Peter returned to Mass General for another X-ray. It disclosed a malignancy, diagnosed as Hodgkin’s disease. Peter and Joan retained Mike, who promptly brought suit on their behalf, alleging that the finding in the 1974 X-ray of “apparent left superior mediastinal widening” was an early manifestation of his disease, and the defendants’ failure to evaluate the finding was medical malpractice.

But Massachusetts law then required that malpractice suits be filed within three years of the malpractice. Case dismissed. Mike wasn’t finished. He appealed. He won. In *Franklin v. Albert*, 381 Mass. 611 (1980), the Massachusetts Supreme Court reversed long-standing precedent and held that its three year limitation period runs from the discovery of, not the commission of the malpractice. Justice for his clients.

In June 2002, then New England Patriots offensive coordinator Charlie Weis underwent a gastric bypass operation at Mass General. Two days after the surgery, with Weis in *extremis*, a nurse suggested a test to detect whether there was internal bleeding. There was. The bleeding spilled stomach contents into Weis’ abdomen, causing massive infection. “He spent days at death’s door,” Mike told the jury in the 2007 trial. Mike told the jury that Weis suffered nerve damage to his lower legs and feet that made it difficult to walk or stand. Weis suffered great pain when he stood on the sidelines during a football game – as his job as Head Coach at Notre Dame required.

Mike lost that case. Well, Mike didn’t lose it; the facts were losers. Post-op bleeding is normal; and there just wasn’t enough evidence



that the doctors had done anything wrong in not detecting it sooner.

That’s the point. Mike didn’t win every case he took on. But he gave his best to every case, and win or lose, his clients got justice. Mike didn’t mope about his losses any more than he gloated about his successes. He simply lawyered on.

The irony is that Mike died much sooner than he should have, because he himself was a victim of the malpractice he fought so fiercely against for clients his entire professional life.

In 2009, two radiologists misdiagnosed a tumor in his kidney as a benign cyst. By the time he was correctly diagnosed in 2015, the cancer had spread and was inoperable. Thanks to Mike’s own work in the *Franklin* case, he could still file a malpractice action – which he did. Mike eventually settled with the insurance company representing the hospital and radiologists, not because he wanted or needed the money, but to ensure that they fully appreciated the impact of their error on a patient’s life. And then, so Mike of him, he told the reporters, “I have no harsh feelings for these doctors. . . . Very, very good people sometimes make a mistake.”

A long illness doesn’t simply afflict the ailing. The pain is shared. And much of it fell to Margie. Margie and Mike also shared good humor. Talking to a reporter about Mike’s illness, she



quipped, “He kept saying, ‘Everyone should marry a nurse.’”

Mike never failed to mention his partnership with Margie. In his final report as College President, published in 2001 in Issue 37 of the Bulletin, Mike proclaimed, “Finally, for the last year, as in the thirty-five years before, everything that I did included the help and support of my wife, Margie. I save my last thanks for her.”

Margie attended one day of the Weis trial. A reporter asked Mike whether Margie always attended his trials. “No,” Mike deadpanned, “in thirty-five years, today was the first time. But then today is the first time I ever put Tom Brady on the stand as a witness.” “Oh, Mike,” Margie protested, “You’ve made me look like a Brady Groupie.”

Margie, we’re sorry for your loss.

In addition to his service as the fiftieth president of the American College of Trial Lawyers, Mike was president of the Massachusetts Academy of Trial Attorneys and the Massachusetts Bar Association. When Mike was our President in 2000, he mused that he hoped one day to see a Canadian and a woman as President (not necessarily at the same time). He did. David Scott became President in 2003; Joan Lukey in 2009.

Joan, we’re sorry for your loss.

Mike’s son, Michael, summed up his personal loss. “He wasn’t just my father. He wasn’t just my law partner. He was my best friend. And he was my best man at my wedding.”

Michael, we’re sorry for your loss.

When Mike spoke to us in 2010 about Oybek, his pride in what he and Michael had done together for Oybek was clear. He was proud of what they had done for Oybeck and his family; but he was equally or maybe more proud that he and Michael had done it together.

Mike mused about the role – and the roll – of lawyers: “Every state in this country has a long tradition of lawyers providing pro bono representation. When Michael and I passed the bar in Massachusetts, thirty years apart, we signed a book that has the name of every lawyer who has ever practiced in our state. That book includes the names of the lawyers who defended Sacco and Vanzetti. It includes the name of Benjamin Curtis, who was on the United States Supreme Court, dissented in the Dred Scott case and resigned as a matter of principle, returned to Massachusetts and only came back to Washington to defend Andrew Johnson in a very unpopular impeachment trial.

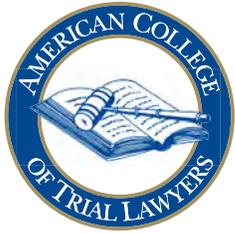
“That book also has the names of the Adamses. Not just John Adams, for what he did with the British soldiers, but his son, John Quincy Adams, who, after he was President, defended the Spanish slaves, African slaves on the slave ship Amistad. This is not just a Massachusetts tradition. This is the fabric of what it means to be an American lawyer. All of you will at some time have an opportunity to undertake an unpopular representation. I would urge all of you to seize that opportunity, because you will never forget it.

“John Adams said that of all the things he did, which included not only the Presidency but being the driving force behind the Declaration of Independence, that the representation of Captain Preston and the British soldiers in the Boston Massacre was the finest service that he had ever done for his country. Each of us standing here today and those who couldn’t get here today will tell you that this is the best thing we have ever done.

“Thank you, and God bless the Constitution of the United States.”

We will miss you Mike. We are sorry for our loss. But, boyo, are we happy to have known ya.

Robert L. Byman
Chicago, Illinois



M A R | **MAUI, HAWAII + 2021 SPRING**
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SAVE THE DATE



Alabama, Florida, Georgia

January 24-26, 2020

Art Ovation Hotel

Sarasota, Florida

TRI-STATE REGIONAL MEETING



One-hundred forty-five Fellows and their guests from Alabama, Florida, and Georgia gathered at the beautiful Art Ovation Hotel in Sarasota, Florida, on January 23-26, 2020 for the bi-annual get together that featured balmy weather, speakers, venues, entertainment, and food. The event, which moves from various locations within (and occasionally outside) the region every other year, captured the beauty and inviting nature of Sarasota at the perfect time of year. When not listening to the speakers and their presentations over the weekend, visitors found time to enjoy local museums, shopping, golf, restaurants, and picturesque Sarasota Bay.

The weekend started on Thursday evening with a happy hour surrounding the Art Ovation rooftop pool. Old acquaintances were renewed, and fresh friendships were made. The two-day program began the next morning with several outstanding presentations that rivaled those Fellows have come to expect at national meetings of the College. President **Doug Young** began the morning with a briefing about the goings-on of the College and his plans for the year. He was followed by interesting tales and little-known information about Sarasota from resident historian, **Jeff LaHurd**. His light and somewhat comical approach regarding the founding and growth of Sarasota, including its several notable characters, was the right touch to enlighten the audience about the locale, which had heretofore never held a College meeting of any type or size. His discussion was followed by **John Thrasher**, the President of Florida State University. Thrasher gave an inside look at the day-to-day challenges facing a large public university, with a mixture of all the advancements he's led at the university during his tenure. In 2000, the Florida legislature placed the stewardship of The Ringling Museum in Sarasota under Florida State University. The Ringling cultural campus is home to the Sarasota Ballet, Asolo Repertory Theatre, and FSU/Asolo Conservatory for Actor Training making it one of the largest college arts complexes in the country. Tallahassee Fellow **Larry Simpson** invited attendees next to join him in a recount of his prosecution of one of history's more heinous mass murderers, Ted Bundy. Simpson was a relatively young assistant state attorney at the time of this important prosecution that took place before the dawn of DNA evidence. But through his untiring efforts, a conviction was reached and withstood challenges on appeal. Simpson's ability to deliver the details of his preparation for this important trial was truly moving. Finishing the day was a pre-



sensation about The Children's Network from **George Clarke** and **Ira Lustbader**. Clarke and Lustbader informed the gathering about the important work being done by this non-profit organization on behalf of thousands of foster children throughout the country, oftentimes displaced and forgotten by the bureaucracies that are simply overwhelmed by their numbers. Their presentation was so convincing that several Fellows volunteered to assist in future investigations and lawsuits on the network's behalf.

On Friday evening, the group was shuttled via Sarasota Trolleys to the enchanting waterside destination of Marie Selby Gardens for drinks, hors d'oeuvres, and a catered dinner. A hidden beauty in downtown Sarasota, the Gardens were a relaxing spot for dinner and entertainment provided by guitarist, Ethan Eastmoore, who is the son of Sarasota Fellow, **Ted Eastmoore**, and his wife, Karen.

The program continued Saturday morning with timely commentary from **Susan MacManus, Ph.D.**, emeritus professor of political science at the University of South Florida in Tampa. Dr. MacManus provided a vast array of statistics and other views on the current political

climate, the upcoming election, and data about how different generations view government and its leaders. Her discussion could not have come at a more pertinent time and her even-keeled delivery was a much-needed diversion from often slanted news outlets. After MacManus, the Fellows and guests were given a first-hand look at how a major medical center deals with an unspeakable yet all too common event in today's society. **Dr. Michael Cheatham** is the chairman of the Orlando Physicians Surgical Group and is the Chief Surgical Quality Officer at Orlando Health Regional Medical Center in Orlando. ORMC as it is known, is a Level One Trauma Center located within three blocks of the Pulse Nightclub where forty-nine patrons were killed and another fifty-three wounded in a mass shooting by a crazed gunman. Dr. Cheatham shared what it was like to be at the epicenter of a medical response like none other. He also provided a tribute to the men and women who had trained for such an event, and worked endless hours saving bullet ridden, and innocent victims.

Following Dr. Cheatham's presentation, the gathering was enlightened by Tallahassee Fellow **Barry Richard**, who took

attendees back to the fast-paced days following the 2000 presidential election and the ensuing litigation in *Bush vs. Gore*. Richard recounted in exacting detail about the counts, recounts, court hearings, and ultimate results of one history's most fascinating elections, and delivered the events as if they had occurred just last week. It was a captivating journey to go along with him as he and Fellow **David Boies** traveled the state from courthouse to courthouse in a whirlwind month of judicial activity.

And last but certainly not least, those in attendance were treated to the music, dancing, and pure entertainment of the Westcoast Black Theatre Troupe from right down the street in Sarasota. The troupe's rendition of hits from the glory days of the Motown era was enjoyed by the attendees.

The Tri-State Meeting concluded Saturday evening with dinner and dancing in the Art Ovation ballroom. Not to be outdone by his talented son, Sarasota Fellow Eastmoore and his band "GoodByEddie," entertained the crowd with singing and dance music well into the evening.

Francis M. McDonald, Jr.
Orlando, Florida

FELLOWS HEAD TO SAIPAN FOR 2020 PACIFIC JUDICIAL CONFERENCE

We were aiming for Saipan. My own trip began with a twenty-hour flight from the East Coast with three segments of three, thirteen and four-and-a-half hours. If one flies through Seoul, as I did, you have to claim luggage there and check it on through. Arrivals of the Fellows varied from 8:30 a.m. on Saturday to 2:00 a.m. on Sunday.

Upon our arrival on the island, we were picked up, regardless of the hour, by good humored, welcoming and smiling Pacific Judicial Council (PJC) officials, judges, and administrative staff, as well as Saipan Marshals. We arrived at the hotel where we stayed and where the conference was being held and were escorted to our rooms, collapsing for a few hours, trying to acclimate to the fourteen- to seventeen- hour time difference.

Our leader and the mastermind of this ACTL/PJC trip, as well as previous trips to Palau (2015) and Guam (2017), was **Brian O’Neill**, the lead plaintiffs’ class attorney in the Exxon Valdez Alaskan spill litigation, and his wife Ruth. Sadly, Brian and Ruth could not accompany us due to an illness, but Brian supported us throughout the planning by email and numerous telephone conferences. The week of the conference he Skyped in to make a special address to the more than 100 attendees, comprised of justices, judges, prosecutors, defenders, and private counsel from various Micronesian jurisdictions (American territories and independent nations). Brian’s address captivated, united, and motivated us, judges, lawyers, and ACTL presenters alike.

[**Editor’s Note:** Brian’s *In Memoriam* tribute will appear in Issue 94 of the *Journal*.]

The Sunday of the week when we started the conference began with a ten-minute flight for a trip to neighboring island, Tinian. Some of our group, who were greeted and gifted Tinian history books by the Tinian Mayor, toured the island where the atomic bombs that ended WWII were stored prior to being loaded onto the bombers that carried them to their final destinations. After the trip to Tinian, all College presenters met with our two hosts, Chief Justice

F. Philip Carbullido of Guam and Associate Justice John Manglona of the Supreme Court of the Northern Mariana Islands to review the agenda and the set-up for the conference. Afterwards, the Commonwealth of the Northern Mariana Islands (CNMI) Bar entertained attendees and presenters with food and drink. Each night included dinners featuring local cuisine sponsored by the Bar, judiciary, and the PJC, respectively.

The PJC is composed of Micronesian states that include three U.S. territories (American Samoa, Guam, and the Commonwealth of the Northern Marianas Islands), the independent country of Palau and the four island members of the Federated States of Micronesia: Yap, Pohnpei, Chuuk, and Kosrae. Each has its own judiciary, steeped not only in traditional island law but also reliant on U.S. precedential law. The U.S. Congress funds the PJC through the U.S. Department of the Interior. The ACTL began its conference partnership with the PJC in 2015 to further the rule of law, a standing tenet of the ACTL’s International Committee.

The first day of the 2020 conference, Monday, January 27, with attendance numbered close to forty people comprised primarily of judicial officials, consisted of presentations on judicial opinion writing, an overview of how to approach pro se litigant issues, human trafficking, and international criminal law issues dealing with extradition. The second day of the conference, when attorneys joined the judges, the conference number ballooned to well over 100 attendees. Presentations ranged from the Skype address by O’Neill to a U.S. Supreme Court review, mediation ethics, search and seizure law, examination of the justice/injustice dialectic or making the right choices and holding people



accountable, to civility and professionalism in the practice of law. The third day of the conference covered topics dealing with complicated civil case organization and presentation, climate change law, *Brady/Giglio* and other criminal law issues, expert testimony, the prosecution and defense of public figures, and the handling of domestic violence cases.

