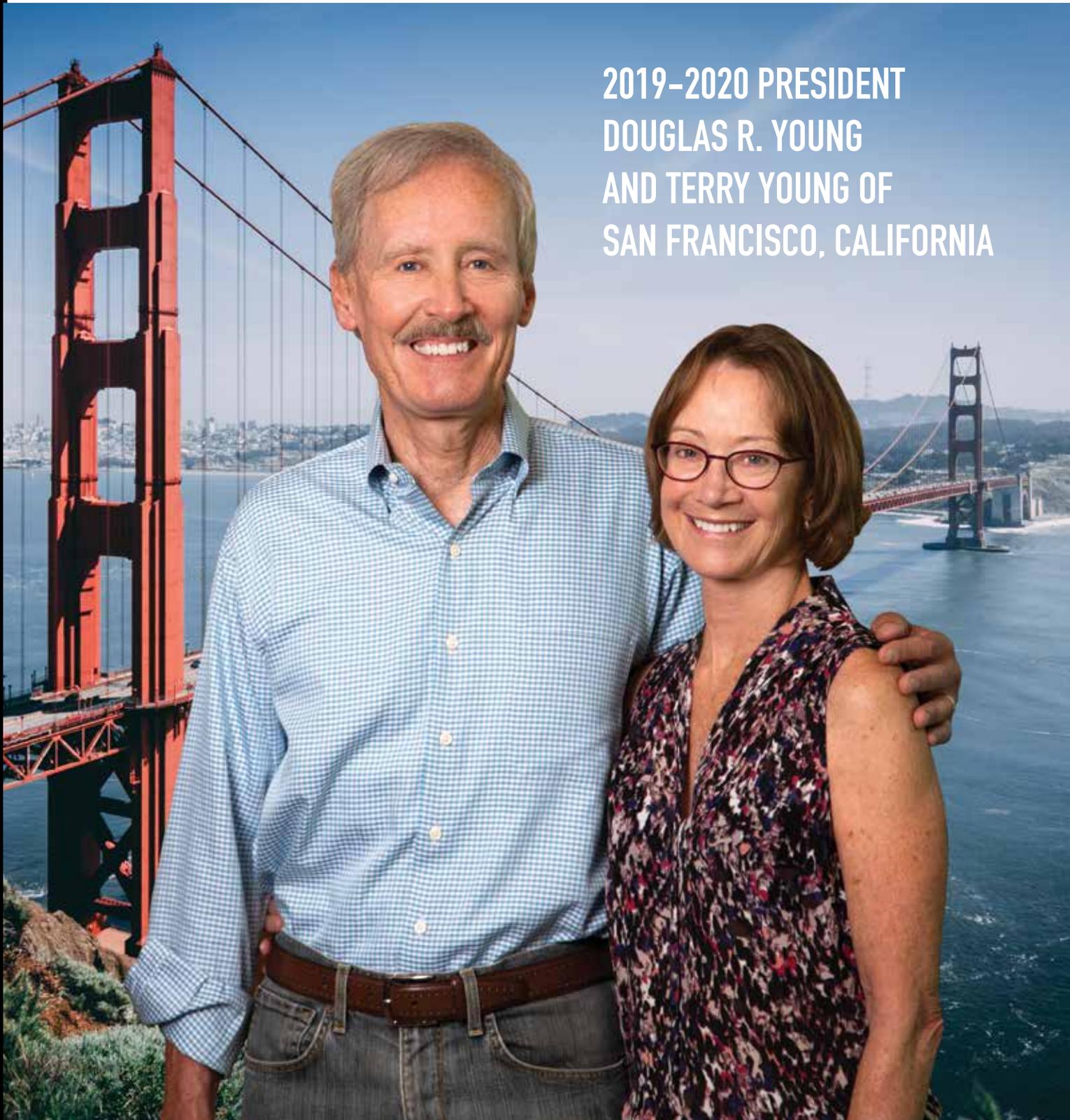


# JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

2019-2020 PRESIDENT  
DOUGLAS R. YOUNG  
AND TERRY YOUNG OF  
SAN FRANCISCO, CALIFORNIA



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# LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

AS A TRIAL LAWYER, FORTY-FIVE YEARS AND COUNTING, I WAS TAKEN BY A RECENT ARTICLE IN *THE ATLANTIC*, “YOUR PROFESSIONAL DECLINE IS COMING (MUCH) SOONER THAN YOU THINK” (ARTHUR C. BROOKS, JULY 2019). BROOKS SET OUT ON A SOCIAL SCIENCE QUEST TO TURN HIS “EVENTUAL PROFESSIONAL DECLINE INTO AN OPPORTUNITY FOR PROGRESS.” HERE’S WHAT HE (AND I) LEARNED.

Not surprisingly perhaps, happiness studies show that most people’s contentment starts to pick up in their fifties lasting into their seventies, when the resultant attitudes become mixed. What prompts unhappiness is, in a word, “irrelevance.” It’s always seemed to me that some lawyers stay well past their appropriate shelf-life out of anxiety or fear that no one will seek their advice any longer. Even giftedness at an early age is no safeguard against these feelings of irrelevance later on in life. Meanwhile, according to Brooks, “the *waning* of ability in people of high accomplishment is especially brutal.” Professional athletes, for instance. How about lawyers, trial lawyers to be precise?

Brooks notes that “in many physically non-demanding occupations, we implicitly reject the inevitability of decline before very old age,” lawyers among them. Yet, although interestingly not in my experience—as I’ve seen it, trial lawyers continually get better with age and experience—the data suggests otherwise. According to one study, “success and productivity increase for the first twenty years after inception of a career, on average,” then decline after that time. In other words, if we start a career at thirty, we’re expected to peak at fifty. In short, “if your profession requires mental processing speed or significant analytic capabilities—the kind of profession most college graduates occupy—noticeable decline is probably going to set in earlier than you imagine.”

What to do, then, when the decline starts? How to manage it? Contrasting crystallized intelligence—“the ability to use knowledge gained in the past” with fluid intelligence—“the ability to reason, analyze and solve problems”—the latter of which starts to diminish in one’s thirties and forties while the former “tends to increase through one’s forties, and does not diminish until very late in life,” there is a practical answer: “No matter what mix of intelligence your field requires, you can always endeavor to weight your career away from [fluid intelligence] and towards the strengths that persist, or even increase, later in life.”

Even more importantly, according to Brooks and much Hindu and other philosophy, is to begin to focus away from acquisition towards stripping away inessentials “to find our true selves—and, thus peace....Even if you are at the height of your professional prestige, [we] need to scale back [our] career ambitions in order to scale up [our] metaphysical ones.” Given our collective propensity towards hard work and problem-solving which, I think, improves in us as trial lawyers as we gain experience, this may be easier said than done but it’s at least worth considering, especially given our median age, at least before it’s too late.

As if this weren’t enough, another Brooks (David Brooks, *The New York Times*, “Do You Have to Be a Jerk to Be Great?” July 29, 2019) says that “living a great life is more important than producing great work. A life devoted to one thing is a stunted life, while a pluralistic life is an abundant one,” a truth brought into the culture by feminism. Brooks concludes that “while we’re learning to preach the gospel of openness and diversity, we’re mostly not living it. In the realm of public life, many live as monads, within the small circles of one specialty, one code, no greatness.”

Although most trial lawyers I know, as College Fellows and outside the College, have rich, rewarding and diverse lives and interests, these thoughts are worth pondering.

\*\*\*\*\*

As this is my last issue as Editor, I want to thank the College for the privilege of editing this *Journal* over the last seven years. College Fellows will be in excellent hands with my successor, Past President Bob Byman at the helm, and I wish him all success.

**Stephen Grant** ■



---

# PRESIDENT'S PERSPECTIVE

## WHEN EVERYTHING OLD CAN BECOME NEW AGAIN (EXCEPTIN' JEFF)<sup>1</sup>

 In preparing this President's Perspective, I began to get somewhat nostalgic about what has been an absolutely incredible year. I went back to look at the comments made by my predecessors, Past Presidents **Mike Smith**, **Bart Dalton**, and **Sam Franklin**, only to learn that this is not new, and I am not alone in that feeling. It is an old and established feeling. Hence the title of this perspective. It affirmed in my mind what an honor and privilege it has been to serve as President of this great organization. "By the time we get to Phoenix" (which is where Carol and I will be going immediately following the Annual Meeting in Vancouver), I will have attended the two National Meetings, the Leadership Workshop, the Executive Retreat, 55 State/Province and Regional Meetings, four trial and moot court competitions, three Award Presentations, one special induction, four other conferences where I spoke as President of the College and, most regrettably, the visitation and funeral of my mentor and very good friend, Past President **David Scott**. I also visited the National Office. My colleagues on the Executive Committee attended about six other events when I had a conflict. Indeed, it has been a very busy year. I have yet to count the miles.

Ours is an organization steeped in tradition yet prepared to adapt to changing times in order to remain relevant to our fellowship in the context of our profession. We may not institute wholesale change, but we do take *baby steps* in moving forward. And in that way too, everything old can become new again.

<sup>1</sup>With apologies to Arlo Guthrie, but the song, "You Can Get Anything You Want at Alice's Restaurant (exceptin' Alice)" has been on my mind since we visited the Woody Guthrie Museum in Tulsa, Oklahoma with Past Presidents Mike Stout and Fran Wikstrom and Regent Paul Hickey and his wife Jeanne.



While I have commented previously on the warm and enthusiastic collegiality which has greeted Carol and me at every stop along the way, and the fact that we had such wonderful opportunities to visit with so many old friends, there are three things that strike me as being particularly noteworthy. First, in addition to meeting so many Fellows, I had the opportunity to get to know on a more personal level several State Committee Chairs, State Committee Vice Chairs and others in the College leadership whom I now consider friends. Those opportunities are priceless. Second, many of the meetings we attended were also attended by recent inductees or pending inductees. They are the future of our organization. It is gratifying to see the uniform joy, pride/modesty and anticipation of these new fellows. I was constantly reminded of the need to *nurture* them and get them involved in the College's many activities and Committees. Third, I have become a big fan of Regional Meetings. Even though the work in organizing

Regional Meetings is significant, the warmth and friendship evident among Fellows and guests after a weekend together is most gratifying. We need to figure out ways to get more Fellows to attend these meetings, in addition to State and Province Meetings/Dinners. Many of the speakers are often of *National Meeting* quality and it is really at this type of meeting, at the grassroots level, that many Fellows can come to appreciate what the College is all about.

The importance of these meetings, as well as State and Province dinners and meetings, is obviously not a *new* concept. At the Strategic Planning Meeting in 2015, it was recognized that for many Fellows, these events are their only ongoing contact with the College. So I have no regrets about the extra miles that I had to travel in giving effect to this *old* idea (well, actually few regrets, given some of the consequences of delayed and cancelled flights – Connecticut being a prime example where I arrived in New





Regent Larry Krantz, Former Regent Trudie Ross Hamilton, and State Chair Mike Walsh "after the dinner"



Saskatoon, Saskatchewan | July 8, 2019

Haven [just after the dinner was finished and after the guest speaker had made his remarks] just *in time* to give my remarks and say goodbye to the gathered Fellows. They all waited for me to arrive, which I very much appreciated).

In the course of my travels, I am often asked about the impact of a decreasing number of trials on the College. The problem is old, but in many ways our approach has been modified into something new. We now recognize that fellowship in the College is not conditioned on a particular number of trials and that in today's legal environment, we must have an appropriately broad view of who is a trial lawyer and what trial and hearing experience is relevant to an individual's consideration for fellowship in the College, without, of course, changing our standards. Nonetheless, we need a *2019 perspective* and must be prepared to *invest in our future*.

When I reflect on the year, I am particularly grateful, as the second Canadian President, to have been able to further the wonderful work of David Scott in weaving Canada into the fabric of the College. Indeed, I have made that comment at many stops along the way. The fact that

every Canadian Province (except Prince Edward Island, which has no Fellows – yet!) – some for the first time – held a dinner meeting, allowed me to tell the Canadian Fellows about the many ways in which Canadian Fellows are involved in and recognized by the College. This notion is not *new* but it remains important to Canadian Fellows. My year as a Canadian President will be complete if the current fundraising by the Canadian Foundation of the College is successful in raising sufficient funds in memory of David to begin making grants to Canadian programs and organizations. Nothing would have made David happier. That was his vision in creating the Canadian Foundation. And it also would have pleased Past President **Ralph Lancaster**. Ralph was a proud and longtime member of the Canadian Foundation Board of Directors. With his summer home in Nova Scotia, he liked being referred to as an honorary Canadian, if not a Canadian.

I am pleased to report that under the stewardship of your current Executive Committee and your Executive Director, Dennis Maggi, the College remains in excellent financial shape. We have continued to monitor expenses closely and often the



Saint John, New Brunswick | March 11, 2019



St. John's, Newfoundland | March 13, 2019

amount expended is below budget. Our vigilance must continue in order to keep us moving in the right direction. We continue to have success, both substantively and financially at our National Meetings, in large part due to the excellent planning and cost control by our staff.

Work done by our Fellows on behalf of the College, while part of an old and ongoing tradition, continues to impress and result in new and outstanding contributions to the administration of justice in the United States and Canada.

The white papers on judicial independence, jury selection, and criminal justice reform are available on the College website and should be read and widely distributed. We now have a new General Committee on Judicial Independence under the leadership of **John “Buddy” Wester** of North Carolina and **Kent Thomson** of Ontario. This General Committee will be reviewing recommendations made by the Task Force. The College’s efforts to maintain and promote judicial independence in Canada and the United States have always been part of our mission. Now they can be front and center and we will be better able to appropriately respond

to threats to judicial independence, when they arise, on a timely basis.

The work done by our Advertising Subcommittee, under the Admission to Fellowship Committee, has resulted in amendments to our policy. The Task Force on Mentoring is in the midst of preparing its highly anticipated report. While the need to create opportunities for young lawyers to get trial experience in an age of decreasing trials has been with us for some time, and was formally recognized at least fifteen years ago by a Task Force chaired by Past President **Greg Joseph**, our current work is new in the sense that with this report in hand, the College and its Fellows will be in a position to make a difference in the trial practice careers of young trial lawyers and in turn help ensure the College’s ongoing vitality to, as indicated, invest in the future by identifying young trial lawyers with actual trial experience as candidates for fellowship.

The Canadian version of *Working Smarter, Not Harder*, which promotes a system of single-judge case management in Canada, has had concrete results and directly given rise to a new and significant change in practice in Ontario (where a pilot project has been initiated) and more





New York City Bar National Moot Court Competition | New York City, January 29-31, 2019



Gale Cup Moot, Osgoode Hall, Toronto, Ontario | February 15-16, 2019

recently, in Manitoba, where a single-judge case managed system has been adopted for all civil litigation in the Province (Saskatchewan has had the system in place for many years).

We have increased the number of Boot Camp Trial Training Programs this year under the leadership of task force co-chairs **Paul Mark Sandler** and **Paul Bekman**, including, for the first time, holding a Boot Camp in Canada. This is a significant expansion of a program that has existed for several years. Our Distinguished Pro Bono Fellows Program has continued to flourish and our Senior Fellows who are involved in the program have been reporting on the significant success and impact that they have had on their partner/host organizations' ability to carry out their mandates. Expansion of the Program to include additional Senior Fellows is underway through the efforts of **Mark Surprenant** and the Access to Justice and Legal Services Committee. This new work is something in which we can all take great pride.

We continue to improve the diversity of our organization. Indeed, I found it very gratifying to hold conference calls with State and Province Diversity Liaisons, along with Regents **Rick Deane** and **Joe Caldwell** who are heading up

our Diversity Working Group to examine our progress and to determine what more we can do. It is clear to me that diversity, while a focus for the College for several years, now remains *top of mind* among the State and Province Committees of the College and we must remain vigilant to ensure this continues.

Our Legal Ethics and Professionalism and Teaching of Trial and Appellate Advocacy Committees continue to put together a comprehensive plan to *teach* civility to young trial lawyers. The importance of civility is not new to Fellows, but this concerted effort to *spread the word* is a new type of undertaking for the College.

While the work of the College to assist American veterans faced with unreasonable delays in resolving appeals from denials of disability claims has been underway for several years, through the ongoing hard work of Special Problems in the Administration of Justice (U.S.) Committee Chair **Denny Shupe**, former Special Problems (U.S.) Chair **John Chandler**, incoming Special Problems (U.S.) Chair **Steve Raber**, and **Beth Tanis**, efforts of our Fellows continue to be rewarded. Most recently, a panel of the United States Court of Appeals for Veterans' Claims has



Sopinka Cup, Ottawa, Ontario | March 15-16, 2019



National Trial Competition | San Antonio, Texas – March 28-31, 2019

certified a class action for all veterans who waited more than eighteen months for their cases to be sent to the Board of Veterans' Appeals. The panel also granted mandamus requiring the Board of Veterans' Appeals to act within eighteen months. The court relied heavily on the *Martin* decision, which had previously been obtained through the excellent counsel of our Fellows and others.

Again, looking to the past, following our 2015 Board of Regent Strategic Retreat, Past President **Fran Wikstrom** reported as follows to the Board:

“Consistent with the new mission statement and the desire to improve our public profile, the Board approved the concept that the College will take a more public or visible position on various issues that fall within the mission of the College. Accordingly, the Board amended the Guidelines for Public Statements, which will now read as follows: 1. Official Statements of the College. The College may from time to time wish to publish a statement that reflects the official position of the College. Official positions of the College shall be limited to matters that impact the Mission of the College. . .”

Over the years, the College has spoken on important issues within our mission and this year, we did the same on issues that included judicial independence, funding of pro bono legal clinics, and the important role played by defense counsel in defending all accused, including those accused of heinous crimes (with the great assistance of Regent **Larry Krantz**). Having the College speak on these important issues is a source of great pride for Fellows. The overwhelming responses that I received to each of these statements is a testament to the fact that our Fellows want us to be proactive on the critical issues that fall within our mission, but to do so in a way that is consistent with preserving the collegiality of our organization.

One of the greatest thrills of being President is having the opportunity to witness the future of the trial bar at the various moot court and trial competitions. The quality of the advocacy is uniformly high among this budding group of trial lawyers. It was a privilege to be able to talk to them about becoming a trial lawyer and about the significance of the College. Seeing the youthful joy of not only the winners, but all the participants, is a wonderful experience. Similarly, having the opportunity to present the Emil Gumpert Award to Pro Bono Students Canada



to support the creation of appropriate legal clinic environments for First Nations Canadians is a memory to be cherished. It reaffirmed for me something that we should all recognize: the College does so much good in so many ways; also part of our tradition and thankfully, we continue to find new ways to make a difference.

Our communications have continued to flourish. Together with our Communications Manager, Eliza Gano, and Communications Committee Co-Chairs **Paul Meyer** and **Paul Fortino** have made the *eBulletin* exactly what it was intended to be – a means of conveying to Fellows on a timely basis what is going on in the College so that all Fellows have knowledge, have the opportunity to get involved and can take pride in all that the College does. At the end of this year, Stephen Grant will be retiring as Editor of *The Journal*, the College's award-winning publication that has become a *must-read* for all Fellows. Thank you, Stephen, for all you have done. In keeping with our quest to be better at communicating, this year we unveiled the new Fellows Community Page on our website to provide an environment for Fellows to connect, engage, and share information in real time.

My dream team, the members of the Executive that have worked so hard and so well together – **Sam Franklin**, **Doug Young**, **Rodney Acker**, **Mike O'Donnell** and most recently, **Susan Harriman**, deserve tremendous recognition for all that they have done and all that they will do in guiding the College in future years. So, thank you, my friends. I am proud to be able to call you my friends. I also want to recognize Executive Director Dennis Maggi and the staff of the College who work so hard to keep the organization functioning and moving forward in the

right direction: Amy Mrugalski, Board/Executive Administrator; Suzanne Alsnauer, Senior Meetings and Conference Manager; Katrina Goddard, Meetings and Conference Coordinator; Eliza Gano, Communications Manager; Gerri Frankenstein, Sr. Manager, Membership; and Cheryl Castillo, Office Administrator. Thank you for all you do and will do in the future.

I have always been big on thank yous. I would be remiss if I did not thank my family for putting up with my crazy travel schedule. As some of you know, we have had some family challenges this year. That, too, is not new for trial lawyers, although we finally appear to be recognizing that trial lawyers and their families can experience *difficult times*, illnesses and other problems that should be acknowledged and accommodated by colleagues and the profession as part of the human condition. Carol has been wonderful and has demonstrated her love for me and the College by attending so many events. We now have a much better understanding of the United States and Canada, not only geographically, but in terms of the wonderful diversity and regional differences of our Fellows and their spouses and significant others. The Fellows of the College are a remarkable group of individuals, not only in their trial skills, but in their warmth and genuine caring for others. So, a special thanks to all those that we have encountered on our travels. Many of you I now consider good friends and to all of you, *thanks for the memories* and I look forward to our years together.

