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JUDGE MYRON H. THOMPSON, OF THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA,
AT THE 2017 ANNUAL MEETING IN MONTRÉAL. "EACH OF US MUST BE ABOUT BEING A HUMAN BEING."

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LETTER FROM THE EDITOR

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**AS WE SEGUE FROM THE SPLENDID MONTRÉAL MEETING TO WHAT PROMISES TO BE A TERRIFIC MEETING IN THE
WARMER CLIMES OF PHOENIX, IT'S FASCINATING TO OBSERVE EVENTS TAKING PLACE IN THE JUSTICE SYSTEM AT LARGE.**

Interestingly, there are parallel developments happening in the courts of both countries. That's the encouragement, if not polite insistence, of the participation of younger counsel, especially women, in trials. With the waning of lawsuits and trials altogether, this must be a welcome, if not entirely necessary, step in maintaining the pre-eminence of our courts as the appropriate and cost-effective forum for dispute resolution. An increasing number of judges have been instituting protocols to achieve this end. Following the lead of another federal judge in Brooklyn, Judge Ann M. Donnelly, Judge Jack B. Weinstein issued a 'rule sheet' that reads "junior members of legal teams" are "invited to argue motions they have helped prepare and to question witnesses with whom they have worked." This overture doesn't derogate from the ultimate right of counsel to determine who argues what but it certainly helps ease the costs and other consequences from having more than one lawyer argue for one party. ("A Judge Wants a Bigger Role for Female Lawyers. So He Made a Rule." *The New York Times*, August 23, 2017.)

The dilemma of a younger lawyer organizing the motion or trial and then never getting on her feet was perfectly described by former Federal District Court Judge Shira A. Scheindlin. ("Female Lawyers Can Talk, Too" *The New York Times*, August 8, 2017.)

She noted that judges, law firms and clients can redress this imbalance – the judges by making a rule that "the lawyer who wrote the brief or prepared the witness should be the one to argue," and the clients by insisting "that their legal teams be diverse." She adds, law firms "must stop paying lip service to diversity and take concrete steps to change," enabling them to "more effectively serve their clients."

And the ABA has now adopted Resolution 116 "urging courts to implement plans that provide meaningful courtroom experience to new lawyers. The resolution—recognizing the important role law firms and clients play in the experience, or lack thereof, that young lawyers receive—also urges law firms and clients to take advantage of those plans." (Brittany Kauffman, IAALS Online, August 17, 2017.)

In Canada, the movement towards greater experience for younger lawyers has also taken hold. Justice Frederick L. Myers of the Ontario Superior Court of Justice held recently that "junior counsel are invited to argue motions or pieces of motions that they have helped prepare and to question witnesses with whom they have worked without fear of cost consequences related to overstaffing concerns." (*Schenk v Valeant*, 2017 ONSC 5101 at para 8.)

As the College continues to promote diversity in our recruitment and ranks, these are initiatives worth keeping in mind.

Meanwhile, Justice Rebecca Love Kourlis warns of the "Unintended Consequences of Waning Court Filings" (IAALS Online, August 8, 2017). She rightly observes that while this may seem to be a positive development, not only will the courts become irrelevant (whether because we have priced litigation out of reach, failed to streamline or otherwise) but equally importantly, the common law and its evolution will stagnate. Yet another reason to embrace positive change in the way we conduct litigation.

In this issue, along with personal reflections and profiles, you will find our recap of the highlights of our Montréal sessions. As an aside, amusing and charming as he was in his greeting to us, Montréal Mayor Denis Coderre ("We build bridges, not walls") lost his re-election bid shortly after the meeting. Still, the array of speakers and topics was magnificent and if you (sadly) missed attending (at a significant exchange-rate advantage for our American Fellows, no less), we have it all encapsulated here for you.

Now, I can't get this Jimmy Webb song "By the time I get to Phoenix, she'll be rising..." out of my head.

Stephen Grant

SAMUEL H. FRANKLIN: PRESIDENT'S PERSPECTIVE



Y VIRTUE OF OUR BI-MONTHLY *EBULLETIN* AND UPDATED, IMPROVED WEBSITE, EACH OF WHICH I COMMEND AS EXCELLENT RESOURCES, YOU SHOULD KNOW ALL THAT IS GOING ON WITHIN THE COLLEGE. THEREFORE, I WILL DEPART SOMEWHAT FROM ROUTINE AND SHARE A FEW THOUGHTS ON MY MIND, HAVING COMPLETED THE FIRST QUARTER OF THIS COLLEGE YEAR AND AS WE ENTER 2018. I EXPRESS SOME THOUGHTS ON THE ROLE THAT COLLEGIALLY PLAYS IN OUR FELLOWSHIP.

