



JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

ISSUE 87 | SUMMER | 2018



DIRECTOR OF THE FBI CHRISTOPHER A. WRAY SPEAKS DURING THE 2018 SPRING MEETING IN PHOENIX. "THE RULE OF LAW, CIVIL RIGHTS, AND CIVIL LIBERTIES ARE NOT THE FBI'S BURDENS, THEY ARE THE VERY THINGS THAT MAKE US ALL SAFER."

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CONTENTS

FEATURES

2 Letter from the Editor	3 President's Perspective	73 Texas Fellow Also a Sculptor	77 All in the College Family
79 Three Months with Roy Cohn	87 Ice Skating with Refugee Children	95 Fellows Share War Stories	97 Fire Destroys Plaque, Not Fellowship
101 Tribute to Past President Charlie Renfrew			

COLLEGE MEETINGS

6 2018 Spring Meeting Recap	11 Former Senator Welcomes College to Arizona	15 FBI Director Reflects on State of the Bureau	23 Experts Discuss Water, Arizona's Precious Resource
27 District Court Judge on Arizona's Evolving Litigation Practices	33 Making of the <i>Marshall</i> Movie	39 Florida Supreme Court Judge, 3rd Recipient of Sandra Day O'Connor Award	45 Professor Discusses Casualties of the Drug War
49 Author Chats About Single Bloodiest Battle in Vietnam War	53 Canadian Justice Newest Honorary Fellow	57 Retired Police Officer Sees Adversity As a Blessing	65 Past President Tongue: Inductee Luncheon Remarks
67 Mary Kay Lanthier: Inductee Response	71 95 Fellows Inducted into College	99 Tri-State Regional Meeting Recap	

FELLOWS IN ACTION

64 Texas Fellow Reforming Bail System	76 Committee Updates	91 Fellows Travel to Guam for Trial Practice Workshop	109 College Competitions Recognize Law's Rising Stars
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ANNOUNCEMENTS

32 2018 Annual Meeting	76 College Updates
----------------------------------	------------------------------

IN EVERY ISSUE

76 Fellows to the Bench	90 Foundation Update	111 In Memoriam	126 Calendar
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LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

ISN'T BEING A TRIAL LAWYER, AS WE ARE, THE END CONSEQUENCE OF BEING A LITIGATOR? ADVOCACY, ON THE OTHER HAND, SEEMS A BROADER TERM, EMBRACING THE ART OF PERSUASION IN ANY FORM. BUT ATTORNEY JOHN G. BALESTRIERE URGES US THAT TRIAL LAWYERS AND LITIGATORS ARE DIFFERENT. IF YOU WANT TO BE A TRIAL LAWYER, BE A TRIAL LAWYER HE SAYS.

On his Manhattan firm's website, he notes that being a litigator only—that is, a lawyer who can't take the case to trial or verdict—isn't serving her/his clients as well as someone able to go the distance.

I suspect them's fighting words but I'm not here to quarrel, more to observe. In a couple of *Above the Law* posts ("A Trial Lawyer is a Whiskey Drinker" and "What Kind of Drinker (and Lawyer) Are You?" (2017), Balestriere posits an interesting theory, that litigators are wine drinkers, trial lawyers are whiskey (scotch? rye?) drinkers. I'm trying to unpack that as I've imbibed both over the years, though generally not at once. He quotes South Dakota Circuit Judge Cheryl Gering who chastised lawyers before her for wasteful trial practices instead of being focused on the task at hand, noting, "You need to be trial lawyers. A litigator drinks wine and takes depositions. A trial lawyer drinks whiskey and tries cases." I guess.

To sober up, attorney Kelly Twigger suggests that "The Pace of Change in the Law is Killing Lawyers" (*Above the Law*, August 2017). She means that it's too slow to adapt. Stalactites, which grow 1/8th of an inch every thousand years, she says, change faster than the legal profession. After savaging the billable hour, she

suggests we embrace new technologies and different models for our main responsibility, that of being "consultants on the law." It's seemed to me over the last few years that if we don't, we will be overtaken by other forms of more cost-effective dispute resolution, leaving us essentially irrelevant as a profession in much the same way that architects have lost their foothold to designers and planners. We are already seeing signs of this.

Before our untimely demise, however, the ABA National Task Force on Lawyer Well-Being has reported on several recommendations, their main thrust being that our individual good health "is an indispensable part of a lawyer's duty of competence." This, in turn, "is regulated by ethical and professional conduct rules" (Heather Buchanan, *IAALS Online*, November 16, 2017). Seems somewhat inconsistent with being either a wine or a whiskey drinker, but there it is.

Still, a recent study has found that "successful lawyers [are] more likely to experience mental health issues" clearly due to the stress of our work (Michelle McQuigge, *The Canadian Press*, October 22, 2017). No mention of either whiskey or wine here.

It may make no difference. According to journalist Bret Stephens, the art of disagreement is dying anyway ("The Dying Art of Disagreement," *The New York Times*, September 24, 2017.) On the other hand, this trenchant but negative view might be a positive development. It seems optimism is overrated. According to *The Atlantic*, it can leave you vulnerable to wishful, but unrealistic, action and thought ("The Power of Negativity," Sarah Elizabeth Adler, January/February, 2018). Who knew?

I'm going for a scotch. Anyone else?



Phoenix had more than risen from its ashes when we met there in March. Here, we present the highlights of the sessions and social events for both those who couldn't make the meeting and those who could, in short, for all Fellows.

N'Awlins has always seemed a city on edge, a dangerous element to it. We will see what develops as a crush of trial lawyers descend for four days in September.

Stephen Grant



10 QUESTIONS

FOR PRESIDENT SAMUEL H. FRANKLIN

PRESIDENT SAMUEL H. FRANKLIN STEPPED INTO THE ROLE AT THE 2017 ANNUAL MEETING IN MONTRÉAL. HERE, THE *JOURNAL* CHECKS IN WITH PRESIDENT FRANKLIN.

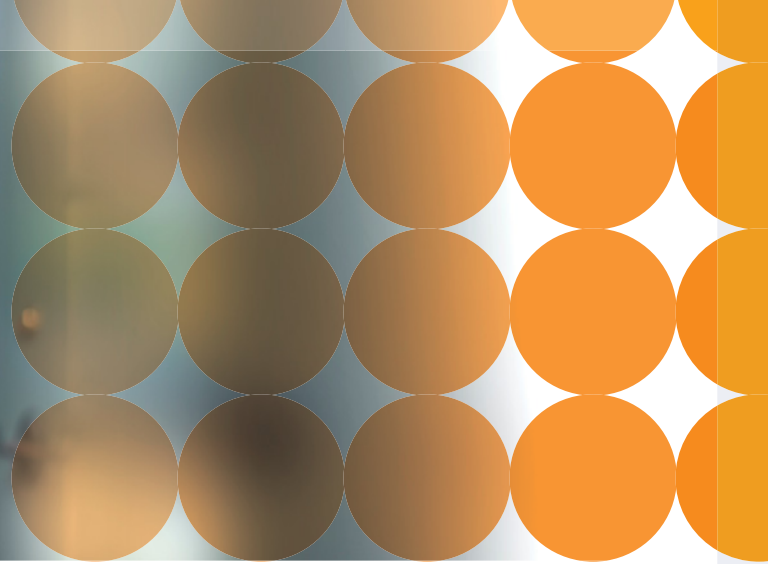
01 Starting in January 2018, you have attended four law school competitions on behalf of the College in a span of four months – the National Moot Court Competition (New York) and National Trial Competition (Austin, Texas) in the U.S. and the Gale Cup (Toronto, Ontario) and Sopinka Cup (Ottawa, Ontario) in Canada. How would you describe your experience from each? What opportunities do these competitions offer Fellows?

Although I have participated in judging some regional competition rounds in the past, I have never attended the national finals either in Canada or the United States. The experience of now being present for all four was quite rewarding as well as a lot of fun. First, these competitions do not happen without a large amount of work by our Committees both at the regional competitions and in connection with the finals. We have wonderful co-sponsors in all four of these and rely upon them to handle many of the administrative details and support. At the Canadian competitions, I was impressed to see members of the Supreme Court of Canada present and participating, which added to the experience of the competitors. It was impressive to see these young law students at their finest, and I was truly impressed by the

level of performance and the enthusiasm. It also pleased me to see the collegiality displayed by the competitors, particularly at the U.S. National Trial Competition. The two teams in the final round were both from Wake Forest Law School, and they had mutually supported each other throughout the year and in preparation for the final competition. They asked that neither team be declared the winner, but in a very close vote by our fifteen Fellows sitting as judges in the final round, one team was declared the winner. These competitions are fun experiences for our participating Fellows, and provide excellent exposure for the College to the participating law schools, the coaches and the law students.

02 During the recent 2018 Spring Meeting in Phoenix, you rode on a horse alongside the rodeo performers during the Friday night rodeo event, to the surprise of everyone there. How did that come about? What were you thinking while you were on the horse?





This came about by a lack of good judgment on my part when asked if I would do so! I had not been on a horse but once in my life, back in 1968 in Boulder, Colorado. I thought it would be amusing to our Fellows and guests, and the organizers assured me that they had not yet lost a rider participating in the opening ceremony. Once mounted, I could only think “for goodness sake, hold on, and do not fall off in front of all these friends.” I was also thinking thank goodness for the cowboy who rode alongside and made sure I made it.

03 What notable actions were taken by the Board of Regents during its Spring Meeting in Phoenix?

There were a number of important actions taken by the Board during this meeting. First, the Board approved our operating and capital budgets for fiscal year 2019, and reviewed pro forma financial statements for the following four fiscal years. This budget, as well as the preparation and use of the pro forma financials, included all recommendations made by the Long Range Financial Planning Committee, chaired by Past President Tom Tongue in 2017. We also approved the Task Force on Judicial Independence to review and update the College paper published in 2006 on that topic, and to evaluate other aspects of our mission statement in which the College can perhaps be more active and engaged. We approved the issuance of a public statement supporting continued federal funding for Legal Services Cor-

poration and approved a pilot program for Fellows to take on pro bono projects with other organizations in need of help. We approved a split into two separate Province Committees for Manitoba and Saskatchewan, and agreed that the Executive Committee would conduct a closer review and more monitoring of the few State or Province Committees where expectations are not being met.

04 Emphasizing diversity has been a key issue for you during your travels to different state and province meetings. What actions have you taken to “find the bright young trial lawyers who are clearly out there?” (Fall 2017 *Journal*, “A Profile on 2017-2018 President Samuel H. Franklin”)

As I prepare this, I have now attended in excess of twenty gatherings of Fellows since Montréal. On each occasion, in my brief remarks I have spoken to two aspects of our search for new Fellows, namely the need to be ever vigilant for young trial lawyers and second to be keenly aware of our need to be more diverse and inclusive. I have shared my concerns over our aging Fellowship, comparing the demographics of the College between 2002 and 2015, as those demographics were captured in connection with each of the Board retreats conducted those years. That comparison shows that the number of Fellows under age sixty has declined significantly, dropping from 1,435 to 673 over thirteen years. These topics were a major

part of our two Chairs Workshops last fall, the Regents are pressed on these issues at each of our Board meetings, and I have conducted two series of conference calls inviting all State and Province diversity liaison Fellows to participate. We are doing our best to share broadly with all of our State and Province Committees those techniques or actions which have proven successful in helping to identify trial lawyers who may not be well known to our existing Fellows, but may well meet our qualification standards. Only by keeping this topic a priority at each State and Province Committee meeting will we continue the progress we have made to date.

05 In that same profile, you spoke about the “power of personal relationships.” Can you give some examples that you have experienced first-hand during your travels?

Everywhere we have been we have seen old friends, and strengthened those friendships. Of course, a number of those Fellows and spouses are people that we have known going back to the time I first attended workshops as a State Chair, but have certainly come to know much better after four years as a Regent and now almost four years as an Officer. In addition, we have made many new friends, as people have been extremely warm and gracious in welcoming us to their gatherings. We have learned a great deal about their communities, their families and their practices. These relationships provide a great

foundation to know who to call whenever any issue, or need, arises. In trial work, we know that value can be added to the representation of our clients if we have a strong personal relationship with other counsel, without diminishing our ability to be a zealous advocate.

06 Because your home base is Birmingham, Alabama you spend a lot of time traveling for College events. How do you pass the time going to and from different cities and time zones?

It would be nice if there were a few more direct flights from and into Birmingham, and we have spent a lot of time in the Atlanta airport. The travel time provides an opportunity to catch up on reading and emails, thanks in part to Wi-Fi services on most planes, at least when the same is reliably working. The main thing we have done is to be sensible and not travel on the day of an event where possible. By arriving a day early, it has reduced some of the stress of travel difficulties, and has given us time to enjoy the wonderful places we have visited and to relax before evening events occur.

07 What has surprised you the most during your time as President?

I have been surprised by the number of routine, small items which seem to arise almost daily and are brought to my attention. These items include a number of communications from Regents or Committee Chairs about various issues, and questions raised by members of our excellent National Office staff, as well as occasionally direct inquiries from individual Fellows. An awful lot of effort goes into the support of our mission, the process to identify and consider potential new Fellows, and to support our various General Committees and occasional task forces. Eventually, it seems that many questions end up being directed to me as President, either to respond or to communicate with the Executive Committee, if the matter requires a broader consideration.

08 The question you are asked the most by Fellows:

In almost every gathering I have attended, I have offered to take questions on any topic, time permitting, and of course a number of questions are raised during receptions or over the dinner table. In the fall of 2017, the most frequent question

was along the lines of “tell us about the special Senate election in Alabama. Is Roy Moore going to win, or does Democratic candidate Doug Jones have a realistic chance?” I was amazed that this story, which did receive a lot of national attention, was of so much interest to our Fellows and spouses. Other typical questions are how much do you travel, how many events have you attended, and do you have time to do any legal work (to which I respond, “my partners would say apparently not!”). A number of Fellows also raised questions about when and how does the College determine that making a public statement on some issue is consistent with our established policies.

09 What do you hope to accomplish during the remainder of your presidency?

Having been involved in the work of the Long Range Financial Planning Committee, I hope to remain vigilant about our financial planning and practices, specifically to see that our budgeting process is thorough, that our financial planning for national meetings is sound and that the Executive Committee is a proper steward over all financial affairs of the College. Second, I intend to encourage and support the search for trial lawyers who meet our standards, with an emphasis on the obligation of each Fellow to assist in identifying younger, more diverse trial lawyers. Part of that effort includes making sure our State and Province Committee Chairs know the standards and guidelines for Fellowship. Third, I intend to continue to encourage participation and engagement by Fellows in activities of the College at some level, either by participation in our committees, participation in our regional competitions and CLE presentations, or attendance at meetings either at the national, regional or state or province level. Finally, I will make the effort to see that the Executive Committee, and the Board where necessary, identifies areas where we need to be active and involved so that we remain relevant to the trial practice and committed to our mission.

10 Five words to describe being President:

That is a tough question, as there are many, many words which come to mind. The ones which stand out to me at this stage are privilege, enlightening, challenging, inspiring and collegiality. ■



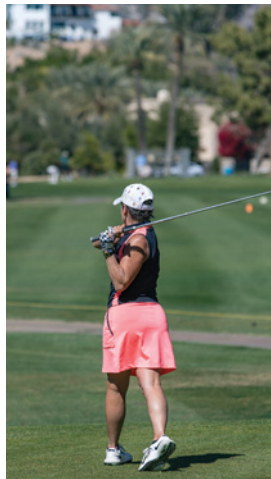
PHOENIX

SPRING MEETING 2018

A rooftop view of the President's Welcome Reception on Squaw Peak Terrace



A filled room awaits the start of the Thursday CLE "Mock Pre-Trial Hearing on Counsel's Request to Use Social Media Searches for Jurors Before, During and After Trial."



A tee shot right down the middle of the green



Roy Fitzgerald III and Ex Officio Pat Lowry of West Palm Beach, Florida; Pam Booker and Legal Ethics and Professionalism Chair Gene Pettis of Fort Lauderdale, Florida



Fellows who attended the Spring Training Game between the San Francisco Giants and the Cincinnati Reds gather for a shot behind home plate.



Horses and their riders in the grand entry parade during the Friday night event at Corona Ranch



Ted Schmidt and Mary Kay Davison, Arizona State Committee Chair Peter Akmajian and Kathy Stern of Tucson, Arizona



Inductees Peter Meyer of Concord, New Hampshire and Jonathan Brogan of Portland, Maine; Julian Sweet of Lewiston, Maine



A crooning cowboy atop his trusty steed serenades Fellows and guests as they enter Corona Ranch



Mary Beth and Dave Johnson of Pittsburgh, Pennsylvania



Alabama State Committee Chair Fred and Florence Tyson; Lucretia and Inductee Louis Franklin, Sr. of Montgomery, Alabama



Riding sidesaddle the women's formation drill team makes a pass around the ring





Inductee Ekwon and Bonnie Rhaw, Lynn and Terry Bird, Inductee Eric George of Los Angeles, California; Inductee Chuck Zauzig III of Woodbridge, Virginia; Inductee Regina Rodriguez and Arnold Woods of Denver, Colorado Chair

PHOENIX

SPRING MEETING 2018



Ninety-five Fellows face the audience while Past President Chilton Davis Varner, standing with the other Past Presidents, reads the Induction Charge



Inductees Darlene Jamieson, Q.C. of Halifax, Nova Scotia; Brenda Noble, Q.C. of St. John's, Newfoundland and Labrador; Nancy Rubin, Q.C. of Halifax, Nova Scotia; Rob Purdy, Q.C. of Truro, Nova Scotia; and Michelle Awad, Q.C. of Halifax, Nova Scotia



Lori Sylvester of South Windsor, Connecticut; Portia Rauer of Boise, Idaho; Kim Herlihy of Columbus, Ohio; and Missouri State Committee Vice Chair Kent Hyde join in during the Sing-Along



Past President David and Alison Scott of Ottawa, Ontario; Natacha Lavoie and Inductee Mathieu Piche Messier of Montréal, Québec



The Utah group gathers - from left, standing: Carlie Christensen and Herman Post; Trina and Michael Higgins; Hon. Linda Jones and Past President Fran Wikstrom; Steve and Kathryn Nester; Tara Isaacson; Greg Rogers. Kneeling: Wally and Tawni Budgen



Marne Obernauer and Jane Michaels of Denver, Colorado; Idaho State Committee Chair Newal and Linda Squyres of Boise, Idaho



Former Regent Bill and Mary Hanglely of Philadelphia, Pennsylvania; Brett and Former Regent Mike O'Donnell of Denver, Colorado

FORMER SENATOR WELCOMES COLLEGE TO ARIZONA





SENATOR **JON KYL** REPRESENTED ARIZONA IN THE HOUSE OF REPRESENTATIVES FOR EIGHT YEARS, BEFORE SERVING THREE TERMS IN THE U.S. SENATE. HE PRACTICED LAW FOR ALMOST TWENTY YEARS IN PHOENIX, ARIZONA, BEFORE BEING ELECTED TO THE HOUSE OF REPRESENTATIVES. “HE HAS A WELL-DESERVED REPUTATION AS SOMEONE WHO, AS A PUBLIC OFFICIAL, TOOK THE TIME TO UNDERSTAND THE IMPORTANT ISSUES FACING OUR COUNTRY AND TO CRAFT SOLUTIONS WHICH WOULD STAND THE TEST OF TIME,” SAID FORMER REGENT **WILLIAM H. SANDWEG, III** OF PHOENIX, ARIZONA, IN HIS INTRODUCTION OF SENATOR KYL DURING THE 2018 SPRING MEETING IN PHOENIX.

While in private practice, Senator Kyl developed an expertise in one of the most important issues facing Arizona—water and water law. Senator Kyl was the lead lawyer for the Salt River Project, a multi-purpose reclamation project begun in 1903 to bring reliable supplies of water and power to the Valley of the Sun, the Salt River valley where Phoenix sits. He played a significant role in the creation of Arizona’s landmark ground water law. In Congress, he completed legislation to fund the Central Arizona Project, which brings Arizona’s portion of the Colorado River to central and southern Arizona.

“His work involved resolving the conflicting claims by Arizona’s Indian tribes and other stakeholders to Arizona’s limited supply of surface water. During his time in the Senate, he was elected by fellow Republicans to many leadership posts, including that of Minority Whip. He was voted by *TIME* magazine as one of America’s 10 best senators. In 2010, he was named one of the most 100 influential people in the world. He was an important member of the Senate Judiciary Committee,” Sandweg said.

Senator Kyl offered remarks welcoming Fellows and their guests to Arizona.

“We, here in Arizona, love to have folks visit our incredibly different and great state. This morning I’ll tell you just a little bit about some of the history of the state. I hope your stay here is one that you will enjoy and talk about for a long time. This Arizona Biltmore is a historic place in Arizona. It’s been updated, modernized and remains one of our luxurious resort hotels. It’s hard when you’re here to imagine that you’re in the middle of a desert, which has problems relating to water. You’ve got one of the Salt River Project canals running right through the property. As you flew in to the airport and landed, you noted that you were over a desert. The Salt River, right next to the airport, was dry as a bone, because dams upstream have captured that water for use when it’s needed in the summertime.

“There’s a lot about the history of the state that revolves around this water. In fact, Arizona became the very last of the forty-eight contiguous states to be admitted into the union. One of the reasons was because of concerns about whether we would ever

“ QUIPS & QUOTES ”

You’re all familiar with the *TIME* Magazine lists of the 100 most this-and-that. The year that I was one of the most influential people in the world, another on that list was Lady Gaga. So, not sure what you can read into that.

Senator Kyl



“ QUIPS & QUOTES ”

In his first address to the Senate [after Arizona was granted statehood], Senator Henry Fountain Ashurst said he knew there are questions about Arizona. Only two things were needed, he said, ‘Water, and lots of good people.’ One of the senators from the back of the chamber said, ‘If the gentleman from Arizona will forgive me, that’s all they need in hell.’

Senator Kyl

have the opportunity to contribute economically, and otherwise, to the United States. They had big debates in the Senate at the time. Arizona got its statehood on Valentine’s Day 1912.

“You may have heard the phrase ‘in our water wars, whiskey’s for drinking, water’s for fighting.’ Unfortunately there’s too much of that that goes around. There are also some stories when an old cowboy friend of mine told me one summer, it was so hot here that the trees were actually chasing the dogs. This could be apocryphal, wouldn’t want to tell it to the jury.

“You’ll notice however that we’ve got a lot of great golf courses here. By state law, the golf courses are watered, and have been for many years now, with greywater, treated effluent. We get the very last little bit out of all the water that we do have here. In fact, the country’s largest nuclear power generating station, about thirty-five miles west of town, is also cooled strictly with treated effluent from the cities. We’re cognizant of the fact that we’ve got to be very efficient with, and take care of, the water that we do have. When you see these beautiful green golf courses, we’re not wasting the water on them.

“I see you will be going to spring training games, and if the Arizona D-backs are playing, you can see that we refer to our hometown team by that name. W. C. Fields had some great advice though, should you be out in the desert, he said, ‘Always carry a flagon of whiskey in case of snake bite and furthermore, always carry a small snake.’

“I’m going to tell you a true story. This one relates to two of the subjects that I’ve mentioned already. During World War II, about six miles southeast of here at a place called Papago Buttes, there was a prisoner of war camp, which primarily housed Nazi submarine POWs. On Christmas Eve, 1944, they decided to break out. Being good Navy guys, they built little boats. They had seen the maps of the Salt River, and they were only about a mile north of the Salt River. They figured they’d break out on Christmas Eve. Go down to the river, float all the way down to the Colorado River, and take Colorado all the way down to Mexico, and home free.

“They broke out, dragged their little boats down to the Salt River, and of course discovered the same thing that you discovered. Namely, it’s a dry river bed. There’s no water taking one down to the Colorado River. They’d already broken out, so they decided to disperse and see if they could make their way somewhere. For about a week, a lot of them hung around Camelback Mountain, which is directly east of here, about four miles. You’ll notice wind caves up there, where the wind has eroded fairly large caves. Apparently, some of these German submariners hid out in the caves during the day, and then they’d go down and sneak food and water. Within a week they were all captured, except one of the captains. He was finally apprehended at the corner of Van Buren and Central in downtown Phoenix. He spoke some English, but he had an accent. He was asking where he



could grab the bus to go to Los Angeles, and the accent gave him away. Every day the newspapers had just been crazy with the story of these prisoners who had broken out. So, he was apprehended, and put back in prison. That was the last that anyone heard about the POWs until after the war was over.

“There’s a lot of interesting history here in the state, despite the fact that it’s a very young state. I hope if you have extra time that you’ll have an opportunity to see some of the other things here, like the Heard Museum, which has one of the world’s greatest American Indian art collections. The Museum of the West, a cowboy museum in Scottsdale, which has a great collection of Hopi pottery right now as well as other interesting art. Other art galleries are there in Scottsdale. There’s so much to see here, you almost feel guilty being inside because the weather’s so nice. Either outside or inside, there’s a lot to do. I hope you take advantage of it, that you enjoy yourself, and that your stay here is therefore both edifying and enjoyable. I’ll close with a comment from my old friend Senator John McCain. He said, ‘You need to do your part to contribute to our economy. Spend money.’ I appreciate your being here, good luck with everything.” ■

“ QUIPS & QUOTES ”

You’re probably going to get some cowboy wisdom, being here in the state of Arizona. You gotta be careful of these cowboys, they have things to tell you like, never grab a bull by the horns, grab him by the tail. That way, when you want to let go, you can. There’s a friend of mine, Marshall Trimble. He was born and raised in Ash Fork, which is a little town up north. At one of his birthday celebration, one of the reporters from Phoenix said to him, ‘Tell me, have you lived here all your life?’ And Marshall said, ‘Not yet.’ There’s some wisdom in our cowboys.

Senator Kyl

FBI DIRECTOR REFLECTS ON PRESENT AND FUTURE STATE OF THE BUREAU



CHRISTOPHER A. WRAY IS THE EIGHTH AND CURRENT DIRECTOR OF THE FBI, HAVING ASSUMED OFFICE ON AUGUST 2, 2017, AND HE HAS DEEP ROOTS IN THE COLLEGE.

“His grandfather, **Samuel Gates**, a name partner in the firm then known as Debevoise, Plimpton, Lyons and Gates, was one of the preeminent trial lawyers of his time. He was not only a Fellow of the College, but in the spring of 1979, he was President-Elect, scheduled to become President in the fall. On the way to the Spring Meeting, he unfortunately had a heart attack and suddenly died. In his memory, the College created the Samuel Gates Award, for significant contribution to the improvement of the litigation process,” said Past President **Robert B. Fiske, Jr.** in his introduction of Wray at the 2018 Spring Meeting in Phoenix, Arizona. “Sam’s wife, Chris’s grandmother, Philomene, better known as Phil, was a powerful force in her own right. Growing up in the South, she was one of three women to graduate from George Washington Law School in 1941. She went on to have an extremely distinguished career practicing law in New York City and serving the community in a wide variety of ways.... She was a regular attendee, and an important presence, at every College meeting for many years after Sam passed on.”

His other major connection to the College was his good fortune in being able to work with three of its former presidents, **Griffin B. Bell**, **Frank C. Jones** and **Chilton Davis Varner**, after graduating from Yale and Yale Law School. Another King & Spalding partner who played an extremely important role in Wray’s career was Larry Thompson. When Thompson became the deputy attorney general of the United States in May 2001, he asked Wray to be his principal associate deputy attorney general.

In 2003, President Bush nominated Wray to be the Assistant Attorney General in charge of the criminal division, a position previously held by one of his predecessors at the FBI, Robert Mueller. He served there until 2005, and then left to return to King & Spalding.



On June 7, 2017, President Trump announced that Wray was his choice to replace James B. Comey as director of the FBI, describing him as, “an impeccably qualified individual.’ He went on to say in words that would resonate with all of us that know him, ‘I know that he will again serve his country as a fierce guardian of the law and a model of integrity,’” Fiske said. “I speak for all who know and have worked with Director Wray, to say that it is extremely reassuring and comforting to know that we have someone with his professional skills, integrity and courage, to lead the FBI at this critical time in our nation’s history.”

Wray spoke to the audience on the threats faced by the FBI, where the Bureau needs to be moving forward and the meaning and impact of the work and the people of the FBI.

A SIMPLE, PROFOUND MISSION

“First, I feel compelled to say a couple of things about what’s been going on at the Bureau over the past few months. I have been lucky to work with the men and women of the FBI through a big chunk of my professional career, both originally as a line assistant out in the field working on all manner of cases, from bank robberies to public corruption, kidnapping, to financial fraud. Then at main justice, I got to see a different side of the Bureau on the day of 9/11, and in the years afterwards, watching the way agents, analysts and staff tackled the national security mission. I could not ▶

“QUIPS & QUOTES”

I’m getting used to being introduced a lot, and that was a much warmer introduction than some of the ones I receive. I am really glad to be here because as you heard a little bit from Bob, I can confidently say that there’s no organization that meant more to my grandfather than this one.

Director Wray, on his introduction by Past President Fiske, which mentioned his grandfather Samuel Gates, a College Fellow and namesake of the Samuel E. Gates Litigation Award

be more fired up to be back and part of the Bureau's next chapter.

"It took me about five seconds after walking back in the door at headquarters to remember how much I had missed the mission, protecting the American people, and upholding the Constitution. Those are fairly simple words to say, but they are very profound to actually execute. I come back to them a lot because I think staying laser-focused on that mission has never been more important than right now. This has been, by any measure, a chaotic and uncertain time for the men and women of the Bureau on a number of different levels. In the midst of all the choppy water, my immediate priority has been to try to bring calm and stability back to the Bureau.

"I am hoping to steady the ship by keeping our eyes focused on the mission and the work, day in, day out, just grinding away. In a society that is impatiently fixated to a fault on the results, I am somebody that happens to be a big believer in process. Following our rules, following the law, following our guidelines. Trying to make sure we're not just doing the right thing, but doing it in the right way. Treating everybody with respect and pursuing the facts independently and objectively no matter who likes it. Those are not glamorous concepts. But I am firmly convinced that that is the approach that represents the Bureau at its best.

thing we can to keep the American people safe. When we fall short, because we are human like everybody else, we will make the changes we need to make to be stronger and better. I think the American people expect us to get it right the first time, and they deserve nothing less than that from us. With everything going on in the world right now, to say that our plate is full would be an understatement. Everywhere I turn, somebody's got some bright idea about something they think the FBI should be doing more of. I have yet, in my first six months on the job, to meet anybody who's got any bright ideas of things they think the FBI should do less of. If any of you know such a person, I would love to meet them, even just for the cathartic benefit of hearing that.

"National security remains our top priority as it has to be, and counterterrorism is still a paramount concern. The counterterrorism threat has morphed significantly since the last time I was in government. We are no longer just worried about large structured terrorist organizations like Al Qaeda planning large scale attacks in big cities like New York, Chicago and Los Angeles. That threat, to be clear, is still very much there. We now also face groups like ISIS, which can use social media to lure people in and inspire them much more remotely and indirectly to attack wherever and whenever they can. We face home-grown violent extremists who self-radicalize at home and are prone to attack with little warning. That new breed of terrorist is particularly troubling and challenging because unlike Al Qaeda, these folks use crude but agile methods of attack, from guns to knives to cars to primitive IEDs that they can figure out how to build just off the internet.

"Their attacks can be planned much more leanly and executed in a matter of days, or even hours, instead of weeks or months. They are perfectly happy to strike at so-called soft targets, which is an intelligence term that I have always despised, because soft targets basically means everyday people, living their everyday lives. People at concerts, people at cafes and clubs, people at their jobs, people walk-

“ QUIPS & QUOTES ”

With all the voices out there trying to speak for us or about us, we focused more on letting our actions do the talking. Our work is what is going to endure over time, as all the chatter fades.

Director Wray

"We have 37,000 men and women at the Bureau who understand that we prove our mettle, not through the chatter of cable TV pundits or social media, but through the actual work we do. One case at a time, one search warrant at a time, one interview at a time, one intelligence product at a time, one decision at a time. We intend to keep grinding away, doing every-

ing down the street. These terrorists can strike anywhere from big cities to small towns. Right now we have about 1,000 open investigations into just that category of terrorists in all fifty states. We're talking about homegrown violent extremists, individuals inspired by the global jihadist movement. That is the new normal that we have to contend with. It has created a whole new set of challenges, a much greater number of potential threats, even though each one of them might be more compact and lean.

“On the counterintelligence front, we still face traditional espionage - spies seeking our state secrets, working under diplomatic cover, or posing as every day citizens. Think of dead drops and tunnels, clandestine meetings in cafes, the kind of stuff you would see in a John le Carré novel. Today's spies also seek our trade secrets, our economic ideas or innovation. They are often businessmen, researchers, scientists or students acting on behalf of state governments. Nation states like China are attempting to infiltrate our companies, your clients, by any means necessary to get control of cutting edge technology. Not just by stealing propriety information, but also by extra-legal means, like acquiring the company, or exploiting business partnerships.

“That brings me to the third national security threat, the cyber threat. When I was last at DOJ as the head of the criminal division, we oversaw all cyber investigations. No area has evolved more dramatically since then, given the blistering pace of technological change.

“In 2005, when I left DOJ, social media did not really exist as it exists today. Tweeting was something that birds did. Today we live most of our lives online, and just about everything that is important to everybody in this room and our families, lives on the internet. That is a pretty scary thought. What was once a comparatively minor threat, people hacking for fun or bragging rights, has turned into full-blown economic espionage and breathtakingly lucrative cybercrime. This threat comes at us now from all sides. We have to worry not just about

“ QUIPS & QUOTES ”

If we only address the crisis of the day, which is all too easy to do, we quickly find ourselves addressing the crisis of yesterday and get way behind the curve.

Director Wray

a range of threat actors, from multinational cyber syndicates, insider threats and activists. We are also seeing an increase in nation state sponsored computer intrusions. We are also seeing increasingly what we are calling a blended threat, which is the nation state actor in effect hiring criminal hackers, or mercenaries, to help execute their efforts. We are also concerned about a wider gamut of methods, from botnets to ransomware.

“As if that trifecta, counterterrorism, counterintelligence, and cyber of national security threats were not enough, we are also responsible at the Bureau for a laundry list of criminal threats—everything from gangs to crimes against kids to public corruption to hate crimes to health care fraud and just about everything in between.

“Violent crime has been on the rise in a lot of areas in this country for the last several years. It is the top concern for our state and local partners. Our crime data for 2015 and 2016 showed increases in violent crime of roughly 4% a year. Four percent might not sound like a big number, but when you consider the sheer number of victims 4% represents in a country our size, you realize the human toll that is reflected in that increase. While preliminary statistics for the first half of last year, 2017, show that overall violent crime finally fell just a little bit, murders, and non-negligent manslaughters were up 1.5%.

“At the Bureau we are focused on doing everything we can to help our partners fight it. We now have 168 safe-street task forces, and forty-seven violent crimes task forces. We are also providing our state and local partners with intelligence related to gun crime and crime trend analysis. We are developing targeting packages, which help them prioritize neighborhoods, and prioritize their own resources in a way that makes their impact maximized.

“Closely connected to the violent crime problem is the country's opioid epidemic. We are trying to do our part, working not just with our partners in state and local law enforcement, and in federal agencies, but also in other ▶

disciplines. We have launched a prescription drug initiative, targeting criminal enterprises that engage in prescription drugs schemes. We are focused on medical professionals who distribute opioids with no legitimate purpose. We have established a high-tech organized crime unit, which focuses on the trafficking of opioids over the internet, especially the dark net. We have more than doubled our number of transnational organized crime task forces.”

PARTNERSHIPS AND INNOVATION

“Now a few hectic months into the job, I am still listening. I am trying to get to all fifty-six of our field offices by the end of this year. I am formulating my own long-term priorities about where the Bureau needs to be over the next ten years. There are a few, very positive, enterprise-wide things that have jumped out at me already that I thought I would flag. First, the FBI’s commitment to partnerships has evolved, almost breathtakingly, since the last time I was at DOJ. I am talking about partnerships with the rest of the intelligence community, our federal, state and local law enforcement colleagues, our foreign counterparts, our partners in the private sector in the communities that we serve. Partnerships are much more part of the DNA of the Bureau, and it is a real point of pride in every office that I visit. It is clearly a change that happened gradually over a period of time, but because I went into the private sector for a while, I am able to see the before and after in a way that jumps out at me. The FBI has always

been proud, passionate, persistent, perfectionist, and that has definitely not changed. What has changed is what our folks are proud, passionate, persistent and perfectionist about. That is their partnerships.

“It is a mindset of what can we bring to the table, what can they bring to the table. How can we match strengths, so that we can put the FBI’s two together with their two, and somehow have it equal more than four. Equal five, or six, or seven. That kind of sea change has made me realize more than ever, how important it is that we continue to nurture and build on those relationships as we move forward.

“The second thing that has really jumped out at me is our dramatically stronger integration of intelligence, and our continued need to focus on it, in everything that we do. Under Director Mueller’s leadership in the aftermath of 9/11, the FBI made a paradigm shift from a law enforcement agency that investigated crime after the fact to a national security service, working to prevent crime and terrorism. That transformation continued under Director Comey and today we have developed a sophisticated and complex intelligence program.

“We talk a lot about the term ‘intelligence’ in a national security world, but what it really boils down to is information. Information that we use to make decisions and to drive operations. Information that we share with the people who need



it, whether state, local, federal law enforcement, to the community and civic leaders, to business leaders in the private sector. On one of my first visits to the FBI Academy at Quantico I spotted this little stone plaque, tucked away on a corner in one of the courtyards. It was only about the size of an 8 1/2 by 11 piece of paper. It had a picture of the Twin Towers. Underneath the Twin Towers it just had two words, "Intelligence Matters." That is as true today as it was on 9/11, maybe even more so. We know we are going to be really great at intelligence. We have to get better at collecting it, at analyzing it, and sharing it, in everything we do.

"We have to make the best and highest use of the information we have. We have to be able to connect the dots and see the bigger picture. A lot of that is easier to say than it is to do. What I see is a radically more sophisticated and integrated effort to do that in the bureau. We are determined to keep pushing ourselves so that we can see not just those threats, but the threats that are coming around the pike. The FBI has come a long way in the years since I left DOJ, but I am continually asking myself, what's next? Where do we need to be down the road? As grateful as I am for the progress that Director Mueller and others launched fifteen or so years ago, that put us in the position we are in 2018, I am trying to focus on where do we need to be ten years from now? What kind of transformation do we need to have over the next ten years? To remain the premier law

enforcement and national security organization in the world, not just in 2018, but in 2028, and beyond? We need to get smarter and more agile than we have ever been. To do that, we are going to have to be more innovative.

"The word innovation is not something you normally associate with the federal government. When I talk about innovation, what I mean is not just technological innovation. I mean innovation even more broadly in terms of best practices, strategies, threat indicators, processes, partnerships, really anything that we can do to be smarter, better, more agile, more creative. As I make my way around the 37,000 people in the Bureau, I am trying to encourage everyone to think more, not just about what is directly in front of them, but more to think long term, ten, fifteen, twenty years. Where do we need to be then? What kind of innovation do we need? What is the threat that we are underestimating now, but that is going to be the biggest threat then? What will our workforce need to look like then? What will our technologies need to look like then?