I also want to thank my Partners at Bennett Jones for allowing me the opportunity to serve the College as its President and for helping me get

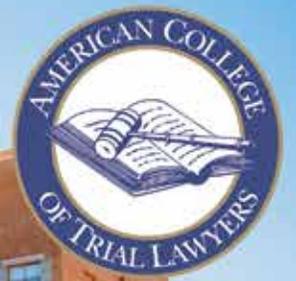
through the year in a way that I was able to maintain my practice and travel the continent, all the while perfecting my juggling skills. I also want to thank my assistant, Melanie de los Reyes, for her hard work in helping me prepare the numerous reports on my travels and for coordinating my travels and my accommodations so that I actually did manage to be in the right place, mostly at the right time, with a roof over my head.

The future holds such great promise, most immediately in the person of your next President, Doug Young. Doug will do an outstanding job as President, just as he has done amazing work in planning our General Sessions.

To become a Fellow is an honor. To get involved in College leadership is an honor. To become Regent is an honor. To become a member of the Executive Committee is an honor. And to have the opportunity to serve as President is the greatest of honors and one that I will never forget. There is a Jewish word *dayenu*. It means *it would have been enough*. That is the way I feel about each of these honors.

And I must keep reminding myself, like I have reminded many of you, that the College is like the Hotel California: "You can check out any time you want, but you can never leave." That, my friends, is a very, very good thing.

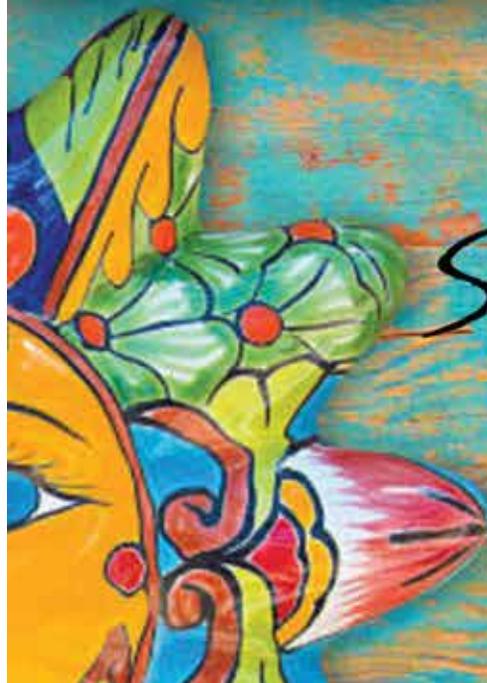
And that way everything old can indeed become new again. True, the exception is that we of advanced years remain *old*. But we can do so with a sense of pride and accomplishment that we have in some small way helped the College adapt so that it remains vibrant and relevant to those that follow. ■



# MAR | 2020 SPRING MEETING

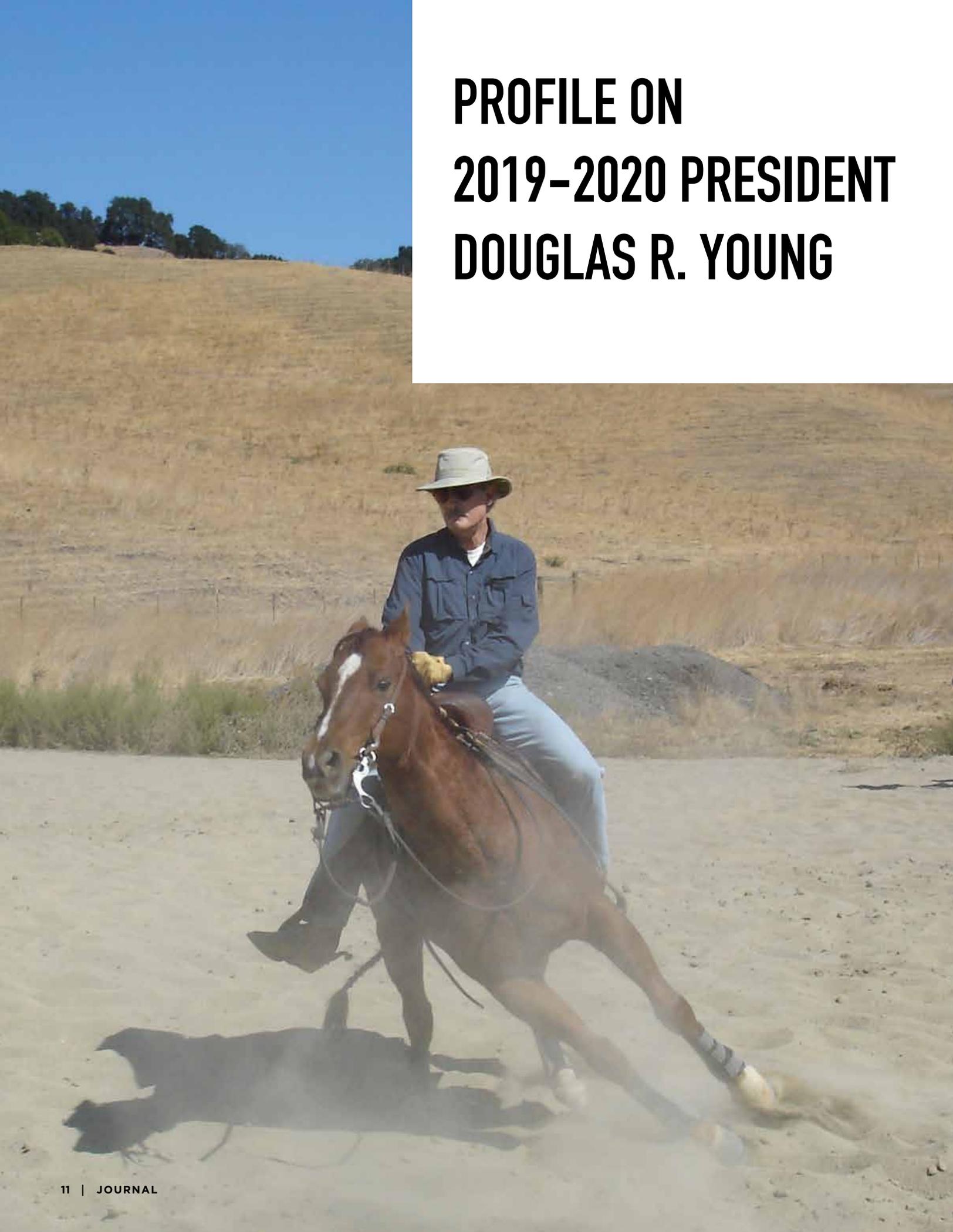
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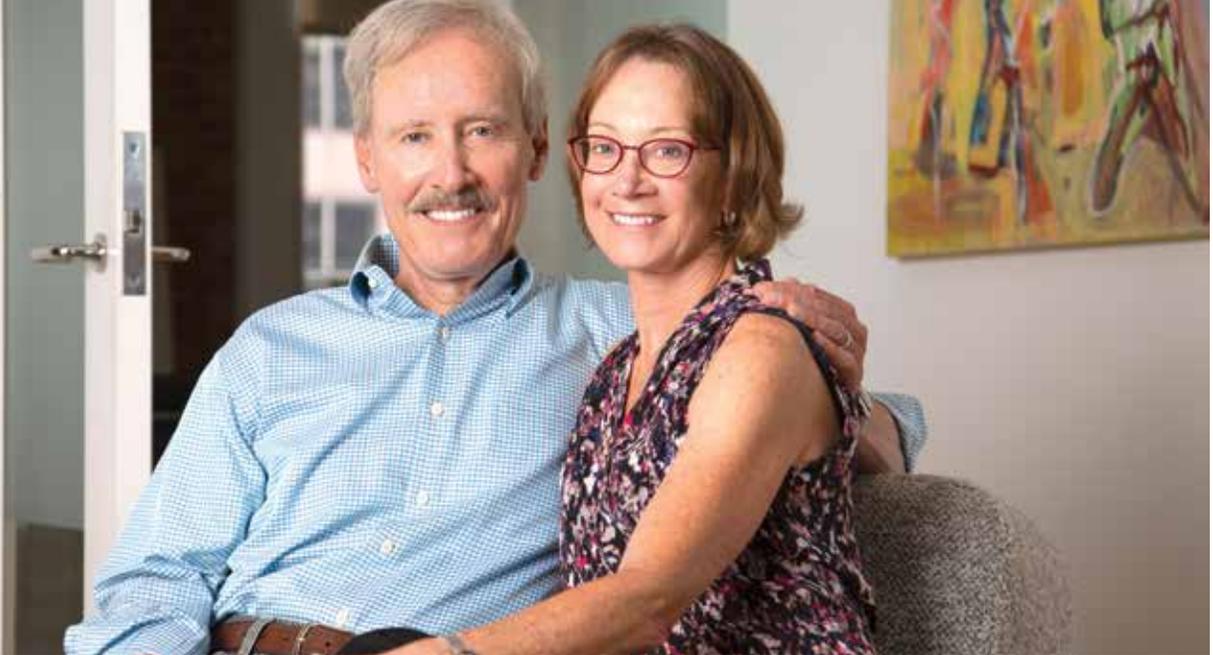
JW Marriott Tucson Starr Pass Resort & Spa, Tucson, Arizona



*Save the Date*

# PROFILE ON 2019-2020 PRESIDENT DOUGLAS R. YOUNG





learned a number of very interesting facts about our incoming President **Douglas R. Young** in our conversation for this profile.

Hailing from Los Angeles, Young's parents were both teachers. His father taught drama, which gave Young an appreciation for storytelling, a crucial component in being a trial lawyer, Young said. He added that the common law is developed through stories of human nature and human interaction, a proposition hard to argue against.

Young does not hold a classical educational resume, but this lack of conventional education has led to his perspective of the law and its critical importance in our society. Young attended Yale where he met his wife, Terry. She was in the first class to admit women in 1969. He later dropped out of Yale for a time to work as a factory laborer and travel in Japan while also studying Buddhism. Young's varied law practice takes him to Asia often, and he can still speak Japanese. After leaving Japan, Young returned to school for two years and graduated from Yale with a degree in philosophy. Then, after drawing a low draft number, Young realized the military was inevitable so he enlisted in the Marine Corps, eventually earning a sergeant rank. He had a brief stint as an acting company commander and, at one point, also served on an honor guard for President Nixon. This was a formative time in Young's life, teaching him teamwork, innovation under stress, and brotherhood. After he left the Marine Corps, he attended the School of Law at the University of California, Berkeley. On graduation, he clerked for a federal judge.

Young is known for his ability to handle complex and sensitive white-collar cases and investigations as well as occasionally parallel commercial cases such as securities fraud, antitrust, theft-of-trade secrets, and other types of cases including class actions. He served on his federal court's Criminal Justice Defense Act panel for approximately eighteen years; has accepted court appointments in three death penalty cases in state and federal courts; and has served as a federal court special master five times. He has unusually diverse experience in forty-three-years in the courtroom, making him much in demand for both his judgment and technical expertise. A list of his distinctions includes the California State Bar/California Appellate Project Award of Appreciation for his work as appointed counsel, American Bar Association Pro Bono Publico Award, the Anti-Defamation League's Distinguished Jurisprudence Award, and the Criminal Justice Achievement Award for Contributions to the Criminal Bar.

*Terry and Doug at the top of Col de Torrent, a mountain pass at 9,570 feet in Val d'Hérens, Switzerland, 2019*



*Doug, with a golden eagle, in the mountains outside Olgii, Mongolia, at a nomad encampment where he camped and rode with the eagle hunters, 2013*

In his practice, Young adopts a three-point philosophy: (1) apply discipline and rigorous preparation to every case, no matter its size; (2) understand the client and the client's needs, yet be willing to challenge the client's views and desires if necessary; and (3) be appropriately discreet, recognizing when, where, and under what circumstances advocacy (and what type of advocacy) will be the most effective.

Terry Young has her own impressive resume. A Ph.D. in chemistry, she is a devoted and effective environmentalist who recently stepped down as chair of the Bay Area Regional Water Board, to which she was appointed by two California governors. According to them, however, the Youngs' proudest achievement is being grandparents to their young granddaughter, the child of their daughter, Megann, who is a medical doctor at a University of California teaching hospital.

When I asked about his goals for his year as President, Young supplemented my inquiry with a very powerful note, reflecting his attention to completeness and detail but also the high standards he sets for himself.

For Young, the College has been a pinnacle of his professional and social life. He hopes to develop an agenda oriented toward increasing diversity and mentoring young lawyers in the practice of trial law. Young sees it as critical that the College continues to emphasize and foster the diversity of the Fellowship. He expects to further the College's dedicated task of providing programs that encourage and engage young lawyers in trial practice, especially those seeking opportunities within our trial courts. Apart from the importance of ensuring the future of the trial bar, Young notes this is essential in preserving and protecting the Rule of Law and judicial independence, both of which have come under recent attack from various quarters.

Young notes the clarity in our Mission Statement: "The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings." He strongly supports the College's new general

*The Youngs at a hiker's hut in the Swiss Alps, overlooking Val d'Hérens, 2019*



Committee on Judicial Independence, co-chaired by Fellows John Wester of Charlotte, North Carolina and Kent Thomson of Toronto, Ontario. Not only is this proactive but, according to Young, fundamentally important in our inescapably changing political climate.

As for fun and relaxation, I asked, what do the Youngs do? When they can get a break from work, Doug and Terry love to head to the outdoors and escape to their cottage in the High Sierras. They love to ski, backpack, and have owned several cutting horses. (These special horses were once used for herding cattle, are now used for rodeo sport, and Doug likes to ride and train them.) Terry loves to race paddleboards while Doug prefers the slower, more relaxing boards. The Youngs are avid adventure travelers who have made a point of venturing outside of the U.S. at least once every year: destinations such as Bhutan, Bolivia, Peru, New Zealand, the Galápagos, Morocco, Mongolia, Myanmar, Egypt, South Korea, Japan, Tanzania, and of course Northern Europe are among their favorites so far. They are also both strong sports fans, including baseball and basketball, oddly resigned to the recent Raptors' NBA championship win over their beloved Golden State Warriors. About the only thing Young couldn't quite help me with was the current malaise with the San Francisco Giants (although he did graciously promise we could go to a game if I showed up in the Bay Area).

I have always found Young to have a calm and reassuring disposition, perhaps from the mindfulness he practices. And if he can train cutting horses, and given his military background, I am confident Young will have no difficulty in marshalling the College troops in furtherance of our collective aspirations and goals for the protection and sanctity of the Rule of Law, diversity in the College ranks, and the encouragement of younger lawyers in trial practice.

**Stephen Grant**  
Toronto, Ontario





# TALKING JUSTICE, DOJ, AND RULE OF LAW WITH CHUCK ROSENBERG

IF YOU NEVER WATCH MSNBC AND YOU ARE NOT AND NEVER WERE A PROSECUTOR OR CRIMINAL DEFENSE ATTORNEY, ESPECIALLY IN NORTHERN VIRGINIA OR D.C., YOU MAY NOT HAVE SEEN OR HEARD OF CHUCK ROSENBERG. BUT, FOR THOSE WHO ATTENDED THE 2019 SPRING MEETING, THEY HAD THE PLEASURE OF MEETING THIS WISE FORMER FEDERAL PROSECUTOR AND LAW ENFORCEMENT ADMINISTRATOR IN A FIRESIDE CHAT. FORMER REGENT AND U.S. FOUNDATION TRUSTEE DAVID J. HENSLER SAT DOWN WITH ROSENBERG DURING THE SATURDAY, MARCH 1, GENERAL SESSION. HENSLER HAD A LOT OF MATERIAL TO WORK WITH IN THE INTERVIEW BECAUSE ROSENBERG HAS QUITE A BIO, BUT IT WAS HIS WAR STORIES AND PERSPECTIVES THAT GRABBED THE AUDIENCE'S ATTENTION AND RESPECT.



## DEEP BACKGROUND IN LAW, PUBLIC SERVICE

Rosenberg got his bachelor's degree from Tufts University, a master's degree in public policy from Harvard University, and his law degree in 1990 from the University of Virginia. Before law school, he worked as a carpenter's assistant and then for an upstate New York moderate Democratic Congressman. The congressman was a lawyer and former D.A. Rosenberg caught the bug. He decided to go to law school so that he, too, could become a prosecutor. He fulfilled his goal and then some. Right after law school, he became an Assistant U.S. Attorney in the Eastern District of Virginia (EDVA), where he conducted grand jury investigations and tried dozens of criminal cases – complex financial fraud, kidnapping, murder, espionage, among others. He also handled a number of appeals.

With six years of this in-the-trenches experience, Rosenberg did a short stint in private practice before Robert Mueller, then a new FBI Director, hired him to be his Counsel in 2002. Rosenberg shared that “I was not all that happy with private practice. I never have been. I missed public service, and it was hard for me to see

what had happened to our nation on 9/11.” After a year as Director Mueller's Counsel, he went to work for Attorney General John Ashcroft as his Counselor for a year. Thereafter, the Deputy AG, Jim Comey made him his Chief of Staff in 2004. Having served in such high DOJ and FBI positions, it was natural for him to then become a U.S. Attorney. In 2005, Rosenberg was appointed U.S. Attorney for the Southern District of Texas, and one year later he came home to Northern Virginia where he was appointed U.S. Attorney for the EDVA – his old office. He served in that role for two years until 2008, where he was “heavily involved in the government's . . . case against Zacarias Moussaoui,” who was part of the 9/11 conspiracy and had trained for the planned “second wave of attacks.” During his two tenures in EDVA, Rosenberg also was involved in investigating and prosecuting espionage and other terrorist cases – Robert Hanssen, Aldrich Ames, John Walker Lindh—the “American Taliban.”

Hensler spoke of the stiff competition to become an AUSA, prompting Rosenberg to speak about his hiring criteria during his tenures as U.S. Attorney in Texas and Virginia. “We value values over skills. Anyone can learn skills. If we



hire for values and teach skills, we're going to be just fine. If we hire for skills and think we're going to be able to teach values, we're screwed." Chuck liked to ask applicants "when is the last time you changed your mind? . . . So, in order to change your mind, there's something you have to do first, which is to listen. In order to listen, you have to do something else, which is shut up. Those are . . . those three things: shutting up, listening, I mean really listening, and changing your mind, that's a hard thing to do." Clearly, Rosenberg thinks open-mindedness is an important capacity for prosecutors to possess.

He re-entered private practice as a partner in Hogan Lovells for five years, before he returned to the FBI in 2013, when Jim Comey became Director. Rosenberg served as the Director's Chief of Staff for two years.

His most recent stint in federal service (and surely not his last) was when President Obama selected him to be the Acting Administrator of the DEA in 2015. He resigned that position in September 2017, after he repudiated statements President Trump made to a police gathering in which the President encouraged the police to rough up suspects. Rosenberg wrote a three-page email to all DEA special agents the day after the speech. In it, he spoke of the core values fundamental to the agency, among them: "Rule of Law, Integrity, Accountability." "This is how we conduct ourselves. This is how we treat those whom we encounter in our work: victims, witnesses, subjects, and defendants. This is who we are." He wrote: "The President, in remarks delivered yesterday in New York, condoned police misconduct regarding the treatment of individuals placed under arrest by law enforcement... I write to offer a strong reaffirmation of the operating principles to which we, as law enforcement professionals, adhere. I write because we have an obligation to speak out when something is wrong. That's what law enforcement officers do. That's what you do. We fix stuff. At least, we try." The *Washington Post* Editorial Board later wrote the following in a piece entitled "A divided nation gets moral guidance – but not from Trump": "Rosenberg's letter was important not as a rebuke to the president but as a model of leadership and courage in reaffirming democratic values."

Hensler asked Rosenberg how he felt about the *Post* editorial. "I didn't think of it as a courageous act. This is who we are and if we can't articulate who we are and what we do, then we shouldn't be in this line of work." He went on to say that "what the president said was so poisonous, was so wrong, so clearly undercut the role of law enforcement in this country. I mean, if a defendant thinks that we're going to throw them in the back of the car, smash their head, and rough 'em up, it's more likely they're going to fight when they're arrested, which puts everybody at risk." He finished with declaring that these are "our core values, and we damn well better live by them...It's just who we are, and we ought to say it."