In looking at our history book, *Sages of Their Craft*, detailing the first fifty years of the College, it notes that in seeking candidates we are looking for excellence of character, and then goes on to state that our standard requires “that intangible quality that we label collegiality.” And the following appears in the induction charge, delivered by a Past President to each group of new inductees:

Here, we seek, for the moment, to obliterate the recollection of our distractions, our controversies and our trials, and to transport ourselves from the rush and tumult and uproar of our daily lives into the quiet fellowship and congenial society of our fellow leaders of the bar. 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.

The unique opportunity to serve as your President provides the benefit of experiencing our collegiality firsthand, and at its finest. This quality, intangible as it may be, permeates our gatherings, large and small. We can feel it from the very beginning of an event and throughout the evening as Fellows, spouses and guests gather together.

The importance of this quality finds its way into our *Code of Pretrial and Trial Conduct*. In the preamble, it states: “. . . Fellows are expected to adhere to the highest possible standards of ethical and collegial behavior . . .” And in the foreword to the Code, in describing traditional aspirations of the profession, it states: “A distaste for meanness, sharp practice and unnecessarily aggressive behavior.”

Closely related, in my mind, is the role of civility in all our relations. Civility also is emphasized in our *Code of Pretrial and Trial Conduct* as reflected in statements such as these:

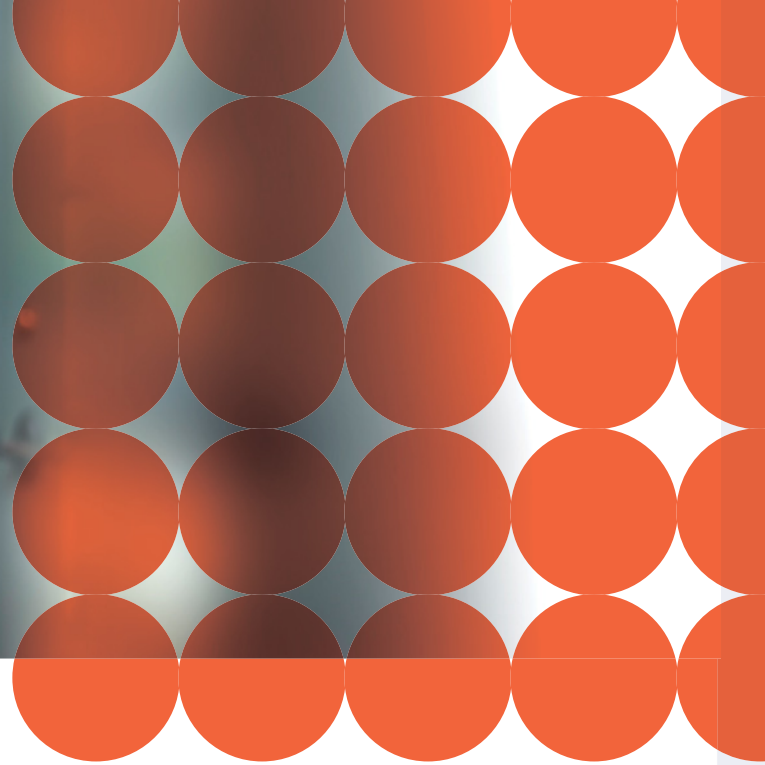
A lawyer must treat all persons involved in a case with candor, courtesy and respect for their role and rights in the legal process.

The conduct of a lawyer before the Court and with other lawyers should at all times be characterized by civility.

My home Bar, the Alabama State Bar, has a formal Lawyer’s Creed adopted in 1992, which includes:

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

Perhaps this topic is on my mind by virtue of the special Senate seat election conducted in December in Alabama, a hotly contested race to complete a two-year term resulting from the appointment of Jeff Sessions as Attorney General and which attracted immense national attention. One would like to think of the United States Senate as a body where, despite



sharp differences, an air of collegiality and civility would prevail. You may recall, however, Senator John McCain's moving remarks to the Senate in 2016 when he implored the chamber to forsake "political tribalism" and restore the chamber to a spirit of compromise. And Republican Senator Luther Strange who held the Alabama Senate seat on an interim basis, lamented in his final remarks on the Senate floor that there was a space across from the Senate chambers known as the Marble Room, described by him as follows:

It was once the place where Senators of all stripes would come to catch their breath and take their armor off. Some would nap, some would eat lunch, and all would end up forming bonds that rose above politics. Today, the Marble Room is nearly always empty. . . . The Senate was designed to accommodate conflict and profound disagreement, not to tolerate the entrenched factionalism that dominates today's proceedings. I urge my colleagues, who will face many more challenges ahead, to return to the Marble Room.