ACTL presenters hailed from across the United States. In no particular order we were from Montana (**Keith Strong**, a co-team leader for the event, and one of three Fellows who has been to all three ACTL/PJC events since 2015; and **Karen Townsend**, a former DA and judge, the interviewer of Jon Krakauer at the recent Annual Meeting in Vancouver, who was attending her second ACTL/PJC event); New Jersey (**Cathy Fleming**, a former federal prosecutor, former President of the National Association of Women Lawyers and a first time participant); Atlanta (**Bruce Maloy**, a seasoned trial lawyer who also is an Adjunct Professor of law at Emory University School of Law and a first time participant); San Francisco (**Harold McElhinny**, a veteran of

litigation on Saipan, lead trial counsel for Apple against Samsung Electronics in 2014, a personal friend of Justice Carbullido, and a first time participant), Pittsburgh (**Charlie Gibbons**, a civil litigator, former Chair of the Pennsylvania Supreme Court Evidence Committee and first time participant) and **Mickey Pohl**, listed as “Best Lawyer” in the Bet-the-Company litigation and another three time participant who, like Charlie, has been involved in major national civil litigation for years); Los Angeles (**Michal D. Schwartz**, a recipient of “Prosecutor of the Year” award from Mothers Against Drunk Driving (MADD) and first time participant who engaged attendees with LA City Attorney lessons he gathered over the years); Seattle (**Corrie Yackulic**, named a “Top 50” Washington Woman Lawyer by Super Lawyers four years in a row and a first-time attendee who unfortunately became ill just before her travels but was able to present through Zoom) and Charlotte (**Rick Glaser**, also a three-time attendee and co-team leader). All ACTL presenters privately paid for their own travel and

Mickey Pohl and Karen Townsend enjoy local cuisine during one of the dinners.



The three-day conference included justices, judges, prosecutors, defenders, and private counsel from various Micronesian jurisdictions.



Cathy Fleming provides remarks on the prosecution of public figures.



A WWII tank jutting out of the ocean, a remnant of combat gear left there since the U.S. invaded Saipan.

stay during this trip and the prior two trips made in partnership with the PJC.

Although the conference was the primary focus for all presenters and attendees, in addition to a Tinian tour, presenters were able to spend time with attendees at the various dinner events and breaks (learning as much from the attendees as from the presentations). We also toured the island of Saipan where we saw native boat making take place, Japanese bunkers created during World War II, were given a history of the U.S. invasion of the island during WWII, and witnessed the site where hundreds of local Japanese civilians were forced to jump off of “Suicide Cliff” by Japanese soldiers just prior to the U.S. taking control of the island. That dark history aside, it is a beautiful island with green hills, cliffs, and dramatic ocean views.

The ACTL Fellows awarded ACTL/PJC paperweights to Justices Carbullido and Manglona (as well to Brian O’Neill and June Carino, an assistant to Justice Carbullido) for their roles in making the conference a huge success. In re-

turn, the PJC showed its appreciation by gifting Trial Practice Training wooden plaques to all presenters.

This highly successful partnership between the ACTL and PJC has engendered good will towards the rule of law throughout the Micronesian islands. Each time Fellows have made this trip half-way around the world we have been made to feel “part of the family” by the PJC and local bars. We have made life-long friendships and have established enduring bonds that extend well beyond the mutual support and admiration for the rule of law. This series, borne out of an idea of Brian O’Neill and judges of the PJC, should continue to flourish with the support of the ACTL, PJC and individual attorneys and judges dedicated to concepts that no person or government is above the law and that no government or its officials can enforce laws that are unfair or unjust.

Richard S. Glaser, Jr.
Charlotte, North Carolina



The entrance of a Japanese bunker created during World War II.



Presenters were gifted with Trial Practice Training wooden plaques.



During a tour of the island, Fellows saw native boat making.



Saipan is a beautiful island with green hills, cliffs, and dramatic ocean views

HEROES AMONG US

WILLIAM O. BARNES, JR.

On June 6, 1944, at 0625, Ensign **William O. Barnes, Jr.**, one of three Naval officers who manned the Landing Craft Infantry (LCI) 412, made the first of what would be four separate runs over two days under heavy fire to deliver a total of roughly 800 members of the 1st and 29th Infantry Divisions to Omaha Beach for the D-Day Invasion. Bill would never know exactly how many of those 800 boy-men he served into battle survived the War, but he knew that many of them did not. Like so many of his generation, he did not talk about his war experiences. He simply came home and went on with his life, a remarkable life, a life that included his induction as a Fellow of the American College of Trial Lawyers in 1969.

The 1998 release of *Saving Private Ryan* inspired Bill's four sons, one of whom, Tim, is also a Fellow of the College, to press their father about his war experiences. Bill and his sons decided that they would travel to Normandy for the fifty-fifth anniversary of D-Day.

They began their journey at Pointe du Hoc — a windswept, remote cliff 100 feet above what was then a heavily fortified position between the landing spots code-named Omaha and Utah Beach. The cliff is now a national park. Majestic in its elevation, Pointe du Hoc is battle-scarred, pockmarked with bomb craters and the remains of concrete pill boxes from which there is a commanding view of the beach through the gun slits that the German gunners used against the invading Allies — Bill, his shipmates, and his human cargo.



Ensign William O. Barnes, Jr. standing watch on the LCI(L)-412.

I myself visited Pointe du Hoc many years ago — on a bright, sunny, comfortable day. I stood in one of the pill boxes and looked down the cliff, across the beach, at the sea. And I had a moment of clarity. In perfect weather, I realized that I could not have successfully scaled that cliff from the beach. Yet 200 Army Rangers from the 2nd Ranger Battalion made the climb on a cold, rainy day through machine gun fire wearing ninety-pound packs. Only sixty-five of the 200 survived the assault.



The Normandy landings were the largest sea-borne invasion in history, involving nearly 5,000 landing and assault craft, 289 escort vessels, and 277 minesweepers. Nearly 160,000 troops crossed the English Channel on D-Day, with 875,000 men disembarking by the end of June. Allied casualties on the first day were at least 10,000, with 4,414 confirmed dead. The Germans lost 1,000 men.

Tim recounts his family's experience at Pointe du Hoc: "Dad stepped into a pillbox — there were no tears, just silence and astonishment as he saw from up close the location he had seen from below, fifty-five years earlier. He continued to explore. He walked to the largest crater at the end of the cliff. Slowly, eagerly, he stood in silence along the fence, peering over the cliff into the icy blue waters below. More disbelief and silence. He raised his hand as if to salute. 'There,' he said. 'Right there.' We gazed, we watched, we looked at the waters below. 'Right there. That is where we were at 0625. And right here is where the German gunners were shooting at us.'

"He remembered it like it happened yesterday. The weather had been awful the previous days. The men were sick. They were nauseous and the seas were rough. Their uniforms were

heavy and backpacks overloaded with food and supplies for a week. They were all under twenty years old. "These are the cliffs we saw from the ship," he remembered. "They look like they did fifty-five years ago. Eisenhower was right. If we invaded here and won this bit of land, we could march inland and the rest would fall in due time. Eisenhower was right. What a great decision. What a great man."

The Barnes' then drove down the coast to Omaha Beach, through the Vierville Draw, along roads only wide enough for their van. Or wide enough for a Sherman tank. They were thrilled to see a Higgins boat, one of the few remaining. Further down the coast they drove to Arromanches-les-Bains, Ste.-Mère-Eglise, and west to Utah Beach, the widest of the landing sites, still littered with shipwrecks.

Finally, they paid respects at Colleville-sur-Mer, the largest American cemetery on foreign soil. At the end of World War II, the Graves Registration Service and American Battlefield Monument Commission offered next of kin the option of transferring the remains of soldiers killed in Europe to a private or national cemetery in the U.S., or interring them in a permanent overseas cemetery. The French government



USS LCI(L)-412 lands troops on Omaha Beach, 6 June 1944

granted a perpetual concession to 172.5 acres at Colleville, overlooking Omaha Beach with breathtaking views of the water; 9,388 souls are buried there.

Bill Barnes was born in Baltimore on March 18, 1922. He attended Hamilton College in Clinton, New York in the Class of 1944, but left in August 1943 to enter the U.S. Navy. In July 1945, he was granted leave to return briefly from Europe to marry Marilyn L. Isenberg. When he was released from service, he finished his undergraduate degree; then he and Marilyn settled in New Jersey as he attended Rutgers Law School.

After a few years of practice, Bill became State Chairman of the New Jersey Young Republicans, and in 1951, at the age of twenty-nine, he ran successfully for the New Jersey Assembly. That same year, the general who had launched D-Day himself ran for office, and the two Republican politicians found themselves shaking hands. The following year, Bill won a second term in the Assembly, and in 1953 he became, at age thirty-one, the Minority Leader of the State Assembly.

In 1954, Bill formed his own law firm, which became Barnes & Barnes in 1980 after his son, Tim, and later, in 1987, his son, Jeff, joined the firm. The firm, and Bill's practice, evolved from primarily criminal defense to plaintiffs' medical malpractice.

His commitment to community service and legal organizations continued throughout his career until his retirement in 1989. He served as president of the Rutgers Law School Alumni Association in 1959-1960 and was a trustee of Rutgers University from 1962-1969. He served as president of the American Cancer Society of New Jersey in 1965-1966, and as its counsel from 1968-1976. He served on the 1976 Bicentennial Commission for New Jersey. He was active in little theatre for much of his life. He wrote and directed more than thirty original musical comedies for various community

groups, including the North Long Branch Little Theatre. After he and Marilyn moved to Venice, Florida, in 1991, he was involved in the Venice Little Theatre and the Lemon Bay Little Theatre. He was a member of the Chanters at Salib Shrine in Sarasota, serving as National President in 1993-1994. He was a founding member of Trial Attorneys of New Jersey in 1967, serving as president in 1971-1972, and received the Trial Attorneys of New Jersey Trial Bar Award for Distinguished Service in 1977.

Bill and Marilyn were married fifty-one years until her death in 1996. Bill died April 18, 2005, after a long and impactful life.

Tim Barnes was inducted as a Fellow of the American College of Trial Lawyers in 2009.

Tim earned his B.A. from Wake Forest University in 1973 and his J.D. from T.C. Williams School of Law, University of Richmond, Richmond, Virginia, in 1978.

The Colleville cemetery includes the graves of three Medal of Honor recipients, including Theodore Roosevelt Jr.; forty-five pairs of brothers (thirty of which buried side by side); a father and his son; an uncle and his nephew; two pairs of cousins; three generals; four chaplains; four civilians; four women; 147 African Americans; and twenty Native Americans.

Tim describes their visit in 1999: "It was glorious, still and pristine in its beauty. We parked the van, listened to the birds chirp and were quiet. The sign reads, 'Silence and Respect.' The notification was not necessary. One doesn't visit Colleville unless you feel that way. You are there because they are there. You owe your lives, your freedom, your history, your legacy to those men. They are Dad's legacy. They are Dad's friends. There are too many.

"We turned the corner through the gates and stared. The view is breathtaking. There are white crosses and stars of David. Too many of them — hundreds, thousands. They are lined

up at perfect angles for long distances. ‘What a waste,’ Dad whispered. ‘What a waste of youth, of men, of families, of lives.’

“He was quiet again. He looked skyward and started to walk. We let him be alone, so he could have time to see his friends, and reflect on their lives and his. He walked around the perimeter past the 9,000 men and disappeared behind a tree. We wondered if he was all right, but we knew he was. This was where he had wanted to return to for fifty-five years. This was where he needed to be one last time.”

“‘What a waste,’ he whispered again. He couldn’t say anything else.”

If you haven’t been to Colleville, you have a gap in your bucket list you need to fill. The cemetery is beautiful, but the true beauty is in what it illustrates. In World War II, the military recognized only three religions. Dog tags were stamped “P” for Protestant, “C” for Catholic, or “H” for Hebrew. The only other option was no initial at all. The gravediggers would assume, if there was no designation, that the appropriate marker was a cross. But make no mistake – people of all faiths fought and died and likely are buried at Colleville. Muslims have fought for the U.S. in every war since the American Revolution. If you walk the Colleville Cemetery, you will find the occasional Crescent of Islam on the crosses; you will recognize names that strongly suggest that the interred was a Sikh or Hindu. And what is unmistakable is that a private is buried next to a colonel, a Jew next to a Catholic. It is the most egalitarian spot on earth. These 9,388 heroes who have nothing in common . . . except that they each died so that you and I can vacation in France.

Bill, it wasn’t a waste; it was something that had to be done. Thank you for doing it.

Robert L. Byman
Chicago, Illinois



A 1969 United Press Telegraph photo of then New Jersey Assemblyman William Barnes, left, shaking hands with New Jersey Senator H. Alexander Smith, center, and Presidential candidate Dwight D. Eisenhower, right, during a luncheon.



The Normandy American Cemetery and Memorial at Colleville-sur-Mer, France



William O. Barnes, Jr., center, at Pointe du Hoc in 1999 with his sons, from left, Jeff, Pat, Tim, and Bill.

WAR STORIES FROM FELLOWS

Below is a continuing series in the *Journal* featuring war stories from our very own Fellows. Ranging from entertaining to instructive, these stories will feature something a Fellow did or something that happened to a Fellow or another Fellow during a trial.

PLEASE SEND STORIES FOR CONSIDERATION TO EDITOR@ACTL.COM.

A CASE OF THE JITTERS

New lawyers sometimes ask, “When do you get to the point that you no longer got the jitters when you go to court?” I don’t like to answer because I fear that my response will be too discouraging. But here are some tales of the jitters, with some thoughts about what might be learned from them.

Vignette 1. About a half dozen years out of law school, I was swapping stories with some pals about our first jury trials. **Tom Carroll** remarked that when it came time to give his closing, he was so nervous that he could not stand up. “I tried but I literally could not stand up.” When asked what he did, Tom replied, “I gave the speech sitting down.” Thomas Colas Carroll went on to become one of the most highly respected criminal defense attorneys in Philadelphia and beyond.¹

Vignette 2. **Spence Toll** began his career working for Nate Richter, a legendary plaintiffs’ personal injury lawyer (and, by all accounts, very much a rascal). Spence was bald even as a young man, which made the problem that developed all the more evident. Shortly before his first jury trial was to start, Richter entered the courtroom and took a seat just behind the bar of the Court, a few feet behind counsel for plaintiffs’ table. As Spence rose to give his opening, his bald pate gleaming, Richter whispered a bit too loudly, “Spence, stop sweating!”

Vignette 3. Some years ago, I appeared in the Second Circuit before a beyond-excellent panel that included Henry Friendly and **Amalya Kearse**, two legendary judges. Was I nervous? Yes, of course.

¹ **Editor’s Note:** This War Story is spun by our Fellow and Former Regent Dennis Suplee, and features (in order of appearance in the article) Fellows Tom Carroll, Spence Toll, Hon. Amalya L. Kearse, Hon. Gerald A. McHugh, Jerry Litvin, Bob Heim, Abe Reich, Katie Recker, Dianne Elderkin, Liz Ainslie, Tom Duffy, Barney Smolens, Sam Silver, Joe Foster, and Joe Matthews.



Once upon a trial...

There was a fearless attorney
determined to see justice
served who faced a judge with
look on the

But, as I sat next to my opponent, waiting for our case to be reached, it became evident that he was even more so. His hands were trembling, and he kept making a clicking sound as he tried without success to clear his throat. My opponent was Joseph L. Alioto, an outstanding trial and appellate lawyer, who had served as Mayor of San Francisco and was once seriously considered for the vice-presidential slot on the Democratic ticket. In spite of his prodigious abilities and dazzling credentials, he had a serious case of the jitters. When our case was called, Alioto stood and fought for his clients. I was close enough to see that his hands were still shaking, and I could detect a quaver in his voice. It didn't matter. He did his job – and did it exceedingly well.

