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JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

UK-U.S. LEGAL EXCHANGE PARTICIPANTS DISCUSS ACCESS TO JUSTICE

The 2016 Annual Meeting in Philadelphia, seated from left to right: Hon. Neil M. Gorsuch; The Right Hon. Lady Justice Arden; The Hon. Mr. Justice Singh; and Nicholas Segal.

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American College of Trial Lawyers

JOURNAL

Chancellor-Founder
Hon. Emil Gumpert
(1895-1982)

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FROM THE EDITOR

Stephen Grant

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At the College's 2006 Annual Meeting in London, England, the late Rt. Hon. Lord Bingham of Cornhill, CJ addressed the College on the Rule of Law. He turned this talk into a slim volume, published to great acclaim, around the time of his death in 2010, winning the Orwell Prize for Books in 2011. Lord Bingham's disquisition was one of the more erudite given at the College and it has since remained a steadfast companion to general consideration about law and lawmaking and lawyering. Apart from his elegance of expression, Lord Bingham articulated the principles forming the bedrock of all democratic society. These principles are surely something all trial lawyers need to keep in mind. Our freedom from constraint in acting for our clients with 'zealous advocacy' depends on it.

Noting John Locke's dictum, "Wherever law ends, tyranny begins," Lord Bingham summed up the general principle this way: "All persons and authorities within the state, whether public or private, should be bound by, and entitled to, the benefit of laws publicly and prospectively promulgated and publicly administered."

He then forged eight sub-rules, of which several specifically highlight the rights and obligations of lawyers, judges and the courts. Sub-rule #4 provided the "law must afford adequate protection of fundamental human rights." The courts, he said, are there to draw the lines as to what is "fundamental." The courts, however, do not decide these points in a vacuum; they require trial or appellate lawyer input.

Sub-rule #5 is of significance for us: "Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve." Interestingly, the state has little option but to provide a forum for resolution of disputes between the state and an accused but less so for civil matters, especially when alternatives such as arbitration are available and presenting themselves in standard form contracts and otherwise. Without dismissing these options, Lord Bingham rejoined "if everybody is bound by the law, they must in the last resort be able, if they've got an arguable case or defence, to assert or advance it in court."

The College's 2016 recipient of the Samuel E. Gates Litigation Award, Justice Rebecca Love Kourlis, addressed some of the challenges in achieving these goals when she spoke to the Fellows at the Annual Meeting in Philadelphia last September. Trials must be more cost-effective and the courts must work to ensure access. Pro bono litigation must also take up some of the slack and, as Fellows, we should seek these opportunities to assist.

A year after the Federal Rule amendments, Brittany Kauffman of the Institute for the Advancement of the American Legal System (IAALS) (Online, December 1, 2016) notes that success has been mixed so far. The most troubling obstacles appear to be that parties and some courts are still not knowledgeable about the amendments, some still using the "reasonably calculated" standard in the scope of discovery when that phrase has been deleted from the rules. Proportionality has also been seen to be too restrictive; specifically, "too quantitative." Again, this is where trial lawyers can inject creativity into the process to achieve speedy access to justice for all litigants.

At the splendid Philadelphia Annual Meeting, ensconced in the city where these democratic norms were enshrined, the speakers showcased these principles, especially in the UK – US Legal Exchange panel discussions. Past President Chilton Davis Varner has recapped the highlights of the Exchange nicely, indeed.

Boca Raton beckons.

Stephen Grant

PRESIDENT'S PERSPECTIVE: COLLEGE PRESIDENT BARTHOLOMEW J. DALTON

The year 2016 was certainly been a busy time for the College. The College is moving forward on our mission while it continues to stand on the shoulders of those who led before and are continuing to lead today.

Since my induction as President in September 2016 at the Annual Meeting in Philadelphia, I have been to meetings in Santa Fe, Cleveland, Indianapolis, Burlington, DC, Philadelphia, Chicago, Colorado Springs, Little Rock, Jackson, New Orleans, Birmingham and Portland, Oregon. An ice storm in Portland prevented me from getting to the Washington Fellows Holiday Dinner in Seattle. It has been an exciting time and I want to report a few of the great works that are happening in the College.

Diversity - Past President Mike Smith initiated this project and the Executive Committee and Board of Regents adopted the policy of the College on this issue. A report authored by the Diversity Subcommittee, a part of the General Committee on the Admission to Fellowship, led by Georgia State Committee Chair Rick Deane has a list of steps that are necessary for us to be successful in the endeavor. One of these is for the President to send a letter to each State and Province Chair that attached the report and ask that a Diversity Liaison be named. I have followed up on that letter with a request that each Regent report back to me on Chairs who have not yet responded. A weekly email from me to the Regents is rounding up Liaisons for this important task. We will continue to follow up until we reach full participation. Once that is completed I plan to have a conference call with all Liaisons to outline the mission.

That this is not an affirmative action push. Rather, it is an attempt to have the College find those truly exceptional candidates for Fellowship that we have been missing.

The standards stay the same. The search is different. We are asking that we broaden the search for these candidates by looking beyond our own law firms and friends. We ask Fellows to search into different practice areas where cases are still being tried and look for the best of those lawyers to decide if they meet our stringent standards. My experience in traveling and speaking about this to Fellows from all of the places I have visited has been the same: the Fellows see this as an important part to the mission of the College and are very much in favor—as long as our standards do not change. My promise to them and to you is that our standards will not change.

Communications - The *eBulletin* is now in full bloom. It has realized the role that we had when this was first conceived at a meeting called by Past President Smith in Virginia. Former Regent Paul Fortino has taken up the role of editor and is doing a great job with the help of Eliza Gano from our staff and Leslie Strickler, our media consultant from être. The *eBulletin* is publicizing the work that is being done at both the local and the national level. One surprise that I have had during my travels is the broad extent of the good work that is being done by our State Committees; I am constantly told about some seminar that the Fellows have conducted.

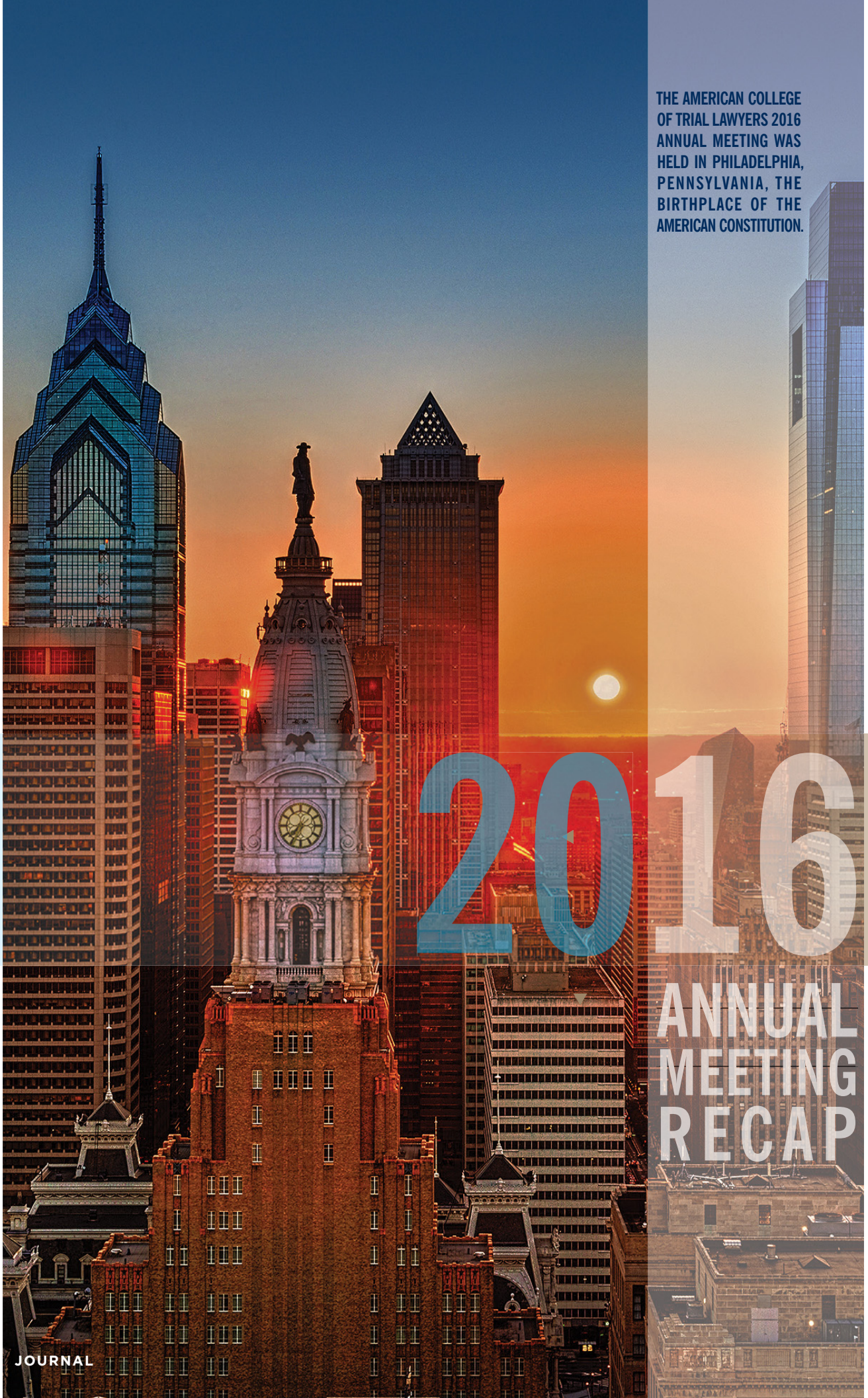
I tell our Fellows that the most frustrating question I get at meetings is, 'What is the College doing?' I answer with a recitation of the work I am told about during my visits around the country. The Fellows are always impressed and even more proud to be Fellows when they see the substantive work being done by both the State Committees and the General Committees on a national and international level. The *eBulletin* and the *Journal* are the places where the story of these good works is being told. They provide a continuing report of what is being done at all levels of the College. When the *eBulletin* reports these projects on a timely basis, as it does, it acts as a catalyst for Fellows to do more locally and get involved nationally. This is what is already happening.

We are also completely rebuilding our website. If you have tried to use the website in the past and have been frustrated, help is on the way. I formed a Website Task Force to hire the best vendor and plan to have the new website up and running by summer 2017. We are well on our way to having a website we can all use to find the information we need without becoming so frustrated that we give up.

Long Range Financial Review Committee - Past President Tom Tongue is leading this Committee, which also includes Past President Bob Byman, President-Elect Sam Franklin and Fellow Jeff Stone. The Committee and the Executive Committee have discussed and agreed on the scope of this Committee. The Committee's central focus is to help the College plan for a future where there may be fewer Fellows because of the "Vanishing Trial" problem. Specifically, the Committee will review how we budget capital expenses and other line items. The Committee will evaluate all aspects of our financial management to determine the best way forward so that we can stay as fiscally healthy as we are today. It is not an easy job and I thank the members of the Committee and especially Chair Past President Tongue for the willingness to help the College in this important endeavor. This is just another example of the continuing leadership of our Past Presidents.

Our Executive Director Dennis Maggi and President-Elect Sam Franklin have put together a program and event in Boca Raton for our 2017 Spring Meeting that you do not want to miss. We have been encouraging Fellows to register online. It is the easiest way to register and there was the extra incentive of a College tote bag. Well, OK, not much of an incentive, but it is worth a try anyway. It is part of our work to get the College communicating in 21st century mode.

I look forward to seeing you in Boca. ■

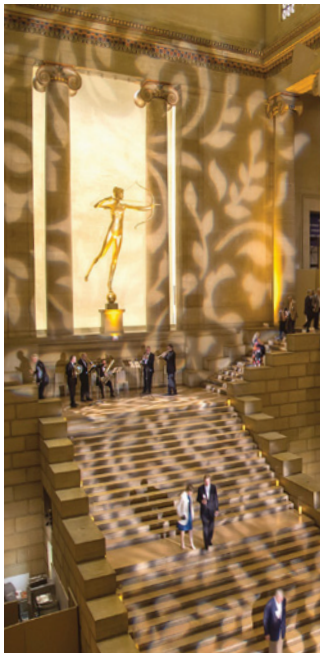


THE AMERICAN COLLEGE OF TRIAL LAWYERS 2016 ANNUAL MEETING WAS HELD IN PHILADELPHIA, PENNSYLVANIA, THE BIRTHPLACE OF THE AMERICAN CONSTITUTION.

2016 ANNUAL MEETING RECAP

A STRING QUARTET FILLS THE GALLERY IN THE PHILADELPHIA MUSEUM OF ART WITH SWEET SOUND AS THE *LITTLE DANCER, AGED FOURTEEN* BY EDGAR DEGAS STANDS WITH HER TOES IN FOURTH OUVERTE (OPEN) POSITION.

THE AMOR STATUE BY ARTIST ROBERT INDIANA SITS AT THE TOP OF THE STEPS TO THE PHILADELPHIA MUSEUM OF ART'S EAST TERRACE, THE SITE OF SATURDAY'S RECEPTION AND DINNER.



A GILDED STATUE OF *DIANA*, CRAFTED BY AUGUSTUS SAINT-GAUDENS, HAS GRACED THE MUSEUM'S MAIN ENTRANCE SINCE 1932. THE STATUE ORIGINALLY STOOD ON THE TOP OF A TOWER AT MADISON SQUARE GARDEN.

PRESIDENT MIKE SMITH RECOGNIZES AND THANKS FOR THEIR SERVICE THE THREE OUTGOING REGENTS, JIM MURRAY, MIKE O'DONNELL AND BILL HANGLEY, AND THEIR WIVES AT THE END OF SATURDAY'S GENERAL SESSION.

TWO FIFERS AND A DRUMMER WEARING REVOLUTIONARY WAR OUTFITS GREET GUESTS TO THE THURSDAY NIGHT PRESIDENT'S WELCOME RECEPTION AT THE NATIONAL CONSTITUTION CENTER.

THE DALTON FAMILY, FROM LEFT: MICHAEL, BART, EILEEN, DAHVIA, DREW, ELISSA, CONNOR.

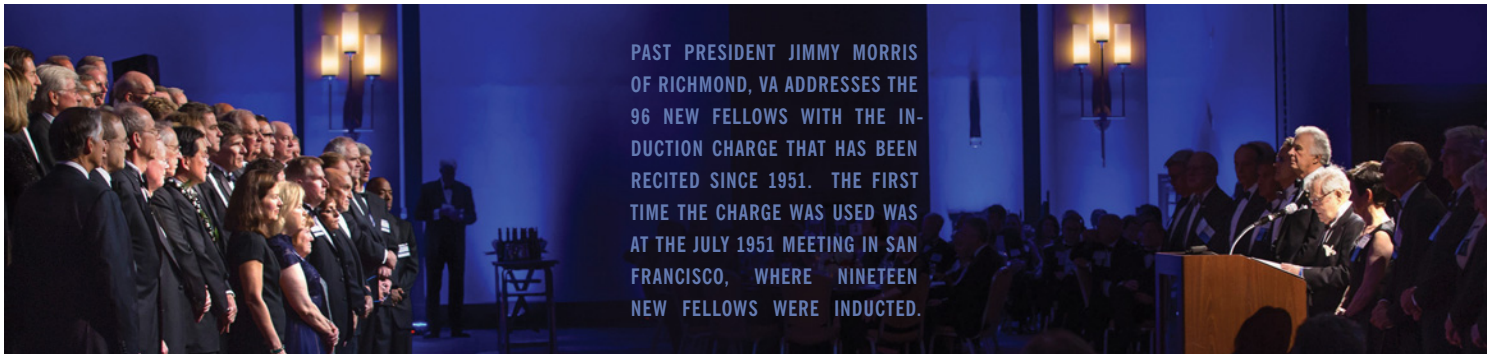
FELLOWS AND GUESTS TESTED THEIR METTLE SCULLING ON THE SCHUYKILL RIVER IN AN OCTUPLE BOAT. THESE ROWERS ON THE RIVER ENJOYED THE SCENIC VIEW OF THE PHILADELPHIA SKYLINE, BOATHOUSE ROW AND FAIRMONT PARK – ALL WHILE GLIDING ALONG THE WATER.

THE 2016 BOARD OF REGENTS AND ALL THE PAST PRESIDENTS WHO ATTENDED THE ANNUAL MEETING IN PHILADELPHIA STAND BESIDE ONE OF THE FOUNDING FATHERS, IMMORTALIZED IN LIFE-SIZE BRONZE STATUES AT SIGNER'S HALL IN THE NATIONAL CONSTITUTION CENTER.

KEEPING BEN FRANKLIN'S OLD ADAGE IN MIND, "WORDS MAY SHOW A MAN'S WIT BUT ACTIONS HIS MEANING," INDUCTEE SAUL SIMMONDS, WINNIPEG, MB OFFERS HIS MARTINI TO MR. FRANKLIN WHILE BILL LYNN OF SKANEATELES, NY LOOKS ON.

FELLOWS ARRIVING TO THE PHILADELPHIA MUSEUM OF ART RECEIVE THE RED CARPET TREATMENT, COMPLETE WITH TWO TRUMPET PLAYERS TO WELCOME THEM.

THE THURSDAY NIGHT RECEPTION AT THE NATIONAL CONSTITUTION CENTER'S GRAND HALL OVERLOOK GAVE ATTENDEES A BIRD'S-EYE VIEW OF INDEPENDENCE MALL. THE CENTER IS THE FIRST-EVER MUSEUM DEDICATED TO THE U.S. CONSTITUTION.



PAST PRESIDENT JIMMY MORRIS OF RICHMOND, VA ADDRESSES THE 96 NEW FELLOWS WITH THE INDUCTION CHARGE THAT HAS BEEN RECITED SINCE 1951. THE FIRST TIME THE CHARGE WAS USED WAS AT THE JULY 1951 MEETING IN SAN FRANCISCO, WHERE NINETEEN NEW FELLOWS WERE INDUCTED.

THE RENOWNED NORTHERN DELAWARE CHAPTER GOSPEL MUSIC WORSHIP OF AMERICA CHOIR RAISE THEIR VOICES TO OPEN THE FIRST DAY OF GENERAL SESSION.

BART DALTON OF WILMINGTON, DE ADDRESSES THE CROWD AS THE NEWLY INSTALLED PRESIDENT WHILE MIKE AND ELLEN BAIN SMITH LOOK ON. DALTON IS THE FIRST COLLEGE PRESIDENT TO BE FROM DELAWARE.

A lifelong resident of Philadelphia, the Honorable **James F. Kenney**, mayor of Philadelphia, grew up the oldest of four in a South Philadelphia neighborhood. After serving on the City Council for more than twenty years, he was sworn in as the 99th mayor of Philadelphia on January 4, 2016. Mayor Kenney spoke to Fellows on the first day of General Session at the Annual Meeting of the College held from September 15-18, 2016 in his city.

Described by Former Regent **William T. Hangley** as "the best rookie we have in our arsenal" in his introduction, he "has been the kind of mayor that brings our city together and gives us hope for excellent seasons to come."

One of his first acts as mayor was to sign the sweetened beverage tax into law in June 2016. "I can assure you that I was just part of the process," Kenney said.

The 1.5-cent per-ounce tax on sugar-sweetened and diet beverages, which took effect January 2017, is expected to raise about $91 million annually, which will go toward expanding pre-kindergarten in the city; creating community schools; improving parks, recreation centers and libraries; and funding other budget programs.

The programs are important "because this city as beautiful as it is, as historic as it is, as wonderful as it is, the city is in twenty-six percent poverty. The reason that it's at twenty-six percent poverty, I believe, is lack of access to an education that can get our children where they need to be. As a result of that lack of education, we wind up paying for things that I call misery dollars. Prisons, department of human services, behavioral health, addiction services, job training for trying to get people up to speed for the new economy.

"When I go into these pre-Ks and daycare, those children, our children, all of our children, no matter what neighborhood they are from, are perfect vessels. They have not been ruined. They are kind, they don't see race, their minds are sponges and they want to reach out and grab in all that they can. That's the time when we need to get to them. If we don't get to them there or by third grade, it's a downward spiral from then on. That's why this is so critically important to our society, to our city, and to the children of our city, and to its public safety."

Mayor Kenney welcomed the College to his city by asking Fellows to look at what's going on around the city. "Take a look at the plethora of cranes and construction that's going on. I want you to look at what's going on at Drexel University and the University

PHILADELPHIA MAYOR WELCOMES COLLEGE: OUR CITY THANKS YOU

of Pennsylvania with the expansion of West Philadelphia…. Lots of these things are going on in the downtown area, and also in our neighborhoods. We're bringing back our neighborhood business strips. We understand that employment and entrepreneurship come from the neighborhoods and there need to be places in everybody's individual neighborhood where you can accomplish those goals."

He also spoke on the difficult and complicated issue of law enforcement and policing.

"We're not perfect here and we continue to make progress every day, but I will tell you the results of how we've approached policing, how our great Commissioner Richard Ross has approached policing. We hosted the Democratic National Convention, and there was lots of concern about public unrest, and civil disobedience and protests. We took the approach that the First Amendment is probably one of the most, if not the most, important amendment of the constitution, and that was going to be honored. When you saw our officers, it wasn't with these large war-like uniforms on with large trucks and machines in the streets. We were on bicycles in soft clothing.

"I had a Bernie Sanders supporter come up to me on Broad Street the third day of the convention, and he ran across the street and said, 'You're the mayor.' I was afraid to say yes because I didn't know what he was going to do. I said, 'Yes' and he said, 'Can I hug you?' 'Okay.' And he whispered in my ear, 'Your police department is awesome.' That is a major compliment to a city, to a police department and to a police commissioner when a Bernie Sanders person who really doesn't feel involved in our society, who are protesting because they want Bernie's ideas to come to fruition, thinks that our police officers are awesome.

"We had a couple situations down at the Wells Fargo Center that got a little bit intense, but we basically helped people. Some people wanted to climb over the fence, not the Secret Service fence. You don't go over there. But they wanted to climb over our fence. We told them we didn't think that was a good idea but anybody who wanted to, please raise your hand and we will assist you safely over the fence. They were then escorted to a school, not a jail, a school where they were issued a $50 ticket.

"One of the protesters who got the ticket complained to the police that he had expected to be arrested for at least twenty-four hours because that's what he was looking to do. We made zero arrests in a four-day event that was fraught with emotion and fraught with protest. We decriminalized a number of issues such as disorderly conduct and failure to disperse so we didn't have to mass arrest anyone. $50 civil fine and on your way, come back to Philly when you want to spend the weekend, we'll be happy to have you."

In addition to all the urban issues dealt with by his office, there is also the matter of accountability he has as mayor to citizens. "The level of attention, the level of interest and the level of ownership that the average citizen has of their mayor sometimes is even more than the President of the United States. You feel it all the time and you realize the responsibility that you have to that."

Mayor Kenney also recognized the importance of the College and its fellowship. "We appreciate all that you're doing, and we appreciate your profession and what it brings to our society." ■

SLATE SUPREME COURT CORRESPONDENT ON NOT COVERING THE MERRICK GARLAND APPOINTMENT

Dahlia Lithwick, senior Supreme Court correspondent for SLATE, spoke during the first day of General Session at the College's Annual Meeting in Philadelphia, Pennsylvania. She writes the Supreme Court Dispatches column and hosts the Amicus podcast. She has contributed as a weekly legal commentator for NPR. Her work has appeared in the *New York Times*, the *Washington Post* and the *New Republic Commentary*. The author of two books, she has also taught at the University of Virginia and the University of Georgia. A graduate of Yale College and Stanford Law School, she practiced family law before becoming a journalist. Even with her impressive credentials, not one of these is her largest claim to fame.

"In college, while she was at Yale she was a debater, and that put her on the debate college circuit with other Ivy Leagues including Princeton," said Past President **Gregory P. Joseph** in his introduction. "At that time at Princeton there was a well-known debater by the name of Ted Cruz, and she has vivid memories of debating Ted Cruz. And she's written, 'Most of my memories of debating Ted Cruz involved being hollered at.'"

Lithwick spoke to Fellows about "what it's like to cover nothing boringly.... I want to just make it very, very, abundantly clear that I stand before you the most tragic creature in the world, and that's because by definition the life of a Supreme Court correspondent is pretty dull. Those of you who are not from the United States maybe don't know this, but there are no cameras in the court, there is delayed audio. When we go into the court, and it's a tiny, select group of us and the average age is about 107, we're allowed to bring one notepad and one pen, and that's it. We scribble furiously as we did 200 years ago when we covered the court, and hope that nothing happens that would require us to have good recall, because the transcripts don't come out for hours.

"I am here as a Supreme Court correspondent deprived of a hearing and I want to just state how starkly this contrasts to back in March, not that anyone's counting, but 183 days ago when those of us who were on the Supreme Court press corps, thought we were really in the catbird's seat because we were going to briefly have a life. This was when President Obama tapped Judge Merrick Garland. It looked as though we all would need to shower, and get haircuts, and do all the things that Supreme Court reporters don't generally do.

"For a few beautiful, beautiful days in March we were filing twenty stories a day, we were tweeting feverishly, we were on speed dial from the TV bookers, and we really, really felt

like this was our moment in the sun. We cancelled our summer plans, there was going to be a hearing, and we were going to be front and center. But it quickly became evident that this would not happen and the bathing and the haircuts were to no purpose. There would be no vote and no hearing. Within just, I would say, a week, all eyes in America swiveled back to the Kardashians where they had been and where they belonged."

FIVE STAGES OF NOTHINGNESS

"What I want to talk to you about is what I would call the five stages of grief, the five stages that Supreme Court reporters ostensibly covering the Merrick Garland confirmation hearing spiraled through as the summer went along. I think that the most important thing I can say is that these five stages of nothingness, covering boringness while nothing happened perfectly track the five stages of grief that Dr. Elisabeth Kübler-Ross laid out in her taxonomy on grief. What the subtitle of this speech could be is "what I did not do this summer."

"Stage one, bargaining. This is when we assure our editors that something really might happen and that even though it seems as though there will be no confirmation hearing, something interesting will nonetheless occur. A sample headline from April from one of my columns, "The Case Against the Case Against Confirmation." Why a refusal to give Judge Garland a hearing could trigger a full-scale constitutional crisis. Our editor said, 'Interesting,' and put it at the top of the page. There was no constitutional crisis. Another sample headline also from April, "The Obstruction of Judge Garland Will Have Colossal Consequences", also placed at the top of the home page.

"Stage two of covering nothing boringly, denial. This is when you realize that not just will the absence of a hearing be not-interesting, but that the Supreme Court itself is becoming not-interesting as well. The 4/4 deadlocked court which was headed into what should have been the term of the century was getting along, cases were being decided unanimously; they were deadlocking 4/4.

"Most pointedly, nobody on the court was talking about the vacancy. Sample headlines for stage two, denial, 'The Supreme Court is All Tied Up,' 'Supreme Court on Contraception: We're Not Even Going to Decide,' 'The Supreme Court is Not Doing Its Job.' Stage two was realizing that it was only going to get worse. This

takes us inexorably to stage three, depression. This is when you really start to really doubt your entire existence, trying desperately to persuade people at parties that the lack of a confirmation hearing is interesting and having them walk away in the middle of your sentence.

"This is when you're exclusively now writing about how the fact that there is no confirmation hearing might be boring to you but it's really, really, interesting to me. Headlines from the phase three stage, depression, include, and these are some of my sample headlines from late June, "No News is No News," "Why It is Virtually Impossible to Cover Merrick Garland," or memorably a classic of the genre, "The Supreme Court is Bored Out of Its Mind."

"Here's a sample paragraph I wrote in the column called, "The Supreme Court is Bored Out of Its Mind." 'Sitting in the press section at the Supreme Court this spring is like sitting on the bridge of the Starship Enterprise when Captain Kirk has been forced to downgrade life support to minimum. Lights flicker gently. Dazed reporters drift down the halls like tumbleweeds. Watching the court justices assemble, dress, climb to their seats on the bench and listen to the Chief Justice reading out another unanimous opinion in a case about peat, it is clear some of them are looking for more interesting work until a ninth member is seated. I'm thinking maybe they can rent a bus or start a band, maybe they can mow lawns or babysit. This is the Court on screen saver.'

"But you think there's nowhere to go, but there's one more level down, stage four, utter desperation. This is the meta stage where you now have been enveloped in a fog of nothingness and nobody cares what you think about anything. This is a time in which the summer has begun, you cancelled all your plans, you thought there would be a hearing, and your editor will no longer take your calls.

"The titles from stage four of my column really show how far I had come. I wrote a column for *New York Magazine* on the failures of journalism. It was called "Welcome to My Breakdown." I wrote another column called, "Justice Ignored." My dad enjoyed both of them very much.

"This is the time at stage four where you are now calling the television networks and offering to act out a pretend confirmation hearing with sock puppets. Surprisingly, MSNBC stops taking your calls. At the end of stage four you decide to take your family on a very long vacation. You say to your editor at the magazine, call me if anything happens. He does not return your calls.

"I now bring you to stage five which dovetails again perfectly with Dr. Kübler-Ross' stages of grief. Stage five, which happened for me early in September, is acceptance. The understanding that you don't matter, you haven't had a haircut in months, and nobody cares. This is the stage that we have subtitled, at SLATE at least, ice cream. I will tell you why. Once you realize that nothing you write about the Supreme Court vacancy will get any attention, you say to your editor, 'I called Ben Cohen from Ben and Jerry's, and we cooked up an idea to get this back on the front page. We're going to have a contest, a reader contest to name an ice cream flavor about the current constitutional crisis and judicial vacancy.' Your editor who is so tired of you and your sock puppet says, 'Okay, Dahlia, you do that.' Ben Cohen from Ben and Jerry's and I then cook up a reader contest to name an ice cream flavor after a Merrick Garland not story of the not summer. I just want give you a list of winners because this is really the highlight of my entire last seven months. A Merrick Can Dream, Mango Nowhere, No Justice, No Peach. Ben Cohen's personal favorite, Fuzzy Gavel.

"Ladies and gentlemen, I stand before you a broken woman. I thank you so much for having me here today, and I wish you a good time with your conference. I guarantee that in nineteen years, when we do have a confirmation hearing, I will give you an incredibly powerful speech."

David N. Kitner
Dallas, Texas ■

AWARDS & HONORS

SPENCER J. BROWN of Kansas City, Missouri was presented with the Purcell Professionalism Award from the Missouri Bar Foundation for consistent demonstration of competency, integrity and civility in his professional and civic activities. Brown is a Former Regent and has served as Missouri State Committee Chair. He has been a Fellow since 1981.

STEPHEN M. GRANT, LSM of Toronto, Ontario was awarded The Advocates' Society Medal. It is the highest expression of esteem that the Society can convey to one of its members. It is intended to honor those who have demonstrated clearly pre-eminence as a counsel and who are acknowledged unequivocally as leaders of the bar, who have been dedicated to The Advocates' Society, and who have made a significant contribution to the profession of law and well-being of the community. Grant is the editor of the *Journal* and has served as Ontario Province Committee Chair. He has been a Fellow since 2003.

CHRIS G. PALIARE, O.ONT., LSM of Toronto, Ontario was recognized with the Award of Excellence in Civil Litigation from the Ontario Bar Association (OBA), which is a branch of the Canadian Bar Association. He has served as Ontario Province Committee Chair. He has been a Fellow since 1999.

JOHN S. SKILTON of Madison, Wisconsin was the recipient of the 2016 Wisconsin Law Foundation (WLF) Charles L. Goldberg Distinguished Service Award for lifetime service to the legal profession and to the public. The WLF is the charitable arm of the State Bar of Wisconsin. He was a member of the Wisconsin State Committee. He has been a Fellow since 1993.

DEPUTY ATTORNEY GENERAL YATES URGES CRIMINAL JUSTICE REFORM

In his introduction of **Sally Quillian Yates**, Fellow and Deputy Attorney General of the United States, **Richard H. (Rick) Deane, Jr.**, Georgia State Committee Chair, described her as exemplifying the best of what the College stands for in the pursuit of justice.

Deane had been Yates' supervisor when, as a young lawyer, she joined the office of the United States Attorney for the Northern District of Georgia. Now a member of Jones Day, Deane had himself served as the United States Attorney in Atlanta, as had Yates when she later became the first woman to hold the same position. Deane reminded the audience that as an AUSA Yates had prosecuted several important high-profile cases, including the prosecutions of Eric Rudolph, the Olympic Park Bomber, and a former mayor of Atlanta.

Many of those present also recalled that twelve years earlier Yates, inducted at the College's 2004 Annual Meeting in St. Louis, had delivered the response on behalf of the 111 Fellows inducted at that meeting.

Picking up on her introducer's description of the Justice Department as the one agency of government whose name, "Justice," is a moral imperative, Deputy Attorney General Yates began her presentation by recounting her own indoctrination as a prosecutor under Deane's tutelage. "He made it clear to all of us that our job was not to get the most convictions or to get the longest sentences; rather, our responsibility was to seek justice. And that means being fair and proportional, ensuring that the law applies equally to everyone."

Yates asserted that it was that commitment to justice that brought her to the topic she had chosen to address: criminal justice reform. She pointed out that across the country there is a growing consensus from both the right and the left that we need to adjust our approach to the criminal justice system. "Our incarceration levels," she continued, "have exploded in the last few decades . . . to a point which is absolutely financially unsustainable. Even more important, our over-reliance on incarceration without sufficient investment in prevention and in prisoner reentry is undermining the safety of our communities. It is also undermining the public's confidence in their criminal justice system. The simple truth is that we cannot jail our way into safer communities, and our country will not be as safe as we can or should be until we are willing to invest in preventing crime, and not just in prosecuting it.

"Now . . . I might seem like an unlikely advocate for criminal justice reform," she continued, "I'm a career prosecutor. I believe in holding people accountable when they violate the law, and I believe that there are some very dangerous people out there who need to go to prison for a long time. But it's because I'm a prosecutor, and not in spite of it, that I believe so strongly in criminal justice reform."

QUIPS & QUOTES

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Deputy Attorney General Yates

OVER-RELIANCE ON INCARCERATION

"I have seen first-hand the impact that our over-reliance on incarceration has had on our communities, our families . . . and public confidence. In my view, it is our responsibility to seek justice that commands that we step back and take a look at what we are doing and adjust our current approach.

"Let's start with the numbers. Our country comprises only five percent of the world's population, yet we have twenty-five percent of its prisoners. Twenty-five percent. We imprison four times more people than does China. We have more people in prison than the top thirty-five European countries combined. How did we get here? It hasn't always been this way. In 1980 we had half a million people in prison. Today, we have more than four times that number; 2.2 million Americans are in prison. The federal prison population alone has grown more than 800 percent since 1980.

"Now, there are a variety of factors that have led to this, but the growth is due in large part to how we have changed the manner in which we treat drug offenses. In the late 1980s and 90s, all across the country at the state level and the federal level, we enacted harsh mandatory minimum sentences and 'three strikes and you're out' laws, which means three convictions and you go to prison for life. And that resulted in an explosion of our prison population when we started sending nonviolent offenders to prison for twenty, thirty, forty years, even life. As a result, now almost half of all the inmates in federal prison are there for drug offenses. . . . [T]he stated congressional purpose . . . of these laws was to focus on the then newly emerging threat from the South American drug cartels and to ensure that the leaders of drug organizations who were shipping tons of drugs into our country . . . got long sentences.

"As we look back, it has become clear that we cast too broad a net. Under the current sentencing regime, our mandatory minimum laws are a blunt instrument, and they don't calibrate a definitive sentence to match the threat that . . . [the defendant] faces to the safety of our community. At its core, the basic problem with our mandatory minimum sentencing scheme is that it's based almost exclusively on one factor, drug crime. And so, we have a hard time distinguishing between the cartel leader, who needs to go to prison for a long time, and the low level courier who doesn't."

THE COST OF OVER-INCARCERATION

"As a result, we have far too many defendants serving more time in prison than is necessary to punish and deter, and instead, in the words of our former Attorney General, 'Too often we warehouse and forget.' This comes with great cost. It comes with great cost to operate our prison system, cost to our public safety, cost to our families and communities and cost to the public's confidence in the fairness of the system.

"These aren't just numbers or hypothetical cases. Take, for example, the case of an individual whose record I recently reviewed, who had only a sixth grade education, had served honorably in the Army and was honorably discharged. He was convicted of selling crack on the street. Well, because he had two prior state convictions also for selling cocaine, one of which was for less than an ounce, when he was convicted in federal court, he was sentenced to mandatory life in prison. In the federal system, there is no parole. That means life in prison. Now, should this individual be punished? Absolutely. Does he deserve to die in prison for three street-level drug deals? I don't think so.

"From a dollars and cents standpoint, our country now spends $80 billion a year imprisoning people. Think about what we can do with $80 billion. The Department of Justice's prison and detention budget has gone up almost $3 billion just in the last ten years alone, and now is roughly one-third of the entire DOJ budget. The Department of Justice includes everything from the FBI and all the law enforcement agencies to our prosecutors and our grants. A third of our entire budget now goes to the Bureau of Prisons. This comes with real public safety consequences, because every dollar we spend imprisoning a nonviolent offender for longer than is necessary for public safety is a dollar that we don't have to spend on investigating and prosecuting the emerging threats that we have–everything from hackers to homegrown terrorists. Every dollar we spend keeping an offender in prison for longer than they need to be there, is a dollar that we don't have to assist state and locals to put more cops on the street or for really critical prevention and re-entry efforts.

"But in addition to the fiscal costs, there are real human costs as well. Over-incarceration has taken a huge toll on our communities, particularly communities of color. Importantly, these costs aren't born just by the defendants. Over 2.7 million children in the United States have a parent in prison. One in nine African American children has a mother or father in prison. This cuts deeply into our society. This is a legacy we cannot pass on to the next generation.

"More broadly, when we impose longer than necessary sentences under the guise of public safety, we undermine the public's confidence in the fairness of the criminal justice system. It's not enough to have a system that holds people accountable. That system must also mete out punishment in a way that is fair and proportional and takes into account the facts and circumstances of each particular case. If it doesn't, then we risk losing the community's faith in the institutions that we represent. And in the long run, I think that that could prove far more costly to our country than any dollars and cents that are spent on the criminal justice system."

QUIPS & QUOTES

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Deputy Attorney General Yates

THE IMPETUS FOR CHANGE

"Looking for solutions, I am incredibly encouraged by what I see going on in states around the country. As Deputy Attorney General, I've had the opportunity to learn about a wide variety of really exciting programs that are going on, from drug courts and pretrial intervention to recidivism reduction programs. These efforts have been part of a broader shift, a shift away from thinking of incarceration as the only answer to prevention as the first response. All across the country . . . states are confronting the exploding prison costs by enacting bold criminal justice reforms. These new more-focused methods of combating crime will enhance, not undercut, our ability to keep our communities safe.

"One of the most common concerns that I hear about sentencing reform," Yates commented, "is that prosecu-

tors without the hammer of a mandatory minimum long sentence won't be able to get the lower level people in drug conspiracy to cooperate and to flip on those more dangerous, higher-level offenders. Not only is this inconsistent with my personal experience as a prosecutor in Atlanta, but it's also inconsistent with the data that we've been able to get. The Department of Justice changed our drug charging policy three years ago under an initiative you may have heard of, called Smart on Crime. And under Smart on Crime, we directed our prosecutors not to charge mandatory minimum sentences for lower level, nonviolent drug offenders. Since that time, the Department's mandatory minimum charging has gone down 20%. . . . [T]he data we have from that three years shows that drug defendants are pleading guilty and cooperating at precisely the same rates they were before Smart on Crime.

"Another important component of reducing crime is reducing recidivism. That requires that we ensure that when individuals leave prison, they have the basic tools that they need to be able to be successful law-abiding citizens. We've recently done a deep dive at how we're handling this at the Bureau of Prisons. Later this fall [2016], we're going to be announcing some very significant reforms in the area of prison education and programming and halfway houses, reforms that I think are going to be truly transformative to the Bureau of Prisons.

"Through the clemency initiative, the President has commuted the sentences of 673 nonviolent drug offenders, including that individual I mentioned just a few moments ago. There are many more like him serving life sentences for nonviolent drug offenses, and there are more commutations to come before the end of this Administration.

"But . . . to make systemic change, Congress needs to act . . . to restore a sense of proportionality to our sentencing laws. We are at a unique moment in time when there is a broad coalition out there, everybody from the Koch brothers to the ACLU, that are advocating for recalibrating our sentencing laws. There is legislation pending right now in the Senate whose sponsors include on the right Chuck Grassley and John Cornyn by way of example, and on the left, Pat Leahy and Cory Booker. There are corresponding measures in the House that would do just what I'm talking about here, recalibrating our sentencing laws. Indeed, this is really one of the rare issues in Washington on which there is bipartisan consensus."

A CHALLENGE TO THE COLLEGE

"But just because we have that bipartisan consensus, and just because it makes sense, I've learned in the short time that I've been in Washington that doesn't mean that it's going to happen, and so I hope that you will let your voices be heard as leaders of our profession, committed to the integrity of our justice system. I hope that you will demand meaningful change, change that will allow us to devote critical resources to making our communities safer, change that will make our system more fair and change that will ensure that our criminal justice system lives up to its promise of equal justice under the law."

E. Osborne Ayscue, Jr.
Charlotte, North Carolina ■

U.S. DISTRICT COURT JUDGE: AMERICAN EXPERIMENT GOES ON EVERY DAY IN FEDERAL COURTHOUSES

After a spirited introduction from Former Regent **Dennis Suplee**, the Honorable **Gerald Austin McHugh**, U.S. District Court Judge in the Eastern District of Pennsylvania, (who also gave the brilliant response on behalf of newly inducted Fellows in Montreal in 2003) made these remarks.

"Those of you from the Philadelphia legal community know that Dennis Suplee has mentored me like he has mentored so many of us. And so as I said when I first stood before this College [when providing the Inductee Response in 2003], we all stand on the shoulders of others, and that's certainly true here.

"When you take the bench after a long career as an active trial lawyer, because you know a great many lawyers who have actually tried significant cases, there's obviously a great deal of curiosity from former colleagues about what it like to make the transition to the bench.

"I've had those discussions. I frequently get into areas that are really the flip side of the same coin because people often say, 'It must be great to work on these big important cases.' And then the reverse side of the coin is, 'You must really be frustrated by all of the small matters that take up your docket and which you have to deal with.' So I decided that I would try to reflect a little bit on what makes a case important. That's a dangerous subject for a judge to raise because we know that every case is important and has to be, because it's certainly important to the litigants.

"I will tell you that the warm glow that surrounds one's affirmations and judgments quickly evaporates as soon as you begin ruling because the inherent part of being a judge, by definition, at least 50 percent of your audience goes away unhappy. Sometimes it's substantially more than that in a multiparty case. So respect for the rule of law really requires that whoever goes away disappointed believes that the judge has taken their case seriously."

CASES THAT GO BEYOND LITIGANT INTEREST

"To that extent, every case is important. But what I want to discuss today is its importance on a different level. What are those cases that occupy our federal courts that go beyond just the interest of the litigants, as important as those interests are? It's in that sense that I talk about what makes a case important.

"Coming to the bench as a tort lawyer who did so-called big cases, as Dennis mentioned, my perspective in taking the bench was that those cases are big-damage cases.