"We are trying to drive that innovation in a variety of ways across the enterprise. Trying to rethink the way we work with our partners, the way we use technology, the way we conduct operations. For example, we now have a program called The Technology Accelerator, which provides a platform for employees to easily share and work on innovative ideas and solutions. One idea is a mobile app on FBI smartphones to collect crime scene and evidence data quickly and accurately. The goal is to cut down on the time spent at crime scenes, improve data accuracy and simplify the record keeping process. Frankly, it makes so much sense, you wonder, why didn't we think of it before? We are also encouraging all of the heads of our field offices to tell their employees to spend 10 percent of their time innovating. That is what they do at places like Google. Then, when they come up with brilliant ideas, they can submit them to the technology accelerator for development.

"This spring, we are holding our first innovation challenge to examine some of the top



technical problems reported over the past year from the field. Employees from across the Bureau will have two months to come up with solutions to those problems, and the winners will present their ideas at the Big Idea Summit, which we are holding at headquarters this summer. By fostering more of that culture of innovation, we hope to ensure that the Bureau will continue to always be leading the way, years and years from now.”

WORK THAT A FOUR-YEAR-OLD UNDERSTANDS AS MEANINGFUL

“I want to close with a few thoughts about the FBI’s work, the people and the challenging environment that we are in. It seems that there is no shortage of opinions about the Bureau these days, but an awful lot of that is rhetoric, without much to back it up. The old saying is true, talk is cheap. What is valuable are the views of those who actually know, who actually experience our work. Those are informed opinions. The juries who hear our hardworking agents on the stand, the magistrate judges who have to sign our warrants, the victims and their families - [they are the ones] that our folks get up every morning determined to protect, our year round partners in federal, state, local law enforcement in the intelligence community, overseas and in the private sector.

“Like me, those folks get to see the men and women of the Bureau for who they really are. People of integrity, people of compassion, and kindness, people fiercely focused on doing the right thing, in the right way. With all the voices out there trying to speak for us or about us, we are focused more on letting our actions do the talking. Our work is what is going to endure over time, as all the chatter fades away. I am doing my best to remind our folks of that. I am doing my best to try and reintroduce the country to the work that we do every day to protect Americans from national security threats coming from all sides to a mind boggling array of criminal threats. For example, this past December, our agents in Sacramento arrested Everitt Jameson who had pledged allegiance to ISIS, and was plotting an attack on Pier 39, in San Francisco on Christmas Day, combining the deadly tactics used in San Bernardino and at the Tribeca attack in New York. He planned to use explosives to funnel people into the area, so he could cause even greater casualties. Quite a number of lives were saved that day.

“In October, through something we call Operation Cross Country, which we conducted in forty-four states and the District of Columbia, we arrested 120 sex traffickers and recovered eighty-four sexually exploited juveniles. Those included a three-month-old girl and her five-year-old sister, who were recovered after a family friend, and I use that term about as loosely as I can, offered to sell them for sex for \$600.

“We also have our top ten most wanted fugitives program. Through that program we have been able to apprehend some of the most dangerous violent offenders over the past two years. One captures what I think is the character of the Bureau. Robert Van Wees turned himself in to FBI agents in January, a few weeks after being added to the top ten list. This is a guy who was wanted in Texas for the 1983 murder of a young woman who at the time had a one-year-old daughter. For thirty-three years, that woman’s daughter had hoped and prayed for his capture. He was finally arrested on her birthday, no less. Cold comfort. We hope it brought her some measure of peace and justice. To me, it illustrates the persistence, the relentless pursuit of justice that is so typical of the people I get to work with.

“That kind of work is what keeps us going when times get tough. The FBI’s work matters because with our investigations, people’s lives hang in the balance. That is why our actions have

to be based at all times on the guiding principles of adherence to the Constitution, the rule of law, integrity and fairness. The same in many ways could be said for your work. In different ways, lives, certainly livelihoods often hang in the balance when you take a case to trial. Like the men and women of the FBI, I think each of you understands that the rule of law is our country's bedrock. Every day at the Bureau we have to weigh our need to protect the citizens we serve with our duty to the Constitution and the rule of law. We have to weigh national security on the one hand, and privacy and civil liberties on the other. Director Mueller used to tell agents at Quantico graduations that it is not a question of conflict; it is a question of balance. That the rule of law, civil rights and civil liberties are not the FBI's burdens, they are the very things that make us all safer and stronger.

"As long as I am at the Bureau, we are going to make sure that we never forget that. As long as I am there, we are going to stay committed to doing things independently and by the book. If we start getting too worried about who is going to be happy, or unhappy, about the results of one of our investigations, or who is going to criticize us or praise us for one of our investigations, we are going to lose our way, and I am determined not to let that happen. We cannot let the ends justify the means. We have to have our means justify our ends. We are going to get through this current tumult by keeping our nose to the grindstone and doing great work, case by case, day by day, no matter what else happens.

"Every day I pass people on the street, who come up to me, and say, 'I just want you to know, we're all praying for you.' I believe strongly in the power of prayer, so my first reaction is, 'Thank you.' My second reaction is, 'I have not been in front of a television in the last two hours. Is this a new thing, or is this the other stuff?' I have tried to make that point to a lot of our folks because I think our 37,000 people have the same experience. One of the things I try to do is remind them about why they went into this work in the first place, and that is the mission.

"For me, I often think back to a time when I was an AUSA, working in Atlanta. My daughter was four. It was Dad's Day at the nursery school. One of the questions, of course, was what does your dad do for a living? This guy is standing next to me, and he keeps looking at me, so I start looking over at him. He says, 'Do you mind if I ask you what you do for a living?' I looked back at the bulletin board, and my daughter had put, 'My daddy and his friends put bad guys in jail and help keep us all safe.' Then I looked over at his daughter's answer. It said, 'My daddy talks on the phone all day, so mommy and I can buy nice stuff.'

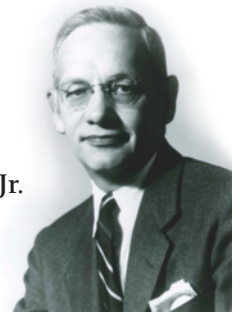
"What I try to say to our 37,000 people when they start to drag is if you want to do something that a four-year-old little girl gets as meaningful and impactful and valuable, you are in the right place. We know that the mission comes first. We know the American people come first. That has not changed, and it is not going to change. Thank you for inviting me here, and for taking the time to listen."

David N. Kitner
Dallas, Texas

Samuel E. Gates Litigation Award

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

Chair: **Robert C. Riter, Jr.**
r.riter@riterlaw.com



EXPERTS DISCUSS ARIZONA'S PAST, PRESENT AND FUTURE WATER SUPPLY

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ATER IS A HOT NEWS TOPIC, AS CAPE TOWN, SOUTH AFRICA, AND OTHER HIGHLY POPULATED AREAS START TO RUN OUT OF WATER. THE STATE OF ARIZONA HAS AN ANNUAL AVERAGE RAINFALL OF LESS THAN THIRTEEN INCHES, AND THE PHOENIX AREA ONLY GETS ABOUT SEVEN INCHES. SPEAKERS **DAVID C. ROBERTS**, THE SENIOR DIRECTOR OF THE WATER RESOURCES OF THE SALT RIVER PROJECT, AND **THOMAS BUSCHATZKE**, DIRECTOR OF ARIZONA'S DEPARTMENT OF WATER RESOURCES, HAVE WORKED THEIR ENTIRE PROFESSIONAL LIVES TO ENSURE THAT WHAT IS HAPPENING IN CAPE TOWN NEVER DEVELOPS IN THEIR STATE. THEY HAVE DONE SO BY BUILDING A LEGACY OF COOPERATIVE, STRATEGIC, LONG-TERM PLANNING OF WATER RESOURCES IN ARIZONA THAT CROSSES NOT ONLY STATE BORDERS BUT ALSO NATIONAL BORDERS. THEY SPOKE ABOUT THEIR EFFORTS AT THE 2018 SPRING MEETING IN PHOENIX, ARIZONA.

Roberts focused his comments on the features of Arizona's Salt River Project, noting that he is often asked, "Where is the water supply for this Phoenix metropolitan area?" There's no ocean, no large lake, not even a discernible river.

"The source," he said, "stems from some very smart people in the late 1800s, who had the vision, the passion and the perseverance, to take the small farming community with a very fragile water supply, and turn it into a multi-faceted federal reclamation project.

"The Phoenix water supply originates outside the metro area, similar to New York City. New York City gets its water from two watersheds in northern New York, more than 100 miles away. These two watersheds, and their reservoirs are located in a 2,000 square mile area, and the reservoirs hold about 1.7 million acre feet of water. San Francisco is another metropolitan area that gets its water from the Hetch Hetchy Reservoir in Yosemite National Park, about 170 miles from San Francisco. The watershed is very small, only about 500 square miles, with about 550,000 acre feet in the reservoir, supplemented by other suppliers.

"Then there is Southern California, which is the poster child in the United States in terms of water importation. Southern California gets its water supply from the Sierras, way up in Northern California. California also gets water from the Colorado River and it has been recently developing desalina-



tion plants in the San Diego area to supplement its water supply.

“While Phoenix only gets about seven inches of rain, mountains that rise to 10,000 to 12,000 feet in elevation are northeast of Phoenix. Those mountains, in the Salt River and Verde River Watersheds, encompass 13,000 square miles, and have four to five times Phoenix’s rainfall. A number of reservoirs were constructed by the federal government and the Salt River project in the early 1900s in these watersheds, and that is the primary water supply for the Phoenix area. The reservoirs collect water that is gravity fed to consumers through the natural stream beds of the Salt River and Verde rivers.

“The cornerstone of the Phoenix surface water supply system is the Theodore Roosevelt Dam, completed in 1911. It is 357 feet high and was refurbished in 1995. This dam is the reason why Phoenix is here today. It creates the largest reservoir in the system, holding about 3.2 million acre feet of water. Compare that to New York City’s water supply, with reservoirs of about 1.7 million. The Theodore Roosevelt Dam also has power generation capabilities, which helps supply power in the valley.

“ QUIPS & QUOTES ”

For those of us who live in drought-prone areas, we think of water conservation as very personal decisions. Do you flush the toilet in the middle of the night? Do you leave the water running when you brush your teeth, or when you wash the dishes, or do you turn it off? Do you reuse the water that’s in your teapot to water your plants?

Regent Susan Harriman, in her introduction of Dave Roberts and Thomas Buschkatzke

“Three other dams on the lower Salt River are also very important in terms of water capture, as the Salt River flows downstream from Theodore Roosevelt Dam. Two additional dams are on the Verde system. All together, these five dams hold about 700,000 acre feet of water. When added to the Roosevelt Dam, Phoenix has total reservoir capacity of about 4 million acre feet. Compared to New York City’s 1.7 acre feet, and San Francisco’s 550,000 acre feet, Phoenix is in pretty good shape when it comes to reservoir capacity. That capacity is needed, as sometimes run-off from the watershed is only a couple of hundred thousand acre feet a year, compared to full capacity of four million acre feet. After twenty-two years of drought, the reservoirs are still at about 60% capacity. ▶



“ QUIPS & QUOTES ”

From our standpoint, we will never be in a situation like Cape Town, because we have access to multiple sources of water, that's surface water plus this ground water here in the system. . . . In addition to the ground water that underlies the Salt River Project service territory, we manage it very carefully.

Dave Roberts

“Underlying the Valley of the Sun, in which Phoenix is situated, is a vast underground aquifer, which has an amazing ability to take and receive water. That aquifer contains an estimated fifteen million acre feet of water, which is enough to satisfy Salt River Project landowners for forty years, without ever using a drop of surface water out of the reservoirs. Throughout the system are deep ground water wells, typically pumping four to five thousand gallons per minute.

“Phoenix manages its groundwater very carefully. Arizona aquifers typically do not naturally recharge well, but the state recharges them by putting water back into the ground. The state operates two large significant recharge projects, or areas where it can bank water for that not-so-rainy day. The state has stored about two million acre feet of water in the last fifteen to twenty years through its recharge projects, which helps sustain the groundwater system. A lot of the water that the state banks is recycled water not used on the golf courses; the state puts it back in the ground, and eventually draws it to supply the landowners.

“Returning to the watershed: this is primarily forested land, covered with national forest. That didn't happen by chance. This was something done by those very smart landowners back in the late 1800s, early 1900s, working with Congress, and working with Teddy Roosevelt. Arizona was able to convince Congress to create these national forests, to restrict the amount of land development that could occur on the watershed. It is significant to the Salt River Project.

“You might think it's not a big deal, to create a forest preserve over watershed. But when you look at the region and look at photos of the forests, there's not a pine tree nor a spruce tree around. This is basically a continuation of the Sonoran Desert, but it has been preserved as national forest. It was done to restrict any kind of development that would occur, to preserve watershed so that that water supply would run into the reservoirs. It has remained that way today. That's a very significant part of the water supply, and part of the reason why Salt River Project has been so successful.”

Buschkatzke focused his presentation on broader Arizona issues and some of the challenges on the Colorado River.

“The Arizona Department of Water Resources was created in 1980; its mission statement makes it responsible for the water supply of seven million Arizonans, a daunting task. To add to the challenges, 60% of the land in Arizona is under federal control; of that, 28% is tribal land. There are twenty-two federally recognized tribes in Arizona, only thirteen of which have their water rights determined either by the court or through settlements.

“That makes for a lot of uncertainty moving forward, as much of the water the tribes claim is being used by non-tribal folks. It's an important issue to determine those tribal water right claims as well as the non-tribal water right claims.

“Of all water use in Arizona, 74% is being used for agriculture. Agriculture is a huge part of Arizona's economy. Some 85 to 90% of all of the salad vegetables in North America are grown around Yuma, Arizona, using Arizona's Colorado River water.

“Of the remainder, 21% of the use is municipal and 5% is industrial. Some 38% of the water comes from the Colorado River, and there currently is an eighteen year-long drought in the Western United States, in Arizona and on the Colorado River.

“The in-state supply, 18%, is mostly from the Salt River Project, and 41% comes from ground water. Arizona has to make sure that it’s not mining that groundwater at rates greater than it is being recharged, either naturally or artificially. That is one of the main regulatory programs run by the Arizona Department of Water Resources.

“Here are just the few of the milestones in Arizona water history:

“In the Colorado River Compact of 1922, seven states agreed to divide the Colorado River. In the upper basin are Wyoming, Colorado, New Mexico and Utah; in the lower basin, Arizona, Nevada and California. Even though it negotiated this compact, Arizona refused to ratify it because of fears that California would take more than what it had agreed to. The 1928 Boulder Canyon Project Act, which authorized the construction of Hoover Dam on the Colorado River, then tried to force ratification without Arizona’s approval. The state did approve the compact in 1944.

“The 1980 Groundwater Code set up active water management areas, such as the Phoenix Active Management Area, which is a corridor from Phoenix south through Tucson all the way to Mexico. In these areas, the state actively manages the water supplies and the groundwater. There are mandatory conservation programs for municipal, industrial, agricultural sectors. When an agricultural acre goes out of production and becomes an industry or a house, you cannot put in a new acre of agriculture, something that is very important to controlling water use in the future. Around 80% of Arizona’s population live in these active water management areas.

“In the Compact, the upper basin of the Colorado got rights to seven and a half million acre feet. The lower basin also got seven and a half million acre feet of rights. Each state was allocated an individual percentage. In the lower basin, California has 4.4 million acre feet, Arizona has 2.8, and Nevada has 300,000 acre feet. In 1944, Mexico also claimed water rights to the Colorado River through the 1944 Water Treaty between the United States and Mexico.

“Essentially, the allocations totaled sixteen and a half million acre feet of water. There are losses in the system, evaporation, environmental uses. The real number is closer to eighteen million acre feet of use. In 1922, that seemed like plenty. But the average annual flow over the last hundred years is closer to fifteen million acre feet. Thus, we have an imbalance of supply and demand. Lake Mead holds twenty-five million acre feet. In the Phoenix area, three households would use one acre feet of water per year. If Lake Mead was completely full, it could provide seventy-five million families in the Phoenix area with water for a year. But in 1999, the lake was less than 40% full and it has been steadily dropping since.

“One of the challenges is to figure out how to deal with a lake that is steadily dropping so that it doesn’t drop to a level where actual reductions would have to occur. In 2007, the seven basin states agreed to guidelines, specifying shortage volumes to protect Lake Mead for Nevada and Arizona. Those guidelines promoted conservation of water to offset shortages, but it isn’t enough; a drought contingency plan is being negotiated to try to further slow the flow from the lake.

“Recall the reference to Mexico and the Mexican Water Treaty; with some minute additions to the treaty, Mexico has finally been brought into the fold as a full partner to manage the Colorado River. Mexico has agreed to take reductions in its use if Arizona and Nevada take reductions.

“Arizona has successfully managed its water supplies; water use data from 1957 through 2016 shows a peak in 1980, when the groundwater code was passed and the Department of Water Resources was created. Water use then dropped to a point where Arizona is using slightly less water today than in 1957. At the same time, the Arizona population went up 504% and its gross domestic income and economic indicator up almost 1,800%. That is Arizona’s great success story. The big challenge will be to make this continue to happen in the future.”

Carey E. Matovich
Billings, Montana

“QUIPS & QUOTES”

During the dedication of the San Carlos Dam, Will Rogers, another famous speaker of the time in the 1930s, looked around at the dryness of that reservoir and said, “If this was my lake, I would mow it.”

Tom Buschkatzke



**U.S. DISTRICT COURT
JUDGE DISCUSSES ARIZONA'S
EVOLVING LITIGATION
PRACTICES AND GIVING
BACK TO HER TRIBAL
COMMUNITY**

THE HONORABLE DIANE J. HUMETEWA, A U.S. DISTRICT COURT JUDGE FOR THE DISTRICT OF ARIZONA, “HAS BEEN A SHINING STAR IN EACH OF THE THREE BRANCHES OF OUR FEDERAL GOVERNMENT. PERHAPS EVEN MORE UNUSUAL, SHE HAS SERVED AS A JUDGE FOR TWO SOVEREIGN NATIONS,” SAID PAST PRESIDENT **JOAN A. LUKEY** OF BOSTON, MASSACHUSETTS, IN HER INTRODUCTION OF JUDGE HUMETEWA DURING THE 2018 SPRING MEETING IN PHOENIX, ARIZONA.

From 2002 to 2007, Judge Humetewa sat on the Appellate Court for the Hopi tribe. Each of the federally recognized tribes in Arizona and in other states is a sovereign nation. As Judge Humetewa has moved through her career, she has focused upon aspects of federal Indian law. Before being a judge, there was a period in which Judge Humetewa served in the Department of Justice as an Assistant United States Attorney where at one point in time she was prosecuting crimes generally, federal crimes, but with an expressed focus on Native American cultural crimes and violent crimes on Indian land. Eventually, she became the United States Attorney for Arizona. On the legislative side, she has served at one point as counsel to the Deputy Attorney General, but then she became the Deputy Counsel for the United States Senate Committee on Indian Affairs.

“In that context, she worked with Senator John McCain, an icon respected by both sides of the aisle and truly a national treasure. He said that her appointment would be historic, and indeed it was. She was the first Native American woman ever appointed to the federal bench. It is believed she is only the third Native American appointed to the federal bench at all. I would deduce from that the two predecessors must have been men,” Lukey said. “She has been heavily rumored to be in the running for a Ninth Circuit appointment for Arizona which stands empty. After meeting her, I can only hope that the current administration has the wis-

dom to put her in that position. She found out about it the way most of us do, of course, on social media. No one had mentioned to her before that she was in the running and I doubt that she will address it today, but still, kudos to her for that.”

As a native of Arizona and a member of the Hopi Indian Tribe, Judge Humetewa focused her topic on a perspective she knows well.

“I want to give you a little bit more about the landscape of our state, generally, as it relates to the work that I’m doing today because we are a complex and a remarkable state. It creates a very unique opportunity as a judge on the federal bench.”

Arizona is the forty-eighth state in the union, with a population of seven million people. It has fifteen counties with as varied a landscape to match. “If you drive one hour in any direction of Phoenix, you’re going to run into a very different landscape... The Saguaro desert, the Grand Canyon and in Prescott, one of the prior indigenous ruins from the Verde Valley people.

“We have twenty-two federally Indian recognized tribes. The land base is 32 percent of Arizona, but you also have to lay upon that we have two of the largest federally Indian-recognized tribes in the United States. The Navajo Nation, which of course expands into Utah and New Mexico, as well as the Tohono O’odham Nation. The Tohono O’odham Nation is roughly the size of Connecticut. What is also unique about



our tribal system is that many of these tribal nations still hold onto their land base. They still have communities, schools, clinics, things of that nature that are providing services to local communities there.

“One of the unique things about Arizona, and also that relates to some of the cases that we see, is that we are a border state bordering with Mexico and the Tohono O’odham Nation as well as the Pascua Yaqui Tribe down to the south into Mexico. They have tribal members that are living on the Mexico side of the border. It creates some very unique challenges.

“Each of these tribal communities has their own populations, and the Hopi Nation that I’m from is right in the middle of the Navajo Nation, which is on the northeast corner of Arizona. We are by virtue of some Congressional act surrounded by the Navajo Nation.

“We have not only the twenty-two Indian Nations that are federally recognized, the facilities and their communities, we have all of the alphabet soup of federal agencies within Arizona including the Interior Department, the Bureau of Indian Affairs, the Veterans Administration, the Bureau of Land Management, and the U.S. Forest Service. We have such a huge amount of federal agencies and all of the attendant issues that come with managing federal lands and federal agencies that are brought into the federal court.”

PERSONAL LANDSCAPE

“My home community, the Hopi tribe, is up in the Northeast corner. It’s fitting that I follow individuals that are talking about water because we live in what is a very dry area in the northeast part of the state.

“We rely on, and have historically relied on, dry farming. When the Spaniards came here and found the Hopi and saw that we relied on our sustenance, primarily corn, squash, beans and the like, they realized there’s no water. We essentially relied on the rain.

“Much of our custom and ceremonial cycles revolved around asking for rain, praying for rain. Our custom always centered on looking for

moisture.... We also are very culturally aware, we continue to practice our cultural religions, we have social dances that young men and women go through. Unfortunately, employment is very low on the Hopi reservation but a lot of our men are very skilled Kachina doll carvers.

“One of the things that I think historically is getting away from us is really the history of how generally we interrelate with tribal governments, tribal people, tribal customs. The very next street beyond Camelback Road is Indian School Road. I used to teach as an Assistant U.S. Attorney to a number of people who would come in to talk about prosecutions in Indian Country. I used to ask them, ‘You’re going to be investigating crimes on Indian reservations, so how many of you can tell me what used to be on the center of Central Avenue and Indian School Road?’

“As the years went by, very few people could answer that. There was a federal Indian boarding school there. Today, it’s known as Steele Indian School Park. That boarding school was where my mother went to school. She and my father were raised in boarding school because there were no schools on the Indian reservations at that time.

“In fact, the high school on the Hopi reservation was actually opened in 1987 and up until that time, all of my cousins on both my mother and father’s side all went away to boarding schools whether it be Phoenix Indian School or Sherman Indian High School in Riverside, California or in Santa Fe Indian School where my father went to school.

“I am the first in my family on both my mother’s and father’s side to receive an undergraduate degree as well as a JD, which made my career into the law very challenging back in the time that I went to Arizona State University. It was a lonely time for me, because during my college days I can tell you that I probably would run into maybe two or three other Native American students at that time.”

ELEVATED TO THE BENCH

“It was very important that I give back to my tribal community. When I was asked by our



chairman at the time to come back and serve as an appellate court judge for our Hopi Appellate Court, which was actually in its infancy at the time, I had to say yes. It helped me understand again the interplay of the three sovereigns, the federal, the state and the tribal sovereigns and to this day and throughout my career as a lawyer, I've had the great pleasure to interact with many of the tribal court systems, many of the tribal court prosecutors of course, all of those individuals who investigated crimes in Indian Country. It has greatly enhanced my ability to do the work that I do today."

At her confirmation hearing to be a district court judge, a total of six were confirmed, which included: Steven Logan; John Joseph Tuchi; Rosemary Márquez; James Alan Soto; Douglas L. Rayes and herself. "This was the first time six of us had ever gone forward in this process together and we will continue to serve well into ten-plus years down the road. We are challenged greatly because although there are six active judges in Phoenix, we currently do have two vacancies. We fortunately do have two nominees that are awaiting confirmation to fill those vacancies and, boy, are we eager to get them on board.

"We do have five U.S. magistrate judges. We have one that sits in Flagstaff about two hours north of us, one that sits in Yuma. In Tucson, we have five active judges including Judge Soto and Márquez. We have two senior judges that are fairly active and two who are likely to go senior, meaning two more vacancies in Tucson probably this year. The fact that before the six of us came on board, there was roughly three and a half years of vacancies, six vacancies if you can imagine, makes for an incredibly large and huge backlog of cases.

"The division caseload in 2007 for our district (Phoenix) there were 5,143 civil filings. In our civil cases, I didn't know this until I got on the bench, roughly 45 to 47 percent of our civil case filings are prison litigation. That is extraordinarily challenging and it has opened my eyes to the fact that we have a tremendous healthcare crisis going on with our prison population and it will only continue to grow as those populations get older.

"Many of the cases that we see are claims of medical malpractice or not providing adequate healthcare. It is at crisis level so much so that we actually have a full unit of law clerks that serve all of the district judges on just these prisoner cases. In terms of our criminal cases filed, there were about 4,500.

"Because we have such a unique geography, our U.S. attorney acts like a county attorney for the twenty-two Indian nations. Felony violent offenses that occur in Indian Country, they are brought to our courts as well as all of the border crime issues that are attendant with a state like ours, illegal re-entry, bringing in of people and drugs, firearms, those types of cases.

"On any given day in any of our courts, we can be hearing for example ERISA cases, Federal Tort Claims Act cases, patent cases, cases dealing with not just regular torts, breach of contract, well as those that stem from technology."

CHANGE DRIVEN BY NECESSITY

"We have a growing economy of technological companies that are coming to the Phoenix valley. We have large companies such as Amazon, GoDaddy and others that lend themselves to some of this litigation as well. It is a very busy practice. How many of you have heard of the disappearing trial? Okay, that is a topic of great debate. I haven't seen it. I think many of us have a mixed feeling about that: we like to see the ability of litigators who come into the court to argue motions, to litigate cases, but, at the same time, we have such a great caseload.

"I have about 351 or so civil cases pending right now. If every one of them went to trial - it would just bury me. What we've done in order to try to alleviate some of the backlog and to try to push cases to resolution quicker and keeping in mind the growing cost of litigation, we have tried to implement a number of policies and practices locally that will address some of not just the criminal cases, but the civil cases.

"For example, at our last district judges meeting, a number of the judges including me volunteered to undertake a summary judgment





project which essentially alleviates the parties from having to file separate statement of facts and controverting statements of facts, but to have all of the facts intertwined in the motions and responses themselves.

“I think a number of us have found that often, the statements of facts are not helpful because they are either cited improperly or there are tremendous amounts of exhibits attached thereto. It just makes for a much more cumbersome process. We started implementing this policy in January, and we’re going to give it a while and see whether or not we have a different result. Hopefully, it will help us resolve those summary judgment motions quicker.

“There are a couple of other federal courts that are also participating in

the mandatory initial disclosure pilot project which requires parties to early on provide initial disclosures, with an ongoing obligation to do so. In many cases, we feel that early initial discovery will push the parties to begin to talk about settlement a little bit earlier, and the discovery process will already be underway by the time you get to your Rule 16 conference.

“On the criminal side, I will tell you that things have changed greatly since I was a federal litigator. I think in some cases for the better. How many of you practice by the rule that if your witness testified at the trial, you didn’t turn over the statement until either while they’re testifying or right after? That was how I was raised in trial practice, but today, everything is open discovery, early discovery.

“At the final pretrial conference, my colleagues and I, we’re requiring the parties to bring their evidentiary objections, motions, eliminate them right away so that we can resolve all of those potential objections to pieces of evidence that may come in at trial. You can have a much smoother trial process and you don’t have to take those breaks. I’ve employed the practice of not having sidebars so that the jury is not sitting there waiting.

“The culture of litigation has changed by necessity. While I thought litigation was fun just because you did get to have a little bit of I guess an element of surprise, by necessity just because of our huge caseload, we are trying to make it more manageable and less expensive in the process.” ■

“ QUIPS & QUOTES ”

One of the most uplifting things that we do as judges in court, and there aren’t many uplifting activities that we engage in in federal court, is we preside over naturalization ceremonies. I always like to remind the new citizens who are coming in is that citizenship for Native Americans actually occurred by way of an act of Congress in 1924. We were deemed United States citizens, which I think makes for interesting conversation.

Judge Humetewa



Let the

GOOD TIMES ROLL!

2018 ANNUAL MEETING
SEPTEMBER 27-30, 2018
THE ROOSEVELT
NEW ORLEANS, LOUISIANA



Invited Speakers:

DR. JOSEPH CRESPINO

Professor of American History, Emory College
of Arts & Sciences

THEODORA GALACATOS

Emil Gumpert Award Recipient, Expanding and Enhancing Remote
Access to Counsel for Detained Asylum-Seekers with Children

FRED D. GRAY, ESQ., FACTL

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C.C. LOCKWOOD

Author and Wildlife Photographer

THE HONOURABLE MADAM JUSTICE SHEILAH MARTIN

Supreme Court of Canada

THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, P.C. (RET.)
Supreme Court of Canada

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PROFESSOR BRAD SNYDER
Georgetown University Law Center

DAVID O. STEWART
Lewis F. Powell, Jr. Lecturer

DR. MICHAEL WHITE
Dr. Michael White Quartet/The Original Liberty Jazz Band

JASON ROGERS WILLIAMS, FACTL
President, New Orleans City Council

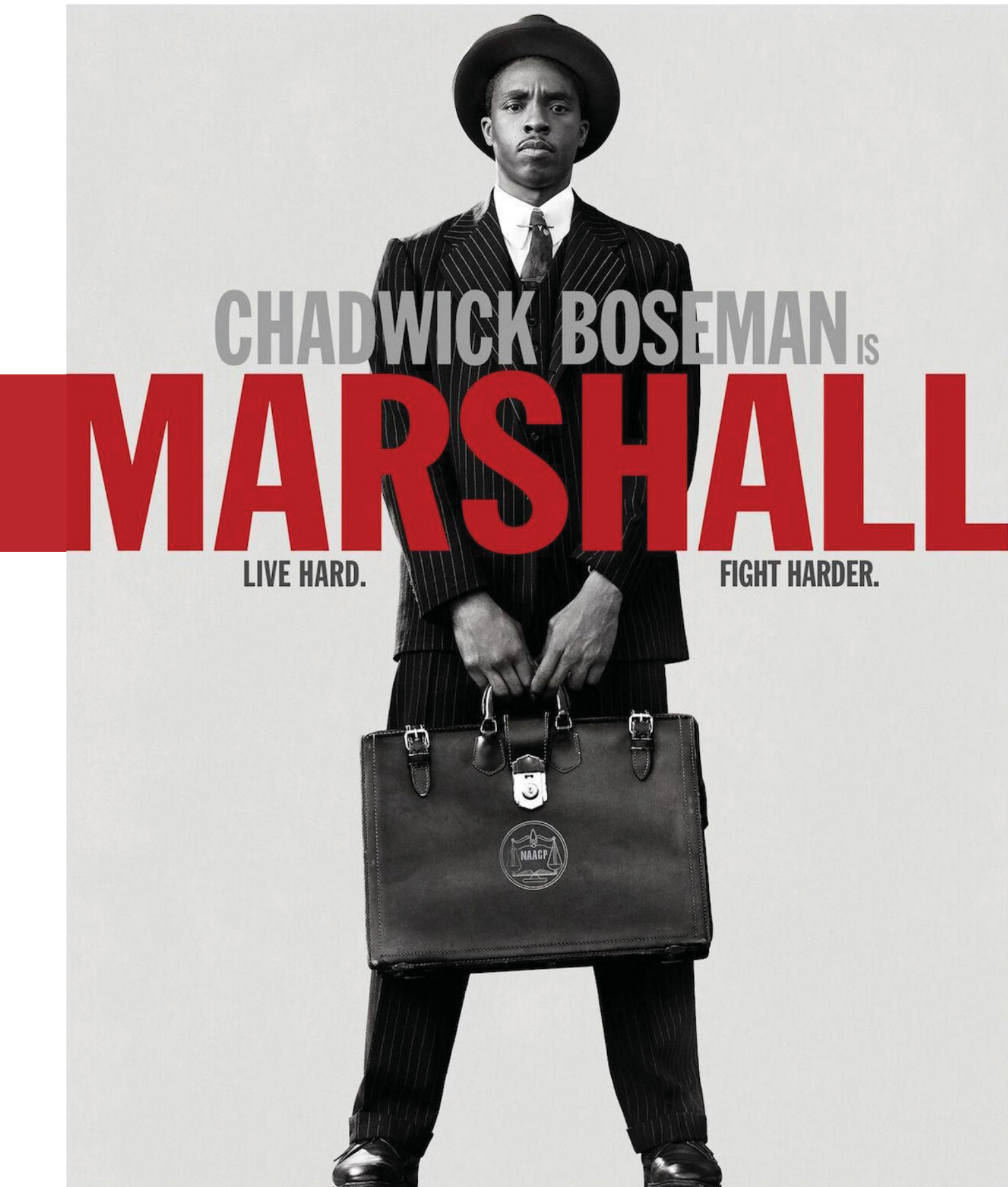


TIMING, CHANCE AND MAKING THE MOVIE *MARSHALL*

IN HIS INTRODUCTION, REGENT **RITCHIE E. BERGER** OF BURLINGTON, VERMONT, RECALLED HIS FIRST ENCOUNTER, MANY YEARS AGO, WITH FELLOW AND SPEAKER **MICHAEL P. KOSKOFF**. BERGER WAS DEFENDING A BIRTH INJURY CASE IN VERMONT WHEN LOCAL COUNSEL NOTIFIED HIM THAT THE KOSKOFF FIRM “WOULD BE COMING UP FROM CONNECTICUT TO TAKE OVER THE CASE.” HE SAID HIS REACTION WAS, “WELL, THAT’S NOT VERY GOOD NEWS.” TWO WEEKS LATER WHEN KOSKOFF ARRIVED IN VERMONT LOOKING “TOTALLY COMPETENT. TOTALLY RESPECTFUL. JUST A DELIGHT TO DEAL WITH. AND I SAID TO MYSELF, ‘OH, VERMONT SURE IS GOING TO LIKE THIS GUY SO THAT’S NOT GOOD NEWS.’ THAT CASE WENT AWAY AND I NEVER HAD ANOTHER ONE, FORTUNATELY, WITH MIKE.”

Although the son of Fellow **Theodore I. Koskoff**, law was not Mike’s first choice. He attended a Shakespearean acting academy in his hometown but, “he came to realize he had to make a living so he went to law school and joined his father Ted’s law firm.” As a Civil Rights activist, the younger Koskoff was involved in notable cases including the defense of Bobby Seale and members of the Black Panthers. He went on to represent black patrolmen of Bridgeport, Connecticut and the firemen of Connecticut, winning suits that led to full integration of the police and fire departments. Berger suggested that Koskoff’s years as a civil rights activist “probably led to his interest in Thurgood Marshall as a trial lawyer and his unlikely alliance with Sam Freeman, a Jewish-American trial lawyer.” Marshall and Freeman, the surprising pair that defended Joseph Spell, a young black chauffeur accused of viciously beating and attacking the woman with whom he was employed. The trial of that case is the basis for the movie *Marshall*, with Koskoff credited as author of the screenplay. Koskoff joined Fellows at the 2018 Spring Meeting in Phoenix to recount his adventures in writing the screenplay and discovering the wisdom of chance.

“I want to tell you a story about the movie and about the making of the movie and about the wisdom that came to me from the whole experience. Because how does a lawyer who’s been practicing for fifty-two years suddenly end up in a Hollywood movie? I’ll give you the wisdom first and then I’ll tell you the story. The wisdom was from a saying my father always used to say and I never knew why. It was ‘the race doesn’t go to the swift,’ I looked it up not too long ago and I found what the whole quote was and it goes something like this: ‘The race doesn’t go to the swift nor the battle to the strong, nor riches to the wise, but time and chance overtake all.’ It’s one of the wisest things I’ve learned about the effects of time and chance. I’m going to show how the



CHADWICK BOSEMAN IS

MARSHALL

LIVE HARD.

FIGHT HARDER.

effects of time and chance influenced me and influenced the history of my making of this movie *Marshall*.”

Years ago, Mike’s friend, Jack, told him of a murder that took place back in 1940. The story began at the Kensico reservoir in Westchester County, New York, where a bruised woman dressed in flimsy, torn and wet clothing was found on December 11, 1940. She was Eleanor Strubing, a socialite from wealthy Greenwich, Connecticut. She told a lurid story of being raped multiple times in her bedroom by Joseph Spell, her African-American chauffeur/butler. He then drove her to the reservoir and hurled her over the bridge. Spell was brought to Bridgeport for trial but not before the news media got hold of the story. Headlines proclaiming “Night of Terror,” “Confesses after 16 Hours of Questioning,” and “Joseph Spell Confessed to the Rape of Eleanor Strubing, Socialite from Greenwich” filled the papers.



Koskoff pointed out this happened at a time when worldwide “there was tremendous racial animus. Jews were being picked up off the streets of Poland and Eastern Europe, Hitler was on the rampage in Europe and in the south, blacks were being lynched.” Blacks were moving north in pursuit of domestic and industrial jobs. “The newspapers would share the story of the war in Europe with the story of this rape. Joseph Spell would be described as, “The defendant who attacks and kidnaps society woman.” The sensationalism would alter more lives than the few directly involved in the case.

The NAACP was then, as Koskoff described, a “fledgling organization” headquartered in New York with little staff and less money. Calls were increasing and most came “from black people who were coming north for jobs and were getting fired because white people were afraid to have them work in their homes.” The NAACP’s response was “to get someone to defend Joseph Spell because this is a publicity nightmare.”

It was obviously an unpopular case that no one wanted. But the NAACP found Sam and Irwin Friedman and convinced them to defend Spell. Sam

would take the lead, and the NAACP promised to send a lawyer from New York to work with them. “That lawyer was, of course, Thurgood Marshall.”

Koskoff’s friend believed the story could be made into a good screenplay so he sent it to Steven Spielberg. Spielberg “had other things going on at the time.” Jack then suggested that Koskoff’s children, screenwriters in Los Angeles, might be interested in it so Mike sent his sons the story. They too were “tied up at the time.” Jack then asked Mike, “Why don’t you write it?” Mike’s cool-headed response was, “Well, okay. I think I could do that.”

“Time and chance overtake all. I wrote the screenplay and after I wrote it, I felt the same experience I had defending the Black Panthers and their very highly publicized trials.” He wanted his screenplay to show the dynamics of a trial and the way “good lawyers adjust to facts and how you have to move and how you have to cross-examine and how you have to work with the jury and how you have all of these different forces going on.” The other thing he wanted to show “was how courageous lawyers are” who are willing “to take unpopular cases and don’t care about the publicity.”

“ QUIPS & QUOTES ”

About six weeks ago, I was here in Phoenix speaking before the law school, and we were doing a screening of the movie. I was very honored that Justice O’Connor came to the movie. I know she doesn’t go out much, but she came to the movie, sat through the whole movie, seemed to really enjoy it.

Mike Koskoff

MAKING HOLLYWOOD CONNECTIONS FROM BRIDGEPORT

About two years pass and Koskoff happened to show the screenplay to a friend. Befitting Koskoff’s appreciation of chance, it turned out his friend knew the Friedman family. When he asked Koskoff if he could show it to them, Koskoff’s response was, “Show it to anyone you want. I mean, I’d written it, I wanted anybody in the world to see it and read it.” He admitted that all his friends “were rolling their eyes and sick of me talking about the damn case!”