Vignette 4. Soon after starting his career, now-Judge **Jerry McHugh** was carrying bags for **Jerry Litvin**, perhaps the best trial lawyer Philadelphia has ever seen, for a jury trial at City Hall. Just before the start of the trial, McHugh entered the men's room just as Litvin downed a slug of Pepto Bismol. The jitters respect no one.

Vignette 5. Carl Solano remembers well his first appearance before the Pennsylvania Supreme Court: "As I made my argument, my mouth became dryer and dryer until I felt my tongue starting to stick. But, of course, I did not have water handy and was too insecure to look for a pitcher. Eventually, I saw the Chief Justice turn to the Justice on his right for a chat. I could not hear all they were saying, but I did pick up two words: 'speech impediment.' That was enough to get me to do what I should have done much earlier: find some water." Carl went on to be recognized as an outstanding appellate advocate and served for a time as a judge on our Superior Court.

Vignette 6. Bob Heim tells the story of seeing a young lawyer rise to argue. "He was so nervous that when he started to speak, no words came out. Like everyone else, I sat there embarrassed for the poor fellow. But then a much older lawyer walked up, put his hand on the young lawyer's shoulder and addressed the Court: 'Your Honor, my good friend here has been having some throat problems. I'm sure that if you give him a minute, he will be able to proceed with his argument, which I happen to know is a very good one.' With that, he again patted the shoulder of the young lawyer, whom I am ▶

sure he did not know, and sat down. With that, everyone in the courtroom relaxed, and the young lawyer recovered and made his argument. I wish I knew who the older lawyer was.”

If you had an Irish grandmother, you might suspect that the older lawyer was the young lawyer’s guardian angel. You will never find him.

What might we learn from this disparate collection of tales?

Some suggestions:

1. **There is nothing wrong with being nervous.** If Joe Alioto and **Jerry Litvin** get the jitters, it’s okay for you to get the jitters. Just recognizing that will help you relax.
2. **You will get through it.** Like **Tom Carroll**, you will find a way. Maybe, as with the young lawyer in **Bob Heim’s** story, your guardian angel will save the day. But, one way or another, you will get through it. Again, just that obvious fact should help you relax.
3. **Everyone is rooting for you.** Everybody wants to see a good trial, a good argument. Even your opponent wants you to do well. He/she just wants to do a tad better.
4. **The jitters are a sign that you care about the case.** Reflecting the view of many, **Abe Reich** put it this way: “The jitters are the stimuli that help in the end. In my view, if you lose them, you lose your edge.”
5. **So what?** If it becomes apparent to the judge or the jury that you are a bit nervous, so what? They will understand. And they will appreciate that you are fighting your way through and that you care.
6. **The jitters will go away.** As you go along in your argument or opening, the jitters will disappear. Knowing that should help you relax.
7. **Be prepared.** **Katie Recker** and **Dianne Elderkin** both emphasize the importance of preparation to keep the jitters at bay. Katie says, “I feel more confident if I am over-prepared, and confidence is the key to being persuasive.” Dianne adds, “If I know there is a weakness in my argument, I write out answers to the difficult questions I might get. I don’t read the answers at argument, but just putting my thoughts on paper seems to help with the butterflies.” But **Liz Ainslie** adds a note of caution about over-preparation: “It can be dangerous to cling too much to your preparation. I think a case through as thoroughly as I can, and then prepare an outline, nothing more.” Find out what works for you.
8. **If you cannot disguise the jitters, accept it.** If, like **Spence Toll**, you are bald and sweat when nervous, forget about it; just do your job.
9. **Rituals matter.** In *All That Jazz*, before each performance, Roy Scheider, playing Bob Fosse, checks himself out and then announces, “It’s show time, folks!” Before each court appearance, **Tom Duffy** stops by the office receptionist, straightens his tie, and announces, “It’s show time, folks!” It’s Tom’s way of reminding himself that a day on trial is, to some extent, a show.

When I was a kid lawyer, as I headed off to court, I would walk by the office of **Barney Smolens**, one of my mentors. His send-off was always the same: “Come back with your shield or on it!” With apologies to Petrarch, it always made me laugh. Now, as I leave my office, briefcase in hand, I say to a colleague or just to myself, “Let’s go to work.” For some reason it helps. Rituals help.

10. **Walk to the courthouse if you can.** You will find that with every step your nervous energy will dissipate. And, as you go along, try to talk through your argument or your questioning with a colleague or just review it in your own mind.
11. **Get to the courtroom early.** **Abe Reich** tells a story illustrating why getting to the courtroom early is important: “I had a 2 p.m. argument in federal court. I jumped into a cab at 1:30, figuring that I had plenty of time. When we got east of City Hall, traffic came to a halt. I jumped out of the cab and ran the remaining 6 blocks. I got to the courtroom at 1:58 and learned that the argument had been moved to another floor. Panic set in. I quickly turned to run and smacked the edge of a wall with my nose. Blood flowed freely. I went to the men’s room to grab some paper towels to stanch the bleeding. Ten minutes later I showed up in the designated courtroom. Judge Harvey Bartle looked at me holding a towel to my nose and said, ‘Mr. Reich, is there something you’d like to share with us?’”
12. **Anticipate your physical needs.** Carl Solano anticipates that his mouth may get dry: “Although most courts have a pitcher of water available, I place a small bottle of water in my briefcase – just in case.” To which I add these two suggestions. First, pour yourself only a half glass of water. That way, if your hands are shaky, you won’t be sloshing water as you try to drink. Second, always – always – keep your hand on the top of the pitcher as you pour. I start to laugh every time I think of the top coming off the pitcher as **Sam Silver** poured a glass with the result that water ran all over the notes of **Joe Foster**, counsel for a co-defendant.
13. **Mock the jitters.** On the cab ride to the U.S. Supreme Court for her first argument there, Nancy Winkelman said to her Second Chair: “When I get nervous, my mouth gets dry. I will be very nervous today. Too nervous to drink water. I’ve been told to bite my tongue. I’ll bite too hard and blood will be spurting everywhere. That will be your cue to take over.” Whatever works.
14. **Acknowledge the jitters.** **Joe Matthews** once found himself blurting out at the start of his opening in a big jury case, “I am staggeringly nervous.” We all try to disguise our nervousness, not to proclaim it. But there is an exception to every rule.

So, when do the jitters go away? Never. But the next time you are in court and your case is called, remember that when you stand up, you are already ahead of **Tom Carroll**. And if you make a sound when you begin to speak, you are ahead of the poor devil described in **Bob Heim’s** story. Things can only get better.

Dennis R. Suplee

Philadelphia, Pennsylvania





**WELCOMING OUR
14TH, 15TH, AND 16TH
ACCESS TO JUSTICE
DISTINGUISHED
PRO BONO FELLOWS
AND THEIR PARTNER
ORGANIZATIONS**

**THE HONOURABLE
MARIE DESCHAMPS, C.C.**

Éducaloi

Madam Justice **Marie Deschamps**, recognized and renowned throughout Canada for her access to justice work, received a Licentiate in Laws from the Université de Montréal in 1974 and an LL.M. from McGill University in 1983. The Université de Montréal and the Université de Sherbrooke each awarded Deschamps an honorary doctorate, respectively in 2008 and 2014. She received the F. R. Scott award for distinguished service in 2013 from the Law School of McGill University. She was appointed Companion of the Order of Canada in 2013 and received the distinction Lawyer Emeritus from the Quebec Bar in 2014.



After a distinguished litigation career in private practice, she was appointed to the Quebec Superior Court in 1990, to the Quebec Court of Appeal in 1992 and to the Supreme Court of Canada in 2002. She retired from the judiciary in August 2012.

Madam Justice Deschamps has been an adjunct professor at the law schools of University of Sherbrooke since 2006 and of McGill University since 2012. She rejoined the Quebec Bar in 2013 following her retirement from the Supreme Court of Canada. In 2014, she was appointed to conduct the Independent Review of the Canadian Armed Forces Policies on Sexual Misconduct and Sexual Harassment. In 2015, she was named Chair of the United Nations Review Committee on the Response to Allegations of Sexual Abuse by Militaries not under UN Command in Central Africa. In 2016, she served as a Member of the Review Committee on Quebec Provincial Judges Remuneration. In 2017, she was appointed Chair of the Canadian Council of Academies Independent Assessment on Medical Assistance in Dying. In 2018, she was designated as Assessor in the LGBT Purge Class Action settlement. In 2019, she became a member of the National Security and Intelligence Review Agency. Madam Justice Deschamps recently completed her allotted maximum of six years on the Board of Directors of éducaloi, her access to justice partner host organization for this Fellowship.

Éducaloi, located in Montreal and founded in 2000, has as its mission “to inform Quebecers about their legal rights and responsibilities in language that makes the law easy to understand.” Éducaloi was a finalist for the 2017 Emil Gumpert Award. Although it did not win the Award, the ACTL Foundation was so impressed with Éducaloi’s planned new and innovative outreach to the homeless community that it provided Éducaloi with a \$50,000 grant so that the homeless could become aware of and knowledgeable about their legal rights, responsibilities, and remedies in a way which they could easily understand without all the legalese.

Ariane Charbonneau, General Manager of Éducaloi, best describes Madam Justice Deschamps and this Fellowship as: “There is no greater role model for Éducaloi than the Honourable Marie Deschamps who, after a long and distinguished career at the top of the legal profession, served on Éducaloi’s Board. Despite having ended her allotted maximum of six years, she maintains her commitment to Éducaloi’s mission: better serve the public in need of legal information and education....This fellowship is a wonderful opportunity to enhance Madam Justice Deschamps’ collaboration and further Éducaloi’s important mission.”





SAMUEL W. SILVER

Pennsylvania Innocence Project

Sam Silver is a partner in the Philadelphia law office of Schnader Harrison Segal & Lewis LLP. A well-respected and highly regarded trial lawyer on a local, state, national, and international level, Silver is truly committed to pro bono work, with capital cases being his primary focus. As his law partner (and Former Regent) **Dennis Suplee** notes: “Sam has been engaged directly in substantial pro bono representation almost since he joined the Schnader firm out of law school (University of Michigan) in 1989.” Silver currently serves as the President and Chair of the Board of the Pennsylvania Innocence Project with whom he will partner as an ACTL Pro Bono Fellow. In addition to his busy law firm and pro bono practice, he is an adjunct professor at the University of Pennsylvania Law School and teaches trial advocacy and other courses at the National Institute of Trial Advocacy (NITA).

On the home page of its website, the Pennsylvania Innocence Project succinctly summarizes its mission and goal as “Unlocking the Truth. Freeing the Innocent.” Silver has done just that for innocently accused and convicted clients. In 2017, he successfully led a team of Schnader lawyers, working together with lawyers from the Innocence Project in New York, in *Commonwealth of Pennsylvania v. Anthony Wright* to persuade a jury of Mr. Wright’s innocence and wrongful conviction after he had served twenty-five years in prison for a rape and murder he did not commit. *Rolling Stone* describes Silver as a “powerhouse trial attorney.” He has successfully retried to a unanimous defense verdict two separate death-condemned inmates.

As an ACTL Pro Bono Fellow, in addition to his Board leadership role, Silver is significantly involved in two ongoing projects of the Pennsylvania Innocence Project (“PIP”). PIP’s Executive Director, Nan Feyler, describes his part in each: first, “Our clemency project is working in cooperation with the Pennsylvania Board of Pardons to ensure that inmates who have strong innocence claims and are otherwise excellent candidates for clemency receive due consideration from the Board. For these individuals, clemency provides potentially their only hope of ever being released from incarceration. This is a project that will require a substantial effort and having Sam’s efforts sponsored by the American College of Trial Lawyers behind this effort would lend us considerable support.” Second, “Much of the work of [PIP] is focused on post-conviction litigation. While we identify and are involved with a large number of post-conviction cases, we also rely heavily on the efforts of volunteer private counsel to take the lead on litigating these cases as our co-counsel. If we are able to launch it, the Post-Conviction Training Institute will work with support of the trial courts in Philadelphia County, prosecutors’ offices, and law schools throughout the Commonwealth to develop and provide this training.”



GUY J. PRATTE

The Advocates' Society

Guy Pratte is a senior partner in the Toronto, Ontario, law office of Borden Ladner Gervais LLP and is a founding member of his firm's national pro bono program. He is a past Co-Chair of the College's Access to Justice and Legal Services Committee and is currently the Chair of the Beverley McLachlin Access to Justice Award Committee. In June 2020, Pratte will start his term as President of The Advocates' Society, his access to justice partner organization for this ACTL Fellowship.

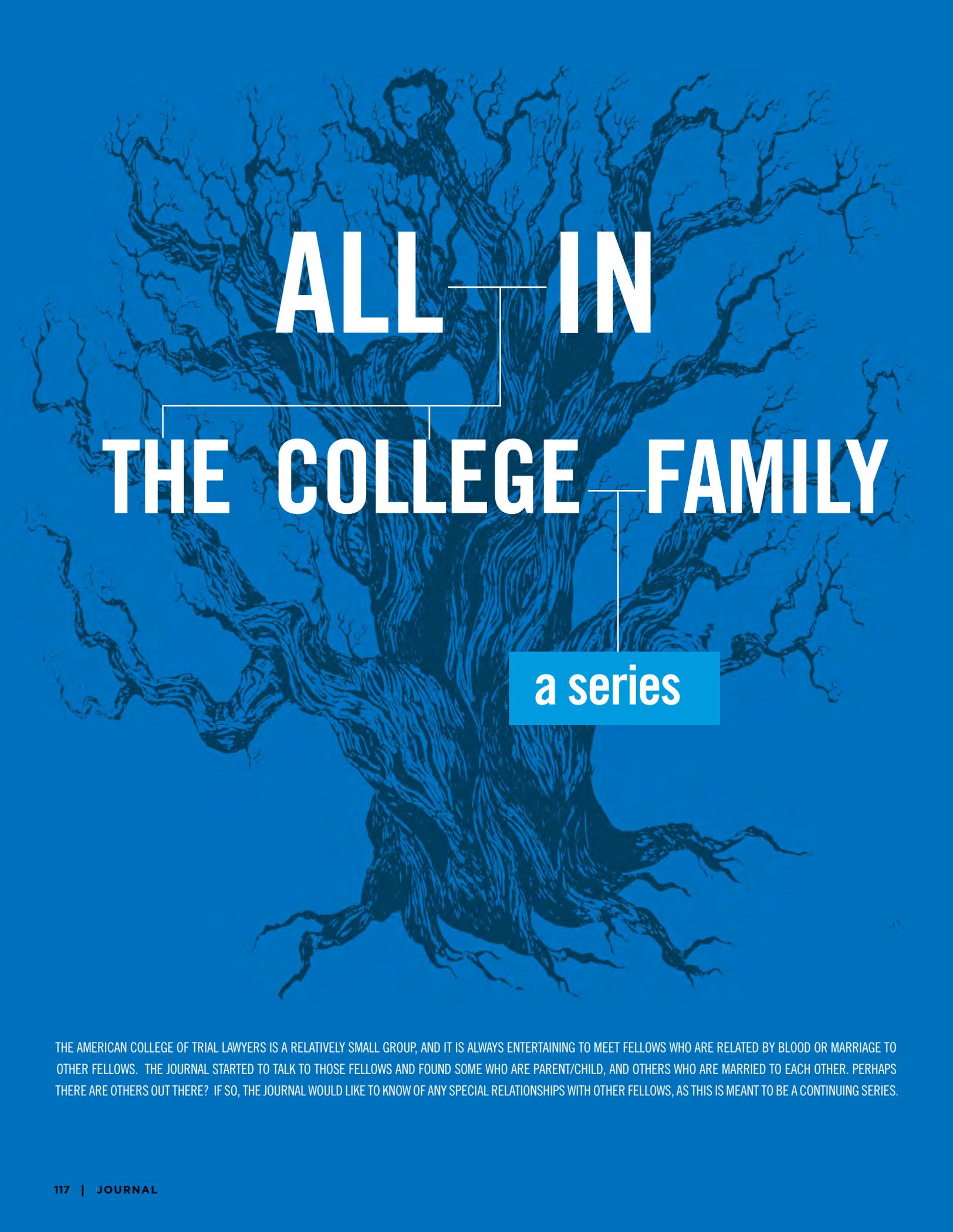
In addition to his impressive legal career, Pratte is a highly regarded access to justice/pro bono leader throughout Canada. Among other notable accomplishments, he is the Founder and former President of Pro Bono Quebec and is a past Chair of Pro Bono Ontario. He has received numerous awards for his pro bono work for those in need, including his receipt of the prestigious St. Yves Medal from Pro Bono Ontario. Pratte also recently received the Ontario Bar Association award of Excellence in Civil Litigation and the Law Society of Ontario Medal which was given to him because of his outstanding service to the legal profession.