"Certainly among my friends that are in the commercial litigation bar, they handle those big cases. I will tell you that there's no doubt that the quality of the lawyering in those matters can be breathtaking.

"Whenever I have the chance, I make sure every law clerk is in the courtroom just to see and hear this quality of advocacy. If the first lawyer says, 'Oh, he must be right' and the second lawyer says, 'Oh she must be right' we go through the litany, they are all equally convincing.

"So I say to my law clerks that what you've seen here is really the Olympics of litigation where truly the perfor- ▷

mance among these great advocates is divided only by a thousandth of a second. But as engrossing as those cases are, and as important as they are to the litigants, and as much money is involved, I'm not always sure that those are the cases that are, in the broader sense, the most important cases that I find in the federal judiciary.

"I recently spent about 50 pages of judicial ink in a very complicated security fraud case. The issues were intellectually fascinating to be before the Third Circuit. Maybe they will or will not say something about the law. But as we drill down on the case we realize that really this case does not have much by way of broader significance other than to the litigants who were engaged in a very sophisticated trading strategy. Ironically, the trading strategy took advantage of the haplessness of other investors who left dividends on the table.

"So I was prompted, I will admit, to put a cheeky footnote in the opinion that said, 'The fight here is over the profits to be made from the sharing of the sheep.' It is clear those cases are truly important in terms of the economic stakes but I suggest that when you take the bench, and when you get out of the bubble, in my case, the bubble of big tort cases, and look at the day in and day out business of the federal courts, there are some remarkably important cases that are being handled under the radar.

"In coming on the bench, I had the good fortune to have clerked for the very court which I now sit where Judge Al Luongo, who was a very sensible, old-school judge who told me 'Always keep the focus on whether this is a case of principle or just a case of principal and interest.'

"I didn't know quite what he meant by that until later when I took the bench. And I also had the good fortune, just as I took the bench, to get a recommendation from David Hamilton who had been a trial judge in Indiana for fifteen years before going on the Circuit Court of Appeals. He told me to read an article called, 'Lessons From Small Cases.' It was about Richard Arnold who was briefly a trial judge and went on to a career as a Circuit Court Judge. Early on, Judge Arnold had a case called *Dodson v. Arkansas Activities Association*.

"Essentially, a claim was brought that challenged the fact that at that time when girls played basketball, it was half court, six on six, because they were too delicate to play a full court game. It was right after the Supreme Court had decided *Craig v. Boren*, the first gender discrimination case. And Judge Arnold, to everyone's great shock that set the Arkansas community on its ear, 'I don't think these girls are shrinking violets. They're going to play full court basketball.' No appeal was taken and the case is only rarely cited.

"As it happens, the author of the article that Judge Hamilton recommended was one of Judge Arnold's law clerks. She was also the law clerk who earlier was an Arkansas high school basketball player. And she pointed out that when he made that ruling, it opened a whole window for high school female athletes in the state of Arkansas to begin to compete on another level and to move on to national stages and national fronts where previously, they could never have had their say.

"What Dave Hamilton said is that I should read that case and think about how any small and any mundane dispute, something very important may be lurking, something we don't even realize. What's interesting about the case is if you read Judge Arnold's opinion, Title IX is raised which, of course, is now always invoked, but he actually decided the case on the Fourteenth Amendment.

"You soon realize that it is often in those cases that fly off the radar that there is a matter of potentially great importance. That message was first delivered in a case that was brought under the IDEA [Individuals with Disabilities Education Act] which has to do with the rights of students who need remedial education. As a judge, one rule of thumb is the more acronyms in the statute, the more painful the job is going to be.

The IDEA case involved "a young person who had the need for remedial education and did not get it. Her parents had brought a claim and remedial education was never provided. As it turns out, the school that was obligated to deliver that education was … a cyber charter school, which means it had no physical presence. So the case was a fight over a very small amount of money and, in fact the child had already gone on to another school and obtained an education.

"The defendants in this case, all governmental entities, some state and some local, said, well, this is really just about counsel fees. But by the time we drill down to the bottom of the case what we realized is, no. It's really about public education. If we're going to say we're going to have charter schools, is there somebody somewhere who stands behind them. And so in the midst of an incredibly arcane and obscure ruling that if the Commonwealth of Pennsylvania is going to say we fund charter schools and the charter school goes bankrupt, the Commonwealth must stand behind it.

"Another case came along shortly afterwards under the Americans with Disabilities Act case and we read the initial pleadings and it seemed very open and shut. It had a young man who worked for a health benefits company, and who experienced a kind of mental breakdown where he had violent impulses and was actually feeling an urge to commit violence against coworkers.

"It seemed fairly clear to the ADA that this kind of conduct is not protected, this case must be dismissed. As we delved into the facts, it turned out that on the day that this individual had this breakdown, what he had done was picked up the phone, called his supervisor, and said, 'I'm afraid. I want to hurt myself or I want to hurt you. Don't come see me alone, call the police and come to my assistance.'

"They did, and he was admitted to the mental health facility from which he called back and said, 'I do have coverage for treatment, right?' As it also turns out, he was terminated. So the issue became, where you have what on the surface appears to be just misconduct and an employer's right to defend themselves, is there a broader issue that really deals with workplace violence."

JURY'S ROLE IN AMERICAN EXPERIMENT

"Let me talk now not about the judicial end of the process, but rather about the jury end of the process. I've been fortunate during my time to be able to try a number of cases. And the very first case that I got to try was the kind of case that would ordinarily be considered just the bane of a federal district court judge. It was a prisoner civil rights case originally filed pro se. Many of us here, I think, volunteer on our local courts to handle these cases, and, if we're candid, there are a number of these cases that are in some ways a matter of sport. But as my colleague **Tom O'Neill** who is also a Fellow of this College, said to me when I took the bench, 'Jerry, look at all those cases carefully and look to see the ones that have merit.'

"Here we had a man who had been convicted of serious crimes and was in our state institution, Graterford, which is where people serve hard time. He had ended up in administrative segregation, which is, of course, a euphemism we now use for solitary confinement. In that prison when you are in administrative segregation, you get one hour a day outside your cell for recreation. But the practice was to shackle the inmate, feet and hands to a belt. The claimant's filing says this is a violation of due process. Now, it's the type of case that I thought would be hopeless given the background of the litigant, but one of our local Philadelphia firms stepped in and assigned him counsel.

"When looking at the files, I thought this will mostly be a training exercise for these young lawyers because the bias against the plaintiff and the burden that that individual must overcome as an outcast for this claim is truly insurmountable.

"We submitted two questions to the jury: number one, did the government have a legitimate interest under the Fourteenth Amendment in securing this man. Of course, the answer was yes, and the jury got it right.

"But on the second question, the jury said, 'We find that the degree of force and restraint used was excessive.' You could have knocked me over with a pin because, as I said from the outset the odds faced by this litigant coming into a court and trying to assert his rights as a convicted felon were daunting. And if we're candid, if you look at your average Eastern District of Pennsylvania jury, it is a heavily suburban, Caucasian rural jury that would have not an ounce of identification with this inmate.

"Yet those jurors took very seriously that principle of the Fourteenth Amendment of the Constitution. And when I talked to the jurors afterwards, they had taken their job very seriously and said, 'Judge, you told us the Constitution applies to everyone and we agreed that in this case it gave him those rights.'

"I thought that night of a phrase that is most often attributed to Fyodor Dostoyevsky, the Russian author, which is 'The degree of civilization of a society can be determined by the condition of its prisons.' When I went home that night I said to myself there is really something to be said for this magnificent system of justice we have. For this Constitution we have that truly can apply to everyone, and for the service of ordinary citizens who come forward and give their time and take a case like that so seriously.

"And so as much enjoyment as I get from the large and dramatic cases, and as much pleasure as there is in seeing the well-funded litigants who come before the federal district court, I have also learned that there are truly important things going on in our courtrooms every day that we and the bar might really not appreciate. When I took the bench, I said that I was really delighted to become a federal judge because it's a way to participate in the American experiment.

"And the American experiment is, can we as a group of people govern ourselves and can we be a nation which is not one of personal win but one of law? What I say to you is that experiment is going on every day inside our federal courthouses all around the United States. My eyes have been opened."

Stephen M. Grant, LSM
Toronto, Ontario ■

2016 EMIL GUMPERT AWARD: LOYOLA IMMIGRANT JUSTICE CLINIC AT LOYOLA LAW SCHOOL

President Mike Smith; Marissa Montes, Co-Director of the Loyola Immigrant Justice Clinic; Emil Gumpert Award Committee Chair David Barry; President-Elect Bart Dalton

Every year the College gives the Emil Gumpert Award, the highest honor conferred by the College on any organization. Its purpose is to recognize programs which maintain and improve the administration of justice. The award is accompanied by a cash grant, this year for $100,000 which is funded by the Foundation of the American College of Trial Lawyers. Perhaps more important than the cash grant is the prestige conferred by the award on its recipient.

"Applicants for the award face enormously stiff competition from many very impressive programs in the United States and in Canada. To give you an example, we had thirty-six applicants, including many impressive programs that would have been worthy recipients of our award," said Emil Gumpert Award Committee Chair **David A. Barry** of Boston, Massachusetts in his introduction. "We narrowed those applicants down to three finalists, and we asked two members of our committee to visit each of the three finalists and to spend a day at the organization learning more about it and evaluating it."

The Committee voted to award the 2016 Emil Gumpert to the Loyola Immigrant Justice Clinic (LIJC) at Loyola Law School in Los Angeles. "As with past recipients of this very prestigious award, what distinguishes this year's winner from many other extraordinary programs is not only the program itself and what it does, but the people who are behind it," Barry said. Accepting the award on behalf of the LIJC was Co-Director and Supervising Clinical Attorney of the clinic, **H. Marissa Montes**. In partnership with Emily Robinson, Montes was jointly awarded the 2012-2013 Post Graduate Public Interest Fellowship to create the LIJC, in partnership with Dolores Mission Parish and Homeboy Industries.

LIJC offers free legal services and seeks to advance the rights of the immigrant population located in the East Side of Los Angeles through direct legal services, education and community empowerment while offering law students an opportunity to learn effective immigrants' rights lawyering skills in a real world setting. Montes, a graduate from Loyola Law School, has thus far dedicated her career to immigration law.

Montes was presented the award at the 2016 Annual Meeting in Philadelphia where she addressed the Fellows. In her remarks, instead of focusing on "the details of clinical pedagogy" and statistics with the Clinic's ninety-nine percent success rate, she chose to "focus on the story of our beginnings, which stemmed from our passion for justice and student eagerness to learn."

"We are not any ordinary law school clinic. We are unique in many ways, including the fact that we're the only community-based immigration clinic in the nation that is being sought out for replication. We are also the only clinic that is directly linked to two partner sites, Dolores Mission Parish and Homeboy Industries, who have opened their doors and lent us their home to provide free consultations twice a week. Yet, what makes our history most interesting is that we are a clinic that came into existence through grassroots advocacy of the law student group and remains under the direction of two of those graduates."

FUELED BY *GANAS*

"Like many incoming law students, my passion to pursue a career in law was driven by the personal injustices that my immigrant family faced. I've also found my desire to become an advocate for those who follow in my place. I purposely attended Loyola Law School due to its commitment to social justice and its prestige as a public interest

law school. Yet to me and my colleagues' surprise, at the time we were the only law school in Los Angeles, let alone Southern California, that had no existing immigration clinic. Without an immigration clinic, then how were we to learn to become the best advocates we sought out to be?

"If there's anything my parents taught me is that, despite all odds, nothing should stand in the way of a good education. By *echándole ganas* or giving it your all, as they would say to me in Spanish, anything can be accomplished. So what did we do? Despite the administration's hesitation, *echamos ganas* [we gave it our all] – and advocated for the creation of the immigration clinic. We mobilized and started our own immigration law society and worked in conjunction with the Mexican American Bar Association to establish beta intake clinics with our clinic partners, not only to demonstrate a need, but also to expose students to even the most minor but important practical skill of client interviewing.

"It was this *ganas*, or desire for us and future law students to learn, that drove our persistence and determination to overcome the obstacles that were placed on us as recent graduates. It was this *ganas* that told us to give it a shot, obtain a fellowship and ultimately secure funding to start our dream in 2012, only weeks before we obtained bar results. This is the same *ganas* that we put into our work each day and have passed onto our students in their training to become the best in their field administering justice for others.

"It is the same *ganas* that I often see in their rigor and precision of their work in whatever legal setting. It is what I saw in my student, Erica, who with class and graciousness, negotiated with law enforcement to sign a certification and press them to investigate her client's human trafficker. It is like Sandra and Courtney who were successful in securing our very first clinical win by advocating for a victim of long-time domestic violence in an affirmative setting.

"It's our students like Alejandro who gave his all when arguing before a judge to secure a lawful permanent residency for his client, Esmeralda, who was abandoned and forced to cross into the United States by herself at the age of seven. Yet our students' efforts are not limited to their dedication to mastering skills, but also furthered by their desire to give a voice to their client and build their trust once again in our legal system. It is their *ganas* that has impacted lives like that of Esmeralda who now is a resident and will qualify for financial aid as she enters as a freshman at Seattle University.

"It is also their accomplishments that have driven clients like Esmeralda to value the importance of advocacy, and have motivated her to pursue a career in law to fight for other children like her. I am proud to say that Esmeralda is now determined to be the first clinic client to attend Loyola and enroll in its work clinic. If there is anything that our clients have, it is *ganas* and the tenacity to overcome obstacles. I look forward to the day that I get to witness Esmeralda achieving her goal and enjoy the opportunity of having her as a student.

"I share our history and students' stories because this *ganas* or ability to push through is what motivates us as attorneys to perfect our skills at overcoming justices on behalf of our clients. Besides our own motivation, the importance placed on improving one's skills for the basis of others could not be done without the support of generations before us in our profession. As a recipient of the Emil Gumpert award, we have been able to keep our *ganas* going and have been able to expand our programming to train even more law students and serve even more clients.

PROTECTION OF RIGHTS WITHIN THE COMMUNITY

"This past year with your support, we have developed a naturalization training and certificate program that has been adopted by other local Los Angeles schools and non-profits. Through our program, we have successfully trained over 80 law student volunteers, and with local community partners have assisted over 500 Angeleños in applying and securing American citizenship. This program has also allowed us to show that lawyering and the protecting of rights is not limited to the courtroom, but happens anywhere including the community setting.

"Our naturalization program not only protects individuals from deportation, but also empowers them to administer justice on their own by giving them the privilege of the fundamental democratic right to vote. I am honored to report that because of our expanded programming, we have earned the title of seventh best immigration program in the nation and the second best in the state of California. Though our clinic is only in its fourth year of existence, we will continue to push forward to be known for our training advocacy at a national level.

"Currently, we are developing an alternative spring break program along the U.S.-Mexican border in hopes to educate students that lawyering can transcend borders and have an international impact. These efforts in growth could not have been done without your support. On behalf of the Loyola Immigrant Justice Clinic, I want to thank the American College of Trial Lawyers for believing in us and giving us the opportunity to share our story of *ganas* with all of you. Thank you." ■

RESPONDING TO THE ZIKA VIRUS PANDEMIC —SCIENCE AND PUBLIC POLICY ISSUES

Past President **Mikel L. Stout**, of Wichita, Kansas, introduced Dr. Anthony Fauci at the 2016 Annual Meeting in Philadelphia, Pennsylvania. Fauci has been the Director of the National Institute of Allergy and Infectious Disease (NIAID) of the National Institutes of Health (NIH) for over forty-two years - probably one of the most recognizable medical doctors in the United States.

The public first met Fauci on TV in the 1980s when he was the "fierce opponent" of the "mysterious and terrifying plague" of HIV/AIDS for which he received the Presidential Medal of Freedom some twenty-five years later in 2008, when President George W. Bush bestowed it on him for his "determined and aggressive efforts to help others live longer and healthier lives."

In addition to his tireless leadership in managing and containing the HIV/AIDS crisis, Fauci has done battle over the years with many other infectious diseases and outbreaks—like the various annual strains of influenza, which wreak havoc on the economy but usually do not have dangerous symptoms for anyone other than the elderly and infants. He also has tackled some infectious disease outbreaks that have had devastating, disabling, or even deadly consequences, such as Dengue Fever, E. coli, West Nile disease, cholera, Japanese encephalitis, tuberculosis, malaria, hepatitis, Lyme disease and Ebola. [One should recall a certain Governor, who, at the height of the Ebola scare in October 2014, forced the quarantine in an isolation tent of a symptom-free Maine nurse upon her return to the U.S. from Sierra Leone via Newark Liberty International Airport after she had been treating Ebola-infected patients. Fauci calmed the waters in 2014, by personally and successfully treating one of the first Ebola patients in the United States (a Dallas nurse).] He discussed with Fellows his latest major challenge - the Zika virus pandemic and its horrific consequences for newborns of mothers infected with the virus during pregnancy.

THREE UNIQUE FACTS ABOUT ZIKA VIRUS

Fauci began by saying how Zika -- an Arbovirus - is a major public health challenge. An Arbovirus basically means viruses that are transmitted by arthropods, mainly mosquitoes and ticks. Zika shares a particular mosquito with the other arboviruses as a transmitter of the virus, the Aedes aegypti mosquito, which thrives in many warm, wet parts of the world, including in the parts of the U.S., especially in the southeast part of the Gulf States. Those local mosquitoes will pick up the virus from Americans or visitors in the U.S. who have recently been infected on their own travels in the Americas, for example, thus spreading the virus "locally" to and between Americans who may never have travelled outside the U.S., and thereby exponentially increasing the number of afflicted persons.

But it was not until very recently (2015 and 2016) when researchers realized three damning and apparently unique facts about this virus:

One, "it is the only mosquito-borne illness that when a pregnant woman gets infected, the virus leads to serious congenital abnormalities" in the newborn, including microcephaly, where the brain has been impeded in its development in utero or is destroyed and the skull doesn't form correctly, leaving the head very small and distorted.

Two, not only is the virus transmitted by mosquitoes, but it also is sexually transmitted and can be transmitted through blood infusions as well. This disturbing revelation about transmissions through sex and blood transfusions also is not true of the other Arboviruses.

The third fact is unsettling for anyone contemplating starting a family soon and lives in an area where there have been and will be outbreaks. Fauci told Fellows that a man who gets the Zika virus has the disease for only about seven to ten days, but scientists have learned that the virus can be found in the man's semen "months after the symptoms disappear, which makes it very, very difficult to have guidelines for what people should do who have been infected." (There are conflicting guidelines from the NIH and the CDC).

Before delving into these and more awful details about why this is such a frightening virus, Fauci took stock of his audience of Fellows and delivered a strong public policy message for us to consider. The issue, he said, is "how we as a society respond to a threat" that is not only to the Americas but also to the globe, because this is not the first, nor will it be the last infectious disease threat of its kind.

This is a recent and frightening new outbreak of a disease that was discovered back in 1947 in the Zika Forest of Uganda and is in a particular family of viruses called Genus Flavivarus of Flaviviridae (e.g., Dengue, yellow fever, Japanese encephalitis, chikungunya and West Nile Virus). As mentioned earlier, there is a particular type of mosquito called Aedes aegypti that is the primary transmitter of this family of viruses. Aedes aegypti thrive in sections of the U.S., especially in some of the Gulf Coast states. While Zika has its unique and devastating effects that Fauci went on to describe, this "Zika Virus in the Americas" is just, in his estimation, "Yet Another Arbovirus Threat," as the caption of his January 2016 article in the New England Journal of Medicine proclaimed.

THE MESSAGE THAT MUST BE HEEDED

Congress and public officials need to do a much better job of recognizing that Arboviruses have always been with us and are here to stay. The public should expect outbreaks and the associated urgent need to promptly fund medical research to find vaccines and cures for each of outbreaks of "emerging and reemerging" infectious diseases. Otherwise, communities and whole nations will continue to be overwhelmed with the sudden personal tragedies and expenses that come with these emerging and reemerging infections. "We need to be aware that these [viruses] have always happened," and inevitably will happen again and preparations must be made to deal with them.

He drove his message home by describing how medical professionals and laboratory researchers will continue to

be "demoralized" when they have to repeatedly stop work when their coffers are empty and scramble, to find funds to support their efforts to find vaccines, run clinical trials and development treatment protocols. For example, Dr. Fauci spoke of the $1.9 billion February 2016 special emergency appropriations that President Obama sought from Congress and how Congress never passed it. It was later learned that failure to pass the appropriations and later appropriations in 2016 was due in part to political jockeying over the insertion of demand by one political party to defund Planned Parenthood. Fauci spoke of how his team was able to take money from other appropriations for such diseases as malaria, tuberculosis, influenza; then, after running out of that money mid-research, having to ask the Secretary of Health and Human Services (HHS) to allow the researchers to use and spend all the Ebola money ("not a really good idea because Ebola has not completely gone away," per Fauci) and having to go back to the well again with the Secretary of HHS to have her use "her 'one percent transfer authority' to move money from cancer, heart disease, diabetes and mental health, so we could develop the vaccine." His proposal is that in order to better anticipate and manage these infectious disease outbreaks and pandemics, the U.S. should replicate how we, as a nation, deal with the inevitable occurrences of powerful hurricanes and other natural disasters. A well-funded, FEMA-type entity should be constructed and should be in place to anticipate and manage the emergency response needs and associated costs with emerging or reemerging infectious outbreaks. Fauci then took a deep dive into the Zika story and its statistics.

He gave a brief tour of where the virus visited before reaching U.S. shores and what species (monkeys) it infected before humans after its discovery in 1947. It spread from Uganda and Africa to Southeast Asia and then travelers brought it to the Yap Islands in Micronesia in 2007, then across the Pacific to French Polynesia and eventually to Brazil where it hit the perfect storm just a few years ago: big country, a huge number of people, pockets of poverty, many, many mosquitoes, and a "completely immunologically naïve population." That is, Zika was new to their body systems and it became an explosive outbreak. But, at first, it seemed like an inconsequential disease. Eighty percent of people had no symptoms (that's still the case) and didn't "even know they were infected." Symptoms are often similar within the family of viruses and just as often they can be mild - like a mild influenza. The mosquito transmitter and the disease posed and still pose a real threat to South and Central America, Puerto Rico, and now Florida and other isolated spots in the U.S.

Fauci used slides that visually hammered home the statistics surrounding the warm and wet environment where the Aedes aegypti mosquitos breed and flourish in the Americas: There were a "stunning" amount of people -- 300 million -- in the Americas with more than 5.4 million births a year (a "disturbing" statistic, per Dr. Fauci, considering the "quite profound" vulnerability in pregnancies from exposure to the Zika virus). Fortunately, Brazil has great doctors and scientists," said Fauci, who quickly noticed for the first time in 2015, the increase in births of babies with microcephaly to mothers who had contracted the Zika virus during their pregnancies.

MORE STATISTICS

Doctors realize now that if a mother gets infected in the first trimester of pregnancy, she has a 1 to 13 percent chance that she will have a microcephalic baby. It may be higher than that, though, because doctors have learned that babies of infected moms may look normal at birth, but they may later "develop hearing abnormalities, blindness, intellectual landmarks that are not met." There are other devastating conditions that can develop, such as arthrogryposis, the bending in of the joints of the hands and feet. Plus there is an association of Zika with Guillain-Barre, a post-infection neurological syndrome. Fauci estimates that the lifetime care of a baby exposed in utero to Zika is from $1 to $10 million.

Fauci then spoke about the U.S. Zika experience. In 2014, Puerto Rico had an outbreak of Chikungunya via the same mosquito that transmits Zika - Aedes aegypti. Twenty-five percent of the population in Puerto Rico was infected. He "fully expects" the same percentage will be infected with Zika. One percent is getting infected every week, which translates to 4 to 5 percent a month. Puerto

Rico has 3.5 million people and tens of thousands of pregnancies per year. "They are looking at a lot of hurt coming up over the next few months." HHS Secretary Burwell declared a public health emergency in Puerto Rico in August 2016.

As for the continental U.S., the illness is imported to the U.S. not by the infected mosquitoes in Puerto Rico, (a mosquito travels no more than 500 feet in its lifetime), but by continental Americans travelling to and from Puerto Rico or by infected Puerto Ricans travelling to the U.S. from Puerto Rico. Every year 216 million people travel this route. As of the Philadelphia meeting in September, there were 3,100 travel-related cases of Zika in the U.S. Eighty percent of the people with Zika are without symptoms, so that figure of 3,100 probably is a gross underestimate. "It's probably more like nine to ten thousand in the U.S. who are infected and we have the "right" mosquitoes living here, especially in the Gulf Coast states. So, we now have what is called "local transmission," not just travel transmission."

In September 2016, there were about 700 pregnant women already infected in the U.S.. There were only 18 babies born with birth defects from that group. Fauci said we will see "many, many more babies born with birth defects in the months to come."

He spoke of the only way to control this outbreak right now is though mosquito control such as cleaning up the standing water—a difficult thing to do in a warm, moist climate in the middle of the summer—and the use of insecticides. He noted that the "population intuitively reacts against spraying anything," and that Florida officials and the CDC are "having a tough time trying to convince people that we really do need to do some spraying."

Fauci closed by talking about what "we are doing at the NIH." He is responsible for the fundamental basic research to understand the disease and develop countermeasures in the form of diagnostics, therapeutics and vaccines. He is overseeing a study in Brazil and Puerto Rico called the Zika in Infants and Pregnancy study. They are planning to follow 10,000 pregnant women who enroll in the program in their first trimester of pregnancy. NIH will follow them through the pregnancy and for one year after birth to determine how many babies who look unharmed at birth actually are not. He is responsible for the development of a vaccine. He is pleased that they started the first vaccine trial in early August 2016—in "record time." When the results come, the NIH will transition to much larger trials of several thousand people in areas where there is an active outbreak. If everything goes well, they will move right into an efficacy trial early 2017.

A vaccine is critically important because this highly infectious disease is going to keep cropping up through travel transmission and local transmission. Prior to the Annual Meeting, the virus had spread to Singapore, a nation that is very good, according to Fauci, in controlling disease, yet it has well over 300 cases and is right next door to Malaysia where an outbreak would be very problematic if the disease spreads there.

He ended with a strong restatement of his message to the Fellows: The repeated need for NIH to engage in a scramble for funds every time there is an outbreak of these sorts of viruses, especially one that has such serious consequences on newborns as Zika does, is "completely unconscionable." The medical research community wants an emergency public health fund that is the same as the emergency FEMA fund; otherwise "every time we're faced with this challenge, we're going to be . . . robbing Peter to pay Paul. When it comes to the public health of our nation, that is a very bad idea."

POSTSCRIPT

In a farewell interview with PBS's Charlie Rose right before the January 20 presidential inauguration, outgoing National Security Advisor Susan Rice listed "a pandemic flu" as a "major concern," and one of her "biggest nightmares" that keeps her up at night. Notably, Rice felt that this threat is second only to a catastrophic attack on the homeland or on American personnel abroad with WMDs, weapons of mass destruction. Consistent with Fauci's message to Fellows, Ambassador Rice said, "The threat of an [infectious disease outbreak is] is not new, but it is persistent and the risk remains." When Rose asked how serious she sees this threat, Rice said, "I think it's a real risk. It's a fact. It will happen. . . . because now our world is that much more interconnected through trade, through commerce, through air connectivity.

"One of the things that this administration has done . . . was to work with countries around the world to put in place . . . much improved global health infrastructure so they can detect and surveil disease, they can contain it before it spreads. We have called this the global health security agenda and we got fifty countries or so that are actively part of this. And that's the kind of long-term effort that we're going to need to build and sustain around the world to diminish the risk of pandemic, but we're not going to eliminate it. . . That means that the United States has to lead. We have to rally other countries to work with us."

Carol Elder Bruce
Washington, D.C. ■

GENERAL MICHAEL V. HAYDEN OF THE CHERTOFF GROUP PRESENTS THE LEWIS F. POWELL, JR. LECTURE

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

General **Michael V. Hayden** of The Chertoff Group, former Director of the Central Intelligence Agency (CIA) and the National Security Agency, presented the Lewis F. Powell, Jr. Lecture at the 2016 Annual Meeting of the College in Philadelphia, Pennsylvania. His remarks follow:

Thank you all for the opportunity to be with you here today. While I was listening to the other presentations I had the thought that by the time I get up here, most of you might be remembering or even humming that old Sesame Street song, 'One of these things is not like the other, one of these things just doesn't belong' because you've had distinguished jurists and legal scholars. Now you've got the former director of the CIA and NSA up here to talk to you about some things.

I did choose a topic and I do think it's perfect because it's a place where I've spent most of my life in and now it overlaps with the world in which you currently exist. My topic is law, power, and a changing world.

I would begin with the premise that the rules-based order on which certainly government depends on, and frankly even espionage depends on, a rules-based world which you nurture and spend a great deal of time not just studying but developing, that rules-based order domestically and globally is a bit under assault. That's really what I want to talk about here today. What that assault looks like and what we might want to do something about it.

QUIPS & QUOTES

You're a very polite audience. You're kind of listening to people up here and so on. The Republicans were not polite.

General Hayden

To begin, I was up in Baltimore, it's a smaller group than we have here. It was all the Republican members of Congress. They were having their annual off-site in February and the leadership, Mitch McConnell and Paul Ryan were trying to get the Republican team together, at least on the same page with regard to a variety of issues. The agenda was filled with panels. They had a panel on the economy, and a panel on social issues, and I'm on the security panel. It was a very good panel.

I was delighted to be there. I was there with Mike Chertoff, the former Secretary of Homeland Security; Ray Odierno, just leaving the job of U.S. Army Chief of Staff, Ryan Crocker who we had sent to be our ambassa- ▷

dor on just about every ugly spot on earth. He had done Pakistan, he had done Iraq. There was me; and then there was Robert Kagan, middle of the road, powerful writer, geopolitics from the Brookings Institute.

They had stuff to say. We're paneling up there, we have individual skirmishes starting to take place up there, and questions are coming back and forth. Finally Kagan, the Brookings scholar, said, 'All right, stop! Look, what's going on is this. We are seeing the melting down of the post-World War II American Liberal, IMF, World Bank, Bretton Woods world order. Get it?'

That's how fundamental the change that Bob [Kagan] thought was going on. I thought that was really good. I thought about it some more. As right as Bob was, he may have lowballed the tectonic shifts that are taking place because I think we're not just seeing the melting down of the post-World War II American Liberal order. I'm willing to sign up that we're seeing the melting down of the post-World War I Versailles order as well.

QUIPS & QUOTES

We're in the Post-Industrial era and as things of the Industrial era strengthen the center, the Post-Industrial era pulls power away from the center, pulls power away from centralized institutions.

General Hayden

If you look at the maps, people here are kind of similar in age, the maps we grew up with, there are big gaps in those maps now, the places that used to be that don't exist anymore. Czechoslovakia, which was divided in what was called a Velvet Divorce. Yugoslavia, which divided, nothing velvety about it, a quarter million people dead. A country created not by Versailles but at the same time as Versailles. The Soviet Union is also gone. If you shift your gaze out to the east a little bit and look at the Eastern Mediterranean and look at the patches of land formerly identified as Iraq, Syria, Lebanon and Libya. Let me just tell you something based on my professional judgment. They're gone too. They're never coming back.

That's a very nutty situation in Syria and Iraq. When you look at the public discourse, it looks like they know there's a polynomial equation for geopoliticians and they know the constants and they're working with the variables. The constants in Syria, the constants in Iraq, the variable is Bashir Al Assad. The variable is Abu al-Baghdadi. It's all for the variable. Get them out of there. I think what I'm trying to suggest to you is we've got that wrong.

The things in that equation we thought were constants, the continued existence of Iraq, the continued existence of Syria, Lebanon, Libya, they're not constants. Those states are gone and they're not coming back in anything like their current form. My point is the tectonic shifts going on now are so dramatic, the things that we use to solve equations, the constants, are no longer constant. If there's a breakdown in the post-World War II order in a melting of Versailles, let me suggest to you that there's a bit of a thawing around the edges of the Treaty of Westphalia too.

Do you remember Westphalia? The 17th century, 1648, Thirty Years' War, the last great war of religion in Christendom, where we in Christendom decided we had a sufficiently long list of things on which we could rely for legitimacy to kill one another that we didn't need religion any longer on that long list. We consciously, we do this imperfectly, but consciously said, 'Okay, secular stuff over here, sacred stuff over here. Coercive power of the state stays here. Questions of theology on.' I know we've applied it imperfectly but we did export it to the planet.

That is the theory of government, in addition to the lines we drew. That is the theory of government we exported around the world. I'm just here to tell you that that theory of government, not just the lines, that theory of government is now being challenged by another great monotheism who isn't quite yet willing to accept Christianity's resolution of fundamental issues of faith and reason, of secular and sacred. It would be the height of arrogance on our part for us to assume that that great monotheism isn't going to come up with the same solution that our monotheism did. In any event, I want to draw a point here that we're really talking about fundamental issues that really effect how we have structured ourselves to maintain some semblance of order on the planet. It goes further.

I was on President Bush 41's NSC [National Security Council] staff. If you recall back then, the National Security Advisor was Brent Scowcroft. Brent is still one of the great strategic minds this country has ever cranked out and he is still cranking out very powerful views. Brent was National Security Advisor, not once but twice, for Bush 41 and for Ford. What Brent

points out in a recent piece about four years ago now, Brent says, 'You know, when I was doing my thing, the things on the board I worried about, they were all nation states. The way I moved the nation state on that board was through what you and I have now taken to call hard power.'

If you're not familiar with the term, masses of men and metal, at the right place at the right time. Brent points out in the article, 'All you care about are nation states and hard power is your favorite tool,' neither of those sentences are as applicable as they were when he was doing his thing, which he admits was at the height of Ford, on the back end of Bush 41, of what Lady Arden [a previous speaker] described for us had begun in Liverpool, the Industrial Age.

If you just think of the dynamics of what Lady Arden pointed out to us, the Industrial Age trended to strengthen the center. You couldn't be an industrial power without a strengthened center. You needed the tools of a powerful state to create the infrastructure on which industrialization would depend. I could do it in my country with the Republican Party controlling power in the last half of the 19th century to build the infrastructure that created the opportunity for the explosion of America as an industrial power in the 20th century.

I can go to the Soviet Union and simply say communism is a bad theory of history and the worst theory of government. It's not bad if what it is you want to do is to rapidly industrialize a backdoor agrarian near feudal society because it aggregates power to the center. What Brent then goes on to point out is we're no longer in that era. We're in the Post-Industrial era and as things of the Industrial era strengthen the center, the Post-Industrial era pulls power away from the center, pulls power away from centralized institutions.

I do this on college campuses and it only half works, but it will work with this group. I'm old enough to remember when making a phone call was such a challenging undertaking, you and I would entrust it only to a government or a government-controlled monopoly. Remember? I'm old enough to remember I used to have to put a shirt on and get in the car, and drive the car, park the car, get out of the car, and go into a building and talk to a human being to get my money.

By the way, the college campus response to that is 'Money? We have been tremendously empowered. How many of you used Zillow the last time you looked for a house? One or two clicks you can get everything you used to have to go to a professionalized institution in order to get that. In my line of work I'm old enough to remember only two countries would take pictures from space and only one of them did it really well. Now, you can go home and use Google Earth to look at North Korea and with sufficient resolution tell me whether or not the fun-loving Kim family is stacking a taepodong missile or not.

QUIPS & QUOTES

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General Hayden

This is a world in which power has pushed out; it is a world that is far more interconnected than the one that we have left. For the most part that's made your life and my life just great. I really do like the empowerment. But that empowerment does not just go to people who are virtuous. That empowerment goes to people who would will us harm. I'm old enough to remember I never lost any sleep over a religious fanatic living in a cave in the Hindu Kush, but it's something we all have now near the front of our consciousness.

The major muscle movement, in addition to the gnawing of the structures at the international level, the major muscle movement at the technological level is that the evil things you and I formerly associated only with the power of a malevolent nation state, those kinds of things are now within reach of groups, gangs and even individuals. That is one real tectonic shift.

One real challenge is how we are going to decide to keep our citizens safe within our traditional value system. If you look up here at me for just a minute, the American security structure was hardwired in 1947 ▷

with the passage of the National Security Act of 1947; it created the CIA, National Security Council, Department of Defense, Joint Chiefs of Staff and America's Air Force. We are hardwired to defend you from a malevolent state power. It's coming at you this way.

What I want to suggest to you is that most of the things that can actually go bump in the night and hurt you, terrorism, cybercrime, transnational crime, the really practical, urgent problems, they ain't coming this way *[gestures to the right].* They're coming this way. The adjustments that I lived through and recorded somewhat in the book, we're still arguing with ourselves about, is how do you take a national security structure designed to go this way and make it go that way.

Let me be very concrete. I'm a career GI. I've had two presidents say to me, 'Hayden we are at war with those guys.' War, armed conflict. You tell somebody like me armed conflict, war, okay. Close width and destroy the enemy, kill them. Normandy, Chateau Theory, Iwojima, Inchon, got it? What does it look like here? It looks like targeted killings outside of internationally-agreed theaters of conflict from unmanned aerial vehicles. I do this on a college campus and as a response I can mimic the audience reaction, 'Whoa, whoa, whoa, slow down Hayden, not sure I'm real comfortable with that. What else do you got in your kit?' Okay. I get the discomfort with the killing thing.

We can capture the enemy. We've done that in every war. There were literally hundreds of thousands Axis prisoners here in the United States during World War II. There's a graveyard at Ford Mead, my headquarters where the NSA was, with German soldiers, German soldiers who died of natural causes in American prisoner of war camps during the Second World War. Oh, yeah, OK Hayden, let's do that. Let's capture them.

What does that look like? It looks like a small naval base on the southeastern tip of Cuba. It looks like Guantanamo. 'Slow down here big guy. You're making me nervous. I tell you what, what else have you got?' Well, I could do the espionage thing. You know, I could divine enemy intentions. I could work really hard to figure out their plans. I could intercept their communications. You all saw the movie, *Bletchley Park*, *Imitation Game*, [Alan] Turing. We're really good at intercepting communications. Yeah, Hayden do that.

What does that look like? That looks like everything Edward Snowden has told you about for the last 2 1/2 years. Do you see the issues? Because the nature of the world, the melting down of international structures, the tectonic shifts put into play by technological and cultural changes, we are in the midst of trying to adapt our traditional tools to nontraditional tasks, and it's very hard. We have honest arguments, underline that word, honest arguments with one another about how we do it. This is a wicked problem.

Let me just stay with terrorism here to finish this out. This is a non-state actor; it's not even a country. Now, how does that effect what's fair and not fair? This is a non-state actor that rejects the heart of Geneva [Convention]. The heart of Geneva is that there is a distinction between combatants and noncombatants. This enemy's basic faith, not just erodes but destroys that distinction, not just for you, their victims, it destroys that distinction for themselves since they believe that all true believers are part of the global jihad.

U.S. law, pre-9/11, U.S. law in order to try to balance our liberty and our security, and this is not a new problem, we've been doing this for, you know, over two centuries. But the broad formula I worked under on the morning of September 11th before the attacks was that we generally pushed questions of foreign stuff over here and questions of domestic stuff over here. In fact institutionally we had institutions that focused on foreign stuff and institutions that focused on domestic stuff.

We put intelligence over here and we put law enforcement over here. Against the traditional, state-based enemy that's pretty good. We stayed free and safe for the most part. On September 11th, nineteen hijackers drove through that gap I just created for you with my metaphor. I was given the direction, close the gap.

So now we've begun a much more difficult conversation. For those of you who follow this, and I know a lot of you do, it's called the wall. It was much easier when you had the wall and that's that and that's this and we don't play together. It's much more difficult if you know you're going to have to blend this in ways we have not blended it before but be careful. Make sure you catch them, but for God's sake don't impose anything on legitimate constitutional rights.

That's just the great struggle that we're having now. By the way, immediately after 9/11, I got flogged left and right for the gap. The wall seemed to be some sort of fundamental affront to human decency. That's eroded. I'm going to be at Georgetown Law School as part of a panel

for a new book written by a professor of law at Georgetown that talks about the future of foreign intelligence. The premise of her book is got to have the wall, got to have the wall, bring the wall back, got to have the wall.

We've come full circle as to how do we make these compromises. By the way, I had to live through some issues because of the erosion of the wall. Let me be very candid with you. When that wall became permeable as opposed to being non-existent, when the wall became permeable, a lot of very noble concepts that existed over here in the law enforcement bubble began to float across into the make war, laws of armed conflict bubble. We over here were being severely criticized because our conduct, in the we are at war enterprise, didn't always reflect the standards of this is a legal procedure.

Criminal law enterprise, two very specific ones. I get beat up routinely. How in God's name can you keep all these people in Guantanamo without a trial? Easy. Laws of armed conflict, enemy combatant, duration of the conflict, or while they pose a danger, whichever comes first. I hear in my old NSA days, particularly after Snowden, 'Oh, my god, NSA does suspicionless surveillance of millions of people abroad.' I have to tell you suspicion is not a word that enters our vocabulary. We don't give a damn about suspicion. We're after interesting.

We will intercept foreign communications that contain information that would help keep America free or safe indifferent to the moral characteristics of who's on either end of the conversation. This isn't about bad people. It's certainly not always about bad people. It's about good information, intelligence. It's not a moral or a legal judgment.

But we have these very powerful arguments, suspicionless surveillance for foreigners. By the way, just so you don't think I'm too much of a renegade up here, there isn't another foreign intelligence service on earth who would not have given the speech I just gave you. That's how it works.

I was invited to go to CPAC, the Conservative Political Action Committee at Washington Harbor last year. A former director of the NSA going into a room full of 18,000 very young Tea Party activists is considered an away game by people in my profession.

I'm there and I'm actually going to debate Andy Napolitano, the judge on Fox News. He's actually a pretty good friend. So Judge Napolitano goes up there, and I mean he just tosses out red meat about libertarian values, and I'm a libertarian, and he's just going on and on. He does that for about five minutes and now it's my turn. I walk up to the microphone and go, 'My good friend Judge Napolitano is an unrelenting civil libertarian.' Hah! The crowd goes crazy. I pause, let the applause die down, 'And so am I.' Boo. No you're not.

QUIPS & QUOTES

A former director of the NSA going into a room full of 18,000 very young Tea Party activists is considered an away game by people in my profession.

General Hayden

I let the crowd die down. I said, 'Yes I am, but I've lived most of my adult life having responsibility for another part of the document, the part that says 'and provide for the common defense.' The thought I would leave with you is that I don't view this argument we're having with ourselves as a struggle between the forces of light and the forces of darkness. We too quickly, unfortunately, divert to that kind of labeling on both sides.

This is an argument we've been having with ourselves since about forever. 'George III was far too overbearing, we have to do it ourselves.' Articles of Confederation, 'Oh my god, we can't do anything with that government.' Okay. 'Let's come here to Philadelphia, write something else down, create the Constitution.' 'Whoa, I'm a little scared, that's a pretty powerful government. Let's go home and write another ten paragraphs.' So you see that's just the life of the nation.

