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JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

HAWAIIAN DANCERS OPEN FRIDAY'S GENERAL SESSION AT THE SPRING MEETING IN MAUI

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FROM THE EDITORS

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Andy Coats and Stephen Grant

Those lucky enough to have attended the College's Spring Meeting in Maui reported on their huge enjoyment at both the social and substantive segments of the program. This was true of the former, even in the middle of this relatively mild winter. While we can't replicate the collegiality, we can replicate the content, all found in these pages.

The standing-room-only CLE program focused on proportionality and related issues, specifically in relation to the significant Federal Rules changes (particularly Rule 26) which came into force late last year. Broken into its constituent elements, the panel discussed a number of interrelated areas: active judicial management; the need for increased cooperation among counsel; proportionality in discovery; and damages for destruction of electronically stored information.

Around the same time as the panelists were discussing these issues in Maui, our colleague and partner in civil justice reform, IAALS (Institute for the Advancement of the American Legal System) was holding its 4th Annual Summit in Denver. This was a singular event. Headed by the indefatigable Executive Director Justice Rebecca Love Kourlis, it was a solid two days of dialogue and discourse on almost every aspect, top to bottom, of the civil justice system, considering the improvements we can and should be implementing if not spearheading.

What emerged from the various presentations and talks at the IAALS Summit and the College meeting in Maui were a number of common themes. For starters, lawyers, as do judges, owe a duty to the civil justice system, to each other as colleagues at the bar and to our clients to making the system work. Not only work, but work in a fair, cost-effective, trusted, trustworthy and accessible way. We know our tools to be the Rules and early case management, the trick being the timely deployment, summed up perhaps in the phrase, "right-sizing." Specifically, this means having a sufficiently adaptable process to adjudicate the matter in proportion to the issues (and their magnitude) in dispute. We must recognize that one size does not fit all. This is certainly not about perfect justice, that standard being, at best, aspirational.

Counsel are now mandated to be mindful of proportionality especially in discovery and at least the new amendments to the Federal Rules of Civil Procedure have limited, if not curtailed entirely, any attempt at excess. Time will tell, of course, how efficacious the amendments are in practice but at least anecdotally, so far, so good.

A number of blog posts followed the IAALS Summit, most embracing the lessons learned and offering a pathway to further refinement. And at around the same time, Kourlis gave a talk in Idaho, refining the themes even more and emphasizing that, the civil justice system being one of the lynchpins of our constitutional democracy, we cannot afford to fail. She noted that, troublingly, the United States is nowhere near the top of the World Justice Index (U.S., #19; Canada, #14) and that civil justice cannot be reserved only for those who can afford the energy and time to attain it, especially in a time of unrest.

Given that the College is a significant sponsor of IAALS and its *Rule One Initiative*, this must afford us additional opportunities and encouragement, as trial lawyers, to take ownership of these changes. As with climate change, we have to assume and expect that it is not too late to change our litigation culture. Otherwise, as the legal prognosticators are saying anyway ("The End of Lawyers, Period," *ABA Journal*, March 3, 2016), we will have forged our own path to extinction.

Andy Coats / Stephen Grant ■

2016 SPRING MEETING
HELD IN MAUI, HAWAII

The College's sixty-second Spring Meeting was held in Maui, Hawaii, from March 3-6, 2016 at the Grand Wailea. Nearly 700 Fellows, spouses and guests attended from as far as Quebec and Vermont, and forty-nine new Fellows were inducted.

Thursday evening's President's Welcome Reception at the Molokini Garden in the Grand Wailea offered attendees a beachside setting to mark the beginning of the three-day event. Banners displaying all fifteen regions designated the areas where Fellows could gather to meet other Fellows from their state or province. Earlier that same day, a professional program titled *It's All a Matter of Proportion: The 2015 Amendments to the Federal Rules of Civil Procedure* was held. **Frank J. Silverstri, Jr.**, Vice Chair of the Federal Civil Procedure Committee moderated the session. The panel included: **Frederick B. Buck** of Philadelphia, Pennsylvania; **Wilbur A. Glahn III** of Manchester, New Hampshire, former Federal Civil Procedure Committee Chair; the Honorable **Gene E.K. Pratter**, U.S. District Court Judge for the Eastern District of Pennsylvania; and Past President **Chilton Davis Varner** of Atlanta, Georgia.

A traditional Hawaiian Oli Komo Welcome Chant that included a light show and conch shell call opened General Session. Fellows were told the story of the island of Maui, a demi-god in Hawaiian lore, and given a gift from the island in the form of song and dance.

Lisa Woods Munger, Hawaii State Committee Vice Chair, then led the audience in an invocation.

Judicial Fellow the Honorable **James E. Duffy, Jr.** of Kailua, Hawaii introduced the meeting's first speaker, the Honorable **Mark E. Recktenwald**, Chief Justice of the Supreme Court of Hawaii, whose presentation was titled *Access to Justice in a Changing World*.

Past President **Michael E. Mone** of Boston, Massachusetts introduced the next speaker, author **Linda Hirshman**. Hirshman gave an insightful talk on her book *Sisters In Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Changed the World*.

Past President **Andrew M. Coats** of Oklahoma City, Oklahoma introduced **David F. Levi**, Dean of the Duke Law School. Levi's topic focused on "Civil Justice and its Discontents: Reflections on Rule Making and Law Reform."

Former Regent **Brian B. O'Neill** presented Friday's last speaker, the Honorable **R. Ashby Pate**, Associate Justice of the Supreme Court of the Republic of Palau. Pate's presentation titled *Be The Light* included his reflections after the symposium conducted by thirteen Fellows who traveled to Palau in November 2015.

Top honors from the golf tournament at the Wailea Golf Club went to **William B. Jakes, III** for the men's longest drive on the eleventh hole and **Howard A. Lazar** for closest to the pin on the eighth hole. On the women's side, the longest drive was Kay Anderle on hole twelve and Allison Greene closest to the pin on hole sixteen. The winning team consisted of Emily Harnden, Brian B. O' Neill and **Patrick Regan**. The winner of the tennis tournament at the Wailea Tennis Club was **John W. Spiegel**. The best time for the 5K Fun Run was **Robert F. Duncan** on the men's side and a tie between Claudia Chan and Ann Connelly on the women's side.

Saturday's General Session was opened by Past President **Thomas H. Tongue** of Portland, Oregon ▷

who introduced the Honorable **Alex Kozinski**, U.S. Court of Appeals Judge for the Ninth Circuit. Kozinski gave tips on *The Wrong Stuff*, or how to lose an appeal.

Regent **Susan J. Harriman** of San Francisco, California introduced **Ovie Carroll**, Director of the Department of Justice Cybercrime Lab who spoke on how digital data affects the legal system.

Hawaii State Committee Chair **Michael K. Livingston** introduced **Kamanamaikalani "Kamana" Beamer**, Ph.D., President and Chief Executive Officer of the Kohala Center. Beamer shared with the audience how looking to Hawaii's past can provide ideas on how to help to conserve land and create sustainable food self-reliance today.

Past President **Joan A. Lukey** of Boston, Massachusetts introduced the Honourable Madam Justice **Suzanne Côté,** judge of the Supreme Court of Canada and a Fellow. Côté spoke on the philosophical and practical considerations when answering the question "to be or not to be."

Former Regent **Douglas R. Young** of San Francisco introduced the final speaker, **Steven Elkins**, a modern-day explorer and documentary filmmaker who spoke on discovering the Lost City of the Monkey God in the jungle of Honduras.

A luncheon program for inductees and their spouses or guests followed Saturday's General Session. President **Michael W. Smith** of Richmond, Virginia, presided while Past President Varner explained the selection process to inductees and the gravitas of their invitation to become part of the College.

Saturday night's grand finale to the Spring Meeting began with the traditional induction ceremony, followed by a banquet, dancing and the time-honored sing-along. **Robert M. Cary** of Washington, D.C. gave the response on behalf of the forty-nine new Fellows. After remarks from Smith, Fellows, spouses and their guests enjoyed the live band and camaraderie of another treasured College gathering.


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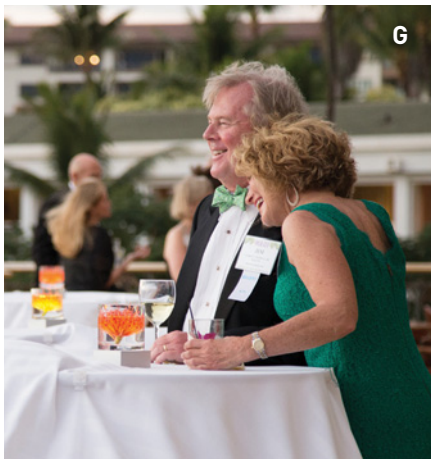
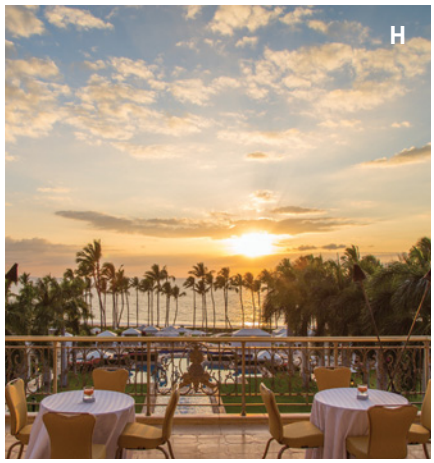




A | Honorable Jim Hopkins and Florida State Committee Chair Pat Lowry, West Palm Beach, FL

B | Joan and Fellow Ron Pink, Halifax, NS

C | Modern Hawaiian fire knife dancing has its roots in the ancient Samoan exhibition called 'ailao,' where a Samoan warrior demonstrated his battle prowess.

D | President Elect Bart and Eileen Dalton, Wilmington, DE; Kaye and Ken Ravenell, Baltimore, MD

E | President Mike Smith moves the program along

F | Lush greens at the Wailea Golf Club

G | Regent Jim and Mary Fran Murray, Milwaukee, WI, enjoy the view

H | View from the Grand Dining Room before the Saturday Spring Banquet and Induction Ceremony

I | A moment of celebration and solemnity – Past President Tom Tongue reads the Induction Charge while the new inductees, Past Presidents and audience listen.

J | Participants in the 5k Fun Run make their way along the ocean path.

K | Ready for tennis fun

L | Fellow Paul and Molly Weathington, Atlanta GA; Regent Thomas M. Hayes, III, Monroe, LA; Fellow James Dore, Baton Rouge, LA; Hon. Karen Hayes; Annell Metsker and Fellow Taylor Darden, New Orleans, LA

M | Oregon State Committee Chair Joe Arellano and Melissa Broussard, Portland, OR

N | Inductee Wade Davis and Bethany Hallam, Knoxville, TN; Inductee Bill and Doreen Lane, Westfield, NJ

DOJ CYBERCRIME LAB DIRECTOR DISCUSSES DIGITAL EVIDENCE, COLLECTING DIGITAL INFO

Ovie Carroll is a man who lives and breathes computers. He is the Director of the Cybercrime Lab at the Computer Crime and Intellectual Property Section at the Department of Justice.

His work has recently received quite a bit of media attention, notably when the FBI sought access to the information on the encrypted iPhone used by Syed Farouk, who died with his wife in a gun battle with the police after killing fourteen people in San Bernardino, California.

With Apple and the FBI set to meet face-to-face in court, at the last possible moment the hearing was postponed when the Justice Department revealed it had found a new way to hack into the San Bernardino shooter's iPhone without help from Apple.

Carroll is the government technologist who helped come up with ideas of how Apple could assist. For example, the government suggested that Apple modify the existing operating system to remove a few lines of code that prevented the FBI from guessing the PIN code on the phone. Without a change in the code, attempts to guess the password might result in all the data being deleted. If Apple were to remove just a couple lines of code, the FBI could link up a computer program that would guess the password without risk of information deletion.

When he is not trying to extract intelligence from terrorists' phones or computers, Carroll presents on technical matters to federal judges. Over the last eight years, these have included topics such as meta-data, how computers save and delete data and what it means to image a computer.

He also teaches graduate courses at George Washington University, including a course on interview and interrogation. "Ovie started teaching the class after he invited a hacker onto a podcast that he hosts, a podcast called CyberSpeak. The FBI had used a toolkit called COFEE, that was developed by Microsoft, to help extract evidence from a Windows computer. COFEE stands for Computer Online Forensic Evidence Extractor," said Regent **Susan J. Harriman** of San Francisco, California in her introduction of Carroll. "A hacker developed a tool called DECAF, which stands for Detect and Eliminate Computer Acquired Forensics. DECAF protected computers against COFEE and rendered the COFEE tool ineffective. Ovie invited the hacker onto his podcast. Through the course of questioning him, Ovie ended up challenging the hacker to take down the tool by pointing out that the hacker wasn't exactly being socially responsible. The hacker agreed to do so, and Ovie got invited to teach a course on interview and interrogation."

Carroll has spent over thirty years in federal law enforcement. In his early days, he conducted investigations into a variety of crimes, including murder, fraud, bribery, theft and narcotics. As he has moved into the computer world, he has been the chief of computer investigations for the Air Force ▷

Office of Special Investigation and he was the Special Agent in charge of computer crimes for the United States Postal Service. "He is the guy that Assistant U.S. Attorneys and the FBI call when they need help," Harriman said.

Caroll set up his presentation in a manner that would be most relevant to Fellows: "I like to start off all of my presentations just by saying that we're living in a digital world. The future of all of our cases has to do with digital evidence. So regardless what type of case you are actually bringing to trial, digital evidence can significantly help you, or hurt you, depending on how much you know."

Last year, eight zettabytes of digital information were created.

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.

Ovie Carroll

"For those of you that don't know what a zettabyte is….if you had a gigabyte of text that was printed out on paper that would be a stack of paper 1,000 feet high. If you took 1,024 of those stacks of paper, that would be one terabyte. 1,024 of those stacks of paper would be a petabyte. 1,024 of those, an exabyte. And 1,024 of those would be the zettabyte. That's how much we created, eight of those zettabytes last year. Now to put it into perspective, that would, essentially, be a stack of paper 1.66 trillion miles, or 226 round trips from the sun to Pluto."

ANDROID, IPHONE ARE CONSTANTLY COLLECTING DATA

The most prolific device collecting information is one that nearly everyone has in their pocket or purse – your cell phone. Without fail, these cell phones are constantly connected and collecting GPS information.

Caroll then asked Fellows who owned an iPhone to pull it out and work through an example of how the device is gathering information.

"On your iPhone, you'll notice there's a Settings icon, that little gear icon. Now, for the Justice people, I am still waiting for you to put in your 36-character password. If you click on the Settings icon, then scroll down to where you see the Privacy tab. Click on the Privacy tab, because Apple does care about your privacy.

"Now, in the Privacy tab, at the very top, you'll see Location Services. Go ahead and click on Location Services. Scroll all the way down to the bottom and you'll see something called System Services. Click on that. Then about halfway down, you're going to see Frequent Locations.

"Now, this is where it gets exciting. Go ahead and click on that Frequent Locations. What you'll notice is a history of everywhere you've been in the last 30 to 40 days."

Using his own iPhone as an example, Carroll picked one item from his history – Bucharest, Romania.

"If you click inside any of those areas, you can see I was there in Bucharest five times. That's the hotel that I stayed at, the InterContinental. You can see exactly what time I got to the hotel, what time I left, what time I got to the hotel and what time I left."

He also included Android users in the demonstration.

"I know I see a couple of you smug Android users out there. Let me just clarify for a moment. The iPhone and the Android both have built into it the Google search app. The nice thing about the iPhone is it's storing all that data, if you believe Apple, on the phone itself. But with the Androids and the Google search app, if that app is running, even in the background, it's transmitting your GPS location, in real-time, up to Google. You can see when I drove to work in the morning. I teach at night in George Washington University out in Arlington, then a trip home. I went down to visit my dad. That's in real-time and it's going up to Google."

Carroll then turned to Google and the search engine collecting data.

"Did you realize that there were 15 million Google searches done in a single month? That was in 1999. There were 2.7 billion Google searches done in 2006. Last month, 106 billion Google searches.

QUIPS & QUOTES

I see a little twinkle in a couple of your eyes. I know what you're thinking. Some of you who are with your spouses, you are already leaning over to take a look. If your spouse is not here, don't go home and say, 'Give me your iPhone.' Wait until they're asleep then just carefully put their finger on the passcode and then take it downstairs.

Ovie Carroll

"What would it tell us if we could re-create your Google searches over a period of one year? It would tell a beautiful story, like how to spice up your marriage. This is a good marriage, getting better, right? Romantic evenings at home, this is a great marriage, these last forever. How to tell if your husband is having an affair. Okay, we hit a snag. Reverse phone number lookups, who is he calling and who is calling him. I am going to hire a private detective, have his butt followed. Getting even with a cheating spouse. It doesn't bother you that Google is prompting the rest of these questions? How to kill your husband and get away with it. Thank you, Google. Divorce attorneys, I'm going to take him for everything that he's worth. How to lose weight fast, because, let's face it, once we get married, we put on some insulation. Dating again at 40, is that really possible. If you're a geek, where do you find love online. And then, of course, we have to look sexy if we're dating. And then, in the dating world, the inevitable Google searches will follow.

"My point being, we tell Google our most intimate secrets."

VOICE ACTIVATED SEARCHING

In the quest to make online searching even easier on any device, companies have started to make all these devices voice aware. "They now have these devices that are passively listening all the time. They are very, very aware."

Caroll then introduced Alexa, or Amazon Echo, a wireless speaker and voice command device from Amazon. The device responds to the name 'Alexa,' and is capable of voice interaction, music playback, making to-do lists, streaming podcasts, laying audiobooks, and providing weather, traffic and other real-time information.

Carroll, a fan of Alexa, has been using it for one year. But with any technology, questions regarding its capability began to arise. "Around the office, people began to question, 'I wonder, are they keeping a history of what commands people give to it.' One attorney quickly said, 'Yes, they're keeping the last command that you give.' Of course, I had to say, 'Well, actually, they are keeping the last command, but they're also keeping every command you've ever given.'

"Everything is listening - even our smart TVs. As a matter of fact, Samsung got in a little bit of hot water early last year when a lawyer had some spare time and started reading the user agreement that came with his smart TV. He realized that Samsung had written into the user agreement that your TV is listening all the time, so if you need to have a private conversation, don't do it around your television."

QUIPS & QUOTES

We can just plug right in. But it's not just our cars; absolutely everything. As a matter of fact, Under Armour just came out with technology where it will record every step, every run, then track and store forever where your shoes go. Amazing, right? At CES (Consumer Electronics Show) they even came out with a sports bra that is monitoring your vitals. This bra will actually be able to ventilate itself. I don't know exactly how, but if you start getting too hot, it will ventilate itself. Now, if that's not ripe for a hacker to go, 'You are really hot.' Right? Instantly someone got cooled up and someone heated up.

Ovie Carroll

Even automobiles are becoming more connected. In nine years, by the year 2025, one-hundred percent of cars will be connected online. By 2035, seventy-five percent of cars will be driven autonomously.

While attending a recent conference Carroll was astounded at the kind of technology and information gathering power being developed for cars. "Some ▷

people were doing some phenomenal research on cars. Did you realize that your car is even recording what time the doors open, which door in your car opens, how fast you're going, the G forces when you're braking, did the tail lights light up, did the light bulb actually come on, did you use your turn signal, how loud was the stereo? It makes parenting a lot easier."

The new normal will be all "about synchronizing your life…. The idea is you can be surfing on the Internet or working on a Word document at your desk upstairs, come downstairs, get on your laptop, open up that document, it will go to the exact location on a document that you were just looking at upstairs. Jump in the car, look at your iPhone, open up that same document on your iPhone—not driving, in the garage—and it will open up that document in the exact same location. It's absolutely amazing."

QUIPS & QUOTES

I am definitely a target of hackers.

Ovie Carroll

As more and more people move in the direction of synchronizing every device, the vendors of all the websites that one frequents see more opportunities to track every online movement.

COOKIES – THE BREADCRUMBS FOR TECH COMPANIES

Newer and newer cookies are being developed. Canvas Cookie is "extremely rare right now. There's virtually no way that you can actually stop it from identifying you. What it does is it draws an invisible canvas across your screen, and hackers can access your information or your signature, your digital fingerprint on their server."

The kind of information computers are now tracking includes all of the applications one runs, the location a person is at, what files are being accessed and the storage media being used – all forms of communications.

"One of the challenges that we're having, and that you'll have in your trials or your cases, is there is no longer a full forensic analysis. There is just too much information for anybody to do a full analysis.

"This concerns me because in the digital evidence world, our lab has to go on a deeper dive. What we've been experiencing more and more recently is prosecutors calling us, prior to going to trial, saying, 'Hey, I want you to guys to take a deep dive and make sure that everything looks right on this computer. I want to make sure that I've got the right guy.' We have, on occasion, actually identified that there was information on the computer that shows this wasn't the guy.

COOKIE

A cookie is a small piece of data sent from a website and stored in the user's web browser while the user is browsing. Each time the user loads the website, the browser sends the cookie back to the server with information about the user's previous activity.

EXABYTE

A large unit of computer data storage, two to the sixtieth power bytes. The prefix exa means one billion billion, or one quintillion

TWO-FACTOR AUTHENTICATION

Two-factor authentication is based on the premise that an unauthorized user is unlikely to be able to supply both factors required for access. If, in an authentication attempt, at least one of the components is missing or supplied incorrectly, access remains blocked.

YOTTABYTE

A multiple of the unit byte for digital information. The prefix yotta indicates multiplication by the eighth power of 1,000 or 1,024 in the International System of Units. One yottabyte is one septillion (one long scale quadrillion) bytes.

ZETTABYTE

A multiple of the unit byte for digital information. The prefix zetta indicates multiplication by the seventh power of 1,000 or 1,024 in the International System of Units. A zettabyte is one sextillion (one long scale trilliard) bytes.

"This is a problem because there's so much information on computers. What's happening is we're having less and less time to go through that volume of information. They almost don't know where to start, and they're not doing it with an investigative mindset. If you're looking at digital evidence, you should be talking to your digital investigative analyst, your forensic examiner, and saying, 'Hey, I need you to make sure that you're doing a really good job looking deep for anything that may be exculpatory to make sure we have everything."

THE THREE PHASES OF DIGITAL EVIDENCE

Digital evidence has three phases. Phase 1 is triage. "This is just a quick look. This is predominately what's happening throughout the world with digital evidence."

Phase 2 is a quick identification, maybe with some keyword searches. "I would go so far as to say almost seventy to eighty percent of cases, that's where it stops. Unless it's going to trial, of course, which is when they're trying to do that deep analysis. Because every forensic artifact that's found on your computer, you need to know can we put somebody's fingers on the keyboard at the time that that evil arrived on the computer or what-have-you. Because that's user attribution. It's also exculpatory, to make sure it was those persons."

Carroll advised time limits need to be provided "before your examiner has to come back and give you that information because what you're doing is you're cutting out that last phase, which is the most important."

The key takeaway Carroll wanted to impart to Fellows was to protect their most valuable digital asset – email.

"I dare to ask this question. How many have two-factor authentication turned on on your email? For those twelve of us in the room, we need to talk to the other hundred or couple of hundred. If you don't have two-factor authentication turned on, go to your Gmail or your Hotmail, or whatever email service provider, and look at it.

"I could give you my password right now in the room and you couldn't get into my email account because that two-factor authentication is that six-digit number that's changing every sixty seconds. If you have that turned on, your email is protected.

"My public service announcement is check to see if you're using two-factor authentication. If you're not, by all means, get it turned on.

"Digital evidence is probably one of the most exciting things that's happened in our life. We are living in a synchronized world. The future of everything that we do is going digital." ■

CANADIAN JUSTICE SUZANNE CÔTÉ DISCUSSES HER "TO BE OR NOT TO BE" DILEMMAS

Unlike other Judges of the Supreme Court of Canada who have spoken at previous College meetings, the Honourable Madame **Suzanne Côté** was not being presented with an Honorary Fellowship at the Spring Meeting in Maui. As Past President **Joan A. Lukey** of Boston, Massachusetts said, "Alas, Suzanne Côté is disqualified from Honorary Fellowship…. Suzanne is disqualified for Honorary Fellowship because she is one of only four U.S. and Canadian Supreme Court Justices who had already become Fellows of the College for their extraordinary work in the courtroom. Preceding her are only U.S. Justice Lewis F. Powell and Canadian Justices John Sopinka and Ian Binnie. Rarefied air, indeed, does Suzanne Côté breathe."

Her remarks to the College follow:

Dear Fellows, Friends, Distinguished Guests, aloha. I am very honored, impressed and humbled to be one of your speakers. I can say that never in my wildest dreams would have I imagined this.

This honor is greatly enhanced by the generous participation in this session of Joan Lukey, the grande dame of the American College of Trial Lawyers, the first woman to be president of the College. Like so many trial lawyers of my generation on the continent, I have looked up to Joan as a truly exemplary practitioner of our profession. Many thanks, Joan, for your kind and too generous introduction.

So after having heard about the five rules during the traditional Hawaiian Oli Komo welcome chant, I am wondering right now if I should not have focused on the fourth one. If you'll recall, the fourth rule yesterday was keep your mouth closed.

That rule reminds me of a story which took place in Canada a few years ago. A student on the summer program was assigned to a Canadian senator. At the very first meeting with this senator, this exchange took place: 'Sir, to prepare for my meeting, I reviewed ten years of the hearings of the Senate. It appears that you have not intervened, not even once. Is there a particular reason?' You can imagine that the senator was a bit insulted, but he decided to use the occasion to teach a lesson to the young student.

He took him to his office and pointed to a huge fish hanging on the wall. And then said, 'Son, you see that fish? Had it kept its mouth shut, it would still be in the water.'

I would love to keep my mouth shut, but it is too late for me, unless President Mike Smith would respond positively if I sing the famous Tom Jones song *Please Release Me and Let Me Go*. But I would need my guitar for that.

To be more serious, I have known about the College for a long time. I got to know it better when I began attending your spring and fall meetings as a spouse, in 1999.

QUIPS & QUOTES

I need to make a small correction to what Joan said. She said my husband, but it's more accurate to say my eternal fiancé. I state that because, for the people who know him, he is quite slow in his decision-making process. He has not proposed and he has been my fiancé for twenty-four years. After having listened to Mr. [Ovie] Carroll this morning, Mr. Carroll, if you would agree, I think we should confiscate my fiancé's iPhone and we'll get to the bottom of that thing. Now I have powers to issue confiscation orders, so be careful.

Justice Côté

I was then attending as a spouse and was asking myself, 'to be or not to be a Fellow of the American College'" I asked the question, 'What does one have to do to become a Fellow of the College?' The answer I got at the time was 'do yourself a favor, do nothing.'

Six years later, in 2005, the invitation came. I must admit that when Past President **David Scott** called me, I did not take very long before accepting. I was so proud. To become a Fellow of the College was quite significant for this trial lawyer, as I was coming from ▷

very modest origins. I did not ask myself then if I should be or not be a Fellow of the American College.

Then I asked, 'What do you have to do to be a speaker at the College?' I had always been impressed by the high caliber and quality of all the speakers. I looked into this, and I came to the conclusion that an invitation was highly unlikely. So, I abandoned the idea of being a speaker at the College. I realize today that I should have stuck with that idea. It took an appointment to the Supreme Court of Canada for me to be invited to speak. And that, too, was something I had never imagined, not even in my wildest dreams.

Life is full of amazing coincidences. Can you believe that on this exact same date, March 5, 2005, I was inducted as a Fellow of the American College at La Quinta, California. Exactly March the fifth. Here I am eleven years later, having answered the question about becoming a speaker, to be a speaker at the College.

Then I asked myself, in November 2014: 'to be a Justice of the Supreme Court of Canada, and not to be a trial lawyer anymore, or to be a trial lawyer forever and never be a Justice of the Supreme Court of Canada?'

QUIPS & QUOTES

After having attended yesterday morning's session, I must confess that I became really anguished. First, I can dance, but not at that level. Second, I can play some instruments, but I conveniently forgot my guitar at home. And, third, I can sing, but no one ever asks for an encore.

Justice Côté

RECEIVING THE CALL TO THE COURT

You might think it took me months to answer this question, but, in fact, I only had a few hours to think about it. As you can see, there are some significant differences between our respective processes about appointment to the Supreme Court of Canada.

When I received the call from our then Prime Minister The Right Honourable Stephen Harper, I quickly realized that I did not have so many options. My 'to be or not to be' moment was quite brief. Let's just say that a telephone call from Mike Smith would have been less stressful.

About the appointment, I can say just a few words. Six days before the announcement, I did not have a clue of what was going on. I never asked before to be a judge, forget the Supreme Court of Canada, to any court. As Joan said, I was a very highly paid trial lawyer. I was like a fish in water when I was in the courtroom.

Six days before, I received the phone call, not from the prime minister, but from his judicial adviser, to tell me that I was on the short list. I said, 'The short list? Sir, I am very happy to be on the short list without having participated to a beauty contest.' I thought he was calling me to give me a file.

He realized that I did not get it about what the short list was for. He said, 'Madam Côté, this is the short list for the Supreme Court of Canada.' I said, 'What? The Supreme Court of Canada? Sir, I would like to know who put my name on that list.' He said, 'You will understand that I cannot disclose that. But you're five on the list.' And the gentleman added, 'And I must say that you are in a very good position.' I was flabbergasted. He asked me, 'Are you interested?' To which I answered, 'Sir, I would like to think about it.' He said, 'Of course. Can you call me tomorrow?'

The only person with whom I was allowed to discuss was my fiancé. When I told him about the phone call, he was ecstatic. He said, 'What did you say?' I said, 'Sir, I want to think about it.' He said, 'Are you out of your mind? A trial lawyer who gets a call and who is told that she is on the short list to go to the Supreme Court of Canada?' I said, 'Maybe he has a point.'

I continued my trial without taking care of this. And then, six days later, the same gentleman called me. He said, 'How are you?' I said, 'I am doing very well.' Maybe they had checked my phone, I don't know, because he said, 'The only thing I don't know about you is your schedule for tomorrow.' I said, 'Oh.' Then he said, 'Yes, because the Prime Minister would like to know if you're going to take his call.' I said, 'I presume that if Prime Minister wants to call me, it is not to tell me that I am not on the short list anymore.'

In Canada, the process is not complicated. I have to tell you it was a dive in the unknown. But I said to myself that we trial lawyers are trained to take calculated risk. The bigger the risk, the bigger potential reward. Make no mistake; it was a risk worth taking.

I must admit, though, that I had to have closure regarding the fact that I would not be a trial lawyer

anymore. Trial lawyers are creatures of a fiercely competitive adversarial environment. One cannot win unless somebody else loses. To succeed, trial lawyers must expend considerable energy and display great persistence and ingenuity.

I confess that I felt a very real regret at the thought of ceasing to be a trial lawyer as the profession is one that I have cherished during my thirty-four years of practice, but I now have to serve another purpose. Continuing to be a Fellow of the College permits me to stay connected with the daily reality of the fellow citizens of our respective countries.

The Supreme Court of Canada was created in 1875. It now comprises nine judges, three of whom come from the province of Quebec, three from the province of Ontario, and the other three from the Western and Atlantic provinces. My eight colleagues have all been appeals court judges before and some of them have also been trial judges. None of them were appointed to the Supreme Court straight from the bar.