A few weeks later his friend called back to report that “Sam Friedman’s daughter read the screenplay and she really liked it and she would like to meet you.’ I said, ‘Fine. Great. Great. Finally somebody read it.’”

He met with Lauren Friedman and she told Koskoff her dad would be very proud. She then asked if she could show it to a producer. “I said, ‘Show it to anyone you want.’ I know enough about Hollywood to know that everybody in Hollywood is a producer. The taxi driver has a production credit somewhere, the dentist has a screenplay, everybody in Hollywood is a producer and the word means nothing. What were the chances that she really had a friend who was a producer?”

Lauren’s friend called a month later and introduced herself as Paula Wagner, which meant nothing to Koskoff. She had read the script and really wanted to make the film. When Koskoff called his son, Jake, and told him he had a producer, his response was, “Oh yeah? Who?” When Koskoff said Paula Wagner “there was this long pause and then he dropped an F-bomb and said, ‘How did you get to meet Paula Wagner?’ I said, ‘Well, you know, in Bridgeport, Connecticut, you develop a lot of contacts.’” Wagner was Tom Cruise’s producer, who had produced the *Mission Impossible* film franchise.

Three years after the writing, he had a producer. She promptly told him he would have to do re-writes. “At that point I said, ‘You know, this is above my pay grade.’ I called Jake, and I said, ‘Jake, now are you interested in working with me on the screenplay?’ He said, ‘Yeah, I guess so.’”

Attention then turned to finding a director. “We really wanted an African-American director because we felt that it was important to get the insights that only an African-American person could ▶

provide.” They reached out to Reginald Hudlin who gave a surprising response: “Thurgood Marshall has been my lifelong hero and there is nothing that would please me more.” Realizing it would be the first film about Thurgood Marshall, he advised Koskoff, “You can’t make a movie about Thurgood Marshall and have it just be kind of a buddy film.” He explained that “even though it’s only about a sliver in time, it’s the first time the country is going to see Thurgood Marshall and you got to make it about Marshall.”

In tackling the rewrites, Koskoff and Jake learned about the Thurgood Marshall of the 1940s. “He was tall. He was handsome. He lived in Harlem and his best friend from college was Langston Hughes, the poet. He was friends with Duke Ellington and Joe Louis and Cab Calloway. He was a part of this rich, intellectual and social community in Harlem and, yet, he was dapper, he was funny, he was a storyteller.” They discovered “this amazing character that we knew nothing about and that history knew nothing about.”

Now they needed a good actor. Their choice was Chadwick Boseman. Boseman had the leading role as Jackie Robinson in *42*, the Jackie Robinson movie and James Brown in *Get on Up*. He plays the Black Panther in the new *Black Panther* film. Koskoff mused, “So here I am. What are the odds

my life would be surrounded by Black Panthers in the beginning and at this age?”

LEAVING THE SCRIPT AT THE RIGHT TABLE

“We still, however, did not have any money. We still did not have a distributor. We still did not have a movie.” While chance had been favoring him, it now seemed to be working against him. Or so he thought. The random chance of a competition arising over the production of a Thurgood Marshall film gave Koskoff’s team the momentum they would need to finish the project.

“*Devil in the Grove* is a wonderful book. It won the Pulitzer Prize and it was about a rape trial that Thurgood Marshall was involved in in Groveland, Florida. It was a great thing. Right after it came out, Lionsgate films announced that they’re going to make a movie about it.” If that weren’t enough Lionsgate, “put their best screenwriters on making the movie. We got a call from our producer that said, ‘Oh-oh.’ That oh-oh meant Hollywood would not make Marshall.” They would only make one and “Lionsgate is making it.” Rather than be defeated, those working with his screenplay increased their resolve.

Paula Wagner “called in another producer friend named Jonathan Sanger. Jonathan had been doing

“ QUIPS & QUOTES ”

You can’t make a movie about Thurgood Marshall and have it just be a buddy film. This is the first biography of Thurgood Marshall, and even though it’s only about a sliver in time, it’s the first time the country is going to see Thurgood Marshall and you’ve got to make it about Marshall.

Marshall director Reginald Hudlin’s advice to Koskoff

work for a Chinese company and he said he was doing consulting. It was called Hero Films. Hero wanted to make superhero films in the United States. Hero Films was not going to be interested in this movie. Sanger was looking for money elsewhere but he happened to leave the script on a table at the headquarters of Hero Films in Los Angeles. A secretary/interpreter picked up the script, read it, and liked it. So she translated it into Mandarin. She sent it to China where the Hero Films people loved it and agreed to finance the film. What are the odds?

“We screened it for the Marshall family after the movie was made. That was, I think for me, the most threatening of all experiences.” Koskoff had become friends with several members of the Marshall family and did not want to disappoint any of them, including Marshall’s second wife Sissy, then in her 90s who had also come to the screening. “Did I get Thurgood Marshall right? That was really my concern. Are they going to approve? I know John loved it, he had seen it already a couple times and Goody (Thurgood, Jr.) was smiling. The grandkids were happy. And I went over to Sissy. She was sitting in the front row and she had a little scowl on her face and I said, ‘Oh-oh. Well Sissy, what do you think of the movie?’ She said, ‘Well, that guy who played Thurgood?’ I said, ‘Yeah.’ She said, ‘He’s a good actor but not nearly as handsome as the real Thurgood.’ Then she burst out laughing. Then of course she came to the premiere and everything else. She was fully on board.”

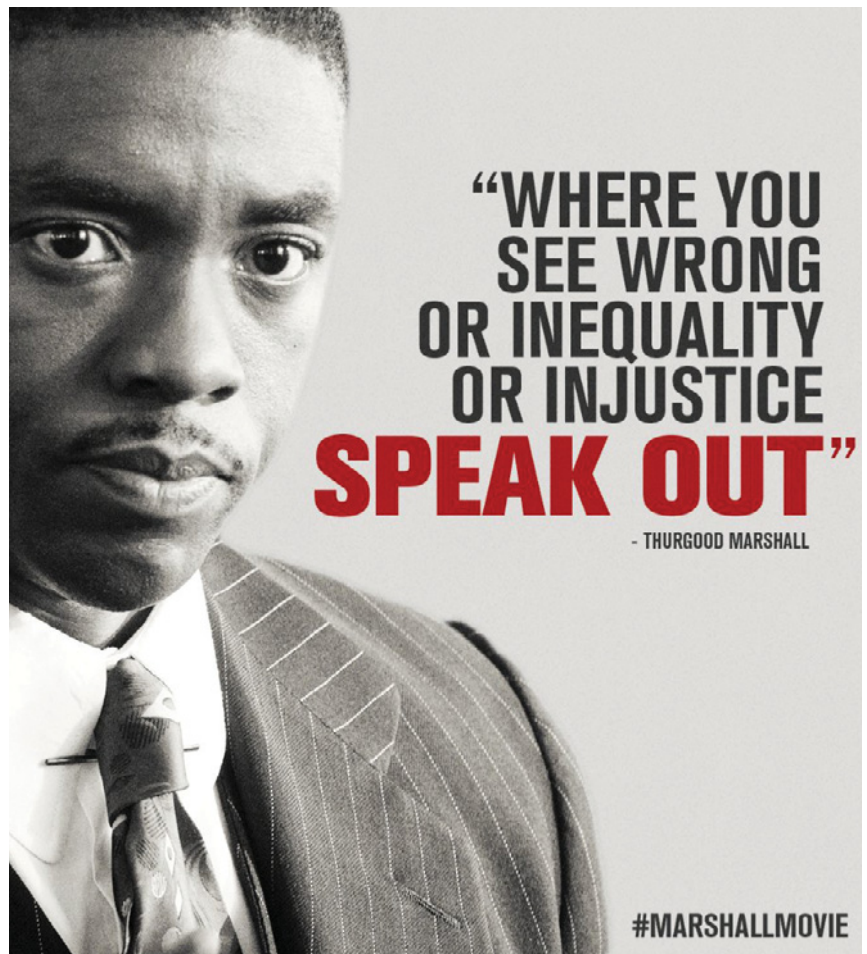
Lorna S. McClusky

Memphis, Tennessee ■

“ QUIPS & QUOTES ”

My great-granddaddy, he was a slave. They’re not slaves now and we got weapons we didn’t have before. We’ve got the law.

Marshall, played by Chadwick Boseman, speaking in a scene from the movie trailer



FLORIDA SUPREME COURT JUDGE RECEIVES SANDRA DAY O'CONNOR JURIST AWARD



U.S. Foundation trustee
Eugene Pettis, President
Sam Franklin, Justice
Barbara Pariente



THE HONORABLE BARBARA J. PARIENTE, JUSTICE OF THE FLORIDA SUPREME COURT, WAS PRESENTED WITH THE SANDRA DAY O'CONNOR JURIST AWARD DURING THE 2018 SPRING MEETING IN PHOENIX. THE AWARD RECOGNIZES A JUDGE FOR HIS OR HER EXEMPLARY JUDICIAL INDEPENDENCE IN THE PERFORMANCE OF HIS OR HER DUTIES. SHE IS THE THIRD RECIPIENT OF THE AWARD SINCE IT WAS FIRST GIVEN IN 2008.

Justice Pariente's legal and judicial career has spanned nearly forty-four years. She has been a Florida Supreme Court Justice since 1997 and served as Chief Justice from 2004 through 2006. She has been a Floridian since 1973, having been born in New York City in 1948 and attended public schools in New York and New Jersey. She graduated with highest honors from Boston University. She then attended George Washington University Law School, where she graduated fifth in her class in 1973, earning highest honors and membership in the Order of the Coif. She moved to Fort Lauderdale, Florida in 1973 for a two year judicial clerkship with United States District Court Judge Norman C. Roettger, Jr., of the Southern District of Florida. In September 1993, Justice Pariente was appointed to Florida's Fourth District Court of Appeal, where she served until her appointment as the seventy-seventh Justice of the Florida Supreme Court on December 10, 1997. During her time on the Florida Supreme Court, she has worked to improve methods for handling cases involving families and children in the courts. Since 2010, she has served as the Chief Justice's designee to the Florida Children and Youth Cabinet.

U.S. Foundation Trustee **Eugene K. Pettis** said in his introduction of Justice Pariente: "You don't have to spend much time with Justice Pariente to see and feel her passion. You can still see the fire that was ignited as a child when, through her eyes, things just didn't seem fair. Despite her professional ascension, she never lost sight of the world in which everyone should be treated fairly. It was Bobby Kennedy who said, 'There are those that look at things the way they are and ask why? I dream of things that never were and ask why not?' Justice Pariente's career has embodied the pursuit of the, 'why not?.... Most impressive is the manner in which she has upheld the integrity and impartiality of the court and still found a way to be an engine of change—change not through judicial activism in her opinions, but rather change outside and above her opinions. Change propelled by her relentless work on maintaining the protections of our judicial system so that the words 'judicial independence' would be true to their meaning.

"She has been a distinct voice in so many appellate decisions in Florida, some of which have had national and international implications. School vouchers, redistricting, abortion rights, right of privacy. She wrote the unanimous opinion in the Terry Schiavo right-to-die case. She had a role in another case in 2000, which some of you may or may not know, the *Bush v. Gore* matter after the 2000 presidential election. The story of Justice Pariente's judicial career will certainly have a prominent chapter on how she stood tall and strong against the efforts of intimidation to our judicial independence."

According to the award committee's nomination of Justice Pariente: "Over her distinguished career, she has participated in momentous decisions affecting individuals, the citizens of Florida and of America as well as the Florida State Legislature. In a 2012 retention election, she and two other



“ QUIPS & QUOTES ”

When I started, I must tell you, I was as tall as Gene is, so the two decades have really gotten to me.

Justice Pariente

judges were the subject of a well-funded and organized “smear” campaign to unseat them. At the same time, these judges faced an unfounded disciplinary investigation directed by Florida’s then Governor and a civil lawsuit. Justice Pariente was re-elected with 68% support despite the strong organized opposition. Throughout that experience and since, she has been an active and vocal educator about the importance of judicial independence. She continues to render courageous decisions on controversial topics of public importance. She speaks publicly about the importance of judicial independence to many audiences through various media.”

Her edited remarks follow:

I want to thank not only friends, Fellows and guests, but particularly [offer] thanks to the Florida Fellows. Not only is this award meaningful coming from this august body of the nation’s premier trial lawyers, but the fact that it has only been given twice before makes this honor even more meaningful. I met Justice O’Connor three times in my life. The first time I met her we shared stories of both being breast cancer survivors. Next, she visited the Supreme Court of Florida in conjunction with her trip to Tallahassee, where she addressed the legislature and executive branches on the importance of civic education. The last time I met her was after my 2012 merit retention election where she recognized the threats to state supreme court justices from politically motivated interest groups and urged all of us to do more to defend judicial independence.

There is a quote of hers that I often use and I share it with you today: “The founders realized that there has to be a place where being right is more important than being popular or powerful, and where fairness trumps strength. And in our country, that place is supposed to be the courtroom.” I speak on behalf of all state court judges and particularly state supreme court justices who work every day to do their best to render decisions that are fair and impartial, free from sympathy, prejudice, personal opinion, or special interest. Having been a state supreme court justice for over two decades, I am the longest serving justice at the present time on our court and the reason I’m leaving in 310 days is because I’ll face senility. In our state, we have mandatory retirement at age seventy.

Before that, I spent five years on the appellate court. My eighteen years as a trial lawyer, which I can tell you was some of the most wonderful and also some of the most stressful times in my life. We know that when a case comes before the state’s highest court, our ultimate decision is going to make one side or another unhappy. If we really do a good job, both sides will be unhappy. When that decision involves the actions of the other two branches, either the legislative or the executive branches, the backlash, the thirty-second soundbites, the willingness of so many to criticize, without regard to the actual merits of the decision, has the potential to impact public opinion.

ASSAULTS ON JUDICIARY

I often look at newspaper articles and instead of talking about the merits of the decision they find somebody that’s willing to give a quote about what they think about the case. More often than not, I’m pretty sure they haven’t read the case; they just know what the result is. Since our courts depend on public trust and confidence to ensure the rule of law and enforce our judgements, that balance is often precarious. When three Iowa justices were defeated in 2010, a result of that court’s unanimous opinion declaring same sex marriage bans unconstitutional under their state constitution, the “send them a message” attack ads with scary background music declared:

Activist judges on Iowa’s Supreme Court have become political, ignoring the will of voters and imposing same sex marriage on Iowa. Liberal, out-of-control judges ignoring our traditional

values and legislating from the bench, imposing their own values on Iowa. If they can usurp the will of voters and redefine marriage, what will they do to other long-established Iowa traditions and rights? Three of these judges are now on the November ballot. Send them a message. Vote no on retention of Supreme Court Justices.

The ads used in Iowa set against images relevant today of Iowan hunters with guns and traditional Iowan families, buzzwords that we often hear, such as “activist,” “legislating from the bench,” “ignoring the will of the people,” which can effectively influence citizens who may forget, when viewing these ads, that the judiciary’s very role is to be fair and impartial and not influenced by popular opinion polls, politics or special interests. Of the three highly qualified justices defeated, one included its chief justice, Chief Justice Marsha Ternus, appointed by a Republican governor and previously in private practice as an insurance defense lawyer representing insurance companies in bad faith cases.

After Iowa, groups energized by the defeat of these highly qualified state supreme court justices, groups such as Americans for Prosperity and other political action groups, decided targeting state supreme court justices, specifically those up for merit retention, would indeed

send a message of intimidation: rule against us, and we will go after you. Usually, the target will be a criminal case but the real intent, as I’ve seen it, is otherwise. It is motivated by an interest in having justices who will rule favorable to those special interests. Unlike other statewide campaigns, targeting justices is relatively cost effective for those groups. If you’re from a merit retention state, there is no opponent on the other side. The challenge is how to respond without becoming political yourself.

Justice O’Connor has more recently expressed her concern about special interests infiltrating the judiciary, stating: “I’m anxious about the state of judiciary in America. What worries me is the manner in which politically-motivated interest groups are attempting to interfere with justice.” The reality is that state court justices, unlike federal judges, are not protected from political winds, changing political opinion or special interest money. As you know, the states employ a patchwork of different systems for judicial selection and judicial retention elections have become especially vulnerable to these political attacks.

We see not only attacks on justices and judges but also attacks on the very system for appointing judges. Many states over the years went to systems that were less political, but in some



states, justices are elected still in partisan elections and we've seen a backsliding. In my humble view, partisan elections for judges negate the very essence of our judicial branch. The judicial branch is different; it is not designed to be a political or representative branch. While it is important that we all defend federal judges being attacked as "so-called judges" or worse, our judicial system being labeled as a joke and laughingstock, those epithets spill over into the state court systems.

Let me ask you a question: how many here are in states where members of the judiciary have been attacked for an opinion they've rendered? Anybody? Show of hands. Pretty large number. The question I ask you to consider is have you done anything about it? My husband, Fred Hazouri, who is a former trial lawyer, former trial court judge, appellate judge, now a mediator, longtime Fellow, has always kept a quote on his desk from Sir Edmund Burke, the great English political philosopher. "The only thing necessary for the triumph of evil is for good men and women" - Burke didn't say women- "to do nothing."

Across the world, we're seeing increasing assaults on the judiciary. Oftentimes, those judiciaries were emulated on the American model after the fall of communism. In Eastern Europe, in countries from Poland to Hungary to Romania, the attacks have been extreme, oftentimes resulting in replacing the entire judiciary. Yet in Romania, a couple of weeks ago, tens of thousands of citizens took to the streets to protest for the rule of law and for an independent judiciary. What would our citizens do? Would they take to the streets against attacks on the rule of law or would they stand by and do nothing?

“ QUIPS & QUOTES ”

I would like to urge all of you here to use your best skills as advocates to think of the judiciary as a client in need of defense. What would you do to defend that client with everything that you had? I urge not only each of you, but this wonderful organization, to use your collective resources in defense of our judiciary.

Justice Pariente

I am so proud of the young people who emerged in our state of Florida after the Parkland tragic school shooting advocating for changes in gun laws. Those victims were front and center in everyone's mind and still are, but the judiciary faces daily assaults that over time hit at the foundation of our democracy each and every day. We've experienced in Florida over twenty years many of these attacks after controversial decisions. I often told a story that my husband, who has been a big supporter of my career, wasn't thrilled in 1997 when I considered applying for the Supreme Court of Florida because we're in West Palm Beach and the court sits in Tallahassee. At that point, the court had no women judges and only had had one in its 150-year history. He said to me, trying to convince me not to apply, I was on the appellate court at that time in West Palm Beach, he said, "the Supreme Court of Florida, they do death cases but otherwise, they don't decide anything important." I did apply, and I was appointed, and he did eat his words over and over again.

Shortly after my appointment was *Bush v. Gore* in 2000. Right after those series of opinions that I still stand very proud for our court and our openness, we were criticized as being political, but I am sure that over time that our decisions will stand as testament to the principle that every vote should be counted. After that, there were changes in our state to the judicial nominating commission. At the present time, the Governor receives virtually all nine appointments. Recently, in Pennsylvania

when the Pennsylvania State Supreme Court decided its gerrymandering opinion, there were calls for impeachment of those justices based on that opinion. I know there are some people here, even on the dais, from Philadelphia and Pennsylvania. I hope that those justices will be defended.

EDUCATING VOTERS ON IMPORTANCE OF JUDICIARY

Bottom line is, I faced my biggest challenge in the 2012 merit retention election after two successful low-key, which they usually are, merit retention elections. Those forces, empowered by what had happened in Iowa in 2010 and the rise of the Tea Party, came along and mounted a campaign against us. We found the internet and social media could be a powerful tool for those who sought our defeat, without even having to spend much money. We made this decision to fight back in an educational way. Not because we would keep our positions at all costs but because we believed so much more was at stake. If those opposing us could successfully attack and remove us, what would be the next move? Constrained by ethical limitations and many wise, self-imposed restrictions, our code of judicial conduct is very strict. We often felt that we were fighting back but with both hands tied behind our back.

With many allies, we felt that we got our message out to the citizens, not an easy task in a state of, at that point, sixteen million Floridians. We were successful and received percentages that were in line with previous retention elections. That came with the support not only of many lawyers in Florida, The Florida Bar could not take an official stand because it's a unified bar, but citizen groups and most of all, the press. The press got it and I'm certain without that, the outcome could've been much different.

I will tell you what I became involved with after my 2012 election was the Informed Voters Project of the National Association of Women Voters. The centerpiece is a four-and-a-half-minute video that was narrated by Sandra Day O'Connor, but I'm only going to show a clip that we used on Constitution Day.

Our Constitution is celebrated as the backbone of our democracy but our Constitution cannot survive without fair and free courts. Americans look to their courts for fairness, free from the influence of politics and partisanship. Learn how you can help keep our courts fair and free at the Informed Voters Fair Judges website or join the conversation on our Facebook page. Our courts are what they have always been and must always be, fair and free.

The video received an Emmy. It was funded by a generous grant from The Florida Bar when Gene Pettis was president. In closing, I would like to urge all of you here to use your best skills as advocates to think of the judiciary as a client in need of defense. What would you do to defend that client with everything that you had? I urge not only each of you, but this wonderful organization, to use your collective resources in defense of our judiciary. In my view, nothing is more important than what is at stake—our democracy. Once again, I am honored and humbled by this award and I thank you from the bottom of my heart. Thank you. ■

CASUALTIES OF THE DRUG WAR: WOMEN, GIRLS, AND MASS INCARCERATION

PROFESSOR **MICHELE BRATCHER GOODWIN**, THE CHANCELLOR'S PROFESSOR AND DIRECTOR OF THE CENTER FOR BIOTECHNOLOGY & GLOBAL HEALTH POLICY AT THE UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW, STUDIES BOTH THE MICRO AND THE MACRO CONSEQUENCES OF TECHNOLOGIES AND SOCIAL PRACTICES IN A COMPLEX WORLD SYSTEM. FOR EXAMPLE, WHEN THE MAJORITY OF PEOPLE THINK OF ORGAN TRANSPLANTS, THE COMMON PERCEPTION IS LIVES HAVE BEEN SAVED OR EXTENDED ON ACCOUNT OF THIS NEW MEDICAL TECHNOLOGY. ORGAN TRANSPLANTS SEEM TO BE A GREAT THING. PROFESSOR GOODWIN WOULD SAY, "NOT SO FAST, THE ANSWER IS YES, BUT ...". SHE GIVES A MUCH MORE NUANCED ANSWER, THAT REALLY TURNS ON ONE'S PERSPECTIVE.

Her talk at the 2018 Spring Meeting in Phoenix, Arizona, focused on the drug war and its impact on women. She became involved in this subject when she saw women being threatened with arrest for refusing a C-section, or charged with first degree murder or manslaughter because they had a miscarriage or stillbirth. She saw this in Florida, in Alabama, in Illinois, and elsewhere.

"When you think about mass incarceration in the United States, it is really off the global scale. Although the U.S. comprises only 5 percent of the world's population, it incarcerates 25 percent of all the people who are incarcerated in the world, both men and women.

The U.S. incarcerates more women than Russia, China, India, and Thailand combined. The impacts are significant for children. *Sesame Street* now has a character who has a parent in prison, because it is so pervasive in the United States. Research done by one of Goodwin's colleagues, Kristen Turney, an Associate Professor in the Department of Sociology at the University of California, Irvine, found that children of an incarcerated parent fare worse psychologically and physiologically than children who have had parents die.

WOMEN AS THE UNINTENDED TARGETS

"Now, the casualty of the drug war; it's important to know that between 1977 and 2007, the rate of incarceration for women grew by over 832 percent. Women became the collateral byproducts and damage of that drug war. Some were users themselves but some were just simply married to people who were drug dealers and they took a package across the street, sometimes knowing what was in the package and sometimes not, and RICO laws were used to ensnare them. The rhetoric of the 1980s certainly did provide a lot of momentum for this, including the disparaging type of narrative in newspapers that women, particularly women of color and black women, were the worst women of the world because these were women who didn't care enough for their children to stop their addiction with crack.



“But then the *Journal of the American Medical Association* and the *New England Journal of Medicine* around the early 2000s said, ‘we’re not going to use the term “crack baby” anymore, we can’t.’ The reason why they couldn’t is because the narratives of the 1980s and early 90s did not pan out. The studies done by Dr. Hallam Hurt, Professor of Pediatrics at the Perleman School of Medicine University of Pennsylvania and Claire Coles, PhD, Director of Maternal Substance Abuse and Child Development program at Emory University on the maternal fetal impacts of a variety of drugs and alcohol showed that while most resulted in any number of health harms, crack had a very different effect than what was theorized. You can see the difference between the *New York Times* headlines in the 1990s versus just a few years ago when the *New York Times* basically recanted, re-visiting the crack baby epidemic that was not.

“By that time, tens of thousands of Black women had been dragged into jails. In fact, in states like Wisconsin, they had created laws euphemistically called ‘crack baby mama’ laws, providing for the civil incarceration of women who were thought to threaten their pregnancies.

“One example, just a few years ago, Alicia Beltran, a woman in Milwaukee, Wisconsin, who had gone to see her medical providers and was really pleased with where she was in her life and in fact said, ‘You know, I’m so happy. I’m pregnant, I have a great house, I have a great job, this is wonderful.’ But then shared with her medical provider, ‘I am really thrilled because earlier in my life, I had an addiction with pain medications and I’m just so happy I’m beyond that in my life.’ Police surrounded her house a few days later. She was dragged before a judge. Attorneys were provided for her fetus, none for her. She was incarcerated by Wisconsin for more than

“ QUIPS & QUOTES ”

The State of Minnesota has a practice with pregnant women, they called it black box shackling, which is to say that when you’re pregnant and you’re in jail, if they want to shackle you, they shackle you not only around your ankles, not only at your wrist but ankles, wrists, and around the womb. Nowhere else in the world is that practiced, but it is in the United States.

Professor Goodwin

seventy days against her will. By the time she got out, she had lost her job and her housing.

“Connected to this has been this very powerful welfare queen mythology that has helped to fuel mass incarceration and the theory that these women are exploiting our resources. There are more than one million women in the United States right now who are in jail, in prison, or somehow tethered to the criminal justice system. Our jails and prisons are full, they’re packed with people. Overwhelmingly, they’re packed with men but they’re packed with women too.

“ QUIPS & QUOTES ”

We have spent so much money on this drug war and we’re losing. We’re no better off for it, not at all. From what we’ve spent, it turns out we’ve changed virtually little. But the people who have been deeply harmed have been children, have been families, have been communities, and we ought to pay attention to this.

Professor Goodwin

“We have spent so much money on this drug war and we’re losing. We’re no better off for it, not at all. From what we’ve spent it turns out we’ve changed virtually little. But the people who have been deeply harmed have been children, have been families, have been communities and we ought to pay attention to this. It’s so significant that researchers are suggesting that the way in which we have massively incarcerated Americans is, in itself, a public health concern in the United States.

“I like to think about alternatives. We spend a lot of money on incarceration and in fact, in New Jersey, it costs more to incarcerate a woman than it would to send her to Princeton. Drug rehabilitation: we know from a variety of sources that rehabilitation does a much better job than incarcerating folks. It’s important to note that of the women who are incarcerated in our country, the overwhelming majority were incarcerated because of drug use and, overwhelmingly, they are nonviolent offenders.

“Look at the recidivism rates —this is a conservative estimate of forty-three. Imagine if your car were guaranteed to break down at least three days a week. Three days a week you’d get in and it wouldn’t start up, and you’d say, get rid of this car. But we keep this system.

INCARCERATION AND MEDICAL CARE

“In the audience today is a woman named Sue Ellen Allen. It’s important to think about what our civilian life is like, where we experience joys and happiness but also experience medical pains, prostate cancer, breast cancer, cervical cancer. In our civilian lives, we think about access to doctors, to clinics, places where we can heal. I learned about Sue Ellen from an op-ed that she wrote about breast cancer behind bars.

“Before she was sentenced, Sue Ellen knew she had breast cancer. The op-ed struck me because it was about how she was in shackles to get her breasts cut off. She was in a holding cell with rats and roaches, shackled during the procedure, no one allowed to be there with her. Even more profound was to learn about other types of medical neglect behind bars. Some of these cases involve women who were using a drug, but the punishment is a death sentence. When Sue Ellen came out, she founded an organization called Gina’s Team.

“It was called Gina’s Team because she had a cellmate, a young woman in her early 20s, who died from medical neglect. This young woman had leukemia, and when Sue Ellen insisted that there be some form of medical attention for Gina, she was threatened with solitary confinement. As women tried to get a thermometer for Gina, they were told shut up, stop. On the day Gina finally got a thermometer, she had this incredible fever. Gina died within a couple of days. Medical neglect. They had refused to take a blood screening, any of those things.

“Gina left behind children. About a year-and-a-half ago, I was giving a talk in Boston and I got a call in the middle of the night from Sue Ellen. She said, ‘Michele, I’m so sorry to be calling you right now, but I just have to tell you Gina’s eldest daughter shot herself.’ These are some of the collateral consequences of mass incarceration. It’s the shackling.

It's what happens with housing when women get out. It's losing their children because their children are surrendered to the State.

"The costs in foster care are significant because foster care is no longer temporary; it's another collateral consequence of our drug war and mass incarceration. The children have to go somewhere and so we put them in foster care. At least there could be hope that these children end up adopted, but that's not the case. Of the children in foster care today, only about 4 percent live in pre-adoptive homes. That means children languish in foster care. They go to group homes, institutions, shelters, foster families. It's stunning to think of scenarios of kids who are seven and eight years old and on their fifth or sixth foster home or living in shelters.

"Let me wrap up with us thinking about the social cost of children who are in foster care. There is a study being conducted by researchers at the University of Chicago, in collaboration with researchers at the University of Illinois and Wisconsin. What their research shows is that by the age of twenty-three, less than 50 percent of children who were in foster care and age out are employed, 25 percent are homeless, more than 75 percent are pregnant after leaving foster care, nearly 60 percent of the young men have been convicted of a crime and more than 80 percent have been arrested. If we think that

somehow this builds a better and brighter generation, it does not because only 6 percent will have a two or four-year degree. Is that the country that we want? I believe that we can do better than that. We, in fact, must do better than that.

"In Alabama over the last few years, over 500 women have been arrested and charged for endangering their fetuses, some of them taking plea deals of twenty years or more even when their babies have been born healthy. Or cases like Bei Bei Shuai, a woman who attempted to commit suicide by eating five packets of rat poison was charged with first degree murder because she had a stillbirth.

"These were issues that looked like the concerns of poor women and poor women of color but that's not the case. In Florida, a couple of years ago, a middle class woman, mother of four, told her doctor that she did not want a C-section, she wanted a vaginal delivery. Her doctor sent her an email and said, 'You are leaving me with no other choice but to have law enforcement come to your house and drag you here.' Fortunately, she was well-to-do, she had a lawyer and quickly shut that down. Other women are not so fortunate. By my talk today, I just wanted to shine a light on these issues for you."

Carey E. Matovich
Billings, Montana



AUTHOR DISCUSSES BATTLE OF HUE — TURNING POINT, DEFINING MOMENT, SINGLE BLOODIEST BATTLE IN VIETNAM WAR

AUTHOR **MARK BOWDEN**'S PRESENTATION WAS A FIRST FOR A COLLEGE MEETING — HE WAS THE FIRST SPEAKER TO GIVE HIS TALK VIA SKYPE. DUE TO WEATHER CONDITIONS, HE WAS UNABLE TO FLY OUT OF PENNSYLVANIA FOR THE 2018 SPRING MEETING IN PHOENIX. UNDETERRED, PENNSYLVANIA STATE COMMITTEE VICE CHAIR **CATHERINE M. RECKER** CONDUCTED HER FIRESIDE CHAT WITH THE AUTHOR — WITH HER STANDING ON STAGE IN PHOENIX WHILE A LIVE IMAGE OF HIM SITTING IN HIS LIVING ROOM PROJECTED ON A SCREEN BEHIND HER.

Few journalists bring clarity to the world with the skill and insight of Bowden. He eloquently captures a reality that not too many people face. In his book *Black Hawk Down, A Story of Modern War*, he wrote: “They were America’s elite fighters and they were going to die here, outnumbered by this determined rabble. Their future was setting with this sun, on this day, and in this place.” The book, the tale of U.S. Army Rangers and their 1993 ill-fated mission in Mogadishu, Somalia, became a *New York Times* bestseller, was a finalist for the National Book Award for Nonfiction and formed the basis for an Oscar award-winning blockbuster movie. “The battle of Mogadishu itself is now routinely referred to as the Black Hawk Down incident, a cautionary tale of American troops being sucked into conflicts of limited strategic value in places we don’t understand,” Recker said in her introduction of Bowden.



Bowden chooses topics as varied as politics, crime, science, urban transportation and sports. His books include *Killing Pablo: The Hunt for the World's Greatest Outlaw*, which chronicles the rise and fall of the Columbian drug lord, Pablo Escobar; *Guests of the Ayatollah: The Iran Hostage Crisis: The First Battle in America's War with Militant Islam*, which deals with the 1979 Iranian hostage crisis, and *The Finish, the Killing of Osama Bin Laden*.

His career began at the now defunct *Baltimore News American*, where he covered a wide array of local news stories. He was eventually snapped up by the *Philadelphia Inquirer*, where he worked as a reporter and columnist for over thirty years.

His latest book is *Hue 1968, A Turning Point of the American War in Vietnam*. "For a journalist interested in history, the sweet spot is about fifty years because many witnesses are still alive and enough time has passed to permit historical perspective. Not coincidentally, this January marked the fiftieth anniversary of the Tet Offensive when the North Vietnamese Army and the Viet Cong surprised American troops and their South Vietnamese allies with coordinated attacks across South Vietnam on Tet, the Vietnamese New Year holiday. The offensive was the largest military operation conducted by either side up to that point in the war. The Battle of Hue, the primary thrust of the Tet Offensive, is considered to be the bloodiest battle of the Vietnam War and according to Mark, a turning point in American history," Recker said.

Their engaging discussion follows:

Recker: [Orient us to late 1967. What was happening at that time in the war?](#)

Bowden: The U.S. had fully entered the war in Vietnam in 1965. As we approached the three-year mark, the assessment by General William Westmoreland and by President Johnson was that the war was all but won. General Westmoreland came back to the U.S. in November 1967 and gave a speech at the National Press Club, where he said the war was winding down, the enemy was only capable of launching small-scale attacks in the far reaches of the country, and that American troops would begin coming home in 1968. The official perspective of the war was very rosy. There was, however, a growing drumbeat of dissatisfaction about the war, which had not yet really become mainstream.

Recker: [Why did you choose Hue? What is about this battle that drew you to write this book?](#)

Bowden: I found it was certainly the largest and bloodiest battle in the war. Because it happened in the Tet Offensive of '68, it was at a critical moment in the history of the war. My preferred way of writing a story is not to write a sweeping history of the war over a couple decades, but rather to choose an important moment in that story and dig deeply enough that you can see all of the threads of the larger story at play directly. I thought that the Battle of Hue was an important subject and one that had been neglected.

Recker: [One of the things that really moved me was your ability to speak with and relate to some of the Viet Cong individuals who played a very important role in carrying out the surprise. Talk to us about some of those people that you met and that you interviewed.](#)

Bowden: People often ask me how I get people to talk to me and the answer is, usually, I show up. I made two trips to Vietnam, one in 2015 and then a follow-up the following year. I met fascinating people like Che Ti Mung, who is today an optometrist in Hue. She fought as an eighteen-year-old volunteer for the Vietcong during the Battle of Hue. I met the former governor of Hue, who had recruited cadres of his fellow students at Hue University to form an armed militia ▶



that helped in taking over the city. Each of the Vietnamese who I interviewed gave me a different slice of the story from their perspective. Hue 1968 tells the story of the battle from both sides.

Recker: Tell us how Che accomplished her goal, what she did by day and then how she was able to acquaint the North Vietnamese with the city once they arrived.

Bowden: For Che the war was her life. Her grandfather had fought against the French, her father had been in prison by the regime of [South Vietnamese] President Diem. Her older sister had joined the Viet Cong and been killed. When her sister was killed, Che had been arrested at age sixteen, tortured and refused to give up information about her villagers, who were fighting against both the Americans and South Vietnamese. She was essentially spying. She would ride her bicycle into the city, sell conical hats on sidewalks and, wherever possible, flirt with South Vietnamese soldiers, get them to tell her when they were off duty and learn things like how many people were at guard posts. She spent months compiling information and passing it along, all of which was useful to the enemy forces as they moved into the city. Then, she helped guide them into the city. When the American forces fought back and there were such heavy losses, she ended up fighting, being wounded, and carried off the battlefield herself.

Recker: Another of the individuals that you mentioned, you described as a Buddhist poet and also as a butcher. Can you tell us a little bit about him?

Bowden: He's a controversial figure even today in Vietnam. His name is Nguyen Dac Xuan. Xuan was a devout Buddhist who was chased from Hue during one of the religious crackdowns by the Saigon regime. He joined the Viet Cong, even though as a Buddhist he was ostensibly pacifist. He ended up writing propaganda for them and then when the city was taken, he became a commissar responsible for helping to organize the new revolutionary government in the city. As such, he was put in a position of passing judgment over his fellow citizens, in many cases judgments of life and death, who had been aligned with the Saigon regime. To this day, he carries the epithet butcher for his role in the executions that took place when the Communists took over the city.

Recker: In the beginning of the war, despite General Westmorland's denying that Hue had even been captured by the North Vietnamese, the Marines were severely outnumbered. Describe how the Marines were able to turn the momentum around and take back the city.

Bowden: In the initial stages the American military command in Saigon and in Phu Bai, which was the Marine headquarters just south of the city, essentially were in denial. They refused to believe that there were anything more than about 500 or 600 enemy troops in the city. In fact, at that point, there were more than 10,000. As a result, they kept sending small units of American Marines up against an overwhelmingly superior enemy. The Marines suffered very heavy casualties in the early days and were given orders that were, in the words of one of the Marine captains, idiotic.

It took Lieutenant Colonel Ernie Cheatham, who was given the task three or four days into the fight to figure out how to take the city back. Cheatham stayed up all night studying old Marine Corps manuals about how to assault four to five positions. He arrived in Hue on February 4, about four days into the battle with the kinds of weapons, recoilless rifles, tear gas, bazookas, which were antiquated at that time but which were capable of blowing holes in big stone walls. His arrival and his tactics enabled the Marines to begin systematically taking the city back, block by block.

Recker: Who were some of the other Americans that you interviewed that stick out in your mind as memorable?

Bowden: One of them is a hunter who always brings me venison scrapple. His name is Richard Leflar, known as Lefty. He was seventeen years old in 1968 when he forged papers and joined the Marines. He was sent to Vietnam in the middle of the Battle of Hue. It was his baptism into the war and he ended up being thrown into one

of the most intense urban fights of that battle. He was so disoriented, he lost his weapon, he lost his helmet, he lost his pants. He ended up in a bunker underground with rotting remains of dead Vietnamese who had been killed some time earlier. [He was] horrified by being there with the dead bodies but also was too afraid to climb out of the hole because the battle raging overhead was so intense.

As he described it to me, he just curled himself up in a fetal position and cried. It was emblematic of how terrible the fighting was in Hue. Someone like Lefty stands to me in stark contrast with a person like Che Te Ming, who was also just eighteen years old but for her, the war had been her life. For Lefty, the war in Vietnam was something he didn't understand. He couldn't even have found it on a map. He found himself thrust into something that was far too big for him to handle.

Recker: After little more than three weeks, the U.S. forces drove the North Vietnamese out of Hue. Around that time, Walter Cronkite concluded that the war was mired in stalemate and that the only rational way out was to negotiate. To what degree do you feel American journalism affected the outcome of the war?