We're still on that journey. We're tacking based upon the realities of the concrete circumstances in which we find ourselves at the time. I'm happy to share with you that people like me share the nature of this problem with you. Our life experiences may give us different things to bring to the conversation but it shouldn't put us on different sides. Thanks so much for the opportunity. ■

JUSTICE REBECCA LOVE KOURLIS RECEIVES SAMUEL E. GATES LITIGATION AWARD

The Samuel E. Gates Litigation Award honors a lawyer or judge who has made a significant, exceptional and lasting contribution to the improvement of the litigation process.

Justice **Rebecca Love Kourlis** was so honored at the College's 2016 Annual Meeting in Philadelphia. A graduate of Stanford University and of its School of Law, she began her journey through the legal profession as an associate at a large Denver law firm. Then, marrying a northwestern Colorado rancher, she left Denver and set up her own private small-town practice. Several years later, she was appointed a state court trial judge and eventually became Chief Judge of her district. In 1995, the Governor of Colorado appointed her at age forty-one as an Associate Justice of the Colorado Supreme Court. She quickly became a highly regarded member of that Court.

Over the next eleven years, Kourlis began to see issues in our justice system that needed to be addressed to make it more accessible, efficient and accountable, issues she could not address while sitting as a Justice. In 2006, she persuaded the President of the Colorado Bar Association, the Chancellor Emeritus of Denver University and a Colorado business leader and philanthropist to become co-founders of what they named the Institute for the Advancement of the American Legal System, more familiarly known as IAALS. She resigned from the Supreme Court to become IAALS' Executive Director, and she recruited as her Board of Advisors a broadly diverse national collection of what she termed "stakeholders" in the civil legal system—from plaintiffs' and defendants' lawyers and in-house counsel to state court chief justices, educators and business leaders.

The very process through which IAALS approaches civil justice research and reform reflects Kourlis' own unyielding commitment to doing things the right way. Determined to operate on data rather than "anecdata," proven facts as opposed to opinion, from the beginning IAALS went one step beyond that of a traditional "think-tank" by leveraging a unique blend of empirical and legal research, innovative solutions, broad-based collaboration, communication and ongoing measurement of the results of its efforts. At its heart, that approach reflected Kourlis' own dedication to positive and lasting change on a national scale.

Over the intervening ten years, IAALS has grown from five employees housed in a borrowed three-room office at Denver University with a small Advisory Board to an institution that has become a major national player in the ongoing search for solutions to some of the most intractable problems facing our justice system. Now housed in its own separate building on the University campus, under Kourlis' visionary leadership IAALS has assembled a staff of carefully selected professionals from various backgrounds and various fields of expertise who collectively bring the knowledge and vision its task requires. In addition to its Advisory Board, which from the beginning has counted a Past President of the College among its members, IAALS has added separate groups of advisors from across the United States to bring their own knowledge and experience to each of the problem areas it has chosen to address, as well as advisory groups drawn from law firms and corporate counsel.

Over time, in expanding its agenda, IAALS has sorted its initiatives into four categories, each of which has been given a name descriptive of its purpose. Its Quality Judges Initiative provided a home for Justice Sandra Day O'Connor's judicial selection plan and created a model Judicial Performance Evaluation for states to use in choosing, evaluating and retaining qualified judges.

President Mike Smith; Justice Rebecca Love Kourlis; Past President Ozzie Ayscue, Jr.

The second, the Rule One Initiative, is that most familiar to the Fellows of the College, since at its core it began as a collaborative effort between IAALS and a task force of the College. Initially devoted to finding ways to deal with the cost and delay that have priced too many litigants out of the civil justice system, thus forcing too many matters to be resolved on a cost-benefit analysis, rather than on the merits of the case, it has since expanded far beyond that to address fundamental organizational issues in our court systems.

The third initiative was Educating Tomorrow's Lawyers. A study of contemporary legal education funded by the Carnegie Foundation at Stanford University had reached three conclusions. First, law schools were doing a respectable job of teaching law as a body of knowledge. Second, they were doing an uneven, often ineffective, job of preparing students to use that knowledge in the real world. And third, they were doing a poor job of passing along to law students the professional traditions, the moral and ethical precepts that have undergirded the legal profession since its emergence centuries ago as an independent self-regulating profession. Carnegie was turning its attention elsewhere, and those involved in the study approached our honoree to ask her to consider having IAALS carry out the task of taking that report from analysis to action. IAALS undertook to do that.

The fourth initiative, Honoring Families, aims to develop dignified and fair out-of-court processes for the resolution of issues involving separation, divorce and related parental responsibility through processes that are more accessible and more responsive to the needs of parents and families, and, most importantly, children.

One can find on IAALS' remarkable website a collection of publications that make available both to those in the civil legal system and to the public recommended roadmaps to progress and almost daily reports on what is going on nationally in each of these four areas. Our honoree has made herself available for an exhaustive schedule of speaking to these issues around the United States and Canada.

In her response accepting the award, Justice Kourlis focused her remarks on the College's role in the Rule One Initiative. At the College's Spring Meeting at La Quinta in March 2007, a few months after IAALS had been formed, she had challenged Fellows to become leaders of change to help to rescue a failing civil justice system. She then asked College leaders to consider participating with IAALS on an organized basis. "You heeded that call," she remarked. "You formed the Task Force on Discovery [later renamed the Task Force on Discovery and Civil Justice] . . . and we began our work together." This effort combined the expertise of the IAALS staff with the knowledge and experience of the Task Force members that included a member of the Canadian judiciary. Beginning with a national survey and hundreds of hours of meeting time, the group published its first report, which then became the focus of a series of national conferences. Members of the Task Force fanned out and helped IAALS to conduct monitored pilot projects across the country to test those original recommendations. Over time, it refined its recommendations into a set of Principles of Change, which eventually evolved into a Report on Progress and Promise that set forth a roadmap for reform of the civil justice system in the United States.

The group's initial report, based on extensive research and fact-finding, had concluded that addressing the problems in our civil justice system would require a change in culture, led by judges and practicing lawyers. Among other things it concluded that the one-size-fits-all approach to discovery was not working, that notice pleading is not effective in defining what ▷

is genuinely at issue in a case, so that discovery can then be confined to that which is relevant, and that procedure, including discovery, must be proportional to what is at stake in a case. It concluded that, from beginning to end, a civil case should be supervised by a judicial officer who can control its course and who can, if necessary, take that case to trial. This initial report, which laid out a set of principles rather than attempting to draft rules, lit a fire that has prompted a national dialogue on a subject that is fundamental to what the College is all about. Over the years since that initial report was published, IAALS' efforts in this area have expanded exponentially, and a number of its resulting programs have been aided by Fellows of the College.

QUIPS & QUOTES

Every once in a while in history a group of people who have intellect, commitment, inspiration, and synergy come together and truly change the world. Remember what Margaret Mead said, 'Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has.' . . . Thank you for your courage and your dedication.

Justice Kourlis

"Every once in a while in history," Kourlis continued, "a group of people who have intellect, commitment, inspiration and synergy come together and truly change the world. Remember what Margaret Mead said, 'Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has.' . . . Thank you for your courage and your dedication."

She then proceeded to outline the changes that "have grown from the seeds we planted together." Beginning with the Federal court system, she listed the 2013 amendments to the Federal Rules of Civil Procedure that include proportionality in discovery, more robust case management and a plea for cooperation among counsel. "The Civil Rules Advisory Committee last week approved two new federal pilot projects," she continued, "one that will focus on mandatory disclosure of documents and things that support or contradict specifically pleaded factual allegations, a principle [that] was hotly contested but ultimately, unanimously adopted by the Task Force." The other pilot project will focus on early firm trial settings.

Turning to the civil justice system at the state level, she reported that in July 2016 the National Conference of State Court Chief Justices unanimously adopted the recommendations of its Civil Justice Improvements Committee, whose work was aided by IAALS staff. "I commend them to you," she continued. "Those recommendations include pathways for cases based on case type, robust case management by the courts, standard and complex pathway rules that include mandatory disclosures and proportional discovery. These recommendations for the state courts focus in part on the fact that the caseloads in state courts predominantly consist of smaller cases . . . . These cases do not need intensive judicial case management; in fact, sometimes that gets in the way. But they absolutely need court attention to make sure that service has actually occurred, that the instrument being sued on is attached to the complaint and matches the claims, in short, to make sure that procedural fairness occurs. The recommendations also include recognition of the increasing number of self-represented pro se litigants in state courts. . . . Those people have real cases and real needs, and the courts have to figure out how to meet them."

In the world of acronyms, the Conference of Chief Justices Civil Justice Improvements Committee recommendations have been labeled CCJ CJI. "The CCJ CJI recommendations are still just paper," she continued, noting the few states that have already acted on them. "For the most part, they are a tool waiting to be picked up by state Supreme Courts, by rules committees, by access to justice committees, by presiding judges, and court administrators and by champions for change. IAALS and the National Center for State Courts, with funding from the State Justice Institute, stand ready to help in these implementation efforts. The future is here, but as William Gibson said, 'It is unevenly distributed.' We really are on the brink of a new system, one that does get closer to providing a just, speedy and inexpensive process, but success is in the implementation.

"And so today," she urged, "I want to ask you to continue your roles as champions of change, as leaders, and as role models, in some very specific ways. The Federal Rules amendments are only as good as the people who use them. The ABA Roadshow, the proportionality guidelines, the weeks and weeks that judges like Lee Rosenthal, Jeremy Fogel and **Jack Zouhary** have spent changing the culture will only work if the rules truly do change the game, and that part is up to you. . . . I urge you to review the Principles, go back and look

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Justice Kourlis

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"As we step back and think about what we have done and what we have yet to do," she continued, "I want to remind us all of the reasons we do it. There is . . . a new discipline out there. It is called 'design thinking.' It is about how to design the solution to a problem. One of the basic premises of design thinking is that it starts with the question of what is best for the end user. It draws upon logic, imagination, intuition and systemic data to create desired user-centered solutions. The world is moving more and more in that direction. The next wave of major change in the legal profession, which is already upon us . . . is a consumer-focused approach to the delivery of legal services, including court services. We have to learn how to make the court system, the legal system, more user-oriented. And it is going to be challenging. We do not embrace change as a profession."

After relating her experience as a trial judge in a system that was organized to operate for the convenience of the judge, but not for the litigants, she reflected, "The system is not for the judges; it is not for the lawyers. It is for the end users: the litigants, the parties, the people whose rights, or pocketbooks, or freedom depend upon fair and effective outcomes."

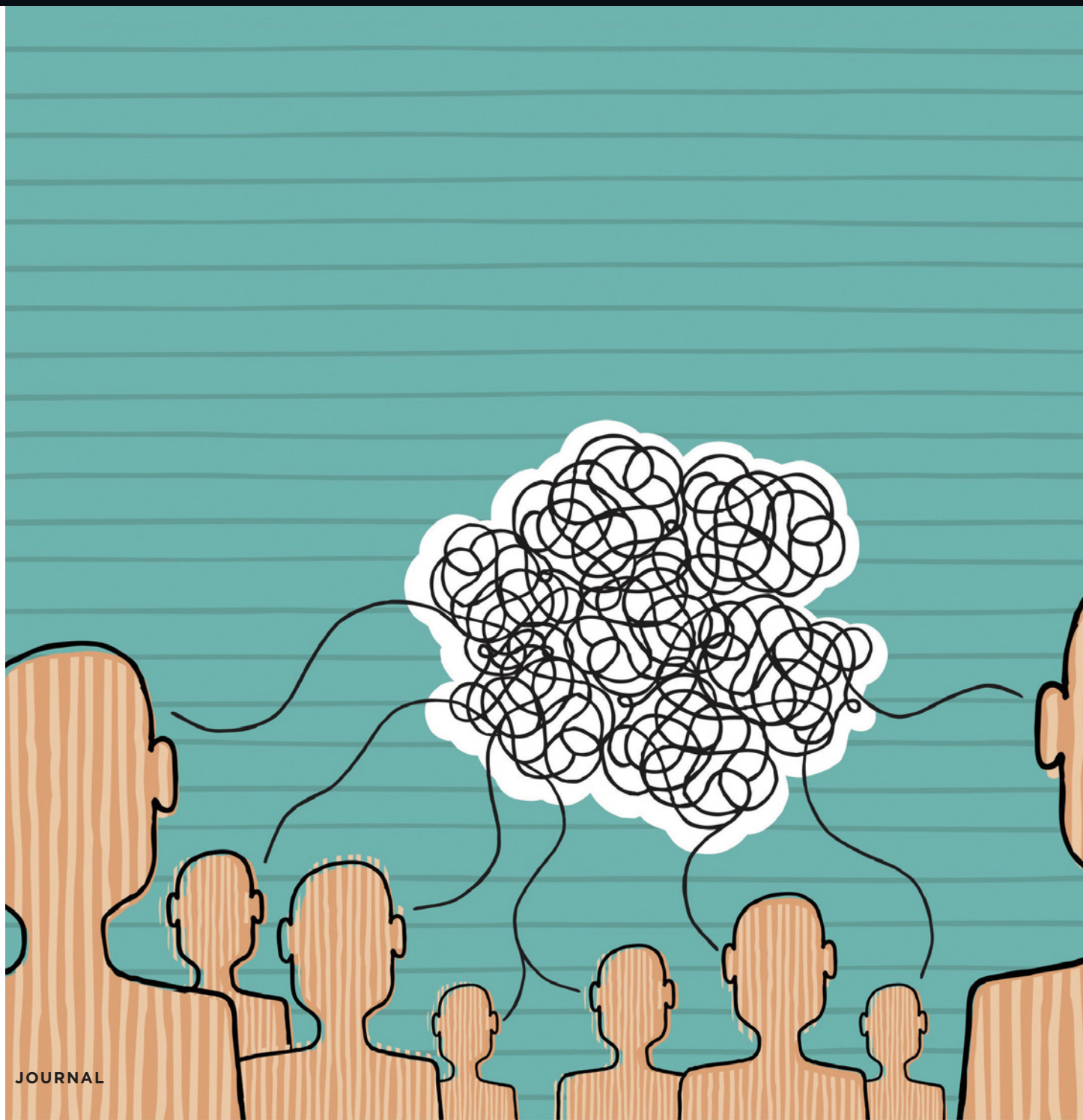
She ended her remarks with a challenge: "We have come a long way together in nine years, farther than any of us thought possible. It is a testament to your leadership that we are here, but we are not finished. When I was thirteen, my dad [a three-term Governor of Colorado] gave me a birthday present that I thought was wonderful. It was a *Peanuts* poster. . . . Linus with a blanket in hand, and it announced across the bottom, 'There is no heavier burden than a great potential.' At the time I viewed that as a vote of confidence: 'My dad believes in me and he believes I have great potential.' Years later, I realized the demand inherent in this and the notion that he was incorporating, the concept that of those to whom much is given, much is expected, and that he was setting the bar pretty high.

"Well, I am today intentionally setting the bar high for you. You have done great things already, but please, we are not finished. We have much more to do, and it is extraordinarily important work. The civil justice system for all of us in this room is part of our lifeblood. We understand the role it plays in American society. We care deeply about it. The measure of that caring, then, is how hard we are willing to work to preserve it, to make it accessible, to make it something that is trusted and trustworthy and admired across the world.

"I thank you from the bottom of my heart for this award, but more to the point, I thank you for your partnership. It has been a source of incredible joy and support to me over the last decade, and, I hope, over the next."

E. Osborne Ayscue, Jr.
Charlotte, North Carolina ■

NEW YORK TIMES CEO DISCUSSES DESTRUCTIVENESS OF PUBLIC DISCOURSE, POLITICAL LANGUAGE



Mark Thompson was aptly scheduled to speak on the second day of General Session, the same day members of the UK - U.S. Legal Exchange spoke later on in the program. "He has one foot firmly planted in each of the two countries. An Englishman by birth, Mark now serves as the Chief Executive Officer of the New York Times Company, an icon of the press in this country for more than 150 years," said Past President Michael A. Cooper of New York, New York in his introduction.

Born in London and educated at Merton College, Oxford, Thompson joined the BBC in 1979 and rose through its ranks to become Director of Television. After a brief stint at Channel 4 in the UK, he returned to the BBC in 2004 as the Director General, a position that combines the responsibilities of Chief Executive Officer and Editor in Chief. As leader of the BBC, he reshaped the organization and introduced new technologies.

Eight years later Mark was lured across the Atlantic to become the CEO of the New York Times where he has been instrumental in accelerating the pace of the Times' digital transformation. In 2012, the year that he came to the States and the New York Times, he was visiting professor of rhetoric and the art of public persuasion at Oxford. He has recently authored a book based on lectures he gave while at Oxford titled *Enough Said: What's Gone Wrong with the Language.*

PUBLIC DISCOURSE LOSING ITS POWER

"What happens when a political language fails, when the rage and incomprehension boil over, when we run out of a common language, a common vocabulary and sufficient trust in each other's words, to be able to sit down and work through what unites and what divides us? Don't expect much comfort from history. From the fall of Athens to the rise of totalitarianism, observers from Thucydides to George Orwell have associated a breakdown in public language or rhetoric with the failure of democracy, loss of freedom, civil strife, and tyranny.

"Let's talk about 2016. In the UK, a supposedly once and for all national debate about Britain's place in Europe which descended into what one leading politician, the chairman of one of our parliamentary select committees called, 'an arms race of evermore lurid claim and counterclaim made by both sides.'

"In continental Europe, anti-politicians, populists and extremists are gaining ground in many countries. There have been Beppe Grillo's Five Star Movements taking city after city. (Beppe Grillo is a former comedian turned political leader of the Five Star Movement). The ultra-rightist, Norbert Hofer, seemingly within millimeters of the Austrian presidency, Marine Le Pen (president of the National Front, a national conservative political party) polling very nicely in the run-up to next year's French presidential race. In the U.S., a presidential race which often seems to be mainly about language, 'telling it like it is' or about cheating and lying, depending on your political perspective.

"Almost everywhere, whether in the debating chamber or on prime time, or the smartphone in your pocket, there is a sense of a public discourse which is losing its power to explain and reconcile or, indeed, to express anything much beyond vitriol and division. Now, ▷

these trends have many socioeconomic and political causes. But public language, the language we use when we discuss politics or policy, or make our case in court, or try and persuade anyone in a public contest, public language seems to me to be at the heart of the matter.

"I believe this amounts to a crisis in public language. This crisis is playing out in many ways, but the most important is the failure of conventional political rhetoric in almost every Western country. For many voters the gap between the claims and promises of political leaders and what these voters take to be the facts on the ground about inequality, globalization, the crash of 2008, immigration, the West's unhappy wars in the Middle East, this gap has simply become too great.

"You can certainly argue whether the disillusion of these voters is justified or not, but the disillusion has itself become a central political reality. The slow death of a political rhetoric is not like a royal succession with a crown passing smoothly from one monarch to the next. We're living today through a disputed interregnum with many politicians refusing to accept that the old queen is dead and strange pretenders are popping up everywhere, anti-politicians like Beppe Grillo and Donald Trump, mavericks from within existing political structures…. Of course the pretenders would deny that they were in the rhetoric business at all. If they mention the word at all, it's only in the context of the detested public language of the establishment.

"Let me quote from that proto-Trump, Silvio Berlusconi, from the 1990s. Silvio said, 'If there's one thing I can't abide, it's rhetoric. I'm only interested in what needs to get done.' I don't think I need to tell this audience that this is itself, of course, a classic move in the rhetorical game. It's what Marc Antony is up to in the 'Friends, Romans and countrymen' speech in *Julius Caesar* when he assures his listeners, 'I am no orator as Brutus is. But as you know me all, a plain, blunt man.'

"In the right circumstances this kind of anti-rhetoric can be the most persuasive rhetoric of all. But like any other form of public language, we can unpack it to find out what makes it tick. Let's take what's probably still Donald Trump's most famous policy commitment unveiled here to his supporters in Dallas September last year. Now, you're going to have to forgive me. I've tried practicing saying 'huge' and 'unbelievable,' but I just can't manage the accent. Here in the Queen's English is Donald Trump:

'We have to build a wall folks, we have to build a wall. All you have to do is to go to Israel and say, 'How is your wall working?' Walls work.'

"The super short sentences, both here and throughout Trump's oratory emphasized certainty and determination. They build like bricks in a real wall towards a climax with a kind of emotional logic. It's a style which students of rhetoric call parataxis, and it's the way that generals and dictators have always spoken to distinguish themselves from the caviling civilians they hope to sweep aside.

"Wikipedia aptly quotes Julius Caesar's 'Veni, Vidi, Vici'; I came, I saw, I conquered, as a classic example of parataxis. Today listeners are more likely to associate it with successful entrepreneurs or CEOs of who both Silvio Berlusconi and Donald Trump are examples. Trump's style is almost infinitely compressible as his intuitive mastery of the micro-rhetorical world of Twitter shows. Here's an example. 'Lightweight Marco Rubio was working hard last night. The problem is he's a choker. And once a choker, always a chocker [sic]. Mr. Meltdown.'

"This is personal in every sense of the word and written personally on the spur of the moment or dictated in real-time to a thick-fingered aide at that last meeting, miskeyed choker, and he spells it chocker is anything to go by. So you can laugh at it, but it contains no more than three different summaries of the Trump view of Senator Rubio, each of which is individually, immediately, and eminently retweetable. Twitter seems to have influenced Donald Trump's public oratory as well.

"Often he obsesses over a single word or a phrase like someone feverishly circling something objectionable in the newspaper. Here he is on President Obama. 'He's the founder of ISIS. He's the founder of ISIS. He's the founder. He founded ISIS. And I'd say that the co-founder will be crooked Hillary Clinton.' Radical compression and routine exaggeration is only one of the ways in which our political language is losing explanatory power. Our conception of the role of authority in rhetoric has become disordered in ways which impact on issues as varied as global warming, vaccine safety and monetary policy.

"It's harder for us to find a common language to engage with peoples and cultures, both at home and abroad, whose values differ substantially from our own. There's a growing intolerance of free speech, not just in controlled societies but in Western countries who claim to venerate it."

FACTORS CONTRIBUTING TO DECLINE

"So how do we get here, and what, if anything, can we do to begin to put things right? Now, I'm skeptical about any theory which is predicated on the wickedness or insanity of any one set of actors in this drama.

"It's very easy in any one country to blame local politicians and local political parties with whom you happen to disagree, but it doesn't explain why similar changes are taking place in public discourse in radically different political cultures and across ideological polarities. The mainly left-wing critics of Andrew Lansley's attempt to reform the national health service under a Tory-led coalition in the UK some of the very same rhetorical tactics as the conservative opponents of Obamacare over here.

"For me, the loading of all the blame onto the political other is not a diagnosis, but a symptom of the disease. Nor do I believe, as Tony Blair claimed as he was leaving his job as Prime Minister in the UK in 2007, that the principal culprits are the media. That also feels too simplistic, not that I think that my own profession is entirely blameless either. I believe instead that the crisis in our public language springs from a set of interlocking political, cultural and technological forces, forces which go beyond any one ideology or interest group or national political situation.

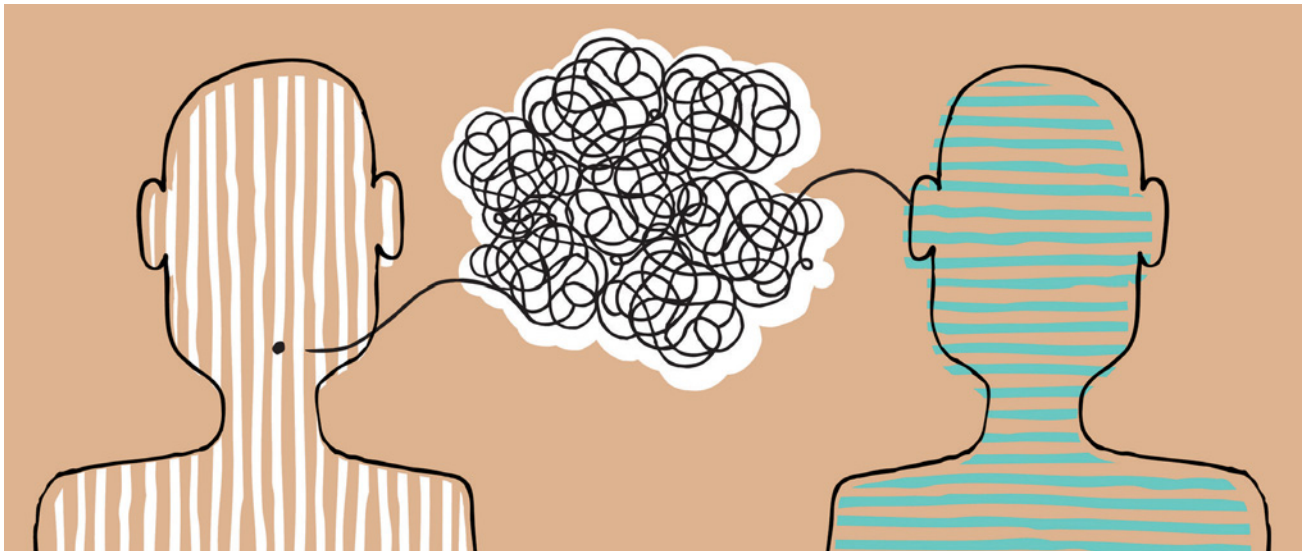
"The first factor is the changing character of Western politics with previous affiliations based on class and other forms of traditional group identity giving way, especially after the end of the Cold War, to a more uncertain landscape in which politicians struggle for definition and differentiation. With policy platforms more arguable and coalitions of interest more transient, it's hardly surprising the political rhetoric has become more fissiparous and when tribal loyalties recede, the character of individual politicians becomes more salient, why it's also become much more personal.

"The second factor is the widening gulf between the world view and the language of the experts who make modern policy, and those of the public at large. Modern government is inescapably technocratic and precisely because Western societies have already made enormous gains in many areas, the trade-offs involved in any new policy proposal are more finely balanced and therefore more arguable than they used to be. It was far easier to decide in the aftermath of World War II that London needed a new airport than it is to decide today whether their airport should get a single additional runway.

"The ranks of lawyers, economists, statisticians and planners assemble vast quantities of evidence to support the political decision-making process. But neither they nor political ministers seem to believe that it's feasible, perhaps not even desirable, to try and share much of this with the public. As a result, there are often two quite distinctive discourses about a given policy question. A sophisticated evidence-based conversation between the Illuminati and an instinct-based and often emotional wrangle in the realm of retail politics.

"One way of thinking about the recent UK Brexit debate is as a clash between these two modes of political discourse with that of the professional policy makers coming off a very poor second. The next factor is digital technology and its impact both on pre-existing media and on the wider dissemination and discussion of political ideas. Over the past three decades or so, technology has driven an astonishing expansion of media choice and has democratized the generation and dissemination of political opinion.

"It's also disrupted legacy business models, squeezed investment in newsrooms and in specialist journalistic expertise, and left most news publishers, whether venerable analog era institutions or digital start-ups, in economic survival mode, chasing audiences, optimizing headlines, courting shock and controversy. Seriousness, ▷



restraint, a sense that journalists have a duty to make major public policy choices intelligible for the public have all been in retreat. That is why it's so important that we find a strong and secure future for those journalistic institutions.

"As you heard, I've worked for two of them, the BBC and the *New York Times*, who are the exceptions of the rule and who still strive to put quality and seriousness first. The web and the major social platforms have also allowed anyone who wants to take part in a new 24/7 worldwide discussion on politics, culture and pretty much anything else to do so.

"The new technologies have also opened the Pandora's box of often anonymous abuse, extremism, intimidation and fury. The vitriols spilled back into conventional media and World War politics. I was lucky enough to go to one of the conventions, the Republicans in Cleveland, and 'lock her up, lock her up' was the least of it. The Internet has set a new dark standard for the expression of strong opinion which some politicians, activists and commentators are only too happy to meet.

"The fourth force at work in my view relates to our understanding about how persuasive language works. In his *Art of Rhetoric*, Aristotle identifies three kinds of rhetoric: deliberative rhetoric by which he means the language we use when we debate politics and the great issues of the day; forensic rhetoric, which is the language that all of you use for a living, the language of the courts; and demonstrative rhetoric.

"What Aristotle has in mind with his last apparently slightly dull category is a language which doesn't seek to win a dialectical argument, but to promote or praise. A speech at a funeral would be an example or a commencement speech. But in our world what I associate demonstrative rhetoric with is a language we use to sell goods and services, namely the language of marketing.

"Over the course of the 20th century progressive, empirical advances were made in the way language is used in sales and marketing. It began with informal trial and error, moved on to quantitative and qualitative research, and today, as a matter of fact of algorithms and generally invisible real-time A/B and multivariate testing is being used, it must be said, so ubiquitously that very few people are fully aware to the extent to which the language they receive has been tailored very specifically to persuade them.

"Inevitably, all of these techniques have been enthusiastically applied to political messaging, and the impressionistic rhetoric of promotion has increasingly come to replace the rhetoric of traditional step-by-step political debate and argument. The effect has been to give political language some of the brevity, intensity and urgency we associate with the best advertising but to strip it of explanatory and argumentative power. So what can we do?

QUIPS & QUOTES

Politicians could treat the public like grown-ups and share some of their actual thinking about policy, including those painful trade-offs with the people they want to vote for them. Reciprocal altruism might even lead them to shout less and allow their opponents to finish the sentence more often so that those same opponents extend the same courtesy to them.

Mark Thompson

"The forces at work are formidable and tend to reinforce each other, but we're adaptable creatures. We know that our life together depends on our being able to resolve our differences, at least most of the time. It's reasonable to hope that one day this difficult and disruptive period of political, social and technological transition will yield to a new equilibrium and a recovery of the conventions and the public language on which the health of our democracies depend.

"We can't know for sure if or when that will happen, but there are some steps I believe we can take right away. Politicians could treat the public like grown-ups and share some of their actual thinking about policy including those painful trade-offs with the people they want to vote for them. Reciprocal altruism might even lead them to shout less and allow their opponents to finish the sentence more often so that those same opponents extend the same courtesy to them.

"The media, too, could cut fewer corners, take more chances with the journalism, it would cost more, international reporting, investigations, but may ultimately make for a better business. Without in any way going soft, they might also allow politicians more space to address the public in their own words. As for the public themselves, I think we should teach our children rhetoric.

"We should teach them how words and images are used and abused to sell packaged goods, political parties and wars, holy and otherwise. But any such program of reform has to begin with an acknowledgment that there is a problem. If this weird and unsettling year of 2016 has nothing else to teach us, we can at least perhaps hope that it will go down as the moment when we took that first crucial step." ■

COLLEGE UPDATE

JOURNAL RECEIVES NATIONAL AWARD

For the uninitiated, NABE is the National Association of Bar Executives. Every year it presents its Luminary Awards, described by the Association as an "opportunity to be recognized for the initiative and creative work our Bars produce every year." There are five categories: Excellence in Regular Publications; Excellence in Special Projects; Excellence in Electronic Media; Excellence in Websites; and Excellence in Marketing. Naturally, same sized organizations are judged against each other within those confines. Eliza Gano, the *Journal's* Managing Editor, submitted the publication (no fewer than three issues) in the Excellence in Regular Publications category with this explanatory note: "The Journal seeks to fulfill different objectives. It is meant to keep Fellows informed of the activities of the College. It is also meant to be a historical record and a resource for future Fellows to learn about the College. The objectives of the two issues focusing on the Spring and Annual Meetings are to recap the thought-provoking speakers from the meeting, which is a trademark of the organization, and to capture the meeting experience for Fellows who were unable

to attend. The objective of the non-meeting issue is to engage and inform Fellows of the activities taking place throughout the states and provinces. It can include articles that demonstrate the College's mission of improving the standards of trial practice and the administration of justice; a profile of the incoming President; and other original content written by Fellows." The *Journal* has won the 2016 Award. The crystal award, recognizing the *Journal* Editorial Board and Staff was presented at the NABE Communications Section Conference in Savannah, Georgia in October 2016. Congratulations go to Eliza, Associate Editor Amy Mrugalski, Photographer Ben Majors and Design Director, Liz Doten, for whose continued efforts the College is grateful.

FELLOWS TO THE BENCH

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

Kevin P. Feehan, Q.C.
Edmonton, Alberta
Effective October 20, 2016
Justice
Court of Queen's Bench of Alberta

David R. Fenster
Middlebury, Vermont
Effective October 2016
Judge
Vermont Superior Court

Jennifer B. Schiffer
Baltimore, Maryland
Effective January 4, 2017
Associate Judge
Circuit Court for Baltimore City

Michael J. Strickroth
Irvine, California
Effective January 2017
Judge
Orange County Superior Court

The College extends congratulations to these Judicial Fellows.

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.

THINK INSIDE THE SHOE

On a warm evening in May, Don Larkin was killed by a shotgun blast fired through the dining room window of his home in the small, northern Iowa town of Garner. Local law enforcement arrived at the scene within minutes of the shooting. In the dining room, they found Larkin's body in a pool of blood, as well as wadding and other components from a 12-gauge shotgun shell. Outside the residence, on a plastic lawn chair near the shattered window, they found a muddy shoe impression.

Investigators immediately focused on Robert Richey as the primary suspect. Larkin had been seeing Richey's estranged wife, Jean. Richey was known to have a violent temper, and had made threats against his wife and anyone who might take her from him.

Within the hour, detectives were interrogating Richey at his farm, about ten miles from Garner. Richey insisted that he had been home all evening and readily agreed to a search of his residence. Officers found several firearms, including shotguns, but no 12-gauge. They also seized the shoes Richey was wearing and every other pair in the house.

At the crime laboratory in Des Moines, the footwear impression was examined and found to have a tread design characteristic of an Etonic brand athletic shoe, with dimensions consistent with sizes 8 to 10. Among Richey's shoes was a pair of size 8 ½ Etonics. Unfortunately, neither that pair, nor any of the other shoes seized from Richey's house matched the impression discovered on the chair.

Nevertheless, based on the history of threats and other circumstances pointing toward him as the killer, Richey was arrested and charged with First Degree Murder. He sat in jail for eight months awaiting trial.

In the meantime, the Robert and Jean Richey divorce was finalized. The Richey farm was ordered sold to satisfy the property division provisions of the divorce decree. In January, with the help of friends and relatives, Jean Richey cleaned the house and out-buildings in preparation for the sale. In the livestock barn, hidden under a bale of hay, one of the workers discovered a second pair of Etonic athletic shoes, size 8 ½.

The homicide detective was excited when he called me to report that the crime lab verified that one of these shoes matched the impression on the lawn chair. He was less excited when I explained to him that this development was eight months tardy. The discovery of the shoe at that late date supported Richey's claim that he was being framed for the murder. With only two weeks until trial, additional investigation needed to be done. Fortunately for me, I had a diligent detective.

At trial, Richey took the stand in his own defense. After denying guilt and denying that he owned the shoe in evidence, the defendant turned to face my cross ex-

amination. I quizzed Richey at length about his history of threats, including his announced determination never to allow Jean to leave him. Shortly before the end of the examination, I shifted topics.

Q. Mr. Richey, two years before this incident were you hospitalized at North Iowa Mercy?

A. Yes.

Q. When you were admitted, what did you have with you?

A. What do you mean?

Q. Did you take your clothing or a shaving kit?

A. Oh yes.

Q. Anything else?

A. No.

Q. Did you keep these things or did the hospital staff take them from you?

A. The nurse took them.

Richey had been hospitalized in the psychiatric wing, where personal effects are held by the nursing staff, rather than being kept in the patient's room.

Q. How long were you in the hospital?

A. Two weeks.

Q. When you were discharged, did the nurse return your clothing to you?

A. Oh yes.

Q. How did she know that it was your clothing, rather than another patient's?

A. Well, when they took my clothing from me, they had me write my name on pieces of tape and then they put one piece of tape on each item of clothing.

I picked up the shoe, State's Exhibit 1, and placed it on the visual presenter. I focused on the inside of the shoe and zoomed in. On the large courtroom monitor, the jury saw on the inside of the shoe a small piece of medical tape with the word "Richey" scrawled in ink.

Q. Like that, Mr. Richey?

A. (long pause) Uh, (longer pause) yeah.

In an age of liberal pretrial evidence disclosure in criminal cases, such courtroom surprises are a rarity. In this case, the discovery of the shoe, including the fact that it matched the print found at the crime scene, was disclosed to the defense as soon as that evidence was discovered. The shoe was produced for examination by a defense expert. That expert's mistake, which duplicated one originally made by the government's expert, was in focusing his attention entirely on the sole of the shoe. The crucial clue was found only when a member of the investigation team thought "outside the box" and looked "inside the shoe."

At the conclusion of the trial the jury returned an unusually swift guilty verdict. Several years later, a rust-covered 12-gauge shotgun was found at the bottom of a deeply weeded ditch on a remote gravel road, about midway between Garner and the Richey farm.

Thomas H. Miller
Des Moines, Iowa

WAR AND PEACE

My favorite trial "war story" is more a trial "peace story." A number of years ago I was representing a Cuban orthopedic surgeon. He was alleged to have improperly operated a time or two upon plaintiff's tibial plateau fracture, leading eventually to a total knee replacement. My adversary was an elderly, rather flamboyant and pompous, Hudson County plaintiff's lawyer who generally muscled his way around the courtroom. I was a fairly inexperienced, female, medical malpractice defense lawyer. For whatever it's worth, I was also a nurse.

I had come to know my client well over the months and years of pretrial discovery. He was short, fat, unorganized, spoke broken English with a heavy Spanish accent but was all heart and inspired adoration in his patients. I too had become a fan. I typically saw him in his office. It was always filled with patients waiting interminable lengths of time to see him. His patient population was poor, often undocumented and generally uneducated. His office manager shared with me ▷

that my client collected little money from his patients and, when necessary, provided cab fare to help them return home. I learned he not infrequently fell asleep in the chairs of his patients' rooms when making rounds at 2 or 3 AM and was known to exist largely on food in his patient's rooms and on candy at the nurses' station. That explained the weight issue. I never knew for sure whether he was a very good doctor. Truth be told, we had a fair number of lawsuits together over the years. I suspect that was more a function of his litigious patient population and his willingness to accept charity cases/patients other doctors rejected. I came to think of him as the embodiment of Santa Claus. Further proof of that conclusion was the Cuban ham he brought me every Christmas for many years until his death.

This was our first trial together. He was shocked to learn that I expected him to wear street clothes rather than his surgical scrubs (the only clothes I had ever seen him in) at trial. He appeared that Monday in the dead of the summer in a heavy wool, checkered sports coat (surely his only one), a white shirt, khaki pants and a red and navy blue diagonally-striped tie which said continuously on every stripe "Super Dad." He wore those clothes every day of the two-week trial.

About midway through the trial, the judge required to me to have my liability expert in the courtroom to take the stand when we completed the testimony of the plaintiff's liability expert. The hour was late when I finally called my expert, and I did as brief a direct examination as I felt able to do under the circumstances. The judge summoned my adversary to begin his cross-examination. My adversary requested a sidebar. As we approach the sidebar, the judge inquired of the jurors whether any were parked in the lot across the street from the courthouse. This particular parking lot closed fairly early, and we were clearly working late. A number of the jurors indicated that was where they were parked. Somewhere in the midst of our sidebar discussion, I realized my doctor was collecting the parking stubs from the jurors intending to cross the street to pay the parking fees and obtain the various sets of keys. I quickly brought this to the court's attention and, needless to say, my doctor was ordered to resume his seat in the courtroom. We proceeded with the cross of my expert, but not for very long. My adversary did not look well and, as it would turn out, unbeknownst to any of us, he had a cardiac condition which took his life some few weeks or months later. I had the dubious honor of having tried with him his final case.

My doctor was the last witness in the trial and he explained in his somewhat broken English what he did surgically, why he performed the operations he performed and how hard he had worked to obtain a satisfactory repair that would avoid the need for joint replacement surgery. He sadly conceded that he had been unsuccessful, though, both he and his expert, felt the required standard of care had been satisfied. Summations were presented and, as we were packing our briefcases to return the next day for the charge and deliberations, I noticed that my doctor and the plaintiff were at the back of the courtroom, heads close together, talking intently. They then hugged. I motioned to my doctor and we hastily left the courtroom. He told me that the plaintiff told him that, until his testimony, she had never realized exactly what he had done and how hard he had worked to make her better. She regretted that she had filed the lawsuit. Optimistically, he hoped the lawsuit would be dismissed. Unsurprisingly, that did not happen. The next day, after the charge, a short period of deliberations and the return of a verdict in my doctor's favor, I again observed my client and his former patient huddled together in the back of the courtroom. This time they not only hugged but parted with tears in their eyes.

Perhaps it was the nurse in me, more than the lawyer, but that trial was, without a doubt, one of the most gratifying in my thirty years of trying cases. Hopefully, justice was served. Certainly, understanding and peace were achieved. Could there be a better result? Probably from the perspective of my adversary.

Judy Wahrenberger
Westfield, New Jersey ■

IMPROVEMENTS AHEAD:
POLLING IS MOVING ONLINE

College polling will be conducted online soon, which means it will be easier and faster than ever. These changes are coming right around the corner though, so it's time to get prepared:

- ☑ Determine your ACTL website username and password
- ☑ Consider changing your login credentials to something easy to remember
- ☑ Make sure we have your current email address (printed polls will not be mailed)

Need help? We're happy to assist by email at nationaloffice@actl.com or by phone at 949-752-1801

COLLEGE ELECTS NEW OFFICERS

At the College's Annual Meeting in Philadelphia, Pennsylvania the following slate of officers was elected to serve the College for the 2016-2017 term.

2016-2017 Executive Committee

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

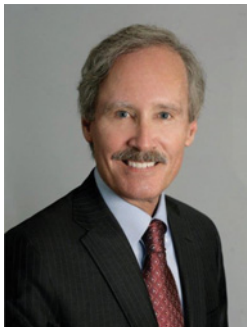
President-Elect **Samuel H. Franklin** of Birmingham, Alabama

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

Secretary **Douglas R. Young** of San Francisco, California

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

Douglas R. Young



Inducted in 1997 at the College's Annual Meeting in Vancouver, British Columbia, Young has served as Chair of the California-Northern State Committee, Chair of the Federal Criminal Procedure Committee and Regent to California-Northern and Nevada. During his time as Regent, he was Regent Liaison to the Federal Rules of Evidence and Federal Criminal Procedure Committees. He also served as Chair of the Retreat Task Force on Admission to Fellowship and as a member of the Adjunct State and Regents Nominating Committees.

Young practices in San Francisco, California, with an emphasis on trials, appeals, investigations and related matters. He is actively involved in white collar defense and parallel civil and regulatory proceedings; intellectual property; and securities, unfair competition and antitrust matters, including significant class actions. He also has served as a federal court Special Master in complex civil and multi-defendant criminal cases; as counsel to a Ninth Circuit special committee; and for eighteen years, by court appointment on the Federal Criminal Justice Act trial panel for the Northern District of California. He is a veteran of the United States Marine Corps. From 1989 through 1994, he was appointed to State Department task forces in administration of justice projects in Argentina, Bolivia, Chile, Egypt, Greece, Mexico, Panama and Uruguay. He serves on a variety of public-interest boards. Young and his wife, Terry, live in Oakland, California. Terry, by gubernatorial appointment, is chair of the San Francisco Bay Regional Water Quality Control Board. They have a daughter, who is a medical doctor.