Finally, *Wall Street Journal* columnist Peggy Noonan following the outcome of the Alabama Senate election stated:

In 2018, we have to do better, all of us. We need to improve. In the area of politics, this means, in part: sober up, think about the long term, be aware of the impression you are making, of what people will infer from your statements and actions. . . .

As I thought about this topic, I was reminded of a short article I saw and saved in early 2013 in *The Wall Street Journal* by Father John I. Jenkins, the President of the University of Notre Dame, entitled "Persuasion as the Cure for Incivility." After noting that much of the 2012 election campaigning was not designed to change anyone's mind, but instead to encourage people to believe more deeply what they already believed, he stated:

I believe that deep and candid dialogue, marked by many acts of courtesy and gestures of respect, is a discipline that brings us nearer the truth about ourselves, about our opponents, about human nature, and about the subject under debate.

If we earnestly try to persuade, civility takes care of itself. . . . Civility is what allows speech to be heard. It is an appeal to citizens never to express or incite hatred, which is more dangerous to the country than any external enemy.

We can disagree, either during the course of lawsuits or in any other activities or relationships. But let's recognize we should disagree reasonably with the other side of the issue. As Roger Fisher and Scott Brown stated in their 1988 book, *Getting Together: Building a Relationship that Gets to Yes*, the ability of two people to deal with their differences will be greater to the extent that reason and emotion are in some kind of balance – ". . . we need both reason informed by emotion and emotion guided and tempered by reason." Let us restrain our emotions toward the other side of

a disagreement to those likely to have a constructive impact, namely acceptance, concern and respect. Let us, as Fellows and the College, continue to be exemplars to lawyers, and hopefully others such as our elected officials, of what is best about civility in all our undertakings and discourse.

In today's political climate, we receive periodic inquiries suggesting the College issue a public statement in response to some event, speech or even a tweet. Here is an area where our spirit of collegiality raises its head. We are most careful and follow our official policy and procedures as to when the College itself, or the Fellows or a Committee, may issue any statement identified with the College. The matter must impact the core mission of the College and no statement which could unduly threaten our collegiality should be made.

Let me close, however, by cautioning that our intangible "collegiality" should not impede our search for new, younger and more diverse Fellows. The topic of diversity has been mentioned by me at each of the eleven events I have attended since Montréal and our two workshops, and our Fellows seem most receptive to our efforts. Diversity and inclusion in our Fellowship improves and strengthens the culture of the College. We must not focus upon only those lawyers who are "like us" or from a network of our own friends and colleagues that come from similar backgrounds. If we are too narrow in our search, we will miss too many truly outstanding trial lawyers worthy of Fellowship.



Jeanie Mackenzie of Birmingham, Alabama; Alabama State Committee Chair Fred and Florence Tyson of Montgomery, Alabama; and Laura and Adam Peck of Birmingham, Alabama

Award-winning jazz singer Kim Richardson of Montréal, Québec, opened the meeting by singing the national anthems for the U.S. and Canada.



MONTREAL

ANNUAL MEETING 2017



The Arsenal, a former shipyard converted into an art venue, all aglow for the Friday Night Reception.



Once the live music starts, guests take the floor at the Thursday Night Welcome Reception.



Daniel Huyett of Reading, Pennsylvania, tests the juggling skills of two performers at the Thursday President's Welcome Reception at Windsor Station.

Inductee Virgil and Paula Adams of Macon, Georgia



Attendees to the Friday Night Reception at the Arsenal are called to dinner while a bagpipe serenade plays.



Bethany Hallam and Wade Davies of Knoxville, Tennessee and Ed and Betty Davies, Nashville, Tennessee



Catin Sanchez and Puerto Rico State Committee Vice Chair Enrique Mendoza-Mendez of San Juan, Puerto Rico



President Dalton thanks the four outgoing Regents on-stage during the Saturday General Session.



