



JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

ISSUE 90 | SUMMER | 2019



PAST PRESIDENT GREG JOSEPH MODERATES
A QUESTION AND ANSWER SESSION WITH JUSTICE NEIL GORSUCH,
WHO BECAME ACTL'S NEWEST HONORARY FELLOW
DURING THE 2019 SPRING MEETING IN LA QUINTA, CALIFORNIA.

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(1895-1982)

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CONTENTS

FEATURES

2 Letter from the Editor	3 President's Perspective	69 Heroes Among Us – A New Series	71 When There Were No Female Lawyers – Male Trailblazers
83 Judicial Fellows Go Back to School Together	85 Fellows Share War Stories	93 Tribute to Past President David Scott	97 Tribute to Past President Ralph Lancaster

COLLEGE MEETINGS

9 2019 Spring Meeting Photo Recap	13 Mayor of La Quinta Welcomes Fellows to Paradise	17 A Conversation with the Chief Justice of California	21 Former U.N. Rapporteur, Nobel Peace Prize Nominee On 5 Ideas to Human Rights
27 Associate Professor, Convicted Felon, Courthouse Lawyer – The Face of Redemption	31 Canadian Justice Abella: Remember, Rethink, Reimagine	37 Stephen Bright – Recipient of the Griffin Bell Award	43 Political Journalist on Defending the Indefensible
51 Medical Expert Discusses Latest Research on PTSD	57 Justice Neil Gorsuch Receives Honorary Fellowship	61 Past President Dalton: Inductee Luncheon	63 Carolyn Fairless: Inductee Responder
67 73 New Fellows Inducted Into College	79 Remarks from Deputy U.S. Attorney Audrey Strauss – Recipient of Leon Silverman Award		

FELLOWS IN ACTION

48 Foundation Updates	49 Alabama Fellows Honor Legacy of Jere F. White, Jr.	77 Spotlight on Service: Update on Access to Justice Pro Bono Fellows Program	87 Committee Updates
103 Future Advocates Shine in Law School Competition			

ANNOUNCEMENTS

8 2019 Annual Meeting in Vancouver	16 College Updates	76 Celebrate Your Fellowship
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IN EVERY ISSUE

16 Fellows to the Bench	26 Awards & Honors	105 In Memoriam	122 Calendar
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LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

THESE ARE CLEARLY TROUBLED AND TROUBLING TIMES, BOTH HERE AND ABROAD. DEMOCRATIC VALUES ARE UNDER SIEGE, SEEMINGLY FROM EVERY QUARTER WHILE AUTOCRACY REIGNS IN MANY PARTS OF THE WORLD. IT'S FASCINATING THAT THE POST-WAR LIBERAL ORDER SEEMS TO HAVE LASTED A SCANT SEVENTY YEARS BEFORE HITTING ROADBLOCKS AND SNAGS, IF NOT OUTRIGHT UNDERMINING.

As a bulwark against tyranny, the justice system embodying our judicial processes have historically and, at least until recently, been a mainstay, one of the fundamental bedrocks of our respective democracies, Canada and the United States. Constitutionally enshrined in the United States, the courts represent one branch of government, along with the executive and legislative branches, part of the “checks and balances” that has steered the ship steadily since 1789. That there has been a tilt towards the power of the executive branch as against the other two, especially the courts, has been documented amply over the last decade or two, heightened recently in the last few years.

One of the factors in this development have been sustained and vicious attacks, in one fashion or another, on courts and judges. These are just two of the headlines: “America’s State Courts are under partisan attack,” (*The New York Times*, April 8, 2018); and “The real war on the courts is happening at the state level,” (*Washington Post*, November 1, 2018), concluding that: “For more than two centuries, state constitutions have guaranteed judicial independence as a cornerstone of American democracy. State legislators need to recognize the courts have a job to do. We the people should insist the politicians let them do it.”

As it did in 2006 with our *White Paper on Judicial Independence*, the College has weighed in again, offering formidable heft against those who would undermine the judicial system. Essential reading, “The Need to Defend and Promote Fair and Impartial Courts,” the paper details the recent attacks on the judiciary of both of our countries, concluding with these passages:

“Reacting to individual threats as they occur will not be adequate. Writing reports to explain the importance of fair and impartial courts is salutary, but it will not be sufficient.”

In finding creative measures to promote judicial independence as well as defend the role of the judiciary and to safeguard fair and impartial courts,

“We must bring the message into the open forum of ideas, not expecting others to seek out what we have to say.”

For, “if our courts are devalued, we will have witnessed a devaluation of the rule of law itself.”

Sobering thoughts.

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I would be remiss if I did not note that my esteemed predecessor, Editor Emeritus Ozzie Ayscue, recently was profiled by our sometime partner, IAALS (Institute for the Advancement of the American Legal System). In the introduction to a charming interview with Ozzie, Executive Director Rebecca Love Kourlis said this about him:

“Without Ozzie, I am not sure where IAALS would be today. Ozzie connected us to the ACTL and vouched for us. We then launched the ACTL/IAALS projects, which included surveys, reports, recommendations, the 2010 Duke Conference and much, much more. Because of those projects, IAALS achieved impact and visibility that might otherwise have taken years. Because of Ozzie that seed was planted and ultimately thrived...[h]e is also a fervent fighter for civil rights, for an open and fair society and for the magic of the American dream...We are immensely grateful.”

Clearly a fitting tribute.

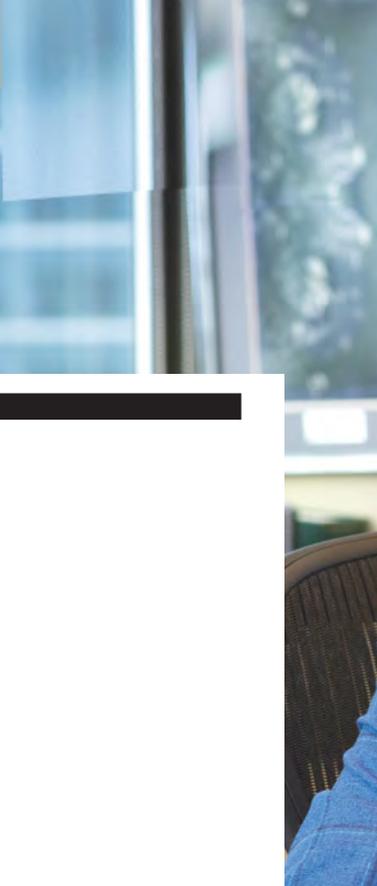
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Unusually I missed the 2019 Spring Meeting in La Quinta. It made me feel in some way dispossessed of an educational and social opportunity that Regent Sandra Forbes and I have truly come to enjoy. But my absence reminded me how important this *Journal* is for those who can’t make one of the two meetings we have each year. In this case, I, too, looked forward to the recaps and verbatim talks that are nestled in this issue. I trust all of the Fellows—present in La Quinta or not—will enjoy reading them as much as I. (It’s also on the website.)

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Our next *Journal* issue is without a meeting as an underpinning, so we welcome all submissions of a timely and topical nature. The world of trial advocacy has great breadth and depth.

Stephen Grant



PRESIDENT'S PERSPECTIVE

10

QUESTIONS FOR PRESIDENT JEFFREY S. LEON, LSM

President Jeffrey S. Leon, LSM began his time in office at the 2018 Annual Meeting in New Orleans. Here, the *Journal* catches up with President Leon.

1. As the second Canadian president of the College, what has serving as president meant to you?

It has been a great honor to serve as the second Canadian President of the College. In some ways I find it particularly meaningful given the recent passing of my predecessor, mentor and very good friend, **David Scott**, the first Canadian President. One of my goals has been to further David's groundbreaking work in weaving Canada into the fabric of the College, and I am pleased that we have made good progress in that regard. One never refers to a "State Committee" without also referring to a "Province Committee." Also, there are Canadians on almost every General Committee of the College (except those that deal solely with American issues). Canadian Fellows have the Special Issues in the Administration of Justice (Canada) Committee. Also, every project that is undertaken by the College now considers the Canadian perspective. Similarly, the results of a uniquely American project are considered by Canadian Fellows to determine if a complementary project should be undertaken in Canada. And we attempt to include Canadians as speakers at our national meetings.

2. In your first *eBulletin* message to Fellows (October 2018), you wrote: "We are confident that this journey will not only be productive, but fun." What has been fun for you as President? What have been the more challenging aspects?



Quite frankly, the whole thing has been fun. The travel can be tiring (and I do worry about waking up in the night and not knowing where I am, or more particularly, where the bathroom is). It has been wonderful to see many of our friends and to make new friends. I actually was unsure how it would be possible to make new friends given that many of the events are only a few hours or a day/day-and-a-half long, but I am pleased to say that we are making new friends, mostly because of the warm welcome we receive wherever we go. This is a real tribute to the College and its Fellows. It has also been great fun to see places that I have never seen before and to take advantage of what the wonderful locations where we have travelled have to offer. Just by way of example, when in Salt Lake City, Regent **Paul Hickey** had arranged for us to attend the Sunday morning filming of the Tabernacle in the Square Choir (formerly the Mormon Tabernacle Choir). I must confess that I never thought I would

be introduced as President of the American College of Trial Lawyers to that many people assembled in a church. We also were recently in Lexington, Kentucky where we spent the day with about forty Fellows and spouses at the Keeneland Races, courtesy of State Committee Chair **Pat Moloney**, State Committee Vice Chair **Bob Connolly** and Regent **John Day** and their wives. Immediate Past President **Sam Franklin** and Betty and Carol and I had the opportunity the following day to have a tour of the “Bourbon Trail.” Yes, that did involve some sampling. That trip also led to one of the least fun aspects of the year. Our flight home to Toronto (where we had to be the next day) was cancelled and there were no other flights out of Lexington or any nearby location that would have resulted in our getting home on time. So, we rented a car and took an involuntary ten-hour road trip through pouring rain, complete with tornado warnings. Another challenge of the year, which I had not fully anticipated,



is keeping up with the volume of emailed correspondence. I had not realized how many issues arise in the day-to-day business of the College that require input or attention. However, I must confess – I am not a fan of “Reply All.”

3. [Having a home base in Toronto, Ontario and Scottsdale, Arizona must be an advantage in terms of traveling. How have you and First Lady Carol Best managed the, sometimes heavy, travel schedule?](#)

Having two homes, one in the east and one in the west, has had some advantages for Carol and me in terms of our travel schedule. There have been occasions where we have been able to use our Arizona home as a base so that we did not have to crisscross the country as many times. Our travel schedule has indeed been heavy, in part because I have encouraged every State and Province to consider holding an event this year given that local events are often the only contact that Fellows have with the College. I am pleased to report that this initiative has been a success. To date, we have made about forty stops on the “Tour” and we have just completed our seventh month. My partners have stopped asking where I am. I have learned to work remotely so that my practice continues unabated, and I have become very good at working on planes and in hotel rooms. One “side effect” is that my absence has allowed me to further “practice what I preach.” I have used the opportunity to give my junior lawyers even more client contact and trial-like experience than I have done in the past. However, it is a bit like holding two jobs at the same time. But I enjoy both.

4. [Pursuing the diversity initiatives undertaken by the College by promoting mentorship, giving younger trial lawyers the opportunity to have trial experience, and increasing the role of the College and Fellows of the College in teaching trial skills has been an emphasis for you. What has been the driving factor behind these focus points? \(Fall 2018 *Journal*, “A Profile on 2018-2019 President Jeffrey S. Leon, LSM”\)](#)

Diversity remains at the very top of the College agenda. The review of our Diversity Initiative, under Regents **Rick Deane** and

Joe Caldwell, is progressing well. I had the opportunity to conduct a series of conference calls with almost all the Diversity Liaisons from the States and Provinces. I am pleased to say that efforts to identify diverse candidates has become an important part of the College nomination process. But, as many of the Diversity Liaisons reported, we still have a long way to go. Through the work of Joe and Rick, we will have some fresh ideas as to what more we can do to identify diverse candidates and to make diverse candidates feel welcome in the College. The average age of our Fellows continues to increase. We cannot afford to hide our heads in the sand. We must do more to identify younger trial lawyers and be prepared to give those who meet our qualifications the opportunity to become Fellows in the College, even at what may seem like an early age. We must invest in our future. I am also pleased to report that the work of our Task Force on Mentoring, under the leadership of Regents **Kathleen Flynn Peterson** and **John Day**, is progressing well. I am confident that the result will be a white paper that will serve as a blueprint for what the College can do to promote mentorship and give younger trial lawyers the opportunity to have more experience in the courtroom. Similarly, our Task Force on Boot Camp Trial Training Programs, under **Paul Mark Sandler** and Former Regent **Paul Bekman**, is doing exactly what we had hoped for in terms of increasing the number of Boot Camps being held across the United States and for the first time, in Canada. Why do I think all this is so important: I think it is important to the ongoing vitality of the College. I think it is important to the ongoing vitality of the trial process as a means for resolving disputes. And I think it is important to continue to develop a College in which its Fellows can take great pride of their fellowship and help others develop their trial skills. This comes back to me time and time again at the induction banquets where I see how our new inductees are thrilled to become Fellows of the College. We need to capitalize on this and remain a relevant organization in order to capture this enthusiasm on an ongoing basis.

5. Speaking of younger trial lawyers, in a span of three months you attended four law school competitions on behalf of the College in this order – the National Moot Court Competition (New York); Gale Cup (Toronto); Sopinka Cup (Toronto); and National Trial Competition (Texas). How would you describe your experience at each competition?

One of the best things about being the President of this College is attending these four law school competitions. When speaking at these events, I have paraphrased the rock critic Jon Landau, who on first seeing Bruce Springsteen at a concert wrote that he had “seen the future of rock n’ roll.” Well I have “seen the future of the trial bar” and it rests well with the law students who compete in these competitions. I am just so impressed at the quality of the preparation and advocacy and the poise and maturity that the students demonstrate. In fact, this has renewed my desire to have the College do more to ensure that these young lawyers have the appropriate mentorship and the appropriate opportunities to develop into the trial and appellate lawyers of the future. They have the skill. They have the desire. They need the opportunity. So, I am encouraged that the winners of these competitions may take their place in the College beside the likes of Past President **Joan Lukey**, Former Regent **Ritchie Berger**, and Immediate Past Chair to the National Moot Court Competition Committee **David Weinstein**, among others. I must say that I particularly enjoyed judging the Final Round of the National Trial Competition in San Antonio, Texas. I experienced the hard work, enthusiasm, and collegiality of the members of that committee. I saw future trial lawyers in action. And I served, for the first and no doubt last time, as a judge in an American courtroom. My colleagues tell me that I did ok in terms of my procedural rulings. I did show my penchant to “get on with things” by my rookie suggestion that counsel call their first witness before they gave their openings. And I did learn that the unexpected can happen to even a judge during a trial, when I accidentally pressed the “distress button” while moving over to view an exhibit, which resulted in a

silent alarm and the need to adjourn while the court staff figured out how to turn it off.

6. In the same *Journal* profile, you quoted Samantha Nutt of War Child who spoke to the College during the 2015 Spring Meeting in Key Biscayne, Florida: “what the world needs is more [trial] lawyers.” Why do you believe that is true?

Without sounding too over-dramatic, I believe that trial lawyers serve an increasingly important role in our societies today. In many respects, it is the responsibility of trial lawyers to protect and promote the rule of law and to protect and promote the rule of justice (that was so eloquently described by Honorary Fellow **The Honourable Justice Rosie Abella** in her remarks at the Spring Meeting in La Quinta). I also believe that trial lawyers have an important role to play in promoting civility and civil discourse in our societies and in providing representation to those who need assistance in resolving disputes or obtaining redress for wrongs they have suffered. Samantha Nutt’s statement was in the context of the need for lawyers in war-torn countries to assist in providing the skills necessary to achieve justice and redress. Those same skills are very much needed at home as well as abroad.

7. In the February 2019 *eBulletin*, you wrote: “Think back to when you were inducted. A significant part of the experience no doubt was the openness and warmth with which you were welcomed into the College by the Fellows in attendance. Use this opportunity to ‘pay it forward’ and do the same for our new inductees as was done for you.” What was it like for you when you were inducted?

I was inducted in 2002 at the Annual Meeting in New York City. I remember how honored and excited I was to be inducted along with two of my good friends from Toronto and with one of my mentors (and best friends) there to help Carol and me celebrate. I never thought I would achieve this sort of recognition in our profession and in fact I am one of those Fellows who saw “the plaque” on his mentor’s wall, asked about it and learned for the first



time about the significance of becoming a Fellow in the College. We must ensure that we preserve our traditions that make fellowship in the College so important but also ensure that we adapt and change in order to ensure the ongoing relevance and importance of the College to younger and more diverse trial lawyers.

8. What other goals do you hope to accomplish during the remainder of your presidency?

In terms of goals for the remainder of my Presidency, Carol and I are looking forward to completing our travels that may well take us to almost all our states and provinces. I am looking forward to the results of our Task Force on Mentoring. The Task Force has indicated its plan to complete its white paper by the summer so that it can be considered by the Board at the Annual Meeting in Vancouver. I am looking forward to bringing to fruition the creation of a General Committee on Judicial Independence and seeing the beginning of implementation of the recommendations made by the Task Force on Judicial Independence. I am hoping that the work being done on reviewing our progress on making the College a truly diverse organization will produce several new ideas that will further facilitate our quest and that will ensure our diverse Fellows feel welcome and involved in the College. I understand that those working on our Civility Initiative may use the time when we are together in Vancouver to record video vignettes that can be used as teaching aides. I am anxious to participate in the first ever Boot Camp Trial Training Program to be held in Canada on September 10. And I am looking forward to welcoming everyone to the wonderful city of Vancouver for the Annual Meeting. By the way, I am counting for the weather to be perfect that week.

9. What have been the common concerns or issues Fellows have shared with you during your travels?

In terms of common concerns or issues that Fellows have shared with me, I would note the concern there are fewer trials taking place in our court systems and the implications for the ongoing strength of the trial bar. Fellows have been very responsive when it comes to looking for ways that the College can become more diverse and in some cases are frustrated that their efforts to date have not produced better results. The work being done by the Task Force on Mentoring has struck a chord, and I have heard from a number of Fellows about how important they believe this initiative to be and how they very much appreciate the opportunity to share some ideas with the Task Force. Fellows have also expressed concerns about the current political climate and the relationship between the United States and Canada. Finally, Fellows have commented on the importance of the College continuing to be proactive where appropriate in defending the rule of law and the independence of the judiciary.

10. As a trial lawyer, you know that words matter. What words do you associate with being a Fellow of the College? What words do you associate with being President?

Words do indeed matter. The words I associate with being a Fellow would include: “collegiality, friendship, fun, and privilege” – the privilege of being part of such a wonderful organization that does so much to improve the administration of justice in our societies. I would say I associate the same words with being President but I might add a few such as: “airplanes, airports, hotels” and, on a more serious note, “honor, contribution, and discovery” (of new places and new friends). However, “collegiality” and “fun” remain at the top of both lists.



SEPT 2019 ANNUAL MEETING

26-29

The Westin Bayshore, Vancouver, British Columbia

SAMPLE TOURS

**CAPILANO
SUSPENSION BRIDGE**

**BIKING IN STANLEY
PARK**

**FOOD TOUR IN GAS
TOWN**

GROUSE MOUNTAIN

ARRIVE WEDNESDAY TO ENJOY FULL-DAY TOURS ON THURSDAY, SEPTEMBER 26

WHISTLER IN THE COASTAL MOUNTAINS OF BRITISH COLUMBIA

A deluxe motor coach with a private tour guide will take us through Stanley Park, across the Lions Gate Bridge then advance along the stunning Sea to Sky Highway overlooking the Howe Sound boasting striking views of the waterways and coastal mountains. Upon arrival in Whistler, we will ride the Blackcomb Gondola enjoying breathtaking views up the mountain. A leisurely hike on top of the peak features the history and wonders of the mountain. Followed by lunch in town. After lunch, an Eco Guide will take the group on a private walking tour of Whistler Village to discuss its history.

THE SEA TO SKY GONDOLA WITH SHANNON FALLS

Join us at Howe Sound — where the ocean meets the mountains in the famed Sea to Sky corridor. Spectacular panoramic views abound as our gondola climbs 2,903 feet above Sea Level. Once at the top, adventures awaits. This beautiful deep-in-nature setting is the stage for a privately led hike across the suspension bridge and onto the nature trails or the perfect spot to relax with a cup of coffee. Our guide will then lead us on a short walk on a paved trail to neighboring Shannon Falls, one of North America's highest waterfalls with a vertical of more than 1,000 feet.

JOIN US AFTER THE MEETING FOR ONE OF TWO, 3-DAY, UNFORGETTABLE POST-MEETING TOURS.

Okanogan Valley

9,000 acres of vineyards and more than 170 wineries stand next to extinct volcanoes and expansive lakes in this special valley. Here, we will take advantage of the booming wine scene in British Columbia with private, custom tours offering exclusive access to underground barrel cellars and art collections, enjoying tastings and wine-paired meals amid lush scenery and panoramic views.

Victoria

British Columbia's capital is filled with gardens and seafront parks, museums, bohemian eateries, and craft brewers. Join the College to explore Victoria with tour options - including a custom bike tour through the Food Eco District, or a private tour of the Parliament buildings. You will also enjoy visits to the Royal BC Museum and the Butchart Gardens. The magic of Victoria will be sure to stay with you long after the tour concludes.

Fellow Chris Paliare and Eva Marszewski; Fellow Mike and Penny Eizenga; First Lady Carol Best and President Jeff Leon



Anne and Outreach Committee Chair Bill Porter; Gini and Fellow Jim Curphey; Fellow Kim and James Herlihy (back row); John Gilligan (front row) of Columbus, Ohio



Jury and Missouri State Committee Chair Rob Adams, Kansas City, Missouri; Michele and Nebraska State Committee Chair Dave Ernst, Omaha, Nebraska



Author and Former CEO of the Oakland Raiders Amy Trask spoke to the College on the second day of General Session, on Saturday, March 2, 2019. Her presentation was titled "You Negotiate Like a Girl."



Law



The Santa Rosa and San Jacinto Mountains are the perfect backdrop for the fairway.





Hon. William W. Bedsworth, Associate Justice, California Fourth District Court of Appeal, leads the CLE Professional Program, "Writing? I'm a Trial Lawyer: Why Should I Care About Writing."

Quinta

SPRING 2019 MEETING

No faults, just fun during the tennis tournament.



Inspired by the Stagecoach Country Music Festival, Fellows and guests gather to enjoy and dance to the live country music.



Regent Paul Hickey, Anne Kenney, and Jeanne Hickey of Cheyenne, Wyoming





New Jersey State Committee Chair Scott Parsons and Meredith Johnsen; Doreen and Fellow Bill Lane; Fellow Paul and Maggie O'Connor; Yanet and Inductee Gregory Noble of Springfield, New Jersey



Linda and Inductee Dennis Waggoner, Tampa, Florida; Inductee Donna McBride, Rockville, Maryland; Inductee Bobbie and James Stanley, Fort Lauderdale, Florida; and Inductee Theresa Chernosky, Rockville, Maryland



Inductee Bill Ford and Debbie Roberts; Faye Kuo and Texas State Committee Vice Chair Lamont Jefferson of San Antonio, Texas



Annette McDaniel-Turner and Inductee Michael Turner, Philadelphia, Pennsylvania; Paris Scott and Inductee Warren Weaver, Baltimore, Maryland



Tracy and Inductee Don Downing of Saint Louis, Missouri



Answering the call to get up and dance to the music during the Saturday Spring Banquet.



First Lady Carol Best and President Jeff Leon of Toronto, Ontario; Inductee Responder Carolyn Fairless and Regent Mike O'Donnell of Denver, Colorado



President Leon prepares to start the Saturday Spring Banquet and Induction Ceremony.



Past President Andy Coats of Oklahoma City, Oklahoma waits patiently while Eileen Dalton of Wilmington, Delaware and Nancy Coats share a laugh.



The Fiesta Ballroom is transformed for the Spring Banquet.



After hearing the Induction Charge from Past President Fran Wikstrom, the other Past Presidents walk forward to greet the 73 newly inducted Fellows.

Quinta

SPRING 2019 MEETING



Inductee John and Sue Gibbons; Kimball and Karen Anderson of Chicago, Illinois



Inductee Mike and Bekki Haggard of Coral Gables, Florida



MAYOR OF LA QUINTA WELCOMES FELLOWS TO PARADISE



OPENING THE FIRST DAY OF GENERAL SESSION AT THE 2019 SPRING MEETING IN LA QUINTA, CALIFORNIA WAS **THE HONORABLE LINDA EVANS**, THE MAYOR OF LA QUINTA. SHE IS AN ACCOMPLISHED PROFESSIONAL IN THE HEALTH CARE INDUSTRY, HAVING SPENT ALMOST TWENTY-FIVE YEARS WITH TENET HEALTHCARE, BUT SHE IS ALSO A DEDICATED PUBLIC SERVANT. AFTER SERVING ON THE CITY COUNCIL, SHE WAS ELECTED MAYOR OF LA QUINTA IN 2014 AND IS NOW IN HER THIRD TERM.



“I spoke with her before coming out to California and asked her what her greatest accomplishment was. She didn’t know I was going to ask her that, but she readily said it was the transformation in which the way this city does business after the 2008 recession, and that includes changes in technology, training, and empowering her staff,” said Immediate Past President **Samuel H. Franklin** of Birmingham, Alabama in his introduction of her. “I then asked her what her biggest challenge was, and she thought a minute and she said, ‘I believe it’s dealing with all the laws that come down from Sacramento.’”

A native of La Quinta, Evans’ presentation showed her passion, pride, and love for the place she calls home.

Her remarks follow:

Welcome to paradise. It’s an honor for me to welcome you and your General Session today and have you choose La Quinta for the fifth time that the American College of Trial Lawyers have met here. Nice little detail about the city name, La Quinta. It means the fifth in Spanish, or a small little casita hacienda. It’s apropos that this timing is relevant.

For those who are new to La Quinta, the greater Palm Springs area, and it’s very much known as the greater Palm Springs area, we’re actually ten little cities, and each little city has its own city council and its own population. But we’re all connected through what you might have driven down, Highway 111. When you look at the ten little cities, they’re



very diverse in their makeup in terms of either the architecture, the look as you're driving, and or the people and their culture.

La Quinta is a newer city. La Quinta did not incorporate until 1982. While we have the vast history of this fabulous resort that opened in 1926, we didn't incorporate our city until 1982. We incorporated our city with less than 10,000 residents who, as an unincorporated county area, wanted public safety, better safety from police coverage, and they wanted regular trash pick-up, believe it or not. Things that drive advocacy and go forward movement.

We're one of the younger cities in this valley. We're a fairly conservative city, from a fiscally responsible standpoint, and how we drive and make our decisions. But we're very socially liberal in terms of accepting of all people. That's important because on either end of our valley, we've got a diverse group of individuals. While we're young, we've got a median age of about forty-five years old. Many people think of this as a retirement community. It's really bolstering more young families who can afford to live here and find jobs here. Some of

them still commute into the Riverside area, but we've got a lot of jobs here. Resort hospitality and tourism clearly drives our industry, and agriculture drives our industry as a valley overall.

We also have a lot of healthcare jobs, and that's my full-time professional career. We're working towards looking at how do we create other industries in our seasonal climate. All the action happens here from November to April or May, and then things start slowing down. Snowbirds go back home, and folks who have second homes return to them and it slows down when the temperature goes up.

How many people left snow for this paradise? Amen to that. This is winter, and it's been a cold one for us this season. I'd say normally our average rainfall is about 5 inches an entire year, and I think we received that on Valentine's Day.

I'll apologize up front if anybody planned on taking the Palm Springs Ariel Tramway. The road heading up to the tram washed out, but please come back to our beautiful valley and visit that because it's a beautiful view of the valley from about 8,500 feet. Eight-thousand,



five-hundred feet is a hikeable elevation by the way. I've hiked from the floor, in Palm Springs, up to that tram. And if you look around you, these mountains, those are all hiking trails. Everywhere you drive in this valley and you see these mountains, there are hiking trails. La Quinta has intentionally created itself as a health and well-being city.

We're all about outdoor recreation because we believe a healthy community is a prosperous community. We have an abundance of golf courses, twenty-five to be exact, and we're only thirty-two square miles wide and long. We've got sixteen different parks and about 18,000 households. We've got a strong, affluent community and we look towards how to make things better all the time. We invest in our infrastructure. When you drive around our city, besides the resort and the old town area just down the street, hopefully you've walked there or seen some of those shops, and or the Highway 111 corridor where all of the shopping and commercial stores are, it was with intention that we segmented those into little pockets of the community, where other cities can access them, while our other communities remain secluded.

It is with intention and purpose that we have a rule, an ordinance of sorts, that's called the Dark Sky Ordinance. For some of you who came in at night and thought, what is going on in this place, there are no street lights anywhere, it's by design. That's because we want to preserve the natural sky and the stars. Because nearly 365 days a year you can look up at the sky at night and see stars. We will not be building into

mountains, and we will not have high streetlights because we value what that nature represents for us.

And it's with intention that we continue to pursue how to make things better going forward. That's a challenge oftentimes not only in local government here, but overall in the state of California. There's a lot of changes, there's a lot of challenges with taxes and increases and budgets, and many of you are probably experiencing that all over the place. But our little niche of La Quinta is a city manager run organization. I am an elected mayor at large and we have four council members as well. We also have a city manager, like all the cities out here, and then city staff. We set the direction and policy and they set the plan.

What I'd like to share is the fact that your mission is about making sure there's fair and impartial representation in justice. We share a mission in terms of that type of passion in making sure that people who live in La Quinta, people who visit La Quinta, we've created and designed it with purpose, so that you feel that magic that we have here, and that we enjoy so much. We treasure the mountain covering us here and the beauty. When people say, 'How do you like living in the desert?' It's like a working vacation, not that you want to work while you're on vacation, but at least anywhere you drive, it's visibly beautiful.

And it's on purpose. We are very much an entertainment area, as a whole. Anybody who has attended Coachella fest, Stagecoach, or have their kids or grandkids come out here for those

major concerts? We're internationally known. Those are happening about four miles just east of us. We have tennis, we have golf, we have film festivals. The Ironman Triathlon just came to La Quinta for the first time in December, and again, another testament to sports and recreation and outdoor living. We invite you to take it all in during your stay here.

This is the first time I've had a chance to talk to a group of lawyers and my husband says, 'Well just let them know, you hope that you never need them if they're trial lawyers.' I'm glad to have met many of you and I appreciate you choosing our great city for your spring session. I hope you enjoy the rest of your stay, take in all of the elements, and please feel the magic that we feel, because I love our town and what it represents, and the best part is really the people like you and so many diverse people that we've met along the way.

I don't get a chance to do these things without being mayor and I don't get a chance to interact with the residents like I do without this position. I thrive on learning more and finding out what makes them tick and why they found our little treasure of a valley. Enjoy the conference. For those staying through the weekend, there is free tennis that starts on Monday, the BNP Paribas Open. If you get delayed going back to your snow, you're welcome to join the Indian Wells Tennis Garden. I know you've got a full plan of events as well, so without further ado, I'll let you continue with your session. Thank you very much for the opportunity to be here. ■

COLLEGE UPDATES

Latest Actions By the Board of Regents

At the 2019 Spring Meeting in La Quinta, the Board of Regents took the following actions:

- Approval of 80 candidates
- Approval of the revised *Canadian Codes of Trial and Pre-Trial Conduct*
- Approval of a revised Statement on Advertising and Use of Social Media
- Approval of a new College brochure
- Approval of the Honourable Jonathan Lippman as recipient of the Beverley McLachlin Access to Justice Award

College Committees: Share Your Skills

This summer the incoming President and President-Elect will appoint members to the College's committees for the 2019-2020 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

FELLOWS TO THE BENCH

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

Alan D. Albright
Waco, Texas
Effective September 2018
Judge U.S. District Court
Western District of Texas

Sharon Greer
Marshalltown, Iowa
Effective May 29, 2019
Judge
Iowa Court of Appeals

Charles LeBlond
Frederickton, New Brunswick
Effective March 8, 2019
Justice
Court of Appeal of New Brunswick

Thomas L. Parker
Memphis, Tennessee
Effective February 2, 2018
Judge
U.S. District Court
Western District of Tennessee

Martin F. Sheehan
Montreal, Quebec
Effective March 8, 2019
Judge
Superior Court of Quebec
Palais de Justice

The College extends congratulations to these Judicial Fellows.



JUDGES WALK THE LINE: MAINTAINING INDEPENDENCE WHILE FACING IMMINENT THREATS

A CONVERSATION WITH THE CHIEF JUSTICE OF CALIFORNIA



ON MARCH 1, 2019, DURING THE SPRING MEETING IN LA QUINTA, CALIFORNIA THE HONORABLE JON B. STREETER, ASSOCIATE JUSTICE OF THE CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION 4 ENGAGED IN A DISCUSSION WITH CHIEF JUSTICE TANI GORRE CANTIL-SAKAUYE. CHIEF JUSTICE CANTIL-SAKAUYE IS THE TWENTY-EIGHTH CHIEF JUSTICE OF THE STATE OF CALIFORNIA. SHE WAS NOMINATED IN 2010 BY GOVERNOR ARNOLD SCHWARZENEGGER AND WAS RETAINED IN OFFICE BY CALIFORNIA VOTERS IN NOVEMBER OF 2010. PRIOR TO HER CURRENT APPOINTMENT, CHIEF JUSTICE CANTIL-SAKAUYE HAD SERVED IN JUDICIAL OFFICES ON CALIFORNIA'S APPELLATE AND TRIAL COURTS. SHE IS THE FIRST FILIPINA-AMERICAN AND THE SECOND WOMAN TO SERVE AS CALIFORNIA'S CHIEF JUSTICE.

As a young lawyer, after graduating from U.C. Davis Law School, she was a deputy District Attorney in Sacramento and then went to work for the legal affairs unit of former Governor George Deukmejian. She was appointed to the Sacramento municipal court in 1990. She ascended within the Superior Court, California's trial court, and finally to the Third District Court of Appeal in Sacramento where in 2010 she applied for the position of presiding judge.

Before becoming an appellate justice, Justice Streeter was a commercial litigator based in San Francisco. He is a Fellow of the College, a member of the American Law Institute, and a former President of the State Bar of California. Justice Streeter earned an A.B. degree from Stanford University in 1978 and a J.D. from Boalt Hall School of Law at U.C. Berkeley in 1981. He was a law clerk to Senior Judge Harry T. Edwards of the United States Court of Appeals for the District of Columbia Circuit in 1982-1983. Justice



Streeter prepared for this session by identifying some themes that are of particular importance to the College and its Fellows, taken significantly from the College's mission statement. For example, the College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and administration of justice through education, and public statements on important issues relating to its mission. The College also strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. Accordingly, Justice Street began his discussion by asking Justice Cantil-Sakauye about a few of these issues.

“QUIPS & QUOTES”

The other threat that exists, I think we've all seen, has been when you underfund a judiciary. It may seem innocuous, but the fact is when you underfund a judiciary, who suffers? Civil practice suffers. And civil practice suffers because criminal law has constitutional rights to access to the courts in a timely fashion. Criminal law takes precedent because those time lines have to be met because liberty's at stake. And so we start closing court houses, we start reducing court hours, we start reducing court rooms available for your clients. Yet we also happen to know that it is in civil practice that we really see modern day civil rights play out in each and every case, that's where we need to build the rule of law.

Chief Justice Cantil-Sakauye

JUDICIAL INDEPENDENCE

Justice Streeter noted that there have been a few events and points in time over the last few decades in which judicial independence has been under threat. He questioned Chief Justice Cantil-Sakauye as to whether she would agree that the judiciary is at a moment in time now when judicial independence is in more peril than it has ever been.