2016-2020 Regents

Paul J. Hickey serves as Regent to Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming, as well as the Federal Civil Procedure and the Sandra Day O'Connor Jurist Award Committees. He has served as Chair of the Wyoming State Committee and has served on the Federal Civil Procedure Committee and the Retreat Task Force on the Future Mission of the College. Hickey was inducted at the 2005 Annual Meeting in Chicago. His practice handles a wide range of commercial matters including oil and gas cases. Hickey is Chairman of the Dean's Advisory Committee of the College of Law at the University of Wyoming and Director of the Historical Society for the Tenth Circuit Court of Appeals. He and his wife, Jeanne, live in Cheyenne, Wyoming.

Daniel E. Reidy is Regent to Illinois-Downstate, Illinois-Upstate, Indiana and Wisconsin as well as the Adjunct-Fellowship and Canada-United States Committees. He was Chair of the Illinois-Upstate Committee and has been a committee member for fifteen years. Reidy became a Fellow in 1994 at the Annual Meeting in Ottawa, Ontario. He has extensive trial experience in very high-profile cases, representing companies and individuals involved in criminal or enforcement investigations, or litigants in complex civil cases, including patent, product liability, securities and anti-trust. He and his wife, Elizabeth, live in Chicago, Illinois.

Robert E. (Bob) Welsh, Jr. is Regent to Delaware, New Jersey and Pennsylvania, as well as the Access to Justice and Legal Services and Complex Litigation Committees. He has served as Chair and Vice Chair of the Pennsylvania State Committee, Chair, Vice Chair and member of the Federal Rules of Evidence Committee and Vice Chair and member of the Access to Justice and Legal Services Committee. Welsh was inducted at the College's 2001 Annual Meeting in New Orleans, Louisiana. A former federal prosecutor, he now practices at the firm of Welsh & Recker, P.C. in Philadelphia. His legal practice focuses on the defense of white collar and economic criminal investigations, including antitrust, trade and embargo regulations, fraud cases, securities prosecutions, criminal tax matters, Foreign Corrupt Practices Act cases and other similar business crime proceedings. Welsh completed the term of another Regent last year and was elected in the fall of 2016 to a four-year term as Regent. He and his wife Suzanne (who retired as Financial Vice President of Swarthmore College) live in Swarthmore, Pennsylvania just outside of Philadelphia.

The new Regents replaced the following retiring Regents:

William T. Hangley, Philadelphia, Pennsylvania
Michael L. O'Donnell, Denver, Colorado
James T. Murray, Jr., Milwaukee, Wisconsin

FROM TRIAL LAWYER TO U.S. AMBASSADOR TO IRELAND — A FELLOW'S PERSPECTIVE

"**Kevin F. O'Malley** has one of the best jobs in the world. He was sworn in as U.S. Ambassador to Ireland in 2014. And, Ambassador O'Malley is one of our own, a Fellow of the College…. He may be the first Fellow to ever serve as a United States Ambassador," said Regent **Michael L. O'Donnell** in his introduction on the second day of General Session. "The United States and Ireland have one of the great bilateral relationships in the world. Ireland is the only country guaranteed an annual visit to the White House. Nineteen presidents of the United States have claimed Irish heritage."

Before entering private practice, Ambassador O'Malley was an Assistant United States Attorney in St. Louis, Missouri and a Special Attorney of the Organized Crime Section of the U.S. Department of Justice in Washington, D.C., Los Angeles and Phoenix, Arizona. He is co-author of the nine-volume treatise, Federal Jury Practice and Instructions, used in federal jury trials throughout the United States.

"His proudest accomplishment in diplomatic life is founding the Creative Mind Series, a cross-cultural program that he founded in 2015. The series invites American artists, filmmakers, musicians, authors and doctors to share their experiences with young Irish students and audiences. The mission is to create new collaborations and encourage more creative economic linkages between the United States and Ireland," said O'Donnell.

"It's a delight to be here and to have an opportunity to speak to you about a subject I happen to love. Let me begin by telling you a story. President John Kennedy was the very first American President to visit Ireland. He went in 1963. He stayed at the Ambassador's residence house for five days and the Irish did their best to make sure that they laid out the best welcome for him. By all accounts, President Kennedy absolutely connected for the first time with his Irishness, and fell in love with the country.

"He was making plans to return to Ireland in the following spring. One night after he was in Ireland, he was with his good friend and drinking buddy, Dave Powers. They were talking, not surprisingly, politics. Powers asked the President who did he think would be his successor, and they were clearly thinking 1968, not as the events tragically unfolded. President Kennedy gave the usual list of suspects, the big Democratic and Republican names at the time.

"Powers sipping on his Jameson whiskey asked President Kennedy, 'Okay, but who will you endorse? Who will you endorse to be your successor' and President Kennedy, according to Powers, snapped back instantly and said, 'I intend to endorse the person who promises to nominate me to be the United States Ambassador of Ireland.' I have had a chance to learn what unfortunately President Kennedy didn't have a chance to learn – this is really the best job in the world. I've been asked here to speak about, first, how you go from being a trial lawyer to being an ambassador. Second, to talk about Ireland, my current home. Let me tell you how this started.

"I was an exchange student in Prague, Czechoslovakia during what was called the Prague Spring [the summer of 1968], and I was a 21-year-old university student. The interesting thing about my experience is that very shortly after I was there, Soviet tanks of the Warsaw Pact were sent to end the Prague Spring and started a Prague Winter for another decade or two.

QUIPS & QUOTES

I have been living and working in Europe for the last two years, and this is one of the few occasions where I get to give a talk and I'm not the guy with the accent. I am especially delighted to be addressing my own group here. Somebody made the mistake of letting me in about fifteen years ago, and I've been attending these meetings ever since. This is the first time that I've ever sat in the first row. I used to sit back with the scholars in the last row, the very last row.

Ambassador O'Malley

"I cannot tell you that the experience didn't pique my interest in things international, it did but that's not the way my life went. I finished my undergraduate degree in St. Louis. I went to law school. I took a job with the U.S. Department of Justice. I got married, had a couple of kids, was lucky enough to be accepted into fellowship in the College, and did some international travel as my children got older and as I had a few extra dollars to spare.

"My career was really doing trial work, mostly after federal prosecution, in medical malpractice defense and white collar crime defense. Fast forward to 2006 and ▷

2007. I'm not making a political statement here; I'm just relating a fact. I got heavily involved in the 2008 presidential campaign and early on I decided that I wanted to support Senator Barack Obama. I was nothing more than a campaign volunteer… but when I do something, I have to do it full bore.

"I kept my practice. I did not miss one trial setting. I didn't use my campaign work as the basis for a trial continuance, it probably wouldn't have worked anyway. I went all over the country working for the candidate. To everybody's surprise, we won. Since I wasn't a big donor and since I wasn't a big fundraiser, that should have been the end of that story. I got what I wanted. I wanted Obama to be the President, and that should have been it. But because President Obama is the type of man that he is, he called me and asked me if I would be his personal representative to the Republic of Ireland. Nobody was more surprised about that than I was."

THE PROCESS TO BECOME AN AMBASSADOR

"The good news is the President wants you to be his personal representative. The bad news is you get about 500 pounds of forms to fill out - and fill them out I did. They were asking for personal histories, financial disclosures, looking for conflicts. You also have to get the approval of the receiving government, a little fact that nobody told me about initially. All receiving countries have a right to refuse an incoming ambassador in a process called the Agrément.

"Since we're in an election year and probably in December 2016 and January, February, March 2017 you're going to hear about people going through the vet. You'll hear about people failing the vet. Let me tell you having been through the vet, there are a million innocuous tripwires. When I heard that somebody had failed the vet, I thought the worst. I always thought that there was some terrible thing in somebody's past that couldn't get through. Having been through all of this, some of those issues can be quite tangential.

"After you go through the vetting process and the President eventually announces your nomination, you go through what is lovingly referred to as charm school at the Department of State. Officially it is referred to as the Ambassadorial Academy where all ambassadors attend, whether they're career foreign service people or non-career like me. Seventy percent of our ambassadors are career foreign service people, men and women who joined the State Department immediately after college and matriculate up the ranks. Thirty percent are non-career. Behind our backs they call us political appointees, but to our face, we're referred to as non-career ambassadors.

"The school has nothing to do with charm or which fork to use. It has to do with an explanation of the alphabet soup of federal agencies that most of us aren't familiar with, to get familiar with them. Agriculture, defense, commerce, justice, the intelligence community, USAID, the whole laundry list of people who will have a presence in the embassy and who will be shortly reporting to you.

QUIPS & QUOTES

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Ambassador O'Malley

"The ambassadors refer to it as the chief of mission, you are the President's personal representative in charge and responsible for all executive branch actions that occur in the country. All of the agencies that I listed, and more that I haven't listed, report directly to the ambassador, and the ambassador reports to the President. The ambassador has the military equivalent rank of a three-or four-star general. I always forget which it is. I left the Army as a first lieutenant so I just take it as a huge promotion.

"The nearest boss in my particular case, President Obama is 3,379 miles from Dublin. He has a lot of things on his plate that are a little bit more sensitive than Ireland. He asks that we take care of those matters for him. Like all of the judges who've appeared here [at the Annual Meeting], you have to get through Senate confirmation, which can be a tricky process.

"You have to get it scheduled, you have to be there, you have to pass it, and then you have to get the Senate to agree to hold a vote on your nomination. That can be tied up in politics. In my case, it clearly was not. I was nominated in June and confirmed in September of the same year, and a lot of people can't say that. If you get through, if the President does select you and if you get through the vetting, and if the receiving government agrees that you're acceptable and you get through the ambassador academy, and if you get through the confirmation hearing and get a favorable vote in the Senate, you get sworn in. The first call I got after being asked if I would be the ambassador was from Joe Biden, the Vice President. He said, 'Kevin, when am I swearing you in?' He has Irish roots and wanted to be involved in the process. I was sworn in in the Treaty Room in the Executive Office building in September. After all that, I went to Ireland.

"The home where the ambassador resides was built in 1776 by the British for the British. It is located in Phoenix Park, which is in the middle of Dublin. Phoenix Park is about twice the size of Central Park. It's called Deerfield because there are about 600 deer that roam through the park and add a lot of class to the whole process. I can go all over Ireland and talk about the United States, and I do. I give two speeches a day about America and Ireland's connection with it. A thousand people pass Phoenix Park every day. The view of Phoenix Park is the best speech I could ever give about the United States. You'll notice there are no walls, there are no fences, there's nothing. It is a picture of openness. It is a view of prosperity. It is a view that's inviting, and there's a big American flag flying there.

QUIPS & QUOTES

The ambassador has the military equivalent rank of a three or four star general. I always forget which it is. I left the Army as a first lieutenant so I just take it as a huge promotion.

Ambassdor O'Malley

TWO COUNTRIES CONNECTED BY HISTORY

"Let's talk about Ireland. Ireland is in the far west corner of Europe. It's about the size of Indiana. About 4.5 million people live on the island of the Republic of Ireland; about a 1.8 million live in Northern Ireland, which is part of the UK. It rains there on occasion. But the Irish will say there's no such thing as bad weather, only bad clothing.

"The watershed event that occurred between 1846 and 1856, and is referred to in Irish as *an Gorta Mór*, the Great Hunger, the Irish Potato Famine. That's important because 1.8 million Irish people left Ireland, mostly for the United States during that period. Another million died of either starvation or diseases related to starvation. As a result of the tsunami of migration that occurred during that time, 40 million Americans claim Irish ancestry to some degree or another.

"The *an Gorta Mór* also strained already difficult relations between Ireland and the U.S. It led to the rise of ▷

QUIPS & QUOTES

It rains there on occasion. But the Irish will say there's no such thing as bad weather, only bad clothing.

Ambassador O'Malley

Irish republicanism and eventually Irish independence in the 1920s. Fast forward about 160 years to today. There's an entirely different economic picture from the Great Hunger. Currently, there are 700 American companies resident in Ireland doing business there. They're doing very, very good business and there are several reasons for that. The one that's been in the news most recently is a 12.5% corporate tax rate that is transparent and relatively simple to figure out.

"Ireland is an English-speaking country. We talked about Brexit. If Brexit goes through, Ireland will be the only English-speaking country in the EU. Ireland has a tremendously successful education program. They have for years and years developed a very educated, very dedicated, very dependable work force. Ireland is in the EU and significantly, Ireland uses the euro. Those are all reasons why Ireland has been such a great depository of the American multinationals.

"But the biggest reason is simply that we get one another. There's so much shared DNA, so much shared history, so much commonality between the United States and Ireland. Almost all of the American multinationals, surprisingly, are all run by Irish people. The big American corporations in Ireland doing so well, the entire top tier of the tech sector and the entire top tier of the pharma sector are almost all run by Irish people in the United States.

"We've had great confidence in Ireland during their downturn. From 2007 to 2011, the United States continued to invest in Ireland, foreign direct investment continued even though they were in a terrible downturn. We weren't doing so well at the time either. We invested more in Ireland during the four years of their downturn than we had invested in the prior fifty-eight years. We continued to bet on Ireland when Ireland wasn't betting on Ireland. And that bet has paid off.

"Today eighty percent of all medical stents used in hospitals throughout the world are manufactured in Ireland. Fifty percent of all ventilators used in hospitals across the world are manufactured in Ireland. One-third of all the contact lenses in the world are manufactured in Ireland. One in seven children who use milk formula use formula that is produced in Ireland. What started out as economic refugees, like my own grandparents who left about 100 years ago with seven children, $20 and no education, has now completely reversed itself.

"There are now 160,000 Americans living in Ireland, behaving themselves most of the time. We have about a million tourists who come from the United States to Ireland every year. Currently, there are about 250 Irish companies doing business in the United States and prospering. This is a two-way street of working in direct foreign investment. Currently, in 2016, there are more Americans working for Irish companies in the United States than there are Irish people working for American companies in Ireland.

THE IRISH LEGAL SYSTEM

"Because I can't seem to help myself, I stop by the Irish courthouse. The Four Courts Building is the principal courthouse in Ireland. I pass it every day on my way from that nice house down to the Embassy. I stop in more than I probably ought to. What I'm about to tell you is not a survey of Irish law by any stretch of the imagination. I just wanted to point out three differences. There are more similarities than there are differences, but there are some dissimilarities.

"One, we know about the witness preparation. The Irish system is much like the English system. There is witness preparation but nothing like a deposition, nothing like the coaching that we would normally expect to happen during the trial. One of the biggest things that I found to be I'd say frightening, is the jury selection process is very different.

"There are jurors only in criminal cases, very seldom are their jurors in civil cases. The litigants have five to seven challenges depending on the type of case, and they exercise those appropriate challenges without any questioning. They have the name of the juror, they have the general address for the juror, and they may or may not have the occupation of the juror. The bailiff calls the prospective juror's name; they walk from their seat up to be sworn in. However long that journey takes, which is only a few seconds, is the time that the solicitor or barrister has to exercise a challenge with absolutely no questions. I sat one day with one of the judges from the High Court. He picked a jury for his own case and two juries for other judges. One case was a murder case, two were rape cases. The entire process to pick all three juries took ninety minutes. About thirty minutes a piece to pick the jurors, and everybody seemed satisfied with that.

"The biggest shock for me, though, came when I talked to the judge about jury instructions. As Mike mentioned, it's something that I have spent some time with over the years. The judges there during the final charge, first of all, they summarize the evidence for the jury, and that summary is from the judge's notes. The summary is given to the jury without consultation with counsel.

QUIPS & QUOTES

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Ambassador O'Malley

"The lawyers are hearing the judge's summary of the facts at the same time that the jury is hearing the summary of the facts. The same thing really happens as it relates to the legal charge. Although they talk to the lawyers about them, there isn't the same sort of process that we use.

"The educational process is different than ours. Most of the barristers will take their undergraduate degree in law, and then after they pass an examination, they will go to the King's Inn. If they graduate from the King's Inn after one year of rigorous training, they will work under the tutelage of another barrister for one or two years in a process they call deviling, and then they'll be fully trained and out in practice.

"Let me close by saying a couple of things. Having seen the UK - U.S. Legal Exchange here, I truly hope, and I'll probably be lobbying in the future, for a similar relationship with the barristers in Ireland. We share so much history; it would be good to share the College with Irish lawyers. I know there's an interest on that side of the Atlantic, and I hope there is later on.

"It's sad President Kennedy didn't have a chance to fulfill what he wanted when he visited Ireland in 1963. I have been told that I am the only Fellow who has gone from a fellowship to being an ambassador. I'm going to work hard to make sure that I'm not the last to make this transition. I look forward to coming back to the College. Hopefully, I will be at the meeting in Montreal. Please save a seat in the back row for me. And as the Irish would say *'duera mila malagiv dia duit.'* God bless you all." ■

THE RIGHT HONOURABLE LADY JUSTICE ARDEN RECEIVES HONORARY FELLOWSHIP

President Mike Smith, new Honorary Fellow Lady Justice Arden and Past President Chilton Davis Varner

The **Right Honourable Lady Justice Arden, DBE**, who currently serves as a judge on the Court of Appeal of England and Wales, told Fellows after being presented with Honorary Fellowship at the 2016 Annual Meeting of the College in Philadelphia, "I believe in breaking molds."

Lady Arden was a member of the delegation from the United Kingdom participating in the second leg of the 2015-2016 UK – U.S. Legal Exchange, which took place immediately after the Annual Meeting in Philadelphia and ended in Washington, D.C. Her remarks follow:

May I say immediately thank you very much. I am greatly honored to be admitted as an Honorary Fellow to the College and I appreciate this brief opportunity. In it, I want to say at the very start how much I value and appreciate your support for the UK - U.S. Legal Exchange.

Like the other women you have heard this morning, I believe in breaking molds.

THE ROLE OF THREE REVOLUTIONS

I'm going to talk about three revolutions, and the first is this revolution. I come from the north of England, actually specifically Liverpool, which is a great multicultural Atlantic port. This is the place where in the 19th century the Industrial Revolution began and it changed the lives of men and women everywhere. The first train was invented. It was called the Rocket and the place where it ran from was a place where I went to school.

It changed our sense of time. It allowed social movement on a scale never known before. It expanded the possibilities for commerce. Here in America it enabled settlers to open up the west and to look for gold. Liverpool and Manchester, two cities just thirty miles apart, supplied both sides in the American Civil War, because as you know, Britain is very keen on free trade and we're very open-handed.

We built many of the great ships including the *Alabama*. The *CSS Alabama* was a screw sloop-of-war built in 1862 for the Confederate states' Navy. It was built on the River Mersey by Liverpool by the John Laird and Sons Company. It was known as the Laird raider. The *CSS Alabama* served as a successful commerce raider attacking the Union merchant and naval ships over her two-year career.

There was a ditty written about her, ''twas laid in the yard of Jonathan Laird, 'twas laid in the town of Birkenhead, down the Mersey she rolled then, and Liverpool fitted her with guns ▷

and men, and from the Western Isles she sailed forth, to destroy the commerce of the north, roll on Alabama, roll.' But she came to a very sticky end as I'm sure you all know. She was sunk in June 1864 by the USS Kearsarge at the Battle of Cherbourg outside Cherbourg, France.

QUIPS & QUOTES

The *CSS Alabama* .... was known as the Laird raider, which was rather nice because now we had a use for that, the Ralph Nader raiders, back then it was the Laird raiders.

Lady Justice Arden on Britain building one of many ships that were supplied to both sides of the American Civil War, an example of cooperation between Britain and America

My first revolution is going to be the Industrial Revolution. Britain's Industrial Revolution led to the cotton industry, the coal industry, iron ships and armaments for two world wars. Britain became the workshop of the world and made a great contribution to the developing world. But why do I mention it? For two reasons. First, it was a jolly good example of cooperation between Britain and America.

There we were providing ships for both sides in the Civil War. And now, of course, the cooperation is much more peaceful but I hope as successful. Secondly, I wanted to mention the Industrial Revolution which started in north of England because it was also the home of great social reform ideas, particularly Chartism and the Suffragettes, the women who fought for the votes of women. That brings me to my second revolution.

My second revolution is connected with my first because we, the women in England, are the daughters of the Suffragettes in the same way you have Daughters of the Revolution. We have daughters and granddaughters of the Suffragettes. In 1993 I became a high court judge, and I was, as I recall, only the fourth high court judge who'd been a woman, and I found that all the women judges were indeed, and it continued to be the case for some years, either had homes or adopted homes in the northwest of England, and given the history that should come as no surprise.

After I was appointed in 1993, I was invited to come to Philadelphia on my first ever judicial exchange. I attended a meeting of the Association of Women Judges, down the road in the new family court. It was a great event. The theme was, "the future is female." It's been an awful long time coming. If you look at our politicians in the United Kingdom and in Europe, Theresa May, Angela Merkel, Nicola Sturgeon, to name but a few, they're all women. So the future may at least be becoming the present. Women are going to be the new norm and that is my second revolution.

My third revolution goes back a bit in time and it was the development of the common law. Like everywhere else in Britain following the Roman occupation, we reverted to tribal warfare and savagery, an eye for an eye and a tooth for a tooth and all that. The common law began to develop in the fifth or sixth century. Where political institutions are active, the common law expands in a measured way and develops the law. The common law is therefore essentially a democratic institution.

It is made by judges taking account of what they think and see is right in society. It is, as its name suggests, essentially the law that is common to all. The common law is also very creative, and scholars have observed that it's noteworthy that in the countries which have the common law, they are the countries which have the most economic progress. Nowhere is the common law more creative than in the United States.

QUIPS & QUOTES

If you look at our politicians in the United Kingdom and in Europe - Theresa May, Angela Merkel, Nicola Sturgeon, to name but a few - they're all women. So the future may at least be becoming the present. Women are going to be the new norm.

Lady Justice Arden

But society worldwide is moving very fast, particularly as a result of the Internet revolution and technological developments and economic and political developments. In the United Kingdom, we've also seen decades of constitutional change of many kinds. You've heard that since about 2005 I've held the post of head of international judicial relations for England and Wales. We have, we hope, a heritage that we would like to share with other countries.

FINDING DIFFERENT SOLUTIONS TO COMMON LEGAL PROBLEMS

Last year for instance, we celebrated the 800th anniversary of Magna Carta. We want to be able to pass on some of what we have learned about the legal system to countries who ask for our advice or assistance, particularly the judges. It's the exchange of ideas between judges and the establishment of informal networks which is very important to the work I do and also to promoting the rule of the law worldwide. We are also well aware that we can learn from our visitors and visits to judges in other countries.

That is why the UK – U.S. Legal Exchange, which you kindly support, is very important. Here in the United States we can always, learn not least in terms of substantive law. I appreciate that here in the United States there is, or at least has been, a difference of view as to the relevance of foreign law. The late justice Antonin Scalia considered that it had to be remembered that it was the U.S. Constitution that the Supreme Court had to interpret, whereas Justice Stephen Breyer and others considered that the experience of foreign courts might throw some empirical light on the concept of different solutions to our common legal problems.

It is the view of Justice Stephen Breyer which reflects the practice in the United Kingdom. Foreign law is, as we say, persuasive, not binding authority. Having exchanges such as the Legal Exchange and such extraordinary support helps us learn about where that authority is to be found.

I feel a sense of excitement when I get on a plane to come to the United States to meet other lawyers. I spent a really happy year at Harvard Law School sitting at the feet of some of the all-time greats, John Dawson, Dodson, Louie Loss, but a few names. American jurisprudence is for me a trove of riches. However, when we meet other judges, there has to be a culture of freedom. No one expressed this better than Learned Hand who famously said, 'Liberty lies and lives in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it.' While it lies there it needs no constitution, no law, no court to save it.

QUIPS & QUOTES

Foreign law is, as we say, persuasive, not binding authority.

Lady Justice Arden

It is not, of course, literally correct that no court is needed if there is liberty, but Learned Hand was making a dramatic point about the need for society to respect the rule of law. He went on to identify the personality traits necessary for freedom to exist. They include humility, openness, tolerance. 'What then is liberty? I cannot define it,' said Learned Hand. 'I can only tell you my own faith. The spirit of liberty is a spirit which is not too sure it is right. The spirit of liberty is the spirit which seeks to understand the minds of other men and women. The spirit of liberty is the spirit which weighs their interest alongside its own without bias.'

The American College of Trial Lawyers is, I am sure, aware of the importance of freedom and securing the rule of law and the importance of the independence of the judiciary and of the role of the rule of law in making this world a better place. Long may all of you continue to promote the rule of law and secure its preservation and expansion.

I thank you from the bottom of my heart for the honor which you have bestowed on me, and thank you again for your support of our Exchange. ■

THE RIGHT HONOURABLE THE LORD MANCE RECEIVES HONORARY FELLOWSHIP

President Mike Smith, Past President Chilton Davis Varner and new Honorary Fellow Lord Mance

The **Right Honourable The Lord Mance, PC, QC**, who became a justice of the Supreme Court of the United Kingdom on October 1, 2009, was inducted as an Honorary Fellow at the 2016 Annual Meeting of the College in Philadelphia, Pennsylvania. Lord Mance was also a member of the delegation from the UK participating in the second leg of the 2015-2016 UK – U.S. Legal Exchange, which took place immediately after the Annual Meeting in Philadelphia and ended in Washington, D.C.

Continuing a long tradition the College has maintained with jurists in the UK, after his acceptance, Lord Mance addressed the Fellows and shared his thoughts on the valuable relationship between the two countries. His remarks follow:

It's a great privilege and a pleasure to be invited to join the pantheon of previous Honorary Fellows of your distinguished colleagues. This is a happy occasion, the occasion of a renewed legal exchange, to which reference has already been made. When I look at the previous Honorary Fellows, they include many old friends, some still living, some sadly dead. Let me mention one or two.

Lord Phillips of Worth Matravers and Lord Hope of Craighead, the first President and Vice President of the Supreme Court where I sit. Formed in 2009 when a degree of constitutional purity overtook the United Kingdom, and the highest court ceased to be a committee of the upper house of legislature, the House of Lords, it became an independent court. Although, no doubt, you would think it a rather pale shadow of yours, certainly in our powers of judicial review.

Lord Woolf, Chief Justice when I was in the Court of Appeal; Sir Sydney Kentridge, the brilliant opponent of apartheid, who not so long ago appeared before us in the Supreme Court on his 90th birthday representing the Bar Council, which was for understandable reasons, business reasons, resisting the proposition that accountants should enjoy legal professional privilege when advising on tax law. He was successful.

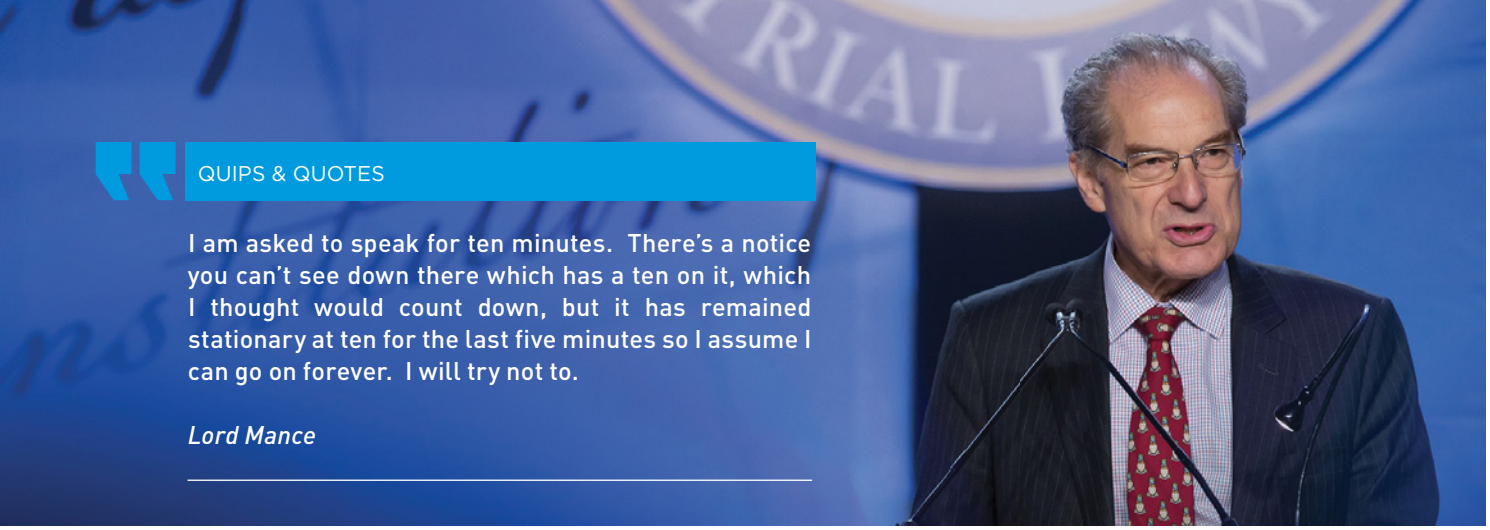
Lord Scott of Foscote who led the 2004-2005 Exchanges, which I have the privilege of now leading. The dead include Lord Denning, whose famous aphorism about European Union law coming up the UK estuaries, seems to have found the tide recently turning. Lord Alan Rodger, the brilliant Romanist and Germanist colleague who took part in the 2004-2005 Exchanges and died prematurely about five years ago of a brain tumor.

Lord Goff of Chieveley, also a member of my old chambers like Lord Denning, another great comparativist, whose funeral my wife and I sadly attended only ten days ago.

It's a great honor to be associated with these and many of the other great names in your list of Honorary Fellows.

THE PATH TO JURISPRUDENCE

I suppose one is expected in some measure to try to explain oneself or at least one's philosophy. I'm the first ever lawyer in my family. I got into the University



QUIPS & QUOTES

I am asked to speak for ten minutes. There's a notice you can't see down there which has a ten on it, which I thought would count down, but it has remained stationary at ten for the last five minutes so I assume I can go on forever. I will try not to.

Lord Mance

College of Oxford to read History, but things turned out differently for rather bad reasons, reading a book about a history graduate called Carry on Down and the competitive challenge posed by my father's admission that when he had tried to study law part-time during the war he had usually fallen asleep.

I turned to jurisprudence as Oxford still calls it. The master at University College was Arthur Layman Goodheart and the professor of jurisprudence was Herbert Hart. The latter's concept of law and his careful analytical, but at the same time principled and humane approach to legal issues, as I would like to think, marked United Kingdom case law.

I liked the law and on completing a first degree, I had several options open, to continue at Oxford, to work with the British Institute of International and Comparative Law, or to go and spend time with a German law firm. I did the latter. It seemed the most exciting, and I have not regretted it even now when a misty divide is emerging, which reminds one of the old newspaper headlines, 'Fog in Channel, Continent Cut Off.'

One reason I don't regret it is that a friendship made in Hamburg led to me later being introduced to my wife by a postcard which read 'Hope it works out.' It did, and in my professional life I have also enjoyed the German connection.

As Council, I am a member of the Middle Temple and a Bencher as you've heard. We were great supporters of American independence, some individually, and proud of that. I practiced in the commercial field and as a QC (Queen's Counsel), I was able to appear in overseas jurisdictions such as Hong Kong and the Bahamas where I spent a lot of time defending Coopers & Lybrand in one of the Banco Ambrosiano litigation cases. I learned the limits of comparative law there. I informed the Chief Justice of the Bahamas, who was hearing the case, that after doing some research, the United States of America did matters in a particular way. 'Well,' he said, 'in that event, we certainly do them differently here.'

I know that the use of comparative legal materials can be contentious in the U.S., although I suppose that may sometimes have to do with the fact that with as many states as you have, there's enough room for argument on what the law is anyway. I've been on the bench since 1993. I've enjoyed every phase of the new career which followed, starting with commercial litigation and a very large issue about jurisdiction under the Brussels Regime, which applies to European Union member states.

Since the early 1970s, London has developed enormously as a legal center. Although, one must recognize that the law is always a service industry and its prominence derives from London's role as a financial and business center, ensuring the continuing legal certainty that English law and English choice of court clauses will be a matter close to London's heart at the moment.

Since the start of the century, I've sat on the governmental advisory committee on private international law, which I now chair and which followed in the early years of this century the negotiations under the aegis of the Hague Conference in the Netherlands. The negotiations for Worldwide Jurisdiction and Judgements Convention, a set of negotiations which the United States, in fact, instigated, but then I'm afraid found it difficult to pursue because of difficulty about abandoning the concept of business limits as the head of jurisdiction.

The effort has in fact recently restarted again under the aegis of the Hague Conference though with what success remains to be seen. What did emerge from the first failure in 2005 was the very positive Hague Choice of Court Convention, which gives effect to exclusive choice of court clauses and provides for the recognition of judgments flowing from them. That convention was recently ratified by the European Union for all member states as well as by Mexico and Singapore, with Australia considering following.

The United States signed the convention, and I rather hope that it will consider ratifying it. If Brexit occurs, as we're sure it will, I think the UK will be bound to sign and ratify the convention in its own right, rather than simply as a member of the EU. As one gives up a system like the British, one becomes less and less a specialist and more and more engaged in areas outside the focus of one's original practice as a lawyer.

DIET OF THE SUPREME COURT

Before we moved from the House of Lords to the new Supreme Court, I was also heavily involved in the European Union Select Committee, chairing its subcommittee on law, but that sort of parliamentary activity is no longer permitted. The major element of our diet in the Supreme Court is now public law including issues of human rights under the European Convention, to which we in the UK will remain party despite Brexit, and also very hotly fought novel issues about the interplay of domestic law, human rights law, general international and humanitarian law arising particularly out of the United Kingdom's foreign activities in Iraq, Afghanistan and elsewhere.

QUIPS & QUOTES

We continue to debate with surprising frequency traditional subjects, but as I say the main focus [of the Supreme Court] has been on public law with much more constitutional and more publicly contentious issues which occupy us compared to those which occupied the House of Lords in the last century.

Lord Mance

We have, I think, succeeded relatively seamlessly without revolution to the previous role of jurisprudence in the House of Lords. Although, we are now physically distinct and we have a very remarkable and attractive building, which I know some of you have visited and I hope others will. We continue to debate with surprising frequency traditional subjects, but as I say, the main focus has been on public law with much more constitutional and more publicly contentious issues which occupy us compared to those which occupied the House of Lords in the last century.

QUIPS & QUOTES

I was able to appear in overseas jurisdictions such as Hong Kong and the Bahamas where I spent a lot of time defending Coopers & Lybrand in one of the Banco Ambrosiano litigation cases. I learned the limits of comparative law there. I informed the Chief Justice of the Bahamas, who was hearing the case, that after doing some research, the United States of America did matters in a particular way. 'Well,' he said, 'in that event, we certainly do them differently here.'

Lord Mance

Again, in that area, as so often in the law, the issue is often one of striking a fair balance between competing considerations. But in the area of public law, the balance is often much more difficult to strike than it is in commercial law. The balance made between fundamental values which are different in nature and difficult to compare; such as for example, liberty, freedom of speech, freedom of expression or to take another example, state security and the interest of justice.

In considering how best to address such issues, we benefit very substantially from the opportunity to exchange views with and to gather information about the approach of our fellow common law system here in the United States. We're extremely grateful to the American College of Trial Lawyers for making possible the Exchanges, which last occurred ten years ago and which are now being repeated, first in the United Kingdom, then in the United States, that it should be accompanied by the personal pleasure of lasting friendships which we've made and consolidated over these occasions and now by the honor of fellowship of your College is an added delight. ■

THREE PANELS OF BRITISH DELEGATES TO THE 2016 LEGAL EXCHANGE

In September 2016, the College-sponsored 2015-2016 UK – U. S. Legal Exchange convened its second conference. Our British guests, including two Justices of the Supreme Court of the United Kingdom, two judges from the Court of Appeal of England and Wales, the Chief Justice of the Supreme Court of Scotland, the Chief Justice of Northern Ireland, a trial judge of the High Court, two practitioners and a law professor, joined their U.S. counterparts at the College's Annual Meeting in Philadelphia for the Saturday morning General Session. The British delegates to the Exchange participated in three panel discussions for the audience, each moderated by a U.S. delegate judge. The panels briefly reprised the discussions that had taken place at the Exchange's first conference in London in September 2015.

Panel 1, seated from left to right: Hon. Neil Gorsuch; The Rt. Hon. Lady Justice Arden DBE; The Hon. Mr. Justice Singh; and Nicholas Segal

PANEL 1: ACCESS TO JUSTICE

Honorable Neil M. Gorsuch, Judge of the United States Court of Appeals for the Tenth Circuit, moderated a panel on Access to Justice that included **The Right Honourable Lady Justice Arden DBE** of the Court of Appeal of England and Wales, **The Honourable Mr. Justice Singh** of the High Court of Justice, Queen's Bench Division and **Nicholas Segal**, a partner at Freshfields Bruckhaus Deringer. The panel began by examining the sometimes significant differences between the United Kingdom justice system and that of the United States concerning the use of non-lawyers to represent parties before tribunals. Judge Gorsuch pointed out that the bar in the United States has jealously limited the privilege of representation to those with a law degree. Lady Justice Arden responded that in the British system, "we have tended to use people who want to act as advisors and let them do the work, and we haven't made it essential that they are legally qualified." To ensure that this flexibility does not impact the quality of representation, the British courts must give permission if a litigant wants a representative who is not a qualified lawyer.

Lady Justice Arden currently has a seat on the Employment Appeal Tribunal which hears appeals in employment disputes. "Even in the Employment Appeal Tribunal, which deals with points of law, we sometimes have non-lawyer representatives. They may not be qualified lawyers. They know nothing about trust law, or land law, but they know a great deal about employment law and discrimination law. And my experience, for what it's worth, is that they can be just as good and effective a representative in that particular field. And they are representing a client who has trust in them because the advocate is a member of the same union." Lady Justice Arden also pointed out that pro se proceedings place an enormous burden on the judge to ensure that the pro se litigant understands his or her rights and puts forward the best case he or she can under the circumstances. In other words, she said, a non-lawyer advocate is better than no lawyer at all.

Another approach to improving access to justice in the British system is the appointment of case officers, who help litigating parties prepare their cases, sort out what the issues are, determine what the evidence is, and decide what is relevant, so that the case will be well prepared. Finally, there is increased experimentation with the notion that a broad range of small claims might be effectively resolved online. For example, there is currently a pilot program in London where, if someone wishes to plead guilty to a minor misdemeanor, they can be summarily fined, with all proceedings being done electronically.

The panel then moved to a discussion of the differences between the British and American systems as to the right to be represented by counsel in a civil (as opposed to a criminal) case. The British system has been heavily influenced by European human rights law. Mr. Justice Singh noted that the guarantees in the European Convention on Human Rights were embedded as part of British law through the Human Rights Act of 1998. As in the U.S., those rights include an express right to counsel in a criminal case. But British law has gone further to suggest there may be certain extreme circumstances in civil litigation where access to justice may require that an indigent party have access to counsel. Mr. Justice Singh reminded the audience that there is considerable academic research establishing that in litigation where one party is represented by a lawyer and the other side is not, the scales, more likely than not, will be skewed. Mr. Justice Singh said that such circumstances are rare, but the right "is there as a safety net" under UK law.

The British and American systems have always followed different paths on the issue of fee-shifting. Britain allows it, and the American system generally disfavors it. Nicholas Segal of Freshfields pointed out that in pursuit of increased access to justice, conditional fee agreements – agreements which are similar to American contingency fee arrangements – are making their way into UK litigation. Such agreements allow the lawyers to share a part of the damages in a successful undertaking. Similarly, while there has historically been caution in Britain about the notion of class actions, there are now an increasing number of mechanisms for facilitating multiple-party litigation in the UK, beginning with Lord Woolf's final report on "Access to Justice" in 2000.

As Judge Gorsuch commented at the close of panel one, "This twenty minute discussion gives us just a taste, an appetizer of what we have been talking about [during the Exchange], ranging from fee-shifting possibilities, the event and modification of class action proceedings to alternative business structures allowing non-lawyers to invest and maybe practice in limited areas of law."

PANEL 2: FOUNDATIONS OF FEDERALISM

Honorable Lee H. Rosenthal, U.S. District Judge for the Southern District of Texas and former chair of both the Advisory Committee for the Federal Civil Rules and the Standing Committee, which oversees all of the federal court advisory committees, moderated a panel on the challenges of federalism. The panelists included **The Right Honourable Lord Reed** of the Supreme Court of the United Kingdom; **The Right Honourable Sir David Lloyd Jones** of the Court of Appeal of England and Wales; and Professor **David Feldman**, QC, Rouse Ball Professor of English Law at Downing College, University of Cambridge. Judge Rosenthal began the discussion by observing that our British colleagues have encountered recent and quite dramatic changes worked by the British vote to exit the European Union (colloquially known as "Brexit"). Because of the importance of the benefits and burdens of Brexit, the panel decided to focus its time on some of the effects that Brexit has worked or may work in the future upon courts and judges in the UK. The panel was well-constituted for such a discussion, being populated, as pointed out by Judge Rosenthal, by an Englishman, a Scotsman and a Welshman. Lord Justice Lloyd Jones began the discussion by announcing, "It does seem pretty clearly that the consequences of Brexit for the laws within the United Kingdom are going to be a mess." He observed that the European Union had begun as an encouragement to free trade, with emphasis on free movement of persons and goods with capital and services. Over the years, however, an ever-widening view was taken of what was necessary in order to enhance the Union's success. "The result has been that EU law now encompasses areas which one might not normally associate with trade, including extradition, environmental law, even regulation of wildlife." Accordingly, over time

Panel 2, seated from left to right: Hon. Lee H. Rosenthal; The Rt. Hon. Lord Reed; The Rt. Hon. Sir David Lloyd Jones; and Prof. David Feldman

the European economic community has evolved from a treaty-based free trade agreement into an international legal community that possesses many characteristics which resemble those of a federal state. Lord Justice Lloyd Jones observed that member states have ceded original jurisdiction to the EU over such a broad range of issues that a simple repeal would leave many areas of fundamental importance without guidelines. "In many areas it may be that the UK will decide to continue existing law; in others it will replace it. This will be the task of many years."

Lord Reed continued the discussion by observing that one of the EU's initiatives has been the harmonization of law in a broad range of areas, from the law of contract to criminal law. "This process of harmonization is one in which the common law doesn't always carry a great deal of weight because out of the twenty-eight member states, there are only three which have common law systems: the United Kingdom, Ireland, and Malta." Lord Reed was quick to caution, however, that Britain – even before it became a member of the EU – has always been influenced to some degree by European law. But Brexit does mean that the common law will remain a bedrock of the British legal system. The UK's relationships with other common law jurisdictions – particularly the United States – may assume added importance.

Lord Reed found the 2016 Legal Exchange particularly timely in wake of Brexit. "And in the context of this conference [the 2016 Legal Exchange], we discuss how we can learn from each other in areas where there are practical advantages in our doing so: for example, national security, counterterrorism, military operations overseas. But much more widely we can also learn and do learn from reading your judgments in areas of the law where we can certainly learn from your thinking. For example, areas such as tort law. And that will continue to be the case."

Professor Feldman added his agreement that there is currently no clear path forward. Investigation must continue about the process necessary in order for Britain to secede from the EU. The process must be triggered in the first instance by Britain's official notification to the EU of its desire to withdraw. Once that notice is given, negotiations will start between the UK and the other twenty-seven member state representatives through the European Council. If no agreement has been reached two years after the date of notification, then automatically the UK will cease to be a member of the EU without any agreements being in place. The panel believed, however, that this latter possibility of non-agreement is unlikely.