Hensler elicited several fascinating war stories from Rosenberg's days in public service. The audience learned how, after a guilty verdict came in during one of Rosenberg's trials as an AUSA early in his career, the defendant was angry and "things . . . went bad very quickly." Armed court security officers were present. In the melee, the defendant "got his hand on one of the weapons." Rosenberg dove on the pile, the marshals got there quickly, and order was restored. He has a pair of boxing gloves hanging in his office that his staff at the time of this event gave him as a memento.

The audience also got a personal glimpse of Bob Mueller's style – a man Rosenberg describes as "the finest, truest, straightest public servant that I've ever had the privilege to work with." Rosenberg shared what it was like to interview in 2002, after 9/11, with Mueller for the job of Counsel to the FBI Director. "[T]his was a big deal to me. I didn't know the man, but he's an icon in the [DOJ], and he's in an iconic position. So, I don't know what you call an icon in an iconic position." He said, "Bob Mueller is a model of efficiency." No one sits sit down in his office, because "sitting is inefficient. The interview was stand up... He came around his desk. He didn't say 'welcome.' He didn't say 'nice to meet you.' He literally said, 'Why do you want to work here?'" Chuck recalled that he mumbled something inarticulate in response and that Mueller then asked, "Why do you think you'd be any good at this?" Rosenberg said he answered his question and then brought the audience to laughter by adding, "By the way, my story is taking longer than my actual interview."

Rosenberg said that “fourteen seconds later, Mueller said, ‘Thanks for coming by,’ and he starts to walk me out. I’m like, ‘this man hates me. This is the worst interview in my entire life.’ And I notice there’s a baseball on one of his shelves. I love baseball. So, I’m thinking I’m just gonna start a conversation with him about baseball. I said, ‘I see you’re a baseball fan.’ He goes, ‘Nope,’ and out the door I go.” After the laughter in the room died down, Rosenberg finished his account: “So, I went back to my office miserable, knew I’d blown it. The phone rings an hour later. He says, ‘Chuck?’ And I go, ‘Yep.’ He says, ‘Mueller here.’” And I said, ‘Sir?’ He said, again, nothing like it was a pleasure to meet you, thanks for coming by . . . The next words out of his mouth were, ‘When can you start?’ I said, ‘How about two weeks?’ He said, ‘See ya in two weeks,’ and hung up on me.”

## SHOWDOWN BETWEEN THE WHITE HOUSE AND DOJ

Hensler then asked Rosenberg to provide his eyewitness account of a dramatic event that occurred in March 2004, when Rosenberg was working as Jim Comey’s Chief of Staff at DOJ. Attorney General John Ashcroft was in George Washington University Hospital, “very, very ill, almost died, and was incapacitated,” recovering from emergency gall bladder surgery. When the health crisis began, the Attorney General formally appointed Comey the Acting AG. At this same time, there was a sensitive domestic surveillance – a NSA Signals Intelligence program that had been secretly launched after the September 11 attacks in 2001 and required reauthorization by the Attorney General. Rosenberg said that “people who worked for Comey and his office found a flaw in it . . . they thought that it was not constitutionally firm.” On the other hand, the White House and others were “genuinely concerned that if we didn’t reauthorize the program, we would be missing key intelligence; we would drop something; somebody would die; there would be literally blood on our hands. But the Rule of Law prevails. We didn’t certify the program.” That decision did not sit well with the White House.



For weeks before the hospitalization of the Ashcroft, Comey had led the charge in arguing against recertification despite very intense pressure from the White House, especially from Vice President Cheney and his office. So, when he became Acting AG when Ashcroft was raced to the hospital, the White House apparently saw an opening to win over the ailing AG.

Many may remember the broad outline of the hospital room showdown between the White House and the Justice Department that ensued. Rosenberg shared his personal recollections of it. “The White House sent two emissaries to John Ashcroft’s hospital room that night. We got word of it through FBI Director Mueller’s security detail, and we raced to the hospital and beat them there. The emissaries were White House counsel, Alberto Gonzales, and Chief of Staff, Andy Card.

Comey later reported that he called Mueller and asked for his help to make sure (1) the AG’s FBI security detail would not leave the AG alone with the White House visitors, and (2) the same FBI security detail would resist any Secret Service attempt to remove Comey – the now Acting AG – from the room. Here’s what Rosenberg had to say: “At which point, this sounds like a bad movie, John Ashcroft who was deathly ill, was confronted with these visitors from the White House and Comey and staff and Mueller, standing in the other corner . . . watching the whole thing unfold... Ashcroft propped himself up on one elbow and pointing to the visitors from the White House said, ‘You know I’m not the Attorney General.’



Then, pointing at Comey who's six foot nine and standing in the corner said, 'That's the Attorney General over there. You deal with him,' and collapsed back into his bed." He ended the story with the fact that President Bush, "to his credit, met with Jim Comey and Bob Mueller the next morning and agreed that we would be able to make changes in the program to ensure that it was constitutionally rooted. I was a bit player."

Hensler noted that the Rule of Law had been mentioned by other speakers at the meeting and that Rosenberg has referred to it as a "construct." He explained that, yes, "I think of it as a construct, meaning it was made by people, it's sustained by people, and if it's broken, it's going to be broken by people. The rule of law is not immutable." Rosenberg said the Rule of Law now is "under stress and I'm both deeply concerned about it and optimistic that it is going to hold and be okay." He recalled what his former boss and friend, Jim Comey, whom he "admires deeply and greatly," has "spoken eloquently about – being the one to say no in a sea of yes." He closed by saying that, "we have to stand for something that's much greater than ourselves even at personal risk."

### **KOREMATSU AND HIRABAYASHI**

After he left the DEA in early October 2017, Rosenberg entered private practice again, this time as a senior counsel at Crowell & Moring. He has been busy these last two years, because he also accepted a position as an adjunct professor

in Georgetown's renowned School of Foreign Service where he teaches National Security Law. Rosenberg spoke of how he loves teaching such "really, really smart young men and women. They're remarkable." And, he talked about how one of the cases he covers in his course is the 1944 Korematsu case, which he characterizes as "one of the darkest stains . . . in our Supreme Court jurisprudence."

Rosenberg brought the audience back to the eve of the infamous surprise attack on Pearl Harbor on December 7, 1941, to make his final point about the Rule of Law. He spoke of the suppression of a Naval Intelligence Report that was authored shortly after Pearl Harbor on January 29, 1942, by a Lieutenant Commander, K.D. Ringle. It reflected Ringle's opinions after many years of studying Japanese American culture. Ringle also incorporated the opinions of a State Department Special Representative, private businessman Curtis Munson, and of the FBI. According to Rosenberg, "J. Edgar Hoover, of all people, the great civil libertarian that he was, thought it was a terrible idea [to intern Japanese Americans]. Munson had concluded in his pre-Pearl Harbor report that "Japanese Americans are loyal and would pose little threat. . . [and that there] is no Japanese 'problem' on the Coast."

Ringle had a deep background in Japanese affairs. He had been attached to the U.S. Embassy in Tokyo as a naval language student for eight years from 1923 to 1931, and returned to the U.S. in Naval Intelligence, specializing in

## **“ QUIPS & QUOTES ”**

**Hensler:** It turns out Chuck has something of a following on Twitter. One tweet, 'He is the classiest, most well-spoken interviewer on news programs and exudes trustworthiness.'

**Rosenberg:** Signed Mom. Mom has a Twitter account now. God bless her.

**Hensler:** Another tweet: 'He's like the prosecutorial Mr. Rogers. Such a calming voice, even arresting someone, he'd put them in a zen state.' This is my favorite, 'I want him to read me bedtime stories about his best indictments.'

**Rosenberg:** Yet another good reason to be off Twitter, right?

intelligence gathering related to the Japanese. From 1940 through at least February 1942, he was an Assistant District Intelligence Officer in charge of Naval Intelligence matters in Los Angeles and vicinity. Before the attack on Pearl Harbor, on December 7, 1941, he had gathered much information that he included in a report he was directed to write to the Chief of Naval Operations after the attack on Pearl Harbor. In his January 29, 1942 Report, Rosenberg said, "Ringle determined that there was no actual, no real, no concrete threat of Japanese sabotage on the West Coast." Many in leadership in FDR's administration saw the Ringle Report, and it "was suppressed."

By Executive Order 9066, issued on February 19, 1942, the President ordered the forced relocation and internment of more than 100,000 Japanese Americans during World War II. One Fred Korematsu, age twenty-three, decided to stay home rather than obey the order to relocate. He was arrested and convicted of violating the order. He took his claim that Executive Order 9066 violated his due process under the Fifth Amendment to court. He was convicted and the Ninth Circuit affirmed his conviction. In a companion case, Gordon Hirabayashi, a college student in Seattle, was convicted of violating curfew and the relocation order, and he also challenged the curfews as also being unconstitutional.

When the two cases reached the Supreme Court in 1943, Solicitor General Charles Fahy, who was defending the exclusion order, answered questions posed by the Court during oral argument. Fahy knew of the Ringle report that undermined the rationale for the internment, yet, as Rosenberg said, "Fahy misled the Court and said, all of the military commanders, all of the best intelligence suggests that this exclusion order is in response to that. And it just wasn't true."

When the Ringle report was surfaced by a pro bono lawyer forty years later in 1983, Korematsu's conviction was overturned in the same California courtroom where he had been convicted. But the Supreme Court case still was standing. While the case still stands today, despite the unearthing of the Ringle report and a barrage of criticism by scholars and justices

alike, at least one federal official tipped his hat to the Rule of Law.

Rosenberg told of how Acting Solicitor General Neal Katyal cited the Ringle report when he made a formal Confession of Error on May 20, 2011, almost seventy years after the Supreme Court's twin decisions in *Korematsu* and *Hirabayashi*, for the mistakes the Solicitor General made in those cases. Rosenberg applauded Katyal for his decision. "This goes back to what I was saying about the Rule of Law being a construct. Regardless of how long it takes, if we don't [abide by] it and nourish it and sustain it, [the Rule of Law] is susceptible to fail." Acting SG Katyal, himself, wrote: "Today, our Office takes this history as an important reminder that the 'special credence' the Solicitor General enjoys before the Supreme Court requires great responsibility and a duty of candor in our representations to the Court. Only then can we fulfill our responsibility to defend the United States and its Constitution, and to protect the rights of all Americans."

The fireside chat ended with Rosenberg sharing a few humorous anecdotes including one about a "nice woman" coming up to him in Penn Station and telling him that, "You are my all-time favorite television analyst." She called her husband to join them. "Fred, Fred, come over here. You've got to come here and meet Jeffrey Toobin."

For those who want to benefit more from Rosenberg's wise perspective on important public issues, he can be heard on one of MSNBC's newest original podcasts, called "The Oath," <https://www.msnbc.com/theoath>, which is "a series of revealing, one-on-one conversations with thoughtful former American public officials from the highest levels of government service shaping this pivotal moment in American history." The name of the show derives from the oath of office that those entering office take, with some variations, in the executive, legislative, and judicial branches of government.

**Carol Elder Bruce**  
Washington, D.C.



## ERRATA

The article in Issue 90, memorializing the death of Past President David W. Scott, O.C., Q.C. correctly reported that he was the College's first Canadian President and that he was elected as a Regent in 1996. However, it incorrectly stated that Scott was the first Canadian Regent. Instead, Ambassador L. Yves Fortier, C.C., Q.C., served from 1991 to 1995 and was the first Canadian Regent. In the same article, it states Scott received his LL.B. from the University of Ontario. Scott received his LL.B. from the University of Ottawa. The article later states he was a founding member of the Common Law Session of the Montreal Law School and that he was twice elected a Bencher of the Law Society of Canada. Instead, Scott was a founding member of the Common Law Section of the University of Ottawa and was twice elected a Bencher of the Law Society of Upper Canada.

The *Journal* apologizes for the errors.

## IN YOUR OWN WORDS

Every Fellow has a story, and the *Journal* would like to hear about yours. If you have an interesting experience to share, consider writing an article about it for an upcoming *Journal* issue. Email submissions or questions to [editor@actl.com](mailto:editor@actl.com).



## CORRESPONDENCE TO THE EDITOR

Issue 90 of the *Journal* prompted a response from a Fellow in Texas who wrote to express his thoughts on the *In Memoriam* section.

The most inspiring thing about the *Journal* is the memorials. Two in the latest issue (Issue 90) catch my particular attention. 1. David Hammer of Dubuque, Iowa. His record as a lawyer speaks for itself, but it doesn't capture his quiet confidence and the twinkle in his eye that made him such a pleasure to be around. 2. Jacob Stein of Washington, D.C. Would that we all could serve the profession and our country so well. I never met him but read everything he wrote that I could get my hands on and treasure the autographed copy of *The Spectator* he sent me. Both maintained an unflinching good cheer in what they were about.

Keep it up.

**Daniel Vincent Flatten**  
Houston, Texas



## FELLOWS TO THE BENCH

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

**Raul M. Arias Marquach**  
San Juan, Puerto Rico  
Effective May 3, 2019  
Judge  
U.S. District Court for the District  
of Puerto Rico

**Maria S. Davila**  
Tucson, Arizona  
Effective April 1, 2019  
Magistrate Judge  
U.S. District Court for the  
District of Arizona

**Patricia L. Dodge**  
Pittsburgh, Pennsylvania  
Effective June 3, 2019  
Judge  
U.S. District Court  
Western District of Pennsylvania

**William E. Glover**  
Fredericksburg, Virginia  
Effective July 12, 2019  
Judge  
15<sup>th</sup> Judicial Circuit  
of Virginia

**Wallace E. Harrell**  
Brunswick, Georgia  
Effective April 2, 2019  
Chief Magistrate Judge  
Magistrate Court of  
Glynn County Georgia

**Paul B. Schabas**  
Toronto, Ontario  
Effective April 11, 2019  
Judge  
Superior Court of Justice  
of Ontario

**James A. Willett**  
Manassas, Virginia  
Effective May 4, 2018  
Judge  
Prince William Circuit Court

The College extends congratulations to these Judicial Fellows.



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# THE CASE FOR *NOLO CONTENDERE*

JUDGE: AND ARE YOU PLEADING GUILTY BECAUSE YOU ARE IN FACT GUILTY?

CLIENT: YES... WELL, ACTUALLY, NO. I DON'T THINK I AM GUILTY. BUT...

JUDGE: COUNSELLOR, WOULD YOU LIKE A RECESS SO THAT YOU CAN EXPLAIN TO YOUR CLIENT THE RISKS OF TOO MUCH CANDOR WITH THE TRIBUNAL?

ATTORNEY: UM, YES, SURE, YOUR HONOR. THANK YOU.

...

ATTORNEY: WE'VE TALKED ABOUT THIS GUILTY PLEA FOR A LONG TIME. NOW YOU WANT TO GO TO TRIAL?

CLIENT: NO WAY! FOR ONE THING, I CAN'T AFFORD A TRIAL. YOU SAID A TRIAL WOULD TAKE TWO WEEKS AND COST \$100,000. YOU KNOW I CAN'T AFFORD THAT. AND BESIDES, YOU EXPLAINED THAT I'D PROBABLY BE CONVICTED ANYWAY, THAT A JURY WOULDN'T UNDERSTAND MY EXPLANATION EVEN THOUGH IT'S TRUE. AND YOU ALSO EXPLAINED THAT I'D PROBABLY GET A HIGHER SENTENCE, UNDER THOSE GUIDELINES YOU TALKED ABOUT. SO NO, I DON'T WANT TO GO TO TRIAL.

ATTORNEY: WELL, IF YOU DON'T PLEAD GUILTY AND IF YOU CAN'T TELL THE JUDGE YOU'RE PLEADING BECAUSE YOU ARE IN FACT GUILTY, THEN THE JUDGE WILL ORDER US TO GO TO TRIAL.

CLIENT: SOUNDS CRAZY TO ME, BUT IF THAT'S WHAT IT TAKES, I'LL TELL HIM I'M ACTUALLY GUILTY.

It *is* crazy. If a criminal defendant is willing to accept the full measure of punishment for his deeds, why should he also be required to recite under oath a statement he doesn't believe to be true?

Anyone who has been a judge or prosecutor or defense attorney or probation officer knows that there is seldom a clear moral line, at least in the defendant's mind, between guilty and not guilty. It's usually "Yes, but ..." or "No, but ..." As in, "Yes, I guess I'm guilty but I didn't know the gun was loaded" or "Yes, but I didn't mean to do that much harm" or "No, I believe I'm not guilty, but I see that the circumstantial evidence makes it look as if I'm guilty" or "No, I don't feel guilty,

but in retrospect I see that I should have acted differently."

There is a third option in the law, besides guilty and not guilty: the *nolo contendere* plea. "I do not contest ..." the prosecution's case.

When a defendant enters a *nolo* plea, he is not required to admit his guilt, but the range of possible sentences he will face at sentencing is exactly the same as if he had admitted his guilt.

The *nolo* plea has been in and out of the shadows of the American legal system for a long time, but rarely if ever has it been analyzed by courts or legislatures. This article will try to fill that void. ▶

Based on that analysis and my own professional experience, the conclusion I have drawn is that *nolo* pleas should be available as a right to criminal defendants.

## The current status of the *nolo* plea in American courts

### 1. FEDERAL COURTS

In American federal courts, a defendant may plead *nolo contendere* but only with the permission of the judge. Rule 11(a)(3) of the Federal Rules of Criminal Procedure provides, in pertinent part:

*Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the efficient administration of justice.*

Thus, a criminal defendant need not get the federal prosecutor's consent before he enters a *nolo* plea, but he does need the judge's approval. And in making that approval decision, the federal judge is directed to consider the parties' arguments—and generally the prosecution will argue, at least weakly, against acceptance of the *nolo* plea—and he is required also to consider the public interest in the efficient administration of justice.

This last phrase, “the public interest in the efficient administration of justice,” is important, because although it sounds neutral, in fact it encourages federal judges to accept *nolo* pleas. Forcing the parties to go through a show trial, just because the defendant feels unable to utter the word “guilty” in public, is hardly an “efficient” use of the public's tax dollars.

### 2. STATE COURTS

About three-quarters of American states permit entry of *nolo contendere* pleas. On the other hand, about a dozen American states appear not to recognize the *nolo* plea at all. So far as I can determine, however, this is not because those states have considered the issue and rejected the option of a *nolo* plea, but rather they haven't thought about it at all; their procedural rules talk only, in the context of arraignments, about a defendant entering a not guilty or guilty plea during his initial appearance. Other states do recognize the plea but restrict its use; two of them require the prosecution's consent, and one allows it for misdemeanors but not for felonies. But again I have been unable to locate

any analysis in those states to support these distinctions.

### *The Time Has Come to Allow Nolo Pleas Freely*

In the past, the public has viewed *nolo* pleas with some suspicion. The pleas have been seen as, and sometimes have actually been, ploys for rich defendants to escape the consequences of their crimes. Spiro Agnew famously entered a *nolo* plea to federal tax charges in 1973 but continued to proclaim his innocence to a generally disbelieving public.

#### a. The moral objection

Part of Americans' thirst for retribution—and retribution is of course one of the classic goals of the criminal law—is a desire to hear the malefactor confess in public and say that he's sorry: if, and only if, he does that, people who feel strongly about retribution are willing to give him a break at sentencing.

But if the public understands that a *nolo* plea does not entitle a defendant to a break at sentencing, the sentencing hearing and the sentence itself should suffice to quench our thirst for retribution. The sentencing hearing is open to the public and the range of sentencing options open to the judge is exactly the same on a *nolo* plea as on a guilty plea.

#### b. The sense that a *nolo* plea allows a defendant to sweep the incriminating facts under the rug.

It has been said that defendants plead *nolo* partly because they don't want people to know how bad they've really been.

But these days, in federal court and many state courts, the criminal rules require a prosecutor to explain in open court what the prosecution case would have consisted of if the case had gone to trial, and current sentencing hearings allow both the prosecutor and any victim who is present to be heard. There is no possibility of sweeping incriminating facts under the rug, and certainly no more for a *nolo* plea than for a guilty plea.

#### c. “A *nolo* plea lets defendant get away with a slap on the wrist.”

This is a common perception among people not acquainted with the criminal law.

But, of course, there is no difference between

the range of punishment a guilty plea opens up and the range opened up by a *nolo* plea. And in fact, a defendant who pleads *nolo* is opening himself up to the possibility of a *greater* sentence than a defendant who pleads guilty. Federal judges are required to take the Federal Sentencing Guidelines into account when imposing sentence, and one of the factors judges are required to consider under the Sentencing Guidelines is “acceptance of responsibility.” Other things being equal, a defendant who pleads guilty has a much better chance of a reduced sentence because of acceptance of responsibility than does a defendant who stands mute and simply does not contest the prosecution’s case.

d. “A *nolo* plea deprives the victims of a defendant’s crime of the opportunity to get compensation from him.”