As the only former trial lawyer currently sitting as a Supreme Court Justice in Canada, I really believe that the mechanism of convention should be contemplated to ensure that there would always be at least one of us on the bench.

Perhaps the most obvious benefit of appointing a lawyer is that they bring to the Court a practical viewpoint. As former Justice Binnie said, 'What the practitioner brings is immediate awareness of the problems of the legal system from the perspective of those who are caught up in it, an understanding of what the profession sees as frailties in the law as it is presently interpreted.' In his view, which I share, practitioners better understand why particular actions are initiated and why lawyers are saying the sort of things they say.

DISSENTS CONFIRM OTHER SIDE OF STORY

After I began hearing cases, which was in January 2015, it did not take me very long to have another to be or not to be moment, which I will summarize as follows: To be or not to be dissenting.

First, before giving you my answer, let me tell you something. Before joining the Court, I had read or attended the speeches given by most of my new colleagues when they were inducted as Honorary Fellows of the College. Those of you who were there or who read their speeches will certainly remember what they said. They said things such as that their dream, when they were lawyers, was to become Fellows of the College, but that had never happened. That they were so impressed by the caliber of the College's Fellows, that we were the finest legal minds that they had ever met, the best of the trial bar from the U.S. and Canada, masters in the art of advocacy and so on. Their admiration for Fellows of the College, including me, of course, was boundless.

When I sat on my first case, I thought that it would be very easy. I thought that they would unanimously share my views since I had been a Fellow of the College for almost ten years. Guess what? Believe it or not, they seemed to have forgotten the great things they had all said, or perhaps they had not really meant what they had said. The full-fledged Fellow I was could not convince even one of these Honorary Fellows to join my side.

So the end result was that I had to write my first dissenting reasons. Let me reassure you, do not be disappointed, your full-fledged Fellow colleague was the one who was right. History will tell us more about that.

Because of that, I decided that the question should be answered as follows: To be a dissenting judge, when necessary. Dissents confirm that there is more than one side to a story. We had a graphic demonstration yesterday that even a single hand has two sides.

At first, when I dissented, I felt like a trial lawyer who had lost her case. But after a few of them, I realized that it was not that at all.

News of the untimely death of Justice Scalia led me to this train of thought. I have just barely been appointed to the bench, I have only a few months behind me as a judge, and I already have a few dissents on record. Should I worry? Am I on a slippery slope toward becoming an ever-dissenting judge? Dissent for dissent's sake.

While it is true that, for litigants, the important thing is that a judgment, unanimous or not, puts an end to the litigation, a well-reasoned dissent may add considerably to the corpus of this ever-evolving essential component of our society that is the law. Although, to be honest, majority or unanimous judgments help to do the job, too.

As Kathleen Sullivan once wrote, 'Great Supreme Court dissents lie like buried ammunition for future generations to unearth when the time comes.'

Justice Scalia said this about dissents: 'Dissents augment rather than diminish the prestige of the Court. When history demonstrates that one of the Court's decisions has been a truly horrendous mistake, it is comforting and conducive of respect for the Court to look back and realize that at least some of the Justices saw the danger clearly and gave voice, often eloquent voice, to their concerns.' Since the adoption of the Canadian Charter of Rights and Freedoms in 1982, the Supreme Court of Canada has, like never before, had a profound and far-reaching impact on individual and collective rights in our country.

I admit I was called to the Quebec bar in 1981. I was trying to look younger. I am, therefore, professionally, a child of the Charter generation. I can still see the scope of judicial review being expended before my eyes. Police powers, woman's and reproductive rights, recognition of gay relationships, assisted dying and linguistic and aboriginal rights are some of the fundamental issues that have been brought to the Court's attention in the recent years.

Though governments have been successful more often than not in Charter challenges, complex laws have been overturned. There are those who express the view that we have witnessed, in Canadian democracy, a clear devolution of power and responsibility from the Executive and Parliament to the Judiciary. This inevitably has led some to bemoan what they call judicial activism. It might even inspire more dissents within the Court itself.

This debate I believe will remain a part of our country's legal landscape for a long time, as it has in the United States since its very beginnings. I also believe it is a healthy necessary debate that can only continue to inform the decisions of our courts and of parliament.

I cannot end this thought without going back to the topic of dissent by drawing to your attention a quotation from Justice William Douglas who said, tongue in cheek, I hope, that 'The right to dissent is the only thing that makes life tolerable for a judge on an appellate court.'

But, my dear Fellows, I have no choice but to dissent once again from this statement, itself coming from a dissenter. Life as a Justice of the Supreme Court of the Canada is more than tolerable. It is immensely pleasurable, challenging, stimulating and rewarding. It is a great privilege, although an immense responsibility, to play such a role in our country's life and destiny.

Yesterday afternoon, I was reflecting on Linda Hirshman's book and on what she said about Sandra Day O'Connor and Ruth Bader Ginsburg and how they contributed to change the world. If, at the end of my judicial career, someone could say that I somehow, at my level, also contributed to change the world, I would have succeeded. But let's be humble here, it is more than appropriate to remind ourselves that there are no giants, but only dwarves on the shoulders of their predecessors.

One of yesterday's topics was entitled, 'To Be the Light.' Yet another 'to be or not to be moment' where one has to choose. I will try to be your light.

There was also a discussion yesterday about the relevance of the courts. My answer to this question is, yes, courts will remain relevant provided you trial lawyers keep on knocking at our doors. Don't be shy to file certiorari applications or leave applications in Canada.

It is a great pleasure and honor to be, at once, a Justice of the Supreme Court of Canada and one of you.

Thank you very much. ■

LATEST ACTIONS BY THE BOARD OF REGENTS

At the Spring Meeting in Maui, the Board of Regents undertook several important actions. President Mike Smith provided an oral report and update on the progress made on recommendations from the Strategic Planning Retreat held last August. These included:

- The revised and expanded Mission Statement of the College
- the College's Diversity Statement that can now be found on page 468 of your Roster
- The amended Principals for Uniform Application of the Qualification Requirements, also found on page 468 of the Roster
- The Guidelines for Public Statements by the College and its Fellows, which includes the Guidelines for Amicus Briefs.

The Board also approved the following:

- A standardized tombstone to be published by State and Province Committees upon the induction of new Fellows
- Amendment of the College's Statement on Logo Usage, found on page 473 of the Roster
- Continued implementation of the communications plan to enhance and improve our internal and external communications.

The Regents' actions included: presentation of 99 candidates, of which 82 were approved for Fellowship; election of Trustees for the Foundation of the American College of Trial Lawyers whose terms will begin July 1, 2016; adoption of a 2017 fiscal year budget and approval of the recipients for the 2016 Emil Gumpert Award and Samuel E. Gates Litigation Award.

FELLOWS TO THE BENCH

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

Peter K. Doody
Ottawa, Ontario
Effective February 24, 2016
Judge
Ontario Court of Justice

James Mangione
San Diego, California
Effective November 2015
Judge
Superior Court of San Diego County

Robert A. Richardson
Hartford, Connecticut
Effective January 2016
Magistrate Judge
U.S. District Court, District of Connecticut

Harry C. Storm
Rockville, Maryland
Effective January 8, 2016
Associate Judge
Montgomery County Circuit Court

The College extends congratulations to these Judicial Fellows.

MODERN-DAY ADVENTURER SHARES TALES OF SEARCHING FOR LOST CITY IN HONDURAS

Emmy-award-winning filmmaker **Steve Elkins** has been exploring the deep and dark rainforests of Honduras for the last twenty years. Elkins has been on a quest in an area known as the Mosquitia Jungle to find a legendary lost city sometimes called the Lost City of the Monkey God or the Legend of Ciudad Blanca, which means White City, because according to lore the buildings in the city were made out of white stone.

"Over the centuries, many explorers have gone into this region in search of lost civilizations and many have returned empty-handed and disappointed," said Former Regent **Douglas R. Young** of San Francisco in his introduction of Elkins. "A great many others ventured into the rainforest and all of its mysteries, disappeared and were never heard from again. Steve Elkins is doing this in a different way. He has taken his thirty-year career as a cinematographer, editor and producer, his degree in earth science and work in environmental education, and, also, his work as a field researcher in paleoclimate studies, and has applied them to the search in ways that no one else ever has or has ever thought to do. His story unfolds in the largest rainforest that remains in Central America. It involves, in part, a race for time because, in that part of the world, the rainforests are being clear-cut for a variety of reasons. His story offers insights into revolutionary developments in archaeology such as the use of light detection and ranging technology in new and exciting ways that could be applied not only to this kind of exploration, but to other kinds of scientific and exciting work in other fields."

The work of Elkins and his exploration partners have been featured in *National Geographic*, *The New Yorker* and the award-winning TV series *National Geographic Explorer*.

Elkins began his presentation with a video clip which depicted vivid images of his experience. One problem the group had to overcome was how to get into the jungle area. "We could only go in by helicopter. At first, the Hondurans offered me the services of their military helicopters. I went to meet with their Defense Minister and their various government officials. They said, 'Great. You can use our helicopters, but you have to pay for them to get fixed so they are flyable.' That made me think quite a bit. In the end, we wound up bringing in our own helicopter from a friend who owns helicopters in San Diego…. The pilot flew the helicopter all the way from San Diego to the jungle along with a mechanic and our spare parts. So we knew we had at least one helicopter that we could depend on. In the end, the Honduran helicopters worked most of the time. I tried to put other people that weren't on my staff on those helicopters. As I am sure, you're trial lawyers, you can understand the liability in this project was in another universe."

PORTAL DEL INFERNO: "GATES OF HELL"

The area Elkins and his team searched has terrain considered "one of the thickest, most treacherous jungles in the world. It's a 50-meter canopy, that's 150 feet-tall, and it's multilevel. In the jungle, you can't see more than twenty or thirty feet at most, so you have no idea where you're going. A lot of these people that went in looking to try and find it over the years didn't come back. It's a very dangerous place."

Known in the mid-nineteenth century as Portal del Inferno, meaning "gates of hell," when viewed from an airplane the jungle looks like the "crown of a piece of broccoli…. It's solid green, and that's 150 feet of multilevel canopy, no breaks."

While on the ground, the team required the expertise of a former master jungle warfare instructor from the British SAS to lead the expedition, hacking away at the vegetation and to make sure they made it back safely. It's so slow going that "most jungle expeditions in this type of an area, if you can do a mile a day, you're doing really well. Another way to get around in the jungle is you have to cross these mud holes, almost like quick mud. An easier option, though it doesn't always get you where you want to go, is walking in a river. We might walk ten feet and, all of a sudden, it becomes twenty feet deep and then we all fall in the water and then we've got to swim out. It's very, very tough.

"The last option is using a dug-out canoe, which is great as long as the water is deep enough for the canoe. What happens is you're pushing it, then, all of a sudden, you run into a shallow and you have this one-ton canoe that you have to somehow move."

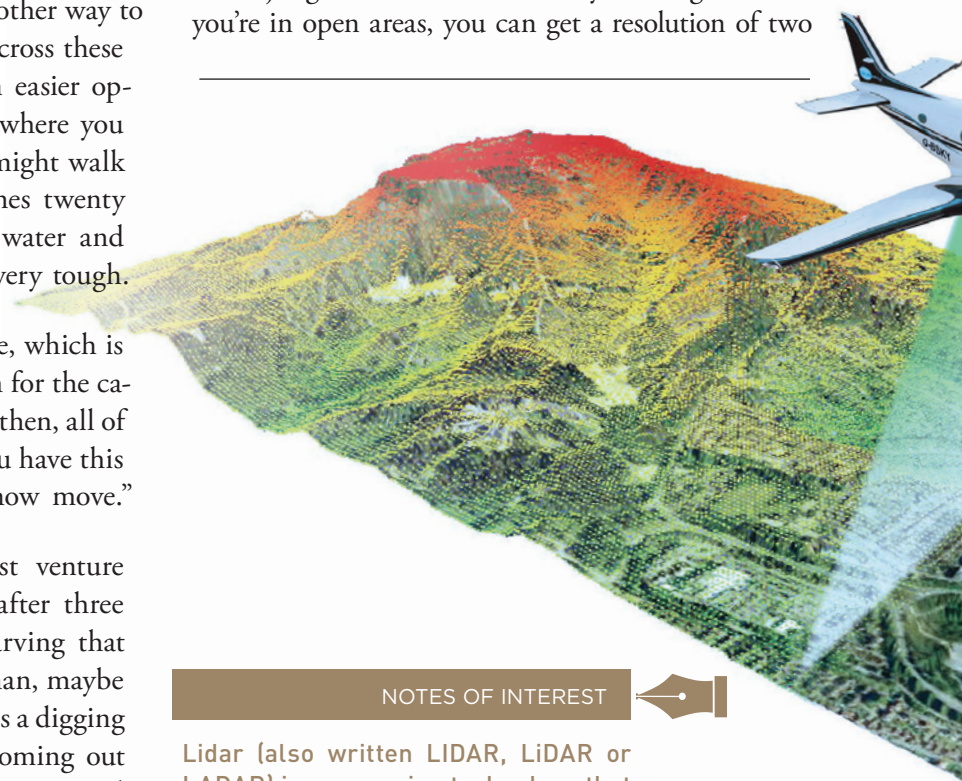
Recalling an epiphany during his first venture searching for the Lost City in 1994, after three weeks in the jungle his team saw a carving that seemed to resemble some kind of a shaman, maybe of Mayan origin. "He's got what maybe is a digging stick and a gourd, with maybe seeds coming out the back. It's all just guesswork. But I saw it and said, 'Why is there a carving of this type, which seems to be promoting agriculture, in the middle of a rainforest far from where there are any people? There's just no way they're doing agriculture here."

However, his paleoclimate research reminded him that the world is always changing. Climate is very dynamic. "Perhaps 1,000 or 2,000 years ago, this rainforest wasn't exactly the rainforest as it is today. That made me think there might be something to this legend. There really might be a place out here that no one has been able to get to because it's too difficult to explore. The environment was different and it could have supported a large civilization."

Technology in the form of Lidar (light detection and ranging) changed the way he could explore and navigate the Honduran jungles. Lidar is a surveying technology that measures distance by illuminating a target with a laser light.

"The cool thing about Lidar is that it maps the surface of the Earth in 3D. Each point, each pixel, each dot in an image has an X, Y and Z coordinate and allows you to see everything and manipulate the image so you can actually walk through or fly through it.

"It's the only technology, far better than radar or sonar or anything else, that allows you to erase the vegetation in the jungle and see what's actually on the ground. If you're in open areas, you can get a resolution of two



NOTES OF INTEREST

Lidar (also written LIDAR, LiDAR or LADAR) is a surveying technology that measures distance by illuminating a target with a laser light. Lidar exists as an acronym of Light Detection And Ranging, and was originally created as a portmanteau of "light" and "radar."

centimeters, which is less than an inch. In areas like where we went, we got about eighteen inches….When I heard about this technology, I thought this is the only way you can effectively search the jungle area. The old way of walking through the jungle aimlessly is for the birds. I never wanted to do that again."

A phone call from his friend, after that friend had a meeting with the newly elected President of Honduras, asking him if he had any interest to look for Ciudad Blanca again led Elkins to convince a partner to finance the project. In 2012 he returned to Honduras. "We had this rickety old airplane with this million dollar Lidar unit in it and we scanned the jungle."

NO LONGER FULTON'S FOLLY

After three days of the pilot and engineer flying grid patters over the jungle for eight hours a day and then coming back to process the data, they finally found something. "I felt vindicated, after all these years, after my wife telling me she never wanted to hear the word Honduras or Lost City again, and after everyone telling me this was Fulton's Folly, you're crazy, it's never going to happen, boom, we found something."

QUIPS & QUOTES

No matter what you do, even if it's something really great, you're always going to have naysayers. I have my share of naysayers, too. If they heard that Raiders of the Lost Ark music, they would be wagging their fingers and saying, 'No, no, no, no, no. You're not supposed to be Indiana Jones, it's not politically correct.' But, you know what? It's what sells the adventure of archaeology, so I don't care.

Steve Elkins

Lidar was able to show the different vegetation and elevations of the area and after pushing a button, the vegetation disappeared and "it's like looking at the moon." Squares, rectangles and other geometric shapes appeared that resembled the outlines of buildings.

A Z-shaped building, a big rectangle about the size of a football field and longitudinal mounds indicated these shapes were foundations for bigger structures. "We knew, according to the archaeologists, that we found a city. This area turned out to be two and-a-half miles long by about a half mile wide."

The next questions were to confirm if this place was truly Ciudad Blanca and what would be the best way to get there. It took three years to raise the money and to work through the politics and logistics, and the initial plan was to rappel out of the helicopter to go through the canopy of trees. However, thanks to the Lidar data, Elkins determined there was a natural clearing in the river that appeared to be in the center of the target area.

Elkins asked his helicopter pilot and representatives from the Honduran Air Force if a helicopter could be landed in the clearing. "The Honduran military had big clunky old Hueys, said, 'No way, we have to park these things twenty miles away and hike in.' I said, 'Well, no way, that's not going to work. We might as well just give up.' Miles, our pilot, said, 'I can put my helicopter in there, no problem.' And that's what we did."

The camp site was "rather muddy. It rained all the time." His home for a couple weeks provided enough shelter to sleep but not enough to protect from the elements. "The only problem is it was moldy and wet. We all basically had two sets of clothes. We had a dirty set of wet clothes and a clean set of wet

clothes. The only difference was, at the end of the day, you would take your dirty set of clothes, put them outside and let the rain all night clean them."

Snakes were another threat. The area was home to the Fer-de-lance, the deadliest snake in the Americas. "On the first night out, one of the guys was about to step out of his hammock and put his foot down on a six-and-a-half foot Fer-de-lance, coiled-up and ready to strike. He screamed, and the British Special Air Service (SAS) guy came by and got him with his knife. The snake spread venom all over the place, and the venom, which is a digestive enzyme, started to dissolve his arm. It was a big mess. But everybody survived. "

QUIPS & QUOTES

Whether you're interested in changing climate, whether you're interested in too many poor people, or whether you're interested in drug resistant bacteria, which is a much greater threat to our species than climate change, deforestation, terrorism or nuclear weapons, you have an interest in the greatest expression of life on Earth, the rainforest, which is home to most of the world's terrestrial biodiversity. If you look at the record, eighty percent of our antibiotics come from nature, and as a student of history, I know that history often predicts the future.

Mark Plotkin, Harvard ethnobotanist, in a video Elkins played during this presentation that answers why people should care about the rainforest and patrimony areas in the world

More insidious than the wetness, the mold or the snakes were protozoa and parasites. "We all got a million bug bites. Someone knee's had what looked to be a mosquito bite. But six weeks later it turned out to be called leishmaniosis, the scourge of the tropical world. Actually, it's spreading even to the United States now. It's endemic in Texas and Oklahoma due to global warming. It's a nasty, nasty parasite. There is no real true cure and there is no vaccine. Half of our group, twenty-three people, got it. All are being treated by the NIH [National Institutes of Health] in Bethesda because of it. It was a good way to see our tax dollars being spent."

With the use of Lidar data mounted in the GPS unit and Lidar unit on the ground, the archaeologists were able to navigate their way throughout the city. "It was just like with your iPhones, it would tell you to go 100 meters this way, here's this building. Make a left, fifty meters that way is another building. It's the greatest way to navigate. This is the way we upended archaeology by doing this. This is the way it's done."

They initially found 52 beautifully carved stone objects. One find was a decorative bowl made out of pure basalt, a substance similar to granite, hand-carved at a time when power tools were nowhere near invented.

UNCOVERING, PROTECTING NATURAL PATRIMONY

The finds created such excitement throughout the country that even the president came out to survey the site. Today the area is a major archaeological site where a joint Honduran-American team continues to excavate. The count is now up to 241 stone sculptures that have been found.

"Now, going back to the question of whether we found the Lost City of the Monkey God. One of the first objects we saw seemed to resemble a monkey until I noticed the ears were on top of its head, not on the side. I said, 'Okay, it's a jaguar.' Now we're calling it the City of the Jaguar.

"The most important things we found were these glyphs or hieroglyphics, whatever you want to call them, emojis, on some of the sculptures. I mean, think about it, an emoji, a hieroglyphic, a glyph, it's just a pictograph. Each one of these symbols represents a thought or an idea. It's the same thing. The archaeologists can't figure this out yet. We found more of these. I think it's going to tell a heck of a story, hopefully, while I am still around."

The Honduran people see the area as a keystone in their way to try and promote their image in the world. "They're very proud of their cultural patrimony. They're very proud of their natural patrimony. Honduras has much to offer even though it's still a screwed-up country, but the new administration is trying very hard. They've taken our project and created a logo. Instead of calling it Ciudad Blanca, now they call it Kaha Kamasa, which is the indigenous expression meaning Ciudad Blanca."

One of 50 artifacts found at the Kaha Kamasa (Ciudad Blance) site

The president has also ordered the military to clear the rainforest of all squatters and narco traffickers. They have even created a brigade complete with uniform that includes a hat reading 'Protección del Ecosistema,' protectors of the ecosystem. "This is unheard of in Latin America. This is a big deal."

"One of the things we noticed is the rainforest is rapidly being depleted from narco traffickers paying poor *campesinos* to go in there, clear out the mahogany logs, sell them, then put in cattle and sell the cattle to the fast food industry. We thought the only way to stop that, and to get the political will, was to promote it in the media, which we did through *National Geographic* and other media outlets.

"They have trees that are incredible. Like our redwoods, they're centuries old. When we were flying on our way to the Lost City area, we would see sites like this being deforested. This is growing like a cancer. If we don't do something in ten or 15 years, this jungle is gone."

Elkins ended his presentation with a video clip from Mark Plotkin, a Harvard ethnobotanist and co-founder of the Amazon Conservation Team who explained why the rainforest and other similar areas in the world matter.

"Whether you're interested in changing climate, whether you're interested in too many poor people, or whether you're interested in drug resistant bacteria, which is a much greater threat to our species than climate change, deforestation, terrorism or nuclear weapons, you have an interest in the greatest expression of life on Earth, the rainforest, which is home to most of the world's terrestrial biodiversity. If you look at the record, eighty percent of our antibiotics come from nature and as a student of history I know that history often predicts the future." ■

AUTHOR LINDA HIRSHMAN SHARES THE TALE OF THE FIRST TWO WOMEN ON THE U.S. SUPREME COURT

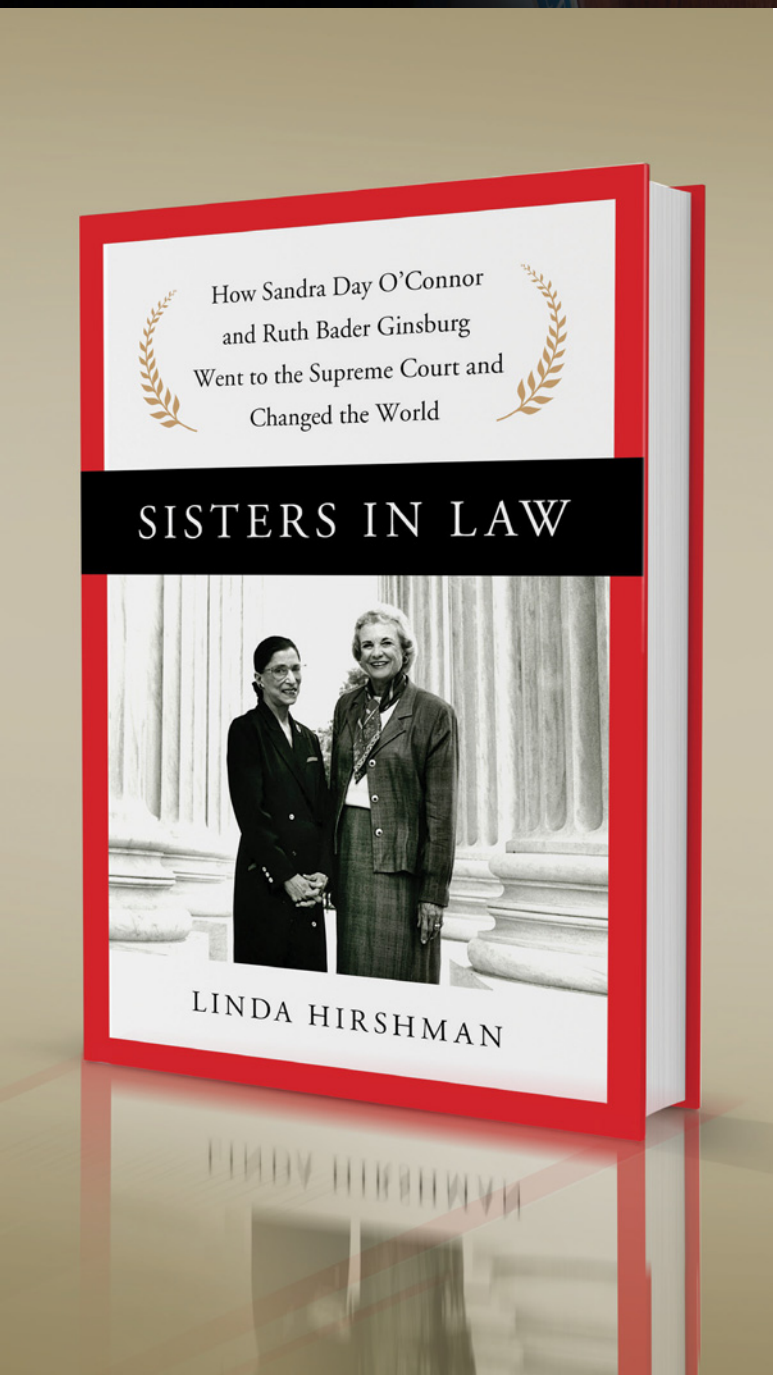
Linda Hirshman is a lawyer, a writer, a historian, philosopher and an advocate for rights. She has chronicled the growth of women's rights in the U.S. She has been involved in the fight for organized labor and has been an advocate for rights across the spectrum. Following her graduation from the University of Chicago Law School, she practiced law, representing mostly organized labor. She was involved in three cases at the Supreme Court of the United States where she was the advocate for organized labor.

She was involved in the 1985 landmark case *Garcia v. San Antonio Metropolitan Transit Authority*, the first case that applied the Fair Labor Standards Act to the states. She then moved on to academia, teaching law, philosophy and women's studies at Brandeis University until 2002.

She has written on human rights and has chronicled successful efforts to establish marriage equality as a matter of constitutional rights. Her recent book *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World*, tells the story of Ginsburg and O'Connor, how they came to the Court, what they had to go through as young women lawyers to get to a position that they would be considered for the Court and how much they have contributed to the presence and the increasing role of women in the law. The book "is wonderfully written," said Past President **Michael E. Mone** of Boston, Massachusetts in his introduction of Hirshman on the first day of General Session at the Spring Meeting in Maui. "Not only does it have great wit, it explains law in a way that does not dumb it down, and it catches Linda Hirshman's wonderful sense of optimism."

An op-ed piece Hirshman wrote for *The Washington Post* in December 2015 "was very prophetic because it talked about the fact that the Supreme Court could face a deadlock in putting new people on the court, and this was before Justice Scalia's death, notwithstanding who was making that appointment. The result of that may well be that the appellate courts, cases and decisions will become law in tie votes. This was before Scalia's death that she made that prophecy," Mone said.

Her long commitment to rights, particularly to the rights of women in the U.S., is without question. "I can only think that we are at the edge of the ultimate glass ceiling being challenged by the election in the fall," Mone said. "Linda has been part of the thought and the process by which we have approached that glass ceiling."



Hirshman discussed the novel with Fellows. "We first meet them in the book in 1996, when they are at the pinnacle of their power….the book begins with a passage that so captures the whole message of the undertaking. If you just give me a minute, I will share with you a paragraph or two of my deathless prose.

> 'By the time the nation celebrates the birth of its democracy each Fourth of July, the nine Justices of the Supreme Court have mostly left town. But before departing the Capitol for their summer recess, they must first decide all the cases they have heard since the current term began the previous October. The hardest, most controversial cases where the unelected Court orders the society to change in a big way are often, left to the end.
>
> 'And every day, as the days for decision tick away in late June, the tension in the courtroom is as hot and heavy as the Washington summer air.
>
> 'On the morning of June 26, 1996, Justice Ruth Bader Ginsburg, the second woman appointed to the high court since its founding, slipped through the red velvet curtain behind the bench and took her seat at the end. Five places along the majestic curve sat Justice Sandra Day O'Connor, the first woman on the Supreme Court, or the FWOTSC, as she slyly called herself. When she found out that the court called itself the SCOTUS, she decided she would start calling herself the FWOTSC. Each woman Justice sported an ornamental white collar on her somber black robe, but, otherwise, there was no obvious link between the first and second woman on the Supreme Court and any other Judge sitting up there that day. On that day, however, the public got a rare glimpse at the ties that bound the two most powerful women in the land.

'Speaking from the depths of the high-back chair that towered over her tiny frame, Justice Ginsburg delivered the decision of the Court in *United States v. Virginia*. And despite its title, this is not a reenactment of the Civil War. It was the day that the Supreme Court ordered the Virginia Military Institute, which had trained young men since before the Civil War, to take females into its ranks. The Constitution of the United States, with its equal protection clause, for all persons, including women, demanded it. Few people listening that morning knew that Ginsburg got to speak for the Court and powerfully write the opinion in that very important case because the first woman, Sandra Day O'Connor, had decided that she should.

After the argument in *U.S. v. Virginia*, the Justices met in conference to decide how they're going to vote. And as they traditionally do, the Chief Justice, if he is in the majority, or the senior Justice who is in the majority, gets to assign the opinion. And he not unreasonably assigned it to the first woman on the Supreme Court, Sandra Day O'Connor. But she would not take it. She knew who had labored as a Supreme Court lawyer at the American Civil Liberties Union from 1970 to 1980 to get the Court to call women equal. 'This should be Ruth's,' she said. And so it was."

Many people have asked Hirshman what inspired her to write the book. "How could you not write it?" she said. "When I found out that there was no serious substantive biography of Ruth Bader Ginsburg, she was not even an Internet meme when I started writing *Sisters in Law*, I was ecstatic. There was an academic who had been working on the authorized biography since the invention of movable type in 1485, but I figured that I could probably get to press before she did.

"Why do we care about Justice Ginsburg so much? Not because she was a Supreme Court Justice, or we would all be sitting here reading books about Potter Stewart, but, rather, because she changed the world. If you think about Supreme Court Justices who changed the world, for women, setting aside, of course, Thurgood Marshall, you have to include Sandra Day O'Connor. You can't write that story without Sandra Day O'Connor."

As Hirshman worked on the book, she discovered that a number of important cases for women's rights came to the Supreme Court when Sandra Day O'Connor sat there alone from 1981 to 1993. "Some of the most important law on sex discrimination in the workplace and sexual harassment was made by the Court where Sandra Day O'Connor was the only woman, before Ruth Bader Ginsburg went up. The icing on the cake is that they came into an unequal, discriminatory, hostile world. They used their assets to change the world. They didn't just accept it… They used their capacities to change the world. Then they used their place in the changed world to make more change."

