



# JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS



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CANADIAN SUPREME COURT  
JUSTICE CLÉMENT GASCON  
RECEIVES HONORARY  
FELLOWSHIP AT THE  
COLLEGE'S 2015 ANNUAL  
MEETING IN CHICAGO.

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American College of Trial Lawyers

## JOURNAL

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# FROM THE EDITORS

It's fascinating, the fascination which blogs and bloggers, media and like have about the justice system. As if we needed proof, it clearly affirms its place as the central pillar on which our social order rests. Attempts to demystify our profession nevertheless seem to cloak us in that very mystery. Arcane knowledge, arcane language, at least that's the public perception.

semble the system it seeks to correct." She notes "...we have still not thought seriously about what it means when a private investigative project—bound by no rules of procedure, answerable to nothing but ratings, shaped only by the ethics and aptitude of its makers—comes to serve as our court of last resort." If this weren't enough drama, we now have *The People v. O.J. Simpson* redux for our viewing enjoyment. Elsewhere, the *ABA Journal* has just published "100 years of law in the movies," a recap of the films that portray the way we perceive justice in action and its successes and occasional failures. Despite declining law school enrollment, for this last century, these cinematic efforts (along with the myriad books by and about lawyers) undoubtedly influenced many a collegian's choice of profession.

As trial lawyers, we are clearly working harder but are we working better? Writing in *The New Yorker* ("You Don't Need To Work So Much," August 26, 2015), Columbia law professor Tim Wu notes: "If dispute resolution is the social function of the law, what we have is far from the most efficient way to reach fair and reasonable resolutions. Instead, modern litigation can be understood as a massive, socially unnecessary arms race, wherein lawyers subject each other to tortuous amounts of labor, just because they can. In older times, the limits of technology and a kind of professionalism created a natural limit to such arms races, but today neither side can stand down, lest it put itself at a competitive disadvantage....With no limits, work becomes like a football game where the whistle is never blown."

As an antidote to this state of affairs, Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System (IAALS), asks "When Will Courts and Lawyers Learn: Not All Cases are Created Equal (IAALS Online, November 18, 2015). Distilling recommendations from various sources (not the least, the IAALS

The latest blogosphere traffic has locked onto the just-concluded Netflix series *Making a Murderer*. This is ten hours of real life, legal drama, stirring controversy in its wake. In *The New Yorker* (January 25, 2016), Kathryn Schulz concludes that the show's certitude comes to "re-

and College Task Force on Discovery and Civil Justice April 2015 Report), and distinguishing between the few complex cases and the many simpler cases, Kourlis notes that "we are past the point where one size can even begin to fit all, when it comes to litigation." In a word, we must embrace proportionality, especially in the discovery process. This precept is now embodied in the amended Rule 26 of the Federal Rules of Civil Procedure, the amendments to which came into effect in December 2015. Putting it succinctly, information is now discoverable if relevant and proportional to the needs of the case, having regard to a number of factors like the parties' resources. No less a personage than Chief Justice John G. Roberts, Jr. has weighed in, heartily endorsing the Rules' amendments, urging counsel to take early stewardship of the process and their cases and "avoid antagonistic tactics, wasteful procedural maneuvers and teetering brinksmanship" (State of the Judiciary Report, December 2015). Indeed, the Chief Justice is exhorting us to change our litigation culture in profoundly cooperative and meaningful ways.

For those decrying the morphing out altogether of the civil justice system in favor of ADR processes such as arbitration, along comes an unlikely ally—*The New York Times*. In a two-part investigative piece, "In Arbitration, a 'Privatization of the Justice System'" (November 2015), the *Times* explores the disadvantages of losing the right to trial, especially trial by jury, where the alternate process isn't freely agreed in advance but rather arises, all too often, from contracts in which the waiver of the right to bring suit isn't clearly expressed or understood. As the *Times* noted, "Beware the fine print."

And if all of that isn't enough legal excitement, a Canadian law firm has launched Lawgo, a litigation-themed Lego set, recommended for those between 18 and 99. (Legal Cheek, November 2015).

For those who sadly weren't able to make the Chicago meeting, you missed a superb event, both substantively and socially. Fear not. We have the best of it in these pages along with a feature or two. Most importantly, Immediate Past President Francis M. Wikstrom's report on the Strategic Planning Retreat is essential reading for all of us concerned with the College's future.

Hawaii awaits.

Aloha.

Andy Coats/Stephen Grant

Andy Coats and Stephen Grant





# 65TH ANNUAL MEETING HELD IN CHICAGO, ILLINOIS

Fellows take in the Chicago skyline, dotted with world-renowned feats of architecture, while cruising along the Chicago River.



From October 1 – 4, 2015, the Fairmont Chicago, Millennium Park hosted close to 1,000 Fellows, spouses and distinguished guests at the 65th Annual Meeting of the American College of Trial Lawyers, the sixth time the College has met in Chicago. New President of the College **Michael W. Smith** of Richmond, Virginia was installed and eighty-eight Fellows were inducted.

**Kathleen Flynn Peterson** of Minneapolis, Minnesota; **Thomas M. Hayes, III** of Monroe, Louisiana; **John J. L. Hunter, Q.C.**, of Vancouver, British Columbia; and **Robert K. Warford** of San Bernardino, California were installed as new members of the Board of Regents to represent: Alaska, Alberta, Arizona, Arkansas, British Columbia, California-Southern, Hawaii, Idaho, Iowa, Louisiana, Manitoba/Saskatchewan, Minnesota, Mississippi, Missouri, Montana, Oregon, Nebraska, North Dakota, South Dakota, Texas and Washington.

On Thursday evening President Wikstrom greeted guests at the traditional President's Welcome Reception at the Fairmont Chicago, Millennium Park in the International Ballroom.

The College's General Committees met on Friday and Saturday mornings before the General Sessions.

Friday's General Session commenced with an invocation by Fellow **Terri L. Mascherin** of Chicago, Illinois.

Past President **Robert L. Byman** of Chicago, Illinois introduced the opening speaker at Friday's General Session, Mayor **Rahm Emanuel**. Emanuel welcomed the Fellows and their guests to his beautiful city, the "most American of cities."

Past President **Earl J. Silbert** of Washington D.C., introduced the next speaker, former client and long-time friend **Erksine Bowles**, who gave a rousing update on Simpson-Bowles, urging Fellows to "get mad" and "do something."

Fellow **Rosewell Page III** of Richmond Virginia introduced FBI Director **James B. Comey**. Comey talked about the latest efforts of the FBI to combat cybercrime, while protecting citizens' rights at the same time.

Past President **David J. Beck** of Houston, Texas gave the introduction for Admiral **William H. McRaven**, currently Chancellor of the University of Texas, who gave the 2015 Lewis F. Powell, Jr. Lecture. McRaven shared stories of his thirty-seven years as a Navy SEAL, including emotional remembrances of those serving under him and the sacrifices they made while keeping the country safe.

**Eva Marszewski**, O. Ont., L.S.M., LL.B., Founder and Director of Peacebuilders International (Canada), was presented with the 2015 Emil Gumpert Award.

**Joe R. Caldwell, Jr.** of Washington, D.C., Chair of the Emil Gumpert Award Committee provided her introduction.

Judicial Fellow the Honorable **Allan van Gestel** (retired) received the 2015 Samuel E. Gates Litigation Award. **Lisa G. Arrowood** of Boston, Massachusetts, Chair of the Samuel E. Gates Litigation Award Committee, introduced van Gestel.

Friday evening's "Night at the Museum" dinner and entertainment was hosted at The Field Museum of Natural History. Dinner was held in the Museum's Main Hall with Sue, the largest and most complete *Tyrannosaurus rex* skeleton, as a dining companion. Fellows were treated to live music as they wandered and enjoyed the museum's many exhibitions.

Saturday's General Session began with Past President **David W. Scott**, O.C., Q.C. of Ottawa, Ontario, who introduced The Honourable Mr. Justice **Clément Gascon** of the Supreme Court of Canada. Gascon accepted Honorary Fellowship in the College.

Former Regent **David J. Hensler** of Washington, D.C. introduced Fellow **Carter Phillips**, an active and go-to Supreme Court advocate, who shared stories and humorous episodes from his experiences with the Court and Justices.

Michigan State Committee Chair **Cheryl A. Bush** of Troy, Michigan introduced the Honorable **Steven W. Rhodes** (retired) and the Honorable **Gerald E. Rosen**, Chief Judge of the United States District Court for the Eastern District of Michigan. The judges conducted a question and answer session describing the steps taken to save the



renowned art collection at the Detroit Institute of Arts from being liquidated for the benefits of creditors in the Detroit bankruptcy, and saved the pensions of municipal employees, all of which led to the revival that is taking place in the Motor City.

Regent **Kathleen M. Trafford** of Columbus, Ohio gave the introduction for Saturday's final speaker, **Steven Nissen**, M.D., M.A.C.C., a cardiac specialist from the renowned Cleveland Clinic, who brought Fellows up to date on the truths about heart disease.

The General Session concluded with the recognition and presentation of plaques to the four retiring Regents: **Rodney Acker** of Dallas, Texas; **James M. Danielson** of Wenatchee, Washington; **Michael F. Kinney** of Omaha, Nebraska; and **William H. Sandweg III** of Phoenix, Arizona.

Afterward, the Board of Regents' reception and luncheon honoring inductees and their spouses and guests was

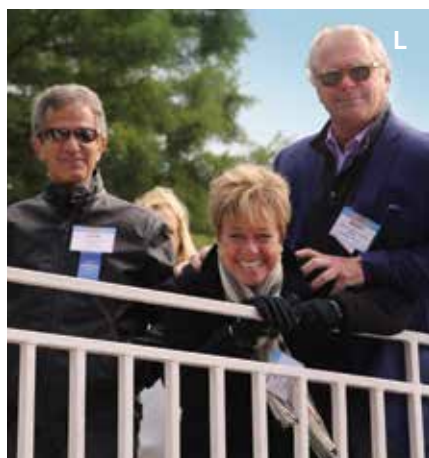
held at the International Ballroom. President Wikstrom presided while Past President **Andrew M. Coats** of Oklahoma City, Oklahoma explained the selection process to inductees, their invitation to become Fellows and the College's history and traditions.

The Saturday night finale was held in the Imperial Ballroom at the Fairmont Chicago, starting with the induction ceremony, followed by the banquet, dancing and traditional sing-along. **Christina M. Habas** of Denver, Colorado provided the response on behalf of the eighty-eight new Fellows.

President Wikstrom presided over the installation of President **Michael W. Smith** of Richmond, Virginia who was joined by family members led by his wife, Ellen Bain Smith. After remarks from Smith, Fellows, spouses and guests hit the dance floor to show off their dance moves. Those more vocally inclined joined the piano player who accompanied them to songs recounting stories of old and foretelling those to come.



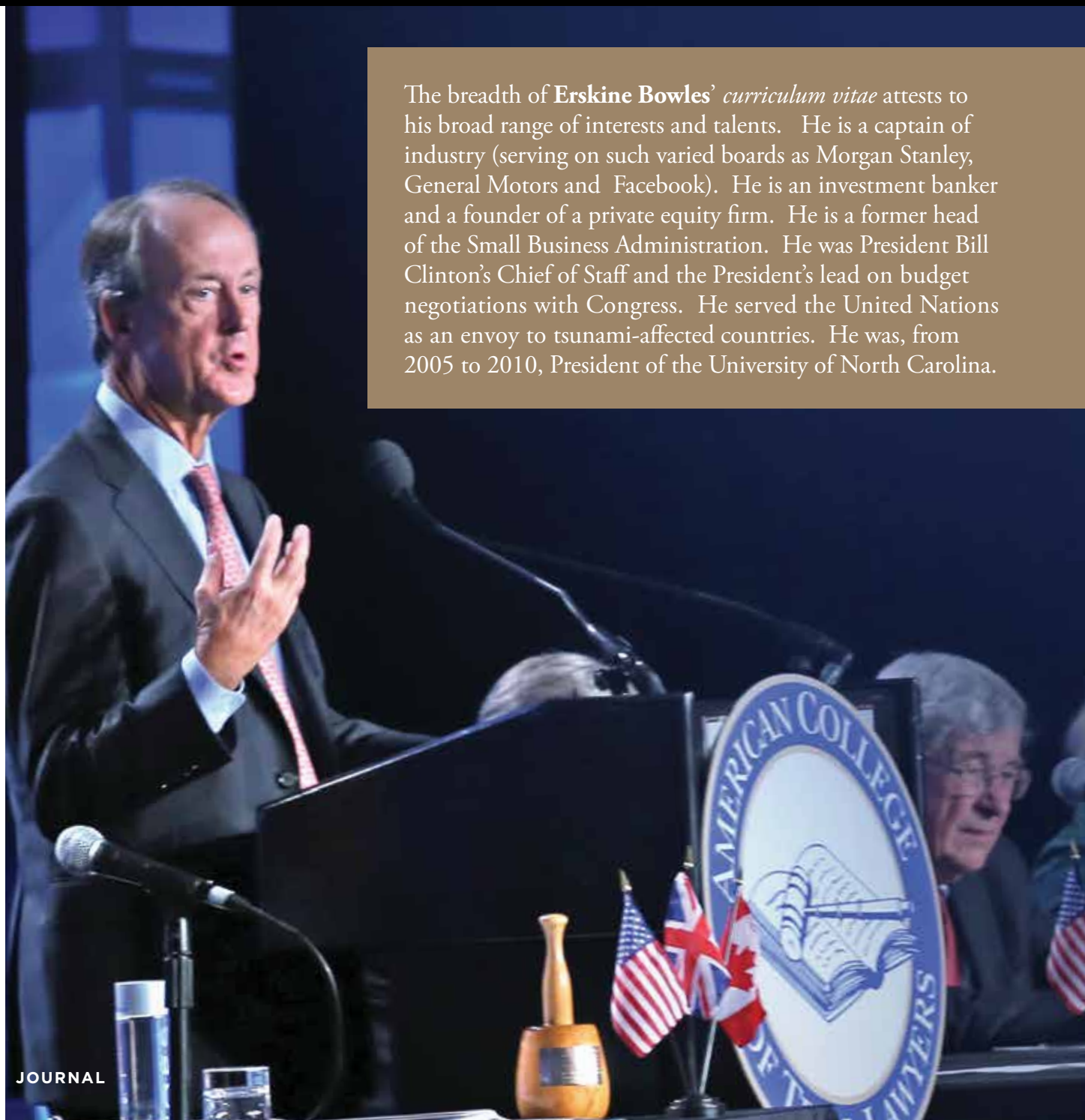




- A | Fellow Tim Trecek and Kathryn, Milwaukee, WI; Betsy and Fellow Jim Jansen, Madison, WI
- B | Fellow Terri Mascherin gives the invocation to start the first day of General Session.
- C | Past President Andy Coats speaks during the Inductee Luncheon.
- D | The Friday Night Reception took place in the Main Hall of the Field Museum.
- E | Ellen Bain and President Elect Mike Smith
- F | Past President Michael Cooper; Pat Silbert; Nan Cooper and Past President Earl Silbert
- G | Judge Ilana Rovner, Circuit Judge of the 7th Circuit Court of Appeals, during the Female Fellows Luncheon.
- H | Fellow Mike Pope, Chicago, IL; Past President Tom Tongue, Portland, OR
- I | The new inductees on stage while Past President Bob Fiske reads the charge.
- J | President Wikstrom recognizes the four outgoing Regents and their wives at the end of Saturday's General Session.
- K | Fellow Becky Moods and Karl Egge; Minnesota State Committee Chair Sally Ferguson and Ray Piirainen
- L | Past President Bob Byman and Jane, Chicago, IL; President-Elect Bart Dalton, Wilmington, DE

# CALLING ON THE COLLEGE TO INFLUENCE DECISION MAKERS

The breadth of **Erskine Bowles'** *curriculum vitae* attests to his broad range of interests and talents. He is a captain of industry (serving on such varied boards as Morgan Stanley, General Motors and Facebook). He is an investment banker and a founder of a private equity firm. He is a former head of the Small Business Administration. He was President Bill Clinton's Chief of Staff and the President's lead on budget negotiations with Congress. He served the United Nations as an envoy to tsunami-affected countries. He was, from 2005 to 2010, President of the University of North Carolina.





More recently, President Barack Obama appointed Bowles co-chair (with Alan Simpson) of the bipartisan National Commission on Fiscal Responsibility and Reform, most often referred to simply as Simpson-Bowles. The Commission's recommendations for reduction of the budget deficit were not adopted by the Obama administration. As a result, the congressional wrangling over the deficit has since descended even more deeply into chaos.

Fast forward to Chicago and the Annual Meeting of the American College of Trial Lawyers. Past President **Earl J. Silbert** of Washington, D.C., gracefully introduced his client and long-time friend, Bowles, who presented remarks entitled "Think! Get Mad! Now Do Something!" The multiple exclamation points in the title presaged an energetic, funny, anecdotal and entirely engaging presentation about the dangers of trying to blink away the risks of the country's national deficit.

Bowles's message came in the form of a challenge: "And so what I want to do today is take my time to make you think. And I hope I can make you think enough that I will get you mad. And if you are mad enough, I think you will act. And what I hope you will do is you will use some of your great influence to make some of these politicians put aside their ultra-partisanship and pull together to make some really tough decisions."

Bowles warned that if the President and Congress do not confront the crucial dangers presented by an ever-rising deficit, the markets will make those tough decisions for the country. The markets will say, "We have a dysfunctional government. We are addicted to debt. The fiscal path we are on is simply not sustainable, and we have no plan, no plan whatsoever, to deal with it." As an index of how dangerous things have become, Bowles pointed to the fact that the United States effectively does not even have a budget. Instead, the largest economy in the world is operating on a month-to-month basis.

Bowles identified the five biggest challenges to fiscal reform and responsibility:

### HEALTHCARE

The United States spends twice as much as any other country on healthcare, but in outcomes ranks only between 25th and 50th. Bowles said the country must slow the rate of growth in healthcare spending, which currently exceeds the growth of the national economy. If the U.S. does nothing, the country will spend more than a third of the federal budget on healthcare by the end of this decade.

### DEFENSE

Bowles stated that even the Pentagon concedes that it would be possible to sensibly reduce defense spending. Currently the United States spends more than the twelve next countries combined (including China and Russia).

### INTERNAL REVENUE CODE

Bowles unceremoniously dubbed the U.S. tax laws as a Rube Goldberg horror. "I think we have the most inefficient, ineffective, globally anti-competitive tax code that man can dream up." Bowles answered his own question of how the country can have such nominally high income tax rates and yet so little money. "The reason is we have \$1.5 trillion dollars of annual backdoor spending in the tax code in the form of deductions and credits and exemptions and loopholes." Bowles recommended massive simplification of the Internal Revenue Code, using ninety percent of the savings to reduce income tax rates and ten percent of the money to reduce the deficit.

### SOCIAL SECURITY

Bowles pointed out that when Social Security was established by President Franklin D. Roosevelt, the average life expectancy was 63, with Social Security payments not beginning until age 65. Today's life expectancy is 79, and Social Security payments can start as early as 62. Bowles pled for the country to make Social Security sustainably solvent. Social Security currently promises to be \$900 billion cash negative over the next ten years.

### COMPOUND INTEREST

The U.S. is currently spending approximately \$250 billion per year on interest, more than is spent at the Departments of Education, Energy, Homeland Security, Interior, Justice and the court system, combined. Unless some tough decisions are made, in the next decade the U.S. will be spending over \$1 trillion a year on interest expense alone. "That is money the country cannot spend to educate its children or to build its infrastructure or to do high value-added research on college campuses. Moreover, it is a trillion dollars that the United States will be spending principally in foreign countries, a number of which are not good friends of the U.S."

Bowles concluded by saying he is convinced the American people themselves want the arguing to stop. They want action. The public is sick, he said, of an ineffective Congress that will not compromise. Bowles appealed to the Fellows of the College to insist in the coming campaign that politicians running for office must have a plan to reform our fiscal policy so that the U.S. is more globally competitive. "But if we don't, I think we will face the most predictable economic crisis in history. And I think our generation will be the first generation of Americans to leave this country worse off than we found it."

Mr. Bowles received a standing ovation.

**Chilton Davis Varner**  
Atlanta, Georgia

# FBI DIRECTOR TALKS CYBERCRIME, COUNTERTERRORISM AND HEALTHY SKEPTICISM OF THE GOVERNMENT







Comey's remarks during General Session focused on the two FBI missions that are "top of mind" for him every day: cybercrime and counterterrorism.

## CYBERCRIME

In discussing cybercrime, Comey reminded Fellows that in the early 20th century, the automobile changed the world of crime fighting because it allowed criminals to commit crimes at speeds that were then unimaginable, and across distances that were previously inconceivable. A national

crime fighting force was needed to respond to criminals who no longer saw state borders as an obstacle. For Comey, this was the "vector change that gave birth to the modern FBI."

The development of the Internet has resulted in a similar sea change in crime and crime fighting. The Internet has allowed criminals to commit crimes in ways no one had ever seen before. It is the automobile "times a billion." The automobile allowed John Dillinger to rob banks in two different states in the same day. "The Internet allows a criminal sitting in his pajamas in Belarus to commit a thousand robberies in all fifty states in a single day. It's a threat that's not moving at 55 mph, it's moving at 186,000 miles a second, the speed of light. It does not respect county and state lines. National boundaries are disrupted profoundly by this threat." Comey described how, in order for the FBI's to be effective, they are compelled to operate in cyberspace. The strategy to accomplish this has five elements.

First, the Bureau focuses on the "top of the stack" crimes, the crimes viewed as the biggest threats and largest in scope, both in their geography and in the risk they pose to the U.S. and industries. These threats include "sophisticated criminal actors, especially the international syndicates, and huge botnets, a collection of thousands, sometimes millions of computers that the bad guys have hijacked and knitted together in order to commit crimes." The "where did it happen" concept no longer has much meaning in the sense that the victim's location is no longer critical. The FBI's approach to addressing these threats is to assign them based on where the FBI possesses the technical expertise to deal with the threat and not based on the physical location of the crime. "The owner of the investigation is where the ability is," Comey said. ▶

**James B. Comey** is the seventh and current director of the FBI, having been confirmed by the Senate for a ten-year term on July 29, 2013 at age 52. In his introductory remarks during the College's Annual Meeting in Chicago, Comey's former partner at McGuire Woods, Fellow **Rosewell Page III**, said, "We are fortunate, indeed, to have as head of the FBI a man of Jim's integrity and respect for the law, commitment to public service and extensive experience and seasoned judgement from a career that has spanned both the public and private sector."

Comey completed his undergraduate work at the College of William & Mary, and then went on to the University of Chicago Law School. Following graduation he clerked for a federal judge, and then worked in private practice until he joined the office of the U.S. Attorney for the Southern District of New York in 1987. He worked there until 1993, frequently spearheading several organized crime prosecutions.

In 1993, Comey went to McGuire Woods in Richmond, Virginia. After three years there, he accepted a position in the U.S. Attorney's office in Richmond. In 2002 he returned to the U.S. Attorney's office in New York City until he was appointed an Assistant Attorney General by President Bush in 2003. Then, in 2005, Comey became General Counsel and Senior Vice President for Lockheed Martin. "The Washington Post headlined his appointment as 'Lockheed Puts Faith in Tough Lawyer,'" Page said. He served in that capacity until 2010 when he accepted a senior management position with Bridgewater Associates, a Connecticut-based investment management firm. In February, 2013, he joined the faculty of Columbia Law School to teach national security law, until he was appointed Director of the FBI.

Second, the Bureau is seeking to “shrink the world.... These threats coming through the Internet make Beijing and Boston a fraction of a second apart on the Internet,” Comey said. The FBI response to this new reality is to put more personnel abroad and embed them with law enforcement partners around the world. The threats require coordinated action across the globe.



#### QUIPS & QUOTES

**The older I get, the more I realize that one of the great problems of human existence is that it is so easy to convince ourselves that we are righteous, so easy to convince ourselves that we have wisdom and we know where we should go.**

*Director Comey*

At the same time, the FBI is also “shrinking the world” inside the government, with the National Cyber Investigative Joint Task Force, a task force consisting of twenty agencies whose mission is to continuously visualize the threats in a very sophisticated way.

The third prong of the bureau’s strategy to fight cyber-crime is to “impose costs” on this new brand of criminal. “If you are in your pajamas halfway around the world, you can steal anything that matters to an American, you can harm their children, you can take their identity, you can steal their innovation, you can take a whack at their infrastructure and it’s a free hit. We have to treat it and impose costs as if it was, which it is, no different than kicking in your door and trying to drag out something from your home that matters to you a great deal. We have got to lock people up so when they are on a keyboard, they feel us behind them. Where we can’t lock them up, we have got to call out their behavior so we can shame nation states, especially, into acknowledging this is not a freebie. This is theft, plain and simple. Our goal is, through shaming and locking people up and calling out behavior, to force a change in criminal behavior and in nation-state behavior.”

The fourth element is the FBI attempting to assist its state and local partners by responding to their need for digital investigations. “Whether you are a cop or a deputy sheriff, digital investigation involves the need for understanding digital evidence and the Internet. It’s part of every single investigation today. We don’t have the ability and time to investigate everything. We have got to equip our partners to be digitally literate so they

can investigate it themselves” in order to fill the gap in investigative capacity.

Finally, the Bureau recognizes the need to liaise with the private sector. The private sector is where much of the cyber expertise resides. It is critical, therefore, to “break down barriers that are technical, legal and cultural, all of which get in the way of crime fighting,” Comey said.

## COUNTERTERRORISM

The FBI’s second major mission is counterterrorism, which has taken on a new look. One of the major benefits of the Internet is the ability of people all over the world to connect with each other through social networks. “That gift has changed our world when it comes to counterterrorism. Because the model that was your parents’ al-Qaeda is this: Focused on national assets. Al-Qaeda wants to disrupt and hit national landmarks in New York or Washington using carefully selected operatives for long investment in surveillance to do the big thing. Those of us in the counterterrorism business have counted on that model since September 11th, waiting for al-Qaeda. Shooting people in a mall or stabbing a police officer on the street would be a confession of weakness. They need to do the big thing. We thought and deployed and equipped ourselves against that threat and have been very successful. That threat hasn’t gone away, but something entirely new has emerged especially with the growth of the group that calls itself the Islamic State, what we call ISIL, the Islamic State of Iraq and Levant.

“ISIL has broken the model. ISIL, through social media, is pushing out a message that has two prongs: First, come to the Caliphate, come to Eden, and participate with us in the final battle between good and evil. The end is near, come fight on behalf of God and find meaning in your life. Second, if you can’t come, kill where you are. Kill anyone, especially try to kill people in uniform, military, or law enforcement. If you can video record it, all the better.”

ISIL’s twin messages and their terrorist propaganda are available at a touch, since it is all available on their Twitter feed. “If you want to speak to a terrorist, you just follow him on Twitter and engage in Twitter direct messaging with him... The threat is now about luring people anywhere their troubled soul is seeking meaning to come to the Caliphate or to kill where they are.” ISIL has been investing in this for over a year and there are now 25,000 English language followers on Twitter. Thousands of people are exposed to their message through mobile devices in the U.S. every day. “There is the reason that Twitter is worth billions of dollars. It’s how social media works. In





the same way it's a method of selling books or movies or shoes, it works as a way to sell death," Comey said.

Since mid-2014 the Bureau has found thousands of people all over the U.S. who are now sitting at some point on the spectrum between simple exposure to ISIL's poisonous message and acting on the message. Comey explained, "It was the crowdsourcing of terrorism so it was anywhere in the United States. Our challenge has become to, in a nationwide haystack, find needles. Find those people who are consuming that poison, figure out where they are on the spectrum between consuming and acting, and disrupt them. These are people who in the core al-Qaeda model would never be selected as operatives, people who use drugs, criminals, the mentally unstable. These are people that even ISIL can't rely upon to act predictably," Comey said.

The strategy is to incapacitate them as soon as possible, but it is very difficult to surveil a large number of people twenty-four hours a day, seven days a week in order to find out where they are on the threat spectrum and disrupt them.

Because the principal means of identifying these potential terrorists is to monitor social networks, a court order is needed in order to access their direct messaging capability. "But ISIL redirects them from Twitter direct messaging to a mobile messaging app that is end-to-end encrypted. Without a court order we cannot decrypt the communications that we seize in transit. So the needle that we found disappears. We know it's a serious one when someone we see on Twitter direct messaging then goes dark to us. That's the most worrisome of all."

This new reality of terrorism gives rise to the tensions pulling in opposite directions in today's society. Safety

and security on the Internet is important. Strong encryption tools are needed. However, the stronger encryption tools become, the harder it gets to "find bad people and stop them from doing bad things." The current tension between the need for Internet security and public safety is something that does not have an obvious answer right now. "It's important we raise that concern now and have a conversation together about how we can solve that. It is one of the world's most difficult problems because it's two fundamental values that are colliding with each other. We have to talk about it and have a conversation. We have to work to take the venom out of the conversation. I hate the term 'crypto war' because wars are fought between people who don't share values. I think in this instance, whether you are in the government or you work for a tech company, we share the same values, we care about the same things, and all of us should see that they are in conflict right now. We have to give our best shot and see how we can resolve those conflicts." Skepticism of the government is essential but solving this problem is critical to the country's future.

#### QUIPS & QUOTES

What I worry about, especially in the post-Snowden era, is that healthy skepticism has bled over and blown over to cynicism where people just nod and say, 'Isn't it terrible what the government is doing' or 'Isn't it terrible what the government does.' I wish I could be at every one of those conversations and say, 'Whoa, whoa, whoa, sorry, what do you mean? What do you want to know? What do you want to know about our authorities? Let me tell you about what we do and why we do it.' That conversation is very, very healthy. The cynicism conversation is bad for all of us.

*Director Comey*

This "healthy skepticism" of government power is why Comey keeps a copy of J. Edgar Hoover's application to Bobby Kennedy in 1963 to conduct electronic surveillance on Martin Luther King, Jr. in a prominent position on his desk, to serve as a "a check on me that I will fall in love with the virtue of my own position." He describes that as healthy, a continual reminder of the tension between the need for security and "as a reminder of the Bureau's capacity to do wrong."

**Robert F. Parker**  
Merrillville, Indiana

# CHICAGO MAYOR WELCOMES COLLEGE: CHICAGO IS THE “MOST AMERICAN OF CITIES”



Rahm Emanuel, Mayor of Chicago, was described by Past President and Chicago resident Robert L. Byman during the first day of the Annual Meeting of the College as a “flint-eyed Energizer Bunny” who never lets a good crisis go to waste. According to a later speaker who knows him well, Erskine Bowles, Emanuel may leave bodies in his wake, but he gets things done.

While in the White House as Chief of Staff to President Obama, Emanuel took on the most difficult tasks; if others could not cut through the red tape and bureaucracy, he would. Mayor Emanuel left the White House in 2010 to return to Chicago to run for mayor in a city with a failing school system and many problems. Bowles described Chicago as the “perfect place for Rahm.”