The surprise performance at the Arsenal – aerial acrobats putting on a dazzling show right above where guests sat.



The Friday Judicial
Fellows Luncheon was
held at the Québec
Court of Appeal,
hosted by Judicial
Fellow the Honourable
Allan R. Hilton



Amanda Graham, Regent Bob Warford of
San Bernardino, California and A. Blair
Graham, Q.C. of Winnipeg, Manitoba



A walking tour of
Old Montréal took
Fellows and guests to the
Basilique Notre-Dame de
Montréal, built in 1829.



The crowd begins to gather for the
sing-along after the Saturday Night
Induction Ceremony and Banquet.



The Franklin family, from left: Andrew Boulter, Meg Boulter, First Lady Betty Franklin, President Sam Franklin, Lindsay Taylor and Matthew Taylor



The Hon. Madam Justice Heather J. Williams and Steven Boyd, of Ottawa, Ontario

MONTREAL

ANNUAL MEETING 2017



The Past Presidents face the seventy-eight inductees as Past President David Scott of Ottawa, Ontario, reads the induction charge.



President Franklin thanks Immediate Past President Bart Dalton and Eileen during the Saturday evening black tie banquet.



President Franklin addresses the audience after being installed as President.

CITY OF MONTRÉAL MAYOR WELCOMES COLLEGE: FUTURE LIES IN CITIES



DESCRIBED AS “A MAN AT THE CENTER OF THE ACTION,” THE **HONOURABLE DENIS CODERRE, PC** WAS ELECTED MAYOR OF THE CITY OF MONTRÉAL ON NOVEMBER 3, 2013. HE HAS USED HIS SKILLS FROM OVER THIRTY YEARS OF POLITICAL EXPERIENCE TO FIRE UP THE CITY’S ECONOMY THROUGH MULTI-BILLION DOLLAR INFRASTRUCTURE PROJECTS, REDEFINING MONTRÉAL AS A HUB FOR TECHNOLOGY, VIDEO GAMES, CREATIVITY AND ARTIFICIAL INTELLIGENCE.

As mayor he sought to attain gender parity within his administration, has been instrumental in helping refugees find shelter in the city and is actively working to protect and encourage film and television production. Before the start of the Annual Meeting, he unveiled Montréal’s new Coat of Arms and its new flag, an initiative allowing the city to start a new chapter towards reconciliation with indigenous people.

“There is indeed a lot to be proud of and all Montréalers now share this pride,” said **Suzanne H. Pringle, Ad.E.**, in her introduction of Coderre.

Mr. Coderre was the opening speaker on the first day of General Session at the 2017 Annual Meeting in Montréal where he welcomed all to his city.

“Distinguished guests, it is an honor for me to welcome you all. First, I’d like to share my thoughts and prayers for those in Florida and Texas who suffered from the storm. I have good friends there. We have a fraternity of mayors and that’s what I’d like to talk to you about. I think it is important to share the grievances. We know also what happened in London with another terrorist act. I think that your organization, this congress is even more important to protect our way of life, and to protect all our rights.

“They ask me what’s the difference between being a Minister of the Crown in the government of Canada and to be a mayor. I say I got promoted. I believe that the future lies in cities. The former Secretary General of the UN, a good friend to us, Ban Ki-moon, said ‘If you want to make things happen, ask a mayor.’ I was

a bit late today. I had to address some tweets from a certain president, south of the border.

By the way welcome to Montréal, here we don’t build walls, we build bridges.

“We understand that we need some counterbalance in politics, and frankly, when I talk to my good friend Rahm Emanuel or Eric Garcetti in Los Angeles or [Bill] De Blasio in New York, [Anne] Hidalgo in Paris, what we realize first is we need to make sure that we protect our rights and freedom. At the same time we have to realize that there is a new kind of governance that demands us to connect the dots.

“In the next twenty years, over 70% of the population will be in cities. When we’re talking about climate change there is no plan B for the planet. We need to protect our citizens. To do so, I think that that new government of proximity is so important. Every decision we are making will have a spontaneous reaction. It is not just a matter of the size of the sidewalks; it is a matter also to focus on the homeless, reconciliation, bring people together, making sure that we are taking all the right things for the benefit of the people. We have, of course, the judicial process and sometimes we are looking for the batting average instead of doing the right thing. That’s why I am so delighted to be in front of this distinguished organization. The fact that Canada and the United States are close friends and allies and we all share those principles – it is important to have those kind of meetings.