Bowden: It had a huge effect. On the one hand, up until 1968 or so, the American public had been lied to systematically by the American military and by their government. This is made clear by anyone who reads the Pentagon Papers. Most reporters went to Vietnam anticipating that this would be a war the U.S. would win handily. What many would discover as they went out into the fields of Vietnam were young American soldiers who were in the field being tasked with carrying out the war's strategy, who were frustrated and who would tell reporters what was going on, and that in fact what they were doing was not being successful. Reporting in the U.S. began to question the strategies and the likelihood of an American victory.

Cronkite, as anchorman at CBS, had essentially been reading rosy optimistic reports about the war on the air for several years until the Tet Offensive forced him to go to Vietnam and inspect what was going on there for himself. He sat with General Westmoreland, who assured him that the Tet Offensive had been a disaster for the enemy, that they had been routed and he specifically said in the city of Hue, there was not a significant battle going on, that it essentially was over. Then Cronkite went to Hue. He saw he was in the middle of one of the worst battles he had ever seen, and this is a reporter who had traveled with American forces across Europe in World War II. The story that he had been told was not accurate. He came home and delivered what I think is a very measured assessment of what he had found - that the U.S. was not winning the war. It was unlikely, it seemed to him, that things were going to be turning around anytime soon.

Recker: You dedicate the book to Gene Roberts. Tell us who Gene Roberts is and what role he had in covering the war.

Bowden: One of the things I was interested in when I started researching about Hue was to learn more about what happened during that war. I was sixteen when this battle was fought. Anyone who lived through those years grew up with opinions about the war that very few really had any great depth of knowledge to defend. This was my chance to really understand it. I was curious about the role that journalists played in the war. My book looks at not just the fighting but also the way the fighting was being reported. The key reporter was Gene Roberts who coincidentally, and I did not know this when I started working on the project, was my editor. He was the man who had hired me in 1979 at the *Philadelphia Inquirer*. Years earlier, he had been the *New York Times* Bureau Chief in Vietnam and was the first reporter on the scene in Hue when that battle started.

I had the opportunity of interviewing Gene about his experiences during the battle and of looking at and studying the reports that he made throughout the battle. They supported completely the experience of the men who were fighting in the city. They were based on interviews with some of the very people who I had come to know as I reported the book myself. I came away with a great respect for Gene, who I had only known as an editor, as a reporter. He was not only incredibly insightful but he was also a very colorful writer.

CANADIAN JUSTICE ROWE RECEIVES HONORARY FELLOWSHIP



President Sam Franklin,
Justice Malcolm Rowe,
Regent Mona Duckett

THE HONOURABLE MR. JUSTICE MALCOLM ROWE WAS APPOINTED TO THE SUPREME COURT OF CANADA ON OCTOBER 28, 2016, BY PRIME MINISTER JUSTIN TRUDEAU. HE BECAME AN HONORARY FELLOW AT THE AMERICAN COLLEGE OF TRIAL LAWYERS 2018 SPRING MEETING IN PHOENIX, ARIZONA. HE IS THE COURT'S 85TH JUDGE IN ITS 143-YEAR HISTORY. HE IS THE FIRST FROM THE CANADIAN PROVINCE OF NEWFOUNDLAND AND LABRADOR. IN KEEPING WITH TRADITION, FOLLOWING HIS ACCEPTANCE, JUSTICE ROWE ADDRESSED THE FELLOWS. HIS REMARKS ON "EXECUTIVE AND LEGISLATIVE AUTHORITY IN CANADA" FOLLOW.

My topic here today comes from the fact that ever since I was in university, which is a long time ago, I had been quite concerned and interested in the integrity and proper operation of the governmental institutions. It's been my good fortune to work in the three branches of government. I served as an officer of the legislature at a young age. When you sit on the floor of the legislature as an officer of the legislature, you get a sense of how that institution operates. I served at a very senior level. In that capacity, I sat in the Cabinet room and sat with the Premier, which of course, is like your U.S. governors, and saw how decisions are made and advised on them.

It has been my good fortune as well to sit on the bench. I respect all three branches of government but I must say I'm most honored to sit where I do today. As a judge of the Supreme Court of Canada and before that, as a federally appointed judge of the Court of Appeal for fifteen years, I have learned to be philosophical about my role. In so doing, I recall two quotes. The first from Antoine de Saint-Exupery: "He who differs from me, does not impoverish me—he enriches my understanding." The second one is from Voltaire: "There is perhaps nothing quite so foolish as to believe that you are right all of the time."

Throughout my fifteen years on the Court of Appeal, I had two colleagues on each case. They regularly reminded me of what

Voltaire had said. Now, I am more fortunate, I have eight to do so. When my colleagues differ from me, I recall Saint-Exupery that by their doing so, they enrich my understanding. It's always nice when I have four of my colleagues who agree with me. I'm going to speak today about, as I said, what's a dry and obscure topic but it's a remarkably important topic. I'm not going to make a comparison between Canada and United States. It's how the institutions in Canada, the executive and legislative branches, interact. It is remarkably poorly understood. The reason it's poorly understood is because in many instances, it simply isn't written down.

A CONSTITUTIONAL MONARCHY

There are two written constitutional documents – the Constitution Act of 1867, which established the country and the Constitution Act of 1982. 1982 dealt with things such as our Charter of Rights and Freedoms, which corresponds to a Bill of Rights and isn't relevant to what I'm going to say today. The Constitution Act of 1867, which as I said created the country, and in very large measure delineated what authority was to be exercised by the federal government and what was to be exercised by the provincial governments, corresponds to your state governments. What it did not do is talk about the relationship between the executive and the legislative branches of government as your Articles of Confederation initially after the War of Independence

did and as the U.S. Constitution and the constitutions of each of your states do.

The reason that our constitution in 1867, and to this day, does not talk about the relationship of executive to the legislative branch is because we inherited a set of rules from Great Britain, a largely unwritten constitution by which our institutions are guided. We have to understand that Canada is a constitutional monarchy. All authorities exercised in the name of the Crown, in the name of the monarch is effectively exercised by elected officials. I'm going to give you a quote from the preamble to the Constitution Act 1867.

"The colonies of British North America are to be united into one dominion with a constitution similar in principle to that of the United Kingdom." I'll just repeat that, "With a constitution similar in principle to that of the United Kingdom." All of the practices that had grown up throughout the centuries in England were brought into the operation of the Canadian government. There are some other interesting passages: in the Constitution Act section 9, executive authority over Canada is to continue to be vested in the Queen. These are all in operation by the way, this hasn't been appealed. There shall be a council, section 11, to aid and advise in the government of Canada and those persons who are the ministers in the national government shall be chosen from time to time by the governor and serve during his or her pleasure. ▶

I was struck by the trap that you [Professor Michele Bratcher Goodwin] described where people are caught in the institutions of the state and their lives are destroyed, people who don't have a chance to move forward. I was brought up in a working class family, but a working class family that always had enough money to put food on the table. I was able to attend a good school and with the help of things like government loans, I was the first one in my family to go to university. I had a chance where the kind of people you described didn't. I think that's a very, very important difference.

Justice Rowe

Finally, section 15 of the Act says the commander in chief of the land and naval forces in Canada is the Queen. All exercise executive authority is expressed to be in the name of the monarch, but as I said while it is nominally vested in the crown, it is actually exercised by elected officials. I'll speak briefly about the legislature before I get to how the nominal authority, the crown, is exercised by elected officials. Federal and provincial governments both operate on the same module. There's no difference in any significant way except that at the federal level, in addition to an elected legislature, the House of Commons, there is a Senate. Our Senate is

a good gig because when you're appointed to the Senate, you serve for life. You don't have to run for election again, as our judges are appointed for life too, which is advantageous.

As to the executive, when you look at the U.S. Constitution, you say, "Here's the power the president has and here is the power congress has. Then, you have the division between the House of Representatives and the Senate. When you look at the state institutions, here's the authority the governor has and the legislature has," but none of that exist in the Canadian Constitution. It's just absent. There's no inherent grant of power or authority to the executive. It's by way of statutory delegation. The legislature has granted a broad authority to the executive to act within a statutory framework, always bearing in mind that it is only Parliament or the legislature that can make laws that can raise revenue.

Now, the odd thing is while Parliament and the executive are separate institutions, both are under the common control of the Prime Minister at the federal level or the Premier at the provincial level. There's an enormous concentration of authority in the hands of the Prime Minister or the Premier. This is where we come to the constitutional conven-

tions, which make all of this odd system work. As I said, most of the constitution is unwritten and is comprised of these conventions. There is no definitive statement anywhere of these conventions, nor is it possible to make one. All that can be done is to describe what occurs in practice. I suppose I'm a minor author in this area. There's not many of us. This would seem, on its face, to be a recipe for uncertainty and conflict but in fact, it is not. The courts, interestingly enough, rarely speak concerning these constitution conventions.

There have been occasions when there had been quite pivotal statements for the courts but these things usually work themselves out in the political arena without the intervention of the courts.

THREE KINDS OF CONVENTIONS

The first [convention] relates to executive authority and how the formal authority vested in the governor as the representative of the crown is actually exercised by the elected officials. On paper, the governor possesses extensive powers but in almost all circumstances, this authority is closely circumscribed by the convention that the governor acts on the advice of the Cabinet or the Prime Minister or the provincial level, the Premier.

By advice is meant effectively the decisions taken by these elected officials. For example, and this is a very important one, it is the Prime Minister who provides the advice upon which the governor exercises his or her authority to a point or dismiss ministers. The key concept is effective control of the advice to the governor. This is extensive in a way that I think most Americans would find remarkable. All senior appointments are made by the executive and the legislature has no role. For example, my appointment was essentially made by the Prime Minister of Canada without reference to the legislature, except in a very nominal way.

The direction of policy for the country under the statutory authorities conferred by a parliament and indeed bringing forward statutory amendments to the change the framework of delegated authority are effectively under the control of the Prime Minister and the Cabinet. Finally, while it is Parliament who must raise revenue and Parliament who must

authorize the expenditure of funds in a block, the finances of the country are effectively under the control of the Prime Minister and the Minister of Finance.

The second group of convention I wanted to speak about relates to the operation of Cabinet. There are three main conventions here, confidentiality, solidarity and collective responsibility. Discussions in Cabinet are held in confidence by its members. This promotes full and frank discussion. Any minister who discloses what occurred in Cabinet would be immediately dismissed. While ministers may vigorously oppose a proposal in the Cabinet room, and I have sat in the Cabinet room and I've seen some very vigorous debates, once the decision is taken, when the doors of the Cabinet room open, they must all stand together united or if you are not in agreement, you must leave the government. The Cabinet is collectively responsible for all of its decisions to the legislature and ultimately to the electorate.

How does the Premier or the Prime Minister relate to the Cabinet? The Prime Minister chairs the Cabinet and in so doing, the Prime Minister guides the discussion and effectively takes the decision. The term that is used is "finding the consensus." This is a euphemism. The Prime Minister, the Premier finds the consensus where he or she sees fit. This may give the impression that Cabinet Ministers are inconsequential to the contrary. They deal with the vast majority of decisions taken by the executive and through Cabinet, they share with the Prime Minister in taking the major decisions of government. It's a very interesting phenomenon. One that almost no one gets to see is the interaction between or among ministers and the first minister, the Premier or the Prime Minister. Prime Minister has the ultimate control but the Prime Minister or

the Premier must be mindful of the views of his or her Cabinet or else the government will divide and it will fail.

The third and final group of conventions I'm going to address is the relationship between the Cabinet and the legislature. Most fundamental is whether the Prime Minister and the Cabinet, sometimes referred to as the Ministry, has the confidence of the legislature. The most critical test of confidence is the budget. If the legislature does not approve proposed budget measures, the ministry must seek a mandate through an election or it must resign and turn office over to the opposition. This occurred in my lifetime in 1979-1980. In 1979, there was a conservative government, which was elected federally. It proposed a budget late in 1979. The budget was defeated in the House of Commons, the government failed. There was an election and the liberals were returned to office under one Pierre Trudeau in 1980.

If you cannot carry budgetary measures, you must either go to the electorate or resign and hand power over to the opposition. Similarly, the Ministry will fail if the legislature adopts a resolution expressing no confidence. This occurred just last year in the province of British Columbia on the west coast, where the liberal government had come out of the election with the largest number of seats but in a minority. The opposition parties formed a coalition and defeated the government in the House. The Premier resigned and the governor called upon the leader of the opposition to form a government without any intervening election. Then, there's this gray zone where you can be defeated on what I'd call ordinary legislation. Is this a matter of confidence? It all depends on the circumstance. It's very contextual.

That's where you get into a little uncertainty. As a general proposition, conven-

tion operates to achieve practical ends. If the Ministry cannot get bills approved, then it cannot govern. If the legislature has lost confidence in the Prime Minister and the Cabinet, then further defeats are sure to follow, such that ministry cannot effectively govern. The system operates on all occasions, so that there is always an effective government. This odd anachronistic, difficult to understand system has only one virtue—it works. No one designed it, rather it arose from the practices in England over the centuries that we adapted in Canada and we have adapted for our own purposes. It has served Canadians well.

In closing, I'd recall the opening words of section 91 of the Constitution Act of 1867. I quote, "It shall be lawful for the Queen, with the consent of Parliament to make laws for the peace, order, and good government of Canada." Peace, order, and good government are plain modest, practical goals. Plain, modest and practical, that is very Canadian. Thank you.



RETIRED PHOENIX POLICE OFFICER TURNS TRAGEDY INTO TRIUMPHS

LIFE IS 10 PERCENT WHAT HAPPENS TO YOU, 90 PERCENT HOW YOU REACT TO IT

Jason Schechterle is what psychologists describe as a super survivor.

“Some people when exposed to life’s most traumatic tests are not defeated but rather survive and even thrive. It is said that adversity reveals character. Psychologists will tell us that it is not the adversity itself but rather how one reacts to that adversity that determines someone’s future. The most important determination a psychologist would tell us is resilience, that inevitable quality that allows a person when faced with unimaginable adversity not to be defeated. Individuals who possess this resilience had been shown to survive and to eventually overcome all that is inevitably associated with trauma and refocus their life on a new mission. Jason Schechterle is a super survivor,” said Regent **Kathleen Flynn Peterson** of Minneapolis, Minnesota in her introduction of Schechterle during the 2018 Spring Meeting in Phoenix.

Since he was sixteen years old, all Schechterle wanted was to be a member of the Phoenix Police force. He dreamed of following in the footsteps of his big brother Michael. It was not always easy. He overcame some obstacles and on January 7, 2000, he graduated as a proud member of the Phoenix Police Academy class 333. He has described being a police officer as not just a job, but a way of life.

He has said, “It is who you are down to the core of your being, a noble calling, being a cop is an

all-in prospect, a life commitment.” At the age of twenty-six, just fourteen months into his career, as he was preparing to respond to a call, a taxicab driving an excess of 100 miles an hour crashed into his squad car. The car exploded. Jason was trapped in this gasoline inferno and he was burned to the bone in over 40 percent of his body. He was not expected to survive. His story, and the courage of choices he has made, provides powerful inspiration for everyone.

“When you wake up in the morning, the most inherent desire that you have as a human being is you want to be inspired. You want something to move you. You want something to feel good. When you’re going through your difficult times and your adversity, no matter how big or small it is to somebody else, whatever you’re going through, you have to embrace it and you have to own it. You have to find those things that move you. Those inspirational things, it could be something as simple as your favorite song coming on the radio, your favorite team winning, a friendly face you haven’t seen in a while. Anything that makes you feel good, you have to gravitate towards it,” Schechterle said.

FACING LIFE-CHANGING ADVERSITY

“I was born and raised in Phoenix. All I ever wanted to do was to be a police officer, a homicide detective. I wanted to serve my community. I



wanted to serve my country. I did four years in the Air Force. I came home and went to work on getting that career. I was successful at twenty-six years old and just could not have been happier. I have a beautiful wife, a daughter, a son, the job that I had dreamed of and serving the community at the city that I grew up in was everything that I wanted to be. A short fourteen months later, I'm twenty-eight years old and truly the least prepared person in the world to face any kind of real adversity, life-changing adversity. I had never faced a death in my family. Not a divorce, my parents are alive and happily married.

"All four of my grandparents were alive and married. My brother is enjoying a successful career in law enforcement. My sister and her husband own a successful sign company here in the valley. I've got a wonderful family. Other than breaking a few bones playing sports growing up, I knew absolutely nothing about hard times. That's how life is. It's not going to tap you on the shoulder and say, 'Hey, here's what's coming in about four hours. You better get ready for it.' You get no preparation. You get no warning when something is going to drastically change your life. For me, it was March 26, 2001, just two miles away from where we are right now. I went to work at 3:00 in the afternoon that day. I was supposed to work until 1:00 in the morning.

"I still remember every single thing I did. I went on a couple minor car accident calls. Just wasn't a whole lot going on. About 11:20 that night, the dispatcher came on the radio with an emergency call of an unknown trouble. It wasn't in my area of responsibility so I didn't really pay attention to it. The officers in that area were busy at the time, so the dispatcher came back on. She said, 'Unknown trouble, found dead body in an apartment with a lot of blood.' It seemed like a violent crime has been committed. For just a brief few seconds, the call went unanswered. I wasn't doing anything at the time, so I grabbed the radio and I said I'll head that direction.

"Because it's not my patrol zone, it seemed like it obviously was an emergency. I'm going to get there as quickly as I can, so I'm driving lights and siren, what we call a code three. This picture is taken during the daytime but again, the incident that I'm describing happened very late at night. This is the intersection of 20th street and Thomas, State Route 51 overpass. It's where Phoenix Children's Hospital, Arizona Heart Institute right there on the corner. The blue arrow at the left of the screen is the direction I was traveling, east bound on Thomas Road. As I approach the intersection, I've got a red light. Even though I'm running code three, I still have a responsibility to come to a complete stop to make sure the people getting on and off the freeway will yield to my emergency vehicle.

“ QUIPS & QUOTES ”

I've learned suffering is biologically useful. It's where the magic happens. It's the only time that inspirational change will happen. Pain and misery are not a defect in us. They are a feature.

Jason Schechterle



“As I’m going to proceed to the intersection, my patrol car is struck from behind by a taxi cab. The driver was suffering from epileptic seizure at the time. According to the investigation, he was doing 115 miles an hour when he ran into me, which is just a speed I can’t even fathom on a downtown city street with a forty mile an hour posted speed zone. My car burst into flames, traveled 270 feet through the intersection coming to rest where that orange rectangle is. Just to the right of that, you see a red number five. That’s where Phoenix Fire Engine number five was sitting at the moment I was hit. I can’t begin to tell you how many miracles and twist of fate went into putting a fire truck in the exact intersection at the exact moment but I needed them most. They turned their truck, drove maybe fifty feet and go to work for me.

“The taxicab did not catch on fire. The driver survived, suffered a severely broken left leg that required surgery and a stay in the hospital. He also had a passenger in the backseat of his car who was ejected out of the windshield and at that speed, that violent of a collision, he also survived. The ironic part was when the second responding fire units arrived on scene, they saw a man’s body lying about 100 feet away in the intersection. Of course, they rush to his aid. The first thing they noticed, he’s wearing Sheriff Joe Arpaio’s jail outfit. This guy had just gotten released from jail and he called a cab to get a ride home. Then, they run into a cop.

“The picture of my Ford Crown Victoria, very susceptible to rear-end, fuel-fed fires. At the time of my accident, twelve police officers had burned to death. Since then, add another nineteen and countless civilians. I’m the one who got a firetruck in the intersection, so I’m very proud to have been eventually a face and a voice for these cars and with my incredible attorney Patrick McGroder was able to effect a great deal of change over the years and make things a lot safer. I want you

to really look at the front windshield, the interior of this car and try to imagine how intense and hot this fire must have been. There are four firefighters on the truck. They’ve all got very important individual jobs. The captain’s on the radio and trying to get more units on scene. The engineers getting her truck prep, getting the hoses out. One of the firefighters is asked to battle the blaze. This young rookie was on the truck. He’s a twenty-two-year-old kid, given the grim task of getting me out of my car.

“As he approached my driver side window, he turned to his captain. He said, ‘Captain, this guy’s dead.’ He broke my window with his ax and I reached out as if to grab the roof of the car. He said it scared the hell out of him. Even unconsciously, you’ll do things to find help for yourself. Here’s this young man wearing just his gloves, turnout gear. He doesn’t have a knife and I’m sitting trapped in my seatbelt in a burning vehicle. Very quickly, two police officers, two very good friends of mine arrived on scene. Not knowing it was a police car and certainly, not knowing who was inside of it. As they exited their patrol car, they heard this young firefighter screaming, ‘I need a knife.’ One of the officers ran up and he cut my seatbelt.

“As he and the firefighter were pulling me out of my driver side window, my size thirteen boots got stuck underneath the steering wheel. This other police officer who wore a short-sleeved polyester uniform crawled into the cab of that car, into the fire, helped get my legs and feet free. Cops and firefighters have a job to do but there are only a select few that are able to go above and beyond the call of duty. Those guys are definitely a couple of my heroes. They won Officers of the Year 2001 for what they did for me that night. From the time I was hit until the time I was out of the car was ninety seconds. I was on fire for maybe fifty-five seconds and another miracle, I was two and a half miles away from what

I would argue is the best burn center in the United States, Maricopa County Hospital and I was on their trauma table in less than eight minutes.

“For the collision, every single thing had gone in my favor. I suffered burns to 43 percent of my body. My neck and face being the worst, they were fourth degree, which is a term I’d never heard. I thought third degree was the worst burns you could have. Fourth degree means it’s down to the last layers of muscle into the bone. My shoulders to my hands, third degree burns. Other than the burns, I had two cracked ribs and a mild concussion. If that car didn’t catch on fire, I’d have gone home just a few hours after the accident.

“My best friend who arrived at the hospital the same time I did, believing that it was me because he couldn’t get a hold of me didn’t recognize me. He said to himself, ‘Thank God, this is not Jason.’ When they took me inside the room, they started cutting off my uniform. I had a tattoo on my arm at the time that he was able to recognize and identify me with. Then, he was faced with the tough task of having to not worry about his own feelings or even me. He had to wake up my wife in the middle of the night and completely change her life forever, get my parents out of bed, gather my family. Outside of the hospital staff and my friend, the only person allowed to see me was my priest who was brought in. He gave me last rites and the doctors gathered my family around. They said, ‘We’ve never seen burns quite like this to somebody’s head and face. There’s no way Jason is going to survive this but we have to get him into surgery. We have to get all that dead bacteria-filled tissue off of him. We’re going to place him into a medically-induced coma, just knowing the surgeries and pain he’s facing if he does survive for a couple of days. We’re going to keep him as quiet as possible.’

“After surgery [picture shows on screen]. You could see the bloody mess around my head. Erase everything up, my nose, my ears, my eyelids, the entire physical identity that I had known for twenty-eight years is being stripped away minute by minute. The best part of this picture is look at that young nurse at the center against the wall. Look at her face, she’s like, ‘Hell, no. I would not get any closer to that.’ Time’s gone by and I’m continuing to survive. Finally, the time came, the doctor said, ‘We’re going to wean Jason out of the medicine, wake him up. See what we’re really dealing with.’ They had no good news for my family. They said, ‘Jason’s completely blind. He’s probably deaf. He can’t hear you. He can’t speak. He’s not going to be very nice. He’s not going to be able to handle this. It’s what we see with physically disfiguring injuries all the time.’

“They woke me up and it’s hard to explain but I was clear headed as I am right now. I knew right away I was in the hospital, just the sound and the smells. Why can’t I open my eyes? Why can’t I move? I was just at work. A thousand thoughts flood into my mind. Thankfully, it’s the middle of the day. I wasn’t alone. My wife is in the room with me. Here’s a woman who hadn’t spoken to me in quite a while. I’ll never forget how calm and strong her voice was. She told me right away that I’d been in a car accident. I said, ‘Was it my fault?’ She said, ‘No.’ I felt a little better. I said, ‘Well, when was it? Just three hours ago. It was last night. I was just at work.’ She said, ‘March 26.’ I thought that is a very odd answer to that question. ‘What’s today?’

“She said, ‘Today’s June 12.’ Two and a half months in a blink of an eye gone. I missed my wedding anniversary, missed my son’s third birthday. Impossible to get your mind wrapped around what’s going on. Then, she told me that my car had caught on fire. I stopped her said, ‘Don’t say another word to me.’ Ever since I was a little kid, the only thing that I’ve ever been scared of is fire. It might sound silly, but growing up as a child and as an adult, my family and I have never owned or cooked on gas barbecue grills. We don’t buy real Christmas trees that can dry out at the end of the season and pose a fire danger. I grew

up to be a cop and went on numerous fire calls. I saw people who were burned and disfigured. I saw people who died in fires. It’s one thing that I pray would never happen. Here without warning, I’m being told it did.

“Knowing it’s a car accident, I thought my legs have been burned but I am still so devastated by this news that I started down the path of emotions. You cannot be told something life-changing, something you consider catastrophic and just simply say okay. We’re not built that way. You have to go on a journey within yourself if you have any hope of coming out the other side. The early days, it was just nonstop crying. What are my kids going to think of me? I’ve lost a job that I love. There were days that the people who even dared walk into my room, they got yelled at and cussed at. There were days I just wanted to talk.

“ QUIPS & QUOTES ”

He’s burned through all the layers of the skin, through the fat, through the muscle down to the bone. By the grace of God, not only is he alive, he’s probably going to live through it. Then, what is he going to be left with? A guy or a gal who gives back not asking for anything, just wants to continuously improve everyone’s situation. That, to me, is a definition of a hero.

From the video played by Regent Kathleen Flynn Peterson in her introduction of Schechterle

“About three weeks after waking up from my coma while in bed, in the middle of the night, no visitors during those hours. When you’re blind, you’re alone with your thoughts all the time. I started to really think about how this could have happened. I don’t believe anything as instantaneous. Our entire life, everything on this earth is just about choices being made and the constant collision course that those are on. We make hundreds of decisions every day that we think are in consequential, but you never know when one’s going to have a ripple effect throughout the rest of your life. It was learned that the taxi driver had caused a lot of other accidents prior to mine. He had lied on his driver’s license applications. He wasn’t taking his medication. He ended up be-



ing arrested and charged with aggravated assault. I knew that he wasn't out to hurt a police officer. He certainly wasn't out to hurt me.

“He made a lot of very bad decisions over a long period of time. I thought that I had made a lot of great choices over many years of my life that led me to that intersection. If it wasn't me, he would've made it to 24th Street and Thomas. He could've hit a woman with her kids, somebody's grandparents and they wouldn't have been as lucky as me to have survived. I also believe strongly in accountability. You have to be accountable for everything that happens in your life, good and bad. No matter what is going on for the most part, you are exactly where you've chosen to be. I'm the one who chose to be a police officer. I chose to answer up a call that I had no business answering up for. The way the city is laid out in a grid, I could've taken ten different directions to the get the address I needed to go to but I chose to drive eastbound on Thomas Road and I chose to be on the left hand lane.

“Having that accountability really laid a solid foundation that I needed if I had any chance of overcoming this. It was the next day that I asked the doctors when can I go home. They said, 'This is the end of June. If everything goes right, you're going to be here until Christmas. We need about six more months.' I did everything they wanted me to do, surgery, therapy, you name it. This picture was taken of me walking out county hospital on July 31. How personally motivating it was to be six months ahead of the expert's schedule. Now, I'm like a little baby. I had lost half my fingers to amputation. I'm completely blind. I've lost sixty pounds. I can't talk because of all the surgeries, these skin grafts. I can't eat real food, just like a baby again, so off to a rehab center to learn some of those things. Then, I was finally sent home on August 17. This is where the mental and emotional adversity really got me.

“All of a sudden, I'm at home. My wife had to give up her twelve-year career in orthodontics to stay home and take care of me. I'm certainly not the husband I used to be or the father I used to be. I've got a seven-year-old daughter, who's pretty intimidated and she's been stuck with her three-year-old brother for all those months while her mom was visiting me at the hospital. My son, Zane, would cry and run out of any room I was in. He would openly say, 'You're not my dad.' I know in this room right now, there are a lot of fathers. Can you even imagine how devastating it is to hear those words? I'm not the member of society that I used to be. I can't return to work. I haven't seen myself so I'm not going to go out in public and show everybody else. Life isn't just one day at a time, sometimes it's one hour at a time.

“Every time I went to therapy and came home, I got a little bit stronger. Every time I had surgery, something got a little bit better. I'm a huge baseball guy and I absolutely love the Arizona Diamondbacks. In the fall of 2001, they were on their journey to winning the World Series. I would sit and listen to those games. For three minutes, I'd get lost in being a fan and forget about what I was going through. Then, it would be an hour and it would bridge the gap to the next hour, and the next day. Finally, I regained some of my eyesight. About nine months after the accident when they opened the skin grafts that they had covered my damaged corneas with it was like being underwater and looking at the other end of the pool. Just to see light and colors again was a blessing.”

INSPIRATIONAL STORIES

“January of 2002, the Olympic torch is on its way through the valley here to Salt Lake City. They asked me to participate in the torch run. At first, I'm incredibly nervous. I can't really see, I'm six foot three, weight maybe 120 pounds at the time. I hadn't started the reconstructive surgery and therapy on my deformed hands. How am I going to do this? The Olympic torch comes to the United States once every twenty or thirty years, so what an incredible honor. Of course, I accepted it. I get down there. This young girl from the Olympic committee, she's maybe nineteen-years-old. She comes up and she says, 'Officer Schechterle, we have a wheelchair for you. We got a guy who's

QUIPS & QUOTES

I was in Newark, New Jersey, a few days... I landed pretty late at night at Newark airport and called for my Uber. When the guy was loading my luggage into his truck, I could tell he's looking at me a little hesitantly and uncomfortably. We got in the car and he turned around and said, 'Hey, you mind if I asked what happened to you? You in the military or something?' I was casually buckling my seatbelt. I said, 'No man. I'm from Phoenix, Arizona, and after just one summer, we all look like this.'

Jason Schechterle

going to carry the torch for you, carry it for 400 yards.' I said, 'I don't know how it's going to go but this is a once in a lifetime opportunity, so I'd really like to carry the torch myself and at least walk down the street.' As sweet as she could, she looked at me and she said, 'Okay, but when you're carrying the torch, make sure you don't get the flame too close to your face.' I said, 'No shit.' I'm the one guy who does not need those instructions. It turned out to be a magical evening. I passed the flame off to Curt Schilling and he was the World Series MVP two months before when the D-backs won the World Series.

On another day, they gave us the largest suite at Chase Field. I invited all my doctors, therapists, nurses, firefighters, anybody who's been with me for those sixteen months. It's a very small way to say thank you and get everybody in the same room together. Then they ask to throw out the first pitch. Two weeks prior to this, I had my right index finger voluntarily amputated. I am still trying to recover from that but again, how often do you get the honor of throwing up the first pitch in major league game. Of course, I accepted. As I'm walking out of the suite, my friends from police department, they said, 'Jason, don't throw this underhanded. It better not hit the dirt. Don't embarrass us.' I'm pretty nervous.

"I get down there and Curt Schilling comes up. He says, 'I'm going to catch this for you.' Another huge honor, future hall-of-famers don't catch ceremonial first pitches. I don't know the rituals before games. I said, 'Can I stand on the mound?' He said, 'You know most people stand on the flat part right in front but if you want to, you could stand on the mound. But don't short hop because I'm not wearing a cup today.' I had tunnel vision like I've never had, 40,000 people in the stands, I didn't hear a sound. I'm just praying, 'God please throw this ball all the way to his glove.' I threw it all the

way to his glove and I was in cloud nine, to go back to the suite, see my doctors, and therapist's faces throwing a ball 60 feet six inches at the time was a really big deal. Of course, the first people I saw were my friends. They said, 'That was three feet outside, you suck.'

"Those stories are a lot of fun to share and obviously, inspirational at the time. It's also very humbling to know I only got to do those things because of the uniform I was wearing, the job that I was doing. I greatly appreciate how communities rally around first responders, but like I said when I started, at the end of the day when I laid my head on the pillow at night, do you think I cared anything about throwing a ball or carrying a torch? Not even a little bit. I cared about my family and I cared about my career and those are the two things I went back to work on. First was my family. We had a daughter and a son, and we were good but you go through something like this and it definitely makes you think. We decided to expand our family and bring another life into this world and we were blessed on October 29, 2002 with our youngest son, Mason Brian. He did more for me than anyone single person or event in this whole journey.

"He would not be here for it wasn't what we had gone through, what those firefighters did, what those doctors did. The fact that I survived and see that he has a life now, it's going to make everything I've ever gone through completely worth it. Outside of Mason, easily the best day of my life is two weeks later. November 12, 2002, eighteen months after the accident, I got into a truck by myself and I drove back to work. I started out as a public information officer. I had become detective certified prior to my accident. I eventually made it to my dream goal of being a homicide detective. It was the honor that I thought it would be to speak for victims who cannot speak for themselves and to help bring closure to

families that are affected by that kind of violence. I learned how to shoot a gun again with this eyesight and these hands to be able to hit the target.

"I'm driving to and from work. I'm reading and writing reports on a computer. I'm investigating detail murder scenes and I started to take that for granted with the work I was doing, the hours I was putting in. It was a very difficult decision but I knew that I needed to walk away from that job and move on with my life. I finally retired in August of 2006. Golf is one of my favorite things. I actually got a scholarship out of high school. I was pretty decent back then and even at the time of my accident, I was a two handicap playing once a week with my dad, my best friend. This is the one thing that I threw overboard. The one thing that I said of all that you need to overcome and accomplish, you are never going to hold on the skinny little golf club and see a ball flying to the blue sky again. Let's not worry about it.

"Around the time I retired, I was able to start working with PING again. They're based right here in Phoenix. I don't care if you're talking about overcoming catastrophic fourth degree burn injuries or if you're talking about something as silly and simple as a game of golf, there's nothing as powerful as a made up mind. If you believe that you can do something, and you move toward doing it, chances are you're going to get it done. I'm so proud to be able to say that I got my handicapped back down to a one. I can play better after the accident than I could before.

"I cannot tell you how blessed I am that she [Suzie] truly understood the vows of marriage, what a job she did as a mom. After giving up her portion of life and really dedicating it to us, she found her new calling. About six years ago, went back to school, got a teaching degree and she's currently the fourth grade teacher at the elementary school that our kids went to. This picture right here ▶

When you wake up in the morning, the most inherent desire that you have as a human being is you want to be inspired. You want something to move you. You want something to feel good. When you're going through your difficult times and your adversity, no matter how big or small it is to somebody else, whatever you're going through, you have to embrace it and you have to own it. You have to find those things that move you.



Jason Schechterle

sums up all of my health and happiness. There's nothing more beautiful to me than seeing somebody take their adversity, spin it 180 degrees and shine something beautiful out on this world. My daughter is a great example of that. For all that she went through as a child, she dedicated herself to being a good person, a good student. She was rewarded with a scholarship to Texas Christian University in Fort Worth where she graduated in 2016. She was one of two people accepted into a medical program at Baylor University doing developmental child psychology, so that she can come back and help children affected by trauma the way that she and her brother were. In January, I was in Dallas and I walked her down the aisle.

“As we were walking down the aisle, all I can think about was every step that I had taken since the night of March 26 of 2001 led me to that moment. There's not a single thing I would change about this journey because of what I've gotten to do. You should have a goal in this life. Every meeting you're in, every room you're in, every airplane you get on, every phone call you're on, every conference you go to, leave it better than you found it. I'm going to leave this world better than I found it because of these wonderful kids. My son Zane is doing hotel restaurant management at NAU right now. My son Mason is over at Brophy College Prep playing in his first baseball game as a freshman. I can't wait to go pick him up in a little while. Nothing matters but the fact that they are leading productive lives and have a compassion and an understanding of life's adversity.

“You can't say it enough. It was said in the introduction. I will say it again. Life is 10 percent what happens to you, it's 90 percent how you react to it. Not a lot of things you're in control of but you're always in control of your attitude no matter what you're facing. You're not always going to win your battles. You're not always going to be the best version of yourself. I told you just a little while ago that I cried every day, that I yelled and cussed at people. They're only there to support me. Every day you get to learn from what you went through the day before. You get to try and be a better version of yourself. I could not control that taxi cab that night. I could not steer it in a different direction or make better decisions for him. Because of his choices, my life has forever changed. My appearance is forever changed. Am I supposed to give up?”

“My face and my hands were burned, my heart wasn't. My face and my hands were burned but my spirit and my character aren't. My eyesight and my hands work about 30 percent the way they used to. Does that mean my effort should drop down to 30 percent? No. If you can wake up every morning and get out of bed, you absolutely are in control of winning that day and making something productive out of your life. No matter what you're going through, when you go to this hotel tonight or you go home tonight, whatever you're facing right now. Don't let the pain of today blind you from the promise of tomorrow. There are too many good things ahead. I know from just the advocacy that my lawyer and I did, the change that we affected with those cars has made my life more meaningful.” ■

“ROLLING REFORM” TO THE BAIL SYSTEM, ONE COUNTY AT A TIME



IN THE SPRING 2017 EDITION OF THE *JOURNAL*, AN ARTICLE FEATURED FELLOW **NEAL S. MANNE**, THE MANAGING PARTNER OF SUSMAN GODFREY IN HOUSTON, TEXAS, AND HIS EXTRAORDINARY PRO BONO WORK. (“TEXAS FELLOW NEAL MANNE SETS THE BAR FOR PRO BONO WORK,” *JOURNAL*, ISSUE 83). ONE OF THE CASES MENTIONED WAS A LAWSUIT CHALLENGING THE CONSTITUTIONALITY OF THE BAIL SYSTEM FOR HARRIS COUNTY, TEXAS. CO-COUNSELING WITH THE CIVIL RIGHTS CORPS, MANNE CLAIMED THAT A SYSTEM THAT ALLOWS FOR LONG-TERM, PRE-DISPOSITION INCARCERATION OF PEOPLE MERELY BECAUSE THEY CAN’T AFFORD TO MAKE BAIL VIOLATES THE U.S. CONSTITUTION.

The district court agreed, making voluminous factual findings and concluding the Constitution was violated in her 193-page decision. Now, the Fifth Circuit also has agreed, unanimously upholding all of her findings and the constitutional violations. As Judge Edith Brown Clement wrote for the Court, “the essence of the district court’s equal protection analysis can be boiled down to the following: take two misdemeanor arrests who are identical in every way—same charge, same criminal background, same circumstances, etc.—except that one is wealthy and one is indigent.”

In the Fifth Circuit’s words:

Applying the County’s current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would

almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that this state of affairs violates the equal protection clause, and we agree.”

The Fifth Circuit concluded, however, that Judge Rosenthal’s injunction altering Harris County’s bail bond system was overly broad and instructed her to make adjustments to the order, such as requiring that a county employee verify an arrestee’s ability to pay a bond. No-

tably, the Court nevertheless left the injunction in place while the district judge considers how to tailor it. She has not yet done so, as both sides have filed narrow motions for reconsideration.

Manne, who was recognized as Texas Lawyer’s “Attorney of the Year” last year after obtaining the district court’s decision, is thrilled with this “very powerful affirmance.” Two additional Texas counties have already been sued under this new precedent. He will happily provide pleadings and counsel to any Fellow who wishes to challenge a similar bail system as part of the College’s Access to Justice initiative. Congratulations to Neal on a battle well-fought, which can have an enormous impact and, as he puts it, “rolling reform” across the U.S.