Professor Feldman pointed out that Brexit also raises internal challenges for the United Kingdom, which he ▷

views as not always so "united." In Northern Ireland there will be challenges because of the Good Friday Agreement with Ireland. Northern Ireland's constitutional arrangements depend on close cooperation between the nationalists and the unionists within Northern Ireland and certainly between the governments of the UK and Ireland. That dynamic will become much more difficult if there is a formal land border between Northern Ireland and the Republic. Lord Reed added his perspective on Scotland's position. A recent opinion poll in Scotland placed the level of support for holding a referendum on the possible independence of Scotland from the UK at approximately 37%. But, Lord Reed commented, circumstances may change.

Lord Reed closed the panel by identifying several differences between the British and American judiciaries: (a) Britain's judges are generally considered to be neutral, as they are not politically appointed, thereby making even controversial decisions something less than a pitched battle; (b) there are no confirmation hearings for judicial appointments, and hence no pressure on judicial nominees to express positions on issues that may come before them once they assume the bench; (c) the Supreme Court of the United Kingdom engages regularly with media to ensure that judgments are correctly understood and accurately reported; and (d) the Supreme Court of the U.K. strives to avoid – to the extent possible – speaking in a controversial or condemnatory fashion in its judgments, in order to encourage calm and measured discussion.

Lord Reed once again expressed appreciation to the American College for its support of the Legal Exchange: "If I can just very briefly thank the College for its support in enabling these viable exchanges of ideas and approaches to take place. They do enable us to learn from each other and I think they assist us in improving our systems, which is entirely in line with the mission of the College to improve the administration of justice."

PANEL 3: TERRORISM AND NATIONAL SECURITY COURTS

Honorable Diane Wood, Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, assisted by Justice **Stephen Breyer** of the Supreme Court of the United States, moderated the third panel. The panelists included **The Right Honourable The Lord Mance PC QC**, Justice of the Supreme Court of the United Kingdom; **The Right Honourable Lord Carloway**, the most senior judge of the Supreme Court of Scotland; **The Right Honourable Sir Declan Morgan**, Lord Chief Justice of Northern Ireland; and **David Anderson**, **QC**, a practitioner who has been appointed by Parliament to be a monitor of national security legislation in the United Kingdom and to make a yearly report to Parliament on how its statutes and regulations on the issue of national security are working out in actual practice.

Chief Judge Wood began the discussion by noting the timeliness of the presentation, given that it was almost exactly fifteen years ago that the United States experienced

Panel 3, seated from left to right:
Hon. Diane Wood;
Justice Stephen Breyer;
The Rt. Hon. The Lord Mance;
The Rt. Hon. Sir Declan Morgan;
The Rt. Hon. Lord Carloway;
David Anderson, QC

its worst act of terrorism, triggering "the most serious discussion imaginable" about how a democracy handles such threats. Both the UK and the U.S. now live daily with the conundrum of how they can assure accountability of government, while at the same time assuring effective intelligence collection. Chief Judge Wood invited Chief Justice Declan Morgan of Northern Ireland to begin the discussion, given that his country has been riven by episodes of terrorism for more than forty years. Chief Justice Morgan observed that Northern Ireland's current state of "relative calm" has been possible only because of the use of intelligence. The achievement has been neither easy nor quick; it has required exhaustive negotiations between various factions. "How do you protect the society as a whole and the rights of an individual criminal defendant as well?" asked Chief Justice Morgan. The mechanism that has emerged in Northern Ireland is a system of open and closed hearings where as much material as possible is dealt with transparently, with the prisoner and his legal representative having access; other highly sensitive information that might place other innocent citizens in danger (e.g., the identity of an informant) may be shielded by a system of "special advocates" who are appointed by the court to safeguard the accused. In the latter procedure, the prisoner does not attend but is given, where possible, "the gist" of the closed material through the special advocate. Over the past ten years, the role of special advocate has become steadily more important. It has proven useful that many of the special advocates have represented parties on both sides of the intelligence process.

Having said this, the panelists concurred in their concerns that non-transparent justice may sometimes fail to be justice at all. According to Chief Justice Morgan: "I think from all our points of view, we remain of the opinion that the notion of secret courts and proceedings to which the accused does not have direct access in all respects, has to be driven solely by the strictest of necessities before it can proceed." He emphasized that where "closed" proceedings occur, it is mandatory that society as a whole understand that the proceeding was an appropriate response under the circumstances.

Practitioner David Anderson elaborated on the "special advocates" procedure in England. He explained that a special advocate must read all the "secrets," attend all the hearings of the court, and make submissions on his/her client's behalf.

In contrast to the United States FISA Court (Foreign Intelligence Service Court), there is no current mechanism in British justice for prior judicial approval before intelligence-gathering is undertaken. According to Anderson, however, there is currently a bill in Parliament which may become law by the end of 2016 which will adopt some of what the United Kingdom has learned from the Canadian Federal Court and the FISA court in the U.S.

The audience warmly received all three presentations. All of the participants and their spouses attended the Saturday evening festivities where they were welcomed by a broad range of Fellows eager to continue the discussions of the morning.

Chilton Davis Varner
Atlanta, Georgia ■

SEPTEMBER 2016: THE UNITED KINGDOM-UNITED STATES LEGAL EXCHANGE

In September 2016, first in Philadelphia and then in Washington, D.C., the College continued its tradition of a Legal Exchange between the bench and bar of the United Kingdom and the United States. Implemented by then Chief Justice Warren E. Burger, for almost fifty years the College has sponsored a series of these exchanges, the most recent in 2004-2005. Each consists of one week hosted by the UK delegation in the first year, followed by a second week the next year hosted by the U.S. delegation. Each exchange has enjoyed the enthusiastic participation of the countries' highest-ranking jurists as well as distinguished practitioners. Each country's delegates present papers on agreed topics of common interest, later discussed among the delegates.

The British delegates arrived in Philadelphia on Friday, September 16 to attend the College's Induction Ceremony and Annual Banquet on Friday evening and participate in the General Session of the College's Annual Meeting on Saturday morning, September 17. At a private reception before the banquet, Associate Justice **Stephen Breyer** of the U.S. Supreme Court (a U.S. delegate to the Exchange) welcomed the UK delegation to Philadelphia and to the second conference of the 2015-2016 UK - U.S. Legal Exchange. Justice Breyer noted that the Philadelphia venue would provide interesting history lessons about the Revolutionary War and the Founders who shaped America.

On Saturday morning, the UK delegates all participated, quite agreeably, as speakers at the General Session of the Annual Meeting. Three panel discussions reprised the topics canvassed in London (noted separately in this issue at page 65). The delegates re-convened Saturday evening for a private reception with the Board of Regents and Past Presidents before departing to the Philadelphia Museum of Art where they joined other attendees of the Philadelphia meeting.

Sunday was a day of rest for the delegates. After various art tours and repasts, the real work began.

DAY ONE

The UK-U.S. discussions began in earnest on Monday morning, September 19. The meeting was held at the American Philosophical Society, housed in one of Philadelphia's lovely old Federal buildings close to Independence Hall. Benjamin Franklin founded the Society, the oldest learned society in North America. The first topic of discussion was "Freedom of Speech," a fundamental right which has been interpreted differently in the two countries. While the Supreme Court of the U.S. has provided a wide and stubborn protection for speech, even where

Chief Justice John G. Roberts, Jr. (center), Justice Stephen G. Breyer (left), and Justice Samuel Alito, Jr. (right), listen to arguments in a reenactment of Georgia v. Brailsford, the only recorded jury trial before the Supreme Court of the United States. The event took place on September 19, 2016, in Old City Hall, Independence National Historic Park, Philadelphia, PA, site of the original trial in 1794. Several justices and judges of the courts of the United Kingdom, visiting Philadelphia for a legal exchange sponsored by the American College of Trial Lawyers, sat as jurors in the reenactment and appear in the foreground.

Photograph by Franz Jantzen, Collection of the Supreme Court of the United States

certain speech may be viewed as deeply offensive by some who hear it, the UK have been less lenient. Of particular interest were recent developments on elite university campuses, where students have sought to police or even prevent speech that they find offensive.

After these sessions, the delegates were provided a 45-minute glimpse into the American Philosophical Society's astonishing archives. The curator had selected approximately twenty of the Society's most valued documents, including a copy of the Declaration of Independence in Thomas Jefferson's hand; handwritten letters from George Washington to his friends in England, commenting on the complex politics of the upcoming Constitutional Convention in 1787; a comprehensive collection of U.S. Supreme Court Chief Justice John Marshall's handwritten opinions; a memoir by the first Surgeon General, Benjamin Rush, commenting on foibles of various Founders; and a working draft of the Constitution of the United States with Ben Franklin's handwritten marginalia and suggested edits. All were laid out on the library table, within inches of the observers, thanks to Fellow **Alfred W. Putnam, Jr.**, also a member of the Society.

Monday afternoon proved a highlight. Chief Justice **John Roberts** of the U.S. Supreme Court traveled to Philadelphia to join his colleagues, Justice Stephen Breyer and Justice **Samuel Alito** (both U.S. delegates to the Exchange) in a re-enactment – in Old City Hall in the Independence National Historic Park – of the only recorded jury trial before the Supreme Court:

The State of Georgia v. Brailsford, et al, heard in 1794. The case pitted Brailsford, a British merchant, against a group of Americans to whom he had loaned money in 1774. Before the debt was paid, the American colonies declared independence. In 1782, near the end of the Revolutionary War, the State of Georgia passed its Confiscation Act, which sequestered debts owed to residents of Great Britain. The Treaty of Paris, which ended the war, declared that creditors of both countries were entitled to collect "all bona fide debts." In the re-enactment, four Fellows of the College – **William T. Hangley**, **Paul Mark Sandler**, **Linda Dale Hoffa** and Alfred Putnam – argued the case to a jury composed of the British delegate judges, who then decided in favor of Brailsford (as happened in 1794).

CASE DESCRIPTION

Samuel Brailsford was a British merchant who made a loan in 1774 to a group of Americans, including James Spalding, a Georgia colonist. In 1776, before Spalding paid his debt, the American colonies declared independence. In 1782, near the end of the Revolutionary War, the state of Georgia passed its Confiscation Act, which sequestered debts due to residents of Great Britain. The Treaty of Paris ended the Revolutionary War in 1783 and recognized American independence. Brailsford subsequently sought payment of the debt, and many years of litigation led to a jury trial in the Supreme Court, which opened on February 4, 1794.

PRINCIPAL AUTHORITIES

The Georgia Confiscation Act, passed on May 4, 1782, provided in Article V:

> That all debts, dues, or demands, due or owing to merchants or others residing in Great Britain, be, and they are hereby sequestered, and the commissioners appointed by this act or a majority of them, are hereby empowered to recover, receive, and deposit the same in the treasury of this State, in the same manner, and under the same regulations as debts confiscated, there to remain for the use of this State until otherwise appropriated by this or any future house of assembly.

The Treaty of Paris, signed on September 3, 1783, provided in Artiticle IV:

> It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

SUPREME COURT of the UNITED STATES

February Term, 1794.

The STATE of GEORGIA, *versus* BRAILSFORD, *et al.*

Trial Reenactment

Old City Hall
Independence National Historic Park
Philadelphia, Pennsylvania

U.K. ~ U.S. Legal Exchange
September 19, 2016

The STATE of GEORGIA, *versus* BRAILSFORD, *et al.*

The only recorded JURY TRIAL before the SUPREME COURT

THE COURT

Chief Justice John Jay

William Cushing

William Paterson

James Wilson

ATTORNEYS FOR THE STATE OF GEORGIA

Alexander Dallas

Jared Ingersoll

ATTORNEYS FOR BRAILSFORD, ET AL.

William Bradford, Jr.

Edward Tilghman

William Lewis

THE COURT

The Honorable John G. Roberts, Jr.
Chief Justice of the United States

The Honorable Stephen G. Breyer
Associate Justice of the Supreme Court

The Honorable Samuel A. Alito, Jr.
Associate Justice of the Supreme Court

ATTORNEYS FOR THE STATE OF GEORGIA

Mr. William T. Hangley
Mr. Paul Mark Sandler

ATTORNEYS FOR BRAILSFORD, ET AL.

Ms. Linda Dale Hoffa
Mr. Alfred W. Putnam, Jr.

THE JURORS

The Right Honourable The Lord Mance
The Right Honourable Lord Reed
The Right Honourable Lady Justice Arden
The Right Honourable Lord Justice Lloyd Jones
The Honourable Mr. Justice Singh
The Right Honourable Lord Carloway
The Right Honourable Sir Declan Morgan

Special Thanks

The American College of Trial Lawyers
Organizer of the 2015-16 U.K.–U.S. Legal Exchange

The National Park Service
Gracious Host of this Trial Reenactment

We also gratefully acknowledge Maeva Marcus and Lochlan F. Shelfer, authors of leading scholarship on the *Brailsford* case. Readers interested in more information about the case and the "special jury" practice are invited to consult:

Georgia v. Brailsford, 6 DOCUMENTARY HISTORY OF THE SUPREME COURT, 1789-1800, at 73-88 (Maeva Marcus et al. eds., 1998)

Lochlan F. Shelfer, *Special Juries in the Supreme Court*, 123 YALE L. J. 208 (2013)

The first day ended with dinner at the beautiful Philadelphia Club, courtesy of Fellow Putnam's arrangements.

DAY TWO

The second day activities took place at the National Constitution Center and featured a discussion of "The Right of Privacy." The United States paper introduced the complexity of the issue with a quotation from former Justice Benjamin Cardozo:

> *"The question is whether the protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flaunted by the insolence of office. There are dangers in any choice."*

To exemplify the tension between privacy and security, the U.S. paper used as its example the iPhone seized by law enforcement authorities after the 2015 terrorist attack in San Bernardino, California. The FBI contended that the phone could contain important evidence in the criminal investigation. The alleged assailant's employer owned the iPhone and consented to an FBI search of the device. The data, however, turned out to be encrypted. The FBI obtained a district court order to compel Apple to develop software to unlock the phone and make the data accessible. Apple objected. According to press reports, the FBI later successfully enlisted another firm to "crack" the iPhone, making moot the government's motion to compel and Apple's opposition.

The UK paper examined the related, but different, topic of privacy, data protection and national security. The paper noted that never in recorded history has so much private data—highly prized by security agencies—been assembled on civilians, much less with the capability of that data being intercepted or retained for unlimited periods for almost any purpose. Despite the persistently high threat of terrorism, however, the European Union has given increased prominence to the importance of protection of privacy and personal data. Recent decisions have applied strict scrutiny to legislation which permits the retention or interception of this data and its transmittal from the European Union to the U.S., where lower standards of protection are considered to apply. These jurisdictional differences produced spirited discussion between the jurists of the two countries.

Legal scholar and renowned author Jeffrey Rosen, the CEO and Executive Director of the National Constitution Center, participated in the discussion and then guided the delegates on a tour of the Center.

The Exchange delegates then departed for Washington, DC by train. The day ended with a tour and dinner at the Museum of the American Indian in Washington.

DAY THREE

The delegates met at the Supreme Court in Washington to discuss "Terrorism," a topic of such complexity and immediacy that it had also been discussed in the first conference of the 2015-2016. The U.S. paper observed that the government is entitled to relax temporarily constitutional protections of individual liberty in exigent circumstances, considering whether looming threat of terrorism has created a permanent state of exigency, permitting the relaxation of civil rights and liberties to protect the very government that makes these rights possible. This issue harkens back to Revolutionary days, recalling Benjamin Franklin's admonition: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." The paper shared a history of government action and the varying boundaries that courts have applied at various times including: the suspension of the writ of habeas corpus during the Civil War; the World War II cases denying habeas relief to a group of German saboteurs; the Japanese internment cases; and, finally, the recent Supreme Court cases emanating from the war on terror.

The UK paper noted that the most serious acts of terrorism have always been dealt with under the U.K.'s normal criminal law, with no special laws or procedures for dealing with terrorism until 2000, when the Terrorism Act became the UK's first permanent anti-terrorism statute. The paper canvassed nine subtopics: (1) the definition of terrorism; (2) powers to stop, search and question suspects; (3) pre-charge detention; (4) precursory offenses; (5) executive orders; (6) citizenship removal; (7) emergency laws; (8) family law; and (9) countering extremism. Barrister and delegate David Anderson, whom Parliament has appointed as an independent civilian "watchdog" of

national security legislation, commented that the laws in the UK today are less intrusive than ten years ago, as protections for individual rights have gradually been judicially established, their oversight shared between the government and the bench.

In the afternoon, on a private tour of George Washington's home and gravesite at Mount Vernon, Lord Reed and Lord Mance, the senior members of the UK delegation, placed a laurel wreath at the grave, and spoke briefly about the long-standing ties between their country and the United States.

The day ended with a dinner at the Supreme Court, hosted by Chief Justice Roberts.

DAY FOUR

The delegations discussed "Where Angels Fear to Tread," exploring the ways courts in both countries have been increasingly drawn into areas once exclusively reserved for the legislature or executive branch. The U.S. paper began by reviewing two mechanisms that U.S. courts used in the past to avoid being drawn into these questions: (a) standing; and (b) the political question doctrine. The paper noted that globalization and internationalization of legal norms have altered these historical traditions, with courts being appealed to more often to solve questions that once would have been dismissed as "political" such as decisions arising from family law, international review of state criminal convictions, and the Alien Tort Statute.

The UK paper rejoined that the law relating to the status of customary international law before domestic courts in the UK is also in a state of flux. International law is itself undergoing fundamental changes, with a corresponding shift in international public policy. This is reflected in a growing willingness on the part of UK courts to address and investigate the conduct of foreign states and issues of public international law. As a result, the UK is seeing a major reconsideration of concepts such as comity, justiciability and acts of state.

On Thursday evening, the British Ambassador to the United States, Sir Kim Darroch, welcomed the Exchange. In responding, Justice Breyer gave a toast, printed here, that emphasized once again the importance of the College-sponsored Exchanges in allowing the judges of the two countries to form not just professional, but personal, relationships that foster increased understanding.

> *"This Exchange has been a great success. Why? What accounts for our ability so well to understand, and to learn from each other?*
>
> *It helps that we have long shared certain highly general, somewhat personal, understandings about the nature of our judicial work:*
>
> *We hope to transmit to the future, the history, learning and traditions of the past, in a form that helps them remain relevant and helpful to the resolution of problems presented by our ever-changing world.*
>
> *We remain committed to the kind of clear, critical thought that will at the least help us separate sense from nonsense.*
>
> *We interpret and apply principles of human liberty, including the rule of law, that from the time of the great charter at Runnymede have so profoundly influenced our free societies.*
>
> *Our professional work calls for thought but not thought alone. It is thought in the service of principle – principle that calls for the use of both head and heart.*
>
> *We are engaged in public service, putting our talents and abilities to work, we hope, for the benefit of others who live in our society.*
>
> *Taken together these characteristics, these goals, imply a seriousness of purpose that informs and inspires our shared judicial lives.*
>
> *Sharing these values, we have in the past few days had a conversation – of the kind that Michael Oakeshott described. He said that in the context of the "pursuit of learning," a "conversation" is not an argument; its "tone is neither tyrannous nor plangent;" it has "no predetermined course;" we do not "judge its excellence by its conclusion" for "it has no conclusion;" its interest "springs from the quality of the voices which speak, and its value lies in the relics it leaves behind in the minds of those who participate."*

This is the kind of conversation we have had, and in the course of that conversation we have become friends.

So, I toast with thanks the American College of Trial Lawyers for its sponsorship of this exchange. I thank the judges and lawyers for their participation. I thank the staff for their excellent work. And, I thank the Ambassador and Embassy for this dinner and for much else besides."

Eleven Exchanges have now taken place, all sponsored by the College, the U.S. trial lawyer delegates drawn from the College's ranks.

Chilton Davis Varner
Atlanta, Georgia

2015 - 2016

UK-U.S. LEGAL EXCHANGE PARTICIPANTS:

THE UNITED KINGDOM

The Right Honourable The Lord Mance PC, QC
Supreme Court of the United Kingdom

The Right Honourable Lord Reed
Supreme Court of the United Kingdom

The Right Honourable Lady Justice Arden DBE
Court of Appeal of England and Wales

The Right Honourable Sir David Lloyd Jones
Court of Appeal of England and Wales

The Honourable Mr. Justice Sir Rabinder Singh
High Court of Justice, Queen's Bench Division

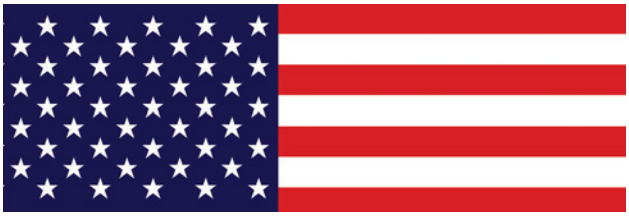
The Right Honourable Lord Carloway
Supreme Court of Scotland

The Right Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland

David Anderson QC
Brick Court Chambers

Nicholas Segal
Freshfields Bruckhaus Deringer

Professor David Feldman QC
University of Cambridge



THE UNITED STATES

Honorable Ruth Bader Ginsburg
Supreme Court of the United States

Honorable Stephen G. Breyer
Supreme Court of the United States

Honorable Samuel A. Alito
Supreme Court of the United States

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

Honorable Neil M. Gorsuch
U.S. Court of Appeals for the Tenth Circuit

Honorable Lee H. Rosenthal
U.S. District Court for the Southern District of Texas

Gregory P. Joseph
Past President, President of Supreme Court Historical Society

Chilton Davis Varner
Past President

Douglas R. Young
Former Regent

Joe R. Caldwell
Former Chair, Emil Gumpert Award Committee

Catherine M. Recker
Chair, Federal Criminal Procedure Committee

INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT JACK DALTON

Inductees, spouses and their guests were honored with a recognition luncheon on Friday, September 16, 2016, immediately after General Session. Past President **Jack Dalton** of Atlanta, Georgia offered remarks during the luncheon. His edited remarks follow:

When I was asked to do this, and I want you to know that it is a great honor to be able to address the inductees. I asked for some direction from President Mike Smith. I said, 'What is it you want me to say, are there messages you want, do you want me to talk about the history of the College, the current state of the College, the future of the College, what's important?' 'No, you just go on,' he said. 'You say whatever you want to say.' 'You can't do that,' I said, 'you've got to help me here!'

No. I got no direction, and men have a bad reputation about not asking for directions. It reminded me of the time several years ago, some of you out there know that I have in the past, had a collection of classic cars. I had one of them out, a 1963, red, two-seater convertible that I enjoyed on weekends. I wanted to go up to Lake Hiawassee in the north Georgia Mountains, and I did.

I was going there, and in order to get to Lake Hiawassee, which is a small lake, a very rural mountains area, you have to go through a place called 5 Road Junction. If you have a local map, you could find it. The significance of it was most intersections are four roads coming together, but 5 Road Junction had five roads that came together. When I got there, I looked it up and to the right about two o'clock there was a road sign that said Lake Hiawassee via State Route 48, and I looked over here about eleven o'clock and there was another sign that said Lake Hiawassee via the Old Platen Road.

So, what do you do? Do you ask for directions? About that time there was a big old mountain guy coming out of the country store, which is the only thing on that junction, and he was headed towards the parking lot where there are several pick-up trucks. I say, 'There's a chance.' So, I leaned out and I said, 'Excuse me, sir, does it make a difference which road I take to Lake Hiawassee.' He looked and realized I was talking to him and he just said, 'Not to me it don't.'

I'm proceeding today without direction. I want to note one thing before I get started and that's who's in this room. Yes, the inductees are honorees, but also their spouses and partners and guests have been invited here today principally because after listening to the inductees talk for years about how great a trial lawyer they have been, we thought if these spouses and guests heard it from somebody else, it might have more credibility.

In *Alice's Adventures in Wonderland* Lewis Carroll wrote that the walrus said to the carpenter, 'The time has come to talk of many things, of shoes and ships and sealing-wax, of cabbages and kings.' The time has come this weekend to talk of many things, of who you are and how you got here, and who we are and what we expect of you. Who are you? You are a mixed and varied group. You come from twenty-nine states, three provinces of Canada, Puerto Rico and the District of Columbia. You are men and women who come from large and middle-sized cities and small towns.

You come from big firms and solo practitioners, and prosecutors' offices and public defender offices. You are lawyers by profession, but you are also emotive photographers, teachers in your places of worship, helpers at your children's schools. You are Democrats, Republicans, Independents, and whatever else you need to be to get through this current election. You are bar association officers, you are voracious readers, you are managing partners of your law firms.

You are blond, dark haired, gray haired, or like me, balding. You are natty or not so natty dressers. You represent plaintiffs, defendants, the government and the accused. Yet despite your many differences, you have much in common. You are real trial lawyers. You are not just deposition takers, you are not e-discovery lawyers, you are not second chairs. But you are as we say in the South, 'Sure enough, honest to God, stand up courtroom lawyers.'

As you will hear tonight when given the charge by Past President **Jimmy Morris** of Virginia, you have all mastered the art of evidence, you are men and women who have all been invited here for there is no application process. You all have an active trial practice with exceptional trial skills. Your reputations are stellar and in place. And yes, you have strong egos. You all leave most everyone with the impression that at least you believe that you are undoubtedly right.

You may also have to wear a T-shirt like I do that was given to me by my adult daughter several years ago as a Christmas present. It was bright green and it had white stenciling across it. It said, 'You can agree with me or you can be wrong.' You may even share the same sense of self-confidence and self-awareness that my client, Ted Turner, had when confronted by a reporter who was highlighting Ted's ever-present bravado and his reply was, 'If I had a little humility, I'd be perfect.'

You all have made sacrifices in aid of your commitment to excellence in your trial practice, sacrifices that impacted your family, your friends, your hobbies, your free time. You have all recognized that preparation is everything. You all understand exactly what Muhammad Ali meant when he declared, 'The fight is won or lost far away from witnesses, it is won behind the lines in the gym and out there running on that lonesome road long before I dance under those lights.' Your trial experience has taught you that you must sweat both the big things and the small things.

You understand it is often necessary to say 'I don't know' without stuttering. You understand Ecclesiastes 9:11 where it proclaims that, 'The race is not always to the swift or the battle to the strong.' Yet you also acknowledge as Damon Runyon did that it may be that 'the race is not always to the swift nor the battle to the strong, but that's the way to bet.' You respect the system you serve and when it's broken, you make sure it's fixed so that it can work again.

You understand how to win but perhaps more importantly, you understand how to lose. You understand and ▷

you appreciate the sacrifices that were made by your spouses, families, partners, friends permitting you to excel in your careers. You hurt when these same supporters had to go alone on vacations or to birthday parties or to soccer games. And you are grateful, and you should be, that your supporters this weekend were there for you when the jury went the wrong way.

Everybody out there who is an inductee, or your guests or spouses, is asking why did all these people, these busy people, do all this work? The answer is because our commitment is to recognize excellence, and that has been and remains our heritage. We guard this honor of membership and we will not relax the high standards we employ. We will not relax them because to do so would impact all Fellows and would risk devaluing our honor.

The United States Supreme Court Justice **Lewis Powell** noted, 'Unique among many organizations of the legal profession, the College is prestigious because of its smallness and selectivity based on merit.' Now, what do we expect of you? When you review the blue book you will learn who has come before you as Fellows. We hope you will consider it to be an honor to be included among that group.

Think of now being part of an invitation-only organization that included Lewis Powell of Virginia, a trial lawyer, a Fellow and Past President of this College, all before he was a Justice of the United States Supreme Court; or **Leon Jaworski** of Texas, a trial lawyer, Fellow and Past President of this College before he was a Watergate special prosecutor; or **Griffin Bell** of Georgia, a trial lawyer, Fellow and Past President of this College, and Attorney General of the United States.

Look around you at the leaders of today's College. They are the guardians of the great traditions of our College. They help preserve our commitment to upholding our standards and to preserving our collegiality. We expect you to enjoy our fellowship and our collegiality. Please learn more about us. Go to your local meetings and dinners, come to our regional meetings, come to our national meetings, and if you wish, participate in our work.

Don't just sign up because someone puts a form in front of you. But if you care to share in the worth of our committees, our competitions, and our awards, I believe you will find our work rewarding and productive. In the process, and more importantly, you will make friends for a lifetime. But you don't have to sign up. It really is okay just to enjoy the honor that you are now among a select group of what we hope you will find to be wonderful and collegial people to spend the day or an evening with because here you are among equals.

Who knows, some day you may return as a leader of the College to an inductee luncheon such as this, and you may feel as we Fellows in this room feel today, that it is our great joy to welcome you, welcome new trial lawyers into our organization. We are Fellows who will respond to your calls whether we know you or not because you have earned our respect. We look forward to being with you and your spouse, or partner or guest at our meetings, on the golf course, in an airport. We will look forward to talk with you of baseball, of politics, of family, of sealing-wax, of cabbages and kings.

We will do all this because we have been warmed by fires built by others that came before us. We owe fidelity to the many who came before us for creating, developing and preserving this great organization. We are a group that is always committed to always stoking that fire, the same fire that warmed us so that its warmth will now reach you.

We expect by the end of tonight you will understand and appreciate that you are now a part of a most unique group. We are not a bar association or a specialty group committed to sponsoring causes. We are a group committed to recognizing excellence, both as a goal and in the flesh, and we cherish and are committed to maintaining that collegiality amongst us.

I expect every Past President in this room would consider their service as President a great honor and opportunity. But I believe every Past President will tell you that their greatest professional career moment was when they were asked to join the American College of Trial Lawyers because it meant that they had confidence and the support of the best trial lawyers in their locale.

We expect you will feel that way tonight as we did as inductees sharing time together unencumbered by differences in upbringings, practices or views. We expect you to preserve our high standards and our collegiality. And, yes. Yes. We expect you to stoke that fire, to provide the warmth for those inductees yet to come. Enjoy tonight. It's your night. Congratulations and welcome. ■

BOCA RATON SPEAKERS CONFIRMED

AMERICAN COLLEGE OF TRIAL LAWYERS SPRING MEETING
MARCH 2-5, 2017, BOCA RATON RESORT & CLUB, FLORIDA

THE FOLLOWING SPEAKERS ARE CONFIRMED FOR THE 2017 SPRING MEETING IN BOCA RATON:

The Honourable Mr. Justice Russell Brown
Supreme Court of Canada
Receiving Honorary Fellowship

Honorable John P. Carlin
Chair, Global Risk + Crisis Management
Morrison & Foerster, LLP
Former Assistant Attorney General for DOJ (NSD)

Judy Clarke, FACTL
Receiving the Griffin Bell Award for Courageous Advocacy

W. Neil Eggleston, FACTL
Former White House Counsel to the President

Honorable D. Robert Graham
Former Senator and Governor of Florida

David Howard
Corporate Vice President and Deputy General Counsel
Litigation, Competition Law and Compliance
Microsoft Corporation

Michele A. Roberts, FACTL
Executive Director
National Basketball Players Association
(NBPA)

Bryan Stevenson
Founder and Executive Director
Equal Justice Initiative

Michael Taylor
Professor
Film and Television Production
Executive Director
Media Institute for Social Change
USC Cinematic Arts

Paul Taylor
Author
The Next America

Dr. Robert Watson
Professor
American Studies
Lynn University

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RESPONSE ON BEHALF OF NEW FELLOWS
IDEALS OF COLLEGE MATTER FAR BEYOND THE COURTROOM

Following the induction of ninety-six new Fellows, **Melissa W. Nelson** of Jacksonville, Florida responded on their behalf. Her remarks follow.

When invited to give tonight's respondent's address, I wondered what I could say that would be interesting to you-all. Should I tell you the story of my first jury trial when, driving home from the courthouse with the victim of a domestic battery in my car, I was crying because I had lost the trial and she was consoling me? Or the time when I was arguing in closing argument to a jury, trying to make the argument to look at the big picture and not get distracted by red herrings, I told them not to lose the birds in the forest. And they looked at me intrigued and a little confused before I corrected the idiom, 'No, I'm sorry, the forest, the forest for the trees.'

What would I or could I talk to you-all about this evening that would be relevant to this special moment for all of us? To give a speech to the best trial lawyers in the United States of America and Canada was and is quite daunting. This morning when I walked in this room and I saw the number of people, I had to catch my breath.

THREE DECISION POINTS

In the spirit of humility, I'd like to talk to you about my own journey to the law and to this podium tonight. Specifically, I'll focus on three major points, decision points, in my own career. Though the details of each of our lives are obviously different from one another, hopefully on some level hearing these experiences will resonate with each of you, and you will find the lessons in each of them commensurate with the values that the College holds dear.

The first decision point involved giving up a job I loved. I went to law school to become a prosecutor. My dad spent his entire career in law enforcement. I was inspired by his work, intrigued by mystery, and fascinated by trial and trial lawyers. I devoured the Nancy Drew series as a young girl. I still remember the impact *To Kill A Mockingbird* had on me. As I grew older, I loved reading the stories of Vincent Bugliosi's trials, and today I still watch reruns of *Law and Order*.

QUIPS & QUOTES

'The lawyer,' Attorney General Robert Jackson said, 'must remember that his most alert and severe, but just, judges will be the members of his own profession and that lawyers rest their good opinion of each other not merely on results accomplished, but on the quality of their performance. Reputation has been called the shadow cast by one's daily life.' The reputations of the judges, the jurists, and lawyers in this group are awe inspiring. On behalf of the Inductee class, I thank you for bestowing on us the honor and privilege to be among your company.

Melissa Nelson

When I graduated from law school I became an assistant state attorney in Jacksonville, and I began working for Fellow and then-state attorney Harry Shorstein. He was a great boss. I was young, eager and committed. Every spare chance I had I went to the second floor of our courthouse where the trials were held and I watched other trials and other trial lawyers, prosecutors, criminal defense lawyers, civil trial lawyers. I loved the heart-thumping adrenalin rush of awaiting verdicts, and not just my own. The jousting of cross-examination, the real and raw drama of the courtroom. I loved great

arguments. Today, listening to the amazing speeches I did, I felt that same stir of excitement. I loved my job, and I knew I was lucky because I loved my job.

When I became a prosecutor, it was my father who admonished me to never lose respect for the awesome responsibility that came with the power to take away another's liberty. But I did not then, and could not, completely appreciate the full contours of the power of the prosecutor, nor the dangers that threaten all of us when that power is abused.

In 2008 my boss retired, and a new state attorney was elected. There came a change in the philosophy of prosecuting. Statistics rather than reaching the best and right outcome began to drive prosecutorial decisions and politics began playing a role in an office where politics deserved no role. This was distressing to me but at that time I had no power, no authority, and hence no voice to change anything. I had a simple choice. Conform or leave.

You may recall the state of the economy in early 2009. I was a twelve-year government lawyer with no civil practice, no book of business to sell a law firm. With the help of Fellow Hank Coxe, who later became a mentor to me, McGuire Woods took a chance on me and hired me. Though the step had not been part of my career plan, it was one of the best unintended moves of my professional career and gave rise to great professional growth. Head down, I worked hard to reinvent myself. I dusted off my civ pro outlines and I became immersed in learning how to become a civil litigator. I had no intentions of practicing criminal defense. It was hard enough for me to leave an office I cared so much about; I didn't want to face my colleagues and friends in a courtroom.

WITNESS TO GRIEF, SADNESS, HOPE, GRACE

But then, once again not according to my plans, there happened a case that profoundly shaped me as a lawyer and changed me as a person. This brings me to my second decision point, whether to join a pro bono effort in defense of a boy who had been charged by my former state attorney's office with murder.

Cristian Fernandez was 12-years-old when he was charged with the first degree murder of his 2-year-old brother. That made Cristian the youngest person ever charged with first degree murder in my city.

Cristian's short life had been a tragic one. He was born to a 12-year-old mother and his biological father had been prosecuted for impregnating her. At 2 ½-years-old he was found naked in a hotel/motel parking lot in Miami, Florida, at 3:00 in the morning.

Ultimately he was placed together in foster care with his young mother, where he was sexually abused by other foster care residents. His mother met a man with whom she had three more children. At 11 years old, Cristian's school sent him to the hospital because his eye was black and blue, for the man his mother had multiple children with had been abusing Cristian. At the hospital, x-rays revealed multiple old fractures of his 11-year-old ribs.

The police were dispatched to arrest Cristian's stepfather, but the arrest never happened because his stepfather, in front of Cristian's younger sister, killed himself before the police could get there. Cristian became the man of his house, and that meant taking care of his three younger siblings often overnight.

In March 2011, while left at home to watch his siblings rather than be at school, Cristian severely injured his younger brother. He called his mother for help. She waited to seek medical help. Eight hours later, when she finally called for medical assistance, it was too late and 2-year-old David ultimately died.

Cristian was taken to the sheriff's office and there he was interrogated without a parent and without a lawyer. He was placed in solitary confinement in the adult jail in our city, where he stayed for over thirty days until the chief judge in our jurisdiction declared his detention cruel and unusual and remanded him to a juvenile pretrial detention facility.

During this time the State of Florida indicted Cristian as an adult for the crime of first degree murder. No doubt a horrible thing had happened. A 2-year-old was dead, and Cristian had been responsible for the injuries leading to his brother's death, but David's death could have equally been prevented by his mother's intervention. Indeed, the medical evidence in the case concluded with certainty that with medical attention his younger brother would have made a full and complete recovery. In fact, if that had happened, Cristian would have been looking at a battery charge. Instead, he was facing mandatory life in prison because at that time the punishment in Florida for such a charge was day-for-day life in prison, no parole.

QUIPS & QUOTES

I have been witness to sadness, grief, coming of age, remorse, mercy, hope and grace. These experiences, that is, knowing Cristian, having the opportunity and privilege of defending him and bearing witness to the human capacity for unconditional love, I am both a better lawyer and, I believe, a better person.

Melissa Nelson

When it became apparent that Cristian's court-appointed lawyers could not adequately represent him, two of the top trial lawyers in Jacksonville, Florida, Fellows Buddy Schulz and Hank Coxe, sought to defend Cristian and fight the outrageous abuse of prosecutorial power. Buddy called upon a group of lawyers to step up pro bono in defense of Cristian, and I was among those lawyers.

On the face this seemed like a no-brainer, but the truth was, I was not looking to publicly challenge my former office. I wondered if I couldn't just help behind the scenes. Aside from my egocentric concerns, I had never defended anyone in criminal court. The stakes were high and the consequences potentially dire. But I knew that what the prosecution was doing was wrong and these lawyers' willingness to step up to correct an injustice inspired me. It moved me. How could I not say yes? Scared, but even more outraged, I agreed to participate in the defense efforts and my firm allowed me to participate and fully supported those efforts.

I found my new young client to be anxious and immature, kind, curious and gracious. Every time I visited him in the pretrial detention facility, he thanked me for coming to see him. When I explained status or law or facts to him, he thanked me for taking the time.

We were successful in suppressing statements obtained in contravention of Cristian's constitutional rights, but trying the case undoubtedly meant positioning Cristian and his mother, whom he loved very dearly, adverse to one another. Ultimately, we negotiated a plea on a lesser offense for juvenile sanctions. A far cry from where we had started, but not a victory, not a defeat. A sad ending to an even sadder story. The case had a deep impact on me professionally and even more so personally. Cristian's two remaining siblings were adopted by people he does not know. He's never seen them since the day he was arrested in March of 2011. His mother's parental rights were terminated, rendering him a ward of the State of Florida. He has been incarcerated for the last five years. He will be released on his 19th birthday. He has no family.

For the last three years his court-appointed guardian, Hank's wife, Mary Coxe, has traveled six hours every Saturday to visit with him for three. She always shows up, she's never late, and she never leaves early.

I have been witness to sadness, grief, coming of age, remorse, mercy, hope and grace. These experiences, that is, knowing Cristian, having the opportunity and privilege of defending him and bearing witness to the human capacity for unconditional love, I am both a better lawyer and, I believe, a better person.

Unfortunately, Cristian's case was not an outlier in my hometown. Other criminal prosecutions were garnering national media attention, requiring the intervention of lawyers and law firms from across our nation to contest the abuse of prosecutorial discretion. This was abnormal.

Our local bar knew it was abnormal. Our local paper knew it was abnormal. People throughout the United States who work in criminal justice began to notice Jacksonville, and not in a good way. Justice was out of balance, and our community had lost trust in our justice system. Seeing these problems was easy. The solution not so much. The solution involved the ballot box.

FROM THE COURTROOM TO PUBLIC OFFICE

My third and final decision point was probably the most surprising of all, whether to enter the unfamiliar world of electoral politics to take on a two-term incumbent, my former boss, in a race for state attorney.

I know I'm in a room full of people who share my love for trial advocacy, and that is building a case and then distilling it so that you can tell a story to a jury so it makes sense. But politics? This was a foreign sport to me and I doubted that I had the skills to play it. I also questioned from where I would find the power and the voice I had lacked years earlier when I left the state attorney's office.

To our 10-year-old daughter there was nothing to be scared of. While struggling with the decision, she innocently asked me, 'Mommy, if it's right, why not do it?' After a lot of soul searching and emboldened by the help of family and a husband who believes I can do anything, because that's what I told him when we were dating, a small and brave group of supporters helped me. I set aside my fears and I took a leap of faith.

Four months ago, in the last day of qualifying, I filed my papers to challenge that incumbent and powerful state attorney. My team and I organized the campaign around a few simple and powerful themes. I promised to be tough, but fair. I promised to be transparent and accountable. And I promised that conducting myself in that way I would restore confidence in the office and, by extension, our local justice system. These are not novel concepts. In fact, they're just the essential elements of being a good prosecutor.

Let me again quote from Justice Robert H. Jackson's magnificent speech. 'The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.'

I doubt that many of the constituents I met on the campaign trail had read Justice Jackson's speech, but they didn't have to. Based on my experience, I have learned that the people have an innate sense of justice. Whether it's a box of twelve jurors deliberating the facts of a case or an electorate of thousands, people crave fair outcomes and fair play. Thanks to that electorate, in January 2017 I will leave McGuire Woods and be sworn in as the state attorney for Florida's Fourth Judicial Circuit.

QUIPS & QUOTES

My experience on the campaign trail proved to me that our fellow citizens, most of whom will never interact with the justice system and most of whom will never see the inside of a courtroom, yearn for justice, for fairness and for due process. And not just for themselves, but for others as well.

Melissa Nelson

Of course, I'm thrilled that the decision points I've talked about have brought me to this place in my career, and I can't wait to get to work, but that's not the point of this talk. The real point is that the ideals for which this organization, the American College of Trial Lawyers, stands, a commitment to maintaining and improving the administration of justice and the ethics of the legal profession still matter. Even in these increasingly cynical and contentious times, they still matter.

They matter far outside the confines of this College. My experience on the campaign trail proved to me that our fellow citizens, most of whom will never interact with the justice system and most of whom will never see the inside of a courtroom, yearn for justice, for fairness and for due process. And not just for themselves, but for others as well.