It is certainly true that the legal effect of a guilty plea is different from the legal effect of a *nolo* plea, in that in a follow-on civil suit on behalf of a criminal defendant’s victims, the plaintiffs’ counsel can simply introduce the defendant’s guilty plea but he can’t do that if the defendant has pleaded *nolo*

But the victims of a defendant who pleads *nolo* are not without remedies.

In the first place, a federal sentencing judge has the opportunity and, in many cases, the obligation, to order the defendant to make restitution to his victims. Such a restitution order may be enforced directly by the victims. This is as true for a defendant who enters a *nolo* plea as for a defendant who pleads guilty or who is convicted at trial.

In the second place, even though a victim can’t use the *nolo* plea to completely establish his civil liability case against the criminal defendant, he

may use any relevant statement, made by the defendant at his sentencing hearing, to help establish his *prima facie* case. For instance, if the defendant, perhaps to mitigate his inability to “accept responsibility,” says at sentencing, “You see, judge, I admit Relevant Facts A and B and C but I honestly can’t admit Relevant Fact D,” the victim can use the defendant’s admission as to A, B against the defendant. Fed.R.Ev. 801(d)(2)(A) and (D). If the defendant had entered a straight guilty plea, of course, he would have been admitting to A, B, C and D (all the elements—relevant facts—of the offense) and the victim could simply use the guilty plea by itself to establish the defendant’s liability. But a *nolo* plea will usually relieve the victim of a significant part of his civil liability burden.

## CONCLUSIONS

1. The plea of *nolo contendere* should be available to defendants as of right.

The traditional reluctance of law- and rule-makers to recognize the plea of *nolo contendere* to dispose of criminal charges is outdated and wrong. It is outdated because modern sentencing procedure deals with all of the old objections to the plea, and it is wrong because it requires a defendant to pretend in public to a moral contrition which he does not wholly feel, in order to avoid a lengthy, expensive, and unnecessary trial, a trial which is in nobody’s best interest.

2. Until the criminal rules are amended to provide that option explicitly, judges should accept every *nolo* plea offered to them.

The federal rules clearly encourage judges to accept *nolo* pleas whenever they feel they can. By giving judges complete discretion as to whether

to accept the plea or not, and then directing them to consider “the public interest in the *efficient* administration of justice,” the rule-makers have discouraged judges from requiring defendants to undergo an unnecessary trial.

### *The Practical Effect of Allowing Defendants to Plead Nolo as of Right*

As a practical matter, the percentages of *nolo* and guilty pleas may remain about the same if the change I suggest comes into effect. After all, a defendant who pleads *nolo*, at least in federal court, is taking a significant risk that the sentencing judge will conclude that he has not accepted responsibility and will accordingly give him a higher sentence than he would have received after a guilty plea. Many defendants, however strongly they feel about their innocence or near-innocence, simply won’t want to take that risk.

But if a defendant strongly feels that he is not guilty, a *nolo* plea will allow him to explain that feeling to the sentencing judge. And his effort to explain that to the judge will allow the judge to have a better sense of the person he’s sentencing. Perhaps the sentence will go up; perhaps it will go down. Either way, the judge will have the chance, indeed the duty, to explain his views about the defendant’s culpability in the course of explaining his sentence. So, the sentencing on such a *nolo* plea will be educational both for the sentencing judge and the defendant. And for the public as well.

**Elizabeth K. Ainslie**  
Swarthmore, Pennsylvania

*A full version of this article with footnotes and appendix is available on the College website, [www.actl.com/home/news-publications/the-journal](http://www.actl.com/home/news-publications/the-journal).*

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# A LIFE AFTER LAW



THE WORD “RETIRE” HAS DIFFERENT MEANINGS. IN THE MILITARY, IT MEANS TO WITHDRAW FROM ACTION OR DANGER. IN ITS BROADER SENSE, IT MEANS TO LEAVE ONE’S EMPLOYMENT, WITHOUT GOING TO A NEW JOB. BUT RETIREMENT FROM THE LAW CERTAINLY DOES NOT MEAN A WITHDRAWAL FROM ACTION. THE VERY DIFFERENT EXPERIENCES OF FOUR FELLOWS MAKES THAT CLEAR.

## HITTING THE RIGHT NOTES

**David G. Hanrahan** is a partner with Gilman, McLaughlin, & Hanrahan, LLP, in Boston, Massachusetts, and a Fellow of the College since 1990. He has been working since he was fourteen years old, when he started his first business venture selling freshly baked soft pretzels in front of movie theaters. By the time he finished college, he had wrapped shirts in a laundry, introduced a new German beer into the New York market, delivered mail during the Christmas rush, and operated an elevator in the United States Steel Building on Wall Street.

While attending law school full time after serving five years in the Army, he worked as a newspaper reporter. Since 1967, he has been a busy trial lawyer in Boston, often obtaining what were at the time record-breaking verdicts. So even though he is eighty-three years old and transitioning to full retirement when he finishes a couple of pending cases, it is not surprising that he still plans to work – now as a full-time novelist.

At age seventy-nine, he began to write mystery/courtroom drama novels, featuring Boston P.I. Bill Coine, a former state cop, who is based on a now-deceased private investigator Hanrahan used in a murder case he defended years ago. He realized writing was something he wanted to focus on, and so he began to think about retirement from the practice of law. “A busy trial schedule interferes with creative writing,” he said.

Hanrahan already has published three novels: *A Deadly Recollection*, *Downsized-With Extreme Prejudice*, and *Sanctuary-A Catalyst for Murder*. They can be bought through Amazon, Barnes and



The Spindrift Barbershop Quartet, from left: Hanrahan (lead), Robert Beauregarde (bass), Tingey Seawall (tenor), and Carl Traina (bass).

Noble, and independent bookstores. He is halfway through finishing a fourth one. Visit his book website – davidhanrahan.com – for details about all of his books.

Each of his novels has a courtroom scene, but only the one in *Sanctuary* is based on his real-life experience. “My courtroom scenes are exciting but accurate. I also put the reader at counsel table as the trial attorneys react to what’s happening in the courtroom. Non-lawyers have no idea what is said in notes passed between co-counsel during a trial. Readers get to see this up close in my stories,” he said.

Hanrahan writes three to four hours a day if he is not in his law office. It generally takes him three and a half

to four months to get a first draft completed. “*Sanctuary* has a surprise ending that even surprised me – mid-stream I realized I had left too many clues to the murder, so I changed it,” he said. He bets “you won’t guess it now.”

In addition to writing novels, Hanrahan is lead singer in Spindrift, a senior Barbershop Quartet. They perform at nursing homes and charitable events, and this is a very important part of his life in retirement.

Hanrahan has two remaining active cases and then he will say goodbye to the practice of law, although he will continue to be an AAA arbitrator. Closing down a long-time trial practice certainly has had its stresses, but Hanrahan has no regrets. “I am having a good time.”

## SPECIALIZING IN INTERESTING CASES, LIMITED TIME REQUIRED

At the Spring Symposium of the The Advocates’ Society, ACTL President **Jeffrey S. Leon, LSM** held a fireside conversation with Fellow The Honourable **Eleanore A. Cronk**, former judge of the Court of Appeal for Ontario, who retired in January 2018 after almost seventeen years on the Court. One of the things she talked about was discovering that there was “a life after law.” Over the next fourteen months, she declined all offers of law-related work, and she described waking up each day wondering what she would do that day and then going to bed wondering where the day had gone.



Called to the Bar of Ontario in 1977, at a time when very few women were in the legal profession in Canada, she became one of Canada's most respected and renowned trial lawyers and a role model, especially for women. She was inducted as an ACTL Fellow in 1995. One news account of her retirement from the bench declared that her "intellect, hard work, and empathy earned the respect of the legal profession, the judiciary, and the public."

*Cronk with husband, Ian MacKay, at Victoria Falls, Zimbabwe, September 2018*



So, what is she doing now as a retiree from the bench? Going back to the practice of law on her own, on a strictly part-time and very limited basis.

It started when she received a request to handle a project that had to be completed within a week, with nothing more to ever be done on it. She enjoyed the assignment and decided to accept new, ad hoc assignments that could be fully completed on a "strictly limited" time frame. A friend had told her years ago that he planned on retirement from his big law firm to run an ad: "Specializing in interesting cases only." This is what she is doing now, without having published any ad.



*Cronk at Constitutional Court, Johannesburg, South Africa, September 2018*

This is a purely part-time practice, on her own. As she explained, if she wanted to continue working full time, she would not have left the bench, which was the "best full-time job in the world." But its time demands left her without much time for other pursuits, and she and her [retired] husband wanted to travel and spend more time at their summer place in Northern Ontario.

In addition, she has painted as a hobby for twenty-five years and wanted more time for it and to learn to do it better. She is reading more novels in addition to doing more traveling. She is "enjoying life."

When I reminded her of her observation at the symposium about discovering there is "life after law" and her filled days after leaving the bench, she laughed and said she got the thought from Patrick LeSage, a former Chief Justice of the Ontario Superior Court of Justice. He would exclaim in retirement that "I woke up this morning with nothing to do and when I went to bed tonight I had accomplished only half of it."

When I told her my son thought I never could retire because I had no hobbies, she said to tell him I "could pick up a hobby next morning after I retired." This Fellow has retirement (or semi-retirement) nailed!

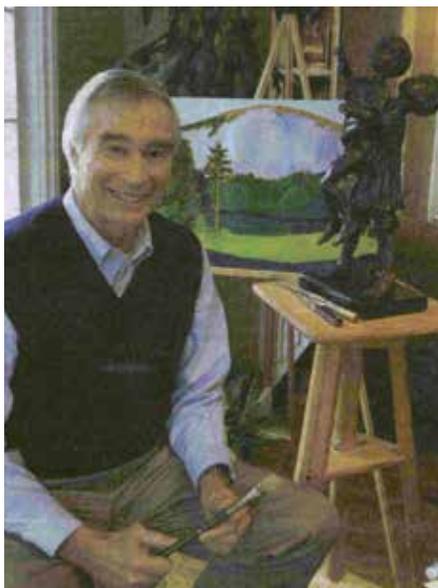
## **MULTIHYPHENATE AND LOVING IT**

Past President **Warren Lightfoot**, a founding partner of the firm Lightfoot, Franklin, & White, LLC, in Birmingham, Alabama, was born in 1938 and began practicing law in 1964. He was inducted into the College in 1984 and served as its President in 2002-2003.

On January 1, 2008, he walked out the door and quit the practice of law cold turkey. "I loved the courtroom, but I love it [my life] now," he said. His days are filled and the stress created by trial work has disappeared.

Lightfoot always had interests outside of his busy trial practice. He and his wife Robbie were avid tennis players, and Warren is a bronze sculptor. His portrait busts are displayed in numerous public buildings, including the U.S. Supreme Court.

He is both a player and a director of duplicate bridge – a highly competitive and intellectually challenging game. The people who come to play are



Far left: The bust of Justice Sandra Day O'Connor created by Lightfoot is displayed at the U.S. Supreme Court building in Washington.

Left: Lightfoot with his sculpture, "Brothers"

very interesting people with a variety of vocations. He spends a good bit of time now in these competitions.

He also has continued to create bronze sculptures but doesn't advertise – no website – and just gets commissions by word of mouth. He has completed forty-nine in retirement. One bust typically takes him around fifteen hours to complete, but the bust of Justice Sandra Day O'Connor took over twenty-five hours.

He laughed about a conversation he had with his late partner and Fellow of the College **Jere F. White, Jr.**, when Lightfoot returned from presenting O'Connor's bust to her. White asked him what he had been up to these days and Lightfoot proudly pointed to the bust, saying "this is what I've been up to." White looked at it and finally said two words – "Thomas Jefferson."

His most recent sculpture is a bust of the newly retired Chief Justice of Canada, Beverley McLachlin. In her remarks at its unveiling, she concluded by expressing her thanks to the artist – "Mr. Wally Golightly." He is still laughing.

Although he has abandoned tennis and

golf without regret, he hikes three miles a day, six days a week, rain or shine, snow or sleet. He and Robbie spend four months each year in tranquil Cashiers, North Carolina, where his daily walks are on trails rather than pavement. Wherever he is, he begins his day by working the daily crossword puzzles. And, he does lots of reading, including more non-fiction than he had time to read before.

On top of all this, he gives a PowerPoint presentation at churches in North Carolina and Alabama on various religious subjects. They are illustrated with classical art, which Lightfoot said is "probably why a lot of people show up." Next he will give a presentation on synthesizing evolution and Christianity, which included over 100 hours of research and features a number of photographs from the Hubble Space Telescope.

Lastly, in retirement he wrote a memoir, *The Right Place at the Right Time*, for his children, grandchildren, and a few friends. He is out of copies – I asked!

As can be readily seen, Lightfoot has found much to do in retirement and his days are filled. He recommends a book co-authored by Chris Crowley, a Davis





Tate, left, Executive Director of CLS Debby Freedman, former Judge (ret.) Carl Solano of the Superior Court of Pennsylvania

Polk partner of ACTL Past President **Bob Fiske**, called *Younger Next Year*, which explains why Warren faithfully walks three miles every single day.

## MENTORING AND SERVING THE PUBLIC INTEREST

**Joseph A. Tate**, a retired partner of Dechert LLP in Philadelphia, Pennsylvania, was a trial lawyer for more than fifty years, focusing on defending against allegations of white-collar crime. At age seventy-five, he decided to “cut back” and now he mentors associates and young partners through an “open door” policy at Dechert.

Tate also serves as one of the College’s initial Access to Justice Distinguished Pro Bono Fellows. Under the College’s project, Tate has partnered with Community Legal Services of Philadelphia (CLS). He learned early on that he could not do the work of the CLS attorneys efficiently. What he could do was teach, mentor, and be available for case strategy.

On a regular basis, he conducts roundtable discussions with CLS lawyers on preparation for trial, deposition taking, examination of witnesses, and general trial strategy, as well as written and oral advocacy. He also has focused on the “Youth Justice Project” of the CLS. That project, which was awarded \$50,000 by the ACTL Emil Gumpert Award Committee, counsels and serves “at risk” youth between the ages of sixteen and twenty-four.

The most common issues the project addresses 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. It has held on-site legal clinics weekly at several locations (schools and shelters for youth). Tate regularly reviews ongoing projects with staff lawyers and provides strategic planning and ideas to them. Tate also provides vision for CLS management. He serves as a “counselor”

to the director of CLS and “counsels on strategy, new programs, grants, staff issues, and the like.”

He and his wife, Detta, (who holds a Ph.D. in psychology) have become active in hospital patient safety programs. He sits, as the only lay person, on the Board of a nonprofit board owned by the Pennsylvania hospitals that is devoted to patient safety in hospitals. In addition, he continues to do some teaching of antitrust and criminal law courses at Villanova Law School, where he graduated.

Tate said that like many trial lawyers, he didn’t develop interests outside of the law. “All I did was work.” He said it is “terrific to be able to transition into public interest work and have the time to really help.” From talking to other Philadelphia public interest law groups about the College’s Access to Justice Fellowship program, he knows they are eager to have such help.

When his children learned he planned to retire from active trial practice, they gave him ten golf lessons, saying they were worried about his marriage and their mother if he retired. Tate tries to play whenever he can. They have a summer house (where he keeps no business suit) and tries to stay there ten weeks in the summer. They kayak every morning while there, and always do a lot of cycling. They take one trip to Europe each year, and have one family trip over Spring Break.

Clearly, he is making up for lost free time.

## CONCLUSION

The experiences of these Fellows in retirement provide good takeaways for all of us. They are making it work for them, in many different ways. So can each of us, if we can just find our own way.

**Sylvia H. Walbolt**  
Tampa, Florida

# AWARDS & HONORS



**Edward Kole** of Woodbridge, New Jersey was installed as President of the Association of the Federal Bar of New Jersey at the 43<sup>rd</sup> Annual William J. Brennan Jr. Award Reception on June 12. He serves on the Heritage and New Jersey State Committees and became a Fellow in 2018.



**A.J. Kramer** of Washington, D.C. was chosen to receive the 2019 American Inns of Court Professionalism Award for the D.C. Circuit. Chief Judge Merrick B. Garland of the U.S. Court of Appeals for the D.C. Circuit presented the award during the Judicial Conference of the D.C. Circuit on June 27 in Cambridge, Maryland. Kramer became a Fellow in 1998 and has served on the Public Defenders Committee.



**Joseph R. Nuss, Q.C., Ad.E.** of Montreal, Quebec was appointed to the Order of Canada, one of the country's highest honors, by the Governor General of Canada. A Fellow since 1986, he has served on the Quebec Province Committee.



**James A. O'Reilly, Ad.E.** of Montreal, Quebec was recognized with the Order of Canada, one of the country's highest honors, by the Governor General of Canada. He has been a Fellow since 2011.



**James P. Ulwick** of Baltimore, Maryland was presented with the John Adams Award on behalf of eighty-four members of the Criminal Justice Act Panel. The award is presented each year by the U.S. District Court for the District of Maryland to an attorney or attorneys on the panel who best exemplify the qualities exhibited by former President John Adams in representing indigent clients. He was recognized with the award on behalf of all CJA panel members who were involved in defending the individuals indicted in the Eastern Correctional Institution prison case, the largest prison corruption case in Maryland history. He has been a Fellow since 1997.



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

Fellow Michael Jones, first row, third from left, with Jon Greenbaum, first row, fourth from left, chief counsel of the Lawyers' Committee For Civil Rights Under Law, along with others from Kirkland, the Lawyers' Committee, and clients



FELLOW MICHAEL D. JONES, A PARTNER AT KIRKLAND & ELLIS LLP IN WASHINGTON, D.C., IS AN ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOW PARTNERING WITH THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW REPRESENTING A COALITION OF STUDENTS, ALUMNI, AND FACULTY AT MARYLAND'S HISTORICALLY BLACK COLLEGES.

Mike and Jon Greenbaum, chief counsel of the Lawyers' Committee, have been co-lead counsel for the past ten years in *Coalition for Equity and Excellence in Maryland Higher Education v. MHEC*, 977 F.Supp.2d 507 (D. Md. 2013) a case seeking attractive, new academic programs and additional funding for Maryland's four black colleges. The pair have won a six-week trial on liability, where the district court found that Maryland violated the Equal Protection Clause, and a seven-week trial on remedies. Now they are awaiting the result of an appeal in the Fourth Circuit United States Court of Appeals, where Mike and Jon split the argument before hundreds of supporters of Maryland black colleges. The case has received extensive nationwide attention including coverage in the *Wall Street Journal*, *New York Times*, *Washington Post*, *USA Today*, *Baltimore Sun*, NPR, and many other news outlets.

The Lawyers' Committee was founded by President Kennedy in 1963 when he convened more than 200 leaders of the bar at the White House and urged them to use the talent and resources of the private bar to combat racial discrimination. The Lawyers' Committee collaborates with law firms to challenge laws and practices that have racially discriminatory intent or impact in a variety of

areas. Key victories in recent years include a victory in the United States Supreme Court involving a law requiring proof of citizenship to register to vote, *ITCA v. Arizona*, 570 U.S. 1 (2013); a Second Circuit decision affirming the district court's determination that a zoning decision by a town on Long Island was enacted with a discriminatory intent, *Mhany Management, Inc. v. Nassau County*, 819 F.3d 581 (2d Cir. 2016); and a Fifth Circuit en banc decision affirming a district court decision that Texas' voter identification law violated the *Voting Rights Act*, *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

"Mike's work in the Maryland HBCU case exemplifies the difference an outstanding trial lawyer can make, as well as embodies President's Kennedy vision for the Lawyers' Committee," said Jon Greenbaum. "This case has presented the most complex combination of factual and legal issues of any civil rights case in my career. Mike has not only demonstrated mastery in the courtroom, but his leadership of the team has enabled us to get everybody's best work. The Lawyers' Committee looks forward to deepening its relationship with ACTL to further our mission to achieve racial justice."

# TWO NEW TRIAL ADVOCACY PROGRAMS INVITE APPLICANTS



THE AMERICAN COLLEGE OF TRIAL LAWYERS (ACTL) IS INVITING APPLICANTS FOR TWO NEW TRIAL ADVOCACY PROGRAMS. THESE TWO, NO FEE PROGRAMS WILL FOCUS ON DIVERSITY IN THE COURTROOM AND IN-HOUSE CORPORATE LITIGATION ATTORNEYS.