Chief Justice Cantil-Sakauye agreed that judicial independence was in peril and noted that she believed that this is both an intentional threat and an inadvertent threat. She explained that the judiciary must be independent from the other branches of government, as well as acting impartially, in order to deliver the Rule of Law in which there is public trust and confidence. When there is a threat, the media, at times, unintentionally

(she believes), labels judges based on their political party, which has little to do with the Rule of Law. That kind of media message goes out to a public who isn't sophisticated in legal matters. It leads the public to think, "Well, she's a Republican judge, that's why she came here." However, the public has not read the reasoning, the rationale nor the facts behind the decision being criticized; nor do they know that other justices (maybe not Republican appointees) have also signed onto that opinion. This leaves a misleading impression and the conclusion that the judiciary is not truly independent.

Furthermore, Chief Justice Cantil-Sakauye noted that another threat is an underfunding of the judiciary. She noted that underfunding directly and most significantly affects the civil practice. The civil practice suffers because criminal law has constitutional rights to access to the courts in a timely fashion. Criminal law takes precedent. But it is the civil practice where you build the Rule of Law. Chief Justice Cantil-Sakauye concluded that the judiciary and its independence is under threat, visibly under threat by the public. Threats are real in terms of narratives that are made about the judiciary, which are often untrue and inaccurate, and exacerbated by the threats of underfunding, which is often inadvertent and ill-advised.

Justice Streeter noted that essentially every Fellow of the College is someone with a leading voice in their legal community. Considering that, he asked Chief Justice Cantil-Sakauye what the College and its Fellows could do to help realize the mission of the College - to promote judicial independence?

Chief Justice Cantil-Sakauye responded that she agreed that Fellows are some of the best spokespersons for the need for an independent judiciary and to address the issues that the judiciary itself cannot respond to. She felt that Fellows are the best advocates, and the most credible advocates to support this important topic. She noted that the Fellows can go to their legislative members, and they can make arguments that judges cannot. Fellows have, or can establish, relationships and connections with key participants, and be a forceful voice, a professional voice, supporting the judiciary, educating their legislature, their governors, and even educating their gubernatorial candidates before they become governor,

about the state of the third branch of government.

JUDICIAL COMMENTS ON POLICY ISSUES

Justice Streeter observed that Chief Justice Cantil-Sakauye has often exercised her prerogative of leadership, commenting frankly to the people of the State of California on broad issues of policy, such as bail reform and immigration enforcement. Justice Streeter asked the Chief Justice to offer some insight into how she goes about choosing when to weigh in on highly charged issues and what considerations guide her when she decides to comment. Chief Justice Cantil-Sakauye noted that as the highest judicial officer in California (in addition to, but different than being the Chief Justice in the California Supreme Court), she interfaces with the legislature on State issues. She believes she normally knows her responsibilities, which are primarily to lead the judiciary of California and to protect it. When she hears about something that she perceives as a threat to the judiciary, especially if not otherwise understandable to the public, she speaks out. Otherwise, the judiciary would not have anyone who can speak about it.

THE ART OF LAWYERING AND LEGAL EDUCATION

Justice Streeter next addressed a topic that is central to the mission of the College—the promotion of high standards of trial practice, professionalism, and ethics. He noted that for decades there has been mounting criticism of law schools for failing to properly educate new lawyers in the art of lawyering. He commented that many critics have said that law schools are too attached to abstract doctrine, unconnected to practical skills that the finest, most effective lawyers, such as College Fellows, know they must master. Justice Streeter asked Chief Justice Cantil-Sakauye if she agreed with that critique and whether she

thought the Fellows should weigh in on that debate?

Chief Justice Cantil-Sakauye responded that she believed that the Fellows would be the most experienced people able to participate in that conversation. To that point, trial attorneys are the very people with whom she meets with every year, who tell her what's wrong in the courts so that she can address fixing what's wrong. The Fellows, to her, are the most experienced people who would have mastered the skills needed to succeed in the practice of law, which is precisely what those law school students need to learn. Fellows can also demonstrate that it can be done, which then allows the students to understand that the whole purpose of law school is to get them to where the Fellows are. Chief Justice Cantil-Sakauye commented that it's about finding a way to create a relationship with law schools, if it's not already taking place, in order to help them make a transition to a more meaningful education.

CIVICS EDUCATION

The last issue Justice Streeter addressed with Chief Justice Cantil-Sakauye was the larger issue of the principles affecting the administration of justice, and how can the public be educated about them. Justice Streeter noted that when he was inducted into the College, then retired U.S. Supreme Court Justice Sandra Day O'Connor spoke. She spoke about civics education (which is an initiative that is moving forward within the College at this time) to get behind citizens' education in civics. Justice Streeter asked Chief Justice Cantil-Sakauye to talk a little bit about that topic and its importance to her.

Chief Justice Cantil-Sakauye acknowledged that civics education was very near and dear to her heart, primarily because when she went to the California legislature in 2011 as the new Chief Justice, she was asked, "Well, don't all the judges work for you and you work for us?" In re-

flecting on that comment, she thought to herself, "This is not a good conversation." She initiated a kindergarten through grade 12 civics education program for the California education system and she went to the top of the Department of Education (the Superintendent of Public Instruction) and said: "You need to get civics with an emphasis on the judiciary into the curriculum that you're teaching, and you need to test it." She noted that now, five years later, that course is instituted in the educational curriculum in California. More recently, however, it became clear to her that civics education was needed for adults as well. And to that point, just the Wednesday preceding her discussion with Justice Streeter, she convened the first ever legislative/judicial summit in California, to which she invited senators and assembly members in leadership from the California legislature. She brought in representatives from the Governor's office along with judicial officers and everyone sat in a room for half a day and talked about the work done by the judiciary. She noted that all of those present appeared interested in access to justice, but they perceived and pursued it in different ways.

Chief Justice Cantil-Sakauye concluded that everyone at the summit had an afternoon of great conversation. There were interactive discussions that resulted in a better understanding of the issues, and in the process, they built relationships. Chief Justice Cantil-Sakauye's view is: "Why aren't we talking? Why isn't the legislative branch and the judicial branch talking to each other? Both branches serve California. Both say "we stand for justice.' So, let's talk. And with this summit they started that dialogue." Chief Justice Cantil-Sakauye encouraged the College to continue its efforts addressing civics education in any way Fellows can.

J. Walt Sinclair
Boise, Idaho

SCHOLAR, FORMER U.N. SPECIAL RAPPOREUR DISCUSSES FIVE INTERRELATED IDEAS TO HUMAN RIGHTS

 IN INTRODUCING **DEAN S. JAMES ANAYA** AT THE COLLEGE'S 2019 SPRING MEETING IN LA QUINTA, FORMER REGENT AND U.S. FOUNDATION TRUSTEE **KATHLEEN M. TRAFFORD**, OF CINCINNATI, OHIO, DESCRIBED HIM AS SOMEONE WHO HAS WITNESSED THE "VERY HARSH CONDITIONS, STRUGGLES AND CHALLENGES OF INDIGENOUS PEOPLE WORLDWIDE" BUT "REMAINS AN OPTIMIST, AN ADVOCATE WHO KNOWS THERE'S MUCH WORK YET TO BE DONE, BUT FIRMLY BELIEVES THE WIND IS AT HIS BACK AND GROWING STRONGER."

Anaya's ancestors lived for centuries in what later became part of southern New Mexico. After the United States acquired that territory in 1853, the family relocated to Mexico. Anaya's grandparents returned to New Mexico after it achieved statehood in 1912, entering their former homeland illegally.

Anaya is Dean and University Distinguished Professor at the University of Colorado – Boulder. He is an internationally recognized author, educator, and advocate for the rights of Indigenous people. The central theme of Anaya's book, *Indigenous People in International Law* is that although it was once the instrument of colonialism, international law now recognizes and promotes the rights of Indigenous people.

From 2008 to 2014, Anaya served as the United Nations Special Rapporteur on the Rights of Indigenous Peoples, documenting abuse, neglect, impoverishment, and marginalization of Indigenous communities around the world. For his work in that role, Anaya was nominated for the Nobel Peace Prize in 2014.

Anaya has also had a distinguished career as a trial lawyer advancing Indigenous rights. He was lead counsel for an Indigenous community, the Awas Tingni, in a decade-long battle. The government of Nicaragua had granted logging rights over Awas Tingni traditional lands to private interests. In 2001 Anaya won a landmark ruling from the Inter-American Court of Human Rights, which held that the right to property protected the Awas Tingni interest in the land. In December 2008, the government of Nicaragua granted title to the land to the Awas Tingni.

The focal point of Anaya's remarks was the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which includes recognition of the historical oppression of Indigenous peoples



and the contemporary inequities they continue to face. “It articulates a constellation of rights that provide an alternative vision of Indigenous peoples and their place in the world. It calls upon national governments and the international community as a whole to take joint and separate action to make this alternative vision a reality.”

The UNDRIP resulted from a worldwide movement of Indigenous peoples, including Native Americans and aboriginal people from Canada, for recognition of their rights. In many cases, that effort was frustrated in the domestic courts and other venues within the countries in which they live.

Anaya explained that this movement began in the 1920s when the Iroquois Chief, Deskaheh went to the UN’s predecessor, the League of Nations, to present grievances against the govern-

ment of Canada relating to self-government, culture, and land rights. The world community was not then organized to hear grievances of that kind, but “Chief Deskaheh laid the groundwork for subsequent efforts by aboriginal and native leaders to go to the UN, which by the 1970s had become poised to receive grievances and concerns based upon human rights.” The UN responded initially by establishing a working group on Indigenous populations. This working group was

responsible for drafting and promoting the UNDRIP.

The UN subsequently created a number of other institutions aimed at addressing Indigenous peoples’ concerns, including the Special Rapporteur position Anaya held for six years.

Anaya contended that Indigenous peoples did not achieve recognition of their rights through political power, economic power, or military power. “My thesis is that instead it was the

“QUIPS & QUOTES”

My thesis is that [Indigenous peoples gained recognition of their rights through] the power of ideas, of human rights ideas in particular. Ideas about human rights are now implanted in constitutional democracies such as the U.S. and Canada and others around the world and are now articulated in various human rights instruments and the United Nations Charter itself.

James Anaya

power of ideas, of human rights ideas in particular. Ideas about human rights are now implanted in constitutional democracies such as the U.S. and Canada and others around the world and are now articulated in various human rights instruments and the United Nations Charter itself.”

“QUIPS & QUOTES”

I see the UNDRIP as a tool for raising public awareness about Indigenous peoples and their human rights concerns. It is a reminder of basic human rights; of the fact that Indigenous peoples have historically been denied those rights, and of the need for concerted action to address the present-day legacies, that past, and the ongoing human rights violations that Indigenous peoples have suffered. With its grounding and powerful human rights ideas, the UNDRIP provides a roadmap for the way forward.

S. James Anaya

FIVE INTERRELATED IDEAS

Anaya elaborated on five interrelated ideas about human rights grounding the articulation of rights found in the UNDRIP.

First is the irresistible idea of equality. “We hold these truths self-evident, that all men are created equal. That idea is implanted in the Declaration of Independence. Similar statements appear and are well-known in constitutions and are also foundational to the international human rights system. This idea has evolved to be more embracing of different sectors of humanity, of women, and of different groups. Of course, Indigenous peoples have been discriminated against through centuries. But the discrimination has not just been against Indigenous individuals but also against entire communities and peoples.” And so, the UNDRIP declares that Indigenous individuals and peoples are equal to all other individuals and peoples.

The second idea is self-determination. “From a human rights perspective, this includes the basic idea that individu-

als and groups have the right to pursue their own destinies under conditions of equality, free from oppression. Now often in international law relations, we think of self-determination as having to do with the right of groups or segments of societies to secede. But Indigenous peoples emphasize the human rights component or core of this notion of self-determination, that right of individuals and groups together to pursue their own destinies. And of course, looking back in history, we can see that that idea has been breached in relation to Indigenous peoples. They’ve seen their political institutions and their social institutions suppressed in various ways that are well known. So, the UNDRIP declares explicitly that Indigenous peoples have the right to self-determination, to pursue their own destinies under conditions of equality.”

The third idea is cultural survival. “This is the idea that culturally differentiated groups are entitled to maintain and develop their distinct cultural identities. In world history, the idea of cultural survival has been applied selectively, mostly in favor of Western civilization or cultures within Western civilization.”

Anaya described efforts to deprive Indigenous peoples of their own cultures in the United States and Canada on the basis that those cultures were inferior, and therefore Indigenous people had to be stripped of those cultural identities in favor of the majority’s cultural identities. The residential schools in both Canada and the United States are a notorious example. “Captain William Pratt, the founder of the Carlisle Indian school, the boarding school in the United States, in the late 1800s, declared ‘Kill the Indian, save the man.’ This exemplified the resolve to strip native peoples, and children in particular, of their cultural identities. Fortunately, thinking has evolved such that now diversity of cultures is valued and Indigenous peoples’ cultures in particular are included among them. And so, the UNDRIP affirms the right of Indige-

nous peoples to maintain their distinct cultural identities, their languages and their own religious traditions.”

The fourth idea is property, and more particularly, the idea of ownership in land. “Now from the classic liberal tradition, there are certain perspectives about property. John Locke in the 1700s wrote that in order to perfect a property interest in land, there had to be an intensive use of it. So, taking that idea of property, Indigenous peoples were in many cases deprived of their rights over lands and resources. Emer de Vattel, one of the so-called fathers of international law, took the Lockean view of property. For de Vattel, Native Americans were wandering herds who did not occupy the land but wandered over it, and hence they could not have a property interest in it.

“Indigenous people showed that their own systems of land tenure, if you combine that with the notion of property and cultural integrity, made for a right to property. And so, we see in a number of decisions. One was mentioned, the Awas Tingni case, and the UNDRIP itself, recognition that Indigenous peoples’ own forms of occupying and using lands and resources are themselves a form of property. And that is affirmed in the UNDRIP and various articles which call for states to recognize Indigenous peoples’ customary land tenure and to protect them in various ways.”

The fifth idea is social, or economic and social justice. “And, here, the idea is that people should have the social and economic conditions that are necessary for a dignified life. Now, this idea within the United States, not Canada, is somewhat contested; you might call this socialism. In most of the world, there is a right to health, there is a right to education, there is a right to employment. I would venture to say that within the United States’ social, and even political milieu, there is fundamental understanding that people do have the right to the basic conditions of a dignified life.

“In this country and others, Indigenous peoples are impoverished, suffer from poor health and experience social ills at a rate far in excess of other segments of the population. You may have seen the casinos coming in, and you think, ‘Oh wow, those Indians with their weird casinos.’ Well, you saw a very narrow slice of the life of Native American people. And, so, the UNDRIP calls upon states to address the social and economic conditions of Indigenous peoples consistent with their own aspirations.

“You might ask, ‘What does this matter? What does it matter to have the UN instrument talking about Indigenous peoples’ rights?’ That’s a very good question, one that I often ask myself. As the UN’s Special Rapporteur on the Rights of Indigenous Peoples, it was the normative basis by which I engaged governments and it was the backdrop by which our discussions proceeded in terms of Indigenous peoples’ rights.”

“But” Anaya asked, “How can it be used closer to home?”

“The UNDRIP is not, itself, legally binding. It is not a treaty; it is a resolution of the General Assembly. However, it is at the very least, a policy statement, one that the U.S. and other countries have adhered to, a policy statement that can be used as persuasive authority in judicial proceedings. However, judges in the United States are often reluctant to invoke international instruments. In Canada, courts routinely invoke international instruments. I think that we’re going to increasingly see that happen in the United States, too.”

TWO VARIANTS OF OTHERNESS

“The UNDRIP is also an advocacy tool for Indigenous peoples and their advocates to use in direct engagement with executive and legislative actors, or government actors more generally. But its utility in the United States at least, is as a means of addressing the fundamental problem of societal attitudes. There



can never really be a change, even through the law, unless fundamental social attitudes change. What we have in the United States and elsewhere is an invisibility of Indigenous peoples, at best, an ‘otherness’.”

Anaya asked how, today we can have a baseball team that is called the Indians and that had the Chief Wahoo logo, one that is still worn by many. This exemplifies the otherness, and even invisibility of Native Americans.

Anaya offered two variants of this otherness, this thinking of Indigenous people as not really present and not part of the fabric of American society.

One is that of the Vanquished Savage who stood in the way of development. Anaya’s fifth grade teacher spoke about the savages who had to be pacified and civilized so that development could occur, looking at Anaya as he said it. “That was a long time ago but nonetheless, we still see that attitude represented in many ways today.”

“The venerated British author Charles Dickens represents the deep-seated sentiment that still exists in this and many countries in regard to native peoples, although perhaps not as in such stark terms.” After a visit to the United States in the mid-nineteenth century, Dickens wrote,

My position is that if we have anything to learn from the Indian, it is what to avoid. His virtues are a fable; his happiness is a delusion; his nobility, nonsense. We have no greater justification for being cruel to the miserable object, than for being cruel to a William Shakespeare or an Isaac Newton; but he passes away before an immeasurably better and higher power (i.e., that of Christianity) than ever ran wild in any earthly woods, and the

world will be all the better when this place knows him no more.

Dickens was expressing the idea of the Vanquished Savage.

“The second variant of this otherness of Indigenous peoples is that of the Noble Savage. This takes a sympathetic view towards native peoples; they’re venerated but they are still ‘other’.”

Anaya referred to the 1970s public service announcement featuring ‘Iron Eyes’ Cody, an Italian-American actor



who played a Native American. Cody was depicted in a canoe, in all his Indian garb, going down a pristine river with lush forests around. But he rounded a bend in the river and there was a factory billowing with pollutants and trash all over the river. The camera panned to his face and a tear ran down his cheek. “The Noble Savage; venerated, but still ‘other’. Not really part of modernity, or the country’s fabric.”

“There is a need for public awareness and understanding of Indigenous peoples. They must be seen as part of the true histories of the countries in which they live; and, as part of contemporary life that embraces a common identity that sees native people as part of the

American identity, not as something other than American, or just something to be embraced in or included in sports logos and elsewhere in a de-meaning way. A public awareness that embraces the mainstreaming of education about Indigenous peoples into education at all levels.

“What did you learn in elementary school, and beyond, about native peoples? It was probably that Vanquished Savage-type model, or at the very best, that Noble Savage; not a real history about native peoples from their perspective and about their contributions to contemporary American society.

“To conclude, I see the UNDRIP as a tool for raising public awareness about Indigenous peoples and their human rights concerns. It is a reminder of basic human rights; of the fact that Indigenous peoples have historically been denied those rights, and of the need for concerted action to address the present-day legacies, that past, and the ongoing human rights violations, that Indigenous peoples

have suffered. With its grounding and powerful human rights ideas, the UNDRIP provides a roadmap for the way forward. It provides guidance for measures to address the human rights concerns of Indigenous peoples and to move forward toward reconciliation with them. It marks a path toward remedying the injustices by calling for determined action to secure Indigenous peoples’ rights within a model of respect for equality, self-determination, cultural identity, property, and social and economic justice.”

Brian H. Gover
Toronto, Ontario

AWARDS & HONORS



T. Maxfield Bahner of Chattanooga, Tennessee, was honored by the American Inns of Court at the Celebration of Excellence on October 20, 2018. He received the 2018 American Inns of Court Professionalism Award for the Sixth Circuit. He has been a Fellow since 1985.



Past President **David J. Beck** of Houston, Texas, was presented the Center for American and International Law Award for Achievement in the Pursuit of Justice for All on Apr. 17, 2019, in Houston. The award recognizes his commitment to the rule of law and equality of justice. He has been a Fellow since 1982.



Thomas F. Campion of Florham Park, New Jersey, was presented with the Francis X. Dee Award for Trial Excellence. Established in 2018, the award recognizes a trial lawyer who demonstrate outstanding advocacy skills and is dedicated to improving the standards of trial practice and the administration of justice. The award celebrates the life of Dee, a Former Regent, who during his forty-seven-year legal career, was broadly recognized by his peers as a trial lawyer who exemplified the profession's highest ideals. Campion has been a Fellow since 1978.



Judicial Fellow the **Hon. Roy B. Dalton, Jr.** of Orlando, Florida, a judge in the U.S. District Court of the Middle District of Florida in Orlando, is the 2019 recipient of the Chief Justice's Distinguished Federal Judicial Service Award. The award, which recognizes an active or retired federal judge for outstanding and sustained service to the public, especially as it relates to the support of pro bono legal services, was presented by Chief Justice Charles T. Canady in a Feb. 7 ceremony at the Supreme Court of Florida. He has been a Fellow since 1997 and serves as Vice Chair of the Samuel E. Gates Litigation Award Committee.



ASSOCIATE PROFESSOR, CONVICTED FELON, COURTHOUSE LAWYER – THE FACE OF REDEMPTION



AST PRESIDENT AND U.S. FOUNDATION TRUSTEE **JOAN A. LUKEY** OF BOSTON, MASSACHUSETTS INTRODUCED **SHON HOPWOOD**, ASSOCIATE PROFESSOR, GEORGETOWN UNIVERSITY LAW CENTER, AS A BANK ROBBER, CONVICTED FELON, COURTHOUSE LAWYER, AUTHOR, REAL LAWYER, PROFESSOR OF LAW AT GEORGETOWN, HUSBAND, AND FATHER.

Having grown up in a small town in Nebraska, he came from a good family and experienced a good upbringing. But he took a wrong turn, that led him to rob banks, five banks to be precise, for which he was arrested, tried, convicted, and sentenced to serve time in federal prison. While in prison, he became a jailhouse lawyer, a good jailhouse lawyer. In fact, he got so good at it that he happened to be the principal author of a petition on behalf of one his friends in prison and obtained an argument before the United State Supreme Court. As the end of his twelve-year sentence was approaching, Hopwood decided that he wanted to complete a paralegal course offered in the prison. With only a high school diploma, he could not go to law school, so he took the paralegal course and came out of prison as a paralegal. He started working in D.C. as a paralegal while completing a college degree through an online school. After completing his high school degree, he decided he did want to go to law school and was accepted to the University of Washington Law School on a Gates Fellowship. Upon finishing law school, he clerked for Janice Brown a U.S. Circuit Judge of the United States Court of Appeals for the District of Columbia circuit, not an easy clerkship to get. He then went on to earn an LL.M. from Georgetown Law, where he ended up on the faculty; and now, he not only teaches, but serves as a judge on Georgetown’s Supreme Court Institute, where every Supreme Court argument is mooted if the advocates wish to do so.

Hopwood has also become one of the leading appellate lawyers in the country. But he was presenting at the 2019 Spring Meeting of the College in La Quinta, California on a topic more important to him, as a voice for the need for criminal justice reform. His comments to the College were from his unique perspective of having served more than a decade in federal penitentiary and having come out to be a

“ QUIPS & QUOTES ”

I was talking to Joan and she said, ‘You know Shon, on my bucket list is someday, I want to argue in the Supreme Court of the United States, and I’ve argued sixty federal circuit cases and never got one to the Supreme Court.’ My only advice for her was, ‘Now Joan, maybe you ought to go to federal prison and then you can get there.’

Shon Hopwood



shining light in the legal profession. His comments were about criminal justice reform in an era of mass incarceration. He offered some statistics for consideration. For example, the U.S. has 5 percent of the world's population, yet 25 percent of the world's prisoners. The U.S. has 2.3 million people in prisons. About ten million people get cycled through county jails each year. He noted a *U.S.A. Today* study citing that 113 million Americans have had someone in their immediate family go to prison at some point in their life.



Hopwood explained that those statistics are why criminologists, legal scholars, economists, and advocates all say that there is a system of mass incarceration in the U.S. His point was that we have an over reliance on incarceration. And he asked, why does that matter? Why does it matter that the United States tends to lock up more people than almost any other country on the planet? He explained why, which he knew from personal experience. “When people go to prison, it does something to them. In many ways, it cripples them. For one, they’re often not put into the best environment. If you’re put in a bad environment for ten to twenty years, where the message both implicitly and explicitly is: ‘You are worthless, you are just inmate number 15632-047’ that is something that is seared into your memory, until the end of time. It makes it extremely hard for you to ever get out and have a normal, law abiding, productive life.”

He commented that when he got out of prison, he had never been on the internet. He had never seen an iPhone, an iPad, or an iPod. And, one of the things he discovered quickly was that most companies didn’t advertise for work in the classified section of the newspaper anymore. Hopwood explained how he had a real struggle getting caught up to speed with the life that had passed him by. And how it was the same way for a lot of people that come out of prison. “So, again, why does that matter? The majority of criminals, 95 percent of people that go into American prisons, will one day come out to be back in our communities and to be our neighbors.” Hopwood suggested “that it should be incumbent upon us, that we want them to come out better off, not worse.”

He noted that in the U.S. “people think that when someone serves their time, that’s their punishment. And then once they’re done, they get to come back and rejoin society as returning citizens. But that’s a misnomer, because no one I know comes back a full returning citizen. There are several thousand collateral consequences of a felony conviction, and sometimes even a misdemeanor conviction. As a prior criminal you can be legally discriminated against in employment, housing, public benefits, and voting rights. You can be locked out of professions because of occupational licenses, including the practice of law. And it turns out that in our profession, a lot of times the same communities that are over represented in the criminal justice system are the same communities that are very much underrepresented in the legal profession.” He noted the U.S. has this huge prison system with more criminal laws on the books than the country

has ever have had in the past. Until the 1970s, there were about 400 to 500 federal statutes carrying criminal penalties; now it's over 5,000. "If all Americans knew how many statutes there were that carry criminal penalties, they would realize that most Americans, at some point in their life, have broken a federal law. As an example, the last three U.S. Presidents all broke a federal law. There's a statute that says, anyone who has ever used or abused a substance on the controlled substance act, including marijuana and then possess a firearm is guilty of felony possession of a fire arm. What did President Clinton say? 'Well I smoked but I didn't inhale.' President Bush also admitted to using marijuana as did President Obama. And there are pictures of all three of them on the internet holding guns."

Hopwood said that the good news is that Americans have finally started to wake up about the social cost of having so many people in prison; and as a result, "we are starting to see prison reforms across the country. Some of it has started at the State level, like the reduction in some state's prison pop-

ulation, while at the same time crime is going down, leading policy makers to think that the United States can significantly reduce its prison population without a decrease in public safety." He commented that a big winner in the November election was Criminal Justice Reform. The U.S. Congress passed the best criminal justice reform bill of his lifetime, referred to as "the First Step" act. This is a bill Hopwood had advocated for and worked with the White House and members of Congress to support for 18 months. While he was very pessimistic about its passage, since there had not been any federal criminal justice reform for the last forty years, it did pass, by a vote of eighty-seven votes (of 100) in the United States Senate. And this act has already started to filter its way down into the states. Not only did the First Step Act get passed, but one of Hopwood's clients was fortunate to be the first person to be released under the Act. He told the story of his client, Matthew Charles. As a result of the Act, a judge entered an order resentencing Charles to time already served and he walked out of jail that day. Then Charles was

highlighted by President Trump at the State of the Union this year, who commented that second chances were important, and that he valued rehabilitation. The President looked at Charles and said, "Welcome Home." That was a life changing moment for him, and for those 25 million Americans with a felony conviction. Now Hopwood has hope for more criminal justice reform. He is hopeful that with renewed focus on second chances and the ability to give people coming out of prison, a real true second chance at life, it will allow former prison inmates a viable chance to turn their lives around. He is convinced that this is the path forward, "especially if we all get involved and help in convincing more Americans that having 2.3 million people in American prisons is not something that we want to look at fondly. There are ways to reduce the rate of imprisonment without impacting public safety and at the same time providing a true second chance to people coming out of prison is in all of our best interests."

J. Walt Sinclair
Boise, Idaho

“QUIPS & QUOTES”

Florida, not the first place that comes to mind when you think of criminal justice reform, passed a new amendment that said people who have been convicted of a felony can get their voting rights back. In several states you are unable to vote if you have a felony conviction. I would know one of those states because I live there. When I was clerking for Judge Brown on the D.C. Circuit, [my wife] Annie and I lived in Virginia, a place where I could not vote. And you want to talk about collateral consequences, I remember getting a phone call one day when we tried to move to Virginia from an apartment complex that said, 'Hey, we can't rent an apartment to you because you have a felony conviction.' I said, 'Well, I'm about to become a lawyer and I'm clerking for a pretty important judge on a pretty important court.' The only thing the woman said was, 'I have no idea what a law clerk is but I can tell you that you can't live here regardless of your circumstances because of that felony conviction.' So Florida passing this bill that now allows millions of people with felony convictions to vote is a huge step forward.

Shon Hopwood

A CHALLENGE FROM JUSTICE ABELLA: REMEMBER, RETHINK, REIMAGINE OBLIGATION AS LAWYERS





THE HONOURABLE MADAME JUSTICE ROSALIE SILBERMAN ABELLA, THE SENIOR JUSTICE OF THE SUPREME COURT OF CANADA, HAS ENJOYED AN UNUSUALLY CLOSE RELATIONSHIP WITH THE AMERICAN COLLEGE OF TRIAL LAWYERS. SHE HAS SPOKEN AT THREE NATIONAL MEETINGS AND AT LEAST ONE REGIONAL MEETING. SHE IS AN ACTIVE MEMBER OF THE COLLEGE'S HONORARY FELLOWSHIP COMMITTEE. AND, OF COURSE, AS A JUSTICE OF THE SUPREME COURT OF CANADA, SHE IS HERSELF AN HONORARY FELLOW.

As was pointed out in her introduction, Justice Abella – an outstanding advocate – has never left a College audience unmoved. She challenges Fellows to remember, rethink, and reimagine their obligations as lawyers. In short, she seeks to make Fellows better at what they do. The 2019 Spring Meeting in La Quinta, California was no exception.

In her remarks (dedicated at the beginning to her friend, recently deceased Past President **Ralph Lancaster**), Justice Abella reminded her audience that 2019 is the seventy-fifth anniversary of D-Day and the Allies' landing at Normandy. "That landing," she said, "allowed justice to emerge assertively from the injustices of World War II and led to a global moral consensus that resulted in the Universal Declaration of Human Rights, the Genocide Convention, and the Nuremberg trials. All were created to preserve the conceptual fruits of victory. But I worry that they perhaps have

become low-hanging fruit, too easily picked off and discarded."

NEEDING THE RULE OF JUSTICE AND RULE OF LAW

Justice Abella started her conversation with the College with the rule of law, a term she said most members of the public don't understand. "But we all know it when we see it. I think we encompass in that term the indispensable instruments of democracy, due process, an independent bar and judiciary, protection for minorities, a free press, and rights of association, religion, and expression. These are core democratic values, and I, for one, am not the least bit embarrassed to trumpet them, because when we trumpet those core democratic values, we trumpet the instruments of justice, and justice is what law is supposed to promote." The Justice cautioned, however, that "when we talk about democracy,

“ QUIPS & QUOTES ”

When we talk about democracy, we're not just talking about elections and majorities. Elections tell democracy it's welcome to come in, but elections are only the entrance. Without a home, democracy can't settle down. It needs an edifice of rules and rights and respect to grow up healthy and secure.

Justice Abella



we're not just talking about elections and majorities. Elections tell democracy it's welcome to come in, but elections are only the entrance. Without a home, democracy can't settle down. It needs an edifice of rules and rights and respect to grow up healthy and secure. We need the rule of justice, not just the rule of law. I know that democratic values are no guarantee, but they're the best goals, because without democracy, there are no rights, without rights, there is no tolerance, without tolerance, there is no justice, and without justice, there is no hope."

tion of Independence, which guaranteed that everyone enjoyed the right to life, liberty, and the pursuit of happiness, and that the government existed only to bring about the best conditions for the preservation of those rights. "And thus was born the essence of social justice for the United States: the belief that every individual American had the same right as every other American individual to be free from government intervention."

Justice Abella contrasted the United States model with that of Canada. "We in Canada were never concerned

"QUIPS & QUOTES"

Public opinion, in its splendid indeterminacy, is not evidence and it's not law. It's a fluctuating, idiosyncratic behemoth incapable of being cross-examined about the basis for its opinion, and susceptible to wild mood swings. In framing its opinions, the public is not expected to weigh all relevant information, or to be impartial, or to be right. The same cannot be said of judges. Time, not public opinion, will be the ultimate judge of how well judges fulfill their duties in protecting rights. And time, too, will judge the governments of the day for their willingness or unwillingness to contribute to public respect for the judiciary's independent responsibility to patrol the borders between legislative action and the public's right to rights.

Justice Abella

Justice Abella identified two kinds of rights that shaped her analysis: human rights and civil liberties. Both, she said, are crucial.

"The rights story in North America, like many of our legal stories, started in England. The rampant religious, feudal and monarchical repressions in seventeenth century England inspired new political philosophies, like those of Hobbes, Locke, and John Stuart Mill, which sought to protect individuals from having their freedom trampled by governments." These theories of civil liberties dominated the rights discussion for 300 years. They were also the theories that journeyed across the Atlantic Ocean to become firmly planted in American soil. They received confirmation in the Declara-

only with the rights of individuals. Our historical roots involved, as well, a constitutional appreciation that the two cultural groups at the constitutional bargaining table – the French and the English – could remain distinct and unassimilated and yet be of equal worth and entitlement. Unlike the United States, where individualism promoted assimilation, we in Canada have always conceded that the right to integrate based on differences has as much legal and political integrity as the right to assimilate. Where for others, pluralism and diversity may be fragmenting magnets, for Canadians, they are unifying. Where for others, assimilation is the social goal, for us, it represents the inequitable obliteration of the identities that define us. Where for others, treating everyone the same

is the dominant governing principle, for Canadians, it takes its place alongside the principle that treating everyone the same can result in ignoring the differences that need to be respected if we are going to be a truly inclusive society.”

Justice Abella pointed out that integration based on difference, equality based on inclusion despite difference, and compassion based on respect and fairness are all part of Canada’s national values and make the country the most successful practitioner of multiculturalism in the world. For example, “Canadians find somewhat problematic the view that all speech should be protected, regardless of content, on the theory that it promotes the marketplace of ideas. It’s a good theory. But to Canadians, it’s a theory that sees no distinction between yelling fire in a crowded theater and yelling theater in a crowded fire hall. Sometimes hateful and vitriolic speech silences those it targets, especially if they are vulnerable. We deeply respect freedom of speech in Canada, but we do not worship at its shrine.”

Justice Abella conceded that the political philosophy of rights as articulated in the American Constitution, ascribing equal civil, political and legal rights to every individual, regardless of differences, became prevalent in the western world as America’s most significant international export. For a long time, concern for the rights of the individual monopolized the remedial endeavors of the pursuers of justice all over the world.

Justice Abella then turned to the awakening that accompanied the end of World War II. “It wasn’t until 1945 that we came to realize that, having chained ourselves to the pedestal of the individual, we may have ignored

rights abuses of a fundamentally different and intolerable kind: the rights of individuals in different groups to retain their differences without fear of loss of life, liberty, or the pursuit of happiness. It was World War II and the horrifying spectacle of group destruction – a spectacle so far removed from what we thought were the limits of rights violations in civilized societies – that jolted us permanently from our complacent belief that the only way to protect rights was to keep our governments at a distance and protect each individual individually. We found our entire vocabulary and remedial arsenal inadequate. We were left with no moral alternative but to acknowledge that individuals could be denied rights not in spite of but because of their differences. And so, we began to formulate ways to protect the rights of the group, in addition to those of the individual.”

Justice Abella explained why both human rights and civil rights are crucial: civil liberties gave us the universal right to be equally free from an intrusive state, regardless of group identity, while human rights had given us the universal right to be equally free from discrimination based on group identity. “We need both to have justice. And we got them slowly and incrementally in the decades after World War II. But then I would argue, we seemed to stall as the last century was winding down.”