After welcoming the Fellows, Mayor Emanuel said that he tried to follow the directive of Micah 6:8 to “act justly, love mercy and walk humbly.” He noted that he was still struggling with the humble part.

He described the work of his administration to restore Chicago to the city of opportunity for its residents. During his term, the school system has been brought into the twenty-first century. Now Chicago has universal

kindergarten and pre-K education and a program to ensure that every child has a chance to go to college. If a student maintains a B average, that student is assured entrance to the University of Illinois at Chicago and financial assistance in the form of a tuition discount. This means that most Chicago children can attend school from pre-K to college, regardless of income. At the same time, the school day has been extended nearly thirty percent so students can get it all: art, math, science and music.

Nearly 36% of Chicago residents now possess a college degree or higher, leading Chicago to become the number one city in America for corporate relocations.

To achieve these successes Emanuel had to take on some of his original and strongest supporters, including teachers and labor unions. These efforts led to what has been described as the most contentious re-election fight in Chicago history, an election Emanuel won in April 2015.

Mayor Emanuel also spoke of the future and the investments that must be made to ensure that generations to come have the opportunity to succeed. He described Chicago as the “most American of cities” filled with immigrant success stories and used his family as an example. Mayor Emmanuel’s grandfather came from Eastern Europe to the United States at age 13. One hundred years later, his grandson was elected mayor of Chicago. His recent election opponent, Jesús “Chuy” García, is also an immigrant.

Mayor Emmanuel concluded by remarking that over 140 languages are spoken today in the Chicago school system, reflecting that Chicago continues to be regarded around the world as the city of opportunity.

**Catharine Biggs Arrowood**  
Raleigh, North Carolina





## AWARDS & HONORS



**JUDY Y. BARRASSO** of New Orleans, Louisiana was installed as President of the New Orleans Bar Association November 2015. She has also been selected by the Louisiana Bar Foundation as a recipient of the 2015 Distinguished Attorney Award. Barrasso has been a member of the Louisiana State Committee, Admission to Fellowship Committee and Complex Litigation Committee. She has been a Fellow since 2006.



**DWIGHT W. JAMES** of Des Moines, Iowa was selected to receive the Iowa State Bar Association's 2015 Award of Merit at the ISBA's Annual Awards Gala. The award is the highest honor the ISBA gives to members and recognizes a member's devotion to the legal profession, to the bar association and to the surrounding community. James has served on the Iowa State Committee and has been a Fellow since 1983.



**HENRY G. MILLER** of White Plains, New York was honored by the New York State Trial Lawyers Association with its Lifetime Achievement Award. Miller has been a member of the following committees: Regents Nominating; Complex Litigation; National Moot Court Competition; New York-Downstate; and Special Problems in the Administration of Justice (U.S). Miller also served as Chair of the International Committee and has been a Fellow since 1975.



**MICHAEL A. POPE** of Chicago, Illinois was presented with The National Judicial College's Advancement of Justice Award on October 15, 2015 at the National Judicial Institute and Conclave, a two-day gathering at the American Bar Association headquarters in which more than 100 judges discussed emerging issues in the judiciary. The award honors those who have demonstrated dedication to improving skills of the judiciary in advancing justice. Pope has served on the Adjunct State Committee, Judiciary Committee, Outreach Committee, Special Problems in the Administration of Justice (U.S.) Committee and has served as Chair of the Sandra Day O'Connor Jurist Award Committee. He has been a Fellow since 1990.



**WILLIAM H. PUGH V** of Norristown, Pennsylvania was named the 121st President of the Pennsylvania Bar Association. He has been a Fellow since 2013.



**CARLYLE R. WIMBISH, III** of Richmond, Virginia was installed as President of the Virginia Association of Defense Attorneys on October 15, 2015 during the organization's annual meeting in Williamsburg, Virginia. He has been a Fellow since 2010.



**ALBERT ZAKARIAN** of Hartford, Connecticut was honored with the Edward F. Hennessey Professionalism Award on June 15, 2015. The award recognizes recipients who have demonstrated integrity, character, competence, ethics, civility and mentoring over the course of their career as to inspire greater professionalism among lawyers and pride in their profession, while also enhancing the public's perception of the legal profession. Zakarian has served on the Connecticut State Committee and has been a Fellow since 1988.

# CANADIAN JUSTICE GASCON RECEIVES HONORARY FELLOWSHIP

The Honourable Mr. Justice Clément Gascon, who joined the Supreme Court of Canada on June 4, 2014, was inducted as an Honorary Fellow at the College's 2015 Annual Meeting in Chicago, Illinois. Justice Gascon is the seventeenth justice on the Supreme Court of Canada to be conferred honorary fellowship. In keeping with tradition, following his acceptance, Justice Gascon addressed the Fellows and shared his thoughts about the College and its mission in the remarks that follow.

Bon jour. I must admit I am very impressed. What a crowd. At the Canada Supreme Court to draw this many people to our hearings, we need about a year. The thought of a selfie crossed my mind, but I am a judge, not a president. As I accept your kind words, David [Scott], with sincere humility, I hear the clever advice of late Prime Minister Golda Meir to one of her ministers, 'Stop trying to be so humble; you are not that great anyway.' I will leave it at that.

The American College of Trial Lawyers is perhaps - I say perhaps because I cannot commit to more in what I do - is perhaps the most prominent association of trial lawyers in United States and Canada. You represent the legal profession at its best. I salute your work to further the interest of law in the profession

and to enhance the administration of justice. I share the values that you proclaim and support. To receive an honorary fellowship from the College is a true privilege. I will leave grateful to have met some of you and inspired by your collective efforts. In the past, I have crossed our border to conduct depositions with talented U.S. trial lawyers. I have fruitful discussions with others on cross-border protocols on class actions. I cherished dealing with American colleagues from Delaware and New York in cross-border structuring that I supervised as a trial judge.

## A SPEECH IS A TOUGH TEST

I must confess that crossing the border for this occasion is special. As David mentioned, I had been a trial lawyer for over twenty years before joining the bench thirteen years ago. My wife, a trial judge in Montreal for the last eight years, was also a trial lawyer for some twenty-five years. We both well know what the College is all about. Your prestige and reputation are second to none. When I learned that I would be honored at the College at this General Session, I was proud and excited. I told my wife, 'Marie Michelle, have you ever imagined in your wildest dreams that one day you would see me receiving an honorary fellowship from this organization in front of hundreds of its prestigious members?' She smiled, 'Honey, we have been married thirty-two years. When I have wild dreams nowadays, you are not in them.' So much for my sense of pride. It is my first time at your meetings; for most of you, it is not. You must be politely wondering what is wrong with the Canada Supreme Court, are they sending a new judge to get an honorary fellowship every year or what? Since 2006 Justices Fish, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, and now Gascon have been inducted. A couple of years before, it was Justices Charron and Abella. Nine in about ten years; don't they ever stop? I don't know what the right answer is, but if you are tired





of Canadian Honorary Fellows, I have bad news. Since my appointment, there have been two additions to the court, Justice Suzanne Côté last December and Russell Brown last July. It has been a time of change at our court. Over the last two years, we have lost the wisdom of three experienced judges who retired at our mandatory age of seventy-five. We now have five judges in their 50s, one over 70. The years to come will no doubt prove challenging but certainly most rewarding.

Even though my fellowship with the College is honorary, I am still required to work to deserve it. At first I thought I was being inducted and that was it. Not that easy I was told. You have to make a speech in front of an audience that will pay attention. This is a tough test. I am not used to that anymore. As a judge, I make speeches on rare occasions and certainly never in front of audiences of hundreds like yours. In fact, when I speak publicly, my audience is normally limited to parties and their counsel, and they are interested in the end result, not in what I say, and all of them are usually not happy with what I end up saying anyway. ‘Do not worry; it is not complicated,’ said the colleagues I turned to for advice. ‘Keep your speech simple and at all costs do not enter into any debate. These Fellows are far more experienced than you at it; they will outsmart you.’ ‘Fair enough, but on what subject?’ ‘Well, this is even easier,’ they added. ‘Subject of your choice. You decide.’ That may look simple to you, but I am not used to that either. Since moving to Ottawa, I do not decide anything by myself anymore. Most of the time I need at least four friends to make a point. What do we do when we face difficult challenges at the Supreme Court? We turn to our law clerks for answers. They are young, brilliant, hardworking and full of ideas. So I asked them. Sure enough, they had suggestions. ‘Why don’t you compare the views on same sex marriage at the U.S. Supreme Court to the Canadian

Supreme Court position? After all they split 5/4 in 2015 and we had an easy unanimous 19/0 decision ten years ago.’ Or they proudly voiced, ‘Why not compare our Canadian living tree metaphor for constitutional interpretation to doctrines like originalism considered by the U.S. Supreme Court in their decision? That will no doubt trigger lively exchanges.’ I will spare you their other ideas, but I was discouraged.

## CIVILITY: THE ART OF LIVING TOGETHER IN HARMONY

A simple speech without debate hardly fits with subjects like marriage or constitution. In the end I ignored them, sometimes we do, and I gave it some thought and it struck me. To find inspiration I need to look no further than to this organization. After all, for sixty-five years the College has improved the practice and ethics of lawyers across U.S. and Canada. It has taken the leadership role in trial and pretrial conduct. It has imposed the highest standards of professionalism, civility, collegiality. Why look elsewhere? Amongst many others, the leadership role of the College in terms of respect and civility has been key to support the rule of law. These are, in my view, two essential ethical features of trial practice and of judging.

I would like to focus my remarks this morning on the importance of us trial or appellate lawyers and judges promoting respect for the rule of law by promoting respect amongst ourselves and within our respective groups. In other words, by keeping civility, a standard that you actively support at the forefront. I like to think that civility is the art of living together in harmony. As your Justice Kennedy once wrote, ‘It has deep roots in the idea of respect for the individual. Although some of us are more talented at it, it is an art that can be learned and we improve with practice.’ There is a need for guidance and your College stands in the forefront. ▶

Civility is important in many professions but the legal one. Why? Because in my view our society sometimes looks up to us, lawyers, judges, to find ways to live together in harmony, to solve problems caused by living together, to apply the rules that permit individuals to have access to rights, freedom, security or respect. This is what justice is all about.

The imperatives of judicial stability rest on all of us. True, in the legal profession civility is sometimes hard to achieve. We operate in an adversarial system; state versus the accused, plaintiff versus defendant. Still, legal battles can be fought with respect. In trials or appeals, civility is as much part of ethics as anything else. We have seen criticism lately in both the U.S. and Canadian courts about judgments, particularly those with multiple opinions that have become increasingly hostile. In my view, we should be careful. It does a disservice to the legal profession, the public, and law itself to allow civility to become subservient to sarcasm or worse to insult and to allow mockery to take priority over convincingness. Be it in the work you do as trial or appellate lawyers or in the judgments we release as judges, we should not forget that members of the bar and of the judiciary serve a unique function. We are asked to solve disputes that oftentimes become very public. As a result, people frequently watch what we do and how we do it, yet we

cannot expect that the public will read the entirety of our briefs of judgments or listen to the full extent of a given hearing. Instead, they are often drawn to their most salient parts fed through media sources that may be tempted to relay the most caustic comments or behavior that the judgments or pleadings contain or disclose as opposed to the legal reasoning at their core. I believe it does not assist any of us when an argument or a judicial opinion can be described as blistering or venomous. Differences of views, however far opposed, do not have to be expressed in this manner. As I see it, what may be the inevitable frustrations associated with this agreement should not be permitted to poison the ultimate argument or judgment with vitriol.

Public faith in our judicial system rests on the belief that key actors, such as you trial lawyers and us judges, properly behave through confrontation. The image that we project in how we treat each other is the reflection of our capacity to solve problems in such a manner that we can continue to evolve together as a society. For any justice system to work, citizens must accept its legitimacy. To do so, they must be able to look up to its main actors with respect. If we don't have it amongst ourselves, we cannot expect outsiders to have it towards us. As Fellows of the College, you are dedicated to entering the highest standards of civility in the profession. In striving to maintain these standards in your daily work, you contribute to the legitimacy of legal institutions and the professions that serve them. I commend you for this and urge you to continue to be the example you want to see in society. Your valuable contribution to support the rule of law to assist parties to present or defend cases helps make a better judicial system, a stronger society, the ultra-democracy. Despite all efforts, some matters remain unresolved except through litigation. I know you cherish that and this is quite fine. We need persons like you to allow for these kinds of resolution.

As for persons like me, remember that as judges, whatever the level, we cannot get our job done without you. The better you are, the better we look. On a day like today, by allowing me to join you as an Honorary Fellow, you certainly help me look better than ever. Thank you for this warm welcome. ■

#### QUIPS & QUOTES

It is a real pleasure to be in Chicago with you today. It is my third time here and I am always overwhelmed. I have learned to love this beautiful city but it took me a while. I was born and raised in Montreal where hockey is a religion. In the '60s and '70s, the Montreal Canadiens were the best of all. As kids and teenagers, Chicago was one of the cities we were trying to profoundly dislike. For many years, Chicago meant for me John Ferguson hammering Bobby Hull, Guy Lafleur beating Tony Esposito or Ken Dryden stopping Stan Mikita. But the roles have now changed. The Montreal Canadiens are not dominant anymore. Chicago is the one building a new dynasty. Secretly, I envy your city. It is, of course, also great to be here because of your organization.

*Justice Gascon*

## NOTES FROM THE NATIONAL OFFICE

The College has officially launched a new website. For the best user experience, it is recommended to use Mozilla Firefox or Google Chrome as the browser. Please make sure to add noreply@actl.com to your email address book in order to prevent notifications from the Fellow Connection being marked as spam by your email server.

As a reminder, please make sure any correspondence or dues payments that are mailed are addressed to the correct suite number.

The National Office address is:  
American College of Trial Lawyers  
19900 MacArthur Blvd., Suite 530  
Irvine, CA 92612

## SPECIAL TOUR OF THE USS JOHN C. STENNIS

Ten Fellows and their spouses were given a special tour of the USS John C. Stennis at the Naval Air Station, North Island on October 31, 2015 during the Western Chairs Workshop in San Diego, California.

President Michael W. Smith  
and his wife, Ellen Bain

President-Elect Bartholomew J. Dalton  
and his wife, Eileen

Immediate Past President Francis M. Wikstrom  
and his wife, Linda Jones

Past President John J. (Jack) Dalton  
and his wife, Marcy

Regent Kathleen Flynn Peterson

Regent Susan J. Harriman

Regent Thomas M. Hayes, III  
and his wife, Karen

Regent James T. Murray  
and his wife, Mary Fran

Regent Robert K. Warford

Special Problems in the Administration of  
Justice (U.S.) Vice Chair J. Denny Shupe



“The tour was a highlight of the trip to San Diego,” said Shupe, a retired Lieutenant Colonel of the United States Air Force. The USS John C. Stennis is the seventh Nimitz-class nuclear-powered super carrier. It was commissioned on December 9, 1995, and its home port is Bremerton, Washington.

## FELLOWS TO THE BENCH

The following Fellow has been elevated to a higher court in her respective jurisdiction:

**Christine Donohue** of Pittsburgh, Pennsylvania  
Effective November 14, 2015 — Justice, Supreme Court of Pennsylvania

The College extends our congratulations to this Judicial Fellow.



# CHANCELLOR WILLIAM H. MCRAVEN OF THE UNIVERSITY OF TEXAS SYSTEM PRESENTS THE 2015 LEWIS F. POWELL, JR. LECTURE



## QUIPS & QUOTES

There is no such thing as a local problem. Everything in the world is connected. The oceans that used to connect us are no longer buffers against extremist ideologies, economic warfare and threats from the air and the sea.

*Chancellor McRaven*





The Lewis F. Powell, Jr., Lecture Series was established in recognition of The Honorable Lewis F. Powell, Jr., who served as the twentieth President of the American College of Trial Lawyers. In 1972, Powell, a distinguished and skilled lawyer of national distinction, became the ninety-ninth Justice to sit on the Supreme Court of the United States, where he served with honor and eminence until his retirement in 1987.

Chancellor William H. McRaven of the University of Texas System, a retired U.S. Navy admiral, presented the 2015 Lewis F. Powell, Jr., Lecture at the College's 2015 Annual Meeting at the Fairmont Chicago in Chicago, Illinois. His remarks follow.

recuperating from a serious parachuting accident. Soon after the events of that day, the President set up what was the Office of United Terrorism on the National Security Council staff. By October 1, I was limping my way into the old executive office as a brand-new member of the White House staff.

One week on the job, I received a call from a man inside the President's inner circle and he said, 'Are you Captain McRaven?' I said, 'Yes, sir, I am.' He said, 'You are a Navy SEAL, right?' I said, 'Yes, sir.' He said, 'Good. I need you to do something for the President.'

I thought here it is. This is what I've been waiting for. On the job a week and the President is already asking for my military advice. Maybe what he wants to know is how to deploy Naval forces into the raging Gulf. Or maybe he wants my advice on overthrowing the Taliban in Kabul or maybe he wants to send me on a secret mission to get this guy bin Laden.

Then the voice on the other end of the phone says, 'The Papal Nuncio is arriving next week and the President needs you to draft a letter to the Pope explaining why war in Afghanistan would be a just war.'

A just war? Good. Nothing too difficult, just something scholars and philosophers have been struggling with for centuries. Then the guy says, 'And keep it short, about two pages.'

Of course. How much effort do you have to put in to explaining a just war to the Pontiff? I reached out to several staff members. I called Cardinals and Bishops. Within a few days, I had my first staff assignment complete. The Papal Nuncio arrived the next week. The letter was delivered to the Pope and off we went to war. ▶

Thank you very much. I have spent much of my year working with great officers of the Federal Bureau of Investigation. There are no finer men and women in this United States and they do an incredible job of protecting us. I would like to recognize Jim Comey and his terrific folks for the great job they do.

Several years ago, the father of an American terrorist, Anwar al-Awlaki, sued me after al-Awlaki was mysteriously killed in Yemen. Then after the death of bin Laden, his son threatened to sue me so I thought after I left the military and stopped chasing bad guys that the need for a good trial lawyer would go away; however, now that I'm the chancellor of the University of Texas and embroiled in Texas politics, I find I still need a good trial lawyer.

I have never had any formal legal training but many years ago I was asked to make a case for one of the more complex legal arguments of our time. On 9/11, I was in a hospital bed in my home in California

**I thought after I left the military and stopped chasing bad guys that the need for a good trial lawyer would go away; however, now that I'm the chancellor of the University of Texas and embroiled in Texas politics, I find I still need a good trial lawyer. So I have got a bowl up here. If you can leave your business cards in that bowl, I would appreciate it.**

*Chancellor McRaven*

Over the course of the next ten years and two wars in Iraq and Afghanistan, I had the opportunity to be involved in some of the more normal special operations of our time. Some of those missions came to light. Most did not. As serious and as intense as they may look from the outside, invariably there is a humorous backstory that accompanies most of these missions.

In December of 2013, we captured Saddam Hussein. The Special Forces soldiers brought him from Tikrit where he had been captured down to my secret headquarters in Baghdad. We had a small holding area where we intended to keep Saddam for about thirty days.

The entire world was waiting to see that we had captured the most wanted man in Iraq. My Chief of Staff came in and informed me that Saddam had grown this huge beard. He thought that photos of Saddam might not look like the former president. So I directed him to have Saddam's beard shaved off.

After I had finished making calls to my bosses and letting them know we had gotten Saddam, a three-star general shows up at my headquarters and he wants to see this "Butcher of Baghdad." So we walked over to the holding area and there, much to my surprise, was Saddam Hussein with a pair of scissors in his hand cutting off his own beard. I carefully removed the scissors, had a few choice words with my staff, and then directed the soldiers to finish the job.

As we moved Saddam to a nearby safe, the three-star general said to me, 'Do we have the authority to shave Saddam?' I said, 'Sir, I had the authority to kill him. I think I have the authority to shave his beard.'

The next day, a clean Saddam Hussein made the front page of every paper in the world, and not a word about who shaved him was in the article.

May 2 of 2011 was the evening we got bin Laden and I was on a video teleconference with the President. He asked me if I was certain we had the right man. I informed the President that I needed to go do a visual check before I confirmed the demise.

I drove a short distance where the SEALs were bringing in the Marines. We pulled the heavy body bag from the vehicle, unzipped the rubber container and I began to inspect the body. I looked at the facial features, which after two rounds in the head, didn't look great. Knowing that bin Laden was about 6'4", I turned to a tall, young SEAL who was standing nearby and I said, 'Son, how tall are you?' He said, 'Sir, I'm about 6 foot 2.' I said, 'Good, I need you to lie down next to the remains here.' He said, 'I'm sorry, sir, you want me to do what?' I said, 'I want you to lie down next to the remains.' So he laid down next to the remains. Of course, the remains were a few inches taller.

So I informed the President that while without the DNA, I couldn't be positive; I told him, I said, 'I did have a SEAL lie next to the body and the remains were clearly taller.' There was a pause on the other end of the video screen. The President, now in a pretty good mood, responded, 'So, Bill, let me get this straight. We had \$60 million for a helicopter, which we had lost on the mission, and you couldn't afford a tape measure?' Two days later I returned to the States and the President invited me to the Oval Office where he presented me a plaque with a tape measure on it.

A lot has happened since that first day I arrived at the White House and I think back on the letter I drafted to the Pope. I don't know whether my thinking was consistent with the just war theory.

But what I know today, after years of fighting this war, is this may be the most righteous fight we have had in the past thousand years. It is a fight between the civilized world and the barbarians who seek to destroy it, the extremists, the al-Qaeda core and their franchises in North Africa, Yemen and Iraq. From Boko Haram in Nigeria to Al Shabaab in Somalia, from Abu Sayyaf in the Philippines to the Taliban in Afghanistan, from ISIS to Al Misra, they bring nothing but destruction, tyranny, savagery and slavery. There are no redeeming qualities about their extremist views and so-called justice they exercise over their subjects.

In Afghanistan, I saw Taliban al-Qaeda fighters force their way into rural villages. The first thing they did was kill the elders who failed to comply with their orders. If they had a particular elder that they needed in order to garner village support, they would bring him in with the elder's family there and kill them in front of the elder.

Young girls were not allowed to go to school. Young men were forced into servitude and schooled only in small groups where nothing enlightening was ever taught. Wherever there was resistance, there was death. They practiced a perverted form of law where any violation could lead to mutilation, torture, execution.

Western values frightened them more than anything. Liberal thinking, scholarly work, the power of the individual,



the role of women and any practice of law and religion that were not Islamic was worthy of a painful death.

In the Kandahar province in southern Afghanistan, the Americans started a small girls' school of about fifty girls. It was a small two-room building in a reasonably secure area of the Kandahar district.

Every day dozens of young girls would put on their uniforms and make their way to the schoolhouse. To the Taliban, it became a symbol of all that was wrong about the West: educating women. Clearly the devil's work.

One night Taliban soldiers slipped into the village and placed mines around the schoolhouse. Fortunately, we had been watching the village through our drones. The next day we went in and defused the mines.

The following night, the Taliban came in again. Once again, we cleared the mines and let the girls go to school. The third time the Taliban came in, we were waiting and we never had that problem again.

But think how committed those fighters had to be in order to risk and, eventually, lose their lives just to keep young girls from going to school. Who and what thinks like that?

Afghanistan, however, seems tame to some of the atrocities I saw in Iraq. There was a special evil reserved for al-Qaeda in Iraq or AQI, as we called them. In 2004, AQI took over the town of Fallujah. It was a sprawling rundown city of about 300,000 people. AQI systematically murdered the town leadership. They lined up young men who didn't support them and summarily executed them, laughing throughout the execution.

They had torture houses where unmentionable horrors occurred. I watched through our surveillance as they dragged men out of their houses and shot them in front of their families. Finally, in late 2004, the Marines, the Army and Special Operations forces went in and cleared out Fallujah.

In 2005, Sunni tribal leaders began to come together in what was called the Sunni awakening to stand up against

al-Qaeda. By 2009, we had begun to turn the tide in Iraq. One of my proudest accomplishments was we helped to establish Iraqi courthouses so that the Iraqis themselves could bring al-Qaeda to justice. We had Navy SEALs, Army Rangers and Green Berets setting up courthouses, helping with the dockets, protecting the judges and the prosecutors, allowing justice, real justice, not a kangaroo court, but true civilized justice to play out in Iraq.

I watched incredibly brave Iraqi trial lawyers risk their lives every day to exercise the law. Some days they didn't return, not because they didn't want to, because they had been discovered and killed by al-Qaeda. It was inspiring to see the power of the law in the hands of men who believed in them. But that was the exception.

In North Africa, al-Qaeda and the alliance of the Islamic Maghreb, or AQIM, were led by a former cigarette smoker Mokhtar Belmokhtar, who routinely kidnapped Westerners and ransomed them to fill his coffers. When ransom wasn't paid he returned and executed his hostage. It was MBM [Belmokhtar] who took over the BP oil refinery in January of 2013. Thirty-seven hostages were killed. AQIM has been emboldened by the fall of Gaddafi and has been reinforced with sophisticated weapons left over after the Libyan Army fell. Now they control a large swath of land ranging from southern Algeria across Mali and into Libya.

Just to the south of the Maghreb is northern Nigeria, home to Boko Haram, which means "Western education is bad." These are the savages who kidnapped and sexually abused the 270 school girls from Chibok in northern Nigeria. Then, when their acts of violence went unchecked by the Nigerian forces or any Western army, they raided another town and another and another, killing, raping and torturing those who didn't support them. It doesn't require any deep social theory to understand that any act of barbarism that goes unchecked only encourages more of the same behavior.

There are those in the U.S. government who hope that the bad behavior will stop. There are those who believe that kindness will prevail or that miracles will be forthcoming and all will be okay. It will not.

Then there is Al-Shabaab in Somalia. It was Al-Shabaab who, without any conscience, attacked the Westgate Mall in Nairobi in 2014, killing six innocent shoppers. The Westgate Mall is not some third-world, run-down shanty strip mall. It's a high-end Western-style outdoor mall with all the amenities that you would expect. Watch the video, and you will see the killers' complete lack of compassion for the men, women and children that they executed.

In Yemen, there is al-Qaeda in the Arabian Peninsula. As mentioned earlier, AQAP was once run by Anwar al-Awlaki until his very fortunate demise. It was al-Awlaki and his bomb-maker Ayman al-Zawahiri who sent Umar



Farouk Abdulmutallab, the underwear bomber, to blow up U.S. civilian airliners and sink the aviation business.



Yemen is a failed state of the highest order. The Houthi Rebels came down from the north and control most of the capital. Al-Qaeda owns most portions of the central portion of the country. The southern secessionists own the south.

Then, of course, there is ISIS. ISIS is an outgrowth of al-Qaeda in Iraq. Abu Bakr al-Bahdadi, their leader, is a former al-Qaeda fighter, who is a brutal, unrelenting megalomaniac. He attracts fighters to his cause by allowing them to carry out every perverted fantasy they might have and cloak their actions in Islam. They have swept across the eastern desert of Syria and entered the key cities of Iraq. They move like locusts, destroying everything in their path and leaving nothing good behind. They routinely destroy world heritage sites in an effort to erase the past. They use fear and torture as a tool to enslave the people they override – beheadings, crucifixion and systematic raping of non-Muslim women.

Fighting these barbarians has been my life for the past decade. I believe we are in an existential fight. But the slow movement of this battle will not change our lives dramatically in the next year or five years or maybe even ten years. Nonetheless, it is one of the most important fights of this generation.

You already see the impact of the fighting in Syria and how that impact is affecting Europe. Thousands upon thousands of refugees are moving west or they are fleeing North Africa and crossing the Mediterranean. Those that can't afford to make it to Europe are hunkering down in Lebanon and Jordan, creating pressures on those nations. If we were to lose King Abdullah of Jordan, one of our closest allies, and if Lebanon were to fall back in the hands of the Hezbollah, the entire region could collapse.

We have been playing preventive defense for several years, allowing the extremists to gain ground in hopes that we can hold them in the red zone. While they are marching

down the field in Syria, Iraq, Yemen, North Africa and Nigeria, their gains will affect the economies of Europe, Africa and the Middle East. If you think the problems in the Middle East don't impact your world, think again.

There is no such thing as a local problem. Everything in the world is connected. The oceans that used to connect us are no longer buffers against extremist ideologies, economic warfare and threats from the air and the sea. Add to those problems the intervention of Russia and Iran and you have a making of a world crisis, the likes of which we have not seen in seventy years.

So what are we to do? We must fight them and we must fight them with everything we have. We must see this conflict for what it is – an assault on everything we hold dear; not some small regional dust up that will quietly recede into the history book. We must accept the fact that more young men and women will pay the ultimate price to achieve victory. We must accept the fact it will cost us billions or trillions more in dollars to fund. If we continue to approach this war with a detached sense of commitment, then we will surely lose.

Many people say that this is not our fight and that we should let the Arabs handle an Arab problem. We can't be the world's policemen. I hear it over and over again. Yes, we can and we must. Our strong European partners will likely join us because they see the inevitable outcome if we don't drastically change our approach.

All of us who have spent time in the region know that the Arabs don't have the resources, the leadership or the skill to take this fight to the enemy. The Somalis, the Nigerians, the Algerians, the Egyptians and the Libyans, none of them can do this alone. Whether we like it or not, this is our fight.

If we do not aggressively attack this problem, it will only get worse. First, we must push ISIS out of Iraq. That means putting U.S. soldiers on the front lines with our Iraqi counterparts. We must reengage, fully interact, providing the troops with air, artillery and logistic support they need to turn the tide.

We must pursue ISIS in Syria. Once again, we will need U.S. boots on the ground, partnered with our European allies and those Syrians who are prepared to stand with us. We must be prepared to inflict casualties and take casualties. We must be prepped to endure the wrath of world opinion. War is dirty, brutal and costly. There is no way to achieve victory without considerable pain and endings. To think otherwise is just naive.

We must take the fight to those terrorist safe havens in Yemen, Somalia, North Africa and Nigeria. We must not be nuanced in our delivery of justice. We must be firm and we must be fully committed. Anything less would be a disservice to the men and women who do the fighting.

We must engage with the moderates in these geographic areas. But they will not come forward unless they know that we have their backs. So far we have not shown the staying power necessary to prevent the rebirth of some of these extremist organizations.

We must mobilize the international community with the same vigor that we engage the American people. Every effort must be made to cut off the flow of money, manpower and supplies to the terrorists. If we contain them, isolate their activities and then systematically destroy their leadership and their message through military, law enforcement, economic and diplomatic efforts, we can achieve success. It will not be easy and it will not be quick.

If all of this sounds rather alarmist, it should. We are in perilous times. But it is easy to see these atrocities as someone else's pain, someone else's misfortune, someone else's country.