## DIVERSITY IN THE COURTROOM PROGRAM

The College has long been committed to increasing its ranks of talented and accomplished trial lawyers, by including more women and persons of color, varying ethnicities, disabilities, and sexual orientation. Through this program, the College expands its commitment by helping to develop the next generation of diverse and inclusive trial advocates

“Our society is diverse. Our courtrooms are diverse – judges, jurors, court personnel, and witnesses. The trial lawyers should mirror the diversity in our society and in our courtrooms,” said ACTL Fellow **Thomas J. Heiden** of Latham & Watkins, LLC (Chicago, IL), who will serve as program chair. “The emergence of a broader group of talented diverse trial lawyers will benefit clients and our system of justice in general. ACTL’s Diversity in the Courtroom Trial Advocacy Program will work to bring even more talented advocates of excellence to our courtrooms.”

## IN-HOUSE CORPORATE LITIGATION ATTORNEY PROGRAM

The second trial advocacy program will focus on in-house corporate litigation attorneys. Corporations and businesses are parties to almost all civil litigation. “In-house corporate litigation attorneys are charged with tasks essential to our civil justice system; yet most are not active trial lawyers and many have never been,” Heiden said. This trial advocacy program “will strive to equip and assist those in-house lawyers in tasks essential to the performance of their job, such as selecting diverse trial counsel, managing trial theme development, and guiding trial and settlement strategies.”

The programs, which will have no fee to attend, will take place in May 2020 in Chicago. Both programs are organized by the ACTL Teaching of Trial and Appellate Advocacy Committee and its Chair, **Joseph C. Crawford** of Hangley Aronchick Segal Pudlin &

Schiller (Philadelphia, PA). Heiden will chair both programs. ACTL Fellows will serve as faculty sharing their extensive experience trying difficult civil cases in each corner of the country. The programs will be held at the Chicago offices of Latham & Watkins, LLC.

Both programs will strive to build faith, trust, and belief in the civil justice system. Preserving and protecting the rule of law and the civil trial system depends in part on the commitment provided today. The ACTL is committed to these goals and to nurturing the future generations of excellent courtroom trial advocates.

Attorney applicants may download an application from the ACTL website or by contacting Tom Heiden (Thomas.Heiden@lw.com). The submission deadline is December 18, 2019. Fellows are invited to volunteer as faculty for the Diversity in the Courtroom program. Please direct any questions or notes of interest to Thomas.Heiden@lw.com. ■

Northern California, Nevada  
May 31 - June 2, 2019  
Resort at Squaw Creek  
Lake Tahoe, California

## REGION 2: WESTERN REGIONAL MEETING



THE WESTERN REGIONAL MEETING WAS HOSTED BY THE NORTHERN CALIFORNIA AND NEVADA FELLOWS ON MAY 31 - JUNE 2, 2019 AT THE RESORT AT SQUAW CREEK. THERE WERE MAJESTIC VIEWS OF THE SQUAW VALLEY SKI SLOPES IN A YEAR OF RECORD-BREAKING SNOWFALL.

President **Jeffrey S. Leon, LSM** attended together with President-Elect **Douglas R. Young** and his wife Terry. Also in attendance were Regent **Michael J. Shepard** and Former Regent **Susan J. Harriman**. The meeting was attended by a robust assortment of Fellows from Northern California and Nevada as well as Fellows from Southern California who ventured into the snowy mountains.

Inclement weather did not daunt those who attended the Friday evening welcoming reception, which, thanks to the foresight of the ACTL Meetings Department, was held in a waterproof and sturdy tent on the premises of the Resort with beautiful views of the imposing ski slope known as KT-22.

The next morning the Fellows were treated to a program kicked off by **Ashby Pate**, Former Justice of the Supreme Court of Palau. He treated everyone to a rousing rendition of "The Midnight Special," the story of promising blues musician Huddie Ledbetter (later known as Leadbelly), his reflections on how his personal run in with the criminal justice system impacted his life and led him to become the youngest Supreme Court Justice in Palau, and his passion about human connections and the value of storytelling.

**David Mann**, from The Other Bar, then gave a compelling and eloquent talk about the difficult problem of substance abuse in the legal profession, discussing not only the cold hard statistics surrounding the problem and the personal, professional, and societal barriers lawyers face in getting help to treat this disease, but a frank and open telling of his own struggles with substance abuse as he journeyed from a straight



A, overachieving student to a successful criminal defense attorney to a homeless drug addict and his path to recovery.

The next speaker was **Anne Marie Schubert**, District Attorney for Sacramento County California. Schubert has been a champion of the use of forensic DNA evidence to solve cold cases and opened the Cold Case Prosecutorial Unit in Sacramento County in 2002. She provided a mesmerizing account of the chronology of the horrific crimes committed by the East Area Rapist a.k.a. Golden State Killer, how crimes in different areas of the state were thought to be connected, and how ultimately the accused Joseph DeAngelo was tracked down through the use of investigative genetic genealogy and charged with these crimes. Schubert also discussed how genetic genealogy investigations are conducted and the ongoing discussion regarding the potential future of this technology to solve crimes while balancing public safety and privacy concerns.

The morning was rounded out by a visit from the well-known satirist **Will Durst** from San Francisco. He regaled the audience with his sometimes cutting, oftentimes controversial humorist view of today's politics, and ultimately left everyone laughing and ready for an afternoon of leisure at the resort.

The meeting concluded on Saturday night with cocktails and dinner in a private dining area of the resort framed by spectacular views as the sun set over the mountains. The Fellows were joined by former Governor of Nevada **Brian Sandoval** and his wife Lauralyn McCarthy. The Fellows were treated to opening remarks by President Leon followed by a candid and very interesting question and answer session between Fellow **Kent R. Robison** and Governor Sandoval about a wide range of personal and political topics.

**Dominique Pollara**  
Sacramento, California



Kentucky, Michigan, Ohio, Tennessee  
June 7-9, 2019  
Metropolitan 9  
Cleveland, Ohio

## REGION 9: 6TH CIRCUIT REGIONAL MEETING



THE 6TH CIRCUIT REGIONAL MEETING BEGAN WITH A WELCOME RECEPTION ON FRIDAY, JUNE 7, 2019 AT THE ROOFTOP BAR OF THE METROPOLITAN AT THE 9 HOTEL. PRESIDENT JEFFREY S. LEON, LSM WAS IN ATTENDANCE ALONG WITH REGENT JOHN DAY AND HIS WIFE JOY, TENNESSEE STATE COMMITTEE CHAIR DARRELL G. TOWNSEND, FORMER REGENT KATHLEEN M. TRAFFORD AND HER HUSBAND, BUZZ TRAFFORD AND OUTREACH COMMITTEE CHAIR WILLIAM G. PORTER.

The next morning commenced with breakfast and was followed by a program where Ohio State Committee Chair **John M. Alton** provided the introduction for all the speakers.

The first to speak was **Terry Stewart**, the Former CEO of the Rock & Roll Hall of Fame who spoke on “Rock and Roll: The Untold History of the Music and the Museum that Bears its Name.” His informative presentation went back to the 1840s and the minstrels through to ragtime, blues, jazz, boogie-woogie “the left hand of God,” swing, rhythm and blues, rock and roll, soul and hip hop. “You could look at the history of this, whether it’s soul or hip hop, it’s the same river. These are all tributaries you can really trace it back to slavery and African American culture, particularly to that early period of minstrels,” Stewart said. He noted the importance of jukeboxes to the development of rock and roll, as well as the role played by disc jockeys Alan Freed and Leo Mintz. Ahmet Ertegun of Atlantic Records and Jann Wenner of *Rolling Stone* magazine were influential in getting the Hall of Fame built. The Rock and Roll Hall of Fame was designed by well-known architect I.M. Pei and was built on reclaimed land at the waterfront. Stewart spoke about some of the issues that the Hall of Fame has faced over the years and its important role in the revitalization of Cleveland. He also spoke about some of the difficulties surrounding the induction of artists into the Hall of Fame. “One of the biggest problems for



people, particularly when they see who we induct into the Rock Hall, is what is rock and roll. It's a very big tent and it has lots of people underneath it that qualify under a broader definition that most people who are musicologists will agree with," he said. He added: "The rule to be inducted is it is twenty-five years after your first record."

The second speaker was **Dennis Lehman**, Executive Vice President, Business of the Cleveland Indians. His talk was entitled "Unintentional Walk: My 50 Seasons in Baseball." A presentation for the sports fan, Lehman's career goes back to the Philadelphia Phillies when they played in Connie Mack Stadium. He discussed the move to Veterans Stadium, his role in operating the scoreboard which he did for eleven years, the Phillie Phanatic mascot, "unleashed in 1978, which I think today is still the best mascot in America," and some of the people who had an influence on his career, including MLB Executive Dallas Green, manager of the Philadelphia Phillies Danny Ozark, former Director of Public Relations for the Phillies Larry Shenk, and former MLB player and manager

Pete Rose. Lehman moved to Cleveland in 1988 where he worked with owner Dick Jacobs. His stories included the time when President Bill Clinton threw the first pitch. He was a very personable guy, I asked him one question, he went on for twenty minutes." He also included the 455 consecutive sell-outs, and his interaction with Hall of Fame pitcher Bob Feller, who knew Babe Ruth and Joe DiMaggio "Bob is the only guy I know who went out to dinner with Joe DiMaggio and Marilyn Monroe. Bob would say to me, 'Yeah, but she didn't talk much.'" The overall theme of his presentation was the importance of "the people you know" and that he had been blessed by knowing genuine people who helped him throughout his career.

The third and final speaker was **Tamika Nunley**, Assistant Professor of History and Comparative American Studies at Oberlin College. She spoke on "The Underground Railroad, 'Three Times the Risk': Women Fugitives and the Legal Geographies of Slavery." She has a book entitled *The Threshold of Liberty*, which is pending publication. She started out by saying that she would not say the

words 'Underground Railroad.' "There was no Underground Railroad, literally, but there was a robust network of people working together to help slaves become free," she said. "This is really a story about North America and its boundaries and also about the ways that law shaped the journey of these people." When the U.S. was founded and the decision was made that the capital would be located on the Potomac River, it "would be this beacon of liberty, it would be the front piece of the republic. It tried to do that, but there were contraindications and there were tensions. There's no better way to really understand those tensions than looking at black women who at the time were considered the absolute bottom rung of that particular society at that time."

The closing dinner was held at the Rock & Roll Hall of Fame, in a private area on the main floor. The evening kicked off with a reception followed by a tour for Fellows and their guests. President Leon offered his remarks, despite a concert going on at the same time as the dinner. ■

New York-Upstate, Ontario, Quebec  
June 14-16, 2019  
Le Germain Hotel  
Ottawa, Ontario

## REGION 15: REGIONAL MEETING



THE REGION 15 MEETING IN OTTAWA, ONTARIO BEGAN WITH A RECEPTION IN THE LOBBY AT THE SUPREME COURT OF CANADA BUILDING ON JUNE 14, 2019. ABOUT THIRTY-FIVE FELLOWS, ALONG WITH ABOUT TWENTY SPOUSES, REGISTERED FOR THE EVENT. OF THOSE IN ATTENDANCE WERE FIVE SUPREME COURT JUDGES: HONORABLE MADAM JUSTICE ROSALIE M. ABELLA, HONORABLE MADAM JUSTICE ANDROMACHE KARAKATSANIS, HONORABLE MR. JUSTICE MALCOLM ROWE, HONORABLE MADAME JUSTICE SUZANNE CÔTÉ, AND HONORABLE MADAME JUSTICE SHEILAH L. MARTIN. JUSTICE ABELLA PROVIDED OPENING REMARKS AND WELCOMED THE FELLOWS TO OTTAWA. SHE SUGGESTED THAT THE TORONTO RAPTORS' WIN OF THE NBA CHAMPIONSHIP WAS THE BEST THING TO HAPPEN TO CANADA SINCE JEFFREY S. LEON, LSM BECAME PRESIDENT OF THE COLLEGE. SHE THANKED THE COLLEGE AND ITS FELLOWS FOR ALL THAT THEY DO AND, IN PARTICULAR, FOR THE ACTIONS TAKEN TO STRENGTHEN THE JUSTICE SYSTEM IN CANADA.

Also present at the reception were Ontario Province Committee Chair **Martha McCarthy**, Ontario Province Committee Vice Chair **Pasquale Santini**, Regent **Sandra A. Forbes**, New York-Upstate Committee Chair **Arthur J. Siegel**, Quebec Province Committee Chair **Suzanne Helene Pringle, Ad.E.**, Former Regent **Stephen G. Schwarz**, outgoing Editor of the *Journal* **Stephen M. Grant**, LSM and Beverley McLachlin Access to Justice Committee Chair **Guy J. Pratte**. It is also notable that there were seven judges in attendance, including **The Honourable Benjamin Zarnett**, Justice of Appeal of the Court of Appeal for Ontario; **The Honourable Allan R. Hilton**, Justice of the Court of Appeal of Quebec; **The Honourable Sylvain Lussier**, Judge to the Superior Court of Quebec Palais de Justice; **The Honourable Simon Noël**, Judge of the Federal Court of Canada; **The Honourable Justice Norman Douglas Boxall**, Ontario Court of Justice; **The Honourable Heather J. Williams**, Judge of Superior Court of Justice; and **The Honourable Justice Peter K. Doody**, Judge of Ontario Court of Justice as well as Fellow **Joseph R. Nuss, Q.C., Ad.E.**, former Justice of the Quebec Court of Appeal.

The Saturday morning General Session began with Ontario Province Committee Chair McCarthy providing introductory remarks followed by remarks from President Leon. He highlighted the upcoming Annual Meeting in Vancouver as well as the Boot Camp Trial Training Program scheduled for September 10 in Toronto; the pending release of the *Canadian Codes of Trial and Pretrial Conduct* following the preparation of an introduction by Chief Justice Wagner; and the new General Committee on



Judicial Independence, mentioning the Canadian members of that committee. He also announced the new initiative of the Canadian Foundation to raise an additional \$200,000 in the memory of Past President David W. Scott. Scott, as the first Canadian President, was instrumental, along with Former Canadian Foundation President **J. Bruce Carr-Harris, LSM** in creating the Foundation. It was Scott's vision that Canadian Fellows would be able to support Canadian programs in advocacy training, access to justice and improving an administration of justice. The Foundation has raised \$300,000 but needs an additional \$200,000 to begin making grants.

There were four presentations during the General Session. The first was a panel on interacting with the media on high-profile cases. It was moderated by **Jim Bronskill**, a reporter in the Ottawa bureau of the Canadian Press and included Fellows **Donald B. Bayne**, Former Regent Schwarz and Justice Lussier. The messages the panelists shared were: media strategy is dictated by the circumstances of the case not by the trial lawyer; trial lawyers are reality managers who have to be practical; think of the client and follow ethical rules; be the client's advocate but avoid exaggerating the client's story and remain within the boundaries of what is acceptable in the courtroom; there is a lack of legal

training and understanding of the legal process and the rule of law by the media; frequently the best policy is to say nothing; and if the client insists on making a statement to the media, make sure he or she understands the pitfalls of not being able to control the narrative.

The second presentation was on courageous advocacy. The first speaker was **Maria Mitousis**, a family lawyer from Winnipeg, Manitoba. Mitousis told her compelling personal story of surviving not only an explosion of a letter bomb in which she lost her hand, but also a serious and career-altering professional issue involving her spouse, both of which occurred within three days of each other. "To advocate and practice safely and meaningfully, lawyers need to recognize their fallibility and the risks to us. Being naïve or willfully blind is dangerous. If I've done any courageous advocacy, it's been to stand up to my colleagues and share my insights about what ails us and to say that we need to challenge assumptions about emotional health and well-being," she said.

The second speaker was **Robert Talach**, a trial lawyer from London, Ontario who recently received a jury verdict that set a record for damages for sexual abuse in Canada. The courage of his client and his own commitment inspired an award-winning Canadian documentary film, *Prey* and after making remarks, he showed a ten-minute clip of the film. "An old case

for some of you may be something that happened in the prior decade. For me, almost all my cases happened in the prior century. I love saying that, but the reality is I have a handful of cases in the 2000's. I've done over 400 cases against the Catholic Church, and the vast majority happened in the range between 1950 and the 1990s. No limitation period," Talach said.

The third presentation was by Judicial Fellow **Benjamin Zarnett**, a recently appointed Judge of the Ontario Court of Appeal. Justice Zarnett was appointed to the bench directly from practice. His topic was "What Trial Lawyers can Learn from Appeal Lawyers." He discussed the fact that being a good trial lawyer and being a good appeal lawyer often involves different skills, but that there are overlapping skills that may be the most important. "There is an overlap of skillsets on such a scale that it's an advantage for trial lawyers on some topics to think like an appellate lawyer. Appeal skills and trial skills should be viewed on a greater spectrum of advocacy skills available, where appropriate, in either venue. Advocates should be encouraged to have the full range of trial and appellate skills because it makes them better at both," Zarnett said. "If you already do trials and appeals and want the cross-pollination benefits of which I speak, you can choose to do what I used to do on my way to trial court. Talk to yourself. Ask your appellate self what your trial lawyer self should do in a particular situation. Nobody thinks that's weird anymore, talking to yourself, because they think you're on a cellphone."

The final presentation was an interview with **Alexandra Suda**, Director of the National Gallery of Canada, by *Journal* Editor Grant. It was an interesting discussion of some of the issues facing the National Gallery such as the mandate of the National Gallery through the work of national outreach programs; a collection strategy of Indigenous art through a project called the Re-Creation Project; the role of art in contemporary society; and deaccessioning pieces of art. The conversation was a prelude to an optional afternoon tour of the Gallery that was led by Grant and Fellow **Julian Porter**, along with Suda. ■

Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming  
June 20 - 22, 2019  
Mayo Hotel  
Tulsa, Oklahoma

## REGION 4: 10th CIRCUIT REGIONAL MEETING



THE ICONIC MAYO HOTEL SERVED AS THE SETTING FOR THE TENTH CIRCUIT REGIONAL MEETING HELD JUNE 20 THROUGH JUNE 22, 2019 IN TULSA, OKLAHOMA. NOTABLE FELLOWS AND GUESTS IN ATTENDANCE INCLUDED COLLEGE PRESIDENT JEFFREY S. LEON, LSM AND FIRST LADY CAROL BEST, ALONG WITH REGENT PAUL J. HICKEY AND HIS WIFE, JEANNE, COLLEGE SECRETARY MICHAEL L. O'DONNELL AND HIS WIFE, BRETT, AND PAST PRESIDENTS ANDREW M. COATS, MIKEL L. STOUT AND FRANCIS M. WIKSTROM. FORMER REGENT JOHN H. TUCKER AND HIS WIFE, FRANCESANNE, WERE ALSO IN ATTENDANCE. OKLAHOMA STATE COMMITTEE CHAIR STANLEY D. MONROE AND HIS SPOUSE, DENICE, SERVED AS HOSTS FOR THE EVENT.

The event kicked off with a welcome reception at the Mayo Hotel on Thursday evening followed by a Friday morning Continuing Education program which was both entertaining and informative.

The **Honorable John E. Dowdell**, chief judge of the U.S. District Court for the Northern District of Oklahoma presented welcoming remarks, setting the stage for some of the extracurricular activities which the Fellows and guests were able to enjoy during their Tulsa stay.

The **Honorable Robert H. Henry**, former judge on the U.S. Court of Appeals for the Tenth Circuit, the keynote speaker, told a fascinating story of Moman Pruett, who, by the time of his death in 1945, had tried 343 murder trials to verdict with 303 acquittals. Only one of his clients ever received a death penalty verdict. However Pruett mortgaged his home, perfected an appeal and convinced President William McKinley to give his client a pardon. Pruett was a convicted felon, having been involved in a robbery when he was in his teens. All in attendance agreed that the legal community will never see the likes of Moman Pruett again in the modern practice of law.

The **Honorable Ralph G. Thompson**, former U.S. District Judge for the Western District of Oklahoma, presented a synopsis of the federal kidnapping trial of Machine Gun Kelly which was held in the Western District of Oklahoma Federal Court in



1933. Judge Thompson had discovered video footage of the trial when he was still on the bench in 1986. The film was preserved and reformatted through the efforts of the National Archives Museum lab in Washington, D.C. It is believed to be the first federal criminal trial ever recorded on video.

Past President Coats spoke about his time as Oklahoma County District Attorney and the investigation and prosecution of one of the most notorious mass murder trials in state history, known as the Steakhouse Murders. Coats described how the investigators pursued leads which broke the case and allowed charges to be brought against Roger Dale Stafford, who ultimately received the death penalty for his crimes.

The last speaker on Friday was **Danny Boy O'Connor**, a musician/rapper who discussed his lifelong interest in the movie *The Outsiders* which he first viewed as a teenager. This 1983 Francis Ford Coppola-directed movie was based upon a novel written by a fifteen-year-old high school student in Tulsa, S.E. Hinton. O'Connor ultimately purchased the *Outsiders* home and renovated it to

reflect what it looked like at the time of the film's shooting. It is now a museum in Tulsa containing *Outsider* memorabilia.