CONTRASTING THE TWO LEGAL LEGENDS

The story of the two Justices is a study of seeming opposites: "Republican, Democrat. Isolated cattle ranch in southeast Arizona, Flatbush, Brooklyn. Goldwater girl, anti-Joseph McCarthy liberal. And most important, blonde and brunette. I myself am neutral on that subject….But Sandra Day O'Connor was born, famously in 1930, on a ranch in southeast Arizona. There was, honest to God, for some years, no electricity and no running water. When she was sixteen, she left the ranch and went to Stanford. Dusty ranch in southeast Arizona to Stanford. She wasn't stupid. And a charismatic mentor inspired her to become a lawyer."

O'Connor returned to Phoenix with her husband, John O'Connor, hung out a shingle and started practicing law. "Her breaking point came when a great friend of the O'Connors decided that he would invite Warren Burger, the Chief Justice of the United States, to go on a houseboat trip on Lake Powell after the Chief had come to Flagstaff for a judicial conference….The dams up in the northern part of Arizona dam up the rivers and they make these beautiful lakes. People rent houseboats and they float around, swim and drink, as near as I can tell.

"They invited the Chief to come on the houseboat with them. Then they realized that they were not lawyers and had absolutely nothing to say to the Chief Justice of the United States. So they invited the O'Connors to come along. Every night after dinner, Warren Burger and Sandra Day O'Connor would disappear from the table. When the other people went looking for them, they found them in a remote corner of the houseboat, talking away like old friends."

O'Connor had the "most acute radar for other people's psychological and emotional states" and quickly became a great protégé of the Chief Justice of the United States. "When Ronald Reagan said he would appoint a woman to the next vacancy on the Court, Warren Burger went to bat for Sandra Day O'Connor."

Ruth Bader Ginsburg was born in 1933 to a modest family in Brooklyn. Her mother died the day before she graduated from high school. "She found that her

mother, from very slender means, had saved money so that she could go to Cornell, which she did. When she was at Cornell, she met a charismatic mentor who inspired her to go to law school.

Her breaking point came when the women in the Rutgers Law School class where she was teaching civil procedure, found out that the lefty women at NYU had a course in women and the law in 1970. They went to Ginsburg and asked her if she would teach it.

"A year later, she was appointed the head of the ACLU Women's Rights Project. For ten years, she applied, for the first time in American history, the Equal Protection Clause to women. She had, what I call, Ruth's five great cases, like Mozart's five great operas and Jane Austen's five great novels."

QUIPS & QUOTES

She had, what I call, Ruth's five great cases, like Mozart's five great operas and Jane Austen's five great novels. The Jane-ites among you can just leave me alone after this talk because I think there were only five great novels. We're not going to spend the rest of the week talking about Northanger Abbey, thank you very much.

Linda Hirshman

HOW THEY CHANGED THE WORLD

Hundreds of thousands of women went to college in the forties and fifties and hundreds, if not thousands, went to law school. But, they did not go to the Supreme Court and change the world like Ginsburg and O'Connor.

"They never internalized their own inferiority. No matter how hard men like the Dean of Harvard Law School, Erwin Griswold, tried to teach Ruth Bader Ginsburg that she was inferior, she would not take it in. They never thought the clock would chime and their coach would turn into a pumpkin.

"They always believed they were entitled to rule—they treated their male colleagues as if they, the women, were their equals. There is a great story about a Ginsburg speech in which she's talking about Philip Kurland from the University of Chicago Law School, who was a big opponent of the Equal Rights Amendment. She said she just could not imagine how gentlemen of such extraordinary minds could fail to make the relevant connections. It was Ruth Bader Ginsburg, the academic, judging her fellow academics exactly as if she was one of them, which she was."

When pressed to admit they were inferior, they took offense. "Gibson Dunn and Crutcher offered Sandra Day O'Connor a job as legal secretary when she got out of Stanford. She turned it down. Many years later, Gibson Dunn made the mistake of inviting Justice O'Connor to speak at the party celebrating the 100th anniversary of the founding of the firm. She shared with them what they had done to her and what she thought of them for doing it. Then she told David Letterman it was the most fun speech she had ever made in her entire life."

Once either woman took offense, they held a grudge. If they could not get even at the time, they took their vengeance cold. Hirshamn said: "When they could not get even, they took the advice that Ruth Bader Ginsburg got from her mother-in-law on her wedding night to Marty Ginsburg, who is now in heaven.... So Marty Ginsburg's mother gave her daughter-in-law-to-be a pair of earplugs for her wedding gift. And she said to her, 'My dear, sometimes it pays to be a little deaf.'

"Unique as they were and extraordinary as the self-discipline that they displayed was, the most salient fact that I can share with you about them is they did not think they were the only ones who deserved to rise. As I got to know them, I realized that they were entitled to think that they were the only ones who deserve to rise. They were so unbelievably brilliant. Sandra Day O'Connor could understand a human situation in an instant.

"Ruth Bader Ginsburg is like Mr. Spock. She just sees the future so clearly. Every single thing she does is calculated to achieve the end she wants way down the road. They were beautiful. They were funny. They loved music. They really had a right to go, 'It's me, I am wonderful, all the rest of those women are just going to have to make it on their own'—but they never did that. They never pulled the ladder up after them. Ruth Bader Ginsburg used her brilliance to make the lives of women less powerful than she better. I was one of them and I am grateful to both of them.

"When Reagan's White House called O'Connor to say she was going to be nominated for the Supreme Court of the United States, she said she was a little worried. She said, 'It's okay to be the first, but I do not want to be the last.' And so she wasn't." ■

IMPORTANT PRACTICE TIPS FROM JUDGE ALEX KOZINSKI: HOW TO LOSE AN APPEAL

Alex Kozinski, U.S. Court of Appeals Judge for the Ninth Circuit, had the audience rolling in the aisles at the Spring Meeting of the College in Maui. In a hilarious riff, delivered for the first few minutes with a straight face, he instructed Fellows and their guests on a topic he knows quite a bit about—how to lose an appeal.

Narrating a little-known but true nugget from twentieth century political and legal history, Judge Kozinski supplied the punch line for the 1948 story involving Abraham "Abe" Fortas, then one of the nation's foremost litigators, who was summoned by his close friend Lyndon B. Johnson to appear in federal district court in Texas to take over litigation that had effectively ruled Johnson off the ballot as the Democratic candidate for U.S. Senator. As the story developed, Johnson, by what appeared to be a variety of time-honored tactics, had overcome a 20,000-vote deficit in the Democratic run-off primary and had defeated former Texas Governor Coke R. Stevenson for the nomination by eighty-seven votes.

Some of "Johnson's boys," as Judge Kozinski called them, "got caught with their fingers in the ballot box," and a federal judge had issued an injunction temporarily keeping Johnson off the general election ballot. Given the short time remaining before the general election, the injunction was not likely to remain "temporary." (*Means of Ascent*, Robert Caro's multi-volume study of Lyndon Johnson, supports the charge that Johnson "received the votes of the dead, the halt, the missing and those who were unaware that an election was going on," but according to the Feb. 11, 1990 *New York Times* article by Martin Tolchin, "How Johnson Won Election He'd Lost," Johnson loyalists refused to accept Caro's conclusions, one saying, for example, that "there was a lot of stealing in that election" that "was caused in most instances by the local races – for a county commissioner, sheriff and county judge. It was just incidental that there were also votes stolen for Johnson and Stevenson.")

Judge Kozinski noted that the Fifth Circuit's "crotchety" judges were "not known for being real fast," so Abe came up with a "creative" solution to get past them quickly and then ask one of Fortas' other friends, Associate Justice of the U.S. Supreme Court **Hugo Black**, to stay the lower court's order in time to keep Lyndon on the ballot in November. The solution: "Old Abe wrote a stinker of a brief" and then presented it to "the most crotchety Fifth Circuit judge he could find." The plan worked. "Justice Black granted a stay [that the Fifth Circuit judge had quickly denied]; Johnson got on the ballot, became president and appointed four Supreme Court justices."

WHAT IT TAKES – TO LOSE A CASE

Noting "many of you probably have your cell phones on buzz, waiting for the White House to call to fill the Scalia spot," Judge Kozinski posed this scenario, "So when that once in a lifetime career opportunity knocks and you are required to lose an appeal, will you have what it takes? Not to worry. I will tell you how to lose an appeal no matter how good your case."

First, Judge Kozinski emphasized, "You have got to tell the judge right up front that you have a rotten case. So, if the rules give you fifty pages, ask for seventy-five, ninety, 125. The more pages, the better."

The judge explained the rationale taking the more pages approach:

"It sends an important message to the court. And that is, I don't have a case that's capable of being put in a concise fashion. I need lots of words to try and persuade you. Keep in mind that simple arguments are winning arguments and convoluted arguments are sleeping pills on paper."

But, Judge Kozinski cautioned, "don't just rely on the length of your brief to tell them that you haven't gotten much of a case. No. Try to come up with something that will annoy the judges, make it difficult for them to read the brief and mistrust whatever they do manage to read. The possibilities are endless. I am only going to give you the highlights here."

Past President **Thomas H. Tongue** of Portland, Oregon introduced Judge Kozinski by noting that commentator Jeffrey Cole "has described Judge Kozinski as brainy and zany in equal measures." As befits his reputation as a creative judge, Kozinski made a number of valuable suggestions in aid of a lawyer determined to lose his or her case:

"Bind your brief so it falls apart when the judge is about halfway through it….Try a little trick recently used in a brief submitted by a major law firm: assemble your briefs so that every other page reads upside down. [Head bobbing from side to side in various difficult positions] You can see that pretty soon the judge will get motion sickness. And let's face it, nothing beats making the judge think of motion sickness when he thinks about your argument….Best of all, cheat on the page limit."

Noting the infinite computerized methods available to accomplish a disregard for the page limit, including slightly cheating on the font size to circumvent the page limits, Judge Kozinski reassured the audience that they could do that and still accomplish their objective of throwing their case: when the judges, "highly attuned to variations in size of type," see a brief that "chisels on the font size, we say, 'Aha, we got you,' and at that point you never trust anything the lawyer says again."

He suspected that his case had been thrown out of court.

However, applying the lawyerlike belts-and-suspenders approach, Judge Kozinski gave some suggestions for losing an appeal if submitting "an enormous brief with narrow margins and tiny type, copied with defective photocopier onto dingy pages, half of which are upside- ▷

down and fall apart when the judge is trying to read it 3,500 feet in the air" doesn't do the trick:

"If you think the judges might nevertheless persevere – and judges are just terrible that way – you go to step 2. Having followed step 1, you already have a long brief, so you can conveniently bury your winning argument among nine or ten losers."

But, he asked, what happens if an "eager beaver" law clerk at the court finds a winning argument that is buried in one of the footnotes?

"Well, to guard against that risk, you should not only bury your argument, but also write it in a way as to be totally unintelligible. Use convoluted sentences; leave out the verb, the subject, or both. Avoid periods like the plague. I love sentences that span three pages, just love 'em. Be generous with the legal jargon and use plenty of Latin, and don't forget the bureaucrat-ese. In a recent brief, I ran across this little gem. And I am not making this up. 'LBE's complaint more specifically alleges that NRB failed to make an appropriate determination of RTP and TIP conformity with SIP.' Now, if there was a winning argument in there, it was DOA."

QUIPS & QUOTES

In a recent brief, I ran across this little gem. And I am not making this up. 'LBE's complaint more specifically alleges that NRB failed to make an appropriate determination of RTP and TIP conformity with SIP.' Now, if there was a winning argument in there, it was DOA.

Judge Kozinski

Noting that a good argument is hard to hold down, despite one's best efforts, Judge Kozinski suggested salting the brief with plenty of distraction to draw attention away from the main issue. "A really good way of doing it is to pick a fight with opposing counsel. Go ahead, call him a slime, accuse him of lying through his teeth." Judge Kozinski, having seen such goings on, reported that "pretty soon I find myself cheering for the lawyers and forget about the legal issues." But what if "opposing counsel is too canny to get into a fight with you? No matter. You can always create a diversion by attacking the trial judge….You might start out by suggesting that he must be on the take because he ruled against you, or senile or drunk with power, or both. Chances are, I will be seeing that same district judge at one of those judicial conferences when we meet to talk about the lawyers. I found that you can get a real chuckle out of a district judge by copying the page where he is described as a disgrace to the robe he wears or is mean-spirited, vindictive, biased and lacking judicial temperament, and sticking it under his nose right as he's sipping some hot soup.

"Now, it's a little known fact that district judges, trial judges in general, have a wonderful sense of humor and they love to laugh at themselves. And I can assure you that that judge will find some way of thanking you for the mirth you have created the next time you appear in his courtroom."

WHEN THE ODDS OF WINNING ARE STILL STACKED IN YOUR FAVOR

Finally, Judge Kozinski addressed the difficult situation where "you have such an excellent case that, despite all of this, you are still likely to win:"

In a case one will likely win if the judges read the statutory or contract language, "it's easy, don't quote the language. Don't append it to your brief. Start by discussing policy. Cite a bunch of floor statements and put testimony of witnesses in large block quotes. Block quotes are a must. They take up a lot of space and nobody reads them.

Judge Kozinski concluded, "assuming you have taken my advice and done everything just right or, rather, just wrong, your case will be lost beyond hope of being saved. Still there's a risk left that things might get turned upside down – turned around at oral argument in open court."

Now, most lawyers will say, 'Look, you don't have to tell us how to make a bad argument, you just get up and stutter, insult the judges, ignore their questions.' Well, those might be good ways of getting yourself chewed out, but it won't necessarily kill your case. No. Bad oral advocacy takes preparation and practice…it also requires some imagination.

"The first thing you must do at this stage is to know your record – like the back of your hand. I know the law, and so I don't really need the lesson of law. What I don't know, the stuff that matters are the facts, how does the law relate to the facts in your case. And that is where the lawyers can really make a difference and can contribute to the judge's understanding of the case. Fa-

miliarity with the record is possibly the most important aspect of appellate advocacy.

"Now this is all good and well if you're trying to win an appeal, but why bother knowing the record if you're trying to lose? Well, it's simple. You have to know where the gold nuggets are hidden so you can skillfully divert the judge's attention away from them. By the same token, if the judges start digging in an area that's, basically, unhelpful to you, you want to keep the attention focused right there."

Other suggestions from Judge Kozinski include: exaggerate the strengths of the case, because "it challenges the judges to get you to admit that maybe there's some weakness in your case. If you overstate your case enough, pretty soon all the judges will take the bait and ask you a question about the weakest part of your case. And, of course, that's precisely where you want the judge to be focusing on, and that is the flaws of your case. Because, remember, you're trying to lose.

"Now having directed the judge's attention to exactly where you want it, you have to press your advantage, or rather your disadvantage by seeing if you can turn the judge into an advocate for the other side." Judge Kozinski challenged the audience to come up with a method for turning "that flickering spark of interest into a firestorm that will reduce your argument to ashes." One way that "works really well," is "once the judge starts to ask a question, raise your hand in a peremptory fashion and say, 'Excuse me, Your Honor, but I have just a few more sentences to complete in my summation and I'll be happy to answer your question then.' The reason this is a good idea is this will give the judge a chance to dwell on the question in his mind and brood about it. If you're clever, you will never get back to the answer, and let the judge stew there while you keep droning on about how silly the case is and how ironclad your case is.

"Now, after a while, the judges will catch on…so they will become more insistent asking questions. When you feel you've got them good and lathered, move on to the next phase, and that is stonewalling. What you want to avoid at all costs is giving a short direct answer to the question. Instead, tease the judge, lead him into a dead end, make him rephrase the question. The point is to get the judge really, really committed to the question so the absence of a good answer will loom giant in the judge's thinking when he goes out to vote in the case."

QUIPS & QUOTES

Bad oral advocacy takes preparation and practice…it also requires some imagination.

Judge Kozinski

OTHER CREATIVE TACTICS

One of Judge Kozinski's "personal favorites" is "cutting off a judge in the middle of a question," which "gives you several very important advantages. First, it's rude. Let's face it: if you are going to lose your case, there's no substitute for insulting one of the people that's going to go make a decision. Beyond that, cutting off a judge in the middle of a question sends an important message: 'Look here, Your Honor, you think you are so smart, but I know exactly what's going on in that pointed little head of yours.' Also, cutting the judge off in mid-question gives you an opportunity to answer the wrong question. Finally, cutting in with an answer while the judge is still phrasing the question gives you an opportunity to answer without thinking, which is always a good idea if you want to come up with something dumb, right?"

Addressing the tactic of making a jury argument in order to please the clients who are sitting in the front "and looking threadbare and unhappy," he pointed out that appellate judges "don't know what your client looks like, so you could hire a couple of homeless people and pay them twenty bucks each to sit in the front row, and just tell them, whenever you say something, they should just nod sadly. We can't tell any difference."

If, Judge Kozinski concluded, "you follow all my pointers and still win the case, you should stop practicing law and buy a lottery ticket. But for most of you, it will work. So when the call comes and you are ready to follow in the footsteps of Abe Fortas, you, too, will be able to prove that you have the wrong stuff."

Richard C. Cahn
Huntington, New York

DUKE LAW SCHOOL DEAN REFLECTS ON RULE MAKING, LAW REFORM AND LEGAL DATA

Past President **Andrew M. Coats** of Oklahoma City, Oklahoma thought his introducing **David F. Levi**, Dean of Duke Law School, was the right move. "I do think it's appropriate to ask one, at least former, dean to introduce a new one because none of you all have any idea how hard it is, what a terrible job it is to be a law dean…. The problem with the job is it's very much like being a director of a cemetery. You have a lot of people under you, but nobody listens." Levi, on the other hand does not have that problem. "His faculty respects him, his students love him and his alumni support him, which is a nice trilogy and has to happen if you're going to be there for a while."

Coats described him to Fellows gathered in Maui for the Spring Meeting as "a brilliant scholar, a very capable administrator and a delightful companion"

Levi grew up in Chicago and graduated magna cum laude from Harvard College in history and literature. He then went on to receive a master's at Harvard His thesis, "Equal Treatment of Equal Protection or Preemption," and, also, "Law Reform in Mid-19th Century England," was a harbinger of his later work and law reform.

After Harvard he went to Stanford Law School and graduated top of his class, Order of the Coif and was president of the *Stanford Law Review*.

While at law school, Levi was preparing to clerk for Past President **Charles B. Renfrew**, but Renfrew left the bench. Levi did clerk for Ben C. Duniway on the Ninth Circuit, and then spent a year as a clerk to Justice **Lewis F. Powell** on the Supreme Court, also a Past President of the College. Levi then went to California and became an Assistant United States Attorney then United States Attorney. He was elevated and called to the bench and served in the Eastern District of California and became the Chief Judge of that District.

His work over the years has been geared to law reform and law procedures. He was Chairman of the United States Judicial Conference Committee on Rules and Practices, he served as Chair of the Advisory Committee on the Federal Rules of Civil Procedure, he has worked with the ABA Standing Committee on these subjects and the North Carolina Commission on the Courts. This recent President-Elect of the American Law Institute also has an Inn of Court named after him.

Levi, a longtime admirer of the College, chose to use his time addressing the audience to "reflect at a very high level on our federal and state legal systems and perhaps how we can help them do their jobs a bit better. The title of my talk is 'Civil Justice and its Discontents.' The title is a reference to Freud's brief book entitled *Civilization and its Discontents*."

The point of his comparison "is simply to suggest that an effective legal system, much like civilization itself, requires a certain amount of self-restraint and self-sacrifice if it is to succeed. From that self-restraint and from that self-sacrifice emerges a certain disquiet and discontent. But on the whole, it is what we need."

RULEMAKING IN THE FEDERAL SYSTEM

Levi's first point of discussion was rulemaking, particularly the rulemaking that occurs in the federal system. He was first appointed to the Rules Committee

QUIPS & QUOTES

Thank you for that very kind introduction. I met Andy for the first time last evening. He has a somewhat folksy way about him. He said to me, 'You know, in life and, particularly, in a new job, it's not so much who you are as who you follow.' I thought he was just being a little bit clever with me, but now I realize that he was actually warning me that I was going to be following Mark [Recktenwald] and Linda [Hirshman] and then, of course, him with his delightful wit.

Dean Levi

in the early 1990s. He served as a judge member, as a chair and "then, in a bit of irony, I think, by the Chief Justice, he reappointed me as the academic member," Levi said. His last term ended December 2015.

"This has been a wonderful experience for me because of the amazing quality of the judges, the practitioners and the academics who engage in this process, all as volunteers, all with the hope of making our system work as well as possible for the American people. It's such a joy. I am sure that many of the people in the room have had this experience of working on committees with judges, with leading practitioners in academics, all pulling together, using our different talents and experiences. Those are very memorable working groups when you can be part of them.

QUIPS & QUOTES

I have been something of a junkie in this area. I think I may have the longest modern run on one of the federal Rules Committees, the Civil Rules Committee and then the Standing Committee, of anyone in the modern era. I like to compare myself to Dean Acheson, who also had a very long run. The two of us, of course, equally distinguished. He was also called Dean.

Dean Levi

"Over the time that I was involved in the Rules Committee, we came to a distinctive approach which was new for the committee. The first step in this approach is to understand the scope and nature of whatever problem it is that the committee is looking at. This often requires data and quantitative analytics, because data is truly the mother's milk of law reform. And, yet, data about any court system is remarkably difficult to obtain and to assemble.

"The second step is to invite as much public participation, participation by the profession, as possible, even before the formal Rules Enabling Act process begins. So even before a rule is put out for formal comment, there will be law school conferences, there will be informal meetings, informal requests for comments, on reporters memorandum and the like—all to generate discussion and feedback from those who deal with these complex topics.

"Finally, there is the enabling act process itself, which is a statutory process. Once it is triggered, it is uniquely transparent, it invites public participation, there are hearings that are open, there are sunset committee meetings, there are multiple levels of review as a rule goes through the Rules Committees, then to the Judicial Conference, then to the Supreme Court, then to the Congress of the United States."

The process provides ample time for deliberation and reconsideration, however, Levi recognizes it has limitations.

If he were asked by the Chief Justice to provide suggestions to former colleagues on the rules committees, Levi would make one. "It would be to abandon the long-standing and absolutist commitment to trans-substantive rulemaking. Mind you, I'm not opposed to trans-substantive rulemaking. It's useful in many respects, but I am opposed to the idea that all rulemaking should be trans-substantive.

"Since their enactment in the 1930s, the Federal Rules of Procedure, Evidence, Civil Procedure, the Criminal Rules, have been trans-substantive in the sense of providing general rules for all kinds of claims and defenses rather than providing rules for suits of different kinds. For example, those against the government, mass torts or for employment disputes. The rules do not provide for tracking, for example, of complex cases or small claims, and then provide separate rules for these kinds of cases.

"Why the emphasis on general rules that apply without regard to substance, trans-substantive rulemaking? My understanding is that because of the terms of the Rules Enabling Act, which limit the Rules Committee to work only on rules that affect procedure and not substantive rights, there has been a tradition that the Rules Enabling Act itself required that the rules be trans-substantive, even though it doesn't say that.

"The perception here was that the danger of directly affecting substantive rights would be more likely if the rules were directed at particular kinds of cases or litigants. There was the thought that perhaps there would be politicking or politics that put pressure by the Rules Committee if they were to focus on particular kinds of cases - in the rules. There must be something to this point because this is the view that been held for over seventy-five years.

"In the meantime, individual courts and districts, both federal and state, have moved to develop rules of procedure for particular kinds of cases. These are non-trans-substantive rules. The Northern District of California, for example, developed rules for patent cases that are followed now in many parts of the country. In

the states, we have specialized courts and specialized rules for business, for drugs or for small claims. This is becoming the norm. The culture, in other words, has shifted with the needs of our time.

"Perhaps the shift on the ground reflects the nature of the caseload has changed, particularly in federal court. I will hazard the guess that the median federal case in the 1930s, when the rules were first enacted, was of a certain size and complexity and that the range of deviation around the median was not very great. Now, however, we have huge cases, on the one hand. For example, the eighteen or so mass tort multi-district litigation cases that take up over a third of the entire federal civil docket. That's at one end. At the opposite end, there's the large and increasing number of pro se cases that involve a variety of grievances and claims around treatment and benefits. It becomes increasingly untenable to assume that the same rules that address mass tort cases with thousands of plaintiffs also fit a small claims matter around individual treatment.

"Moreover, instead of freeing the rulemaking process from the ups and downs of politics and pressure, the trans-substantive approach has actually had the unintended effect of binding up the rulemaking gears and subjecting it, ironically, to just that sort of interest group politicking. We see this happen again and again.

"The rulemakers will be thinking of one kind of case, for example, discovery costs in complex cases that require a lot of e-discovery. Yet the rule, because they must be trans-substantive, will be written for all cases. That inspires those who would oppose the rule in the complex case to seek allies in the cases that were not thought by the rulemakers to be involved. Before you know it, the Rules Committee is faced with what looks like very powerful opposition. This is taken deeply to heart because one of the aspirations of the enabling act process is to identify and then develop consensus and points of agreement.

"We've had an example of this in the last go-round on the discovery rules and the proportionality principle, a very salutary set of rules, to my view, for the complex case. Because of the trans-substantive nature of the rules, the proportionality rule does not carve out civil rights or other kinds of cases that are not the reason for the rule change.

"The result was a coalition of opponents that had the potential to derail the process and who tried, in this coalition, to cast the committee as an opponent of civil rights. Civil rights was not something that the committee had even thought about."

The situation has happened time and again. "To some extent, the specialization that I am advocating has already happened and will continue. I mentioned the Northern District Patent Rules, but there are also model discovery rules that can be applied now in employment cases. These rules were developed under the leadership of Judge John G. Koeltl in the Southern District of New York. It is remarkable, as it is heartening, that leading employment lawyers on both sides of the V were able to come in with reasonable discovery protocols that they could all agree on for these kinds of cases.

"Imagine if we had asked them to come forward with discovery protocols for all cases? There's no way they could have done this. But when asked to direct themselves to the area that they knew, they were able to come up with agreement. "

Levi sees "public/private partnerships" forming, similar to what happened years ago with development of official and semiofficial pattern jury instructions.

"My own law school has been something of a mover in this area by convening a group of lawyers and judges to develop best practices under the new, now new, proportionality rules and in multi-district cases. As judges turn to these guides and begin to use them, we can predict that some of them will achieve such a reputation for usefulness that they will become the starting point and the standard, with all the benefits that we would all get in uniformity and predictability."

LOOKING AT THE OVERALL JUSTICE SYSTEM

His second discussion point was "institutional design as whole….It will be helpful to break down the justice system into more manageable pieces and to think about these different pieces with their unique problems rather than taking a one-size-fits-all approach."

Levi recommends turning the gaze from lawyers and their individual clients in particular cases to the wholesale needs of the large population. It is happening in state courts under the leadership of the Conference of Chief Justices. "It is a new way of thinking, very promising, to my belief, but it calls upon a different set of skills than most of us have."

Access to justice is a problem in the U.S. One manifestation of the justice gap is the increasingly large population of cases brought pro se; this is happening in state and federal court. "Indeed, it is happening all around the world. It is a worldwide phenomenon."

"How are we going to handle these cases and the unmet legal needs of most Americans? How do we fairly adjudicate these cases? I can assure you that it won't be by applying the same rules of procedure that we apply to multiparty antitrust cases. To address the justice gap will take creative thinking and extensive understanding about those who cannot afford or do not want lawyers.

"We should know how they experience the justice system, what kinds of cases and legal needs they typically have. Whether their needs could be met by non-lawyer assistants or interactive computer programs, we should know why some of them seek legal services and some do not."

The answer to who will think through these issues and make proposals is not obvious. "It would take a CEO of great talent to run any of our court systems. Yet, our chief judges and justices are schooled in the law, not in systems design.

"I dare say the same is true of the distinguished trial lawyers in this room. I think it is fair to say that the various bar associations have been more vigilant to enforce unauthorized practice rules than to come to grips with the large group of cases that lawyers simply won't handle."

QUIPS & QUOTES

How are we going to handle these cases and the unmet legal needs of most Americans? How do we fairly adjudicate these cases? I can assure you that it won't be by applying the same rules of procedure that we apply to multiparty antitrust cases. To address the justice gap will take creative thinking and extensive understanding about those who cannot afford or do not want lawyers.

Dean Levi

A consensus is building, at least among the state chief justices, that triage is needed in the legal system. "Cases should be subject to expedited standard or complex standard that would be the middle group, or complex procedures. "

Levi advocates the use of technology, where filings in certain kinds of cases may be made by phone, hearings done by Skype and judges and clerks will be specially trained to handle the kinds of cases in which they are assigned. "Complex cases will go to special divisions that have their own set of rules as well as judges who have the experience and the desire to handle them.

"States with business courts have looked to the federal courts for guidance in handling complex cases. Would the federal courts now consider borrowing some of the best practices from the state courts? For example, would it make sense for judges who desire to handle complex business cases to receive some kind of training in financial instruments, commercial transactions, capital markets, accounting and the like before going on such a wheel? Would we permit some element of choice by the litigants as to the judge?

"Either of these ideas is revolutionary in the federal courts where the trans-substantive ideal also applies to the bench, but it is standard practice in virtually every other profession or endeavor. If the federal courts wish to keep a portion of the most important and interesting commercial work that has drifted to private judging, it will need to consider some of these changes.

"Once we start thinking of our civil justice system as a system with many moving parts and once we set our minds to make that system serve as many of our population as fairly as possible, we can make real progress."

THE IMPORTANCE OF DATA

"It is startling, truly surprising, how little aggregate data we have about the courts. For example, in the federal courts, it might be a good thing for a law reformer to know how many class actions were brought last year. I would like to know that. But we cannot answer that question because the data has not been collected. We might like to know whether a certain kind of motion is typically granted or denied and how long it takes to decide. The client might ask you questions like that and you might wish to answer them, but you can't because the data doesn't exist.

"In the federal system, our life-tenured judges, and I was one, are so sensitive to public criticism that they have placed obstacles in the way of scholars and others who would study the system because of the possibility that the scholars and others, would make individual judge comparisons and that this might embarrass or

lead to criticism of a particular judge. I understand the point, and I have some sympathy for it, but the price is simply too high.

"The price has been that the federal court data is locked behind the PACER (Public Access to Court Electronic Records) system. Waivers to scholars are only granted on a district-by-district basis, individually applied for and individually reviewed by each one of the ninety-four districts, one by one. This doesn't make any sense at all.

QUIPS & QUOTES

Once we start thinking of our civil justice system as a system with many moving parts, and once we set our minds to make that system serve as many of our population as fairly as possible, we can make real progress.

Dean Levi

"As I have said to my former colleagues on the federal bench, the data is your friend. The more we know about our system, the better the story to tell the American people. If the data shows us that there are efficiencies to be gained or problems to be solved in certain areas, I would hope…that the courts would see this new knowledge as a way of bringing the system to a better place."

One problem, according to Levi, with opening up the PACER system is that the federal courts have become so dependent on the user fees generated by the system to support its annual budget. "In the wee hours of the morning, when we here in Hawaii are just going to bed, the credit card companies and others go into the PACER system and they download all of the activity in the bankruptcy court from the preceding day. This generates tens of millions of dollars each year, and some years over $100 million. One problem for us is how to replace this revenue if the system is made more accessible.