Sylvia H. Walbolt
Tampa, Florida

INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT THOMAS H. TONGUE



DURING THE FRIDAY, MARCH 2, INDUCTEE BREAKFAST, TREASURER **DOUGLAS R. YOUNG** GAVE AN EXECUTIVE SUMMARY ON HOW INDUCTEES GOT TO THIS POINT. PAST PRESIDENT **THOMAS H. TONGUE**, GAVE INDUCTEES, SPOUSES AND GUESTS THE “REST OF THE STORY” DURING THE INDUCTEE RECEPTION AND LUNCHEON ON SATURDAY, MARCH 3. HIS EDITED REMARKS FOLLOW:

You are here today to be inducted into the most prestigious professional organization of trial lawyers in North America—founded sixty-eight years ago—because you have been judged by your peers to be the best of the real lawyers, trial lawyers. We congratulate and welcome you. You cannot apply for membership. You can only be the best you can be and hope to be noticed. How does that happen? How did you get here? Was it as the speaker yesterday said, the product of “time and chance”?

Like a former Boston Congressman said, all politics is local, and so is the process that started you on the path to where you are today.

The College seeks only the very best current trial lawyers. They know that the College, by rule, will not begin to consider anyone who has not completed at least fifteen years of trial work.

That rule is strictly applied. The late Past President **Griffin Bell**, who had thirteen years of trial practice before becoming a federal judge and before becoming the Attorney General under President Carter, could not be and was not considered until he had an additional two years of trial practice.

Fellowship in the College is not a lifetime achievement award. Persons who might have been con-

sidered years ago when they were trying cases but now only manage litigation will not be considered. Further, just being a top trial lawyer is not enough. A person must have, at all times, conducted themselves civilly and professionally.

You must have done so while acting professionally with civility and utmost candor to the court, opposing counsel, and even adverse parties. In general you must have evidenced the collegiality we seek in Fellows. As you will hear at the end of the induction charge tonight, it is our hope that “long and happy may be our years together.

Once you were approved...a call was then likely placed to you. Do you remember that call? The call telling you that you will be getting a letter inviting you to submit a statement of qualifications to be a Fellow?

I bet that you remember that call. I certainly remember the call I got—there were no Fellows in my firm at that time. It was a total surprise—on St. Patrick’s Day. The first person I called was my Irish mother. I could hear her call out to my father “Tom is going to be in the American College of Trial Lawyers” and I could hear his reply “It’s about time.”



From what I have said that you went through, you may conclude that you may actually be as good as you think you are. But you would not be here without the mentoring and support of others.

There are many persons that you should thank, but for most of you only one of those persons is seated with you today – your spouse or guest that has been there to support you and give you the opportunity to, as you will hear tonight, “live like a hermit and work like a horse.” Your chosen profession as a real trial lawyer has demanded much not only from you but also your families. Past President **Chilton Varner** said it best in her luncheon speech two years ago,

Spouses, partners and guests who are here, the lawyer with whom you entered this room today has survived the toughest individual scrutiny that any lawyer will ever see. His or her ability has been scrutinized over an entire career and measured against those resumes of the best lawyers on the continent. Your lawyer has been found to be at the pinnacle of his or her profession. He or she has, in case after case, welcomed the most significant responsibility and shown over and over that no test was too severe. Your

Lawyer’s dedication to excellence has never wavered. Your lawyer’s integrity and ethics have been found to be beyond reproach. Judges, competitors and adversaries have told us that your lawyer really does stand out amongst all the rest. So we salute today not just the inductees, but you as well for your indispensable contribution to the success of this day.

Again, tonight you will hear at the end of the induction charge the words, “long and happy may be our years together.” As you have experienced in this, your first meeting of the College, collegiality is a hallmark of our organization. We look forward to meetings of Fellows, be they at the local, regional or national level. There are no clients or potential clients here for you to entertain. We just take pleasure in each other’s company and the College’s mission. Listen to the words of the induction charge to be read tonight by Past President Chilton Varner, as the charge sets forth why we seek new Fellows to continue the mission of the College – which is to maintain and improve the standards of trial practice, the administration of justice and the ethics of our profession.

To carry out our mission, we have more than thirty committees. Sign up for one and if asked to serve on your local committee, say yes. Much has been accomplished by the committees of the College.

An example of this is our *Code of Pretrial and Trial Conduct*. **Chief Justice Roberts** in his introduction to that publication said:

As Justice Frankfurter noted, “An attorney actively engaged in the conduct of a trial is not merely another citizen. He is an intimate and trusted and essential part of the machinery of justice, an ‘officer of the court’ in the most compelling sense.” I encourage lawyers who engage in

trial work to observe and advance the principles that the College has set forth in this volume.

I commend the American College of Trial Lawyers for its leadership in defining and refining the standards of professionalism that are vital to our system of justice.

Every Justice of the Supreme Courts of the United States and Canada has accepted an Honorary Fellowship because they support our mission.

Another example of our efforts to carry out our mission are exchanges we arrange between the Supreme Courts of the United States, Canada and the United Kingdom. With Fellows and lower court judges participating and the College hosting, the Justices of these courts have met to exchange views on topics of mutual interest. Past exchanges, we were told, were credited as significant in the formation of the new Supreme Court of the United Kingdom. Justice Gorsuch, while a circuit judge, participated at the most recent exchange and will be formally inducted as an Honorary Fellow at an upcoming meeting.

Yesterday FBI Director Christopher Wray inspired us with his commitment to preserving the rule of law.

It is the goal of the College to preserve and protect our system of justice and the rule of law. We ask you to continue our efforts in accomplishing that goal. As Janet Reno said, “Being a lawyer is not merely a vocation, it is a public trust, and each of us has an obligation to give back. With your help, years from now the rule of law will continue and there will still be outstanding trial lawyers to support it. With your help, we can maintain and protect our system of justice.”

Congratulations and welcome aboard. ■

INDUCTEE RESPONDER MARY KAY LANTHIER ON BEHALF OF NEWLY INDUCTED FELLOWS

JUSTICE SYSTEM AT ITS BEST WHEN ALL PARTIES ARE SERVED BY THE HERMIT AND THE HORSE



RESIDENT FRANKLIN, REGENTS AND FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS, DISTINGUISHED AND SPECIAL GUESTS, ON BEHALF OF EACH OF THE INDUCTEES HERE TONIGHT, I WISH TO EXPRESS OUR GRATITUDE FOR THE INVITATION TO JOIN THIS PRESTIGIOUS ORGANIZATION. THE WORK THAT THE FELLOWS OF THIS COLLEGE DO EACH AND EVERY DAY IN PURSUIT OF ADVANCING THE HIGHEST STANDARDS IN THE PRACTICE OF LAW AND ENSURING ACCESS TO JUSTICE FOR ALL ACROSS THE UNITED STATES AND CANADA IS INSPIRATIONAL.

We have enjoyed the fun and camaraderie of spending time together, getting to know each other, getting to know you over the past two days. We are also mindful though of the responsibility that comes with being a Fellow of this College. It is by each of us taking the principles and ideals of the College back to our own areas of practice, to our own geographic region and to our own diverse clients that the College can continue to improve the standard of trial advocacy, professionalism and advance the administration of justice.

Each of the Inductees has come to this room at this time on very different journeys, from very different backgrounds and with very different life experiences. We come from places as varied as Rutland, Vermont; Portland, Oregon; Little Rock, Arkansas; San Juan, Puerto Rico; Halifax, Nova Scotia and Toronto, Ontario. We represent

plaintiffs and defendants in civil litigation. We are prosecutors. We are criminal defense lawyers. We are public defenders. Some of us work in the private sector, others work in public interest. Despite these diverse backgrounds, however, we arrive here in this room on this evening united by our pursuit of the goals and aspirations of the College. I am humbled and incredibly honored to be representing the talented and diverse group of Inductees that are here this evening.

I must share with you, when I was first approached about giving this Inductee response, it was back in January. I had returned to my office at the end of a day of jury selection. A colleague and I selected a jury in a case where our client had been charged as a habitual offender and was facing a life sentence. I returned to my office, and I frankly was a little grumpy with my-



self. For a host of reasons, I did not feel that I had done as well as I needed to do on that day. When I arrived back at my office, I saw an email from President Franklin, and he wrote that he wanted to speak to me and wondered when I was going to be available.

My first and immediate thought was, “Really? How could word of my performance today in this jury selection have traveled from Rutland, Vermont to Birmingham, Alabama?” I was convinced my invitation to join was going to be rescinded. After an exchange of emails, I spoke to President Franklin that evening. He assured me he was not rescinding the invitation to join, but rather was hoping that I would be willing to do this.

I went home that evening to tell my husband about President Franklin’s request. My charming husband’s response, “Why did he ask you to do it?” Just as a side note, my husband said it didn’t matter what I said up here as long as I threw in, “charming husband.”

I will be honest with you, I had not heard about the American College of Trial Lawyers before last

fall. When I received the letter inviting me to apply, I was fortunate enough to receive a phone call from a Vermont Fellow, the first female Fellow in Vermont, Karen McAndrew. She explained to me a little bit about the College. First, she explained the vetting process, which to me really just meant that people had been talking about me without me knowing about it for a really long time. That left me pretty unsettled, but then she went on to talk about the College’s history, its standards and its future.

This phone call was also personally meaningful to me. To appreciate the significance, I just need to share a little of my own personal background. I grew up in Hydeville, Vermont. My father was a crane operator at a local slate quarry. My mother was the postmaster of our small town, whose population is less than half of the people in this room right now. From Hydeville, I went to college, and I went straight to law school. Although I went to law school knowing that I wanted to be a public defender, I was young, inexperienced and oblivious to what it meant to be a member of the legal community.



My first experience in the legal field was as an intern with Chief Justice Frederic Allen at the Vermont Supreme Court. Chief Justice Allen passed away in 2016, and while I'm virtually certain that he would not have remembered me at all as a result of my short three-month internship there, he had a lasting impact on my legal career. He was a man of few words who led by example. He was soft spoken, earnest in his work and committed to maintaining the highest ethical and professional standards of the legal system.

While most of the work that I did came through his law clerk, he did ask me to do one project and report directly to him. I worked very hard on that project. When the project was complete and he'd reviewed it, I found a small note on my desk. "Excellent. Exactly what I wanted." For me, a young and naïve law student, this small note was affirmation. It was affirmation that I could do this, and through hard work and focus, I was capable of meeting the high standards of this profession.

To this day, over twenty years later, this note remains in the top drawer of my desk, as a reminder of Chief Justice Allen, his high standards for himself and the legal community. It also reminds me of what this small gesture, coming from a legend of the legal community, meant to me as a young and inexperienced law student.

With that background, I want to now return to my telephone call from Karen McAndrew. While I was interning with Chief Justice Allen, in addition to hearing about his tremendous legal skills,

I learned that his wife, Karen McAndrew, was a prominent trial attorney in Vermont, and was someone from whom a young attorney, particularly a young female attorney, could learn.

Our paths, however, did not cross until that telephone call last fall. For although the bar in Vermont is quite small, we, as lawyers and as litigators, often become isolated in our own areas of practice. It's simply a reality of the work that we do, that public defenders like myself and commercial litigators like Karen McAndrew don't have many opportunities to meet and interact.

At some level, when we are being the hermit and the horse, our isolation and one-minded focus are necessary. The mission of this College I have learned, however, transcends areas of practice. It transcends geography. It transcends the distinction between the public versus the private sector. It allows this diverse group of Inductees and Fellows to gather together in the pursuit of raising the standards of our practice.

Thurgood Marshall once stated in an opinion: "Mere access to the courthouse doors does not, by itself, assure proper functioning of the adversary process." We are all trial lawyers. We believe in a system of trial by jury. Each of us, though, also recognizes the flaws in the system. Our system only works when each party to the legal process has fair and just representation. Without competent and zealous advocates on both sides, overseen by an independent judiciary, the system fails.



These failures can have dire consequences for individuals, companies and organizations.

As a public defender, I work with individuals, on a daily basis, that are poor and disenfranchised. Many of them are mentally ill, addicted to alcohol or drugs and have been raised with very little opportunity. To give you an example, there are times after a bail hearing when a client of ours is released from custody, and I or another attorney in my office will need to bring that client somewhere. Many of them are released without any family or friends there to support or assist them. So it's left to us to bring them, sometimes to the hospital if they're in a mental health crisis or in need of medical detox, some may need to go to the police station just to simply get their wallets.

I cannot tell you the number of times when clients have climbed into my car, which is not a pink Cadillac as you may think, but rather my 2010 Toyota Camry with 180,000 miles on it, and say, "What a great car you have. You're so lucky." Many of my clients have little faith in any government system. They're skeptical of whether they will get a fair shake. They're frankly skeptical of me, their lawyer. As I undertake to represent them, one of the first goals that I have is to demonstrate to them that I will be their advocate. I will work on their behalf so that they do get a fair shake. I will be their hermit and their horse.

I often represent individuals who hear advice and opinions from me, and decisions from judges,

that they don't want to hear. I can tell you, however, that when individuals feel that they have been listened to and represented well, the vast majority of them can accept that advice, and can accept that court's decision, because they feel respected by the process.

As a public defender, I am proud to be a Fellow of this College whose goal it is to ensure that all parties to a legal proceeding have fair and just representation, whether that party is a young woman from Rutland, Vermont or a large corporation from Toronto, Canada. Our justice system is at its best when each party to a proceeding is served by that hermit and horse. In the words of Judge Learned Hand, "If we are to keep our democracy, there must be one commandment. Thou shalt not ration justice."

As we, the Inductees, leave here tonight Fellows of the American College of Trial Lawyers, we are committed to bringing the skills, ideals and philosophy of this College back to our communities across the United States and Canada. As FBI Director Christopher Wray stated yesterday, we recognize that talk is cheap. Actions speak louder than words. It is by working for each and every client that we have, whether criminal or civil, in every corner of the United States or Canada, that we can help fulfill the mission of this organization. Again, on behalf of the inductees here tonight, thank you for this honor and privilege. ■





95 NEWLY-INDUCTED FELLOWS FROM THE 2018 SPRING MEETING – PHOENIX, ARIZONA

UNITED STATES

ALABAMA

Montgomery
Louis V. Franklin, Sr.
U.S. Attorney's Office

ARKANSAS

Little Rock
Melody H. Piazza
Trammell Piazza Law Firm

CALIFORNIA – NORTHERN

Fresno
William M. White
White Canepa LLP

San Francisco
Josh A. Cohen
Clarence Dyer & Cohen LLP

CALIFORNIA – SOUTHERN

Irvine
Gregory L. Bentley
Bentley & More, LLP

Long Beach
Michael J. Trotter
Carroll, Kelly, Trotter, Franzen,
McBride & Peabody

Los Angeles
Kevin R. Boyle
Panish, Shea & Boyle, LLP

Dana Alden Fox
Lewis Brisbois Bisgaard & Smith LLP

CALIFORNIA – SOUTHERN (Cont'd)

Los Angeles (Cont'd)
Eric M. George
Brown George Ross LLP

Mark Holscher
Kirkland & Ellis LLP

Carolyn J. Kubota
Covington & Burling, LLP

Hilary L. Potashner
Federal Public Defender's Office,
Central District of California

Ekwon Eric Rhow
Bird Marella Boxer Wolpert Nessim
Drooks Lincenberg Rhow APC

Richard M. Steingard
Law Offices of Richard M. Steingard

Dennis M. Wasser
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TEXAS FELLOW CONTINUES HIS CRAFT IN CLAY AND BRONZE



D

ON DAVIS IS A TEXAS TRIAL LAWYER WHOSE PRACTICE HAS PRIMARILY BEEN ON THE PLAINTIFF'S SIDE OF THE DOCKET IN PERSONAL INJURY CASES. HE HAS BEEN A FELLOW IN THE COLLEGE SINCE 1995. HE PREVIOUSLY SERVED AS THE TEXAS STATE COMMITTEE CHAIR AND OVER THE YEARS HAS DEVOTED MANY HOURS TO THE NATIONAL TRIAL COMPETITION. DAVIS RECENTLY RETIRED FROM THE FIRM OF BYRD, DAVIS, ALDEN & HENRICHSON – AFTER FIFTY-ONE YEARS OF PRACTICE. (LONG STANDING COMMITMENTS ARE FAVORED BY DON. AS HE LIKES TO SAY – HE IS STILL MARRIED TO HIS FIRST WIFE AFTER FIFTY-EIGHT YEARS.) DURING HIS YEARS OF PRACTICE DAVIS WAS A WELL-RESPECTED ADVERSARY TO THOSE ON THE DEFENSE SIDE. HIS WORD WAS HIS BOND. THE INTERESTS OF HIS CLIENT WERE PARAMOUNT. THIS IS THE DON DAVIS THAT MOST KNOW.



He is also a self-taught and accomplished sculptor. First, however, a little background. Davis attended Abilene Christian College in Abilene, Texas, on a football scholarship, but he was an art major – undoubtedly the only one on the team. Davis claims he was the worst artist in his class and eventually became an accounting student. He then went to law school at the University of Texas, served as Briefing Attorney for Justice Mead Griffin on the Texas Supreme Court, and settled in Austin for a long and successful career.

Despite his self-critique of being a terrible artist he never lost his passion for art. He continued to paint as a hobby – oil, watercolor and acrylics. In 1987, as a result of a sculpture given to him as a gift, Davis was immediately attracted to three dimensional art. He put down his brushes and started sculpting. Since then, he has not stopped. ▶



Many Texas Fellows are familiar with his quill pen and hand sculpture with the College logo. For many years the Texas Fellows have presented the College President with this sculpture at the annual luncheon. (Yes, there are both female and male hands.) A sculpture by Davis is a treasured possession and is available to any Fellow upon request.

Davis' work has a wide range as to both size and subject matter. For example, in 1995 he created a life-size sculpture of professional golfer Tom Kite and legendary golf professional Harvey Penick, which can be seen at the Austin Country Club. He also has works on display at several public locations including Dell Children's Hospital in Austin, the Butler School of Music at the University of Texas and the Lyndon Baines Johnson Presidential Library at the University of Texas at Austin.

Golf has provided numerous other opportunities for Davis to display his talents. He has created trophies for the LPGA, PGA and PGA of America. In 1997, at the request of Ryder Cup captain Tom Kite, Davis created an American eagle as Kite's gift to the team members (this was the first Ryder Cup for Tiger Woods). In order to make the sculpture, Davis obtained blueprints of the American eagle from the Audubon Society. He then sculpted to a half scale of an eagle (37-inches wing tip to wing tip) swooping down with talons outstretched to grasp the Ryder Cup that was coming out of the Rock of Gibraltar – the weld point for the eagle (the matches were held at Soto Grande in Spain). A spectacular creation that may have been the highlight of the event for the Americans – they lost by one point.

Davis continues to sculpt one or two pieces per year in retirement. He has created approximately ninety pieces. He does not sell his work, but they can be purchased directly by inquiring with the foundry – Deep in the Heart Art Foundry, Bastrop, Texas, by paying the casting cost.

David N. Kitner

Dallas, Texas



COLLEGE UPDATES

LATEST ACTIONS BY THE BOARD OF REGENTS

At the 2018 Spring Meeting in Phoenix, the Board of Regents took the following actions:

- Approval of the Treasurer's Report and the Fiscal Year 2019 Budget
- Approval of 84 candidates
- Voted to present Honorary Fellowship to The Honourable Sheila Martin, a judge on the Supreme Court of Canada
- Approval of the white paper Attorney-Client Privilege Update: Current and Recurring Issues
- Approval of two new committees: the Beverly McLachlin Access to Justice Award Committee and the Task Force on Judicial Independence

COLLEGE COMMITTEES: AN OPPORTUNITY TO SERVE

This summer the incoming President and President-Elect will appoint members to the College's committees for the 2018-2019 term. State and province committees focus on the nomination of new Fellows and local outreach, while general committees each have specific mandates to guide their work. If you are interested in serving on a College committee, please contact the National Office. A list of committees and their mandates is available on the College website, www.actl.com

COMMITTEE UPDATES

On April 12, 2018 Tennessee Fellows presented a continuing legal education program, Trial Practice Skills –Techniques and Insights from Experienced Practitioners in Nashville, Tennessee. The program was presented through the Nashville Bar Association. The program was presented by Tennessee Outreach Liaison **William B. Jakes III** who acted as moderator with three Fellows, Judicial Fellow **James G. Martin III**, and Nashville Fellows **John P. Branham** and **Gayle Malone, Jr.** The program primarily involved discussing ethical standards and issues related to pretrial and trial conduct. Various ethical situations and dilemmas frequently faced by litigators were presented by video vignettes and materials prepared by the College and were discussed with the panel and presenters.

FELLOWS TO THE BENCH

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

CLAIRE G. CALDWELL

Richmond, Virginia
Effective July 1, 2017
Judge

Richmond General District Court

ANNE L. KIRKER, Q.C.

Calgary, Alberta
Effective May 8, 2018
Justice

Court of Queen's Bench of Alberta

A. MARVIN QUATTLEBAUM, JR.

Greenville, South Carolina
Effective March 2018
Judge

U.S. District Court, District of South Carolina

The College extends congratulations to these Judicial Fellows.



ALL IN THE COLLEGE FAMILY

a series

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

WE HAVE ALL HEARD THE STORY ABOUT THE TRAIN RIDE ON APRIL 4, 1950, WHEN EMIL GUMPERT FIRST CONCEIVED OF THE AMERICAN COLLEGE OF TRIAL LAWYERS, AND WOKE HIS FRIEND AND COLLEAGUE, LESLIE A. CLEARY, TO EXCITEDLY TELL HIM OF HIS NEW CONCEPT: A FELLOWSHIP OF COLLEAGUES WHO SHARED A LOVE AND RESPECT FOR THE LAW, BOUND BY THEIR COMMON EXPERIENCES IN THE COURTROOM, A GROUP OF THE VERY BEST OF THE LAWYERS WHO MADE THEIR LIVING IN COURT.

Now, imagine a young boy, sitting in his family living room, hearing **Emil Gumpert** ('50) retelling that same story to the young boy's father, **William Zeff** ('50), who also just happened to be the law partner of **Leslie A. Cleary** ('50). Probably again over a cocktail or two, and with much jocularly and friendship. And the story was of course retold when another partner of William Zeff, **Edward Dean Price** ('69), was also inducted as a Fellow in the College. And the story was again retold when another partner, **John W. "Jack" Martin** ('77), was also inducted into the College.

Then, imagine the pride, and the emotions that same boy, grown to become a reputable trial lawyer on his own merit, would feel when he heard that same familiar story about the train ride at his own induction into the American College of Trial Lawyers in New Orleans in 2001. That boy is **Thomas D. Zeff**, a California Fellow, who had been well indoctrinated in all of the values of the College since his birth in 1951. Thomas recalls the night he was inducted, and the delight that another Inductee at his table was feeling. Still, Thomas was overwhelmed with pride that night, and while the other Inductee at his table was certainly proud as well, he just didn't have the same sense of the history of the College as Thomas. The induction was "pretty special" for Thomas, who always knew about the College, and was now experiencing what he believes was the highlight of his professional career.

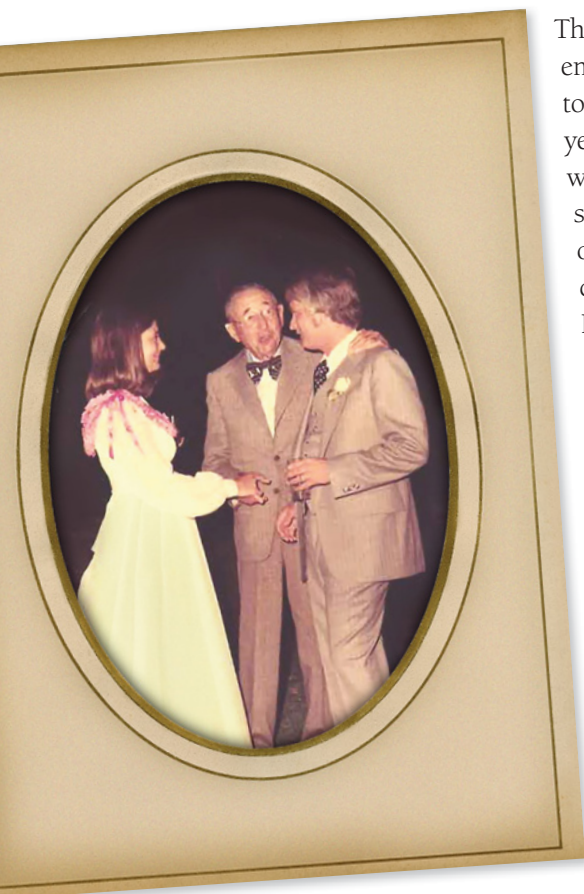
Thomas Zeff, currently a Superior Court Judge in Modesto, California, always knew he would be a lawyer like his father, like Emil, like Leslie, like Dean, like Jack. He was raised with the law. William Zeff never forced the law on his family, but he always talked about his practice, about things that were happening in his practice. Emil Gumpert was a good family friend, and was present at all important rites of Thomas' life, such as the weddings of all three Zeff children. Both Emil and William were hero figures to young Thomas. Thomas remembers the times when his father was in trial, and jokingly says he should have paid more attention to the stress trial lawyers undergo.

He regrets that his dad couldn't be there at his induction, as he was about ninety years old at the time, and travel was difficult.

Thomas' lawyer career began, of course, in his father's old firm of Zeff and Price, which later became Price and Martin (after father William took the bench in 1979). Thomas' trial practice was primarily insurance defense, but evolved into more business litigation as he matured. Thomas' advice to young lawyers: make sure you really want to be a lawyer before you become one. Be committed to whatever you do. Be prepared, and be civil in your practice.


Thomas and his wife, Shelly (a former court reporter), have been married for forty-one years. Thomas enjoys outdoor hobbies and for years worked and trained his own bird dogs, even running field trials with as many as three dogs. He currently has just one dog, a black Labrador retriever, who enjoys bird hunting along with Tom.

Carey E. Matovich
Billings, Montana



Shelly and Tom Zeff with College Founder Emil Gumpert during their September 11, 1976 wedding at Del Rio Country Club in Modesto, California.

ROY M. COHN: MY PERSONAL EXPERIENCES AND REFLECTIONS ON HIS CONNECTIONS TO THE FORTY-FIFTH PRESIDENT OF THE UNITED STATES



IN THE SPRING OF 1979, I WAS NAVIGATING MY WAY THROUGH MY FIRST YEAR OF LAW SCHOOL. LAW-RELATED JOBS FOR FIRST YEARS WERE VIRTUALLY NON-EXISTENT, BUT A COLLEGE FRIEND'S BROTHER WAS A CATHOLIC PRIEST WHO HAD BEFRIENDED A GAY COUPLE WHO WORKED AT A SMALL LAW FIRM IN MANHATTAN. FATHER TOM SUGGESTED I COME DOWN FROM ALBANY TO MEET THEM BECAUSE IT MIGHT LEAD TO SUMMER EMPLOYMENT. SO BEGAN ONE OF THE STRANGEST AND MOST MEMORABLE EXPERIENCES OF MY LIFE.

From June through August of 1979, I learned all I would ever need to know about how I never wanted to practice law. The firm that hired me for the summer was comprised of several political heavyweights of the era. Stanley Friedman, Bronx Democratic Party Chair, was of counsel to the firm, and Tom Bolan, the chair of the New York Conservative Party, was a partner.

But the star of Saxe Bacon & Bolan was Roy M. Cohn. It was Roy, his unique cast of clients and followers, and his unconventional law practice and lifestyle that were responsible for the most bizarre three months of my legal career.

WHO WAS ROY COHN?

Roy Cohn was born in 1927 into an affluent and politically connected family. When Roy was a teenager, his parents insisted that he attend their dinner parties with important New York political figures. According to guests, Roy could talk politics with them all night.

Roy was sent to exclusive prep schools, graduated from Columbia College, and then from Columbia Law School at the age of twenty. Using his family's connections, he obtained a position in the United States Attorney's Office for the Southern District on the day he was admitted to practice.

As an assistant U.S. Attorney, Cohn became obsessed with the Soviet influence in America and helped to secure convictions in several well-publicized trials of accused Soviet operatives. Later, in 1951, at the age of twenty-three, Cohn played a prominent role in the espionage trial of Julius and Ethel Rosenberg. Cohn's direct examination of Ethel's brother, David Greenglass, produced ▶



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THE MAGAZINE FOR MEN



*Joe McCarthy's Roy Cohn
tells it like it was.*

testimony that was central to the Rosenbergs' convictions. Greenglass would later claim that he lied in that trial to protect himself and his wife, Ruth. He also claimed that he was encouraged by Cohn to do so.

Roy publicly took great pride in the Rosenberg verdict and claimed to have played an even greater part than had been known. According to Cohn's autobiography, the trial judge called him after the jury returned its verdict to ask for his advice as to whether Ethel Rosenberg should receive the death penalty. "The way I see it," he told the judge, "she is worse than Julius."

McCARTHY HEARINGS

In 1953, Cohn joined Senator Joseph McCarthy as chief counsel to the Senate's Permanent Subcommittee on In-

vestigations. McCarthy had exploded into public view three years earlier when he claimed to hold a list of 205 State Department employees who were members of the Communist Party.

In early 1954, the Permanent Subcommittee held the Army-McCarthy hearings, in part to determine whether Cohn sought special treatment for an enlisted friend. Cohn's animosity toward assistant committee counsel Robert Kennedy boiled over when Roy lunged at and tried to punch Kennedy in the middle of the hearing.

Cohn left Washington in 1954 as McCarthy's power waned. Settling back in New York, Cohn utilized his father's political connections to build a private legal practice. In doing so, he often operated in the gray areas of the law to produce maximum results for his clients. This

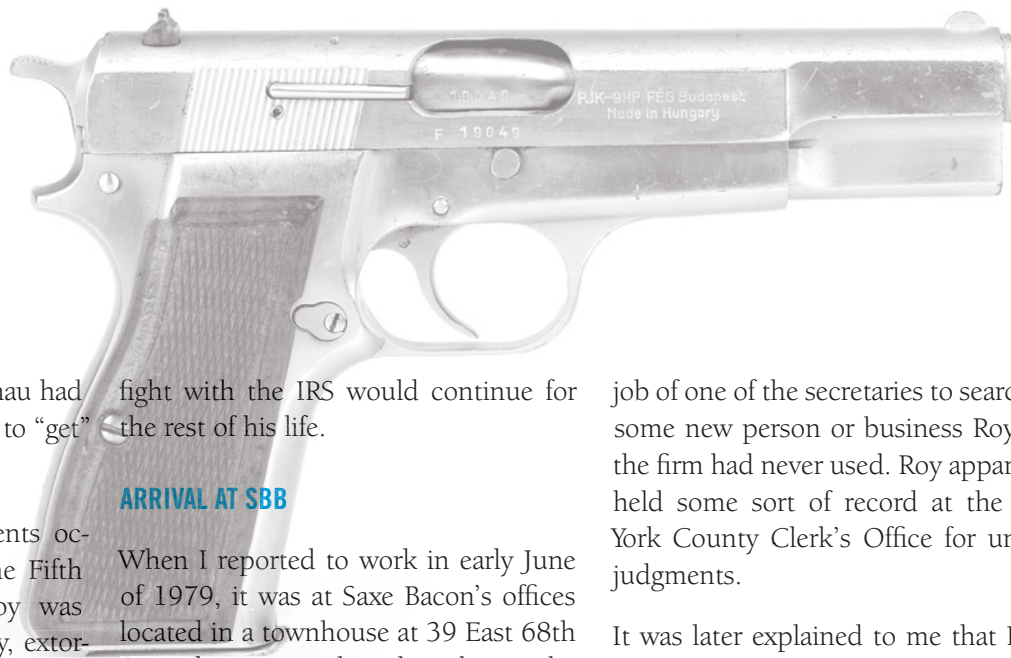
led to four federal and state indictments for alleged extortion, bribery, conspiracy, perjury, and banking violations in the 1960s and early 70s.

In 1964 Roy was tried by U.S. Attorney Robert M. Morgenthau, with the strong backing of then Attorney General Robert Kennedy. Roy was charged with obstructing justice to prevent the indictment of four men in a stock swindle scheme and with perjury for denying it under oath. Roy accused Kennedy and Morgenthau of engaging in a vendetta and the case ended in a mistrial when one of the juror's fathers died during deliberations.

According to Irving Younger, former Assistant U.S. Attorney under Morgenthau, who would later become a professor at Georgetown Law, Roy's allegations of a vendetta were not completely baseless. Younger wrote in a magazine article years



Roy Cohn (right) with Sen. Joseph McCarthy, during a committee hearing in Washington on April 26, 1954.



later that Kennedy and Morgenthau had personally assigned him full time to “get” Roy Cohn.

The second and third indictments occurred several years later. In the Fifth Avenue Coach Lines case, Roy was charged with bribery, conspiracy, extortion, and blackmail for allegedly bribing a city appraiser to help his client snare a higher award in a pending condemnation trial. At the close of proof, Roy’s attorney suffered an alleged heart attack, leaving Roy to present his own closing argument. Not having testified during the trial, Cohn could now present his version of the story without being sworn as a witness or being subject to cross-examination. Over two days, without a note, Roy delivered a seven-hour summation ending with a proclamation of Roy’s undying love for America as tears streamed down his face. The summation also left most of the jury in tears and Roy was acquitted.

The third trial came in 1971 and was a spinoff of the second. Cohn was accused of bribery, conspiracy and filing false reports with the SEC. This trial also ended in an acquittal. That was the final federal prosecution of Roy, with the government finally giving up after three unsuccessful tries.

Throughout, Roy was also involved in a marathon battle with the IRS because he diligently avoided paying state and federal income taxes, something that I learned more about when I arrived at Saxe Bacon in 1979. Roy reportedly owed the IRS over \$7,000,000, and his

fight with the IRS would continue for the rest of his life.

ARRIVAL AT SBB

When I reported to work in early June of 1979, it was at Saxe Bacon’s offices located in a townhouse at 39 East 68th Street between Park and Madison. The ground floor acted as the reception area, administrative offices, offices of the office manager and one of the most important people at the firm - Roy’s secretary and gatekeeper Susan Bell. Roy’s office also was located on the first floor. The second, third and sixth floors were Roy’s living quarters, and I was told in no uncertain terms never to push those buttons on the tiny elevator that serviced the building. The fourth and fifth floors held the offices and law library.

I had a table in the library as my workspace for the next three months.

One of the first things that tipped me off that this was not your typical law firm was when I began my first assigned research project on a statutory issue. I immediately went to the pocket part of the McKinney’s volume to find if there were any recent amendments to the statute I was researching before consulting the main volume. I was a bit startled to discover that the pocket part was seven years out of date. When I inquired, I was informed that Roy had stopped paying West’s bills in 1972. Hence, no updates had been sent since then.

I later learned that this was the norm. If a vendor, service person or contractor was needed at the firm, it was the

job of one of the secretaries to search for some new person or business Roy and the firm had never used. Roy apparently held some sort of record at the New York County Clerk’s Office for unpaid judgments.

It was later explained to me that Roy’s living arrangements were part of his scheme to avoid paying taxes. Saxe Bacon owned the building, the Rolls Royce and Bentley in which he was chauffeured and every other tangible thing in his life, while Roy drew only a minimal salary. His expenses were paid by the firm because, according to Roy, everything he did socially was related to business. His tax returns were perpetually under audit.

To call the legal work I did that summer pedestrian would be greatly overstating its significance. My most frequent assignment was attending court appearances requesting adjournments. Most times I would learn when I arrived that multiple adjournments had already been granted in the case. But being young and scared, I usually garnered more sympathy than anger and most times I got what I asked for, with a stern warning from the judge that no further adjournments would be granted.

I spent more time doing non-law related tasks than I did doing pseudo-legal work that summer. Sometimes I filled in for Roy’s chauffeur and would drive Roy to a restaurant or to the airport. One memorable day I was told to get the Lincoln and take Roy and some guests to a restaurant on Fifth Avenue ▶

for lunch and then to the private plane area of LaGuardia where he was to depart for a weekend in the Hamptons. When I pulled the car to the front of the townhouse, Roy, two other middle-aged men and a much younger man got in. When we arrived at the restaurant, Roy and the two older men got out but I was unexpectedly instructed to drive the younger man to his apartment where he was to gather things for the weekend with Roy in the Hamptons.

Roy's sexual preferences were no secret to anyone at the firm, so it was obvious this guy was going to be Roy's weekend date. As we proceeded through the park, the young man in the back of the Lincoln conducted a non-stop debate with himself as to whether he should go. He ultimately bolted out of the car, saying only "Tell Roy I can't go with him" and was gone.

I was pretty sure of a couple things at that moment. One was that Roy was not going to be pleased with this development. The other was that Roy was almost certainly going to take his displeasure out on me. In fact, we spent the entire ride from Manhattan with Roy in the back seat berating me and everyone around him as incompetent.

My most memorable day at Saxe Bacon came a few weeks later. Roy's clientele in 1979 was comprised of a mixture of very rich women who were divorcing their husbands and wanted payback, sleazy shareholders who wanted to extort settlements out of companies using Roy's reputation as leverage, prominent members of New York's rich and famous such as the two owners of Studio 54 and a fourth prominent group—the mob.

One afternoon, two very large, very dangerous looking gentlemen appeared unannounced in the doorway of the library. They did not say a word to any of us, but proceeded to search the room as if we weren't there. Then, just as quick-

ly as they appeared, they departed. We later learned that Carmine Galante, leader of the Bonnano crime family and the man responsible for most of the heroin trade from Sicily at the time, had come to meet with Roy about some legal problems and these gentlemen were his bodyguards securing the site. But what made this moment memorable was that the next day's *New York Post's* front page featured a photo of Galante after his gangland style execution in Brooklyn.

Roy was fond of saying that winning was not sufficient. People needed to know about it. He also preferred influence over case law. He was quoted once as saying "I don't want to know what the law is; I want to know who the judge is." He always turned his troubles into news by aggressively attacking those who attacked him and he loved the attention he got from the tabloids and magazines, including *Esquire*, which more than once featured Roy on its cover. A former U.S. Attorney described Roy as "the only person I've ever known as a prosecutor who enjoyed being indicted."

In passing, Roy acted as counsel on various matters for our current Commander-in-Chief, but I leave those anecdotes for another day.

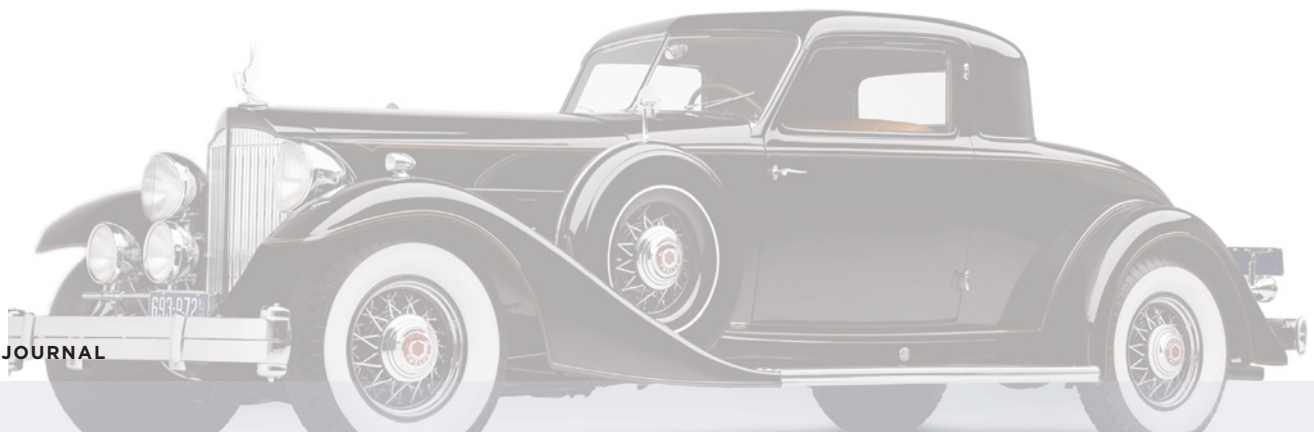
ROY'S EVENTUAL DEMISE

By early 1980s Roy's legal tactics and lifestyle finally caught up with him. In the fall of 1984, he became ill. Roy publically maintained that he had liver cancer, but, in fact, he had HIV AIDS. By 1985, he had started then experimental AZT treatment at the National Institutes of Health Clinical Center in Bethesda, Maryland.