QUIPS & QUOTES

It is not the size of the axe that matters but the power of the swing one transfers to the handle.

One of Mr. Coderre's favorite sayings, spoken by Québec Province Committee Chair Suzanne H. Pringle, Ad.E, in her introduction of Coderre

"The time has come to realize that we are living in troubled times. Peter Drucker used to say the difference between managers and leaders is that managers are doing things right but leaders do the right things. When we are talking about migration, when we are talking about climate change, when we are talking about bringing hope, respect and dignity among ourselves, what remains is our Constitution, our Charter of Rights and Freedoms. It is important and imperative that we have the right people at the right place to protect that way of life. The best way to fight against terrorism is to make sure that we are saying we are not afraid. A right is a right is a right and we all do that together.

"Montréal is the land of living together. When I was Immigration Minister of Canada, after 9/11, our role was to make sure that we had a balanced approach between openness and vigilance, meaning that we had to protect our way of life through rights and freedoms. At the same time we needed to be vigilant, generous but not naïve. There are some rotten apples that we have to take care of. There are some issues that we have to address to protect our people, but the third concept, and it is very Canadian: it is balance. You don't want to go to march on one side...and on the other side we don't want to live in a police state, that's why it is important to have great prosecutors.

"I hope I'll never have to need your services, but I understand the importance to have trial lawyers, that's why I am delighted to welcome you.

"Montréal is "la ville de la joie de vivre. Je comprends que dans votre organisation il y a quelques soixante-

sept avocats québécois, parmi la crème de la crème. Alors, je vous salue dans notre propre langue. Montréal est une métropole francophone mais évidemment c'est une ville internationale.

(Translation: Montréal is the city of joy. I understand that in your organization there are some sixty-seven Québec lawyers, among the cream of the crop, so I greet you in our own language. Montréal is a French-speaking metropolis, but obviously it is an international city.)

"Things are moving, we are facing a lot of challenges, but I always base politics on hope. It is one of the noblest things to have, the confidence and the trust of the people. That's why we need to have a judicial system that is trusted and to make sure we need those "des chiens de garde"(watchdogs). We need people who will be there to protect our constitution, our freedom and our rights.

"Enjoy yourselves, don't forget to spend a lot of money, it is good for me. Cities are booming. We could be negative and say, we live in troubled times but I think that we need to keep that optimism. We have a great government in Canada; we have a great government in Québec. All the planets are lining together, we all are wishing to work together and that's what I call a true progressive way of life. There is one thing about Montréal: when you taste it first, you want to come back all the time. So you are stuck with me. Bonne chance à tous. Merci beaucoup! (Translation: Good luck everybody. Thank you very much!)



INSIDE VIEW FROM A HEAD OF STATE - CANADA'S 28TH GOVERNOR GENERAL

THE RIGHT HONOURABLE DAVID JOHNSTON, CC, CMM, CD, WHO SERVED AS CANADA'S TWENTY-EIGHTH GOVERNOR GENERAL, GREW UP IN A SMALL TOWN IN NORTHERN ONTARIO, WHERE HE WAS A STAR HOCKEY PLAYER. HE ATTENDED HARVARD UNIVERSITY WHERE HE WAS CAPTAIN OF THE HARVARD HOCKEY TEAM AND A TWO-TIME ALL-AMERICAN. YEARS LATER HE BECAME THE FIRST NON-AMERICAN CHAIR OF THE HARVARD BOARD OF TRUSTEES. HE LATER OBTAINED BACHELOR OF LAWS DEGREES FROM CAMBRIDGE UNIVERSITY IN ENGLAND AND QUEEN'S UNIVERSITY IN ONTARIO.

Photo Credit: MCpl Vincent Carbonneau, Rideau Hall (2014)

While at Queen's, he married Sharon with whom he has five daughters. He taught at Queen's University in Kingston, Ontario, and then at University of Toronto Law where he taught corporate law. He became Dean after that at the University of Western Ontario Law, Principal and Vice-Chancellor of McGill University in Montréal and President of the University of Waterloo. He chaired public commissions and moderated political debates, many major electoral debates in the late 1980s and early 1990s. In 2010, he was appointed by Queen Elizabeth II as the twenty-eighth Governor General of Canada. His mandate, which was somewhat unusual for a Governor General to promulgate, was a call to service – public service – both community and country.