"The absence of data and the imposition of user fees by the courts are among the most pressing problems that we have, and not just in the federal court. Since many of our state courts do not yet have electronic filing, they are even less able than the federal courts to tell us how many cases have been filed and in what buckets. These courts are so poorly funded that they must resort to fees to pay for their ongoing services, let alone something new like electronic filing or laptops for judges."

STUDENT DISTRUST OF THE JUSTICE SYSTEM

Many of Levi's students, particularly minority students, feel distress and distrust toward the justice system. "This has happened over the course of the past year. Unless you are at a law school or on a university campus, you may not know of this deep distress. I want you to know about it because I think that the people in this room hold the key to some of the solutions. Many of the problems that came to light after the events in Ferguson [Missouri] are in line with some of the issues that I have discussed already.

"For example, consider the shockingly inadequate data on police shootings. The U.S. Department of Justice cannot tell us how often and in what circumstances the police have used deadly force. This absence of data has made it so very difficult for any of us to understand, let alone address, the spate of shootings by the police of unarmed African Americans over the course of the past year. We have no context, no history and no comparative data. We don't know if the problem is getting worse, is roughly the same or is even getting better. We just simply don't know.

"The use of courts as collection agencies to fund themselves and other municipal services is a big part of why the minority community in Ferguson felt so beset upon by the local judges. The destitution pipeline and the phenomenon of a debtor's prison that is created by excessive fees and fines when a court system attempts to fund itself in municipal services is a topic of very great importance."

However, Levi chose to end on a hopeful note. "Over the past few years, I have seen that all around the country, our state court chief justices have stepped up when others would not. Chief Justices such as Jonathan Lippman in New York, Maureen O'Connor in Ohio, Mark Martin in my own state of North Carolina, and Mark Recktenwald here in Hawaii, and others, have taken the lead and filled the vacuum left by state attorneys general, legislators, mayors, governors, bar associations and the Department of Justice. Praise be them." ■

PALAU SUPREME COURT JUSTICE URGES FELLOWS TO BE THE LIGHT

The Honorable **R. Ashby Pate** addressed Fellows at the College's Spring Meeting in Maui as an Associate Justice of the Supreme Court of Palau, an island nation located in the western Pacific Ocean. Justice Pate was introduced by Former Regent **Brian O'Neill** of Minnetonka, Minneapolis. While on Palau's highest court, Justice Pate presided over several hundred civil and criminal trials and served as a panelist on over forty civil and criminal appeals. He also helped establish Palau's first jury trial system in 2009, contributing to its enabling legislation and authoring Palau's first jury trial rules and juror handbook.

As part of his continuing efforts to advance jury trials in Palau, Justice Pate spearheaded the College's 2015 Advanced Trial Advocacy Symposium in Palau, in which thirteen Fellows presented a three-day workshop for lawyers from Palau and Micronesia, including Guam, the Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia. When appointed to the Court in 2013 at the age of 34 by President Johnson Toribiong, Justice Pate was the youngest justice in the island nation's history.

As an undergraduate, Justice Pate attended the University of Colorado. He received his legal education in England at the University of East Anglia, Norwich Law School, and at Samford University's Cumberland School of Law in his hometown of Birmingham, Alabama.

After law school, Pate served as clerk to the Honorable U. W. Clemon (United States District Court for the Northern District of Alabama), a prominent civil rights leader and Alabama's first African-American federal judge. Pate then practiced in Birmingham with the firm of Lightfoot Franklin & White LLC. In 2009, he became Senior Court Counsel to the Honorable Chief Justice Arthur Ngiraklsong of the Supreme Court of the Republic of Palau, where he worked as a judicial clerk and legal counsel for the Supreme Court.

Justice Pate was elected to the American Law Institute in 2014, where he now actively contributes to projects including The Restatement (Fourth) Foreign Relations Law of the United States, The Restatement (Third) The U.S. Law of International Commercial Arbitration, and The Restatement (Third) Torts: Liability for Economic Harm.

In 2016, Justice Pate rejoined Lightfoot Franklin & White LLC in Birmingham, where his practice focuses on international disputes, appellate practice, white collar crime and medical device litigation.

Aside from being an accomplished lawyer, a legal scholar and an internationally renowned jurist, Justice Pate is a true Renaissance Man. Prior to law school, he toured regionally in the Southeastern United States in two different bands, releasing two albums of original music. He is also the author of a children's book about Palau, titled *Sweet Dreams Palau* and published by the Etpison Museum in Palau.

After playing the guitar and singing *Midnight Special*, Justice Pate offered the following remarks:

Thank you. That's it, really. I was just going to reserve the rest of my time for questions.

In January of 1918, there was this young, promising blues musician named Huddie Ledbetter. He was already becoming popular in the blues clubs scene in Louisiana and Texas. One night, after playing a sold-out show in a seedy bar somewhere in Texas, Huddie Ledbetter made a terrible mistake. He got into a fight with a man from his audience over a woman. In the heat of the moment and in a drunken rage, he stabbed that man to death. For his crime, he was sentenced to thirty-five years in Sugar Land Prison, Texas, one of the most notoriously dismal prisons in our country's history. ▷

A few months later, Huddie found himself alone in a prison cell in the dark, in the middle of the night, utterly disconnected from the world that he knew and loved. He stood up from his bunk and he peered out of the small prison window of his cell. When he did, he caught sight of a train. It was a Southern Pacific Golden Gate Limited, to be precise. It always left the Houston station right around midnight. Then this amazing thing happened. As the light from the train started to illuminate the prison walls, Huddie heard his fellow prisoners start singing in this swelling sort of rapturous lament, 'Let the midnight special shine the light on me.'

What Huddie didn't realize was that his fellow prisoners superstitiously believed that if the light from this train shone on their prison cells, they would take it as a sign or a symbol of hope that they might soon be released, that they might soon be reconnected to the world that they had been separated from for so long. Huddie was so moved by his fellow prisoners' song, the next morning, he puts pen to paper and he turns this swelling traditional folk chorus into the song you just heard me sing a few seconds ago.

Here's the best part of the story: After serving the minimum seven years of his thirty-five-year prison sentence, Huddie sent a crude recording of that song to the hardliner Texas Governor Pat Neff, who had actually run for office on a campaign promise not to issue pardons. But Huddie asked for one. Amazingly, Neff broke his promise and he set this young man free. Upon his release, this promising young musician soon dropped the name Huddie and he assumed the blues name Lead Belly, becoming the man who was widely considered to be one of the most important and best American blues artists of all time.

Some of you are probably familiar with Lead Belly. Most of you, I would assume, are familiar with that song. It's been covered by just about everyone, including Creedence Clearwater Revival, but here's something I bet you're not familiar with. Last November, at this organization's Advanced Trial Advocacy Symposium, in the remote island nation of Palau, one of your very own Fellows, **Larry Robbins**, the ultra-prestigious Supreme Court advocate who has argued eighteen cases before the U.S. Supreme Court, that very same man played one hell of an organ solo of that song, alongside yours truly, in a small island bar.

THE POWER OF HUMAN CONNECTION

I started my speech off with that song and this story because, on the final night of the Palau symposium, we were all seated at a lovely resort, not so different from this, when I had an epiphany. As I rose to say a few words of thanks, I found myself staring out into a sea full of lawyers, judges and staff from all over Micronesia, from Palau, Yap, Guam, Saipan, Chuuk, Pohnpei, Fiji and about twenty-five different U.S. jurisdictions. I had this epiphany and I had this realization that, for the first time in my life, I wasn't necessarily passionate about the law. I wasn't passionate about being a Supreme Court Justice, and I wasn't passionate about advancing the rule of law, which, I admit, is a very noble sounding phrase. I realized what I was passionate about, right then and there, was human connection. To be more precise, the unique power that lawyers and judges have to create meaningful human connection in this world. That same visceral longing to connect with other human beings on an emotional level in the outside world that Lead Belly and his fellow prisoners sung about in that prison so many years ago. I knew at that moment that it was that same longing that literally defined the symposium. It was that, and certainly not something having to do with trial skills, that made it so remarkable and so special.

You see, when the news broke that the College was going to pay its own way to come present a free CLE seminar, to come to the remote island nation of Palau, that's what happened. About 100 lawyers, judges and staff from all over this side of the world clamored to attend. The turnout exceeded our expectation by orders of magnitude. When it was over, everyone agreed it was one of the best legal seminars they had ever attended. The camaraderie and fellowship was palpable. It was front-page news.

Now, it's a really small country and it's a slow news cycle, so take that for what it's worth. But, why? Why was it so special? Why was it the best legal seminar so many people had ever attended? Is it because you guys are really that special? Maybe. I submit to you, though, that there is a deeper reason.

Researchers across all disciplines, people who work in foster homes, psychologists, social workers, doctors, lawyers, qualitative researchers, they all agree on two things.

First, the need to feel connected to other human beings is one of our most basic needs. It's right up there with food and water. It's that ineffable whisper that got each and every one of you out of bed this morning. It is, I submit to you, why prisoners who are held in solitary confinement, who are denied that essential connection, lose their minds at a rate that is double to those in the general population. In California alone, prisoners who have spent time in solitary confinement

are thirty-three times more likely to commit suicide than those who have not.

Human connection is soul food. It is literally what keeps our minds and hearts alive. That's the first thing they agree on.

The second thing is that stories, the telling of them and the hearing of them, are the most essential way that we as humans achieve that connection. Because we yearn for a shared history, a shared purpose, a shared narrative, and we yearn to achieve meaning through metaphor, we do it through stories.

When Brian O'Neill stood up and told us the incredible story of deposing an alcoholic ship captain who had run the Exxon Valdez aground in Prince William Sound and spilled millions and millions of barrels of oil, triggering the worst environmental disaster in U.S. history as a way of teaching us how to use the fundamental principles of psychology to elicit favorable deposition testimony you can later use at trial, the whole room was spellbound. We connected immediately and emotionally to Brian and his story.

Or when **Tom Orloff** stood up and told you us the heart-wrenching tale of his prosecution of Black Panther affiliates in Oakland for the execution-style murder of a young Bay Area police officer as a way of teaching us how to use forensic analysis of gunshot wounds at trial, you could have heard a pin drop in the auditorium. We all connected immediately and emotionally to Tom's story. The lessons he taught us got stuck in that special part of our brain that's reserved for emotion and not just data.

QUIPS & QUOTES

I want to thank the College and all of the Fellows who came to Palau, especially Brian O'Neill. Brian is a passionate, professional and kind lawyer. If it weren't for him, the Palau symposium would not have happened. But in Palau, he showed me another side, too. Before we adjourn, all of you deserve to see that side.

Justice Pate

Most people yawn and roll their eyes at the thought of a bunch of lawyers telling war stories for three days straight, but I disagree. The way they did it was masterful and, in the case of Palau, incredibly timely.

Palau recently adopted jury trials for the first time in its country's history. It was a process I was lucky to have a hand in. As everyone in this room knows, trying a case to a jury as opposed to a judge requires very different skills. Trying your case to a jury requires, more than anything, the ability to tell a compelling story and to connect emotionally with other human beings in that courtroom. When your Fellows came to Palau and told their stories, yes, they taught us some trial skills. But what they really did was teach us how to tell our own stories.

There's no way in the time I've been given to retell all the amazing stories we heard, but I want to tell you a story that **Joe Matthews** told us, not because it's a great story, which it is, but because it's a story about how to tell great stories.

On the first day of the conference, Joe Matthews stood up and he was giving his presentation on effective opening arguments in jury trials from the standpoint of the defense. He stood up and he said, 'I had this big commercial case one time. Plaintiff's counsel had just sat down and his opening argument was incredible, it was blistering. Everyone in the courtroom, including the judge and the jury, even me, were convinced that my guy had done whatever it was he was accused of doing. So I gathered myself and I walked to the front of the jury box. I held out my hand like and I said, 'Do you see my hand? If so, just nod your head.' Of course, he waited and they all nodded their head in affirmation, but then he said, 'No, you don't. You don't see my hand. You're just seeing one side of my hand. Now you've seen my whole hand. Now that you've seen my whole hand, I am going to tell you the whole story, the one that plaintiff's counsel failed to tell you.'

That is good. I remember it and everyone who was there will remember it because what Joe's story so beautifully illustrated is that the way to truly tell great stories and the way to truly connect with everyone, not just juries, but everyone you meet in life, is to embrace the fact that everyone's story has two sides. The ones that truly connect and the ones that truly resonate are the ones that tell both sides genuinely and vulnerably.

PALAU'S STORY

After the symposium was over, I received numerous emails from judges in Guam and Saipan, my fellow colleagues on the bench in Palau and bar members, and they were marveling at all the stories we heard. But, without fail, they always ask me the same question: how did Palau, little, old, remote, disconnected ▷

Western Pacific Palau, pull this thing off? Symposiums as impressive as this, as successful as this, with the type of legal talent that this brought in, those happen in nice places, ritzy places like the Grand Wailea in Maui. The reason they asked that question is because Palau, like all of us, has a story.

Like all stories, Palau's story has two sides. It is, without fail, the most beautiful and exquisitely wonderful place on this Earth. It is a paradise that I have been lucky, along with my wife and daughters, to call home for four of the last seven years. Its rock islands are UNESCO World Heritage sites. They explode like some symphony out of the seas in and these wild coral pincushions. It is a country that has designated its entire marine territory as a sanctuary, off limits to commercial fishing, creating what can only be described as an Eden in the Pacific. The wondrous, staggering beauty that you see is a huge part of Palau's story, but it's not all of it. It's just the side of the hand that it shows its tourists.

Palau is one of the most remote and disconnected places on this Earth. It is the fourth smallest country by population on the planet, but its islands sprawl across an ocean the size of France. As a result of this, it is one of the last countries that still does not have fiber optic internet connection. That means it's still dial-up.

It's a place where most domestic workers still earn about $200 a month and where subsistence farming and fishing is still a way of life for many. It's a place whose only hospital is so understaffed and lacks essential resources to such a degree that it doesn't even provide toilet paper to its patients. If you stay for longer than a day, you are told to bring your own. It's a place that was ravaged by occupational powers for over a century and decimated by World War II. It's a place whose legal system, which was put in place post World War II, by the Trust Territory Government of the United States, still suffers from a combination of a lack of modern legal resources and a shortage of homegrown qualified lawyers. There are no law schools in Micronesia. That's why people like me still have a job in these jurisdictions.

The reason why people responded with such enthusiasm, the reason why Micronesian lawyers clamored to attend the symposium is because they saw what is an all-too-rare chance to be connected to the outside world. And they jumped at it.

What I want to tell you is that what happened last November in Palau wasn't just some CLE in a sunny place, it was about human connection. Your Fellows and the stories they brought with them were the conduits. It is amazing when we, as lawyers and judges, admit to our own need to connect and we step out in faith to connect with other human beings. It's amazing what happens inside your soul. Because we work and live in a profession that I would submit to you is addicted to disconnection.

It should not go unnoticed that almost every lawyer in this room is licensed to practice law in a jurisdiction and in a country that has five percent of the world's population, but 25 percent of its incarcerated population. The highest rate of institutionalized disconnection in the world. It has the highest rate of solitary confinement in the world. It has the longest and most protracted and acrimonious discovery disputes in the world. We lawyers and judges live, operate and breathe every day in a system that is defined by disconnection. But every so often, when we use our power to flip it and go the other way and create meaningful human connection, it feels good. You feel yourself brimming with energy and vitality.

WHEN THE LAW BECOMES A LIGHT

I feel it right now, because I am going to try to tell you a quick story. I want to try to make this exchange as meaningful and memorable as the exchange we had back in November. When **Bart Dalton** emailed me about six months ago and asked me to come give this talk, he asked me to talk about the symposium, which I think I have, but he also asked me to talk about my story, the story of how a 34-year-old kid from Alabama becomes a Supreme Court Justice in paradise. None of you would be surprised to know that I get asked that question a lot. I have a rather standard 1,000-word response that tracks my legal career and the fortuitous, but unlikely, events that led up to my appointment. I am not going to tell you that side of the story today. I am going to tell you the other side, which is something I've never told in a setting like this. Apologies in advance if I get a little emotional.

The story of how a 34-year-old kid turns into a Supreme Court Justice starts on a cold winter's night in Birmingham, Alabama, about fifteen years ago, long before I decided to go to law school. Like Huddie Ledbetter, I was a promising young musician. I was playing a sold-out show at some seedy bar. Just like Huddie, I, too, made a terrible mistake.

There was a time in my life when my youthful experimentation with drugs was right at the cusp of becoming a serious problem. I was sitting outside that club in a parked car with some friends, celebrating what a cool rock star I thought I was. I was doing the type of drugs that I thought cool rock stars did. Suddenly, I

I stood there right at that moment in awe of the law's power to reconnect me back to the person I thought I was destined to be. I said, 'Thank you. Thank you, Your Honor.' He looked at me and he said, 'To whom much is given, son, much is required.

Justice Pate, sharing the story of when he stood before a judge for a nonviolent drug possession felony charge and how it shaped the man he is today

was pulled out of that car by a plainclothes undercover agent. He slammed me against the hood of my car. He found the drugs he was looking for and put me in the back of his cruiser and took me to the Birmingham City Jail, strip-searched me and threw me into a dark cell in the middle of the night.

A few days later, I stood before a judge. His name was Judge Pete Johnson. I will never forget him. I stood before that judge and a young prosecutor and defense attorney, and I was so ashamed. I thought everything that I worked for, I had squandered. Everything that my parents had given me, I had flushed down the drain, because I knew then that the judge and the law itself had the power right then and there to disconnect me from my family, my goals and society. Because in Alabama, like many states, if you are convicted even of a nonviolent drug possession felony, you are instantly and permanently disconnected and disenfranchised. You immediately and permanently lose the right to vote forever. You lose the right to own a gun forever. You certainly compromise the opportunity to get admitted to any good law school or get admitted to the bar. I would submit you probably forfeit the opportunity to become a Supreme Court Justice one day.

Even though it was my first and only offense, I am not blind to the fact that if I had gotten a different judge or if I had been a different socioeconomic status, or even a different skin color, in Alabama, the statistics strongly suggest I might have been locked up. Instead, Judge Johnson looked down at me, as did he for many others, and he said, 'You need help, and I am going to give you some.' He ordered me to report to a program every day for a year, ordered me to drug testing, told me that I would have to do community service until my knuckles bled. But if I did all those things, he would reconnect me back to the person I thought I was destined to be. He would defer that prosecution and expunge it all, and he would allow me to have a second chance to become a person of value and consequence in the world.

I stood there right at that moment in awe of the law's power to reconnect me back to the person I thought I was destined to be. I said, 'Thank you. Thank you, your Honor.' He looked at me and he said, 'To whom much is given, son, much is required.'

So that's the other side of the hand. The accomplishments that got me here, they are modest compared to yours, and I am grateful for them. But none of them would have been possible unless someone had used the law's power to bring connection to a place where the status quo was disconnection. I don't tell you this story to appear somehow virtuous or to impress you with how far I've come since that night. I tell you because there is power when we commit to apply the law and our lives and the stories we tell to create meaningful human connection in this world, when we realize that the law's highest calling is not to disconnect, but to reconcile, not to lock people up, but to set them free. So what you did for Palau is, in my opinion, of the same quality and caliber as what Judge Johnson did for me and what Governor Neff did for Lead Belly. You used your significant power and resources to bring connection to a place and to a people where the status quo was disconnection.

The results were inspiring and extraordinary. Just like Judge Johnson had no way of knowing that one day the stupid kid he gave a second chance to would be standing on this stage talking to a roomful of the most powerful lawyers in the world, none of the Fellows who came to Palau yet know whose lives they touched when they came and brought connection with them. So thank you. Thank you for being the light on that train.

If my own war story today serves any purpose whatsoever, I hope it's only to encourage this organization to continue to commit to being the light wherever darkness and disconnection can be found because it is everywhere. Because I am standing on this stage, living proof, that you never know whose life or whose lives will be changed. To whom much is given, much is required. Keep being the light. ■

CHIEF JUSTICE ADDRESSES MODERN CHALLENGES TO NATION'S PROMISE OF 'JUSTICE FOR ALL'

The first time the Honorable **Mark E. Recktenwald**, Chief Justice of the Hawaii Supreme Court heard the following question several years ago he thought it was a joke: do we still believe the courts are relevant in modern American society? "When I realized it wasn't, I was dumbfounded," Recktenwald said.

In a lively and thought-provoking presentation at the 2016 Spring Meeting of the College in Maui, the Chief Justice examined this question. His answer: "As long as we provide justice to all, justice that is fair, prompt, and transparent" and as long as we "let every voice be heard, listen respectfully to those voices, and give each person a meaningful day in court" then courts will continue to be at the center of American life. But the challenge is "an all too common phenomenon in our judicial system today where the number of unrepresented parties has skyrocketed," largely because they are unable to afford an attorney.

The phenomenon of unrepresented parties arises in a world with new technologies such as online legal intake systems and dispute resolution services and other online services that give legal information without direct access to a lawyer.

While one can speculate whether these new systems will reduce judicial caseloads, it is clear that in recent years arbitration has become a genuine alternative to the courtroom (not just in labor-management disputes) and appears to be expanding in less formal and faster versions. Ebay now offers online dispute resolution; businesses that sell to nationwide consumer markets are experimenting with voluntary online ADR, with a computer first offering mediation and then an online human arbitrator.

Chief Justice Recktenwald noted there are other changes afoot in the practice of law itself. In England, corporations can now practice law and one can buy stock in law firms. An effort is also ongoing to get states in the U.S. to adopt the Uniform Bar Examination that would allow scores to be used for admission to other jurisdictions that use the UBE. Ten states have rules that allow attorneys from other countries to practice law under certain circumstances. Recent online innovations, such as Ravel, use data-driven interactive visualization and analytics to help lawyers themselves get information differently than the way such information has been traditionally presented by LEXIS or Westlaw. Software is in development that will perform historical document analysis tasks that have long been performed by new associates or staff attorneys. Indeed, a recent American Lawyers Survey found that thirty-three percent of the lawyers leading major firms think software applications will largely replace paralegals within ten years.

"These challenges come at a time of profound changes that are sweeping the legal profession worldwide. To a certain extent, the full effect of some of those changes has not yet been felt. That's a good thing because it means our profession has a window, albeit a small one, to give some thought about how we want to respond to these developments and what future we want to chart for ourselves," said Chief Justice Recktenwald.

The Courts, too, are undergoing significant changes, beyond the vanishing jury trial. The Chief Justice is of the view that new technology enables the delivery of more and better legal and judicial services but technology alone will not solve the problem of unrepresented parties in civil cases. One response to this problem in Hawaii is the Access to Justice Commission, one of forty that have sprung up across the nation. The Hawaii Commission has opened self-help centers in courthouses where volunteer attorneys provide limited-scope assistance to pro se litigants. From the first center on Kauai in 2011, the Commission has added centers across the state that now have helped more than 11,000 people.

QUIPS & QUOTES

It will take many people coming together and contributing even more in terms of time, money and other resources to accomplish 100 percent access, but we can do it. And in so doing, we can provide a resounding answer to the question I was asked at those two panels recently, 'Are the courts still relevant?' As long as we provide justice for all, we will be relevant. As long as we adjudicate disputes in a way that is fair, prompt and transparent, we will be relevant. As long as we let every voice be heard, listen respectfully to those voices and give each person a meaningful day in court, we will be relevant. With all due respect to Watson [IBM supercomputer], that is something that a computer cannot replace.

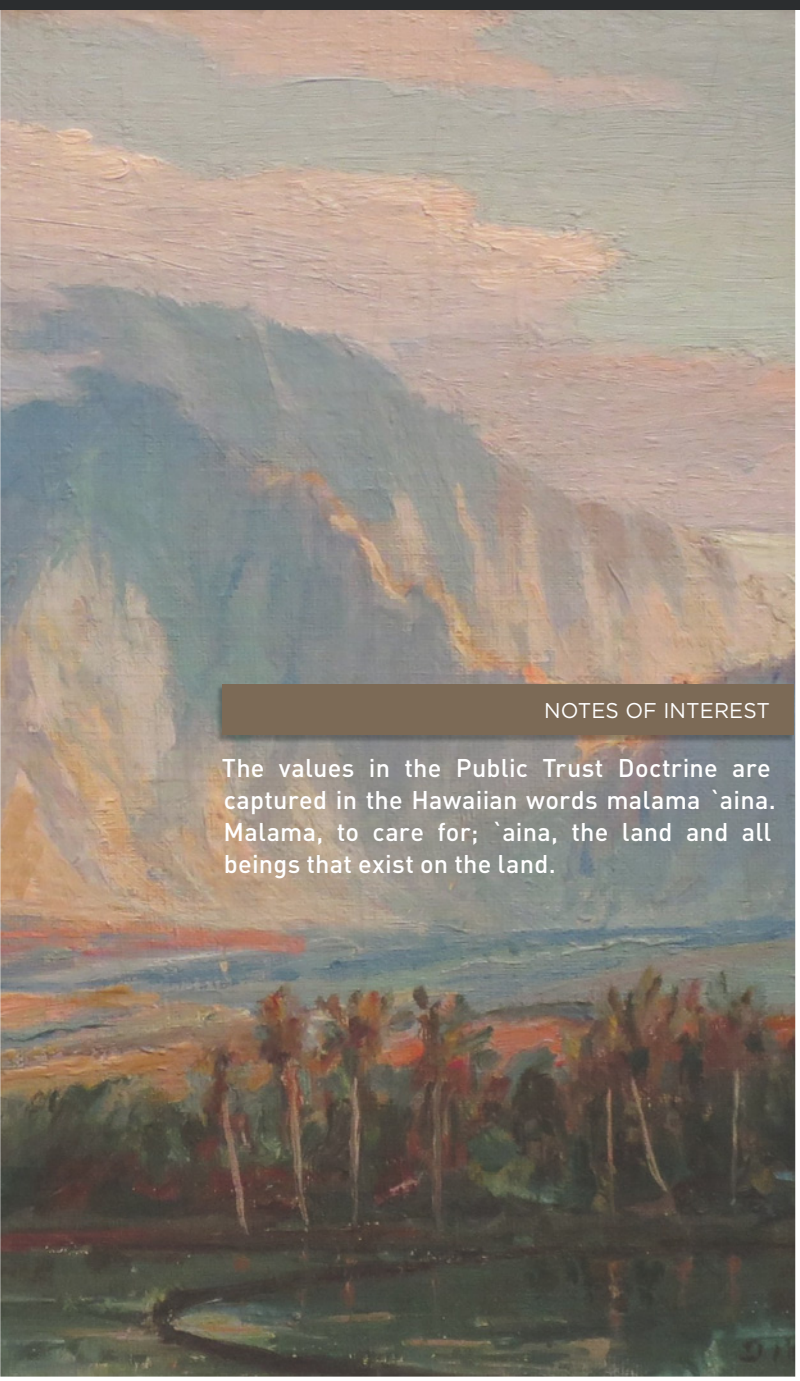
Chief Justice Recktenwald

The Chief Justice suggested that Fellows consider becoming involved in Access to Justice groups in their states or provinces. "The College as a whole, whether through developing policy statements or programs on access to justice issues, can bring its considerable expertise and credibility to bear in this effort." The goal nationwide must be 100 percent access to effective assistance for essential civil litigation needs. That goal can be accomplished by offering a "continuum of services" tailored to each individual's needs. "Some folks will be able to manage with online resources…. In fact, some people may prefer it. Others will need full representation, from either a legal services attorney or a pro bono attorney. Many will be somewhere in between and will need to at least consult with an attorney at a self-help center or walk-in clinic to get their bearings."

Ultimately the issue for the legal profession and the courts is "to give life to the promise of equal justice for all." Chief Justice Recktenwald illustrated this point with reference to a heroic Hawaii lawyer, later a judge on the Hawaii Intermediate Court of Appeals: Daniel Foley. As a sole practitioner civil rights attorney, Foley agreed in 1992 to represent three same-sex couples whose marriage license applications had been rejected, and whom other lawyers had declined to represent. In 1993 the Hawaii Supreme Court held denial of the right to marry for these couples was sex discrimination in violation of the Hawaii Constitution, which set the stage for a lengthy trial in 1996 where the state failed to demonstrate a compelling interest to bar same sex marriage. The Chief Justice suggested that, but for Foley's courage in taking their case, and his tenacity in seeing it through a trial and appeals, these plaintiffs may not have been able to find counsel for a claim that could not really be prosecuted pro se. The challenge of delivery of equal justice to the unrepresented, despite technological innovations, illustrated by this case, remains in Hawaii and throughout the country.

Timothy D. Kelly
Minneapolis, Minnesota

PUBLIC SERVANT, AUTHOR HONORS LESSONS FROM HAWAII'S HISTORY, LAND



NOTES OF INTEREST

The values in the Public Trust Doctrine are captured in the Hawaiian words malama `aina. Malama, to care for; `aina, the land and all beings that exist on the land.

Michael K. Livingston, Hawaii State Committee Chair, said in his introduction of Dr. **Kamanamaikalani "Kamana" Beamer**, "Dr. Beamer's predecessor at the Kohala Center described him this way: 'For those who know Dr. Beamer, we cannot help but be impressed by his personal integrity, his enormous intelligence, his service to the community, his ability to build bridges, his ease of movement across cultures, his musicality and his sincere commitment to the values of aloha `aina. In my mind, Kamana represents Hawaii's future.'"

To add further context, Livingston told the audience of Fellows during the Spring Meeting in Maui that in 1993, the United States enacted legislation, known as the Apology Resolution, formally apologizing to the Native Hawaiians for the overthrow of the independent and sovereign Kingdom of Hawaii. "Public Law 103-150 begins this way: 'Prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient subsistent social system based on communal land tenure, with a sophisticated language, culture and religion. This social system, which had evolved over 1,000-plus years, in the most remote geographical place on the planet Earth, included land use and resource management strategies that supported a population estimated at 800,000 people.' For comparison, today the population of Hawaii is approximately 1.4 million."

In December 2015, the Hawaii Supreme Court handed down a unanimous decision holding that the Hawaii Board of Land and Natural Resources had acted improperly when it failed to hold a contested case hearing before issuing a permit for a 30-meter telescope on the top of Mauna Kea. A concurring opinion by two of the five justices focused on the Public Trust Doctrine and its roots in Hawaiian history.

"This is how those justices put it: The Public Trust Doctrine is an ancient principle recognizing that certain resources bestowed by nature are so inviolable that their benefits should accrue to the collective rather than only to certain members of society," Livingston said. "The values vindicated by this doctrine are so universal in their application that, in this jurisdiction, its roots can be traced to the Hawaiian Kingdom when it was reaffirmed that it was not the king, the sovereign, but the people of Hawaii who are the original owners of all Hawaiian land."

The values in the Public Trust Doctrine are captured in the Hawaiian words malama `aina. Malama, to care for; `aina, the land and all beings that exist on the land.

Beamer, a leading authority on Hawaiian land tenure, is combining the Hawaiian concepts of aloha and malama `aina in his work. A geographer, a historian, an author and a public servant, Beamer is currently the President and Chief Executive Officer of the Kohala Center on the Big Island, which is a nonprofit focused on land conservation, energy independence and food self-reliance.