Scott Maidment, the current President of The Advocates' Society, speaks very highly of Pratte: "We at the Society are proud of Guy's many accomplishments, including his outstanding contributions to pro bono work in Canada. . . . Part of the core mission of The Advocates' Society is to promote access to justice. Guy has been instrumental in maintaining our focus on this during his years as a Society Director and member of our Executive Committee. . . . Guy has a way of helping others see what they ought to do without ever asking them to do it. It is a powerful form of advocacy, and it makes him invaluable as a champion of access to justice. . . . I know that Guy wants to make access to justice a special priority during his term as President of The Advocates' Society. That will be especially important in the wake of the COVID-19 crisis. The Advocates' Society is dedicated to that mission, and there is no advocate more fitted to lead that mission than Guy Pratte."

The College and The Advocates' Society are presently in the process of jointly planning an access to justice/pro bono symposium to be held in Canada most likely in 2021. Pratte is serving a key role in regard to that symposium which will bring together many access to justice leaders throughout Canada for meaningful discussion on important areas of concern affecting many needy individuals, families, and nonprofits.

Mark C. Surprenant

New Orleans, Louisiana



ALL IN THE COLLEGE FAMILY

a series

THE AMERICAN COLLEGE OF TRIAL LAWYERS IS A RELATIVELY SMALL GROUP, AND IT IS ALWAYS ENTERTAINING TO MEET FELLOWS WHO ARE RELATED BY BLOOD OR MARRIAGE TO OTHER FELLOWS. THE JOURNAL STARTED TO TALK TO THOSE FELLOWS AND FOUND SOME WHO ARE PARENT/CHILD, AND OTHERS WHO ARE MARRIED TO EACH OTHER. PERHAPS THERE ARE OTHERS OUT THERE? IF SO, THE JOURNAL WOULD LIKE TO KNOW OF ANY SPECIAL RELATIONSHIPS WITH OTHER FELLOWS, AS THIS IS MEANT TO BE A CONTINUING SERIES.

Opposites do attract. Just ask Fellow **Joel T.S. Greer** ('12) and his wife, Fellow **Sharon Soorholtz Greer** ('15). Both have admittedly different styles: Joel is reputedly very calm and organized, consistent, and steady, while Sharon describes herself as very direct, getting right to the point but with a flair for drama. She said she was "kind of little," and had to be tough in order to prevail. Although the two practiced in the same Iowa firm from 1982 until 2019, they only tried one case together. It was a divorce modification and at one point, the judge told them that if they didn't start getting along better, they would need their own divorce lawyers. They vowed – successfully – never to try a case together again.

Joel currently practices in Marshalltown, Iowa, where he has also served as Mayor since early 2018. Joel has a statewide insurance defense practice, as did Sharon until she left the practice in May 2019, when she was appointed to the Iowa Court of Appeals. She is one of four female jurists on the nine-judge Court. This is likely Iowa's busiest appellate court, handling 1,200 to 1,300 cases each year. In contrast, the Iowa Supreme Court handles about 100 more complicated cases each year.

I asked Joel to describe one or two of his cases:

"My most challenging case was at age thirty-one, when I brought a medical malpractice claim against an elderly doctor, a proctologist by subspecialty, for having used forceps and having turned off the fetal heart monitor, resulting in a baby born blind and with cerebral palsy. There were sixteen depositions in the month before trial, which started June 4 and ended August 13. We turned down a significant offer (\$225,000 if memory serves), the first jury vote was four for the doctor, three for my clients, and one juror flipped to our side. We think it was then the highest award against an Iowa physician. I lost nineteen pounds and resumed smoking during that trial. (My marriage proposal had been met with a conditional answer: she was OK being my wife, but her husband would not smoke. It took me a year to quit for good the second time.)

"My attempted murder case was also interesting. My client, in his own home, warned his much larger brother-in-law not to come any closer. Brother-in-law advanced. Client shot him in the leg. Why they charged it as attempted murder is a mystery to me. During closing arguments, the older farmer on the jury was smiling and nodding at me, so I found myself focusing on him. The jury's first vote was 11-1 to acquit. He was the hold-out. I've doubted my ability to read jurors ever since!"

Fellowship in the College runs in the family (and the firm) as Joel's father, **John J. Greer** ('83), was also a Fellow. The older Greer died in 2004, ten years before Joel was inducted. A former senior partner in Joel's firm, **John B. (Jack) Grier**, ret. ('83,) (note different spelling) was also a Fellow.

Joel grew up in a small Iowa town, the fifth of six children, with three of each gender. How eight people lived in a house with only one full bathroom is still a mystery to him. His father, Fellow John J. Greer, was a World War II Army veteran who had marched through Germany, defended Japanese war criminals, and then set up a practice with an older lawyer. Being raised in a family of storytellers and interrupters, each of the siblings had to develop a way to wedge into a conversation. ▶

Joel finished law school at the University of Iowa College of Law in Iowa City, Iowa, in 1978, and Sharon completed her law degree at the same institution in 1982. They met in 1980 on a blind date arranged by one of Joel's sisters. Following that first date, Joel drove two hours every weekend from Des Moines to Iowa City to see Sharon, until he moved his practice to Spencer, Iowa. The drives were longer then, and visits became more infrequent. Joel claims that Sharon failed to advise him that she knew how to type, and he therefore typed all her law school papers in his efforts to woo her. She contends he always knew she could type but he thought she was not as fast a typist as he, so she let him handle the typing chores.

Whatever – they seemed to be the right type for one another; the courtship worked. Sharon was sworn into the Iowa Bar on the Friday after bar examinations were completed, and because many of their friends were in town for the bar examination, they scheduled their wedding the very next day, some thirty-eight years ago.

Following their wedding, the two practiced in Spencer, Iowa, at John J. Greer's firm, and then moved to Marshalltown in 1986, to raise their daughters near more family. They have two daughters, Kate is the oldest, recently blessing the family with the first grandchild in Big Sur, California. Erin is the youngest, just married in October 2019. Neither daughter followed her parents into the world of law, telling them that they hated the fact that they were lawyers, because they only talked law at home. That can't be entirely true, however, as Joel says that as parents, they rarely missed dance recitals or sports events.

Both Joel and Sharon are interested in outdoor sports, and both are avid runners. Joel says that Sharon is more avid than he, but his resume shows that he completed five marathons (Duluth 1993 and 1994, Twin Cities in 1994, and Chicago 2000 and 2001), along with numerous other races. Sharon lettered in track and

was a football and wrestling cheerleader when in high school. Both held their high school half-mile race records. Each has been busy with non-profits, and Joel counts at least twenty-two nonprofits that he has chaired. Sharon believes that if Joel hadn't been a trial lawyer, he likely would have managed a non-profit, as he is a deep-hearted person. (Joel thinks he would've played in the NBA despite being 5'8").

One of Sharon's passions is cooking, her grandfather was a professional chef, and Joel claims she invests in a new cookbook at least once per month. Sharon says cooking is her therapy from legal stress, and that while they do eat out occasionally, they are likely to eat at home five of seven nights. She described a recent meal with buttermilk chicken where the chicken was soaked in buttermilk for several days, then cooked in a cast iron pot. It sounds like we should all figure out a way to get a dinner invitation whenever in the Marshalltown area.

Joel is currently practicing with the firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C., and operates the Marshalltown office of the larger firm. Sharon splits her time between the offices of the Des Moines Court of Appeals and working from her home office when possible.

Why did Sharon choose the law? For her, it was a natural. While none of her family were lawyers, she grew up on an Iowa hog farm with four sisters. Her father didn't know that girls were not supposed to do what guys could do, so Sharon grew up with a strong and tough work ethic. Her grandfather had wanted to be a lawyer and helped convince her she should attain the goal that had been out of his reach. That, and when she entered a boring business job after undergraduate school, she soon began realizing that she liked to argue and that she wanted the challenge that the law provides.

When she began practicing in 1982, it was a time when women were not frequently in the legal profession, and even fewer were in the

courtroom. She quickly learned to use humor to deflect what could have become gender bias. At one hearing, a judge decided to tell a joke to Sharon and her male comrades. He asked her to leave the room so that he could tell the joke. She told him she liked jokes as well, and he relented and told the joke in her presence. On innumerable occasions, she would appear at a scheduled event and be asked when the lawyer would appear. Or, she would be asked if she was the court reporter.

Male witnesses were another challenge. One expert gave her a demeaning response to her cross examination by stating: "I don't know what you're asking." She simply replied: "I forgot we are in a room of men – I will bring the tone down for you."

Her toughest case was the criminal defense of a young girl accused of felony theft at the shoe store where the girl was employed. The girl was planning to go to college to become an accountant, which would not be possible if she was convicted. The store's loss prevention leader had flown in from Chicago and convinced the young girl to sign a confession before Sharon's involvement in the defense. Despite the confession, Sharon was able to get an acquittal as the loss prevention leader was so adversarial and the store manager was in Sharon's words, a "dingbat," with a disastrous inventory system.

Joel says he has never known anyone who works as hard as Sharon.

Still, her favorite part of the practice is the interaction with other great lawyers and clients, and the ability to creatively solve problems. She said that while her trial practice was "really crazy busy," the court is also busy but in a different way. She still works very hard, but no longer wakes up at night thinking of her cases. Becoming a judge has in many ways re-energized her.

Carey E. Matovich
Billings, Montana



The ceremony where Sharon Greer was appointed to the Iowa Court of Appeals in May 2019.



Sharon dancing with Joel's father, Fellow John J. Greer, during their wedding



Sharon and Joel, center, with their parents

ACTL FOUNDATION MAKING A DIFFERENCE THROUGH CAMPAIGN FOR FAIR SENTENCING OF YOUTH



Spring in farm country is a time for new beginnings. Flowers bloom, barren trees come alive with color, fields are planted, and the cycle of life brings a mood of hope to the countryside. Optimism is in the air. Surely, an expectation of many tomorrows was the mood in farm country on Easter Day 2006 when two troubled youths broke into a darkened farm home near the Nebraska village of Murdock and murdered Wayne and Sharmon Stock. Reminiscent of Truman Capote's *In Cold Blood*, the victims were found by their son on Easter Monday morning, both shot in the head at close range. How could a crime of such proportion occur against the backdrop of a season expected to bring new life?

One protagonist in this Nebraska horror story was a seventeen-year-old honors student from small-town Wisconsin. Her early life of accomplishment lost focus when her mother and stepfather separated just as she entered her teen years; vagrancy, drugs, truancy, and petty theft soon replaced academic achievement. At every fork, Jessica Reid seemed intent on choosing the wrong road. Then, a teenage romance with another small-town delinquent – Gregory Fester, whose resume was laced with car theft and burglary – proved to be a life-changing decision.

When arrested, Fester and Reid admitted killing Mr. and Mrs. Stock, and they were charged with first-degree murder. In a plea agreement, both were convicted of second-degree murder and sentenced within the trial judge's discretion to two consecutive terms "not less than life imprisonment nor more than life imprisonment." As the Cass County Attorney told the sentencing judge, "This is about the [same] sentence that has already been imposed on the victims and the victims' families."

Jessica Reid's life sentence was affirmed in January 2008 by the Supreme Court of Nebraska, and today she is incarcerated in the Nebraska Correctional Center for Women. Now thirty-one-years-old, Reid has become a model inmate and does nothing to minimize her role in a horrible crime. She has found a much higher purpose to her life. She trains service dogs, is studying for an associate's degree, and has become a prison mentor. Her gripping TEDx Talk can be viewed at <https://www.youtube.com/watch?v=91aPIDwR6n4>. Fourteen years ago, she was a cold-blooded murderer. Today, she helps other people find the good within themselves.

The Jessica Reid story thoughtfully frames an important question: When dealing with a convicted teenage murderer, what response best serves the legitimate needs of society? What must the State

do to provide its citizenry a sound and secure life? Is Reid's incarceration intended to deter, supply public safety, provide retribution, facilitate rehabilitation, or set an example?

THE POWER OF PROXIMITY

At the College's 2017 Spring Meeting in Boca Raton, Bryan Stevenson of the Equal Justice Initiative gave a thought-provoking presentation, challenging believers in the Rule of Law to "do what is right, even when it's hard." He implored Fellows of the College to embrace "the power of proximity," figuratively urging leaders of our profession to get close, look people in eye, and absorb their humanity. Proximity, Stevenson said, reveals why the law is so powerful, and it reminds that "each of us is more than the worst thing we've ever done."

The last century embraced "law and order." With "three strikes" deemed conclusive evidence of a societal menace, prison populations exploded. The current century saw the pendulum swing back, as criminal justice reform gained traction. In 2004, the College presented the Griffin Bell Award for Courageous Advocacy to Bryan Stevenson, in part for his belief that "our system's ability to 'Right the Wrong' strengthens our democracy."