That's why this organization is so very important. It's why, on behalf of the Inductee class, I express our sincere gratitude for the honor and privilege of joining you all and standing up for and perpetuating these very worthy ideals and accepting your charge to preserve the standards for which this great organization stands. ■

NINETY-SIX NEW FELLOWS INDUCTED AT THE ANNUAL MEETING IN PHILADELPHIA

ALBERTA
Calgary
Anne L. Kirker, Q.C.
Blair C. Yorke-Slader, Q.C.

ARIZONA
Tucson
Dan Cavett
Phoenix
Joseph E. Mais
Jon M. Sands
J. Russell Skelton

CALIFORNIA - NORTHERN
San Jose
Mark B. Fredkin

CALIFORNIA - SOUTHERN
Los Angeles
Tracey A. Kennedy

DISTRICT OF COLUMBIA
Washington
Benjamin G. Chew
Heidi Kay Hubbard
Danny C. Onorato
Beth A. Wilkinson

FLORIDA
Jacksonville
Melissa Williamson Nelson
Angelo M. Patacca, Jr.
Miami
Anthony N. Upshaw
Naples
Gerald T. (Jerry) Berry
Orlando
Thomas E. Dukes III
Ladd H. Fassett
Tallahassee
Jesse F. Suber

GEORGIA
Atlanta
Timothy H. Bendin

HAWAII
Honolulu
David M. Louie

ILLINOIS - UPSTATE
Chicago
Daniel J. Collins
Patrick M. Collins
Zachary T. Fardon
Mark R. Filip
Tarek Ismail

ILLINOIS - UPSTATE *(continued)*
Chicago (continued)
Mercedes Luque-Rosales
Andrew R. McGaan
William Michael, Jr.

INDIANA
Indianapolis
Kenneth J. Falk

IOWA
Cedar Falls
Timothy C. Boller
Waterloo
James H. Cook

KENTUCKY
Louisville
Bradley A. Case
James P. Grohmann

LOUISIANA
Lafayette
James H. Gibson
Monroe
David H. Nelson

MANITOBA
Winnipeg
Saul B. Simmonds

MARYLAND
Baltimore
William B. Purpura, Jr.
James G. Warwick

MASSACHUSETTS
Boston
Ellen Epstein Cohen
Sarah Chapin Columbia
Tracy A. Miner

MICHIGAN
Bloomfield Hills
Dennis M. Haffey
Grand Rapids
John C. O'Loughlin
Perrin Rynders

MINNESOTA
Minneapolis
William R. Stoeri

MISSISSIPPI
Oxford
Kenneth H. Coghlan
Ridgeland
Orlando R. Richmond, Sr.

MISSOURI
Saint Louis
Mary Anne Sedey

NEW JERSEY
Hackensack
Donald A. Caminiti
New York
Michael J. Sullivan

NEW MEXICO
Gallup
Thomas L. Isaacson

NEW YORK - DOWNSTATE
Armonk
William S. Ohlemeyer
New York
Robert M. Baum
Andrew J. Levander
Henry E. Mazurek
Susan R. Necheles
White Plains
Don D. Buchwald

NEW YORK - UPSTATE
Albany
Michael J. Murphy
Troy
James E. Hacker
Syracuse
Janet D. Callahan
Thomas F. Shannon

OHIO
Cincinnati
Thomas Montgomery Evans
Columbus
James D. Curphey
Kimberly Weber Herlihy
Augusta
George R. Hall
Kingsland
John J. Ossick, Jr.
Macon
Laura D. Hogue
Rome
J. Anderson Davis

OKLAHOMA
Oklahoma City
Monty B. Bottom
Joe E. White, Jr.
Tulsa
Charles H. Moody, Jr.

ONTARIO
Toronto
Anil K. Kapoor

OREGON
Portland
James D. Huegli
Judy D. Snyder

PENNSYLVANIA
Philadelphia
Howard Bruce Klein
John P. McShea III
William J. Ricci
David J. Wolfsohn

PUERTO RICO
San Juan
Ramon E. Dapena
Maria A. Dominguez
J. Ramon Rivera-Morales
Sonia I. Torres-Pabon

RHODE ISLAND
Providence
Mark S. Mandell

SOUTH CAROLINA
Columbia
Charles L. Henshaw, Jr.
Conway
L. Morgan Martin
Hampton
Ronnie L. Crosby

TENNESSEE
Chattanooga
Jeffrey W. Rufolo
Memphis
Leslie Gattas Coleman
Thomas L. Parker

VIRGINIA
Charlottesville
Jonathan T. Blank
Fairfax
Timothy J. McEvoy
Virginia Beach
Stephen G. Test

WASHINGTON
Seattle
Corrie J. Yackulic

WISCONSIN
Madison
Barrett J. Corneille
David E. McFarlane

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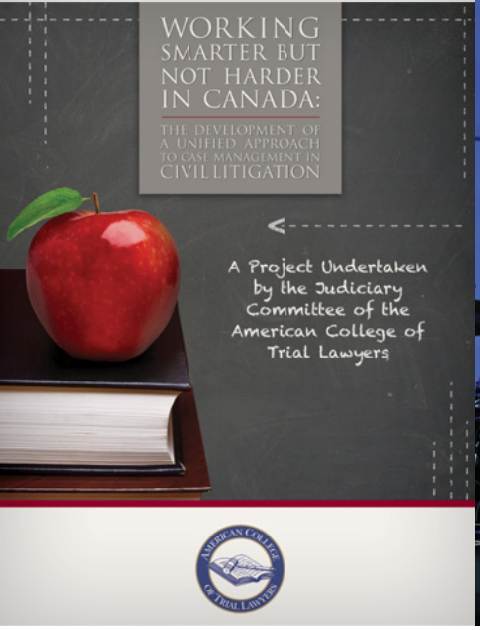
PRESIDENT'S REPORT
2015-2016 PRESIDENT, MICHAEL W. SMITH

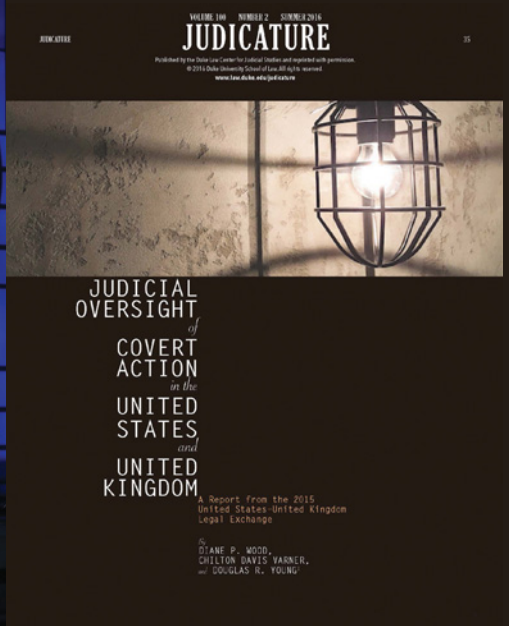
As I reflect back on all that has been accomplished through the tireless efforts of all Fellows, leaders and non-leaders, during the 2015-2016 fiscal year, I am pleased to report that the College remains in excellent shape. While we have not been timid, and lived true to our newly expanded Mission, our enduring legacies, high standards and longstanding traditions have been preserved, always placed front and center and consistently reaffirmed. At the same time, we have not turned a blind eye to the significant issues facing the College in the coming years, and, thus, have implemented a number of new initiatives and laid the groundwork for others that will help maintain our status as the premier trial lawyer organization well into the future. Before commenting in more detail on some of these matters, please indulge me a minute for personal reflection and to express my and Ellen Bain's profound appreciation for being afforded this wonderful year.

From the moment I was installed as the 66th president of the College at our Annual Meeting in Chicago, we have had the time of our lives. The greatest experience for any President of the College is traveling and making the rounds from the Atlantic coast to the Pacific coast and all states in between, as well as Canada and as far north as Alaska, west to Hawaii, and even south to Mexico. 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 truly unique, and it is simply impossible to adequately express our gratitude.

Over the course of the year, the travel was occasioned not only by the state, province and regional meetings, but other important College events as well, including the trial and moot court competitions, the Emil Gumpert Award presentation, the Eastern and Western Chairs Workshops, and a dinner at the U.S. Supreme Court, just to name a few. Also, there was the business of the College including, for instance, picking and vetting of new committees and getting them started in their new endeavors. In all, I will have traveled 140 days since mid-October 2015, on College matters, but I am not complaining. Of those trips, many were spent with some of the most interesting and fun people I've ever known. For the fellowship and friendships, we thank everyone.

I especially thank all members of the Executive Committee and Board of Regents, and the Chairs of our 61 State and Province and our 33 General Committees who, not only were an enormous help to me, but served the College with their time, talents, and dedication. We tackled many important issues this year, and no President could even think about doing it alone. For instance, it took the time of very busy lawyers on short notice to participate in four specially called telephonic Board meetings necessary to accomplish timely our tasks. During each, the Past Presidents and Regents gave of their time, good advice and good humor without complaint or reservation. And, with all of these balls in the air this year, we still managed to maintain our high standards. Let me elaborate a bit on some of the year's activities.





We are now operating under our revised and expanded Mission Statement.

As the result of much hard work and thought by members of this and previous Boards, we now have a broader Mission Statement for the College that better describes who we are, what we do, and what we stand for. The new mission statement, under which we are now operating, is:

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

We have reaffirmed our commitment to our high standards of admission to the College.

The College maintains an unequivocal commitment to its admission standards. The Board has adopted a statement of principles for uniform application of the qualifications requirement. The statement reads:

> **PRINCIPLES FOR UNIFORM APLCTION OF THE QUALIFICATION REQUIREMENTS**
>
> A prospective nominee must demonstrate excellence in trial. The prospective nominee must be considered to be among the very best trial lawyers in his or her State or Province.
>
> There is no minimum number of trials required for admission: a prospective nominee must have completed a reasonable number of trials. All areas of practice are eligible for consideration. Admission depends upon the breadth, weight, and complexity of the individual prospective nominee's total body of work.
>
> Jury and bench trials are the primary adversarial proceedings considered for membership. For prospective nominees who have demonstrated excellence in trial, other adversarial proceedings are considered if they are trial-like; i.e., they include such elements as opening statements, examination of witnesses, and closing arguments. Appeals are not qualifying adversarial proceedings for purposes of admission to the College, although they may be favorably considered if a prospective nominee otherwise meets the criteria for membership.
>
> Once a prospective nominee has otherwise satisfied the criteria, the absence of qualifying trials and other adversary proceedings in recent years will not foreclose admission so long as the prospective nominee is actively engaged in trial practice as the principal activity, and currently demonstrates the excellence in trial skills required for admission. Active engagement includes actual participation in the preparation and trial of cases, and may include active supervision of trial lawyers engaged in trial practice so long as the prospective nominee's primary activity is focused on trial practice as opposed to other management responsibilities (i.e., the prospective nominee is doing hands-on trial work as opposed to merely supervising others).

We adopted a new Diversity Statement and implemented new initiatives to support it.

While the standards for admission will not change, the Board has reaffirmed our dedication to identifying every

exceptional, ethical and collegial trial lawyer to be measured against our standards, and that includes including women and minority lawyers. For at least as long as I have been involved, the College has been proactive in its approach to identifying for consideration every exceptional trial lawyer from whatever walk of life. While the College has increased the number of qualified female and minority Fellows, we can do better. Therefore, the Board adopted a Diversity Statement:

> Consistent with its Mission Statement, the College seeks to promote the treatment of every person with dignity and respect, and to foster an inclusive, collegial environment that values the unique background, experiences, perspectives, and contributions of all. Under a singular standard of excellence that values and appreciates differences in its membership, the College endeavors to identify talented and accomplished trial lawyers as possible Fellows, including women and persons of color, varying ethnicities, disabilities, and sexual orientation.

To make sure that the Diversity Statement had teeth, the Diversity Subcommittee, a part of the General Committee on the Admission to Fellowship, was appointed with the charge of maximizing our efforts through recommendations aimed at identifying minority candidates and developing a process through which we are accountable for our efforts. The Subcommittee was appointed early in the year and responded quickly by filing its recommendations to the Executive Committee within the year. The Subcommittee suggested guidelines to assist State and Province Committees focusing on all appropriate practice areas and organizations. Additionally, it suggested potential contacts best suited to identifying diverse, qualified candidates. Along with the creation of locally-tailored plans to help enhance the State and Province efforts, built into the process is an appropriate level of accountability. Based on the Diversity Subcommittee's recommendations, the Executive Committee recommended to the Board a plan of implementation. The Board has approved the implementation plan, and the implementation commenced in earnest at the Fall 2016 Chairs Workshop.

We adopted new Guidelines for Public Statements by the College and its Fellows, which included the Guidelines for Amicus Briefs.

Consistent with our new mission, the Board approved the concept that the College will take a more public or visible position on those issues fitting squarely within the mission of the College. Accordingly, the Board amended the Guidelines for Public Statements which will now read as follows:

1. **Official Statements of the College.** The College may, from time to time, wish to publish a statement that reflects the official position of the College. Official positions of the College shall be limited to matters that impact the Mission of the College.

2. **Amicus Briefs.** It is the Policy of the College to file amicus briefs only where its position or argument can add something of significance. The decision to seek leave to file an amicus brief shall be approved by the Board. If approved, the Board shall designate one or more Fellows to liaise with amicus counsel.

While there were no requests this year for amicus briefs, there now exists a process to help institutionalize how decisions to become involved are made. Past Presidents Chilton Davis Varner and Greg Joseph, and Regent Bill Murphy, were appointed to the Task Force on Amicus Briefs, a committee to review each amicus request and make a recommendation to the Executive Committee which, in turn, will make its recommendation for final action to the Board.

We implemented a new Communications Plan to enhance and improve our internal and external communications.

It became clear in Board discussions that we had let slip adequately communicating internally with our Fellows about many of the good things happening in and with the College. We have attempted to remedy this situation. Increasing communications across the board to remind the legal community of the College's Mission and inspiring Fellows to take advantage of what the College has to offer is important. We have always adhered, of course, to the command that any communication be provided with the required understated elegance.

The Board made it clear that the primary focus of any communications effort should be aimed at our Fellowship first. Following that directive, in January 2016 I invited several College leaders and National Office staff members to a one-day communications planning meeting with être Communications at my office in Richmond. At the conclusion of the meeting, être was asked to propose a communications plan in two phases: Phase I would focus on the College's internal audience, with the goals of 1) enhancing the immense feeling of pride in being part of the Fellowship and 2) engaging more Fellows in the activities and projects of the College, particularly on the local level. Phase II would focus on external

communications. We have improved our internal communications in several ways, and we have found time to increase our external communications on significant matters that support our Mission.

Our meetings aside, there are three basic ways for the College to communicate with our Fellows. Our *Journal* is an award-winning publication, but it is published only three times a year. So, with the concurrence of the Board, and a specially appointed Committee comprised of Fellows, members of our staff and être Communications, the new *eBulletin* has come to fruition. As presently constituted, it is an every-other-month electronic publication, brisk and to the point, identifying a smorgasbord of events and activities going on in and around the College. It will certainly augment the *Journal* but not in a competitive way, instead using a different format to distribute information in a different way. Lastly, our technology system essentially consisting of a database and website, unlike the first two assets mentioned above, has not proven satisfactorily workable yet from a user-friendly standpoint. We have addressed the problems during the year, however, and while the work has not yet been completed, we are close to the end and expect it to be so in the spring of 2017. Not only will the staff's job be made more efficient, our Fellows' relationship with the College will be greatly enhanced and far more connected.

Having all three components in play will change the College in some ways, but not its standards and traditions. It will simply enhance the College's relevancy, responsiveness and help keep it where it is and should be – at the pinnacle.

We acted aggressively with our initiative to assist our veterans in navigating the process of appealing denials of benefits before the Board of Veterans Appeals.

Two of our committees have been very involved with the unconscionable problems our veterans experience with the denial of their benefits and the VA appellate process. It takes, on average, four years for an appeal to make its way through the process. Meanwhile, some veterans die before their appeals are heard, much less decided. John Chandler, as Chair of our Special Problems in the Administration of Justice (U.S.) Committee, has been deeply involved with others working for the past few years to resolve the problem amicably. The College's offers to assist the bureaucracy have fallen on deaf ears or were disregarded.

At our Spring Meeting in Maui, John, Fellows Beth Tanis, Steve Raber and I, discussed the lay of the land and concluded that litigation was the only realistic solution. Faced with no other alternative, it was decided to take the steel hand out of the velvet glove. On July 21, 2016, John and Beth, and their firm King & Spalding, and Steve, and his firm Williams & Connolly, took the lead in filing a Petition for Writ of Mandamus and Other Relief with the United States Court of Appeals for Veterans' Claims. The suit was filed on behalf of seventeen veteran plaintiffs or their survivors, asserting that the long delays are violative of plaintiffs' due process rights and, hence, unconstitutional. The suit seeks an order requiring the VA to eliminate the delays in the appeals system. We are grateful to the Fellows and their firms who have undertaken this outstanding effort on a pro bono basis.

We are addressing the issue of a proper process to handle sexual harassment allegations at colleges and universities.

A Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence was appointed and is working on recommendations concerning procedures 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. The procedures, for the most part, were developed by the Department of Education. Threatening the colleges and universities with the powers of the purse, the DOE imposed its process on their proceedings. Generally, the Task Force is preparing a white paper on the topic of an acceptable process, after which it will consider avenues to the Department of Education through which our white paper may become an approved template for future use by the colleges and universities in their discretion.

We published, Working Smarter But Not Harder in Canada: The Development of a Unified Approach to Case Management in Civil Litigation.

In Canada, lawyers and judges generally agree that the effective use of case management assists in reducing the cost and delay associated with our civil justice system. There is a wide disparity of views, however, as to the circumstances in which case management should be used and concerning the various approaches and techniques that can or should be implemented to improve the results case management is intended to achieve. In its recent decision in *Hryniak v Mauldin*, the Supreme Court of Canada noted that the Canadian civil justice system must be reformed in order to ensure timely and affordable access to justice.

The Canadian case management project was undertaken with the aim of identifying techniques and approaches that have been implemented by judges in Canada who are recognized as being particularly adept at the use of case management to assist in the resolution of civil disputes. ▷

The hope is that through the identification of proven case management techniques, this project will assist in the development of a unified approach to the use of case management in the civil justice system in Canada.

Led by Ex Officio of the Judiciary Committee Kent E. Thomson of Davies, Ward, Phillips & Vineberg, and Secretary Jeff Leon of Bennett Jones, implementation of a major communications strategy is being considered across Canada with the goal of instituting real change in the Canadian justice system.

The Canadian project follows in the footsteps of the "Innovating for Efficiency" project that was undertaken recently in the United States by the College, working together with the Institute for the Advancement of the American Legal System. The central purpose of that project was to identify best practices in case management used in civil proceedings in the U.S. The results of the project were set out in a report published in 2014, entitled "Working Smarter, Not Harder: How Excellent Judges Manage Cases," a project praised and generally credited with providing impetus to the adoption of the recent discovery changes in the Federal Rules of Civil Procedure related to "proportionality."

We continued to support a number of other access to justice initiatives.

Access to justice has become for the College, as with most other legal institutions, a rallying cry for service to our underserved communities. Our Access to Justice and Legal Services Committee is always on the lookout for projects to help the underserved. The issue, however, extends across a broad spectrum of College activities, not just the Access to Justice Committee. For instance, and to mention just a couple of projects among the many which are in addition to the Veteran's Initiative:

- The Teaching of Trial and Appellate Advocacy Committee has been involved with, and continues to support, our State and Province Committees in providing free trial tactics CLE seminars and instruction to our Legal Aid communities.
- The College Foundation continues to provide significant grants to worthy organizations, many of which are set up to help underserved communities.

The College's ongoing attention to Access to Justice initiatives will continue to grow.

We took important stands recently to protect the independence of the judiciary in instances of unwarranted attacks.

The "independence of the judiciary" has always been a priority and will remain one for the College. In 2006, the College made the point for posterity through a unanimous Board-approved white paper on the subject.

Encroachment into the independence of the judiciary has taken many forms. One of the major abusers is the silly season (politics), which generally results in overstated exuberance by some politicians, unbridled by the fact that these days there seems to be very little political capital to be lost by criticizing judges (and lawyers). Sometimes the overreaching is spite-driven.

That the College remains vigilant is exemplified by three situations occurring in 2016: in Kansas, Fellows successfully challenged special legislation aimed at limiting the role of the court which was ultimately declared unconstitutional. The genesis of the legislation was a governor bent on payback for a decision with which he was displeased. A unanimous Kansas Fellowship backed the Court's position. Also, when a political candidate went after a sitting trial judge and his rulings in a case involving the political candidate, the College immediately responded with a press release clearly reaffirming its position against unwarranted attacks against the judiciary. Later, in August, the *Richmond Times-Dispatch* published an Op-Ed addressing intemperate personal remarks made by the Executive Branch in response to an adverse Supreme Court decision.

Over the years, there have been issues other than attacks which infringed judicial independence and about which the College was quick to respond. For instance, some years ago the College endorsed an amicus brief filed in support of the judiciary in a case involving judicial salaries, a successful endorsement I might add.

The College will continue to monitor situations of interference and speak when appropriate to do so in accordance with College standards.

In addition to projects such as *Working Smarter, Not Harder,* we continue to participate in service to the courts, state and federal, through independent research, the production of written comments and attendance at Advisory Committee meetings.

The College has always welcomed service to our courts and their related organizations as a duty imposed by its Mission. The service traditionally has flowed from a wide range of activities, far too many and over too long a time to be catalogued here, but following are a few examples:

- The College continues to support fully the efforts of the United States Supreme Court Historical Society;

- The College continues to participate in the preparation and presentation of white papers, publications, committee work, and joint efforts with other organizations related to the betterment of the administration of justice;
- The College has and will continue to participate with the Federal Judicial Center and National Center for State Courts in developing programs supporting their Administration of Justice initiatives.

We took actions to move forward our goal of maintaining the jury trial as a fundamental part of our democratic system of government.

The vanishing jury trial and trials in general have been a major concern for the College for some time now. And, the College was among the earliest of those institutions who took the problem seriously.

Eight and a half years ago, January 2008, the College sponsored a symposium in Dallas, Texas, addressing not only the causes of the problem, but possible cures. The symposium was a multi-day affair and was attended by academics; federal and state judges; prosecutors and criminal defense lawyers; civil plaintiff and defense lawyers; and users of the system, including General Counsel; insurance companies and other corporate representatives. The subject continues to be a source of widespread interest today, and the College is no exception. The College staunchly remains of the view that trial is the best arbiter of disputes ever devised and, considering that the United States is the only country in the world that provides for it in a Constitution, the College is committed to preserving it.

The College has also been involved in the jury trial issue through other avenues. For instance, a few years ago the College's Foundation made a $35,000 grant to *iCivics*, a program whose most visible sponsor was and is Justice Sandra Day O'Connor. The program is aimed at the education of our kids on the importance of trial and juries (and serving on them). Also, the College has helped to organize a faculty of Fellows to serve as teachers and instructors in the program.

The College remains focused on the subject and is quick in its support of programs aimed at maintaining this important Constitutional right.

We successfully operated our annual awards and law school competitions programs again this year.

2016 Emil Gumpert Award – This year the Loyola Immigrant Justice Clinic at Loyola Law School, Los Angeles (LIJC) was the recipient of our 2016 Emil Gumpert Award. The organization received a $100,000 grant, which was funded by the Foundation. I had the distinct pleasure of attending the awards presentation event and hearing about the amazing work being done, accompanied by Charles Dick, Treasurer of the Foundation, and Robert Warford, Regent for Southern California.

2016 Samuel E. Gates Litigation Award – 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, was the recipient of the Samuel E. Gates Litigation Award. Under Justice Kourlis' leadership, 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. Justice Kourlis, through her work and that of IAALS, is changing the legal system of this country. Justice Kourlis is a change agent. She is bringing to the forefront the idea that in order to improve the legal system it requires a change in the culture of the courts and the profession itself, and we recognized her contributions in Philadelphia at the 2016 Annual Meeting.

The College's Trial and Moot Court Competitions – For years now, the College has vigorously supported four national law school competitions, two each in the United States and Canada. The four competitions remain "Crown Jewels" in the College crown. They are supported financially and with sweat equity by the College and its Foundation. Many Fellows on a local level through the State and Province Committees participate with the law schools in providing adjunct instruction, competitions, conferences, and the like, ranging in subjects from trial practice and acceptable tactics to ethics, both stated as Missions of the College.

The College's involvement with the National Moot Court Competition (U.S.) can be traced to the 1950's. The finals are always held at the New York City Bar Headquarters. Unfortunately, one unique aspect of the competition no longer exists – in years past, a Justice of the Supreme Court of the United States sat on the panel of judges hearing argument for the finals. Nonetheless, the competition remains today the premier moot competition in the United States.

The National Trial Competition was the brainchild of the Texas Young Lawyers Association. The finals are held annually in Texas. This competition, too, is at the top of the heap of trial competitions in the United States and annually provides as much enjoyment and collegiality to ▷

those in the College charged with putting it on as it does to those students participating in it.

In Canada, the Sopinka Cup, named for John Sopinka, a deceased Fellow and former Justice of the Canadian Supreme Court, is the Canadian counterpart to the National Trial Competition in the United States. Started in the 1990s, it, too, is a trial competition, but bilingual, and has the "best of its kind" reputation in Canada. The finals, which are held in Ottawa, provide an enjoyable week for all involved, including the College President.

Finally, but by no means lacking in similar stature or prestige, is the Gale Cup, the annual Moot competition for Canadians. Its namesake is George Alexander Gale, a deceased former Chief Justice of Ontario. The competition commenced in the latter 1970s and is held in Toronto each year. With the other competitions, it continues to bring not only credit to the College, but a fun and educational opportunity for the contestants and their respective law schools.

Also, the College strives to stay in touch with and be a part of the law school communities in ways other than just the competitions. For instance, scholarly papers were collaboratively prepared by Supreme Court Justices, judges, academics and Fellows, along with their British counterparts, in the recent United Kingdom – United States Legal Exchange Program. Two of the scholar undertakings have been provided to the Duke University Law School for publication in *Judicature*, a publication now distributed by the law school.

Similarly, several of the State Committees have created awards for outstanding young trial lawyers who have demonstrated proficiency in trying cases and maintaining high ethical standards.

We made time to review the business of the College.

The College continues to monitor its business practices to ensure not only that its standards and traditions are kept firmly in place, but to improve its functionality for the benefit of its Fellows as well.

For instance,

- The Board of Regents recently approved the adoption of the new Bylaws, Policies, Guidelines and Procedures Manual. Now, for the first time in memory, all of the referred to information can be found in one place, kept up to date and easily accessed by the Fellows. Importantly, it contains an excellent and complete Table of Contents and relevant attachments, where appropriate. The Manual is accessible on the website (https://www.actl.com/library/fellow-resources).

- Additionally, the Board found time to amend several bylaws to clarify and improve their application. For instance, Section 3.4(b) of the Bylaws ("Adjunct Fellowship Committee") has been amended and restated so as to best describe the purpose of the Committee and its proper function.

- The College currently has money in the bank which, with anticipated dues receipts, is sufficient to cover our anticipated operational expenses. Moreover, the College has reserve funds invested in fairly accessible securities, in an amount roughly equal to our budget year expense projections. Nonetheless, with our standards in place and reaffirmed unanimously by the Board at our recent retreat, with fewer cases being tried and with the normal attrition in the College, we must keep an eye on the financial ball. Accordingly, a new ad hoc Committee has been appointed to conduct a long range review for financial planning purposes. We need to be prepared and hopefully, to avoid any unexpected, unpleasant shocks to the system.

I am told that at one time the College had an Audit Committee which reviewed the activities of our National Office on a fairly regular basis. We decided to commission an audit this year, under the leadership of Past Presidents Jack Dalton, Tom Tongue and Fran Wikstrom. That audit was presented to the Regents and discussed at the Philadelphia meeting.

CLOSING THOUGHTS

What an organization! Steeped in tradition, made up of the best of its kind, collegial, and a limited but very important and focused Mission. Like you, I am proud of being a Fellow in the American College of Trial Lawyers. I'm delighted to have been afforded an opportunity to sign on as wanting to preserve its high standards and traditions for our 5,900 current Fellows and for all new inductees to come. With our insistence on a standard of excellence, our willingness to take appropriate stands on matters important to our Mission, our commitment to diversity and a high value placed on collegiality and ethics, there is no doubt that we will remain the premier organization of trial lawyers. Again, thank you for the opportunity to serve as your President. ■

CORRESPONDENCE TO THE EDITOR

Last year Lord Neuberger, President of the Supreme Court of the United Kingdom offered this view in a lecture on legal ethics in the 21st century: "Together with judges, lawyers are the quintessential representatives, or ambassadors, of the rule of law so far as the general public is concerned. ...If lawyers and judges are not competent and honest...the rule of law is severely undermined."

I believe the bar may be facing a crisis that might well undermine the rule of law. In my opinion, it is dishonest for a lawyer to fail to disclose their trial experience with clients before they sign a fee agreement. While the vast majority of legal representation may not involve trial work, when a case has the potential of being pursued in court, our ethics simply demand that potential clients be informed of the trial experience of the lawyer. Fee agreements cannot be "unreasonable" or "unconscionable." Isn't it both "unreasonable" and "unconscionable" for an attorney with no trial experience to sign a client without disclosing that fact?

In Texas and Colorado, the states where I am licensed, there is an industry of lawyers that "market" themselves as trial lawyers in TV ads, repeated hour on the hour. Yet, the very fervor of their advertisements illustrates they have never tried a case to a court or jury. And, the disgruntled clients who ask for a second opinion when these "marketing" firms recommend an unsatisfactory settlement, underscore that fact.

It is no answer that "you would never engage a surgeon to do your appendectomy if you knew this was his first." First, this is no analogy. To be a surgeon, the doctor has performed many appendectomies during his training. And every lawyer going into court should have that type of training, either through trial advocacy programs in law school or second chair trial experience in practice. Then, once disclosed, the client can make an informed decision concerning hiring the attorney.

My suggestion is simple: The College should be in the forefront in prescribing rules of ethics directing attorneys to inform clients of their trial experience before a fee contract is signed. It is likely a hard sell but that should not deter us. To be successful, the concept may have to be endorsed by the various grievance or professional conduct committees of the nation's bar associations not the bar members themselves.

Sincerely,
Don Davis
Austin, Texas

PERSONAL HISTORY: NEXT STEPS LEAD TO AFRICA

Another chapter is to be written in our professional lives. There is life, abundant and satisfying life, to be found after our courtroom days are over.

Consider the following demographic:

Have reached a "retirement" age?
CHECK.

Have my ACTL plaque on the wall?
CHECK.

Can continue practicing law, but don't have to?
CHECK.

Believe that more "full time" practice is unwise?
CHECK.

Don't want only legacy to be "was a trial lawyer"?
CHECK.

Have developed another passion?
CHECK.

Have time and talents to share?
CHECK.

I am sixty-seven and have practiced law for forty-two years. My health is good. I am not that good of a golfer. The burning desire to practice law full-time is not there. So, what should I do? I am blessed to have found an outlet for my energy and modest talents by making a contribution to sustainable health care in Tanzania.

HOW IT HAPPENED

I have known Bobby and Barb Griffin for over thirty years. We met the Griffins at our church. Bobby is a retired Medtronic Corporation executive having run that company's pacing division. He is the fellow who invented the nuclear battery that powers pacemakers. He has done well professionally and has been a mentor to me. Bobby and Barb have traveled the world viewing healthcare needs and opportunities.

In 2004, while visiting a hospital in Tanzania, they witnessed a woman die during childbirth. It was an entirely avoidable tragedy, but in Tanzania a very common occurrence. Even today, most babies in Tanzania are born at home, which is usually a hut. So what did Bobby and Barb do when confronted with graphic and compelling need? They decided to build a hospital in Dodoma, Tanzania. That hospital is the Dodoma Christian Medical Center or, DCMC. Bobby requested that I help with some legal issues in 2008. Since then I, along with my wife Nancy, have been very involved in all aspects of the development of the hospital. We travel frequently to Tanzania, and when in Minnesota devote many hours each week to the project.

Tanzania is a country south of the equator on the Indian Ocean. Its neighbors are Kenya, Rwanda, Burundi, Democratic Republic of Congo, Zambia, Malawi and Mozambique. Its population exceeds 50,000,000. Dodoma is its capital.

Building anything in an underdeveloped country is challenging. The actual building of a hospital structure in an arid and undeveloped area is hugely complex. The goal of building a hospital to European or American standards is also very costly. All but the most basic equipment must be imported. Tradespersons like masons, carpenters, plumbers and electricians are hard to find. Government officials often impose barriers to success rather than offering help. Everyone seems to have their hand out seeking some money for their cooperation. Additionally, any hospital, especially a hospital that serves a chronically poor population located in East Africa, is not self-sustaining. It must have funds beyond money received in payment for services.

A COMPASSIONATE ENTREPRENEUR

Early in the process, the decision was made to avoid government entanglement (especially in a foreign country) and therefore not seek governmental support for either capital development or operational expenses. Such money

Above: Fellow Karl Cambronne sits with a group of orphans where both parents have died of AIDS.

Right: Cambronne stands in the last row with hospital staff and workers in Dodoma, Tanzania.

comes with too many strings attached and cannot be counted on into the future. DCMC therefore relies upon charitable contributions, fees for services and eventually, profit to be spun off from a related for-profit business. Part of the DCMC structure is the operation of the Dodoma Innovation and Production Company Ltd., a for-profit business, also known as a compassionate entrepreneurial business activity. That is where I come in.

Situated adjacent to the hospital on ninety acres (the entire plot where the hospital and business are located is approximately 250 acres) is a separate business known as the Dodoma Innovation & Production Company, Ltd (DIPC). It is owned indirectly by a group of fifteen individuals, composed of Americans, Germans, Italians and Tanzanians. Each of us has agreed in our formation documents to devote at least 50% of any profit generated by the company to sustain the hospital. This hoped-for source of ongoing support for the hospital is now taking shape. A new 43,000 square foot manufacturing facility was operational at the end of 2016. The primary business of DIPC is beverage bottling. The trade name is "Asante," which in Swahili means "thank you". The plant will have three bottling lines and the ability to produce and bottle various beverages, such as still and sparkling water, tea, vitamin water and flavored drinks. The plant will have a capacity of producing five million bottles per year.

WHERE THINGS STAND

The hospital now generates approximately 52% of operating expenses through fee for services. There is no way it could independently build or expand the facility. The rest of the needed money must be found from compassionate givers, which is the current situation, and eventually, profits from DIPC. The hospital employs six full-time doctors (all Tanzanian) and thirty to forty staff. DCMC recently entered into a formal agreement with the University of Minnesota Medical School to provide a steady source of medical residents who will serve three to four month stints working at the hospital.

This major undertaking–construction of both a hospital and a related manufacturing facility–creates a huge need for many volunteers, even lawyers. People are needed who have the time and willingness to see a problem, sense an opportunity, and agree to help.

My wife, Nancy is a board member of Dodoma Tanzania Health Development, www.DTHD.org, which is the 501(c) 3 corporation that raises funds to support the hospital. I am on the board of the for-profit operating company, DIPC. We travel to Tanzania two to three times each year to deal with a host of issues that arise in such a major undertaking. Most of my days, as I ease into retirement, involve dealing with Africa.

The future growth and success of the hospital is directly dependent upon the manufacture and sale of Asante beverage products. The combination of fee for services, charitable contributions and the spin-off of profit from the for-profit business will, if successful, sustain the hospital into the future—far beyond our lifetimes.

In 2015, DCMC served more than 53,000 Tanzanians in Central Tanzania. Most were extremely poor. The medical center provides a range of inpatient, outpatient, dental services and community health outreach programs to a population for whom quality healthcare is not easily found. The Tanzania Ministry of Health recently recognized DCMC as the best medical facility in the region with a 3-star rating.

NOW WHAT?

2017 should witness the production and sale of beverages at DIPC. Also by the end of 2016, the expansion of the hospital (the "West Wing") was operational and added seventeen additional beds, a laboratory and the only operating CT scan in central Tanzania.

My cases/trials are fewer by design. I have other things to do.

Karl L. Cambronne
Minneapolis, Minnesota ■

HONESTY IS THE ONLY POLICY

While recently caught in the throes of a nine-week jury trial, I read with interest the latest vanishing jury op-ed in the *Texas Bar Journal* (March 2016) entitled, "Honesty is the Best Policy." As with other professional lamentations over the alleged "near extinction of the jury trial," this piece proposes, "It's time to disclose lack of jury trial experience." The authors (one a law school professor, the other an Assistant U.S. Attorney) opine that a litigator can hardly evaluate or settle, much less try, a case without the gold standard of courtroom experience with a venire. They appropriately recommend that an attorney has an ethical obligation to inform a client of a lack of jury trial competency ("Honesty is a virtue easy to extol, easy to rationalize, and hard to practice."), but candor in the attorney-client relationship makes eminent good sense, and last time I checked, the North Carolina State Bar Rules of Professional Conduct require that lawyers not undertake matters they are not qualified to handle.

But while seconding the laudable position that an attorney must own up to the client when the skill set is simply lacking, I have to exude just a little schadenfreude by noting that nothing pleases me more than to have a litigator (as opposed to a trial lawyer) oppose me in court when the clerk starts seating jurors in the box. No trial lawyer worth his or her salt has not experienced the relief of facing an arrogant opponent, who has wreaked havoc in pleadings, pretrial motions and discovery, only to show up in front of a jury with no earthly idea about how to try a case. If that sounds familiar, then the Texas authors have a very good point. As "Dirty" Harry Callahan expressed in the movie, *Magnum Force*, "A man's got to know his limitations."

But even before getting to the courtroom for trial, the litigator is at a disadvantage against a seasoned trial attorney. Without jury experience, a litigator is at a loss to know what discovery to pursue and how, for the purpose of marshalling the evidence for a jury. Similarly, a litigator may lack the ability to assess a case objectively for settlement value for the same reason. The Texas article makes both of these points more eloquently, but the bottom line is, why would anyone ever settle a case with an opponent who cannot sell it to a jury?

The specter of lawyers bungling jury trials is hardly a recent phenomenon, however, but the more intriguing question is whether the premise of the Texas article is sound. The opinion opens: "The days of the trial lawyer are essentially gone. . . Trials themselves are essentially gone as well." Pointing to a number of factors that have contributed to the demise of this institution and its legal cowboys, the authors posit alternative dispute resolution as the wave of the future. They may well be correct, but trial lawyers are not quite dead yet in North Carolina, and I suspect that is the case in many other pockets of resistance around the country where high-stakes disputes are still settled the old-fashioned way.

For example, in this jurisdiction, a jury trial is still mandatory in certain instances. Will caveats require that a jury pass on the validity of certain testamentary instruments, and the caveat procedure

(if not the decedent) is alive and well here. The clerk of court may also require that twelve citizens pass on whether or not to commit someone to a psychiatric facility in incompetency proceedings. And until recently, all felony cases in the criminal arena had to be tried to a jury. Predictably, since that statute was amended in 2014 to permit such trials to occur before the bench (except where a death sentence may be sought), there have not been many takers from the ranks of the accused. Motor vehicle personal injury and medical malpractice cases still command the bulk of the jury docket in civil court, with the stakes ranging from $25,000 to $25,000,000. Certainly the number of jury trials has shrunk dramatically over the past generation, but in response so has the roster of trial attorneys. Hence, I occasionally get asked to go try a case before a jury on as little as 2-6 weeks' notice by some of the larger full service firms in the area that lack the skills and cost efficiency to pull trial lawyers from their own ranks.

It has been said that when a case is tried to a jury (or any other fact-finder for that matter), it means that one side or the other has miscalculated (i.e., usually the attorney of record). That may be true, but juries also make mistakes, and to that extent remain unpredictable even to the most intuitive of counsel, not to mention the jury consultants hired to do the background work. The recent CBS prime-time drama *Bull* may offer great entertainment in this regard, but as the title suggests, the premise of the series is equal parts psychobabble and fiction.

So juries can go off half-cocked on matters no one ever contemplated for reasons unrelated to the evidence (e.g., the color of the socks or tie a male attorney sports, stiletto heels on a woman attorney, whether the judge twirls his hair while listening to the case, how the bailiff interacts with jurors outside the immediate courtroom, what anyone had for lunch, an uncomfortable chair, etc.), but that is part of the package. A mediated settlement conference can end with both sides unhappy over the result, avoiding jury roulette, but not all cases are designed for such Solomonic resolution. Sometimes corporate fraud, government corruption, and individual skullduggery need to be addressed by more than a brokered pay-off, i.e., the law is more than just the price of doing business. Juries can demonstrate amazing collective wisdom and human decency on occasion; not all of them board a runaway train.

And yet, they usually get it right, if the lawyers are competent and play it straight and the judge is capable and fair. Having tried close to 300 cases in my career, I have seen only a handful of genuine miscarriages, perhaps one or two rivalling the Stalin instigated Moscow Trials of the 30s. This database is a testament to the value of a trial by one's peers (or at least a sampling of humanity drawn from the local community). As I wrote back in 1989:

The decision to opt for a jury trial must be made during the pleading stage of a case. The skilled practitioner must consider a variety of factors, including the nature of the suit, the complexity of the legal and factual issues involved, the demographics of the forum county and the tenor of the local judiciary. Judges are often reluctant fact finders, and many do not relish the role of trier of fact that is sometimes thrust upon them. The lay notion that a bench trial lacks the unfairness, unpredictability, and confusion of a jury trial is not borne out by experience. History teaches that a jury can best settle factual controversies, and a jury should therefore not be dispensed with lightly. When any doubt exists, the better practice is to demand a jury.

So the only remaining unanswered question is, of course, how one develops the skill to be a trial lawyer in this age of diminishing opportunity. Many law schools offer trial advocacy courses with mock jury trials, often pulling practitioners from the local bar to serve as adjunct professors in this regard. I have also participated in some of the national programs that offer instruction in trial advocacy. I confess that these can be poor substitutes for the real deal, but they may be a good start. I was thrown into the fray early on when fender benders could be tried to a jury in a day, and the stakes were often under five figures. But I also did a lot of second-chair work watching some of the legendary trial lawyers in this state strut their stuff in the courtroom. Great mentors make great trial attorneys, and I am indebted to those who took the time to teach me their craft. I may never be their equal, but I will always be up for the challenge.

G. Gray Wilson
Winston Salem, North Carolina

A full version of this article with footnotes is available in the College's Library on the website, www.actl.com. ■

TEXAS FELLOW NEAL MANNE SETS THE BAR FOR PRO BONO WORK

It is an old adage that if you want something done right, give it to a busy person. For all those lawyers who say they are just too busy to take on pro bono work, Fellow **Neal S. Manne** of Houston, Texas shows that adage is really true. Despite being a full-time trial lawyer in bet-the-company litigation and despite also being the Managing Partner of Susman Godfrey LLP, Manne regularly makes time to personally handle pro bono cases.

In fact, Manne recently was told he does more pro bono work than any other managing partner of a national firm. Just a few of his pro bono matters make it clear he is a leader by example.

In a successful pro bono representation in early 2016, Manne and the ACLU defeated multiple requests for injunctions by the state of Texas to prohibit placement of Syrian refugees in Texas. Manne appeared in that litigation on behalf of the International Rescue Committee, a non-profit refugee resettlement agency.