Prior to joining the Kohala Center in 2015 he was a member of the faculty at the University of Hawaii, with a joint appointment at the law school and the School of Hawaiian Knowledge. He is the author of the recent award-winning book *No Makou Ka Mana: Liberating the Nation*, which offers a unique and intriguing perspective on Hawaiian history.

He comes from generations of Hawaiian storytellers, including his father, the noted Hawaiian musician Kapono Beamer, and his grandmother, the revered kumu hula (teacher of hula) and Hawaiian teacher, Auntie Nona Beamer.

WORK GROUNDED IN ALOHA

Like any good story, it must begin at the beginning. For Beamer, his beginning was his grandmother. He sang to the audience *Aloha mai kako,* a chant his grandmother taught him who learned it from her grandmother, which started about eight generations ago. The song is "to welcome all of us to this place and to ground us under a common umbrella of aloha, which is love," Beamer said.

He recalled her as an incredibly staunch educator and defender of Hawaiian traditions. She was kicked out of school for performing traditional chants and dances. Later on, as a teacher, she challenged one of the most powerful and elite boards in Hawaii, the Trustees of the Kamehameha Schools, for improper management of their resources. Her work revolutionized the school and part of Hawaii politics. The Kamehameha Schools were developed at the bequest of Princess Bernice Pauahi Bishop to educate children of Hawaiian descent. The school teaches, in the English language, a college-prep education enhanced by Hawaiian culture, language and practices, imparting historical and practical value of continuing Hawaiian traditions.

Because of his upbringing, he is also someone who has practiced agriculture and traditional Hawaiian practices around food and the ecosystem health, which includes restoring wetland taro patches on Hawaii and in other places. "My work as an academic and as a public servant is really grounded in actual hands-on practices in working with `aina, that is land, and food."

Looking at the past with the foresight of how it can help the future, his work delves into how indigenous Hawaiians appropriated and utilized tools from the outside world. "It shouldn't be a revelation that people use new tools all the time…. However, with every appropriation of a technology comes some sort of unforeseen consequences. That was the case even back in the 1830s."

HISTORICAL DOCUMENTS ACTS AS GUIDES

He shared a map that was first introduced in 1838 by a Hawaiian, S.P. Kalama, who was a geographer and historian. According to Beamer, what this map did was codify indigenous principles of resource management and names in a brand new form.

"If you were to look at a map that was done, say, by James Cook during the same time period, they wouldn't reflect these Hawaiian boundaries and traditions. These were the ways in which indigenous Hawaiians started to appropriate these new tools and technologies as they came ashore. This is another stunning example of some of that appropriation. Literacy rates in the Hawaiian Kingdom were upwards of 85 percent by the 1860s. We had an incredibly literate population here in the Hawaiian language."

Between the years of 1825 and 1930, there were over 50 separate newspaper companies that published Hawaiian language newspapers. "What these documents do is they, out of this amazingly transformational period in time, these Hawaiians were codifying and documenting ancient stories, relationships with places, resource management principles, all in the Hawaiian language.

"The Hawaiian kingdom was an independent sovereign state until 1893. It was this developed strategy of these Hawaiian leaders at the time to engage with the outside world and appropriate what they saw was beneficial and useful. The law was one of those incredible tools."

Hawaiian leaders discovered early that they were not going to win militarily if they tried stopping others from coming in and claiming their territory. Beamer said their best chance was through diplomacy and law.

"Law was this incredibly powerful transformational tool that allowed a country that was militarily inferior at least to be theoretically equal in terms of the family of nations."

Beamer shared with Fellows an image of the very first Constitution of the Hawaiian Kingdom, entirely authored in the Hawaiian language.

"What this Constitution codified was this idea, this indigenous principle that all the lands and waters of Hawaii were not owned by the sovereign exclusively, that they were held in trust by the sovereign for all of the people and the chiefs at the time period. This actually becomes the origin of private, hybrid if you will, private property law in Hawaii."

He also credited Kauikeaouli Kamehameha III, a Hawaiian leader who set out a policy of becoming a country of literacy and law. Through his strategy, Kamehameha enabled the Hawaiian Kingdom to achieve independence. The Hawaiian Kingdom became an independent and sovereign state, jointly governed by the French and British governments, November 28, 1843.

At that point, the Hawaiian Kingdom began to advance internationally, establishing treaties with many European countries, Japan and the U.S. The Hawaiian Kingdom held councils with several nations across the world and was a member of the postal union. A bilingual culture of Hawaiian and English existed, where both languages were used and debated in the legislature and in law. However, in 1893 Queen Lili'uokalani was overthrown.

"After this overthrow, there was this period when indigenous Hawaiians as well as Hawaiian nationals who weren't ethnically Hawaiian mobilized and tried to petition against annexation attempts in a particular proposed treaty of annexation with the United States. The movement mobilized probably in the area of 38,000 people, and was about 40,000 native Hawaiians during this time period, so it was a large-scale initiative."

QUIPS & QUOTES

Buckminster Fuller tells us 'You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.'

Dr. Beamer

Another outcome of the 1893 overthrow was the approximate two million acres of land across Hawaii that was seized and transferred to successive governments. The Republic of Hawaii was established in 1894, then the State of Hawaii in 1959. "Oftentimes, these lands are incredibly contested. As was the case with the attempt to place the telescope on top of Mauna Kea, indigenous issues and how indigenous

people interact with these land bases continues to play out in Hawaii. I imagine it will for some time.

"Landholdings have also created this incredible situation that we're in. It's hard to believe, but Hawaii is probably one of the most food insecure places in the world. If these barges, for some catastrophic reason, were not able to reach Hawaii, people would run out of food in about a week and-a-half to two weeks. That's because we import about 88 percent of our food to the islands. We are the most isolated place in the world, at least in terms of geography and getting to.

"We grew and fed more people from the bounties of this land when we were making tools that were principally handmade out of stone. We fed more people then from the bounties of our land, from the ocean and our land base, than we do today with all of our modern tools and technologies. It's something that, oftentimes, is hard for me to fathom, but is entirely true."

THRIVING OFF THE WEALTH OF THE LAND

Looking to the future, Beamer sees Hawaii as part of a potential global collapse that requires "changing our behaviors and our relationships with our resources, our food systems and people around us."

Since the 1970s, Hawaii has seen a resurgence and movement to find ways to feed its people, to build off of indigenous knowledge and the traditions in Hawaii. Examples of this include the development of wetland taro patches, aqua cultural systems of indigenous fishponds and resource management and dryland field systems.

"To give you an idea of the collapse that we face in terms of production, we probably were producing upwards of two million pounds of protein from our fishponds in the early 1800s. That has absolutely collapsed as we've moved forward with changes in land use and resource management."

Restoring systems and structures to improvement of the management of resources has seen success.

A local i`a, a fishpond located off the east coast of the Oahu island in a place called He`eia, has "made incredible use of ecological and sustainable practices, because essentially they were built in areas that were freshwater marine estuaries. You would wall them in, and what you grew in these ponds would be algae. Then you farm the fish that fed off of the algae, herbivorous fish, and you tried to remove the predatory fish to be able to increase the amount of protein that we could access. These are in the midst of being restored all over our islands now."

However, juxtaposition exists when it comes to modern land use. The Hawaiian shorelines are immensely valuable to the economy, which leads to challenges in finding spaces for Hawaiians to feed themselves.

"Because of the maps that were made in the Hawaiian Kingdom, we have this documentation of these incredibly complex and uniquely-situated resource management blocks that best utilize ecosystem niches to grow and produce food. A lot of my work is trying to uncover these principles to better manage and promote our food systems.

"This leads me to the work that I do under the Kohala Center. Our model and mission at the Kohala Center is to be a model of and for the world in areas of food, energy and ecosystems health. We found that model because we listened to our island and we listened to elders who told us the incredible wealth of the island. It turns out, from a scientific perspective, we have every ecosystem niche all on one small place, one small island.

"We also have every social ill and problem that you can probably find in the world. We flip that to think about our problems in intellectual assets. Every time we want to solve a problem, we should be able to because we're small enough and the scale is easy enough to grapple with. We've experienced success in partnering with other researchers and universities, locally and around the world, in our efforts."

Beamer believes with a collective effort from the Kohala Center and Fellows of the College, "in spite of these global challenges, in spite of the politics of our days, I am incredibly hopeful that with help and working together in the next generation we can solve some of these issues that we face." ■

FORTY-NINE FELLOWS INDUCTED AT THE SPRING MEETING IN MAUI

ALBERTA
Calgary
Brian F. Devlin, Q.C.
Douglas G. Mills

ARKANSAS
Little Rock
Rodney P. Moore

ARIZIONA
Phoenix
Stephen A. Bullington
Diane M. Lucas
Paul J. McGoldrick

CALIFORNIA-SOUTHERN
Irvine
Jennifer L. Keller
Los Angeles
John W. Spiegel
San Diego
Robert Hamparyan

COLORADO
Denver
Gilbert A. Dickinson
Kenzo Kawanabe
Habib Nasrullah
Jeffrey S. Pagliuca
Greenwood Village
Maureen Reidy Witt

CONNECTICUT
Bridgeport
William M. Bloss

DELAWARE
Wilmington
Colm F. Connolly
Robert S. Saunders
Kevin R. Shannon

DISTRICT OF COLUMBIA
Washington
Robert M. Cary

FLORIDA
Jacksonville
Christopher C. Hazelip
Miami
Michael S. Pasano
Sarasota
Patricia D. Crauwels

GEORGIA
Atlanta
C. Scott Greene

IDAHO
Pocatello
Reed W. Larsen

KENTUCKY
Lexington
Robert F. Duncan

LOUISIANA
New Orleans
Jason Rogers Williams

MARYLAND
Frederick
Mary Elizabeth Kaslick
Silver Spring
Andrew V. Jezic

MISSOURI
Independence
Michael J. Hunt
Springfield
Brian D. Malkmus

NEBRASKA
Lincoln
Randall L. Goyette
Robert S. Lannin

NEW JERSEY
Westfield
William R. Lane

NEW YORK
New York
Marc L. Mukasey

NORTH DAKOTA
Williston
Kent Reierson

ONTARIO
Toronto
David W. Kent
Robert H.C. MacFarlane
Frank E. Walwyn

QUEBEC
Montreal
Marc-Andre G. Fabien, Ad.E.

TENNESSEE
Knoxville
Wade V. Davies
Memphis
Gary K. Smith

TEXAS
Dallas
Douglas A. Cawley
Roy William Hardin

UTAH
Salt Lake City
Andrew M. Morse

VIRGINIA
Altavista
Glenn L. Berger

VERMONT
Middlebury
David R. Fenster

WASHINGTON
Seattle
Timothy G. Leyh
Cheryl L. Snow

WYOMING
Casper
Scott Edward Ortiz

INDUCTEE RESPONDER BELIEVES PAST MENTORS WILL INSPIRE NEW FELLOWS TO CARRY ON MENTOR ROLE

Following the induction of the forty-nine new Fellows, **Robert M. Cary** of Washington, D.C. responded on their behalf.

When Washington, D.C. Chair **Bob Trout** invited me to join the Fellows, and when **Mike Smith** called and asked if I would respond to the charge, I had the same thought when both calls took place. It took me back to a time about twenty years ago in the office of one my mentors, a partner I worked for at the time, we were looking to refer a product liability case in Iowa. He pulled a book off a shelf and he said, 'This is the directory of the American College of Trial Lawyers, it's the roster of elite people who actually try cases. It's a very mysterious and top secret process. I can't describe it to you, but trust me these people really do try cases and they do so very well.' And then he said, 'Get this – they're nice, every last one of them. Jerks don't get in.' I've never forgotten that.

When Bob called and when Mike called, I also thought of my father. He was a trial lawyer in Hannibal, Missouri. He actually called himself a pike lawyer because he took any kind of case that came down the pike. In addition to trials, he did wills and estates, house closings. I have one very vivid memory of him defending one of the waitresses at the Holiday Inn where we also often went to dinner, she was accused of murdering her husband. The defense was self-defense, an acquittal was obtained and ever since whenever we'd go to dinner at the restaurant there, we got extra fixings, huge plates of food, and the rump end of the roast. That was the fee he got for that case.

I lost my dad eleven years ago but I thought of him a lot this weekend. I'm sure I can confidently speak for all the new inductees that we all thought about our parents a lot this very weekend.

I knew from a very early age, about fifth grade, I was not going to be able to play professional baseball from the St. Louis Cardinals, that trials was what I wanted to do. I am very happy to be here and couldn't be more thrilled.

UNDERSTANDING THE HORSE AND HERMIT REFERENCE

When Mike called and asked if I would do this, he worked his Southern charm and I quickly said yes. A little bit later I got a letter with the official seal of the American College of Trial Lawyers confirming that I would be responding to the charge and then it went on to read "from the time guests are seated for the banquet until the completion of your response food and wine will not be served.' Talk about pressure.

It reminds me of the old English oath that's given to bailiffs, it's still done in Montgomery County, Maryland, I just confirmed that this weekend. I had a trial there about ten years ago and the bailiff was ordered not to give food or drink to the jury until they reached their verdict. Of course that wasn't honored. The Maryland courts do not in fact deny food and drink from their juries but the American College of Trial Lawyers does until I'm finished so I'll be quick.

When I got that letter I got to work. I got hold of a copy of the charge. I learned that it was written by Judge Gumpert as we just heard, the patron saint of the American College of Trial Lawyers, a great man by all accounts. When I read the charge I was struck by the words that Tom Tongue just highlighted for us about the hermit and the horse. "Truly we are the hermit and the horse," the

words read. I immediately understood what I thought the horse thing meant. I'm from the Missouri and I thought of the St. Louis Clydesdales and I thought of the expression 'work like a horse.' But the hermit thing threw me for a little bit of a loop. What does that mean? Why do these people call themselves hermits? I thought about it a little bit, I thought about people I had known in the College and they talk about these wonderful trips they went on and meetings to London and Paris and Boca Raton and Maui, about the fine dining, and the opera, and the great lectures, the wine tasting, the golf. And I thought, 'This crowd? Hermits?'

So I went to another mentor of mine who explained the Lord Eldon reference and he said what this hermit thing means is when you're getting ready for trial, and only when you're getting ready for trial, that's when you live like a hermit. You need to cut yourself off from the rest of the world so that you're single-mindedly focused on getting ready for trial. That made sense to me. In fact it reminded me of what this very same mentor told me many times in the past. He would say, 'When we get ready for trial we live like monks.'

MANY MENTORS ALONG THE WAY

On behalf of the class of 2016 we are pleased to be celebrating with you this evening. As I think about this evening I can't help but to think of the role mentors have played in our careers. Mike Smith wisely, sagely, cautioned me not to mention names but as I stand here right now I can think in my own mind of the many, many mentors who helped me along the way. They mentored me in ways large and small.

One who took the chance of hiring me twenty-six years ago, actually introduced me to my spouse of twenty-three years. Many took the time to give me encouragement. When I needed it, some gave me gentle criticism, and others gave me criticism that wasn't so gentle when I needed that. Others set a great example as I worked with them day after day, week after week, month after month, year after year. Some I consider mentors of sorts even though they may not even know who I am.

When I was a Federal District Court clerk I used to love to go and watch trials. I have very fond memories of sitting, taking notes, making observations of lawyers I enjoyed watching most. There were two that stood out in my mind and I learned recently that they are now both Fellows of the College.

In fact a number of lawyers I consider mentors were not Fellows of the College when they were mentoring me but now they are. I don't think that's a coincidence because something about this top secret, mysterious process that we newbies are beginning to understand this weekend must favor those lawyers who take the time to mentor younger lawyers. I know when I speak for all of us when I say we are grateful to you, for the privilege of joining you and for all of our mentors this evening.

QUIPS & QUOTES

It's a very mysterious and top secret process I can't describe it to you, but trust me these people really do try cases and they do so very well.' And then he said, 'Get this – they're nice, every last one of them. Jerks don't get in.'

Robert Cary sharing what a mentor told him about the College twenty years ago

FIGHTING THE CYNICISM

There's one subject I'd like to discuss. I get to travel around the country for my work quite a bit but I make my professional home in Washington, D.C. I think ▷

it's fair to say that there is great skepticism about Washington D.C., in fact skepticism is too soft a word, anger or rage might be better words. A brand new CBS poll that just came out reveals that 60 percent of 18-24-year-olds believe Washington, D.C. embodies what is worst about America. I blame *House of Cards* for that a little bit. I blame our political culture. I think it's unfair; there are many good people who work in Washington, D.C.… But there's a reason political candidates are finding success by attacking Washington, D.C. That anger is not just directed at my professional home, Washington, D.C.; it's directed at many institutions that better our democracy. One of these institutions is the trial.

I was struck by Dean Levi's observation yesterday that law students, especially minority students, are deeply distrustful of our judicial system. In the United States, the number of cases going to trial is way down, 97 percent of criminal cases plead; more than 99 percent of civil cases settle; American business, especially, would rather litigate than settle and are opting out of the traditional trial altogether for private arbitration. On the criminal side, the evidence is compelling that even innocent people are pleading guilty to crimes they did not commit.

There may be many reasons for the decline of the trial or fewer trials: the expense of trial; the expense of discovery; the certainty of a devastating sentence in a criminal case if it's lost versus the certainty of a tolerable sentence if the plea agreement is entered into; the risk of catastrophic losses; damages in a civil case; the lack of confidence in a citizen's jury; the belief, unfair though it may be, the system is rigged; the number of times the results of trials have in fact been manifestly unjust.

Last year alone there were three exonerations a week of innocent people who have served an average of fourteen years in prison. If you ask people on the street, they believe, rightly or wrongly, that many criminals escape the consequences of their actions. The bottom line is the trial is under attack and I'm sure this is not new to the College. I don't want to diminish the accomplishments of my fellow inductees but I for one feel lucky to have gotten enough trials in this day and age to meet your admission standards.

But I worry will we be able to find qualified Fellows a few generations down the line. The same poll I just cited that found that 18-24-year-olds believe that institutional corruption is our nation's biggest problem. I think that's too cynical. One way we can fight that cynicism, I submit, is to have more trials, public trials in the sunlight. I think when that happens people will realize that trial lawyers are doing great work and things aren't as bad as those 18-24-year-olds think it is. They'll see conscientious prosecutors enforcing the law so we can live safely and our markets work fairly. Criminal defense lawyers standing up to the government so that the government does not overreach. Plaintiffs' lawyers seeking compensation for victims of negligence and worse. Civil defense lawyers making sure that all businesses and citizens are treated fairly.

THE MENTEE BECOMES THE MENTOR

As I said I'm a proud native of Hannibal, Missouri, which happens to be Mark Twain's hometown. My mother recently sent me a 1983 volume of the *Missouri Law Review* she found among my dad's papers. My dad, like me, was not the type to read law review articles for pleasure. I was surprised that he kept it. I flipped through it and wondered what kept his interest. I found an article about Mark Twain in it. My hometown's patron saint Mark Twain, turns out wrote about eight different trials, and this article addressed his evolving attitude toward trials. Mark Twain was originally cynical about lawyers and trials but came to appreciate and learn they were a great way to seek the truth. He eventually viewed good lawyers as conscientious champions of justice. Here's what he wrote: 'There is no display of human ingenuity, wit, and power, so fascinating as that by trained lawyers in the trial of an important case. Nowhere else is exhibited such subtlety, acumen, address and eloquence.' That's the view of College that I've had ever since I first heard about it from my mentor's office twenty years ago. Hearing yesterday about the College's efforts to increase diversity, and hearing Linda Hirshman's fabulous talk yesterday about Justices O'Connor and Ginsburg, I'd like to end with this simple thought.

My closing thought is this: I was struck by the fact that Justices O'Connor and Ginsburg both had mentors who made a great impact on their careers. Mentors who were very different from them in age, gender and background. Justices O'Connor and Ginsburg were extraordinary people. I don't want to diminish from what they've accomplished, but I believe their roles in history were accelerated because of the roles these mentors played. If we pay back those of you who mentored us by nurturing and teaching an ever more diverse group of younger lawyers I believe that this College and the American trial will flourish long after we're gone. Simply put, I believe if there's more mentorship of a larger pool of more diverse lawyers there will be more trials and more great lawyers.

On behalf of the class of 2016 we thank you for this privilege and we look forward to our journey together. Food and drink may now be served. ■

AWARDS & HONORS

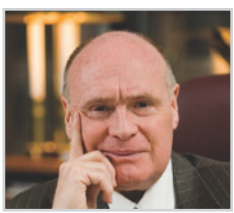
ROBERT T. ADAMS of Kansas City, Missouri has been named a 2016 Dean of the Trial Bar by the Kansas City Metropolitan Bar Association (KCMBA). Adams accepted the award at KCMBA's annual Bench-Bar & Boardroom Conference in May. The award, which was created in 1985, recognizes member attorneys who have substantial and distinguished trial service "whose litigation skill and professional demeanor have resulted in consistent recognition by their peers as exemplary." Adams is Vice Chair of the Jury Committee and has served on the following committees: Complex Litigation; Missouri State; and liaison to Teaching of Trial and Appellate Advocacy. He has been a Fellow since 2006.

CHARLES H. BAUMBERGER of Miami, Florida has been elected president of the American Board of Trial Advocates (ABOTA). Baumberger took office January 1, 20106. He has been a Fellow since 1996.

DAVID J. BECK of Houston, Texas was presented the Luther (Luke) H. Soules III Award by the Litigation Section of the State Bar of Texas. Each year, the Litigation Section of the State Bar of Texas recognizes attorneys who embody the excellence in the practice of law and exemplary service to the bar through outstanding professionalism and community impact. Beck served as Past President and is a Trustee of the Foundation. He has been a Fellow since 1982.

GEORGE A. DAVIDSON of New York, New York was honored with the 2016 Whitney North Seymour Award for outstanding public service in private practice. The award is named in honor of the late Whitney North Seymour, a leading member of the bar who served as president of the College, American Bar Association and the Association of the Bar of the City of New York. Davidson has served on the New York-Downstate Committee. He has been a Fellow since 1990.

HARRY M. REASONER of Houston, Texas has been named as the recipient of the 2016 Karen H. Susman Jurisprudence Award by the Anti-Defamation League. The award is given annually to an outstanding member of the legal community who exhibits an exceptional commitment to equality, justice, fairness and community service. Reasoner has served on the following committees: Adjunct State; Federal Civil Procedure; and Special Problems in the Administration of Justice (U.S.). He has been a Fellow since 1981.



RODNEY G. SNOW of Salt Lake City, Utah received the 2016 Utah State Bar James B. Lee Mentoring Award in March 2016. The recognition is given for time, dedication and service in helping new lawyers in Utah understand the rules of professionalism and civility and how adherence benefits clients and the profession as a whole. Snow has been a Fellow since 1993.

PHILLIP A. WITTMANN of New Orleans, Louisiana was recognized with the Presidents' Award from the New Orleans Bar Association at a ceremony held in October 2015. The Presidents' Award recognizes professional excellence, integrity and dedication to service in the highest ideals of citizenship. He served as a member of the Mexico Committee and has been Fellow since 1983.

INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT CHILTON DAVIS VARNER

Inductees, spouses and their guests were honored with a recognition luncheon on Saturday, March 5, 2016, immediately after General Session. Past President **Chilton Davis Varner** of Atlanta, Georgia offered remarks to the attendees. Her edited remarks follow:

Good afternoon and welcome to the American College of Trial Lawyers. When I first joined my firm in Atlanta, I came in one morning and the litigation floor was all atwitter. I grabbed somebody and I said, 'What in the world is going on? Did somebody get a big verdict?' 'No,' came the response, 'Byron Attridge has just been invited to join the American College of Trial Lawyers.'

I went down the hall to find somebody that was a little older and wiser than I was. I stepped in his office and I said, 'Can you tell me what the American College of Trial Lawyers is?' He said, 'It's the most prestigious honor that can befall any trial lawyer. You can't even campaign to get in; they have to ask you to join.'

Everybody on the litigation floor that day was proud as they could be. Byron was the head of our firm's litigation practice. He was 43 years old at the time. He was a well-respected and well-known trial lawyer in Atlanta. Even we fledglings that day shared a little bit in the reflected glory that Byron had because he had been invited to join the College.

I decided then and there that membership in this organization was surely the capstone of any trial lawyer's career. And I vowed to work as hard as I could to be worthy.

Now, that was a long time ago, but some important things stay the same. The College is still the most prestigious organization for trial lawyers. You still can't campaign to be asked to join.

So let's talk about how you did get here. It began with your hard work of trying cases

The College limits its membership to one percent of the lawyers in any state or Canadian province, but our numbers tell us that, actually, the number of Fellows in any jurisdiction is a small fraction of that one percent.

For more than 60 years now, the College has been selecting only the most outstanding lawyers in North America. We have assured that we pick and select only the best of the best by an extraordinary selection process that is awesome, and I use that overused word in its true sense, in the amount of effort that it involves.

Many really fine lawyers fall by the wayside right there. There are lots of great lawyers, but the College wants only the most outstanding ones. To be blunt, this is not the American College of Litigators and it is not the American College of Settlement Lawyers.

Not only were your trial skills explored, so were your ethics, your professionalism and, indeed, your good humor. Surely, you have gleaned by now that collegiality is a very large part of the College, are you someone that we will enjoy sharing time with, someone that we will enjoy working with in the shared work of the College.

In fact, one of the biggest attractions of membership is attending meetings like this and talking to the speakers and the great lawyers who assemble here. Sometimes even you might feel like Tom Clark, when he was approved for the Supreme Court, he said, 'I feel like a mule entered in the Kentucky Derby. I don't expect to distinguish myself, but I do expect to benefit by the association.'

There are many excellent lawyers, but the College wants only the best. Because you are here today, you know exactly how we feel about you.

To quote Past President **Greg Joseph**, 'I think the conclusion that you can reach from all of this, you may actually approach being as good as you think you are.'

Now, being a courtroom lawyer is one of the most demanding vocations that you could ask for. It requires multiple skills, solid judgment, physical endurance and ▷

a certain degree of likability so that juries won't mind helping us out. That combination is not found all that often. The hours are long. The pressure is ever present. The buck surely stops with the first chair trial lawyer. Virtually none of us in this room could have made it here without the strongest support, tolerance and understanding from those closest to us.

So with your permission, I would like to speak for just a moment to the spouses, partners and guests who are here. The lawyer with whom you entered this room today has survived the toughest individual scrutiny that any lawyer will ever see. His or her ability has been scrutinized over an entire career and measured against those resumes of the best lawyers on the continent.

Your lawyer has been found to be at the pinnacle of his or her profession. He or she has, in case after case, welcomed the most significant responsibility and shown over and over that no test was too severe. Your lawyer's dedication to excellence has never wavered. Your lawyer's integrity and ethics have been found to be beyond reproach. Judges, competitors and adversaries have told us that your lawyer really does stand out amongst all the rest. So we salute today not just the inductees, but you as well for your indispensable contribution to the success of this day.

Before we close, let me say that we hope today will be a beginning, not an end. The College is busy about so much: reform, education, finding the best new members of the College, the list goes on and on.

When I was inducted, I had a visit shortly thereafter by **Griffin Bell**. He was my mentor and my law partner. He came in and sat down. He had been a President of the College. And he told me, 'Chilton, you need to get involved in the work of the College.' He reminded me that so many people have worked so hard for me to be invited to join this organization, that if all I did was to hang my plaque on my office wall and attend a meeting now and then, I would have let all those people down.

I urge you to find one of the College's initiatives that fires your passion, arouses your interest, and join it and help us make our profession and our system of justice better than what we found. All of this good work goes on in great atmosphere of collegiality, a characteristic that fundamentally distinguishes this organization from any other. To borrow a phrase from our speaker Ashby Pate yesterday, 'The College is a variable engine of human connection.'

On one of my travels, I heard **Brian O'Neill**, who has acquired some notoriety at this meeting by virtue of his aloha shirt and his introduction of Ashby Pate, tell his Minnesota colleagues that wherever he traveled for the College, he has found that College Fellows were the best lawyers, they were the most well-respected lawyers and, this was the part I found most interesting, they were the happiest lawyers in their community. Brian, I think, was right. I would say to you in this day and time, it is no small accomplishment to bring together in a single organization the happiest lawyers in the United States and Canada, people who still love what they do and want to be the very best at it. Now, that is something worth preserving and it is something worth being part of.

Let me quote one more Fellow, Judge **Bill Kayatta** of the First Circuit Court of Appeals, who served on the Board of Regents. Indeed, he was on the Board when he was called to the bench of the First Circuit. He once told me that he thought the College, with its unabashed commitment to excellence, its celebration of collegiality and our sheer joy in the pleasure of each other's company was perhaps the last barricade in the world where legal practice all too often seems determined to drift toward gray mediocrity.

This College is not about gray mediocrity. It's been said that the College is known as much by those who were not members as by those who are. One still can't politic one's way into the College. One can't purchase admission to Fellowship. One cannot seek it. It is not considered proper. One can simply earn it and then wait to be asked.

What an honor we all have to be here at this meeting. Induction into the College is truly a blessing pronounced upon a career well-served, a profession accomplished and a life well-lived.

To the inductees, I say this, we know so much about you, we know so much about you in every dimension, and it is precisely because of that knowledge we can say, with most profound pride, respect and confidence, welcome to our revered Fellowship. We challenge you to make us better. ■

THREE PENNSYLVANIA FELLOWS HOLD SEMINAR ON NEGOTIATIONS

On January 29, 2016 Fellows **Catherine M. Recker**, **Timothy R. Lawn** and **Joseph C. Crawford** presented a ninety-minute seminar on negotiation in Harrisburg, Pennsylvania to fifty-five public interest lawyers affiliated with the Pennsylvania Legal Aid Network (PLAN). PLAN is a consortium of legal aid programs that provide legal representation to low-income individuals and families in civil matters throughout Pennsylvania, including cases involving veterans' benefits, defense of wrongful eviction cases, protection from abuse and wage theft. Judicial Fellow **Gerald A. McHugh**, a United States District Judge for the Eastern District of Pennsylvania, encouraged the Fellows to make such a presentation to the PLAN lawyers.

Instead of teaching from the frame of reference of their own practices, the trio decided to focus the seminar on negotiation issues that the public interest lawyers had previously identified as having importance in their practices, including the ethical dilemmas presented by: negotiating with an unrepresented opposing party; and negotiations in which the opposing party demands that the legal aid program and public interest lawyer waive their right to an award of statutory attorney's fees. Recker, Lawn and Crawford educated themselves and prepared written materials on these issues and on some general negotiation topics. A copy of these materials was provided to each public interest lawyer in the audience.

In another effort to make the program relevant and interesting, they used familiar "voir dire" techniques to encourage the public interest lawyers in the audience to take control of the presentation by asking the questions that mattered most to them. That is exactly what happened. If a transcript had been prepared, it would have shown that ninety percent or more of the time spent in the seminar consisted of discussion of questions posed by members of the audience, who were a talented and dedicated group of public interest lawyers. The result was a lively question-and-answer format that covered not only the issues on which the Fellows had prepared written materials, but also many other aspects of negotiation, including methods to prepare for negotiation, strategies for breaking impasses and practical aspects of drafting settlement agreements.