Friday evening's dinner was held at the Gilcrease Museum where Fellows and guests were allowed access to the museum in advance of the evening's dinner. Guest dinner speaker **Geoffrey Standing Bear**, current principal chief of the Osage Nation, presented a history of the Osage People and the historical basis for the novel, *Killers of the Flower Moon*. This 2017 novel recounted the efforts of people outside of the Osage Nation to obtain valuable headrights of Osage members through nefarious methods.

Saturday's continuing education event included a presentation by **Patrick M. Connor, M.D.** who gave an insider's perspective on being a team physician for the Carolina Panthers of the National Football League. President Leon spoke briefly about his work as President of the College, and the fact that Tulsa was his 56<sup>th</sup> stop on his tour as President—a stop he said that he thoroughly enjoyed.

**Scott S. Barker**, a Fellow from Colorado, spoke about his recently published

book, *Impeachment - A Political Sword: How the Johnson, Nixon and Clinton Impeachments Reshaped Presidential Politics*. UCLA professor **J. Arch Getty, Ph.D.** presented a unique prospective on Russia in a presentation titled, "Who is Putin? A Different View." Saturday's continuing education was concluded by inspirational speaker, **Brian Brurud**, a successful businessman and retired naval fighter pilot. Brurud discussed how his experience with military operations helped form his Tulsa-based business which operates internationally as a consulting firm for the oil and gas industry and manufacturing operations.

The event concluded with dinner at the Mayo on Saturday night.

Fellows and guests had plenty of down time to explore Northeastern Oklahoma's attractions and restaurants. Tulsa's award-winning city park "The Gathering Place" was a hit, along with the Woodie Guthrie Museum and the Tall Grass Prairie Preserve in Osage County.

The next Tenth Circuit Regional Meeting will be in Colorado in 2021. ■



# COMMITTEE UPDATES

## ALASKA

The Alaska Fellows issued a statement in response to the Governor's veto of the court system budget in which the veto was seen as a threat to judicial independence. The statement read as follows:

An independent judiciary is crucial to protecting the rights embedded in the United States Constitution and in the constitutions of the 50 states. Although the principle of an independent judiciary emerged from the Founders' earliest writings, it may be the most underappreciated and least understood of our basic Constitutional rights. Under our system of government, state and federal judges are empowered to provide the final word on the validity and enforceability (constitutionality) of legislation and of actions by the executive branch of government, which is known as the principle of judicial review.

The Alaska Governor recently vetoed part of the budget the Alaska legislature had enacted to fund the Alaska Court System. His veto did not respond to budget constraints. Rather, the reduction in funding retaliated for a Supreme Court opinion on abortion rights with which he disagreed.

The Alaska members of the American College of Trial Lawyers (The College)

object to this veto as an encroachment on the independence of the courts. The College is an international organization of trial lawyers from all areas of trial practice. Since its founding, the American College of Trial Lawyers has defended the independence of Courts as fundamental to our democracy. The College published two papers on judicial independence: *Judicial Independence: A Cornerstone of Democracy Which Must Be Defended* in 2006 and *The Need to Promote and Defend Fair and Impartial Courts* in 2019.

As we evaluate our Governor's action against the Alaska judiciary, we encourage a review of hallowed principles and norms of our system of government, going back for centuries. One of the primary complaints against the English King set out in the Declaration of Independence, related to the right of judicial independence:

*"He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."* Declaration of Independence, July 4, 1776

Historically, English judges, through the Act of Settlement of 1700, had the assurance of life tenure during their

"good behavior." But Colonial judges served at the pleasure of the King. Their salaries were subject to his whims. Judges beholden to the King, not surprisingly, often ruled as he pleased, no matter how unfairly.

Our post-Revolution government sought to ensure an independent judiciary. In 1780, nearly a decade before the United States Constitution was ratified, John Adams drafted as the introductory provision of the Massachusetts Constitution, a Declaration of Rights, Article XXIX which provided in part: *It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit.*

The concept of judicial independence, that judges should decide cases, faithful to the law, without "fear or favor" and free from political or external pressures, remains one of the cornerstones of our political and legal systems. The Founders designed our courts to ensure that due process and equal protection are not merely words on paper but intrinsic and enforceable human values. Attacks on our judiciary are nothing less than attacks on these values. As officers of the court, we feel a responsibility to call out such attacks whenever we see them. The recent veto by our Governor moves us to speak out now.

## ARIZONA

On May 9, 2019 the Arizona Fellows held their annual Continuing Legal Education for members of the Arizona Bar at the Sandra Day O'Connor College of Law. The program was called "Damages: It's All About the Money – How to Get it and How to Keep It." Arizona Fellows presented the daylong conference which included topics such as: Proving and Defending Wrongful Death Damages, Developments of Punitive Damages Jurisprudence and Presenting and Defending Economic Damages in Complex Commercial Disputes. A "Day in the Life" video was shown which captured the audience's attention. It was a teaching moment for attorneys who represent not only plaintiffs but also defendants. Additionally, a section was presented on the topic of Hedonic Damages. In order to fully explore the topic, Fellow Arizona State Committee Vice Chair **Paul J. McGoldrick** invited his brother, Mark McGoldrick, who overcame a catastrophic injury and became a graduate of Harvard Law school and active trial attorney. Mark discussed how to present catastrophic injuries to a jury so that a juror understands how such an injury impacts a plaintiff from an emotional and personal standpoint.

## DISTRICT OF COLUMBIA

On June 14, 2019, Fellows **Thomas G. Connolly** and former Federal Legislation Committee Vice Chair **Mark D. Hopson** organized a program on trial techniques, in which various members of the D.C. Fellows participated in presentations on all aspects of a trial practice. Four Judges, two from the federal District Court – the Honorable Amit Mehta and the Honorable Richard A. Leon and two from the local Superior Court – the Honorable

Gerald Fisher and the Honorable Robert Richter, also participated and provided their judicial insights into trial practice. The program was held at the D.C. Office of Sidley Austin and was well-attended and well-received.

## HAWAII

The efforts of Fellow **Mark S. Davis** and former Hawaii State Committee Chair **Michael K. Livingston** to obtain funding for the new Advocacy and Trial Practice Building at the University of Hawaii at Manoa William S. Richardson School of Law have paid off. Davis, who chaired the fundraising efforts with the assistance of Livingston, has obtained enough donations to dedicate a Hawai'i Chapter of the ACTL workspace at the new building. The building is almost complete with the hope to be open for use by the fall semester. The ACTL workspace will have a plaque that reads: "The American College of Trial Lawyers is a fellowship of exceptional trial lawyers from the United States and Canada who have demonstrated the highest standards of trial advocacy, ethical conduct and professionalism. This workspace is dedicated by its Hawai'i members as a venue for Richardson students to preserve the independence of the judiciary, trial by jury, access to justice and respect for the rule of law.

"This classroom is endowed by The Hawaii Chapter of The American College of Trial Lawyers and its members listed below:

Mark S. Davis, Michael K. Livingston, Hon. Mark J. Bennett, James Kawashima, Howard K.K. Luke, William C. McCorrison, Paul F. Cronin, David L. Fairbanks, Brook Hart, Wayne K. Kekina, Gerald Y. Sekiya, Hon. James E. Duffy, Sidney K. Ayabe."

Each ACTL member whose firm, or who individually, made a contribution to the building of at least \$10,000 will be listed.

## KENTUCKY

On July 26, 2019, Kentucky Fellows hosted "May It Please the Court: Effective Appellate Oral Advocacy" put on 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 was held at Northern Kentucky University Chase College of Law. A four-hour CLE credit was given to those in attendance. Justice Michelle Keller of the Kentucky Supreme Court, Judge Pamela Goodwine of the Kentucky Court of Appeals, and Judge Pierre Bergeron of the Ohio First District Court of Appeals served as the panel judges for the appellate oral arguments. They also participated in the panel discussion that will follow, moderated by Teaching of Trial and Appellate Advocacy Chair **Joseph C. Crawford** of Philadelphia, PA. Past President **Chilton Davis Varner** of Atlanta, GA along with Kentucky Fellow **John L. Tate**, Sheryl Snyder (AAAL) and Virginia Snell (AAAL) will argue a constitutional issue.

## SOUTH CAROLINA

On April 11, 2019, the South Carolina Fellows hosted a "Senior Fellows Reception" to honor all of the state's retired Fellows and emeritus Fellows. The well-attended event was held at The Palmetto Club in Columbia. Among the senior Fellows who attended were former South Carolina State Committee Chair **Robert W. Dibble, Jr.**; **Robert J. Thomas**; Former Regent **Edward J. Mullins, Jr.**; **Michael D. Glenn**; **Robert A. McKenzie**; **Robert B. Wallace**; **H. Simmons Tate, Jr.**; and former National College of District Attorneys Committee Chair **Mark W. Buyck, Jr.** The fellowship opportunity with these senior members could not have been better. All seemed quite pleased. ■

# 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 DURING A TRIAL.

Please send stories for consideration to [editor@actl.com](mailto:editor@actl.com).

## THE POWER OF SUGGESTION

Several years ago, my associate and I were defending a local amusement park against a claim that a roller coaster had malfunctioned. Plaintiff's attorney had retained an engineer as an expert witness to testify that the roller coaster was dangerous and negligently maintained.

Once the expert had been introduced to the jury, the plaintiff's attorney launched into a lengthy hypothetical question, asking the expert to assume "as true" several assertions as premises for the expert's opinion.

Since at least one of the propositions included a claim which had already been precluded by an Order in Limine, I asked the judge to approach, and objected to the assumptions.

The judge asked the plaintiff's lawyer if his list of assumptions was in writing, and the lawyer gave the judge the hypothetical question which he had written out.

The judge asked the bailiff to take the jury out, and asked the court reporter to copy the paper, so that we could discuss which of the assumptions the expert would be allowed to consider.

While the jury was out, I mentioned to the opposing counsel, that Indiana law had changed, and it was no longer necessary to ask hypothetical questions to elicit an expert's opinion.

The lawyer asked the judge if that was so, and the judge confirmed that once qualified, experts could testify as to their opinions *without* the lengthy process of asking the expert to make assumptions followed by a hypothetical question.

As I explained to opposing counsel, "So, you can just ask your expert if he has an opinion as to the safety of the roller coaster. He'll say 'yes.' You'll ask for his opinion. I'll object as to foundation, and the judge will allow his opinion over my objection."

Again, the lawyer asked the judge “Is that right?” And again, the Judge answered “Yes. That’s right.”

The lawyer responded, “OK, then. I’ll do it that way, and we won’t have to sort through the assumptions.”

The bailiff brought the jury in, and, as predicted, the plaintiff’s attorney asked his opinion.

Over my objection, the expert testified with a lengthy opinion as to the claimed defects and dangers posed by the roller coaster.

As the expert was testifying, my associate tugged on my sleeve. Not wanting to be interrupted, I almost ignored her, but the tug was insistent.

While the jury was being brought in, the court reporter had handed my associate the plaintiff’s lawyer’s original hypothetical question.

The paper was a list of the lawyer’s proposed assumptions, followed by the phrase: “Suggested Answer,” and the opinion which the lawyer wanted from the expert.

The “Suggested Answer,” was, of course, nearly verbatim as the expert had just opined to the jury.

You might well guess our cross examination.

Borrowing a tactic from the Triangle Shirtwaist Factory trial, I asked the expert to repeat his opinion twice more, and then introduced the paper with the phrase “Suggested Answer.”

I then commended the engineer for his ability to opine exactly as “suggested,” by the lawyer who had employed him.

The jury returned a defense verdict in twenty-two minutes.

**Robert B. Clemens**  
Hilton Head, South Carolina

## CALLING IT LIKE YOU SEE IT

I had a case one time on a motion to suppress, and it involved hashish that was boxed and sent in Hawaii. The agricultural inspectors inspected it, found it was hashish, boxed it up again, and shipped it to the Bozeman, Montana, police department. The police had it delivered in a controlled stakeout, and then went in for their arrest. They brought for the suppression motion a witness from the police department in Honolulu. And he was testifying in response to the county attorney’s questions. The question was, “Where does hashish come from?”

The witness said, “Well, you’re not gonna believe this, but, in the Middle East they have these fields of growing marijuana. And what they do is they turn a bunch of camels loose and they eat this marijuana and then what they defecate turns out to be hashish.”

At that point I said, “Your Honor, may I approach the bench?”

I walked up, and we had a sidebar up there, and the county attorney walked up.

I said, “I have a motion to make.”

The judge looked at me, and said, “Yes, counsel, what is your motion?”

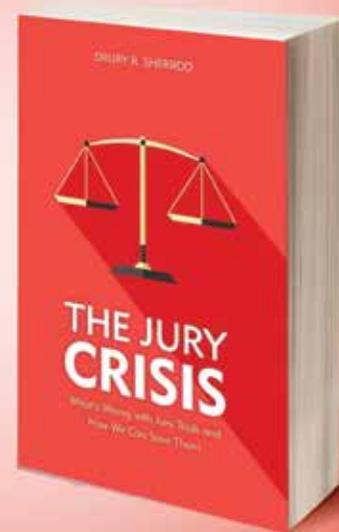
I said, “Your Honor, I have to move to dismiss this case.”

The judge said, “On what grounds?”

I said, “On the grounds that this is not hashish. This is camel shit.”

**James H. Goetz**  
Bozeman, Montana

# REVIEW OF *THE JURY CRISIS: WHAT'S WRONG WITH JURY TRIALS AND HOW WE CAN SAVE THEM* DRURY R. SHERROD



W

HEN I BEGAN A BOOK ON JURY TRIALS NOT LONG AGO, I DID NOT EXPECT TO GET THE TRIAL JITTERS. YOU KNOW WHAT I AM TALKING ABOUT. THE BUTTERFLIES IN THE STOMACH, THAT TRENCH THAT DEEPENS BETWEEN YOUR EYES AND YOUR HAIRLINE AND THE TENSION ACROSS YOUR SHOULDERS LIKE YOU KNOW A BOOGEY MONSTER IS ABOUT TO JUMP OUT AT YOU. NO, I DIDN'T EXPECT THOSE FEELINGS WHEN I PICKED UP *THE JURY CRISIS: WHAT'S WRONG WITH JURY TRIALS AND HOW WE CAN SAVE THEM*.

Written by Drury Sherrod, a cognitive social psychologist turned jury consultant, the work is a mere 171 pages, including index and “About the Author.” Sherrod integrates a wealth of resources, such as dissertations, scientific research, research undertaken over the last few decades at his own company, magazine articles, and books, to support his analysis of how trials *really* function. His approach to the study of jury trials begins by examining the key participants. These are, not surprisingly, the jurors who become members of the jury, the lawyers, and the judges. The argument by Sherrod is that these participants can and will develop their own independent story as to what happened and why. What is a surprise is how well Sherrod presents this proposition and how well it is supported by case studies and research.

He scrutinizes and explores how each of these participants applies their own poorly recognized and understood personal filters in analyzing the “facts.” The result is that we are warned of how the belief system of the judges and even ourselves can impact the outcome of trials. Jurors, lawyers, and judges create their own independent stories of how the case comes to be and how the parties behaved. Warning! Butterflies in the stomach realizing that while representing our clients, our own hidden agenda and our own made up story of the case may fog our view of our client’s position. A kaleidoscope of butterflies swirl when you fully appreciate how the judge’s story of the case might be conceived in the scant pre-trial facts and fed by his limited knowledge, even limited knowledge of the facts could be rooted in his personal experiences, unrecognized bias, and automatic response to pre-conceived notions. It is a reminder that even the most admirable jurist is just a person with convictions not previously considered or recognized by him/her much less you.

*The Jury Crisis* presents this conundrum with intriguing statistics and eye-popping trial results. While statistics can sometimes affect us like a comfy sofa after Thanksgiving dinner, Mr. Sherrod manages to delve into them with such illumination that I found myself steadily taking notes so that I could readily reference the data later. For instance, 80% of jurors make up their mind before ever deliberating. Like me, I am sure that statistic makes you say, “So what? We have been hearing that for twenty years or more.” But that is why the book becomes so uncomfortable! If that is the same number that was out there twenty years ago, why have we failed to change it? What have we been missing? *The Jury Crisis* will leave you deep in thought as to how you might better manage your client’s story and ultimately the trial outcome next time around.

Now, on to Sherrod’s consideration and, thus, our furrowed brow issues: jurors and how they deliberate. Consider this harrowing tale recited by Mr. Sherrod. A young mother is pregnant with her second child and heads out with her two-year-old to watch her husband play in a local sports event. At the end of the game, she begins to drive home but is so tired she pulls over to rest a moment. She wakes up minutes later and discovers that her little girl is dead. The child managed to get out of her car seat, step onto the armrest and inadvertently press down on the power window button with her little foot. That button, when pressed downward, caused the window to roll up, choking the child. Sherrod notes that after the lawsuit that followed, car manufacturers changed the “up” button so that it had to be lifted to activate the window roll up feature. But the little girl’s family did not prevail in the suit. The jurors developed a new tale weaving in all sorts of non-facts—the family was Hispanic, Hispanics drink alcohol, alcohol was consumed during the game by spectators and perhaps players, the pregnant mom had consumed so much alcohol that she had to pull over. She was too buzzed to be aware of the harm awaiting her child, so buzzed she slept through the child crying and kicking as she slowly choked to death. This was the story the jury told themselves.

Two things were at play here. The first is a holdover from the earlier premise of the book that if we are not telling a compelling story, jurors are busy creating their own. The second is the introduction of the new premise that putting strangers together under the strain of ill-defined legal duties and responsibilities creates a “group think.” Group think then replaces thoughtful consideration of the evidence with a strange blend of homogenized thinking and the “pick me” vulnerability of a fourth-grade playground game. In Sherrod’s view, clumping together strangers results in a cohesiveness borne by the shared sense of not belonging in the judicial process. Jurors don’t know the law. Rattling off from a high seat doesn’t help them understand it and neither does tossing out legal terms punctuated with an occasional, “You can follow that law, can’t you?” during voir dire. In fact, it is more

likely to make them feel isolated. This easily wraps jurors within a shared bubble of isolation. Now the jurors have their own world where someone wants to be the decision maker, someone doesn’t want to be seen as weak, someone wants to be viewed as the good guy, and someone wants to be the hero. Yet, in all this psychological jostling, they have the shared hope of being part of the winner’s club. All want to be in THE group that determines the verdict. According to Sherrod, one of the first things jurors do is take a straw poll of how many are for, how many against.

The group think that continues next deepens that track in our forehead. By the time the jurors go around the table stating their initial position, a “majority” has typically been formed. If most of the jurors are for the defendant, it automatically becomes the duty of the plaintiff’s supporters to advance why their position is correct. Of course, once it is clear that the “losers” will have to verbally support and defend their position, several will likely flip to the winner’s circle. The remaining “losers” are then faced with several groups of people cutting through their arguments. They must not only hold their own against the winners but attempt to convince the winners they are wrong. And rational arguments don’t work against the united story of the winners’ circle.

Having stingingly brought home to the reader that juries, judges, and even counsel for the parties fail to recognize much less set aside their biases, the author then plows into the intricacies of our jury dilemma. Jury trials have been dropping for the last 100 years. Currently less than 1 percent of civil cases goes to trial and less than 2 percent of criminal cases are tried. Meanwhile the cost of trial has gone risen sharply. Settlement, arbitration, mediation, private judges, and plea bargains are shown by Sherrod to be key contributors to the loss of jury trials. The question then becomes whether these avenues bring their own biases and fail as a replacement for trial.

In concluding, Sherrod suggests various methods of revitalizing jury trials. He advances broader based jury pools which, in theory, would result in competing biases that fuel more intense and useful deliberation of the real facts. Speeding up the trial date, allowing jury questionnaires, disclosing juror names earlier, allowing fewer strikes, and shortening trials are also areas explored. But the real boogey man that jumps out to a trial lawyer reading this book is that in his last chapter Mr. Sherrod advocates for advocacy. In our trial work, zealous advocacy necessarily includes telling our client’s story as a story! Most of us have heard this; many of us practice this. All of us need the reminder. So, thank you, Mr. Sherrod for all your suggestions, statistics, and trial stories. And thank you for spooking us into being better trial lawyers.

**Lorna S. McClusky**  
Memphis, Tennessee



# IN MEMORIAM

A HISTORY: The College *Bulletin*, now the *Journal*, which was originally created to inform the Fellows about the current developments in the College, had long included a section called “In Memoriam,” listing only the names of those Fellows who had died and whose deaths had come to the attention of the national office.