Excerpts from his engaging discussion with **Stephen Grant**, editor of the *Journal*, follow.

GRANT: What did growing up in a small Ontario town do in terms of shaping your values?

JOHNSTON: I have a very modest background in a northern resource community, which I suppose was rural at its best. My town, Sault Ste. Marie, was a town of immigrants. I learned the strength that comes from diversity very early in life. All the sporting teams I played on had a United Nations of members. You learn so much about teamwork when you get together with a group of people whose cultural backgrounds are somewhat different than your own. My upbringing was really fundamental in coming to understand how diverse people can find common ground and come out of it with a very productive, progressive and harmonious society.

GRANT: Was going to Harvard from there anything of a culture shock for you?

JOHNSTON: Yes. I think my first grade was D minus. I went to my professor and I said, 'I don't think they had grades this low.' He said, 'Don't worry. They'll get better.' When I was applying, my high school principal ... said he would not write the letter of recommendation for me because he did not want me leaving the country. I then went to the history teacher who's also the football coach. He said, 'I'll write the wretched letter of reference for you.' He said, 'You've been a big frog. You've got a very small pond. You're going to get your head knocked off by people that are faster, meaner and tougher than you' and they were.

GRANT: Down to brass tacks as some of the folks here will not know this. What exactly does the Governor General do?

JOHNSTON: I was explaining that to the fiftieth reunion of my American University class. They asked me to speak on public policy and Northern view. I think I got three sentences into the beginning when they said, 'We thought we got rid of that in 1789.' I'm the Queen's representative. She is our Head of State. I represent her here in Canada. When I travel abroad, I function as a Head of State. We have a divided government, divided in the sense that there's a Head of State function. What



people see as somewhat ceremonial, it's beyond that. ... The Head of Government and our elected government are responsible for the business of government. The Head of State function has to do with the dignity of government, the respect, the longevity, the stability. I do five things. One is I'm responsible for constitutional law matters. I give the Speech from the Throne, which is the beginning address to Parliament written by the government. I sign bills into law, orders, and accounts. I sign about 100,000 documents a year. That's a fair amount of writing. I'm responsible for ensuring we always have a Prime Minister and a functioning Parliament. In a minority government, that gets a bit challenging. Second function is I'm Commander in Chief of the Armed Forces. I was in Washington two days ago for a meeting of the Joint Chiefs of Staff. We have a very close relationship between our two military arms. I don't order people into battle – that's a head of government function. The third function is the Foreign Affairs responsibilities. I represent Canada's Head of State outside the country. We've done fifty-six different country missions in the past seven years. The personal diplomacy is quite remarkable and much needed in this challenging world of ours. I receive the credentials of all incoming ambassadors. We have about 200. I see seventy-five or so new ambassadors each year. I feel I should pay a tuition fee because you learn so much by being briefed and then interacting with them. The fourth responsibility is our honor system. We have about seventy different honors. Ours is the least political, most merit-based, honor system in the world. We cherish it. Fifthly, something I would call connecting, honoring and inspiring communities in large measure by visiting communities across the country. Last week, my wife and I were three days in the Arctic, sailing on an icebreaker and meeting the people of the North. That was my ninth or tenth trip to the Arctic regions since I was Governor General. Those are the five buckets.

GRANT: One of the books he's written is called *The Idea of Canada: Letters to a Nation* in which he's writing

QUIPS & QUOTES

Some of you would be familiar with the Esposito Brothers, Phil and Tony Esposito were both from Sault Ste. Marie. We played in the seventeen and under team. I'd say Tony was a backup goaltender. People laugh, Tony Esposito a backup goaltender. Tony was fourteen but almost all the players on that team were Italian. There were three of us who are non-Italian names so we formed one forward line, Fring, Ryan and Johnston. They called us the spaghetti line.

Gov. General Johnston



to people, both living and dead, on his thoughts about the country and our identity. He talks in a section called “What consumes me.” He says this: ‘Individuals matter, too, especially in the Office of the Governor General. This post is not an abstract model to be common played in theory alone nor is it a simple mechanism that is turned on at specific times to generate pre-determined actions.’ What was the thrust of that comment?

JOHNSTON: This book really comes from my installation speech that was entitled “A Smart and Caring Country: A Call to Service.” We have three pillars from that. One is family and children and their centrality to our nation and our communities. Second was learning and innovation, the smart and caring part. The third was philanthropy and volunteerism. We see this office because it is non-political, because it is long-term, because it is an institution not a person, as trying to reach to the most fundamental values of the country, the precious values that permit us to be conscious of improving our community every day for those around us.