I love the final courtroom scene in Matthew McConaughey's movie *A Time to Kill*. It is set in rural Mississippi. McConaughey plays a young, street-wise lawyer, who, against everyone's advice, takes a case to defend a black man responsible for killing two white supremacists who raped the man's young daughter and tossed her over a bridge.

In the pivotal scene, McConaughey is making his closing arguments to the all-white jury. He talks them through the events of that night. The two drunk men, kidnap the young girl, brutally rape her, toss her in the back of their pickup and then, like she was a piece of trash, throw her off a bridge. McConaughey paints a vivid picture of the horror that night, of the barbaric treatment of this young black girl. The jury, their eyes downcast, struggle to visualize the scene. Then McConaughey says, 'Now picture the little girl as white. Now picture the little girl as white.'

Watch the news today and picture the families escaping from Syria as yours. Picture the border full of refugees as our borders. Cast yourself in the real life movie and then ask: 'Are we doing enough?'

In the midst of all this chaos, we have the ultimate weapon. We have the key to success. We have the American soldier. They are men and women, rich and poor, black

and white, Christian and Muslim, gay and straight. They come from every corner of the United States, from small towns and big cities. They are the Millennials and the Gen Xers. They have tattoos and earrings. They listen to music that is incomprehensible to anyone over thirty. They play video games and they are wildly independent. Yet, they may very well be the greatest generation of all.

They volunteered when the nation called. They didn't just do four years. They have been at it for fourteen years. They have seen all of their friends wrapped in the stars and stripes returning to the States in the back of a C-17, and yet they keep coming back, knowing that someday it could be them, but accepting those terms as part of their service. They are stronger than any group of young Americans I have ever seen in the past forty years. They are unabashedly patriotic. They believe that the words duty, honor and country mean something important, something worth fighting for and something worth dying for. They will not stop fighting until we are safe.

As bad as things look sometimes, I remain incredibly optimistic because I have been honored to serve with such fine Americans. When a soldier dies in combat, we have a ramp ceremony before placing the remains on the airplane to take them home. After saying a brief prayer, the clergy will always quote Isaiah 6:8, 'And I heard the voice of the Lord saying who shall I send and who will go for me. And I said, 'Here am I. Send me.'

They keep raising their hands and they keep saying, 'Send me, all I ask from you is your kindness, your understanding, your support and your prayers.' The world can look pretty bad at times. But if we are decisive, if we are not afraid of action, and if we know that the sacrifice will be required, and if we rely on the greatness of Americans who are this century's greatest generation, then everything will be fine.

**David N. Kitner**  
Dallas, Texas

*The complete transcript is available for download on the College website in the Library, titled 2015 Lewis F. Powell Lecture Series.*

#### QUIPS & QUOTES

In the midst of all this chaos, we have the ultimate weapon. We have the key to success. We have the American soldier. They are men and women, rich and poor, black and white, Christian and Muslim, gay and straight. They come from every corner of the United States, from small towns and big cities. They are the Millennials and the Gen Xers. They have tattoos and earrings. They listen to music that is incomprehensible to anyone over thirty. They play video games and they are wildly independent. Yet, they may very well be the greatest generation of all.

*Chancellor McRaven*



# 2015 EMIL GUMPERT AWARD: THE TORONTO EXTRA JUDICIAL MEASURES PILOT PROJECT OF PEACEBUILDERS INTERNATIONAL (CANADA)

The Foundation of the American College of Trial Lawyers annually awards \$100,000 to the recipient of the Emil Gumpert Award. For the last decade, the goal of the Award has been “to recognize programs, whether public or private, whose principal purpose is to maintain and improve the administration of justice.” Applications for the 2015 Award were due in October 2014, and the Emil Gumpert Award Committee spent several months reviewing applications and performing due-diligence site visits.

The Committee’s work culminated in a recommendation to the Foundation Trustees that the 2015 Award be given to the Extra Judicial Measures Pilot Project of Peacebuilders International (Canada). Following a check presentation in May 2015, the Director of Peacebuilders, **Eva E. Marszewski**, O. Ont., L.S.M., addressed the Fellows at the 2015 Annual Meeting in Chicago.

One attribute the Gumpert Award Committee seeks in applications is whether a program can be replicated elsewhere. Peacebuilders seeks to fulfill this aspiration by developing and designing a pre-charge youth diversion program to serve as a diversion model for police, schools and community, not only in Toronto, but also across Canada, the United States and elsewhere.

Marszewski reported to the Fellows that the Emil Gumpert Award has already had a huge impact on Peacebuilders’s ability to make things happen on the ground. Canadians, including the Canadian Fellows of the College, have now contributed to match the funds provided to Peacebuilders by the Award. And as with past recipients, Peacebuilders has found that beyond the financial benefits of the award, the reputation of the College as its sponsor has opened new doors for the program.

“The program that is responsible for receiving this award is really an integral component of what is a much larger vision for what we could have as a solution. It is much more comprehensive than just a solution focused on young people. It is a solution that can also be adopted to deal with vulnerable populations. And we know we have many, from seniors and elders who are abused to people with various health and physical disabilities to people who don’t speak our language properly and many, many others,” Marszewski said.



## QUIPS & QUOTES

All of these circles are delivered by volunteers, which is another entirely untapped resource that we have. In a world where we need every bit of help, we need to identify people who are passionate about causes and we need to give them the tools. In our case the tools are facilitation training. We train them to facilitate as neutrals to help have these young people and their families and the schools have conversations with one another.

*Eva Marszewski*



## THE INCARCERATION OF CHILDREN

At the time the Youth Criminal Justice Act was proclaimed in 2003, Canada had incarcerated more children and youth per capita than any other country in the Western world, including the United States. It was not until 2015, however, that the Toronto Police civilian oversight board directed the Chief of Police to devise a plan to implement the Extra Judicial Measures (EJM) provisions of the Act so that Toronto Police officers would begin to divert young people to appropriate community programs instead of laying criminal charges against them.

Concurrently, a national grassroots effort has also grown over the past several decades to address issues of harm and public safety outside of, yet monitored by, the criminal justice system. This growing movement, first referred to as “Restorative Justice,” and more recently also as “Smart Justice,” not only seeks to change the public dialogue from one of retaliation and punishment to one of reconciliation and community building, but also works to bring attention to the inordinate economic costs of a punitive, retributive model of justice.

“We have a massive problem where young people live and grow up in disaffected communities and poverty, where there are issues with homelessness, with housing and with joblessness,” Marszewski said. “We all know those issues. We see them in the press. We see the outcomes in marches and all kinds of other issues which involve police action, possibly questionable or illegal.

“But the reality is that the young people we are talking about, ages thirteen to seventeen, are not the heavy-duty gang, gun and drugs criminals. These are young

people who have no voice. When they have a voice, when they find a voice, they are not heard. They live with no expectations.”

### QUIPS & QUOTES

**The program that is responsible for receiving this award is really an integral component of what is a much larger vision for what we could have as a solution. It is much more comprehensive than just a solution focused on young people. It is a solution that can also be adopted to deal with vulnerable populations.**

*Eva Marszewski*

Over half of Peacebuilders’s cases involve adolescent fights which are not the same as criminal assaults. Bryan Stevenson, one of the College’s earlier Emil Gumpert award recipients, pointed out in his book, *Just Mercy*, that young people are constantly defined for the rest of their lives “by the worst thing that they have ever done.” While these young people may have in fact committed illegal or even criminal acts, Marszewski believes they are adolescents, not criminals.

“Adolescents, as we all know, and as science has determined exactly, are not small adults. Adolescents, like children, are a separate category of human being. They lack the executive functions. Their thought process is aborted. It goes from instinct to reaction and action that is often inappropriate...Young people are being charged for behavior which twenty years ago would have involved a trip to the principal’s office.”

A child’s memory of “injustice” or “unfair treatment” will inevitably follow him or her into adulthood, Marszewski

believes. The young people in Peacebuilders's program live in a world of invisible injustice where unfairness and the presumption of guilt is their everyday experience, impacting their ability to relate to police and people in positions of authority as they grow up to be adults.

A "presumption of innocence" approach to children and youth must be accompanied by a fair and appropriate fact-finding process if the presumption is to be meaningful.

The trial process is clearly the most thorough fact finding process, but it comes at a significant cost in terms of resources, highly skilled personnel, facilities and perhaps as importantly from a young person's perspective, delays. One month in a young person's life can be perceived as many more. Six months are the better part of a school year. The trial process is also intimidating.

## FOSTERING RESPECTFUL CONVERSATION

Peacebuilders has developed a Peacebuilding Circle methodology, a consensus-based, fact-finding process which brings together those who have direct knowledge of the matters in question and facilitates a respectful conversation in order to, first, get to the bottom of a situation and then to understand and determine the actual culpability of the young person in question.

### QUIPS & QUOTES

**A chief administrative judge told me...if he could, he would send every young person in his courtroom to our program.**

*Eva Marszewski*

What is the alternative presented by Peacebuilders's program? Youth are accepted into Peacebuilders's youth court diversion program where they first participate in a series of weekly after school sessions with other young people who have been charged with various criminal offenses. They learn how to participate and speak in a circle when their turn comes up in the circle rounds and they receive the Talking Piece. They learn how to follow the Circle Guidelines of honesty, respect and confidentiality. They also learn to commit and to stay with the process. They learn the true meaning of an apology.



Upon completion of the individual sessions, each young person is assigned to work with two volunteer facilitators in a number of weekly, after-school circle sessions until the nature and extent of their involvement and behavior are fully understood and they are able to take responsibility for their actual behavior.

Peacebuilders's program is, at its core, an "Ethical Literacy" program that provides the participants and the young people, often for the first time in their lives, with the opportunity to consider and understand the positive values which underlie healthy, human relationships. Discussions in the Circle also begin to elicit critical thinking on the part of the children and youth in relation to how these values can guide them in their everyday choices.

Over 600 young people have now participated in Peacebuilders's intensive, intervention program. Most charges laid against the participants been withdrawn. Not infrequently, some of the young people have also gone on to earn college and university degrees.

Building on the organization's record of success, the Extra Judicial Measures Pilot Project will enable Peacebuilders to adapt its program for use by police and schools. The Pilot will also enable the documentation and publication of a Guidebook, Training Manual and Toolkit to enable the program to be replicated and scaled and made available to other interested communities on both sides of the border. ■



# GREAT TRIAL LAWYERS ARE GREAT STORYTELLERS



Once upon  
a trial...

There was a fearless attorney  
determined to see justice  
done by a judge with

Below is the first installment of 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](mailto:editor@actl.com).

## A VALUABLE LESSON

I've practiced criminal law for my entire career, including five years as a prosecutor during the Jurassic Era. I once took over a case from a colleague who had abruptly left the office four days before the trial was to begin. The young defendant allegedly had snuck into his neighbor's house and made off with a modest Danish pornography collection, which the lad's mom found in his hockey equipment bag.

I felt that my predecessor had sought much more serious charges than the incident warranted. Plea discussions were unproductive, and the trial began during Christmas week. I intentionally conveyed the impression during my closing argument that I felt that the young man had learned a valuable lesson just by being charged with a felony. The judge could barely suppress a smile when I finished because he knew what I was doing.

The jury speedily returned a verdict of not guilty, probably so that they could return to last-minute shopping. I saw the foreperson of the jury approach the defendant near the elevator, where he was standing with his relieved parents. The foreperson patted him on the back as he entered the elevator and said, "Good luck, son." The foreperson then turned to face the defendant, adding, "And don't ever do that again." In my mind, justice was served.

**J.W. Carney, Jr.**

Boston, Massachusetts

## ONE QUESTION TOO MANY

Most young lawyers have regretted asking a question that was unnecessary, where the response to it was devastat-

ing. My most memorable such experience occurred in the days before public defenders when attorneys were court appointed to represent, without compensation, indigent defendants in criminal cases. I was selected to represent one of three defendants accused of robbing the bank of Neville in rural west Tennessee. There were two accomplices with my client who were not indigent and were able to hire counsel. The trial was in U.S. District Court for the Western District of Tennessee, in Jackson, with the Honorable Bailey Brown. The government's principal witness was an elderly lady named Thankful Clenney, who owned the grocery store directly across the street from the bank. At the time of the robbery she was sitting on the counter looking out of the store front window when she saw my client exit the bank with two other men. During my cross-examination I asked her if she had gotten a good look at my client in spite of the distance. When she affirmed that she had I asked her to identify on which side of his face the very prominent scar was located and she gave an immediate response of a positive nature. My client had no scar and the witness had no opportunity to look at him before answering my question. Instead of sitting down, I turned to one of my experienced co-counsel who leaned over to me and said, "I have interviewed her and she's as blind as a bat. Ask her if she can tell what time the clock says at the back of the court room." I followed his suggestion and after the question was loosed from my brainless tongue Ms. Clenney squinted, adjusted her spectacles, leaned forward in the witness box and said, "I believe it is sixteen minutes after two." And it was! Judge Brown immediately swiveled around in his chair to face the wall so that the jury could not see him convulsing with laughter, with his hand firmly over his mouth. I then said in defeat, "Touché, Ms. Clenney." Whenever Judge Brown was at a lawyer social function he always delighted in recalling the event—to my everlasting chagrin.

**Tom Rainey**

Jackson, Tennessee

# JUDGE ALLAN VAN GESTEL RECEIVES THE SAMUEL E. GATES LITIGATION AWARD

The College presented the Samuel E. Gates Litigation Award to retired Massachusetts Superior Court Judge **Allan van Gestel**. The Gates Award is presented to honor a lawyer or judge who has made a significant contribution to the improvement of the litigation process. The Samuel E. Gates Litigation Award Committee, with the approval of Board of the Regents, voted to give the award to Judge van Gestel to recognize his work as the first presiding justice of the Commonwealth of Massachusetts Business Litigation Session.

## CONTRIBUTIONS TO THE LITIGATION PROCESS

Judge van Gestel, a former partner in the Boston law firm of Goodwin, Procter & Hoar and a Fellow of the College since 1979, ascended to the Superior Court Bench in 1996. In 2000, Honorable Suzanne V. Del Vecchio, the then-Chief Justice of the Massachusetts Superior Court, decided to create a two-year pilot session of the trial court devoted to business cases. This was extremely controversial among the other Superior Court Judges who saw such a move as elitist and feared that the best cases would go into the new session. Everyone realized that the choice of the justice to preside over this new court would be critical to its success.

Judge van Gestel took the challenge and presided over the Business Litigation Session from 2000 to 2008. For the first several years, Judge van Gestel was the only judge in the session, without a secretary or a single law clerk, and he immediately took on eighty-five complex cases. The average case had seven parties on the caption. Despite the lack of resources, in the early years Judge van Gestel was holding sixty-five hearings a month, rendering decisions on preliminary injunction motions within ten days of argument, decisions on dispositive motions within seventy-five days of argument and writing incisive opinions which averaged twenty-three pages in length. By September 2004, 948 additional cases had been accepted into the Business Litigation Session. The new session became such a success that there are now two sessions and they have been expanded to handle cases beyond Boston to other counties in Massachusetts. Attorneys and judges in Massachusetts uniformly attribute that success to the trailblazing role of its first presiding judge and his indefatigable work ethic.

## FELLOWS ARE INDEBTED TO STATE TRIAL COURTS

As the first state trial judge to be the recipient of the Gates Award, Judge van Gestel's remarks were appropriately focused upon the dire situation of most state trial courts and also the debt that Fellows in the College owe to state and provincial trial courts. Judge van Gestel stressed that he spent most of his career trying cases in state court and was inducted into the College after becoming a "sage of his craft" in state court trials.

Publicly available statistics show that 40 million cases are filed each year in state courts compared to 1 million cases filed in federal courts. Since 95 to 98% of all cases that are resolved in the United States are resolved in state courts, most trial lawyers amass their experience trying cases in the state rather than federal system and this is generally true of Fellows. While federal and state judges do the same work – hearing motions, making decisions, trying cases, instructing juries, sentencing criminal defendants and writing opinions – federal judges are considerably better paid and have greater job and personal security. State judges have only a fraction of the administrative



support that federal judges do. At the same time, state court judges have vastly greater caseloads.

Despite these facts, most state trial courts are very poorly funded, located in crumbling buildings, and their judges have no secretaries, few law clerks and little support. In Massachusetts, for example, the current state budget for 2015 is \$38 billion while the amount allocated for the court system is \$600 million, under 2% of the entire state budget. In light of these facts, Judge van Gestel challenged the audience: “I would ask how many of the Fellows sitting out here could run their law practices with no secretary, with no associate lawyers to do research for you, doing it all on your own, writing all of your own briefs, going to court and making your own arguments without someone in the second chair or the third chair or the fourth chair, whatever you have?”

Judge van Gestel wondered aloud whether clients would trust their important business and personal issues to court systems that are so constrained if they knew the true situation. As Fellows are well aware, the more sophisticated litigants and their lawyers are fleeing the state court systems for arbitration and mediation, contributing to the “vanishing jury trial” and reducing the pool of experienced trial lawyers from which future Fellows can be selected.

### WHAT CAN BE DONE?

Judge van Gestel closed his remarks with a call to action. Trial law is the profession to which all the Fellows in the

College have devoted their lives. As is often said, courts and judges have no constituency other than the trial bar. Judge van Gestel called upon the College as the preeminent association of members of the trial bar to create a task force to work with and support state and provincial trial courts in their times of great economic distress.

“I seek to have the College plan for and work together with state legislative leaders and executive leaders, executive branch leaders, with local business organizations, with other advocates for court systems as well as state and provincial bar associations to develop a strong and loudly heard constituency for our state courts.”

In closing, Judge van Gestel asked, “Without effective state and provincial trial courts, where will the future trial lawyers come from? And without the future trial lawyers, what will become of the American College of Trial Lawyers?” To ensure the continued existence of trial lawyers and, by logical extension, the College, Judge van Gestel urged all Fellows to acknowledge the debt they owe to state and provincial trial courts by advocating for their appropriate support and funding.

As President Wikstrom stated after Judge van Gestel’s remarks, the College got it “exactly right” in giving the Gates Award to a trial judge because trial courts are “what we are all about.”

**Lisa G. Arrowood**  
Boston, Massachusetts

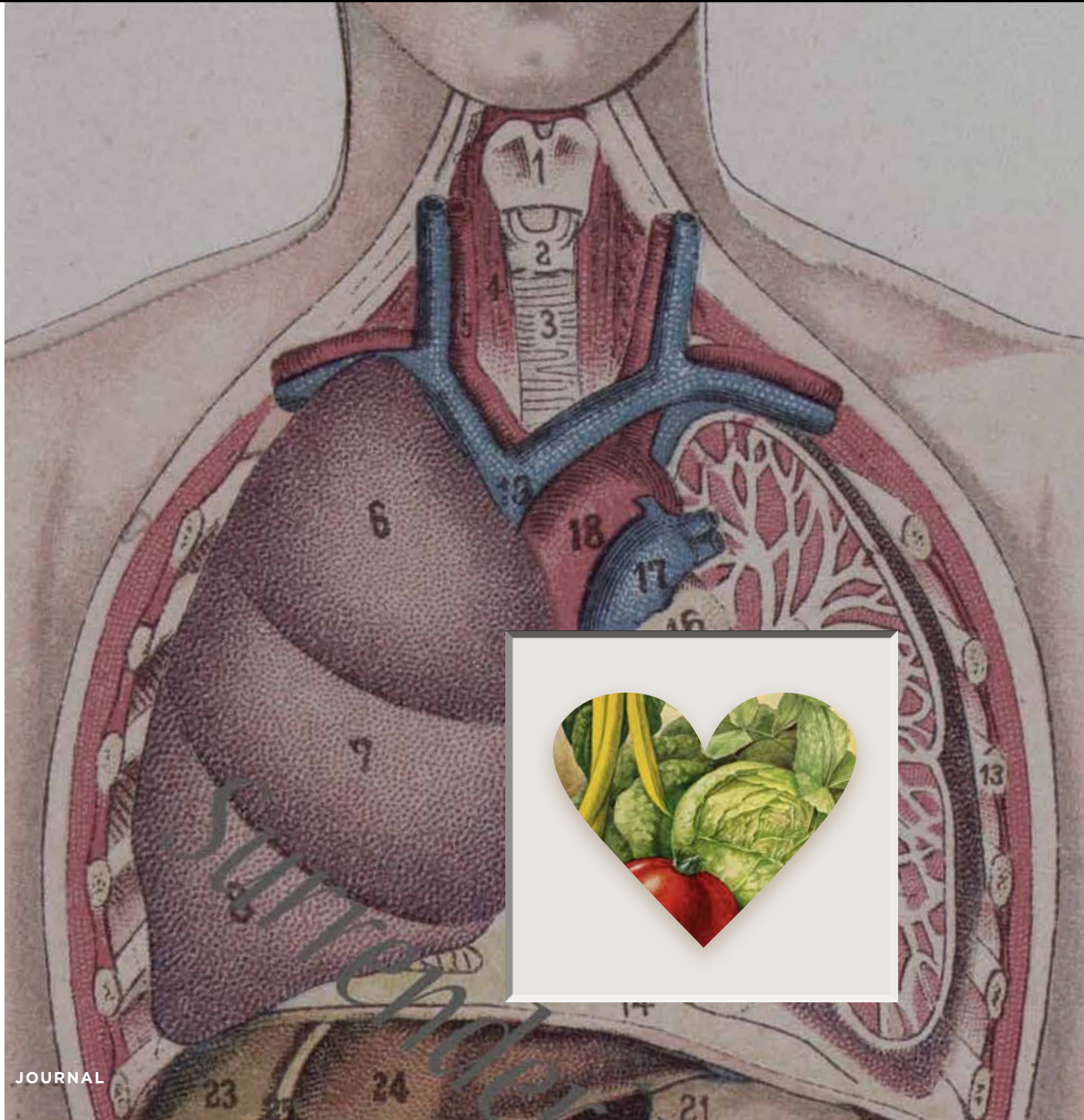
### QUIPS & QUOTES

That kind of thing is happening in many, many state courts all cross the country. They are not being funded. Their buildings are crumbling. Judges are sitting...in little rooms behind little desks with linoleum floors. They have no secretaries. They have no law clerks. And it does say if you will, behind them, “In od We rust.” And we do that.

*Judge van Gestel*



# PHYSICIAN ADVISES KNOWLEDGE, EXERCISE, DIET BEST APPROACH TO PREVENT HEART DISEASE





**Steven Nissen**, M.D., Chief of Cardiovascular Medicine at the world renowned Cleveland Clinic, was introduced by Regent **Kathleen M. Trafford** of Columbus, Ohio as “a crusader for putting patient safety into action.” A native of California, the 67-year-old physician completed both his undergraduate and medical education at the University of Michigan. He followed that with an internship and residency in internal medicine at the University of California, Davis, and completed a cardiology fellowship at University of Kentucky in Lexington. Nissen came to the Cleveland Clinic in 1992. He has occupied a variety of positions there, most recently Medical Director of the Cleveland Clinic Cardiovascular Coordinating Center, an organization that directs multi-center clinical trials, and Chairman of the Department of Cardiovascular Medicine. He is also a former president of the American College of Cardiology and has authored more than 400 journal articles and book chapters, most notably in the field of cardiac imaging, where he is recognized as the primary force behind the new technology of intravascular ultrasound, which allows researchers to see and measure atherosclerosis, the fatty plaque that attaches to the walls of coronary arteries and cannot be detected on an angiogram. Nissen is also well-known as an advocate for patients, and he has led several research efforts that resulted in drugs being re-evaluated or even removed from the market because of their adverse cardiac effects, most notably Vioxx.

### **RISK FACTOR MANAGEMENT KEY TO HEART HEALTH**

Nissen’s remarks centered on the topic of “staying healthy by avoiding heart disease.” He pointed out that sudden cardiac death, heart attack and stroke remain major problems in today’s society. Despite the public perception of cancer as the predominant cause of death in the United States, the fact is that heart disease remains the top killer of both adult men and women.

But the good news is that in most cases heart disease is preventable, and it is in each person’s control to prevent it. “We absolutely know how to prevent this disease in the vast majority of cases, and that’s risk factor management....If you know your risk factors and if you pay attention to them, this is a disease that we do know how to prevent,” Nissen said.

Nissen chronicled the development of heart disease as the primary health risk in America. The development of antibiotics eliminated pneumonia as the leading cause of death in the U.S. in the early part of the twentieth century. With this new development began the catastrophic increase in the rate of death from heart disease. It became a serious concern in the 1950s, and peaked in the period 1965-1970. Epidemiological studies led to a better understanding of heart disease, leading to the notion that this was a “lifestyle” disease. It was the modern lifestyle that had caused this dramatic increase in the rate of death from heart disease. Due to better understanding of the disease, there has been a dramatic decrease in the death rate. However, it is still the leading cause of death in the U.S., therefore increased steps in prevention are vital. Heart disease “is rising at a rate that is just unbelievable in countries such as China and India. As they modernize, become wealthier and adopt the kind of lifestyle that we live in America, so, too, the diseases that we face in America are faced now in the third world,” Nissen said.

One obstacle to effectively addressing heart disease in the U.S. is that “there’s a lot of snake oil out there,” which includes bizarre diets and vitamin therapies. The inability of the Food and Drug Administration to regulate so-called dietary supplements has led to a huge industry that is not effectively preventing or treating disease, but actually doing more harm. And the FDA is powerless to stop it, due to “a catastrophic law that was passed in 1994 known as DSHEA [Dietary Supplement



Health and Education Action]. What DSHEA did was it basically said the FDA could not regulate something if you call it a dietary supplement. If you call it a dietary supplement, then the FDA can't regulate you.... Part of the mission that I'm on is to try to wake everybody up to the fact that we have people who are not taking medications that could save their life but they're taking stuff that doesn't work and doesn't even contain what it's supposed to contain.

Something important to remember," he said.

Nissen used the example of TV personality "Dr. Oz," as a source of misinformation on these dietary supplements and fads. Nissen partnered with another physician at the Cleveland Clinic, Marc Gillinov, M.D., to write a book to counteract this misinformation: *Heart 411: The Only Guide to Heart Health You'll Ever Need*. The book provides, in plain language, the science that debunks the efficacy of fad diets and miracle supplements, and lays out the evidence-based approach to defeating heart disease. As is the case with Nissen's speaking engagements, all proceeds from sales of the book are donated to charitable causes.

## THE 411 ON DRUGS, FAD DIETS

Nissen then identified the risk factors that lead to heart disease: hypertension, diabetes, smoking, family history, lack of exercise, obesity, diabetes and cholesterol, specifically high levels of LDL ("bad cholesterol") and low levels of HDL ("good cholesterol"). Of these numerous risk factors, only one is not within the individual's control: family history. The remaining risk factors can all be controlled with diet, exercise, lifestyle changes and medication.

Nissen then told the story of the development of statin drugs, used to control cholesterol. The results of a study from Sweden were released in 1994 and showed unequivocally that statins caused a reduction in bad cholesterol, an increase in good cholesterol, a reduction in the rate of heart attacks by 34 percent, of heart-related death by 42%, and of all causes of mortality by 30%. Nissen described the results of the study as "an absolute revolution," in the prevention and treatment of heart disease. Further research has since proved that as one keeps lowering cholesterol, and specifically, LDL, it then keeps lowering the risk of coronary artery disease. Statins are inexpensive and have an outstanding safety profile, despite a wealth of misinformation on the internet.

"If you Google search 'statin benefit,' you get around 1.6 million hits, terrific. If you Google 'statin harm,' you get three times more; you get 4.8 million hits and that's what caused us to write the book. The American public, maybe some of you in the audience, when getting your information from Google, you become a victim of herd

mentality. The loud anti-treatment zealots seem to get the airwaves, and we want people to know the facts. Now, believe me I am not advocating putting medications in the water supply. I'm advocating a thoughtful approach so the people at risk get what they need to get. People not at risk are not treated and we have approaches to this that make a lot of sense. But you've got to understand that if you go on the Internet and try to get medical information, about 80 to 90 percent of the medical information about heart disease is just dead wrong," Nissen advised.

He then turned his attention to smoking. The good news is that studies show that two years after cessation of smoking, the risk of heart attack decreases by about 36%. Nissen explained, "All you have to do is make a decision you're not going to smoke and you can reduce by one-third your chances of having a heart attack. That's a pretty good approach to the disease. You don't have to take a drug, don't have to go see the doctor; it's all in your hands. If anybody in this audience smokes, I really want you to stop, for you, your family, your kids and for everybody's sake."

For Nissen, obesity represents another lifestyle choice that affects 150 million adults in America, and results in health care costs estimated at \$150 billion annually. It leads to 300,000 deaths each year. But instead of effectively addressing it, Americans spend \$59 billion annually on diet books and supplements to lose weight, "most of them worthless or harmful."

## QUIPS & QUOTES

I've now scoured the world to find the world's most unhealthy food, the most atherogenic food. I've gone to Asia, I've gone to South America, I've gone to Europe. I found it and I wanted to show you the ultimate unhealthy food in the next slide—it's a deep-fried Mars bar. Here's how you make one of these. This is real. They sell these in Scotland in fish and chip shops. They're very popular. You take a Mars candy bar, you batter it, then you deep fry it in lard. It comes out as this nice warm gooey mess. Apparently, it tastes very good, although I'd certainly not be caught eating one. It goes straight to the left main coronary artery and then you die. There is no antidote. There is absolutely no antidote for a deep-fried Mars bar.

*Dr. Nissen*

Linked to obesity is diabetes, a disease that is "epidemic" in the United States. The disease was not all that common in the 1950s, afflicting perhaps 1% of the population. Now, approximately 7% of the population suffers from diabetes—that represents 20 million diabetics and



the number is increasing very fast. “There is a predilection [of the disease] for people with certain ethnic groups. But among women, the highest one is Hispanic women. If you’re a Hispanic woman and you were born in the year 2000, you have a 50 percent lifetime risk of developing diabetes. Unbelievable. Even in the less risky groups like non-Hispanic whites, we’re still talking about one-third.... If we do nothing, then there are going to be an awful lot of people injecting themselves with insulin over the next one hundred years. We have to fight it,” Nissen said. Diabetes is a disease caused by diet and lack of exercise in the great majority of cases, and fast food is a big culprit.

Nissen then turned to “fad” diets. “These fad diets are not based on science ... any of them.” For example, Pritikin and Atkins are two of the most popular, and they provide diametrically opposed nutritional advice, “they can’t both be right,” Nissen said. “people are so eager to find a quick and easy way to solve the problem that they go and they buy this kind of nonsense.” However, there is a diet that has been proven scientifically to work – the Mediterranean diet. The diet is simple, it is filled with many fruits and vegetables, rich in olive oil and nuts, and uses meat, especially red meat, very sparingly. A study that contrasted the Mediterranean diet with the American Heart Association low fat-diet showed that with the former there was a dramatic reduction in the incidence of heart attack, stroke and sudden cardiac death. “The American Heart Association just got it wrong, and someday they’ll eat their words, to use a pun,” Nissen said. “Stay away from the cult diets. Stick with what works. The science is very, very clear.”