Justice Abella identified her concerns. “We started to dismissively call a differences-based approach ‘political correctness’ or ‘an insult to the good will of the majority and to the talents of minorities’ or ‘a violation of the merit principle.’ Somehow once the twentieth century ended, we started to let those who had enough say, ‘Enough is enough.’ We allowed them to set the agenda while they accused everyone else of having an agenda and leaving



millions wondering where the human rights they were promised were, and why so many people who already had them thought the rest of North America didn't need them."

She then elaborated about the effect on judicial independence. "The essence of the critics' message was that there was an anti-democratic, socially hazardous turbulence in the air, and that this was most notable during judicial flights. The critics made their arguments skillfully. They called the good news of an independent judiciary, the bad news of judicial autocracy. They called minorities seeking the right to be free from discrimination, special interest groups seeking to jump the queue. They called efforts to reverse discrimination, reverse discrimination. They trumpeted the rights of the majority and ignored the fact that minorities are people who want rights too. They said courts should only interpret, not make law, thereby, ignoring the history of common law. They called advocates for equality and human rights biased, and defenders of the status quo impartial. They said judges who struck down legislation were activists, unless they didn't like the legislation that was struck down. They claimed the monopoly on truth, frequently used invectives to assert it, then accused their detractors of personalizing the debate. Significantly, they wanted judges to be directly responsive to public opinion, without understanding that when we speak of an independent judiciary, we are talking about a judiciary free from precisely this kind of influence. Public opinion, in its splendid indeterminacy, is not evidence and it's not law. It's a fluctuating, idiosyncratic behemoth incapable of being cross-examined about the basis for its opinion, and susceptible to wild mood swings. In framing its opinions, the public is not expected to weigh all relevant information, or to

be impartial, or to be right. The same cannot be said of judges."

Justice Abella offered a ringing affirmation of judicial independence. She stated that "time, not public opinion, will be the ultimate judge of how well judges fulfill their duties in protecting rights. And time, too, will judge the governments of the day for their willingness or unwillingness to contribute to public respect for the judiciary's independent responsibility to patrol the borders between legislative action and the public's right to rights. There is no doubt that the public views have and should have a seat at the justice system's table. What they do not have and should not have is a veto. Judges who do their job properly in a democracy not only have the right to disregard the majority's opinion, they have a duty to do so if it conflicts with basic legal and democratic principles. Independent judges who are not politically compliant are not anti-democratic. They are doing their job. And if judges don't do their job fearlessly, neither human rights nor the democracies they serve have a chance."

AMERICAN JUSTICE –THE GIFT THAT KEEPS ON GIVING

Justice Abella closed by discussing the fragility of democracy in the Third World. "Political expediency and global indifference penalize citizens who live in an environment where too many rights abuses go unrecognized and unchallenged. Too many governments have interfered with the independence of their judges in the media. Too many people have lost their liberty arbitrarily. Too many people are hungry. Too many people have died in armed conflicts. And too many people have lost hope. We are in danger of a new status quo, where hate triumphs over dignity and indignity triumphs over decency, one

where intolerance is tolerated and tolerance is not. What has happened to the miraculous regeneration and luminous moral vision that emerged from the beaches of Normandy? And that led me personally to a life in the law."

Justice Abella explained the effect of that "moral vision" on her personal decisions. "Many of you have had the good fortune to have had lives that represent the unfolding of the happily expected. This, I hope will be the light my children and grandchildren will have. But from the beginning of my life, as someone who was born in a refugee camp in 1946 to parents who survived the Holocaust, there was nothing expected, and everything hoped for. After the war, my parents went to Germany where my father, a lawyer, taught himself English and was hired by the Americans to help set up legal services for displaced persons. In Canada, my father wasn't allowed to practice law because he wasn't a 'citizen.' That's when I decided to become a lawyer. I was four. I had no idea what it meant to be a lawyer, but I felt that if he couldn't be what he wanted to be, I would. The revenge of the refugee. It led me to choose law as a profession. You cannot be born in the shadow of the Holocaust to two Jews who survived it without an exaggerated commitment to the pursuit of justice. You cannot grow up indifferent to the rule of law, when every adult you love experienced the horror of its subversion. And you cannot live a life without idealism when the very fact of your birth reflects a tenacious belief by parents whose only son had been one of the war's six million martyrs to injustice, that the world would turn fair.

"I had a father who, being a lawyer in Europe, taught me that being a lawyer was the noblest thing you could be. And I had a mother who was in all things his

enthusiastic partner, especially in endorsing his encouragement of my childhood dream to emulate him. My father died a month before I finished law school and never lived to see his inspiration take flight in his daughter's love of the law, but he never for a moment gave up hope because living in a democracy made him feel safe.

“As those of you who were here when I first spoke to the college in 2002 know, my mother found a few of my father's papers from Germany about fifteen years ago. In those papers, I found the answer to why he always spoke so respectfully and appreciatively of Americans. I saw letters from American lawyers, prosecutors, and judges he worked with in the U.S. Zone in Stuttgart. They were warm, generous and encouraging letters, either recommending, appointing, or qualifying my father for various legal roles in the court system the Americans had set up in Germany after the war. Those Americans believed in him and as a result, they not only restored him, they gave him back his belief that justice was possible.



“ QUIPS & QUOTES ”

You cannot be born in the shadow of the Holocaust to two Jews who survived it without an exaggerated commitment to the pursuit of justice. You cannot grow up indifferent to the rule of law, when every adult you love experienced the horror of its subversion. And you cannot live a life without idealism when the very fact of your birth reflects a tenacious belief by parents whose only son had been one of the war's six million martyrs to injustice, that the world would turn fair.

Justice Abella

“One of the most powerful documents I found was written by my father when he was head of our Displaced Persons Camp where we lived. It was his introduction of Eleanor Roosevelt when she came to visit our camp in 1948. He said, ‘We welcome you Mrs. Roosevelt. As a representative of a great nation whose victorious army liberated the remnants of European Jewry from death and so highly contributed to their moral and physical rehabilitation, we shall never forget that aid rendered by the American people. We are not in a position of showing you many assets. The best we are able to produce are these few children. They alone are our fortune and our sole hope for the future.’

“As one of those children, I am here to remind you that the gift of American justice at its best is the gift that keeps right on giving – a gift that propelled me from a Displaced Persons Camp in Germany all the way to the Supreme Court of Canada. Thank you, American College of Trial Lawyers, for all you do to make sure that the justice gift keeps right on giving and thank you for promoting the ideals and values that make me so proud to be a lawyer and one of you.”

Chilton Davis Varner

Atlanta, Georgia







STEPHEN B. BRIGHT RECEIVES GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY

THE GRIFFIN BELL FOR COURAGEOUS ADVOCACY WAS ESTABLISHED BY THE COLLEGE IN 1964 TO HONOR TRIAL LAWYERS WHO HAD PERSEVERED IN THE PURSUIT OF AN IMPORTANT CAUSE DESPITE SUBSTANTIAL PERSONAL DANGER, FEAR, UNPOPULARITY, OPPOSITION, OR OTHER EXTREME DIFFICULTIES.

A decade ago, the award was renamed to honor Judge Griffin Bell. Regent **Richard H. Deane, Jr.** of Atlanta, Georgia said, “Judge Bell was an exceptional lawyer and public servant, and he was also a Past President of this college. Judge Bell was known for his integrity, his independence as well as a bold defender of the rule of law and our Constitution. In the fifty-three years since the award was created, it has been awarded only fifteen times. Today, I have the honor of introducing the sixteenth recipient of the award - **Stephen B. Bright**. The College confers this award in honor of Steve’s relentless and courageous opposition to the death penalty throughout his career, and his dogged commitment to the simple notion that a person charged with a crime should be afforded representation without regard to their being indigent.”

Upon earning his law degree from the University of Kentucky, Bright began his career with the Appalachian Research and Defense fund in Eastern Kentucky, where he represented indigent prisoners and defendants working in the coal fields. He later moved to Washington, D.C. where he continued to represent the poor as a public defender. Throughout his career, Bright has had an interest in helping to bring justice to those who were less privileged, those who were poor, and those who, in many cases, were left out of the legal system entirely.

While working in D.C., he received a call from an ACLU representative asking if he would petition the Supreme Court for review in a Georgia death penalty case. That case involved an eighteen-year-old, schizophrenic, African-American man who was convicted and sentenced for the death of a nine-year-old boy. The man was convicted based on the testimony of two unreliable witnesses, with little effort on behalf of the state to prove his guilt beyond a reasonable doubt. Bright was able to get that death sentence overturned.

Recognizing the great need to do more in the face of injustice visited upon the poor, he moved to Atlanta and became the executive director of the Southern Center for Human Rights. He has worked on more than 100 death penalty cases and has argued and won four death penalty cases before the Supreme Court.

In three of his cases before the Court, the death sentences were overturned due to racial discrimination in the jury selection process. In Bright's fourth case before the Supreme Court, he successfully argued that his client, an Alabama Death Row inmate with significant brain damage and other mental impairments, should have been provided with an independent expert who could have testified at his trial, regarding his mental condition.

“QUIPS & QUOTES”

Last year only forty-one people were sentenced to death in the entire United States of America. The year before that thirty-nine, the year before that thirty-seven. It shows that the lawyer matters. It shows that good lawyers, capable lawyers who know what they're doing, know how to investigate for mitigation, know what issues to raise, know how to present cases to prosecutors to negotiate cases out.

Stephen Bright

He has also filed and won lawsuits across the South, challenging the inhumane prison conditions and violations of the right to counsel. In the early 2000s, Bright helped persuade the Georgia legislature to create a state-wide public defender system, by filing a series of lawsuits attacking and exposing the injustices inherent in Georgia's practically non-existent indigent defense system.

Bright's edited acceptance remarks follow:

Mark Twain once said that it always made him feel uncomfortable when people said nice things about him because he was afraid they would leave something out. I am so humbled and grateful to be here and to receive this award named for Judge Bell.

This really recognizes the work of people at the Southern Center for Human Rights over the years. Bryan Stevenson is one of many people who answered the call to come and to work in the early days for a salary between \$16,000 and \$20,000, and in the more recent days, between \$30,000 and \$35,000. They have done a remarkable job. Just because I was the director, I got credit for a lot of it, but it was really their work.

Forty years ago, 1979, I got that call that Rick mentioned, from a volunteer in Georgia who asked me if I'd take a death case. I said, "You know I'm a public defender in Washington, I try cases, I'm in court every day. I'm not an appellate lawyer. I've never filed petition to the Supreme Court of the United States in the short career that I've had as a lawyer." The volunteer said, "That's alright, we'll take anybody we can get," and then explained to me, that many people facing the death penalty in Georgia and elsewhere did not have lawyers, that they had a lawyer for their trial and one appeal, but not beyond that.

It seemed unconscionable to me at the time, that a person could face the death penalty and not have a lawyer. Of course, I learned later that one of the strategies to obtain the death penalty and to carry out executions was to deny people lawyers or deny people capable lawyers. I would not have thought that incompetent lawyers could be appointed to represent people in any kind of criminal case, but certainly not in a death penalty case.

That very first case, the lawyer's closing argument was just a generic argument against the death penalty, which of course was pointless with a death qualified jury. Then, I met the client. Not a word about him was put in the trial. He was a schizophrenic, out of touch with reality, not a word of that to the jury.

Later, I took another case involving William Anthony Brooks, out of Columbus, Georgia, a case where the racism in the jury selection just leaped right off the pages of a cold transcript. I found out later, the judge in that case who presided over

it, his father had been involved in two lynchings as he was growing up there in Columbus, Georgia. I thought at the time that what the judge did in that case was not that different than what his father had done earlier; it was a legal lynching. It had the appearance of some process, but there was no process, even in a community with 35 percent African-Americans. All-white jury, terrible lawyers, racist appeals, and the closing argument like the Tim Foster case, where the lawyers struck all the African-Americans and then in closing argued that Tim Foster should be given the death penalty in order to send a message. Ninety percent of the people in the projects were African-American, including my client.

I later represented Judy Haney, a woman sentenced to death at a trial where her lawyer was so intoxicated that he stood up one morning and fell forward to the floor in the courtroom. He was kind of like a turtle, he just couldn't get back up. The judge held him in contempt and sent him to jail. The next morning, he produced the lawyer and client from the jail and continued the trial on to a death sentence.

Not many professions where you can drink on the job, but Robert Holsley was executed in Georgia not that long ago. He was represented by a lawyer who was drinking a quart of vodka every day during the trial. The lawyer was, after the trial, indicted, convicted, sent to prison, and disbarred.

Yet, that case resulted in a death sentence with no information about Robert Holsley being presented to the jury that would decide whether he would live or die. They were never told that he was intellectually limited, never told that he grew up in a home where the abuse was so constant, so fierce, and so notorious that the people in the neighborhood called his home the torture chamber, not a word of that. Robert Holsley was executed based on some judges saying they didn't think it made any difference

that he was represented by this alcoholic, drunk lawyer, who was more worried about his pending indictment and disbarment than he was worried about representing Mr. Holsley.

I represented a client whose lawyer referred to him with a racial slur, called him the N-word during closing argument. But that was only one of three cases in Georgia where lawyers referred to their clients with a racial slur.

In Houston, there were three cases, at least, where lawyers slept during their death penalty trials. Joe Frank Cannon put ten people on death row doing that. He was an older guy and he often fell asleep after lunch, and that included two death penalty cases. One got relief, but one was executed.

In George McFarland's case, the judge who was presiding, when asked by a reporter from the *Houston Chronicle*, "How can you preside over a case where the lawyer in a death penalty case is sleeping?" The judge said, "Well, the Constitution guarantees every person a lawyer, but it does not guarantee that the lawyer has to be awake." I guess that's a strict Constitutionalist if ever there was one, but it gives sort of new meaning to being represented by the Dream Team.

How are we allowing lawyers like this, in the most important cases, in the death penalty cases? One lawyer in Houston constantly misses the statute of limitations for filing a federal Habeas Corpus. We've had these lawyers in Florida, in Alabama, and elsewhere who have missed the deadline. Filing papers within the deadline—that is about as basic as it gets. And yet, the Texas Bar has done nothing, Texas Court of Criminal Appeals, absolutely nothing. The judges in Harris County (Houston) continue to appoint this same lawyer, even though the lawyer has cost his clients any review in federal Habeas Corpus.

There's a great book by Anthony Graves, the young man who spent eighteen

years in prison, twelve on death row in Texas. Represented by a court appointed lawyer at his trial. He had another lawyer and things were looking pretty good, but the lawyer said it's going to cost \$100,000. He didn't have \$100,000. His book and Ray Hinton's book about his wrongful conviction in Alabama are remarkably similar. Hinton was convicted in Alabama. Bryan Stevenson finally proved his innocence and got him off death row thirty years later.

In their books, both write that when they first were arrested, they told their mothers "Don't worry, it's just a mistake, I'll be home later." They cooperate in every way they can. Anthony Graves. "We want you to take a lie detector." "Absolutely, let me take it, it'll show I'm innocent." "We want you to testify in the grand jury. "Absolutely, where's the grand jury? Let me testify. No lawyer. "What can I do? This is all a mistake." As time goes by it suddenly becomes apparent ... it's a mistake alright, but it's not a mistake that they're going to be able to extricate themselves from. The need for a lawyer is so critical, a lawyer who's capable and competent and able to represent people.

Rick talked about the establishment of the public defender system in Georgia. One of the best parts of it has been the establishment of a capital defender office, so that people facing the death penalty are represented by people who actually know how to try a death penalty case. What a radical notion. There hasn't been anyone sentenced to death in Georgia since 2014.

Virginia is second only to Texas in carrying out executions - 113. After regional capital defenders were established and we went from a system where lawyers were sometimes paid less than \$800 to try a death penalty case, to where cases were handled by lawyers who were competent and capable, no one has been sentenced to death in Virginia since 2011. There are only two people left on Virginia's death row. They've ex-

ecuted everybody else, and nobody has been replacing them over this period of time.

Just two percent of the counties in the country account for well over half the people under death sentence and people who've been executed. Just fifteen percent of the counties account for all death sentences and executions over the last forty years. Yet we have so far to go and so many places where that's not the case. I was reviewing with my students a capital trial in Alabama that only lasts two hours and seven minutes. That's from the start through the evidence, through the instruction, through the closings, through the deliberations and the return of a death verdict, two hours and seven minutes. The judge says to the client, "Boy, your lawyer really did a great job for you, didn't he?" And the client says, "Oh yeah he did a great job."

I go to court houses all around the country where it looks like a slave ship has docked outside the court house. All these black men brought in, handcuffed, chained, shackled, dressed in, sometimes bright orange jumpsuits, sometimes dressed in the old fashioned black and white stripes like something out of the 1920s. No dignity whatsoever, handcuffed to each other, brought in and put in a jury box. Very often, a lawyer will meet with those people for five, ten, maybe even fifteen minutes. The judge takes the bench and takes guilty pleas one after another. I've watched judges take guilty pleas in groups of people, sometimes ten people in front of the judge all at once, all pleading guilty to different crimes, some with lawyers, some without.

The thing that's troubling to me, is that everybody in that courtroom, the judge, the prosecutors, the lawyer who's facilitating this, and probably most importantly, the people in the gallery - they all know that it's a complete charade. They all know that those people pleading guilty have not had an iota of representation. There was no interview, there was no review of any records, there was no investigation, there was no determination of whether there were legal issues that should be raised in the case. It is a complete and total charade. Yet at the end, the judge will ask each person, "Are you satisfied with your lawyer?" And, of course, they're all prompted to say yes, because that's what you have to do. My question is: how would they know? This is all they've seen. They've spent five, ten, fifteen minutes with a lawyer and they're satisfied with that lawyer?

The other thing that's not dissimilar is when we're considering jury strikes. In the case that I had at the Supreme Court, two elected prosecutors in Georgia tried Tim Foster's case. They did what they did in every case - they struck all the African-Americans to get an all-white jury. This was the only time they got caught. Often the prosecutor just reads the reason off the list that you get at a CLE program, and it says these are

reasons that you can give. It's not the actual reason, the reason was that they were black, and you can't give that reason. They read a reason into the record and the judge approves it. Everybody watching knows that this is a charade.

Not many people in the gallery see this, but when they do, they realize what's going on. In Tim Foster's case, the local newspaper interviewed a couple of the black jurors that were struck. Eddie Hood said, "I came home that night and I told my wife, there's not going to be any of us on that jury." Marilyn Garret said, "They kept examining me about why I worked two jobs. I'm a single parent with a child, that's why I work two jobs, and neither one of them pays very much, but I was treated horribly in court." She knew what was going on.

In my class at Yale this year, I have a student who sat on a jury. She said, "We knew what the prosecutor was doing," struck all the blacks, got an all-white jury. She said, "When we went to deliberate, we were really troubled by it. We were pretty convinced by the evidence, it was pretty overwhelming that he was guilty, but we wondered that it wasn't fair that we were deciding and nobody of his race was being allowed to participate in this process." She said it was very troubling.

I had a case out of Louisiana, *Snyder vs. Louisiana*, - and what we found in that case was that if you lived in Jefferson Parish, Louisiana at that time, you did not participate in the criminal justice system at all, because it was the policy of the prosecutors to strike African-Americans from jury service. They were just basically disenfranchised.

We said in the brief, the black people in Jefferson Parish know that they're not going to participate in the criminal justice system as jurors, but the white people know too. It undermines the credibility and the legitimacy of the courts when that happens. We don't have to tolerate inadequate lawyering and we don't have to tolerate race discrimination in jury selection.

The Washington Supreme Court adopted a rule that says, when there's strikes like that, against a racial minority, the test is no longer: was it intentional and did the person lie about the reason? It's very hard for a judge to make the determination that a prosecutor intentionally discriminated and lied, particularly if the judge is someone who previously was the prosecutor and struck all the black jurors himself or herself.

The Washington standard is whether a reasonable person, knowing all the circumstances would think that race was a factor in the strike. An objective standard. My friends in Washington say it's working to eliminate these all-white juries.

In North Carolina they did a study of 7,500 jurors in 173 cases and they found there that you're twice as likely to be struck from a jury if you're black than if you're white. The

evidence in this area is overwhelming. Yet, the test of *Batson vs. Kentucky* is so completely inadequate to deal with it.

Our jury selection process is a farce, and something has to be done about it. I hope when you put out your white paper on criminal justice, I hope part of it will be recommending that the Washington rule which looks at strikes and asks whether a reasonable person knowing all the circumstances would think that there was discrimination.

In Tim Foster's case he was lucky because they forgot to shred the notes. We filed an open record request. We obtained notes from the prosecutor, everybody was organized by race. There were notations that not only showed racial intent, but also showed that they had misrepresented facts to the court over and over again in giving their reasons.

In that case there was success, but in other cases including most other cases involving those same prosecutors there was no ability to overcome the reasons that were given.

I've been honored to be the lawyer for some of these people. I've been honored to be able to take their case and message to the Supreme Court, but much more often to courts in Mississippi, Alabama, Georgia, Florida, and other places where I have represented people in capital cases. I've never done anything by myself. I've never done anything by myself, I've always had Bryan Stevenson who came to me not long after I came to Georgia, first as a law student at Harvard and then later came as a lawyer, and brought his enormous gifts to our practice for a number of years, and then went to Alabama and established the Equal Justice Initiative, which is the only kind of legitimate lawyering that goes on in capital cases for the most part in Alabama.

One other thing I would just say about the success of the capital trial units in Virginia, in Georgia, and other places is in the mid '90s when I was doing this work about 300 to 315 people would be sentenced to death every year. One year we carried out ninety-eight executions. Last year only forty-one people were sentenced to death in the entire United States of America. The year before that thirty-nine, the year before that thirty-seven. It shows that the lawyer matters. It shows that good lawyers, capable lawyers who know what they're doing, know how to investigate for mitigation, know what issues to raise, know how to present cases to prosecutors to negotiate cases out. That's how those cases are being solved, as opposed to the ne'er-do-well lawyers who are often taking cases to trial not because there's anything to try, but because it was a payday to be in a capital trial and get paid so much an hour for every hour they were there.

I hope that all of you, both in doing the pro bono work that I know many of you have done in capital cases and other cases, will continue to do that. I hope you will continue in every way that you can to try to improve. We have public defender systems really in only about half the states. We need them so badly everywhere else.

That's the great and paramount issue that we have here and I urge you to do everything you can with regard to giving people the opportunity to be represented by capable lawyers in all kinds of cases. There's no small case if you're the person who's facing it. We must end this long nightmare of racial discrimination in our court system. Thank you very much for having me.

Bright's full remarks can be viewed on the College YouTube page.

David N. Kitner
Dallas, Texas

“ QUIPS & QUOTES ”

Steve is also known for his humility and for his compassion. He makes sure that his clients are never alone throughout any stage of the criminal justice process, whether in court for a hearing, or being put to death after a series of failed appeals. Steve has made it a point to attend the executions of his clients, so that they may find comfort in seeing someone that cared about them in their final moments.

Regent Deane in his introduction of Bright



POLITICAL JOURNALIST DISCUSSES JOURNALISTS AND LAWYERS: DEFENDING THE INDEFENSIBLE



AFTER A SPIRITED AND CHARMING INTRODUCTION BY REGENT **KATHLEEN FLYNN PETERSON** OF MINNESOTA, MINNEAPOLIS, JOURNALIST **JEFF GREENFIELD** GAVE THESE REMARKS AT THE 2019 SPRING MEETING OF THE COLLEGE IN LA QUINTA, CALIFORNIA:

“I haven’t been on a panel this big since the last time I was on CNN and while I did have fantasies of sitting on a panel of roughly nine people as a Supreme Court justice, my failure to take the bar exam put a real crimp in those aspirations. Although, as I often point out to presidential candidates, you do not have to be a lawyer to be on the Supreme Court. Just a thought, but I need to begin by confessing error. I did not do due diligence about this group, I did not know who I would be coming to talk to. I made assumptions and as you know, assumptions are the mother of all screw ups, that I’d probably hear talks about how to bill two clients at the same time when xeroxing at the copy machine, which in fact my daughter, who is a lawyer, heard at a presentation at one of the largest law firms in America.

“I did not expect passionate advocacy of Indigenous people’s rights. I did not expect moving stories of the redemption of a convicted felon. I did not expect to hear from the funniest Drug Enforcement Administrator in American history. And I did not expect to fall in love with a justice of the Supreme Court. Sir, I’m talking about Justice Abella.

“Also noted, you do not have to be born in the United States to be a justice of the U.S. Supreme Court, all you need is the ability to sit with a straight face at a confirmation hearing and listen to forty people give you bloviating speeches while asking such penetrating questions as, ‘Do you believe no one is above the law?’



Pro tip, do not say, ‘No. Some people are above the law.’

“But, the fact is I’m a refugee or a deserter from your ranks. I did go to law school, there are those who would argue that while Yale is a celebrated institution, if you have a contract dispute you might want to be a graduate of a school that taught law. I must embrace the fact that Yale is known as a center of progressive, liberal, leftist thinking, so embodied by Justices Kavanaugh, Clarence Thomas. But, I turned away from the law. Partly because what happened to me my summer as an associate in a big, tony, New York law firm.

“It’s a very nice job, they pay you well, it’s light work, they take you to the theater, take you to ball games. But, I noticed this pale-faced, hollow-eyed zombie scuttling through the halls and I asked, ‘Who’s that?’ They said, ‘Oh. That’s a permanent associate.’ It is true. The very first week I was called into a partner’s office and asked to research the following. Their client, a

huge construction company has been accused of defrauding the city by padding pills, something utterly unknown to New York construction companies of course, but the fact is the city owed them money. More money that they had allegedly stolen and I was asked to research at whatever rate they were charging this client, could you assert a defense to larceny that you were owed more money than you stole?

“I found out, spoiler alert, going back to the court of A to Z, no one had ever tried to what I came to call the chutzpah defense, but that kind of shook me up a little bit. The other thing was a kind of blow to what I had seen as a young person. I loved Perry Mason, I watched it every week, and every week Perry Mason would exert a courtroom confession from the real murderer.

“It was only years later that I asked myself, ‘How the hell did that district attorney get reelected?’ Yes. Four hundred arrests, no convictions. And then, I grew up watching Abe Lincoln in Il-

“ QUIPS & QUOTES ”

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Jeff Greenfield



linois. You know, that wonderful movie where young Abe is defending a murder suspect and the witness says, “I saw the murder by the light of the full moon.” Abe picks up the Farmer’s Almanac and confronts the witness and says, ‘There was no moon that night.’ I just love that movie and in my moot court, I got up, took up my farmer’s almanac, and said, ‘There was no moon that night.’ The judge said, ‘Sir, this is a copyright case.’

“But, the movie that really hit me was *The Big Chill*. This wonderful movie about a reunion of 60s friends that gather and one of them asks a woman, ‘Why did you stop being a public defender?’ She said, ‘I didn’t realize they’d all be so guilty.’

“We’ve heard this morning, that between prosecutorial misconduct, police misconduct, bad evidence, bad lawyering, and the utter denial of rights you still defend a client who may well be guilty.

“I’ll circle back to this in a moment, but whatever the reasons I became a journalist. The other reason by the way was it occurred to me that the law as a profession is constantly criticized and scorned. I wanted to embrace a craft that was universally respected, so I became a political journalist.

THREE COMMON ELEMENTS IN JOURNALISM AND LAW

“But it turns out that the same thing that had begun to bother me about the law, bothers me about journalism, and that is that there are certain bedrock assumptions where the implications seemed very dicey to me or at least came with some very provocative footnotes. That’s what I want to focus on.

“What I learned is that in the profession that I trained for and the craft that I practiced, there are three elements I think that they hold in common. One is that they’re both indispensable to a free society. If you don’t have a system that allows for the challenge to public and private power through an independent judiciary and if you don’t allow for criticism of that power, then, by definition, as Justice Abella said yesterday, ‘Even if you elect a leader you’re not in a free country.’ Poland, Hungary, the Philippines, pretty soon I suspect Brazil, Russia.

“Second, both of our enterprises are subject to criticism. A lot of it is just plain wrong headed. People love to quote that line from Shakespeare, ‘First thing we do, let’s kill all the lawyers.’ You know what it comes from? It’s Dick the butcher, the villain in Henry the VI, Part Two and what he’s talking about is how you undermine a society.

“As far as journalism goes one of the consequences of this systematic assault on the press from the very highest councils of power. It can be seen when you look at a political rally and you see an attendee with a T-shirt on which is written, ‘Rope, tree, journalist. Some assembly required.’ That’s part of what we’re dealing with, but the third quality that I think both have in common is that both resort to high-minded principles to justify what is sometimes thoroughly indefensible conduct.

“It’s interesting to me when doctors become doctors, they take the Hippocratic oath and the very first part of that is, ‘First do no harm.’ Lawyers don’t take that oath and journalists, not being a profession, don’t have any oath to take

“QUIPS & QUOTES”

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Jeff Greenfield

at all. Now, what are the consequences of that? Well, if you were a bunch of journalists, I would spend most of time talking about that enterprise, but since you're not let me just point one example and that is when we assert the public's right to know.

"That's an incomplete thought. The public's right to know what and at what cost? The steady erosion of privacy, the smearing of reputations which can never be recovered, the rush to cover breaking news by reporting every rumor, innuendo, assertion possible. I guarantee you if you turn on a cable news network and there is a breaking news story invariably you will be hearing inaccurate information, because as Chuck [Rosenberg] so eloquently pointed out yesterday the hardest thing to hear from a journalist and an expert is, 'We don't know.'

"I sometimes think that the press uses the First Amendment the way a drunken diplomat waves his passport at the New Jersey turnpike. The First Amendment permits us to do pretty much what we want to do, at least until Justice Thomas' views on libel get a few more votes, but just because we can do it, ought we? What are the consequences? The public's right to know using means that, in fact, lead to further bad ends, so I'm suggesting that's true of my not profession [political journalism]. There is no barrier to entry and there's no way to de-journalize somebody. I would suggest that applies to the legal profession at times and that comes with the notion of every accused is entitled to the best defense.

RETHINKING ZEALOUS ADVOCACY

"As provided in the ABA's Model rules of professional conduct, a lawyer zealously asserts the client's position un-

der the rules of an adversary system. Footnote, here's one definition of zealous: people, who having forgotten their objectives, redouble their efforts.

"Let's look at what this can mean and what the implications are. Some years ago, *60 Minutes* profiled a lawyer who specialized in DUI defenses. He would prove that the breathalyzer hadn't been calibrated recently or that the license of the nurse administering the blood test had expired a month earlier.

"It was not his job to say, 'Look, I will take your case, but you've got to enter a substance abuse problem. I will take your case, but you've got to get sober.' His job was to zealously defend his client and I remember wondering when I watched that, 'When he went home that night, what did he tell his family?' He probably told his family, 'I won my case, I did my job. I defended my client with zealous advocacy.'

"He probably did not say, 'I likely helped a drunk driver get back on the road and marginally increased the risk that someone would be injured or die the next time he gets drunk behind the wheel.' But, of course, if you take a step back that's what he did. Provided you take away the protective shield that says, 'No. My job is simply to give my client the best defense.'

"Consider some recent examples all involving one of the best known and admired lawyers in the country. When David Boies signed on to work for Theranos, the company whose celebrated founder Elizabeth Holmes had promised a revolutionary blood testing device, his firm's zealous advocacy involved hiring private investigators to follow the whistle-blowers who were reporting wholesale fraud, threatening financial ruin, and worse.

"If you think this an exaggeration read the book *Bad Blood* by John Carreyou the Wall Street journalist who blew up this story up. At the same time, by the way, this lawyer was on the board of directors of that company, which made his zealous advocacy even more zealous.

"It wasn't his job to say, 'You know, I've looked into this. This entire company is based on one huge fraud and if this company succeeds in its goal of testing the blood of countless numbers of patients they are going to bring back false positives and false negatives, which could endanger the health and the life of the people whose blood they are testing.' Not his job.

"Or, look at what happened in the Harvey Weinstein case when that same prestigious firm hired black ops private investigators to look into the private lives of the women who were accusing Harvey Weinstein, who were trying to undermine the reporting of the *New York Times*. It was trying to expose this case.

"All can be explained by this zealous advocacy, but only if you step back and refuse to look at the probable and likely consequences of those actions. I guess that's how to explain the conduct of these esteemed lawyers who worked for Jeffery Epstein, a serial child rapist. I mean those words. If you are a middle-aged man importing fourteen and fifteen year old girls for sex, you are a serial child rapist and these lawyers in their zealous advocacy worked to ensure not only that he would get the sweetheart deal, not only that he'd be able to leave his cell for twelve hours a day on work release, but also worked with the U.S. attorney, now the Secretary of Labor to make sure that those victims were not informed of the schedule of Epstein's hearings, ▶

so that they could not show up to tell the judge what had happened.

“They were just doing their job, but you know what? Just doing my job hasn’t really been an effective argument ever since the Nuremberg trials. What I’m asking is whether or not there shouldn’t be some kind of

upon his not understanding it.’ I see that every day on at least one cable news network.

“One final note. The injustices inflicted by the law can only be redeemed by lawyers. Stephen Bright made that point brilliantly just a few minutes ago. If the victims of Epstein and Weinstein and Elizabeth Holmes are to find justice, it’s going to be in part because of lawyers and not so incidentally because of a press that uses its freedom wisely and effectively.

“Obviously, it is true that the troubles of a legal system or of a free press do not mean the abandonment of either. Just for the record, I would dearly love to see confirmation hearings where the bloviating politicians are replaced by staff counsel like in the old days of hearings that know how to pursue a sustained, nonpolitical line of questioning.

“If you remember Joseph Welch at the McCarthy Army hearings, Robert Kennedy at the Rockets hearing, Sam Dash and Fred Thompson at the Watergate hearings, we need lawyers in those roles and we’re not getting them. But, I’m just suggesting that we shouldn’t be blind to what some of these consequences are. The noble assertions work very well at awards dinners, but they can also be tools for avoiding some very hard questions.

“George Orwell said, ‘To see what is in front of one’s nose requires a constant struggle.’ That makes your work harder, it makes my work harder, but I think in the end it is the only moral choice that we have. Thanks for listening.”

Greenfield’s full remarks can be viewed on the College YouTube page.

Stephen M. Grant, LSM
Toronto, Ontario ■

“QUIPS & QUOTES”

The injustices inflicted by the law can only be redeemed by lawyers

Jeff Greenfield

amendment to this best defense, zealous advocacy idea, or at least a follow up question.

“I wonder if I were a lawyer what would I do if the Sackler family came to me? This is the family that became enormously rich by promoting the use of OxyContin, including if you read one of the Sackler’s recently revealed depositions deliberately misinforming doctors as to the potency of the drug and its likely addictive affect. A drug which helped trigger the opioid epidemic, which now in the United States every year kills more people than died in all of the Vietnam War. What would you do? You know that the pockets are going to be deep enough. I don’t mean you personally, I mean whoever. The question I always ask is, ‘Okay. They’re entitled to their ... Are they entitled to yours?’

“I don’t think it’s an easy question by the way. The great muckracker Upton Sinclair said about journalists what I would also ask of lawyers. He said, ‘It is difficult to get a man to understand something when his salary depends

FUNDING PROJECTS CENTRAL TO FOUNDATION'S MISSION

Thanks to the generous support of Fellows, the Foundation provided financial assistance to different programs that fit the core purposes of the Foundation. At the time of printing, the Foundation had awarded the following:

- \$100,000 Emil Gumpert Award Recipient – Indigenous Human Rights Pilot Program of Pro Bono Students Canada
- \$50,000 – Tucson Home Project: Step Up to Justice
- \$20,000 - National District Attorneys Association for scholarships for participants to attend trial advocacy seminars
- \$5,000 - Montana Trial Advocacy Seminar
- \$2,000 – Maine Trial Lawyers Association Maine College of Trial Advocacy
- \$2,000 – “Masters of Litigation” CLE Program with Temple Law School
- \$2,000 – Missouri Coalition to Right for Counsel

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 are the organizers of the programs in Montana and Maine. 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*.