Yet, Roy publically denied his homosexuality to the end, when he appeared on *60 Minutes* in March of 1986. Paraphrasing McCarthy with theatrical flair, Mike Wallace asked Roy, "Are you



Roy Cohn in 1982



now or have you ever been a homosexual?” Roy categorically denied that he had AIDS and said the stories of his homosexuality were based upon jealousy and prejudice.

Not only did Roy deny his homosexuality, he took public positions against gay rights. McCarthy and Cohn claimed in the 1950s that foreign communists had blackmailed closeted homosexuals in the U.S. government into giving them secrets. This charge led to President Dwight D. Eisenhower signing an Executive Order, which allowed the government to deny employment to homosexuals.

In the 1970s, gay rights activists asked Roy to represent a teacher fired for being a homosexual. He refused, saying, “I believe homosexuals are a grave threat to our children and have no business polluting the schools of America.” He also actively lobbied against gay rights legislation in New York City.

In June of 1986, Roy’s long history of flouting legal ethics rules finally caught up with him when the New York Appellate Division, First Department, issued a decision disbaring him. The Court upheld four charges against him, each more outrageous than the next. The first involved a loan he received from a client that he partially repaid, acknowledged numerous times in writing but, when eventually sued for collection, claimed in an affidavit opposing summary judgment that it was really an advance on future legal work. The second charge involved an escrow order Roy negotiated with the SEC to take possession of certain assets, including two yachts owned by his corporate client Pied Piper, pending investigations into the fraudulent conduct of the company’s executives. The cash in the escrow fund disappeared and one of the yachts, which Roy was using as his own, caught fire and sunk, with Roy collecting over \$30,000 in insurance proceeds for legal fees and alleged lost personal property. ▶



Walking to his Bentley in 1977, with the personalized New Jersey plate “Roy C”



But the pièce de résistance was the third charge. Lewis Rosenstiel was a multimillionaire and founder of the Schenley Distillers Empire, whom Roy had represented in a divorce. Years later, Rosenstiel suffered a debilitating stroke and was admitted to Miami's Mount Sinai Medical Center suffering from partial paralysis, limited ability to speak, significant loss of vision and dementia secondary to Alzheimer's disease.

It was in this setting that Roy arrived at the hospital six weeks before Rosenstiel's death, with

a one-page codicil to Rosenstiel's existing will appointing Roy and two others as additional executors to his estate and trustees to the trusts set up under his will. According to nurses and attendants who offered testimony later, Cohn told the semi-conscious Rosenstiel, who was being given Thorazine as a tranquilizer, that the paper he wanted him to sign was some leftover document from Rosenstiel's contentious prior divorce with his ex-wife, Susan. The nursing staff protested that there were orders prohibiting anyone from conducting business with Rosenstiel in his condition, but Cohn persisted.

While one of the nurses went to get a hospital administrator, witnesses testified that Cohn put a pen in Rosenstiel's hand and helped him sign the codicil. Roy's companion signed as a witness and the two departed, leaving a different one-page document on the night stand, which purported to be an innocuous affidavit of service from the old divorce proceeding. The new one-page codicil first came to light after Rosenstiel's death. After a hearing, the Florida Probate Court rejected the document, finding "Roy M. Cohn misrepresented to the decedent, the nature, content and purpose of the document he offered to Mr. Rosenstiel for execution."

Roy learned of his disbarment from a local news anchor who called for his comment. Roy told the reporter that he couldn't care less. But Roy broke down after the call, and six weeks later, on August 2, 1986, he died at the age of 59. The IRS confiscated virtually all of Cohn's property.

STUDIO 54

On my final day at Saxe Bacon in late August of 1979, I was unexpectedly summoned to Roy's office. I had encountered Roy several times a week all summer but never in his office and never because he wanted to see me. Mystified, and not just a little frightened, I proceeded down the elevator to find Roy in his first floor office.



From The Desk of



V.I.P.

Thursday, August 30, 1979

Dear Steve & Marc,

This is to introduce

MR. STEVEN SCHWARTZ.

Please admit him and his party (total of eight) to Studio 54 this evening... as our guests.

He and members of the group are with Saxe, Bacon & Bolan.

Many thanks,

Roy Cohn
Roy M. Cohn

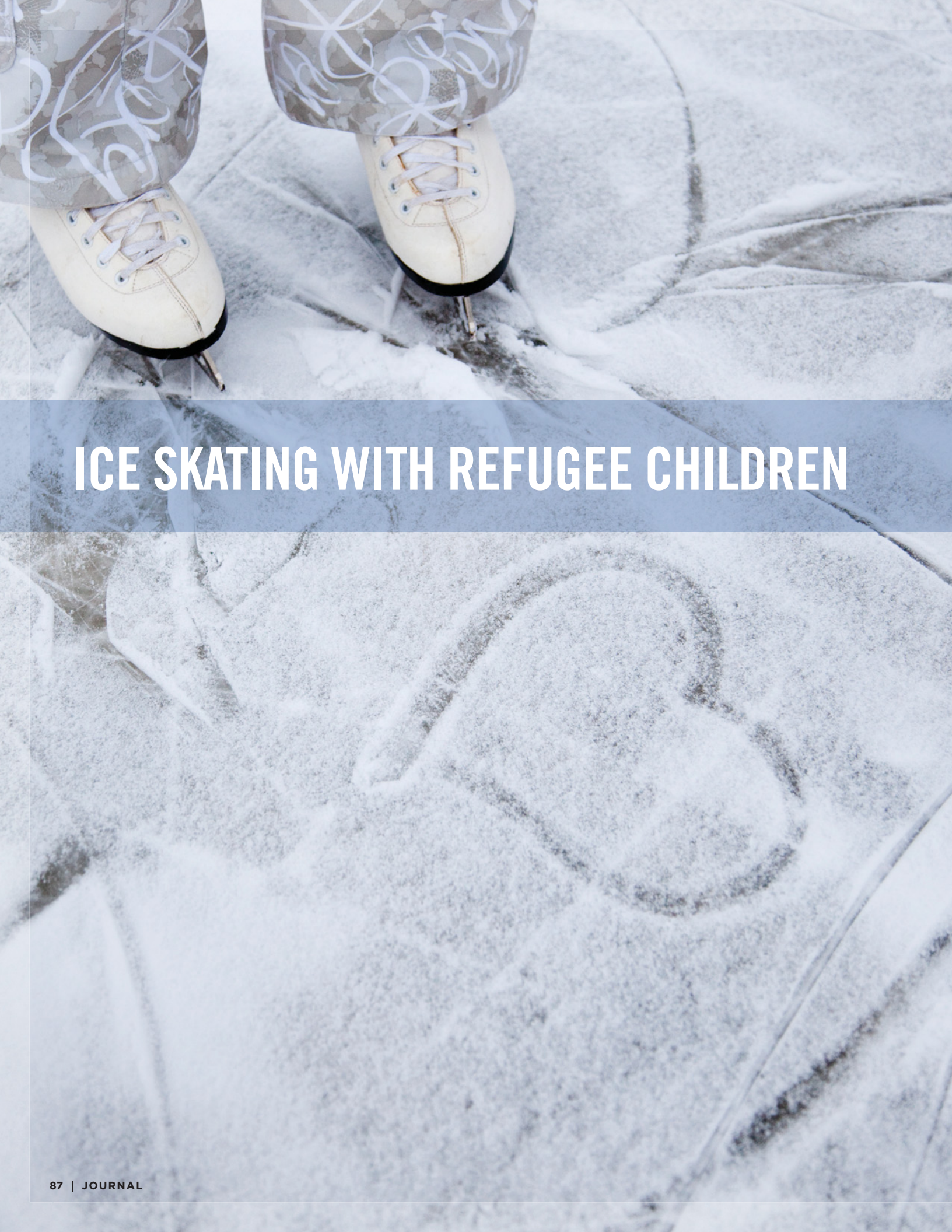
(Request of Louis Binacone.)

Roy asked me to sit down, very graciously thanked me for my service, and wished me well in my legal career. He then handed me a note written on his personal stationary addressed to the owners of Studio 54 requesting that they admit me and six guests that evening to the notorious 70's nightclub as his guests. So it was that I ended my tenure at Saxe Bacon & Bolan at New York's most exclusive nightspot.

I never had contact with Roy or anyone from Saxe Bacon after that night. The next school year I was hired by a firm in Albany and worked there throughout the rest of law school, so I never had reason to consider going back to Saxe Bacon. I tangentially followed developments in Roy's life through the newspapers until the reports of his death.

Roy Cohn seemed to me a conflicted and tragic figure, never truly happy with himself or his life. His flouting of the rules everyone else was required to follow made him both interesting and dangerous. His willingness to do anything to win was truly frightening, and, unfortunately, has become all too common in our field in the years since. But like his small gesture to me on my last day, Roy also could display a curious kind of loyalty and generosity. His biographies are filled with corroborating statements from people who valued Roy as a true and loyal friend. Like most people, Roy was a complex package, not just evil, as many will remember him.

Stephen G. Schwarz
Rochester, New York



ICE SKATING WITH REFUGEE CHILDREN



HUNG UP MY SKATES OVER TWENTY YEARS AGO. BUT THIS WINTER I LACED THEM UP AGAIN AND STEPPED BACK ONTO THE ICE TO HELP SYRIAN REFUGEE CHILDREN LEARN TO SKATE. AT TIMES, I HAVE BEEN THE “RESPONSIBLE ADULT” ON THE ICE WITH UP TO FIVE SYRIAN CHILDREN.

Millions of Syrians have fled the fighting in their home country, seeking safety and refuge from war, death and destruction. Canada has taken in approximately 45,000 Syrian refugees since late 2015 through a combination of Canadian government and private sponsorship programs. Most of the refugees in Canada are families with children. More than 100 of those families have chosen to make their new homes in Newfoundland and Labrador.

My wife Donna and I are members of a church group that has sponsored one of the Syrian families. Gassan Muhammed, his wife Hene, and their two young children, Sima and Simav, fled from their home in northeastern Syria in 2013 to a refugee camp in Turkey, where their third daughter Cana (pronounced “Jana”) was born in 2014. They became our family. They arrived in St. John’s in February, 2016, just over two years ago. Their fourth daughter, Seelva, was born in St. John’s in September, 2017.

The family speaks Arabic and Kurdish. Like the majority of other Syrian refugees, they spoke virtually no English when they arrived. The parents are enrolled in English language training with the Association for New Canadians. The children attend English-speaking schools.

The members of our sponsorship group have a wide range of skills, serving as teachers, social workers

and public administrators. During the first year, we were especially fortunate to have the assistance of an Arabic-speaking couple. There was a great deal to be done to assist the family with housing, education, medical, dental and other services.

In the early days, Donna took the men from three Syrian families to Friday prayers at the mosque. It didn’t take long before there was also an obligatory stop at Costco on the way home!

Working with the Commissionaires Newfoundland and Labrador, we helped to create the Commissionaires’ Syrian Refugee Employment Initiative Program. The Canadian Corps of Commissionaires is a non-profit security company whose primary mandate is to provide meaningful employment to military veterans, former police and uniformed services members, as well as other Canadians. With the assistance of Arabic translators, Gassan completed the security officer’s training course and the St. John Ambulance First Aid course. Gassan was then paired on the job with another Commissionaire since his English functionality was insufficient to work alone. The City of St. John’s agreed to fund one extra security shift per week. On March 2, 2017, Gassan began his first work shift at City Hall. Gassan now works one day per week as a Commissionaire at City Hall, gaining valuable work experience and skills while

Learning how to skate at the Glacier Arena, from left: Simav, Cana, and Sima with Ian Kelly



First Day of work at City Hall, March 2, 2017: From left: Jim Lynch (CEO Commissionaires Newfoundland and Labrador), St. John's Mayor Dennis O'Keefe, and Gassan Muhammed



Kelly's family, from left: Hene, Sima, Cana, Simav, Gassan, and Seelva

continuing his English language training during the other weekdays.

We have come to know several other refugee families from various parts of Syria, including Aleppo and Damascus. The common thread through all of their experiences was the drive to protect their children from the war raging around them. The story of the Aless family from the Harasta suburb of Damascus illustrates the risks and challenges involved. Harasta has been a battleground throughout the Syrian war. The family fled first to Lebanon and then to Turkey. When the oldest boy, eighteen, wanted to set out for Germany in the hope of finding work, his mother said to him, "You can go. But take your eleven-year-old brother with you." The two boys managed to make it across Europe in the fall of 2015 to a refugee camp in Germany. But there was no work. In February 2016, the parents and the other three children came to St. John's as a sponsored family. It took another ten months to arrange to have the two boys in Germany re-united with their family in St. John's, arriving just before Christmas in 2016.

For the past year, we have been working to bring Gassan's brother, his wife and their five children to St. John's. They are refugees in Beirut, Lebanon. The two youngest children were born there. The

family of seven is living in one room in the basement of an apartment building. We have obtained final approval from Canadian Immigration. The family arrived in St. John's in late April 2018.

Two years after arrival, our family is settled and happy. Most importantly, the children are safe. They no longer have to fear war or the turmoil of living in a refugee camp. Their English continues to improve. They have learned to live with Canadian winters!

Well, that's the background to my skating adventure. This January, Sima, aged 8, said that she would like to learn to skate. I said that I would take her skating. Donna, fearing for my safety, said, "You can't do that; you'll end up in hospital. You haven't been on skates for years." But Sima and I headed off to the St. John's outdoor "Loop" and survived our first efforts.

The two other girls, Simav and Cana, joined in. We moved to the Glacier Arena. I initially enlisted the support of my nine-year-old neighbour, Eoin, to help me on the ice with the three girls. The children from two other Syrian families later joined in the weekend skating. I am the only one who shows up at the arena looking for five children's tickets and one senior's ticket! The arena attendants

have been very supportive, even donating a skating aid. They laugh at my forty-year-old hockey helmet with its 1978 Canadian Standards Association sticker.

All of the children, even four-year-old Cana, can now skate by themselves. Sima always wants to be the first one on the ice after the Zamboni has completed the ice resurfacing and the last one off the ice when the horn sounds. Our ice dancing techniques still need improvement, but there is still time before the 2022 Winter Olympics!

It has been an amazing experience to share the joy and freedom of young children having fun ice skating instead of facing war and destruction. You can't beat the thrill of having a four-year-old child, who was born in a refugee camp, look up at you and say, "I love Ian" as you help her take off her skates after an hour on the ice.

The Universal Declaration of Human Rights, adopted by both Canada and the United States, declares that: "Everyone has the right to life, liberty and security of the person." That declaration can only be meaningful if we take concrete steps to address the refugee crisis. It's time for all the world to strap on their skates!

Ian Francis Kelly, Q.C.
St. John's, Newfoundland

COLLEGE FOUNDATION FUNDS PROJECTS AT RECORD-SETTING TOTAL



Thanks to the generous support of Fellows, the Foundation will close out its 2017-2018 fiscal year having given a record amount in grants. At the time of printing, the Foundation gifted the following:

- **\$150,000** — Assisting with legal matters in the aftermaths of the devastating hurricanes in Texas, Florida, and Puerto Rico.
- **\$100,000** — Emil Gumpert Award Recipient - Expanding and Enhancing Remote Access to Counsel for Detained Asylum-Seekers with Children, Fordham University
- **\$37,500** — Institute for the Advancement of the American Legal System, the first of a two-part grant to support the development of initial discovery protocols for natural disaster insurance cases
- **\$20,000** — National Criminal Defense College for scholarships so public defenders can receive valuable training
- **\$20,000** — National District Attorneys Association for scholarships so prosecutors can obtain valuable training
- **\$2,000** — Massachusetts Trial Skills Seminar

The Foundation not only relies on the contributions of Fellows to make these grants possible, but many of the programs the Foundation funds rely on the Fellows' professional expertise and local connections. For example, the Foundation Trustees worked with Fellows in Texas, Florida, and Puerto Rico to identify organizations who could best leverage the grant money in those places to assist with needs caused by the hurricanes. Fellows teach at the National Criminal Defense College, and are the organizers of the programs in Montana and Massachusetts. Many Emil Gumpert Award recipients over the years have been nominated by Fellows.

If you have not made a donation yet this year and want to help continue funding for important initiatives like those just described, you may donate online at any time: www.actl.com/donate. Your contribution is valued and it makes a difference.

Watch for the Foundation's Annual Report to be included in your next issue of the *Journal*. ■

HAFA ADAI FROM GUAM!



LAST JANUARY A GROUP OF FELLOWS FLEW TO GUAM TO STAGE A TRIAL PRACTICE WORKSHOP IN THE CAPITAL CITY OF HAGÁTÑA. OVER 100 PEOPLE ATTENDED INCLUDING JUDICIAL OFFICERS, ATTORNEYS GENERAL, PUBLIC DEFENDERS, AND LAWYERS FROM GUAM, THE FEDERATED STATES OF MICRONESIA, THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, THE REPUBLIC OF PALAU, AND THE REPUBLIC OF THE PHILIPPINES.

Why Guam? Guam is located in the western Pacific Ocean some 1,500 miles west of the Philippines. The tropical island is a United States territory, and the District Court of Guam is under the jurisdiction of the United States Court of Appeals for the Ninth Circuit. The Guam Superior Court has jurisdiction over cases arising under Guam law with a direct appeal to the Guam Supreme Court. Appeals from the Guam Supreme Court are treated similarly as appeals from any state supreme court. As one might expect, South Pacific judicial officers and lawyers share many of the same concerns and challenges of trial practice, ethics and the administration of justice.

“Good things happen when smart people gather under the sun,” said Former Regent **Brian B. O’Neill** about the opportunity for him and ten other Fellows to meet their Micronesian counterparts. “We talked about how to make the world a better place,” said O’Neill. “I mean, how cool is that?”

This workshop was the College’s second outreach to the South Pacific. O’Neill and R. Ashby Pate, at that time a Republic of Palau Supreme Court Justice, organized a similar workshop in Koror in 2015. Pate spoke about the Palau workshop at the March 2016 Spring Annual Meeting in Maui. He sang, strummed his guitar and shared a personal story about the power of forgiveness and the cruelty of solitary confinement. Pate stressed the critical human need to interact with other people. He praised the meaningful connections the College made with the people in Palau. His speech can be seen on the College YouTube channel.

The learning and fun that happened in Palau led Former International Committee Chair **Richard C. Busse** of Portland, Oregon, and O’Neill to reach out to Guam Supreme Court Justice F. Philip Carbullido and propose another educational workshop. Justice Carbullido welcomed the idea and facilitated the first-ever collaboration between the College and The Pacific Judicial Council (“PJC”). O’Neill drafted an agenda and selected Fellows with agenda-specific expertise who were able to make firm commitments to the project (“Team Guam”).

Justice Carbullido orchestrated what became a three-day educational workshop. He set aside the first two days for judges only and opened the third day to both lawyers and judicial officers. He then introduced Fellows to Guam lawyers and judges before the conference began. These personal pre-conference connections helped Team Guam understand the local legal landscape and make their presentations more meaningful.

The PJC hosted a welcome dinner of local eats. Team Guam and attending judges enjoyed a savory home-style evening. Dinner spilled into a leisurely dessert where ►



Participants of the workshop on the first day



Judge Strong speaking on day two

folks lingered and swapped stories about law and life. “We learned as much from them as they did from us,” said Fellow **Richard S. Glaser, Jr.** of Charlotte, North Carolina, who presented on trial preparation, tactics and issue spotting in criminal law cases. “Justice Carbullido was so helpful and accessible. I was most impressed with the quality and knowledge base of the judges and lawyers from the islands. Our dinner with the judges and, in particular, our time with the Filipino judges learning of their non-jury system, was fascinating.”

Fellow **Cynthia Day Grimes** of San Antonio, Texas, who shared trial tips for civil tort cases, concurred. “The lawyers were obviously dedicated to the practice of law and passionate in their representation of clients. It was a terrific opportunity for us to interact with lawyers and judges halfway around the world who, just like us, are eager to adopt best practices in the courtroom and promote jury trials and the rule of law in their communities.”

Hafa Adai (pronounced “half a day”) is a traditional greeting on the island. Like “Aloha,” it means more than just hello and goodbye. It means welcome. We are glad you are here. We invite you to be part of this community. The Honorable

Camillo Noket (Chief Justice, Chuuk State Supreme Court and President, PJC), The Honorable Katherine A. Maraman (Chief Justice, Supreme Court of Guam) and Justice Carbullido, opened the workshop with this warm greeting.

Next up was **Larry S. Robbins** of Washington, D.C., Robbins gave a review of cases before the United States Supreme Court. Does a baker have the right to refuse to make a wedding cake for a same-sex couple? Is partisan gerrymandering unconstitutional? How much can a government surveil cellphones? Robbins explained both sides of the issues, then made personal predictions of how the court might rule. Judges in attendance noted that they are facing some of the same legal questions in various South Pacific jurisdictions.

Day two paired Micronesian judges with International Committee Chair the **Honorable Carolyn S. Ostby** and the **Honorable Keith Strong**, both United States Magistrate Judges in the District of Montana. They discussed standards of review, strategies for docket management, how to control the courtroom and writing legal opinions. **Charles P. Diamond** of Los Angeles, California, explained How to Present Expert Testimony, and How to

Get a Document into Evidence. **Mickey Pohl** of Pittsburgh, Pennsylvania, shared his expertise regarding Evidence Review.

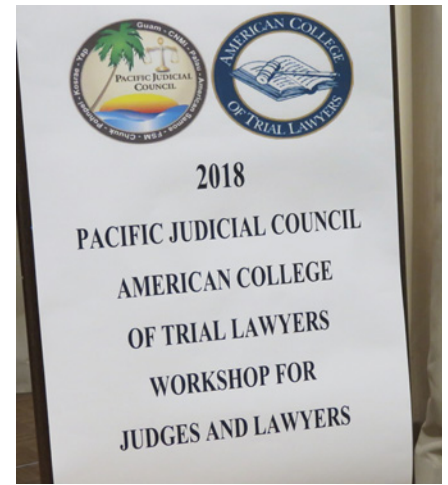
The **Honorable Karen S. Townsend**, Fourth District Court of Montana, shared her expertise on search-and-seizure law and how to manage a high-profile case. Her picture and an article about the workshop were in a local Guam newspaper the following morning.

Thanks to Fellow **Richard H. Friedman** of Seattle, Washington, each attendee received *Elements of Trial*, a book authored and donated to the workshop by Friedman. As the conference unfolded, attendees were encouraged to put down cellphones and to ask questions, and people did. Attendees shared professional and personal experiences and stories, and even sang “Happy Birthday” to Chief Judge Frances Tydingco-Gatewood of the Guam District Court.

Day three was open to both judges and lawyers. Morning presentations were How to Handle Complicated Civil Actions (O’Neill), How to Try a Civil Tort Case (Grimes) and How to Try an Employment Law Case (Busse). In the afternoon, the focus of the seminar shifted from civil to criminal trial work. Glaser led



View of Apra Harbor



A welcoming sign

a discussion about Trial Preparation, Trial Tactics and Issue Spotting. **Douglas A. Kelley** of Minneapolis, Minnesota, and Dr. Christopher Barden Ph.D, J.D. of RC Barden & Associates, Plymouth, Minnesota, highlighted some of the challenges, concerns and best practices with regard to prosecuting Criminal Sexual Conduct against Children.

There is remarkable patriotism in Guam due in large part to the American forces liberation of Guam from Japanese forces during World War II. Guam continues to be a strategic location for the United States military. American military bases occupy nearly 30 percent of Guam's land, including the Andersen Air Force Base and Naval Base Guam. It is home to more than 6,000 military personnel. Plans are underway to build a Marine base on Guam with the transfer of about 5,000 Marines from Okinawa to Guam. The Chamorros, the indigenous people, have the highest recruitment rate per capita, of any ethnic group in the United States.

North Korea is just 2,200 miles from Guam, and it was surreal to watch stealth bombers fly over beaches where

families and small children were playing. The aircraft returned each evening during cocktail hour.

If Fellows sipping piña colodas and the local brew on a white beach sounds like a "boondoggle" to you, please think again. A trip to Guam is over 7,000 miles and involves about thirty hours of travel time, and that's just one way. Members of Team Guam donated their time and paid all their own expenses.

The group received clearance to "visit" the U.S. Naval Base Guam in Apra Harbor. As the van rolled slowly to just inside the base security gate, Kelley was able to eyeball the officers' barracks where he lived back when he was in the service. Kelley later tracked down the War Dog Memorial which pays tribute to dogs who died helping soldiers. Next, they proceeded to Talafofo Falls Park only to discover the tram leading down to the falls was broken. "But it's not that far," the ticket seller explained. "You can walk down, just 300 yards."

It was much further. Sweating down a steep hill for about an hour, the group found the splendid waterfalls. A trail

from there led further to the cave where Japanese soldier Shōichi Yokoi lived for twenty-eight years. Yokoi was discovered in 1972. He did not know World War II had ended. He is famously quoted as saying "I return home in disgrace," when he went home to Japan that same year.

By the time the group returned to the waterfalls, the joke was on them. The tram was not broken, just temporarily unattended. Luckily, the return to the van did not include a hike up monster hill. Instead, two trams airlifted the weary hikers out of the valley and to ice-cold bottled water. The return to the Dust Thani Hotel was accompanied by aching feet and a good story.

Guam is the first place the sun rises on U.S. soil. Before the sun set on the last day of the workshop, Justice Carbullido had invited O'Neill and the College back to Micronesia in 2020. "The judges and lawyers in attendance gave remarkably high marks for the caliber of workshop presentations," said Carbullido. "We have to do this again."

With Contributions from
Ruth B. O'Neill



Once upon
a trial...

...a fearless attorney

WAR STORIES FROM FELLOWS



BELLOW 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.

NOT-SO-NOTABLE NOTES

In early December 1973, a healthy young man of twenty-nine, married with four young children, attended the emergency department at a teaching hospital in London, Ontario, with his wife, complaining of a severe throbbing headache, nausea, dizziness, numbness and photophobia, among other symptoms. He was seen by a Dr. N, studying for a Ph.D. in neurophysiology at another teaching hospital, and moonlighting as an emergency physician. The young man was examined for 15 or 20 minutes, and discharged with a diagnosis noted on the hospital chart of “migrainous headache plus nervous overtone” and prescribed 6 292 (acetylsalicylic acid, codeine and caffeine) and 6 valium pills. In fact, the young man was suffering from the early stages of a subarachnoid hemorrhage (an early bleed), which would have been caught had a lumbar tap been done. On December 20, after resuming normal duties, he collapsed in his car, was admitted to hospital, and before surgery could be performed, he died on December 22.

If the young man indeed had a history of migraine headaches, the emergency diagnosis, though inadequate given the symptoms, was arguably, based on the expert evidence, not negligent. But if that history was wrong, or created after the fact, quite a different outcome. The evidence of the patient’s wife, parents, friends and co-workers was that he had never in his life suffered from, complained or been treated for migraine headaches. Critical to the case was the evidence of the family doctor whose patient he had been for many years that there was not only no history of migraine headaches, he had never complained of headaches at all.

By the time of the trial (1977) the family doctor had moved from London to Houston, Texas, one of a number of Canadian doctors who had decamped to the U.S. in the 1970s. By coincidence, the family

doctor had also been my family doctor and a close friend for years, so I knew him well. I proposed to, and did, put his evidence in by filing his handwritten office notes covering about 10 years before 1973, which were unremarkable, and showed no complaint of or treatment for headaches. The case otherwise was a battle of competing neurosurgical expert evidence, and the accuracy and provenance of Dr. N's emergency notes.

The family doctor's notes were what you would expect for the period. Handwritten, somewhat difficult to read entries, covering a period of years, in different inks, written on a pad supplied by a pharmaceutical company.

The first witness called by the defense late one afternoon was from that pharmaceutical company, who testified that the form on which the family doctor's notes were written had not been produced until 1973. I was taken completely by surprise, and almost physically sick. As soon as I got back to the office, I called my friend in Houston. "Roy, what is the explanation," though the language I used may have been more colourful. Sheepishly, he explained that he was so embarrassed by the state of his original record that when he knew they were to be filed in court, he recopied them on a new form, different inks and all. "Roy," I said, "get on a plane immediately. You have to testify about this in London (his hometown) tomorrow."

He did, his explanation was accepted, problem solved. The trial judge accepted the evidence of the widow's family and experts, and she and her children were compensated. But it remains one of the worst experiences I ever had in court.

An interesting sidelight - the very distinguished head of Clinical and Neurological Sciences where Dr. N (a foreign trained doctor) had spent his one year of residency wrote a letter about his time there. It read in its entirety: " Dr. N spent the year 1973-74 as a resident here in Neurophysiology. I am sure he benefitted from the experience."

Earl A. Cherniak, Q.C.
Toronto, Ontario

AIR APPARENT?

Some years ago I was trying a bench trial together with my partner, Fellow **Gordon Roberts**. We were defending a claim of patent infringement and Gordon was cross examining one of the plaintiff's experts. The witness had testified on direct that it was possible to combine certain ratios of ingredients of molecular explosive compounds that were disclosed in a prior art reference in a manner such that interstitial air would not be trapped throughout the compound. Our defense was that interstitial air was inherently present in any of the combinations disclosed in the prior art reference as a matter of basic

physics. The combinations disclosed in the patent-at-issue fell within the ranges disclosed in the prior art reference. If we were correct, the patent was anticipated by the prior art and invalid. If the plaintiff's expert was right, our client was an infringer and liable for many millions in damages. Gordon took the witness through a series of questions to demonstrate that it was physically impossible to fill all of the air spaces in and around given amounts of ammonium nitrate prills with given amounts of slurry explosive. The witness refused to concede the point. Finally, in exasperation, Gordon asked:

Q: Doctor, by what manner of alchemy do you claim that interstitial air is not inherently present in all of the composition ratios disclosed in the Egly patent?

A: It's not alchemy, Mr. Roberts, it's chemistry.

Q: The jury is still out on that, Doctor.

Noticing that the judge could barely repress his laughter at his rejoinder, Gordon wisely said "no more questions" and sat down.

The judge ruled for our client and the decision was affirmed by the Federal Circuit.

Francis M. Wikstrom
Salt Lake City, Utah



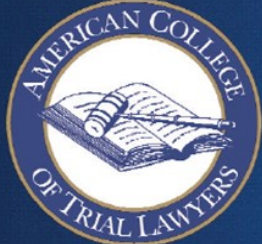
THE METTLE OF A FELLOW

THE TUBBS FIRE, WHICH DEVASTATED SANTA ROSA LAST OCTOBER, WAS ONE OF THE WORST IN CALIFORNIA HISTORY, DESTROYING NEARLY 7,000 STRUCTURES AND AFFECTING OVER 110,000 ACRES. AT ITS WORST, THE FIRE SWEEPED THROUGH THE SANTA ROSA NEIGHBORHOODS OF COFFEY PARK, LARKFIELD, AND FOUNTAINGROVE.

Fellow **David W. Condeff** was one of those affected by the fire, his home and all his belongings destroyed by the fires. Among the many prized possession lost within the ashes was also his College membership plaque. As he undertook the task of rebuilding his home – no small feat for anyone – he also sought to replace his plaque. In February 2018, he called the National Office to ask about obtaining a replacement plaque and the costs involved. One day after the call, National Office received his check to order a new plaque. His plaque has now been replaced and his check was returned. In the April 2018 *eBulletin*, President Franklin wrote: “This Fellow, with the multitude of things he must have had on his plate, put replacing his membership plaque near the top of his action list. I know I certainly would have felt this way if something were to happen to my membership plaque and I am confident the same is true for all of our Fellows.” ■



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

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

— from the College Induction Charge

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January 25-28, 2018

The Mansion on Forsyth Park

Savannah, Georgia

REGION 7: TRI-STATE REGIONAL MEETING



ON JANUARY 25, 2018, MORE THAN 180 FELLOWS AND GUESTS, INCLUDING PRESIDENT **SAMUEL H. FRANKLIN** AND PAST PRESIDENTS **CHILTON DAVIS VARNER** AND **JOHN J. (JACK) DALTON**, ARRIVED AT THE MANSION ON FORSYTH PARK IN HISTORIC AND BEAUTIFUL SAVANNAH FOR THE REGION 7 TRI-STATE MEETING. FELLOWS FROM ALABAMA, FLORIDA, AND GEORGIA ATTENDED THE BI-ANNUAL MEETING. ALABAMA HOSTED THE PREVIOUS TRI-STATE MEETING IN NEW ORLEANS AND SET A HIGH BAR. BY ALL ACCOUNTS THE SAVANNAH MEETING MEASURED UP TO THE STANDARD SET IN NEW ORLEANS. THE MEETING WAS BLESSED WITH GREAT WEATHER WHICH ALLOWED FOR EASY EXPLORATION OF SAVANNAH'S HISTORIC DISTRICT WITH ITS ANTEBELLUM ARCHITECTURE, COBBLESTONE STREETS, AND PARKS.

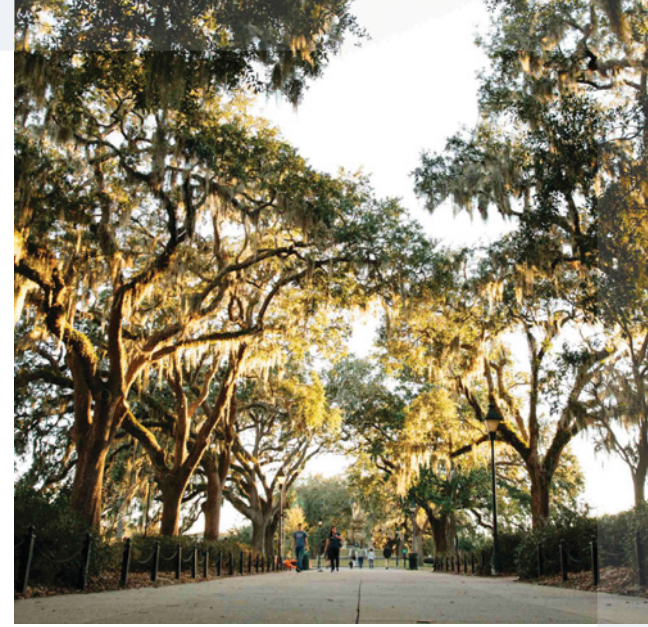
Upon arrival, Fellows and guests received a welcome basket including Savannah delicacies and books authored by two of the speakers, Bill Hancock and Joe Beck. A cocktail reception kicked off the festivities on Thursday night.

R. Ashby Pate spoke first on Friday. Pate practices with President Franklin's firm, Lightfoot, Franklin & White, L.L.C., in Birmingham. Formerly a professional musician, he began his presentation with a stirring rendition of *Midnight Special*. This old prison song led into a message of creating meaningful human connection and bringing light wherever darkness and disconnection can be found.

His talk also went through his unusual background as an Associate Justice of the Supreme Court of Palau, an island nation in the western Pacific Ocean. After returning to Birmingham and rejoining the firm, Pate has represented some of the firm's most important and controversial matters,

including giving the closing argument for the State in the judicial ethics trial of Alabama's former Supreme Court Justice and Senatorial candidate, Roy Moore.

The second speaker on Saturday morning was **Bill Hancock**. Hancock has been at the highest level of intercollegiate athletics for many years. He was the first full-time director of the NCAA Final Four, the first Executor Director of the Bowl Championship Series and also the first Executive Director of the college football playoffs. The Alabama Fellows became vocal with cries of "Roll Tide" when he recounted once again presenting the national trophy to Nick Saban and the University of Alabama only two weeks before the meeting. The University of Georgia contingent among the Georgia Fellows, still smarting over the Dawgs loss in the national championship game, was noticeably quiet during this part of Hancock's talk. (The small, but notable, Auburn contingent did not miss the opportunity to remind the Georgia and



Alabama fans that the Tigers had beaten them both during the regular season.)

Hancock's talk then focused on his book, *Riding With the Blue Moth*. It is a remarkable memoir of his experiences during a cross-country bicycle journey he and his wife, Nicki, undertook in the aftermath of the tragic death of their son, Will, who passed away seventeen years ago in an airplane crash which also claimed the lives of players and staff of Oklahoma State University who were returning from a basketball game.

His talk fit well with the message given by Pate. He concluded by saying, "... be smiling because people are watching you all the time and no matter whether you are a lawyer, you are a coach or just a regular person walking down the street, have a thought in your heart and be smiling because somebody is watching you and their life will be influenced by what they see in you." It was truly an inspirational talk

The final speakers on Friday morning were **Dr. W. Todd Groce, Ph.D.** and **Dr. Stan Deaton**. Groce is President and CEO of the Georgia Historical Society. Deaton, a senior historian at the Society, gave a self-deprecating, humorous talk which centered on Savannah's Abraham Baldwin and the drafting of the United States Constitution. His talk brought to life a conference in which fifty-five people with widely divergent interests and opinions managed to put together a document that has served the United States well for almost 300 years.

On Friday evening, Georgia took a page out of the Alabama playbook and held a Dine Around at about a dozen of Savannah's finest restaurants. Fellows from each state were present at each of the restaurants to meet and make new friends.

The first speaker on Saturday morning was the **Honorable Glenda A. Hatchett**. She left a successful tour of duty as counsel for Delta Airlines to become Chief Presiding Judge of the Fulton County (Atlanta Georgia) Juvenile Court. In so doing, she became the first African American Chief Presiding Judge of a State Court in Georgia and head of one of the largest juvenile courts in the country. Hatchett has also authored several books and presided over a two-time Emmy nominated syndicated show for fifteen years. She now practices in Atlanta with her son, Christopher Johnson, who was present at the meeting.

The next speaker was **Joseph M. Beck**, who is a partner at Kilpatrick Townsend & Stockton LLP in Atlanta. Beck talked about his book, *My Father and Atticus Finch, A Lawyer's Fight for Justice in 1930's Alabama*. Beck's father represented an African-American defendant in a fascinating case which was almost certainly the inspiration for Harper Lee's literary classic *To Kill a Mockingbird* and its lead character Atticus Finch. Although this was never acknowledged by Ms. Lee, the similarities with this true story and the fictional Atticus Finch seem too similar to be coincidental. Among the

similar details include the fact that both Atticus Finch and Beck's father were great shots with a rifle despite being blind in one eye.

The final speaker was **WJ. Michael Cody**. Cody practices with Burch, Porter & Johnson, PLLC, in Memphis and has served as the Attorney General for Tennessee as well as the U.S. Attorney for the Western District of Tennessee. Early in his illustrious career, he was one of the attorneys representing Dr. Martin Luther King, Jr. during the last two days of Dr. King's life after he had gone to Memphis to lead garbage workers in a strike. Cody told a fascinating story of the events representing Dr. King on April 4, 1968, as well as the tragic historical events surrounding Dr. King's assassination.

The final organized event of the meeting was a dinner at The Mansion on Forsyth Park Saturday evening. Entertainment was provided by "Call the Cops," a rock band consisting primarily of local attorneys.