One of the goals of the seminar was to continue the dialogue between the College and PLAN, which Judge McHugh began when he served as Chair of the Board of PLAN before his appointment to the bench. The hope is that presenting interesting seminars to public interest lawyers will strengthen the bond between the College and the public interest bar and lead to involvement by Fellows in important access to justice initiatives. All three who participated in this seminar enjoyed the experience and encourage others to consider similar outreach efforts to public interest lawyers.

Joseph C. Crawford
Philadelphia, Pennsylvania ■

WAR STORIES FROM FELLOWS

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

Please send stories for consideration to editor@actl.com

THE CASE OF THE MYSTERIOUS WINDOWS

For twenty-four years, I was an Assistant U.S. Attorney in Cincinnati, Ohio. I prosecuted one case that included a mysterious appearance during trial.

The defendant was an antique dealer in West Virginia. He specialized in, as the indictment charged, knowingly fencing stolen leaded and stained glass windows and doors which he sold in his antique store and elsewhere. He was accused of using thieves who would steal leaded and stained glass windows and doors from homes, businesses and churches in Ohio and transport them to West Virginia to the dealer. It was clearly interstate transportation of stolen property, a federal offense. A target area for the conspiracy was greater Cincinnati, which has many older buildings with wonderful examples of the glass.

Some of the thieves were caught. The thieves agreed to cooperate with the FBI, tell about their relationship with the defendant dealer and testify at trial if needed. The thieves said that on some occasions the dealer would travel to Cincinnati and ride around town with the thieves and point out which windows and doors he wanted stolen.

The thieves said their biggest haul at the dealer's direction was a set of multiple heavy leaded-glass interior windows of intricate design over six feet tall. They had stolen the windows from a private club in downtown Cincinnati while the windows were stored awaiting re-installation after a renovation. They told the FBI the windows were huge and very heavy and hard to move without damaging, but they had taken them to the dealer in West Virginia. They did not know what had happened to the windows once delivered. The FBI confirmed that the windows had been stolen from the renovation site and obtained pictures and dimensions. They were huge, heavy and very beautiful.

The government executed a search warrant at the dealer's business. Some windows and doors were recovered that could be identified as having been stolen from buildings in Cincinnati. The thieves were able to say from which buildings some had been stolen. The FBI confirmed the thefts.

The issue: was there proof beyond a reasonable doubt in a "they said" "he said" confrontation in court that the defendant dealer knew that the property found in his business had been stolen?

The defendant insisted on a trial. He asked for a bench trial and, unusual for a federal criminal trial, the government agreed. We tried the case to a judge without a jury. The judge presided over the trial in a majestic old courtroom, with some grand windows of its own, on the eighth floor of the U.S. courthouse in Cincinnati. The courthouse was built when someone with one of my favorite names of all times, Christian Joy Peoples, was the head of the federal agency responsible for the construction. But I digress.

At trial the proof was coming in as expected for the government. The FBI testified to what it had found during the execution of the search warrant. Witnesses testified and identified windows and doors that had been stolen from their buildings in Cincinnati. The thieves testified about how they had worked for the defendant and that he knew that the windows and doors they brought to him in West Virginia were stolen property from Ohio. The defense cross-examined the thieves, most of whom had criminal records. The defense got the thieves to admit that they were hoping to get reduced sentences by testifying that the defendant knew the property they brought him was stolen. It was a typical trial to determine "what did he know and when did he know it." The 800-pound elephant in the trial was those huge and heavy beautiful, intricate leaded glass windows stolen from the private club that had not been found at the defendant's business.

The judge's routine was to take a break mid-morning and mid-afternoon. One afternoon after the evidence, direct and circumstantial had been building up for days, my co-counsel and I were the first to leave the courtroom at the break. We stopped short as we entered the hallway outside the courtroom. There before us, leaning again the wall of the hallway in the federal courthouse, were, unmistakably, all of the stolen windows from the private club. The hall was otherwise empty. How had anyone gotten the windows to the eighth floor of the courthouse without being noticed? And without damaging them?

We never found out who put the windows outside the courtroom. The defendant professed to know nothing about the windows or their return. The thieves were clueless. No helpful fingerprints were found.

Courthouse security in those days before 9/11 was not so strict. It apparently was possible to pull a truck into the basement of the courthouse under the pretense of making a delivery. The elevator was big enough to take the windows to the eighth floor in one trip. Magic.

The judge found the defendant guilty on all counts. Later the judge agonized at sentencing that a young man with so much promise, the son of the former president of the West Virginia Bar, had stooped to being a fence and found himself in federal court as a criminal. The judge sent him to federal prison.

Just last week I was at a function at the former private club, private no more and available for the public to see the huge, heavy and beautiful windows reinstalled after being hauled from the courthouse and refurbished years ago. Many a law school and bar association function is held in the presence of the windows that made the mysterious return to the federal courthouse mid-trial.

Kathleen M. Brinkman
Cincinnati, Ohio

TALES FROM *U.S. V. MOUSSAOUI*

The first tale comes from a Rule 15 F.R.Cr.P. deposition, but it was read during the trial.

1. The government took the deposition of a witness in Malaysia. Mr. Moussaoui was functioning pro se at that time, but the defense team was conducting shadow litigation so that, in the event he lost the right to proceed pro se, we would be prepared to continue with the case. I was in the Virginia jail with Mr. Moussaoui and the Federal Defender, Frank Dunham, and the Assistant United States Attorney were in Malaysia with the witness. We had a video feed between the two locations. The AUSA went through the direct examination, during which the witness detailed his interactions with a man he knew as "John." However, the AUSA forgot to have the witness identify "John" as Mr. Moussaoui. Mr. Moussaoui then began his cross-examination of the witness by asking him to describe "John." The witness responded, "He looked like you." Mr. Moussaoui pushed him on the point and the witness responded the same. Finally, the witness said, "He looked like you. He was you." ▷

A classic example of snatching defeat from the jaws of victory. Mr. Dunham then conducted a skillful, lawyer-like examination of the witness, but he didn't try to undo the shot Mr. Moussaoui had made in his own foot.

2. Mr. Moussaoui insisted on testifying at each of the two phases of the penalty trial. For all practical purposes, he had not spoken to us for almost four years. On cross-examination, the AUSA was able to get Mr. Moussaoui to agree to any proposition he set forth, the more damaging, the more enthusiastic his response. For example, when he asserted that Mr. Moussaoui, wanted to see September 11 repeated, Moussaoui responded "Yes, and on September 12 and September 13 and September 14 and September 15."

Our position was that Mr. Moussaoui was schizophrenic and, as part of our proof, we had to demonstrate that he suffered from "fixed delusions." To that end, we elicited testimony from a jail guard that Mr. Moussaoui was convinced that he would be released by the end of President Bush's term in office. On a roll because of Mr. Moussaoui's agreeability during cross-examination, the AUSA said, "You heard the testimony of the jail officer that you believe you will be released before the end of President Bush's term in office. Now you don't really know that is going to happen? You just hope that it will happen, right." To which Mr. Moussaoui responded emphatically, "I believe it will happen like you believe the sun will rise in the morning."

3. Also in *Moussaoui,* the government called Rudy Giuliani as a victim witness. He testified compellingly about all the close friends he lost in the 9/11 attack and the damage the attack had done to New York City. In my cross-examination, I elicited testimony about how resilient New Yorkers were and how the city had responded to the crisis, my examination being premised that, as mayor, he had to give me answers that would be helpful. But the idea of having so prominent a public figure on the stand, and the success of my early questioning got the better of me. I asked him if he agreed that New Yorkers would rise above this tragedy, and, having had the time to figure out what I was doing, he answered, "Yes, except the ones who died."

4. A capital trial is usually held in two parts, a guilt phase and a penalty phase, based upon the Supreme Court cases that abolished the death penalty and then revived it, in the 1970s, and the Federal Death Penalty Act provides for such a bifurcated trial. While he was acting pro se, Mr. Moussaoui insisted on pleading guilty and, consistent with practice in the district, he signed a stipulation of facts to support the plea. The stipulation which the government drafted and he signed, however, went far beyond what was necessary to establish guilt for the offenses with which he was charged, and advanced the ball for the government on the issue of his eligibility for the death penalty, evidence which would normally be presented during the penalty phase. The defense team believed that we had a substantial defense on the question of his eligibility for the death penalty, but that once the jury saw the horrors of 9/11, including the victims who jumped from the World Trade Center, and the body parts scattered on the street below, a death sentence was virtually inevitable. I, therefore, filed a motion to bifurcate the penalty phase (there would be no guilt phase, obviously, since he had pled guilty), on the theory that the elements of death eligibility under the Federal Death Penalty Act, like intent to kill, really were more like elements of most state capital crimes than like issues to be proven in the penalty phase under capital sentencing schemes. I also argued that Mr. Moussaoui had already stipulated to most of the facts needed to establish death eligibility, including the number of people who had died as a result of the 9/11 attack, and that, therefore, the court should exclude the highly prejudicial evidence of the carnage of that day. The court granted the motion and the penalty phase was bifurcated, for the first time as far as I know. Ironically, we lost at the eligibility phase, which all of this was designed to prevent, but the jury ended up giving him a life sentence in the final stage.

Gerald T. Zerkin
Richmond, Virginia

PHILADELPHIA

AMERICAN COLLEGE OF TRIAL LAWYERS ANNUAL MEETING

SEPT 15 -18, 2016, PHILADELPHIA MARRIOTT DOWNTOWN, PHILADELPHIA, PA

Confirmed speakers include the following:

ANTHONY FAUCI, M.D.
Director, National Institute of Allergy and Infectious Diseases

HON. TIMOTHY M. KAINE
U.S. Senator from Virginia

HON. JAMES F. KENNEY
Mayor, City of Philadelphia

JUSTICE REBECCA LOVE KOURLIS
Executive Director, Institute for the Advancement of the American Legal System, Former Colorado Supreme Court Justice, Recipient of the Samuel E. Gates Litigation Award

GENERAL MICHAEL V. HAYDEN
Former Director, National Security Agency
Lewis F. Powell Lecturer

DAHLIA LITHWICK
Senior Editor, Legal Correspondent, *Slate*

HON. KEVIN F. O'MALLEY
U.S. Ambassador to Ireland, FACTL

MARK THOMPSON
President and CEO, The New York Times Company

HON. SALLY Q. YATES
Deputy Attorney General of the U.S., FACTL

BRIDGE OF SPIES: HOLLYWOOD A-LISTER TOM HANKS AS FELLOW JAMES DONOVAN

Fifty-seven years after New York City insurance lawyer **James B. Donovan** was inducted into the College on August 25, 1958, his professional life and defense of a Russian spy played out on the big screen. Donovan could not have known at his 1958 induction at the Beverly Hills Hilton that his career would be reenacted in the critically-acclaimed *Bridge of Spies* movie. The College was but eight-years-old when Donovan was inducted, but it chose wisely in tapping him to become a Fellow.

Bridge of Spies featured the work of two Hollywood heavyweights: Academy Award-winning director Steven Spielberg and Academy Award-winning actor Tom Hanks as James Donovan. Released in 2015, it merited a number of Oscar nominations, including a Best Actor in a Supporting Role win for Mark Rylance, the British screen actor who portrayed Donovan's client, Rudolf Abel.

The film's real appeal lies in Hanks' Norman Rockwell-esque embodiment of trial lawyer James Donovan. Donovan's advocacy skills elevated him onto a bigger stage as an international negotiator during the Cold War.

The story began for Donovan when he was "con-scripted" by his local bar association to serve as the court-appointed attorney for a then-alleged Soviet spy, Col. Rudolf Ivanovich Abel.

Donovan took the unpopular assignment, and took his representation of Abel all the way to the United States Supreme Court

The Supreme Court scene features Donovan vigorously advocating for his Russian client, but the unpopular cause of representing a Russian spy did not go unnoticed. There were reports of public scorn for Donovan's advocacy on behalf of an accused Russian spy. At that time, Abel was the highest ranking Soviet officer ever tried on espionage charges in the U.S. Even the trial court judge (spoiler alert) disliked Abel. In a classic, "only in Hollywood," *ex parte* scene, Donovan is seen negotiating with the sitting federal judge for the life of his client—no prosecutor in sight. It was the saved life of Abel that then became the international chess piece in an exchange of Cold War prisoners over the Glienicke Bridge in East Berlin, Germany. Most famously, it resulted in the return of Abel to Russia and the return of U-2 pilot Francis Gary Powers to the United States. Powers was downed in a U-2 plane while making a high-altitude reconnaissance flight over the Soviet Union in May, 1960. Named after the Glienicke Palace, the bridge was used several times for the exchange of captured spies. The bridge connected the Wansee district of Berlin and Potsdam. The border between East Germany and West Berlin runs through the middle of the bridge.

One of Donovan's arguments to save the life of Abel was that a living Abel might prove of greater value in a Cold War situation. He was exactly right, as it helped arrange the now-famous transfer of Abel for Powers. After the exchange, Powers returned to the U.S. and became a traffic pilot/reporter in Los Angeles. Although he was a true survivor of the Cold War, his death came in 1977 when he crashed his traffic reporter helicopter after filming Los Angeles area wildfires.

While the College goes unmentioned in the movie, Hanks' characterization of James Donovan did much to extol the virtues of trial lawyers.

Donovan (Tom Hanks), wife Mary Donovan (Amy Ryan) and Associate Thomas Watters, Jr. (Alan Alda) face the press.

James Donovan's son, John Donovan, remembered meeting Abel with his father. It was one of many trips he made with his father to the jail where Abel was being held.

As portrayed in the movie, James Donovan spent so much time on the *Abel* case that his wife Mary Donovan (portrayed in the movie by Amy Ryan), told her husband, "You spend more time with this Russian spy than your own family." Donovan responded, "Mary, if you were charged with a capital crime, you'd find that I would spend more time with you as well." Mrs. Donovan, quick to the retort, humorously told her husband, "What if I was charged with a capital crime, and you were the victim?"

Tom Hanks, in a media interview, described Donovan: "He was the perfect negotiator. Irish, tough, and not going to give an inch."

When Donovan passed away at the age of fifty-three in 1970, the College and this country lost both an excellent trial lawyer and an accomplished diplomat.

John Donovan with his father Fellow James Donovan on a trip to Cuba. The elder Donovan served as the U.S government's emissary to Cuba.

Bridge of Spies brings together historical truths of the Cold War, and aligns it with the advocacy and skill of colleague and Fellow, James Donovan. Having Tom Hanks portray one's legal career on the big screen is wishful thinking for all trial lawyers and Fellows.

Kevin J. Kuhn
Denver, Colorado

NOTES OF INTEREST

OTHER HIGHLIGHTS IN DONOVAN'S CAREER

Donovan's professional life has also been discussed in fascinating detail by St. John's University Law School Professor John Q. Barrett. Barrett took a shining to the story of James Donovan because of Barrett's interest in one of Donovan's early military bosses, chief Nuremburg prosecutor Robert Jackson, a Justice of the U.S. Supreme Court. Donovan worked for Justice Jackson as one of the Nuremburg prosecutors after World War II. Barrett's piece of writing entitled "James B. Donovan, Before the Bridge of Spies" is available on Barrett's blog on Justice Jackson, http:\\thejacksonlist.com

Few know the story about how Donovan served as the U.S. government's emissary to Cuba and worked for the release of various political prisoners and servicemen. Son John Donovan vividly remembers his trip to Cuba with his father. In the opening scene of the movie, then private practice lawyer, James Donovan, is arguing a coverage defense with regards to a motor vehicle liability policy: "Even though my client struck several motorcyclists, it was still one accident. The same way that when a train derails and multiple people are injured, it is still one accident." John Donovan remembers that case well because he accompanied his father for argument before the State of Washington Supreme Court. ■

PRESIDENT'S PERSPECTIVE
COLLEGE PRESIDENT MICHAEL W. SMITH

The leadership of the College is proactively addressing the significant issues facing the College in the coming years, based on the thoughtful views expressed by Fellows in a recent survey, and also informally throughout the years. In doing so, the Board of Regents and the Committee Chairs are helping the College meet the challenges of the times, while preserving its enduring legacies and remaining true to its high standards and longstanding traditions. President Mike Smith reports on some of the initiatives that are helping the College plan for the future and the accomplishments of the College so far this year.

Q: You are a little more than halfway through your term as President. What has your experience been so far?

Probably, the greatest experience for any President is traveling and making the rounds from Vermont to the Northwest, and most places in between, as well as Canada. Seeing old friends, making new friends, going to new places and being exposed to the constant grand level of collegiality and excitement make this job very special, and Ellen Bain and I are very grateful for the opportunity.

Q: What is the College's mission and its work related to the mission?

Some years ago, Past President Justice Lewis Powell related the College's unique characteristics to its "smallness" and "exclusivity." Concomitantly, the College's Mission is far more focused than that of bar associations and other like groups. For instance, the College seeks to maintain and "to improve the standards of trial practice, professionalism, ethics and the administration of justice…", and it does so through its thirty-four General Committees, sixty-one State and Province Committees, and Task Force and Ad Hoc Committee appointments when needed.

For instance, and as relates to the Administration of Justice, two of our Committees have been and are very involved with the unconscionable problems our veterans are experiencing with the denial of their benefits and the Veterans Administration appellate process. Similarly, a Task Force was recently appointed to consider and make recommendations concerning procedures currently used by many colleges and universities to resolve sexual harassment allegations. These procedures in many cases are demonstratively unfair to the accused, with no right to representation or cross-examination in many of them. It should be noted that the College is not about picking winners and losers, but is concerned about the fairness of the adjudicating process.

Our State Committees are often called upon to protect the judiciary, not from fair critique, but malicious attacks some of which are ignited by politicians simply unhappy with a given result.

Professionalism and ethics are front and center in much of what the College does including the four yearly law school competitions, two in the United States and two in Canada.

The College practices what is preaches—strict adherence to the ethical standards, professionalism and collegial conduct are bedrock boxes which must be checked prior to invitation to Fellowship.

Q: The College stands out among organizations that evaluate trial attorneys due to its high admission standards. How will the College continue to select only the best trial lawyers and maintain its position as the preeminent organization of its kind?

The College has never wavered in the insistence on its standards being met as an absolute prerequisite to Fellowship. We know, for instance, that there are not as many cases being tried as in years past. This circumstance may result in fewer lawyers meeting our standards, but as recently as last year at the 2015 Strategic Planning Retreat in Atlanta, it was unanimously confirmed (again) that should this circumstance result in a smaller Fellowship, so be it.

Q: The College has reaffirmed its commitment to identify quality candidates among women and minority lawyers. What initiatives have been implemented to increase diversity among the Fellows?

First, as a result of the 2015 Retreat, the College appointed a Diversity Sub-Committee of the Admission to Fellowship Committee. For as long as I have been involved, the College has made it a point to ensure that *each* elite trial lawyer from whatever walk of life, has an opportunity to be judged equally by our standards for Fellowship. In this regard, the Diversity Sub-Committee has been charged with reporting to our State and Province Committees with ways and means to help them broaden their search for qualified minority candidates, and to develop a process by which accountability is assured. That report and any required reorganization will be completed soon, hopefully by the end of the summer.

Q: The College has determined that it will take a more public or visible position on issues that fall within its mission. Can you please discuss the importance of this change?

Recently, the College has, in its Mission Statement, placed more emphasis on making public statements but only, and this is important, in *matters related to its mission*. Similarly, there are other checks and balances; for instance, a requirement that all Fellows in a State or Province give prior consent to a public statement to be attributed to the State or Province Fellows of the American College of Trial Lawyers. This requirement also helps ensure that collegiality among the Fellows is maintained. We have also improved the processes by which these important questions are resolved, particularly with requests for amicus briefing.

Q: What is the new policy of the College regarding the consideration and handling of requests for Amicus Briefs and why was this change implemented?

The policy is as I just described and is the subject of a written policy of the College. The process, I should add, requires a blue-ribbon panel of three Fellows to review the request and make a recommendation to the Executive Committee. Final approval rests with the Board of Regents.

Q: How are the College's efforts going regarding help for veterans?

Providing assistance for our veterans is a complex issue and one I have addressed often on my trips to meetings of Fellows. There is a steadfast resolve, however, that this is worth our continued effort and attention, and everything is on the table from the College's perspective, from cajoling to litigation. This is a very serious issue.

Q: What are some of the other key accomplishments of the College so far this year?

Clearly, the College has needed to improve its lines of communications, particularly with respect to our Fellowship and our constituents to include the judiciary (federal, state and provincial), law schools and students, among others. In this regard, on June 1, 2016, you received the first edition of the *eBulletin,* a publication dedicated to reporting what is happening in the College. And, we will continue with the work of our thirty General Committees, and State and Province Committees. For example, the Complex Litigation Committee will soon issue its third edition of the acclaimed *Anatomy of a Patent Case*; and State and Province Committees will continue offering trial advocacy programs and free CLE to our public interest lawyers; our Emil Gumpert Award Committee in conjunction with the College's Foundation will continue to make awards to deserving programs, such as the $100,000 recently given to the Loyola Immigrant Justice Clinic in Los Angeles, a very deserving recipient which provides pro bono legal services to an underserved population. These are just a few of the many, many programs generated by the College in furtherance of its mission.

Q: What's in store for the remainder of your term?

To stay the course with those matters mentioned above, and to react to those mission-encompassed matters raised by our Fellows. Most importantly, to see that our standards and traditions remain strong. ■

Alabama, Florida, Georgia

January 21-24, 2016

New Orleans, Louisiana

REGION 7: TRI-STATE REGIONAL MEETING

On January 21, 2016 over 200 Fellows and guests arrived at the beautiful Windsor Court Hotel in New Orleans for the Region 7, Tri-State Meeting. Representing Fellows from Alabama, Florida and Georgia, the meeting is held every other year with each state rotating as host. With Alabama playing this year's host, the Alabama State Committee decided to break from tradition and hold the event in the Crescent City. For the past decade or so, it had been held at either Sea Island in Georgia or Amelia Island in Florida. Thinking a change of venue and pace might be well-received, two decisions were made early on that reflected a slightly different approach: picking New Orleans as the new venue and opting for more casual and less structured program. The gathering still had the traditional speakers programs but carved out substantial free time so Fellows and their guests could enjoy all the delights New Orleans had to offer.

As Fellows and guests checked in to the hotel, they received a basket in the shape of the state of Alabama full of goodies from Alabama. A cocktail reception at the hotel on Thursday night kicked off the weekend's events.

Friday and Saturday mornings offered an interesting lineup of speakers on a variety of topics that are described as eclectic with an Alabama and New Orleans flair.

The first speaker on Friday, January 22, was **Richard Campanella**, a geographer with the Tulane School of Architecture and author of nine books on the urban geography and history of New Orleans. Campanella gave a revealing talk on the geographical and topographical history of New Orleans up to Hurricane Katrina, which explained how tampering with Mother Nature actually made New Orleans more vulnerable to the ravages of that hurricane.

Louisiana Fellow **Patrick A. Juneau, Jr**. followed Campanella. Juneau, the claims administrator for the BP Class Settlement, enlightened Fellows on the inner workings of that process.

After Juneau was **William King**, an attorney in Birmingham formerly with Lightfoot, Franklin & White LLC. William had just left the private practice of law to join the Southeastern Conference (SEC) as General Counsel. Before joining the SEC, William had represented a host of well-known athletic entities including Auburn University, Carolina Panthers quarterback Cam Newton, former Cleveland Browns quarterback Johnny Manziel and many others.

To round out Friday, Fellows were entertained by **Carla Jean Whitley** and her stories of the Muscle Shoals Sound Studios and excerpts from her book, *Muscle Shoals Sound Studio: How the Swampers Changed American Music*. The story of the famous, and infamous, stars who passed through the studio and recorded in that tiny building in Northwest Alabama were of great interest to Fellows.

On Friday night another cocktail party was held at the hotel before Fellows enjoyed "A Taste of New Orleans," an event planned by the Alabama Fellows whereby reservations had been arranged for Fellows and guests at ten top restaurants around town. At each venue there was at least one Alabama Fellow to welcome the diners and promote conversation and fellowship. The arrangement allowed Fellows the opportunity to meet and mix in a more intimate setting.

On Saturday morning, January 23, the morning session opened with Alabama Fellow **Joe Espy III** and Florida Fellow **James P. Judkins** providing a glimpse into the Alabama "Bingo Trial." Espy and Judkins were lead trial counsel for two defendants among nine others (four current and former legislators). The defendants were accused of offering and accepting millions of dollars in bribes in connection with the 2010 Alabama Gambling Bill. The duo successfully defended their clients in a months-long trial.

Next up was environment reporter **Ben Raines**, who described his breaking of the story of the truth about the amount of oil being pumped into the Gulf by the failure of the BP Macondo Well. He presented a detailed slide show that depicted the oil's impact on the flora and fauna of the Gulf.

After the break, **Bradford Baker**, treasure hunter and entrepreneur extraordinaire from Central Florida told how he found $750 million worth of treasure only to lose it to the Spanish Government.

Last, but not least, was a surprise guest. From the small town of Elkmont, Alabama, population 435, **Tasia Malakasis** creates and markets goat cheese throughout the United States under the name of Belle Chèvre. She told her story and served three samples of goat cheese along with fruit and crackers. It was a delicious way to end the presentations on Saturday morning.

On Saturday night Fellows and guests were bussed to the World War II Museum for a buffet dinner and entertainment. Attendees had the place all to themselves, and a great time was had by all.

"You can have a great venue, you can have great speakers, you can have great ideas, but if you do not have people to execute your plan, you will not have anything. None of this would have happened without the help of National Office staff, my office staff and our State Committee members putting their shoulders to the wheel and pushing. To them go the thanks and the recognition," said Alabama State Committee Chair Edward R. Jackson of Jasper, Alabama.

Edward R. Jackson
Jasper, Alabama ■

Arkansas, Louisiana,
Mississippi, Texas

April 15-17, 2016

Austin, Texas

REGION 6 MEETING

The Texas Fellows hosted the regional meeting for Region Six (Arkansas, Louisiana, Mississippi and Texas) in Austin, Texas, April 15-17 at the JW Marriott Hotel. (For trivia buffs, with 1,005 rooms, it is the largest JW Marriott in the United States.) Approximately 100 Fellows and spouses or guests were in attendance.

Region Six meetings are held every two years and rotate among the four states in the region. Recent meetings have been held in Little Rock, Arkansas; Gulfport, Mississippi; New Orleans, Louisiana; and San Antonio, Texas.

The meeting began with a Friday evening reception. Fellows and guests socialized in a relaxed setting in which very few coats or ties were worn. Following the reception the attendees were able to enjoy the many dining opportunities in downtown Austin, ranging from Tex Mex and barbeque to international cuisine.

On Saturday morning, Texas State Committee Chair **J. Mark Mann** welcomed Fellows and guests to the general session which featured four outstanding speakers. First, the Fellows heard from **Mike Perrin**, a Fellow who was appointed the Athletic Director at the University of Texas in September 2015. A former UT football player and All Southwest Conference linebacker who played for Coach Darrell K. Royal, Perrin had no prior experience in the business side of college athletics. His background was that of a successful trial lawyer in Houston. But his predecessor as athletic director had alienated many folks in the University of Texas community and a change was desperately and quickly needed. Hence, the unexpected call to Perrin from the university president on Labor Day weekend.

At a time when many lawyers are considering retirement, Perrin took on a completely new career. Perrin talked about his transition from law to college athletics and how his experience as a trial lawyer translated well into his new position. Perrin then discussed the varied matters that he has dealt with as Athletic Director, such as negotiating within his first weeks on the job with Nike over a new contract for equipment; the death of Bevo, the beloved Longhorn mascot, and finding a replacement; recruitment of coaches for the football team; Big 12 Conference television and expansion issues; and fundraising.

Next, **Kenneth Winston "Ken" Starr**, then President and Chancellor of Baylor University and a former Solicitor General for George H. W. Bush, federal Court of Appeals judge, special prosecutor and Dean of the Pepperdine Law School from 2004 to 2010, gave a personal perspective on his friend, the late Associate Justice of the Supreme Court Antonin Scalia. His unique relationship with "Nino" was enlightening. For example, Scalia's polar opposite on the Court was Ruth Bader Ginsburg. Yet, as he noted, they were close friends and fellow opera lovers. As she described Scalia – "he made us all better."

Perhaps the most interesting story from Starr was that Scalia longed to be Solicitor General. When Scalia was in his mid-30's he was one of two persons considered for that position but he was not selected. Starr

explained that the Solicitor General sometimes must take positions contrary to the wishes of the President and, as a result, often gets out of favor with the President. No doubt Scalia would have found himself in that dilemma if he had been chosen as Solicitor General. Starr believes that Scalia would never have been appointed to the Supreme Court if he had received the Solicitor General appointment he so dearly wanted.

The third speaker was **Robert M. Chesney**, a University of Texas law professor who specializes in national security policy issues. Chesney's talk focused on how to respond to security threats in an age in which the enemy is often stateless. When can lethal force be used when we are not at war? What techniques can be used for interrogation? Many similar thought-provoking questions were raised by Professor Chesney which prompted lively discussion among the attendees.

The final speaker was **Henry W. "Bill" Brands**, a University of Texas history professor and author of six presidential biographies ranging from George Washington to Ronald Reagan. Brands spoke on his latest biography, *Reagan: The Life*, which was published in 2015. Brands was an engaging speaker who regaled the group with little known stories and his personal insight into Reagan. He described Reagan as a friendly, affable and self-deprecating person who was skilled at connecting with everyday audiences. Yet, he believed that Reagan had no close friends other than his wife Nancy. Brands talked about Reagan's largely unsuccessful career as an actor and how he was mainly in "B" movies. Then, at age 52 Reagan's career as an actor and television host was over. He turned to politics and became the consummate communicator. The rest is history – two terms as Governor of California and two terms as President of the United States.

Brands described Reagan as a conservative optimist. He was pragmatic and always had his eye on making progress to his goals, even if he could not achieve them all at once. Brands contrasted Reagan's effectiveness with today's politics and speculated just how well Reagan would have done as a presidential candidate in 2016. Short answer: just fine if running for the first time; much less certain of success if running for reelection. Brands went well beyond his allotted time but no one was seen checking the clock.

The meeting concluded with a dinner Saturday evening. President **Michael W. Smith** spoke of the College's standard of collegiality and its importance in the nomination process and that being a great trial lawyer alone will not lead to fellowship. He then updated Fellows regarding some of the current activities of the College. In particular, he talked about legislation that was considered in Kansas which potentially would undermine the independence of the judiciary. The College participated in the preparation of an amicus brief that was signed by every Kansas Fellow. The proposed action which would have been detrimental to the judiciary was defeated. President Smith also told Fellows about the work of a new task force, the Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence. The task force is developing a template for use by universities insuring due process to all participants in the resolution of allegations of sexual violence.

At the dinner, President Smith and Regent **Thomas M. Hayes III**, the Regent for Region 6, were presented hand and quill sculptures created by Fellow **Don L. Davis** of Austin. The sculptures are traditionally given by the Texas Fellows to the President and Regent in appreciation for their service to the College.

Entertainment was provided by the Bar and Grill Singers, a group of Austin lawyers who perform popular songs with substituted satirical lyrics poking fun at the legal profession. The final song was a wonderful and non-satirical rendition of the Star Spangled Banner, a fitting ending to a great meeting.