In 2005, Issue 49, we first published a handful of descriptions of those Fellows who had recently died and about whose lives the College was given information from other Fellows.



This quickly motivated more Fellows to send obituaries and other remembrances about departed Fellows whom they had known. In Issue 50, the Spring 2005 Issue, the College formally launched the current version of the *In Memoriam* column, which continues to this day.



Issue 50 created a landmark that grew. It included the grandson of a sharecropper who had become a nationally known trial lawyer, Johnnie L Cochran, Jr. It also included a decorated, twice wounded, World War II Marine, a Southern conservative from Mississippi, who supported civil rights legislation and who was widely known as “the conscience of the Senate,” Senator Howell Thomas Heflin.



In this Issue 91, over fourteen years and forty-one issues later, we chronicle more lives, bringing us to a total of 1,690 deceased Fellows whose lives we have described since Issue 49. Their stories have become a part of the College’s collective history.



In this issue, you will find the life of a World War II veteran who died at the age of 108, the oldest living alumnus of the Harvard Law School and also the oldest living College Fellow; the life of a World War II veteran, recalled to active combat duty in Korea who was so modest about his service to country that only in his obituary did a long-time law partner learn that he had been awarded a Bronze Star and a Purple Heart; and the life of a 104-year-old retired judge who, on moving to Florida, passed the Florida Bar examination so that he could still do legal work. These, and many other lives grace our pages.



AN OPPORTUNITY FOR SERVICE: About ten years ago, the current author of these memorials, the then Editor Emeritus of the *Bulletin*, now the *Journal*, agreed to continue to write these memorials, wryly asserting that he would do so until the time came for someone else to write his own. Realizing that from among the deceased Fellows covered in this issue, only about ten of them are older than he, he has suggested that the time has come for the new Editor of the *Journal* to have the comfort of knowing that the College has recruited some one (or two or three) individual(s) to undertake this task, while there is time for your current Editor Emeritus to walk through at least the next issue of the *Journal* with him or her.



Whoever undertakes this task will need skills beyond brief-writing, and especially guidance in the infinite varieties of obituaries he or she will receive, what may be missing, and where the missing information may—or may not—be found, to compose and write the memorials. Undoubtedly there are many Fellows who are talented writers and who will recognize this as an opportunity to take an unusual and vital role in the College. It will require the Fellow’s time and motivation to do so.



If you have any interest in taking on this vital role, please contact us at [editor@actl.com](mailto:editor@actl.com). To ensure a smooth transition, the Editor Emeritus will gladly discuss the contours and depth of the task the Fellow is assuming.

**E. Osborne Ayscue, Jr.**

Editor Emeritus



**Hon. William Richmond Albrecht**, '76, a Judicial Fellow, retired from the Superior Court of Warren County, New Jersey, and living in retirement in Prescott, Arizona, died June 15, 2019 at age ninety-two. In World War II, he was a surviving member of the crew of the United States Navy aircraft carrier, *USS Franklin* (CV-13), which was sunk off the Sea of Japan. Returning, honored with a Bronze Star, he earned his law license at Chicago's John Marshall School of Law and, after serving as a special agent of the Federal Bureau of Investigation, he practiced law for over thirty years with Schenck, Price, Smith & King, Morristown, New Jersey. He later opened his private practice in Belvedere, New Jersey. He was President of his local Bar, Chair of the local Salvation Army Advisory Board, and an elder in a Presbyterian Church and vestryman in an Episcopal church. Later appointed Judge of the Superior Court of Warren County, New Jersey, after reaching mandatory retirement age he moved to Prescott. His survivors include his wife of forty-six years, two sons, and two stepdaughters.

**Alexander Armstrong Alston, Jr.**, '82, a Fellow Emeritus from Jackson, Mississippi, died June 1, 2019 at age eighty-two. A graduate of Millsaps College, he was a fraternity president and a guard on its football team. He loved to remind people that he lived under the gym with "a rowdy bunch of football players, a possum and a few birds." As a newlywed, he next spent three years in the United States Marine Corps and returned to earn his law degree from the University of Mississippi, where he was first in his class and Editor of the law journal. Elected President of the Mississippi Bar Association, he thereafter received the John Minor Wisdom Award for Public Service and Professionalism and a Pro Bono Public Service Award from the American Bar Association. Immediately after he began practicing law in Jackson, he devoted much of his free time to public service. He was known as a historian and a writer. He was for many years a Scoutmaster to a generation of young men, and he had been honored with scouting's highest award, the

Silver Beaver. At his death, one of his former Boy Scouts reflected on his memory thus: "I was lucky enough to be one of the Boy Scouts in Troop 302. Mr. Alston always told us stories on the trail, but on particularly hot days when we were hiking through the woods, they would begin to feature a country store. This country store was always just around the bend or over the next hill, and it had ice cream—lots of ice cream, and lemonade. And the lemonade was in a fountain in the middle of the store, where it flowed over ice, big cold, blocks of ice, and you could just pick up a cup and dip it in the lemonade and drink your fill. We never did get to the store, but I get the feeling that Mr. Alston is enjoying some well-deserved lemonade right now." A supporter of Stewpot Community Services, for which he served as President and an advocate of the Mississippi Natural Sciences Museum, for which he also served as President, he raised money to stuff a black bear that had been illegally shot. He also volunteered for a statewide Crisis Line. His survivors include his wife of sixty years, a daughter, and two sons.

**John Joseph Aponick, Jr.**, '81, Marshall, Dennehey, Warner, Coleman & Goggin, Scranton, Pennsylvania, died January 3, 2019 at age eighty-two. A graduate of Princeton University and of the University of Pennsylvania Law School, he was the son of a judge. He had taught and served as President of the Pennsylvania Defense Institute and also served as a guest lecturer at Penn State Dickinson School of Law and the Pennsylvania Bar Institute. At Princeton, he assumed a broadcasting personality of "Jack Aponick" and hosted a regular radio show on WPRB. An avid pilot, he loved Formula 1 and IndyCar racing. Specializing in medical malpractice defense, at age sixty he formed the firm in which he practiced until he fell ill in late 2018. Purchasing a farmhouse in nearby Shavertown, he and his wife preserved and respected the original decor through numerous renovations and expansions as their family expanded. His survivors include his wife of fifty years, a daughter, and two sons.

**Hon. Roberto Lope Cordova Arone**, '89, Guaynabo, Puerto Rico, died in June 2019 in his eighty-fourth year. He earned his undergraduate and law degrees at the University of Tulsa and began his legal career as a partner in Brown, Newson & Cordova, San Juan, Puerto Rico, a firm founded by his father. He later established his own firm. Initially acting as a plaintiff counsellor in constitutional claims and a defendant counsellor for the Puerto Rico Ports Authority, he also acted as counsellor for two Canadian banks. Named as an appellate judge for the Puerto Rico Court of Appeal, he retired from the judiciary in 2006 and subsequently became an Adjunct Professor at the Inter American University of Puerto Rico – School of Law in San Juan. An active member of his church parish, he was instrumental in forming a ministry dedicated to offering mentorship to young men in prison confinement. His survivors include his wife, whom he met while in college in Tulsa and married in Canada, a daughter, and three sons.

**Emerson (Buddy) Banack, Jr.**, '84, Langley & Banack, Inc, San Antonio, Texas, died July 31, 2019 at age eighty-one. He earned his undergraduate degree and his law degree from the University of Texas and then served as a Captain in the United States Army. His many awards included a Professional Excellence Lifetime Achievement Award from the Texas Bar Association. He served on the boards of several health-related organizations. He served the College as Texas State Committee Chair and as a member of a number of general College committees. His survivors include his wife of fifty-nine years, a son, and a daughter.

**James Orin Bass, Sr.**, '64, a Fellow Emeritus, Bass, Berry & Sims, Nashville, Tennessee, died May 22, 2019 at age 108. Having skipped two grades in elementary school, in 1931 he graduated in three years from The University of the South at Sewanee, and in 1934 from Harvard Law School. At his death, he was the oldest living alumnus of both Sewanee and Harvard Law and,

as best that can be determined, the oldest living Fellow of the American College of Trial Lawyers. A descendant of the founders of Nashville itself, he was the son of a founder of Bass, Berry & Sims, which his father had helped to create in 1922. At age twenty-seven, Bass, Jr. was encouraged to win a seat in the Tennessee House of Representatives. He introduced legislation that replaced the Nashville Justice of the Peace system with a more modern court system, a change ultimately made throughout the state. He subsequently became a member of the Tennessee State Senate. Entering the United States Army after Pearl Harbor, he served in the First Canadian Army and then in the United States Army Judge Advocate General's Corps, attached to the 104<sup>th</sup> Infantry Division. Having served in France, Belgium, Holland, and Germany, he emerged in 1945 with a Bronze Star as a Lieutenant Colonel. He returned to Bass, Berry, then a six-person firm, and participated in its growth over the next seventy years to a four-office, 300-lawyer firm. Six years after his return, he was elected President of the Nashville Bar Association. In the 1960s he was appointed by the mayor of Nashville to the Metro Human Relations Committee to help deal with the rising tide of civil rights protests and to begin to facilitate the end of racial segregation in Nashville. Well known for his extraordinarily thorough preparation and commitment to excellence, he believed that the two were inherently linked. For many years he had on his desk the saying, "Luck is what happens when preparation meets opportunity." His colleagues joked that his meticulous attention to detail often required them to take briefs away from him physically in order to meet deadlines. A man who mowed his own lawn and drove his car past the age of 100 years, when he became 100 years old, at the nearest Sunday service on each of his birthdays thereafter his Presbyterian church, sang "Happy Birthday, Big Jim." Known as a consummate gentleman, kind, and thoughtful to both his partners and his adversaries, he retired many years ago, but until very recently, continued to go to the office several days a week, acting as a

sounding board and mentor to the firm's other attorneys. His wife of sixty-three years predeceased him. His survivors include a daughter and three sons.

**John Albert Beck**, '68, a Fellow Emeritus, retired from Reed Smith LLP, Washington, District of Columbia, died December 27, 2018 at age ninety-three. A 1988-1992 member of the College's Board of Regents, he was born in Oklahoma and grew up in Missouri. At age eighteen, he enlisted in the United States Navy, stationed in the South Pacific. Later assigned to the First Marine Division as a mobile radio operator, he participated in the battles of Peleliu, Okinawa, Guam, and Iwo Jima. At the end of the war, he participated in the occupation of Japan, returning home on the battleship *USS New Jersey*. He completed his undergraduate studies at the University of Tulsa and his law degree at George Washington University School of Law. He began practice with Frost and Towers in Washington. Early in his career, he was involved in what became the longest-running case in United States judicial history, one involving the last living direct descendant and heir of President Abraham Lincoln. Beck became a partner in Baker Hostetler and later in Reed Smith. He was president of a number of law-related organizations in Washington, as well as several business and philanthropic groups. A widower whose wife of fifty-five years predeceased him, his survivors include two sons.

**Wayne Lee Bickes**, '81, retired from Bickes, Wilson & Moss, Decatur, Illinois died July 2, 2019 at age eighty-seven. A graduate of the University of Illinois and of its School of Law, he entered practice with Rosenberg and Rosenberg in Decatur, and practiced law for fifty years. A United States Army veteran, a golf lover and a talented pianist, his survivors include his wife of fifty-two years and three sons.

**Robert James Clune**, '81, Williamson, Clune & Stevens, Ithaca, New York, died March 23, 2019 at age eighty-two. A graduate of Niagara University and of the Georgetown University Law Center, he also studied at the Wharton Graduate School at the University of Pennsylvania and then became a confidential law clerk for a state court judge. After two years with another firm, he began practice with the firm with which he practiced his entire career. His survivors include his wife, five daughters, and three sons.

**John Martin Curphey**, '73, a Fellow Emeritus, retired from Robison, Curphey & O'Connell, Toledo, Ohio, and living in Santa Rosa Beach, Florida, died July 3, 2019 at age ninety-two. Born in Columbus, Ohio, he graduated from high school at age sixteen and enrolled in the University of Kentucky to play basketball. His education interrupted by World War II, he enlisted in the United States Army, and after officer candidate school, was deployed to the Philippines as an infantry platoon leader. After the war, he entered Ohio State University and there earned his undergraduate and law degrees. He then entered a predecessor of the Robison firm, but was recalled to active duty in the Korean Conflict two years after he completed law school. After serving for two years as a platoon leader in Korea, earning a Bronze Star and a Purple Heart, he returned to that firm where he practiced until he retired in 1999. One of his sons, a lawyer, related that his father taught that serving clients and helping them to solve their problems was a lawyer's duty, teaching that, "It's not about you— it's about them." He first approached a legal problem with thought and analysis, and only then expressed an opinion. One former partner, a senior United States District Judge, himself a Fellow of the College, described him as a mentor and a friend—"the complete package of civility and a greatness that went hand in hand." Curphey was so modest that one of his partners learned about the medals he brought home from Korea only from his obituary. A lifetime reader, he served

as a deacon and an elder in his Presbyterian church. He was also involved in leadership of health-related organizations, having served for thirty-five years on the board of a Toledo hospital. His wife of sixty-six years predeceased him. His survivors include two daughters and two sons.

**Hon. Thomas Patrick Curran**, '82, retired Judge of the Court of Common Pleas, Shaker Heights, Ohio, died May 1, 2019 at age eighty-three. Born in Cleveland, Ohio, he was a graduate of Ohio State University and of Case Western Reserve School of Law. He began his career as a trial attorney in the Criminal Division of the United States Department of Justice in Washington, becoming an Assistant United States Attorney under Robert F. Kennedy. In 1968, he returned to Cleveland and entered private practice with Weston Hurd. Fifteen years later, he launched his own firm, Curran & Associates. He became a judge in 1994 and retired in December 2016. In practice, he had often donated his time to representing indigent citizens and was General Counsel of an area Catholic education system. A pianist, he was also a member of his church's bell choir. His survivors include his wife, three daughters, a son, and three stepdaughters.

**Richard Lee Cys**, '04, Chevy Chase, Maryland, died November 1, 2017 at age seventy-three. A Colorado native and a graduate of the University of Colorado, he earned his law degree from Georgetown University Law Center. He served as law clerk for a Judge John Pratt, United States Judge for the District of Columbia and then served as an Adjunct Professor of Legal Research at Georgetown Law Center. For seven years he was an Assistant United States Attorney for the District of Columbia. He then joined the Washington firm Verner Liipfert, Bernhard, McPherson & Hand. In 1982, he joined Davis Wright Tremain LLP in Washington as partner in charge of its Washington office. He developed an expertise in complex litigation, including representing foreign embassies, airlines, and the

government of Puerto Rico. He voluntarily represented a detainee at the military prison at Guantánamo Bay and defended Air America Radio in a high-profile defamation suit involving the debacle at Abu Ghraib prison. Known for his organizational and diplomatic skills, his calm, quiet confidence, and his good humor, he was a mentor to many young lawyers. He was also active in many professional groups, such as the U.S. District Court Lawyer Counseling panel, the U. S. District Court Committee on Grievances, and the D. C. Bar Client's Security Fund. For over twenty years he served as Treasurer of the Robert A. Shuker Scholarship Foundation, which provides college and law school scholarships for deserving students from the District of Columbia. An avid skier and traveler along with his wife, he participated in several marathons, and was a frequent tennis player. His wife of forty-one years survives him.

**H. Talbot (Sandy) D'Alemberte**, '80, a Fellow Emeritus, Tallahassee, Florida, died May 20, 2019 at age eighty-five. He collapsed and died at a rest stop on the way home from recent knee surgery to correct the growing pain from a motorcycle accident suffered in his thirties. Born in his grandmother's upstairs room in Tallahassee, a family home a few blocks from the state capitol, his father's military career took his young son to many places. In retirement, he worked at a mental hospital in the tiny town of Chattahoochee, where Sandy spent his teenage years. A 1955 honor graduate of The University of the South, after military service as a lieutenant in the United States Naval Reserve, he attended the University of London on a Rotary Foundation Scholarship and then earned his law degree with honors from the University of Florida Law School, where he was a member of the Order of the Coif, served as President of the student bar association and was captain of the moot court team, articles editor of his law review, and winner of an award as the outstanding law graduate. At the time of his induction in the College he was practicing law as a partner in Steel, Hector &

Davis in Miami. While in private practice, he petitioned the Florida Supreme Court to allow video cameras into Florida courts, thus eventually making Florida the first state to allow such coverage of civil and criminal trials. From 1966 to 1972, he served as a member of the Florida House of Representatives, first receiving the award for the Outstanding First Term Member and, in 1972, honored as the “Outstanding Member of the Florida House.” At his memorial service, his daughter observed, “The politics of what he did was less about politics and more about shaping . . . our future.” He went on to chair the Florida Constitution Revision Commission and the Florida Commission on Ethics. The 1982-1984 President of the American Judicature Society, he served as President of the American Bar Association in 1991-1992. Considered one of the leading advocates for human and civil rights around the world, he was a pioneer of dispute resolution, chairing an ABA committee on that subject. A constitutional expert and a champion of open government, during his ABA tenure, he and a colleague helped to create the ABA program that aided the Central European and Eurasian Law Initiative (CEELI), which assisted the newly democratic nations of Eastern Europe, former Soviet states, to build democratic institutions. Justice Sandra Day O’Connor called this the “most crucial of his contributions to the world.” He became Dean of the Florida State University School of Law from 1984 to 1989 and was appointed President of Florida State University in 1993, serving until 2003, leading huge strides in that growing institution. An ardent supporter of the obligation of lawyers, he established a requirement for pro bono work for law students and undertook a number of high-profile cases, including one to gain state compensation for a man falsely imprisoned for over twenty-two years. When walking became too painful, he went around campus on a yellow motor scooter. In 2004, he joined the firm of Hunton & Williams, and later retired from that firm in 2008. Then, while continuing teaching at FSU, he and his wife, Patsy

Palmer, a former journalist and a 2007 graduate of the Florida State School of Law and for over twenty years his wife, created their own firm, D’Alemberte & Palmer, PLLC. He was still practicing law at his death. His obituary noted that his default settings were joy, kindness, curiosity, and creativity and that he “could talk to students the same way he talked to presidents.” A smiling, quiet-spoken, constantly polite southern gentleman lawyer he wore bow ties, “which one admirer labelled a metaphor for how Sandy lived: “To wear a bow tie you have to take the time to do it right.” Fearlessness was another of his virtues. In his later years he learned to fly a seaplane and smilingly admitted that his license had been revoked for too many minor accidents. To the end, he was regarded as a constitutional scholar who did not care how powerful his opposing voices were. He spoke out, saying that there were too few lawyers left who would disagree with opposing voices. Consistently, when high school students, seventeen of whose classmates were killed by a gunman at the Majorie Douglas High School in Parkland, Florida, staged a demonstration, D’Alemberte joined them on his motor scooter, adorned with a sign that read, “Assault guns are not muskets.” D’Alemberte’s many awards stretched from a Distinguished Eagle Scout Award and an Emmy for his work in open government to the ABA Medal, the highest of the three medals with which he was honored by that organization. He was awarded at least seven honorary degrees from colleges and universities. At his memorial service, ABA Past President Martha Barnett, a Floridian, observed, “Right up to the last day of his life, he did what he loved best—being a lawyer. Self-effacing and kind, he referred to himself as a ‘common lawyer’ and asked that you just call him ‘Sandy.’ . . . The one common thread that ran through the fabric of his life was the law. He knew all too well what happened when the law was distorted and compromised. He never once turned back on the rule of law or on a person in need of help.” D’Alemberte’s survivors include his wife of thirty years, a daughter, a son, and a seated statue of himself on

the FSU campus, which, on the day after he died, was adorned with a bouquet of flowers in his lap and a string of bow ties lying across his shoulders.

**Samuel Field Phillips Daniel, Jr.**, '81, Doerner, Saunders, Daniel & Anderson, LLP, Tulsa, Oklahoma, died July 14, 2019 at age eighty-six. A graduate of Georgetown University, his legal education at the University of Oklahoma was interrupted by service as a Captain in the United States Air Force. He was an adjunct professor at the University of Tulsa, President of the Tulsa Bar, and a member of the American Academy of Matrimonial Lawyers. He served the College on several national committees. A golfer who loved to fish, hunt, and travel, he was actively involved in a number of nature-oriented organizations. He was a recipient of the NatureWorks Wildlife Stewardship Award. His bird collection is housed in a local museum, and he wrote a book about birds for his grandchildren. His survivors include his wife, three sons, and two stepdaughters.