The Georgia State Committee, led by Savannah's own former Georgia State Committee Chair **Patrick T. O'Connor**, was proud to host the event. Fellows from all three states are looking forward to the Tri-State Meeting to be hosted by the Florida Fellows in 2020 in Sarasota.

Wade K. Copeland
Atlanta, Georgia



CHARLES BYRON RENFREW

1928-2017

A MEMORIAL TRIBUTE



Charles Byron Renfrew, the forty-fifth President of the American College of Trial Lawyers, died December 14, 2017 at age eighty-nine.

Born in Detroit, Michigan, graduating at age seventeen from Birmingham High School, Charlie and some of his buddies enlisted in the United States Navy at the end of World War II. As the war wrapped up and the Pacific Fleet began to roam the seas, he saw duty as a shipboard electronics technician in the Philippines, Australia, New Zealand, Hawaii, Hong Kong, Tsingtao, Yokohama and Tokyo.

He had wanted both to see the world and to pay for a college education. He accomplished both. His travels sparked a lifelong fascination with the communities and cultures of the world. His naval service earned him his education under the GI Bill of Rights at Princeton University, from which he graduated with a Phi Beta Kappa key. Thirty years later, as a Trustee, he delivered its baccalaureate sermon.

Married shortly after graduation at about the time the Korean Conflict erupted, he again volunteered to serve his country, this time as an officer in the United States Army, where he was a Forward Artillery Observer, guarding the Demilitarized Zone (DMZ) between North and South Korea, created to facilitate the end of that conflict. After two years of military service, he entered the University of Michigan Law School, where, a member of the law review, he was inducted into the Order of the Coif.

He began practice at San Francisco's Pillsbury, Madison & Sutrow, then the largest law firm west of the Mississippi, where he became a partner. Sixteen years later, Republican President Richard Nixon nominated him to be a United States District Judge in the Northern District of California, and he received his commission on December 9, 1971. Eight years later, Democratic President Jimmy Carter appointed him as Deputy Attorney General of the United States under Ben Civiletti, and he resigned his Federal judgeship and

assumed that role in early 1980. When, in late 1980, Carter was defeated by President Ronald Reagan, Renfrew returned to Pillsbury, where he remained for two years.

In 1981, he was inducted into the American College of Trial Lawyers, and in 1993-1994 he served as its President. In 1983, after two years of private practice, he became Vice President and General Counsel of Chevron Corporation. In 1993, after ten years at Chevron, he became a partner in San Francisco's LeBoeuf, Lamb, Greene & MacRae.

Four years later, at age seventy, he began yet another new life, this one labelled "Law Office of Charles B. Renfrew." His new practice, specializing in arbitration, mediation and internal corporate investigations, became the last and longest of his remarkable stream of careers.

Over those years, his public service stretched from California to London and beyond. In the legal arena, in addition to service as chair of six different committees in the American College of Trial

Lawyers, he served on the Board of the National Center for State Courts, as a member of the American Law Institute, on the Legal Advisory Committee of the New York Stock Exchange, on the Federal Judicial Center's Special Committee to Study the Problem of Discovery, as Vice-Chair of the Antitrust Section of the American Bar Association, and as a member of American Bar Association's Standing Committee on Federal Judiciary, which conducts peer review on the qualifications of every person nominated to become an Article 1 Judge. He spent a decade as Public Director of the California Power Exchange.

In the world of dispute resolution, he was for nearly fifteen years Chair of the International Institute for Conflict Prevention and Resolution (CPR), Chair of the Board of the National Panel of Distinguished Neutrals of the CPR Institute for Dispute Resolution, and a member of ADR Chambers, the London Court of International Arbitration and the College of Commercial Arbitrators.

In the fight for equality, he served the NAACP Legal Defense Fund for more than thirty years and was a Director

and its President and chaired its Committee of the Bar.

In the local San Francisco scene, he served on the Boards of the San Francisco Symphony and the San Francisco Museum of Modern Art, on the local Council for Civic Unity and as Vestryman, Senior Warden and member of the Board of Trustees of Grace Cathedral.

In the education world, he served on the Boards of Princeton University and Claremont University Center, and those of four law schools - Stanford, Chicago, Michigan and Brigham Young - as well as on the Board of Marin Country Day School and Chair of the Town School for Boys.

Those are the major obituary-appropriate landmarks of a life of service. Behind these landmarks, however, lay an adventurous storybook legal career. In every phase of his life, the same words appeared: intellect, curiosity, energy, optimism, wisdom and, perhaps most of all, kindness. A great storyteller, he engaged people with his humor and talent for creating genuine connections. His devoted commitment to

public service became an inspiration to younger lawyers.

The protocol of the American College of Trial Lawyers has long required that any person considered for invitation to fellowship be currently in full-time practice as a trial lawyer with at least fifteen years' trial practice under one's belt. In 1981, when President Carter's reelection defeat sent Renfrew back to Pillsbury, those in the College who had long known him at last found him a trial lawyer sitting in one place long enough to be nominated as a Fellow. He was inducted at the Annual Meeting in 1981 in New Orleans, Louisiana.

Each lawyer being considered for induction is asked by the College to submit a form that includes a request for references to three judges of courts of record who might be inquired upon respecting her or his character and qualifications. Although absolute verification might now be virtually impossible, Charlie Renfrew may well be the only potential Fellow whose responsive list included a sitting Chief Justice of the United States Supreme Court.



Renfrew, far right, with then Secretary Bart Dalton, Treasurer Mike Smith and President Bob Byman at Palais de Bercy during the 2014 Conference in Paris

Kindness and humor were among Charlie Renfrew's lifetime habits. One evening on their way from dinner, several College Fellows and their wives found him dressed in his usual splendid attire, sitting straddle-legged on the floor in a gathering space at their Ritz Carlton hotel. He was rolling a large rubber ball back and forth to amuse a cute toddler he had found sitting on the floor, bored and seeking eye-contact with another human being.

Three years after his election to the College fellowship, a new Charlie Renfrew emerged. Earlier divorced from his first wife, in October 1984, he married Barbara Jones, six and a half years his junior, merging her four children and his five, one of whom later died as a young woman. From then on, he spent the rest of his life keeping up with Barbara. She transitioned him from a perennial workaholic and kept him organized. At his memorial service, Charlie's friend, John Keeker, related that around Thanksgiving, several weeks before he died, Charlie was fairly immobile because of a fall. Barbara had also fallen and broken her hip in five places. Asked where they were

going for Christmas, Charlie said that they would be going to London "because Barbara wants to go."

She introduced him to fishing for trout in remote places. The vision of tall Charlie Renfrew wearing rubber hip boots, complete with suspenders, instead of his customary striped shirts and colorful ties, and fly-fishing hip-deep in a roaring boulder-strewn mountain stream was one at which his friends marveled. His fishing exploits were not without physical cost. He once flew back on a long flight from a remote corner of South America to California encased in a long-leg cast, fractured in pursuit of a prized rod and reel that had been purloined by a determined trout. So widely known were his fishing exploits that one published article at the time of his death listed among his survivors "rivers around the world full of relieved trout."

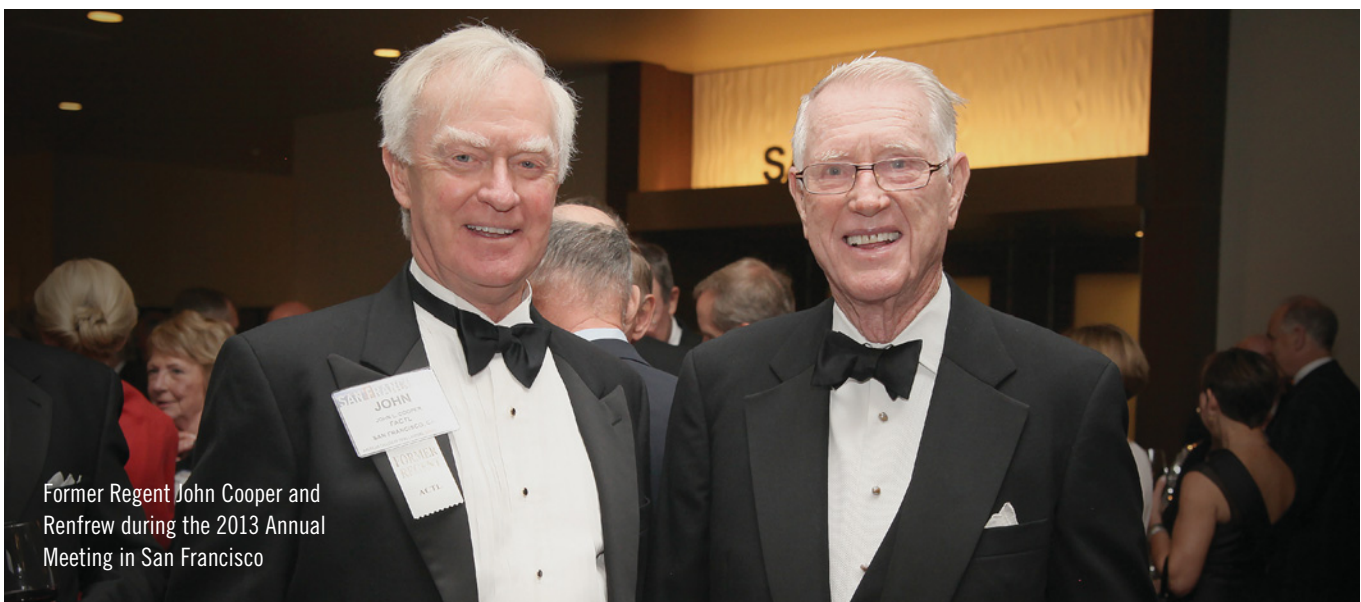
No one who crossed the trail of Charlie Renfrew's sense of humor left without his or her own stories. Near the end of Charlie's memorial service, his friend, John Keeker, exclaimed, "Alas, I have come finally to the topic you have

all dreaded – Charlie's sense of humor. It was that of a precocious, very well educated, thirteen-year-old boy."

"When Charlie arrived at the Supreme Court to see Justice Breyer, who was famous for his bicycle accidents, . . . he had," Keeker related, "just had one. The receptionist asked Charlie who he was and what he wanted, and Charlie explained that he was a representative of Schwinn Bicycle Company and was seeking a release from Justice Breyer."

On one occasion, he was standing with two or three Fellows of the College at a meeting in Williamsburg, when out of an elevator door came Justice Sandra Day O'Connor, who was there for an unrelated meeting. Charlie ushered his group over, saying, "Sandra, I want you to meet these people." He proceeded to introduce them, leaving until last College Fellow John Marshall from Atlanta, whose introduction went: "And this is John Marshall. I suspect that you may have read some of his opinions."

Charlie developed a close relationship with Lord Woolf of Barnes, arising ▶



Former Regent John Cooper and Renfrew during the 2013 Annual Meeting in San Francisco

from their work together in the London Court of International Arbitration. When Lord Woolf went from being one among many of the Law Lords in the House of Lords to being Master of the Rolls (the head of the civil appellate court) and then to being the Chief Justice (the head of the criminal appellate court), Charlie sent him a note of congratulation. He then added, “It does appear, however, that you seem to have a hard time keeping a job.”

His targets ranged from those who, such as Justices Breyer and O’Connor and Lord Woolf, knew him well, to some for whom one of his outrageous dead-pan jokes was their first introduction. One new Regent was sitting at dinner, having arrived that afternoon for his first Board meeting when, partway through the meal, Charlie leaned across, disclosed that he had found from the Regent’s wife that their daughter had graduated from Princeton in 1982. His serial questions that followed established that the Regent had indeed attended her graduation and that he had attended the baccalaureate service. When his next question, whether he remembered the message that was delivered at that service was met with a negative answer, the eyelids in Charlie’s otherwise dead-pan visage dropped almost imperceptibly as he responded, “I delivered it.”

Some of the roles that evolved over his life, such as those of a Federal District Judge and a Deputy in the Department of Justice and his leadership of the American College of Trial Lawyers and the

NAACP Legal Defense Fund were very public. Others, such as his private law practice, his corporate employment and his dispute resolution activities, were less apparent to the public and were best known by those who worked with him.

Long before he was inducted into the College, Renfrew had already become a highly respected Federal District Judge. It was his service on the bench that became perhaps the most well-known and well-remembered part of his legal career. He loved being a judge, and he took the job very seriously. Considered brilliant, innovative, compassionate and hard-working, he cared deeply about the impact his decisions would have on both victims and offenders and he never lost sight of his responsibility to find the path that best served justice. He was proud of a succession of great law clerks for whom he became a mentor, many of whom went on to serve as clerks at the United States Supreme Court.

Leading naturalization ceremonies and meeting newly-minted citizens, he would ask them to look for inspiration at the dollar bill’s motto “out of many, one.” He asked them to notice that all of them standing in his courtroom were from different countries, different backgrounds and different faiths, but that all of them shared a common belief in the United States and in their American citizenship.

Coming to the bench already intimately familiar with the civil side of his docket from his own years of law practice, he fought for new rules to elimi-



Renfrew stands with other Past Presidents during the reading of the Induction Charge at the 2015 Annual Meeting in Chicago

nate what he called “trial by avalanche” caused by misuse of discovery procedures. He led a committee to study whether to limit the amount of punitive damages, and his group issued a report that outlined relevant standards of proof. “Winning a lawsuit” he said, “should not be like winning the Lotto or the Irish Sweepstakes. It should be fair compensation for the damages sustained from the party that was responsible for the injury.”

To the apparent horror of some other federal judges, he wrote his own findings of fact and conclusions of law. In his oral history, he remembered fondly one lawyer’s shock on being asked about a paragraph in his complaint, and blurting out in open court, “You read the Complaint?” When appointed to sit by designation on the Ninth Circuit, he would read the record thoroughly—he was very proud of his speed-reading—and could be counted on to ask questions based on the most abstruse parts of the record, something that could be intimidating if you were the advocate he was questioning.

Going on the bench knowing very little about the criminal justice system, he was determined to learn. He agonized over sentencing. When the rules allowed it, he would make the inmate write to him, telling him what was going on and evaluating his sentence. Encouraging reflection by convicted persons to lower their odds of recidivism, he asked them to tell their cautionary tales to others, and he ordered specific sentences for community service as a part of the condition of the offender’s release. As a condition of their release, he required certain offenders, especially white-collar ones, to give talks before groups, explaining how they had gotten into trouble and why it was very much in the interest of those to whom he was speaking to avoid doing .

He developed a four-pronged practice after imposing a criminal sentence. First, he would often reopen the sentencing process on his own, something that was then permitted. Second, he visited prisons each year, staying one or two days, sitting in on classification hearings, disciplinary hearings, vocational training and educational programs to learn what went on in that particular prison. He wanted to make sure that those he sent to prison were safe, and he was often disappointed and upset with the conditions he saw. In the third prong,

after he sentenced someone to prison, he would call up that person’s case worker and ask them, “How is John doing? Is he partaking of the drug abuse program? Is he doing the education program?” The case workers would frequently hang-up on him; they could not believe the caller was really a judge. The fourth prong of his criminal sentencing was having the probation department make a written report every quarter on the people for whom they had a responsibility, whether on probation or parole. He would ask how they were readjusting to society, whether they were back with their family, whether they were getting vocational or substance abuse training. The parole officer would come to his chambers with the defendant. He observed, “I found that the people that I had sentenced got much more attention from the probation department because their officers had to write a report to me about how their people were doing.”

Proud to have served in the aftermath of World War II and in the Korean Conflict, and horrified by what he saw of war, he adopted a practice that was born of that experience. Sitting on the bench in a later contentious era, his experience with war led to his judicial decision never to send a Vietnam draft resister to jail. Instead, he placed them on probation.

Although his role on the bench was one of dignity, one notable humorous event was long remembered. One day Judge Renfrew found that a slight woman with a scar on her forehead had sneaked into his chambers, representing that she was asking for help in contacting her father, who was in prison. After the woman left, it was learned that she was Squeaky Fromme, a member of the notorious “Manson family,” led by criminal cult leader Charles Manson. Manson had been imprisoned, and there had been persistent rumors of the existence of a plot by his followers to kidnap a judge, who would then be traded for Manson’s release. If that were indeed the case, Squeaky Fromme, like all of those trout, escaped to freedom.

His next role, as Deputy Attorney General of the United States, lasted less than two years. One of his well-known major engagements involved defending the Department of Justice’s actions in connection with the Cuban-Haitian Crisis, when thousands of people from both countries had fled



to the United States. The Cubans were fleeing Fidel Castro, the Haitians Papa Doc (François Duvalier). Far more Cubans than Haitians were being admitted into the United States. Senator Ted Kennedy, challenging President Carter for the Democratic nomination, had charged that the Carter Department of Justice had unfairly favored Cuban immigrants over those from Haiti. The Cuban Adjustment Act of 1966, enacted after the Bay of Pigs debacle, had, however, provided a more direct route to citizenship for Cuban immigrants than for their Haitian counterparts. Renfrew was able to demonstrate that the questioned practice arose from an Act of Congress, and not from the Department of Justice.



Charlie and Barbara Renfrew at the 2017 Spring Meeting in Boca Raton, Florida

When he was finally eligible for nomination and induction into the College, his role there quickly began to leave its mark. In 1988, the College released a report on the then-controversial subject of punitive damages. Written by Renfrew, it recommended limited punitive damages under a flexible formula based on the amount of compensatory damages. The next year, 1993, he became a member of the College's Board of Regents. In his fifth year, he served as Treasurer.

Sages of Their Craft, the fifty-year history of the College, quoted at length his remarks at a College planning retreat during 1993. He observed

that in big-city firms, where everything was billed on an hourly basis, this and other similar pressures were putting lawyers in a situation in which they could become more and more like tradesmen, rather than professionals, one that could put the client and the lawyer in conflict. This transition, he pointed out, involved the advent of legal advertising, the emphasis on billable hours, the skyrocketing cost of legal services, the decline of civility in the courtroom and the resulting plummeting image of trial lawyers.

In 1994, the year he became President-Elect of the College, he participated in an Anglo-American Legal Exchange, a long-standing cooperative venture between the United States Supreme Court and the College. The United States delegation included Supreme Court Justices Sandra Day O'Connor, Anthony Kennedy and Stephen Breyer and College Past President Robert Clare, Jr., an Honorary Bencher of the Middle Temple, who was on his third such Exchange, along with the British wife that he, a widower, had met in an Exchange in the early 1970s. The United Kingdom delegation, headed by The Rt. Hon. Thomas Bingham, who at the time led the civil appellate arm of the courts of England and Wales, was of equal stature. After a week of discussing the similarities and differences in the way in which their respective courts functioned, visits to the Royal Courts of Justice, the Old Bailey and a Magistrates' Court and tours of both Houses of Parliament, a reception by the United States Ambassador and a final black-tie dinner in the wine cellar of the Hotel Stafford, the Renfrews came away from London with a bond, both geographic and personal, that would last them the rest of their lives. His later role in the London Court of International Arbitration helped to cement that bond. Indeed, when he began to be engaged in frequent lengthy arbitration proceedings there, Barbara was known to have undertaken a study of British history in one of the old libraries nearby.

When the College itself met in London in 1998, Barbara collected a group of friends from both countries for the celebration of Charlie's seventieth birthday. After a cocktail party in an adjoining apartment, the group was led after twilight across

the street to a restaurant where they were to have dinner. From out of the group, a tall man stepped into the street and, in a commanding manner, stopped traffic from both directions until the party had crossed in safety. Only later did the U.S. guests realize that the man who had guarded them from annihilation by vehicles driving on what to them was the wrong side of the street, was the then-Chief Justice of England and Wales, Lord Bingham. Only Barbara Renfrew could have recruited, and Charlie deserved, so talented a traffic cop.

In 1995, Charlie Renfrew took over the College's leadership in trying times, including the ongoing highly controversial O.J. Simpson criminal trial. Renfrew voiced the angst that was present: "From many perspectives, the legal profession is at a low point. The public opinion of lawyers appears to be at an all-time low. Law school enrollments have fallen off, as has membership in the American Bar Association. Many states have either enacted legislation or have pending propositions designed to correct the perceived over-reaching and greed of lawyers. Lawyer advertising continues unabated and increasingly panders to the publicity and engages in shameless self-promotion." There was, he concluded, a malaise in the profession, in which, he said, "The College essentially provides a leadership role for our profession in troubling times."

As an *ex-officio* member of the Board of Regents, retained to bring the history and traditions of the College, Renfrew, as do all of the past presidents, continued to be a valued participant in its meetings. At the time of his death, he was the fourth most senior among its past presidents

His role at Chevron did not restrict his activity in the College. Early in his time as Vice-President and General Counsel, he helped to oversee Chevron's 1985 merger with Gulf Oil. He chaired the American Petroleum Institute's General Committee on Law. Before the end of his tenure, a 600-foot long oil tanker bore his name.

As an arbitrator hugely in demand, he was described as one who worked harder than lawyers

forty years younger, and he did that all over the world. At the time of his death, the tribute of the International Institute for Conflict Prevention and Dispute Resolution, which he chaired for fifteen years, described him as "nearly evangelical at CPR meetings and in (published) articles in his focus on developing CPR and creating opportunities for its growth and improvement (H)e spearheaded the organization's emphasis on international work and measures to prevent conflicts" Among his major engagements were fights among Alabama, Georgia and Florida over allocation of water from common river basins and claims by Native Americans over misuse of Indian trust funds. He was involved in the resolution of four huge Asbestos Settlement Trusts.

At his death, the then President and Director-Counsel of the NAACP Legal Defense Fund said, "Judge Renfrew was an extraordinary advocate for justice and equality, He served on LDF's Board for more than thirty years, and never missed an opportunity to offer his time, share his networks, or support and contribute to LDF" He established and chaired the LDF's Committee of the Bar, enlisting over 100 lawyers to raise money for the benefit of its Earl Warren Legal Training Program, which granted scholarships for promising law students.

At his death, Charlie Renfrew left as survivors Barbara, his wife of thirty-three years, eight children, twenty-one grandchildren and two great-grandchildren.

The last paragraph in his oral history said it all: "Whatever I have achieved in the law has been the result of the support and help from so many people: loving and caring parents, wonderful teachers and mentors, my family, persons with whom I've worked, jurists and lawyers who set the standards that inspired me. My journey has never been a lonely one."

E. Osborne Ayscue, Jr.
Editor Emeritus



LJ Pavletic, Brendan J. Gerdes, President Franklin, Coach Sarah O'Rourke Schrup, and Taylor N. Mullaney

NATIONAL MOOT COURT COMPETITION

Northwestern Pritzker School of Law won the final round of the sixty-eighth Annual National Moot Court Competition held February 1, 2018 at the New York City Bar Association. The winning team was comprised of Brendan J. Gerdes, Taylor N. Mullaney, and LJ Pavletic. The USC Gould School of Law was the runner-up, with a team comprised of Zoe Steinberg and Rachel Yang.

Best Brief honors went to the University of Iowa College of Law, with Runner-Up Best Brief awarded to the University of Washington.

Best Oral Advocate was awarded to Mullaney.

The final round was judged by Hon. Carol Bagley Amon, U. S. District Court Judge for the Eastern District of New York; Hon. Judicial Fellow **Ann M. Donnelly**, U.S. District Court Judge for the Eastern District of New York; Hon. Debra James, Justice of the New York State Supreme Court, New York County; Hon. Dennis Jacobs, of the U.S. Court of Appeals for the Second Circuit; Hon. Robert R. Reed, Justice of the New York State Supreme Court; **Samuel H. Franklin**, President of the American College of Trial Lawyers; and John S. Kiernan, President of the New York City Bar Association.

The College co-sponsors this moot court competition with the New York City Bar.

The final argument was the culmination of more than six months of preparation and arguments by teams from over 150 law schools across the country. The top two teams from each of the fourteen regional competitions advanced to the final rounds.

The winning Northwestern team was introduced and honored at a special presentation May 9, 2018 at the Northwestern Law School.



COLLEGE COMPETITIONS RECOGNIZE FUTURE ADVOCATES



Dean Robert Leckey, McGill University, Faculty of Law, Dominique Verdurmen, Kelsey Angeley, and Canada-United States Committee Chair Bernard Amoyt at Maison Blvd.



The two winning teams from Wake Forest University School of Law with President Sam Franklin and the members of the National Trial Competition Committee who attended the finals in Austin, Texas.

NATIONAL TRIAL COMPETITION

On April 8, 2018, the Wake Forest School of Law National Trial Team competitors and coaches continued their record-breaking streak by winning a historic National Trial Team championship at the Texas Young Lawyers Association National Trial Competition in Austin, Texas with not one, but two, teams competing in the final round.

This championship is Wake Forest's first in the National Trial Team Competition. The win also makes Wake Forest the only U.S. law school to win the national TYLA competition, the national AAJ Student Trial Advocacy Competition and the National Moot Court Competition in consecutive years.

Out of the 300 teams that began the process at regionals, the two teams from Wake Forest ended up as No. 1 and No. 2 in the nation, beating out two former national champions – Kentucky and Michigan law schools.

The team that took first place was: Tracea Rice, Darius Lamonte, Jonathon Salmons, and alternate Le'Ron Byrd, with Rice and Lamonte trying the final round. The runner-up was: Zach McCamey, Virginia Stanton, Joe Karam, and alternate Nick Bedo, with McCamey and Stanton trying the final round.

McCamey was awarded the George A Spiegelberg Award for Best Advocate of the competition.

The team, coaches and school were honored with an awards presentation on April 20, 2018.

SOPINKA CUP

In the 20th Annual Sopinka Cup national trial advocacy competition, held this year in March, the winning team was from McGill University Faculty of Law. Team members included Kelsey Angeley and Dominique Verdurmen. The team from the University of Manitoba, Yassir Al-Naji, and Ben Johnson, placed second. The Best Overall Advocate was Angela Pagano from the University of Toronto.

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



Coach Mandy MacLeod, Kritika Sharma, Heather Cave, Sarah Offredi, Coach Professor Peter Sankoff, Daniel Jachma, and Judicial Fellow Justice Suzanne Côté

GALE CUP

The Gale Cup Moot is Canada's premier bilingual law student moot court competition that is held annually at Osgoode Hall in Toronto, Ontario. The winner of the 45th Gale Cup was the team of Heather Cave, Daniel Jachna, Sarah Offredi, and Kritika Sharma from the University of Alberta. Placing second was the team from the University of Toronto Faculty of Law. The Dickson Medal for Exceptional Oralist Performance in the Final Round was awarded to Cave.

IN MEMORIAM

In 2005, the Editors of the College's then recently transformed publication, *The Bulletin*, added to the previous traditional list of the names of deceased Fellows a paragraph about four of them, three former Regents and a former American Bar Association President, a Fellow, who had recently died. In the process of researching these four, we discovered, buried in storage boxes in the College archives, the written response of every person who had ever been invited to submit his or her credentials for consideration and who had thereafter been inducted as a Fellow, along with a file of each Fellow's College-related activities, beginning with their induction.

Utilizing that information, in Issue 50, Winter 2005, we published memorials of twenty-two newly-deceased Fellows. They ranged from a somewhat controversial grandson of slaves who began his career advocating for the victims of police abuse to a conservative from the Deep South who supported civil rights legislation and was described as the conscience of the United States Senate. As we continued to publish these memorials, we began to ask those who knew a departed Fellow to send us obituaries and other relevant information. Over time, in response, some of our state committees began to solicit reflections on their departed Fellows, collecting and sending them for our use with their memorials. You will have no trouble identifying those states in the memorials that follow.

In 2005, *The Bulletin* was a printed publication addressed to the Fellows. Over time, as the College went online, it became more widely available. Now the *Journal*, it is essentially available to anyone with access to the internet, and our memorials speak not just to our members, but also to the rest of our world.

With the forty-one memorials contained in the current issue, we have now published tributes to 1,533 departed Fellows of the College. Twelve of those in this issue ranged from age ninety to ninety-eight. Thirteen were veterans of a war that ended seventy-three years ago, several of whom were then recalled to duty in the Korean Era. Statistically, all but six of the forty-one, those who lived beyond age eighty, had long since exceeded what would have been their actuarial life expectancy as of the time they were born. Engaged lives were, we suggest, a major part of that picture.

These memorials are not merely remembrances of individual departed Fellows. They speak both to the evolution of the College and to the changing world in which we now live. The first three alphabetical listings in the paragraphs that follow include, by coincidence, those of Fellows who served as Regents of the College, two of them veterans of World War II. At the other end of the memorials, the last was a young woman who, after working her way from high school to become a registered nurse, then went to law school and practiced law for over twenty-seven years, becoming the second woman Fellow in her state.

In between, is a fascinating collection of humanity: One was a life-long learner, mentor, sailor, tennis player, problem solver, punster, chef and lover of fine wines, who played football with Bobby Kennedy and became a Justice of the Peace so that he could officiate in the marriages of kinfolk and friends. His grandchildren called him “Buddy.”

Another was a wordsmith, scholar and prankster who would scare his children with a mongoose in a cage and perform magic tricks such as retrieving quarters out of his ears. When asked in his late nineties by an emergency room doctor about the secret of his longevity, he replied “a little Jack Daniels every day.” Shortly before his death at ninety-eight, he exclaimed, “Oh, what a life!”

Another was the only unanimous Most Valuable Player in the history of the Sugar Bowl, who died while walking his dog five days before he was to be inducted into the first Sugar Bowl Hall of Fame. In the three years in which he was John Unitas’ understudy, he had earned his law degree in the post-season.

Among others was a recovering alcoholic who created a support network for other lawyers that became a national model.

Another was an avid skier, biker, sailor, traveler, culinary wizard, hostess and world traveler who was “Grammie” to her three grandsons.

One, a political conservative, then recently returned from shore bombardment in Korea, participated in the defense of a known communist charged under the Smith Act. “I was not too fond of communists,” he related, “but I was convinced that (he) was no more dangerous to the United States than my pussycat.”

In retirement, they found new lives in many different places, from supervising construction of Habitat houses to teaching law in places such as Moscow, Estonia and Lithuania.

And they were not without humor. One described being on Shore Patrol duty in San Diego during World War II as “keeping the mayhem to a minimum.” Another in retirement became the husband of a United States Ambassador, and, in filling out the State Department manual for diplomatic spouses, asked only one exception from the prescribed regimen of learning language, customs, history and the like. He asked to be allowed to fill his entire month’s social activities with “lunch with the French Ambassador’s wife.”

These were all people whose lives went far beyond what outsiders might envision as the life of a lawyer. We invite you to sit back and read what you will find in these memorials, one of our more inspiring and more entertaining issues of our ongoing account of the College’s history.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

Samuel Adams, '73, a Fellow Emeritus, retired Of Counsel to K&L Gates LLP, Boston, Massachusetts, died March 4, 2018 at age ninety-two, of respiratory failure. A lifelong learner, mentor, sailor, tennis player, problem solver, punster, chef and lover of fine wines, whose grandchildren called him "Buddy," his higher education began at Tufts University. Interrupted by service in World War II as the waist gunner and radioman of a *PBM 5A Mariner* in the Pacific Theater, he humorously described his San Diego shore patrol duty as "keeping the mayhem to a minimum." Returning to college at Harvard University, where he earned both his undergraduate and law degrees, he played football and rugby. At both Milton Academy and at Harvard, he was a friend and a teammate of young Bobby Kennedy. After law school, he served as Chief of the Antitrust Division of the Massachusetts Attorney General's Office and later as a Special Assistant Attorney General. He was also made a Justice of the Peace and took great delight in officiating at the weddings of friends and family. He had been a longtime partner and managing partner of Boston's Warner & Stackpole before its 1999 merger with K&L Gates. In 1973, he was appointed to the Massachusetts Superior Court, its highest trial court, on which he served for nine years before returning to Warner & Stackpole. In retirement, he became a mediator and arbitrator. Among his many civic and professional activities, he served the College as a General Committee Chair, as Massachusetts State Committee Chair and as a member of the Board of Regents. His survivors include his wife of sixty-six years, whom he first met at age sixteen at his sister's barn dance, three daughters and one son.

Saunders McKenzie Bridges, '77, a member of Akin, Bridges, Elliott, Tyler & Saleeby, P.A., Florence, South Carolina, died January 28, 2018 at age ninety-three, of Alzheimer's Disease. Initially enrolled in The Citadel, he enlisted in the United States Army in World War II, serving as a Second Lieutenant in a rifle platoon until he was wounded in both legs in the immediate aftermath of the Battle of the Bulge. Returning home with two Bronze Stars for Valor and a Purple Heart, he resumed his education at the University of South Carolina and then at its law school. He was Editor-in-Chief of his law quarterly and a member of Wig and Robe

and Omicron Delta Kappa. Joining his father's Florence law firm, he was recalled to active duty in the Korean Conflict, serving as a Captain in the Judge Advocates General Corps in Pusan, Korea. He served as President of his county Bar, the South Carolina Defense Trial Attorneys' Association and the South Carolina Bar Association. Among his many awards were one from his local Bar, the Robert W. Hemphill Award from the South Carolina Trial Attorneys' Association and the Worthy Adversary Award of the South Carolina Trial Lawyers' Association. A thirteen-year trustee of his local school district, the local President and a National Director of the Junior Chamber of Commerce, a founder and charter Commander of the Swamp Fox Power Squadron of the United States Power Squadron, he was a water safety instructor, instructor trainer and consultant for twenty-three years. The community service of which he was most proud was as Scoutmaster of a local Boy Scout troop, which he led to the Pan-American Jamboree in Rio de Janeiro, Brazil and to other jamborees in England and the United States. He received Scouting's Silver Beaver Award and the Order of the Arrow. A widower, his survivors include two daughters and a son, who is a Fellow of the College.

Raymond L. Brown, '79, a Fellow Emeritus and Former Regent, retired from Pascagoula and living in Gautier, Mississippi, died unexpectedly on December 25, 2017 at age eighty-two while walking on a trail with his dog. He died five days before he was to have been inducted into the inaugural class of New Orleans' Sugar Bowl Hall of Fame. A four-sport athlete, he was a first-team high school All-American football player, whose mother operated a local restaurant. During his senior year, he was told that an Air Force major in his school gymnasium wanted to speak with him. There, seventeen-year-old Brown found, in full dress uniform, former West Point All-American and Heisman Trophy winner Felix "Doc" Blanchard, who had been flown in to recruit him to West Point. His mother said, "Son, I could not stand your being so far away from home," and so he went instead on a football scholarship to the University of Mississippi, playing both football and baseball. President of the undergraduate business school class, he was inducted into Omicron Delta Kappa. He was a member of three college

bowl games and a college world series baseball team. An All-Southeastern Conference football player, he led the conference in passing one year and in total offense the next. His ninety-two-yard touchdown run in the 1958 Sugar Bowl against Texas still stands as its historic longest, and he was the only player ever unanimously chosen as most valuable player in a Sugar Bowl game. In 1958, he played in the now defunct College All-Stars game, in which his team defeated the National Football League champion Detroit Lions. He then spent three years of professional football with the Baltimore Colts. He was an understudy to quarterback Johnny Unitas and a defensive back (thirteen interceptions and four fumble recoveries) and punter who played in the 1958 sudden-death championship game against the New York Giants in Yankee Stadium, widely known as the Greatest Game Ever Played, which the Colts won. His three years in professional football were intertwined with his next career. During the winter and spring, he attended law school at Ole Miss. During the football season, he took law courses at the University of Maryland. He earned a place on the Ole Miss law review. He also earned a clerkship with United States Supreme Court Associate Justice Tom Clark. He then came home to Pascagoula to practice law. In his professional life, he became President of the Mississippi Bar. In his civic life he was Chair of the Trustees of his Methodist church, Chair of the Gulf Coast Community Foundation and, for thirty-one years, attorney for his school district. The President of the Ole Miss Alumni Association and of the Ole Miss Law Alumni, one can count seven different Halls of Fame in his history, the last being the Wall Street Journal Lawyer Football Hall of Fame, in which were also included Justice Byron "Whizzer" White and President Gerald Ford. He was the College's Mississippi State Committee Chair and then a member of the Board of Regents. He also owned and flew his own airplane. A widower whose wife of fifty-six years predeceased him, his survivors include two daughters and a son.

Joseph Warren Cabaniss, '88, a Fellow Emeritus, Of Counsel to Grimball & Cabiness, Charleston, South Carolina, died January 12, 2018 at age ninety-three. Beginning at the College of Charleston, after two years he entered the United States Marine Corps in World War II, serving on active duty in the Pacific

Theater. Returning to the College of Charleston to graduate, he earned his law degree from the University of South Carolina. He later served in the Korean Conflict and retired as a Major in the Marine Corps Reserves. Perhaps best remembered for his activity in the early civil rights movement, a speech that he gave in 1947 at the College of Charleston, where he had just graduated, advocating the end of racial segregation, won him the Robert Worth Bingham Prize. That was the year in which Harry Briggs, a service station attendant in Somerville, South Carolina, and his wife, Eliza Briggs, a maid, instituted the first case that was later combined under *Brown v. Topeka Board of Education*. Cabaniss later became Chair of the Charleston Council on Human Relations, a biracial organization for better communication and cooperation among the races. In 1969, Governor Robert McNair appointed him to a committee to attempt to resolve a strike by hospital workers at the state university medical school. He had been President of his local Bar and received a Distinguished Alumnus Award from the College of Charleston. In law school, he was a member of Wig and Robe and he received the Compleat Lawyer Award from the South Carolina Law School Alumni Association. His survivors include three sons.

John Rogers Carroll, '90, a Fellow Emeritus, John Rogers Carroll, PC, Philadelphia, Pennsylvania, died January 2, 2018 at age eighty-nine, of heart failure. A white-collar criminal defense lawyer who was not afraid to take on unpopular cases, he was also known as a recovering alcoholic who blazed a trail helping other addicted lawyers. A graduate of St. Joseph's University who earned his law degree at the University of Pennsylvania, fresh out of law school, he had represented defendants caught up in the communist hysteria of the "Red Scare" in the 1950s, including teachers fired for pleading their Fifth Amendment rights before congressional committees and those accused of advocating violent overthrow of the government under the Smith Act. Starting with a group of friends to organize a telephone help line to assist fellow lawyers in their battles with addiction, he went on to chair the Lawyers' and Judges' Assistance Committee of the Philadelphia Bar Association and later became one of the founding members and a Director of Lawyers Concerned for Lawyers, Pennsylvania, one of the country's most

influential organizations providing assistance to impaired lawyers. He also founded the M. Patricia Carroll Fund, named in honor of his late wife, which provides direct financial assistance for treatment to judges, lawyers and law students dealing with addiction and mental health disorders. A widower whose wife of twenty years predeceased him eighteen years ago, his closest survivor is a brother.

John Joseph Cassidy, Jr., '83, a Fellow Emeritus, Of Counsel to Vedder Price Kaufman Kammholz, Chicago, Illinois and retired to Naples, Florida, died November 8, 2016 at age ninety. He served in the United States Navy's Pacific Fleet in World War II and earned his undergraduate degree from Marquette University and his law degree from Loyola University. He served on the Illinois Bar Association Board of Governors and the Lawyers' Trust Fund (IOLTA) Board and was President of the Illinois Bar Foundation Board. After retiring from his firm and moving to Florida, he passed the Florida Bar and, in retirement, served as a pro bono lawyer with Florida Rural Legal Services, the Coalition of Immokalee Workers and the Florida Immigrant Advisory Center. The Florida Supreme Court awarded him its Florida Bar President's Pro Bono Service Award. A lifetime golfer, his obituary also referred to a residence in Curraheen, County Kerry, Ireland. His survivors include his wife of fifty-seven years, a daughter and two sons.