David N. Kitner
Dallas, Texas

COLLEGE SUPPORTS NEXT GENERATION OF TRIAL LAWYERS

Canadian Competitions

GALE CUP MOOT

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

College President **Michael W. Smith** attended this year's competition, held on February 19 to February 21, and presented the College's awards, including the Dickson Medals awarded to the top three oralists of the competitions. He also spoke about the College's involvement with the Gale Cup and gave a comparison of Justice **Lewis F. Powell** and the late Chief Justice **Brian Dickson**, the namesakes for the medals the College awards in the U.S. and Canadian moot court competitions.

The winning team for the Gale Cup Moot was McGill University, composed of Greg Elder and Vallery Bayly. The second place team was the University of British Columbia, with team member Jocelyn Plant. The Dickson Medal for Exceptional Oralist Performance in the Final Round was awarded to Michelle Psutka, University of Ottawa.

SOPINKA CUP

The annual Sopinka Cup national trial advocacy competition began in 1999 and was named in honor of the late Hon. Mr. Justice **John Sopinka**, Judge of the Supreme Court of Canada and Fellow of the College. The competition is administered by The Advocates' Society, with the final rounds traditionally held at the Ottawa Court House.

Secretary **Jeffrey S. Leon** attended the 2016 competition and, noted, "I can say without doubt that trial skills are alive and well in Canada."

The team from the University of Alberta took home the top prize at the Sopinka Cup. Team members included Jonothon Austin and Fraser Genuis. The Best Overall Advocate was Caroline Humphrey of Université de Moncton.

Gale Cup Moot winning team from McGill University, composed of Vallery Bayly, coach Alexandre Bien-Aimé and Greg Elder.

Sopinka Cup winning team from the University of Alberta: coach Donald MacCannell; Jonothon Austin; Fraser Genuis; coach Alexandra Seaman

National Moot Court winning team from Texas Tech University School of Law with the judges. Left to right, back row: Shelby Hall, Hon. Nicholas Garaufis; Hon. Susan L. Carney' Hon. Michael Sonberg; Hon. Rolando Acosta; Hon. Judith Gische; President Mike Smith; C.J. Baker. Front row, left to right: Debra L. Raskin, Fellow and President of the New York City Bar Association Kristen Vanderplas

Harvard Law School coach John James "J.J." Snidow; team member: Amanda Mundell; President: Mike Smith; team member Joe Resnek,;Texas Young Lawyers Association President President C. Barrett Thomas

Since the early days of the College, scores of Fellows have invested in the future of the profession by serving as judges and feedback providers at the four law student competitions sponsored by the College.

In addition to the time and expertise donated by Fellows, the College also provides each participating student with either the American or bilingual Canadian *Code of Pretrial and Trial Conduct* and a brochure describing the College and its work.

Along with the work of their partner organizations, the College's three competition committee members ensure the success of the events. The 2015-2016 Chairs were **Allan R. O'Brien** of Ottawa, Ontario, Canadian Competitions Committee; **David B. Weinstein** of Houston, Texas, National Moot Court Competition Committee; and **N. Karen Deming** of Atlanta, Georgia, National Trial Competition Committee.

U.S. Competitions

NATIONAL MOOT COURT

The team from Texas Tech University School of Law won the 66th Annual National Moot Court Competition. Held annually since 1951, the competition is organized by the New York City Bar and has been sponsored by the College for decades.

The winning team was composed of Kristen Vander-Plas, C.J. Baker and Shelby Hall. Georgetown University Law Center was the runner-up for best overall team, composed of Kyle Crawford, Anna Deffebach and Stephen Petkis. The Best Oral Advocate honor went to Kyle Crawford of Georgetown University Law Center, who received the Fulton W. Haight Award. The runner-up for Best Oral Advocate was Anna Deffeback, also from Georgetown University Law Center.

The final round was judged by Honorable Susan L. Carney, U.S. Court of Appeals for the Second Circuit; Fellow **Debra L. Raskin**, President, New York City Bar Association and President **Michael W. Smith**.

This year's problem addressed the contours of the "personal benefit" requirement for insider trading liability as well as the standard for admissibility of grand jury testimony in subsequent criminal proceedings.

The final argument was the culmination of more than six months of preparation and arguments by more than 158 teams from 113 law schools across the country. The top two teams from each of 15 regional competitions advanced to the February final rounds.

The Texas Tech team will be recognized during the Texas Fellows Luncheon in June.

NATIONAL TRIAL COMPETITION

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

More than 300 teams from more than 150 law schools participated in regional rounds held around the country; each of the fourteen regions sent its top two teams to the finals held in Dallas, Texas in March.

Members of the National Trial Competition serve as jurors and President Smith presented the College's awards.

This year's competition was won by Harvard Law School which bested a team from California Western School of Law. The winning team members receive plaques and their school receives the $10,000 Kraft W. Eidman Award. The Best Oral Advocate, who is awarded the George A. Spiegelberg Award, went to Joe Resnek from Harvard.

Norton Rose Fulbright provided plaques for the Harvard students, while a silver bowl and $10,000 were presented to the school in honor of Past President of the College, Kraft W. Eidman. California Western School of Law, the runner-up, received a $5,000 cash award from Beck Redden LLP, and the semifinalist teams, including Northwestern Pritzker School of Law and Yale Law School received $1,500 each from Polsinelli PC. ■

SUMMIT SEEKS TO CREATE COURTS OF TOMORROW

On February 25-26, 2016 the Institute for the Advancement of the American Legal System (IAALS), hosted its Fourth Civil Justice Reform Summit, focused on shepherding the just, speedy and inexpensive courts of tomorrow in Denver. The Foundation of the College played an integral part of the summit, granting $50,000 for sponsorship of the event.

"Improvements in the administration of justice will undoubtedly be the result of the summit," said Foundation President **David J. Beck**.

The summit, which included attendees from Australia, Canada, England and Singapore, brought together federal and state court judges, court administrators, attorneys on both sides, academics and users of the legal system to map the path for creating the just, speedy and inexpensive courts of tomorrow.

The summit covered a large swath of topics including current civil justice reform efforts around the country at the state and federal levels, simple to complex cases, the importance of case management by judges and the court and the varying perspectives of those who use the system. The gathering allowed for discussions on innovations throughout federal and state courts and opportunities to share lesson to be learned from different experiences and dockets.

In a blog posted on the IAALS website, Brittany Kauffman, Director of the Rule One Initiative, noted the immediate takeaways from the summit:

- "Fair and efficient implementation of the federal rule changes and the recommendations from the Conference of Chief Justices Civil Justice Improvements Committee at the state level are paramount. We are not at the finish line yet, and we need to remain committed to ensuring these changes have a positive impact on the ground.

- Judges play an essential role in this implementation—for the individual cases before them and as leaders in the system more broadly—and thus education and engagement of our judges at the federal and state levels is critical.

- Courts play an equally important role. As we learned from our keynote speaker, Judge Carolyn Kuhl, Presiding Judge of the Superior Court of California for the County of Los Angeles, all court officers and court staff must think outside the box to meet the ultimate goal of our system—service to litigants.

- Technology is a short-term challenge but also a long-term answer to creating the courts of tomorrow. Technology is an essential component in ensuring that courts will be able to meet the expectations and needs of our system's users.

- Cultural change must go hand in hand with all of the above in order to achieve real and lasting reform."

Past President **Francis M. Wikstrom,** who spoke at the summit, described IAALS as "a think and do tank. A true catalyst of reform throughout the justice system." ■

CALL FOR NOMINATIONS

The following College committees are always seeking nominations. Nominations can be sent to nationaloffice@actl.com or to each committee chair.

GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY COMMITTEE

Mandate: To receive and investigate recommendations and information relative to outstanding courage demonstrated by trial lawyers in unpopular or difficult causes, and where appropriate to recommend an award.

Chair: Daniel J. Buckley, djbuckley@vorys.com

SAMUEL E. GATES LITIGATION AWARD COMMITTEE

Mandate: To honor a lawyer or judge, whether or not a Fellow of the College, who has made a significant, exceptional and lasting contribution to the improvement of the litigation process.

Chair: Lisa G. Arrowood, larrowood@arrowoodpeters.com

SANDRA DAY O'CONNOR JURIST AWARD COMMITTEE

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

Chair: Charles E. Patterson, cpatterson@mofo.com

ARIZONA FELLOWS SHARE EXPERTISE IN ONE-DAY CLE

More than 140 attendees participated in "Innovative Trial Preparation and Presentation," a CLE program presented by the Arizona Fellows on April 22, 2016 at the Phoenix Convention Center. Led by program co-chairs **Ted A. Schmidt** and Arizona State Committee Chair **Peter Akmajian**, the all-Fellow faculty lectured, discussed and explored the best available options during every phase of the trial process. By using the facts from a real-life scenario, the program explored both technical and non-technical options for lawyers. The daylong seminar focused on the use of cutting-edge technology to assist voir dire, opening and closing statements; witness examination; exhibit presentation; and lawyer-client discussions and interactions regarding trial presentation. The program was also webcast for those unable to make the trip to Phoenix.

The program's guest speaker was Richard Waites, notable jury consultant who is one of only five people in the U.S. who is a board-certified civil trial attorney and trial psychologist. Waites moderated an interactive discussion on voir dire and an effective, winning trial presentation.

"This is our fourth year presenting a full-day program. It creates higher visibility in our legal community as to who we are, provides the contribution of excellent continuing legal education for our bench and bar, and the profits fund our other activities, most notably the Jenckes Competition each fall," Schmidt said.

The following Fellows also participated as faculty: **Shawn K. Aiken; Neil C. Alden; Howard R. Cabot; James R. Condo; Diane M. Lucas; Michael J. O'Connor; Georgia A. Staton; Thomas J. Shorall, Jr.; K. Thomas Slack;** Former Regent **Tom Slutes; Hon.Timothy J. Thomason; Jeffrey A. Williams;** and **Lonnie J. Williams, Jr.** A copy of the program is available to Fellows. Requests can be sent to nationaloffice@actl.com.

COLLEGE/FOUNDATION UPDATES

DUES REMINDER

The National Office thanks those Fellows who have paid their 2016 Annual Dues. For those who have not sent in payment, please note Section 3.5(d) of the *Bylaws of the American College of Trial Lawyers* indicating that payment must be received by the National Office by June 30, 2016. If you prefer, you may remit payment online by logging in to www.actl.com, clicking on 'My Account' and clicking 'Pay Dues/Induction Fee' through the website.

REQUEST TO UPDATE CONTACT INFORMATION

In July the National Office will be mailing the annual request to update your contact information. This information is used for a Fellow's listing in the printed Roster and in the online directory. You can return the printed request with any changes. If you wish to change your contact information before receiving the printed request, you can log on to the website, www.actl.com and update your profile by clicking on 'My Account', then 'My Profile.'

COLLEGE COMMITTEES: AN OPPORTUNITY TO SERVE

Each spring, the incoming President and President-Elect appoint members to the College's committees. General committees each have a specific mandate that guides their work, while state and province committees focus on local outreach and the nomination of new Fellows. The work of the committees is the backbone of the College.

If you are interested in serving on one of the College's thirty-four general committees and sixty-one state and province committees, please contact the National Office.

A list of committees and their mandates is available on the College website, www.actl.com

EMIL GUMPERT AWARD WINNER

The Loyola Immigrant Justice Clinic at Loyola Law School, Los Angeles (LIJC) was selected as the recipient of the 2016 Emil Gumpert Award. The LIJC is a community-based collaboration of Loyola Law School, Loyola Marymount University, Homeboy Industries Inc., and Dolores Mission Church. LIJC's dual-pronged mission is to advance the rights of the indigent immigrant population in East Los Angeles through direct legal services, education and community empowerment while teaching law students effective immigrants' rights lawyering skills in a real world setting. A representative from LIJC will make a presentation about the clinic at the College's Annual Meeting being held from September 15-18, 2016 in Philadelphia.

Gumpert Award Reception: College President Mike Smith; LIJC Co-Director Marissa Montes; LIJC Co-Director Emily Robison; Interim Dean Loyola Law School Paul T. Hayden; Foundation Treasurer Charles H. Dick (Credit: Kim Fox/Loyola Law School)

Samuel E. Gates Award Recipient Justice Rebecca Love Kourlis

This award is made in honor of the late Honorable Emil Gumpert, Chancellor-Founder of the American College of Trial Lawyers. Judge Gumpert, throughout his more than half-century professional career as an eminent trial lawyer, State Bar president and trial judge, substantially and effectively devoted himself to the administration of justice and to the improvement of trial practice.

The award recognizes programs, public or private, whose principal purpose is to maintain and improve the administration of justice. The programs considered may be associated with courts, law schools, bar associations or any other organization that provides such a program.

SAMUEL E. GATES AWARD

The Board approved the recommendation of the Samuel E. Gates Litigation Award Committee to present Justice Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System (IAALS) and former Justice of the Colorado Supreme Court, with the Samuel E. Gates Litigation Award. Under Justice Kourlis' leadership, the IAALS has expanded its agenda into four categories, all of which attempt to significantly improve the litigation process in different ways. Those four categories are: Quality of Judges Initiative, Rule One Initiative, Educating Tomorrow's Lawyers Initiative and Honoring Families Initiative. More information on these initiatives can be found on the IAALS website. Justice Kourlis has been invited to receive the award at the College's Annual Meeting in Philadelphia.

This award was established in 1980 to honor a lawyer or judge who has made a significant contribution to the improvement of the litigation process. The person selected might be a trial practitioner, a judge, a teacher, a writer, a legislator, an administrator, or initiator of organizations or programs, or some other person whose work has been substantively significant or who has inaugurated or advanced significant programs. Samuel E. Gates was a President-Elect of the College who died shortly before he was to be sworn in. In Gates' memory, the College created the award in his name. The award is funded by Gates' old firm, Debevoise and Plimpton of New York City. Gates was recognized as a pioneer in the field of aviation law, playing a major role in shaping the laws and international conventions that govern airline flights, and in representing domestic and international airlines.

Previous recipients of the award are: Honorable Allan van Gestel (Ret.) - 2015; Donald R. Dunner - 2013; James B. Sales - 2011; Honorable Judith S. Kaye -2008; Honorable Ronald M. George - 2007; Honorable Robert R. Mehrige, Jr. - 2004; Garry D. Warson, Q.C. - 2004; William R. Jones, Jr. - 2003; James E. Coleman, Jr. - 2002; James J. Brosnahan - 2000; Honorable Dorothy W. Nelson - 1999; Honorable Patrick E. Higginbotham - 1997; Honorable William J. Brennan, Jr. - 1993; Honorable William W. Schwarzer - 1991; Honorable Sam C. Pointer - 1990; Honorable David Hittner - 1989; Professor A. Leo Levin - 1988; Robert W. Meserve - 1987; Professor Daniel J. Meador - 1986; Professor John W. Reed - 1985; Honorable Robert E. Keeton - 1984; Joseph A. Ball - 1983; Honorable Erwin N. Griswold - 1982; and Honorable Edward Weinfeld - 1981. ■

IN MEMORIAM

Eleven years ago, the College realized that, in leaving uncelebrated the lives of those Fellows who had passed from among us, we were failing to preserve a significant part of our heritage. We thus began with Issue 49 of what was then *The Bulletin* to publish a memorial to each departed Fellow. We have since reported the passing of 1,314 Fellows, including the fifty-four whose deaths are memorialized in this issue.

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Although we have now passed the seventieth anniversary of the end of World War II, there are, remarkably, twenty-two veterans of that war among those whose passing we report here. One was attached to the infantry division that met with the Russian army in western Germany, thereby splitting the Nazi army and hastening the end of the war. Another was in the lead element of his division when it discovered and secured from destruction the Ludendorff Bridge that crossed the Rhine River at Remagen, thus enabling the Allied forces to pour into Germany without a fight, the first successful military crossing of the Rhine since the time of Napoleon. Beneficiaries of engaged lives, thirty-one of our departed Fellows were eighty-five or older; twenty, all but one of whom are known to have served in World War II, had lived to ninety or more.

✦

They came from many different origins, and the paths to their careers were equally varied. One, the first-generation daughter of immigrants, finished high school at fifteen, college at nineteen, abandoned a journalism career upon being assigned to write a social column and worked her way through night law school while working as a copy editor. One worked in high school digging graves, including that of Al Capone, and supported his higher education doing dangerous underground construction work. One worked in factory and railroad jobs and became a labor lawyer. Another taught in a parochial school by day while attending night law school. Four had been Eagle Scouts. One won a four-year scholarship on a quiz show. Well over thirty-five had much of their education financed by the GI Bill. One who began life in a basket on the doorsteps of a Florence Crittenton Home, attended college on a track scholarship and died at ninety-three.

✦

Their law practices varied from serving the needs of their own communities to handling cases of national significance. One represented the plaintiff in *Sullivan v. The New York Times.* One, who changed his practice in midstream, had led both the plaintiff's and defense bar organizations in his state. One, known as "The King of Torts," had a spectacular career as a plaintiff's lawyer despite his claim that he had flunked the course in torts in law school. For over thirty years one counseled a young boy suspected, but never charged, of having murdered a neighborhood girl. After DNA testing identified the guilty party, he co-authored with the now-grown boy, a book about his saga. One handled the prosecution of protesters to the admission of James Meredith to the University of Mississippi.

✦

The lives of many were models of public service. Four held their state's highest judicial office; the deaths of two of them were honored with the lowering of flags in their state. One had been appointed an Independent Counsel to investigate alleged high-level wrongdoing in the Federal government. One had been a member of the Federal Trade Commission. Two had served on

the American Bar Association's Board of Governors. One was a four-term state senator. Six had been Presidents of their state Bar. One had been President of both the National Conference of State Chief Justices and the National Center for State Courts. At least seven had been adjunct professors; several were writers. Many had served the College on state and general committees; a number of them chaired those committees. Two had been members of the Board of Regents, and one of those had served as Treasurer of the College.

✦

They were not without humor. One bought a sailboat before he bought a house, explaining that "you can't sail a house." And the "King of Torts" once told an interviewer that he made his jury argument in the largest case he ever won with a hangover because his friends Willie Nelson and football coach Darryl Royal had arrived unannounced in a white limousine the night before and had refused to leave him to prepare for the next day.

✦

Their interests outside the law were a part of their lives. Three were pilots. One, who had a cattle farm, kept his plane in a barn and occasionally flew it to work. Two were sailors. One had a camellia named for him. One was a gourmet cook. One in retirement went regularly with a therapy dog to a Veterans Administration hospital to work with servicemen suffering from PTSD. One practiced yoga for over fifty years and lived into his nineties. One survivor of heart transplant surgery offered counseling to others facing that ordeal. One had climbed Mt. Fuji. One, who had suffered a heart attack in the locker room of a country club, had bypass surgery and continued to play golf for twenty-three more years, scoring his fourth hole-in-one eight months before his death. One and his wife were known to virtually everyone in their small college town for walking all over the town, rather than driving. Upon their deaths in an automobile accident, in tribute to them, those who attended their funeral walked the mile and a half from the church to the cemetery where they were laid to rest.

✦

The College is planning shortly to begin sending a periodic *eBulletin* to all the Fellows. It will report those things that need to be communicated in a more timely manner than is possible through the *Journal*. Short entries will note those Fellows whose passing has been reported to the College office. We will continue to give tribute to their lives in the In Memoriam section of the *Journal* that follows. We hope that seeing timely notice of the deaths of Fellows may prompt you to share with us information and stories that will help us better to describe their lives.

✦

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.

Hon. Frederic Walter Allen, '72, a Judicial Fellow, Shelburne, Vermont, died April 9, 2016, at age eighty-nine. Enlisting in the United States Navy immediately after graduation from high school, he received his undergraduate education at Alma College and Miami University of Ohio through the Navy V-12 Program. After World War II, he earned his law degree at Boston University School of Law. He then practiced law for thirty-three years in Burlington, Vermont until, during a time of turmoil, he was appointed Chief Justice of the Vermont Supreme Court in 1984, thereafter serving for twelve years. He had been a Trustee of Middlebury College and was awarded honorary degrees by both Middlebury and Vermont Law School. The Middlebury citation reflected that he had "restored the prestige of the Supreme Court among both the public and bar." His law school awarded him its Silver Shingle Award for service to the profession. He served on numerous state court committees, including the Civil Rules Committee, the Board of Bar Examiners, the Professional Responsibility Committee and the Judicial Conduct Board. An accomplished sailor, he bought a boat before he bought a house, explaining that, "you can't sail a house," and he crewed in a number of ocean races. A three-sport high school athlete, he played handball until he was almost eighty. At his death, the Governor of Vermont ordered flags to fly at half-staff throughout the state. His survivors include his wife of thirty-five years, three daughters and two sons.

Jerry Shumate Alvis, Sr., '92, Raleigh, North Carolina, retired from the Raleigh office of Womble, Carlyle, Sandridge & Rice, LLP, died April 11, 2016, at age eighty-one. Enlisting in the United States Air Force at age seventeen, he served for five years during the Korean Conflict, achieving the rank of Staff Sergeant. After earning both his undergraduate and law degrees from the University of North Carolina at Chapel Hill, he clerked for a United States District Judge. After twelve years in private practice, he served as a Judge of the North Carolina Superior Court for three and a half years, then returned to private practice. His survivors include his wife and two sons.

William Elliott Bernstein, '89, Worcester, Massachusetts, a member of Bernstein & Stern, LLC, died January 8, 2016, at age eighty-five. A graduate of Clark University and the Boston University Law School, he had practiced with the same firm for over sixty years. A Past President of the Massachusetts Bar Association and Past Chairman of the Board of Bar Overseers, he had also served on the state Judiciary Nominating Commission and the Federal Judicial Nominating Commission of Massachusetts and was a Past Chairman of the Public Counsel Service. He served on the Board of Anna Maria College, which had awarded him an Honorary Doctorate of Laws and had been active in the local Jewish community, including serving of as a Trustee of Temple Emanuel. His survivors include his wife of thirty-five years, three sons and a daughter.

Peter Blomgren Bradford, '87, a Fellow Emeritus, retired from Conner & Bradford, LLC, Oklahoma City, Oklahoma, died December 26, 2014, under hospice care at age seventy-eight. Earning his undergraduate degree from Grinnell College and his law degree from the University of Tulsa, he served as an Assistant District Attorney in Tulsa for a year before entering the United States Air Force Judge Advocate General Corps, where he served in Japan for three years during the Vietnam War, returning to serve as Assistant City Attorney before entering private practice. A Past President of his county Bar, he had served as an American Arbitration Association mediator in hundreds of cases and taught as an adjunct professor at the Oklahoma University Law School. The recipient of a Lifetime Achievement Award from the University of Tulsa, he served as a deacon and trustee in his Congregational Church and for twelve years as a docent at the Oklahoma City Museum of Art. A world

traveler, and a talented photographer, he had once hiked up Mt. Fuji. His survivors include his wife of forty-seven years, a daughter and a son.

William Joseph Brennan, Jr.,'81, a Fellow Emeritus, retired from Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O., Omaha, Nebraska, died February 11, 2016, at age eighty of complications following heart surgery. A graduate of Creighton University and of its School of Law, he had served as an officer in the United States Army Judge Advocate General Corps during the Vietnam War. An avid golfer, he had survived a heart attack in the locker room of a country club in 1993. Surviving bypass surgery, he had continued to practice law for five more years before retiring, continuing to serve as a mentor to the younger lawyers in his firm. He also continued to play golf, scoring his fourth hole-in-one eight months before his death and playing his last round two weeks before the surgery from which he did not recover. He had served the College as Oklahoma State Committee Chair. His survivors include his wife of forty-six years and three sons.

David Arthur (Brocky) Brockinton, Jr., '79, a Fellow Emeritus, retired from his Charleston, South Carolina family law firm, died peacefully November 1, 2015, at age ninety-seven. A *magna cum laude* 1940 graduate of the College of Charleston, where he majored in Latin and Greek and minored in English and German, his legal education at the University of Virginia Law School was interrupted by four years of service in the Pacific Theater as an officer in the United States Navy during World War II. A specialist in admiralty law and libel law, he had served as counsel to one of the two major South Carolina newspapers, *The Post Courier,* for over forty years. He had served as President of his county Bar, and the list of the organizations to which he belonged is a classic inventory of the heritage of a city, named for King Charles II and founded in 1670, where 191 years later the first shot in the Civil War was fired. A former Elder and the longest living member of Charleston's First (Scots) Presbyterian Church at 53 Meeting Street, he had served as legal counsel and a Trustee of the Charleston Atlantic Presbytery. A widower, whose wife of over fifty-six years had predeceased him, his survivors include two daughters.

Allyn Larrabee Brown, Jr., '61, a Fellow Emeritus, retired from Brown Jacobson P.C., Norwich, Connecticut, died April 19, 2014, at age ninety-eight. A graduate of Brown University and of the Yale Law School, in World War II he left private practice to serve, first in the United States Coast Guard as Captain of the Port of Bridgeport and then as an officer in the United States Navy on the *USS Ramsden (DE-382)*, serving in the North and South Atlantic and the Mediterranean. His life of service to his profession included serving as a Deputy Judge of the City of Norwich, as State's Attorney for his county and as President of the Connecticut State Bar Association. He led the Citizens' Committee for Better Norwich Government, which led to consolidation of the city and county governments and a new charter, providing for a city manager form of government. He also led or served many local and regional civic and charitable organizations and a variety of businesses. A widower, his survivors include three daughters and three sons.

Jonathan Haynes Burnett, '84, a Fellow Emeritus, retired from Hodges, Doughty & Carson, P.L.L.C., Knoxville, Tennessee, died September 10, 2015, at age eighty-seven. Shortly before the end of World War II, he had enlisted in the United States Navy as an aviation cadet. He then earned his undergraduate and law degrees at the University of Tennessee, where he was President of the Student Bar Association. He had served as Trial Attorney and then as Law Director of the City of Knoxville before joining the firm with which he practiced for the rest of his career. An Eagle Scout and a pilot, he occasionally commuted to his office from a farm where he kept his plane in a barn. He had chaired the Board of Deacons of his Baptist Church, taught Sunday school and sang in the choir for sixty years. His survivors include his wife of sixty-two years, a daughter and two sons.

Thomas David Burns, '64, a member of Burns & Levinson LLP, Boston, Massachusetts died February 27, 2016, at age ninety-four of cancer. A graduate of Brown University and Boston University Law School, during World War II he served as an officer in the United States Navy in the European and Pacific Theaters, passing the bar while still on active duty. He had served on the Judicial Council of the Commonwealth and the Massachusetts Judicial Nominating Commission and as Chair of the Judicial Selection Committees of the Boston and Massachusetts Bar Associations. He had also served as Special Counsel to the Boston City Council during the school busing controversy. His law school had honored him with its Award for Distinguished Professional Services and, on the occasion of his ninetieth birthday, Massachusetts Continuing Legal Education and his law firm had created a scholarship honoring his leadership in the legal community to fund participation in MCLE programs. He had served the College as Massachusetts State Committee Chair, as Chair of the Admission to Fellowship Committee, as a Regent and Treasurer of the College. His survivors include his wife, a daughter and two sons.

Daniel N. Burton, '83, a Fellow Emeritus, retired from Foley & Lardner LLP, Tampa, Florida, died August 21, 2015, at age eighty-one. He had served in the United States Air Force in the Korean Conflict as a medic and an announcer with American Forces Korea Network. He then worked in commercial radio and television before earning his undergraduate degree from Rollins College and his law degree from Stetson College of Law. A generalist, he headed his firm's Tampa litigation team and its Florida healthcare section. He had served on a hospital ethics committee and was the author of numerous articles on medical ethics. He was general legal counsel and a member of the Board of Directors of Florida College in Temple Terrace, serving as an adjunct professor for eight years after his retirement. His survivors include his wife of thirty-nine years, a daughter and a son.

Ralph Fallon Cobb, '01, a Fellow Emeritus, retired from Luvaas Cobb, Eugene, Oregon, died November, 21, 2015, at age ninety-three. Left in a basket on the doorstep of a Florence Crittenton Home in Sioux City, Iowa in December 1921, he was raised by adoptive parents in South Dakota. A champion half-miler, he earned his undergraduate degree from Yankton College, attending on a track scholarship. On the brink of World War II, he enlisted in the United States Army, serving as an officer in the 90th Medical Battalion in France, Germany, the Philippines and Japan. After the war, he earned his law degree from the University of South Dakota and practiced in Eugene until his ninetieth birthday. A Past President of his local Bar, he had been named Distinguished Trial Lawyer of the Year by the American Board of Trial Advocates. He had served on many civic boards. Twice a widower, his survivors include three daughters and a son.

David Conrad Coey, '81, a Fellow Emeritus, retired from Dickinson Wright, PLLC, East Lansing, Michigan, died January 23, 2016, at his winter home in Cape Coral, Florida at age eighty-five. Growing up on Chicago's South Side, in his high school years, he had worked as a grave digger and was a member of the crew that dug the grave for Al Capone. He attended Michigan State University for two years before serving four years in the United States Navy during the Korean Conflict. After returning to complete his undergraduate education at Michigan State, he earned his law degree at the University of Michigan Law School, working during the summers in dangerous underground construction to help finance his education. He had been honored with the top awards bestowed by his local Bar and the Michigan Defense Trial Counsel. His survivors include his wife of forty-three years, a daughter and two sons.

Barry Michael Davis, '01, a Fellow Emeritus, retired in 2015 from Piccarreta Davis PC, Tucson, Arizona, died January 5, 2016, at age sixty-seven. He received his undergraduate education at Washington University of St. Louis and was a *cum laude* graduate of the University of Toledo College of Law, where he was managing editor of the law review. After serving as a law clerk for the Arizona Court of Appeals, he practiced as a personal injury and medical malpractice lawyer. He had been President of both the Arizona Trial Lawyers Association and the Morris K. Udall American Inn of Court. A frequent instructor for the Arizona College of Trial Advocacy, he was an adjunct professor of trial practice at the University of Arizona College of Law. His survivors include his wife of thirty-five years, a daughter and a son.

William Adrian Ehrmantraut, Sr., '77, Easton, Maryland, retired from Wharton, Levin, Ehrmantraut & Klein, PA, of which he was a founding member, died in hospice care October 25, 2015, at age ninety. A graduate of the University of Maryland and Georgetown Law School, he was a United States Army World War II veteran. His survivors include his wife, a daughter and a son.

Edward P. Fahey, '76, a Fellow Emeritus, retired in 1991 from Groce, Locke & Hebdon, P.C., San Antonio, Texas, died January 12, 2014, at age ninety. After serving in the South Pacific Theater in World War II, he did his undergraduate work at St. Edwards University and earned his law degree with honors from St. Mary's School of Law. A founding member of the Texas Association of Defense Counsel, in retirement, he researched and wrote a family genealogy, tracing his ancestry back to County Tipperary, Ireland and the province of Hess-Nassau, Germany. A widower whose wife of forty-four years predeceased him, his survivors include two sons.