## EXERCISE AS MEDICATION

Nissen then shared his observations about the role of exercise in a healthy lifestyle. “I don’t want to die of the disease that I treat,” he said. Using himself as the example, he uses a Fitbit that keeps track of his daily steps, he takes about 11,000 steps every day and that adds up. He uses it to keep his weight down and, as a result, to stay healthier.

“The evidence for exercise is remarkable. It lowers blood pressure, it improves blood sugar, it lowers bad cholesterol, it dramatically raises good cholesterol, it reduces stress, it improves blood vessel functioning, it helps to form new blood vessels and it decreases the stickiness of platelets, which are one of the factors that cause blood clots in coronary arteries that cause heart attacks. These things are all proven scientifically. Exercise, unlike pharmaceuticals, has no side effects that I’m aware of. It doesn’t cost anything. It just costs a little discipline. It’s always good to try to prevent this disease with nonpharmacological means. As much as we have

great drugs, if you can do it without medications, you’re better off. Exercise is a medication, and it’s as good, or better, than almost any medication that we have.

“One of the reasons I really looked forward to talking to you is I understand a lot of the work you do, you have to do at a desk or a computer sitting down. I mean, you are a vulnerable group. You are not working outside in a construction trade. You’re doing these cognitive things where you’re seated. So am I. You have to decide you’re going to fight it. People with active jobs have a 50 percent reduction in age adjusted risk for heart attack. People who are sedentary have a 200 percent higher risk of sudden cardiac death, and those people that are active, they have less hypertension. The data is just overwhelming that if you can get in those 10,000 steps a day, even better some vigorous exercise three or four days a week, it has a therapeutic effect as good as any drug I can give you. It’s amazing how effective it is. Not only does it reduce the risk of disease, but as you get older and you want to maintain your activity level, it improves cognition, it improves the quality of life for people. You have to make the time.”

## DISPELLING HEART DISEASE MYTHS

Finally, Nissen commented on some myths associated with health in general and prevention of heart disease in particular. “If you don’t have heart disease, unless you’re at extremely high risk, aspirin should not be part of your routine regimen. The risks of bleeding and other consequences are greater than the benefits,” he said.

Use of the dietary supplement fish oil has not been shown to be effective. There is no scientific evidence that it affects the risk of heart disease. The same observation pertains to routine use of Vitamin E, Coenzyme Q10 and Gingko Biloba. Although there is some benefit for women at risk for osteoporosis, Vitamin D has no demonstrated heart-protective effects.

In summary, Nissen ended with a quote written 2600 B.C. from Nai-Ching, the First Chinese Medical Text: “Superior doctors prevent the disease; mediocre doctors treat the disease before evident; and inferior doctors treat the full blown disease.’ I think they got it right a long time ago. We just have to remember the lessons of the past. I can wow you with all the gee-whiz new tools that we have for treating heart disease. But the best advice I can give you is: know your risk factors, know your cholesterol, know your blood pressure, exercise, fight obesity, eat a healthy diet.” That is the best recipe for defeating heart disease.

**Robert F. Parker**  
Merrillville, Indiana

# THE DETROIT MUNICIPAL BANKRUPTCY CASE





Michigan State Committee Chair Cheryl Bush listens to the discussion between Judge Steven Rhodes, left, and Judge Gerald Rosen, right.

United States District Judge **Gerald E. Rosen**, Detroit, Michigan, Chief Judge of the Eastern District of Michigan, and United States Bankruptcy Judge **Steven W. Rhodes**, retired, of Ann Arbor, Michigan, joined in a presentation at the College's 2015 Annual Meeting in which they took turns interviewing one another to take the audience on a fascinating trip through the 2013 bankruptcy of the City of Detroit.

In introducing the two speakers, Michigan State Committee Chair **Cheryl A. Bush** of Troy, Michigan, introduced Judge Rosen, the chief mediator in the Detroit bankruptcy, as a wise, civic-minded natural leader and author. She introduced Judge Rhodes, the bankruptcy judge appointed to handle the case, as a deeply intelligent scholar in bankruptcy law, suggesting that in that field he was a rock star. She went on to introduce them as the two judges who saved the Detroit Institute of Arts and the City of Detroit.

Their presentation described a classic example of how a huge, complicated legal problem with profound societal implications can be resolved within the law through the cooperation of parties with conflicting interests to reach a result that the law alone could not achieve.

## SETTING THE SCENE

By 2013 it had become evident that for decades the City of Detroit had ignored its growing financial problems, stacking debt upon debt, and that its situation had reached crisis proportions. In March 2013, the city's mayor had been convicted of twenty-four federal crimes, including racketeering, lawyer fraud and extortion. The Governor, Rick Snyder, had declared a financial emergency and the State of Michigan had taken over the city. Kevyn Orr, the city's Emergency Manager made subse-

quent attempts to persuade the city's creditors to accept a reduction in their claims, but these attempts had failed.

By June 2013, the city had stopped making payments to some of its unsecured creditors, including some public employee pensioners. The City's total debt was \$18.5 billion. Close to \$6 billion of that principally covered post-employment health care obligations to retirees, and another \$3.5 billion related to unfunded pension liabilities. Another \$1.5 billion was attributable to a disastrous transaction entered into almost a decade earlier in an attempt to shore up pension underfunding. The Detroit Water Department was \$4 billion in debt. And then, there was liability of \$1.2 billion to holders of general obligation bonds, which were secured only by the general backing of taxpayers.

The city's population had shrunk from 1.8 million inhabitants in 1950 to fewer than 700,000. The city was "service delivery insolvent." Basic public services—police, firefighting, ambulance service—were sporadic or nonexistent. Forty percent of the city's streetlights were dark. Criminals thrived in darkened streets and abandoned homes. The city's ancient water and sewer system was collapsing. The resulting human cost was unimaginable.

One third of the city's annual budget was committed to municipal employee retirement benefits, but forty-seven percent of the property owners had not paid their 2011 taxes. The city was insolvent on a cash-flow basis, and its budget deficit was growing rapidly. Leaders in the United States Congress had expressed opposition to a federal bailout.

Assets belonging outright to the city were exposed to the city's liabilities to creditors. Notable among them was the Detroit Institute of the Arts (DIA), which held



66,000 valuable pieces of art, only five percent of which had been bought with city money. Whether the entire collection could be monetized to satisfy the city's debts was an impending legal question.

On July 18, 2013, the city filed in the United States Court for the Eastern District of Michigan a proceeding under Chapter 9 of the United States Bankruptcy Code, entitled "Adjustment of Debts of a Municipality." It was the largest municipal bankruptcy filing in United States history.

The filing was immediately challenged in a Michigan state court. The vested pension benefits of retired city employees were protected under the Michigan State Constitution, and the ability of a federal court to modify such obligations in a bankruptcy proceeding was an untested legal issue.

### THE BANKRUPTCY PROCEEDING

Five days after the filing, Judge Rhodes, who had been assigned the case, announced his intention to appoint a mediator to work with the parties to the bankruptcy in order to seek an agreed resolution. Ultimately, the state court proceedings were stayed and Judge Rosen was appointed the mediator with authority to bring the parties together for "facilitative mediation" on any issue Judge Rhodes chose to refer to him.

On December 3, 2013, Judge Rhodes ruled that Detroit was eligible for bankruptcy protection under Chapter 9. He ruled that under federal bankruptcy law the city could potentially impair the pensions of city retirees, despite the protections of Michigan law. He concluded his 143-page memorandum by stating that the "ultimate objective is confirmation of a plan of adjustment. . . . [T]he Court strongly encourages the parties to begin to negotiate, or if they have already begun, to continue to negotiate, with a view toward a consensual plan."

In a Chapter 9 bankruptcy, the bankruptcy judge chosen to preside is appointed by the Chief Judge of the Circuit. The Chief Judge of the 6th Circuit, Alice Batchelder had called Judge Rosen and asked if he had a recommendation. He recommended Judge Steven Rhodes, with whom he had worked for a very long time, as someone particularly able to handle this "hydra-headed monster of a case."

Judge Rhodes pointed out that in bankruptcy, there is often a fixed pie, and the creditors argue about how to split it up. In the Detroit bankruptcy the ultimate real-



ity was that if the city was not able to provide adequate municipal services and not able to compete in the market of municipalities, it was not going to be able to pay any creditors. It was thus in the best interest of the creditors to have both a feasible plan and a revitalized Detroit. Rhodes also knew from experience that a settled result in bankruptcy was always a better result than a litigated result. Here, the city could not afford extended and costly litigation with appeals to higher courts; it literally could not survive years of uncertainty that would result from that kind of litigation. "I felt that a settled result was always going to be better, and the best way to achieve a settled result was to appoint a mediator," Rhodes said.

Rhodes therefore in turn asked Judge Rosen to serve as the mediator. He felt Rosen had just the right combination of weight of office, love of the city, political and community connections, communication skills, thick skin (which turned out to be important) creativity and relentlessness. Judge Rosen disclosed that Rhodes had told him that he was willing to defer his own retirement for the duration of this case on condition that he would agree to be the mediator. Rosen had not known that there would be a mediator, but he saw this request through the lens of a life-long Detroiter with a passion for the city. "It was an opportunity to do something to help my city in its time of need. . . . [T]his was a consequential moment for the city of Detroit, and not just the city, but the region," he said.

Rhodes told Rosen that his "deliverable" was to be a confirmable plan of adjustment. The greatest challenges Rosen saw when he was assigned to mediate the case:

“Well, the immediate challenge I saw rose from the fact that every resident and every business in the city of Detroit had a stake in the outcome of the case, so it was as much a political case as it was a legal case. . . . There was great anger in the city that resulted from the filing and from the appointment of the city’s Emergency Manager. People felt like their democratic rights had been taken away from them . . . . And as the judge in the case, I felt a very strong obligation to attempt to deal with that anger in some way and to engage with the people of the city of Detroit in the resolution of the case. To me that was my greatest challenge.”

The principles Judge Rosen applied to the assignment were: “The first and probably most important . . . was that, because of the stake that every resident had in the city, I wanted to hear from them. I wanted to give them the right to be heard. Beyond that, I knew from the very beginning that the city needed to get out of bankruptcy as promptly as it possibly could. [Second] because of the suffering . . . from the lack of services, we needed to get the debt adjusted and the city’s services revitalized as promptly as we could. And the third assumption was that we were only going to get one shot at this. . . . I wanted the plan that we were going to eventually confirm to be a feasible plan.”

Both judges agreed that time was the enemy. Nothing was going to get better in Detroit with time. Detroit was going to lose population and constantly lose revenue. There was an incentive to finish quickly, but the creditors’ due process rights also had to be observed. Rhodes related that he set the tone for the lawyers in the case for how he was going to administer the case by applying his judicial philosophy. “My philosophy had always been A, B, C, ‘Always be closing.’ So my attitude . . . was that every case management decision I made, every deadline I set, every step along the way, was always with a view towards closing the case as promptly and efficiently as possible. I set firm and prompt deadlines and insisted that they be complied with. . . . I entered the courtroom on time every time, and that sent a message regarding timeliness in the case.”

“Chapter 9 . . . municipal bankruptcy,” Judge Rhodes related, “is . . . a state, a sovereign jurisdiction, coming to the . . . federal courts asking for help that under our constitutional scheme it cannot solve by itself. States cannot impair contract, so they come to the federal courts to help them solve a problem they can’t solve. And so I

thought it was entirely appropriate for the federal courts to marshal all of the resources available to them to solve this problem.”

## THE PROCESS

Judge Rosen saw a case in which there was great, incredibly interconnected debt, in an essentially asset-less bankruptcy. His task was to present the bankruptcy court with a plan it could confirm. The dilemma was how to get settlements with nothing to offer creditors.

### QUIPS & QUOTES

By the end of the case, we were ready to return democracy to the city of Detroit, and we did that. But I told the people of the city of Detroit that because their leaders are going to come and go, it’s really up to the citizens of the city of Detroit . . . to elect leaders who will make the tough decisions and will execute this plan. I told them that democracy is not a spectator sport; they have to get involved. They have to help their leaders make the right decisions, and that’s going to be an ongoing challenge for the people of the city of Detroit.

*Judge Rhodes*

In fact, the city did have some real estate assets and one great asset, its world-renowned iconic art collection and museum. In addition to the cultural issues that selling the collection would raise, there was a legal issue whether it could be thus impaired. And it anchored the Midtown, one of the few areas beginning to be revitalized, a process vital to the city’s recovery.

“I felt that to liquidate the DIA would be like dropping a hydrogen bomb in the middle of this one area of nascent growth that was coming. In addition to that, the DIA’s Board of Trustees was a Who’s Who of everybody in the region. It would have set off a civil war . . . . I began thinking about it [the conflicting interests] as bookends. One bookend was the DIA; the other bookend was the pensioners and the retirees who had all sorts of human issues. The average pension was \$19,000 for the civilian pensioners and \$32,000 for the uniformed pensions, but those folks didn’t receive Social Security, and many of them didn’t receive Medicare. It would have been devastating to reduce their pensions by thirty percent. And there were legal issues . . . between the State Constitution that purported to protect municipal pensions and the federal Constitution, bankruptcy laws and supremacy



## QUIPS & QUOTES

By any objective measure the result in the Detroit bankruptcy case is truly miraculous. No one could have foreseen when we were going into the bankruptcy case the result that we achieved. . . . Judge Rosen is the one who went out and got 800-plus million to resolve this case. Without that, what a donnybrook it would have been.

*Judge Rhodes*

clauses. . . . It wasn't as if the other creditors were not important. . . . They had loaned money to the city. But these two issues I began to think of as book-ending the bankruptcy, so I saw those as the greatest challenges."

"My initial idea," Rosen continued, ". . . was to have the state kick-start the funding, give the money to the DIA effectively and put in a trust, lock it off . . . and then use those proceeds to pay the underfunding of the pensions. So it was really sort of a triple bank shot. On the one hand it was to save the art for prosperity, lock it off from creditors, and on the other hand to use it to mitigate the underfunding in the pensions."

Snyder, the Governor of Michigan, soon made it clear that the state was not going to come forward and kick-start the funding and Rosen had to look for other sources. A chance encounter with Mariam Noland, an influential friend who asked if she could help led within three weeks to audiences with leaders of thirteen major foundations who were told about the problem, Detroit's prospects for the future and the need for money to kick-start the negotiations. There was soon a pool of commitments from eight foundations for a total of \$292

million, and six more were considering contributing. Their commitments were contingent on participation by the State of Michigan.

Rosen and a fellow mediator then went back to the Governor, pointing out that, absent a global settlement, the commitments of the foundations would be lost, and with them, possibly the DIA. The Governor was ultimately persuaded to produce a contribution of \$350 million from the state, with the understanding that the mediator would not return asking for more.

There remained a strong feeling among the foundations and the state legislature that the DIA itself should have some "skin in the game." The Governor ultimately persuaded the DIA itself to contribute \$100 million to the settlement. In exchange, the DIA was put into a trust that would thereafter insulate it from the debts of the city.

## THE GRAND BARGAIN

The pool of money thus created, ultimately \$820 million, was used to support the retirement rights of the pensioners. The remainder of the revenues available were used to settle with the city's other creditors.

Judge Rosen summarized the ultimate results: "[A]fter less than sixteen months, which is municipal bankruptcy at warp speed . . . we shed \$7.3 billion in debt and restructured another \$3.1 billion. We provided \$1.7 billion for . . . blight removal, reinstatement of public safety services and revitalization of the city's infrastructure, including all of its street lights. We provided for very small cuts to the pensions and transitioned their retirees to a much more affordable efficient health care plan, provided for savings of \$113 million to the city's water and sewer system for infrastructure removal and \$50 million a year for forty years to fund the desperately needed repairs to the city's water and sewer system. The city's water and sewer department is now transitioning to a regional system, which is desperately needed. We provided the city a stable work force through collective bargaining agreements with every one of the city's unions.

"We saved the DIA and its treasured art collection from liquidation, preserved it in perpetuity for future generations and posterity by locking it off in a trust, so it will never be jeopardized again and will be available to future generations, and the cultural heritage of our region is preserved.

"We had no money left to give, so in the last deals we did, we gave real estate. These real estate deals were win-win



situations which will dramatically improve the city's tunnel to Windsor, Canada the riverfront development and the convention center. And finally, the city's bond rating, which was at junk status and falling at the beginning, was headed toward investment grade and indeed for its exit financing, the city did receive investment grade."

## LESSONS LEARNED

Judge Rosen suggested four lessons that came from the mediation process in the Detroit case. He termed them his 'four C's.' The first was candor, getting through the "scar tissue" and recognizing and dealing with the real interests and the real problems. The second was cooperation, focusing on pathways toward solutions that could lead to settlement. The third was creativity, "thinking outside the box" to come up with solutions. The fourth he termed courage to put aside self-interest and to think about getting to the finish line, recognizing that one's client might not be able to get everything it wanted.

He went on to give high praise to the lawyers and other professionals involved in the mediation, calling them, "once we got through the 'scar tissue,' fair-minded, thoughtful, constructive and engaged."

Judge Rhodes reflected, "So many lawyers out there think there is this inherent conflict between zealous advocacy on the one side and civility on the other side: 'We can either be civil or we can zealously advocate.' These lawyers proved the falsity of that. They were civil at all times—well, almost all times—and they advocated zealously. They proved there's actually a symbiosis there: if you are civil, you'll do a better job of advocating zealously for your clients. At the end of the case, I told the lawyers in open court that they were a model of the public service role that lawyers play in our society. . . . I have nothing but the highest of praise for the lawyers."

"By any objective measure," Rhodes said, "the result in the Detroit bankruptcy case is truly miraculous. No one could have foreseen when we were going into the bankruptcy case the result that we achieved. . . . Judge Rosen is the one who went out and got 800-plus million to resolve this case. Without that, what a donnybrook it would have been. What I'm most proud about is that we helped the city fulfill its mission and establish and maintain a community that can foster hope and opportunity for its residents and its businesses. That was the goal of the bankruptcy, and I think we fulfilled that goal."

## QUIPS & QUOTES

[A]fter less than sixteen months, which is municipal bankruptcy at warp speed . . . we shed \$7.3 billion in debt and restructured another \$3.1 billion.

*Judge Rosen*

After noting that the bankruptcy settlement, the "grand plan," fixed Detroit's current balance sheet, created a plan for the city to revitalize itself and attracted new leadership, Rhodes concluded: "By the end of the case, we were ready to return democracy to the city of Detroit, and we did that. But I told the people of the city of Detroit that because their leaders are going to come and go, it's really up to the citizens of the city of Detroit . . . to elect leaders who will make the tough decisions and will execute this plan. I told them that democracy is not a spectator sport; they have to get involved. They have to help their leaders make the right decisions, and that's going to be an ongoing challenge for the people of the city of Detroit."

**E. Osborne Ayscue, Jr.**

Charlotte, North Carolina

## QUIPS & QUOTES

The first and probably most important . . . was that, because of the stake that every resident had in the city, I wanted to hear from them. I wanted to give them the right to be heard. Beyond that, I knew from the very beginning that the city needed to get out of bankruptcy as promptly as it possibly could. [Second] because of the suffering . . . from the lack of services, we needed to get the debt adjusted and the city's services revitalized as promptly as we could. And the third assumption was that we were only going to get one shot at this. . . . I wanted the plan that we were going to eventually confirm to be a feasible plan.

*Judge Rosen*

# BEHIND THE SUPREME COURT DOORS: AN INSIDER'S VIEW

**Carter G. Phillips** joined the Office of Solicitor General and had his first argument before the Supreme Court at age twenty-nine. His total of eighty cases argued at the Court is the most of any current Supreme Court advocate.

“Anyone looking for a Supreme Court advocate will quickly realize there’s a short list,” said former Regent **David J. Hensler** of Washington, D.C., in his introduction of Phillips at the College’s Annual Meeting in Chicago. “In fact, it’s about six lawyers and right at the top is Carter Phillips.”

Phillips, a native of Canton, Ohio, attended Northwestern University Law and has represented a host of important commercial clients including Exxon, AT&T and Norfolk Southern. A lifelong fan of the Ohio State Buckeyes, one of his eccentric habits is to place a buckeye in his pocket when he is going to make a Supreme Court argument. Phillips, who is a Fellow, shared first-hand accounts of his experience with different Justices in and out of the courthouse.

## A WINTER RIDE TO THE COURT

Phillips had an argument in front of the Supreme Court on a Monday in the dead of winter. It snowed all night the Saturday and Sunday before. The city was immobilized, but still the Supreme Court was not closed. The argument was scheduled for 10 a.m. on Monday. By Sunday afternoon, Phillips was at his wit’s end, uncertain of how he would get to court. He was faced with his last option: ask for a ride from Justice Antonin Scalia who lived down the street from him. Phillips called Scalia’s number, but it went to the answering machine and he left a brief message. Two hours later, his phone rang and a deep voice on the other end said, ‘Carter, Nino; you want a ride to work?’

Phillips, along with Justice Scalia Justice Kennedy and the driver, braved the wintry roads. “We start riding Georgetown Pike toward 123, which is a huge intersection in northern Virginia. It’s about a half block from the CIA and we start to pull up to a series of red lights there. Justice Scalia looks at the driver and he says, ‘We’re in an emergency, we’re running late. I authorize you to run this red light. Justice Kennedy sitting beside me says, ‘What are you talking about, Nino? We don’t have any authority to run red lights.’ What did the driver do? He shot right through the red light. We went through under the authority of Justice Scalia. Every stop sign and red light between my house and the U.S. Supreme Court, not a lot of traffic out, but I didn’t think I was taking my life in my own hands by going down that particular route. We get to the court, we go into the garage, and Justice Breyer is in the garage directing traffic. There are two elevators in the Supreme Court, one for mortals - which is where they stopped to let me off - then there’s the other one for the immortals where the justices go in. So when they stopped to let me out, I hopped out of the car and thanked them for the ride. Justice Scalia looked at his watch and said, ‘It’s 9:30. We’ve got thirty more minutes before the argument. Phillips, I still have time to read your brief.’”



### HIS MOST EMBARRASSING MOMENT

"I was answering a question that had been asked by Justice Ginsburg, and unfortunately, I referred to her as Justice O'Connor. The circumstances were that Justice O'Connor had asked a question just before that. It was a fairly short one and I answered it quickly. Then Justice Ginsburg asked one, not that's an excuse for justification, but I was looking at the joint appendix to get a specific page cite which was in answer to Justice Ginsburg's. I mindlessly said, 'Well, Justice O'Connor, it's page 48,' and then looked up. I probably argued 60 some cases in front of Justice Ginsburg and I can tell you categorically that this is the only time she has ever smiled at me. It's very disarming. What are you supposed to do, apologize and say, 'I'm so sorry for calling you Justice O'Connor, what an insult?' I went ahead and figured I won't do anything. Next time she asks a question, I'll be very clear to refer to her as Justice Ginsburg and hope this all sort of blows over. As I left the courthouse, Tony Mora with the *Legal Times* asked me how many times I screwed up the Justice's name; it was to be the front page of the *Legal Times*, which was certainly a high point in my legal career. This one also has a bit of a postscript to it because I was arguing in the Court a month or two later and as I was making my argument, Justice Ginsburg interrupts me and she says, 'Mr. Carter.' A lot of people call me Mr. Carter. It happens if you have two last names; it's an occupational risk. I had argued in front of Justice Ginsburg many times and she'd always gotten the Phillips correct before. I just ignored it and went on and answered the question. Justice Stevens then interrupted and he said, but, 'Mr. Phillips,' and I thought he said it more pointedly than he might normally, so I was answering his question, and then Justice Ginsburg interrupted again, she said, 'But, Mr. Carter.' I kept thinking, 'I've got to put up with this for twenty more years?' The good news is since

then, she's pretty consistently called me Mr. Phillips and I've always called her Justice Ginsburg; I think we've got a nice status at this point."

#### QUIPS & QUOTES

My daughter got married a little more than a year ago. I did the father's speech at the reception. I finished my speech, and Justice Alito was at the wedding. He comes up to me afterwards and says, 'You know, Carter that may have been the best public presentation I have ever heard you make.' I said, 'Sam, I do a lot better when I'm not interrupted with questions.'

Carter Phillips

### PREPARING FOR AN ORAL ARGUMENT

"How do you prepare for oral arguments before the Supreme Court? I was arguing the Fox television case, the one where Nicole Richie and Cher were using expletives on national television. That was certainly why I went to law school, to defend the First Amendment right to swear on TV. The clerk of the Court called me on Friday and said the Justices do not want to hear the language during the oral arguments, so we didn't use that. But the second time the case was argued, I was splitting my time with Seth Waxman, also a Fellow of the College, and Seth was arguing a *Hill Street Blues* case, where there was partial female nudity showing the rear end of a woman and I was defending Nicole Richie and Cher. We're sitting there chatting away and we looked up. I don't remember whether I noticed it or he noticed it, but right above the Justices is a painting that has a nude buttock of a young man. Right above their heads. Seth says, 'I'm using it.' I said, 'They don't have expletives up there, I've got nothing. Knock yourself out.' Very elegantly, it seemed almost seamless that he actually makes this presentation ▶



and references the fact that there are nude buttocks right above the Justices' heads. It's a very intimate setting in the U.S. Supreme Court, Justice Alito is maybe seven feet away from me, and he's looking at me and literally says to me while I'm sitting at the counsel table, 'Where? I've never seen it.' I point to it. He looks up and he looks back. He says, 'I never noticed that.' I said, 'There's one over there too.' When we went back to the court a month or two later, I was happy to see that they hadn't covered it."

## FAVORITE EXCHANGE BETWEEN JUSTICES AND ADVOCATES

"The one that I love, when I talk to younger lawyers I say, 'Don't try this at home.' This is something you can only do if you are really, really good at what you do. Rex Lee did it, and he did it in a case called, *Presiding Bishop v. Amos*. *Presiding Bishop* is a fairly important First Amendment case. Rex was representing the Mormon Church. The church had a rule you had to pay your tithe in order to retain what they call "temple recommend" status to be a member of the church; you had to have that if you wanted to be an employee of the church. There was a janitor of a gymnasium that was owned by the church. He had lost his temple recommend status and so he was fired. As we do in the United States, if you're not happy with something, you sue. He sued the church for discrimination because they discriminated him on religious grounds, which quite honestly they did. Fortunately, there's an exemption in Title 7 that allows religious institutions to discriminate on religious grounds otherwise there would be very difficult times for the Catholic Church and other churches for that matter. In any event, a district judge in Utah declared the exemption unconstitutional as an establishment of religion. Rex was hired to argue the case in the Supreme Court.

By way of background, Rex Lee and Justice Scalia had a very close relationship. Justice Scalia and Rex's relationship came out of the fact that they were in the Florida Administration together in the justice department and Rex was the head of the civil division and Justice Scalia was the head of the office and legal counsel. If you think back to that period of time right after President Nixon had resigned, there was a real bunker mentality going on in the Justice Department because they were being bombarded by requests from everybody for very sensitive information. They spent an enormous amount of time together during that period. There are some who argued that the fact that Justice Scalia has nine children and Rex had eight children may have driven them to almost want to stay at the justice department more. In any event, they got to know each other very well. Rex is arguing

his case, and Justice Scalia interrupts him. When I say Justice Scalia had a twinkle in his eye, you can literally see a twinkle in his eye. He leans forward and he says, 'Mr. Lee, this janitor, like all good Mormons, I assume he neither smokes nor drinks. Rex without batting an eye says, 'Yes, Justice Scalia, in that regard, he's a lot better than some Catholics I know.' Justice Scalia is laughing so hard you could see him shaking with the robes on.

There was some point Scalia wanted to make, and I've always wanted to know what it was. I was at a dinner at the Supreme Court Historical Society this year and just happened to be seated beside Justice Scalia. I reminded him of the exchange during the *Amos* case, and he said he remembered Rex's argument. I said, 'Do you remember the question you asked and Rex's answer?' He started laughing exactly the same way he laughed the first time. I said, 'What was your follow-up question going to be?' He said, 'You know what, I laughed so hard the first time, I forgot what it was, the follow up, and now I've forgotten it again.'"

## COLLEAGUES OUTSIDE OF THE COURTROOM

"I think it's fair to say Justice Alito is one person on the bench whom I know particularly well. We met in 1981 when we were interviewing for the same job on the same day in the Justice department. Years ago Alito had been to the Philadelphia Phillies fantasy baseball camp and they made a baseball card of him. For reasons I will never understand, his wife gave me one of those baseball cards, the Justice looking like a real baseball player. I kept it on my desk because I couldn't really figure out what to do with it. Although, I will say when she gave it to me the Justice tried to steal it away from my hand. I did say to him, 'Someday you're going to regret that I have this.' I had it on my desk for fifteen years. Then he gets nominated to the Supreme Court. C-SPAN asks me if I will do an interview to talk about our experiences together at the Justice department. I said, 'I'd be happy to do that.' We have a conversation, then talk about how we meet each other, and somehow I must have mentioned that I had this baseball card. The next morning I get a call from a *New York Times* reporter who asked me, 'Do you really have a baseball card of Sam Alito?' I said, 'Do you really think I would get on national television and lie about something like that?' I said I had it. She asked if the paper would take a picture of it and I agreed. They came and took a picture of it. Later that week the *Sunday Times* front page has a picture of Justice Alito's baseball card. At about 7:30 in the morning, I get a call, 'Phillips, what have you done?' I said, 'Sam, you must have seen the paper. I'm just trying to humanize you.' He said, 'Don't do that, please.'"

## FLORIDA FELLOWS SHARE TRIAL SKILLS WITH LEGAL AID ATTORNEYS

Sixteen legal aid attorneys from Miami and Fort Lauderdale participated in a one-day, hands-on litigation training with eight Florida Fellows on March 4, 2015.

The hypothetical case involved Linda Smith, her elderly mother and two teenage sons who were on the verge of losing their federally subsidized apartment after Jacksonville police found a marijuana plant in the family's back patio. Before the eviction process would go through, Smith would have her day in court.

The training, held at Nova Southeastern University Law School in Fort Lauderdale, allowed half of the legal aid attorneys to represent Smith while the other half represented her landlord. Nova Law School students played the witnesses. Fellow **Gordon James, III** of Fort Lauderdale helped recruit other Fellows to serve as volunteer judges. Fellow **Kimberly A. Cook** of Miami volunteered to serve as a judge for the seminar.

The legal aid attorneys were provided information packets in advance to prepare for the case. Throughout the training, which included an opening statement, direct and cross examination of two witnesses and closing argument, the eight Fellows offered feedback and critique. They advised on the quality of preparation and questioning, as well as appearance, style and effectiveness.

The event was set in motion after Fellow **Darryl M. Bloodworth**, liaison to the College's Access to Justice and Legal Services Committee, approached The Florida Bar Foundation seeking to start a pro bono project for Fellows in Florida. The Foundation helped connect the College with Florida Legal Services. The legal aid attorneys who attended the training all work for legal aid organizations supported in part by the Bar Foundation.