ALABAMA FELLOWS HONOR THE LEGACY OF JERE F. WHITE, JR.

The Alabama State Fellows honored the life of **Jere F. White, Jr.** on November 8 and 9, 2018 in Birmingham with a dinner and Continuing Legal Education program. First organized by the Alabama State Fellows in 2012 and then repeated every other year, the event is appropriately named the Jere F. White, Jr. Trial Institute. White, a founding partner of Lightfoot, Franklin & White, was inducted into the College in 1998. Prior to his death on October 3, 2011, White and his wife Lyda established the Jere F. White, Jr. Fellows Program at the Cumberland School of Law where Jere graduated. The Fellows Program seeks to recruit outstanding students with strong academic credentials and who demonstrate a history of leadership and commitment to public service. From proceeds of the Trial Institute, over \$400,000 has been contributed to the Fellows Program.

Like its predecessors, the 2018 program was a tremendous success with over 275 lawyers in attendance. On the evening of November 8, Fellows and spouses joined, Lyda and her family for a dinner hosted by Fellows **Harlan I. Prater, IV** and **Walter W. Bates** at The Country Club of Birmingham to celebrate Jere's legacy. The guests included President **Jeffrey S. Leon, LSM** and his wife Carol along with Past-Presidents **Warren B. Lightfoot** and Robbie; **Chilton Davis Varner** and Morgan; and Immediate Past President **Samuel H. Franklin** and Betty. President Leon spoke of Jere's courage and the example that he set for all lawyers to improve the mission of the College. The Fellows were pleased to welcome Judicial Fellow **Marc T. Treadwell** and his wife Kimberly from Macon, Georgia. The Alabama Fellows also appreciate the participation of

Georgia State Chair Committee **Sally Yates**. A late and unavoidable conflict caused **Regent Richard H. Deane, Jr.** to be miss the program.

The all-day seminar focused on the primary components of a trial, beginning with the voir dire examination through closing arguments. Each segment was divided between two Fellows who gave their perspectives from the plaintiff and defendant sides. There were two one-hour panel presentations. The first focused upon judicial independence in times of partisan politics and social media. The panel included President Leon, Past President Varner, Immediate Past President Franklin and Committee Chair Yates. The second panel of Judicial Fellows included Judge Treadwell, Alabama Circuit Court Judge **Donna Sanders Pate**, and former Alabama Supreme Court Justice **Robert B. Harwood, Jr.** The panel addressed a judge's expectation of lawyers in the courtroom. The program also featured a tribute to White by Immediate Past President Franklin. This included a video of White addressing his associates in 2011 about the ten characteristics of a great trial lawyer. The video has been previously shown at all seminars and is viewed by the participants as a highlight of the day. The attendees were honored to have Past President Varner, an Alabama native serve as the luncheon speaker. Past President Varner spoke on growing up in the South and the influence which lawyers that allows them to address and solve social problems. Among the attendees, the Alabama Fellows were pleased to welcome as their guests, thirty law students from Cumberland, the University of Alabama, Faulkner University, and Miles College.



The program as designed, was fast paced, intense, and well appreciated by the audience. To add even more excitement, music along with college football highlights played during the breaks. There were multiple prize drawings including tickets for the Alabama/Auburn football game and SEC football championship. The dinner and seminar were a great success. The program has earned the reputation as the “go to” CLE in Alabama. The Alabama Fellows are proud to be able to help this worthy cause and honor a great lawyer, Fellow, and friend who is dearly missed. The Alabama Fellows are most appreciative of the College staff for their help, and all those who attended.

Robert P. Mackenzie III
Birmingham, Alabama



Photos from top down:

1. A panel discussion focused on judicial independence in times of partisan politics and social media.

2. Mike Bell, Lyda White, Harlan Prater IV, Immediate Past President Sam Franklin, President Jeff Leon

3. Linda Connor, Georgia State Committee Chair Sally Yates, Past President Chilton Davis Varner, Gilda Branch Williams, Ann Marovich

4. Fellow Harlan Prater IV and Bennett White

MEDICAL EXPERT DISCUSSES LATEST RESEARCH ON PREDICTORS, TESTING, TREATING PTSD



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HEN FORMER REGENT AND COMMUNICATIONS COMMITTEE CO-CHAIR **PAUL T. FORTINO** OF HUSUM, WASHINGTON, WHO HADN'T SEEN **DR. CHARLES R. MARMAR** IN TWENTY-EIGHT YEARS, ASKED MARMAR WHAT HE WANTED SAID IN HIS INTRODUCTION SPEECH AT THE 2019 SPRING MEETING OF THE COLLEGE IN LA QUINTA, CALIFORNIA, HE ANSWERED, "YOU TELL THEM THAT I WAS A KID WHO GREW UP IN CENTRAL CANADA, WISHED MORE THAN ANYTHING IN THE WORLD TO BE A HOCKEY PLAYER, AND WAS DEVASTATED WHEN MY COACH TOLD ME TO GO TO MEDICAL SCHOOL." WHEN THE CHUCKLING SUBSIDED, FORTINO DECLARED, "AND HOCKEY'S LOSS HAS BEEN OUR GAIN." FORTINO CONTINUED HIS INTRODUCTION IN A MORE SERIOUS TONE. "TRAUMATIC STRESS IS THE WING MAN OF CALAMITY AND DISASTER. WHETHER IT'S AN EARTHQUAKE, FIRE, FLOOD, AIRLINE CRASH, IT'S THERE. SOMETIMES IN THE BACKGROUND, SOMETIMES DELAYED.



"My first interaction with Charlie was over thirty years ago." Both Marmar and Fortino were involved in what would become known as the United 811 cases. They began "on a February night about 1 o'clock in the morning. A plane, a jumbo jet was taking off from Honolulu on route to Auckland, New Zealand, and then to Sydney, Australia. About 130 miles out over the Pacific Ocean at an altitude of 23,000 feet, a cargo door blew off, taking out a number of seats with a number of people in those seats, and ruining the number three and the number four engine." The plane was at 23,000 feet and had rapidly decompressed so the pilot placed it "into a steep dive to get it down below 10,000 feet, so people could breathe. Unfortunately, an awful lot of those people thought that they were diving to their death. In the aftermath of that, even though the plane turned around and landed safely in Honolulu, Charlie Marmar was hired to help sort out the stress injuries that were claimed in lawsuits, and how there might be some treatment

for those folks to help them get their lives back in order."

Recognized in the United States and Canada "as the primary person with an understanding of causation, treatment, and diagnosis of traumatic stress disorders. Dr. Marmar is currently the Chair of Psychiatry at the New York University Hospital. He received his baccalaureate and medical degree from the University of Manitoba, and he spent several years at the University Hospital in Toronto, where he basically became a psychiatrist. After that, a long stint in California, and now quite a long stint in New York. While all these things were going on, he found time to author literally dozens of books, chapters of books related generally to stress and hundreds of articles. He's going to talk to us today about advances in the diagnosis and treatment of traumatic stress disorders. It's my pleasure and my privilege to introduce to you Dr. Charlie Marmar."

After a gracious response, Marmar began by looking back. "Thinking back ▶

about the United 811 cases, I looked at the picture you had of the cargo dome, I recall the first person I interviewed in that case, who was a litigant, was a man who was sitting in the seat that was next to the door that was blown out. He told me the following story. He had been having a very pleasant conversation with the person to his right across the aisle. He put his coffee cup down, and when he looked up that person was gone, the row was gone, and there was an open hole in the sky, and all he could see was the moon out above Hawaii.”

“During the Civil War, PTSD was called soldier’s heart. There are many railroad crash victims, particularly in the nineteenth century in Europe, who developed what was believed to be a concussion, or a compression of their spine. This was thought to be the cause of their nightmares, flashbacks, and startle reactions. In World War I we had shell shock, which is interestingly very similar to the kind of combined traumatic stress and traumatic brain injury we see in modern Iraq and Afghanistan war fighters. It was really the Vietnam War more than any other single event that led to the final inclusion of PTSD in the diagnostic nomenclature of the American Psychiatric Association, which occurred in 1980.” Marmar was fortunate to be a part of the groups that developed the criteria for the inclusion of PTSD for the DSM-V, the American classification system for diagnostic criteria, and ICD 11, the international classification system.

“Traumatic stress is diagnosed when a person experiences an actual or a threatened death or serious injury or sexual violence.” Victims reexperience the trauma “in the form of disturbing thoughts and images and memories.” The international classification of PTSD describes its characteristics as “recurrent nightmares, flashbacks, avoidance of reminders because they’re very painful, being vigilant or on guard even in a safe situation, being jumpy and easily startled.” These symptoms “are conserved across 3,400 years of descriptions of PTSD. The descriptions have changed over time, but those are core features, and they are likely closest to the psychology and biology of traumatic stress. In addition, PTSD must also interfere with functioning. Yet most people are resilient in the face of horribly stressful events. The question is: who is more vulnerable?”

“QUIPS & QUOTES”

The physician offered an explanation from a millennium ago about the cause of this man’s, this war fighter’s traumatic stress. The explanation was the man is being afflicted by the spirit of the enemies he has vanquished in battle, a notion which is now called moral injury, and is very much like the current understanding of the guilt some people feel after battle experiences.

Dr. Marmar on the first case of post-traumatic stress disorder that was published 3,400 years ago about a Syrian war fighter from Mesopotamia

PTSD THROUGH THE CENTURIES

Stories of traumatic exposure are not new. They were told in the “very elegant writings by Homer about returning Trojan war fighters.” Indeed, “a recent publication revealed that the first case was published roughly 3,400 years ago. It was about a Syrian war fighter from Mesopotamia, ironically where modern-day Iraq is now. The features in that case were interesting. The symptoms included nightmares and flashbacks to combat experiences. I thought there was a wonderful quote in this publication that the patient who was being examined, this veteran says, ‘During the night he wakes up from a disturbing dream and he sees a living person, or a dead person on the battlefield. He’s terrified, and he turns around to wake up his bed partner, but like a man who has rancid oil in his mouth, his mouth is seized, so he is unable to cry out, a kind of a frozen state of terror and horror.’” A thousand years ago, a physician’s explanation would be “the man is being afflicted by the spirit of the enemies he has vanquished in battle, a notion which is now called moral injury, and is very much like a current understanding of the guilt some people feel after battle experiences.

“In the general population, women are more vulnerable, have twice the rate of traumatic stress compared to men” and women “are disproportionately targeted as victims of interpersonal violence.” Worldwide, the single most common cause of posttraumatic stress “is domestic violence suffered primarily by women. Being exposed to trauma when you’re a child makes you much more vulnerable to traumatic stress in adulthood, having a family or personal history of psychiatric illness, not being socially supported and unfortunately, having lower IQ and lower educational attainment, all other factors being equal, disadvantages people. Having multiple stressful events and those who at the time in their life is being threatened have a panic like reaction, or a profound sense of unreality are much more likely to develop PTSD.”

Forty years ago, the belief on stress disorders “was that traumatic events were relatively rare. The fact is a majority of adults in developed countries, including the United States, will experience a traumatic event at some time during their life. The rates are higher in developing countries. Of those who are exposed, roughly one in four will develop posttraumatic stress disorder, more frequently in women than men.

“A majority of those who develop it will recover in the first twelve to eighteen months. A minority will develop very chronic symptoms. One of the things that I’ve been very interested in is are the effects of traumatic stress limited to psychological factors, or do they in fact impact physical health? Now here’s some very interesting data. I conducted a study of 300,000 returning Iraq and Afghanistan veterans.” The question posed was, “among young men and women returning from the Iraq and Afghanistan wars, what are their

physical health risk factors compared to those with PTSD, particularly if they are also depressed, compared to those who returned to VA healthcare for other problems without mental health diagnoses?” The data revealed that PTSD has a profound effect on long-term physical health. “Tobacco use, high blood pressure, abnormal blood lipids, obesity, and diabetes are two to three times as common in returning war fighters with traumatic stress disorder and depression, compared to those without those disorders.”

The study examined data on 200,000 middle-aged, mostly Vietnam veterans and followed them for ten years beginning at middle age at a time when they were neurologically intact and had no signs of dementia. “We asked one question. If you had PTSD in your late fifties or early sixties, were you more likely to present with dementia in your late sixties, to early seventies? “The answer is twice as likely. The rates are 10 percent in those without PTSD, equivalent to the general population, and approximating 20 percent in those with PTSD. Chronic stress is a profound risk factor for dementia, even when you control for other risk factors like smoking, depression, and other risk factors.” In a recently published article in the *New England Journal of Medicine*, “we identify specific circuits in the human brain which are disrupted in posttraumatic stress disorder.”

The amygdala is a “fear center in the brain. Activation of the amygdala increases your heart rate, your breathing rate, you sweat, you experience fear, you have a fight/flight kind of reaction, or maybe freezing behaviors. It’s most activated when you believe you’re about to die. The most important regulatory center in the brain for this is the frontal cortex, the executive center of

the brain. Most of the new treatments we’re developing for post-traumatic stress disorder, attempt to engage and increase frontal cortical control to lower the level of amygdalar activity in the brain, and reduce fear and increase emotion regulation capacity.”

PREDICTORS OF PTSD

But what about the genetics of post-traumatic stress disorder? Is there a genetic predisposition? “The answer is yes, about 20 percent of the risk in men and 30 percent plus of the risk for PTSD in women is on a hereditary basis. Interestingly, that’s about the same as the genetic risk for depression, bipolar disorder, and schizophrenia. Genetics is a profoundly important risk factor, and we’re going to leverage that knowledge to develop new treatments as we go forward.”

Marmar recently completed the National Vietnam Veterans Longitudinal Study, “the only lifetime study of a representative sample of every man and every woman who experienced major war-time stress exposure” during the Vietnam War. “Our first wave was thirteen years after the war, in 1985. I’ve been following this cohort since. At that time, roughly one in three Vietnam veterans had developed PTSD at some time after the war, and half the men and about a third of the women still had it thirteen years later. Almost one million men and women had very significant PTSD symptoms thirteen years after the war. Who was at risk? We found at that time in 1985, Vietnam veterans who were high school dropouts. I want to say that of all the risk factors we have found for posttraumatic stress, dropping out of high school is one of the most profound risk factors. That could be a topic of another discussion by itself, but if you think about what leads a person to drop out of school, the social disadvantage, ▶



educational disadvantage, exposure to violence in the home, exposure to violence in the community, family history of mental disorders, early exposure to alcohol, drugs, and sexual violence, are all prominent among high school dropouts.”

Being a member of a minority group, in this case Hispanic ethnicity, was an independent risk. Other risk factors included “very high levels of combat exposure, being injured in the war zone, and killing enemy combatants, and being very disturbed at the time of the exposure. By the way, one of the things I found very interesting when I started my work on veterans health following combat exposure, two things were not well studied at all, the nature of the threat at the time of being in combat, and the human experience of being asked to take other lives in the defense of your country.

“Killing other enemy combatants, and especially if you ended up killing prisoners of war or civilians in the Vietnam War, is a very high-risk factor. What about mortality? We found that close to one in five Vietnam veterans had

died prematurely by the time we did our forty-year follow-up.” Major causes of death are cancer and heart disease.

“How is the Vietnam generation doing forty years after the war? Well, we found roughly 11 percent of Vietnam combat veterans alive today have very significant PTSD symptoms and twenty-six had developed PTSD at some time during the war. Three quarters were resilient, one quarter had very persistent symptoms at some point in time, and roughly 11 percent met reasonable criteria at the present time. More Vietnam veterans, despite all the efforts to provide care for them, have intensification of their PTSD symptoms than have had improvement. And these were the final risk factors forty years after the war, being younger when you entered military service, being a high school graduate as opposed to having higher levels of education, members of a minority group, and again being wounded in combat or killing increased the risk three to five times.”

TESTING, TREATING PTSD

A caution and “huge limitation of most psychiatric diagnoses, particu-

larly PTSD, is that we rely heavily on what patients or litigants tell us they are suffering. They say they have nightmares, flashbacks, and startled reactions but it’s difficult to know with a high level of certainty, particularly in the context of litigation and disability evaluation. So, my group and several others are working to develop an objective biological test for PTSD. We have under review now a seven-year Department of Defense funded study, in which we examine one million features in blood from a large group of Iraq and Afghanistan veterans. These are DNA related methylation, proteins in the blood, metabolites in the blood, routine clinical blood measures, and heart rate and other biological measures. And using all of these measures we were able to achieve a correct classification rate of 81 percent for PTSD. More work needs to be done, but this is roughly the same level of accuracy as the PSA test for prostate cancer, as it was introduced.

“Also, we’ve become very interested in human voice, it’s been known for a long time that human voice carries signals of emotional state. We recent-

ly have under review also an article which we think will be published in the next week or two, in which we examine 40,000 unique features in the human voice spectrum. I should emphasize this has nothing to do with the content of speech, or the words of speech, this is entirely to do with the physics of speech, the voice spectrum, and we were able to identify a subset of voice features that correctly classified 89 percent of cases and controls. We're really moving quickly towards a biological test for PTSD, using brain imaging, blood tests and voice quality."

In treating PTSD, a "psychological debriefing is often given to people, understandably, who come out of a severely traumatic life event, usually in the first hours afterwards. Just a cautionary note, one of the best randomized controlled studies was done at Oxford University Medical School, and it found that debriefing of people following motor traffic accidents, particularly if they were very upset afterwards, actually slowed the rate of recovery, rather than help people in recovery. And the answer may be that asking people to vividly describe their emotional reactions to sexual assault, or motor traffic accident, or just coming hours after walking out of an intense combat engagement, may be too overstimulating, may be too over-activating of the amygdala and other fear centers of the brain, and may interfere with our natural resilience and ability to process trauma."

Representative data from Australia shows that a two to five week cognitive behavioral therapy treatment given within three to four weeks after

the trauma, when people have regained their composure, can be very helpful and the results are sustained at six months. Medications can assist. Three have FDA approval for PTSD: Paxil, Zoloft, and Effexor. Also, "we have medications, mostly antidepressant-like drugs, that are effective, for PTSD.

"Let me conclude with some new directions in treatment. Because we are beginning to understand the molecular biology of PTSD and brain circuit changes in PTSD, we have identified a large number of new molecular and circuit targets. We will have new and effective treatments for PTSD. One treatment that is very exciting is cannabidiol, a non-addictive, non-psychoactive molecule from the cannabinoid plant. There are some new ideas about preventing PTSD. Rather than asking people to describe what happened to them in the hours after the event, instead give them some medication that can quickly cool down amygdalae activity like cortisol and oxytocin. There's some new interest even in psychedelic medications for the treatment of chronic PTSD, and we're developing new brain stimulation treatments.

"If we were to come back and meet again in ten years' time, I would be able to report to you that we have a biological test for post-traumatic stress disorder, as we do for heart disease and cancer, and that we can provide precise, individualized treatment that will help people suffering from PTSD. And maybe even give them something to prevent the development."

Lorna S. McClusky
Memphis, Tennessee

“ QUIPS & QUOTES ”

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Dr. Marmar

U.S. SUPREME COURT JUSTICE GORSUCH RECEIVES HONORARY FELLOWSHIP



ONE OF THE HIGHLIGHTS OF THE 2019 SPRING MEETING IN LA QUINTA, CALIFORNIA WAS THE INDUCTION OF **NEIL GORSUCH**, ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT, AS AN HONORARY FELLOW OF THE COLLEGE. FOLLOWING THE PRESENTATION OF HIS PLAQUE BY PRESIDENT **JEFFREY S. LEON, LSM**, THE COLLEGE'S NEW FELLOW WAS INTRODUCED AND INTERVIEWED BY PAST PRESIDENT – AND CHAIR OF THE BOARD OF TRUSTEES OF THE SUPREME COURT HISTORICAL SOCIETY – **GREGORY P. JOSEPH**.





Joseph began by observing that “it isn’t easy for a distinguished trial lawyer to sit mute for two days before a large audience.” He was speaking not of himself, but of Justice Gorsuch; Joseph noted that Justice Gorsuch had spent ten years in private practice as a trial lawyer at the Kellogg Hansen Firm, an outstanding trial firm in Washington, D.C., and “if he practiced five more years, he’d be with us as a Fellow and not an Honorary Fellow.”

Justice Gorsuch is a fourth-generation Coloradan, born and raised in Denver, although he attended high school in Washington because his mother had a series of important positions in the Reagan administration. Justice Gorsuch is an outdoors man, a skier, a hunter, a fisherman. He was a Phi Beta Kappa graduate of Columbia University, after which he attended Harvard Law School, where he graduated with honors and was a classmate of President Obama’s. He went on to earn a doctorate in the philosophy of law at Oxford; but more importantly, while he was at Oxford he met his bride, Louise, who was a champion equestrian on the Oxford riding team.

Justice Gorsuch clerked for Judge David B. Sentelle of the U.S. Court of Appeals for the District of Columbia, and then for Justices Byron R. White and Anthony M. Kennedy on the Supreme Court. In 2005 he became the principal deputy to the Associate Attorney General, the third highest ranking position in the Justice Department. In 2006, he was appointed to the Tenth Circuit, and in the course of his eleven years on that bench he sent ten of his clerks to become law clerks on the U.S. Supreme Court, an astounding number and a testament to the trust that the Justices had in his judgment and in the training that he gave those young people.

When he was nominated to the U.S. Supreme Court in 2017, Justice Gorsuch’s first call was to Merrick Garland, who had been nominated for that same seat by ▶

President Obama, but whose nomination was not taken up by the Senate. Fifteen years earlier, Justice Gorsuch – then a private attorney – had written a piece complaining about the shabby treatment that both Judge Garland and then to-be Judge Roberts had received by the Senate, both of whose confirmations to Courts of Appeal had been delayed for years.

Joseph noted that Justice Gorsuch now sits in what was the seat of Justice Scalia, before that Justice Rehnquist, before that John Marshall Harlan II, before that Robert Jackson, before that Charles Evans Hughes; Joseph commented “it is a highly, highly distinguished place for anyone to be, and we have an honoree who is qualified by character, by intellect and training, and we’re very fortunate and honored that he’s agreed to accept honorary fellowship in this college.”

Justice Gorsuch began by saying, “I’m delighted to be here, Greg, among so many friends and colleagues from wars past. I’ve been a trial lawyer for quite a while, and I admire this organization very much, and I’ve done a lot of work with it over the years. I think very highly of what you’re doing on civil justice reform, with IAALS [Institute for the Advancement of the American Legal System], among others, what you’re doing in criminal justice reform, these are very important things. There’s only so much judges can do or should do. This is government by we the people, and if people like you don’t stand up and worry about things like access to justice, nobody else is going to. I admire you for doing that. More than that I admire the professionalism and the comradery that this organization displays. Plaintiffs and defendants, Republicans and Democrats and ev-

everything else, we need more places like this where we can come together, recognize that we are people first, persons behind our positions, and spend time with one another, recognize that everybody in this room and everybody we deal with and disagree with on a daily basis, loves this country every bit as much as we do. So, I admire this organization and I thank you for doing what you’re doing and say keep it up.”

After recounting how he ended up with possession of Leroy the Elk, a trophy bagged by Justice Scalia, Justice Gorsuch turned serious, describing the first opinion the Court issued after Justice Scalia passed: a statutory interpretation case involving a debate over fishing rights. Justice Gorsuch explained that out of 100 million cases filed every year, the Supreme Court hears seventy cases. “The only cases we hear are the ones where there’s endemic disagreement in the lower Courts. Not a little bit of a disagreement. A lot of disagreement.” And yet, despite that lower court disagreement, the Supreme Court is “unanimous about 40 percent of the time. Our five-fours that everybody likes to talk about, it’s about 25 percent of the docket.”

Justice Gorsuch noted that the first three words of the Constitution are “We the people,” not “We the states,” and certainly not “We the judges.” “Our Founders didn’t want to live under any set of elites, they wanted to rule themselves. And judges have an important role to play. Our role is to make sure that law on the page is given effect to every person who comes to court, regardless of their popularity. The least amongst us, the most vulnerable, get the rights on the page along with the most powerful. But there’s a lot left up for the legislature to do. There are a lot

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Justice Gorsuch

of stupid laws. You know them, you see them every day. So do I, but there are a lot of stupid but constitutional laws. And the judge's job isn't to rewrite those stupid but constitutional laws to make them less stupid, in his or her view. It's up to you, it's up to the people to make sure they elect representatives who pass wise laws."

Joseph reminded Justice Gorsuch that he has observed that a legislator may call upon his or her own moral views, but a judge should not do that. Justice Gorsuch agreed. "A judge who likes every result he or she reaches is very likely a bad judge. And I really believe that. There's a reason why Lady Justice has a blindfold. You don't want me ruling the country the way I would like it ruled. Who would set up a constitutional republic where five old people can decide the fate of 330 million Americans? That wouldn't make sense. But it would make sense to give those people, those independent, politically unaccountable people, the responsibility of making sure that the law is applied neutrally and fairly to all of us, including the least amongst us. That does make sense. And that basic separation of powers idea I think is vital to our freedom."

Joseph asked the Justice to share his thoughts on access to justice.

"We used to have trials without discovery. Now we have discovery without trials. I'd swap, I'd go back the other way, if I had to choose between the two. I don't, for the life of me, understand why in our criminal justice system, the

prosecutor is expected to turn over the good, the bad, and the ugly, and here we get to hide things we don't like to produce if they're not asked for using the magic words.

"I don't know why it takes so long to get to trial. A mandatory, firm, six months, year to trial. I think any case can be tried in that period of time. I think it's people like you who can make those sorts of things happen. I know there's a lot of experiments in the state court systems along these lines, and I know you've been working with IAALS on these things. I just encourage you to continue to do that. I am very worried that very few people could afford access to justice in this country."

Joseph took the Justice through his experience clerking for two separate Justices, Justice White and Justice Kennedy. Justice Gorsuch remembered both with joy, but described Justice White as his "childhood hero, growing up in Colorado. Largely forgotten today, I know, but folks in this room remember. First in his class at the University of Colorado, while he also led college rushing. Took the team to the Cotton Bowl on his back. Rhodes Scholar at Oxford. Highest paid NFL football player of his day. Led the NFL in rushing, twice. Yale Law School, first in his class. Supreme Court law clerk."

But perhaps more important, Justice Gorsuch recalled vividly walking with Justice White along the basement of the Supreme Court where there were portraits of the 114 people who had served on the Supreme Court. White

grabbed Gorsuch's arm and said, 'How many can you actually name?' And Gorsuch thought, 'There are only 114. I should know them all, right? I probably knew about half. I was torn between telling the truth and embarrassing myself or fudging it.' Well, with Justice White, you never fudged it. I said, 'About half.' He grunted and he said, 'Yeah, me too.'

"Then he said something that really shocked me. He said, 'That's as it should be. That's what's going to happen to me soon enough.' I couldn't get my head around that. I thought, 'Nobody will forget Byron White.' I mean, what a life. Right? He's also a war hero, twice. The Bronze Star in World War II. I mean, I couldn't imagine anybody would forget Byron White.

"Now, I walk past his portrait in that hallway, and I see tourists every day wondering who the heck that is. I realize the wisdom of what White was telling me. That the judge's role in our Constitutional Republic is to keep the lights on. To make sure the rule of law is made real with the help of the lawyers like you in this room, and that we should be forgotten pretty quickly afterwards. Because it's not about us, it's about that Constitution."

Maybe someday he too will be forgotten, but not yet, not for a long time. The College is honored to have Neil Gorsuch as a Fellow.

Robert L. Byman
Chicago, Illinois



INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT BARTHOLOMEW J. DALTON



HIS LUNCHEON IS, IN PART, HOPEFULLY GOING TO BE INFORMATIONAL AND IN SOME SMALL WAY I HOPE A LITTLE INSPIRATIONAL. THIS LUNCHEON ATTEMPTS TO ANSWER THE TWO QUESTIONS ABOUT INDUCTION INTO AN ORGANIZATION WHICH YOU COULD NOT AND DID NOT APPLY. HOW DID YOU GET HERE AND WHY DID YOU GET HERE?

I will tell you this is a special time for those of us who love the College, our Past Presidents and the Regents here because we are in the presence of our new Fellows, Fellows who will continue the important mission of the College. The important missions of the College are the protection and promotion of the rule of law, judicial independence, the education of the next generation of trial lawyers and promoting access to justice that we heard about this morning.

That's what we're about. We are not an honorary association. We're an active organization and I want you to be active with us. The people here who love the College care about it. Every member of the Supreme Courts of Canada and the U.S. not only are Honorary Fellows, but they come here and speak like they spoke to you today. You heard, for example, this morning what Justice Gorsuch thinks about the College. That's shared by all the justices in

Canada and the U.S. Supreme Court. When I was President, I was very, very lucky to be able to join these Honorary Fellows in various programs and they constantly talk about how impressed they are with the College.

If you look at the history of the College, the Past Presidents of the College have been without question the greatest lawyers of their generation. Justice Lewis Powell, before he became a justice, was the President of this College as was Leon Silverman, the great New York lawyer. Leon Jaworski who's gotten a lot of press lately [for his role as Watergate independent counsel]. And of course, former Attorney General and Judge Griffin Bell. The best lawyers of their time. And me, which clearly proves the adage that not all presidents are Lincoln. Every Fellow has a story about when they received the call to say they were in the College. In the great law firms in this country, the Williams & Connolly's, the Jenner &

Block's, the King & Spalding's, those great firms. A celebration has been had because of how important this is.

My experience was a little different. At the time I was admitted to the College, I had two associates and three paralegals. When my Regent called me to advise me that I was just offered induction into the American College of Trial Lawyers, I said, "American College of what? I'm not sure I understand." The Regent, who's become a good friend, said, "I'm just going to send you a list of the other Fellows in your state that are in the College." I ask you all, you get your blue books. Look at the other Fellows who are already in the College in your state or province. Because when I looked at mine, that is when I got a little emotional. These were the very best lawyers in my community. All of a sudden, I was just told that I was with them and that felt pretty good that I was actually with the best.

Now, you know this is a special time not only for the people who love the College, but this is a special time also for the spouses, partners, and special friends who are here today. We welcome you.

The lawyers who you are with today share something that all Fellows share. We do not suffer from poor self-image. Nobody knows that better than you do. But you also know that our profession is a hard one. We try to help people when they're at their worst. We take on significant responsibilities and you do it so well or you wouldn't be sitting here. We do that and it has an effect. It has an effect on relationships. It has an effect on families and can even have an effect on our health. But what a wonderful thing we're being given. How wonderful it is to be able to practice in a profession where you can help people and that you love? That's who you are.

I would say that when I first came to a meeting, the thing that struck me most was that this was clearly not a bar association meeting. You walk around a bar association meeting and you hear people whining about practicing law. "Oh, what I really want to be is an author or an artist or a sculptor." Let me just tell you, we have Fellows who are artists, who are writers, who are sculptors and they also happen to be great trial lawyers who love what they do. But more importantly, as I speak for a second to the spouses and the partners and the special friends, we want to welcome you. The most interesting people you will meet in your life, you'll meet at these meetings. Frequently they're not even Fellows. They're you.

This meeting is, first of all, to thank you because the lawyer you are with would not be here without your support. And yes, sometimes your tolerance. My wife

would say to me, when I'm in trial that I am like a ghost walking through the house. She's probably right about that. I want to thank you and welcome you and we look forward to meeting with you.

One of our Past Presidents has talked about the standards of the College are like a three-legged stool. First, excellence in trial law. That starts it. You have to be excellent. This is not an organization of second chairs. This is not an organization of good. Good is good but good does not live here. You have to be excellent, among the very best.

Second, your ethics have to be beyond reproach. If there are ethical issues, you're not sitting here. Third, professionalism or what we call collegiality. We have to want to sit here with you. Jerks need not apply. The great philosopher Eric Hoffer said once that, "Rudeness is a weaker person's impersonation or imitation of strength." You are not rude. You are the kind of lawyer who can win and usually does but can lose. We are sometimes tested the most when we lose. Can we lose with the same grace with which we win? You can. We know that of you.

You ran a gauntlet that you didn't even know you were running. And you showed yourself to be among the very best, to have ethics that are irreproachable and to be collegial in what you do. You are now and going to be tonight our honored Fellows and we are so happy to have you here.

But, where do we go from here? It is our hope that you do not just go home, hang the plaque on the wall, and feel good about it. We want you to do that, but we want you to do more. This College is an active College. You heard Justice Gorsuch talk about the things that we do and you've heard other people

talk about the things we do. The rule of law, judicial independence, educating younger lawyers, educating public service lawyers. We do it all over the country and we support all sorts of efforts to increase access to justice. We have committees that handle all these things and I ask you to get involved with those committees.

You came to us as great lawyers.

But I ask you to remember the words of the great twentieth century philosopher Earl Weaver who was manager of the Baltimore Orioles. When he said, "It's what you learn after thinking you know everything that counts." You know a lot, but I can tell you one thing for sure. The rule of law right now is under attack. That's not a political statement and it's not a temporal statement either because the rule of law has always been under attack. When Plutarch wrote about the rise and fall of the Roman Empire, he talked about Marc Antony who wanted a dictatorship and wanted to do away with the Republic. What was the first order that Marc Antony issued in order to crush the Republic? That was to murder the greatest advocate of the Republic, Cicero.

Great advocates were needed then, and great advocates have always been needed and they're needed now. Those great advocates are you. No time like the present. Churchill talked about it. He said, "The price of greatness is responsibility." I've just handed you something. I hope you take it on, but for now I wish you congratulations. It's a great honor to be in any room where the greatest trial lawyers in America and Canada are sitting. In the words of our founder, "Long and happy may be our years together." Thank you. ■

INDUCTEE RESPONDER

CAROLYN J. FAIRLESS RESPONDS

ON BEHALF OF NEWLY

INDUCTED FELLOWS



IT'S MY HONOR TO BE INVITED TO JOIN THE COLLEGE, AND ON BEHALF OF ALL OF THE INDUCTEES, I'M HUMBLLED TO PROVIDE THEIR RESPONSE.

Each Fellow, and each inductee is very different. We come from different states and different countries. We have different practices, whether they're civil, or criminal, whether we're in private practice, or in the public sector. We all have our own unique background, and experiences, the things that make us us, but we all share a common aspiration, and that is to elevate the ethics of the profession, and the ethics of trial practice, and to promote the administration of justice.

It's a very high standard both on paper, and in practice. Every Fellow I have met in my entire career has been without exception, a trial lawyer of the highest caliber, and the highest professional standards.

It's not easy to pass the bar, and I congratulate each, and every one of my fellow inductees for having made it here. It was surreal when I got out of trial and got that call asking me to join this fellowship, and even more surreal when I was asked to give this response.

First, of course, is the fact that I'm used to speaking to no more than twelve people in a jury box, rather than a room full of hundreds of Fellows, inductees,





and of course our very understanding and forgiving spouses and significant others, and by any metric, the fact that I'm standing here at all is pretty amazing, because I'm not the kind of person who you would think would be a trial lawyer, much less somebody standing on this stage.

A BEGINNING THAT STARTED IN SAIGON

Growing up, I had no idea what it was that lawyers actually did. I never even met a lawyer until I went to law school. The fact that I'm standing here is less a testament to anything I have done, and

more a testament to what many people have done for me, including many people in this room tonight. It starts with my parents who are here with me tonight. My father grew up on a small farm in Oklahoma, and he ended up working as an engineer in Saigon in the 1960's where he met, and married my mother, which made no one happy.

Her family was not happy she was marrying an American, and his family was not happy that he was marrying a Vietnamese woman. They ignored the naysayers, they had two children in Vietnam, and then they moved back to the United States where they had

one more. Life was anything but easy for them at first.

My father went back to Saigon in April of 1975, because he heard that things were getting really bad and he went back to get my grandmother and one of my uncles out of the country. He had gotten down to the Philippines when they received the news that Saigon had fallen. My grandmother and my uncle had nothing left in the world, other than what they could fit into their suitcases.