For the past two years, he handled, pro bono, a grievance filed with the Texas Bar against a former district attorney for ethical misconduct in a death penalty case that had resulted in the wrongful imprisonment of an innocent defendant for more than eighteen years. In 2016, the Bar's lifetime disbarment of the prosecutor was affirmed on appeal.

The exoneree, Anthony Graves, called Manne a "man of God who stepped up to help me get a measure of justice." As important to Graves was the emotional support provided by Manne and his wife Nancy, who "welcomed me back into society, treated me as the man I am, and helped me get my life back on track." Listening to him, it is clear Manne went above and beyond what was necessary to simply provide good legal representation.

Manne presently is working on another death penalty related matter, where the defendant has already been executed by the state of Texas. On behalf of the defendant's family, Manne, along with the Innocence Project, is pursuing a Bar grievance against the former prosecutor based on evidence that prosecutorial misconduct resulted in the execution of an innocent man. Tenacious is a weak adjective for Manne.

His newest pro bono case is a lawsuit (brought with Washington, DC-based Civil Rights Corps.) against Harris County, Texas, challenging the constitutionality of its system of money bail, which often results in long-term, pre-disposition incarceration of people simply because they are poor. The U.S. Department of Justice has agreed that money bail systems like this violate the Fourteenth Amendment. It is an important issue in our country's judicial system, and is the subject of ongoing discussion by the College's Access to Justice Committee.

Manne's pro bono commitment is in no way new-found. It dates as far back as the 1980s.

As a very young lawyer, Manne's first pro bono case was for Anna Mahoney, an elderly African American maid who had been swindled out of her Washington, D.C. home. Mahoney's employer had persuaded her to transfer title of the house to the employer, who assured Mahoney that she would make

all mortgage and tax payments for her lifetime. After Mahoney retired, the former employer stopped making the payments. Because Mahoney's name was no longer was on the title, she only learned about this when the bank, which already had foreclosed on the property, began eviction proceedings.

Working with his then-colleague and lifelong friend Michael Dreeben—now the Deputy Solicitor General of the United States, who has argued more than 100 cases before the U.S. Supreme Court–Manne represented Mahoney pro bono in a suit against the former employer and the bank. The court eventually ruled for Mahoney, who was then able to remain in the home for which she had worked so hard.

Over the years, Manne has had an incredibly wide range of pro bono cases, including cases against radical anti-abortion groups threatening violence against patients, doctors and nurses at Houston's women's health clinics. After a lengthy jury trial, Manne won a record-setting damages award and a broad "buffer zone" injunction to protect the clinics.

His pro bono legal work led the National Women's Political Caucus to honor him (along with then-Vice President Al Gore) as the national "Good Guy of the Year" in 1994. The Houston Press followed suit, calling Manne "Good Guy Lawyer of the Year" in Houston, and Planned Parenthood gave him its Public Service Award.

One of his longest-running pro bono cases pitted Manne against The Nationalist Movement, a virulently racist group that sued Houston's public access television station, claiming that the small fees charged for broadcast of non-local content violated its free speech rights under the First Amendment. Manne's litigation against this Mississippi-based white supremacist organization lasted more than ten years, including a trial and an appeal to the Fifth Circuit. In the end, all of the claims by The Nationalist Movement were dismissed.

Manne has not shied away from controversial cases involving potentially unpopular causes. In Houston, the county jail had a practice of refusing to accommodate the dietary rules of Islamic inmates, and refusing to allow them to eat later than 4:00 p.m., the regular dinner time, during Ramadan, the Islamic holy month during which Moslems do not eat until sunset each day. When an inmate filed suit on his own, a federal judge asked Manne to handle the case on behalf of all affected prisoners. Manne won broad relief for all Moslem inmates. The Harris County jail now accommodates religious dietary restrictions and holiday rules regarding meal times.

In addition to regularly handling individual pro bono cases, Manne is chair of the Board of Directors of Texas Defender Service (TDS), a nonprofit organization that provides pre- and post-conviction legal services in Texas capital cases. Kathryn Kase, the executive director cannot give enough accolades about Manne's dedication to pro bono legal services. She stressed that he not only handles cases himself, he encourages others to do so.

"TDS has benefitted from Neal's willingness to recruit lawyers and law firms to take on capital habeas cases. I'll never forget the time he left town to try a case in Alaska and, upon return, advised that he had persuaded opposing counsel to represent a Texas death row inmate pro bono publico. Now, that's lawyering!" Kase said.

It is not just his own clients who have good things to say about Manne's pro bono work—even folks on the other side of his cases do.

Terry O'Rourke, Special Counsel of the County Attorney's Office, is opposing counsel in the Harris County bail reform class action pending now in Houston. He described Manne as "an extraordinary litigator," and makes the point that "when a lawyer with his stature and acclaim undertakes to use his time and energies in pro bono representations, it is both impressive and noteworthy." O'Rourke added that "Neal works these cases, he is not just a name on a piece of paper."

Manne is the recipient of numerous awards for his pro bono work, including the Anti-Defamation League's 2011 Jurisprudence Award given for "commitment to equality, justice, fairness and community service," the Houston Bar Association Auxiliary's 2003 Leon Jaworski Award, given for "a lifetime of volunteer service," and recognition by his alma mater, the University of Texas School of Law, as the Distinguished Alumnus for Community Service.

Manne fulfills the highest aspirations of the College. His stellar example of furthering the administration of justice and ensuring access to justice for all, regardless of ability to pay, makes all Fellows of the College proud.

But he is not done yet. "Pro bono case are one of the most enjoyable and satisfying aspects of my practice," Manne said. "I'm fortunate that my law firm supports this work, and I look forward to handling many more pro bono cases in the coming years. It would be fun to work on some with other Fellows from around the country!"

Sylvia H. Walbolt
Tampa, Florida ■

ALL IN THE COLLEGE FAMILY

The American College of Trial Lawyers is a relatively small group, and it is always entertaining to meet Fellows who are related by blood or marriage to other Fellows. The *Journal* started to talk to those Fellows and found some who are parent/child, and others who are married to other Fellows. Perhaps there are others out there? If so, the *Journal* would like to know of any special relationships with other Fellows, as this is meant to be a continuing series. This article is just a start.

The Penningtons:

Untold and talented lawyers and judges populate the family of Regent **C. Rufus Pennington III** of Jacksonville, Florida and his father, Fellow **Carl R. Pennington Jr.** of Tallahassee, Florida. The two are probably the only related *entre-familia* Fellows who have been tried together as criminal co-defendants. Acquitted, of course.

The two tell different versions of the federal trial. Rufus claims he won acquittal for himself after a strategic and brilliant cross-examination of the federal agent who arrested them for violation of a statute dealing with the taking of migrant waterfowl with bait, while Carl had to defend both by proceeding with a Perry Mason moment, initiating a full defense by calling a previously unknown (and unseen) witness to the stand, whom Carl seduced into admitting that he and only he had committed the crime. They do agree, however, that Judge Maurice M. Paul of the U.S. District Court for the Northern District of Florida had Carl's witness arrested on the spot, and then gravely counseled Rufus and Carl never to darken his courtroom as defendants again. Carl judiciously responded that he would agree so long as the government never again brought trumped-up charges against innocent people.

Although trial law was initially the last career Rufus thought he would ever pursue, after Rufus had rebelled against his father and family and exhausted his grandmother's college money to pursue a Bahamian surfing life in 1973, Carl found Rufus a job as a laborer, and then a security guard, in earthquake-ravaged Managua, Nicaragua. When Rufus later returned home and started attending Duke University, Carl hired his long-haired, leisure-suited son as a summer runner at Carl's firm. Rufus suspected Carl knew he could be lured into the law (he describes Carl as a sidewalk psychologist), and Carl soon directed his son to obtain date-stamped documents from the circuit court in New Orleans, and then fly the

Rufus and Carl Pennington

documents to Washington, D.C., to file a petition for certiorari with the United States Supreme Court. When Rufus arrived at the Supreme Court, he found a line of citizens looped all around the building, waiting to enter the Court.

Rufus thought he had failed – he knew there was no way he could get past the line and get the petition filed that day, which was the last day for filing, but a friendly security guard helped him bypass the line to enter the clerk's office. The same guard explained that the crowd was present to watch the oral argument that day in *U.S. v. Nixon*, and then smuggled the young hippie into court to watch thirty seconds of brilliant argument by Past President Leon Jaworski. Walking out, Rufus decided that maybe the law wouldn't be such a bad gig after all.

After finishing law school and starting to practice with wonderful mentors and numerous Fellows, Rufus said he knew Fellowship in the College was a singular attainment. He worshiped the idea of the College but knew for certain he would never be in it. He was stunned when he was inducted in 2004 – into a group that included so many of his mentors. In his mind, the Fellows are not just great lawyers, but great people. "But I have never been exposed to a greater lawyer than my dad," he said.

Carl's entrance into the law was encouraged by the long line of family lawyers – Uncle Richard Ervin was a former attorney general and chief justice in Florida, and Uncle Bob Ervin was a president of The Florida Bar as well as a Former Regent of the College. Carl is well respected, and is not only a celebrated trial lawyer, but has been a board certified tax law practitioner as well. Still, he will steer most conversations to bone fishing or duck hunting, or adventure tales, of which he has many.

Carl said it is always the little cases that are memorable. He recalled the case where he represented an older woman in a claim, completed his direct examination and then tendered her to the defense. Defense counsel began his cross by asking: "How old are you?" After a five second pause, she turned to the very severe presiding judge and said: "Your honor, I object to the question. It ▷

has nothing to do with why we're here." The judge sustained her objection.

Carl's proudest moment in law? He represented a couple who got into a dispute with an adult daughter over the couple's property. The daughter had some sort of record interest in the real estate, which likely had no substantive value for anyone but the couple. After a divorce the daughter wanted larger share of the property, and Carl successfully defended the couple against her claim. It was about two years later, on Christmas Eve, that Carl got a call from his client, the father. The voicemail simply said that the couple had been sitting there that Christmas Eve, just thinking about how much Carl had genuinely helped them, and that they just wanted him to know that he was in their thoughts that holy evening. Carl still has the voicemail.

Carl's proudest moment in life? He is obviously extremely proud of Rufus and all that he has accomplished and become. Unless, of course, you want to talk about bone fishing, duck hunting or some other non-legal entertainment.

Randi Hood/John Connor:

John P. Connor Jr. finished law school in 1970, while **Randi M. Hood** completed her law education in 1975. They met a year after Randi's graduation when both were living in Missoula, Montana, and both were working as contract public defenders for Missoula County. They married in 1980.

They recalled an early date when the two traveled from Missoula to Helena for some sort of CLE seminar, along with co-workers Fred Van Valkenburg (later, the County Attorney for Missoula County, Montana) and Mike McGrath (currently the Chief Justice of the Montana Supreme Court). Practical jokes were the order of the

John Connor and Randi Hood

day, and Randi and John pulled one on Fred and Mike on the drive to Helena. Imagine Randi and John's surprise on the return trip when a state patrolman stopped their car, lights flashing, and told them the car they were driving had been reported as stolen. Fred and Mike huddled in the back seat, giggling, while Randi and John attempted to talk their way out of the crime.

Randi stayed with the public defender line of work, while John moved to the prosecution side. They worked on opposite sides of the criminal bar for nearly thirty years – John as head of the Montana Special Prosecutions Unit, and Randi in various positions, including a number of years as chief of the Montana Public Defenders' office.

Yet, John quickly pointed out that they never had conflicts about work. "We each respected what the other did," he said. They did converse and confer, and that gave each the necessary defense or prosecution perspectives on their respective cases, including a number of horrific homicide cases. Randi has tried more than forty homicide cases in Montana during her career.

Part of John's job in the Montana Attorney General's office was to train new county attorneys in the State. He said he always told them, "if you don't respect what the defense does, you have no business in this field."

What led them to the law? John said his father always wanted to be a lawyer and was in his first year of law school when World War II came along and interrupted his schooling. John said he had no other talents, and the law didn't require math, so he too chose to follow a legal career. Randi had no lawyers in her family, but her mother worked for a lawyer in Glendive, Montana, at one time, which caused Randi's grandfather to encourage Randi to become a legal secretary ("a good occupation for a woman"). She chose instead to become a trial lawyer, and has never looked back.

Randi's passion for the law and for her clients is obvious. John said that when Randi was interviewed for the post of Montana's Chief Public Defender, she said she "liked to give voice to those who had no voice." She has a "very caring heart, but I think everyone knows that." She is "absolutely courageous, fearless," except for riding motorcycles (one of John's passions has been his Harley). Randi said she has no idea what she might have done if she was not a trial lawyer. After being employed as a public defender for just one month, she knew that was exactly what she should be doing

What is something about John that most folks don't know? Randi said, "He's a really good cowboy—he helps all his friends brand cattle, and move cattle from here to there." John recently got a new hip, and as a post-surgical present to himself, he also got a new horse and a new horse trailer.

John said one of his most interesting cases was the prosecution of those involved in riots at the Montana State Prison in September, 1991. Five inmates were killed, the maximum-security building left in shambles, and various prison officials condemned for poor security and ignorance of warning signs. Overall, fourteen people were charged with violent crimes, with nine going through a complete trial. Yet, after convictions in all cases, there were no post-judgment appeals or writs for federal interventions. This was likely due, according to the then-Montana Supreme Court Chief Justice, to John's strategic decision in all of those cases not to ask for any death penalties.

Randi said John is a really good husband. Several years ago she had to go out of town about a hundred miles from their Helena home for a weeklong trial. When she arrived at the trial location, she discovered she had forgotten to pack any underwear. So she called home, and after some careful description, John located all the necessary articles and personally drove them down to her.

What do most people not know about Randi? In addition to being a top trial lawyer, she is an excellent seamstress, and through her entire career has designed and sewn all of her professional (and casual) clothes.

Carey E. Matovich
Billings, Montana

COMMITTEE UPDATES

ARIZONA STATE COMMITTEE

Arizona Fellows Sponsor Jenckes Competition, Pay Tribute to Deceased Fellow

Since 1970, the Arizona Fellows have proudly sponsored the Jenckes Competition, an annual closing argument competition between the law schools at the University of Arizona (U of A) and Arizona State University (ASU). The competition honors a beloved Arizona Fellow, the late **Joe Jenckes**. The law schools at the U of A and ASU internally select two-person teams by late October. Fellows provide each team with a trial transcript (sans the closing arguments) of a real trial. Civil and criminal trials alternate year to year. Each team is given 35 minutes to present its argument with the plaintiff or prosecution team reserving time for rebuttal. The Fellows who attend the competition deliberate and decide on the winning team.

The site of the competition alternates between the two schools each year. So as to minimize any bias, Fellows do not know which team represents which school until after the winner is declared. After the competition, the teams and all those present at the competition are invited to a reception sponsored by the Fellows, where both teams are presented with a cash prize from the Arizona Fellows - $1,000 to each member of the winning team and $500 to each of the runners up.

On November 18, 2016, the Arizona Fellows convened at the U of A in Tucson and judged another Jenckes Competition. This year's competition was a criminal case involving a duo of hunters accused of illegally killing a mountain lion in a state park near Tucson. The arguments were hotly contested, and both teams did an excellent job.

After difficult deliberations, the Fellows ruled that the defense team—the team from the U of A—won the competition. Both teams and all in attendance were warmly greeted at the post-competition reception, where Fellows and students had the chance to get acquainted and discuss the arguments.

The morning after the competition, the Arizona Fellows held their annual business meeting. Regent **Robert K. Warford** attended both the competition and the Saturday meeting.

Next year's Jenckes Competition will be held at ASU's new law school located in downtown Phoenix.

Arizona Fellows will always remember deceased Fellow Barry M. Davis for his tireless and courageous advocacy in difficult circumstances for desperate and deserving clients. Beyond his dedication in representing his clients, Davis was deeply devoted to the teaching of trial advocacy. In keeping with his passion, the Arizona Fellows are offering their support of a new endowment established at the University of Arizona College of Law—The Barry Davis National Trial Team.

This endowment will support the Arizona Law Trial Team that competes annually in the College sponsored National Trial Competition. Those wishing to contribute to this endowment to honor Davis and support the teaching of trial advocacy should contact **Ted A. Schmidt** for further information, tschmidt@kss-law.com.

The Arizona Fellows will hold an all-day CLE on April 28, 2017 at the Phoenix Convention Center followed by a Fellows' meeting on April 28-29.

COMPLEX LITIGATION COMMITTEE

Complete Guide to Patent Lawsuits Now Available

Anatomy of a Patent Case: Third Edition is now available for purchase online or by calling 800-960-1220. The new edition was published and written in partnership with the Complex Litigation Committee and the Federal Judicial Center. Fellows who are interested in purchasing a copy may receive a twenty-five percent discount by using the discount code ACTAOP. The website to purchase is: https://www.bna.com/anatomy-patent-case-p17179870731/.

The Honorable Paul Michel, Chief Judge (retired) of U.S. Court of Appeals for the Federal Circuit said in the book's foreword: "Despite the inherent complexity of the subject, their text is extraordinarily clear and eminently readable. It is, in addition, so well organized as to enable the readers to immediately find the exact place within each chapter for any issue then confronting them. Its initial use is for trial preparation, but then its proper place is on the judge's bench and the litigators' table, for it can be a daily resource."

The new Third Edition includes:

- A brand-new Chapter 15, Patent Office Inter Partes Review (IPR) and Other AIA Trial Proceedings: Comparison and Interplays with Patent Litigation, addressing key features of PTAB trials and the impact of PTAB trials on patent litigation in federal courts
- The impact of changes in the law resulting from numerous decisions from the Supreme Court, as well as the Federal Circuit Court of Appeals, including what subject matter is eligible for patent protection, how the all-important claim construction determination is to be made and when attorneys' fees should be granted
- Amendments to the Federal Rules of Civil Procedure that alter pleading requirements

INTERNATIONAL COMMITTEE

International Committee Hosts Delegation From China

On September 21, 2016, at the request of the International Law Institute, three members of the International Committee, Regent **Susan J. Harriman**, Former Regent **Robert A. Goodin** and International Committee Chair **Richard C. Busse**, along with Past President **Charles B. Renfrew** and Honorable **Susan Illston**, U. S. District Judge for the Northern District of California and Judicial Fellow, made a three-hour panel presentation to a 21-member delegation of the China Law Society of the People's Republic of China in San Francisco at the law offices of Keker & Van Nest, LLP.

The delegation is focused on judicial reforms in China, and is considering whether to move to a jury trial system. Before meeting in San Francisco, the delegation met with representatives from the Justice Department, the U.S. Senate Judiciary Committee, the Ninth Circuit and the U.S. Supreme Court.

The China Law Society is the official organization for China's legal profession, with its members participating in the nation's legislative, judicial and law enforcement functions. It plays an important role in developing that country's legal system, fosters legal research and promotes the rule of law in China.

The program was presented in five parts: the history of the jury trial; the jury system; the essential role of the independent jury system in U.S. trial courts; jury selection; and the grand jury's role in criminal cases. The presentation was presented in English with consecutive translation into Mandarin. At the end of the presentation, the panel took questions from the audience.

OHIO STATE COMMITTEE

On November 17, 2016, the Ohio Fellows sponsored a full-day CLE program in conjunction with the Ohio State Bar Association (OSBA). The program was titled "ACTL Winning At Trial 2016." Six Fellows covered pre-trial procedures, voir dire, opening statements, direct examination, cross-examination, closing arguments. The trial components incorporated actual ▷

trial videos and Fellows talked about their strategy and techniques during the trial. Four Fellows then presented a 2 ½ hour presentation on ethics and professionalism using the College's video vignettes and *Code of Pretrial and Trial Conduct*. The program was presented to a live audience at the OSBA office in Columbus and simultaneously webcast to four other locations in Ohio. More than 150 attended the program and it was taped for later replay. The following Fellows participated in the program: **John C. Barron**; **Doreen Canton**; **Thomas M. Green**; **David C. Greer**, former Ohio State Committee Chair; **Thomas W. Hill**, former National Moot Court Competition Committee Chair; **Gerald R. Kowalski**; former Ohio State Committee Chair; **Robert W. Trafford**; Regent **Kathleen M. Trafford**; and **Elizabeth B. Wright**.

On December 6, 2016, four Fellows presented a program titled "ACTL Professional Conduct" in conjunction with the OSBA. This program used the College's video vignettes and *Code of Pretrial and Trial Conduct,* with the four Fellows commenting on each of the ten vignettes. The program was presented to a live audience at the OSBA office in Columbus and simultaneously webcast to four other locations in Ohio. A video replay of the program was planned for December 30, 2016.

NORTH CAROLINA STATE COMMITTEE

North Carolina Fellows Plan And Present Legal Services Trial Skills CLE

North Carolina Fellows planned and presented a two-day CLE focusing on trial skills for approximately 100 legal services lawyers on October 26 and 27, 2016, in Greensboro, North Carolina.

The CLE was a featured part of the 2016 North Carolina Legal Services Conference titled "Looking Ahead: The Path to Justice." The Conference was sponsored by the North Carolina Equal Justice Alliance, a group of providers of civil legal assistance to low income individuals in North Carolina. The Equal Justice Alliance includes groups such as Legal Aid of North Carolina, NC Prisoner Legal Services and Disability Rights of North Carolina.

The program, planned by North Carolina State Committee Vice Chair Mark Holt and Alan M. Ruley, included the following topic and speakers: Evidence Refresher for Litigators; Effective Discovery and Motion Practice; Ethics and Professionalism: Pretrial and Trial; Negotiation and Alternative Dispute Resolution; and Direct and Cross Examination. The following Fellows participated as speakers: **Catharine Biggs Arrowood**; **C. Mark Holt**; **Maureen Demarest Murray**; **Leslie C. Packer**; **W. Doug Parsons**, Judicial Fellow; **Alan M. Ruley**; **Wade M. Smith**; **G. Gray Wilson**.

A $3,730 grant from the Foundation allowed the program to be videotaped for future use. The program also used the *Code of Pretrial and Trial Conduct*, and copies were made available to attendees.

The presentations were very well-received, with numerous questions from the attendees and discussion of topics of interest. Celia Pistolis, the Chair of the Equal Justice Alliance, said that "The North Carolina Fellows presented a fantastic trial skills track for the 2016 NC Legal Services Conference. Mark Holt and Alan Ruley assembled a team of presenters who are clearly some of the best trial lawyers in the state. It was a thrill to see those attorneys in action! The caliber of the materials and presenters made this CLE track a very popular one at the conference. There were great interactions between the attendees and presenters as well as amongst the presenters themselves. Undoubtedly, the legal services attorneys who attended will put to use the tips and strategies they learned."

Given the success of the program, the Equal Justice Alliance and the North Carolina Fellows hope to make the program a regular part of the Equal Justice Alliance's bi-annual conference for legal aid lawyers. ■

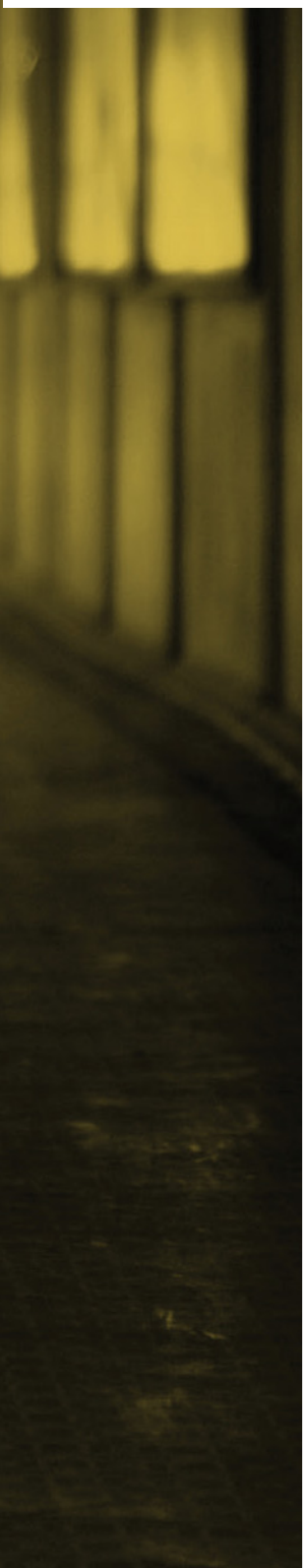
MONTREAL

AMERICAN COLLEGE OF TRIAL LAWYERS ANNUAL MEETING
SEPTEMBER 14-17, 2017, FAIRMONT THE QUEEN ELIZABETH

SAVE *the* DATE

KIDS ARE DIFFERENT: GUMPERT AWARD SETS RIPPLES IN MOTION

Then-College President **Chilton Davis Varner** presented the Emil Gumpert Award to the Miller Resentencing Project of the Florida State University College of Law Children in Prison Project during the 2013 Annual Meeting of the College in San Francisco, California. The Miller Resentencing Project focuses on Florida children serving mandatory life sentences who were juveniles at the time of the crime. In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Court ruled that a mandatory life sentence without the possibility of parole in a homicide case is unconstitutional for juvenile cases. Paolo Annino, Director of the Florida State University Public Interest Law Center of the Florida State University College of Law and his students are awaiting a decision by the Florida Supreme Court to decide if *Miller* will be applied retroactively.



"I'm here doing something I've never done before." The three-member Florida Commission on Offender Review in Tallahassee, Florida, sat rapt as Florida's Sixth Circuit State Attorney Bernie McCabe spoke those words before them in September 2016. At issue was the continued incarceration of Timothy Kane, arrested when he was 14, and serving life in prison for two counts of first-degree murder. What happened that day started with a ripple set in motion by a small stone: the presentation of the 2013 Emil Gumpert Award to the Miller Resentencing Project of Florida State University.

The 2013 Award, likewise, was an earlier ripple prompted by the United States Supreme Court in *Miller v. Alabama,* just over one year earlier. The Court in *Miller* held "We require [a sentencing court] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." The Miller Project was conceived to build upon new rights created by the *Miller* ruling, in order to provide legal representation to Florida inmates who were juveniles at the time of their crime and had been sentenced to mandatory life sentences without parole in homicide cases. *Miller* found mandatory sentences of life without parole for a minor at the time of the crime to be unconstitutional as a violation of the Eighth Amendment's ban on cruel and unusual punishment. At the time of the Gumpert award in 2013, the Project estimated 260 inmates had a right to be resentenced. Twenty-eight other states had a prison population of approximately 2,700 inmates who now might be subject to resentencing.

Today, Professor Annino said the Miller Project would not have succeeded without the Emil Gumpert Award. The Gumpert Award funded a full-time Graduate Fellow, Eric D. Schab, a 2013 graduate of the Florida State University College of Law, to assist the Public Interest Law Center with the resentencing project full time. "We simply would not have had the capacity to take on this Project without the Award," Annino said.

The first step in taking on the challenge was to litigate what cases *Miller* applied to: were they only the cases "not final" as of the date *Miller* was decided, or did *Miller* apply retroactively, to all cases of juveniles who received a sentence of mandatory life without parole? The future of hundreds of inmates was in the balance. To deal with this issue, the Project was an attorney of record in the Florida Supreme Court case, *Falcon v. State*, arguing that *Miller* applied retroactively to all kids in adult prisons who had received mandatory life without parole. It prevailed.

In March 2015, the Florida Supreme Court held:

> [W]e conclude that the Supreme Court's decision in *Miller* constitutes a "development of fundamental significance" . . . and therefore applies retroactively. . . . [A]ny affected juvenile offender shall have two years from the time the mandate issues in this case to file a motion for postconviction relief in the trial court seeking to correct his or her sentence based on *Miller*.

The ripple had become a wave.

A SECOND LOOK FOR JUVENILE OFFENDERS

But how many kids were in the path of that wave? No one knew how many *Miller* kids were residing in Florida prisons. The Project began gathering data. Based upon hours of digging through

records, the Project published its report, obtained largely via public records requests. The report, available online, lists the number of *Miller* kids by county and appellate district, and shows data broken down by race, sex and age at the time of offense (1: age 13; 8: age 14; 26: age 15; 65: age 16; and 101: age 17). To date, approximately 25% of this population has received representation by the Project or Project-directed volunteer attorneys in seeking resentencing under *Miller*. The Project has handled individual cases, has co-counseled with pro bono counsel and has otherwise assisted pro bono attorneys and public defenders in the state. And the report is a major resource in the Project's work to provide advice and support to pro bono attorneys and public defenders in juvenile sentencing matters around the nation.

The Project, recognizing that trial courts were at sea in dealing with resentencing of juveniles in the new environment, joined with other advocacy groups, Human Rights Watch and Southern Poverty Law Center, in advocating legislative response to Miller, resulting in a bill signed into Flordia law on June 20, 2014 ensuring that virtually all children who receive a lengthy sentence in Florida will be provided with a "second look," in the form of a judicial review after a set period of incarceration (twenty years for a juvenile convicted of a non-homicide offense and twenty-five years for a homicide), to determine whether or not the child has been rehabilitated. A Project report states: "Because of the Award, we had the legal staff capacity to do near-daily legal analysis of proposed legislative language and were able to meet with legislative staff to educate the Legislature about the constitutional requirements of *Miller."*

The ripples expanded to touch stakeholders outside the Project's ambit. *Miller* was restricted to only those juveniles with no-parole sentences. Hundreds more were imprisoned with sentences that allowed parole, but the Florida parole system was dysfunctional and paroles were rarely granted to those convicted as juveniles. One of those, Angelo Atwell, had a public defender who took the question to the Florida Supreme Court of whether life with parole was de facto the same as life without parole in Florida. The Project was notified, cooperated with Atwell's attorney and filed an amicus brief. On May 26, 2016, the court held that a sentence of life with parole in Florida was tantamount to one of life without parole and thereby prohibited by *Miller*:

> The issue we consider is whether Atwell's sentence for first-degree murder is constitutional, in light of the United States Supreme Court's decision in [*Miller v. Alabama*] which held that the Eighth Amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." We conclude that Florida's existing parole system, as set forth by statute, does not provide for individualized consideration of Atwell's juvenile status at the time of the murder, as required by *Miller*, and that his sentence, which is virtually indistinguishable from a sentence of life without parole, is therefore unconstitutional.

The resentencing review for Atwell is underway in the lower courts.

In May 2016, then, the *Miller* kids were joined by the *Atwell* kids. The Project is seeking to serve them all and help private advocates and public defenders in their efforts to that end.

"I'm here doing something I've never done before," said State Attorney McCabe. What the State Attorney was doing for the first time was asking that a convicted prisoner, Tim Kane, be set free.

HIS BACK STORY AND NEW FUTURE

As previously reported by the *The Florida Bar News*, on Super Bowl Sunday, January 26, 1992, 14-year-old Kane, who had no juvenile record, decided to go along with two older teens to burglarize a house. Alvin Morton, the 19-year-old ringleader, described by a judge as a sociopath, called two others who backed out of the plan sissies. The 14-year-old Kane could not find the courage to say no. In the house were a 75-year-old mother, and her 55-year-old son. When Kane tried to leave, Morton pointed a shotgun at him and said he wasn't going anywhere. Kane cowered by a dining room table as Morton shot the son; Morton and a 17-year-old stabbed the mother. Kane was found guilty of two counts of first-degree murder under the "felony murder rule." In the twenty-four years Kane has been behind bars, he has received no disciplinary report.

The Project has worked on Tim's case for over ten years and set the stage for the parole hearing. The outcome: because of the Project's work and the help and efforts of many others, Tim Kane will be released from prison in February 2017. The ripples are building a current.

Gary L. Bostwick
Los Angeles, CA

Bostwick served as chair of the Emil Gumpert Award Committee from 2010-2013. A full version of this article with footnotes is available in the College's Library on the website, www.actl.com. ■

FOUNDATION UPDATES

THE FOUNDATION HAS PROVIDED GRANTS TO THE FOLLOWING ORGANIZATIONS:

Cabrini Green Legal Aid: $50,000 to support a project called Open Doors for Youth, a proactive criminal records expungement program for emerging adults

Emory Law Volunteer Clinic for Veterans: $50,000 to support the mission of the clinic, whose efforts include assisting veterans with claims before the Veterans Administration

Institute for the Advancement of the American Legal System (IAALS): $45,000 to support the development of initial discovery protocols for Fair Labor Standards Act (FLSA) cases.

South Carolina Access to Justice Commission: $18,500 to support the statewide Trial Advocacy Incubator Program, where 50 Fellows have signed up to mentor inexperienced lawyers as they handle residential landlord/tenant disputes that are referred from South Carolina Legal Services. The program was highlighted during the South Carolina Summit on Access to Justice for All on October 24, 2016.

The Foundation accepts applications from College committees and outside organizations requesting funding for proposed projects that are consistent with the College's objectives. The Trustees welcome project proposals with potential to leverage the Foundation's investments through model programs capable of replication in other jurisdictions. Applications should be completed and submitted to nationaloffice@actl.com.

VERMONT FELLOWS HOST SEMINAR FOR LEGAL AID ATTORNEYS

Vermont Fellows held a day-long continuing legal education seminar for lawyers from Vermont Legal Aid on December 12, 2016, focusing on developing skills in direct and cross-examination of parties and witnesses. Nine Fellows participated, and the Foundation approved a grant of $1,500 to the program.

The basic trial skills course was a hypothetical eviction proceeding entitled *NITA City Housing Authority v. Johnson*. The video and documentary materials were used with permission of NITA.

The seminar was held at the offices of Dinse, Knapp & McAndrew, office of Regent **Ritchie E. Berger**, in Burlington, Vermont. Three courtrooms were provided along with multiple witness preparation rooms for the attorneys who were assigned the tasks of direct examination of each of the two witnesses. Breakfast and lunch was also provided.

Materials were provided to all participating lawyers in advance of the seminar, so they could study the materials and prepare not only for witnesses' preparation and direct examination, but also cross-examination.

Volunteers from the community were asked to play the roles of the NITA Housing Authority manager and the defendant in the eviction proceeding, an elder female resident of the complex who had, as occupants in her unit, a granddaughter and great-granddaughter, and a 16-year-old grandson who was peripherally involved with a local street gang, which resulted in his arrest in a sting operation involving the sale of drugs, and further resulted in the eviction proceedings (allegedly under the lease agreement-Title 8 housing), which were the subject of the seminar.

As a part of the morning and afternoon sessions, the participating Fellows conducted their own demonstrations of direct and cross-examination of the key witnesses, which were very well received.

The attorneys present were assigned to plaintiff and/or defendant teams for the morning and afternoon sessions. Fellows served as judges in each courtroom and, at the end of each session, provided feedback, including discussions on analysis of the evidence and testimony for preparation on direct and cross-examination, trial tactics, and evidentiary issues.

At the end of the day, an additional roundtable discussion was held, and the young lawyers were provided opportunity for any additional questions and comments. It was a successful learning experience, both for the participants and, indeed, the Fellows.

If a State or Province Committee is interested in hosting a CLE program for public service lawyers, the College can provide a grant of up to $2,000 without a formal application. A Chair should provide basic details and the amount needed in an inquiry to the National Office, nationaloffice@actl.com. ■

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

June 3-5, 2016

Mount Washington Hotel
Bretton Woods, New Hampshire

REGION 12: NEW ENGLAND REGIONAL MEETING

The White Mountains in New Hampshire were the scenic backdrop for the Region 12 New England Regional Meeting. The annual event rotates among the states and provinces in the region, with the New Hampshire State Committee hosting this year's meeting.

The event began with a welcome reception and dinner on Friday, June 3. Nearly 70 Fellows and guests attended, including President **Michael W. Smith**; Past President **Michael E. Mone** and his spouse Margie as well as Past President **Joan A. Lukey** and her husband, Phil Stevenson; Regent **Liz Mulvey**, Former Regents **Bruce W. Felmly** and **Camille F. Sarrouf** and their spouses Susan and Joyce. The reception and dinner were held on an outside porch to enjoy the beautiful surroundings.

Saturday morning's program began with New Hampshire State Committee Chair **Wilbur A. Glahn, III**, offering welcome remarks.

President Smith then presented plaques to the two members of the winning team of the 2016 National Trial Competition, Amanda Mundell and Joe Resnek from Harvard Law School. Resnek was also presented the award for winning Best Oral Advocate.

The next portion of the program was titled "Observations from the Campaign Trail 2016," consisting of a panel that included **Alison Morris**, a political reporter with the *Concord Monitor*; **Josh Rogers**, a senior political report for New Hampshire Public Radio; and **Dante Scala**, an associate professor of political science at the University of New Hampshire. The trio discussed the current political season with an emphasis on what they had learned during the New Hampshire primaries.

The panel also fielded questions from the audience.

The last speaker was Fellow **Daniel L. Goldberg**, who represents the New England Patriots. He discussed Deflategate and provided his insider perspective.

The remainder of the day was left open to enjoy the golf course or the ample hiking options on Mount Washington and other peaks in the Presidential Mountain Range. Many attendees chose to ride the Mount Washington Cog Railway, a 3-hour guided train tour to the highest peak in the Northeast. At the 6,288 foot summit, railway riders were able to take in the panoramic view, spanning the mountains and valleys of New Hampshire, Maine and Vermont, north into Canada and east to the Atlantic Ocean.

Saturday's evening reception and dinner was alive with collegiality. The real show was a 20-minute jam session led by guitarists and vocalists **Richard M. Zielinski** and Felmly.

The 2017 New England Regional Meeting will be held June 16-18 at The Algonquin Resort, St. Andrews By-The-Sea, New Brunswick.

The 2016 National Trial Competition winning team from Harvard Law School, from left, Joe Resnek, Fellow Richard Zielinski and Amanda Mundell.

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

August 4-6, 2016

Skamania Lodge,
Stevenson, Washington

REGION 3: NORTHWEST REGIONAL MEETING

The Oregon State Committee sponsored the Northwest Regional Meeting at Skamania Lodge over the weekend of August 4–6, 2016. Situated in the majestic Columbia River Gorge, many Fellows crossed the Bridge of the Gods spanning Oregon and Washington to reach the meeting venue, which provided a spectacular preview of the Columbia Gorge and the meeting site. The meeting drew attendees from six of the seven states and provinces that comprise Region 3. President **Michael W. Smith** and Regent **John J. L. Hunter, Q.C.** were among many honored guests.

The Skamania Lodge's outdoor amphitheater was the venue for Thursday night's welcome reception. Spectacular views of Oregon and the Columbia River Gorge, cool refreshments and hot hors d'oeuvres provided Fellows and guests with an antidote for a hot August evening.

In addition to a venue showcasing Oregon's natural beauty, the meeting's program showcased some of the state's other treasures.

The Saturday morning program began with a presentation with **Kerry Tymchuk**, executive director of the Oregon Historical Society. Tymchuk delighted the audience with artifacts and treasures from the vaults of the Oregon Historical Society, including a piece of the Willamette meteorite (the largest ever to hit North America); a branding iron carried by Captain Meriwether Lewis on his expedition; and countless anecdotes of political humor, including former Senator and Republican nominee for President Bob Dole's quip about the photo taken (at Anwar Sadat's funeral) of Presidents Carter, Ford, and Nixon: 'There they are. See no evil, hear no evil, and evil.'

The second presentation of the morning was on the "Oregon Wine Experience" by **Doug Tunnell**, owner/winemaker at Brick House Vineyards in Newberg, Oregon. A former CBS News foreign correspondent, Tunnell shared his experience establishing Brick House Vineyards as one of Oregon's iconic Pinot Noir and Chardonnay producers. Friday morning's session was concluded with a special screening of the documentary film, *Kids for Cash*, a riveting look behind the notorious kids-for-cash scandal that rocked the nation when it came to light in 2009. Later that afternoon, Tunnell and his wife, Melissa Mills, hosted a wine tasting of some of their celebrated Pinot Noirs and Chardonnays.

A forested clearing decorated with tea lights was the venue for Friday evening's dinner and entertainment. A Northwest family-style dinner was served followed by an evening of music and dancing with the Sean+Fred sextet providing a diverse mix of vocal jazz and R&B.

Saturday morning's program featured the Honorable **Thomas A. Balmer**, Chief Justice of the Oregon Supreme Court, who delivered an insightful and thought-provoking presentation titled "Poverty and Social Dysfunction: What Happens When We Fail to Promote the 'General Welfare'." Following Justice Balmer's presentation, Fellow **Steven T. Wax** discussed his work with the Oregon Innocence Project after his 31-year tenure as Oregon's federal public defender. The morning program also included a presentation by Oregon Health & Science University Foundation President, **Keith Todd**, who discussed the Foundation's successful completion of the $1 billion Knight Cancer Center challenge in 2015. Concluding the program was a fireside chat with Oliver Wendell Holmes, Jr. former Associate Justice of the Supreme Court of the United States and his alter ego, Fellow **William A. Barton**, who had filled the meeting room with his private collection of Justice Holmes' memorabilia. This dramatic, historical performance provided a fascinating insight into the private life of one our most celebrated jurists.

Golf, hiking, and Gorge excursions were popular Saturday afternoon activities.

The finale of the Northwest Regional Meeting was a reception and dinner at the beautiful Columbia Gorge Interpretive Center. Fellows and guests had the run of the entire museum during the evening. Remarks by President Smith and Regent Hunter concluded a successful meeting.

Joseph Arellano
Portland, Oregon

IN MEMORIAM

It was the vision of the founders of the American College of Trial Lawyers that the collective stature of those invited to Fellowship was to be the source of its own stature as an organization. It would be difficult to find a collection of life stories that better represents that vision than those of the thirty-nine Fellows whose passing is noted in the tributes that follow.

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WHERE THEY CAME FROM

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Their backgrounds were a portrait of a diverse 20th-century North America. One was the son of a Chief Judge of the District of Columbia Court of Appeals for whom the courthouse where he sat was named. Four were first-generation immigrants. One, a Ukrainian, was the first in his family to finish high school. Another, Armenian, went twelve years without missing a single day of school. Another, from a Russian Jewish family, regularly wrote to his grandmother in Yiddish until her death in 1941 at Nazi hands. One, the son of a British policeman, got his education articling for a London solicitor from age sixteen on and later emigrated to practice in Saskatchewan. Three grew up on farms, one of them the oldest of ten children in an Oklahoma sharecropper family whose first education came from a one-room schoolhouse. One had won a national high school debating competition, which led to a visit with President Harry S. Truman at the White House. One, the great-great-grandson of the tenth President of the United States, was the son of a father who held the basic patents for rayon and a mother who was the dean of a well-known college.

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THEIR JOURNEY TO THE LAW

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Some worked their way through college and law school, more than one paying for their education while helping to support their families. One worked as a clerk and investigator for a law firm while a law student. One worked as a night janitor. One whose parents died when he was young worked to pay his way through undergraduate school and graduated with high honors, a member of Phi Beta Kappa. One worked six nights a week at Radio City Music Hall. One worked thirty hours a week while holding multiple elected campus offices. Four were college athletes; one had a contract offer from a major league baseball team. Their journeys to the law varied. One, intending to be a career Marine, was badly injured in an explosion, spent two years in a hospital and, discharged, chose to go to law school. For many, military service intervened in their education. Twelve served in World War II, some immediately after high school. Seventy-one years later, names like Saipan, the Philippines, Utah Beach, the Battle of the Bulge and the retreat from Tobruk still crop up. One is buried in the National Cemetery at Cape Canaveral.