Joseph Hodell Foster, '89, White & Williams LLP, Philadelphia, Pennsylvania, died April 7, 2016, at age eighty-seven as the result of a fall. A *magna cum laude* graduate of LaSalle College, he had earned his law degree at the University of Pennsylvania Law School. After law school, he served for two years as an officer in the United States Army Judge Advocate General Corps during the Korean Conflict and then was a law clerk to a Pennsylvania Supreme Court Justice. He had served as Chancellor of the Philadelphia Bar Association, played a role in laying the groundwork for the Philadelphia Volunteers for the Indigent Program (VIP), served as President of the Pennsylvania Defense Institute and of the Lawyers Club of Philadelphia and had been a Judge Pro Tem of the Philadelphia Court of Common Pleas. A legendary mentor, he brought various facets of the Philadelphia legal community together for informal "McGillin's Meetings," named for their traditional locale, Center City's McGillin's Olde Ale House. His survivors include his wife and three sons.

Hal Gerber, '80, a Fellow Emeritus, retired from Wyatt, Tarrant & Combs, LLP, Memphis, Tennessee, died March 27, 2016, at age ninety-four. Drafted after two years at Vanderbilt University, to serve in the United States Army during World War II, he returned to earn his law degree at Southern Law University (now Memphis State School of Law). A gourmet cook, he had practiced yoga for almost fifty years. He had served in the early 1960s as Associate Counsel of the United States House of Representatives Committee to Investigate Campaign Expenditures. His survivors include two daughters and a son.

William B. Hairston, Jr., '81, a Fellow Emeritus retired from Engel, Hairston & Johanson, P.C., Birmingham, Alabama, died December 24, 2015, at age ninety-one. His undergraduate education at the University of Alabama had been interrupted by service in the United States Army. Injured in paratrooper training, he was transferred to the 69th Infantry Division. After pushing across France, his outfit met with Russian units, thereby splitting the Nazi forces and hastening the end of the war. He came home with a Combat Infantry

Badge and a Bronze Star. After finishing his undergraduate studies, becoming a member of Omicron Delta Kappa, he earned his law degree from the University of Alabama. In later years he served as President of both the University of Alabama Law School Alumni Association and the Law School Foundation. He was honored with the Sam W. Pipes Distinguished Alumnus Award. He taught at the Birmingham School of Law, receiving the Outstanding Faculty Award and authored a treatise on Alabama law. Instrumental in developing a unified judicial system in the state, he instituted the nation's first Law Day Parade, which earned the American Bar Association's Award of Merit. He had been President of both his local Bar and the Alabama Bar Association. He had been honored with the Birmingham Bar's Lifetime Achievement Award. He had also been President of the Eleventh Circuit Historical Society. He had taught Sunday School in his Methodist Church for over fifty years and had chaired his church's Board of Stewards. His passion for cultivating the state flower led to the presidency of the Birmingham Camellia Society, and he had been honored with a camellia that bears his name. His survivors include his wife of sixty years and a son.

Glenn Charles Hanni, '70, Strong & Hanni, Salt Lake City, Utah, died December 25, 2015, at age ninety-two. His undergraduate education at the University of Utah was interrupted by service as a pilot in the United States Navy in World War II, he returned to earn both his undergraduate and law degrees, finishing first in his law class and being inducted into the Order of the Coif. Twice named Utah Trial Attorney of the Year, he held a pilot's license throughout his life and skied and danced well into his eighties. A Past President of his local Bar, he had twice served the College as Utah State Committee Chair. A widower whose wife of sixty-eight years had predeceased him, his survivors include two sons.

Donald Ray Harris, '80, a Fellow Emeritus, retired from Jenner & Block, Chicago, Illinois, died February 23, 2016, at age seventy-seven of multiple myeloma. A graduate of the State University of Iowa and of its law school, he had served for two years as an officer in the United States Army during the Vietnam era before joining the firm with which he practiced for his entire career. He had served as the firm's managing partner and had been instrumental in establishing its presence in Japan. One of his female partners noted that he had supported women lawyers long before it was politically correct to do so. His survivors include his wife, two daughters and two sons.

Thomas B. High, '14, Benoit, Alexander, Harwood & High, LLP, Twin Falls, Idaho, died March 27, 2016, at age sixty-three of cancer. A graduate of the University of Utah, he then spent a year in a graduate psychology program at the University of Tennessee before earning his law degree at the University of Idaho College of Law. A Past President of his district Bar, and the Idaho Association of Defense Counsel, he had taught numerous continuing education programs. His survivors include his wife, a daughter and a son.

John J. Hollins, Sr., '90, a Fellow Emeritus, retired from Hollins, Raybin & Weisssman, PC, Nashville, Tennessee, died January 7, 2016, at age eighty-three. A graduate of Vanderbilt University and of its law school, early in his career he had been both an Assistant City Attorney and an Assistant District Attorney. He was best known for his pro bono representation for over thirty years of a boy accused at the age of fifteen of the murder of a young neighbor, a case that ended when DNA evidence implicated a serial rapist of the crime. The original accused, who was never tried, and Hollins later co-authored a book, *The Suspect: A Memoir,* about the saga. His survivors include his wife of fifty-three years, two daughters and a son.

Donald Forrest Hunter, '86, a Fellow Emeritus, retired from Gislason & Hunter LLP, Minneapolis, Minnesota, died January 24, 2016, at age eighty-one. A graduate with honors from the University of Minnesota and a graduate of its law school, for a period of five years in the middle of his career he had left law practice to serve as counsel to two successive businesses. A member of the Boards of over fifty companies over the span of his career, he had been President of his district Bar. His survivors include his wife of over sixty years, two daughters and a son.

Joseph D. Jamail II, '74, Jamail & Kolius, Houston, Texas, died January 13, 2016, at age ninety. After one semester at the University of Texas, he joined the United States Marine Corps in World War II, serving in the Pacific Theater. After the war, he returned to the University of Texas and completed his undergraduate studies and his law degree. He first served as an Assistant District Attorney in Houston. He had also served as President of the Houston Junior Bar Association. A larger-than-life figure, he was a legendary plaintiff's trial lawyer, dubbed "The King of Torts," something he found ironic since he claimed to have failed a course in torts in law school. In the largest jury verdict recovery of his career, he claimed to have made his jury argument with a hangover because his friends Willie Nelson and former Texas coach Darrell Royal had come by his house unannounced in a white limousine and refused to leave. Jamail was known for his passionate, aggressive, sometimes abrasive advocacy on behalf of his clients. He was also known for his generosity to the University of Texas, to Rice University, to the city of Houston in the form of a public downtown event area and to the school his wife had attended. A widower, his survivors include three sons.

Bradley Dean Jesson, '86, Hardin Jesson & Terry, PLC, Fort Smith, Arkansas, died January 11, 2016, at age eighty-three. An Eagle Scout at thirteen, he won a radio quiz show where the prize was a four year scholarship to the University of Tulsa, where he was President of the student body. Partway through law school he entered the United States Army Judge Advocate General Corps, serving in Japan during the Korean Conflict. He then went to the University of Arkansas Law School to complete the last year of his legal education. He then served as a law clerk for a United States District Judge. During his career, he served as City Attorney for Fort Smith, Legislative Secretary to Governor Dale Bumpers, Chair of the Arkansas Democratic Party and Chair of the University of Arkansas Board of Trustees. When the Chief Justice of Arkansas retired, Jesson was appointed to serve the rest of his term. His survivors include his wife and four daughters.

Hon. Judith Smith Kaye, '86, of counsel to Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, died January 7, 2016, at age seventy-seven of lung cancer. The daughter of Jewish immigrants from Poland, she grew up on a farm, finished high school at fifteen and Barnard College at nineteen. Her intention to become a journalist was diverted when her first employer assigned her to write a social column, and she thereafter began to work as a copy editor by day while attending New York University Law School, where she was one of only ten women students, at night. She began her career as an associate at Sullivan & Cromwell, where she met her husband-to-be and, after two years, she worked as a staff attorney for IBM for a year and then, while she was raising her young family, as a part-time assistant to the Deans at NYU Law School. In 1969, she joined New York's Olwine, Connelly, Chase, O'Donnell & Weyher, where she practiced for seventeen years, becoming its first female partner. Appointed in 1983 by Governor Mario Cuomo as a Judge of the New York Court of Appeals, its first female judge, ten years later she was appointed Chief Judge of that court. Serving in that position until she reached mandatory retirement age, she was that court's first woman and longest serving Chief Judge. Her tenure saw a

move towards judicial reform and modernization, including creating problem-solving special courts offering alternatives to incarceration in appropriate areas. She had addressed a recent meeting of New York Fellows on that subject. In retirement, she became of counsel to Skadden, Arps. Over her career, she served on countless boards and commissions and was honored with many awards and honorary Doctor of Laws degrees. At her death, the Governor of New York ordered all flags in the state to be lowered in her honor. A widow whose lawyer husband had predeceased her, her survivors include a daughter and two sons.

Stephen T. Keefe, Jr.,'79, a Fellow Emeritus, Prescott, Arizona, who had retired to Arizona from his solo practice in Quincy and Weymouth, Massachusetts in 1991, died September 29, 2015. Born in 1922, he had served in the United States Air Force in World War II before pursuing his undergraduate and legal education at Suffolk University and Suffolk Law School. He has served as the City Solicitor for Quincy for seven years and served as a Member-Secretary of the Air Force Reserve Policy Committee.

Joseph H. Kenney '76, a Fellow Emeritus, retired from Ballard Spahr LLP, Cherry Hill, New Jersey, died December 13, 2015, at age eighty-three. A graduate of Villanova University and the James E. Beasley School of Law at Temple University, where he was editor of the law review, he had served during the Korean Conflict as an officer in the United States Navy between undergraduate and law school. He began his career by serving as a law clerk for a United States District Judge. An adjunct professor at Rutgers University of Law, he had served as President of his local Bar and of the New Jersey State Bar Foundation. His survivors include his wife of sixty years, two daughters and two sons.

David M. Lascell, '85, Harter Secrest & Emery LLP, Rochester, New York, died April 1, 2016, at age seventy-four, ten days short of his seventy-fifth birthday. He was a graduate of Hamilton College and of the Cornell Law School. Long involved in educational institutions, he had been Chairman of the Board of Trustees of Wells College and a Trustee of Grove City College, Mt. Vernon College and Roberts Wesleyan College. He had been the founding Board Chair of the National Center for Non-Profit Boards and Chair of Rochester Area Colleges and of the Association of Governing Boards of Universities and Colleges. He had also been involved in the organization of an insurance company and a management company serving universities and colleges nationally. He had received an Honorary Doctor of Laws degree from Grove City College, which he had represented before the United States Supreme Court in a case involving government funding of private colleges. As his career wound down, he found a new calling, serving with his dog, Fezzik, in a therapy dog program at a Veterans Administration hospital. His survivors include his wife of fifty-one years, a daughter and two sons.

William A. Logan, '81, a Fellow Emeritus, retired from Logan, Morton & Ratliff, Madisonville, Kentucky, died December 23, 2015, at age eighty-one. A graduate of Murray State University, he served as an officer in the United States Army during the Korean Conflict before earning his law degree at the University of Kentucky Law School. He had served as a Judge *pro tem* in Frankfort, as a state Senator and as Chairman of the Kentucky Public Service Commission. He had been President of the Murray State University Alumni Association and Chair of a local community college foundation, which had created an endowed professorship in his honor. A licensed pilot, he had also been a cattle farmer. His survivors include his wife of fifty-nine years and a son.

George Patrick Lynch, '79, a Fellow Emeritus, retired from George Patrick Lynch Ltd., Oak Brook, Illinois, died November 13, 2015, at age eighty-three of leukemia. He had begun his undergraduate education at St. Mary's

College and, after service in the United States Army during the Korean Conflict, completed it at the University of Illinois. He then earned his law degree from DePaul University. He had served as Assistant State's Attorney for Cook County, Illinois and as a Special Prosecutor for Cook County. A criminal defense lawyer throughout his career, he led a number of Bar committees in that area. His survivors include his wife of fifty-six years, a daughter and a son.

Loyd W. McCormick, '88, Morgan Lewis, San Francisco, California, died August 28, 2014, at age eighty-five. He had begun his undergraduate education at the University of California at Los Angeles and completed it at the University of California at Berkeley. He served as an officer in the United States Navy during the Korean Conflict and then earned his law degree at Boalt Hall School of Law at Berkeley. He spent all but the last year of his career at Bingham McCutchen, where he participated in the expansion of the firm to the Far East. He was involved throughout his life in many legal, community, civic and political organizations. His survivors include his wife of fifty-eight years, a daughter and two sons.

James Creighton McKay, '73, a Fellow Emeritus, Chevy Chase, Maryland, retired from Covington & Burling, Washington, District of Columbia, died November 23, 2015, at age ninety-eight of pneumonia. A graduate of Cornell University, his legal education at Georgetown University had been interrupted by service in the United States Navy in World War II. He began his legal career as an Assistant United States Attorney in the District of Columbia. A trial lawyer of wide experience, his practice had ranged from extensive pro bono representations to acting as a principal attorney for the National Football League. In 1987, the United States Court of Appeals for the District of Columbia had appointed him Independent Counsel to investigate alleged illegal lobbying by members of the Reagan Administration, including Lyn C. Nofziger, an investigation that reached all the way to then Attorney-General Edwin Meese, III. His survivors include his wife, a daughter and two sons.

Ronald E. McKinstry, '71, a Fellow Emeritus, Bainbridge Island, Washington, retired from Ellis, Li & McKinstry, PLLC, Seattle, died March 5, 2016, at age ninety. After serving in the United States Navy in World War II, he earned his undergraduate and law degrees at the University of Washington. One of the early appointees as a special settlement mediator in the Western District of Washington, he had also served on the CPR Panel of Distinguished Legal Neutrals. The author of a number of published works, he had served the College as a member of the Board of Regents. His survivors include his wife of sixty-seven years, two daughters and a son.

James F. Meehan, '75, a Fellow Emeritus, retired from Meehan, Boyle, Black & Bognadow, P.C., Boston, Massachusetts and living in Savannah, Georgia, died November 4, 2015, at age eighty-five of cancer. A graduate of the College of Holy Cross, where he paid his tuition "buttering several hundred slices of toast every morning" working in the college kitchen, and the Boston College Law School while working as a busboy, he then enlisted in the United States Army as a counterintelligence special agent during the Korean Conflict. At age fifty-five, after spending twenty-five years specializing in insurance defense work, he launched his own small law firm, representing personal injury plaintiffs. In one major suit, the team he led recovered $62.9 million for an airline against the Massachusetts Port Authority. One result of his professional transition was that he had served as President of both the Massachusetts Defense Lawyers Association and the Massachusetts Academy of Trial Attorneys. Divorced and remarried, his survivors include his wife, four daughters, a stepdaughter and a stepson.

Alfred Elliott Moreton, III, '91, a Fellow Emeritus, retired United States Attorney for the Northern District of Mississippi, Oxford, Mississippi, died January 16, 2016, at age eighty-two in an automobile accident that also took the life of his wife. He had served for four years in the United States Navy as a quartermaster's mate on the *USS Hawk (AMS-17)* during the Korean Conflict before earning his undergraduate degree at Millsaps College. After earning his law degree at the University of Mississippi Law School, he went to work as an Assistant United States Attorney. Shortly thereafter he prosecuted rioters who were trying to prevent the integration of the University of Mississippi by James Meredith. After two years in that position, he entered Yale University to earn a Master's degree and then attended England's Cambridge University to earn a second Master's degree in criminology. He then spent a year as a trial attorney in the Department of Justice during the civil rights era, served as legislative assistant to Senator John Stennis and engaged in private practice for a year, then returned to Oxford as Assistant United States Attorney. He, dressed always in a black suit and white shirt, and his wife were regarded as treasures of the community, engaged in many civic projects. They rarely drove and were regularly seen strolling around the college town together, so that everyone in Oxford had come to know them as a classic couple. In tribute, those who attended their funeral walked together the mile and a half from their church to their graveside. Their survivors include two daughters.

Edward Wingate Mullinix, '74, a Fellow Emeritus, retired from Schnader Harrison Segal & Lewis LLP and living in Durham, North Carolina, died December 9, 2015, at age ninety-one of Alzheimer's Disease. A graduate of St. John's College, he had served as an officer in the United States Navy in World War II, then earned his law degree *summa cum laude* at the University of Pennsylvania Law School, where he was a member of the Order of the Coif and valedictorian of his class. He had chaired his firm's committee on professional conduct, had been co-chair of the American Bar Association Special Committee on Complex and Multi-District Litigation, served as President of the Historical Society of the United States Court for the Eastern District of Pennsylvania and served on an elderly victim assistance program of the Philadelphia District Attorney's Office Elder Justice Project. He had been a member of the College's Task Force on Discovery and Civil Justice. His survivors include his wife, a daughter and a son.

Frederick M. Myers, '70, a Fellow Emeritus, retired from Cain Hibbard & Myers , PC, Pittsfield, Massachusetts, died February 27, 2016, at age ninety-three. A *magna cum laude* graduate of Williams College, where he was a member of Phi Beta Kappa, and a *cum laude* graduate of Harvard Law School, he began his practice in New York, later joining his father's firm in Pittsfield, where he practiced until his retirement. He had been a Special Justice in Southern Berkshire District Court. He had been involved in an early lawsuit that had established the doctrine of strict liability against hazardous activity in Massachusetts.

M. Roland Nachman, Jr., '85, a Fellow Emeritus, retired from Wilson Price, Montgomery, Alabama, died November 24, 2015, at age ninety-one of kidney failure after suffering from Alzheimer's Disease. A *cum laude* graduate of Harvard College, his education was interrupted by service in United States Navy Intelligence in World War II. After returning and earning his law degree at Harvard Law School, he began his career as Assistant Attorney General of Alabama. A Past President of the Alabama State Bar, Court-appointed Chairman of the Alabama Human Rights Commission for the state's prison system, a member of the Board of Governors of the American Bar Association and

the recipient of the American Judicature Society's Herbert Harley Award, he is best known for his representation of the plaintiff in *Sullivan v. The New York Times*. A political moderate who favored civil rights and had represented newspapers in the past, he established to the satisfaction of a jury and the Alabama Supreme Court that the newspaper ad on which the case was based had defamed his client. Existing Alabama libel law required only that a statement had been published, that it was about the plaintiff and that it was defamatory. His prediction was that he would win the case in the appeal to the United States Supreme Court or that the Court would change the law. The Supreme Court unanimously held that the Alabama law abridged the First Amendment and imposed on plaintiffs who were public officials the burden of showing either that the challenged statement was known to be false or that it was made with reckless disregard of whether it was or was not false. Later interviewers reported that, looking back, Nachman accepted his defeat "with good humor and a sense of irony." His survivors include four daughters.

Alex Worthy Newton, '74, Hare, Wynn, Newell & Newton, Birmingham, Alabama, died December 25, 2015, at age eighty-five. An Eagle Scout, after earning his undergraduate degree from the University of Alabama, he had served as an officer in the United States Army Infantry in the Korean Conflict. He then returned to complete his legal education at the University of Alabama Law School. He had been President of the University of Alabama Law School Foundation and of the International Society of Barristers. The Birmingham Bar had named him its Lawyer of the Year and he had received the Sam W. Pipes Distinguished Alumni Award from his law school. He had been the driving force behind the election of the first African-American to the local Bar executive committee and in procuring the nomination of Birmingham's first African-American judge. He had served as a deacon in his Independent Presbyterian Church. A civic activist, he had chaired the Finance Committee of the Birmingham Airport Authority and had served on a number of local boards. He had co-chaired the Alabama Finance Committee for the campaigns of four consecutive Democratic presidential candidates. He had served the College both as Alabama State Committee Chair and as Chair of the Adjunct State Committee. His survivors include his wife of sixty-three years, two daughters and two sons,

Charles L. Palmer, '79, a Fellow Emeritus, retired from Flynn, Palmer & Tague, Champaign, Illinois, died January 20, 2016, at age eighty-four of a stroke. He was a graduate of the University of Illinois and of the University of Illinois College of Law. His law school education had been interrupted by service in the United States Army in Alaska during the Korean Conflict. He had served as Assistant State's Attorney, Assistant City Attorney and an interim public defender and as outside counsel for the University of Illinois. He had also been President of his local Bar. A widower, his survivors include two daughters and two sons.

William Boyd Reeves, '90, Armbrecht, Jackson, LLP, Mobile, Alabama, died January 18, 2016, at age eighty-three. A graduate of Furman University and of Tulane University School of Law, he served in the Korean Conflict as company commander of the United States Army Tank Company, 4th Infantry in Alaska between undergraduate and law school. After law school, he had been a law clerk for a United States District Judge. A founding member and Chairman of the Southeastern Admiralty Law Institute and a member of the Executive Committee of the Maritime Law Association of the United States, he had served as President of his local Bar and of the Alabama Defense Lawyers' Association. He had been Chancellor of his Episcopal Church and was a founding member of a journalism scholarship foundation. A twenty-year survivor of a heart transplant, he counseled others facing that surgery. His survivors include his wife, two daughters and a son.

Hon. Walter Ward Reynoldson, '71, a Fellow Emeritus and former Chief Justice of Iowa, Des Moines, Iowa, died March 28, 2015, at age ninety-five. In the depths of the Great Depression, he had worked to afford his last two years of high school. A graduate of Wayne State Teachers College, he served as an officer in the United States Navy in World War II, seeing duty in North Africa, the North Atlantic, Pearl Harbor and Chicago. After the war, he earned his law degree at the University of Iowa, graduating with high distinction, a member of the Order of the Coif. His first wife, whom he married after finishing his naval officer's training, also became a lawyer, and they eventually practiced in the same firm, along with a son. In his early years, he served as county attorney. He was President of his county Bar and of the local school board and commander of his American Legion Post. Appointed to the Iowa Supreme Court, he served for sixteen years, the last nine as Chief Justice. His tenure was marked with progressive reforms. He served as President of the Conference of Chief Justices and of the National Center for States Courts. He had received the Herbert Harley Award from the American Judicature Society, on whose Board he had served, and he was the recipient of honorary degrees from Simpson College and Drake University. In retirement he was an adjunct professor at Drake Law School and a mediator and arbitrator. A widower whose wife of forty-four years had died, he had remarried. His survivors include his wife, a daughter, a son and three stepchildren.

Donald Gifford Ribble, '83, a Fellow Emeritus, retired from Lynch Dallas, P.C., Cedar Rapids, Iowa, died under hospice care on November 4, 2015, at age eighty-five. A graduate of Coe College and the University of Iowa School of Law, he served as a JAG officer in the United States Marine Corps before entering private practice. A Past President of his local bar, he was a life member of the Coe College Board of Trustees. A widower whose wife of forty years predeceased him, his survivors include a daughter and two sons.

Christopher Geoffrey Riggs, '03, a Fellow Emeritus, retired from Hicks Morley Hamilton Stewart Storie LLP, Toronto, Ontario, Canada, died January 13, 2016, at age seventy-three of lung cancer. Born in England, his family had immigrated to Canada. To help pay for high school and university tuition, he held a variety of jobs, including factories and the railway, exposure that led him to become a labor lawyer. He earned his undergraduate degree from Trinity College of the University of Toronto and his law degree from Queens University Law School. Called to the Bar in 1969, he was later appointed Queens Counsel. He had received an honorary LL.D. from the University of Guelph. An Anglican churchman, he had served both of his local parishes, served as Vice-Chancellor to the Anglican Diocese of Toronto and as Chancellor of the Ecclesiastical Province of Ontario and had been made an honorary lay canon of St. James Cathedral, Toronto. His survivors include his wife and three daughters.

David Kirk Robinson, '79, a Fellow Emeritus, retired from Hahn & Hahn LLP, Pasadena, California, died August 20, 2013, at age ninety-five. Graduating from Princeton University in 1940, he was partway through Harvard Law School when World War II intervened. After serving as a special agent in the Federal Bureau of Investigation for the duration of the war, he resumed and completed his legal education at Stanford Law School. He practiced with Hahn & Hahn until his retirement sixty years later. He served as President of his local Bar, of the California Bar Association and of the Western States Bar Conference and on the Board of Governors of the American Bar Association. Among his many civic activities, he was a Life Member of the Pasadena Tournament of Roses Association. An Eagle Scout, he had been a vestryman and a warden of his Episcopal church.

He had served the College as Chair of the Samuel E. Gates Litigation Award Committee. A widower, his survivors include a daughter and three sons.

J. Thomas Rosch, '92, a Fellow Emeritus, retired from Latham & Watkins LLP, Washington, District of Columbia, died March 30, 2016, at age seventy-six of complications from Parkinson's Disease. A graduate of Harvard College who had then attended Jesus College, Cambridge University for a year, he earned his law degree from Harvard Law School. He began his practice with McCutchen, Doyle, Brown & Enersen in San Francisco. He served for two years in the 1970s as Director of the Bureau of Consumer Protection of the Federal Trade Commission. He later became a partner at Latham & Watkins. In 2006 President George W. Bush named him one of the five Commissioners of the Federal Trade Commission. After his term was over, he rejoined Latham & Watkins in a counseling role. A widower whose wife of more than fifty-four years died two months before his death, his survivors include a son and a daughter.

Robert J. Roth, '79, a Fellow Emeritus, retired from Stinson Leonard Street LLP, Wichita, Kansas, died March 8, 2016, at age eighty-seven. His undergraduate education at Fort Hays State University had been interrupted by service in the Korean Conflict. After earning his law degree from Washburn University Law School, he served as a research attorney for the Kansas Supreme Court and then as Assistant Attorney General for the State of Kansas. He later served as Administrative Assistant for United States Senator James B. Pearson and as United States Attorney for the District of Kansas. He practiced for most of his career with Hershberger, Patterson, Jones and Roth and was the recipient of the Kansas Bar Association's Professionalism Award. A youth baseball coach for many years, he was an avid contributor to the annals of the American Historical Society of Germans from Russia. His survivors include his wife of sixty-three years, a daughter and two sons.

Donald Sanford Ryan, '81, a Fellow Emeritus, retired from Dodds, Kidd & Ryan, Little Rock, Arkansas, died January 3, 2016, at age eighty-one of Parkinson's Disease. A graduate of Arkansas Polytechnical College and of the University of Arkansas Law School, he had served as an officer in the United States Army and taught at Culver Military Academy. He was a Past President of the Arkansas Bar Association. A widower, his survivors include a daughter and a son.

John Edward (Jack) Wall, '93, Dickey, McCamey & Chilcote, P.C., Pittsburgh, Pennsylvania, died February 27, 2016, at age sixty-nine. He had earned his undergraduate degree at Clarion State College and his law degree at Duquesne University Law School, which he attended at night while teaching at a parochial school to pay for his education. He had served as President of the Pennsylvania Defense Institute, from which he had later received its award as Defense Lawyer of the Year and its Lifetime Achievement Award. His survivors include his wife and three daughters.

Lindsay Carter Warren, Jr., '77, a Fellow Emeritus, retired from Warren Kerr Walston Taylor & Smith, L.L.P., Goldsboro, North Carolina, died April 11, 2016, at age ninety-one. After a year at the University of North Carolina at Chapel Hill, he enlisted in the United States Coast Guard. Commissioned an officer, he served in World War II in the Atlantic, Mediterranean and Pacific Theaters on the *USS Wakefield* (*AP-21)*. Returning to Chapel Hill, he completed his undergraduate education and his law degree, graduating with honors from the law school, serving as associate editor of the law review and being elected to the Order of the Coif. He was a Past President of the North Carolina Bar Association, had been inducted into its General Practice Hall of Fame and was the honoree of an endowed North Carolina Bar Foundation Justice Fund. He served four terms as a Senator in the North Carolina General Assembly, where he chaired the Courts and Judicial Districts and the Appropriations Committees. He had

chaired the North Carolina Courts Commission during the time when it was remodeling the state courts into what was for its time one of the most progressive state court systems in the nation. He served as Vice Chair of the North Carolina Board of Higher Education, as a member of the North Carolina Advisory Budget Commission and as Chair of the Governor's Study Commission on Structure and Organization of Higher Education. He chaired the America's Four Hundredth Anniversary Commission, served as Chair of the Board of St. Andrews Presbyterian College and served his alma mater as President of both the UNC Law Alumni Association and the UNC General Alumni Association. He served on the boards of his local hospital and board of education and was an Elder Emeritus in his Presbyterian Church. The North Carolina Bar Association had honored him with its Judge John J. Parker Award for conspicuous service to the cause of jurisprudence, his law school had given him its award for distinction beyond professional excellence and his university had given him its Distinguished Alumnus Award. He had also been honored with the Christopher Crittenden Memorial Award for significant contribution to the preservation of North Carolina History and he had received the Distinguished Citizen Award from the Tuscarora Council of the Boy Scouts of America and the North Carolina Society Award. A widower who had remarried, his survivors include his wife, three daughters and three stepchildren.

Claud Roberson Wheatly, Jr., '68, Wheatley, Wheatley, Weeks, Lupton & Massie, PA, Beaufort, North Carolina, died December 24, 2015, at age ninety-seven. He began his undergraduate education at The Citadel, then transferred to the University of North Carolina, where he earned his undergraduate and law degrees. Licensed to practice in 1941, shortly after Pearl Harbor he joined the United States Army, serving in the 78th Lightning Division. Involved first in the Battle of the Bulge, he was in the lead elements of his unit that discovered the Ludendorff Bridge that crossed the Rhine River at Remagen was still standing and helped to secure the bridge so that American troops could cross into Germany. He practiced law in coastal Carteret County for almost seventy years and was for many years the City Attorney. One Fellow of the College noted that his greatest victory in that county was to have a hung jury in a case in which one juror held out against Wheatley's client. He taught Sunday School at his local Episcopal Church for sixty-two years and successfully represented the Diocese of Eastern North Carolina pro bono in a case involving ownership of the church property when a majority of the congregation split from the national church. He was in the first class of inductees into the North Carolina Bar Association General Practice Hall of Fame. A widower whose wife of sixty-six years predeceased him, his survivors include three sons.

Charles Rolland (Chuck) Zierke, '74, a Fellow Emeritus, retired from Erickson, Zierke, Kuderer & Madsen, P.A. , Fairmont, Minnesota and living in Hot Springs Village, Alabama, died December 19, 2015, at age eighty-nine. He had served in the Merchant Marine in World War II, and then began his education at the University of Minnesota, finishing law school at the University of New Mexico. He had been City Attorney in Fairmont. In retirement in Arkansas, he had helped to establish and served as an officer in a local Boys and Girls Club. A widower, his survivors include a daughter and a son. ■

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, under Future Annual and Spring Meeting Dates and under the Events tab.

NATIONAL MEETINGS

2016 Annual Meeting

Philadelphia Marriott Downtown

Philadelphia, Pennsylvania

September 15-18, 2016

2017 Spring Meeting

Boca Raton Resort & Club

Boca Raton, Florida

March 2-5, 2017

REGIONAL MEETINGS

Regions 1 and 2
Southwest Regional Meeting

The Ritz-Carlton, Laguna Niguel

Laguna Niguel, California

July 15-17

Region 3
Northwest Regional Meeting

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

Skamania Lodge

Stevenson, Washington

August 4-7, 2016

STATE / PROVINCE MEETINGS

July 15, 2016	**Idaho Fellows Dinner**
August 12, 2016	**Colorado Fellows Diner**
August 25, 2016	**Georgia Fellows Meeting**
August 27, 2016	**Kansas Fellows Meeting**

JOURNAL

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

"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.