**Cheryl A. Bush** of Troy, Michigan is Chair of the Michigan State Committee and has served as a member of the Retreat Task Force on Admission to Fellowship.



**Eugene K. Pettis** of Fort Lauderdale, Florida has served on the following committees: Admission to Fellowship; Florida State; Legal Ethics and Professionalism; National Trial Competition; and Regents Nominating.



Past President **Thomas H. Tongue** of Portland, Oregon. He has served on the Regents Nominating Committee.

## THE FOUNDATION OF THE AMERICAN COLLEGE OF TRIAL LAWYERS HAS THREE NEW TRUSTEES

The three new Trustees replace **Alan G. Greer** of Miami Florida and Past President **Michael E. Mone** of Boston, Massachusetts, whose terms ended on June 30, 2015, as well as Regent **Kathleen Flynn Peterson** of Minneapolis, Minnesota, who resigned her term early upon nomination to the Board of Regents. The College would like to thank these former Trustees for their service and dedication to the College.

# EIGHTY-EIGHT FELLOWS INDUCTED AT THE ANNUAL MEETING IN CHICAGO



## ALABAMA

*Birmingham*  
Michael L. Bell  
*Mobile*  
Brian P. McCarthy  
Michael E. Upchurch

## ALASKA

*Anchorage*  
Ray R. Brown  
Neil T. O'Donnell

## ALBERTA

*Edmonton*  
Kevin P. Feehan, Q.C.  
Kevin T. Mott

## ARIZONA

*Phoenix*  
Shawn K. Aiken  
Steven A. Hirsch

## CALIFORNIA-NORTHERN

*Oakland*  
David R. Stein  
*San Francisco*  
Arturo J. Gonzalez  
Edward W. Swanson

## CALIFORNIA-SOUTHERN

*Los Angeles*  
Phillip A. Baker  
Christopher T. Tayback  
*San Diego*  
Michael A. Attanasio  
James A. Mangione

## COLORADO

*Denver*  
Christina M. Habas

## DISTRICT OF COLUMBIA

*Washington*  
David V. Harbach, II  
Kevin M. Murphy  
James R. Murray  
Jonathan L. Stern

## FLORIDA

*Fort Lauderdale*  
J. David Bogenschutz  
*Jacksonville*  
Dana G. Bradford II  
*Orlando*  
Rafael E. Martinez  
*Tampa*  
Mark P. Buell  
*Palm Beach Gardens*  
Stephan A. LeClainche

## GEORGIA

*Atlanta*  
William J. Holley, II  
Johannes S. Kingma  
*Decatur*  
Robert G. Rubin

## HAWAII

*Honolulu*  
Jeffrey H.K. Sia

## IDAHO

*Boise*  
J. Nick Crawford  
*Lewiston*  
Bentley G. Stromberg

## ILLINOIS

*Chicago*  
Joel R. Levin  
George C. Lombardi  
Christopher Niewoehner  
Lisa M. Noller  
Reid J. Schar  
Dale G. Wills

## INDIANA

*Indianapolis*  
John R. Maley

## IOWA

*Cedar Rapids*  
Jennifer E. Rinden  
*Des Moines*  
Kevin J. Driscoll  
William W. Graham  
Michael W. Thrall

## KANSAS

*Lawrence*  
Todd N. Thompson  
*Olathe*  
Wendel Scott Toth

## LOUISIANA

*Lafayette*  
George Arceneaux III  
*New Orleans*  
Brent B. Barriere

## MASSACHUSETTS

*Boston*  
Daniel L. Goldberg  
Harvey J. Wolkoff  
*South Eaton*  
Susan E. Sullivan  
*Worcester*  
James J. Gribouski





#### **MARYLAND**

*Baltimore*  
Michael A. Brown  
Irwin E. Weiss  
Laura G. Zois

#### **MICHIGAN**

*Birmingham*  
Michael J. Harrison  
*Detroit*  
Mark D. Chutkow  
Megan P. Norris  
*Haslett*  
Brett J. Bean  
*Southfield*  
Robert P. Siemion

#### **MISSOURI**

*St. Louis*  
Beverly A. Beimdiek

#### **MISSISSIPPI**

*Jackson*  
Paul H. Stephenson III  
*Oxford*  
Wilton V. (Trey) Byars, III

#### **MONTANA**

*Billings*  
Calvin J. Stacey

#### **NORTH DAKOTA**

*Bismarck*  
Rebecca S. Thiem  
*Fargo*  
Bruce D. Quick

#### **NEBRASKA**

*Omaha*  
Matthew A. Lathrop

#### **NEVADA**

*Las Vegas*  
Tamara B. Peterson  
*Reno*  
Kent R. Robison

#### **NEW MEXICO**

*Santa Fe*  
Walter J. Melendres

#### **NEW YORK**

*New York*  
Garrard R. Beeney  
Peter A. Bicks  
Michael P. Carroll  
Mark P. Goodman  
James R. Hubbard  
Sharon L. McCarthy  
C. William Phillips

#### **OHIO**

*Columbus*  
Gregory D. Rankin  
J. Stephen Teetor  
*Dayton*  
John B. Welch

#### **PENNSYLVANIA**

*Philadelphia*  
Edward F. McCann, Jr.  
Kenneth A. Murphy  
Leigh M. Skipper  
*Pittsburgh*  
Thomas J. Sweeney, Jr.

#### **QUEBEC**

*Montreal*  
Sophie Melchers

#### **SOUTH CAROLINA**

*Columbia*  
Deborah B. Barbier

#### **SOUTH DAKOTA**

*Rapid City*  
Daniel F. Duffy

#### **VIRGINIA**

*Roanoke*  
Donald Ray Wolthuis

#### **WASHINGTON**

*Bremerton*  
Richard H. Friedman

# INDUCTEE RESPONDER BELIEVES TRIAL LAWYERS HAVE ABILITY TO IGNITE BELIEF, FLAME

Following the induction of new Fellows, **Christina M. Habas** of Denver, Colorado responded on their behalf. In her speech, Habas spoke on the trial lawyer as being “a different breed of cat,” how returning to trial practice after sitting on the bench for ten years was the best decision she ever made and the influence a trial lawyer can have.

I love lawyers, and it’s a very good thing, being in a room full of them. I am unashamed to say it and admit it even in public. I love lawyers. This is so, even though several times in my career I had many, many opportunities to not love them quite so much. In fact, the very day I was sworn in to the Denver District Court, which is our highest trial court, two of my colleagues rushed up to me and said, “You know, you can’t do this job and still like lawyers.”

There’s a certain kind of lawyer I love more than any other and that is trial lawyers because we are a different breed of cat. I have tried to find a lot out about our new inductee class, and I will tell you that there is a lot about them to love. They are extraordinarily worthy of the great honor that you’ve just given to us standing here on this stage.

## HONORING A BELOVED MENTOR

I am extremely grateful to be up here speaking on their behalf, and whether I am worthy of this great honor, I leave in your hands to decide. You be the judge.

I am compelled this evening to begin with a note in honor of my dear friend **Bill Keating**, who was a Fellow of the College. Bill passed away New Year’s Day 2015. Chicago was his hometown, and he was ever so excited when I got the announcement letter in the mail telling me I was going to be inducted as a Fellow. He was ill starting about October of 2014, and he felt he couldn’t make the trip to Florida. So he asked that I wait until Chicago when he could be here with me. As things would happen he’s not here physically. But please, give me a few minutes to let me tell you about him.

If you met Bill, you were immediately his friend. The main reason I’m mentioning Bill tonight and giving him part of my time is because he’s the reason I’m standing here. Not only is he the reason that many people in Colorado decided to give me a chance to become a Fellow, but he somehow convinced me to leave the one job I had wanted since I was eight years old.



## QUIPS & QUOTES

As a trial lawyer we all have that magical ability to ignite that flame. I am hoping that each one of us will go out and find someone who, otherwise, would never have become or even thought of being a trial lawyer and let’s have our reach go as far as it possible can. This is why I love trial lawyers and I always will.

*Christina Habas*



I was on the bench. I thought I was happy. But he convinced me to leave that job and go practice with him as a lawyer, and I did it. Some might say that after you've practiced law for more than thirty years, and been on the bench for nearly ten of that time, that you don't need a mentor. There's nothing left to learn. In my view those people would be wrong. Having Bill as a mentor became so important to me while he was still with me, and it's even more important to me now that he's no longer with us. My partner, Bob Wagner, said at Bill's service said that Bill had the unique ability to make all of us feel that we were better than we actually were, smarter, funnier, more lively, and that was so very true. Having someone who ignites that belief in you is important at any age. Thank you, Bill. It was a pleasure knowing you.

### THE GIFT OF THE PROFESSION

I got a lot of well-meaning advice before this speech. It was very helpful, and most people said, 'Just be you.' I thought, 'Well, if that's true we're going to have a bumpy ride.' The reason I love trial lawyers so much is we are advocates. But I've learned that before you can advocate on anyone's behalf, you had better learn about them. You need to know how they actually view the world. So what I did is I sent emails. I tried to include in my email almost every inductee in this class, and if I missed someone it wasn't intentional; trust me. It was probably just my inability to use the computer. I asked for two things. The first was, 'Tell me what the profession has given to you?' And the second was, 'If you could fix one thing, what would it be?' The responses were remarkable. What was amazing to me is we were nearly of one mind in our answer to the very first question. The gift that the profession gave us was the ability to see the world through other people's eyes, the ability to have the diversity in our life to learn how to view the world differently, and it was a gift to represent people so different

from ourselves. The answer to the question of what you would change in this profession was remarkably diverse. I'm not arrogant enough to believe that I have the answer. As I thought about the answers that my colleagues gave to me it occurred to me that the answer to the first question may inform the challenge that's presented to the second question. A firm belief we all have is that somehow we need to change the public's perception of what lawyers do and who we are. After thinking about all the responses, I started thinking about my life.

The first thing that occurred to me is that the Grateful Dead were right. Sometimes the lights are all shining on me and other times I can barely see. Lately it occurs to me what a long, strange trip it's been. My own career began completely by accident. I was in law school and the dean of the law school had told us, 'Don't get a job in your first year, it'll interfere.' I did that for about three weeks. I realized if I didn't get a job not only would I not eat, and I like to eat, but also I would go out of my mind because I was not the top tier in law school. Don't ever ask me what my class rank was. I'll lie about it. Because I was able to type, I was able to get a job as a receptionist/typist in a local law firm. The first mentors I had were in that law firm.

It was an insurance defense firm. What they told me was our clients don't get to choose us. We are thrust upon them. Similarly, we don't have a lot of ability to say no to clients either. You have to understand that even though the matters we deal with are civil matters, for these clients they care about it. Sometimes I would represent a teacher or a police officer or a store clerk. What I learned was it was vital for me to find out about their experiences and find out their story. I needed to know it because I needed to know what was important to them. If I was going to give them a goal that they wanted to get to, I needed to know what was important to them. ►



I was able to see the world very differently once I met my clients because I did start seeing it through their eyes.

#### QUIPS & QUOTES

The main reason I'm mentioning Bill [Keating] tonight and giving him part of my time is because he's the reason I'm standing here. Not only is he the reason that many people in Colorado decided to give me a chance to become a Fellow, but he somehow convinced me to leave the one job I had wanted since I was eight years old. I was on the bench. I thought I was happy. But he convinced me to leave that job and go practice with him as a lawyer, and I did it.

*Christina Habas*

I was a trial lawyer for twenty-three years. I thought I knew what judges did. I had no clue. It is amazing the difference when, from your new vantage point, you recognize that your real job is to give people the right to be heard. Immediately you stop caring about who wins. As an advocate I thought that would never happen but it did— instantly. The reason it did is because I knew what it felt like to have a judge who didn't feel that way. It's a strange career path to be a trial lawyer, be a trial judge, and then go back to being a lawyer. I suggest it for everyone. First, because we need more trial lawyers as trial judges. Secondly, you get to make lots of "friends" when you're a trial judge. In fact, some of the best friends I made were forty-two members of a white supremacist prison gang known as the 211 Crew. We got to know each other very, very well over about a five-year period. Based on that I got to meet other new people like the Denver Police Department SWAT and the Sheriff's Department who were sitting at my house day and night because of the death threats.

I learned so much being an audience member for ten years. I think Bill knew I was itching to get back in the saddle. When he called me, it was in June of 2012, I gave it exactly thirty seconds though and said, 'I'm going to do it.' The main reason I did it is I didn't want to become one of *those* judges, the kind who told me you can't do this job and like lawyers. I could feel myself starting to think that all lawyers were alike and that they were there to make my life miserable. I was wrong. So, I got back in and, boy, am I glad.

#### FAITH IN TWELVE STRANGERS

We all know in this room that we have an impact on the people that we represent. But I want to talk about

a different kind of person. Specifically, I want to talk about jurors. In any trial you will find as many different backgrounds as you will jurors. Whether you do criminal work, civil work, municipal work, it just doesn't matter. You get people from different backgrounds that come together as a unit, who look at the evidence as presented to them. Hopefully, with the able assistance of trial lawyers, they figure it out and it's remarkable. I had far more faith in decisions made by twelve strangers than I ever would have in anything I made a decision about alone. I got to love jurors, and I'll tell you why.

Whenever I was in front of a jury as a judge or a lawyer I thought of my father. I have this very fuzzy memory of when I was about three-years-old and we were standing in our front yard, me, my two sisters and my mother. My dad wasn't around. He would work two or three jobs at a time so, frequently, he wasn't around. One time he wasn't around for a whole week. I remember standing there asking, 'Mommy, what are we doing here?' She said, 'Well, when the bus goes by, wave at Daddy.' I remember this light-blue school bus drove by and we waved. I couldn't see anybody, but they were sequestered jurors. It was a murder trial.

#### QUIPS & QUOTES

It's a strange career path, be a trial lawyer, be a trial judge, and then go back to being a lawyer. I suggest it for everyone. First, because we need more trial lawyers as trial judges. Secondly, you get to make lots of friends when you're a trial judge.

*Christina Habas*

The background my dad brought to that jury was very interesting. He was from Ashland, Wisconsin. When he was growing up it was made up mostly of Swedes, Germans, Polish, Russians, Croatians and a bunch of Native Americans. Human nature being what it is, the Swedes and the Germans looked down on the Polish and the Croats, and the Polish and the Croats looked down on the Native Americans. My dad was dark skinned. Everyone in that town assumed he was Indian, and they treated him that way. When he fled to Denver with my mother he had hoped that he wouldn't be treated that way there. He landed on a jury of a death penalty case with a black man on trial, and the defendant, Robert E. Calhoun, was represented by a black lawyer named Irving Anderson. They were claiming self-defense. The

defense lawyer touched my father in a very real way because my father had been involved in fights when he was growing up, and my father truly believed this man was innocent, that he had acted in self-defense. He went back to the jury room, and what he told me about what happened in that jury room both horrified and inspired me. My father said that several of the jurors made comments that essentially said, 'One more black life isn't going to matter,' and there was a lot of racism in that room. My father could not stand by and say nothing. So, all of twenty-six years old, he said, 'We have to look at this evidence. We have a man's life in our hands.' He was probably not that eloquent. He and three other jurors convinced the rest of them and they acquitted Mr. Calhoun. It was Mr. Calhoun's lawyer that inspired my father to do what I consider to be a great act of courage. My father told me all the time about his service on that jury, how it was democracy in action and how he couldn't believe that people listened to a twenty-six year old from the sticks in Wisconsin. But they did.

When I stood and raised my right hand to take the oath of office as a Denver District Court judge, I remembered my father. Every time I swore in a new jury and during my first homicide jury, I remembered my father. Sometimes I shared that experience with my jurors, sometimes I didn't. What I found was that jurors come into a courtroom not particularly happy to be there. We know that. But for those who stay and have the ability to listen to trial lawyers, they leave believing that the system is great. It was my great pleasure to preside over a lot of those juries and see them do that. Now those experiences convinced me that our reach is much longer than our arms. It has been said that 'A man's reach should always exceed his grasp or what's a heaven for?'

I am so thrilled to be here and especially thrilled to have delivered this response. I want to end by saying, why do I love trial lawyers? It's because this group is up to this challenge. I sat in full attention for two full days listening to every speaker for the last two days. Some were better than the others, but they were all magnificent. As a trial lawyer we all have that magical ability to ignite that flame. I am hoping that each one of us will go out and find someone who, otherwise, would never have become or even thought of being a trial lawyer and let's have our reach go as far as it possibly can. This is why I love trial lawyers and I always will. Thank you.



# INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT ANDREW M. COATS

When Fran asked me to give the remarks to the inductees, I was pleased to do it because I had done it two or three other times. I was sure I had a wonderful speech prepared that I could just pull out. Sure enough, I got my file and there was a little thing on top of it that says, 'Inductee speech.' I was happy and relieved but when I opened it up, there's not a damn thing in there, except a little word that said pirate. I thought, 'What the hell is that for?'

Inductees, spouses and their guests were honored with a recognition luncheon on Saturday, October 3, 2015 immediately after General Session. Past President **Andrew M. Coats** of Oklahoma City, Oklahoma offered remarks to the attendees, where he told the audience, "I love the College, or I wouldn't be here."

Coats provided examples of the College's stature in North America as well as overseas. "The College supports the United Kingdom-United States Legal Exchange where you get to spend a lot of time with judges from the UK. One of the great things about the College is the Justices of the U.S. Supreme Court, Justices of the Canadian Supreme Court and the Supreme Court of England are all Honorary Fellows of the College. Over the years, between the justices of the high courts and the justices along the ways in various places, you get to hear some of the stories that the English law lords tell.

"I enjoyed when one of the lords said he was assigned to go and try a case in Wales and he was the judge. The prosecutor came along and told then it's an open-and-shut murder case. They tried the case, and right at the end, the Wales defense lawyer said, 'Do you suppose it would be alright if I can make my closing argument in Welsh?' The judge said, 'I don't know.' The prosecutor said, 'I don't care, it's a pretty soft conviction.' They have their arguments and the defense lawyer from Wales gets up and says four or five lines and sits down. The jury goes out for about an hour and comes back with an acquittal, which is startling to everybody. The judge asks, 'What did you say when you spoke in Welsh?' He said, 'I said, Ladies and gentlemen of the jury, the judge is an Englishman. The prosecutor is an Englishman. His client is an Englishman. I'm Welsh, the defendant's Welsh, you're Welsh; do you your duty.'

"Another favorite story occurred when one of them stood up to argue an appeal. He said, 'May it please you, Lords. We have three points to make. We think the first one is not strong, probably won't carry the day. We think the second one is arguable, maybe soft, we think it's arguable. The third one we think is unanswerable.' The judge says, 'Counsel, tell us your strongest point.' Then he says, 'Oh, no, my Lord. I have no intention of telling the Court which is which.'"

Past President Coats also spoke on the College's history and the process to become a Fellow of the College. "It's a joy to get to be here and to speak to the inductees. It is an even greater joy to get to speak to their spouses and significant others who are here to hear all this good stuff.





You and I know that the inductees are not people who are given to self-doubt. But we are going to massage their egos a little bit more today because they are joining, what is in my judgment, the finest professional organization in the world.

“It started on a train coming from Los Angeles to northern California after a meeting of the American Bar Association. Our founder, Emil Gumpert considered how much the lawyers who happened to be at that meeting were enjoying each other’s company. He decided that there should be an organization of the finest trial lawyers in America, similar the American College of Surgeons, which is one of the first ones. One of the earliest Fellows, **Cody Fowler**, was also President of the ABA. He starts to go through the country on ABA business, and he forwards recommendations for College membership to Gumpert.



Soon he had gone all over the United States and Canada. We are now something on the order of 5,500 or so. So spouses and significant others, your significant others are taken as lawyers, in their state or province, to be in the top one percent. Amazing.”

Past President Coats emphasized that membership into the College is one “where you can’t apply. You can’t buy your way in. You can’t pay for it. You can’t inherit it. . . . We know a lot about those who will become Fellows tonight. We know that your word is absolutely good. We know that your trial skills are the very best. We know that you are pleasant, civil and reasonable to deal with, whether you’re on the same side or opposed. We know that you are collegial. We know that you’re damn hard to beat. And that is true of all of us. Because if you go around the country and talk with other Fellows of College, you’ll find we have interchangeable parts.

“Each person here was carefully considered. They’ve got to be people who you enjoy being with, who contribute to the relationships we have with each other. We celebrate with you today and tonight. This is a marked success. You are best of the bar, the best of their profession.

“When I became president of the College, I said it was the second-highest honor I ever had. The highest honor was becoming a Fellow in the first place.

“I hope you’ll listen to the charge tonight as it’s given to you. It’s beautifully written and crafted, and it says the things that we consider to be so important in the way we live our lives, the way we deal with our profession, the way we deal with each other. Long and happy may be our years together.”

# FELLOWS BRING CLE, TRIAL SKILLS TO SOUTH PACIFIC

The Rock Islands of Palau, also called Chelbacheb, are a small collection of limestone or coral uprisings, ancient relics of coral reefs that violently surfaced to form Islands in Palau's Southern Lagoon. The islands are sparsely populated and are famous for their beaches and blue lagoons. Known as the most popular dive destination in Palau, the islands offer some of the best and most diverse dive sites on the planet.





What began as Secretary **Samuel H. Franklin's** idea to have Fellows perhaps advise members of the judiciary in the Republic of Palau, transformed into an international CLE for twenty judges and sixty-seven attorneys currently working in Palau, Guam, the Federated States of Micronesia (FSM) and the Commonwealth of the Northern Mariana Islands (CNMI).

The College's Advanced Trial Advocacy Symposium in Palau from November 4-6, 2015 was, according to Immediate Past President **Francis M. Wikstrom**, "one of the great accomplishments of the College." Preparations for this endeavor began January 2015 with a vaguely worded email from International Committee Chair **Brian B. O'Neill**. Was anyone willing to travel to Palau on their own dime? Two days later, he had seventy responses.

By March, thirteen Fellows from eleven different states had committed to what was still a roughly defined project. Palau's 20,000-plus citizens live on a collection of 250 islands located 900 miles west of Guam and roughly 1,000 miles north of Papua New Guinea. In 1994, Palau became a republic, and modeled its constitution and legal system after the U.S. But jury trials in Palau were new.

Palau Supreme Court Associate Justice Ashby Pate, previously of Lightfoot, Franklin & White, LLC in Alabama, helped establish the Republic's jury trial system when he worked as senior court counsel in 2009. Justice Pate expressed reasonable concern to O'Neill that the number of Fellows would probably outnumber attendees.

O'Neill collected biographies of his potential panelists and dubbed them "Team Palau:" **Michael P. Atkinson** of Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco (Tulsa, OK); **Richard S. Glaser, Jr.** of Parker, Poe Adams & Bernstein (Charlotte, NC); **Jan K. Kitchel** of Cable Huston, LLP (Portland, OR); **Joseph Matthews** of Colson Hicks Eidson (Coral Gables, FL); **Brian B. O'Neill** (Minnetonka, MN); United States Magistrate Judge for the District of Montana **Carolyn S. Ostby** (Billings, MN); retired District Attorney **Thomas J. Orloff** (Oakland, CA); **Paul Michael Pohl** of Jones Day (Pittsburgh, PA); **Roland G. Riopelle** of Sercarz & Riopelle, LLP (New York, NY); **Lawrence S. Robbins** of Robbins, Russell, Englert, Orseck, Unteriner & Sauber LLP (Washington, D.C.); **Ted A. Schmidt** of Kinerk, Schmidt & Sethi, PLLC (Tucson, AZ); **Keith Strong**, former U.S. Magistrate Judge for the District of Montana, Great Falls Division (Bozeman, MT); and **Michael O. Warnecke** of Perkins, Coie, LLP (Chicago, IL).

O'Neill sent the participants' background information to Pate and together they pitched an agenda to the



Palau Bar Association. Bar Association Secretary Rachel Dimitruk invited neighboring countries and soon 100 people said they would come.

"Lawyers' gathering brings in legal giants from the US," read the front page headline in the *Island Times*. The seminar opened with a warm welcome from Palau Bar Association President Salvador Remoket. President of the Republic of Palau Tommy Remengesau, Jr. made a surprise appearance and personally thanked Fellows for coming.

Team Palau walked participants through a jury trial. Topics included respect for the rule of law, civility, ethics, bias, forensics, facts about bullet wounds and finger prints, and stress management. Lawyers were strongly encouraged to represent people on a pro bono basis.

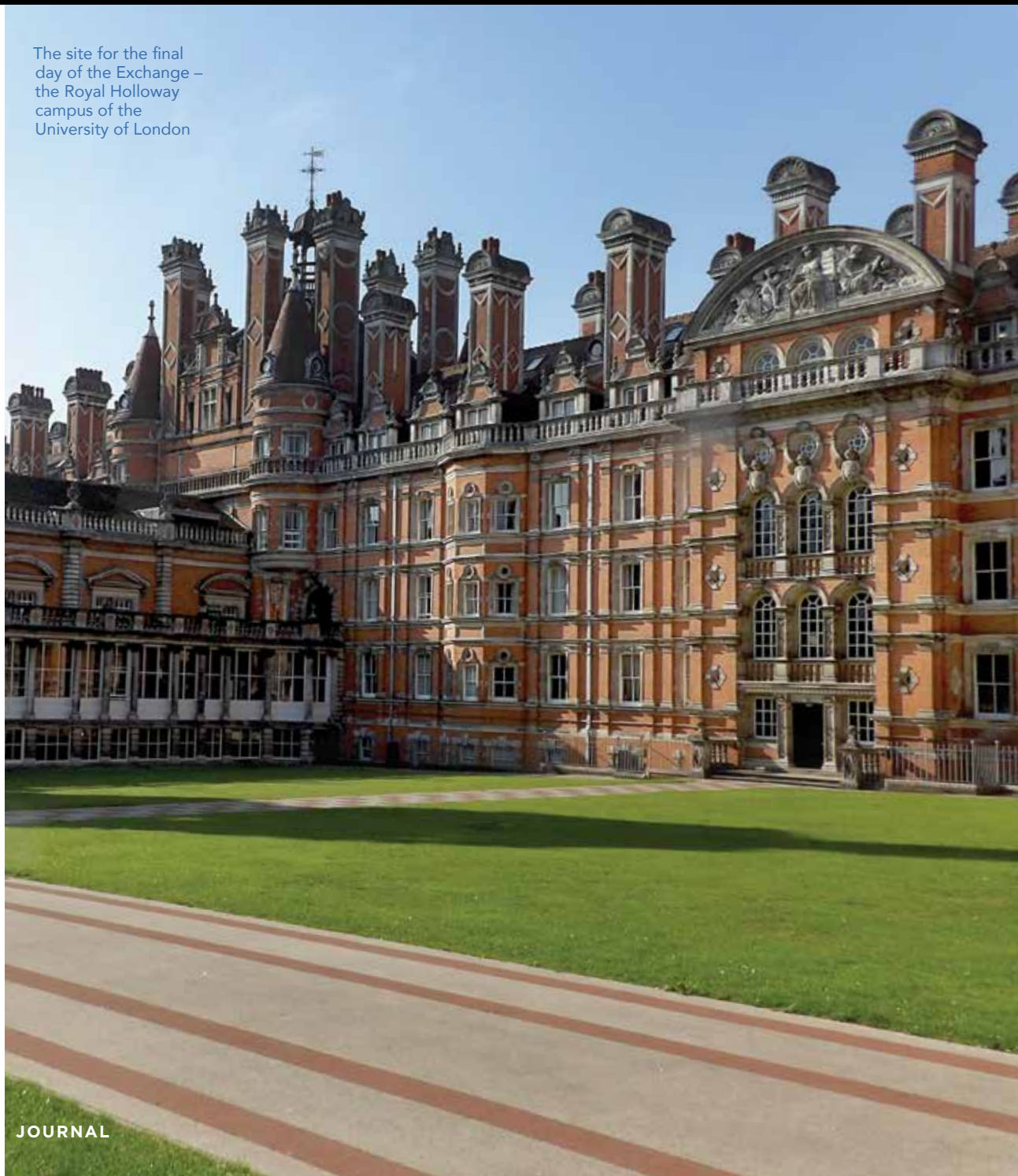
The program received rave reviews and succeeded in more ways than ever imagined. The audience was quick-witted, earnest and most importantly devoted to improving the legal systems in their home countries. Even in such a culturally and geographically diverse group, the camaraderie was palpable. Justice Pate and the Palau Bar generously coordinated and catered social events featuring island specialties such as coconut land crab, stuffed mussels and sashimi. Fellows and their guests mixed easily with justices, judges and attorneys from Chuuk State, CNMI, FSM, Guam, Kosrae, Pohnpei, Palau, Saipan, and were even joined by former Palaun President Johnson Toribiong.

Team Palau and their guests stayed in paradise post-conference to kayak, snorkel, scuba dive among millions of stingless jellyfish and tour historic Peleiu. At the end of the trip, when Fellow Lawrence Robbins on keyboard and Justice Pate on guitar took the stage at a restaurant and sang "Midnight Special," everyone agreed it had been a magical experience. ■



# SEPTEMBER 2015: THE UNITED KINGDOM-UNITED STATES LEGAL EXCHANGE

The site for the final  
day of the Exchange –  
the Royal Holloway  
campus of the  
University of London





The UK and U.S. delegates together at the Supreme Court of the United Kingdom

On September 7-10, 2015, in London, England, the College resumed its tradition of a Legal Exchange between the bench and bar of the United Kingdom and the United States. Over a period of almost fifty years the College has sponsored a series of such exchanges, the last occurring in 2004-2005. Each exchange consists of one week hosted by the UK delegation in the first year and a second week in the following year hosted by the U.S. delegation. Each exchange has enjoyed the enthusiastic participation of the countries' highest-ranking jurists, as well as distinguished practitioners. Discussion papers on agreed topics of common interest are prepared and shared in advance of the Exchange. Once the Exchange begins, the papers are then the subject of robust discussion by the delegates during the mornings, followed by afternoon events that include both delegates and their spouses or partners.

Lincoln's Inn was the setting for the welcome reception and dinner where the United Kingdom delegates welcomed all participants to London with a candlelit dinner in the Great Hall of the Inn, built in 1835. The Inn has written records of its operation since 1422, and it is believed that the Inn had been in existence for approximately a century prior to that date. (The Treasurer of Lincoln's Inn was pleased to tell the delegates and spouses that the candlesticks on the head table were older than the United States of America.) Lord Mance of the Supreme Court of the UK welcomed the American delegation, underlining the importance of the Exchange to both countries.

The guests enjoyed a five-course dinner, each with appropriate wine pairings. After dinner, delegates were invited to view a special exhibit in the Inn library entitled "Lincoln's Inn, Charles II, and America."