They moved into my parent's house, not a big house, and my uncle's stay was temporary, but my grandmother's



turned out to be much more permanent. She lived with us for the rest of her life. When I think of courage, I think of my father. After all, how many people do you know who would go into a war zone to get their mother-in-law and then let her come live with him?

My parents didn't have much money when they started out, and what little they had, they sent back to Vietnam to help my other uncle who had been imprisoned in a re-education camp. They drove a hand-me-down car that a relative had given them, and we kids wore hand-me-down clothes, or clothes that my mother would make for us. She even made clothes for my Barbie dolls.

My mother had to adopt to a new language and a new culture. She got a job working as a checkout woman at the grocery store to help make ends meet, but she worked incredibly hard. She bought a business that she runs to this day. She's barely missed a day's work, and she has no plans to stop anytime soon, she's the most industrious person I know.

My father worked his way up from an entry level engineer at the Corps of Engineers, to head up one of their largest engineering divisions. Even though he's now retired from the government, he's still working, but this time he has a much harder job. He's working for my mother. My parents showed me that I could truly do anything if I had the courage to do it, or at least try it, and if I was willing to work hard at it. Thanks Mom and Dad.

I first tried my hand at computer programming, and though I loved the problem solving, I hated the solitude, so I ended up moving to Colorado to attend law school, even though I had only the vaguest idea of what I would possibly do as a lawyer. It would have been very easy for someone like me to get derailed from a legal career. After all, I knew no one, I had no connections, I didn't even golf.

There was no one in the world who could make a phone call, or exert any influence to open doors in the legal community for me, but numerous people over the years have lifted me up, and have helped me become a trial lawyer, and even more importantly have helped me become the type of trial lawyer who I hope will be a credit to the College.

First, many of us, and you know who you are, couldn't do it without support at home. My husband's a brilliant lawyer, but he's a transactional lawyer. The idea of doing trial work is anathema to him. He had to take a trial advocacy class pass fail as a condition of graduation from law school, and he had to give an opening statement. So, he researched the rules, and when it came time for him to give his opening, he stood up, and he said, 'I waive opening'.

He doesn't understand why I love what I do, but he supports me, and he makes it possible for me to do what I do. Second, I landed at a litigation boutique that as luck would have, was helmed by several members of the College. Hugh Gottschalk, Jack Trigg, Mike O'Donnell, Mal Wheeler, and others. I watched everything they did usually in awe.

WHAT YOU DO MAKES A DIFFERENCE

I still remember one of the first depositions I attended with Mike O'Donnell, where the opposing lawyer literally had his head on the table in defeat, because

the questioning was going so poorly for his witness. The Fellows I worked under taught me everything important that I know about how to practice law, and how to do it the right way.

Sharp elbows had no business in their practice. They had integrity, and they were selfless in their service to their clients. To the casual observer, I may seem to have little in common with them. We look very different, our backgrounds are very different, but it turns out that we have a lot in common once you get past exterior appearances.

We shared a tremendous desire to serve our clients and our system of justice. They encouraged me, they went out of their way to give me opportunities, and to mentor and promote me. They made my success, their success. Over time, I started to represent lawyers, and law firms in professional negligence cases, and I realize even more how much our service to our clients matters, and how much we affect people's lives.

I'll never forget one of the earliest legal malpractice cases I worked on as a young lawyer. It was an extraordinarily hard fought case where the plaintiff went to prison and claimed that she had lost everything, even her liberty, because the lawyers for the company she worked for had failed to protect her against claims that the company was engaged in fraud.

I represented one of the lawyers and his law firm who had been sued. The case went on for two years. There were numerous days of depositions that my clients had to go through, and numerous expert reports accusing them of committing malpractice. Finally, just two weeks before we were set to pick a jury, and start trial, we won summary judgment dismissing the entire case.

At first, I was let down. I had a great trial presentation, and I knew we were going to win. In my bones, I knew we were going to win, and I was disappointed that I wasn't going to have the chance to try the case. After my disappointment passed, I was elated. After all, we got a complete dismissal, who can argue with that? It turns out I was wrong on both points, I was missing the mark, because winning isn't necessarily synonymous with justice.

The case went on for two more years after the plaintiff appealed, and even though we won on appeal, it didn't mean that justice was served in that case. I remember during the time that the case was on appeal, my client called me up to let me know that he was retiring from the practice of law. He and I had worked so closely together that I could tell something was wrong just by talking to him.

I asked him if the case had anything to do with his retirement, and he paused, and he said, 'Yes, it did', because just to be accused of committing malpractice was devastating to him, and he lost his passion for practicing law as a result. That conversation has stuck with me, and it stuck with me, because even in civil litigation, it's not necessarily about dollars and cents.

No matter what type of litigation you practice, there are people behind the names on the caption, people whose lives are profoundly affected by what we do. We are truly privileged that clients trust us with the things that matter most to them, and we should never forget that trust.

Jane Goodall said, 'You cannot get through a single day without having an impact on the world around you. What you do makes a difference, and you

have to decide what kind of difference you are going to make.' I think that's exactly right.

Our ability to influence is tremendous. We make a difference every day in our arguments to judges and to juries and interactions with counsel on the other side, with our clients, and with our colleagues. What kind of difference are you going to make? I'm standing here today, because of the people who made a difference for me. Mine is just one story from our inductee class, and I'm guessing that every other inductee could get up here and tell you something similar.

The College was built on making a difference. I read with great interest the College's mission statement, and it talks about not just maintaining, but improving the standards of trial practice, professionalism, ethics, and the administration of justice. President Leon has formed a committee to explore mentoring, and our responsibility as successful lawyers to pay it forward to those who come after us, just the way others have paved the way for each of you in this room here tonight.

As Fellows in the College, you in this room are in a position to make an enormous difference in the lives of many. I and my fellow inductees are proud to become affiliated with this College. On behalf of the inductees, we recognize the trust and also the responsibility that you have placed in us. We all strive to embody the ideals of the College and to make you as proud of us as we are of this organization.

Our class looks forward to joining you for many years of fellowship, and the spirit of collegiality which makes the College so special. Thank you very much for your very warm welcome to all of us. ■



73 NEW FELLOWS INDUCTED AT THE 2019 SPRING MEETING IN LA QUINTA, CALIFORNIA

CALIFORNIA - NORTHERN

Sacramento
Carol Wieckowski
Evans, Wieckowski,
Ward & Scofield

San Francisco
Daralyn J. Durie
Durie Tangri

CALIFORNIA - SOUTHERN

Los Angeles
Suzelle M. Smith
Howarth & Smith

Woodland Hills
Dale K. Galipo
Law Offices of Dale K. Galipo

COLORADO

Denver
Carolyn J. Fairless
Wheeler Trigg O'Donnell LLP

Eric R. Olson
Office of the Attorney General

Jon F. Sands
Sweetbaum Sands
Anderson P.C.

DELAWARE

Wilmington
Gregory V. Varallo
Richards, Layton &
Finger, PA

DISTRICT OF COLUMBIA

Washington
Heather Pinckney
Harden & Pinckney PLLC
FLORIDA

Coral Gables
Michael A. Haggard
The Haggard Law Firm, P.A.

Fort Lauderdale
Roberta G. Stanley
Brinkley Morgan

Orlando
Richard B. Schwamm
Haliczer Pettis &
Schwamm, P.A.

Tampa
Dennis P. Waggoner
Hill Ward Henderson, P.A.

IDAHO

Boise
Scott McKay
Nevin Benjamin
McKay & Bartlett LLP

ILLINOIS - UPSTATE

Chicago
John F. Gibbons
Greenberg Traurig, LLP

Evanston
Julie B. Porter
Salvatore Prescott & Porter

INDIANA

Fort Wayne
Tina L. Nommay
US Attorney's Office

Indianapolis
Ellen E. Boshkoff
Faegre Baker Daniels

Valparaiso
Steven L. Langer
Langer & Langer

IOWA

Cedar Rapids
Tim Semelroth
RHS Legal

Des Moines
Tom L. Drew
Drew Law Firm, PC

Janice M. Thomas
Bradshaw, Fowler, Proctor
& Fairgrave, P.C.

Mason City
Joel Yunek
Yunek Law Firm

KANSAS

Liberal
Daniel H. Diepenbrock
Law Offices of Daniel H.
Diepenbrock, P.A.

KENTUCKY

Crestview Hills
David V. Kramer
Dressman Benzinger
LaVelle, psc

MAINE

Portland
John J. Aromando
Pierce Atwood LLP

David Beneman
Federal Public Defender,
District of Maine

MARYLAND

Baltimore
Charles I. Joseph
Baxter, Baker, Sidle,
Conn & Jones, P.A.

Ty Kelly Cronin
Baker Donelson Bearman
Caldwell & Berkowitz, PC

Warren N. Weaver
Whiteford, Taylor &
Preston, LLP

Lutherville
Joseph Murtha
Murtha Psoras Lanasa LLC

Rockville
Theresa M. Chernosky
Office of the Public
Defender, Maryland

MARYLAND (Continued)

Donna E. McBride
Miller, Miller & Canby,
Chartered

Towson
Garret P. Glennon
Baltimore County State's
Attorney's Office

MISSOURI

Kansas City
BK Christopher
Horn Aylward & Bandy, LLC

Saint Louis
Don M. Downing
Gray, Ritter & Graham, P.C.

Amy Collignon Gunn
The Simon Law Firm, P.C.

MONTANA

Missoula
Douglas A. Buxbaum
Buxbaum Daue PLLC

NEW HAMPSHIRE

Littleton
Gregory M. Eaton
Primmer Piper
Eggleston & Cramer PC

Manchester
Jennifer L. Parent
McLane Middleton, P.A.



NEW JERSEY

Haddon Heights
Rocco C. Cipparone, Jr.
 Rocco C. Cipparone, Jr.
 Law Offices

Springfield
Gregory B. Noble
 O'Connor, Parsons, Lane &
 Noble, L.L.C.

NEW YORK - DOWNSTATE

New York
Hector Gonzalez
 Dechert LLP

NEW YORK - UPSTATE

Buffalo
Donald P. Chiari
 Brown Chiari LLP

Kevin A. Ricotta
 Ricotta Mattrey Callocchia
 Markel & Cassert

Rochester
Dennis Gruttadaro
 Brown, Gruttadaro &
 Prato, LLC

OHIO

Cleveland
William A. Meadows
 Reminger Co., L.P.A.

Columbus
Frederick D. Benton, Jr.
 Frederick D. Benton, Jr.,
 L.P.A.

Warren
Martin F. White
 Martin F. White Co, L.P.A.

PENNSYLVANIA

Philadelphia
Michael J. Engle
 Stradley Ronon Stevens &
 Young, LLP

Michael L. Turner
 Marshall, Dennehey, Warner,
 Coleman & Goggin

Robert A. Zauzmer
 U.S. Attorney's Office

SOUTH CAROLINA

Columbia
Richard H. Willis
 Bowman and Brooke LLP

Mount Pleasant
Frank M. Cisa
 Cisa & Dodds, LLP

TENNESSEE

Knoxville
Mark E. Stephens
 Knoxville County Public
 Defender's Office

Nashville
Joseph F. Welborn III
 Butler Snow LLP

TEXAS

Austin
Missy K. Atwood
 Germer, PLLC

Karen C. Burgess
 Burgess Law PC

Casey L. Dobson
 Scott, Douglass &
 McConnico, L.L.P.

Dallas
Quentin D. Brogdon
 Crain Lewis Brogdon LLP

Thomas M. Melsheimer
 Winston & Strawn LLP

Andrew L. Payne
 Payne Mitchell Law Group

San Antonio
William H. Ford
 Ford Murray PLLC

WASHINGTON

Seattle
Robert Flenbaugh II
 Law Offices of Robert
 Flenbaugh II PC

Roy A. Umlauf
 Forsberg & Umlauf, P.S.

Tacoma
Philip M. deMaine
 Johnson, Graffe, Keay, Moniz
 & Wick, LLP

WEST VIRGINIA

Huntington
Melissa Foster Bird
 Nelson Mullins Riley &
 Scarborough, L.L.P.

WISCONSIN

Eau Claire
Steven V. Schlitz
 Weld Riley, S.C.

Madison
Ann C. Emmerich
 Bell, Moore & Richter, S.C.

Amy F. Scholl
 Coyne, Schultz, Becker
 & Bauer, S.C.

CANADA

BRITISH COLUMBIA

Vancouver
Tracey M. Cohen, Q.C.
 Fasken Martineau
 DuMoulin LLP

QUÉBEC

Montréal
Pierre Y. Lefebvre
 Langlois Lawyers

Jean Saint-Onge, Ad.E.
 Borden Ladner Gervais LLP

Maria S. Davila
Tucson, Arizona
 was inducted by President
 Jeffrey S. Leon, LSM on
 March, 19, 2019 in Tucson.

HEROES AMONG US

B

IBB ALLEN

On March 30, 1867, Secretary of State William H. Seward inked the deal for the purchase of Alaska and the Aleutian Islands. Although the acquisition was sarcastically referred to as “Seward’s Folly,” the \$7,200,000 purchase price turned out to be one of the best buys in United States history. The chain of volcanic islands extends westward for 1,200 miles and the small island of Attu is the westernmost. It is only 2,027 miles from Japan while Hawaii is 4,108 miles away. The Japanese did not overlook that strategic fact. Six months after the sneak attack on Pearl Harbor, they occupied Attu and the nearby island of Kiska.

The establishment of Japanese garrisons on those islands struck a hard blow to the morale of the American military. By March 1943, the Navy successfully blockaded the islands, seriously limiting supplies to the Japanese forces. A major sea battle ensued—the Battle of the Komandorski Islands—which was won by the United States. That set the stage for the invasion of Attu in May 1943. Code named “Operation Land Grab,” it was the only World War II battle fought on American soil. It also marked the entry of a twenty-two-year-old Alabama boy into combat. **Bibb**

Allen, who became a Fellow in 1968, like many young men of the greatest generation, left college after completing only two years. He joined the Army Air Corps and became a fighter pilot, flying the impressive P-47 Thunderbolt.

The P-47 was designed to battle the Luftwaffe (aerial warfare branch of German Wehrmacht military forces) in the European theatre. It was a fast, high altitude fighter accurately nicknamed “The Jug,” short for juggernaut. Its thick body fuselage gave it the appearance of a flying tank. When Bibb entered his large, armored cockpit, he had at his command the largest and most powerful single engine fighter in World War II. It possessed a mighty arsenal: eight .50 caliber machine guns in ground support mode, four on each wing. Fully loaded, Bibb’s P-47 had 3,400 rounds and could unleash a thirty-second burst that shredded ground targets. When loaded for bombing missions, Bibb could deliver approximately half the load of a B-17 Flying Fortress.

Throughout the Land Grab campaign, Bibb provided ground support for the 12,500 invading soldiers. While he and his squadron, aided by Canadian planes, kept the skies clear of Japanese fighters and bombers, the troops engaged the enemy in vicious ground





fighting under horrible weather conditions. While Bibb was protecting the troops from the air, they had to face one of the largest banzai charges of the Pacific theater. By the end of May 1943, Attu was retaken. Three months later, 35,000 American soldiers landed on Kiska, only to find that the Japanese garrison had been abandoned three weeks earlier; fog had covered their withdrawal. Bibb was reassigned to the fight in Europe.

On two occasions while on missions over France, the P-47's ability to take a beating saved Bibb's life. Badly damaged, Bibb coaxed his plane across the English Channel. However, he believed he could not successfully land and survive. He decided to bail out. Later, he provided air cover for the D-Day invasion. At one point over France, Bibb's plane came under intense ground fire and he crash landed. He was listed as "missing in action and presumed deceased." However, he was fortunate to be able to evade the enemy until he reached Canadian troops and safety.

Bibb was supposed to fly 100 combat missions but was assigned two more. Having survived the first 100, Bibb did worry more during the last two. Out of the thirty-two members of his squadron, only Bibb and fourteen oth-

ers survived. When he finally made his last landing, Bibb had a war record to be proud of: the Distinguished Flying Cross, the Belgian Croix de Guerre, and seven bronze stars. His survival of the war led him to believe that "every day is a gift."

After the war, Bibb completed his college education at Auburn. He graduated from the University of Alabama Law School where he served on the Law Review and was awarded the Order of the Coif. His accomplishments as a lawyer were numerous. He served as president of his local bar, the Alabama Bar Association, and the Alabama Defense Lawyers Association. He authored the "Alabama Insurance Liability Handbook," a 700-page treatise that is a fixture in many law offices. He taught for thirty years at Birmingham Law School.

Bibb Allen received the Birmingham Bar Association Lifetime Achievement Award in 1972 at the age of 70. He finished his career at the firm of Christian & Small. He left us in 2007 at age 85. He is sorely missed.

David G. Hanrahan
Boston, Massachusetts



WHEN THERE WERE NO FEMALE TRIAL LAWYERS AS MENTORS – MALE TRAILBLAZERS

SYLVIA WALBOLT

IN RECENTLY READING ABOUT THE EXPERIENCES OF HONORARY FELLOW U.S. SUPREME COURT JUSTICE RUTH BADER GINSBURG AND THE LATE JUDGE PATRICIA WALD AFTER THEY GRADUATED AT THE TOP OF THEIR CLASS AT TOP LAW SCHOOLS BUT FOUND THE BIG LAW FIRMS HAD NO INTEREST IN THEM, I WAS STRUCK BY THE INVALUABLE HELP BOTH OF THEM GOT FROM MALE JUDGES WHO STEADFASTLY ADVOCATED FOR THEM AND ADVANCED THEIR CAREERS. AND THIS BROUGHT BACK VERY OLD MEMORIES OF MY OWN LUCKY EXPERIENCES IN ENTERING THE PRACTICE OF LAW IN 1963 WITH THE TWELVE-MAN LAW FIRM OF CARLTON FIELDS, THEN CONSIDERED TO BE A “BIG” LAW FIRM IN FLORIDA.

At that time, Carlton Fields always interviewed the man who graduated first in his class from the University of Florida College of Law. In 1963, they learned this number one graduate was a woman. To its credit, the firm decided to interview me anyway. Then they hired me. Then they decided I would be the junior member of the firm’s trial department.

When I started practicing law as the firm’s first ever woman lawyer, no one said the word “mentor” to me or affirmatively offered to mentor me in the strange new world I was entering. But three Fellows of the College in my law firm effectively served as wonderful mentors for me over those early years, to my great and everlasting benefit.



Broadus Livingston and Walbolt



Reece Smith and Walbolt

Both **Tom Clark**, who later was appointed to the Eleventh Circuit, and **Broadus Livingston** took me under their wing. They gave me numerous opportunities to appear in court, as well as to work with clients and lawyers in other firms. But most of all, **Reece Smith**, who ultimately served as President of the American Bar Association, mentored me and supported my career from the start and even when I wanted to work part-time (unheard of in those days in a big Florida law firm) to accommodate the needs of my growing family.

Reece had an amazing variety of significant cases, and he quickly made me his “second chair” on all of them. We were constantly in state and federal courts, both trial and appellate. I became his “lead” on appellate matters and began to make the arguments, usually being the only woman in the courtroom other than the court reporter. While I still was an associate, he was hired on a major antitrust case and handed it over to me to handle when he was unexpectedly called upon to serve two terms as President of The Florida Bar.

While my trial and appellate work was exhilarating, far more important in the long run was the example Reece set by participating in bar work and providing pro bono services. He encouraged me to do so as well, not because it would be a good marketing tool or opportunity to “network,” but rather because he fervently believed it was the right thing for every lawyer granted the privilege to practice law to do. Nothing has brought me more satisfaction over the years than these experiences and, now, following in Reece’s footsteps, I mentor all my young lawyers to seize those same opportunities.

I also had male mentors from other law firms – again, all Fellows of the College. I learned, years after the fact, that **Chessterfield Smith**, another ABA President, had nominated me for election to the College, completely on his own, without talking to any of the Fellows in my firm. This was back in the day when my Certificate of Admission read that “he possesses the necessary experience, skill and integrity to qualify for this Fellowship,” and it was only one of the many ways he helped my career.

So, although there were no women trial lawyers or judges around in Florida in those early years to serve as role models for me, I was lucky that many men stepped forward to help me. As I reflected on the importance to me of my own mentors back in the day, I wondered if other female Fellows of the

College had had the same good luck with mentors as I did. They did indeed, and here are some of their stories.

EMILY NICKLIN

Reading Sylvia Walbolt’s recollections of her experience with senior male mentors made me think back to the early years of my career. Like Sylvia, I benefitted from the training and opportunities provided by several Fellows of the College.

When I joined Kirkland & Ellis’ Chicago office in late 1979, there were a few other junior women lawyers at the Firm, so although I was a rare bird, I was not a new species. In fact, one of those junior women, Mary Allen, got me assigned upon my arrival to an antitrust case shortly set for jury trial in St. Louis. The trial team was led by **Fred Bartlit**, a Fellow of the College with a distinctive personality and approach, matched by a formidable physical presence: tall, broad-shouldered, with a deep, authoritative voice. I would spend the next few years working mostly for him, to my immeasurable benefit.

I realized later that Fred’s approach to trial was rather like Admiral Lord Nelson’s approach to naval battle: first, relentless, practical preparation; then, the command: “Follow me—and go straight at ‘em.” Fred taught me that clear-eyed fact investigation was critical to courtroom success. Fred got me out of the office and into the field, digging up the facts, interviewing clients and third parties, taking depositions and witness statements, and using all the tools trial lawyers have to gather the evidence.

He taught me to think broadly about trials as the culmination of complex human stories, and to learn every detail of the story before presenting it in a courtroom. He also taught me to tell that story in a straightforward, plain way. He joked: “You spent years learning lots of legal language. Now you’ll spend years unlearning it. Tell your story as if you were explaining something important to your Dad.” This approach became deeply ingrained in me. It is the way I have practiced ever since Fred trained me. I sometimes joke Fred Bartlit put a thumbprint on my forehead, so distinctive you can see it if you stand behind me.

Fred took risks with the junior lawyers on his team, including me. He gave us tremendous opportunities. My early years working for him were spent doing things that were just beyond my “comfort zone.” Each assignment and each case posed larger and more complex challenges—of fact development, of strategy, of a more skilled adversary or an unusually difficult forum.



Emily Nicklin, then



Fred Bartlit, then



Nicklin, now



Bartlit, now

I remember that I was often anxious about my work. I was scared that I would make mistakes, screw up the case, and fail the client and the Firm. Although he didn't call it mentoring, Fred was tremendously helpful to me in learning to accept professional risk and manage my engagement with it so as to thrive on it, rather than be crushed by it. He was quite explicit that nervousness was normal: important things were at stake for our clients and any sane professional would be nervous. But he taught me also: nervousness should never stop you nor shake your resolve and focus.

He thus enabled me to take on the opportunities he provided. In early 1980, I was the most junior member of his St. Louis jury trial team. We won. In early 1982, I gave my first opening statement in a jury trial in Idaho in a product liability case Fred assigned to me.

In mentoring me, Fred was following Kirkland's explicit meritocratic approach. But in doing this for a woman, he was unusual. His singular focus on supporting junior people's talent without regard to their gender became clearer to me when my first son was born in late 1982.

At the end of that maternity leave, I went to see Fred. He suggested that I take up a complex out-of-town grand jury investigation. I told him I would love to do the case but hesitated because I would have to bring along my baby who was still breast-feeding and my nanny. Surprised but completely unhesitant, he said: "So do that."

For the next several years, I tried cases from Omaha, Nebraska to Washington, D.C., ranging from a few days to many months in length, generally with my kids and nanny along with me. Fred ensured the Firm's constant financial and practical support every step of the way. Because of Fred's leadership, other senior partners who worked with me took the same approach, and I experienced fully the challenges and blessings of both career and family.

I don't suggest that Fred was politically correct. He wasn't. In fact, he was quite blunt about discrimination in the profession. He told me, "The client won't care if you're a man, a woman, or a broccoli if you can really effectively help them. But the fact is, if you aren't effective, if you're mediocre, you'll wash out fast if you're a woman. But you would probably bump along for quite a while without being fired if you're a man." This observation remains true today, although I don't know if many would be so candid about it.

Other Kirkland partners who were Fellows of the College—**Steve McCormick**, **Steve Neal**, **Bill Jentes**, and **Frank Cicerio**—also provided me with great mentoring while sometimes limiting their role in the courtroom to introducing me to the trial judge.

All of these mentors greatly enhanced my professional experience. They also set me an example I try to follow today, by mentoring the new lawyers at the firm—challenging them, coaching them, and taking risks on them. I have found that being a mentor is also a wonderful experience. As my mother (who was not a lawyer) used to say, "When someone does something good for you, don't pay it back. Pay it forward."

CHILTON VARNER

I walked into the firm of King & Spalding in Atlanta in September 1976 as a freshly-minted lawyer who had just been sworn in by the Chief Judge of the Georgia Supreme Court. After an internship the previous summer, I managed to wrangle a post-law school assignment to the firm's Litigation Department, a practice area that had never had a female lawyer. More than forty years later, I am still at King & Spalding, grateful that I found the right place to hang my hat.

There were no other women litigators (much less trial lawyers), so there were no female role models. My career was shaped and assisted by three extraordinary mentors, all male: **Griffin Bell**, who served President Jimmy Carter as Attorney-Gen-



Griffin Bell, middle, with Varner and Varner's daughter



Varner, Frank Jones, Fellow Doc Schneider, Annie Jones

eral before returning to King & Spalding; **Frank Jones**, a former President of the Georgia State Bar who was widely-recognized as the best courtroom trial lawyer in the state; and **Byron Attridge**, who headed the firm's Litigation Department. All were Fellows of the American College of Trial Lawyers, and Bell and Jones both served as President.

After an appropriate period of orientation, I went to each of these three and told them, should the opportunity arise, I would be honored to work with them. Each took me up on my offer. Timing helped. The firm was not yet highly leveraged, and associates did not outnumber experienced partners. That made it not only possible but probable that young lawyers could work directly with the senior lawyers who knew the most about trial work. None of the three was worried about turf; to the contrary, each was pleased to have have-working young lawyers help them to do a better job.

Judge Bell and Frank soon had me doing all the discovery and all the writing in a massive case for The Coca-Cola Company that lasted more than a decade and encompassed three separate trials. Byron put me to work learning trial skills in product liability cases across the southeast for General Motors, and soon I was speaking in Detroit at seminars for other lawyers.

The mentoring did not stop there. All three of my mentors, I am confident, helped my nomination to and participation in the College. For example, when the firm celebrated Judge Bell's seventy-fifth birthday, I magically found myself seated at dinner with a table of five former Presidents of the College. My nomination was approved a year later. Judge Bell told me once that if I were ever interested in becoming

a federal judge (an idea I flirted briefly with in the 1990s), College Fellowship would be the most persuasive credential I could have.

But perhaps the most important mentoring I received was the simple opportunity to watch these three work their magic. They had very different styles and strengths. Judge Bell was the ultimate client's problem solver; he never met a problem he thought was insoluble. With his extraordinary credibility and his experience in Washington, he catapulted King & Spalding from being a regional firm to one with a national practice. I was a beneficiary. Frank taught me the indispensable values of preparation and organization; he *always* knew more than the opposition (and usually the judge). Byron was eager and willing for young lawyers to get out of the library and in front of the firm's most important clients. I learned from him the values of delegation and trusting others. It was then my task to take those various strengths and mold them in my own style as a female trial lawyer.

Years later, there is a still-expanding cadre of younger lawyers at King & Spalding—both male and female—whom I have taught and mentored. I believe that, while formal mentoring programs are useful, the most successful mentoring relationships spring from one-to-one direct working contact. Human capital is, of course, indispensable to our future as lawyers for the next forty years, so it is important for us to make the best of it. Plus, of course, mentoring makes practicing law more fun!

MENTORING IS NOT A ONE-WAY STREET

Mentors get every bit as much out of mentoring as their mentees do. Former Regent **Dennis R. Suplee**





Nancy Winkelman



Former Regent Dennis Suplee

recounts his experience in mentoring a young female lawyer in his firm, without thinking of it in formal terms. As he puts it:

I don't think that I ever set out to serve as mentor to a junior lawyer. In my own experience, mentoring is a byproduct of being too busy (which makes one willing to delegate work), being lazy (which makes one more willing to delegate work), and being in need of a colleague with whom one can collaborate (which leads to trust and, hence, willingness to delegate more responsible work).

So, it is only by hindsight that I can claim to have served as a mentor to Nancy Winkelman, an appellate advocacy star whose success in that arena is reflected in her selection to serve as President of the American Academy of Appellate Lawyers. It started with Nancy as a new lawyer being assigned to help me with several appeals, both with the briefing and the oral argument; and then working with her as an equal with the decision about who should make the oral argument being made rather late in the going; and then a client calling to say, "I'm assigning you a new appeal. We would like Nancy to take the lead."

It is at that bittersweet moment that one can say, with a mix of chagrin and pride, "Sure, she has surpassed me. But I can say that I taught her a thing or two."

MENTORING COMES IN MANY FORMS

Mentor was a friend of Odysseus and was entrusted by him with the education of Telemachus. Today the word "mentor" is used to refer to any trusted counselor or guide. Over the years, many Fellows of the College have served as mentors to female lawyers. But their mentoring of young men is important as well.

I once watched U.S. Foundation Trustee **Eugene K. Pettis** give a spontaneous

one-time mentoring session to a group of Black, male "at risk" high school students who had come to watch the filming of a mock trial by the College's Teaching of Trial and Appellate Advocacy Committee. These kids had come to see what a trial and real lawyers looked like. At the end of the day, Gene informally gathered them together and talked about his experiences as a poor young Black man and how he was able to become a lawyer and indeed President of The Florida Bar. Talk about a memorable mentoring session.

Mentoring is still important today, perhaps even more important today in light of the new stresses and complexities of the practice of law. Plenty of minority lawyers or lawyers with disabilities still face special difficulties in their practice. Fellows of the College are particularly well-suited to serve as mentors in young lawyers seeking to become a real trial lawyer.

After writing this article, I listened to a "fireside chat" between President **Jeffrey S. Leon, LSM** and Honorary Fellow the **Honourable Eleanore A. Cronk**, retired judge on the Court of Appeal for Ontario. She began her trial practice in the 1970s and had the benefit of great mentoring.

She talked about the "generosity of senior counsel," both within and outside her firm, who reached out to her despite the absence of any formal mentoring structure. There was, however, a "climate" that existed in which "senior counsel" took seriously their responsibility to mentor young trial counsel.

Hopefully that same climate exists today, both in Canada and the United States. So, look around for some young trial lawyer who could benefit from your mentoring. And who knows -- maybe that young lawyer will be inducted into the College one day.

Sylvia H. Walbolt
Tampa, Florida



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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SPOTLIGHT ON SERVICE: UPDATE ON ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS PROJECT



AT THE RECENT 2019 SPRING MEETING IN LA QUINTA, CALIFORNIA, FELLOW **JOSEPH A. TATE** OF THE LAW FIRM DECHERT LLP IN PHILADELPHIA, PENNSYLVANIA, REPORTED TO THE COLLEGE'S ACCESS TO JUSTICE AND LEGAL SERVICES COMMITTEE ON THE STATUS OF HIS WORK THROUGH THE ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS PILOT PROJECT AND HIS PARTNER HOST ORGANIZATION COMMUNITY LEGAL SERVICES OF PHILADELPHIA. THE FOLLOWING IS HIS FULL REPORT:

Under the Access to Justice Distinguished Pro Bono Fellows Pilot Project, I have partnered with Community Legal Services of Philadelphia (CLS). I learned early on that I could not do the work of the CLS attorneys efficiently. What I could do was teach, mentor, be available for case strategy, and provide vision for management. Working with CLS' Executive Director, I have implemented programs and planned for others.

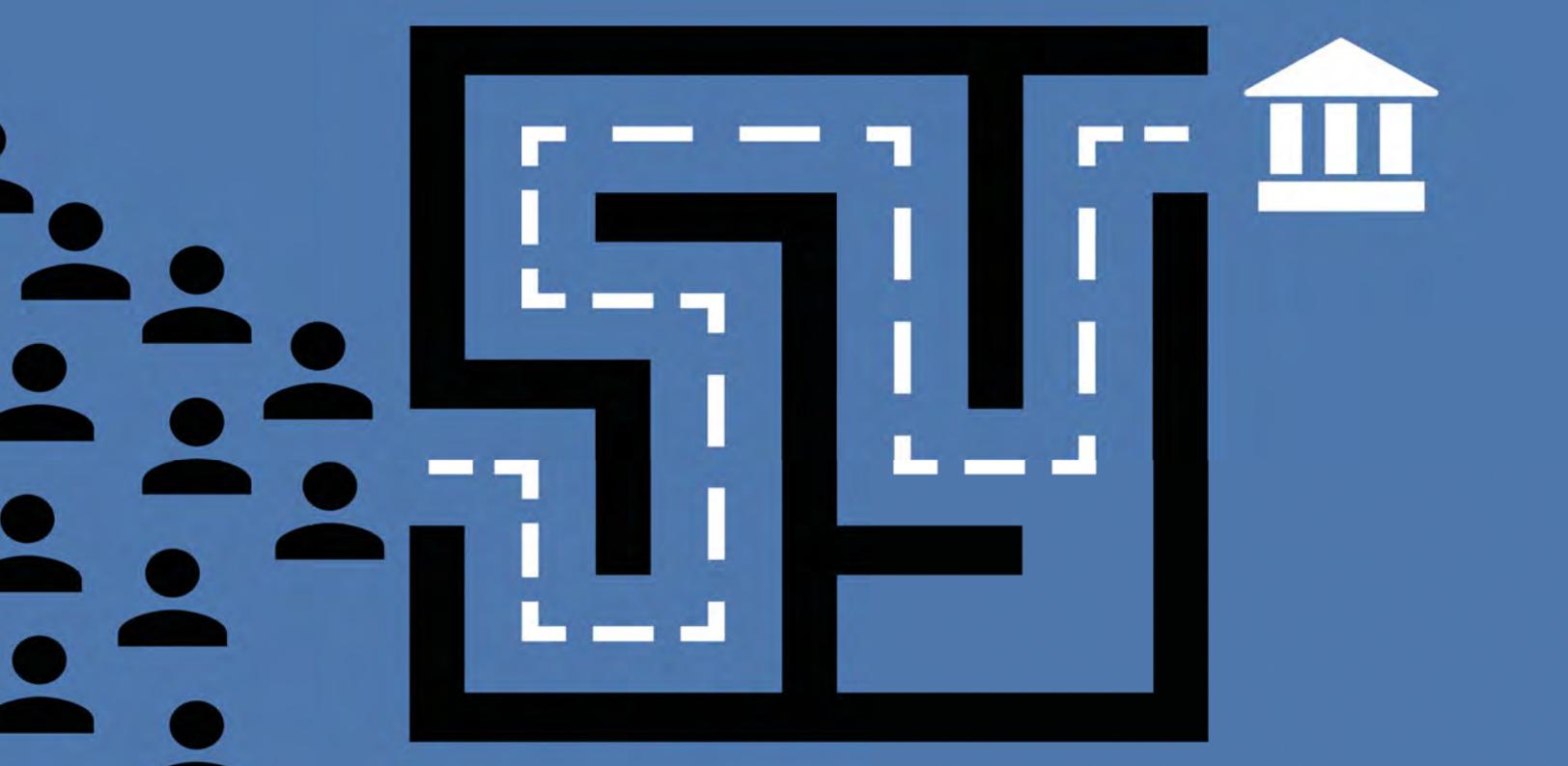
The large proportion of CLS cases are tried in the Municipal Court of Philadelphia. We had an hour-long clinic in which the Presiding Judge of the Municipal Court spoke to our attorneys on conducting themselves in court. He covered topics such as brief writing, citations, demeanor to the court, court staff, and opposing counsel. He also answered questions posed by our young and often inexperienced lawyers. It was an educational experience for all.