GRANT: Fair enough. But I take it the individual who occupies that post creates his or her own dynamic in that job.

JOHNSTON: Yes. Within the parameters of the job, I describe the basic functions and one can apply one’s particular priorities to it. As we watched different people who’ve occupied this post, there is a commonality. Typically, it is to emphasize the qualities of inclusiveness and diversity in the country. It’s to answer that question that [Secretary of Health, Education and Welfare under President Lyndon John] John W. Gardner put so well decades ago. Can we have equality of opportunity and excellence, too? Can we ensure that those two objectives are mutually reinforcing? Can we be people that are constantly striving to make our society better? That’s really what I was getting at in that passage.

POLITICS IN AN APOLITICAL POSITION

GRANT: You mentioned earlier that you are responsible if there’s a minority government situation where you have to call on one party or the other to form a government. Is that the way, if at all, politics factors into your job?

JOHNSTON: Sure, but because the position is non-political, one is there to ensure our democratic processes work, and the fundamental principle of that rule is to always ensure that you have a functioning parliament with a leader who is Prime Minister who has the confidence of that parliament.... even in minority government. If there is a contest as to who can command the confidence of our House of Commons, our Parliament, the role of the Governor General is not to be an active participant in that drama but to be sure that the political process works its way through so that one has a leader who commands the confidence of the parliament.

GRANT: In our last election, when Prime Minister Trudeau was elected, there was some thought as people went into the polls that we could end up with a minor-

ity government. Is there anything that you do to prepare for the possibility?

JOHNSTON: Yes. In fact, that’s one issue where there’s a degree of discretion in the role of the Governor General. In theory, there’s also a power of disallowance of legislation, which has never been exercised in Canada and would only happen in the most extreme circumstances. When I came into the job in 2010, we in fact were looking at the possibility of a minority government. We’ve had an issue with respect to the promulgation of Parliament of power that lies in the hands of the Governor General but exercised on the advice of the Prime Minister, somewhat controversial. I look for the precedence as any good lawyer would. They were fairly scant. My principal adviser is the Prime Minister. On a legal basis, it is the clerk of the Privy Council and the lawyers in the Privy Council Office and then lawyers from the Department of Justice. Those are the same people who are also advising the Prime Minister. It is important for me to have an independent stream of legal advice so we identified three very wise individuals who on a pro bono basis serve in that role.

GRANT: That’s a fascinating aspect of this as apolitical as it might be. At least you’re in a situation of some position to affect the outcome.

JOHNSTON: Yes. But the principal feature there is that we are a parliamentary democracy within a constitutional monarchy. You want your democracy to play out appropriately. Therefore, the role of the Governor General is to ensure that democracy flourishes to produce the end result.

GRANT: How does one actually prepare to be the Governor General?

JOHNSTON: I was totally unprepared and rather surprised. I’m on a one-year leave of absence from my law firm for fifty-three years. I keep extending it and they say, ‘When you’ve got the courage to face the real world, we’ll teach you how to practice law.’ I terrify them. I’ve been a university president for twenty-seven years. I got a phone call one day asking if I’d be interested in doing this job. You can’t be university president forever. That’s why I am where I am.

GRANT: Did you visit the U.S. during your tenure?

JOHNSTON: Yes, seven times.

GRANT: Was that unusual?

JOHNSTON: Yes. For reasons I don’t understand, there was not a substantial custom of Governors General making state visits to the U.S.

GRANT: Why is that?

JOHNSTON: I don’t understand it. When I first chatted with the Prime Minister, Day 2 or so on the office on the foreign relations area, he said, ‘Where in the world would you want to go?’ I said, ‘I don’t want to

QUIPS & QUOTES

Gov. General Johnston: We’re seeing an act of justice here this morning, a former student cross examining his professor. I think I taught you corporate law and that drove you into family law.

Stephen Grant: Yes, that was it. It wasn’t your fault, though.

go anywhere. Where do you want me to go and why?' I only travel out of the country with the authorization of the Prime Minister's office. They don't want the Governor General to be off some place for three months. I said, 'I think there are three countries where I can be of some help. They are the United States, China and India, in that order.' He said, 'You know that hasn't been a custom of the GG doing a U.S. state visit.' I said, 'We're going to change that because it's by far the most important relationship we in Canada have. It's something where we have to work every day in every way on a rapport with different segments of American society.' That's been a major priority for me.