Today, the United States is the only country on Earth that holds prisoner minors sentenced to life without the possibility of parole. In 2009, the Campaign for The Fair Sentencing of Youth ("CFSY") was organized by criminal justice reformers committed to making juvenile sentencing a public policy priority. The campaign's purpose was to hold juvenile offenders accountable in youth-appropriate ways. Its premise: children can continue growing, and personal growth means there is a prospect of a mature, responsible adulthood.

Jody Kent Lavy was the first person hired by CFSY, and she has served as its only Executive Director. Blessed with charisma and a passion for justice, she brought a healthy mix of idealism and reality to her position. While working with the Jesuit Volunteer Corps in the Los Angeles Juvenile Hall, Lavy already had seen how bleakness of life contributed to children making poor choices. She had learned how young people turn to the streets when they are not getting what they need at home; she had met teenagers who had no hope in their lives. She realized these children were her own rough contemporaries who "had the same needs as I, but their needs were not being met."

The organizers of CFSY challenged her to implement a nationwide strategy to make the case that a life sentence for a juvenile without the possibility of parole is not socially acceptable. Her goal was greatly aided when the United States Supreme Court found life without parole unconstitutional in non-homicide juvenile cases. *Graham v. Florida*, 560 U.S. 48 (2010). CFSY suddenly recognized its mission needed a nationwide collaboration that could marshal the juvenile law expertise extant around the country.

Two years after the *Graham* decision, the Supreme Court banned mandatory sentences of life without parole for persons convicted of homicide as a youth. *Miller v. Alabama*, 567 U.S. 460 (2012). An upshot of that decision was the College's grant of its Emil Gumpert Award to Florida State University College of Law's Miller Resentencing Project. Director Paolo Anino acknowledged the \$50,000 grant by the Foundation was there for his clients "at the right time."

The emerging Supreme Court jurisprudence made it impossible for the campaign to confine its advocacy to public policy change alone. Prisoners deserved resentencing with the benefit of legal counsel. CFSY added lawyers to its staff, and they began working with defense counsel across the country, developing strategies to be used in resentencing hearings. Then came *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), in which the Court held the *Miller* decision retroactive. Justice 

Kennedy’s opinion said life without the possibility of parole was excessive for all but “the rare juvenile offender whose crime reflects irreparable corruption.”

LAUNCHING A NATIONWIDE RESENTENCING INITIATIVE

Overnight, the *Montgomery* decision expanded CFSY’s role supporting a nationwide resentencing initiative; at least 2,000 inmates now were entitled to resentencing. And even though the new jurisprudence created a presumption against life sentences for children, nothing guaranteed that prosecutors, judges, or parole boards would take heed.

Rebecca Turner was hired by CFSY to coordinate implementation of the *Montgomery* ruling. The College’s Foundation came forward once again in 2018 to help underwrite her position with a two-year grant totaling \$100,000. The grants were supplemented with funding from the Annie E. Casey Foundation and the Ford Foundation.

Turner’s task was daunting. There was no database containing the names of all the individuals entitled to resentencing, and she spent the bulk of her first two years at CFSY gathering information from local public defenders, partner organizations, newspaper archives, family members, recently released prisoners, and public record requests. A total of 2,817 individuals were identified as beneficiaries of the *Miller* decision, and virtually everyone needed legal counsel. Turner became the project’s chief recruiter, relying principally on the Association of Pro Bono Counsel and its ListServ to identify volunteers. She also turned to law firms who agreed to hold information sessions that might entice potential recruits.

Early on, the optics of resentencing in cases with horrifying facts was an obstacle to attorney recruitment. These cases often evoked little sympathy for the defendant. Volunteers required convincing to take on an entirely new type of pro bono case. There also was general ignorance; CFSY had to educate attorneys that

Life Without Parole for juveniles was something that actually happens.

Who volunteers for these pro bono assignments? **Neil Eggleston** is on the short list of the most prominent defense counsel in the District of Columbia. A Kirkland & Ellis partner, Eggleston served as White House Counsel during the Obama administration, an appointment that immersed this Fellow of the College in a panoply of criminal justice reform issues; he also was involved in presidential clemency decisions. “These became issues of personal interest,” Eggleston said, and it prompted him to say “Yes” when his law firm’s coordinator suggested he satisfy his pro bono urges by accepting an assignment from CFSY. A conversation with Turner was all he needed, and today he and a Kirkland colleague — Julie Siegal — are preparing a clemency petition on behalf of none other than Jessica Reid. The reason? “I was touched while with the Obama White House at how much [criminal justice reform work] affected human lives. . . . [C]lemency introduced me to real people . . . and I feel a responsibility to give something back.”

Former Regent and U.S. Foundation Trustee John Siffert knows about “giving back.” In 2013, Jody Kent Lavy called for help with the first case requiring resentencing in the Southern District of New York, and Siffert worked for the better part of a year on an amicus brief supporting the Federal Defenders’ work on behalf of a federal inmate, Angel Alejandro.

Growing up on the streets of Yonkers in greater New York City, the Latin Kings Gang was impossible for a young boy to ignore, and by his middle school years, Alejandro had turned to the gang. The gang provided what he was not getting elsewhere. So, at age fifteen, Alejandro was assigned by his gang captain to serve as a lookout while other gang members murdered a rival leader in front of the victim’s wife and children. Alejandro, the shooter, and other members of the Latin Kings all were indicted on RICO charges and arrested three years later. The shooter pled guilty and was sentenced

to fifty years in prison, but Alejandro chose trial. Convicted of the homicide, along with firearms and drug offenses, he was sentenced to a life term, which the district court found mandated by federal law. Alejandro began his adult years looking forward to a lifetime in prison for his misbehavior as a fifteen-year-old.

Siffert's amicus brief centered on the brain science and criminological advances made in recent years, and his advocacy underscored the unconstitutionality of ignoring the transient immaturity of youth. He articulated the argument that even if the federal sentencing guidelines no longer were mandatory, the Constitution made life sentencing guidelines inapplicable when dealing with crimes committed as a juvenile.

At the resentencing hearing, the district judge resentenced Alejandro to twenty-five years in prison. He already had served over fifteen years, and he ultimately was released from confinement in September 2019 as he celebrated his fortieth birthday and pondered a future.

Alejandro "kept his nose clean" in prison, and he earned two Associate in Arts degrees in Business Entrepreneurship and Individual Studies; his plan is to complete work for a bachelor's degree in business, but for now he is working at CFSY. Why? "Having been on the other end, I want to be an example. I participated in a horrible crime, and I spent twenty-two years in prison . . . but if I can show people that kids deserve a second chance, sharing my stories, then I can be an example proving the work of CFSY is worthwhile." Alejandro believes having "a kid spend the rest of his life in prison is wrong on so many levels," and he has committed himself to

ensuring that young people and their families do not go through the criminal justice process alone. As for Siffert, he received the Healing and Hope Award from the Campaign in 2014.

PIVOTING TO NEW CAUSES

Now over three years into the project, with the prisoner database complete and the immediate need for pro bono volunteers largely satisfied, CFSY has redirected Turner to help coordinate representation of District of Columbia prisoners sentenced for juvenile crime. Local law did not mandate life sentences, but youthful offenders were often sentenced to a life equivalent, such as "fifty years to life." CFSY successfully helped enact legislation entitling juvenile offenders to a sentence review after serving fifteen years in confinement, but that process is permeated with procedural demands that make it necessary for a robust litigation strategy in every case. All the while, Turner continues her endless labor: recruiting more pro bono counsel for clemency petitions and parole hearings; developing new tools for counsel to employ; deepening relations with allies around the country; supplying critical information from the CFSY database. To underpin this new phase of her work, the Foundation recently approved a third \$50,000 matching grant.

Turner shares that, but for the generosity of the Foundation, the CFSY database would not exist. And without that database, the work of the CFSY cannot be done. Foundation grants have enabled her to engage in litigation support and recruit pro bono attorneys. Seven-hundred-and-fifty prisoners still await resentencing, and a variety of legal obstacles stand in the way. Some, such as Jessica Reid, were sentenced within the discretion of the trial court.

Other states have declined to make life sentences contingent upon a finding the defendant is "irreparably corrupt." Her work and that of CFSY continues.

Angela Vigil is the firm-wide Pro Bono Coordinator for Baker McKenzie, and she serves as volunteer legal counsel to the Board of CFSY. She emphasizes that the organization is not just a well-intentioned nonprofit trying to make a difference. It truly is a "campaign" that teaches it is wrong to lock up adults indefinitely for what they did as kids. "Child offenders should have their youth considered in sentencing." Age is important, she asserts. The teenage brain is still developing. Her point reminds of scriptural teaching that as a child, I talked, thought, and reasoned like a child.

The essential argument of CFSY (*see* Project Witness VR Experience on YouTube) is a belief that just treatment of juvenile crime requires consideration of the offender's age when shaping a sentence. Society's needs are served by allowing for the possibility of rehabilitation as a child grows into adulthood. Who among us has never begged for a second chance?

The Campaign for The Fair Sentencing of Youth is an example of the Foundation bringing the College's values to life. The generosity of Fellows has made it possible for the Foundation to help organizations such as CFSY enhance access to justice. By identifying worthy objects for support, the Foundation serves as a screening agency on which charitably minded Fellows can rely for due diligence. CFSY is just one more example of Foundation grant recipients changing lives, one person at a time.

Charles H. Dick, Jr.
San Diego, California

IN MEMORIAM

Since our last issue, we have learned of the passing of forty-six Fellows, two of them Former Regents – Henry Miller and Jerry Graham – and another a Past President of the College, Mike Mone.



What a loss. They include twenty-three who served in the military. Twelve of those WWII veterans; one rose to Major General; one flew fighter planes in both WWII and Korea. One received a Silver Star; another a Bronze Star. A word about that. There are some medals you get by simply being there. But to get a Star, you have to purposefully rush into danger. The Bronze Star is awarded to a person who “distinguishes himself or herself by heroic or meritorious achievement or service.” The Silver Star, the third highest military honor that can be bestowed, is awarded for *gallantry* during action against an enemy. These people are genuine heroes.



What a loss. An Eagle Scout. A CIA Officer. Four sharpshooters. A Black Belt. A Federal Judge. And a state court judge – who had a somewhat unusual path to the trial bench. After a few years sitting on lower courts, he was elevated and served four years on the State Supreme Court. Then he left for private practice, where he distinguished himself as a trial lawyer and earned Fellowship in the College. And when he hit retirement age at his firm, he was appointed to the state court trial bench – where he presided for nearly thirty years.



Some died way, way too soon. But on average, not so bad. Wikipedia tells us that the average U.S. life expectancy is 78.9 years; Canadians average 82.3. The average of this group is 85. So on average, our Fellows did pretty well. But not one of these Fellows was average. They were each, in their own way, exceptional. We will miss them.



We live now in strange times; the recently fallen cannot be properly honored because it is currently unhealthy for the present to congregate for the departed. So, these write-ups are all the more important.



You will note that some of these memoriams are years overdue. We can only honor those we *know* have passed, *when* we know. So, when you learn that a Fellow has passed, we urge you to ensure that the National Office is informed.



These pieces are necessarily brief. We don't have space to list all surviving family members, so we name only spouses, we count but do not name children and grandchildren. Yet every one of our departed Fellows left scores of family and friends who will miss and remember them. Through those memories, these Fellows live on.

Mark Andrews, Q.C., '08, passed away on March 20, 2020, surrounded by his family. Mark was born in Germany in 1959, where his father, a flight lieutenant, was stationed. He was tiny at birth – five pounds – but grew to 6'6," a metaphor for his career. After a stint in the British army, Mark read law at Magdalen College Oxford, where he rowed in two championship boat race crews, and where he met a Canadian student (a Rhodes Scholar), Shelagh Scarth. After graduation, Mark followed Shelagh to Winnipeg; his immigration papers required that he marry her within ninety days of arriving in Canada and he did, in August 1983, at the chapel where Shelagh's parents had been married thirty years before. The newlyweds loaded a borrowed pickup truck and drove to Vancouver to take up their respective articling positions. But while Mark met all of the other qualifications for the bar, he remained a British citizen and the law then required Canadian citizenship as a prerequisite to admission. Mark sued the Law Society of British Columbia, alleging that the citizenship requirement violated the Canadian Charter of Rights and Freedoms. Mark lost in the trial court, but won in the Appellate court in 1986; the judgment was affirmed by the Canadian Supreme Court in *Andrews v. The Law Society of British Columbia*, [1989] 1 SCR 143. Mark swiftly climbed to the highest ranks of commercial litigators in Canada. He was named as Queen's Counsel in 2004. He appeared as counsel in more than 120 reported cases. Mark's professional accomplishments were publicly recognized by the Law Society of British Columbia shortly before his passing by the creation of the "Mark Andrews Excellence in Litigation Award," which will recognize outstanding lifetime achievements in litigation, such as those achieved by Mark. Mark was only sixty – far too young – when

cancer took him. But his friends and family rejoiced. "Mark did not waste a minute of the year between his cancer diagnosis and his death. He took us hiking at Mt. Assiniboine Park, bird-watching on the west coast off Tofino, and cycling in the Okanagan; he caught salmon from his 'vintage' Boston Whaler, travelled to some of his favorite spots in England, went on a fly-fishing road trip in BC and Alberta along with his friend Simon Coval, and appeared as counsel in the BC Court of Appeal and the Supreme Court of Canada. He made us believe he was unstoppable." Mark is survived by Shelagh, their children, and a grandson.

John Douglas Barr, '89, passed away on November 29, 2019 at the age of seventy-seven. Dugan was born in Yreka, just south of the California-Oregon border. Dugan became an Eagle Scout and was an accomplished sharp-shooter in NRA shooting competitions. Dugan attended Reed College in Portland, where he earned a Fulbright Scholarship. After attending the University of Chicago Law School, Dugan returned to Northern California to engage in a national plaintiff's personal injury work, based out of his Redding office. Dugan truly loved music. He played guitar, standup bass, and a wide array of brass instruments. But his greatest happiness was that he was able to practice with two of his daughters.



Walter J. Blenko, Jr., '78, died August 11, 2019 at age ninety-three of congestive heart failure. Walter left high school halfway through his senior year at age seventeen to enlist in the Army during World War II in 1944. He served in the European Theater as a combat infantryman in the 95th Infantry Division and was awarded a Bronze Star. After the war, Walter earned a degree in mechanical engineering from the Carnegie Institute of Technology and a law degree from the University of Pittsburgh. Walter joined his father's law firm in 1954 and specialized in patent, trademark, and copyright work, practicing more than fifty years before his retirement in 2008. But in "retirement," he took on a new career as president of Blenko Glass, a firm that had been formed by his grandfather in 1893. Walter had not been involved in the company before, but it was in financial difficulty and Walter guided it through Chapter 11 and rebirth. Walter's passions included musical theater and collecting cars. He served for more than twelve years on the Board of the Pittsburgh Civic Light Opera and attended nearly every opening of the cabaret theater and musicals. He served as president of the Classic Car Club of America's museum in rural Michigan and had an impressive collection of his own that included a 1923 Rolls-Royce Silver Ghost. Walter was preceded in death by his wife of sixty-three years, Joy Kinneman. Remarried at age eighty-eight, Walter is survived by his wife, Patti, and by two sons and his four stepchildren – who Walter called his "bonus children."