I have conducted round-table discussions with our lawyers on preparation for trial, deposition taking, examination of witnesses, including experts, and general trial strategy.

There are two specific projects at CLS that I have focused on: the Youth Justice Project and the Medical-Legal Partnership.

YOUTH JUSTICE PROJECT (YJP)

YJP was awarded \$50,000 by the U.S. Foundation of the College. YJP counsels and serves "at risk" youth between the ages of sixteen and twenty-four. To date,



YJP has partnered with over 250 youth to ensure a more stable transition to adulthood. The most common issues identified include: (1) expungement of juvenile/criminal records; (2) lack of access to public benefits; (3) family challenges; and (4) barriers to employment, housing, and education. YJP has held on-site legal clinics weekly at several locations (schools and shelters for youth). I regularly review on-going projects with the YJP lawyers and provide strategic planning and ideas to staff.

MEDICAL-LEGAL PARTNERSHIP (MLP)

MLP addresses legal issues that impact health, such as lack of heat, unstable housing, or food insecurity, by embedding lawyers within the health care team. Children's Hospital of Philadelphia (CHOP) Karabots Pediatric Care Center is the largest pediatric primary care center in the country. An overwhelming majority of its patients are low-income Philadelphia children, whose families face social, economic, and legal problems that undermine their health. For example, losing electricity, heat or water can severely impact a child with existing health needs.

A CLS attorney works on site at Karabots two days a week and can see Karabots patients on

the spot. The health care team is trained to identify legal problems with housing, utilities, employment, and public benefits, and to refer families to the CLS attorney on site for legal assessment and representation. We serve approximately twelve families a week.

In addition, MLP had a Saturday open-house for residents of the neighborhood. Staffed by CLS attorneys and law students, CLS had representatives from the city, the utilities, landlords, and banks. Over forty families had their problems solved that day. Again, I had the opportunity to meet with the Chief Medical Officer of Karabots, and observed the legal services provided. I assist in whatever ways the CLS' Executive Director requests, particularly with ideas to expand the MLP. The MLP is already a huge success. CHOP heaps great praise on the CLS program.

In a more general sense, as a Fellow, I remain available to the CLS Executive Director as an advisor and to undertake specific tasks when requested.

Overall, I am very enthusiastic about the program and feel I benefit from it as much as CLS does.

REMARKS FROM DEPUTY U.S. ATTORNEY AUDREY STRAUSS ON RECEIVING THE LEON SILVERMAN AWARD: GETTING OUT FROM BEHIND THE DESK



AT THE ANNUAL DINNER HOSTED BY THE DOWNSTATE NEW YORK FELLOWS ON APRIL 8, 2019, AT THE CENTURY ASSOCIATION, FELLOW AUDREY STRAUSS, WAS PRESENTED WITH THE LEON SILVERMAN AWARD. THE LEON SILVERMAN AWARD WAS CREATED IN 2005 TO HONOR A LAWYER OR SENIOR JUDGE WHO EXEMPLIFIES THE QUALITIES OF ETHICS AND PROFESSIONALISM EMBODIED IN THE COLLEGE'S CODE OF PRETRIAL AND TRIAL CONDUCT AND WHOSE ACCOMPLISHMENTS MANIFEST A LIFETIME COMMITMENT TO ADVANCING THE ADMINISTRATION OF JUSTICE.

Her remarks follow:

Thank you for those kind words. I am honored to be given this award by this particular group: The most respected trial lawyers in the country—respected not only for their skills in the courtroom but also, for their professionalism and integrity.

The award is given in the name of my former partner and mentor, Leon Silverman, which increases my delight and humbles me further.

I became Leon's partner when I joined Fried Frank in 1990 together with my two partners, Jed Rakoff and Howard Goldstein. When we arrived at Fried Frank, Leon had been a leader of the firm for decades and a mentor to a generation of Fried Frank partners.

Leon immediately took the three of us, and me in particular, under his wing. From the outset, Leon told me what the College meant to him and how important



it was to the profession. Leon encouraged me to be active in the College and to attend meetings. He wanted me to get out from behind my desk and become known in the bar.

And he did his very best to make sure this happened. I recall the first time I attended a federal bar council Thanksgiving luncheon after I joined Fried Frank. Leon made a point of traveling to the Waldorf with me, and he did not leave my side.

You know the set up at the Waldorf — two rooms for cocktails with a corridor in between. Normal practice, what had been my normal practice, I'd pick a room, get a drink, look for a friend, and then stand in place chatting until the chimes rang for lunch.

But on this occasion, Leon took my arm and steered me through the rooms. As we came to anyone he knew, and he

knew everyone, he announced, 'This is Audrey Strauss, my new partner.' He steered me around both rooms until it was time to sit down for lunch.

Judge Barbara Jones addressed this group last year and she talked about the importance of sponsorship for women. She distinguished between mentorship and sponsorship. She said, 'The sponsor actively advocates of that person both inside and outside the firm.'

Looking back now, I realize, that Leon was giving me his sponsorship. He sent me the message that he not only had my arm, he had my back. There is so much to be said about Leon.

I will resist the temptation to list his legion of accomplishments that explain why an award for public service epitomizes Leon. Instead, I will share just one more personal vignette about Leon.

When Leon was embarking on his retirement, he still came into the office most days to work on matters for the College and the Supreme Court Historical Society. After watching his routine for a while, one day I asked him if he was going to add some leisure activities, like golf, to his life.

He looked utterly insulted and said, 'Audrey, I have never committed an athletic act in my life—and I don't intend to start now.'

Leon was a lion of the bar and I will treasure this award especially because it is named for him and will always remind me of him. This award is given to me as I am serving in my second tour in the U.S. Attorney's Office for the Southern District of New York.

It was my greatest pleasure and honor to serve in the office the first time and now to come back and serve again is

almost too good to be true. I am getting the opportunity to get to know a whole new generation of Assistants. They are outstanding in every way, but especially in the fact that they carry on the traditions of the office - doing their best to do justice in every case. It is my great privilege to get up every day and go to the office to serve with them and to provide whatever support I can as they do their jobs.

Among the jobs they do is trying cases. There is a lot of worry in our community of trial lawyers about whether the next generation of trial lawyers will even exist. Will there be enough opportunity for new lawyers to try cases and learn the craft? I will not claim there is no cause for concern, but I will report that in this past year that I have spent in the office I find there are reasons to feel some cheer. True, there are fewer trials per Assistant than in our day, but still I am seeing AUSA's, even with fewer trials, developing into remarkably good trial lawyers.

For example, a very experienced judge recently called a unit chief to shower high praise on an Assistant who had summed up that day in a case before him. The judge asked, 'How many cases had she tried?' The chief reported: it was her first. The judge couldn't believe it. He was so impressed that he also mentioned the Assistant's performance to Geoff Berman, our U.S. Attorney, when he next saw him.

I began to think about what could have accounted for that—an Assistant delivering her first summation, mistaken for a more experienced trial lawyer?

I have a few hunches that I thought I would share with you. For starters, I would give credit to the increase in trial practice teaching in the law schools. When I was in law school, there were few trial advocacy courses offered. Now

those who have a real interest in becoming trial lawyers can get trial practice while still in law school. Fellows, such as our Downstate Fellows, many of you here tonight, have contributed to the early training of many of our young trial lawyers by their teaching.

The College itself contributes with its National Trial Competition every year. Similarly, clinical programs have offered opportunities to go to court while still in law school. And the adjustment of court rules has allowed law students into court.

I would also give credit to the many firms, including those represented here tonight, that have made increasing efforts to give their associates opportunities for hands-on courtroom experiences, in client matters and in robust pro bono programs.

We see this in our applicant pool. Many applicants we see have had some kind of courtroom experience. As notable examples, one firm created a program where an associate is regularly selected for a six-month rotation into a DA's office to try misdemeanor cases. Others have let associates take on pro bono cases where they have had contested hearings, for example, in cases before immigration judges. One applicant had been appointed by the court, SDNY, to try a civil rights case as first chair, representing a prisoner with a credible claim against prison guards.

I would also point to the work we do to provide trial advocacy training during an Assistant's first year in the office. Once we have a critical mass of new general crimes Assistants, our two senior litigation counsel lead two days of trial training for them. This training uses a case file filled with thorny problems and provides an opportunity to do openings, summations, direct and cross of an agent, cooperators, and de-

fendants, as well as practice objecting and arguing to the court.

Senior Assistants are present to provide critiques and every AUSA walks away with a video that the Assistant can bring home to their significant other, to watch together on a Saturday night, very romantic.

In addition, nowadays moot courts of opening statements are part of normal trial preparation. Even summations are mooted if there is time.

One further contributor to the development of trial skills in the office today is the blast email. In my day, the U.S. Attorney and other executives got a list of upcoming and ongoing trials every day. This allowed them to drop in to see what we were doing and provide feedback to us afterwards.

Now, as a matter of regular practice, when a trial is about to begin, one member of the trial team sends out a blast email to all AUSA's in the Criminal Division, with a dramatic description of the trial, to drum up interest. This initial teaser is followed by updates that alert everyone exactly when to show up, such as Kyle opens this morning at 10:00 am, courtroom 110, come support; or Sarah will be cross-examining the defendant at 1 pm, come support; or don't miss Laurie's rebuttal summation at 3 pm. Come support!

'Come support' is the rallying cry. All of us on the eighth floor depend on these alerts to time our own visits to see the assistants' trial work. But when we walk into the courtroom, there is almost always a gang of Assistants who have come to support their colleague—but also to watch and to learn. This is another way our AUSA's are accelerating their learning of trial practice.

So, all is not lost. We have a very talented and motivated generation of trial

lawyers in the making. They are learning their craft, a little differently than we did, but learning they are.

A word about women.

I thought it would be of interest to you to know that the percentage of women in the USAO SDNY today is 43 percent. I bring this up as a point of encouragement.

Among the exceedingly talented assistants in the SDNY delivering their jury addresses and occasionally drawing praise from an experienced judge, it so happens that many of them are women. So, there is reason to believe that the College will be able to find women Fellows, in greater numbers, in upcoming years.

I have had extraordinary female and male mentors. They have not only taught me but also befriended me, and many of you are here tonight. I thank you all.

I will mention just two by name.

Bob Fiske and Jed Rakoff.

Bob gave me opportunities within the office and thereafter, time and again. Most importantly, he gave me his example as a role model. It is always with me. Jed was my close colleague in the office, then my unit chief and then my partner. He probably would say that he taught me everything I know—and it would be true.

So, thank you Bob and thank you Jed.

Last, but not least, thank you to my very own Fellow, Rusty. Rusty has been my constant booster and supporter. His boundless optimism has carried me through every challenge I ever faced. Thank you to the Downstate Committee and the college for this honor, the Leon Silverman Award, which I will always treasure.

JUDICIAL FELLOWS GO BACK TO SCHOOL TOGETHER

Judge Trenga and Judge Molloy upon receiving their Masters of Judicial Studies degree from Duke University College of Law in May 2016.

Judicial Fellow **Donald W. Molloy** is a senior U.S. District Court Judge for the District of Montana, in Missoula, Montana, appointed in 1996 by President Clinton. In college, he was a running back for the University of Montana Grizzlies, and he was a Naval Flight Officer during the Vietnam War era. He is a private-instrument-rated pilot and for several years flew his plane on court cases to cover the vast space of Montana. For seventeen years, he co-taught a course at the University of Montana Law School on the “Philosophy of Law.” He was inducted as a Fellow in 1995 in San Antonio, Texas.

Judicial Fellow **Anthony J. Trenga** is a U.S. District Court Judge for the “Rocket Docket” Eastern District of Virginia, Alexandria Division, appointed by President Bush in July 2008. He graduated from Princeton University and the University of Virginia School of Law. He was inducted as a Fellow from Washington D.C. in 2005 and has served as Vice-Chair of the College’s International Law Committee.

Both judges are renowned as hard workers who expect lawyers to be fully prepared. Both have issued high-profile decisions, albeit on very different issues, without concern for public opinion or criticism. So, what else do these Fellows with entirely different backgrounds from entirely different parts of our country have in common? They were the only two Fellows of the College to earn a Masters of Judicial Studies degree at Duke University College of Law in May 2016. They did not know each other before they were assigned, apparently by serendipity, to be roommates for a month in each of the two years they participated in that program.

The program consists of a wide range of courses for judges – everything from constitutional law to legal history to international law and more. The course curriculum is set, but the judges choose the subject for the thesis they write in the second year.

There were twenty judges in their class – a broad spectrum of state and federal trial and appellate judges from all over the country, as well as two foreign judges.

Judge Molloy said the professors were “terrific” and prominent visiting lecturers were brought in, including two U.S. Supreme Court Justices - the late Justice Antonin Scalia and Justice Samuel Alito. The “dynamics” of the lectures were “interesting – most of the judges were older than the professors - so it was not the typical dynamic of a student and teacher.” There was “lots of interaction – not a straight lecture.”

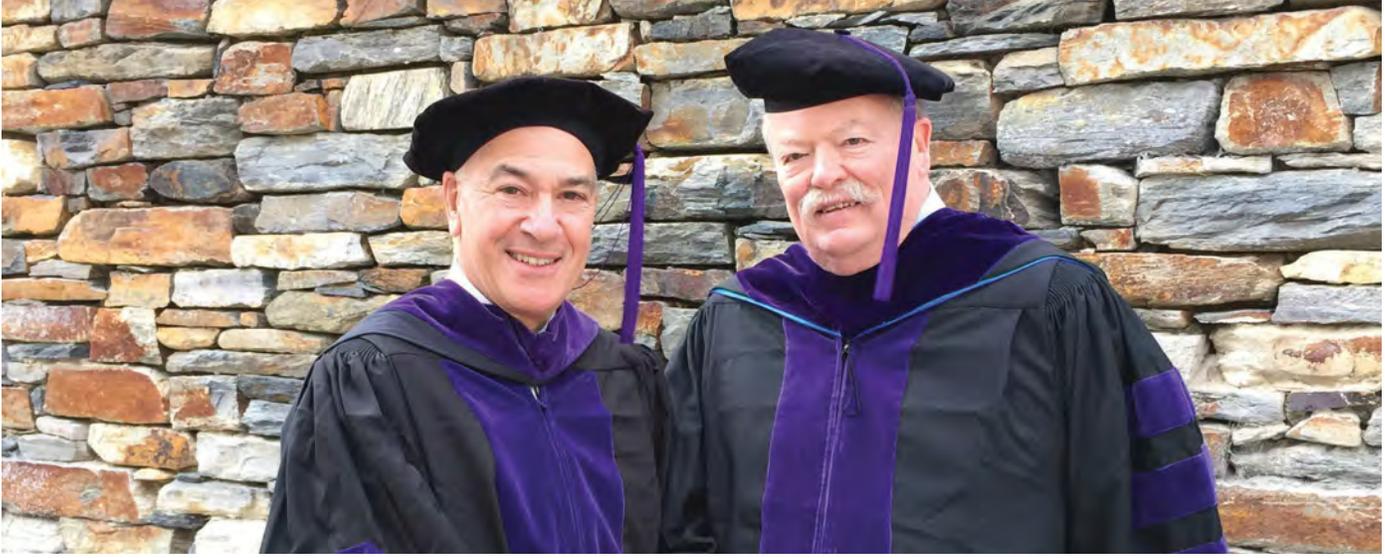
Judge Molloy described one visiting speaker who was brought in to lecture on the Sentencing Guidelines. He was “an academic who did not have a good grasp of the practical aspects of applying the guidelines.” The professor was peppered with questions and comments, and the discussion “lit the class up.” In contrast, the students “didn’t poke” at visiting speaker Judge Richard Posner!

Both judges commented on the lecture given by ACTL Past President Gregory P. Joseph on the factors that influence judges in imposing sanctions. When asked how often he filed such motions, Joseph responded “Never – they are just a distraction.” His talk was very well received – so much so that one of the other student judges sang Joseph’s praises in a limerick about his presentation. Sadly, the poem has been lost to posterity.

Judge Molloy was impressed with the rigor and demands of the program. He found it to “have both practical use and to be intellectually stimulating.... It was a very different level of looking at things.... I was exposed to new things – such as admiralty and international law – that I hadn’t seen on the bench in Montana.”

Like Judge Molloy, Judge Trenga said the program turned out to be a “pretty rigorous program, with more work than I expected.” The program “allowed me to get my arms around the big picture and think about how the law has developed over time.” He is glad he did this and has found it very helpful in his work as a trial judge. The judges in the program have stayed in contact more than Judge Trenga thought they would.

Judge Trenga’s thesis was published in 2018 by the *Har-*



vard *National Security Journal*. See http://harvardnsj.org/wp-content/uploads/2018/01/1_Trenga_StateSecrets-2.pdf. Judge Trenga explored how trial judges decide cases involving the state secrets privilege. He crafted a hypothetical case that reflected aspects of different cases in which the privilege had been asserted, and then “explored what considerations and objectives influence judges in the exercise of the considerable discretion they have in such a case.” He presented an academic analysis of judicial decisions as well as the results of interviews with several judges as to how they would deal with the assertion of privilege in the hypothetical case.

Each student had to make an oral presentation of the thesis to the class. Judge Trenga used the hypothetical case set forth at the outset of his thesis as the basis for his oral presentation, which he made in the form of an opening statement. Judge Molloy said Judge Trenga “really turned it on and had everyone in the room in his hand.” Judge Molloy thought at the time, “I bet he was a hell of a trial lawyer.”

Indeed, Judge Trenga was asked by the class to address a delegation of judges from Argentina who were visiting the law school. He discussed the “challenge” whether judges “can maintain the public’s faith and confidence in the need for an independent judiciary, whose independence is indispensable to

a proper discharge of the role we have been assigned within our Constitutional Republic. Whether we will meet that challenge will depend not only on our integrity, but also on our competence to decide increasingly complex cases and issues.” His thoughtful and inspiring remarks can be read at https://www.federaljudgesassoc.org/egov/documents/1431379348_90651.pdf.

For his part, Judge Molloy’s seventy-page thesis is titled “Designated Hitters, Pinch Hitters, and Bat Boys: Judges Dealing with Judgment and Inexperience, Career Clerks or Term Clerks.” Based on his own “life experience” when he began to clerk for a federal district judge after law school and the Navy and realized that “I didn’t know a damn thing about what I was doing,” Judge Molloy wondered whether trial judges who regularly changed clerks saw this change as a problem in their work. Although much had been written on the relationship between appellate judges and their clerks, there were hardly any such articles with respect to trial judges and their clerks. He accordingly wrote his thesis on the experience of trial judges who hire new clerks on a rotating basis, rather than stay with career clerks.

Judge Molloy found from his interviews with a wide variety of trial judges across the country that the decision to change from term clerks to career clerks generally was “serendipitous – they got along

well, had a good working relationship, and the clerk ends up just staying.” On the other hand, the decision to change from a career clerk to a term clerk usually “is triggered by the career clerk forgetting who is the judge.”

His oral presentation on his thesis described the “August effect” in trial courts, a take-off on the “July effect” in teaching hospitals when interns are now new residents and often don’t yet know exactly what they are doing. He found it takes law clerks about three months to get their bearings in their clerkships.

These two Fellows, one Italian-American and one Irish-American, who did not know each other before being assigned as roommates at Duke, formed a “fast friendship.” Judge Molloy relates that Judge Trenga would sometimes cook steaks in their apartment, and it was not unusual to get the fire alarms going with smoke from his efforts as a chef. Judge Trenga had no comment on that for this article.

The roommate judges will get together again at a meeting of the Judicial Conference of the United States, as both serve as chairs of Conference Committees. In August, they will explore Glacier Park with their spouses. Clearly this program enriched their lives not just as judges but on a personal level as well.

Sylvia H. Walbolt
Tampa, Florida



nce 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.

EXPECTING THE UNEXPECTED

Joe S. Hatfield was the patriarch of our firm when in 1977, I returned to southern Indiana from my four-year initial stint as a civil litigator in Chicago. Mr. Hatfield was a third-generation attorney and had been doing civil trial work since the '40s. He was past president of the Indiana State Bar Association and had been a Fellow of College for years. Whenever he would mentor us younger litigators, he would always include a personal experience to back up the discussion. He knew we would remember the lesson better with that reference.

Illustrating the unexpected that can occur during trial, he told us about a cross-examination of a witness an injured male plaintiff had called to support his claims of injury, and the pain and suffering he had experienced. The witness was a woman of about his age and had been characterized as a neighbor who had had the opportunity to observe first-hand the effects of the injury. Always the gentleman, Mr. Hatfield's cross-examination went something like the following:

Q. Now Miss Jones, you have known Mr. Brown for more than just a few years, isn't that true?

A. Yes.

Q. And during that time, you have been more than just neighbors, but actual friends, isn't that true?

A. Yes.

Q. As a matter of fact, haven't you and Mr. Brown been more than just friends, but at one time, weren't you sweethearts?

A. (she blurted out): “We only did it one time!”

Thomas H. Bryan

Evansville, Indiana

THE TRIAL MUST GO ON – 9/11

This story is about my beloved former law partner, John Howie, also a Fellow of the College, who died from cancer far too young on December 31, 2002.

John had a sudden unexpected illness in March of 2001, was hospitalized, comatose, and not expected to live. Against all odds, he recovered unimpaired and returned to our law practice in late May, resuming his vibrant, successful aviation law practice.

Months later, on September 11, 2001, (yes, the 9/11), he was in trial in federal court in Little Rock, Arkansas, against American Airlines, involving a crashed AA flight. So, first thing to remember, in 2001 we were not quite as digital as we are now, and in the massive confusion following the attacks, details were slow to trickle in. Second, in federal court, no one had their cell phones, so lawyers and litigants were slow to learn the thinking about the likely causes of the crashes. Nonetheless, news of the horror of the attacks on the World Trade Center and Pentagon did reach the courtroom, reinforced by the nationwide closure of all federal buildings and courthouses (not to mention all airports).

But not this court. The judge’s response when told the courthouse was being closed was something, according to John, along the lines

of “that’s just what those people want. I’m not closing my courtroom. Call your next witness.”

Apparently federal judges are the final authority on when their courtrooms are open for business, and this judge took his authority to heart.

As news of the nature of the attacks filtered in, American was first to file for a mistrial. Understandably, AA argued that the crash of its planes in the middle of a trial about a crashed airplane might have a prejudicial effect against it. The judge’s ruling was swift: “we’re not mistrying this case. Call your next witness.”

By the next morning, as trial resumed in the now deserted, silent courthouse, John, on behalf of the plaintiffs, moved for a mistrial. By now it seemed likely that terrorism was the cause of the crashes, and now, John was concerned that a sympathy backlash in favor of the airline might result. Again, the ruling was swift: “we’re still not going to mistry this case. Call your next witness.”

And so, still in a deserted, cavernous, empty courthouse, the trial proceeded. The judge remained staunch: “we’re not closing this courtroom, we’re not stopping this trial, jury trial is a cornerstone of this great country, and I’m not letting those people stop this trial in this courtroom.”

And the trial eventually concluded, the plaintiffs got their verdict, airports and courthouses reopened, and justice was served.

Paula Fiset Sweeney

Dallas, Texas





COMMITTEE UPDATES

UPDATES FROM STATE AND PROVINCE COMMITTEES

DISTRICT OF COLUMBIA

The Washington, D.C. Fellows held a panel presentation on April 8, 2019 on “The Life and Trials of Edward Bennett Williams” at the Georgetown University School of Law. The program was presented by Fellows **Brendan V. Sullivan, Jr.**, former Federal Legislation Committee Chair **John J. Buckley, Jr.** and **K. Chris Todd**, along with David Kendall. Over 200 attended the presentation.

KENTUCKY

On June 12, 2019, following the Kentucky State Committee meeting, three Kentucky Fellows, former Kentucky State Committee Chair **Richard W. Hay**, former Kentucky State Committee Chair **John W. Phillips**, and **J. Guthrie True**, along with Deputy Chief Justice of the Kentucky Supreme Court Lisabeth Tabor Hughes and law professor Grace M. Giesel, from the University of Louisville Brandeis School of Law, will present a one-hour CLE at the 2019 Kentucky Bar Association Annual Convention. The topic will be “Handling the Challenges of Pretrial and Trial Practice Ethically and Professionally.” On July 26, 2019, Kentucky Fellows will host an appellate advocacy training program sponsored by the ACTL and the American Academy of Appellate Lawyers jointly with the Kentucky Supreme Court. This training program, for approximately twenty-five public interest lawyers, will be held at Northern Kentucky University Chase College of Law. It will also be open to twenty-five members of the Kentucky Bar Association who are interested in developing their appellate advocacy skills. A four-hour CLE credit will be given to those in attendance. On September 13 and 14, the Kentucky Fellows, along with the Kentucky Supreme Court Access to Justice Commission will hold a trial skills training program for public interest lawyers in Louisville. The Friday afternoon program, September 13, will consist of lectures and demonstrations. The Saturday program on September 14 will consist of five to six mock trials with Kentucky Fellows serving as mentors and judges. Law students from University of Louisville Brandeis School of Law will assist in serving as witnesses, parties and bailiffs.

MISSOURI

Missouri Fellows will conduct two mock trial seminars in June of 2019 entitled “Trial of a Catastrophic Personal Injury Case by the Masters.” The Kansas City seminar is set for June 4 at the University of Missouri – Kansas City. The St. Louis seminar is set for June 11 at Saint Louis University, Scott Hall. Fellows **Paul L. Redfearn III** and **Dawn M. Parsons** are the co-chairs of the Kansas City seminar. Fellows **John G. Simon** and **Amy Collignon Gunn** are the co-chairs of the St. Louis Seminar.

NEW YORK-DOWNSTATE

On Wednesday, May 1, 2019, several New York Fellows participated in an innovative trial practice program for more than 140 aspiring trial lawyers. Using the historic trial of *United States vs Ethel and Julius Rosenberg* as the model, attendees were led through opening, direct, cross and summation, in an all-day long program held at the Southern District Courthouse in the very same courtroom where the Rosenbergs were tried in 1952. The program was created and led by Task Force for Boot Camp Trial Training Programs Chair, **Paul Mark Sandler**, with the able assistance of Immediate Past Chair of the New York-Downstate Committee, **J. Bruce Maffeo** and New York-Downstate Committee Chair **Robert J. Jossen**. Among the New York Fellows who gave outstanding demonstrations or who participated in the intriguing panel discussions were: **Michael F. Bachner**; **Matthew E. Fishbein**; soon to be inducted Fellow Joan Illuzzi-Orbon; **Robert Jossen**; **Judith A. Livingston**; **Susan G. Kellman**; Regent **Larry H. Krantz**; **Bruce Maffeo**; **Susan R. Necheles**; **David E. Patton**; and **Roland G. Riopelle**. In addition, Judicial Fellow Senior United States

District Judge of the United States District Court for the Southern District of New York **Jed S. Rakoff** participated in several aspects of the program, together with other judges from the Eastern and Southern Districts of New York and from Maryland. The program was jointly sponsored by the ABA Litigation Section and included a riveting discussion of the story of the Rosenberg trial and its historical background. This truly was the College and its Fellows acting at their best, demonstrating the skills which make them stand out as trial lawyers, and providing public service to the bar.

ONTARIO

Ontario Fellows, in partnership with The Advocates’ Society, presented The Advocate Matters: Spring Symposium 2019 on Wednesday, April 24, 2019. The practical program, a continuing professional development and networking event for civil litigators, included presentations on the following topics: The Year in Review: Key Cases in 2018; Fireside Chat with The Honourable Eleanore A. Cronk (retired), Court of Appeal of Ontario; Electronic Trial Advocacy; Demonstration & Discussion: What Category of Expert is your Opponent Calling and Why Does it Matter?; Some Reflection and a Few Lessons from Public Inquiries. Two panels were also held, with the first panel discussing “A Question of Advocacy: Handling Questions from the Bench” and the second panel presenting on “Evidentiary Issues: What Every Advocate Needs to Know.” The program included a keynote presentation from Fellow and Griffin Bell Award for Advocacy recipient **Andrew J. Savage** and a presentation to Pro Bono Students Canada and their new pilot, the Indigenous Human Rights Program, the 2019 recipient of the Emil Gumpert Award.

The following Fellows participated in the program: **The Honourable**



W. Ian C. Binnie; Honorary Fellow
The Honourable Eleanore A. Cronk;
Immediate Past Chair of the Ontario
Province Committee Scott K. Fen-
ton; Regent **Sandra A. Forbes**; **Brian
J. Gover**; President **Jeffrey S. Leon,
LSM**; Beverly McLachlin Access to
Justice Award Committee Chair **Guy
J. Pratte**; soon to be inducted Fellows
Matthew P. Gottlieb and Linda M.
Plumpton; **Linda Rothstein**; Special
Problems in the Administration of Jus-
tice (Canada) Chair **Kent E. Thom-
son**; and former Access to Justice
and Legal Services Committee Chair
Sylvia H. Walbolt.

UPDATES FROM GENERAL COMMITTEES

FEDERAL CRIMINAL PROCEDURE

The American College of Trial Lawyers has as its mission the improvement of the administration of justice through education and public statements on important legal issues relating to that mission. The ACTL strongly supports recent criminal justice reforms aimed at addressing the incarceration rate in the United States and urges full consideration of reforms on both the state and federal level through its Statement on Criminal Justice Reform (“Statement”).

Drafted by the ACTL’s Federal Criminal Procedure Committee, the Statement discusses the fact that the United States has the highest incarceration rate in the world. It provides important background to explain how the United States reached these high incarceration rates and discusses recent innovative criminal justice initiatives that have resulted in reducing incarceration rates.

The Statement highlights some notable criminal justice reforms, includ-

ing the recent enactment by the federal government of the FIRST STEP Act, short for “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act.” The FIRST STEP Act is intended to shorten certain federal prison sentences for non-violent offenders by, among other things, shortening mandatory minimum sentences, easing the federal “three strikes” rule, and expanding the drug safety valve to give judges more discretion to deviate from mandatory minimum sentences. The Statement also discusses reforms, including those on the state and local levels, that have had a notably positive impact, including bail reform, the opportunity for courts to guide first-time offenders to diversion programs, efforts to reduce prison terms for certain non-violent offenses, and certain multi-faceted approaches that involve branches of the criminal justice system and the community to provide a structure to enable successful re-entry into society after release from custody.

Through the Statement, the ACTL seeks to highlight the important work being done on the local, state, and federal levels throughout the United States to embrace and promote alternatives to incarceration. The ACTL encourages criminal practitioners to draw upon the examples of success and advocate for diversion and other options in lieu of jail or prison. Finally, the ACTL calls upon the judiciary, pre-trial and probation departments to study programs that have addressed this process in order to adopt and develop effective and evidence-based alternatives when fashioning pre-trial release conditions and punishments for non-violent offenders in order to reverse the trend of over-incarceration in the United States.

JURY

With this closing instruction ringing in their ears, jurors across the country are sent off to their deliberation rooms to reach a verdict: “Free your minds of all feelings of sympathy, bias and prejudice and let your verdict speak the truth, whatever the truth may be.” For decades we believed this instruction was effective and its goals attainable. People could simply “free their minds of all feelings” and reach a verdict based on reason and objective facts—or so we thought.

Recent advances in the science of decision-making, however, undercut our assumptions about how jurors make decisions. Science now teaches that our cerebral cortex (and its deliberate, logical power) does not either solely or separately rule the day. Instead, logic or reason (described below as “System 2” thinking) operates alongside and in conjunction with the evolutionary brain and its quick, instinctual impulses (described below as “System 1” thinking). Thus, instructing someone simply to shut down part of their brains and “free their minds of all feelings . . .” is as effective as telling a child perched on a garage roof to ignore gravity.

The Jury Committee prepared and the College recently issued a white paper, *Improving Jury Deliberations Through Jury Instructions Based on Cognitive Science*, that discusses the research into decision-making and applies that research to juries. The Paper then offers sample Jury Instructions based on this science that courts can use to help improve jury deliberations. The Paper’s goal is straightforward: “to increase the thoroughness of jurors’ evidence review and to improve jurors’ deliberations. The premise is that jurors who

focus and deliberate in a meaningful way are more likely to reach the correct decision.”

If you or a colleague are involved in your state’s Jury Instructions Committee, please ask the Committee to consider the College’s suggestions on how to improve jury deliberations.

If you have any questions or suggestions, please contact the Committee Chair, **Robert T. Adams**, or Committee Vice Chair **Ralph A. Weber**.

TASK FORCE ON JUDICIAL INDEPENDENCE

Written by the Task Force on Judicial Independence, “*The Need to Promote and Defend Fair and Impartial Courts*” concludes that threats to judicial independence have increased in volume – both number and pitch – at both the federal and state level over the past decade. It advocates that “we as a profession must find new resolve and creative measures to promote – not just defend – the role of the judiciary and to safeguard fair and impartial courts. We must bring the message into the open forum of ideas, not expecting others to seek out what we have to say. As lawyers we are professional advocates and we must, as our ethical code requires, apply our special skills to ‘further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.’” The Task Force also made a series of detailed recommendations that are being considered and reviewed. More details will be shared about the plans of the College to further promote judicial independence in the U.S. and Canada in the weeks to come. ■

FUTURE ADVOCATES SHINE IN LAW SCHOOL COMPETITIONS



NATIONAL MOOT COURT COMPETITION

The Hugh F. Culverhouse Jr. School of Law at the University of Alabama won the final round of the 69th Annual National Moot Court Competition held Jan. 31 at the New York City Bar Association defeating more than 150 other teams and winning its first title in the event's history. Of the twenty-eight teams who qualified for the final rounds, the UA team was the only one comprised solely of second-year law students. The winning team was comprised of Lindsey Barber, Cory Church, and Anne Miles Golson. The Northwestern University Pritzker School of Law was the runner-up, with a team comprised of Linda Qiu, Clayton Faits, and Lois Ahn. Best Oralist in the Final Round was Anne Miles Golson. Runner-Up Best Oralist in the Final Round was Clayton Faits.

Anne Miles Golson, Lindsey Barber, and Cory Church of the Hugh F. Culverhouse Jr, School of the University of Alabama



Nathan Wells and Olivia Whynot of the University of British Columbia

SOPINKA CUP

The team of Nathan Wells and Olivia Whynot from the University of British Columbia won the 21st annual Sopinka Cup competition. Best Oral Advocate was Nathan Wells.



Jennifer Brooker,
National Trial Team
Directors Lindsey Cloud
Mervis and John N.
Sharifi, and Vania Smith
from Catholic University
of American Columbus
School of Law

NATIONAL TRIAL COMPETITION

The Catholic University of America Columbus School of Law was crowned the 2019 National Champion March 28 – March 30, 2019 at the National Trial Competition in San Antonio, Texas. It is the first national trial championship in the law school's history. CUA Law joins an elite group of only twenty-one other law schools which have won the title. Representing CUA were students Vania Smith and Jennifer Brooker, coached by National Trial Team directors John N. Sharifi and Lindsey Cloud Mervis. The George A. Spiegelberg Award for Best Oral Advocate went to Vania Smith.

The National Trial Competition is co-sponsored by the Texas Young Lawyers Association (TYLA) and the College. It is widely thought to be the most coveted trial competition in the country. The competition attracts teams from more than 140 law schools and involves more than 1,000 law students each year. Nationwide regional competitions are held every February, during which the two top finishers in each region qualify for the national competition. Thirty regional winners then compete for the championship.

This year's national competition involved a securities fraud insider trading case titled *United States v. Jordan Belfort*. CUA Law faced off against five-time champion Stetson University School of Law in the spirited final round judged by the members of the National Trial Competition Committee. College President Jeff Leon presided at the championship trial.