## DAY ONE

The first working session for the delegates was held at the Supreme Court of the United Kingdom where delegates discussed the topic of "Equality and Access to Justice," a subject of vital interest to both countries and to the College. The paper prepared by the American delegation addressed whether (a) the bar's self-imposed ethical rules (including the broad sweep of the provision about the unauthorized practice of law); (b) the civil justice rules; and (c) legal education accreditation requirements present impediments to equality and access. The UK delegation's paper examined differences between the two countries in government funding of criminal and civil litigation. It came as a surprise to many in the American delegation that filing fees for civil claims in the UK can range from £1200 to 10,000, and that recent legislation has imposed court fees, even in criminal cases, depending upon whether the criminal defendant pleads guilty or insists upon a trial. Both delegations discussed possible measures to fill the gap between the countries' aspirations for equal justice and the somewhat darker reality of constrained resources.

Following lunch, Lord Mance provided a personal tour of the recently renovated building that now houses the Supreme Court of the UK. The delegates next enjoyed a tour of Buckingham Palace, followed by a tour of the House of Lords and a private dinner, hosted by Lord Mance and Lord Reed, in the Palace of Westminster.

## DAY TWO

The following day the Exchange participants met at the Guildhall of London, another beautifully renovated building. The topic of the day was "Foundations of Federalism." Federalism, one of the steadfast pillars

## DELEGATES TO THE 2015-2016 EXCHANGE:

### UNITED KINGDOM

**The Right Honourable The Lord Mance**

Supreme Court of the United Kingdom

**The Right Honourable The Lord Reed**

Supreme Court of the United Kingdom

**The Right Honourable Lady Justice Arden**

Court of Appeal of England and Wales

**The Right Honourable Lord Justice Lloyd Jones**

Court of Appeal of England and Wales

**The Honourable Mr. Justice Rabinder Singh**

High Court of Justice, Queen's Bench Division

**The Right Honourable Lord Colin Carloway**

Supreme Courts of Scotland

**The Right Honourable Sir Declan Morgan**

Lord Chief Justice of Northern Ireland

**Dinah Rose, QC**

Blackstone Chambers

**Christopher Pugh**

Managing Partner, Freshfields Bruckhouse Deringer

**Professor David Feldman, QC**

Rouse Ball Professor of English Law  
University of Cambridge

### UNITED STATES OF AMERICA

**Honorable Ruth Bader Ginsburg**

Associate Justice of the Supreme Court  
of the United States

**Honorable Stephen G. Breyer**

Associate Justice of the Supreme Court  
of the United States

**Honorable Samuel A. Alito**

Associate Justice of the Supreme Court  
of the United States

**Honorable Diane Wood**

Chief Judge, U.S. Court of Appeals for the Seventh Circuit

**Honorable Neil M. Gorsuch**

U.S. Court of Appeals for the Tenth Circuit

**Honorable Lee H. Rosenthal**

U.S. District Court for the Southern District of Texas

**Gregory P. Joseph**

Past President and President of Supreme Court  
Historical Society

**Chilton Davis Varner**

Past President

**Douglas R. Young**

Former Regent

**Joe R. Caldwell**

Chair, Emil Gumpert Award Committee

**Catherine M. Recker**

Chair, Federal Criminal Procedure Committee

of American jurisprudence, has also recently aroused increased interest amongst our United Kingdom colleagues. The paper of the American delegation provided a valuable historical summary of the constantly evolving balance in this country between the powers of the national government and those of the states. The UK delegation's paper addressed the uneasy relationship between the UK and the European Union – a relationship whose continued viability is currently in question. The discussion revealed that there is no shared vision in the EU as to what the federalist balance should be. The discussion also expanded quickly to include knotty internal questions of federalism within the UK, given the increased interest of Wales, Northern Ireland and Scotland in devolution of powers. Notably, one of the leaders in the UK delegation commented that the clear presentation and history of the American system of federalism had enabled her to analyze much more carefully the EU-UK relationship, as well as the complications of devolution. She believed the Exchange “will lead to greater understanding of our duties on these difficult questions that confront us.”

After lunch, the delegations were treated to a tour of the impressive Guildhall art collection, including a copy of the 1297 Magna Carta and a restoration of the ruins of a Roman amphitheater discovered when the basement was excavated. Dinner in the evening was hosted by London's “Magic Circle” law firms at the Freshfield offices.

### DAY THREE

On the final day of the Exchange the delegates and their spouses or partners traveled through the country to the beautiful Royal Holloway campus of the University of London (formerly a prominent Victorian women's college). The morning was devoted to the topic of “International Law and Terrorism,” focusing specifically on the so-called “secret courts” both countries have established in an attempt to deal with the tension between their “open justice” traditions and the competing requirements of national security. A special UK participant in the discussion was David Anderson, QC, a barrister appointed as an independent auditor of terrorism legislation, who reports annually to Parliament on the operation and effect of Parliamentary legislation on national security and human rights. The discussion revealed fascinating similarities and differences in the “secret courts” of the two countries.

Lunch with the Holloway faculty followed. The afternoon included a trip to nearby Runnymede and the



memorial to the Magna Carta. The delegations then traveled to a late afternoon Evensong service at Westminster Abbey – a service that has occurred daily for more than a thousand years.

## CONCLUSION

A final dinner at Spencer House, a mansion in St. James's Place, brought the first session of the 2015-2016 Legal Exchange to a close. Lord Mance once again expressed gratitude to the College for sponsoring “a most necessary and valuable Exchange,” and voiced his hope that such Exchanges will be a continuing institution.

The next leg of the Exchange will resume in September 2016, in Philadelphia and Washington, D.C. The members of the UK and U.S. delegations will be invited to the Annual Meeting of the College in Philadelphia on September 17. Delegates will thereafter travel to Washington to continue their discussions.

One of the judges in the U.S. delegation sent this thank you message to the College:

*“Thank you for what was, quite simply and without exaggeration, one of the most amazing weeks I have spent. The discussions, the people, the careful planning and execution by the College all contributed hugely. I savored it as it occurred, learned a great deal, and was left with a great deal to think about. What could be better than gathering with brilliant and engaged people to think together about consequential issues, in places that themselves make us think about history and events we too often ignore or take for granted? Answer – perhaps nothing. And to do all this in fabulous venues with people who showed no arrogance or smallness or selfishness, but instead brought humor and warmth and openness to each table, made it just remarkable.”*

Another judicial participant congratulated the College on an exchange which went “marvelously well,” and which is “important symbolically.” Still another characterized the week as the experience of a lifetime, resulting in valuable friendships and stimulating education.

This long-standing tradition of the College appears to be in excellent health.

**Chilton Davis Varner**  
Atlanta, Georgia

Participants gather in the Picture Gallery, located in the Founder's Building on the Royal Holloway campus, before discussions begin on the topic of “International Law and Terrorism.”



CONTINUING SERIES

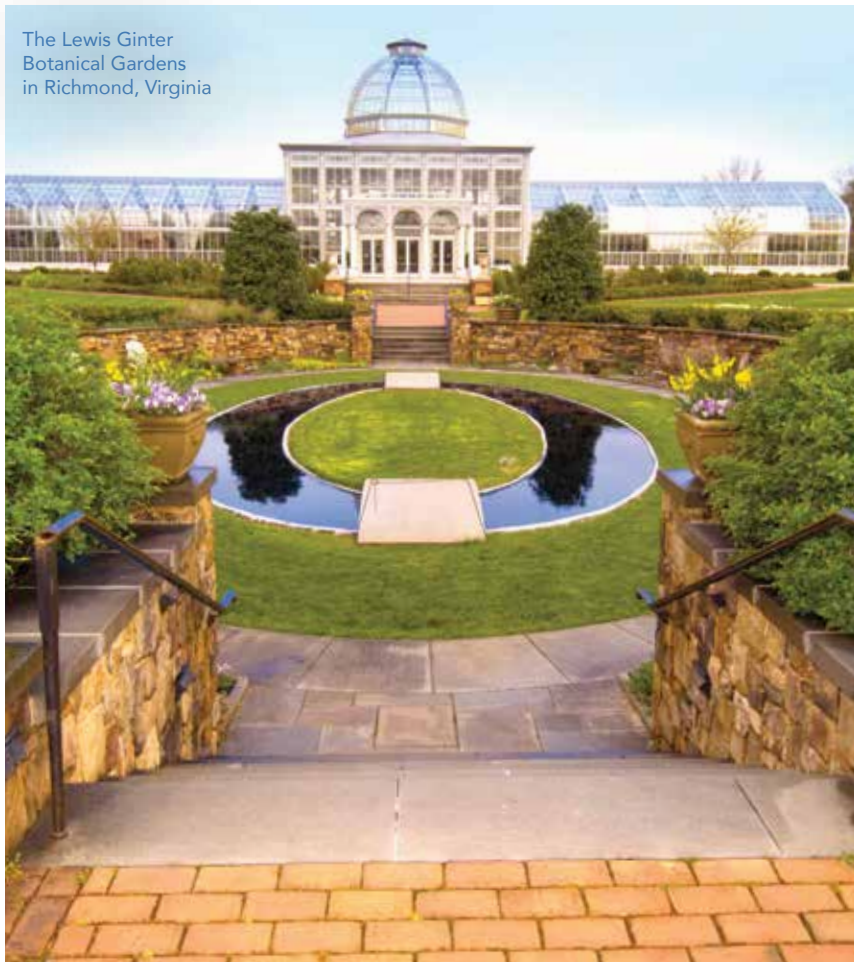
# VIRGINIA FELLOWS SPONSOR ACCESS TO JUSTICE SEMINAR

On September 24, 2015, at the beautiful Lewis Ginter Botanical Gardens in Richmond, Virginia, members of the Virginia State Committee and the Virginia State Bar Access to Legal Services Committee co-sponsored an Access to Justice seminar for legal aid attorneys and public defenders.

The program, which is the second program in the past two years co-sponsored by the College and by the VSB, continues the Virginia State Committee's commitment to support access to justice for public defenders and legal aid attorneys. These efforts correspond with the direction charted by the College and of the Chief Justice of the Virginia Supreme Court.

The Lewis Ginter Botanical Gardens, the setting for the seminar, is a picturesque property surrounded by gardens, paths and patios. The facility cost of the event was completely underwritten by the College's Foundation. The event presented an opportunity for legal aid and public defender attorneys to attend a seminar at a beautiful location and receive a highly substantive educational program. One attorney even drove four hours each way to take advantage of the seminar.

The Lewis Ginter  
Botanical Gardens  
in Richmond, Virginia







Using feedback received after the 2013 program and working in conjunction with the VSB, a program was developed which included the following speakers:

*Domestic Abuse Cases*

Julie Ellen McConnell

University of Richmond School of Law

*Recent Changes in the Law of Expert Witnesses in the Supreme Court of Virginia: Is Virginia Ready for a Daubert Standard?*

W. David Harless, FACTL

Christian & Barton, LLP

*Ruby v. Cashnet, Inc. - Developing Trial Strategies for Impact Litigation*

Grant D. Penrod

Hoover Penrod, PLC

*Appellate Practice and Preserving Error in the Court of Appeals:*

*How to Present a Case to the Court of Appeals*

The Honorable Rossie D. Alston, Jr.

Court of Appeals of Virginia

A General District Court Judges panelled by Fellow **Claire G. Cardwell**, Stone, Cardwell & Dinkin, PLC; The Honorable Tracy W. J. Thorne-Begland, General District Court, City of Richmond; and The Honorable Mary B. Malveaux, General District Court, Henrico County

*Commonwealth v. Muhammed: A Look Back at the Trial and Prosecution of a Serial Killer*

The Honorable LeRoy F. Millette

Retired Justice, Virginia Supreme Court

James A. Willett, FACTL

Assistant Commonwealth's Attorney,

Prince William County

The program was moderated by Karl Doss, Esq., Virginia State Bar liaison to the Access to Legal Services Committee and Fellow **John D. McGavin**.

The program was attended by more than sixty public defenders and legal aid lawyers. The presentation was well-received, with constructive comments regarding a number of issues that affect the attorneys who practice on behalf of indigents.



Fellow James A. Willett and Justice LeRoy F. Millette, who both participated in the presentation *Commonwealth v. Muhammed: A Look Back at the Trial and Prosecution of a Serial Killer*, with Fellow John D. McGavin.

A highlight was the program's presentation of the case *Commonwealth v. Muhammed*. The Washington, D.C. area was paralyzed for several weeks in 2002 when a serial killer took it upon himself to murder innocent individuals in various locations, whether pumping gas or standing in a parking lot. The prosecution and conviction of John Muhammed brought national and international attention. Fellow James A. Willett was one of the prosecuting attorneys and Justice Millette, who presented the case at the seminar, was the trial judge.

Following the presentation, Fellows enjoyed a cocktail hour in the Lewis Ginter gardens. Many favorable comments were heard from the attorneys who attended.

Given its success, the Virginia Fellows hope to sponsor the program again in two years.

**John D. McGavin**

Fairfax, Virginia



# COLLEGE ELECTS NEW LEADERS



At the College's Annual Meeting in Chicago, Illinois, the following slate of officers was elected to serve the College for the 2015-2016 term.



## 2015-2016 EXECUTIVE COMMITTEE

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

President-Elect **Bartholomew J. Dalton** of Wilmington, Delaware

Treasurer **Samuel H. Franklin** of Birmingham, Alabama

Secretary **Jeffrey S. Leon, LSM** of Toronto, Ontario

Immediate Past President **Francis M. Wikstrom** of Salt Lake City, Utah

### **Jeffrey S. (Jeff) Leon, LSM**

Inducted in 2002 at the College's Annual Meeting in New York, New York, Leon has served as Chair of the Ontario Province Committee, Chair of the Canada-United States Committee and Regent to New York-Upstate, Ontario and Quebec. During his tenure as Regent, he was Regent Liaison to the Canadian Competitions Committee, International Committee and Special Problems in the Administration of Justice (Canada) Committee. He also served on the Retreat Planning Committee, working with the Task Force on National and Regional College Meetings.

Leon practices in Toronto, Ontario. He acts in a variety of litigation matters, including securities, commercial, corporate, class proceedings, product liability, professional negligence and health care. He has also acted in administrative law matters and has appeared in both domestic and international arbitrations as counsel. He has been involved in numerous cross-border and international commercial disputes. In 2005, Leon was awarded the Law Society Medal by the Law Society of Upper Canada in recognition of his outstanding service and contributions to the legal profession. In 2010, he became the second recipient of The Advocates' Society's Catzman Award for Civility and Professionalism, which recognizes individuals who have demonstrated a high degree of professionalism and civility in the practice of law. He is also a past President of The Advocates' Society. A former law clerk to the Chief Justice of Ontario, he is a regular author, speaker and panelist. He is a member of the editorial board of Corporate Liability (Federated Press). He is a fellow and member of the Board of Directors of the International Academy of Trial Lawyers and a fellow of the International Society of Barristers. Leon is also a fellow of the Litigation Counsel of America and an honorary member of the Commercial Bar Association (UK). He serves as Past Chair of the Board of Directors of Pro Bono Law Ontario and is a member of the Dickson Circle.

Leon and his wife, Carol Best, live in Toronto, Ontario.

Four new Regents were also elected to four-year terms.

## 2015-2019 REGENTS

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**Kathleen Flynn Peterson** serves the Fellows of Iowa, Manitoba/Saskatchewan, Minnesota, Missouri, Nebraska, North Dakota and South Dakota. Her area of responsibility also includes the National Trial Competition Committee. She previously served as a Trustee of the Foundation, Vice Chair and Chair of the Minnesota State Committee, Chair of the Retreat Task Force on National and Regional Meetings, and member of the Regents Nominating Committee, International Committee and National Trial Competition Committee. Flynn Peterson was inducted at the College's 2004 Spring Meeting in Phoenix, Arizona. Her practice area concentrates on the representation of individuals and families who have experienced injury or death as a result of medical negligence. She and her husband, Steven, live in Minneapolis, Minnesota.



**Thomas M. (Tom) Hayes, III** is Regent to Arkansas, Louisiana, Mississippi and Texas as well as the Legal Ethics and Professionalism and Prosecuting Attorneys Committees. He has served as Vice Chair and Chair of the Louisiana State Committee and was a member of the Retreat Task Force on Admission to Fellowship. Hayes was inducted at the College's 2001 Annual Meeting in New Orleans, Louisiana. His practice specialties include civil and commercial litigation; construction; legal and professional malpractice; and products liability. Hayes lives in Monroe, Louisiana, with his wife, the Honorable Karen L. Hayes.



**John J.L. Hunter, Q.C.** serves as Regent to Alaska, Alberta, British Columbia, Idaho, Montana, Oregon and Washington, and the Canadian Competitions and Special Problems in the Administration of Justice (Canada) Committees. He has served as Chair of the British Columbia Province Committee and member of the Access to Justice and Legal Services, Canada-United States, Special Problems in the Administration of Justice (Canada) and British Columbia Province Committees. Hunter was inducted at the College's 2001 Spring Meeting in Boca Raton, Florida. His practice has focused on broad litigation in the trial and appellate courts of British Columbia in a wide range of commercial and public law matters. He and his wife, Rebecca, live in Vancouver, British Columbia.



**Robert K. (Bob) Warford** is Regent to Arizona, California-Southern and Hawaii, as well as the Alternative Dispute Resolution and Communications Committees. He has served as Chair, Vice Chair and member of the California-Southern State Committee. Warford was inducted at the College's 2002 Spring Meeting in La Quinta, California. His legal practice focuses on the trial of civil matters involving issues of medical malpractice (with particular emphasis on brain injury, other catastrophic injuries, cancer and the technology of medical equipment), physician licensing and health care law. He and his wife, Darlene, live in Riverside, California.

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The new Regents replaced the following retiring Regents *(from left to right)*:

**James M. Danielson**, Wenatchee, Washington

**Rodney Acker**, Dallas, Texas

**Michael F. Kinney**, Omaha, Nebraska

**William H. Sandweg III**, Phoenix, Arizona



# 2015 STRATEGIC PLANNING RETREAT REPORT

One of the most significant efforts of the College during 2014-15 was the Board of Regents Retreat. Planning began in the summer of 2014, and a Retreat Planning Committee was formed at the 2014 Annual Meeting in London under the leadership of Past President **David J. Beck**. The committee included Past President **Michael E. Mone**, former Regents **Christy D. Jones**, **Paul S. Meyer**, and **Jeffrey S. Leon, LSM**, and Secretary **Samuel H. Franklin**. By the end of 2014, the Retreat Planning Committee had surveyed more than 1,500 Fellows, received input from the attendees at the Chairs Workshops, identified the topics for the retreat, and appointed five Task Forces to study and report on the five selected topics. These topics included all of the significant issues facing the College in the next five to ten years.



## THE FIVE TASK FORCES WERE:

- **Activities of the College**  
Chaired by former Regent Phillip R. Garrison, and charged with looking at all of the activities of the College and the public profile of the College.
- **Admission to Fellowship**  
Chaired by former Regent Douglas R. Young, and charged with examining the criteria for Fellowship and the need for diversity.
- **Future Mission of the College**  
Chaired by former Regent Bruce W. Felmly, and charged with articulating the future mission of the College.
- **Governance**  
Chaired by former Regent Dennis R. Suplee, and charged with considering all issues relating to College governance.
- **National and Regional College Meetings**  
Chaired by Kathleen Flynn Peterson, and charged with determining whether the national, regional and local meetings are fulfilling the needs of the Fellows.



During the winter and spring of 2015, the Task Forces conducted research, met numerous times and prepared comprehensive reports on their assigned topics. The two-day retreat began on July 31 in Atlanta, Georgia. In addition to the Board of Regents and Past Presidents, the Retreat Planning Committee, the Task Force Chairs and one Fellow at large from each Task Force also participated in the retreat. They thoroughly discussed each of the reports and recommendations until they agreed that consensus had been reached.

Following the conclusion of the retreat, each Task Force prepared a final report to the Board that distilled the consensus items into discrete proposals that could be voted on by the Board at the Annual Meeting in Chicago. The retreat proposals were first on the agenda for the Chicago Board meeting where they were discussed further and most were adopted.

Perhaps the most significant decision made as a result of the retreat is that the College will not change its admissions standards, notwithstanding the dramatically reduced number of trials in the United States and Canada. We recognize that this decision will mean that the College will become smaller in the future, because there will be fewer candidates who will achieve the necessary trial experience, and that the average age of the Fellows will continue to increase. The Board reaffirmed that our standards make us who we are and enable us to command the respect that we enjoy. Lowering our admission standards for the sake of getting more Fellows would do irreparable harm to the College.

The Board voted to clarify the admission standards to eliminate some confusion that has developed in recent years. Membership will continue to be limited to those lawyers currently actively engaged in trial work as their principal activity. The critical question is whether a prospective nominee is an *outstanding* trial lawyer. Once a nominee has established over an extended period a deserved reputation as a preeminent trial lawyer, the fact that the lawyer's last trial was several years before the date of nomination does not alone foreclose admission.

The Board also adopted the following statement of principles for uniform application of the qualifications requirement:

#### **PRINCIPLES FOR UNIFORM APPLICATION OF THE QUALIFICATION REQUIREMENTS**

A prospective nominee must demonstrate excellence in trial. The prospective nominee must be considered

to be among the very best trial lawyers in his or her State or Province.

There is no minimum number of trials required for admission: a prospective nominee must have completed a reasonable number of trials. All areas of practice are eligible for consideration. Admission depends upon the breadth, weight and complexity of the individual prospective nominee's total body of work.

Jury and bench trials are the primary adversarial proceedings considered for membership. For prospective nominees who have demonstrated excellence in trial, other adversarial proceedings are considered if they are trial-like; e.g., they include such elements as opening statements, examination of witnesses, and closing arguments. Appeals are not qualifying adversarial proceedings for purposes of admission to the College, although they may be favorably considered if a prospective nominee otherwise meets the criteria for membership.

Once a prospective nominee has otherwise satisfied the criteria, the absence of qualifying trials and other adversary proceedings in recent years will not foreclose admission so long as the prospective nominee is actively engaged in trial practice as the principal activity, and currently demonstrates the excellence in trial skills required for admission. Active engagement includes actual participation in the preparation and trial of cases, and may include active supervision of trial lawyers engaged in trial practice so long as the prospective nominee's primary activity is focused on trial practice as opposed to other management responsibilities (i.e., the prospective nominee is doing hands-on trial work as opposed to merely supervising others).

Although the standards for admission will not change, the Board recognized that we have not done all that we could do to make sure we have identified qualified candidates, particularly among women and minority lawyers. It has long been the policy of the College to try to identify qualified candidates who are different from the Fellows who comprise more than 90% of the fellowship (older, white males). Since the last retreat in 2002 we have doubled the number of female Fellows and have increased the number of minority Fellows. But we can and must do better. The Board adopted a Diversity Statement to encourage and guide that effort:

Consistent with its Mission Statement, the College seeks to promote the treatment of every person with dignity and respect, and to foster an inclu-



sive, collegial environment that values the unique background, experiences, perspectives, and contributions of all. Under a singular standard of excellence that values and appreciates differences in its membership, the College endeavors to identify talented and accomplished trial lawyers as possible Fellows, including women and persons of color, varying ethnicities, disabilities, and sexual orientation.

To ensure that the Diversity Statement results in action, the Board voted to create a Diversity Subcommittee within the Admission to Fellowship Committee. The Executive Committee will appoint the members of the subcommittee which will include Fellows who are sensitive to diversity issues and are committed to improving the College's endeavors in this area. The subcommittee will be asked to develop guidelines and checklists to assist State and Province committees and to make sure that they look in all appropriate practice areas and organizations and talk to the people necessary to identify diverse, qualified candidates. The subcommittee will also develop a process, including appropriate follow-up and monitoring, to assist the State and Province committees to create locally-tailored plans to identify and nominate outstanding trial lawyers who will enhance the diversity and stature of the College. The Board also approved the recommendation that the College look for speakers at national meetings on the topic of unconscious bias and related diversity and inclusion issues.

The Board approved a broader mission statement for the College that better describes who we are, what we do and what we stand for. The expanded mission statement reads:

The American College of Trial Lawyers is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings.

The reports from the Retreat Task Forces made it clear that the College is not as visible and well known as it

was several decades ago. This is partially due to the decreased number of trials; partially the result of the increasing number of judges who themselves lack significant trial experience; and partially the consequence of the proliferation of companies and organizations that purport to evaluate and rate trial lawyers. The Board has authorized the Executive Committee to develop a proposal for an outside professional consultant with expertise in communications and public relations to consult with and advise the Board about ways to improve the College's profile.

Consistent with the new mission statement and the desire to improve our public profile, the Board approved the concept that the College will take a more public or visible position on various issues that fall within the mission of the College. Accordingly the Board amended the Guidelines for Public Statements. The Board also adopted several other retreat proposals to improve the profile of the College. A standardized "tombstone" ad was approved to be used to announce the induction of new Fellows, and State and Province committees will all be encouraged to use it. Fellows will be encouraged to use the College logo in a prominent position on their individual websites and also in their email signature blocks. State and Province committees will be strongly encouraged to conduct at least one outreach activity each year and to report the activity to the Outreach Committee. The National Office, under the direction of the Board, is also revamping the website to improve communications with the Fellows, to make College publications and our teaching and outreach materials more easily available, and to help improve the public image of the College.

Finally, the Board approved a number of retreat recommendations relating to governance. These included some changes to notice requirements in the Bylaws to reflect the ubiquity and speed of email communications. The Board also voted to require Regents to regularly review and report whether General committees should continue in existence and whether their mission should be changed. If they are no longer needed, they will be dissolved. The Board also approved an aspirational goal that there should always be at least one Regent from Canada and that Regent should not always come from Ontario or Quebec.

No changes were recommended or adopted regarding the meetings of the College. The Task Force determined that the current meeting structure, while not perfect for all Fellows, is meeting the needs and desires of the overwhelming majority of Fellows.

**Francis M. Wikstrom**  
Immediate Past President

**SAVE THE DATE**



# PHILADELPHIA

**AMERICAN COLLEGE OF TRIAL LAWYERS ANNUAL MEETING**  
SEPTEMBER 15 -18, 2016, MARRIOTT PHILADELPHIA DOWNTOWN, PHILADELPHIA, PA

## PUERTO RICO FELLOWS GATHER FOR REGENT'S VISIT

Regent Elizabeth N. Mulvey traveled to Puerto Rico in August 2015 and met with nine Fellows for an informal lunch meeting. The lunch included: Former Puerto Rico State Committee Chair David C. Indiano; Regent Elizabeth N. Mulvey, Puerto Rico State Committee Chair Francisco (Frankie) Colon-Pagan; Francisco (Paco) G. Bruno; Salvador Antonetti-Zequeira; Rafael R. Vizcarrondo; Joseph C. Laws, Jr.; Alvaro R. Calderon, Jr.; Hector Reichard, Jr.; Enrique (Rico) J. Mendoza-Mendez





# NEW YORK TIMES V. SULLIVAN: RETROSPECTIVE



On March 29, 1960, *The New York Times* ran a full-page advertisement titled “Heed Their Rising Voices,” which solicited funds to defend Rev. Martin Luther King, Jr. against an Alabama perjury indictment. The ad detailed mistreatment of civil rights protesters, some of which involved the Montgomery police force. A number of statements were factually inaccurate, as noted by the court, although they were generally minor. For example, referring to the Alabama State Police, the advertisement stated: “They have arrested [King] seven times...,” when he had only been arrested four times. African-American students who staged a demonstration at the state capitol sang the national anthem instead of “My Country ‘Tis of Thee,” as reported. Although the Montgomery Public Safety commissioner, L. B. Sullivan, was never mentioned by name in the advertisement, he took great umbrage that the criticism of the police was leveled at him, given his duty to supervise the police department.

Sullivan sued *The Times* and four African-American ministers whose names appeared in the ad, albeit without their knowledge. Plaintiff made quick work of the defendants in the lower court. The trial lasted three days, and within three hours of receiving the case, the jury returned a verdict against all defendants for \$500,000, the entire sum requested by plaintiff. The verdict included compensatory and punitive damages, all awarded in a single lump sum. The Alabama Supreme Court affirmed in a lengthy opinion, and *The Times* petitioned the highest court in the land for certiorari, which was granted. Fearing a tsunami of other lawsuits, *The Times* pulled all of its reporters out of Alabama while the case was on appeal. With \$300 million at issue in other libel actions against news media or organizations below the Mason-Dixon, *The Times* had reason to be worried.

## A HALLMARK OF THE WARREN COURT

Sound like ancient history? Half a century has elapsed since the United States Supreme Court issued its seminal opinion in *The New York Times Company v. Sullivan*. The decision, which recognized the “actual malice” threshold for defamation claims against public officials, is second nature to the current trial bar, and second only to the ruling in *Brown v. Board of Education* a decade earlier as the hallmark

of the Warren court, whatever other deficiencies it may have suffered from. Paul Newman and Sally Field milked it for a full-length movie unrelated to the facts of the Alabama lawsuit in 1981 (*Absence of Malice*), but Newman has since moved on to his reward, along with nearly all of the actual cast and court roster from the 1964 case. Along with a host of legal seminars and symposia devoted to the case, at least two books received critical acclaim: *Make No Law: The Sullivan Case and the First Amendment* and *New York Times v. Sullivan: Civil Rights, Libel Law, and the Free Press*.

The unanimous decision reads like a period piece, with the individual petitioners referred to as “Negroes,” which in this age of political rectitude would be like labeling Asians “Orientals.” The actual trial before an all-white jury in Montgomery, Alabama was presided over by Judge Thomas Goode Jones, who authored a provincial manifesto entitled “Southern Creed,” which touted the Stars and Bars (Confederate battle flag) as “the glorious banner of the Confederacy as it waves in the Southern breeze, a symbol of freedom and devotion to constitutional rights, an emblem of honor and character.” During the presentation of the case, an objection was lodged by defense counsel to the manner in which one of plaintiff’s counsel pronounced the word “Negro.” The offending attorney responded that he had said it that way his entire life, after which the court declined to intervene.

There is irony here also. The Supreme Court had no problem articulating the benefits of free speech where criticism of the government was concerned, but lacked a handy precedent to latch onto as a vehicle for constitutional intervention. So the court adopted the actual malice standard from a 1908 Kansas Supreme Court ruling, the same court which had heretofore enforced the “separate but equal” doctrine of *Plessy v. Ferguson*, later rejected by the Warren court in 1954. In the defamation case, the Kansas court found that a newspaper article critical of a state attorney general running for reelection, even if rife with false and derogatory statements, was privileged, if “the whole thing [was] done in good faith and without malice.”

That was certainly the case with *Sullivan*. *The Times* ad, purchased for \$4,800, was replete with factual errors and

racially-charged hyperbole, but the reader would search it in vain for any mention of the named plaintiff, one of three elected commissioners of the City of Montgomery, Alabama. And *The Times* published a retraction of the ad at the request of the Alabama governor at the time, but declined to do so as to the plaintiff.