**Richard Waters Davis**, '93, a Fellow Emeritus, Radford, Virginia, died June 2, 2019 at age eighty-seven. He began his undergraduate education at Hampden-Sydney, and at Centre College. He then served in the United States Air Force in the Korean Conflict as a navigator on a B-57 jet bomber, stationed in Japan and Germany. He thereafter earned his law degree in two years from the T. C. Williams School of Law at the University of Richmond. Beginning practice in a Radford firm, he later founded Davis, Davis, & Davis, a firm consisting of two of his sons and a granddaughter, who practiced with him until his death. An unsuccessful candidate for Commonwealth Attorney, he was later appointed a local municipal judge while maintaining his law practice. He was an associate professor of business law at Radford University and he served as President of his local Bar and on both the Virginia State Bar Disciplinary Board and the Virginia Public Defenders Commission. He also served on the boards of two banks and two medical

facilities. He coached youth basketball and baseball teams. A civic activist, his local Chamber of Commerce awarded him its Distinguished Service Award. One of his passions was poker. He studied cards and he authored a publication, *Hold'Em Poker Bible*. He earned entry in the World Series of poker in Las Vegas, where he celebrated his seventy-ninth birthday. His children reflected that he ruled the world "my way" with a few regrets, "too few to mention." While reading the newspaper, his wit once remarked, "Hell must be a lonely place, because everyone in the obits only goes to heaven." A widower, his survivors include two daughters and three sons.

**Thomas McLean Faw**, '83, Fellow Emeritus, Mount Airy, North Carolina, died March 24, 2018 at age ninety-three. A graduate of Davidson College and the Wake Forest University School of Law, he served as a Captain in the United States Army in World War II and in the Korean Conflict. An elder of his Presbyterian church and a director of several business companies, he was also a director of a local hospital. A widower whose wife of forty-two years predeceased him, his survivors include a daughter and a son.

**Anthony Michael Fitzgerald**, '86, Carmody Torrance Sandak & Hennessey LLP, New Haven, Connecticut, died June 4, 2019 at age seventy-seven, of brain cancer. He earned his undergraduate degree with honors at Yale University and, his law degree, also with honors, as a Stone Scholar at Columbia University Law School. Starting in a firm with his father and brothers, in 1972, their firm merged with Carmody. Standing at 6'8" tall with a trademark bow tie and courtly manner, he cut a distinctive figure in the courtroom. He led a team of lawyers representing the State of Connecticut in successful litigation against major tobacco companies. A gifted raconteur, known for his quick wit and sense of humor, he had a gift of creating festive occasions. He was also a voracious reader, an opera buff, a skilled cribbage player, a lover of Motown and New Orleans music, a traveler, and

“perpetual student” of the Italian language. He had served the College as Connecticut State Committee Chair. His survivors include his wife of fifty years and two daughters.

**David Prince Freitas**, '86, a Fellow Emeritus, retired from Ragghianti Frietas, San Rafael, California, died October 25, 2017 at age seventy-seven while vacationing with his family in Italy. A sixth generation Californian, whose grandmother was recorded in the 1849 census as born “on the plains en route to California,” he was the fourth of the six generations of his family who lived in Marin County, where his grandfather started the Bank of San Rafael (later Wells Fargo). He earned his undergraduate and law degrees from the University of San Francisco, where he was first in his law class. An officer in many legal organizations, he served in many capacities in the American Board of Trial Advocates, including as California Chairman. He was a founding member and later President of the San Francisco Inn of Court. In the mid-1980s, he and a friend created a company to hire judges to serve as arbitrators and mediators, which later merged into JAMS. A lover of the outdoors, he was a skilled skier, and after his retirement in 2005, led his family members and friends on horseback rides on the trails in Marin and Sonoma Counties. His “cowboy lunches,” elaborately served in a home garden, were a favorite among his fellow riders. Active in many civic endeavors, he served on the boards of a private school, Guide Dogs for the Blind, the local Chamber of Commerce, an agricultural land trust, the local humane society, the local historical society and a local history museum. He was President of a philanthropic foundation established by his uncle. His family honored his wishes to spread his remains on a favorite Marin County hilltop horse trail. His survivors include his wife and three daughters.

**Henry Newton Herndon, Jr.**, '92, Fellow Emeritus, retired from, Morris James, New Castle, Delaware and liv-

ing in retirement in Hanover, New Hampshire, died April 5, 2017 at age eighty-six. Born in San Antonio, Texas, the son of an Episcopal minister and a trained classical pianist mother, his family eventually came to Wilmington, Delaware. He earned his undergraduate degree from the University of Mississippi on a ROTC scholarship, and afterward served as an officer on the *USS Fremont*, an attack transport. He then earned his law degree at Columbia University Law School. He practiced his entire career at Morris James in New Castle and served as President of the Delaware Bar Association. He served on the vestry of his Episcopal Church and was Trustee of the Common in New Castle, as well as Chair of the Board of Trustees of St. Andrew's School, the boarding school he attended. His family jokingly remembered that after a Saturday morning at the office and then lunch, he would routinely sweep the sidewalks outside his home to the early aggravation of his wife, who later realized that it was his way to connect with passing neighbors. His obituary related that he loved to do chores, “including his legendary and beautifully imperfect carpentry” and that, vacationing at Martha's Vineyard, he took a ritual swim each night in the waters of Cape Poge. His survivors include his wife, a daughter, and a son.

**Hon. Herbert Horn**, '59, Fellow Emeritus, retired to West Palm Beach, Florida, died July 7, 2015 at age 104. A 1932 graduate of Penn State Dickinson Law School in a day when an undergraduate degree was not required, he entered practice in Atlantic City, New Jersey. The local newspaper once titled him “The King of Torts.” He served as President of his county Bar. In 1964, he was appointed a Judge of the New Jersey Superior Court Trial Division, becoming the assigned judge of four counties. He presided over the design and construction of the Atlantic County courthouse and was later appointed to the Appellate Division of the New Jersey Superior Court. Arriving at mandatory retirement at age seventy, he moved to West Palm Beach, where he studied and successfully passed the Florida bar examination. While he was essentially retired, he performed some legal work

and was for many years President of The Consulate, a West Palm Beach collection of condominiums for the elderly, where he resided. Living alone with a caretaker, until his last year, he continued to be active, going out to dinner two or three times a week. A widower, whose wife of sixty-three years died in 1997, his survivors include a daughter and a son, one a lawyer who was once the head of the Miss America organization.

**Eric Daniel Lanphere**, '84, a Fellow Emeritus, retired from Hinkle, Cox, Eaton, Coffield & Hensley, Albuquerque, New Mexico, died November 9, 2018 at age eighty-one. Born in Toledo, Ohio, he earned his undergraduate degree at Amherst College and his law degree at the University of Michigan School of Law. His survivors include his wife of forty-eight years, a son, and a stepdaughter.

**Robert Jeffrey Lewis**, '04, Lewis, Webster, Van Winkle & Knoshaug, L.L.P. Des Moines, Iowa, died July 22, 2019 at age seventy-seven. Earning his undergraduate degree at the University of Kansas and his law degree from the University of Minnesota, after practicing with his first firm for twenty-two years, he became managing partner of Lewis, Webster for the rest of his career. A lifelong learner and a scholar of history, he was a voracious reader. He lived on, and operated, a corn and soybean farm outside Des Moines, where over the years, he raised cattle, chickens, horses, ducks, goats, and other animals. His family related that his prized possession was a Massey Ferguson 255 tractor. Known for his sharp wit, unerring humor, and sense of pragmatic fairness, for many years he served as coach and judge at mock trial competitions for middle school and high school students. His survivors include his wife of thirty-six years, a daughter, and two sons.

**Weyman Ivan Lundquist**, '86, San Francisco, California, died May 19, 2019 at age eighty-eight. The

son of Swedish immigrants, he was the first member of his family to attend college. From early in life, he necessarily held many jobs at once. After starting at Boston University, where he played varsity soccer, he transferred to Dartmouth College, where he was a member of Phi Beta Kappa. He earned his law degree from Harvard Law School. After law school, he served in a peacetime era in the United States Army, providing civilian legal assistance and simultaneously teaching economics at the University of Maryland and working as a part-time manager of a savings and loan. After his Army service, he began working as an Assistant United States Attorney for Massachusetts. Shortly after Alaska statehood he was appointed Assistant United States Attorney for Alaska, living in Anchorage and flying around the state by plane to try jury cases. Returning to the Lower Forty-Eight, he began practicing law with Heller, Ehrman, White & McAuliffe in San Francisco, California. He went back briefly to Massachusetts to work for a commercial business, but soon returned to Heller Erhman. He was a member of the Bar in four states. In 1974, he and his family drove north on the Alaska (ALCAN) highway, flew to Asia, and then crossed the USSR on the Trans-Siberian Railroad, continuing to Moscow. Along this trip, they visited the Limnological Institute at Lake Baikal (the world's deepest lake), as part of the Lake Tahoe/Lake Baikal reciprocal study for global change, on whose Board he later served. He was a founding member of the American Bar Association Litigation Section, and in 1978-79 served as its Chair. The next year, he served as Chair of the ABA Soviet Lawyer Dialogue Committee, and in 1981, he organized a meeting of the Lawyers Alliance for Nuclear Arms Control. In that Cold War era, he organized, hosted, and attended numerous meetings with Russian and American academicians, judges, and political leaders, including Mikhail Gorbachev. In 1990 he was an advisor to a meeting on Northern Justice conducted by the Alaska, Canada and Soviet Bars. Then, on sabbatical from Heller Ehrman, he taught in the environmental studies

department at Dartmouth and later taught management of legal crises at Dartmouth's Tuck School of Business. In the late 1980s he visited his daughter who was serving in the Peace Corps in Africa, taking with her a bicycle trip from Burundi into Zaire. In 1993, he moved to Hanover, New Hampshire, serving as Acting Director and then Senior Fellow in Dartmouth's John Sloan Dickey Center for International Understanding. He was also faculty advisor to Dartmouth's varsity lacrosse and soccer teams. For him, sports were a constant. He was still playing in a California soccer league at age sixty-two. He ran races in San Francisco's Bay to Breakers, Honolulu's Diamond Head Race, and the City2Surf Race in Sydney Australia, and he was a regular on the squash court when he turned eighty-seven. He funded the Lundquist Family Scholarship at Dartmouth. He permanently preserved a plot of land in Massachusetts which, in coordination with the local Audubon Society and the White Oak Society, was turned into the Eagle Lake Wildlife Sanctuary. In 2010, he went back to San Francisco to teach at the Fromm Institute: "500 Years of Searching for Northwest Passage and Finding it Through Global Warming." He was an author who wrote the *ABA Litigation Manual on Jury Trials*, and he published numerous articles on trial practice, the environment, and legal history. He served on the Swedish-American Chamber of Commerce of the Western United States, as President of California Tomorrow, and on the Boards of the National Resources Defense Council, the American Antiquarian Society, and University Press of New England. In 2015 he and his wife moved back to San Francisco, working in a family-owned business. His survivors include his wife, two daughters, and three sons.

**Thomas Dennis Masterson**, '96, Masterson, Hoag & Smith, Saint Petersburg, Florida, died July 14, 2018 at age sixty-nine. He earned his undergraduate degree at the University of South Florida and his law degree a South Texas College of Law. He spent nineteen years in practice with his father. A highly decorated national judo

champion, he was known for his sense of humor and his humility. His survivors include his wife of forty-six years, a daughter, and two sons.

**Thomas Earl Palmer**, '87, a Fellow Emeritus living in Williamsburg, Michigan, died January 5, 2019 at age seventy-nine, of cancer. He earned his undergraduate degree from Denison University and his law degree from the University of Michigan Law School. For over forty years he practiced in Columbus, Ohio with Chester, Willcox & Saxbe and then with Squire Sanders & Dempsey, where he served as managing partner. He later served as Vice-President, Secretary and Corporate Counsel with Mead Corporation in Dayton, Ohio. He also served as a Trustee of Wright State University. In retirement, he and his wife built a waterside residence in upper Michigan, where he enjoyed his gardens, woodworking, and creating fish sculptures from driftwood. In his new home, he served on a zoning board of appeals and a regional land conservancy. His survivors include his wife, a daughter, and three sons.

**Rudolph Gottlieb Schade, Jr.**, '96, Cassiday Schade LLP, Chicago, Illinois died March 20, 2019 at age seventy-seven of amyloidosis. A graduate of Ohio's Heidelberg University he had taught school for several years before attending John Marshall School of Law, graduating at the top of his class. He practiced for eleven years in a Chicago firm before helping to form Cassiday Schade. He was a long-time trustee of Elmhurst College, where his father had been a professor, and served as President of the Illinois chapter of the American Board of Trial Advocates. He was also involved as a director of several health systems. A widower, his survivors include a daughter and two sons.

**Robert G. Stachler**, '73, a Fellow Emeritus retired from Taft Stettinius & Hollister LLP, Cincinnati, Ohio,

died July 11, 2019 at age eighty-nine. Attending the University of Dayton on a football scholarship, he then served as an officer in the 101<sup>st</sup> Airborne Division of the United States Army in the Korean Conflict. He earned his law degree from the University of Cincinnati School of Law, graduating at the top of his class and joined Taft Stettinius, where he practiced until his 2000 retirement. One of his most well-known engagements was his representation of Major League Baseball player and manager Pete Rose for his alleged gambling on games in which his team was involved. His survivors include his wife of sixty-three years, a daughter, and three sons.

**Graydon Shaw Staring**, '86, a Fellow Emeritus, Nixon Peabody LLP, San Francisco, California, died July 25, 2019 at age ninety-six. A child of working-class roots born in upstate New York in the midst of the Great Depression, after starting college, World War II interrupted his education. He served as an officer in the United States Navy. He remained in the Naval Reserve and retired as a Commander. He graduated from Hamilton College and entered law school at the University of California, Berkeley. Boarding at International House, he fell in love with a student from Trinidad. Less than a year after the California Supreme Court struck down California's anti-miscegenation law, which would have prohibited their marriage, they were married almost seventy years ago. His first job after law school was in the Office of General Counsel of the Navy Department in San Francisco, followed by the United States Department of Justice Administration and Shipping Section. Developing an international reputation in maritime law and marine insurance, a partner in Lillick, McHose & Charles (now Nixon Peabody LLP) he served as President of the Maritime Law Association of the United States. He was an Editor of *American Maritime Cases* and authored numerous articles and a treatise, well into his nineties. In retirement, he took up bookbinding as hobby, donating the results to libraries. His survivors include his wife of seventy years, a daughter, and a son.

**Hon. John Paul Stevens**, '80, Washington, District of Columbia, an Honorary Fellow, a retired Associate Justice of the United States Supreme Court, died July 16, 2019 at age ninety-nine, from complications of a stroke. The son of a lawyer-hotelier father and a mother who had been a high school English teacher, he grew up in Chicago, Illinois. At age twelve, he witnessed the famous 1932 World Series in which Babe Ruth allegedly called his shot, hitting a home run out of the park. A 1941 Phi Beta Kappa honor graduate of the University of Chicago, where he majored in English, he began a master's degree in English there and soon enlisted in the military one day before the Japanese attack on Pearl Harbor. An intelligence officer in the Pacific Theater, he was a part of the code-breaking team whose work led to the downing of Japanese Admiral Isoroku Yamamoto's plane in 1943. Returning after the war with a Bronze Star, he was persuaded by his lawyer brother to enter law school at Northwestern University. A brilliant student, he earned the highest GPA in the law school's history and, in 1947, graduated magna cum laude. He then served as a law clerk for Associate Supreme Court Justice Wiley Rutledge. Working for two years in a Chicago firm, he then returned to Washington to serve as associate counsel to the United States House of Representatives' Judiciary subcommittee on Monopoly Power, which was then focusing in great part on major league baseball. After a year, he returned to Chicago, and he and two other young lawyers formed their own firm, which became Rothschild, Stevens, Barry & Myers. Stevens also taught a course at the University of Chicago Law School. He had gained a name for himself as an antitrust lawyer, and in 1969, the Greenberg Commission, appointed by the Illinois Supreme Court to investigate corruption allegations involving State Supreme Court Justices brought him into prominence. As a result, in 1970, President Richard Nixon appointed him as a Judge of the United States Court of Appeals for the Seventh Circuit, and President Gerald Ford thereafter nominated him as Associate Justice of the Supreme

Court to replace retired Justice William O. Douglas. The United States Senate confirmed him by a 98-to-0 vote. He ultimately became the third-longest-serving Justice in the Court's history, and at the time of his retirement the second oldest Justice behind Oliver Wendell Holmes. At his death, he became history's longest-living retired Justice. Considered as the last of the "Rockefeller Republicans" on the Court, he asserted that his political persuasion was the kind of issue on which he should not comment, and he refused to discuss politics before he left the Court. His jurisprudence was usually characterized as idiosyncratic. President Ford later reflected, "Justice Stevens has made me, and our fellow citizens, proud of my three-decade-old decision to appoint him to the Supreme Court." In retirement, Stevens published three books about his view of the Court and its history. In 2012, he was awarded a Presidential Medal of Freedom. Divorced and remarried, his second wife predeceased him. His survivors include two daughters. He lay in repose at the Supreme Court and was buried at Arlington National Cemetery on July 23, 2019, a day at which the President ordered flags to fly at half-mast until sundown.

**Walter Scott Welch, III**, '94, Fellow Emeritus, Ridgeland, Mississippi, passed away in his garden on June 14, 2019 at age seventy-nine. He earned his undergraduate degree cum laude from The University of

the South, where he was a member of Phi Beta Kappa, and his law degree, with distinction, from the University of Mississippi School of Law. After a brief stay in a firm in Laurel, Mississippi, he served for three years as Assistant Staff Adjutant Judge Advocate in the United States Air Force. After his discharge, he joined the Jackson, Mississippi firm Butler, Snow, O'Mara, Stevens & Cannada. A President of the Mississippi Bar and national President of American Board of Trial Advocates, he had served in the American Bar Association House of Delegates and Board of Governors. For many years a faculty member of the National Trial Academy, he had been honored with a number of lifetime achievement awards and with the Edmund S. Muskie Pro Bono Award. In retirement, he maintained his own mediation firm. His survivors include his wife, three daughters, and three sons.

**James Lee Wernstrom**, '04, Clark Hill PLC, Grand Rapids, Michigan, died May 19, 2019 in his seventy-third year. He was living in Sarasota, Florida. He earned his undergraduate degree from Western Michigan University and his law degree from the University of Michigan. He served for five years on the College's Griffin Bell Award for Courageous Advocacy Committee. His survivors include his wife of thirty-five years, a daughter, and a son.



**Faye Eileen Hanger**, Ross, California, widow of Past President **Charles E. (Chuck) Hanger**, died April 16, 2019 in her ninety-sixth year. Born in Cambridge, Massachusetts, she was an artist, poet, children's theater actor, and courageous woman of the world. She was preceded in death by her first husband, Roland Bryant Foerster and by her second husband, Hanger, whom she accompanied during his time as President of the College. Her survivors include two daughters and two sons.

# 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](http://www.actl.com), in the 'Events' section.

## NATIONAL MEETINGS



**2020 SPRING MEETING**  
**JW MARRIOTT  
TUCSON STARR PASS  
RESORT & SPA**  
**TUCSON, ARIZONA  
MARCH 5-8, 2020**



**2020 ANNUAL MEETING**  
**JW MARRIOTT**  
**WASHINGTON, D.C.**  
**SEPTEMBER 24-27, 2020**

## REGIONAL MEETINGS

January 23-26, 2020      TRI-STATE REGIONAL MEETING  
July 9-12, 2020        NORTHWEST REGIONAL MEETING

## STATE/PROVINCE MEETINGS

|                  |                                    |                    |                                    |
|------------------|------------------------------------|--------------------|------------------------------------|
| October 18, 2019 | INDIANA FELLOWS DINNER             | November 8-9, 2019 | ARIZONA FELLOWS MEETING            |
| October 22, 2019 | BRITISH COLUMBIA FELLOWS DINNER    | December 4, 2019   | OREGON FELLOWS DINNER              |
| October 24, 2019 | WASHINGTON FELLOWS DINNER          | December 5, 2019   | ARKANSAS FELLOWS DINNER            |
| October 25, 2019 | TENNESSEE FELLOWS DINNER           | December 6, 2019   | MISSISSIPPI FELLOWS DINNER         |
| October 29, 2019 | EASTERN PENNSYLVANIA FELLOWS EVENT | December 7, 2019   | LOUISIANA FELLOWS DINNER           |
| November 8, 2019 | ALABAMA FELLOWS DINNER             | December 12, 2019  | WESTERN PENNSYLVANIA FELLOWS EVENT |

## LAW SCHOOL COMPETITIONS

November 8-9, 2019      JENCKES COMPETITION  
February 10-13, 2020    NATIONAL MOOT COURT FINAL ROUNDS

# JOURNAL

American College of Trial Lawyers  
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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*