Salvatore Bossio, '72, passed at age 92 in late December 2019. Sadly, every now and then we encounter a dead end (no pun intended) and have too little information to give our Fellow a proper sendoff. We have been unable to locate an obituary or family member, and our internet and Westlaw searches yielded only crumbs. We know

from his College induction questionnaire that Sal attended Stanford for undergrad and law school, graduating in 1953; and we know that he practiced insurance defense in San Francisco. He appears as counsel in seven reported California appeals in opinions handed down from 1958 – 1967. We wish we knew more. If you knew Sal and can fill in the blanks, let us know.

Donald A. Burr, '82, died February 4, 2020 in Anchorage, Alaska. He was ninety-four. Don was born, raised, and educated in Nebraska, attending the University of Nebraska and the Creighton University School of Law, Lincoln. Don served in the U.S. Army Air Corp in World War II, piloting a P-51 Mustang fighter. He was recalled to active duty with the U.S. Air Force in 1951, assigned to the 83rd Fighter-Interceptor Squadron during the Korean Conflict. In 1953 Don and his wife Joy settled in Alaska, where Don served as an Assistant U.S. Attorney before founding his own firm, Burr, Pease, and Kurtz, where he practiced for over thirty years, taking leave in 1966-67 to serve as Alaska's Attorney General. After retirement, Don and Joy spent winter months in Maui and enjoyed motor homing around the Lower 48. Don loved flying. He homesteaded and built a fly-in cabin in the 1950s where he and Joy and their family spent many happy days, hunting and fishing. Don was preceded in death by Joy, after more than sixty years together. Don leaves four children, twelve grandchildren, and five great-grandchildren.





John Wesley Castles III, '69, died peacefully at home with his loving wife, Arminda, at his side on December 8, 2014. John graduated from Andover, Yale, and Columbia University. At Yale he was captain of the wrestling team and played on the 150-pound (and under) football team. He received his diploma from Yale in 1942, walked across the street to the New Haven, Connecticut Naval Recruitment Office, and fifteen minutes later was sworn into the U.S. Navy as an ensign. John was based in Australia as Captain of the USS-SC 748. [The SC's – "Sub Chasers" – were wooden hulled fast boats designed to hunt and destroy enemy submarines near coastlines.] John saw action in New Guinea and the Philippines where he and his shipmates engaged Kamikazes. John practiced for over forty years at Lord, Day & Lord in New York City. Aside from his practice, he volunteered much of his time as Director for Recording for The Blind, receiving special recognition for that work from then President Ronald Reagan. John was survived by his son and daughter, by Arminda's two sons, and six grandchildren.

James E. Coleman, Jr., '74, died on February 22, 2020 at the age of ninety-six. "The law lost a giant today," Judge Higginbotham of the Fifth Circuit said, adding "I can't tell you what all the characteristics are of a great lawyer, but I can point to Jim Coleman and say with absolute confidence that he had all of them." Jim founded and built one of the most respected law firms in

Texas, hiring women lawyers when other firms did not; he successfully handled hundreds of jury trials during his six-decade career, including a pair of billion-dollar lawsuits. In 2002, Jim was presented with the College's Samuel E. Gates Litigation Award, established to honor a lawyer or judge who has made a significant contribution to the improvement of the litigation process. At age seventeen, Jim enrolled as an engineering student at Georgia Tech, where he met Margaret Sutherland, whose father was the founding partner of one of Atlanta's largest and most influential law firms, Sutherland, Asbill & Brennan. In his sophomore year, on December 7, 1941, Jim Coleman was exiting a movie



theater when he heard a newspaper boy scream out "Extra, Extra. Japan Attacks Pearl Harbor!" A few weeks later, Jim enlisted in the Army, where he was awarded the Silver Star – the third-highest military combat decoration, bestowed for gallantry in action – during his service as a platoon leader with Patton's Third Army. At the end of the war, Jim was assigned to Camp Swift in Bastrop, Texas, where he served until his discharge in 1946. It was his first brush with Texas, and he loved it, vowing to return after he completed his interrupted education. With the G.I. Bill paying the way, Jim and Margaret married in 1947 and returned to Georgia Tech. They were married for more than sixty-five years until Margaret passed in 2012. After graduation, Jim enrolled in the University of Virginia Law School, but that too was interrupted by service. In 1951 he was ordered to report to Fort Meade to prepare to deploy to Korea immediately. But

rather than the Army, Jim was assigned to the Central Intelligence Agency from May 1951 to July 1953, the details of which he never discussed other than to say “I wasn’t doing desk work, I can tell you that. Even my wife never knew what I did.” Federal Judge Barbara Lynn, whom Jim hired out of SMU Law School in 1976 and made his firm’s first woman partner in 1983, reminisced that Jim’s support never wavered. “We had a client who said he didn’t want women working on his case,” Judge Lynn said. “Jim looked at the client and said, ‘Then we don’t want your business.’” We could devote this entire issue to Jim Coleman by simply reprinting the tributes that have come in about Jim from Fellows; we don’t have room to print them all. One example. In 1994, Fellow Dick Sayles told Jim he was leaving Carrington Coleman after nineteen years to form his own firm. “I told Jim through tears ‘I hope you are not disappointed in me.’” Without hesitation Jim looked Dick squarely in the eye and said, “Dick, the only way I will ever be disappointed in you is if you don’t aim for the stars and make it.” Jim is with the stars now.

William Daniel Cremins, ’97, passed away on March 18, 2020, at the age of eighty-one. Bill practiced in Northern Virginia his entire career until he retired to Southport, North Carolina in the early 2000s. Bill’s practice focused on bodily injury cases both as a plaintiff’s and as a defense trial lawyer. Bill’s mastery with juries was characterized by a soft, gentle manner which made every juror wish he would represent him/her should misfortune befall them. Bill was well-liked and regarded by both the Plaintiff’s Bar and the Defense Bar and he was a past President of the Fairfax Bar Association.

Fred G. Crumpler, Jr., ’88, passed away at his farm on

January 19, 2020 at age eighty-nine, survived by his wife of thirty-five years, Marsha. For most of his adult life, Fred’s day began at 4:30 a.m., as he walked his farm and pondered the day’s legal work. Fred represented Henry Alford in *North Carolina v. Alford*, the landmark case in which the Supreme Court affirmed that there are no constitutional barriers to prevent a judge from accepting a guilty plea from a defendant who wants to plead guilty while still protesting his innocence, to take the death penalty off the table. A graduate of Guilford College and Wake Forest Law School, Fred was a dead eye shot with a shotgun, once winning a \$100 bet that he could hit 100 clays with 100 shells. Fred’s hobbies included hunting, sailing, motorcycles, horses, and skiing; and with all of that, he found time for his greatest passion – piloting a variety of aircraft, from an open cockpit taildragger, to a complex twin-engine turbo prop. Fred learned to fly when he served in the U.S. Air Force from 1950 to 1952. He and his beloved black lab, Butch, would share oxygen masks at 21,000 feet while heading to a duck hunt.

Richard T. Cunningham, ’84, was eighty-nine on August 14, 2019, when he died peacefully at Akron Summa Hospital’s Palliative Care Unit. Dick grew up in Cuyahoga Falls and attended Western Reserve University for one year before transferring to Columbia on an NROTC scholarship. He graduated from the University of Illinois College of Law in June 1953 and served as a JAG officer in the U.S. Navy for three years. After the Navy and four years with the Ohio Attorney General’s Office, Dick returned to Akron in 1957, where his practice eventually narrowed to trial and appellate work in personal injury, business, and real estate law. Dick was a past President of the Akron Bar Association and a former

member of the Executive Committee of the Ohio State Bar Association. For many years, Dick volunteered at a local inner-city school where he authored and taught a “Street Law” program to fourth graders. Dick is survived by his wife of seventeen years, June, and by six children, sixteen grandchildren, and five great-grandchildren.

John J. Dee, '77, died at age eighty-nine on July 20, 2018. Born in Syracuse, N.Y. in 1929, Jack attended Syracuse University and the Syracuse College of Law, where he was President of his law school graduating class. Jack served in the Korean Conflict as a JAG Officer and was discharged with the rank of Captain, after which he practiced for more than fifty years with the law firm of Bond, Schoeneck & King, where he was Chair of the Litigation Department. Jack survived his wife by just ten months; he is survived by his daughter and three sons and four grandchildren.

William J. Doyle, '78, was eighty-four when he passed on April 18, 2020. Bill was the former head of the litigation practice at Wiggin and Dana and principal trial lawyer for Yale University for over twenty-five years. In high school, in addition to other jobs, Bill sang for hire at church weddings and funerals and in a local band. Despite poor academic performance in high school, Fairfield University decided to take a chance on him and gave him a glee club scholarship. The Jesuits at Fairfield changed the direction of his life and under their influence, he became a serious student and leader. He was President of his class as a sophomore, President of the student body as a senior, and he graduated with honors in 1958. He attended St. John's University School of Law as a Thomas Moore Scholar, became Managing Editor of the law review, Vice-President of his class, and graduating

second in his class of over 200. He began his legal career in Manhattan at Paul, Weiss, and returned to Connecticut in 1963 to Wiggin and Dana, which grew from eighteen to over 150 lawyers during his tenure. Bill's specialty was high stakes complex civil litigation, and he was good at it. When other lawyers knew he was on trial, they came to his courtroom to watch and learn. He had a real presence in the courtroom, extraordinary cross-examination skills, and a rare ability to make even the most complicated matters understandable to jurors, who more often than not rewarded him with a favorable verdict. He was well liked and had the admiration and respect of clients, judges, and lawyers. When Bill was inducted into the College in 1978, he was at the time the youngest Connecticut lawyer to have received that honor. He later served as State Committee Chair and on other College Committees. For many years, he taught Trial Practice at the Yale Law School as a member of the adjunct faculty. Bill was predeceased by his first wife Margaret O'Keeffe and two children. He is survived by his love Leslie Cummings, his daughter, and his two grandchildren.

Robert Eugene Dryden, '77, passed away peacefully on October 9, 2014, at the age of eighty-seven, following a brief and unexpected illness. Bob enlisted in the U.S. Marine Corps immediately following high school graduation and served in 1945-1946. After the war, Bob graduated from the University of San Francisco Law School in 1954. Bob specialized in products liability, general negligence, construction, insurance coverage, aviation, environmental, complex litigation,



and professional malpractice. Bob served on the faculties of the University of California, Hastings College of the Law, the National College of Advocacy, and USF Law School. Bob and his family loved spending summer and winter weekends and vacations at Lake Tahoe where he skied, boated, swam, and fished. Bob was survived by his wife of sixty-one years, Jetta, his two children, and three grandchildren.

William Benner Enright, '69, a Judicial Fellow, spent almost thirty years as a federal judge. In that role, he delivered a set speech dozens, if not hundreds of times. He would lock eyes on a defendant he was about to sentence and say: "Your worst fears have come to pass. Today is the day we settle accounts. The bill collector comes for you like he comes for me, like he comes for everyone else in this room." The collector came for Judge Enright on March 7, 2020 after a heart attack. Judge Enright had been a defense attorney before he became a judge, and he understood justice as something more than just locking people up. He compiled a list of those he incarcerated and kept tabs on them, reducing sentences for good behavior when he thought it was appropriate. Born July 12, 1925, in New York, William Benner Enright grew up and attended high school in Queens. At seventeen, with his mother's permission, he enlisted in the Navy as part of the V-12 officer-training program and was eventually assigned to the USS Marcus Island, a carrier escort. After his discharge, he got a bachelor's degree in philosophy at Dartmouth College and went to Loyola Law School in Los Angeles. His first job after graduation was in San Diego, as a deputy district attorney, starting in 1951. Three years later, he and several other county prosecutors started their own firm, and he spent the next two decades doing criminal defense work and "building

a reputation as one of the most formidable trial lawyers in San Diego and in the State of California," according to Chief Judge Larry Burns. Some of the cases involved defendants accused of horrific crimes that made him unpopular with some in the community, but Enright found the work satisfying because he wanted to ensure that they had a fair trial, no matter what the eventual result. In June of 1972, in a rare political party cross-over, Judge Enright, a Democrat, was nominated to sit on the Federal District Court by President Richard Nixon. Judge Enright developed a reputation for running a no-nonsense court. In 1985, when he gave the maximum possible sentence to J. David Dominelli for running a \$200 million Ponzi scheme, Judge Enright told him, "You're an intelligent man, Mr. Dominelli — presumably — so you must know that there's no free lunch in this life." But the Judge sometimes displayed a soft spot. He kept a box of keys in his office to hand out to defendants he sentenced to probation instead of prison — a way of reminding them that they held the keys to their own freedom by staying out of trouble. Judge Enright retired in 2000 after presiding, by Chief Judge Burns' count, over more than 300 criminal and civil trials. In his honor, the flags at the federal court complex were flown at half-staff an entire week. Bette Card Enright, his wife of sixty-eight years, passed last year. Judge Enright is survived by his son Kevin Enright, a San Diego Superior Court judge, and daughters Kimberly Enright and Kerry Kunde, plus eight grandchildren.

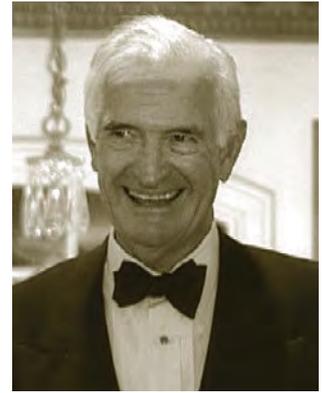
Joseph William Fullem, Jr., '92, passed away at the age of eighty-two on April 10, 2020, survived by his wife, Linda (Keogh) Fullem, four children, two stepchildren, and many grandchildren; Joe's first wife, Nancy Zoller Fullem, predeceased him. Joe graduated from Notre

Dame and Villanova Law School and practiced insurance defense. Joe was an adjunct Professor of Law at the Beasley School of Law. He was an avid golfer.

Yoine J. Goldstein, '88, died March 18 in Montreal. He was eighty-five-years-old. An expert in insolvency and restructuring practice, Yoine was the only Canadian lawyer to have been elected a Fellow of both the American College of Bankruptcy and the American College of Trial Lawyers. Yoine was named to the Canadian Senate by former Prime Minister Paul Martin, serving from August 2005 to May 2009; there he introduced and sponsored bills to protect refugees in Canada, to relieve Canadian students from the burden of student loans, to add a human rights element to the Investment Canada Act when a foreign investment is reviewed, and to facilitate the supply of Canadian medications to African and Asian countries at affordable prices. He co-founded and chaired the All-Party Parliamentary Group for the Prevention of Genocide and Other Crimes Against Humanity. Born in Montreal in May 1934, Yoine earned his bachelor's and law degrees from McGill University and a doctorate from the Université de Lyon in 1960. Yoine served as President of the Jewish Community Foundation, President of Federation CJA, Vice-President of the Jewish National Fund Canada, and was honorary legal counsel to many other organizations. Yoine taught bankruptcy law at the University of Montreal for more than twenty-five years. Yoine is survived by his wife Elaine, two children, and a grandson.