## SULLIVAN AND THE INTERNET AGE

In 2014, on the 50th anniversary of the ruling, *The Times* published an editorial heralding the Supreme Court decision while reflecting on the state of freedom of the press 50 years after the ruling and comparing it with treatment of the Fourth Estate in other nations. The editorial board hailed the decision as “the clearest and most forceful defense of press freedom in American history”:

The ruling was revolutionary, because the court for the first time rejected virtually any attempt to squelch criticism of public officials—even if false—as antithetical to “the central meaning of the First Amendment.” Today, our understanding of freedom of the press comes in large part from the Sullivan case. Its core observations and principles remain unchallenged, even as the Internet has turned everyone into a worldwide publisher—capable of calling public officials instantly to account for their actions, and also of ruining reputations with the click of a mouse.

Other commentators have jumped on the Internet bandwagon. “Today one of the reasons I think we don’t have as many libel cases is not just because the Sullivan rule is so widely accepted by everyone, but in a digital world there’s so much greater opportunity for response,” observed Bruce W. Sanford, a Washington-based First Amendment lawyer. David Ardia, a University of North Carolina law professor and co-director of the school’s Center for Media Law and Policy, agrees that in the Sixties, the only avenue for responding to defamation and “reach an audience was to get into the same newspaper, and that’s no longer the case.” Ardia suggests that the “megaphone” of the Internet is available to everyone. Not everyone agrees. During her Supreme Court confirmation hearing, Justice **Elena Kagan** (Honorary Fellow of the College) noted that while the *Times* rule is vital to free speech, it could leave a plaintiff with a damaged reputation without a viable civil remedy.

Whether the Internet provides the optimum forum for settling debates with a playground screaming match is also debatable, but don’t ask singer-songwriter-actor Courtney Love. She drew a lawsuit over a tweet she sent out about a former lawyer, claiming she had been “bought off” in a case involving the estate of Love’s late husband, rock star Kurt Cobain of Nirvana. The attorney, Rhonda Holmes, sued Love for \$8 million for injury to her professional reputation. She made it all the way to a California jury in 2014, which hit her over the head with the *Sullivan* rule. Finding that

Love’s statement was false, but not knowingly so, the jury returned a verdict in favor of defendant.

The Love case follows a litany of related decisions from the Supreme Court in the wake of *Sullivan*:

- *Curtis Publishing Co. v. Butts* - news organizations liable for recklessly disseminating information about public figures other than government officials;
- *Gertz v. Robert Welch, Inc.*, - actual malice not required for defamation of private individual if media negligent;
- *Hustler Magazine v. Falwell* - applying malice standard to intentional infliction of emotional distress; and
- *Milkovich v. Lorain Journal Co.* - extending opinion privilege to libel claims unnecessary to protect free speech.

## WITNESSES TO HISTORY

It did not take much more than a click of the mouse to eliminate nearly all of the witnesses to this historic event, save perhaps some unnamed law clerk or two. Chief Justice **Earl Warren** (Honorary Fellow in the College) expired in 1974, only a decade after the decision was handed down. Justice William Douglas, the most vocal liberal on the court (he not only joined in the unanimous opinion written by Justice **William Brennan, Jr.** (Honorary Fellow) but also concurred the two separate opinions authored by Justices **Hugo Black** and **Arthur Goldberg** (Honorary Fellow) followed in 1980. Reverend Ralph Abernathy, the most prominent of the four clerical defendants, died over 25 years ago in 1990. The plaintiff, L. B. Sullivan, died a year later in 1991. Justice Brennan followed in 1997. The last surviving member of the Warren court at the time, Justice **Byron White** (Honorary Fellow), passed in 2002. Defense counsel T. Eric Embry from Birmingham, later a justice on the Alabama Supreme Court, stepped in to defend the case when other prominent members of the state trial bar declined to participate. Embry died in 1992. Louis Loeb, who argued the case for *The Times* before the Supreme Court, died in 1979. Herbert Wechsler and William P. Rogers, who also represented the defendants before the Supreme Court, died in 2000 and 2001, respectively.

**Merton Roland Nachman, Jr.**, a premier defamation attorney in Montgomery and later Fellow of the College, represented plaintiff. Now retired, infirm and in his nineties, Nachman is the only survivor from the cast of this vintage courtroom drama. His daughter, Amy, still visits with her father in the house in Montgomery where he has lived his entire life. She bemoaned the fact that her father always considered the case his greatest loss. Her father’s case is far from a loss. The College and all its Fellows are in his debt.

### G. Gray Wilson

Winston-Salem, North Carolina

*A full version of this article with footnotes is available in the College’s Library on the website, [www.actl.com](http://www.actl.com) in the Library.* ■

Alaska, Alberta, British Columbia, Idaho,  
Montana, Oregon, Washington

August 6-9, 2015

Fairmont Jasper Park  
Jasper, Alberta

## REGION 3: NORTHWEST REGIONAL MEETING



Approximately fifty Fellows from Alaska, Alberta, British Columbia, Idaho, Montana, Oregon and Washington gathered in Alberta with almost as many spouses and guests. Alberta Province Committee Chair **Bradley Nemetz, Q.C.** organized the meeting at the Fairmont Jasper Park located in Jasper National Park.

Attendees included Past President **David W. Scott, O.C., Q.C.** and Alison Scott. For Alison, it was a homecoming of sorts. Sixty-some years ago, she spent a summer at the lodge as a young teenager serving meals to guests and staff. A photo of sixteen-year-old Alison on a diving board became a favorite postcard at the lodge. Also in attendance were: Past President **Thomas H. Tongue** and his wife, Andrea; Regent **James M. Danielson** and his wife, Carol; Former Regent **Paul T. Fortino** and his wife, Carol; Montana State Committee Chair **Randi M. Hood**, Alberta Province Committee Vice Chair **David J. Wachowich, Q.C.**;

Oregon State Committee Vice Chair **Edward A. Harnden**; and Washington State Committee Vice Chair **Jay Zulauf**.

Special guests included: The Right Honourable **Beverley McLachlin**, Chief Justice of the Supreme Court of Canada; The Honourable Mr. Justice **Neil C. Wittman**, Chief Justice the Alberta Court of Queen's Bench; The Honourable Mr. Justice **Paul J. Pearlman** of the Supreme Court of British Columbia; The Honourable **Jim Prentice, P.C., Q.C.**, former Alberta Premier; **Bill Abercrombie**, a noted Canadian trapper and guide; **Radha Curpen**, a partner of former Regent **Jeffrey S. Leon**, L.S.M., and counsel to one of the parties in the Lac-Mégantic rail disaster in Quebec, and Fellow **C.D. Evans, Q.C.**, author of several books and editor of *Tough Crimes*, true stories by noted Canadian criminal defense lawyers and prosecutors, most of whom are Fellows.

A Thursday evening welcome reception in the ballroom that included cocktails and a buffet dinner started the meeting. Former Regent Paul Fortino noted that the Northwest Fellows know how to enjoy each other's company.

Friday's first speakers were former Alberta Premier Jim Prentice and Radha Curpen. The morning's subject involved transportation of oil, particularly Alberta's heavy crude from the Athabasca Oil Sands by pipeline and rail, and the regulation of rail transport in the wake of the 2013 Lac-Mégantic disaster.

In Canada, the pipeline issues "have been more multifaceted. We have the Keystone Pipeline, the Gateway Pipeline to the west coast, we have the Trans Mountain Pipeline to the west coast, and





now we have a project called Energy East, which would carry Canadian oil to the east coast of our own country,” Prentice said. “These, I think, are of real importance to trial lawyers because it’s fair to say that in the case of every single one of these projects, they have moved beyond a public political discussion, a regulatory discussion, and into the courtrooms of our two countries.” These issues will transform society in both Canada and the United States because “no one else in the world has the free-market capacity to convert that resource blessing into economic prosperity,” Prentice said.

Curpen shared some key numbers with the group. In 2014, Canada exported an estimated 62 million barrels of crude oil by rail to the U.S. compared to an estimated 16 million barrels of crude oil by rail in 2012; within Canada, 578,000 barrels per day were transported in 2014, compared to 340,000 barrels per day in 2010. “Some of the recent reforms that we’ve found is that the main themes have been classification, testing and sampling of crude oil; speed and safety of trains carrying crude oil; decreased speed limits; emergency response action plans in Canada; increased responsibility on regulated entities; consignor certifications; changes to safety management system regulations; new funds and crude oil levies, means of containment; reporting obligations and the harmonization of rail car standards in Canada and the U.S.,” Curpen said. From Aboriginal law to environmental law, there is much work for lawyers within the oil industry.

The Friday afternoon schedule allowed for a golf tournament, a tennis tournament and other activities. Friday night’s reception and barbeque dinner was held at Trefoil Lake, located about one mile from the Lodge.

The Saturday morning program featured Chief Justice McLachlin who spoke about the role of lawyers in the

rapidly changing legal and social environment of the twenty-first century. Justice Wittmann introduced her and said, “The Supreme Court of Canada is admired and respected throughout the Western democracies, and for that matter, the world. In my view, this is in large measure due to the leadership of Beverley McLachlin. Canadian lawyers and judges are very proud of her. She exhibits grace under pressure. She is always courteous and always civil. The Alberta and British Columbia Fellows are especially proud to call her one of our own.”

The second speaker was Bill Abercrombie, husband of Judicial Fellow **Laura K. Stevens** of the Provincial Court of Alberta. Abercrombie is one of the world’s experts on wolves. His presentation focused on his encounters with wolves in northern Canada and the current expansion of the wolf population in Canada. “The wolf is a litmus test for us as humans on this planet because if we can’t find a place in our hearts for wolves in wilderness areas, and we continue to disconnect ourselves from the natural world, the sad irony of that will be in turning our backs on a species that may have given us the essential competitive tool to ensure our own survival 45,000 years ago. That disconnect may be the undoing of the human species on this planet, if we can’t find a place in our hearts for the natural world,” Abercrombie said.

Saturday afternoon was open to enjoy all the activities offered by the lodge. Saturday night’s reception was held in The Great Hall, where College President **Francis M. Wikstrom** spoke.

Author and Fellow C.D. Evans, Q.C. was the featured after-dinner speaker and he amused the group with excerpts from his book and anecdotes from his forty years as a criminal defense lawyer. ■

Kentucky, Michigan, Ohio, Tennessee

August 14-16, 2015

Homestead Resort  
Glen Arbor, Michigan

## REGION 9: SIXTH CIRCUIT REGIONAL MEETING



Fellows in the Sixth Circuit, the College's Region 9, including Kentucky, Michigan, Ohio and Tennessee met on the shore of Lake Michigan at the Homestead Resort in Glen Arbor, Michigan.

Close to forty-five Fellows attended, including Regent **Kathleen M. Trafford** and Fellow **Robert "Buzz" Trafford**, Former Regent **Philip J. Kessler** and Leslie Carranza, Michigan State Committee Chair **Cheryl A. Bush** and her husband Steven Winter; Ohio State Committee Chair **John D. Holschuh, Jr.** and his wife Wendy; former Kentucky State Committee Chairs **John W. Phillips** and **Susan Daunhauer Phillips**; Access to Justice and Legal Services Committee Chair **John P. Gilligan** and his wife Megan; Michigan State Committee Vice Chair **E. Thomas McCarthy, Jr.** and his wife, Linda; and Ohio State Committee Vice Chair **James E. Brazeau** and his wife, Michele. Also in attendance were two inductees and their spouses: John B. Welch and his wife, Jenny; and Mark D. Chutkow and wife Sonja Lengnick.

The meeting began with a cocktail reception Friday evening, accessible by a short ski lift. The summit gave attendees a view of Lake Michigan.

The Saturday program opened with Assistant U.S. Attorney **Jonathan Tukel**, the lead prosecutor in the Christmas Day underwear bomber terrorist case against Umar Farouk Abdulmutallab. Abdulmutallab, the son of a wealthy Nigerian family, planned to detonate a bomb on Northwest Airlines flight 253, which had a final destination of Detroit. Tukel shared intriguing details about the incident. For example, initially investigators assumed it was a firecracker that had been lit during flight. "One of the customs officers who came on board who had been in the Marines said it reminded him of going to the firing range. He said that's what it smelled like. There was this chemical burning smell. He said half the passengers are stunned into silence, the other half are crying. He has no idea what's going on, and there's this guy, because he's been moved up there by then, who's sitting in a white T-shirt wrapped in a blanket, no shoes, no pants, and a burn from here to here, and he said 'I don't think that had anything to do with firecrackers.'" Abdulmutallab wore the explosive device in his underwear for twenty-three days, "so no change of underwear for three weeks. He also said that he would take it off and hang it up outside the shower when he would take a shower." Tukel said the motivation for Abdulmutallab was "he doesn't view it as harming others, because it's religiously sanctioned. He doesn't view it as harming himself because it's religiously sanctioned." Abdulmutallab was sentenced to four life terms plus sixty years and a term of supervision at the U.S. Penitentiary Administrative Maximum Facility in Florence, Colorado.

The next speakers were the Honorable **Gerald E. Rosen**, Chief Judge of the United States District Court for the Eastern District of Michigan and **Eugene Driker** who shared their story of how, as mediators, they put together a deal that saved the world-famous art collection at the Detroit



Institute of Arts (DIA) from being sold to satisfy the city's 150,000 creditors, saved Detroit pensioners from ruinous cuts in their pensions and paved the way for the resurrection Motor City.

Chapter 9, the bankruptcy code section that deals with municipal bankruptcy, is "a balancing act between the fact that a city can't go out of business and liquidate and it is run by democratically elected leaders. All of the organizational decisions remain with the city. All of the structural decisions, all of the decisions on disposition of assets remain with the democratically elected leadership. However, the court does have an important role to play. The court first has to determine if the city is eligible for bankruptcy, if it is insolvent on an ongoing basis. In Detroit, that wasn't really a difficult decision. Beyond eligibility there are many sub-issues that have to be determined. At the end, the court has to confirm a plan that is fair and equitable to all the creditors similarly situated in creditor classes," said Judge Rosen.

Driker, who was charged to work on all the issues related to the pensions and retirees recalled an interaction during a meeting with the Detroit retiree group. He mentioned the DIA and "a very impressive retiree stood up.... She turned out to be the president of one of the retiree associations and she had worked for the city for about forty years, knows somebody getting these \$19,000 a year pensions and said to me, 'Mr. Driker, I love the DIA. I take my grandchildren to the DIA, but if it's between the art that's hanging on the walls that suburbanites come down to look at and putting food on the table for my husband and me, it's not a close call.' That hit me like an arrow through the head.... It was an Aha! moment when I realized that there was a lot more at stake here with the retirees than simply a dollar amount. There was respect for their position.... The retirees I met with were not greedy. They were sincere, intelligent and devoted workers for the city, and unless we could get them to appreciate that

we, the mediators, were not blaming them for the bankruptcy, and unless we could cross that hurdle, we weren't going to get any place."

It was Judge Rosen's brilliant idea to marry the DIA and the city pensions that prevented the twenty to thirty percent pension cut. By approaching different major foundation such as the Ford Foundation and The Kresge Foundation, Rosen and Driker were able to approach the state of Michigan to match the amount the foundations were going to provide. In the end, the nearly \$820 million in Detroit's "grand bargain" reduced pension cuts and avoided the sale of the city's world-class art collection. (Editor's note: The Detroit Bankruptcy case is discussed in an earlier article in this issue.)

Friday's final speaker was **Dennis Albert**, author of *Borne of the Wind*, adjunct professor and landscape and wetland ecologist, who discussed the Michigan sand dunes that are unique to the area and the biota that exist around the sand dunes, which is very specialized because of the extreme conditions of the dunes.

In order to create sand dunes, "we need a lot of sand. We have a lot because of glaciation. The second is we need wind. A lot of Michigan sand dunes, especially on Lake Michigan, are so dramatic because we have a prevailing wind that's very predictable from the southwest to the northeast. Of course, on Lake Superior it's a different direction, but one strong prevailing wind direction gives you really nice blow-outs in the dunes," Albert said. His favorite dune in the state is South Fox Island, although "it's a place you have to think twice before you go out and visit it. It's a combination of state and private, but there's no good entrance except for flying in."

The meeting concluded with a cocktail reception and dinner. After-dinner entertainment was provided by Masters of Music, a Detroit jazz band. ■



Colorado, Kansas, New Mexico,  
Oklahoma, Utah, Wyoming

August 20-23, 2015

St. Regis Deer Valley  
Park City, Utah

## REGION 4: TENTH CIRCUIT REGIONAL MEETING



Fellows in the 10th Circuit, including Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming met from August 20-23, 2015 at the St. Regis Deer Valley in Park City, Utah. Approximately forty Fellows and their spouses or guests attended the meeting, including Past Presidents **Andrew M. Coats**, and his wife of nine days, Nancy Coats, and **Mikel L. Stout** and wife LeAnn Stout. Regent **Michael L. O'Donnell** and Brett, Former Regent **John H. Tucker** and Francesanne, Foundation Trustee **James L. Eisenbrandt** and Lou, and Federal Criminal Procedure Vice Chair **Virginia L. Grady** and her spouse Thomas J. Hammond also attended.

The festivities began with a Thursday evening cocktail reception on the patio deck with a mountain view. Friday's program opened with **Ken Verdoia**, an award-winning journalist and producer from KUED, the Utah public television affiliate. Verdoia gave a presentation on the judicial history of Utah beginning with the theocratic courts established by the Mormons, continuing with conflicts between the federal courts and

the Mormon residents, and concluding with more modern history, ending with federal judges A. Sherman Christensen, "an Eisenhower Republican" and Willis Ritter, "a New Deal Democrat."

"The stories of Utah really help us better understand what it means to be an American citizen, and when you look at our rough and ragged edges and some of our storied legal battles that have played out in this territory and then state, they really help you understand how the evolution of a legal system has helped us define first the twentieth century and now ongoing twenty-first century American society," Verdoia said.

The next speaker was **Michael Stawasz**, Deputy Chief for Computer Crime at the Department of Justice, who serves as the department's expert on the proper collection and use of electronic evidence as well as the head of the criminal division's cybersecurity unit. He spoke on the larger cyberthreats his office has seen, what the DOJ is doing to combat these threats and how investigations can be improved. Stawasz talked about botnets, which happens after a hacker remains on a computer "to make it part of a group of computers that they have infected with some piece of malware and have ongoing access to these computers." In turn, these botnets are controlled by a botmaster. One of the largest botnets his office encountered was "GameOver Zeus," which, at its height, had more than 500,000 infected computers. "In order to do its job to protect public safety, to protect national security, to find the truth and do justice, we have a series of checks and balances in place about how we go about collecting information. Hackers don't. They will take it anywhere they can get it, and they do not care about your privacy," Stawasz said. The biggest take-away was the "government cannot solve cybercrime on its own," and it requires assistance from international partners and the private sector.

Friday's final speaker was **Lee Tien**, Senior Staff Attorney and the Adams Chair for Internet Rights at the Electronic Frontier Foundation, an organization that focuses on impact litigation, "usually civil litigation or defense in order to try to change the law, in order to try to make rules that are actually



going to make sense in the digital era.” His organization launched the first lawsuit on NSA surveillance in 2006, *Hepting vs. AT&T*, “because we had reason to believe that they were a partner with the NSA in surveillance.... Historically, it has always been the case that these kinds of mass government surveillance operations are dining in partnership with major corporate companies that sit on, back in the old days, the public switch telephone network, and now not only that, but also the Internet backbone.”

Friday afternoon’s activities began with an art stroll to the galleries along historic Main Street in Park City, organized and led by Fellow **Tara L. Isaacson**. Afterward, there was a guided tour of the High West Distillery, a local boutique distillery followed by a whiskey tasting organized and led by Fellow **Kathryn N. Nester**.

The Saturday morning speakers began with U.S. District Court Judge **Dee Benson** who spoke about his service on the Foreign Intelligence Surveillance Court from 2004 to 2011, which he described as a court “designed at trying to find people who are agents of foreign powers.” Throughout his seven years on the court, he looked at, on average, fifty applications per week for wiretaps or surveillance. “I think that over my seven-year period I refused to sign, on average, about one and a half to two applications per week because I didn’t think that the probable cause standard was met, or there was some other technical legal violation,” Benson said. The standard boiled down to, “did we have reason to believe that the information presented to us constituted probable cause that the person in question was an agent of a foreign power, or if it was a United States person and not a United States citizen, or what was designated in the Act as the United States person, were they knowingly aiding and abetting or knowingly conspiring with an agent of a foreign power.”

Next was **Ryan Marsh**, senior director of litigation at PayPal who spoke about the new technologies his company is developing to help maintain privacy and combat data breaches. He noted the industry is trying to improve not

only the security of the experience but the overall customer experience. “We’ve moved from just having a password which you set yourself to situations where companies are adopting a two-factor authentication ... where not only is your password required, as per usual, but you can actually ask the service to add another layer of authentication on there, which very often will require you to prove that you have access to your phone,” Marsh said. Other security measures include biometric authentications and tokenization, which is based on the idea that during a transaction a data element is created that gets passed, and “when it gets to the other side where, the banks and everything else that are having to facilitate the actual financial transaction, they have technology on their end that decodes that data element and allows for that transaction to proceed.” Another interesting point he shared was the proposal to build an organization equivalent to the National Transportation Safety Board for the Internet. “From its genesis, the Internet has been very decentralized. The participants operating within the Internet world are also still pretty decentralized. There’s not necessarily a lot of information sharing that goes on, particularly information that relates to cybersecurity,” Marsh said. “It’s important to think about this, not only from the perspective of whether and to what extent information should be shared with the government, because the government does have some role to play in this, but also information sharing that can happen between private parties, whether it be other companies sharing information with each other or companies sharing information with the public.”

The final speaker was **Peggy Tomsic**, lead counsel in the groundbreaking *Kitchen, et al. v. Herber, et al* case in Utah and the Tenth Circuit—the first case to strike down an anti-gay marriage constitutional provision as a violation of due process and equal protection. Catering to her specific audience, Tomsic and her legal team made a decision “that we were not going to allow any national or even local organizations that were tied into the LGBT rights movement to be part of our case, because we truly believed if we had real plaintiffs from Utah and we had real lawyers from Utah who live and work here, that it would present a different case to the community.... We truly believe that it helped us in getting an education program in place when we won before Judge Shelby to have people realize that it was people in everybody’s community that was fighting for these rights and not outsiders coming in and trying to sweep Utah into something that they didn’t want to be in,” Tomsic said. Contrary to conventional wisdom, Tomsic’s approach to the briefs started out with the due process clause “because if you could frame the right to marry as a fundamental right guaranteed by the due process clause, you could package the equal protection argument in that liberty interest and demonstrate how critical and important that constitutional right was....It doesn’t matter who’s exercising it. It’s a constitutional right that applies to all citizens.” ■

# IN MEMORIAM

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*The things that made them great lawyers also made them great human beings.*

In this issue, we memorialize thirty-four more departed Fellows of the College. They ranged from two who were the first in their families to attend college to ones who had prepared for college in private boarding schools. One Fellow traced his ancestry back to The Mayflower. Another, the graduate of a racially segregated high school in the South, had found his way to Harvard with the encouragement of a teacher who saw his promise. (Editor's note: Seventeen years later, in a changed world, your Editor Emeritus was co-chair of the PTA at that same high school, by then thoroughly desegregated.)



Some hung out their shingles when they finished law school; others joined firms created by their fathers or grandfathers. Their professional lives were the foundation for their invitation to fellowship in the College. They ranged from a career prosecutor to a generalist who was a legal and civic legend in his area of the state. One clerked for a Justice of the United States Supreme Court. One had argued and won a case in that Court two years out of law school. One was at the time the youngest United States Attorney in the United States. One appeared in a case that resulted in the creation of now-routine health care directives. Two were civil trial lawyers who had taken on high profile pro bono cases. Names such as John Hinkley, ABSCAM and Travelgate dot resumé's. Several made their marks in the civil rights era. Several became state or federal judges. One became the first African-American partner in an old Boston law firm.



They lived lives of service. One co-taught a statewide bar review course that made him a mentor to two generations of young lawyers. One was a long-time NITA instructor. Several were local athletic coaches. Many were the anchors of local civic, educational and health care institutions. Two were former Regents of the College; several had been State or Committee Chairs. Two, one as the Chair, had screened nominees to the federal bench as members of the ABA Standing Committee on the Federal Judiciary.



They lived interesting lives outside the law. One, his undergraduate education interrupted by World War II, quarterbacked one college team in a bowl game and later quarterbacked that of another school in a different bowl. One coached a college lacrosse team while he was in law school. One, who had what was described as a "mean left-handed serve," was still playing tennis into his nineties. One drove a Harley-Davidson motorcycle. The granddaughter of one reported at his memorial service that he had downloaded 2,000 books onto his iPad. One raced his sailboat to Bermuda three times and later sailed it across the Atlantic to tour for a year. One spent eight years after law school studying in a Jesuit



seminary before joining a law firm. One remembered playing six-man football on a lawn on the Washington Mall against a team from the Department of Justice, one of whose players was Attorney General Robert Kennedy. One, flying his own plane, died in an unexplained crash. Another, not content with parasailing, driving a stock car around a NASCAR track and skydiving at age seventy-three, managed to get permission to sit in the jump seat behind the pilot as he landed a supersonic Concorde at Heathrow Airport.



They had a sense of humor. One medical malpractice defense lawyer named his boat Defense Rests. Another noted that his decision to choose law over medicine when he received a bad grade in chemistry had probably saved countless lives. And the women who attended the funeral of one, famous for her collection of over one hundred hats, were each sent home wearing one of her hats after they had posed for a group photograph.



Nineteen had seen military service, eleven of them in World War II, many serving before they entered college. One piloted a B-17 Flying Fortress, one flew a torpedo-bomber and one was a hazardous-duty deep-sea searcher. One came home with a French Legion of Honor for valor in Alsace-Lorraine in the winter of 1944. One received the British Military Cross for disabling a German tank in battle. One was awarded a Navy-Marine Corps Medal for Valor. Several were wounded in action.



Sixteen of the thirty-four departed Fellows were eighty-six years or older; seven of those died in their nineties. Of those whose obituaries disclosed it, thirteen had been married for over fifty years, seven of those for over sixty. Their individual biographies make clear the relation between engaged lives and longevity. On the other hand, another, perhaps distressing, pattern may be emerging. An unusual number died too young: five in their sixties, ten more in their seventies. The mothers of two were listed among their sons' survivors.



Some of these departed Fellows were known to many among us; others were known only to those among whom they had lived and worked. By recording all of their lives as we continue to do, we hope to preserve the role their stories played in the College's ongoing legacy. We also suspect that, in reading the accounts of their lives, many of us come to wish that we had known them all.

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

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



**Roger Mark Adelman**, '03, Washington, District of Columbia, died September 13, 2015 at age seventy-four of complications from congestive heart failure. The first in his family to attend college, he was a graduate of Dartmouth College, where he was a member of the rowing team, and of the University of Pennsylvania Law School. He then served in the United States Army before becoming an Assistant United States Attorney for the District of Columbia, where he served for eighteen years. He handled the prosecution of John Hinckley for the attempted assassination of President Ronald Reagan and cases arising out of the ABSCAM saga, in which a number of state and federal officeholders were videotaped accepting bribes in an FBI sting operation. He was later recalled from private practice to assist in the investigation of what became known as Travelgate. After practicing for nine years as a partner in the Washington office of Kilpatrick and Lockhart LLP, he formed his own Washington firm, where he practiced until his death. Described as "the paragon of a career prosecutor," he was the recipient of the Council for Court Excellence's Justice Potter Stewart Award for his contribution to the administration of justice in Washington. He taught evidence and trial practice at Georgetown University Law School for twenty-four years and was a founder of the William B. Bryant Inn of Court. He had no immediate survivors.

**Morris Atlas**, '76, a Fellow Emeritus, retired from Atlas Hall & Rodrigues, L.L.P., McAllen, Texas, died October 4, 2015 at age eighty-eight of a chronic illness. After graduating from the University of Texas and its School of Law, he and his wife chose to leave his native Houston for McAllen in the Rio Grande Valley, where he practiced until his retirement. He became a larger than life legal and political and figure in southern Texas. In his legal career, he became the go-to lawyer in the Rio Grande Valley for major cases. He was a Past President of his local Bar, a Director of the Texas Association of Defense Counsel and a member of the Board of Directors of the Texas-Mexican Bar. He served as Special Counsel to a civil justice reform committee and other similar efforts. He once represented an accused Russian spy pro bono. He had been President of the University of

Texas Law School Foundation. Active in the political arena, confidant to a succession of Texas Governors, he had declined numerous offers of judicial and political office, preferring to practice law. A supporter of higher education in his part of the state, he was instrumental in bringing the local institution of higher learning, Pan-American University, into the University of Texas system, and he was a Past Chair of its Board of Regents. He served as a member of the University of Texas Chancellor's Council. In the business arena, he served on the Boards of several banks and financial institutions, as well as other businesses. He had served on the Board of Directors of the local hospital and for fifteen years on the Texas Alcoholic Beverage Commission. Among his many honors were the University of Texas Law School Faculty Award, the University of Texas' Distinguished Alumnus Award, the Law Alumni Outstanding Alumnus Award and the Anti-Defamations League's Karen Susman Jurisprudence Award. He had been named the Texas Bar Foundation's Outstanding 50-Year Lawyer and the Border Texan of the Year. His survivors include his wife of sixty-eight years, three daughters and a son, who is also an attorney.

**Frank V. Benton, III**, '77, a Fellow Emeritus, retired from Benton, Benton & Lucedale, Newport, Kentucky, died November 1, 2015 at age eighty-nine. After serving in the United States Navy in World War II, he earned his undergraduate and law degrees from the University of Kentucky and began practice in Newport with his father and grandfather. He later served as Commonwealth Attorney for thirteen years, where he led a movement to rid the area of gambling influences, and he served as President of the Kentucky Commonwealth Attorneys' Association. After rejoining his law firm, he was President of the Kentucky Bar Association. His survivors include his wife of sixty-six years, two daughters and two sons.