Leigh Acheson, Dylan
Hanwell, Leah Strand,
coaches Peter Sankoff
and Mandy MacLeod,
and Nate Gartke
from the University of
Alberta Faculty of Law

GALE CUP

The winner of the 46th Gale Cup was the team of Leigh Acheson, Dylan Hanwell, Leah Strand, Nate Gartke and coaches Peter Sankoff and Mandy MacLeod from the University of Alberta Faculty of Law. Placing second was the team from the Université du Québec à Montréal. The Dickson Medal for Exceptional Oral Performance went to Leah Strand. The competition was held at Osgoode Hall School of Law at York University on Feb. 15-16, 2019. The team of Strand, Hanwell, Gartke and co-coaches MacLeod and Sankoff represented Canada at the International Commonwealth Moot in Livingstone, Zambia, April 15, 2019 and won the competition. The team competed with seven other teams from commonwealth countries around the world and defeated the team from the United Kingdom in the final round.

**ACTL FIRST CANADIAN PRESIDENT
DAVID WILLIAM SCOTT, O.C., Q.C.**



David W. Scott, Ottawa, Ontario, Canada, the first Canadian President of the American College of Trial Lawyers, died March 21, 2019 at age eighty-three, after a sudden hospitalization for lupus, an autoimmune disease.

Born in Ottawa, a third-generation lawyer, Scott earned his bachelor's degree from Loyola College (University of Montreal) in 1957 and his LL.B. from the University of Ontario in 1960. Called to the Bar in 1962, he practiced in his father's firm, Scott & Aylen, Barristers. Unlike his father, an intellectual property lawyer, he found the competitive aspect of litigation the more appealing of the two.

Immediately after receiving his license, he acquired his first case, being named co-counsel to represent a young mother charged with killing her infant. The defense ended in an acquittal. Within a year, he was named a Part-Time Crown Attorney, an assignment that lasted three years. Over the years, he had been involved in numerous professional, educational, social, and philanthropic organizations in his greater community.

Named Queen's Counsel in 1976, his growing practice essentially included general civil, intellectual property and criminal litigation and administrative law. His firm eventually evolved into a national concern, Borden Ladner Gervais LLP.

Over the years, he had been involved in numerous notable cases. In the early 1990s he was involved in the "diaper wars," representing Kimberly-Clark in the Canadian aspect of a world-wide patent infringement case against Proctor & Gamble, involving the right to the invention of disposable baby diapers. At the time, it was regarded as one of the world's largest international lawsuits of its sort.

He once successfully defended a journalist charged with publishing the Canadian government's planned budget, an otherwise secret document. In 1999, he successfully represented the Prime Minister of Canada in a famous

suit involving Conrad Black, Canada's largest and wealthiest press baron. The British Crown had offered Black a knighthood. Canada barred its citizens from accepting foreign titular honors. After losing the decision, Black resigned his Canadian citizenship and moved to England.

An alert Canadian lawyer noted in a letter to the American College that later in the day after Scott argued a motion on behalf of the Prime Minister in the Conrad Black case, he also appeared in an unrelated case representing the Chief Justice of Canada. The writer remarked that most litigators would consider representing either the leader of the country *or* its Chief Justice to be the pinnacle of an exemplary career, but that to do both in the same day must surely have been unprecedented!

Inducted into the College in 1984, Scott became a member of his Province Committee in 1987, remaining through 1995 and serving as its Chair from 1992 to 1994. In 1993, he was a member of the second Canadian-American Legal Exchange. He was elected the first Canadian member of the College's Board of Regents in 1996. His presence did not go unnoticed. With an always smiling face, a meticulously tied bow tie and Alison by his side, they were the best of company. At an age when many of his fellow Regents were ready to retire, he would frequently be found huddling around the nearest watering hole as long as there was someone there who was ready to talk or to listen.

When Canadian Supreme Court Justice John Sopinka died prematurely, it was David Scott who wrote his memorial for the College publication. At the 1998 Spring Meeting of the College, Canadian Bar Association President P. Andre Gervais, Q.C., spoke, quoting Scott on the increasing difficulty of dealing efficiently with civil litigation, suggesting that it was a "paper chase . . . going the way of the dodo bird."

As the first Canadian President, when he undertook the office in 2004, he clearly saw himself as the surrogate for the rest of the Canadian Fellows, of whom at the time

there were about 300. He pointed out the strength of diversity in areas of both practice and culture, observing, "Our differences represent our strength." One of his standing jokes concerning one of those differences was his suggestion that in dealing with the War of 1812, each one should leave it to his or her own research to determine who won.

His election did not go unremarked in Canada. On February 4, 2004, Ottawa mayor Bob Chiarelli declared the city David Scott Day in honor of his installation as President of the American College of Trial Lawyers.

As President, Scott undertook four major areas that needed particular emphasis. One had to do with disparity in membership, from region to region. A second was the need for more local projects at the state and province levels, another the need for more diversity in membership and the last involved improving the College publications. These areas were not neglected during his presidency. The College began to publicize the variations in numbers of nominations and the age and gender of those nominated from region to region. It also created a way of allowing state and province committees to volunteer with the College's approval in assisting local projects that were consonant with the aims of the College generally.

In addition to the College's long-standing adherence to speaking on behalf of the College only on those subjects in which its bylaws supported a consensus of the membership, it began to allow submissions labeled "OPINION" to denote expressions of personal opinion of an author on issues outside those bounds, as opposed to communications from the College itself. Indeed, one of the first of such opinion pieces ultimately resulted in the creation of the College's joint task force with the Institute for the Advancement of the American Legal System (IAALS) that generated a national movement to review the continued usefulness of the ageing Federal Rules of Civil Procedure.

The College publication was also expanded during his presidency to begin to collect and publish a memorial to the life of each departed Fellow, thereby creating an ongoing history of the institution that survives to this day.

David Scott's older brother, Ian, the former Attorney General of Ontario had predeceased him. In his memory, David led the creation of an operating courtroom at the University of Ottawa, where students could watch and interact with lawyers and judges arguing real trials in progress.

In Scott's later years, nothing in his life as a lawyer was more important than giving back to access to justice through Pro Bono Ontario and the Help Law Center in Ottawa, with their mandate to provide free legal advice for those without means to pay.

As a person, Scott was universally seen as one with a vibrant life, dedicated to his craft and to family and friends, someone who laughed often and radiated joy. Comments at the time of his death included: "a wonderful role model and a true inspiration," "brilliant," "caring," "genuine," "infectious joie de vivre," "through sheer force of intellect and oratorical ability commanded every room," "the epitome of a gentleman," "he made me proud to be a lawyer," small in stature, a giant in the College, in the legal profession and in Canadian Society," "an advocate for the poor and deep, caring, and empathetic to the disadvantaged." Those observations invariably referred to both Scott and Alison as a fun-loving couple. He called her his love of fifty-nine years--since he first saw her at age fourteen.

David Scott was a teacher. A founding member of the Common Law Session of the Montreal Law School he had taught trial advocacy for almost fifteen years, as well as publishing on various legal topics. He was a founding member of the Common Law Honours Society, from which he held an Honorary Doctorate. As a public servant and citizen, he was twice elected a

Bencher of the Law Society of Canada. He had been awarded the Advocates' Society Medal and the Ottawa Bar Association's Award for excellence in civil litigation. He had been appointed by the Minister of Justice as Chair of the Triennial Review Commission established by the Judges Act of 1999. He had been awarded Honorary Doctor of Laws degrees from the Law Society of Upper Canada and the University of Ottawa. In 2011, he had been made an Officer of the Order of Canada.

Another hobby for which Scott was well known was hand-carved walking sticks and hiking poles, which he both gave to friends and sold for charity. One friend observed that on the night before his funeral service, his own carved walking stick leaned against the table on which his ashes rested.

His survivors include his wife, Alison, daughters Blair, Sheila, and Sandy and son, Tony. In the memory of his family, his greatest love and legacy was Beaverlost, a small community of families on a shared acreage in the beautiful Gatineau Hills. "With his love of cross-country skiing and of being outdoors with his ATV and chainsaw," they wrote, "he spearheaded the creation of a spectacular network of ski trails, providing us countless hours of skiing and walking. The trails will always and forever remind us of him and his boundless enthusiasm and energy for a project. We will always find him there."

E. Osborne Ayscue, Jr.
Editor Emeritus



(Top down)

Alison and David during the 2015 Spring Meeting in Key Biscayne – always ready together for the open road.

Alison and David Scott with Kristin and Fellow Walt Sinclair during the Thursday Welcome Reception at Vizcaya during the 2015 Spring Meeting in Key Biscayne, Florida

David and Allison with Natacha Lavoie and Inductee Matthieu Piche-Messier during the 2018 Spring Meeting in Phoenix, Arizona

Past President Mike Stout, David and Alison Scott, and Past President Bob Byman at the 2018 Annual Meeting in New Orleans

Then President Sam Franklin, Scott, Chief Justice Beverley McLachlin, and then President-Elect Jeff Leon during the 2018 Annual Meeting in New Orleans on the announcement of the Beverley McLachlin Access to Justice Award

The fun-love couple ready to dance at the Welcome Reception during the 2015 Spring Meeting in Key Biscayne

1930 — 2019

PAST PRESIDENT
RALPH IVAN LANCASTER



IN DEATH AS IN LIFE, HE SPOKE FOR, BUT NOT ABOUT, HIMSELF

Ralph Ivan Lancaster, Jr. died peacefully at home on January 22, 2019 with his loving wife by his side. At his request, we share this obituary, which he himself wrote, directing that it be all that he wished to be said on his behalf.

I died on January 22, 2019.

I was born in Bangor, Maine on May 9, 1930, the first child of Mary Katherine (Kelleher) and Ralph Ivan Lancaster, who had married on November 7, 1929. My mother died giving birth to my stillborn brother when I was three. I was raised in Bangor by my great aunt and uncle, Bridget (Kelleher) and Charles Milan. They loved me as if I had been their own child, encouraged, and rejoiced in, my every endeavor.

On August 21, 1954, I married Mary Lou Pooler whom I had met in 1944 and loved from that very first meeting. Mary Lou's support and guidance were crucial in every task I undertook and every challenge I met. She was my compass, my guide, my conscience, my partner and my life-long best friend. Our six children, nine grandchildren and four great-grandchildren were the source of great joy, pride, shared love and happiness throughout our married lives. I was fortunate to be invited to join the law firm that is now called Pierce Atwood where I found a second family and work that I loved for over fifty-five years.

I am survived by my wife, Mary Lou, three daughters, three sons, nine grandchildren and 4 great-grandchildren. In birth order: Mary Miller and her husband Gary; Anne Lancaster; Elizabeth Lancaster and Alan Peoples; their children Wyatt (and his fiancée Stephanie,) Alana, and Emmett; Christopher Lancaster and his children, Christopher and his son Tobias; Stephen and his wife Dominique, Brianne and Katelynn; John Lancaster and his sons Matthew Lancaster, his partner Casey and their son, Noah; Nicholas Lancaster and his wife, Laura and their sons Benjamin and Grayson; Martin Lancaster and his fiancée Megan, and by my special cousin/brother, Charles H. Milan, III.

I loved life and believed that you should live fully in the moment. I believed that laughter is the heaven of life.

I believed that we should all:

Dance as if no one is looking
Sing as if no one is listening
Love as if we've never been hurt.

I truly cared for people.... all people.

And I wrote this obituary without a list of major professional accomplishments in order to emphasize that material matters pale into insignificance when compared to the love of family and friends.

Please do not send flowers or make contributions in my memory. If you want to do something that would please me, take someone(s) you love out to dinner, tell her/him/them you love her/him/them and say the things we unfortunately wish we had said before she/he/they died. Use the word "love" frequently, laugh a lot and enjoy the moment.

I did.

HIS BACKSTORY

In May 2009, Lancaster had agreed to an interview concerning his legal career for an oral history collection for the Bowdoin College library. The story it told fills in and puts into context many omissions from the preceding self-published obituary that he wrote ten years later.

He did not grow up in a life of ease. His mother, one of eight children, died in childbirth in 1933 when he was three years old. In the midst of the Great Depression, after one year of college, his father came to Portland, Maine to find work. When his wife died, the father, young and single and left with a motherless child, needed help. Ralph was taken in and raised by a great-aunt and great-uncle in Bangor.

The great-aunt, a homemaker, and the great-uncle, who ran a hotel and two bars in Bangor, were in their late sixties or early seventies. Respecting the education they lacked, they took Ralph in and encouraged him. In high school, he tended bar for the uncle, closing the bar at midnight and going over to get the morning papers. In the summer, he worked for him in Bangor, drove a garbage truck, did roofing work, did “all kinds of trades.”

Ralph knew about Holy Cross from the sports pages, and he applied there. He claimed that the interviewer asked him to spell Worcester and, when he did, responded: “Got it right! You’re qualified!” An English major and history minor, he later applied only to law school at Harvard and was accepted. He roomed there with Joe Califano, who became President Jimmy Carter’s Secretary of the Health, Education and Welfare. Ralph asserted that, playing poker every night, he missed the *Harvard Law Review* by one tenth of a point.

In college and law school, he worked nights in a factory in Worcester. Married to Mary Lou in his sophomore year at Harvard, he was a summer intern in Boston, but he did not want to go to Boston to live. He graduated from Harvard on a Sunday and received a draft notice on Monday. He tried to tell his draft board that he was old and married, with an expectant wife, but he was drafted anyway. In the 1955-1957 Cold War period, there was no GI Bill. He was an enlisted man, a clerk typist. He lived off base because of his wife and child. This made his master sergeant so irate that he required him to show up two hours early for work each morning. Ralph worked at night in a movie theater and sold encyclopedias on weekends to make ends meet.

Three weeks before he was to graduate, the Dean of the law school called, saying that a new federal judge, Edward T. Gignoux, had just been appointed to Portland and would like to interview him for a clerkship. Lancaster declined twice; he was not interested in Portland. On the third call, the Dean told him that the new judge was a graduate of Harvard Law School and that Lancaster was the only warm body they could find to go to interview him. He went to the local library, studied the judge’s record and then had an interview with him. Liking what he saw, he accepted a one-year assignment as a law clerk. At the end of the year there were no jobs available, and so Lancaster took another year’s assignment.

The trial docket at Portland was sparse, and so Judge Gignoux was sent to try cases all over. Lancaster’s first dose of litigation was a case in New York City. The judge stayed in a hotel. Lancaster stayed with a law school friend and took the subway to court. The trial took over a month.

Near the end of Lancaster's second year of clerkship, a local Portland firm, Hutchinson Pierce, had an unexpected vacancy, and they offered Lancaster a job. The seventh lawyer at what became Pierce Atwood, Lancaster spent the rest of his career with that firm. Ultimately, his presence and his mentorship attracted a collection of partners and associates that have included a Governor and a lawyer, a Fellow, who now sits on a United States Court of Appeals.

He built himself on the discipline that he had learned as he grew up. He arrived each day dressed in coat and tie—always a bow tie. He became the first person in the office every morning, reputedly as early as five a.m. He brewed the coffee and checked and responded to his emails. He regularly exchanged emailed witticisms and barbs with one group of friends and shared pieces of wisdom with those who, like him, had figured out that one can send a shirt to the laundry, but not a tie, and with whom he therefore regularly shared clippings about bow ties. One New England bow tie producer named one of its products the Lancaster. Any suggestion to Lancaster that he might have known its origin was met with a silent cryptic smile.

He was universally known for his total absence of any apparent element of malice. His most favorable expression was one with a twinkle in his eye, his worst, silent deadpan. In response to the Bowdoin interview about his view of the legal world of his time, he explained; "I am not a litigator; I am a trial lawyer. Litigators know how to file motions; I try cases." Further, "I did lobby once. I told the firm that if I had to do it again, I would leave."

He noted that he lived in a world in which all the lawyers knew one another. Now, he observed, the entire trial landscape has changed. Very few cases go to trial. It is difficult to get training for younger lawyers. Most people who graduate from law school do not even know where the courthouse is. They do not begin to learn what to do until they get into a law firm.

THE CURRICULUM VITAE MISSING FROM THE PUBLISHED OBITUARY

He became a general-purpose civil trial lawyer. For a time, he did some teaching at a new local law school. Over time, he became President of Maine State Bar Association. He began to serve as a representative in the American Bar Association House of Delegates, the governing body of the organization.

In the American College of Trial Lawyers, he was inducted in 1972 at age forty-two with the minimum span of trial practice the College required, a rarity. In 1982, ten years later, he became a member of the College's Board of Regents. The next year, in the context of being quoted on a controversial proposal concerning lawyer-client relationships in which the College leadership was heavily engaged, his remarks were publicly characterized as those of a "prominent ABA leader."

A year later, he was appointed to serve as Trial Counsel for the United States at the Hague International Court of Justice in a six-week case involving a seabed boundary dispute concerning the Gulf of Maine between the United States and Canada. After serving two years as the College Treasurer, in

1988 he became the College's President-Elect and then became its President in 1989, a task that carried him and Mary Lou all over the United States and Canada.

During the period he had been serving on the College's Board of Regents, he was also a member of the American Bar Association's Standing Committee on the Federal Judiciary. President Eisenhower had realized that he needed knowledgeable assistance in filling lifetime appointments to the federal judiciary and asked the ABA to help create this arrangement. Its members' duty was to evaluate the professional qualifications of suggested appointees to the federal bench. For obvious reasons, from the beginning a large number of the members of this committee, including its leaders, were Fellows of the American College of Trial Lawyers.

Not only had he become a member of the ABA Standing Committee while he was a member of the Board of Regents, he was elected its chair and served from 1988 to 1991, simultaneously being the College's President and then its Immediate Past President.

Throughout the years of his College vice-presidency and presidency, he and Mary Lou visited every national and regional College meeting in the United States and Canada and as a couple, they were the College's ambassadors on many occasions. They were particularly effective because of his long geography-related relationship with the Canadian Fellows.

Lancaster's year as Immediate Past President was not devoid of activity. His successor, President Chuck Hanger, commissioned him to represent the College in a special cere-

mony at 10 Downing Street to make Prime Minister Margaret Thatcher an Honorary Fellow of the College.

AT HIS EVERY STEP IN THE COLLEGE, THERE WAS CANADA

As a Regent, Lancaster's original area included a part of eastern Canada, so from the beginning he was no stranger to the Canadian Fellows. He even learned to speak his own modicum of French. In the fall of 1986, he chaired the first Canadian-United States Legal Exchange, modelled after the long-existing Anglo-American Exchanges, and was a participant from the beginning in the Canadian Bar Foundation. Over a number of years, when a Canadian was a speaker at a College meeting, particularly those who came as guests to be installed as Honorary Fellows, he was

the traditional introducer. He knew them all personally and had an ease and a sense of humor about them, and they about him.

The high point of his performance was his Spring 2007 introduction of Madame Justice Rosalie Silberman Abella as an Honorary Fellow, a presentation that Lancaster had craftily orchestrated in advance. Holding in his hand what he claimed to be an eighteen-page CV for Justice Abella, he withheld it, lest the chair "give him the hook." As a substitute, he began by touching some of the high points of her life, noting that she was born—at a time he would not disclose because she was a friend—in a displaced persons camp, and then came to Canada as a refugee in 1950 when she was four years old.

In response, she exclaimed it to be a particular honor to be introduced

by Lancaster because of personal history. She disclosed that many years ago, she applied to join the College and the person who wrote the rejection letter, which she proceeded to read aloud, was Lancaster. The points that he made included: no one had nominated her, the letters from her sons and her mother, though very nice, were nevertheless unhelpful; she was completely unqualified, having practiced law for only four years before becoming a family court judge, creating an uninterrupted period of sustained family controversies, rather than making waves in landmark cases; her suggestion that one cannot call an institution a College without a football team, when in fact the word came from the Latin "collegium," meaning silver-haired and silver tongued, and her suggestion that "Fellow" was not gender-neutral. His letter ended by saying that his rejection did not mean



that she was a lesser human being, but merely a lesser lawyer.

In a postscript, he disclosed that the only way that he could think of to circumvent the merit-based requirement for membership in the College was for her to become a Judge on the Supreme Court of Canada, “but I think you and I both know that will never happen.” Her response: “So in order to become a member of the American College of Trial Lawyers, I became a Judge of the Supreme Court of Canada. How great is that?!!”

THE PROFESSION IN A TIME OF CHANGE

The College had long held its annual meeting at the same time and place as the ABA. The institutions, one confined to trial lawyers, the other to the legal profession generally, had been so close that several past presidents had been president of both. When there were issues on

which members divided, the College’s approach was to hold national programs in which speakers expressed both sides of the conflicting views for the education of the members, but, representing trial lawyers whose clients would of necessity have different interests, it educated its members on conflicting issues, but took positions and spoke to the public only on those consensus issues that improved and elevated the standards of trial practice, the administration of justice and the ethics of the trial profession.

In the late 1970s, the ABA, on the other hand, had begun to shift toward social and political issues which, unlike its prior history and unlike that of the American College, did not reflect a consensus view of all its members. The matter came to a head at the 1992 ABA annual meeting, at which issues involving matters such as abortion induced many members of the ABA, particularly those



(Left to right)
Mary Lou and Ralph during the 2015 Spring Meeting in Key Biscayne, Florida
The Lancasters with Marcy and Past President Jack Dalton at the 2015 Spring Meeting in Key Biscayne, Florida
Then President Chuck Hanger, Prime Minister Margaret Thatcher, and Lancaster during the 1990 Annual Meeting in London when Thatcher was presented with Honorary Fellowship.

(Above)
Lancaster at the 2004 Annual Meeting in St. Louis, Missouri



who, like Lancaster, had their own lifetime conviction on some of these issues, to resign from the organization. Many had considered Lancaster to be a prime candidate for the ABA presidency, and he always considered leading the ABA Standing Committee to help select qualified judges as one of his most important contributions. His opinion, however, was that the ABA, unlike the College, had stopped doing what it was created to do, represent the entire legal profession. There was no right or wrong in this, but simply a major difference of opinion between the two organizations.

As the ABA and the College drifted apart and as the legal profession became more complicated, Lancaster urged the College to create a long-range plan. It could no longer afford simply to react to problems as they appeared. There was the need

for a process to study and make recommendations about the College, about problems within the profession and about the future of the trial bar. This sentiment resulted in a 1993 retreat, the College's first, in Washington, D.C. As a result of this retreat, the College did indeed create a Long-Range Planning Commission, which Past Presidents Griffin Bell and Lancaster co-chaired, one which over time energized the College.

In anticipation of the fiftieth anniversary of the College's creation, Lancaster was one of the members of the planning committee for that 2000 event. President Frank Jones had created a separate group to produce a fifty-year history of the organization, entitled *Sages of Their Craft*, to which Lancaster also contributed.

CURRICULUM VITAE RESUMED

As a Past President of the College, Lancaster became a member of the Board ex officio. The Past Presidents can make motions, second motions, and speak, but have no vote. They are retained for the value of their knowledge of the College, its history, its traditions and its intended purposes. They are the keepers of its identity. Lancaster was long known as the Past President who could look into his file and find the answer to every question of history, from how the College had handled a past issue to what it paid for some expenditure in the past. Both active Regents, Past Presidents, and the staff looked to him as their memory bank, and he was not bashful about speaking out when he saw the current Board heading in what he thought was the wrong direction.

His absence in recent years has been a loss to the College.

Over the years, in his spare time Lancaster also served an unprecedented four times as a special master for the Supreme Court of the United States. Under the Constitution, if disputes among two states, usually over water rights, arose, the Court has original jurisdiction. It had no mechanism for performing this duty. Custom dictated that the Supreme Court would appoint a special master to report an adjudication of the conflict to the Court. Incredibly, Lancaster was called on to serve in that capacity in four different cases.

In the 1990s, he was also appointed by Janet Reno as Independent Counsel to investigate allegations that a United States Secretary of Labor in the Clinton Administration had been involved in influence-peddling and campaign fund-raising improprieties while serving as a White House aide. Lancaster even quietly took an interview of President Clinton under oath. The Whitewater investigation was going on simultaneously. Each day, Lancaster would casually walk through the front door where a mob of reporters stood looking for the latest word on Whitewater, but never wondering who he was. It was only near the end of his work that an enterprising reporter started wondering what other active independent counsel were at work there and blew his cover with a newspaper photo.

In 2002, back home in Maine, Lancaster also founded the Maine Assistance Program for Lawyers and judges, created to deal with issues such as

substance abuse, depression, mental health and aging.

THE SUPREME COURT HISTORICAL SOCIETY

Before becoming its President, Lancaster had served the Supreme Court Historical Society of the United States as one of the most successful membership chairs in its history. As its President, he was credited with ably guiding it through the depths of the 2008-2011 financial crisis, maintaining its programs and publications and avoiding the staff layoffs that were common in other such organizations during that Recession. Despite the financial pressures, he worked diligently to find the resources to build a new Gift Shop in the Supreme Court building, one in keeping with the rich architectural detail of that historic landmark. He led a campaign to secure the minting of a John Marshall Commemorative Coin, the proceeds of which added \$2.6 million to the Society's endowment. After a short stint as its President Emeritus, he was again called in 2013 to serve as Chairman, and in 2018 he was elected Chairman Emeritus of the Society.

ON THE HOME STRETCH

His last public appearance at a national College program was an on-stage chat with retired United States Supreme Court Justice Sandra Day O'Connor at the Spring 2012 Meeting in Scottsdale, Arizona. A review of their dialogue discloses a few subtle invitations from Lancaster to elicit humorous responses from Justice O'Connor, but it was clear that she

already knew him too well.

After all the years he was at the office first to make the coffee and pass along the morning news, in the years after his retirement his witty emails began to come from home. They came in the mischievous, playful sense of humor for which he was known. A growing number were about the view of aging from one's own perspective, some more than a bit risqué. These missives may have indicated that they had been transmitted from Mary Lou's email address, and hence from her desktop, but clearly their recipients knew who the real sender was.

As his former law partner observed at his memorial service, his leadership resulted from neither ambition nor self-promotion. "People trusted Ralph, and he never abused that trust. He was the single best lawyer I ever knew."

Surely Ralph would have known that, though his local newspaper might have obeyed his directions, they knew too much to let his farewell pass without their own separate editorial view, the next day's headline of which read: "America's lawyer' chose to practice here"

As for Lancaster's own obituary, we suggest that it could have been written only by the same young lawyer who long ago in the Mayfair section of London's Westminster, placed a marked bench in Berkeley Square, where the nightingale sings, in honor of a young wife named Mary Lou.

E. Osborne Ayscue, Jr.

Editor Emeritus

IN MEMORIAM

In this issue, we honor the memories of another forty-four departed Fellows of the College. As is the case with such groups, woven into their collective pattern of accomplishment are many different threads.

As is our custom, the two Presidents of the College who are included, Ralph Lancaster and David Scott, are each the subject of a separate tribute elsewhere in this issue. The group also includes five former members of the Board of Regents: Don Cowan, David Cupps, Jim Danielson, Mike King, and Stephen Nebeker. Cowan's service to the College was foreshortened by a stroke shortly after he became Secretary of the College. In a departure first suggested by a Past President, we have described the last eight years of his life, focusing on the wife who made the rest of his life sustainable. King's term was foreshortened by his confirmation to the federal bench.

As is our custom, the deaths of widows of Past Presidents are noted when they occur. The one in this issue, Frances Wilson, widow of Lively Wilson, is known by many of her contemporaries by her graceful hospitality on the occasion of the Kentucky Derby.

Some state and province committees have long begun to respond to our requests by generating round-robin email entries from all of their Fellows at the time of their death, seeking useful information and insights about them. You will have no difficulty identifying which groups now do that honor to their departed friends, thereby adding memories of them to our

memorials and thus to the College's history.

In this issue, one orphaned child of the Great Depression carefully wrote his own obituary, one that said little about himself. Another forbade either funeral or memorial service, asking instead that his ashes be scattered on the sea and that his friends spend no time in mourning, but instead remember the good times, of which there were many. In one case, however, another Fellow took the time to add more about him, and the other was already long a legend before his passing.

With the passage of time, World War II is now a distant memory for all but a few teenagers who were embroiled in its final years: the nineteen-year-old Ensign who commanded a 440-ton water-carrier and was still around to see the two tests on Bikini Atoll, the nineteen-year-old who was on his way across the Pacific when Hiroshima and Nagasaki ended the war, and the eighteen-year-old born in Canada of Norwegian ancestry, who fought in the United States Army as a foreign national.

They came from many different places. One grew up in a place called Whizbang, Oklahoma. Another grew up in a town with one stop sign on a wheeled cart that could be moved to the side of the street when it was not needed. He went from there to become Chair of the largest "homegrown" law firm in the Southwest. One spent his teenage summers as a wrangler training horses and leading trips in Yellowstone country. One was the youngest of eight sons whose father, a

Governor of Nevada, died when he was two years old, leaving a forty-four-year-old mother who educated all of her children.

They were scholars. One was, for a number of years, the Dean of a newly emerging law school. One was a longtime mainstay of NITA. One became valedictorian of his law class while working as Chief of Contracts for a national corporation by day and going to law school at night. Another entered college at age sixteen and had to wait a few days until he was twenty-one to become eligible to receive his law license.

Although we assume that all Fellows are accomplished trial lawyers who have their own collection of war stories, we do point out two who acted as Independent Counsel in national proceedings involving members of the cabinets of Presidents Clinton and Reagan and one who acted as Special Master for the United States Supreme Court in a number of matters in which it had original jurisdiction. And Fellows who helped to gain immunity for Monica Lewinsky or presided over the knee-capping trial involving figure skaters Tonya Harding and Nancy Kerrigan may also call forth memories of past events.

Hobbies abound. One built a log cabin with his wife. One ran a Marine Corps Marathon at age fifty-nine. One grew olives and produced olive oil from them. One was a well-known author who had written twenty-six books. One wrote a monthly column in a Washington D.C. bar publication. Wanting to develop something he felt to be unique, he became an adept juggler. In retirement, one ran a travel agency with his wife for twenty-one years, taking their own last trip abroad together at age ninety-one.

One last landmark: This issue marks the departure of three of the College's most visible lifetime bow tie wearers. Indeed, the deaths of Past President Jimmy Morris in the last issue and that of Fellow Jacob Stein and Past Presidents Lancaster and Scott in this issue severely thin the ranks of us who still harbor the practical knowledge that one can send a shirt, but not a tie, to the laundry.

With this issue, we now have a collection of 1,659 memorials of departed Fellows. Please continue to do your part to send us the information that can help us do justice to the memories of all our departed Fellows.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

ERRATA

In Issue 89, Spring 2019, of the *Journal*, the memorial to Charles E. Patterson at page 129 erroneously stated that he had served in the United States Marine Corps in Korea. He had instead served in Vietnam. The *Journal* regrets the error.



John Tilden Ballantine, '77, Stoll Keenon Ogden PLLC, Louisville, Kentucky, died April 9, 2019, at age eighty-eight. Earning a bachelor's degree with High Distinction from the University of Kentucky, he was a member of Phi Beta Kappa and was honored with the Algernon Sydney Sullivan Medallion as his year's outstanding male graduate. After two years as an officer in the United States Air Force, he earned his law degree from Harvard Law School and served as a clerk for a Judge of the United States District Court before joining the law firm with whose successor firm he practiced for sixty years. Over the years, he served as his firm's general counsel and in later years often served as a mediator. He was honored as the Kentucky Bar Association Lawyer of the Year, the inaugural Louisville Bar Association Judge Benjamin Shobe Civility and Professionalism Award, and the American Inns of Court Professionalism Award for the Sixth Circuit. President of the Louisville Bar Association, he served the College as Kentucky State Committee Chair and participated in a number of local civic and charitable causes. A contemporary noted that he spent his entire life with honesty, integrity, and humility, treating everyone with dignity and respect. His survivors include his wife of fifty-one years, two daughters, and three sons.

Walter Barthold, '73, a Fellow Emeritus, from Ridgewood, New Jersey, died March 10, 2018, at age ninety-three. Born in Toronto, Ontario, he emigrated to the United States with his family as a child. Serving as a foreign national in the United States Army's 80th Division Signal Corps

in World War II, he was awarded the Chevalier Medal of the Legion of Honor by the President of France for his part in its liberation. He thereafter graduated from Northwestern University and from Yale Law School. For many years he was director of litigation at Arthur, Dry, Kalish, Taylor and Wood in New York City before establishing his own firm at age eighty. He reestablished and maintained connection with his father's extended family in Norway, visiting it on many occasions and giving many years of service to Norwegian associations. He chaired a national committee of the College and was a regular contributor to the *American Bar Association Journal* and a long-time devotee of the Metropolitan Opera. A widower who remarried, his survivors include his wife, a daughter, two sons, and two stepdaughters.

John Jacob Bouma, '81, Snell & Wilmer, L.L.P., Phoenix, Arizona, died January 22, 2019, at age eighty-two. A graduate of the State University of Iowa and of its School of Law, he was editor of its law review. He grew up in Pocahontas, Iowa, where his father ran a movie theater in a town so small that its single stop sign was on wheels, parked to the side of the road when it was not needed. Stationed in the United States Army Judge Advocate General Corps in Arizona, he explored Phoenix, applied to law firms there, was accepted by Snell & Wilmer and never went back East. He eventually became Chair of Snell & Wilmer, as it grew into the largest home-grown law firm in the Southwest. He served as President of his state Bar and as Arizona State Committee Chair of the College, as well as of another national College

Committee and was a member of several others. He co-founded an Equal Justice Foundation that provided legal assistance for those who could not afford an attorney. A community leader, he was involved in many local initiatives. Competitive and relentlessly hard-working, on the eve of his eighty-second birthday, he spent three weeks on a pheasant hunt in Colorado, hiking in the cold for nine miles a day. Ironically, nine days later, he died in a pedestrian accident a few blocks from his home. His survivors include his wife of fifty-nine years, three daughters, and a son,

Thomas C. Burke, '93, a Fellow Emeritus from Osborn, Reed & Burke, LLP, Rochester, New York, died November 21, 2017, at age eighty-six of cancer. A graduate of Canisius College and Georgetown University School of Law, he was a United States Army veteran. He chaired the College's Upstate New York Committee. His survivors include his wife and three sons.

John W. Carey, '87, a Fellow Emeritus, Sieben Cary, PA, Cologne, Minnesota, died December 11, 2018, at age eighty-one. After attending St. Thomas College, St. Paul, Minnesota, he finished his undergraduate work at the University of Minnesota and his law degree at the William Mitchell College of Law. He was appointed to a number of professional organizations, including the Governor's Blue-Ribbon Commission on the Insurance Crisis, representing the plaintiffs' bar. He also served on a myriad of non-professional organizations. In a humorous, larger-than-life obituary, his family noted that he found the perfect

gift in playing cards, "a gift he never mastered." Known for the funny stories he told to those he called his dear friends, both colleagues and those who were "adversaries," with a sense of humor second to none, his passion turned to wearing big jewelry and to riding motorcycles. He served the College as Minnesota State Committee Chair. His survivors include his wife of fifty-three years, a daughter, and two sons.