Jerome J. Graham, Jr., '87, a Former Regent of the College, passed away on March 20, 2020. Jerry graduated cum laude from Princeton University in 1956, where he was President of the Glee Club. In 1960, Jerry earned his

law degree from the University of Michigan Law School. Jerry practiced and lived in New Jersey, where he served on the Harding Township Committee, the Harding Township Zoning Board of Adjustment, and Harding



Township Deputy Mayor. In addition to his service as a Regent, Jerry chaired the New Jersey State Committee, was a Trustee of the ACTL Foundation, and served on half a dozen other College Committees. Jerry was a voracious reader – he always had a book or newspaper in hand, and he had an incredible command of the English language. He loved doing *The New York Times* crossword puzzle in pen. He briefly dabbled in horse ownership as a partner in The Unstable LLC. He loved designer ties and was always impeccably dressed. Jerry is survived by his wife of sixty-two years, Marie “Tine” Kirkland Graham, his four children, and seven grandchildren.

Dennis M. Gray, '87, succumbed to a stroke at age of seventy-six on November 22, 2019. Dennis graduated from the University of Iowa and the University of Iowa Law School in 1968. While at Iowa he was an ROTC student, and was commissioned as a First Lieutenant in the US Air Force. After four years of active duty, he remained in the Reserves serving at Headquarters Strategic Air Command and rising to the rank of Major General. Dennis spent his legal career in Council Bluffs, where his practice was product liability, personal injury, and workers compensation. Dennis retired in 2012 to pursue his other passion, spending time with family, specifically, his eleven grandkids. Dennis is also survived by his wife, Linda, and their four children.

Alan Neilson Halkett, '85, passed away suddenly and peacefully at his home in Palos Verdes Estates on January 30, 2020, after a series of persistent medical issues. Alan was born in Chungking (now Chongqing), China in 1931; his family, originally from Scotland, relocated to Santa Monica, California, in 1941. Alan achieved U.S. citizenship at age seventeen and graduated from UCLA in 1953. He served proudly as an aviator and flight instructor in the U.S. Navy for four years. After his naval service, Alan continued his education at the UCLA School of Law, where he served on the Law Review and graduated Order of the Coif in 1961. He practiced for thirty-three years as a trial lawyer at Latham & Watkins (which, when he joined, numbered about twenty lawyers), and served on the firm's Executive Committee and as Chair of the Litigation Department. Alan retired in 1994. He is survived by his wife, Mary, three children, and four grandchildren.

Lawrence A. Hammond, '11, passed away March 2, 2020, following a long illness at age seventy-four. Larry's passions were family, the law, and baseball, in that order. He enjoyed every day, he was an avid marathon runner, world traveler, and lover of country music. He only drove a pick-up truck. Over five decades, Larry won numerous national awards and recognitions, including the ABA John Minor Wisdom Public Service and Professionalism Award and the Southern Poverty Law Center's Justice Award. Under President Carter, Larry received the U.S. Attorney General's Award for Exceptional Service. In Arizona, he received the Tom Karas Criminal Justice Award, the Judge Learned Hand Community Service Award, and the Arizona State Bar Association's Walter Craig Award. In 2015, Larry received the Ninth Circuit Court of Appeal's Professionalism Award. Larry served

as President of the American Judicature Society, and in 2008 former U.S. Attorney General Janet Reno presented him with the Justice Award, the Society's highest honor. Larry helped found the Arizona Capital Representation Project in 1988, which assists inmates convicted of capital crimes, and he served as chair of the Arizona State Bar's Indigent Defense Task Force. But Larry was most proud of founding the Arizona Justice Project, the fifth innocence organization in the nation, of which he served as President for twenty-two years. To further the reach of that work, he helped found the Innocence Network, which has blossomed into a network of over sixty innocence organizations worldwide. Because of the Arizona Justice Project's work, twenty-seven people have been freed from unjust imprisonment. Larry taught law courses for Arizona State University, the University of Arizona, Elon University College of Law, the University of New Mexico, St. John's College (Santa Fe), and Birmingham City University School of Law in the United Kingdom, and he wrote prolifically on the need to ensure that no one was denied access to fair treatment under the law for lack of funds. He helped create law school clinics at ASU and the University of Arizona that focus on wrongful convictions. Larry grew up in El Paso, Texas, and earned his undergraduate and law degrees from the University of Texas, where he served as Editor-in-Chief of the Texas Law Review. After graduation, Larry clerked for Judge Carl McGowan on the U.S. Court of Appeals for the District of Columbia, and then for two U.S. Supreme Court Justices, Hugo L. Black, and ACTL Past President Lewis F. Powell, Jr. After his clerkship, Justice Powell wrote Larry a note: "I think you are one of the ablest lawyers with whom I have ever worked. Your capacity of penetrating legal analysis is exceptional. You

also write with clarity and precision and I had complete confidence in the thoroughness and integrity of your research and in the soundness of your judgement.” Larry later served as an assistant Watergate Special Prosecutor, and then as a deputy assistant attorney general with the U.S. Justice Department during the Carter administration before moving to Phoenix, where his distinguished career included pro bono work for the NAACP in the 1970s on school desegregation, working on international war crimes as part of an ABA task force, and advocacy for increasing the funding for lawyers appointed to serve as public defenders in capital cases. Larry is survived by his wife, Frances, three children, and nine grandchildren.

T. Donald Henson, '85, passed away on December 31, 2019; he was seventy-seven. Don and his identical twin brother, Ron, were born July 24, 1942, in Murray, Kentucky; they were nearly inseparable until Ron's untimely death in 2004. Don earned a bachelor's degree in chemistry and zoology from the University of Illinois in 1964, planning to go on to medical school. But something made Don decide instead to become a lawyer. Don earned his degree from the University of Illinois College of Law and was admitted to the bar in 1967. After a brief stint at a Springfield firm, Don spent most of his career in LaSalle, Illinois, where he became President of the County Bar Association. Don was an avid fisherman and could be found dropping a line in waters around the world. Don married Vicki Sue Barth in 1965 while he was in Law School, and they celebrated their fifty-fourth wedding anniversary together a few days before his death. Don is also survived by his two children and three grandchildren.



Robert D. Hofer, '93, died on January 9, 2020, at age eighty-eight. Bob was an All-State Guard on Emery High School's 1950 state "B" Basketball Championship team and went on to play basketball and baseball at the University of South Dakota. Bob joined the Army in 1956 and was assigned to the US Army Missile Command in Huntsville, Alabama. He was Hanson County State's Attorney before moving to Pierre to work for the State Attorney General, where he met his wife, Roberta (Bobbie) Hartley in 1961. Bob was President of the State Bar of South Dakota. Bob was a lifetime fan of athletics and was an active referee in football and basketball. After his retirement almost twenty years ago, Bob became a four-time national sporting clays champion. One cold South Dakota winter, Bob successfully "pass shot" high flying Canada geese with 410, 28-, 20-, 16-, and 12-gauge shotguns, to prove success comes from the hunter, not the accessory. [Pass shooting is getting under a flock flight line and shooting at the birds as they pass by; it is considered ethical, only so long as the birds are within the clean kill range of the shot, but if not, it is unethical and called sky-busting.] His recipe for shooting success was "keep your head down so the two blocks of wood stay together." Bob is survived by Bobbi, his wife of fifty-seven years, two daughters, and four granddaughters. ▶

Kenneth Earle Howie, Q.C., '85, peacefully passed at his residence at the age of ninety-four on December 20, 2019. Born September 16, 1925, Ken graduated high school as his class valedictorian in 1943 and enlisted in the Canadian Army, serving in the Royal Regiment of Canada in Northern Europe as a Sergeant. Ken attended the University of Paris while still in the Army after the hostilities ended and was promoted to Captain in the 29th Field Regiment of Toronto. Returning home, Ken graduated from Osgoode Hall Law School and the University of Toronto Law School in 1951. Ken was appointed Queen's Counsel in 1958. Ken was a Past President of The Advocates' Society and a Past Dean of the International Academy of Trial Lawyers. In 1989, Ken was awarded an Honorary Ph.D. from the University of Urbino. Ken is survived by his four children, nine grandchildren, and five great-grandchildren.

G. Conley Ingram, '86, a Judicial Fellow, died on November 19, 2019 at his home in Marietta at the age of eighty-nine. Conley sat on the Cobb County Superior Court for thirty years, from 1988 through 2018 – after he had served as a justice of the Georgia Supreme Court. Judge Ingram was born September 27, 1930. He attended law school at Emory University. He practiced privately in Marietta before becoming a judge. He served on the Cobb Juvenile Court and the Cobb Superior Court; he was elevated to the Supreme Court of Georgia, where he was a justice from 1973 to 1977. He left the high court to join the Atlanta law firm Alston & Bird, where he worked for twenty-one years and earned an invitation to become a Fellow. In 1998, he retired from the firm to become a senior judge on the Cobb Superior Court, where he served until he retired in September 2019. But Judge Ingram's move back to the bench was not easy; in

fact, when he first considered it, it was not legal. Judge Ingram once told a reporter that he felt lonely and cloistered at the Supreme Court, rarely seeing anyone from the outside; he greatly preferred being a trial court judge, where human beings came in front of him every day. But when he decided to return to the bench as a senior judge at age sixty-eight, he wasn't eligible to do it, because the law required ten years of experience either on a superior court or an appellate court; Judge Ingram had served three four-year stints on juvenile, superior, and supreme courts but not ten years on any one of them. No problem. The Georgia General Assembly passed a special law changing the requirement to ten years of total service. Not the official name of the Act, but Georgia legislators privately called it the "Conley Ingram Bill." Two of the lawyers Judge Ingram mentored were his own daughters: Cobb County Superior Court Judge S. Lark Ingram and Nancy Ingram Jordan, a former prosecutor in the Cobb County District Attorney's Office. Judge Ingram and his wife of sixty-seven years, Sylvia, also have a son, Conley Ingram IV.

Martin H. Katz, '90, of Rock Island, passed away peacefully on November 4, 2016 at the age of seventy-nine. Marty was a graduate of Augustana College, where he was a national debate champion, and of Northwestern Law School, where he graduated with honors. Marty practiced law for more than fifty years and served as an officer of the Illinois Attorney Registration and Disciplinary Commission. Marty is survived by his wife of fifty-two years, Susan, his two sons, and three grandchildren.

Carl L. Lathrop, '80, had just celebrated his ninety-first birthday when he died peacefully on December 24, 2019 at Primrose Retirement Community in Cheyenne.

Carl enlisted in the Army when he graduated high school in 1946; he served in Japan as part of the Occupation Forces. He enrolled in the University of Colorado at Boulder in early 1948 where he received his B.A. and J.D. degrees. During undergrad he met and married Wilma Galles of Casper. Wilma was the love of his life and best friend for sixty-eight years. Carl spent most of his sixty-plus years legal career in Cheyenne. Carl served as President of the Wyoming State Bar in 1980-1981. Carl is survived by Wilma, four children, ten grandchildren, and fourteen great-grandchildren.

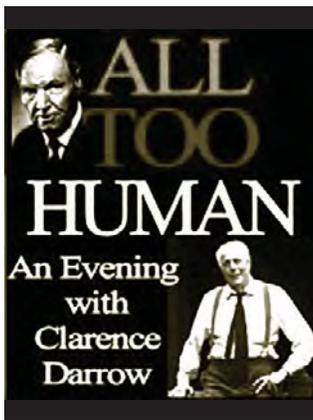
John Gardner Lile III, '83, died March 30, 2020, just short of his eighty-second birthday, after a long illness. John graduated from Hendrix College in 1959 and from Duke Law School in 1962. John met Pat McGill, of Hope, Arkansas (President Clinton's hometown), in September of his second year, her first at Hendrix. They married August 25, 1959, their honeymoon being the drive to Duke. John practiced in Pine Bluff for twenty-eight years; then the next twenty-five years in Little Rock. John served as Jefferson County Bar Association President in 1973, and he chaired the Arkansas Bar Committee on Professional Ethics which prepared the current Rules of Professional Conduct. John specialized in business and commercial litigation, defending railroad and insurance companies among others, as well as in labor and employment matters. Although John loved practicing law, he most treasured his wife of sixty years, Pat, their four children, seven grandchildren, and one great-grandchild. John's interests and hobbies included duck and quail hunting, bird dogs, art, woodworking, cooking, traveling, and "wine time."

John W. McDonald, '91, died December 14, 2019, four days shy of his seventy-fourth birthday. John received his undergraduate degree from Texas Tech in 1968, but his real accomplishment there was meeting his wife, Connie. After service in the Navy, John earned his law degree from the University of Arizona in 1973. John spent several years as a public defender, after which his career went from criminal defense to insurance defense to plaintiffs' work; he excelled in all of those fields. Along the way, he raised cattle, handicapped horses, and wrote a novel. John loved fly fishing, good books, horse racing, a good drink, and his family and friends, although not necessarily in that order. Hearing of his death, one friend said simply, "A lion has passed." John leaves behind Connie and their two daughters and four grandchildren.

Martin John McGreevy, '99, passed away peacefully on December 28, 2019. Marty graduated from Le Moyne College in 1969, where he played basketball, and then worked for General Motors until he was drafted into the U.S. Army serving two years as a medic. He graduated from Seton Hall Law School in 1975. After four years as Assistant Monmouth County Prosecutor, Marty continued his career as a medical malpractice defense attorney and local prosecutor for the next forty years. Marty enjoyed golf, waterskiing, Notre Dame football, and basketball, sharing his love by coaching several Neptune City sports teams as his children were growing up. Marty is survived by Kerry, his wife of forty-two years, their three children, and seven grandchildren.

Robert D. McIlwaine III, '71, died February 21, 2015, at the age of ninety. Robert was a Phi Beta Kappa graduate of the University of Virginia; he attended Harvard Law School but graduated from UVA Law School, where ▶

he was a member of the Law Review. Robert served in the U.S. Navy during World War II and the Korean Conflict. A red-headed, diminutive, courtly Southerner who spoke in oval tones and had a bellowing laugh, Robert was among the most influential figures in Richmond who most Virginians had never heard of, helping shape law and policy as an aide, adviser, and confidant to three governors (Republicans Mills E. Godwin Jr. and John N. Dalton, and Democrat Charles S. Robb), and to Senator Harry F. Byrd. As a lawyer for the state, Robert was often on the wrong side of history. As an assistant attorney general, Robert argued a number of cases in the Supreme Court in favor of Virginia's policy of "Massive Resistance" to desegregation of public schools. Robert represented the State in *Loving v. Virginia*, which involved Virginia's law prohibiting interracial marriage. "You take the cases as they come," said Reno S. Harp III, a former colleague in the attorney general's office. "When you're in the attorney general's office, you have no choice."