**James Davis Blount, Jr.**, '77, a Fellow Emeritus, retired from Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, Raleigh, North Carolina, died October 16, 2015 at age eighty-eight, of Parkinson's Disease. An Eagle Scout, after finishing high school he served for two years in the United

States Navy in World War II, then entered the University of North Carolina at Chapel Hill, where he earned an undergraduate and a law degree in six years. He was a member of the Board of Editors of his law review and the Chair of the Law School Honor Council. In essence, he had two separate professional careers. For the first seventeen years he practiced in a firm in his small home town, Rockingham, North Carolina. He served two terms on the local City Council and was Counsel to the County Board of Education during the era when *Brown v. Board of Education* was being implemented across the South. He was named by the local Junior Chamber of Commerce as his town's Young Man of the Year. He was an organizer and the first Chair of the Board of Trustees of a regional library and was Chair of the Board of Trustees of the North Carolina Association of Library Trustees. He served as President of his local Rotary Club and the Chamber of Commerce and Chair of the local hospital Board. A Deacon in his Baptist Church, he taught a men's bible class for seventeen years. In 1961, he joined his law partner who the year before had created an annual statewide bar review course, and for the next eighteen years the two of them taught the course, essentially becoming the legendary mentors of two decades of young lawyers. In 1970, he moved to the state capital, Raleigh, joining the firm with which he practiced all over eastern North Carolina for another thirty-one years until declining health forced his retirement. He served as Vice-President of the North Carolina Bar Association, served on the Board of the local Red Cross and was an Elder in the largest local Presbyterian Church. The North Carolina Association of Defense Attorneys had given him its Award for Professional Excellence, and the Eastern North Carolina Chapter of ABOTA presented him with its Lifetime Achievement Award for his extraordinary professionalism. He served the College as North Carolina State Committee Chair. His published obituary contained the following: "Jim's gentle, easygoing demeanor belied a very adventuresome and competitive spirit. He went parasailing on a trip to France, drove a race car on the Carolina Motor Speedway, loved hot air ballooning and skydived out of an airplane at age seventy-three with some of the young colleagues in the law firm. He was a licensed private

pilot, and one of the highlights of his life was sitting in the jump seat behind the pilot of a *Concorde* as it landed at Heathrow." His survivors include his wife of forty-two years, one daughter, two sons and a stepson.

**Henry Burnett**, '68, a Fellow Emeritus, of Counsel to Fowler, White, Burnett, PA, Miami, Florida, died September 23, 2015 at age eighty-eight. A World War II veteran who served in the United States Navy, he had remained in the Naval Reserve for many years. After the War, he had earned his undergraduate degree from the University of Virginia and his law degree from the University of Virginia Law School. He had been an initial member of the Board of the Defense Research Institute, President of both the Dade County Defense Lawyers Association and the Florida Defense Lawyers Association and President of the International Association of Defense Counsel. The Florida Defense Lawyers Association had established the Henry Burnett Trial Advocacy Award at Stetson University College of Law in his honor. Over his lifetime he had been active in a multitude of local civic boards, and he had been honored by the United States District Court for the Southern District of Florida with the Joe Easton Unsung Hero Award. He had served the College both as Florida State Committee Chair and as Chair of a national committee. A widower, his survivors include two daughters.

**Lowell Thorson Carruth**, '82, a member of McCormick Barstow LLP, Fresno, California, died October 23, 2015 at age seventy-seven. He graduated with great distinction from Stanford University, where he was a member of Phi Beta Kappa and played on the tennis team. He earned his law degree from Boalt Hall School of Law at the University of California at Berkeley, where he was Associate Editor of the *California Law Review*. In his early career he had been an Assistant District Attorney in Fresno County. He was a Captain in the United States Army Reserve. He had served on the California State Bar Board of Governors and was a founding member of the local chapter of the American Board of Trial Advocates, which has honored him with its Trial Lawyer of the Year Award. He had also served as Chair of the Board of Directors of St. Agnes Medical Center. He continued



to play competitive tournament tennis for years after his graduation from college. His survivors include his wife, a daughter, who is a lawyer, and a son.

**James David Causey**, '79, Atoka, Tennessee, who had practiced with Caywood & Causey, Memphis, Tennessee until his retirement to Atoka, died November 3, 2015 at age eighty-nine after a long illness. Before going to college, he had served in the United States Army Air Force as the pilot of a B-17 Flying Fortress in World War II. He then earned his undergraduate degree at Delta State College and his law degree from the University of Florida Law School. He was a Past President of his local Bar and a member of the Lawyer Pilot Bar Association. He served the College as its Tennessee State Committee Chair. His wife of sixty-two years had predeceased him. His survivors include a daughter and a son.

**Morrill J. Cole**, '95, a Fellow Emeritus, retired from Cole, Schotz, Meisel, Forman and Leonard, Hackensack, New Jersey and living in Nyack, New York, died October 27, 2015 at age eighty-seven. A graduate of Harvard College and of Harvard Law School, he worked two years as an associate in a law firm before returning for two years to be a Teaching Fellow at Harvard Law School. His firm traced its roots to 1928, when his father opened the firm in Paterson, New Jersey. Cole had been Chair of the Community Relations Council of the Paterson Jewish Community Council, a founder of the Paterson Task Force on Community Affairs, the local arm of President Lyndon Johnson's anti-poverty program, Chair of Paterson's Redevelopment Agency in an urban renewal initiative in the 1970s and a Master in his local Inn of Court. The firm had moved its principal office to Hackensack in his later years. He was honored by the Trial Attorneys of New Jersey with its Trial Bar Award for Distinguished Service in the Cause of Justice, by the New Jersey State Bar Association with its Professional Lawyer of the Year Award and with a similar award from his local Bar. He was endowed with great intellectual curiosity; a granddaughter noted in her eulogy that he had downloaded 2,000 books onto his iPad. A widower, his survivors include a daughter and a son.

**John P. Cooney, Jr.**, '95, a member of McKool Smith, P.C., New York, New York, died November 2, 2015 at age seventy-one, from lung cancer. He was a graduate of the University of Indiana at Bloomington and of Duke University Law School, where he was Note Editor of the *Duke Law Journal*. After two years in private practice, he served for five years as an Assistant United States Attorney for the Southern District of New York, rising to become Chief of the Narcotics Unit. He then practiced with Davis Polk and Wardwell LLP until his retirement from that firm in 2008, after which he began to practice with McKool Smith. A white collar practitioner, notably he defended many defendants who were unable to pay a lawyer by appointment under the Criminal Justice Act. He served the College as Chair of the Federal Criminal Procedure Committee. His survivors include his wife, two daughters and four sons.

**Harvey Lindenthal Cosper, Jr.**, '07, Parker Poe Adams & Bernstein LLP, died December 19, 2015 at age sixty-seven, having retired from active practice after suffering a stroke in 2013. He was a graduate of the University of North Carolina at Chapel Hill and of the Wake Forest University School of Law, where he was a member of the law review. He had served in the United States Army Reserve and as an Elder in his Presbyterian Church. The head of his firm's medical malpractice defense team, he was universally known by the plaintiffs lawyers with whom he had dealt with for his kindness, compassion, integrity and professionalism in dealing with the most difficult of cases. He had been an officer of the North Carolina Association of Defense Attorneys, which had honored him with its J. Robert Elster Award for Professional Excellence (an award named for a deceased Fellow of the College). In accepting the award, with typical humility and humor, for which he was universally known, he labeled himself as "just a plodder" who had "enjoyed every single minute of his career." His humor extended to his private life; he had named his boat "Defense Rests." His survivors include his wife, two sons and a daughter, who is herself an attorney.

**Frank Neil Cowan, Sr.**, '92, a Fellow Emeritus and a member of CowanOwen PC, Richmond, Virginia,

died August 28, 2015 at age seventy-nine. His high school baseball team had won two state championships, but after a short stretch with the Pittsburgh Pirates organization, he realized that his future lay in other directions, and he earned his undergraduate degree from Virginia Polytechnic Institute and his law degree from the T. C. Williams School of Law at the University of Richmond. He served as a Commissioner in Chancery for Chesterfield County. An active VPI alumnus, he also sat on the Board of a local YMCA and on a local planning commission. He helped to organize and was a regular reader in an Eager Beaver Readers organization in local public schools. He served on the Board of the Virginia-West Virginia Chapter of the National MS Society, which has named its most prestigious award the Frank N. Cowan Cup of Hope Award. He had been honored with the Virginia Association of Defense Attorneys' Award for Excellence in Civil Litigation. A widower who had remarried, his survivors include his wife and three sons.

**Thomas Francis Daly, III**, '87, a Fellow Emeritus, retired from McCarter & English, Newark, New Jersey and living in Rumson, New Jersey, died September 8, 2015 at age seventy-eight. A graduate of Lafayette College and Georgetown Law School, he had served as head coach of the Georgetown lacrosse team while in law school. He served as an infantry officer in the United States Army. A maritime lawyer, he served as a Commissioner and Past President of the New Jersey Maritime and Docking Pilots Commission and a Trustee of the National Maritime Historical Society. He was also was an adjunct professor at Rutgers University Law School. His survivors include his wife, three daughters and a son.

**Haliburton Fales, II** '72, a Fellow Emeritus, retired from White & Case LLP, New York, New York, died November 2, 2015 at age ninety-six. He traced his ancestry back to settlers who came over on the Mayflower. He left Harvard College in 1941, after his junior year, two weeks after the attack on Pearl Harbor, to serve as a junior officer in the United States Navy. He was assigned to the *USS Alabaster (PYc-21)*, a coastal patrol yacht that was eventually converted to an antisubmarine warfare training platform and sent to

join the 7th Fleet in the Pacific Theater. Fales emerged from naval service at the end of the war as a Lieutenant Commander. He returned to Harvard, earned his law degree there in 1947 and spent his entire career at White & Case. Over a long career, he served on the Board of Trustees of the National Center for State Courts, which honored him with its Distinguished Service Award, sat on the Boards of the New York Legal Aid Society, the Volunteers of Legal Services and the New York Lawyers for the Public Interest. A Past President of the New York State Bar Association, he had chaired its Task Force on the Legal Profession and a Task Force on Women in the Courts and was volunteer counsel for the New York Women's Prison Association. He also served on the Columbia Law School Board of Visitors. In the civic arena, he was Chair of the Board of St. Barnabas Hospital and a Trustee and President of the Morgan Library and Museum, the first person outside of the descendants of J. P. Morgan to hold that post. He had served for years on the Vestry and as Senior Warden of his Episcopal Church. He was the author of *Trying Cases: A Life in the Law*, which has been described as the story of the "development of corporate law as seen by an American trial lawyer, an evolution from an enterprise primarily local into one that is immensely global." A widower whose wife of sixty-four years had predeceased him, his survivors include three daughters and two sons.

**John Michael Famularo**, '92, a member of Stites & Harbison PLLC, Lexington, Kentucky, and a Former Regent of the College, died October 23, 2015 at age sixty-eight after a long illness. He was a graduate of Loyola University of the South, New Orleans, Louisiana, and of the University of Kentucky School of Law. He began his career as an Assistant Attorney General for the Commonwealth of Kentucky. The son of a lawyer-judge and the brother of a former United States Attorney, he argued and won a boundary dispute case before the United States Supreme Court two years after he finished law school. He thereafter served as Assistant Commonwealth Attorney in Lexington before becoming a judge in the Fayetteville District Court, serving as Chief Judge for two years. He then joined Stites & Harbison, where he practiced for the remainder of his career. He served as General Counsel for the Roman Catholic Diocese of Lexington and

sat on the Board of Governors of the Kentucky Bar Association. He was honored as the Defendant's Lawyer of the Year for Kentucky in 2012 and was a member of the University of Kentucky Law Hall of Fame. He also served the College in numerous capacities, including as Kentucky State Committee Chair and Chair of two national committees. He and his wife of forty-five years, Karen, were widely known for their great good humor. His survivors in addition to Karen include two daughters and a son.

**Richard Anthony Gargiulo**, '93, a member of Gargiulo/Rudnick LLP, Boston, Massachusetts, died October 9, 2015 at age seventy-six. A graduate of the University of Maryland and of Suffolk University School of Law, he began his career as First Assistant District Attorney for Middlesex County, Massachusetts. Designated by the Chief Justice of the Superior Court of Massachusetts, he conducted an investigation that resulted in the impeachment of one judge and the sanctioning of another. He entered private practice, ultimately forming a law firm with his brother and others. He was especially proud of a pro bono case in which he procured the exoneration of a mentally deficient young African-American man who was serving a sentence based on a coerced false confession. An avid and accomplished sailor, he had three times raced his Frer and Cibils 44-foot ketch in races to Bermuda. With three others, he had sailed from Cape Cod to Portugal, keeping the boat in Europe for over a year, with his wife, children and friends joining him for trips to various ports from Portugal to Mallorca to Menorca. His survivors include his wife, a daughter and three sons.

**The Rt. Hon. William Hugh Griffiths, Baron Griffiths of Govilon**, '88, an Honorary Fellow from London, England, died May 30, 2015 at age ninety-one. He entered the Welsh Guards at age eighteen at the beginning of World War II, serving as an officer in the Second Battalion of the Guards Armoured Division and landing in Normandy shortly after D-Day. Wounded towards the end of the War, he was awarded the Military Cross for disarming a German tank. He received his education at Charterhouse School and St. John's College, Cambridge, of which

he was later made an Honorary Fellow. He was called to the Bar of Inner Temple in 1949. He "took silk," (became a Queen's Counsel) in 1964, was knighted and became a High Court Judge, Queen's Bench Division, in 1971. He was a Judge in the Industrial Relations Court in the early seventies. After five years as a Lord Justice in the Court of Appeal, in 1985 he was made a Lord of Appeal in Ordinary, a Life Peer. His service on the bench included acting as Chairman of the Security Commission, of the Tribunal of Inquiry on Ronan Point (involving the collapse of a London office building) and the Lord Chancellor's Advisory Committee on Legal Education and Conduct. He served on a variety of other official commissions and committees dealing with issues such as parole, penal reform and law reform. An Honorary Member of the Canadian Bar Association and the American Institute of Judicial Administration, he had been honored by two institutions with an Honorary Doctor of Laws. He was a member of the British delegation to the 1977 Anglo-American Legal Exchange, out of which came the adoption by the British courts of the American custom of written briefs. A well-known cricket player in his younger days, he held the rare distinction of having been both President of Marylebone Cricket Club and Captain of the Royal and Ancient Golf Club. Remarried after his first wife died, his second wife died in an automobile accident, and he later remarried. His survivors include his third wife, three daughters and a son.

**John Michael Harrington, Jr.**, '70, a Fellow Emeritus, retired from Ropes & Gray, Boston, Massachusetts, died November 8, 2015 at age ninety-four. His undergraduate education at Harvard College had been interrupted by World War II, in which he served in the United States Army Field Artillery in the European Theater. After returning to complete his undergraduate work, he earned his law degree from Harvard Law School. He had then been a law clerk on the Massachusetts Supreme Court and an Assistant United States Attorney. With Ropes & Gray for fifty years, he had chaired its litigation department. He had served on the American Bar Association Standing Committee on the Federal Judiciary and on the Overseers'



Committee to Visit Harvard Law School. He had also served on a number of civic and education-related Boards and had served the College in the 1980s as Chair of a Task Force on Litigation Issues. A widower, his survivors include five sons and one daughter.

**Hon. Truman McGill Hobbs**, '69, a Judicial Fellow from Montgomery, Alabama, died November 4, 2015 at age ninety-four. The son of a long-time United States Congressman and a member of a family long noted for its leadership, he was a graduate of the University of North Carolina at Chapel Hill, where he was President of the Student Body and a member of Phi Beta Kappa. He served for four years in the United States Navy during World War II, volunteering to be a hazardous-duty deep-sea searcher. He saw action in both the European and Pacific Theaters, earned a Bronze Star and a Navy-Marine Corps Medal for Heroism and emerged as a Lieutenant Commander. After finishing his law degree at Yale University School of Law, he was a law clerk to United States Supreme Court Associate Justice Hugo Black. Returning to Alabama, where he helped to establish his own law firm, over the years he was President of his county Bar, the Alabama Trial Lawyers Association and the Alabama Bar Association. In 1980, he was appointed a Judge of the United States District Court for the Middle District of Alabama by President Jimmy Carter, and he ultimately became the Chief Judge of that court. His obituary stated that "his tenure on the bench was widely recognized for its integrity, compassion and intellect during some of Alabama's darkest times." His survivors include his wife of sixty-six years, two daughters and a son, who is also a judge.

**John Michael Imel**, '76, a member of Moyers, Martin, Santee & Imel, Tulsa, Oklahoma, died on Christmas Day 2014 at age eighty-two. He earned his undergraduate degree at the University of Oklahoma, where he played tight end on the football team until a broken elbow in the Oklahoma-Oklahoma State game his junior year ended his career. After undergraduate school, he served two years as an officer in the United States Navy during the Vietnam Era. After earning his law degree from the University of Oklahoma School of Law, he served as an Assistant County Attorney and

then as Municipal Judge of the City of Tulsa before being appointed as the then youngest United States Attorney in the United States. Along with fellow U.S. Attorneys, he once played a game of six-man football on the lawn outside the Washington Monument against a team of "the Department of Justice Boys," whose team included Attorney General Robert Kennedy. He had served as Chair of the University of Oklahoma Board of Regents and had served the College as Oklahoma State Committee Chair. A widower, his survivors include three daughters.

**Evan Howard Johnson**, '89, a member of Erickson, Davis, Murphy, Johnson & Walsh, Ltd., Decatur, Illinois, died July 7, 2015 at age seventy-two. A graduate of Rose-Hulman Institute of Technology and of the University of Illinois-Champaign Law School, he had served as an officer in the United States Army Judge Advocate Corps during the Vietnam conflict, trying in excess of 1,000 cases. An Elder in his church, his hobbies included riding Harley-Davidson motorcycles. His survivors include his wife of fifty years, two daughters, a son and his mother.

**Gerard Roland Laurence**, '84, a member of Milton, Laurence & Dixon LLP, Worcester, Massachusetts, died October 19, 2015 at age seventy-six. He received his undergraduate education from Assumption College and Georgetown University and was a graduate of the Georgetown University Law Center. He had served as President of the Massachusetts Defense Lawyers Association and had been honored with the St. Thomas More Award, awarded to outstanding Catholic lawyers. His survivors include his wife of fifty-two years, four daughters and a son.

**Sam H. Mann, Jr.** '71, a Fellow Emeritus, retired from Harris, Barrett, Mann & Dew, St. Petersburg, Florida, died July 24, 2015 at age eighty-nine, nine days short of his ninetieth birthday. His undergraduate education at Yale University had been interrupted by three years' military service in World War II. He began his legal education at Vanderbilt University School of Law and finished it at the University of Florida Law School. He had served on the Boards of multiple local businesses, legal and civic organizations and as a

Trustee of Eckerd College. His survivors include his wife of sixty-six years, a daughter and two sons.

**Thaddeus Charles McCanse**, '77, a Fellow Emeritus from Columbia, Missouri, died October 7, 2015 at age ninety-six. He served in World War II, first in the Missouri National Guard and then in the United States Army, stationed in the Aleutian Islands. He then attended the University of Missouri, completing the required undergraduate and law school work in four years. He served as general counsel for Rock Island Railroad in Kansas City before entering practice in Kansas City as a partner in James & McCanse. During this time, he served as the first Executive Secretary of the Administrators of Kansas City Public Schools. He then became a partner in Flannigan, Macanese & Lesley in Carthage, Missouri. He served for nine years as attorney for St. John Hospital in Joplin, and late in his career was the hearing officer for the Gaming Commission of Missouri. In retirement, he lived in Columbia. A case in the 1980s in which he was guardian ad litem for the defendant, a young woman left in a persistent vegetative state after an automobile accident, went all the way to the United States Supreme Court. That Court upheld Missouri's position that clear, convincing evidence of the desires of the patient were required to terminate her life, a holding that led to the creation of advance health care directives. In addition to woodworking, reading books and unpredictably breaking into song, he was still playing tennis, displaying a "mean left-handed serve," well into his nineties. His survivors include his wife of sixty-five years, three daughters and a son.

**George Richard McClenahan**, '84, a Fellow Emeritus from San Diego, California, died July 31, 2015 at age ninety-two. His undergraduate education at the University of Indiana was interrupted by four years of service as a torpedo bomber pilot in the United States Navy in both the Atlantic and Pacific Theaters. Upon his graduation from law school, he was an Assistant District Attorney in Madera County and then San Diego County, California. After practicing with Casey, McClenahan, Fraley & Hauser in San Diego, he moved his office to

Seaport Village, where he practiced alone for the last twenty years of his career. He had been President of the San Diego Chapter of ABOTA, of the San Diego Trial Lawyers, which had honored him with its Outstanding Trial Lawyer Award in 1984, and the Western Trial Lawyers. He and his wife raced a Lido 14 yacht, regarding it as their second home. He also spent a sabbatical year in Barcelona, Spain. In a website interview for his local Bar, McClenahan, who was honored with the Joe Easton Unsung Hero Award and known for his warmth and wit, disclosed that he had really wanted to be a physician, but that a bad grade in chemistry redirected him to law. As a result, he observed, "We have no idea how many people are alive today as a result." His survivors include his wife, two daughters and two sons.

**Walter J. Murphy, Jr.**, '73, a Fellow Emeritus, retired from Carr Goodson & Lee, Washington, D.C., and living in Rockville, Maryland, died June 25, 2015 at age eighty-four. A graduate of the University of Notre Dame and of Georgetown University Law Center, he began practice as an attorney for the National Association of Broadcasters. After practicing law for over thirty years with his father-in-law, he joined the firm from which he retired in 1999. He had served as Alternate Chairman of the District of Columbia Mental Health Commission and had been honored as the District of Columbia Defense Lawyers as their Lawyer of the Year in 1990. His survivors include his wife of fifty-seven years and three sons.

**Walter Arthur Porter**, '73, a Fellow Emeritus from Canal Winchester, Ohio, died August 6, 2015 at age ninety-one. A graduate of the University of Cincinnati and of its law school, his undergraduate education had been interrupted by service as a combat infantryman in the United States Army's 44th Infantry Division in the European Theater of Operations in World War II. He returned to college with four battle stars, two Bronze Stars, a Purple Heart and the French Legion of Honor, France's highest award for valor granted to a non-national, for his actions in Alsace-Lorraine in the winter of 1944. He had first served as a Legal Deputy in a county probate court and then as an assistant county

prosecutor before beginning private practice in Dayton, Ohio, where he practiced with Smith and Schnacke and then with Thompson Hine. He had also served as a Judge of the Montgomery County Common Pleas Court. He was a Past President of the Ohio State Legal Services Association, the Ohio State Bar Association, the Ohio State Bar Foundation and the Dayton Bicycle Club. He had served as Chairman of the Board of several local associations and as a Trustee of the Dayton Philharmonic Orchestra Association and the Dayton Lawyers Club. A widower whose wife of sixty-six years had predeceased him, his survivors include two sons.

**Edward Norwood Robinson**, '76, a Fellow Emeritus, retired from Robinson & Lawing, L.L.P., Winston-Salem, North Carolina, died July 18, 2015 at age ninety. Appointed to the United States Military Academy at age seventeen, he graduated in 1945 and served as an officer in the United States Army in Germany. He earned his law degree from Duke University Law School, where he was a member of the Law Review and of the Order of the Coif. He had taught a Sunday school class at his Methodist church, where he had been Chair of the official board for over fifty years. He also served as President of the local Rotary Club and Red Cross and of the Greater Winston-Salem Chamber of Commerce. He was a Civilian Aide to the Secretary of the Arm. He had practiced law in Winston-Salem for over sixty years. A widower whose wife of fifty-five years predeceased him, his survivors include four sons.

**Donald Edward Scott**, '05, Bartlett Beck Herman Palenchar & Scott LLP, Denver, Colorado, died July 18, 2015 at age sixty-six when a plane that he was piloting crashed near Cody, Wyoming. A *magna cum laude* graduate of Harvard College, where he was a member of Phi Beta Kappa, he earned his law degree from Yale Law School, where he was on the editorial board of the *Yale Law Journal*. He began his career in Chicago, moved to Denver and later helped to found the firm with which he was associated at the time of his death. He had a national practice and was an instructor in the programs of the National Institute for Trial Advocacy (NITA) for thirty years. An Eagle Scout, he had been a leader in the local Boy Scouts of America. He had

also served on the Foundation Board of a local hospital and the Endowment Board of the Central City Opera of Denver. Divorced, his survivors include two sons.

**George M. Sirilla**, '98, a member of Pillsbury, Winthrop Shaw Pittman, LLP, McLean, Virginia, died October 28, 2015 at age eighty-six. After graduation from Rennsselaer Polytechnic Institute, he worked as a patent examiner while earning his law degree from Georgetown Law School, remaining at the U. S. Patent & Trademark Office for four years after his graduation. He then studied for eight years at a Jesuit seminary before joining Cushman, Darby & Cushman, which later merged with the Pillsbury firm, where he practiced patent law. He was a member of the Equestrian Order of the Holy Sepulcher of Jerusalem, a lay institution of the Catholic Church. His survivors include his wife of forty-seven years and two sons.

**Hon. David William Skolnick**, '80, a Judicial Fellow from Woodbridge, Connecticut, died October 5, 2015 at age seventy-nine. A graduate of Yale University and of Columbia University Law School, he practiced with Winnick, Skolnick, Ruben & Block, New Haven, until he was appointed to the Connecticut Superior Court. In private practice, he served on the Connecticut Grievance Committee and as a special master and attorney trial referee for both state and federal courts. After reaching mandatory retirement age as a judge, he continued to serve as a Judge Referee. His survivors include a daughter and a son.

**Payton Smith**, '80, a Former Regent of the College and a Fellow Emeritus, retired from Davis Wright Tremaine, Seattle, Washington and living in Las Vegas, Nevada, died September 22, 2015 at age eighty-two. A graduate of Southern Methodist University and of the University of Chicago School of Law, he had been Chief Assistant United States Attorney for the Western District of Washington and later Judge Pro Tem of the Seattle Municipal Court. He served two terms as Counsel to the Speaker of the Washington State House of Representatives and as General Counsel to the Seattle Chamber of Commerce. He had also authored a published political



biography. He had also chaired the College's Emil Gumpert Award Committee. His survivors include his wife of fifty-one years, two daughters and a son.

**Roscoe Trimmier, Jr.**, '95, a Fellow Emeritus, retired from Ropes & Gray LLP, Boston, Massachusetts, where he was the first African-American partner, died July 29, 2015 at age seventy-one, of cancer. Born in a segregated South, the son of a domestic and a laborer, a high school teacher recognized his ability and steered him to Harvard College. His undergraduate education was interrupted by service as an officer in the United States Army, stationed in West Germany. He returned to Harvard, finished his undergraduate degree and then earned his law degree at Harvard Law School. At Ropes & Gray, he had been Co-Chair of its Litigation Department and head of its Environmental Practice Group. He was widely known and respected as a mentor and door-opener for a generation of young lawyers, particularly those from backgrounds such as his. He served as Chair of the American Bar Association Standing Committee on the Federal Judiciary, which conducts independent peer review of every Article III nominee to the federal bench, and Vice-Chair of the Massachusetts Board of Registration in Medicine and was a Governor Emeritus of the Tufts Medical Center. His marriage ended in divorce. He is survived by his companion of over thirty years, his mother and a daughter.

**Marvin A. (Whitey) Urquhart, Jr.**, '83, a Fellow Emeritus, retired from Panama City, Florida, died June 29, 2015 at age eighty-seven. The oldest of twelve children, he was raised by grandparents after his mother died when he was eleven-years-old. Entering the University of Alabama on a football scholarship, he played in the 1946 Rose Bowl. After two years in the United States Navy, he entered Florida State University, where he was the quarterback of the football team for two years, winning the 1950 Cigar Bowl. He earned his law degree from the University of Florida. He served for many years as City Attorney for Lynn Haven, Florida and as counsel for Gulf Coast Community College. He was a charter member of the Florida State Board of Community

Colleges. A widower who had remarried, his survivors include his wife and two daughters.

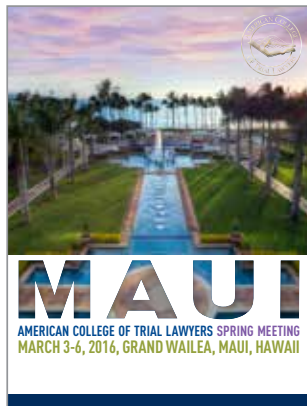
**Carol Mae Welch**, '93, a Fellow Emeritus retired from Miller & Welch, Denver, Colorado, died in October 2015 at age sixty-seven. She was a graduate of Wheaton College and of the University of Denver College of Law, where she was a member of the Order of St. Ives. Of Swedish ancestry, she had maintained a second home in Sweden and had apparently gone there against medical advice and had to be airlifted home shortly before her death. She had been a member of the Colorado Supreme Court Committee on Jury Instructions and Regional Vice-President of the Mid-Region of the Defense Research Institute. She was also a member of the Board of Directors of the local chapter of ABOTA and President of the Denver chapter. She served as a Trustee of the Colorado Bar Foundation. Described by a former secretary as a vivacious lady, the brief announcement of her funeral ended with the cryptic sentence, "Hats provided for all ladies." The story was that she began wearing hats as a young adult, and they became her trademark. At her death, she owned over one hundred and all of the women who attended her funeral were asked to take one of her hats home with them. A widow whose husband had died in a plane crash in the 1970s, her survivors were nieces and nephews.

**Rand Steven Wonio**, '04, a member of Lane & Waterman, LLP, Davenport, Iowa, died October 3, 2015 at age sixty-five, of melanoma. He was a graduate of St. Ambrose University and a *cum laude* graduate of the St. Louis University School of Law. He served as President of his county Bar and of the Iowa Academy of Trial Lawyers. The father of eight children, he coached teams ranging from Little League baseball to AAU basketball and officiated girls high school basketball. The local Pony League named its ball field for him. He founded and coached in a mock trial program at St. Ambrose, and he had been named YMCA Big Brother of the Year. He served his Catholic Church as a lector and Finance Council member and served as attorney for his Catholic diocese. His survivors include his wife of over forty years and his eight children.

# UPCOMING EVENTS

Mark your calendar now to attend one of the College's upcoming gatherings. More events can be viewed on the College website, [www.actl.com](http://www.actl.com), under Future Annual and Spring Meeting Dates and under the Events tab.

## NATIONAL MEETINGS



### 2016 Spring Meeting

Grand Wailea  
Maui, Hawaii

March 3-6, 2016



### 2016 Annual Meeting

Philadelphia Marriott  
Downtown

Philadelphia,  
Pennsylvania

September 15-18, 2016

## REGIONAL MEETINGS

### Region 6

Arkansas, Louisiana,  
Mississippi, Texas

JW Marriott  
Austin, Texas

April 15-17, 2016

### Region 12

NORTHEAST  
REGIONAL MEETING

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

Venue TBA

June 9-11, 2016

### Regions 1 and 2

SOUTHWEST  
REGIONAL MEETING

Arizona,  
California-Northern,  
California-Southern,  
Hawaii, Nevada

The Ritz Carlton  
Laguna Niguel

Laguna Niguel, California

July 15-17, 2016

### Region 3

NORTHWEST  
REGIONAL MEETING

Alaska, Alberta,  
British Columbia,  
Idaho, Montana,  
Oregon, Washington

Skamania Lodge  
Stevenson,  
Washington

August 4-7, 2016

# JOURNAL

**American College of Trial Lawyers**

19900 MacArthur Boulevard, Suite 530  
Irvine, California 92612

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

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

## Statement of Purpose

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