It is a given that virtually all were strong people and strong students. Their résumés are laced with notations such as Highest Honors, Phi Beta Kappa, Law Review Editor and Order of the Coif. Several were judicial law clerks. One clerked for three United States Supreme Court Justices and was widely given credit for steering one of them away from a concurring opinion that would have seriously weakened the majority opinion in *Brown v. Board of Education*. Another took a job as the office manager of a medical office to support his new solo practice. The one who began his education in a one-room schoolhouse worked his way through undergraduate and law school, finished law school at age twenty and went back home and picked cotton until he was old enough to take the bar examination.

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THEIR LONGEVITY

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Three of the thirty-nine were born before World War I ended with the 1918 Armistice. Twenty-five, all of whom experienced the Great Depression, lived past their eightieth birthday. One was inducted as a Fellow nine years after the College was created. The family of one Fellow who had been in his seat in church a few days before he died—fourteen days before his 100th birthday—

was certain that he would be chagrined not to have lived to 107, as had his mother. Ironically, one who died at age seventy-six left as a survivor his 100-year-old mother. Strong family ties were surely a factor. One departed Fellow left three children, all lawyers. One married a widow with four children and they then had three more. Fifteen had marriages of fifty-five or more years. One Fellow died eighteen days after the death of his wife of sixty-six years. One couple had been recently honored by the alumni of his law school as its "longest living love-birds." In that vein, the last of the tributes that follow is that to Ellen Badger Shanor, the wife of the fifty-second President of the College.

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THEIR CAREERS

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Some hung out their shingles, created their own firms and became the generalists who inhabit small-town courthouses and become pillars of their communities and mentors to the next generation. Others went to major big-city law firms, acquired clients with names like Truman Capote and John Lennon, became their firms' leaders and were the creators of new specialties in an era of change. The obituaries of some were published in *The New York Times* or *The Washington Post.* Your Editor Emeritus had to try to track down others on the Internet. The portrait of one small-town lawyer hung in the lawyers' lounge in his county courthouse, and an annual award to the courthouse employee of the year was named for him. One became the youngest judge in his state's history. One tried his first case at age twenty-one. One's life was changed after he went with his lawyer father-in-law to confer with Dr. Martin Luther King at the Lorraine Motel about the ongoing sanitation workers strike the day before King was killed. One was sent by President John Kennedy to Cuba to negotiate with Fidel Castro to secure the release of 1,113 Bay of Pigs prisoners and was Special Counsel in the "Abscam" probe of Congressional wrongdoing. One defended the National Guardsmen in the wake of the Kent State tragedy in the Vietnam War era. Much of their work was done pro bono. One created a pro bono post in his law firm and represented a Florida death row prisoner for almost three decades. In an era before unions gained some degree of recognition, one represented unions without compensation. In retirement, one African-American lawyer found a role in a program to help bridge the gap between young black men and law enforcement agencies.

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LIVES OUTSIDE LAW PRACTICE

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Many were adjunct professors, schooling law students in the realities of practice. Two had been full-time professors, one of them a legendary trial practice teacher. Many led their local bars. At least seven were presidents of their state bar organizations. Others led other national legal organizations. One was the national President of a charitable organization. Many led their churches; one of them held multiple high-level posts in the Mormon Church; another, the nation's longest-serving Chancellor (legal counsel) of an Episcopal diocese. And they had served the College when they were called on by its leaders to do so. At least seven were State or Province Chairs. Four chaired national committees; one was a member of the Board of Regents. They were not dull. Most lived to ripe old ages and never ran out of engaging interests. Many were world travelers. They were storytellers, mentors of children and grandchildren. One's book had won an Edgar Allen Poe Award. Two were licensed pilots, one of whom could also fly a helicopter. One sailed competitively for four decades. In retirement, one took up squash, piano lessons and flying lessons. In the year he died, one won a fishing tournament by landing a 301-pound Mako shark. One, an accomplished athlete and singer, sang tenor in a well-known organization for sixty-six years, directed and sang in many plays, collected almost two dozen trophies in racquet sports and rode a motorcycle well into his eighties.

With this issue, we have now published tributes to 1,388 departed Fellows of the College.

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.

Albert R. Abramson, '73, Abramson Smith Waldsmith, LLP, San Francisco, California, died September 7, 2016 at age eighty-nine. Dropping out of high school at age seventeen to join the United States Marines Corps during World War II, he served in Guam and Saipan during the later stages of the war. After graduating with highest honors from the University of California at Berkeley, where he was a member of Phi Beta Kappa, he earned his law degree from the University of California Hastings College of Law, where he was Note Editor of the law review and a member of the Order of the Coif. Married while in undergraduate school, he supported his wife, himself and his legal education by working as a law clerk and investigator for a local firm. Both he and his wife earned their pilot's licenses, and he also learned to fly a helicopter. He served as President of the International Academy of Trial Lawyers and was for many years thereafter President of its Foundation. He served for twenty-two years as a Board member in the American Board of Trial Advocates. He also served as President of the San Francisco Trial Lawyers Association and of the Hastings Alumni Association. A member of the Inner Circle of Advocates, he was the recipient of many honors for his advocacy. He endowed both a scholarship fund for Hastings students and a Distinguished Faculty Chair at its law school. A widower whose wife of sixty years had predeceased him, his survivors include a son.

Peter T. Affatato, '77, Massapequa Park, New York, died August 31, 2016 at age ninety-two in a nursing facility in Daytona Beach, Florida of complications of heart disease. Born and raised in Brooklyn, his undergraduate education at St. John's University was interrupted by World War II service in the United States Army Air Forces in New Guinea and the Philippine Islands. Returning to St. John's to earn his undergraduate and law degrees, he was recalled upon graduation to active duty as an officer in the Air Force Judge Advocate General Corps during the Korean Conflict. He spent his entire career as a solo, small-town practitioner on Long Island. A 1985 profile in the regional edition of *The New York Times* described him as "A Private Attorney and a Public Man." Known for wearing a hat twelve months of the year, he was regularly seen in the halls of his county courthouse until he was well into his eighties. For years, his portrait hung in his courthouse's attorney's lounge and an annual award given to the local Court Employee of the Year bears his name. A mentor to generations of young lawyers, he served as President of the Nassau County Bar and for decades served on his regional Bar's character and fitness committee, interviewing applicants for law licenses. He served for fourteen years on his local school board, including a term as its President, and he briefly served as Chair of the Board of Trustees of Briarcliffe College. A founder of his local Lodge of the Benevolent and Protective Order of the Elks, he rose first to the state, and ultimately to the national presidency of that organization. He was laid to rest with military honors at Cape Canaveral National Cemetery. His survivors include his wife of sixty-eight years and two daughters.

James L. Applegate, '81, a Fellow Emeritus retired from Hirst Applegate, LLP, Cheyenne, Wyoming, died October 5, 2016 at age eighty-five. After earning his undergraduate degree from the University of Notre Dame, he served as an officer in the United States Marine Corps during the Korean Conflict, thereafter earning his law degree from the University of Wyoming. He served as Assistant City Attorney of Cheyenne and then entered private practice. In a lifetime of public service, he was a State Senator for eight years, President of the Wyoming Board of Law Examiners and the Cheyenne Board of Public Utilities and Chairman of the Wyoming Retirement System Board of Trustees. He served the College as Wyoming State Committee Chair and was also a member of the American College of Trust and Estate Counsel. His survivors include his wife, a daughter and a son.

Richard Franklin Balotti, '93, a Fellow Emeritus, retired from Richards, Layton & Finger, PA, Wilmington, Delaware, died August 2, 2016 at age seventy-four. He was a graduate of Hamilton College and Cornell University School of Law, where he was a member of the Order of the Coif. A longtime Delaware corporate lawyer, he served as President of the Bar Association of the State of Delaware, was the co-author of the seminal treatise on Delaware corporate law and widely lectured on that subject. He served as an adjunct professor at the law schools at Cornell, the University of Miami, Widener University, the University of Iowa and Ohio State University. His survivors include his wife of forty-nine years, a daughter and two sons.

Richard S. Bannick, '82, a Fellow Emeritus, retired from Fowler, White, Burnett PA, Miami, Florida, died February 26, 2016 at age eighty-four after an extended illness. A graduate of Westminster College, where he was the quarterback of the football team, and of the University of Miami School of Law, he was for twenty-five years the managing stockholder of his firm. A member of the Board of Directors of City National Bank and a Trustee Emeritus of Miami Country Day School, he spearheaded the creation of a Chair of Neonatology at the University of Miami/Jackson Memorial Medical Center. His survivors include his wife of almost sixty-three years and three daughters.

William Gilbreth (Will) Barber, '83, retired from active practice in Texas and living in Gunnison, Colorado, died November 24, 2015 at age eighty-three as the result of an automobile accident. Having lost his parents at an early age, he worked his way through undergraduate school at the University of Texas, graduating with highest honors and earning membership in Phi Beta Kappa. After graduating from Harvard Law School, he entered law practice in Austin, Texas. After retirement from his original firm, he was Senior Counsel at Locke Lidell & Sapp and then Of Counsel to Hull Henricks, LLP. In the 1980s he served as Special Counsel to the Texas State Senate during an era of sweeping tort reform. A playground injury to a granddaughter moved him to become heavily involved in state and national legislation concerning playground safety. He served as an adjunct professor at the law schools of both the University of Houston and the University of Texas and served the College as Chair of the Emil Gumpert Award Committee. His survivors include his wife of fifty-seven years, two daughters and two sons.

Marion L. Beatty, '04, Miller, Pearson, Gloe, Burns, Beatty & Parish, P.L.C., Decorah, Iowa, died August 29, 2016 at age sixty-three of colon cancer. Raised on a family farm, he was a magna cum laude graduate of Luther College and earned his law degree in two years on an accelerated program at the University of Iowa School of Law. He practiced with the same firm for his entire career. He served as President of his county Bar, the Iowa State Bar, the Iowa Defense Counsel Association and the Iowa Academy of Trial Lawyers. He received awards of merit from his State Bar and the Iowa Defense Counsel Association and also received the Edward J. Seitzman Award from the latter. In the civic arena, he had received a Distinguished Service Award from Luther College and had served as President of his local Chamber of Commerce, the local Medical Center Foundation, the United Way and the County Historical Society. His survivors include his wife of forty years, a daughter and two sons.

Gary L. Birnbaum, '01, Dickinson Wright PLLC, Phoenix, Arizona, died November 1, 2016 at age sixty-four. A summa cum laude graduate of the State University of New York at Binghamton, where he was a member of Phi Beta Kappa, he was a magna cum laude graduate of the University of Indiana at Bloomington School of Law, where he was Articles Editor of his law review and a member of the Order of the Coif. He served as President of the Phoenix Little Theater and on the Board of Visitors of the University of Arizona College of Law. For fifteen years he taught at the Sandra Day O'Connor School of Law at Arizona State University. His survivors include his wife of forty-three years.

Jeffrey Owen Bramlett, '12, Bondurant, Mixson & Elmore, LLP, Atlanta, Georgia, died July 28, 2016, at age sixty-two. After earning his undergraduate degree at the University of Maryland, he worked as a legislative aide to Texas Congressman Bob Eckhardt before earning his law degree at the University of Texas, where he was Notes Editor of his law review. He then served as a law clerk to Judge Jerre S. Williams on the United States Court of Appeals for the Fifth Circuit before beginning practice with the firm where he spent his entire career. He served as President of both the Atlanta Bar Association and the State Bar of Georgia and as a delegate to the American Bar Association House of Delegates. Past President of the American Civil Liberties Union of Georgia and a former national Board member of that organization, he was Chair of the Georgia Chapter of the American Constitution Society. He received the Elbert P. Tuttle Jurisprudence Award of the Anti-Defamation League, the Atlanta Bar's Charles E. Watkins Award for sustained service and its Harold G. Clarke Professionalism Award. He was an elder in his Presbyterian church as well as a coach for his children's basketball and soccer teams. His survivors include his wife, two daughters and a son.

Thomas L. Brayton, '84, Waterbury, Connecticut, died October 14, 2016 at age eighty-four. A high school and college baseball player, he had once been offered a contract with the St. Louis Cardinals. Graduating from Providence College and married the year he graduated, he joined the United States Marine Corps in the Korean Conflict era, intending to make that his career. An accidental explosion, however, left him with severe injuries that required two years of hospitalization and recuperation. Changing his life's course, he applied to the University of Connecticut Law School, but ended up spending his first year at Boston University School of Law, demonstrating that, despite his injuries, he was fully capable of handling the rigors and demands of law school and law practice. At that point, he transferred to the University of Connecticut to be closer to his already growing family in Connecticut and completed his legal studies there. He never allowed his physical limitations to hinder anything that he wanted to undertake, and he eventually practiced in a firm with his son to the end of his career. His wife of thirty-nine years having predeceased him by twenty-two years, his survivors include three daughters and two sons.

Lawrence Keith Burleigh, Sr., '94, a Fellow Emeritus from Lafayette, Louisiana, died July 14, 2016 at age eighty-four. A high school athlete, his 100-yard dash record stood for ten years, and he ran on his college track team. He earned his undergraduate degree at the University of Louisiana at Lafayette and finished second in his law class at Loyola University New Orleans. Between undergraduate and law school, he spent three years in the United States Air Force in the Korean Conflict era, stationed in Germany. He practiced in Morgan City, Louisiana, for twenty-five years, then moved to Lafayette to practice with his son for another twenty years. He served as President of his Parish Bar and of the Louisiana Trial Lawyers Association and had taught trial tactics seminars at Harvard and Duke Universities. His survivors include a daughter and four sons.

David Earl Caywood, '94, Memphis, Tennessee, died September 7, 2016 at age seventy-nine. A graduate of Vanderbilt University, he had come across an application to take the LSAT exam and, seeing that it cost only $10 and since, as he later humorously related in a newspaper interview, he had $15 in his pocket, he took the test and thus ended up in the Vanderbilt University Law School. In 1968, six years into his practice, he, along with his father-in-law, were working closely with the local civil rights movement, representing the Southern Christian Leadership Conference in connection with the sanitation workers strike in Memphis. They had conferred with Dr. Martin Luther King, Jr. in the Lorraine Motel the day before he was assassinated, a day that he later related had altered his life. Caywood was thereafter awarded the Newspaper

Guild's Citizen of the Year Award for his contributions in attempting to settle the strike and calm the city in the wake of the assassination. He also received the University of Memphis' Pillar of Excellence Award. Principally a domestic relations lawyer, he had handled a number of high-profile divorce cases and was Tennessee's first member of the Academy of Matrimonial Lawyers. His survivors include his wife of forty-seven years, two sons and a stepson.

Nickolas Peter Chilivis, '73, a Fellow Emeritus, retired from Chilivis, Cochran, Larkins & Bever, LLP, Atlanta, Georgia, died October 4, 2016 at age eighty-five. He earned his undergraduate degree at the University of Georgia where, while working thirty hours a week, he was Cadet Colonel of the Air Force ROTC, President of the Inter-Fraternity Council and an officer of each of his four successive classes. He then finished in the top three in his class at the University of Georgia Law School. Entering the United States Air Force for two years, he earned a Master's degree from Atlanta Law School while in service. After practicing in Athens for twenty years, he moved to Atlanta to become Georgia Commissioner of Revenue. When his term was over, he practiced law in Atlanta until his retirement. In Athens, he had been President of his local Bar, a Judge pro tem, administrator of the local court and the treasurer of his church. For ten years he taught a course in jury trial practice as an adjunct professor at the University of Georgia Law School. In Atlanta, he served in many capacities, including as Vice-Chair of the State Depository Board and as a four-term Senior Warden of his Evangelical church. He represented the University of Georgia Athletic Association for over forty years and was a Trustee of the University of Georgia Foundation and a member of the Board of Visitors of its Law School. He had received the State Bar of Georgia's Tradition of Excellence Award and the Greek Orthodox Medal of Honor. His survivors include his wife of thirty-nine years, two daughters and a son.

Robert Custis (Cutty) Coleburn, '70, a Fellow Emeritus, retired from Simmonds, Coleburn, & Towner, Bristol, Tennessee, died April 30, 2016 at age ninety-three. He earned his undergraduate degree at Hampden-Sydney College and his law degree at the University of Virginia. At the time of his induction into the College, he was practicing with the Simmons firm in Arlington, Virginia. A widower, his survivors include two daughters.

David Robert Cumming, Jr., '81, a Fellow Emeritus, retired from Sutherland Asbill & Brennan, Atlanta, Georgia, died April 6, 2016 at age eighty-eight. After serving in the United States Army in World War II, he earned his undergraduate degree summa cum laude from Princeton University and his law degree from the University of Georgia, where he was valedictorian of his class and Editor of the law review. His survivors include his wife and four daughters.

Ralph Matthew (Mad Dog) Dawson, '68, a Fellow Emeritus, retired from Dawson & Sodd, LLP, Corsicana, Texas, died February 17, 2015 at age ninety-eight. A graduate of Baylor University and of its School of Law, he first practiced in Longview, Texas where, at age twenty-six, he became County Judge of Gregg County, the then-youngest judge in Texas history. After serving as a medical corpsman in the United States Navy in World War II, he established a firm with his brother in Corsicana, Texas, where he later served as President of his county Bar. After thirty-five years of practice, he was asked to fill the Leon Jaworski Chair in Practice and Procedure at Baylor Law School, where he became a legendary teacher. His mock trial teams won numerous regional competitions and two national championships. He started a tradition of internal mini-trials at Baylor. The winner of each competition receives an eighteen-inch high "Mad Dog" statuette of him. His life-size statute stands outside the practice court building at Baylor. His former students created the R. Matt Dawson Endowed Professorship in Trial Practice, and an advocacy award is named for him. After retiring from teaching, he practiced for two more decades,

during which time he was counsel in numerous high-profile cases, including one that resulted in the then-largest verdict in history. The Texas Bar Foundation had named him an Outstanding 50 Year Lawyer. He had served the College as Chair of the National Trial Competition Committee. A widower whose wife of over sixty years predeceased him, his survivors include three daughters and two sons.

Francis X. Dee, '93, McElroy, Deutsch, Mulvaney & Carpenter, LLP, Newark, New Jersey, a Former Regent of the College, died December 14, 2016 at age seventy-two. He was a graduate of Manhattan College who earned his law degree from Catholic University of America and his Master's degree in labor law from New York University Law School. After law school, he served for three years as an attorney in the National Labor Relations Board office in Newark, with a brief interruption for service in the United States Army Reserves. He was then Labor Counsel for Litton Industries before entering private practice. He received the Trial Attorneys of New Jersey's Trial Bar Award. His College service included chairing his state committee and the Regents Nominating Committee. He and his wife owned a charter fishing and commercial fishing business. On Father's Day, 2016, he won the Mako Mania Fishing Tournament by landing a 301-pound Mako shark. His survivors include his wife, a daughter and two sons.

John Merrill Dinse, '79, a Fellow Emeritus, retired from Dinse, Knapp & McAndrew, P.C., Burlington, Vermont, where he practiced for sixty-five years, died July 14, 2016 at age ninety-one. His undergraduate education at the University of Rochester was interrupted by service in World War II as an acting First Sergeant in the United States Army 94th Infantry Division. He earned a European Theater Ribbon with four battle stars and a Bronze Star for Bravery in the Battle of the Bulge. After completing his undergraduate education, he earned his law degree at Cornell University. A former President of the Vermont Bar Association, he was an original member of that state's Judicial Nominating Commission, serving as its Chair for eleven years. He served on the Board of Directors of the American Judicature Society, as President of the New England Defense Lawyers Association, as President and then Chair of the Board of the Defense Research Institute and as a Fellow of the American Law Institute. Instrumental in the creation of the University of Vermont Medical Center, he served on the governing boards of numerous medical organizations. His wide-ranging interests included preservation of natural resources, typified by his appointment to the Vermont Waterways Commission, and music, which led him to serve as Chair of the Board of the Vermont Symphony. The Vermont Bar Association had given him its award for professionalism and ethics. He had served the College as Vermont State Committee Chair. His survivors include his wife of sixty-seven years, a daughter and a son.

Michael Emerson Dunphy, '13, Cox & Palmer, Halifax, Nova Scotia, died October 11, 2015 at age sixty-three. After earning his undergraduate degree at Notre Dame University and his Masters of Business Administration at the University of Western Ontario, he graduated from the law school at Dalhousie University. As a teenager, he had been a junior hockey star. His survivors include his wife of forty-one years, a daughter and two sons.

Ford Franklin Farabow, Jr., '05, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Washington, D.C., died September 12, 2016 at age seventy-eight, after brain surgery following a fall. A graduate of Clemson University and of the George Washington University National Law Center, he had practiced briefly in South Carolina and then worked as in-house counsel for two corporations before joining the firm with which he practiced until his death. He had a national trial and appellate practice in patent and trade secrets, focusing primarily in the technical areas of chemistry, pharmaceuticals, chemical engineering and material science. His survivors include his wife, who was also his law partner, a daughter and two sons.

Burt James Fulton, '72, a Fellow Emeritus, retired from Galligher, Sharpe, Fulton & Norman, Cleveland, Ohio and living in Westerville, Ohio, died July 13, 2016 at age ninety-one. He began his undergraduate education at the University of Michigan, served in World War II in the United States Army as a squad leader in an intelligence and reconnaissance squad of the 417th Infantry Regiment, seeing action in three battles, including the Battle of the Bulge. Among his awards were a Bronze Star with Cluster for Valor and a Purple Heart. After the war, he attended Kenyon College, then graduated with distinction from the University of Iowa, going on to earn his law degree with distinction from the University of Iowa School of Law. For his first four years after law school before entering private practice, he was an Assistant Director of Law for the City of Cleveland. Among his notable cases was the defense of the National Guardsmen involved in the Kent State incident during the Vietnam era. His survivors include his wife of sixty-seven years, a daughter and two sons.

James Edward Gorman, II, '83, a Fellow Emeritus, retired from Lucco Brown Threlkeld Dawson LLP, Edwardsville, Illinois, died May 2, 2016 at age eighty-five. A graduate of St. Ambrose University and of the University of Illinois School of Law, he served in the United States Army Security Agency for two years after law school. Then, after two years practice in Peoria, Illinois, he moved to Edwardsville, where he practiced for the remainder of his career, retiring twice, once in 2002 and again in 2015. He served as President of his county Bar. Passionate about sailing, he sailed competitively for four decades. After his death, a book was found open on his reading chair opened to a story entitled *Happy Ending.* The first sentence read, "Sailing is a participant sport, and only a sailor can fully understand the tremendous attachment that kindred spirits have for their boats and the water." He had married a young widow with four children. His obituary humorously reflected, "Only a man of remarkable character, or some might say questionable judgment, would do this." He and his bride then had three more children, thus leaving him as survivors his wife of fifty-five years, two daughters, one son and four stepsons.

Frank Hastings Griffin, Jr., '71, a Fellow Emeritus, retired from Dechert, Price & Rhodes, Philadelphia, Pennsylvania and living in Newtown Square, Pennsylvania, died September 18, 2016 at age ninety-five. Finishing undergraduate school at Princeton University in 1943, he served in the United States Marine Corps in World War II, then earned his law degree from Harvard Law School. The son of a chemist who held the basic patents for rayon and a mother who was Dean of Women at Swarthmore College, he was the great, great-grandson of John Tyler, the tenth President of the United States. He practiced with Dechert for his entire career. In 1962, he was appointed Assistant Prosecutor of a Philadelphia Special Grand Jury to investigate alleged corruption in the local City Hall. The classic Renaissance man, an accomplished athlete and singer, he was a lifelong equestrian who as a youth had won the Puissance Class, involving high jumping, at the National Horse Show in Madison Square Garden. He played lawn tennis, court tennis and squash, winning a total of twenty-three assorted national championships across these sports. For sixty-six years he sang tenor in the Orpheus Club of Philadelphia and served as its President. A member of the Savoy Company of Philadelphia, he sang leads in many plays and stage-directed its productions for sixteen years, also serving as its President. He rode a motorcycle well into his eighties. His wife of sixty-four years predeceased him, and he had remarried nine years before his death. His survivors include his second wife, two daughters and a son.

Warren Eugene Hansen, '79, a Fellow Emeritus, retired from Hansen & Dewsnup, Salt Lake City, Utah, died November 5, 2016 at age eighty-eight, fifteen days after the death of his wife of sixty-six years. The second of eight children, he had grown up on a farm. In high school, he had won first place in the National Future Farmers of America

speaking competition, which resulted in a trip to the White House to meet President Harry Truman. Graduating from Utah State University, where he was President of the student body, he served in the United States Marine Corps in the Korean Conflict era and remained in the Marine Corps Reserves, retiring as a Full Colonel. He earned his law degree from the University of Utah School of Law, where he was a member of the Order of the Coif. After serving briefly with the Utah Insurance Commission, he entered private practice. He served as President of both his local American Inn of Court and the Utah State Bar. A devoted member of the Church of Jesus Christ of Latter-day Saints, he had served at various times as Bishop, Patriarch, Stake President, a member of the First Quorum of the Seventy and later as President of the Seventy and President of the Salt Lake Temple. He held an Honorary Law Degree from Utah State University and served as a Trustee of both that institution and Westminster College. His survivors include one daughter and two sons.

Patrick Nicholas Harkins, III, '97, a Fellow Emeritus, retired from Watkins & Eager PLLC, Jackson, Mississippi, died November 7, 2016 at age seventy-five. A graduate of the University of Notre Dame and of the University of Mississippi School of Law, he served as a Captain in the United States Army in Vietnam, stationed at Tan Son Nhut Air Base, Saigon, earning an Army Commendation Medal, a Vietnam Service Medal and National Defense Service Medal. He served as a legal assistant to a United States Congressman before entering private practice, and served as President of the Mississippi Bar Foundation and of the Defense Research Institute. He was active in the leadership of a number of health, education, retirement, religion and music-oriented organizations. His survivors include his wife, a daughter and a son.

Jack Caldwell Hebdon, '60, a Fellow Emeritus, retired from Groce, Locke & Hebdon from San Antonio, Texas, died February 12, 2016 at age ninety-three. A graduate of the University of Texas and of its School of Law, he tried his first case at age twenty-one. He had been President of his local Bar and of the Texas Association of Defense Counsel, a Vice-President of the State Bar of Texas and Chair of the Texas State Bar Foundation. Senior Warden of his Episcopal church multiple times, he had been Chancellor (legal counsel) of the Episcopal Diocese of West Texas for forty-two years, the longest-tenured diocesan chancellor in the United States, and a Deputy to General Conventions of the national church. He had been President of the Order of the Alamo and had served the College as Texas State Committee Chair. A widower whose wife of fifty-eight years had predeceased him, his survivors include a daughter and a son.

John Briggs Jenkins, '84, a Fellow Emeritus, retired from Gunn & Hickman, PC, Danville, Illinois, died May 12, 2016 at age eighty. An Eagle Scout, he was a graduate of the University of Illinois and of its School of Law. A licensed pilot, he had served on the Board of Governors of the Illinois Bar Association and served as President of his local Bar. A widower, his survivors include a daughter and three sons.

Frederic H. Kauffman, '80, Cline, Williams, Wright, Johnson & Oldfather, LLP, Lincoln, Nebraska, died July 27, 2016 at age seventy-six. After attending Iowa State University and then graduating from the University of Nebraska, he earned his law degree cum laude from that university's School of Law. He then served as a law clerk for a United States District Judge before entering private practice. President of his local bar and of the Nebraska State Bar Association, he had been a trial advocacy instructor at the University of Nebraska-Lincoln College of Law. Active in a number of health, public service and religious organizations, he had served the College as Nebraska State Committee Chair and as Chair of the Attorney-Client Relationships Committee. His survivors include his 100-year-old mother, his wife, a daughter, two sons and five stepdaughters.

Albert Momjian, '97, a Fellow Emeritus, retired from Schnader, Harrison, Segal & Lewis LLP, Philadelphia, Pennsylvania, died July 11, 2016 at age eighty-two. The son of immigrant Armenian parents, his father died when he was young, and he was raised by his mother and other family members during the Great Depression. A student who never missed a day of school in twelve years of public education, he earned his undergraduate and law degrees from Columbia University, attending both on full scholarships. He served in the Pennsylvania National Guard, eventually reaching the rank of Major. After a decade of general practice, he became a specialist in family law in a state that had not adopted no-fault divorce. A Diplomate of the American College of Family Trial Lawyers and a Fellow of the American Academy of Matrimonial Lawyers, he was a national leader in that field and the author of numerous publications and papers on family law, most notably as co-author of the treatise, *Pennsylvania Family Law*. He served as an adjunct faculty member at both Temple University Law School and Delaware Law School. He was also an ardent proponent of animal rights and an author of a regular column on animal law. He was known both for his representation of high-profile clients and for the cases, many for Armenian causes, that he handled on a pro bono basis. He was a former Grand Commander of the Ardashad Lodge of the Knights of Vartan, a 100-year-old Armenian fellowship organization, and of the Armenian Missionary Association of America and was heavily involved in raising funds after a 1988 earthquake in Armenia. At his death, his fellow lawyers, including those who had appeared against him, remembered him for the way in which he brought dignity and civility to an area of the law frequently characterized by contentiousness. He served as President of his local Inn of Court and for nearly four decades as an Honorary Consul of the Republic of Haiti and was a leader in seeking funding for Haiti after its 2010 earthquake. Among his many honors were the Judge Learned Hand Award from the American Jewish Committee and the Columbia University Alumni Medal for Distinguished Service. His survivors include his wife of fifty-seven years, a daughter and two sons, all three of whom are lawyers.

Edward John Moss, Q.C., '76, a Fellow Emeritus, retired from Balfour, Moss, LLP, Victoria, British Columbia, died September 25, 2010 at age ninety-two. His death was only recently reported to the College. Born in Great Britain, the son of a Brighton policeman, at age sixteen he was articled to a London solicitor. With the outbreak of World War II, he joined the British Army, serving in the Eighth Army in North Africa under General Bernard Montgomery. He was involved in the retreat from Tobruk in the face of attack by German General Rommel. After the war, he returned to complete his legal studies and practiced as a solicitor for eight years. In 1954 he emigrated to Leader, Saskatchewan, where he qualified as both a barrister and a solicitor. Moving to Regina, Saskatchewan, he eventually became a member of what became Balfour, Moss. For over twenty years he was counsel to the Wascana Centre Authority, a park complex in Regina. He served as President of the Law Society of Saskatchewan. At age sixty-five, he retired, saying, "Anne (his wife) has followed me for all of these years and now it is time for me to do what Anne wants." Moving to Victoria, they enjoyed the next twenty-seven years of retirement together.

Clarence Dewey Northcutt, '59, a Fellow Emeritus, retired from Northcutt, Clark, Gardner, Hron & Brune, Ponca City, Oklahoma, passed away in his sleep in his home on June 23, 2016 at age ninety-nine, fourteen days short of his 100th birthday. He was born in Guin, Alabama on his mother's twentieth birthday. His parents' oldest child, he eventually had nine younger siblings. He was still an infant when his parents traveled by train to Lexington, Oklahoma to share-crop on a farm. He began his education at a one-room schoolhouse. Entering the University of Oklahoma at age sixteen, he worked his way through school and earned his law degree when he was twenty. He then returned to the farm to pick cotton until he was twenty-one and could take the state bar examination and forever referred to himself

as a "cotton pickin' lawyer." He began his career in Ponca City and was hired by a local medical clinic as office manager, which enabled him to pay his bills while establishing his law practice. In World War II, he served in the United States Army's VII Army, Field Artillery, emerging as a Lieutenant-Colonel. From his experience which involved, among other engagements, the landing on Utah Beach in the invasion of Normandy, he received a Bronze Star, an Air Medal with Clusters and five battle stars. After the war, he returned to Ponca City and resumed his practice. His role in counseling Lydie Marland, the wife of oil baron E.W. Marland, was described in the made-for-television movie, *High Stakes*, and he had co-authored a book, *Palace on the Prairie*, about the famous Marland Mansion. A past President of the Oklahoma State Bar, he served his alma mater in numerous capacities. He was inducted into the Oklahoma Hall of Fame. He had served the College as Oklahoma State Committee Chair. An active member of his local Baptist church, he taught a Sunday school class, including a businessmen's class, for over fifty years. Twelve days before he died, he was the focus of a family reunion that drew nearly 100 family members, and he was in his "place" in church on Father's Day four days before he died. He did not achieve his goal of living to 107, the age at which his mother had died. A widower who had remarried at age ninety-two, his survivors include his wife, a daughter, a stepdaughter and a stepson.

Donald Roy Peterson, '86, a Fellow Emeritus, retired from Peterson, Johnson & Murray, S.C., Milwaukee, Wisconsin, died October 15, 2016 at age eighty-three. A graduate of the University of Wisconsin-Madison and of its School of Law, he had served as a Captain in the Judge Advocates General Corps. A state champion in tennis doubles in high school, he took flying lessons, became scuba-certified and began taking piano lessons in his later years. He and his wife were known for their adventurous vacations. His survivors include his wife of sixty-two years, a daughter and three sons.

Elijah Barrett Prettyman, Jr., '81, Hogan Lovells US, LLP, Washington, D.C., died November 4, 2016 at age ninety-one. He was the son of a Chief Judge of the United States Court of Appeals for the District of Columbia for whom its courthouse is named. He enlisted in the 84th Division of the United States Army after he finished high school, and saw combat in World War II in France and Germany. After earning his undergraduate degree from Yale University, he had a brief early career as a newspaper reporter in Providence, Rhode Island before earning his law degree from the University of Virginia School of Law, where he was a classmate of Robert Kennedy and where he won a prize for the best law review note of the year and was Decisions Editor of his law review. The only person to have clerked for three Justices of the United States Supreme Court, he served in that capacity for Associate Justices Robert H. Jackson, Felix Frankfurter and John M. Harlan. He is widely given credit for having persuaded Justice Jackson, for whom he was then a law clerk, not to circulate a proposed concurring opinion that would have significantly watered down the Court's ultimate decision in *Brown v. Board of Education*. He spent his entire career at Hogan, where he established an appellate division and represented many high-profile clients, ranging from Truman Capote to John Lennon, appearing nineteen times before the Court where he had clerked. While he was on his firm's Executive Committee, it established its own full-time pro bono practice. For almost three decades he and his team had unsuccessfully represented Florida death row prisoner and diagnosed paranoid schizophrenic killer John Ferguson. Prettyman took leave from his firm on more than one occasion for public service assignments. In the first of these, during the Kennedy administration, he was Special Assistant to the Attorney General and to the White House. He traveled to Cuba and negotiated directly with Fidel Castro for the exchange that liberated 1,113 prisoners taken captive after the failed Bay of Pigs invasion. He later served as Special Counsel to the House Ethics Committee during the

"Abscam" investigation, which resulted *inter alia* in the conviction of seven members of Congress. He also served full-time, without compensation, as Inspector General of the District of Columbia. The first President of the newly integrated District of Columbia Bar, he established a precedent that each of his successors make a priority of handling pro bono cases. He also served as President of the American Academy of Appellate Lawyers and of the District of Columbia Bar Foundation. He was the recipient of the Common Cause Public Service Achievement Award. An accomplished writer, his novel *Death and the Supreme Court* had won the Mystery Writers of America's Edgar Allen Poe Award and he was a past President of the PEN/Faulkner Foundation. Twice divorced and a widower, his survivors include his daughter and a son.

Noel Francis Stahl, '07, Butler Snow, Nashville, Tennessee, died August 11, 2016 at age sixty-eight. A graduate of Vanderbilt University, which he attended on a football scholarship, and of its School of Law, he served four years of active duty in the United States Marine Corps Judge Advocate General Corps as a staff JAG officer in the First Marine Division before entering private practice. He had been actively involved in leadership roles in several youth athletic organizations in Nashville. His survivors include his wife and three sons.

Theodore Oreck Struk, '88, Dickie, McCarney & Chilcote, P.C., Pittsburgh, Pennsylvania, died November 6, 2015 at age eighty-three. The son of Ukrainian immigrants, he was the first in his family to finish high school. He earned his undergraduate degree from Penn State University and his law degree from the University of Pennsylvania Law School, attending both on scholarships and working at night as a janitor to supplement his expenses. After law school he was a law clerk for a United States District Judge before entering private practice. He chaired the Board of Family House, a "home away from home" for patients and their families seeking medical care in Pittsburgh. A widower whose wife of fifty-one years had predeceased him, his survivors include a daughter and a son.

Harry B. Swerdlow, '77, Swerdlow & Swerdlow, APC, Beverly Hills, California, died May 26, 2016, at age ninety-eight. The son of Russian Jewish immigrants, he was born into a labor union family at a time when that was not an easy existence. Along with his public education, he attended a workmen's circle school for six years, learning to read and write Yiddish. He regularly wrote letters in Yiddish to his grandmother until 1941, when she was killed by the Nazis. Skipping two grades in school, he graduated from high school at sixteen and entered the College of the City of New York, helping to support his family by working six nights a week at Radio City Music Hall. Graduating at age twenty, he earned a Master's degree in American Literature at Cornell University before entering Columbia Law School. Invited to join the law review, he declined because his father had just died. Instead, while still attending law school, he worked as a Clerk in the Antitrust Division of the Justice Department in New York. Finishing law school a semester early, he enlisted in the United States Maritime Service in World War II. Discharged on account of a serious illness, on advice of his doctors, he left New York and took a job with the Antitrust Division of the Department of Justice in Denver, Colorado. Two years later, he moved to California and entered private practice. As a part of his practice, he represented, pro bono, labor unions, as well as a rebel, musicians union. His antitrust practice led to involvement in both the Manhattan Project and the Watergate trials. On Valentine's Day 2016, Columbia Law School honored Swerdlow and his wife, Edith, whom he had met in 1943 and married in 1948, as its "longest living love-birds." His survivors include his wife of sixty-eight years and four sons.

James Peterson Taylor, Q.C., '01, Taylor, Jordan Chafetz, LLP, Vancouver, British Columbia, died October 16, 2016 at age seventy-two. An Honours graduate of the University of British Columbia and of its School of Law, six years after he was admitted to the Bar, he returned to his law school as a professor, gaining tenure in three years and a full professorship two years later. He was co-author with the now Canadian Supreme Court Chief Justice Beverley McLachlin of the standard litigation text for British Columbia. He also served as Deputy Attorney General

and Deputy Minister of Justice for the Province of Saskatchewan. A park at the University of British Columbia is dedicated to his memory and he was awarded a Diamond Jubilee Commemorative Medal. His survivors include his wife and two daughters.

William Frederick Wenke, '78, a Fellow Emeritus, retired from Harwood, Adkinson & Meindl, Newport Beach, California, died May 28, 2015 at age eighty-six. A graduate of the University of Nebraska and of its School of Law, he served as President of the Orange County Bar Association, of the State Bar of California and of the Foundation of the University of Nebraska. He had been honored with the Salvation Army's Hand the Man Award. A widower whose wife of sixty three years had predeceased him, his survivors include a daughter and three sons.

Harold Lee Whitfield, '98, a Fellow Emeritus, retired from Whitfield, Montgomery & Staples, PC, Kirkwood, Missouri, died September 27, 2016 at age seventy-eight. A graduate of Washington University at St. Louis and of its School of Law, his legal education was interrupted by two years of service in the United States Army. For the first four years after he received his law degree, he served as Director of Conciliation for the Missouri Commission on Human Rights. He then served for four years as Administrative Assistant to the Regional Director of the United States Civil Service Commission. He served for four years on the Kirkwood City Council, was a Professional Municipal Judge for the City of Kirkwood, an adjunct professor of law at Washington University and a delegate to the 2008 Democratic National Convention. A Steward and Trustee of his A.M.E. Zion Church, he was a member of its Judicial Council. Over his career, he had received awards and resolutions from various governmental and professional organizations. In retirement, he found a role on a local radio station and through it became active in a Bridging the Gap program, designed to help restore the strained relationship between young black men and law enforcement agencies. His survivors include his wife of forty-eight years and two daughters.

An Additional Loss to the College Family

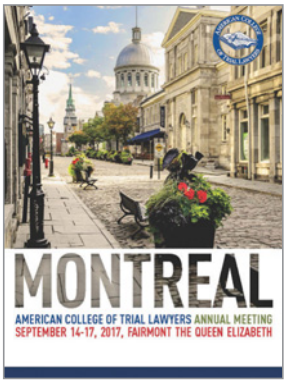
Ellen Badger Shanor, the wife of Stuart D. Shanor, Roswell, New Mexico, the fifty-second President of the College, died November 16, 2016 after a long illness. Raised in Hobbs, New Mexico, the daughter of practicing physicians, she was a graduate of the University of Michigan. A student of the Spanish language and culture, she also studied abroad at the University of Madrid. To those who knew her in Roswell she was an artist, a bird photographer, a leader of the local art museum, a longtime youth Sunday school teacher and neighborhood mom for all the children on her street, including her own son and daughter. She and Stu, lovers of the outdoors, spent many days exploring the West in their RV, which she called "my trailer." To those who knew her in the College, she was the woman who always had a smile on her face and a twinkle, a sometimes devilish twinkle, in her eye. Shortly after visitors from outer space were reported to have landed their spacecraft north of Roswell, she memorialized their alleged visit by sending some of her College friends pins bearing green extraterrestrial faces, black eye sockets and flashing pinpoint pupils. And many Fellows remember a College meeting where she and Stu closed down the dance hall on the opening night and their early disappearance the next night was explained by a note in Ellen's handwriting, posted on their room door, that read, "Twinkletoes done twinked!" She will be warmly remembered and sorely missed by those who knew her from all the years that the College meetings were graced by her presence.

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 in the "Events" section.

NATIONAL MEETINGS

2017 Spring Meeting
Boca Raton
Resort & Club
Boca Raton, Florida
March 2-5, 2017



2017 Annual Meeting
Fairmont The Queen
Elizabeth
Montreal, Quebec
September 14-17, 2017

STATE / PROVINCE MEETINGS

February 24-26, 2017	**South Carolina Fellows Meeting**
March 22, 2017	**Downstate New Fellows Dinner Meeting**
March 23-26, 2017	**North Carolina Fellows Dinner**
March 30, 2017	**Quebec Fellows Dinner**
April 2, 2017	**Maine Fellows Dinner**
April 7-8, 2017	**Virginia Fellows Meeting**
April 29, 2017	**Maryland Fellows Dinner**
May 5, 2017	**Southern California Fellows Dinner**
May 5-6, 2017	**Missouri Annual Fellows Retreat**
May 6, 2017	**Michigan Spring Black Tie**
May 19, 2017	**West Virginia Fellows Meeting**
June 21, 2017	**Kentucky Fellows Dinner**

REGIONAL MEETINGS

REGION 9
6th Circuit Regional Meeting
Kentucky, Michigan, Ohio, Tennessee
Griffin Gate Marriott Resort & Spa
Lexington, KY
April 21-22, 2017

REGION 12
Northeast Regional Meeting
St. Andrews, New Brunswick
June 16-18, 2017

REGION 4
10th Circuit Regional Meeting
Wichita, KS
August 17-20, 2017

REGION 3
Northwest Regional Meeting
Sun Valley, ID
August 24-27, 2017

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.