Henry G. Miller, '75, a Regent of the College from 1992-96, succumbed to the coronavirus on April 16, 2020 at the age of eighty-nine, survived by his five children and ten grandchildren. Henry, a graduate of St. John's College (1952) and St. John's Law School (1959), was Past President of both the Westchester County Bar Association and



the New York State Bar Association. He was, in addition to serving as a Regent, a Director of the International Academy of Trial Lawyers, a Fellow of both the American and New York Bar Foundations, and a Past Director of the New York State Trial Lawyers Association. Henry was the author of many legal texts, including his book, *On Trial – Lessons from a Lifetime in the Courtroom*. Henry had a deep affection for the theater. He studied acting with Stella Adler and wrote and performed many of his own plays. He performed his one-man show, *All Too Human*, about the life of Clarence Darrow, off Broadway at the 45th Street Theatre. The outpouring of affection, respect, and reminiscences from Fellows prompted by Henry's passing has been extraordinary. One of those came from Past President Bob Fiske, who recalled that he was asked to be on a CLE program on trial practice years ago and asked who else would be on the panel. There were several judges and lawyers slated, including Henry. Bob said he would do it on one condition: he had to go before Henry. "To say he was a tough act to follow is a big understatement. He had a unique ability to deliver an incisive and cogent message coupled with a sense of humor like few others I have known. He was one of the very best trial lawyers of his time. He was special."

William Forgy McNagny II, '71, of Ft. Wayne, Indiana died January 27, 2020 in Naples, Florida, at age ninety-eight. Bill's grandfather, for whom Bill was named, was admitted to the Indiana Bar in 1875 and served in the U.S. House of Representatives. Bill's father, Phil McNagny, was among the first Fellows of the College, inducted in 1953; Phil served in World War I, rising to the rank of Major. Bill graduated from the Culver Military Academy in Culver, Indiana, before enrolling at Swarthmore College in Pennsylvania. After two years

at Swarthmore, Bill left to serve as an officer in the U.S. Army during World War II. Discharged in 1945, Bill returned to Indiana and attended the Indiana University School of Law where he graduated first in his class in 1947. Bill practiced in Fort Wayne for more than fifty years. In 2009, Bill was named a “Legendary Lawyer” by the Indiana Bar Foundation. Bill’s partner, Fellow Tom Kimbrough, described Bill as one of the smartest people he has ever known, who had a photographic memory, and “could intelligently discuss any topic.” Bill met Joan Buesching at Swarthmore; they were married in 1947, a marriage that spanned sixty-five years until Joan’s death in 2013. Bill and Joan had three children and nine grandchildren.

Frank Opie Meade, ’76, of Charleston, South Carolina, passed away on December 28, 2019. He was born in Danville, Virginia and attended the University of Virginia, where he was a member of the varsity tennis team. Frank went on to the University of Virginia Law School, graduating eighth in his class and Order of the Coif. Frank then graduated from the Army’s JAG School, which was located on the UVA grounds. After deployment in occupied Germany, Frank returned to Danville in 1958 to practice law with his father. Frank’s retirement in 1996 brought an end to the family’s four generation tradition of the practice of law in Danville, but both his daughter and a son are lawyers. Frank was President of the Danville Bar Association, the Virginia Bar Association Young Lawyers Section, and the Virginia Association of Defense Attorneys. In retirement, Frank and his wife, the former Jo Anne “Joby” Tolly, lived in South Carolina, where Frank continued in competitive tennis events, repeatedly winning local and national tournaments. In

addition to Joby, Frank is survived by his three children and three grandchildren from a prior marriage.

Michael E. Mone, ’84, our fiftieth President, passed away on March 30, 2020. A memorial to his life appears at page 93.

John Adams Moore, Jr., ’96, was seventy-six when he died on February 20, 2020. Adam graduated from Oshkosh High School in 1962 where he lettered in football, basketball, and track, served as the Editor of the school newspaper, and was the lead performer in numerous musical productions, including *Showboat*, where his rendition of “Ole Man River,” we are told, was unforgettable. Adam did undergrad and law school at the University of Wisconsin, and when he graduated in 1969, he moved to Yakima, Washington, where he began his legal career as a deputy prosecutor with the Yakima County Prosecuting Attorney’s Office. He subsequently entered private practice, where he focused primarily on criminal defense, from 1973 until his retirement in 2016. Adam co-founded the Washington Association of Criminal Defense Lawyers in 1987, and some of his more notable homicide trials even earned national attention, with one being televised from “gavel-to-gavel” on Court TV. Adam and his high school sweetheart, Karen, were inseparable throughout more than fifty-three years of marriage. Adam was an avid outdoorsman and horseman, co-founding the Backcountry Horsemen of Central Washington. Adam was also a passionate builder, securing his contractor license and engaging in numerous projects, including a 5,100 square-foot horse barn with an old-fashioned community barn-raising, the renovation and expansion of his law office, and his own home. Adam was a black belt in karate, and a member of the Yakima Barbershop

Quartet, the Yakima Symphony Chorus, and the Tieton Presbyterian Church Choir. Adam is survived by Karen, their four children, and three grandchildren.

Terrence D. O'Hare, '93, died at age seventy-three on January 22, 2020. Terry was born in Columbus, Nebraska and grew up on a farm in North Bend. He graduated from Creighton University and Creighton School of Law. His law practice spanned nearly fifty years and focused on aviation, airport operation, and insurance underwriters. For many years, Terry served as the outside general counsel to the Omaha Airport Authority. Terry served as President of the Omaha Bar Association. Terry's hobbies included racing cars on dirt tracks. He enjoyed watching NASCAR races and Creighton Blue Jays Basketball. Terry was known for his impeccable appearance, that usually featured heavily starched white dress shirts. A friend observed that "he needed a flaw." Terry is survived by his wife of fifty years, Linda, three sons, and ten grandchildren.

Eric William Olson, '88, passed on April 7, 2020, at age seventy-six. Bill began a lifelong relationship with his future wife, Leslie, in 1964. They married in 1967, just before Bill entered the Faculty of Law at the University of Manitoba, graduating with the Gold Medal in 1970. In 1970-1971 Bill and Leslie moved to Ottawa while Bill clerked for a Supreme Court Justice. When Bill returned to Winnipeg, he became a well-known and highly respected litigator in not only Manitoba, but throughout Canada. He represented captains of industry and front-line workers - police officers, teachers, and health care workers. Bill was known as a lawyer's lawyer. He spent many hours participating in continuing legal education for the profession. In 1986,

Bill served as President of the Law Society of Manitoba. In 2005-2006 he was Chair of the Manitoba/Saskatchewan Province Committee of the ACTL. Though his long career, he mentored many young lawyers. Bill loved the law but loved his family more. Bill spent many hours coaching his two sons in hockey, and his daughter in ringette. Leslie, their three children, and eight grandchildren were truly the light of his life.

Richard L. Pemberton, '82, of Fergus Falls, died on December 1, 2019 at the age of eighty-seven. Dick was born in Blue Earth, Minnesota, best known for its statue of the Jolly Green Giant. Not wishing to live in that shadow, Dick and his wife, Betty Joan, settled in Fergus Falls, the County Seat of Otter Tail County. Dick got his undergraduate and law degrees from the University of Minnesota; after law school, Dick joined the U.S. Army as a JAG officer and taught International Law at the University of Virginia Law School. Dick was a President of the Minnesota State Bar Association and, when he was named the 2014 Minnesota Lawyer of the Year, described as an "exemplary trial lawyer." Dick is survived by his wife, four children, and six grandchildren.

Stephen Edgar Robison, '02, passed on April 13, 2020. Steve was one of four Kansas lawyers appointed by the Chief Justice of the Kansas Supreme Court to serve on the Kansas Judicial Council, a group dedicated to the improvement of substantive and procedural law in Kansas. Steve is survived by his companion, Linda Constable, three children, eight grandchildren, and eight great-grandchildren.

Philip Jefford Rogers, '82, passed away at age eighty-four on June 26, 2019, survived by his four children and eight grandchildren. Phil served in the U.S. Army,

was a radio host in Anderson, South Carolina, and after graduation from Stetson Law School, practiced law in St. Petersburg, Florida.

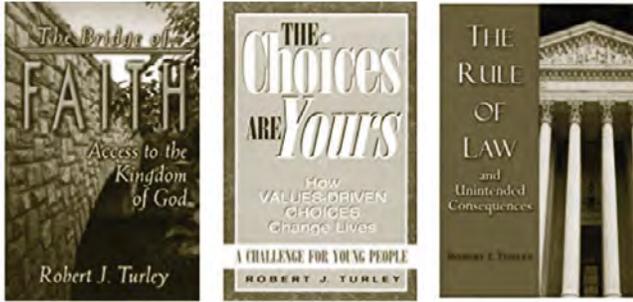
Whitney North Seymour Jr., '72, was ninety-five when he passed on June 29, 2019. Known to his friends as “Mike,” he was elected to two terms in the New York State Senate in the 1960s. Mike was the United States attorney for the Southern District of New York from 1970-1973, where he won convictions of Wall Street miscreants, organized crime leaders, and narcotics traffickers, as well as high-profile cases against corrupt politicians. Mike argued the Nixon administration’s initial case to suppress publication of the Pentagon Papers by *The New York Times* in 1971. In 1987, he was appointed as special prosecutor to make the case against Michael K. Deaver, the former deputy chief of staff in the Reagan White House and a close friend of the president and his wife, Nancy Reagan, on charges of lying under oath to hide lucrative influence-peddling. Mike’s father was President Herbert Hoover’s assistant solicitor general. After two years at Princeton, Mike joined the U.S. Army in 1943 and served as an artillery officer in the Pacific. After the war, Mike finished his degree at Princeton and earned a law degree from Yale in 1950. In 1951, he married Catryna Ten Eyck, a descendant of Roger Williams, the founder of Rhode Island; Mrs. Seymour died in 2017. Mike wrote three books, *Why Justice Fails* (1973), *United States Attorney: An Inside View of ‘Justice’ in America Under the Nixon Administration* (1975), and *Making a Difference* (1984), a call for decency in public life. He was a former President of the New York State Bar Association, a Trustee of the New York Public Library, and a Director of the Municipal Art Society of New York. He also was an accomplished amateur artist, who painted

watercolors and many oils of nineteenth-century upstate courthouses. Mike and his wife and daughters co-wrote and produced a one-act stage play, *Stars in the Dark*, about a small nonviolent student resistance movement against Hitler in World War II.



Nancy J. Sheehan, '11, died after a brave battle with breast cancer on November 23, 2019 at the much too young age of sixty-two. Nancy did undergrad at Long Island University and obtained her law degree from the University of the Pacific – after a brief career as a private investigator and a stint as the Manager of a McDonald’s franchise, where she required her staff to sing the Egg McMuffin song on request. Nancy was a fair, funny, and formidable civil rights and employment law litigator. Nancy was active in the College and served as Vice-Chair of the Emil Gumpert Award Committee at the time of her death. In addition to the College, Nancy was a Fellow of the International Academy of Trial Lawyers, the International Society of Barristers, and the American Board of Trial Advocates, serving as President of its Sacramento Valley Chapter. The Sacramento County Bar Association recently renamed its Distinguished Attorney of the Year award in her honor. Nancy is survived by her best friend

and husband of twenty-four years, Rich Simpson, and their two granddaughters.



Robert Joe Turley, Jr., '84, passed at age ninety-three on March 15, 2020. Bob is survived by his long-time sweetheart, Susan Tebbs, four children, eight grandchildren, and nine great grandchildren. Bob was a World War II veteran, a lawyer of great distinction, and an untiring supporter of Shriners Hospitals for Children. After he slowed his practice, at age seventy-three, Bob turned his talents to writing, having three books published.

David Newton Webster, '82, was eighty-five years old when he passed on January 28, 2020. In a trial practice that spanned sixty years, David conducted a broad range of civil and criminal trials in sixteen states and the District of Columbia. He served as Adjunct Professor of Criminal Law at Georgetown University Law Center and as an instructor in Trial Practice at Catholic University Law School. Among many notable cases, David served as lead trial counsel for over 1,000 flood victims of the Buffalo Creek, West Virginia mining disaster. David received his bachelor's degree from Providence College, where he served two four-year terms on its Board of Trustees and later as Trustee Emeritus, and his law degree from Georgetown, where he graduated first in his class. David is

survived by his four children and eight grandchildren.

Seymour Weinstein, '73, passed away on February 15, 2019 in Delray Medical Center in Delray, Florida, three days before his ninety-first birthday. Seymour spent most of his life in Worcester, Massachusetts, where he attended Clark University, and where he practiced law. But since the 1970s, he loved spending his winters in Boca Raton and upon his retirement in 2012, Seymour moved to Boca Raton permanently. After law school at the University of Michigan, Seymour enlisted in the U.S. Air Force. Seymour was a past President of the Worcester County Bar Association, and Vice President of the Massachusetts Bar Association. Seymour is survived by his wife of nearly sixty-seven years, Janet, two children, six grandchildren, one step-grandson, and two great-grandchildren.

Sidney Frank Wheeler, '79, died on January 21, 2020. He was eighty-six. Sidney attended Georgia Tech and the University of Georgia School of Law, serving active duty as an NROTC Officer in the U.S. Navy between college and law school. Sidney practiced as a trial lawyer for more than forty years, principally representing doctors and hospitals in medical malpractice cases. In addition to the College, Sidney was a proud member of the Old War Horse Lawyers Club, organized in 1952 as a private club in Atlanta limited to 450 members, because, the founders observed, Atlanta has "too many lawyers." The Club's motto is "We aim at nothing and seldom miss." Sidney is survived by his wife of twenty-nine years, Linda Stanley Wheeler, three children, and seven grandchildren. ■

UPCOMING EVENTS



Mark your calendar now to attend one of the College's upcoming gatherings.

**Dates listed here were correct at the time of printing. To view the latest up-to-date listings, please visit the 'Events' section on the College website, www.actl.com. **

NATIONAL MEETINGS

2020 ANNUAL MEETING SEPTEMBER 23-25, 2020 A VIRTUAL EVENT

2021 SPRING MEETING MARCH 4-7, 2021 GRAND WAILEA, A WALDORF ASTORIA RESORT MAUI, HAWAII

REGIONAL MEETINGS

April 16-18, 2021 **Region 6 Regional Meeting (Arkansas, Louisiana, Mississippi, Texas)**

June 5-7, 2021 **NE Regional Meeting (Atlantic Provinces, Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island)**

July 8-11, 2021 **Northwest Regional Meeting (Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, Washington)**

STATE / PROVINCE MEETINGS

July 30, 2020 **Wisconsin Fellows Zoom Meeting**

August 27, 2020 **Georgia Fellows Dinner**

August 29, 2020 **Kansas Fellows Dinner**

September 11, 2020 **Texas Fellows Luncheon**

September 12, 2020 **Hawaii Fellows Dinner**

JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660

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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.

"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*