Francis Richard Croak, '83, a Fellow Emeritus, retired from Stafford Rosenbaum LLP, Milwaukee, Wisconsin, died February 21, 2018 at age eighty-nine. A graduate of the University of Wisconsin, Madison and of its law school, he then served in the Judge Advocate General Corps in the Korean Conflict, for one year. Discharged from active duty, for the next five years he was First Assistant District Attorney for Milwaukee County before entering private practice for over fifty years. He was for twenty years President of the Jane Bradley Petit Foundation, a major Milwaukee charity that focused on low-income youngsters and the arts. An avid sports fan, he served as President of the Milwaukee Admirals Hockey Team, President of the Greater Milwaukee Open Golf Tournament and a member of the Board of the Milwaukee Brewers. A widower who had

remarried, his survivors include his wife of forty-one years, two daughters, a son and two stepsons.

George Anderson Cumming, Jr., '89, Morgan Lewis & Bockius LLP, San Francisco, California, died August 23, 2017 at age seventy-five, of cancer. Beginning his higher education at the College of San Mateo, he graduated from San Francisco State University and earned his law degree at the University of California, Berkeley, where he was a member of the Order of the Coif. He had been involved in many youth-related community organizations in Castro Valley, where he lived and was an active member of model railroad clubs, old-time car groups and the Danish Lodge of Northern California. His survivors include his wife and a son.

William Frank Day, Jr., '87, a Fellow Emeritus who practiced for thirty-three years in Winner, South Dakota, retired from Lynn, Jackson, Shultz & Lebrun, PC, Rapid City, South Dakota and living in retirement in Belle Fourche, South Dakota, died January 2, 2018 at age eighty-seven. A graduate of the University of South Dakota and of its law school, as a young man he was a Golden Gloves boxing champion in several states. At the end of his undergraduate education, he joined the United States Army and was sent to communications school, where he participated in creating and distributing a series of lectures on communication in small-unit operations. Partway through law school, he was recalled to active duty near the end of the Korean Conflict, and, after law school, he was again called to active duty in the Berlin Crisis. He settled in Winner, a member of Williams Mullins, where he began as both a State's Attorney and the City Attorney. He soon became President of the South Dakota Junior Bar Association, and then of his Judicial Circuit Bar. Over the years, he was a member of a multitude of law-related task forces—Judicial Qualifications, Professionalism, Civil Justice Reform—including serving as his State Bar's Legal Access Civil Legal Services Coordinator. He later served as President of the South Dakota Trial Lawyers' Association and then of the South Dakota State Bar. He also served for many years as a Trial Judge for the Rosebud Sioux Tribe and was a member of multiple tribal courts. He served the College as South Dakota State Committee

Chair. Active in a multitude of church and civic organizations, he was particularly devoted to the welfare of children, spending twenty-six years on the Boards of the Children's Care Hospital and School and the Child Care Foundation. He had been South Dakota Trial Lawyer of the Year and a recipient of a prestigious McKusick Award. A widower whose wife of fifty-seven years predeceased him, his survivors include a daughter and a son.

Howard Wesley Dobbins, '77, a member of Williams Mullen, Richmond, Virginia, died December 25, 2017 at age ninety-eight. Growing up in a modest boyhood home in Louisville, Kentucky, a child of the Great Depression, he organized paper routes, strung tennis rackets, sold and delivered corsages for dances and could happily turn a shirt collar or cuff on a worn shirt by detaching and re-sewing it to look like new. He went to Washington & Lee University on an athletic and academic scholarship. He lettered in three sports, was captain of the basketball team, a member of All-State and All-Southern Conference teams in basketball and football and was inducted into the W&L Athletic Hall of Fame. In his spare time he was President of the student body (his slogan: "Even the robins are votin' for Dobbins"), a member of Phi Beta Kappa, Omicron Delta Kappa and the Order of the Coif and Co-Editor of the law review. Using his Kentucky citizenship, he utilized his eligibility to pass that state's bar examination after one year before going from law school to the United States Navy, where he saw service in World War II in the Atlantic, Mediterranean and Pacific Theaters. Upon return from the war, he passed the Virginia Bar on motion, relying on his Kentucky license, and began practice in Richmond in 1947. His firm, Wallerstein, Goode & Dobbins was later merged into Williams Mullen. He had served as General Counsel for the Virginia Municipal League and as President of the Virginia State Bar and was a member, trustee and deacon of his Baptist church. A wordsmith, scholar and prankster, he would scare his children on Christmas with a vicious mongoose in a cage, perform magic tricks such as retrieving quarters from their ears and indulge in various performances of music and dance, including the Charleston. Recently asked by an emergency room doctor about the secret of his long and healthy life,

he pondered for a moment and then replied, "a little Jack Daniels every day." He gave up practicing law when he reached age ninety-five, and at a birthday party in a recent year, he happily announced, "Oh, what a life!" A widower whose wife of seventy-three years, whom he met on Valentine's Day, predeceased him, his survivors include two daughters.

Kreag Donovan, '85, a Fellow Emeritus, retired from Harris Beach PLLC, Rochester, New York, died November 19, 2017 at age eighty-four. A graduate of Williams College and Harvard Law School, he was a Trustee of Monroe County Bar Association and served in a wide variety of community boards, including that of the Rochester General Hospital, Rochester Health Care, Inc. and the Hospital Trustees Association of New York State. Believing that a good education should not be restricted to those who have much, he was an enthusiastic supporter of the University of the Cumberlands, which enrolls students largely from Appalachia. His survivors include his wife, a daughter and a son.

Jack Francis Dunbar, '84, a Fellow Emeritus, retired from Holcomb Dunbar, PA, Oxford, Mississippi, died December 20, 2017 at age eighty-four. Earning his undergraduate degree at Millsaps College, where he became a member of Omicron Delta Kappa, he attended Georgetown University for a short time before returning to law school at the University of Mississippi, where he was President of the law school student body, valedictorian of his class and Associate Editor of the law review. After practicing for twenty-one years in Clarksdale, Mississippi, he moved to Oxford and joined the firm in which he practiced for the remainder of his career. He served as President of the Mississippi Bar, which later gave him its Lifetime Achievement Award, and was also elected to the Board of Governors of the American Bar Association. He served for many years as an adjunct professor at the Mississippi Law School and was later named both its Alumnus of the Year and inducted into its Law Hall of Fame. Becoming a mediator and arbitrator, he was one of the fee arbitrators in the Mississippi Tobacco Litigation, in which that state, acting alone, had agreed with four tobacco companies to a twenty-five year settlement of \$3.4 billion for

medical expenses relating to tobacco, the first in the country to be thus resolved. His appreciation of his experience at Millsaps prompted him to endow an annual lecture series there. An avid tennis player, fisherman, poker player and story-teller, he was a fixture at Oxford's Smitty's Breakfast Club. He was named Oxford Citizen of the Year for his work on a strategic plan for the community hospital and the Oxford School District's Citizen of the year for his efforts in helping children in need of eye care. His survivors include his wife, his three lawyer sons and his dogs, Daisy, Pepper and Sam.

E. Judge Elderkin, '78, a Fellow Emeritus, retired from San Francisco's Brobeck Phleger & Harrison and living in Walnut Creek, California, died December 31, 2016 at age eighty-four. A graduate of the University of Oregon, he entered the United States Army during the Korean era, then earned his law degree at the University of California, Berkeley. In the 1980s, he represented Fiberboard Corporation and was instrumental in negotiating the resolution of the national class actions involving health claims arising from exposure to asbestos. His survivors include his wife, a daughter and a son.

John Cottrill Feirich, '75, a Fellow Emeritus, retired and living in Spokane, Washington, died January 14, 2018 at age eighty-five, of cancer. After attending Northwestern University and the University of Illinois in undergraduate school, he earned his law degree from the University of Illinois and began practice in Carbondale, Illinois with his father and grandfather. He continued practicing in Carbondale until he retired in 1988, after which he moved to Naples, Florida, where he met his wife. They thereafter moved to Idaho and then to Washington. He co-founded the Lawyer's Trust Fund of Illinois to provide funds for legal services to those in need and was President of the Illinois State Bar Association and Chair of the American Bar Association's General Practice Section. He was co-author of Illinois pattern jury instructions and was the founder and first president of Air Illinois, a third-level commuter airline. His survivors include a daughter, a son and a stepson.

Albert E. Fey, '77, a Fellow Emeritus, retired in 2002 from Fish & Neave LLP (now Ropes & Gray), New York, New York, died June 13,

2014 at age eighty-one after a brief pulmonary illness. An intellectual property attorney, he was a graduate of the University of Michigan and of George Washington School of Law. He spent his first three years after law school working on the patent staff of General Electric Company, then joined Fish & Neave. His patent clients included a large array of major companies across the United States. Twice widowed, his survivors include his third wife, a daughter, a son and two stepdaughters.

Michael John Fitzgerald, '08, Fitzgerald Law Firm, S.C., Milwaukee, Wisconsin, died March 6, 2018 at age fifty-eight. He was a graduate of Creighton University and Marquette University School of Law. A criminal defense lawyer, before coming to Milwaukee he had first practiced for five years in Racine, Wisconsin. Unmarried, his survivors included four siblings.

Julian Denver Fleming, Jr., '85, a Fellow Emeritus retired from Sutherland, Asbill & Brennan, Atlanta, Georgia, died July 29, 2017 at age eighty-three, of Alzheimer's Disease and vascular dementia. He began his education at the University of Pennsylvania and went on to earn a bachelor's degree and Ph.D. at the Georgia Institute of Technology, where for twelve years he taught as a consultant in chemical engineering and metallurgy. He also served as Research Engineer at the Georgia Engineering Experiment Station and a Staff Consultant at the Oak Ridge National Laboratory. He began attending night school classes at Emory University School of Law so that he could work more effectively in connection with his work as an expert witness. He graduated first in his law class and practiced with Sutherland Asbill for more than forty years. He became Chair of the American Bar Association's Section of Science and Technology Law, a member of the ABA House of Delegates, a member of its Board of Governors and chair of a special committee to develop a uniform method to cite decisions published on the internet, along with printed decisions. He became one of the first attorneys in his state to use a computer in the courtroom. He traveled widely and daily read a Bible that his parents had given him during his college years. A widower, his survivors included a daughter.

David Kenneth Floyd, '82, a Fellow Emeritus, retired from Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York, and living in Orchard Park, New York, died February 1, 2018 at age eighty-five. The son of a teacher, he earned his undergraduate degree at Trinity College, where he played on the football and baseball teams for one year and the basketball team for three. After serving for three years as an officer in the United States Air Force, he entered the University of Chicago Law School, where he graduated with honors, Managing Editor of the law review and a member of the Order of the Coif. He spent his entire career with Phillips, Lytle, originally as a tax and litigation attorney. He later became involved in the evolution of the Clean Air Act. He represented Bethlehem Steel and was involved in pollution lawsuits, including representing two parties in the legal actions arising from the pollution of Love Canal. Serving as a town justice in Aurora, where he lived, he was a Director Emeritus of the Board of Western New York Land Conservancy, and he assisted in open-space planning in Aurora. He began as a volunteer construction worker for Habitat for Humanity, in retirement becoming head of construction for new builds and remaining involved in Habitat for over twenty-five years. He was also an avid golfer, tennis player and duplicate bridge player. His survivors include his wife of sixty-five years, three daughters and two sons.

Larry Bruce Franklin, '84, Franklin Law Group, Louisville, Kentucky, died January 14, 2018 at age eighty after a bout with the flu. An honor graduate of the United States Naval Academy, he ranked first in his class in aptitude and, after submarine school, served in Vietnam. Remaining in the Naval Reserve, he retired as a Vice-Admiral. He earned his law degree in night school at Louisville School of Law, working in his uncle's appliance company, finishing the four-year course in three years while also serving as a city judge in his small hometown. He became a plaintiff's lawyer, over time settling more than twenty cases for \$1 million or more and winning the state's largest medical malpractice verdict. He was known as a creative thinker with a true sense of what was important in a case and a way of talking to jurors as he had learned to communicate in his small

town. Elected to the Inner Circle of Advocates, he was described as pathologically generous. "Money is like manure," he said. "It has no use until you spread it around." A former partner attributed his success to "time, effort, an extraordinarily quick mind and money," money used to assure that a case was properly prepared. Eschewing jury consultants and focus groups, he looked for jurors "who work with their hands" and "don't look down their noses at anyone." He was known for his ability to find humanity in everyone, and he treated everyone, "from judge to busboy," with the same respect. He was President of the Louisville Bar Association, of the Kentucky Academy of Trial Attorneys, and of the Louisville Bar Foundation and Chair of the House of Delegates of the Kentucky Bar Association. His survivors include his wife, two daughters, two sons and four stepchildren.

Robert James Henderson, '80, RJF Consulting, Jackson, Wyoming, died December 11, 2017 of sudden cardiac arrest at age eighty-four. A graduate of the University of Michigan and of its law school, he practiced with Luce, Henderson, Port Huron, Michigan, for thirty-eight years, the last ten of which he was its managing partner, concentrating on product liability and gas-related fire and explosion cases. He became a distance runner in law school, but at age thirty-four took up snow skiing, which became a central part of family vacations. He ran daily, played handball and ran summer camps and ski trips, dealing with hundreds of youths over the years. Another family passion was traveling, and after a first visit to Jackson Hole, Wyoming while on a six-month journey through the west, they were hooked. He bought several businesses in Jackson and in 1999 moved there permanently. After his first wife's death, he remarried, and he and his new wife founded RJH Consulting, a company created to help small and medium law firms with their organizational and management issues. More recently, they helped to found the Elder Law College, which has become one of the premier institutions for lawyers who wish to become proficient in elder and special needs law. A widower whose first wife of fifty-three years predeceased him, his survivors include his second wife of nine years, two daughters, a son and a stepson.

James Watts Hudgens, '93, a Fellow Emeritus, retired from the Ward Law Firm, P.A., Spartanburg, South Carolina, died September 22, 2017 at age seventy-seven after five years of battling ALS, Lou Gehrig's Disease. After two years at Vanderbilt University, he completed his undergraduate education at Wofford College. He then spent four years as an officer in the United States Navy during the Vietnam era, stationed in the Pacific Theater on the *USS Navarro*, (APA-215), an attack transport. He then earned his law degree at the University of Tennessee. After serving as a law clerk for a South Carolina Supreme Court Justice, he joined the Ward Law Firm, where he practiced for the rest of his career. He was President and a longtime member of the Board of the Music Foundation of Spartanburg, which operates the Spartanburg Philharmonic Orchestra and Spartanburg Memorial Auditorium. He was also a longtime member of Mobile Meals, delivering meals to the homebound, and he had a practice of taking a friend with him, briefing his passenger about the circumstances of the person they were about to visit, thus making the delivery a personal interchange. After the beginning of his disease, he continued as long as he could do so to be an active emailer about the ongoing needs of the things he cared about, and a small gathering of lawyers came to his home to eat with him once a week. His survivors include his wife, two daughters and two sons.

Bynum Merritt Hunter, '70, a Fellow Emeritus, retired from Smith Moore Leatherwood LLP, Greensboro, North Carolina, passed away peacefully in his sleep on January 18, 2018 at age ninety-two after a long illness. After high school graduation, he entered the United States Navy V-12 program at the University of North Carolina. A star athlete, he was captain of the Tar Heel track team. After his V-12 training, he was assigned to active duty as an officer on the *USS Iowa (BB-61)*, stationed in the Pacific Theater. He then returned to UNC to law school, graduating in 1949 and joining the Greensboro firm with which he practiced in its successive iterations for the remainder of his career. In 1951, he was again called to duty, serving aboard a rocket ship, launching shore bombardment towards North Korea. A North Carolina State Committee Chair, who at his induction was reputed to have been the College's

then most junior inductee, he was a President of the Greensboro Bar. His athletic interest and his acquaintance with many of the regional figures in college athletics resulted in his legal representation of the Atlantic Coast Conference for almost three decades. On his seventy-fifth birthday, his fiftieth year as a lawyer, his family and friends created a major Restricted Justice Fund to support the North Carolina Bar Association Lawyers in the Schools Project and, in addition, named the Bar Association's Galleria in his honor. His memorial service was a celebration of what one speaker referred to as marking the end of an era. A classic Southern Gentleman with white hair and impeccable social graces, a man of upright professionalism and accomplishment, people trusted him, trusted his practical judgment, to handle their most important cases. A daughter related that he greeted every stranger with, "Where are you from?", a question that inevitably created a connection. One friend commented that he could "charm the bark off a tree." He also believed in having fun while doing what he did, and he made the most of it. With a look of innocence in his face, he could convey more with a facial expression than most lawyers could say with words. More than one friend noted that he could, with an impish grin, get away with remarks that would have subjected another lawyer to judicial reprimand. Everyone knew him, everyone loved him and everyone appreciated the humor underlying his words. And at the end of a case, whether he won or lost, his generosity of spirit led to a glass or two of wine. A registered Democrat, he consistently voted for Republican presidents. A staunch conservative, during the McCarthy era, he participated with a senior partner and with Nuremberg prosecutor Telford Taylor in the defense of American leader of the Communist Party Junius Scales, a North Carolina resident, against a charge of violating the Smith Act. His comment about Scales: "I had just gotten back from Korea and I was not too fond of communists, but I was convinced that Junius was no more dangerous to the United States than my pussycat, and I thought the charges were absurd." Twice divorced, on his fifty-fifth birthday, he married Mary Bonnaeu "Bonnie" McElveen, an emerging young entrepreneur, twenty-five years his junior, the daughter of a World War II and Cold War U-2 fighter pilot and a former Miss

Nebraska USA. She began her part of the memorial service by recounting that those who attended their wedding reception thirty-eight years earlier had, upon leaving, found their cars decorated with bumper stickers that read “HONK IF YOU’VE BEEN MARRIED TO BYNUM.” One of Bynum’s friends had observed, “She’s an outgoing person with a dominant personality,” reminding Bynum that it would be difficult for two such dominant people to live together; Bynum’s laconic response: “I just tag along.” As Bonnie put it, “He was my soulmate. We had a covenant, a bond of loyalty and trust and love to do together what we couldn’t do alone.” For years until he tapered off his practice, he would continue to be one of the leading trial lawyers in North Carolina. Bonnie would become a national figure, growing the publishing company she had created into one of the largest female-owned and operated firms in the country, a formidable fundraiser who became the United States Ambassador to Finland and the first female chair of the Board of Governors of the American Red Cross. The State Department’s indoctrination for a spouse of an ambassador asked each participant to complete a notebook marked with tabs to allow orderly planning for each of the facets of the role: history, language, customs and the like. The last tab was a list of proposed social engagements for the following month. On his tab, Hunter had written for each day, “Lunch with the French Ambassador’s wife.” In his memorial service, a former partner reflected, “I suspect that the sound we hear in our minds is laughter.” His survivors include his wife, two daughters by an earlier marriage and his son.

Deborah Ann Johnston, ’98, Senior Litigation Counsel for the United States Attorney, Greenbelt, Maryland, died November 1, 2017 at age sixty-four. She began her undergraduate studies at Seton Hall University and graduated from Catholic University of America, where she went on to earn her law degree at about the time her son was born. After a state court judicial clerkship, she spent five years as an Assistant State’s Attorney in Prince George’s County, Maryland, followed by a part-time assignment as Assistant Public Defender and then by three years in the office of a private attorney. She then returned to Prince George’s County as Senior Trial Attorney, becoming Chief Trial Attorney of the

Homicide/Narcotics Unit and then Deputy State’s Attorney. In 1994, she was appointed Assistant United States Attorney for the Southern District of Maryland and spent the next twenty-three years in Federal service. She was instrumental in dismantling narcotics organizations and in prosecuting large multi-defendant drug cases. She became Chief of the Southern Division, Associate Deputy Attorney General in the Department of Justice and finally as Senior Litigation Counsel for now Deputy Attorney General Rod J. Rosenstein. An avid skier, biker, sailor, traveler, culinary wizard, hostess and world traveler, she was “Grammie” to three grandsons. The main conference room in the Greenbelt United States Attorney’s office has been dedicated to her memory. The first prosecutor and the second woman inducted into the College in Maryland, her survivors include her husband and a son.

Carl W. Lee, ’74, Belleville, Illinois, died December 30, 2017 at age ninety. Working multiple jobs to pay for his education, both undergraduate and legal, at the University of Illinois, he was drafted before his last year of law school, took and passed the Illinois bar examination, entered the United States Air Force Judge Advocate General Corps and afterwards returned to complete his law degree. A President of the Illinois Trial Lawyers Association, he spent his entire career until retirement at age eighty-two with Gundlach, Lee, Eggmann, Boyle & Rossler in Belleville. A widower, his survivors include three daughters and a son.

Robert Gene Levy, ’83, a Fellow Emeritus, retired from Brown, Goldstein & Levy, LLP, Baltimore, Maryland, died January 29, 2018 at age eighty-five of pancreatic cancer. After earning his undergraduate degree at Dartmouth College, he began studying for a doctoral degree in history at Johns Hopkins University. After one year, he was drafted into the United States Navy during the Korean Conflict and, upon his discharge, decided instead to enter law school at the University of Virginia, where he was a member of the Order of the Coif. He began his legal career in the Trial Section, Antitrust Division of the United States Department of Justice under Attorney General Robert F. Kennedy, tossing a football with him while discussing cases and working on several major monopolization and criminal conspiracy

cases. He then joined the antitrust department of Frank, Bernstein, Conaway & Goldman, Baltimore, where he successfully litigated major antitrust cases. After retiring from that firm, he served for eight years as Counsel to Sutherland Asbill & Brennan in Washington. He also taught economics and was a visiting professor in Moscow, Estonia and Lithuania, teaching both antitrust law and American constitutional law. He took the Amtrak train one day a week to teach at Yale University, where he taught law and economics. An Eagle Scout, he developed a lifelong interest in the outdoors while at Dartmouth, and his life later became centered around his thirty-two-foot sailboat, on which he took his friends for exploratory expeditions from Maine to Florida and around the East Coast. Not liking fads, he wore shirts, jackets and suspenders from outdoor stores. Known for his generosity, in the month before his death, he found an old friend who had fallen on hard times and went out to purchase and deliver a car to him. Several times divorced, his survivors included a daughter and a son.

Thomas English McCutchen, Jr., '72, retired from Columbia, South Carolina and living in Charleston, died January 15, 2018 at age ninety-eight. A magna cum laude graduate of the University of South Carolina, he was a member of the debate team, played the clarinet in the university band, won many oratorical awards and was a member of Phi Beta Kappa and Omicron Delta Kappa. Admitted to the practice of law at the University of South Carolina after his first year, he entered the United States Army Air Corps and became a pilot, serving for four and one-half years in World War II, principally as an instructor in twin-engine bombers. After returning to complete his legal education, he practiced law in Columbia for sixty-six years, retiring from McCutchen, Blanton, LLP at age ninety-three. The President of his county Bar, he had been selected by the Governor of South Carolina to be lead counsel in a boundary dispute instituted by the State of Georgia, a case that he successfully took to the United States Supreme Court. He had been honored with awards from the South Carolina Trial Lawyers for his contribution to continuing legal education. The University of South Carolina School of Law had awarded him a Certificate of Merit and he had been honored

with its Compleat Lawyer Award. His county Bar had awarded him its first Lifetime Achievement Award. He attended every meeting of his local Inn of Court until his ninety-fifth year. He had served the College as South Carolina State Committee Chair. An Elder Emeritus in his Presbyterian church, he was a sailor, fisherman and hunter. A widower, his survivors include two daughters.

John Hess McElhaney, '78, a Fellow Emeritus, retired from Locke, Purnell, Boren, Laney & Neely, Dallas, Texas, died January 27, 2018 at age eighty-three. Offered a swimming scholarship to Southern Methodist University, he became an SMU devotee for life, earning both his undergraduate and law degrees there, as well as swimming on multiple Southwest Conference champion swimming teams. He served as Managing Editor of his law review. His two most well-known clients were SMU and local print and broadcast media firms. He taught several courses at SMU and authored numerous articles and other works. He had been honored with the SMU Dedman School of Law Distinguished Alumni Award. He enjoyed scuba diving trips, bicycle trips and European riverboat exploration, also built and launched model rockets and was Chief of the Tweety Bird Tribe of Indian Princesses. His survivors include his wife of fifty-six years, a daughter and a son.

Henry Dave Menghini, '84, a Fellow Emeritus, retired from Evans & Dixon LLC, St. Louis, Missouri, where he taught for over forty years, and living in retirement in Fenton, died March 20, 2018 at age eighty-three. The child of first-generation Italian immigrants, he earned his undergraduate and law degrees from Washington University in St. Louis, then served as an officer in the United States Army. Early in his career, he was given a Lon Hocker Award, presented annually by the Missouri Bar Foundation to a select number of young lawyers who demonstrate unusual proficiency in the art of trial advocacy. Menghini himself later taught trial advocacy at his law school. He represented his school district for over thirty years and in retirement spent a decade serving as a mediator. Enjoying sports, he played handball for his entire career, winning the Missouri State Championship in doubles handball on more than one occasion,

coached children's baseball and softball teams and taught his grandchildren to fish. A widower whose wife of fifty-eight years predeceased him, his survivors include a daughter and three sons.

Joseph William Moss, '91, a Fellow Emeritus from Greensboro, North Carolina, died January 3, 2018 at age seventy-six. After attending Duke University on a football scholarship, he attended Mercer University Law School for one year before transferring to Wake Forest University, where he earned his law degree. After serving as a law clerk for a Justice of the North Carolina Supreme Court, he practiced law for forty years with Adams, Kleemeier, Hagan, Hannah & Fouts, Greensboro before finishing his career in a smaller firm. A Chair of the Young Lawyers Division of the North Carolina Bar Association, he was an organizer of the Bar Association's Construction Law Section. He had also been General Chairman of the Greater Greensboro Open Golf Tournament and President of the Greensboro Sports Council. His survivors include a daughter and a son.

Frederic Solis Nathan, '72, a member of Kelley, Drye & Warren, LLP, New York, New York and former New York City legal officer who prosecuted the striking teachers' union in the 1960s, died March 14, 2017 at age ninety-four of Parkinson's disease. A graduate of Williams College and of the Yale Law School, he served in the United States Army in the European Theater in World War II and then began his career at Kelley, Drye. Five years later, he spent three years as an Assistant United States Attorney in the Southern District of New York and then spent nine years at Greenbaum, Wolff & Ernest, New York. In 1966, he became New York City legal officer and, as second in command of what was then described as the nation's largest legal office, was charged with enforcing the Public Employees Fair Employment Act, known as the Taylor Law, which prohibited work stoppages by state and municipal employees. After the bitter battle over that issue was resolved, he returned to Greenbaum in 1970. When that firm later closed, he returned to Kelley, Drye. His survivors include his wife, a daughter and a son.

Hon. Thomas N. O'Neill, Jr., '81, a Judicial Fellow, retired from the United States District Court for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania, died January 16, 2018 at age eighty-nine. A graduate of Catholic University of America and of the University of Pennsylvania Law School, where he was Articles Editor of the law review, he was a law clerk, first for Judge Herbert Goodrich of the United States Court of Appeals for the Third Circuit and then for United States Supreme Court Associate Justice Harold Burton. He studied for a year as a Fulbright Scholar at the University of London School of Economics before joining the Philadelphia firm Montgomery McCracken Walker & Rhoads LLP, where he worked for twenty-seven years, serving as Chair of its litigation department. In 1976, he served as Chancellor of the Philadelphia Bar Association, where he was remembered for his focus on the need for free and low-cost legal services. In 1983, he was appointed Judge of the Eastern District of Pennsylvania, taking senior status in 1996 and retiring only in September 2017, four months before his death. He was regarded as a fair and considerate jurist who understood the foibles of human nature and took them into account in deciding cases. For six years, he served on the Codes of Conduct Committee of the Judicial Conference of the United States, dealing with the ethical and conflict questions involving judges in his jurisdiction. He was a member of the Board of Overseers of the University of Pennsylvania Museum and of the Lawyers' Committee for Civil Rights Under Law, an incorporator and board member of the Public Interest Law Center of Philadelphia and a founding chair of the Pennsylvania Law School Inn of Court. At his death, the current Chancellor of the local Bar Association noted that Judge O'Neill would "always be remembered for his brilliance as a lawyer and judge, his kind and caring nature and concern for others, and his dedication to public service." His survivors include his wife of fifty-six years, two daughters and a son.

Alvin M. Owsley, '81, a Fellow Emeritus, retired in 1986 from Baker & Botts, Houston, Texas, died February 4, 2018 at age ninety-one. His explicitly detailed and colorful obituary recited every incident

of his life, right down to his gun ownership and his membership in Sam's Club. The son of a military officer, he was raised in Texas, Romania, Ireland and Demark and briefly in Indiana. His education at Princeton University was interrupted after his freshman year, and he served in Italy as a Field Artillery Sergeant in the United States Army in World War II, earning a Good Conduct Medal, four service medals and two battle stars. Returning to Princeton, where he was the Cadet Commander of the Army ROTC battalion, he became an officer in the United States Army Reserve. Having already performed his active military service, he earned his law degree at the University of Texas, where he was Associate Editor of his law review and a member of the Order of the Coif. His obituary recites that he began work at Baker & Botts at 9:00 a.m. on August 1, 1952 and retired there on December 31, 1986. He had been a Special Hearing Officer for the United States Department of Justice and was a longtime Director and a Chairman of Ball Corporation. A board member of multiple civic and charitable organizations over the course of his life, he once won a poetry prize and at age seventy-five won a bronze medal in the fifty-yard dash in the Houston Senior Olympiad. He had created scholarships at the Lawrenceville School, which he had attended before entering Princeton, the University of Texas Law School and various other similar institutions and organizations. A widower, his survivors included a daughter and a son.

Bert Raphael, Q.C., LLM, '88, Raphael Barristers, Thornhill, Ontario, Canada, a Fellow Emeritus, died November, 15, 2016 at age eighty-three after a fall at home. He received his bachelor's degree at McMaster University and his law degree at Osgoode Hall Law School. The eldest of four boys born to Russian-Polish immigrants, he was known for decades for his Jewish activism, including Soviet Jewry, an organization devoted to the pursuit of Nazi war criminals in Canada. He and his wife were also leaders in the promoting the dignity, individuality, independence, personal growth and community inclusion for the developmentally challenged, of which their daughter was an example. In 1982,

just before the Canada-Soviet hockey summit, he was one of a group of lawyers who, knowing that they would be under surveillance by the KGB, had traveled to Moscow and Leningrad to meet with Jewish Refuseniks and to deliver prayer books and religions items. He had been a founder of Canadian Lawyers and Jurists for Soviet Jewry and in 1980 he had advocated a boycott of the Moscow Olympics. He founded the Jewish Civil Rights Educational Foundation of Canada. In 1985, he had been President of the Advocate's Society. His survivors include his wife, a daughter and two sons.

Charles Byron Renfrew, San Francisco, California, the forty-fifth President of the College, died December 14, 2017 at age eighty-nine. A tribute to his life may be found on page 101 in this issue of the *Journal*.

Phillip A. Robbins, '80, Phillip A. Robbins, PC, Phoenix, Arizona, died March 20, 2018 at age eighty-five. A graduate of the University of Arizona and of its law school, he served as a law clerk for a United States District Judge in Los Angeles, then began his career as a Deputy District Attorney in San Diego County, California, where he prosecuted the only local horse-stealing case in a century. Moving to Phoenix, after practicing for fifteen years in his first firm, he helped to found Robbins, Green, O'Grady and Abbuhl, where he practiced for the next thirty-three years, finally practicing as Special Counsel to two successive firms before retiring in 2017. He had received a Professionalism Award from the American Board of Trial Advocates, was inducted into his local Bar's Hall of Fame, was Chair of his State Bar's International Law Section and a President of the Arizona Trial Lawyers Association. In addition to twice being Arizona State Committee Chair, he had chaired two College committees in the international arena. Living as he did in a border state, he had also been affiliated with a large number of international law organizations, including being Chair of the National Law Center of Interamerican Free Trade, the U.S.-Mexico Bar Association, the Arizona-Mexico Commission, the Phoenix Sister Cities Commission and the Border Health Foundation. He was a member of

the NAFTA Advisory Commission on the use of Mediation and Arbitration in Private Commercial Disputes. He served with former President Jimmy Carter as an election observer in Indonesia and Honduras. A lover of both travel and language, he had participated in Spanish language classes until his death and was in the process of completing an art studio in his home. Divorced and remarried, his survivors include his wife and five daughters.

Donald L. Schoenwald, '99, a Fellow Emeritus, retired from Sugarman Law Firm, Syracuse, New York, died December 19, 2017 at age eighty-seven. A graduate of Syracuse University and of Cornell Law School, he practiced his entire fifty-plus year career in the same firm. He served on the Board of the Syracuse Friends of Chamber Music and was an ardent supporter of the ACLU, with whose Faith A. Seiderberg Award he had been honored. He played tennis and enjoyed playing music, taking music lessons. His survivors include his wife of fifty-two years and two sons.

Douglas Omar Smith, Jr., '76, a Fellow Emeritus, Fort Smith, Arkansas, died November 27, 2017 at age eighty-two. An honor graduate of the University of Arkansas, where he was a member of Omicron Delta Kappa, he earned his law degree at Yale University. A member of the Arkansas Air National Guard, he served on active duty in the early 1960s during the Vietnam era. He practiced with Warner, Smith & Harris for fifty-one years, served as legislative liaison to Governor Dale Bumpers and was member of the Arkansas Supreme Court's Code Revision Commission. A President of the local school board and of the University of Arkansas, Fort Smith Foundation, he had served on a number of civic boards and counseling, guidance and hospital organizations. He had also been president of a local savings and loan association and a board member of a local oil and gas company. He been a member of the vestry of his local Episcopal church and had been honored with the Richard S. Arnold Award for distinguished service by the United States Court of Appeals for the Eighth Judicial Circuit. His survivors include his wife and a daughter.

Duane Eugene Taber, '81, a Fellow Emeritus, retired and living in Pasco, Washington, died February 17, 2018 at age ninety-two of liver cancer.

Joining the United States Navy in World War II, he was a signalman on a destroyer that saw action in both the Atlantic and Pacific Theaters. After graduating from the University of Washington and its law school, he began work on the legal staff of the United States Atomic Energy Commission. He then joined the firm now known as Leavy Shultz and Davis as its third partner. He left private practice in 1981 to join the Superior Court bench, serving until his retirement in 1997. Afterwards he volunteered to serve on school district and park committees. He frequently weighed in on ballot issues with letters to the editor of his local newspaper. At age eighty-five, riding in a Ford Mustang, he proudly served as the grand marshal of the Pasco's Fourth of July parade. A widower whose wife of sixty-five years, a United States District Judge in Los Angeles, predeceased him, his survivors include two daughters and a son.

Charles Jenkins Tighe, '75, Cotton, Bledsoe, Tighe & Dawson, Midland, Texas, died January 12, 2018 at age eighty-nine. As a child living across from Rice University stadium, he "sold papers, shined shoes and helped inebriated sports fans to locate their cars" to earn money to buy United States Savings Bonds. After graduation from high school, he spent eighteen months in the United States Navy near the end of World War II, serving in the Philippines. Attending Rice, he was a member of the basketball team, served on the Honor Council and won the Bob Quinn Award as outstanding scholar-athlete. After a year teaching history at Rice while working towards a master's degree, he entered the University of Texas School of Law, where he served on the law review. After practicing five years with Baker & Botts in Houston, he moved to Midland, where he eventually helped to create the firm with which he practiced for the remainder of his career. He served on his local planning and zoning board, served on the city council and was the attorney who handled his local school district's desegregation litigation. He played golf until six months before his death and, starting at age seventy-nine, shot his age at least once every year. An avid runner, he participated in two marathons and was frequently listed on the "top ten" list for weights lifted at his local YMCA. He was a frequent member of the vestry in his Anglican church and

a world traveler. His survivors include his wife of sixty-seven years, a daughter and two sons.

Edward Nicholas Wehr, '85, a Fellow Emeritus, retired from Wehr Berger Lane & Stevens, Bettendorf, Iowa, died January 27, 2018 at age ninety. He served in the United States Navy in World War II and thereafter did his undergraduate work at St. Ambrose College and earned his law degree at the University of Iowa. After graduation and a brief time in a law firm, he was appointed Assistant County Attorney, established his own firm and was for five terms elected County Attorney. He became the then youngest elected member of his County Bar Association's Executive Council. He served as State President of the Iowa County Attorneys Association and was President of the Iowa Academy of Trial Lawyers. He also served on the Board of the National District Attorney's Association and was appointed to the Iowa Supreme Court Advisory Committee on Rules of Procedure. A teacher, he participated in many seminars and trial demonstrations. His many services in the civic and

charitable arena included the local Red Cross, his county Society for Crippled Children and Adults, the Easter Seal Campaign, a Lend-A-Hand fund drive, the local Boy Scouts and United Cerebral Palsy. In his younger years he played baseball and in later years softball, along with snow-skiing, biking and regular workouts at the local YMCA. His survivors include his wife of forty-five years.

Barbara Ann Zurek, '07, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota, died March 28, 2018 at age sixty-two. Immediately after finishing high school, she began a nursing career. After earning her certificate as an Associate of Applied Science-Nursing, she took courses in biochemistry and organic chemistry and in 1985 she earned a bachelor's degree in nursing at Metropolitan State University and began work as a registered nurse. Two years later, she entered the William Mitchell College of Law and there earned her law degree, thereafter practicing law for over twenty-seven years. Her survivors include her husband, a daughter, a son, a stepdaughter and a stepson.

WE ALSO NOTE THE PASSING OF THE WIVES OF TWO PAST PRESIDENTS.



Jane Carolyn Mallory (Buddie) Morris, Richmond, Virginia, wife of Past President James W. Morris, III, died peacefully in her sleep December 26, 2017 after a long illness. Survived by her husband and a son, she will be especially remembered for her devotion to raising her two granddaughters after their young mother died.



LeAnn Stout, wife of Past President Mikel L. Stout, Wichita, Kansas, died March 6, 2018. A former schoolteacher and an only child who wanted many children of her own, she is survived by her husband and five children, two sons and three daughters.

UPCOMING EVENTS

Mark your calendar now to attend one of the College's upcoming gatherings. Events can be viewed on the College website, www.actl.com, in the 'Events' section.

NATIONAL MEETINGS



2018 ANNUAL MEETING
The Roosevelt
New Orleans, Louisiana
September 27-30, 2018



2019 SPRING MEETING
La Quinta Resort & Club
La Quinta, California
February 28-March 3, 2019

REGIONAL MEETINGS

REGION 12
NORTHEAST REGIONAL

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

June 22-24, 2018

Portland, Maine

REGION 3
NORTHWEST REGIONAL

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

August 23-26, 2018

Whitefish, Montana

STATE/PROVINCE MEETINGS

June 20, 2018	CONNECTICUT FELLOWS DINNER	August 18-19, 2018	KANSAS FELLOWS MEETING
June 22, 2018	TEXAS FELLOWS SUMMER LUNCHEON	August 23, 2018	GEORGIA FELLOWS DINNER
June 28, 2018	MANITOBA FELLOWS MEETING	August 24-26, 2018	IOWA FELLOWS MEETING
July 21, 2018	COLORADO AND WYOMING FELLOWS DINNER	August 27, 2018	ALASKA FELLOWS MEETING
July 26, 2018	MINNESOTA FELLOWS MEETING	September 14-16, 2018	NEW MEXICO FELLOWS MEETING ■

JOURNAL

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

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

Statement of Purpose

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