Hon. Robert Foster Chapman, '69, a Judicial Fellow from Spartanburg, South Carolina, died April 18, 2018, at age ninety-one, six days short of his ninety-second birthday. He joined the United States Navy V-12 program in World War II and transferred to a Naval ROTC program at the University of South Carolina while completing his undergraduate degree there. Then, at age nineteen, he became an Ensign, the commanding officer of a 172-foot, 440-ton water carrier in the South Pacific, assigned to Guam. He later served in Operation Crossroads at the Bikini Atoll, where he witnessed two atomic bomb tests. Earning his law degree at the University of South Carolina, where he was a member of the Order of the Coif, he was in private practice in Spartanburg for two years before being called for another two years as an officer in the Navy. He then practiced law in Spartanburg with Butler, Chapman, Parler and Morgan until 1971, when he was nominated by President Richard Nixon to the United States Court for the District of South Carolina. Ten years later, he was elevated by President Ronald Reagan to the United States Court of Appeals for the Fourth Circuit. He assumed senior status in 1991, ▶

serving until his death. He served as Chair of the South Carolina Republican Party and attended two Republican National Conventions. The son of a well-known philanthropic South Carolina textile family, he was a deacon in his Spartanburg Presbyterian Church, and when he moved to Camden when he became a judge, served as an elder in his church there. He was known as a great storyteller. At the time of his death, Fourth Circuit Chief Judge J. Harvie Wilkinson III wrote of his unfailing kindness: “a man whom bench and bar held in highest respect. As a golfer, he was legendary. As a soldier, practitioner, judge, husband and father, he displayed deep patriotism, unfailing kindness and steadfast loyalties that made us, one and all, proud to call him friend.” One of his law clerks observed that he was a man of unfailing grace, charm, wisdom and kindness. . . we are all better for having crossed his path.” Loving human interaction, he had complained to his law clerks that appointment to the appellate court was isolating, and that he missed the daily contact he had with lawyers as a trial judge. He had been honored with the Order of the Palmetto, the National Patriot’s Award from the Congressional Medal of Honor Society, an Honorary law degree from the University of South Carolina, and an Honorary Doctorate of Humanities from the College of Charleston. A widower whose second wife also predeceased him, his survivors include three sons, a stepdaughter, and a stepson.

Thomas William Christian, ’85, Christian & Small LLP, Birmingham, Alabama, died February

25, 2019, at age eighty. A graduate of the University of Alabama, he served as an officer in the United States Army in the Vietnam Era before returning to earn his law degree at the University of Alabama Law School. Beginning by serving in two successive law firms in Birmingham, he formed the firm Christian & Small. A former President of the Alabama Defense Lawyers Association, his survivors include his wife of fifty-four years, a daughter, and two sons.

James Donald Cowan, Jr., ’90, a Fellow Emeritus, Former Regent, and Secretary of the College, retired from Ellis & Winters, LLP, Raleigh, North Carolina, died April 1, 2019, at age seventy-five, almost eight years after he suffered a debilitating stroke. He earned his undergraduate and law degrees from Wake Forest University, where he was the Editor of the law review. He then spent four years as an officer in the United States Army JAG Corps, attached successively to the 82nd Airborne Division at Fort Bragg, North Carolina, the 1st Infantry Division (the Big Red One) with periodic assignments with the 101st Airborne Division (the Screaming Eagles), both in Vietnam and, finally, with the 1st Armored Division in Nuremberg, Germany. He chose never to disclose the honors and awards he had received in his military service. He began his law practice in Greensboro, North Carolina, practicing both there and in Raleigh with successive iterations of a growing statewide law firm, until he joined Ellis & Winters in 2008. A former member of the American Bar Association House of Delegates, he was President of the North Carolina Bar

Association and of Legal Services of North Carolina (now Legal Aid of North Carolina). He served several terms on the Board of Trustees of Wake Forest University and was President of its Law Alumni Association. As a teacher earlier in his career, he was asked to produce a program for the statewide association of the Superior Court Judges of North Carolina, summarizing every significant state court decision and statutory enactment in the preceding year. It made such an impact that it became, on demand, a standard legal education program for both judges and the North Carolina Fellows of the American College of Trial Lawyers for at least the next seventeen years. He became an acclaimed Adjunct Professor of Trial Practice at Duke University Law School. He also recruited and led national educational programs at two meetings of the College, one on the *Daubert* case and one on a controversial case involving Duke lacrosse players. In 1987, a state court judge asked Cowan, a civil trial lawyer, to represent a defendant accused of first-degree murder. For the next nineteen years, he pursued the case, which involved, among other things, an unusually painful lethal injection drug. This pro bono case became the subject of a *New York Times* article. His last appearance in a federal court came in another indigent case fifteen days before he suffered his stroke. At his memorial service in Raleigh's historic downtown Episcopal Church, the seats in an entire corner of the church were divided by notes for seating the Past Presidents of the North Carolina Bar Association and notes for seating Fellows of the College. "Where do I sit?" generated more than a few smiles; of

the nineteen living past presidents of the North Carolina Bar Association who are trial lawyers, seventeen are also Fellows of the College. At his memorial service, two of the persons who spoke and one who was quoted in his obituary, all of whom had become or are becoming national leaders in their own right, spoke about his role as their mentors. One partner outlined Cowan's five professional principles: the highest ethical standards, exhaustive preparation that never ceases, less is more—hyperbole has no place, act when issues arise and not later, and always keep one's credibility. The love of the law was his job, his career, his avocation, and his hobby. He was the consummate professional. To his children, on the other hand, he lived in their world. He taught them the wildest music of his generation, and they, in turn, taught him the even wilder music of theirs. Convention normally describes an obituary as ending with a description of the nearest survivors of the deceased. In this case, however, doing so would leave a story that we fear too often goes untold. In the prime of his life, Don Cowan suffered a stroke that left him essentially paralyzed and with a vocabulary of only four or five words. It quickly became apparent that he could receive, hear and understand what came **in** to his eyes, his ears and his mind, but that he could not organize to respond, to communicate, in return. Sarah was his wife with her own career and her own academic doctorate. Fellow Regents had seen Don and her pedaling up the steep grade to the top of an Arizona mountaintop, passing the bus on which the rest of them sat as it labored up the same hill, and who in the evening was, ▶

with him, performing dance maneuvers at which the others could only marvel. She then became, overnight, his guardian and his caretaker. Over time, Don began to pull on his Wake Forest t-shirt to go over to UNC Memorial Hospital for therapy and began to navigate a handrail to reach an exercise bicycle. Amidst the constant flow of correspondence and emails there came visits at which the two of them always sat side by side, eager to listen to everything a friend could tell them about the world outside their own confined lives. Over time, that became more stressful, and visits came only through Sarah's laptop, on which the North Carolina Fellow's email address was given. Sarah did the receiving, proposing, agreeing, and sending of responses from both of them. Their lawyer son left his New York career with *60 Minutes* to come home to Raleigh, as did their daughter, who left her own Washington career in the federal government, and they brought with them Don's and Sarah's grandchildren. In 2014, the North Carolina Bar Association honored Don with its highest honor, the Judge John J. Parker Award. A group of his fellow lawyers carried him on a chair to place him on the dais. Sarah stood behind him. When it came time for him to respond, he articulated as best he could, the words, as Sarah quietly spoke them from behind him. There not a dry eye in the room. At some point, Don had a relapse that left him where he had begun the day of his stroke, essentially totally helpless. When it became apparent that Don's case was not terminal, hospice ceased being an option, and Sarah again took over again. For almost eight years, she, characterized by one of her friends as

the energizer bunny, thus insisted on carrying on for both of them. Don's survivors include Sarah, his wife of over fifty years, a daughter, and a son. Looking back over the nearly 1,700 memorials we have published since this feature of the *Bulletin*, now the *Journal*, became available, in a world where people of achievement such as those the College represents rarely stand alone in their world, we have to wonder how many stories like this one go, unfortunately, untold.

David Stewart Cupps, '84, Columbus, Ohio, died February 28, 2019, at age eighty-two as the result of complications from heart surgery. After graduating from Harvard College, he served as an officer in the United States Navy for four years during the Vietnam Era before earning his law degree at Ohio State University College of Law. While qualifying for a bar license in New York, he held clerkships with New York City's Dewey Ballantine and then with Cravath, Swaine & Moore, where he then practiced for six years before joining Columbus' Vorys, Sater, Seymour and Pease LLP in 1972. He served the College as Ohio State Committee Chair and then, from 1997 to 2001, as a member of the Board of Regents, as well as serving as Chair of the College's National Trial Competition Committee. From 2007 until 2018, he was corporate counsel at Abercrombie & Fitch. A trial judge before whom he had often practiced sent the following message to his family: "I have known David for most of his impressive career in the law. In addition to his expertise as a lawyer, he was a true gentleman. It was a pleasure to discuss matters with him as he was always

so knowledgeable about his cases. I will always remember his ‘trademark’ when answering the phone—‘David Cupps here.’ He will long be remembered.” As this observation suggested, reflecting on his own image was not something in which Cupps was interested. His self-dictated non-obituary read as follows: “He found practice of law endlessly fascinating. At his insistence there will be no funeral or memorial service. His ashes will be scattered in the sea. His hope for surviving family and friends was that they waste no time mourning, but instead to remember the good times—of which there were many.” His family added: “Should friends desire, David’s family welcomes remembrances to any charity significant to you; or, suggests the Faith Mission Homeless Shelter & Services . . . and the Ohio State Law Journal . . . as organizations especially dear to David.” His survivors include his wife of fifty-three years, three daughters, and a son.

James Myron Danielson, ’89, a member of the College’s Board of Regents from 2011 to 2015 and a Fellow Emeritus, retired from Jeffers, Danielson, Sonn & Aylward, P.S., Wenatchee, Washington, died January 22, 2019, at age seventy-six. Raised on a farm, he received an academic scholarship to Dartmouth College, after which he served as an officer in the United States Army in the Vietnam Era. He earned his law degree from the University of Washington Law School, where he was Editor-in-Chief of the Law Review and a member of the Order of the Coif. During his career, he was President of his local Bar and of the Washington Law School Foundation and a long-time member of his local

school board. A skilled hunter and an avid fly fisherman, he built a large log cabin on the Stehekin River with his wife. His survivors include his wife of fifty-four years, two daughters, and a son.

John R. DiCaro, ’86, a Fellow Emeritus, retired from DiCaro, Coppo & Popcke, Carlsbad, California and living in Vista, California, died March 16, 2019, at age seventy-eight. He earned his undergraduate degree from the University of Colorado-Boulder and his law degree from the University of California, Berkeley (Boalt Hall School of Law). He served as Judge *pro tem* for the Orange County Superior Court and attended various mediation training programs, including the Straus Institute for Dispute Resolution at Pepperdine College. He grew olives, produced olive oil, and had sailed numerous voyages in various parts of the world.

George Morton Dickerson, ’81, Fellow Emeritus, Las Vegas, Nevada, died February 15, 2019, at age ninety-six. The youngest of eight children of the eleventh Governor of Nevada, his father died when he was two, leaving his mother, a forty-four-year-old widow, who thereafter saw all her children to college. He did his undergraduate work at the University of Nevada and gained his legal education at the University of California Hastings College of Law. In his first seven years, he worked as Deputy District Attorney and then as District Attorney of Clark County, Nevada, before entering private practice. President of his County Bar, a member and President of the Board of Governors of the Nevada State Bar, he led the

State Gaming Commission and was the long-time counsel of the Las Vegas Convention/Visitors Authority. His survivors include his wife of seventy years, a daughter, and two sons.

Jon Peter Dixon, '99, a Fellow Emeritus from Oakland, California, died July 12, 2018, at age seventy-six. He earned his undergraduate degree at Stanford University, where he had a baseball scholarship, and his law degree at Hastings Law School. He served as a JAG officer in Vietnam, earning a Bronze Star. A traveler, he enjoyed numerous trips to France, Italy, Amsterdam and Hawaii and made twenty-five fishing trips to Alaska. He also was an accomplished pianist. His survivors include a daughter.

Carl Andrew Eck, '96, a Fellow Emeritus, Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, from Pittsburgh, Pennsylvania, died June 15, 2013 in his eighty-first year. After earning a combined undergraduate and law degree at the University of Notre Dame, he served in the United States Air Force Judge Advocate General Corps in France. Founder and senior partner of his firm, he practiced for fifty-two years. An active lifelong parishioner in his church, he was committed to the success of DePaul School for Hearing & Speech. His survivors include his wife of fifty-seven years, three daughters, and three sons.

Geoffrey L. Gifford, '93, Pavalon & Gifford, Chicago, Illinois, died February 9, 2019, at age seventy-two. A Phi Beta Kappa graduate of the University of Missouri, he earned his law degree from the University of Michigan. After

first practicing with his father in his original hometown, he served as Prosecuting Attorney and Corporation Counsel of another town before moving to Chicago, where he first taught for two years at Chicago-Kent College of Law before beginning private practice. He served as President of the Illinois Trial Lawyers Association, leading a successful challenge to that state's tort reform legislation. He had been involved in both a Legal Aid Clinic Advisory Board and the Board of a Gastro-Intestinal Research Foundation. Divorced and remarried, his survivors include his former and present wives, a daughter, a son, a daughter-in-law, and a son-in-law.

David Lindley Hammer, '80, a Fellow Emeritus, retired from Hammer, Simon & Jensen, Dubuque, Iowa, died December 27, 2018, at age eighty-nine. After earning his undergraduate degree from Grinnell College, he served two years in the United States Army before returning for his law degree at the University of Iowa. A past President of the Young Lawyers of Iowa, he served for twelve years on the Iowa Supreme Court Grievance Commission, followed by six years' service on that Court's Advisory Rules Committee. He was President of his local Bar and of the Iowa Defense Council and a delegate to the Defense Research Institute. He also was the author of twenty-six published books, ranging from Sherlock Holmes travel books to a best-selling memoir and one about legendary basketball coach Dean Smith. His civic contributions went from thirty-five years' service on the board of a local Cemetery Association

through the Board of Directors of the Dubuque Museum of Art, the local United Way, and the board of a local hospital. His survivors include his wife, a daughter, and a son.

Joseph C. Jaudon, Jr., '81, a Fellow Emeritus, retired from Jaudon & Avery, LLP, Denver, Colorado, died February 12, 2019, at age eighty-one. Earning his undergraduate education at Washington University and Westminster College and his law degree from the University of Missouri, he then moved to Colorado to practice law. A lecturer in trial advocacy at Denver University's Sturm College of Law, he taught for many years and served for sixteen years on the Board of the National Institute of Trial Advocacy (NITA). He also taught trial tactics at Harvard Law School and held a Fulbright Fellowship to establish and direct the teaching of advocacy skills in New Zealand. As a teenager, he worked as a wrangler in Yellowstone National Park. A ruling Elder in his Presbyterian church, he was volunteer counsel to a lobbying group on special education and a member of the Colorado Committee on Human Subjects Research and Experimental Medicine. He served the College as Colorado State Committee Chair. His survivors include his wife, two daughters, and two sons.

John Ephraim Johnston, Jr., '90, a Fellow Emeritus, retired from Smith Moore Leatherwood, LLP, Greenville, South Carolina, died September 2, 2016, six days before his eighty-third birthday. Graduating from the University of South Carolina, a member of Phi Beta Kappa and Omicron Delta

Kappa, he went on to its law school, where he was first in his class and an editor of the law journal. He then served as an officer in the United States Air Force Judge Advocate General Corps. Active in statewide legal, charitable, and educational affairs, he was President of both the South Carolina State Bar and its Bar Foundation, and Chair of the South Carolina Supreme Court Commission on Continuing Lawyer Competence. He was a member of the South Carolina State College Board of Trustees, which served a collection of institutions of higher education, and was awarded an honorary doctorate from one of them, Lander University. The University of South Carolina awarded him its Platinum Compleat Lawyer Award, and he was honored with the Order of the Palmetto, the state's highest honor, as had been his late wife. A widower, his survivors include three daughters.

Hon. Garr M. King, '84, Judicial Fellow and a former member of the Board of Regents of the College, Portland, Oregon, died February 5, 2019, at age eighty-three. After high school, he joined the United States Marine Corps and was deployed to Japan during the Korean Era. He earned his undergraduate degree from the University of Utah and, moving to Portland, he worked for the United States National Bank as a trust officer while attending night school at Northwestern School of Law of Lewis & Clark College. Beginning his career as a Deputy District Attorney, he entered private practice and six years later formed the law firm in which he practiced for over twenty-five years. He became President of his local Bar and

was a generous contributor to his community. He served the College as Oregon State Committee Chair and, in 1995, became a member of the Board of Regents. Appointed three years later in 1998 by President Bill Clinton as Judge of the United States Court for the District of Oregon, he took senior status in 2009. His survivors include his wife of sixty-two years, Mary Jo King, a daughter, and four sons. Mary Jo herself died on March 30, 2019, less than eight weeks after his death.

Bruce Wheat Kirbo, '79, a Fellow Emeritus from Bainbridge, Georgia, died December 22, 2018, at age eighty-eight, after a lengthy bout with Alzheimer's Disease. Entering the University of Georgia at age sixteen, he finished law school at age twenty-one and had to wait a few more days to gain his admission to the Bar. After two years of military service, he began practice as a sole practitioner. Over the years, he was President of his local Bar and a member of the Board of Governors of the Georgia State Bar. He served as a special master by the Supreme Court of Georgia and, for over twenty years, was the solicitor of the State Court of Decatur County. His survivors include his wife of sixty-three years, a daughter, and four sons.

Jefferson Davis Kirby III, '93, a Fellow Emeritus, retired and living at Pawleys Island, South Carolina, died December 10, 2018, at age seventy-eight. A graduate of the University of Virginia, where, a member of Phi Beta Kappa and of the golf team, he graduated in three years, he

also earned his law degree there before earning a Master of Laws degree at Georgetown University. An officer in the United States Army, he served as a military policeman in Vietnam and was awarded a Bronze Star. He practiced law in Atlanta for over thirty years and taught trial practice at Emory University Law School. A traveler to Europe, he took voice and French lessons and loved to dance. His survivors as listed in his obituary included his first wife and mother of his children, his second wife of thirty years, and two sons.

David Sterling Kunz, '62, a Fellow Emeritus who practiced law in Ogden, Utah, and later lived in retirement in Coronado, California, died November 19, 2018, at age 101. A graduate of Utah State University and of the University of Utah College of Law, he was on a Latter-day Saints mission to Germany until two weeks before December 7, 1941, when he immediately enlisted in the United States Navy. The following July, after finishing his law degree, he entered active duty, serving as an Intelligence Officer in the Pacific Theater, and remained a reserve officer for another ten years, retiring as a Lieutenant Commander. Practicing law with his brother, he served as President of the Utah State Bar and at the time of his death, was the oldest living member of the Utah Bar Association. He also served for forty-six years on the Board of Directors of the Bank of Utah. For twenty-one years, he and his wife owned Adventure Travel in Ogden. In 1997 they moved to Coronado to be near their daughter and her family, spending their remaining years traveling the globe. Their

last trip to Europe came in 2018, when they were ninety-one years old. Predeceased by his wife by almost exactly one year, his closest survivor is his daughter.

Ralph Ivan Lancaster, Jr. '72, Portland, Maine, the thirty-ninth President of the College, died January 22, 2019, at age eighty-eight. A tribute to his life may be found on page 97 in this issue of the *Journal*.

Richard Garrett Langdon, '85, a Fellow Emeritus, retired from Herrick, Langdon, Sandblom & Belin, & Langdon, Des Moines, Iowa, died March 25, 2019, at age eighty-two. A graduate of Harvard College and of Harvard Law School, he practiced law with his father for over forty-five years. His life included a large variety of philanthropic achievements. A widower who had remarried, his survivors include his wife, a daughter, and a son.

Ronald Dale Libkuman, '80, a Fellow Emeritus, retired in 1995 from Libkuman, Ventura, Ayabe, Chong & Nishimoto, Honolulu, Hawaii, died September 11, 2018, at age eighty-six. Born in Detroit, Michigan, after serving for four years in the United States Air Force, stationed in Europe, he earned his undergraduate degree at Wayne State University and his law degree at Detroit College of Law. He then moved with his family to Honolulu, Hawaii, where he practiced law for forty-five years. One of his major civic contributions was helping to direct children's educational and hospital establishments. A sailor

and a woodworker, most of the furniture in his home he built of teak and koa wood. A widower, his survivors included daughter and a son.

Gerald Lawrence McMahon, '82, a member of Seltzer Caplan McMahon Vitek, a Law Corporation, San Diego, California, died December 24, 2018, at age eighty-three. Born in Ohio, he earned his undergraduate degree at the University of Southern California on a Naval ROTC scholarship. Elected student body president, at graduation he received the Order of the Palm, presented to the most outstanding graduating senior in his class. For four years he was a naval aviator, stationed on the aircraft carrier *USS Hornet*. He then accepted a position as Chief of Contracts for General Dynamics Corporation's Centaur Space Vehicle Program, while pursuing a law degree after hours at the University of San Diego. Graduating summa cum laude, becoming Notes Editor of the law review, named a member of the Order of the Coif, he was designated the St. Thomas More Scholar for the highest-grade point average in his class. He then practiced law at Seltzer Caplan for fifty-four years, serving as Board chair and head of the litigation department. Awarded numerous legal accolades, he received the Arthur R. Hughes Career Achievement Award at the University of San Diego School of Law and twice was given its distinguished Alumnus Award. One of his contemporaries described him as the "last Renaissance gentleman lawyer." His survivors include his wife of sixty-two years, two daughters, and three sons.

Stephen Bennion Nebeker, '76, a Fellow Emeritus, retired from Ray Quinney & Nebeker, Salt Lake City, Utah, died August 19, 2018, at age eighty-nine, of Parkinson's Disease. His life was heavily influenced by his upbringing in the outdoors and his membership in the Church of Jesus Christ of Latter-day Saints. He spent his summers working on a family farm and later as a bellhop at Jenny Lake Lodge in the Grand Tetons. An accomplished skier, he served a Mission in Liverpool, England. After completing his undergraduate degree and his law degree at the University of Utah, where he was member of the law review, he served two years in the United States Army before commencing law practice. Named Lawyer of the Year by the Utah State Bar, he was the College's Utah State Committee Chair and then became the first Fellow from Utah to serve as a member of the College's Board of Regents. He had served as President of the Utah Alumni Association and had received a Distinguished Alumnus Award by the University. His survivors include his wife of sixty-seven years, three daughters, and a son.

John Patrick Nelligan, QC, LSM, '75, a Fellow Emeritus, retired from Nelligan, O'Brien & Payne LLP, Ottawa, Ontario, died January 7, 2019, at age ninety-seven. After earning his undergraduate degree from the University of Toronto, he served overseas in World War II, returning to earn his Barrister at Law, with honors, from Osgoode Hall Law School. Practicing for six years in Toronto, he then moved to Ottawa where he thereafter formed the law firm from which he practiced

for the rest of his career. Counsel in numerous high-profile cases, he was made Queen's Counsel in 1972. A past president of the Canada Civil Liberties Association, he was the first President of The Advocates' Society to practice outside Toronto. Among his many honors, he was the recipient of The Law Society Medal, The Advocates' Society Medal, the Carleton Medal, the Laidlaw Medal for Excellence in Advocacy and the Award of Merit from B'nai B'rith of Canada. He served the College as its Ontario Province Committee Chair. A widower, his survivors include two daughters.

Alfred Howard Osborne, '87, a Fellow Emeritus, retired from Bowen Hall Ohlson & Osborne, Chartered, Reno, Nevada, died December 13, 2018, at age eighty-four, of cancer. A graduate of Lake Forest College and Washington University School of Law, he had served in the United States Army Reserves. Beginning practice in Kansas City, Missouri, he soon moved west to Reno, working for the Nevada Highway Department before joining in organizing a law firm from which he practiced until 2010. He had been President of the Nevada Trial Lawyers' Association. A golfer and sports enthusiast, he had served on several community boards. His survivors include his wife of fifty-eight years, two daughters, and two sons.

Thomas Earl Palmer, '87, Fellow Emeritus, Williamsburg, Michigan, died January 5, 2019, at age seventy-nine, of cancer. A graduate of Denison University and of the University of

Michigan Law School, he practiced law for over forty years in Columbus, Ohio, including serving as managing partner of Squire Sanders & Dempsey. He then completed his career as Vice-President, Secretary and Corporate Counsel of Mead Corporation, Dayton, Ohio, during which time he served on the Wright State University Board of Trustees. In retirement, he and his wife built a waterside residence on the Great Lakes in Elk Rapids, Michigan. His survivors include his wife, a daughter, and three sons.

Owen Murphy Panner, '65, a Senior United States District Judge, Medford, Oregon, died December 19, 2018, at age ninety-four. Born in Chicago of a geologist father who worked in the oil fields, the family moved to Whizbang, Oklahoma, where he grew up in the Dust Bowl the Great Depression. After two years at the University of Oklahoma, Panner joined the United States Army in World War II, learning to command troop ships on Atlantic crossings. Returning to law school on a golf scholarship, he graduated as a member of the Order of the Coif. Upon graduation, he and his wife moved to Bend, Oregon, where he practiced law for thirty years. General Counsel for the Confederated Tribes of Warm Springs for twenty-five years, he declined the position of Commissioner of the Bureau of Indian Affairs in the Kennedy administration. As a trial attorney, he served in several Oregon State Bar positions and was a Trustee of Lewis & Clark College and a President of the Oregon Historical Society. He served the College as Oregon State Committee Chair. Appointed to the United States

District Court for the District of Oregon, he served for twelve years, including six as Chief Judge, before taking senior status. He continued to work on a reduced schedule, hearing cases until 2015 and continuing to go to the office twice a week. Among his many well-known cases was that of ice skater Tonya Harding in litigation involving the kneecap attack of her rival, Nancy Kerrigan. A widower who had remarried, he and his second wife bred and trained Arabian horses, and his chambers were decorated with a display of horses and Native American gifts and decorations from the Warm Springs Tribes. His survivors include his second wife and four children.

David William Scott, '84, O.C., Q.C., the fifty-third President of the College, died March 21, 2019, at age eighty-three. A tribute to his life may be found at page 93 of this issue of the *Journal*.

Arthur Gloster Seymour, Jr., '92, Frantz, McConnell & Seymour, LLP, Knoxville, Tennessee, died March 11, 2019, at age seventy-four, of cancer. A graduate of the University of the South and of the University of Tennessee School of Law, he served in the United States Army before joining the law firm of his grandfather, where he practiced for his entire career. A member of the Board of the University of the South, his broad span of civic and charitable activities included the presidency of the East Tennessee Historical Society and of the Metropolitan Airport Authority, as well as membership of the boards of the Episcopal School of Knoxville and the County Public Library System. He served as

senior warden of his local Episcopal cathedral. His survivors include his wife.

Ross Harry Sidney, '79, a Fellow Emeritus, retired from Grefe & Sidney, Des Moines, Iowa and living in Sarasota, Florida is reported to have died in December 2018, at approximately the time of his ninety-sixth birthday. A graduate of the University of Iowa and of its School of Law, where he was a member of the Order of the Coif, he was a lifetime honorary member of the Board of Directors of the Iowa Law School Foundation. No further information is available at this time.

Marvin Talieu Simmons, Jr., '01, a Fellow Emeritus from Gainesville, Georgia, died January 15, 2019, at age eighty-two. After earning his undergraduate and law degrees from the University of Georgia, he first practiced as an accountant and then a comptroller of the Civil Defense Division of the Department of Defense for the State of Georgia. Principally practicing family law in the Decatur area, he was a driving force in the creation of the State Bar's Family Law Section, serving as Chair of its first Family Law Institute and as Chair of its Family Law Section. He had been the recipient of the Family Law Section's award for professionalism and later of its highest award. More generally, he served on the Georgia State Bar's Board of Governors and chaired the State Bar's Disciplinary Board and later the State Bar's Lawyers Assistance Program. He also served on the Georgia State Bar Board of Law Examiners and as its Chair. His survivors include his wife and two daughters.

Jacob A. Stein, '73, Stein Mitchell Cipollone Beato & Missner, LLP, Washington, District of Columbia, died April 3, 2019, at age ninety-four of multiple myeloma. A Washington native who participated in some of the most dramatic episodes of the modern United States presidency, he earned his undergraduate and law degrees from George Washington University. Skilled in both civil and criminal law, he was known for the old-world elegance of his attire—two-toned shoes, tailor-made double-breasted suits, and bow ties from London—and his sense of sophistication. His windowless office was filled with books, everything from legal texts to eighteenth- and nineteenth century literature, to which he retreated for his afternoon “siestas,” taking no phone calls. He won the only high-profile acquittal in the Watergate Affair and later teamed with Plato Cacheris to obtain immunity for former White House intern Monica Lewinsky after her affair with President Bill Clinton. Later, he was appointed independent counsel to investigate Edwin Meese III, President Reagan's adviser and prospective Attorney General, in connection with the Iran-Contra Affair, in which he found no basis for federal criminality. A former President of both the District of Columbia Bar and the Bar Association of the District of Columbia and an exceptional teacher and scholar, he taught students at Harvard, American, Georgetown and George Washington universities. He authored the Trial Handbooks of the District of Columbia and Maryland. His monthly contributions of the “Legal Spectator,” the last page in the monthly District of Columbia Bar Journal, entertained

local lawyers for decades with stories about heroes of the law in a classic writing style, sometimes serious, sometimes humorous. In his office a bluefish was mounted with a sign reading, “If I’d kept my big mouth shut, I wouldn’t be here.” An accomplished portrait painter, he found time to train and run for the Marine Corps Marathon at age fifty-nine. He once dreamed of being a juggler, delighting audiences by keeping pins impossibly aloft, a wonderful way to do something to perfection. True to this thought, he kept up juggling as a hobby and was an adept three-pin juggler who once had a picture of him juggling three bowling pins outside the Federal Courthouse. His wife of nearly six decades died the year before his own death. His survivors include a daughter and a son.

Fredric Cutner Tausend, ’81, K&L Gates LLP, Seattle, Washington, died December 18, 2018, at age eighty-five. A graduate of Harvard College and Harvard Law School, upon his graduation, he moved from his native New York to Seattle, where he began practice with Schweppe, Doolittle, Krug, Tausend & Beezer. In the 1960s, he was an Assistant Attorney General and Acting Head of the Division of Antitrust and Consumer Protection in Washington state, bringing the first enforcement cases under the Washington antitrust law. Six years after the University of Puget Sound Law School (now Seattle University Law School) acquired its first full three-year class, Tausend became its Dean, a post he held for six years. Then from 1990 until his retirement, he practiced with Seattle’s Preston Gates & Ellis (now K&L Gates),

remaining active in academia, teaching at Seattle University and the University of Washington Law School. Tausend had begun teaching as an adjunct professor almost from the beginning of the Puget Sound school. Many assumed that, coming from private practice, he would be principally engaged in building relationships with the practicing bar. He also devoted himself, however, to enhancing the academic program of the school. Under his direction, the school increased its legal writing program from one to two years and employed a career faculty member as legal writing director. The program he created received national recognition in an era in which that was not always the case. He upgraded the school’s externship placements and formalized externships to ensure their educational quality, hiring two career faculty persons to teach the clinic. He instituted a comprehensive trial advocacy course and required each student to take an advanced course in philosophical, historical, or theoretical character as a requirement to graduation, and he encouraged faculty to provide advanced seminars. He instituted an annual Dean’s Service Award to recognize exceptional faculty contributions and implemented a merit pay system based on the quality of contribution to the institution. He reorganized the law school administration, and the school’s admission applications remained strong. A substantial fundraising drive helped to stabilize the school’s financial stability. He was widely regarded as a key figure in the school’s emergence into legal academia. A widower whose wife of thirty-nine years predeceased him by eleven months, his survivors include five daughters and a son.

Hon. Roger Warren Titus, '86, a Judicial Fellow, Greenbelt, Maryland, died March 3, 2019, at age seventy-seven, of complications from liposarcoma, a cancer of the connective tissues. A graduate of Johns Hopkins University, he attended classes at night at Georgetown University School of Law while working by day as an insurance claims adjuster to earn his law school degree. In private law practice in Montgomery County, Maryland with Titus & Glasgow, his firm was later merged with the Venable firm, where he became partner-in-charge of its local office. A former Chair of Suburban Hospital of Bethesda and of the Maryland Democratic Party, he was President of the Maryland State Bar Association. Confirmed as a judge of the United States District Court for the Southern District of Maryland in 2003, he assumed senior status in 2014. As a judge, he was known never to have liked sentencing, and he took pleasure in conducting a special courtroom procedure when an offender completed a prison sentence, making the occasion a rite of reentry to society. His survivors include his wife of fifty-seven years, a daughter, and two sons.

Rafael R. Vizcarrondo, '86, a Fellow Emeritus, Fiddler Gonzalez & Rodriguez, P.S.C., San Juan, Puerto Rico, died February 12, 2019, at age eighty-three. A graduate of Harvard College and the University of Puerto Rico Law School, he served as an Honorary Superior Court Judge (pro

bono fide) in San Juan Superior Court for four years and served the College as its Puerto Rico State Committee Chair. His survivors include his wife and seven children.

Bruce Dutton Wagner, '83, a Fellow Emeritus, retired from Ropers, Majeski, Kohn, & Bentley, Redwood City, California and living in Salinas, California, died September 12, 2012, at age eighty-five. Born in Connecticut, his family moved to Philadelphia when he was seven, where his father became Secretary of the national insurance company Phoenix of Hartford. The family later moved to San Mateo, California. He enlisted in the United States Army at age nineteen and was sailing to the South Pacific when the bombing of Hiroshima and Nagasaki ended World War II. He earned his undergraduate education at the University of San Francisco and his law degree at Hastings School of Law. After practicing for five years as a Deputy District Attorney in the Criminal Division of Redwood City, San Mateo County, he practiced for the rest of his life until retirement with Ropers, Majeski. He and his Dublin-born wife, Nancy, were great lovers of Ireland, where they traveled for many years and were among the first guests when their old friend and best man in their wedding became the United States Ambassador to Ireland. Among his survivors are his wife and two sons.



Frances Hildreth Wilson, Louisville, Kentucky, the widow of Past President Lively M. Wilson, her husband for almost sixty-two years, died February 18, 2019, after a brief illness. A graduate of Western Kentucky University, where she majored in music and developed a lifelong love of jazz, she joined a jazz band as pianist and occasional vocalist after her four daughters were grown, as well as singing in her church choir. She also was an avid golfer and bridge player. She and Lively had enjoyed many summers at their mountain home in Cashiers, North Carolina as well as the friendships and international travel that became a part of their life in the College.

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

**2019 ANNUAL MEETING THE WESTIN BAYSHORE
VANCOUVER, BRITISH COLUMBIA SEPTEMBER 26-29, 2019**



THE LINEUP OF SPEAKERS INCLUDE:

GIDEON ARTHURS, CEO, NATIONAL THEATRE SCHOOL OF CANADA
CHIEF PHIL FONTAINE, FOUNDER, ISHKONIGAN, INC.
PHILIP K. HOWARD, J.D., LAWYER AND AUTHOR
JON KRAKAUER, AUTHOR
DANIEL BARSTOW MAGRAW, JR., J.D., VISITING PROFESSOR
NICHOLAS SCHMIDLE, AUTHOR
JUSTICE ROBERT J. SHARPE, JUDGE, COURT OF APPEAL OF ONTARIO
SUZANNE SPAULDING, J.D., SENIOR ADVISER, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES



REGIONAL MEETINGS

June 20-23, 2019 **10TH CIRCUIT REGIONAL MEETING**

September 12-14, 2019 **REGION 5 REGIONAL MEETING**

STATE/PROVINCE MEETINGS

June 26, 2019 **MANITOBA FELLOWS MEETINGS**

June 27, 2019 **MINNESOTA FELLOWS MEETING**

July 13, 2019 **COLORADO FELLOWS MEETING**

July 27, 2019 **IDAHO FELLOWS MEETING**

August 2, 2019 **ALASKA FELLOWS DINNER**

August 8, 2019 **WYOMING "DINNER WITH THE SUPREME COURT"**

August 22, 2019 **GEORGIA FELLOWS DINNER**

August 24, 2019 **KANSAS FELLOWS MEETING**

September 6, 2019 **MONTANA FELLOWS DINNER**

September 6-7, 2019 **NEW MEXICO FELLOWS MEETING**

September 7, 2019 **NEBRASKA FELLOWS DINNER**

September 11, 2019 **WISCONSIN FELLOWS DINNER**

September 14, 2019 **MICHIGAN FALL RECEPTION**

JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660

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Statement of Purpose

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

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

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