GRANT: Did you feel those forays made a difference?

JOHNSTON: Yes. I believe in the diplomacy of knowledge. Jefferson would understand that and would preach about that concept of knowledge that crosses cultural, geographic and disciplinary boundaries. I believe in a personal diplomacy. I believe that relationships are very important in the conduct of the affairs of the nation.

GRANT: How is Canada seen abroad?

JOHNSTON: The brand is a good brand. Canada has not had a colonial past. We operate with that advantage. I think in many world scenes, we're a small to middle-sized power. I think we punch above our weight. The last trip to China was about seven or eight weeks ago. I had a very interesting discussion with President Xi on that very question. We discussed the question of is there a role for a small country like Canada with respect to North Korea? There are interesting answers.

GRANT: There's a whole debate that we have here in Canada about our identity, that we don't really have one national identity. What is seen as our identity abroad?

JOHNSTON: That we're a country where the peace, order and good government is bedrock in our constitution. That is true. For those Canadians who question a constitutional monarchy, with our head of state who is the Queen, I have said, 'If you wanted to identify ten countries around the world whose citizens believe that they're reasonably well-governed, could be better but reasonably well-governed and functioning tolerably well, you probably would have on that list Denmark, Sweden, Norway, The United Kingdom, The Netherlands, Australia, New Zealand and Canada.' What's common about those countries is they all have a constitutional monarchy with a

thriving parliamentary democracy. There's a stability that comes from that constitutional evolution that provides a longer term view to political issues, provides a focus on fundamental values in a society. The inclusiveness of diversity provides a division of responsibility so that there is one instrument of government that is reminding citizens of their responsibilities and not simply their rights.

RECOGNIZING INNOVATION, ASSESSING WORLD DYNAMICS

JOHNSTON: My other book *Ingenious* comes out of the innovation theme. Innovation simply means making things better including social innovation. Our office is responsible for the honor system. We have a number of honors that recognize great citizenship, recognize excellence in different domains, performing arts and journalism, but we didn't have one in innovation. We put together a group of fifty networking partners in Canada who in themselves promote innovation with prizes. We now offer the Governor General's Innovation Awards each year, six of them. Tom Jenkins, my co-author and I were working on The Innovation Awards and decided we needed to tell stories of innovation, of people in Canada who simply made things better. We looked for the database. It wasn't there so we created one. We got fifty stories and we thought there were many, many more. We went to 150 for our 150th birthday. At 297, the publisher said, 'That's it. That's all this book will hold.' We stopped with stories in the book. We created a website called innovationculture.ca for the ones we missed. The children's edition of that book comes out next week. We really are excited about seeing it used in the schools.

GRANT: The subtitle is *How Canadian Innovators Made the World*. It goes from the ridiculous to the sublime. The sublime being the discovery of insulin, the ridiculous being the invention of the Whoopee cushion. In between, the invention of the butter tart. That's the range of response. To be more serious, how do you assess the world dynamics now? This is just my question. Do you see any hope?

JOHNSTON: Leadership, I think, is articulating the sense of hope and giving life to it in any society. Let's be realistic about the situation. How do we make it better? That's a subject of the next book that we're writing now is trust in Canada. It's interesting this notion of trust. What is it? Why is it important? Mark Carney, the Canadian who was the Governor of the Bank of England once said, 'Trust comes in on foot and goes out on a Ferrari.' Just think of that - comes in on foot.

It's slow to build, painstaking, but it can go very quickly.

GRANT: Is there an increasing lack of trust in government institutions?

JOHNSTON: One of the stories I talk about that is the Edelman Trust Barometer. They do a survey of the issue of trust in countries. We have done one for eight years. One of the questions is do you trust your public institutions? Canada, for the first time in the eight years of the survey, has become a distruster nation. That is a majority.

GRANT: More than a truster nation.

JOHNSTON: That's right. A majority of the population distrust their public institutions. As a Governor General, that's a pretty challenging observation and something one has to work to change. The same survey looked at the question of where people get their news or their facts. In the United States, the United Kingdom and France, the majority of the people do not get their news and facts from traditional media or from public institutions. They get it from ideology or they get it from social media including the Internet where there isn't a kind of screening that you would like to have to digest what is fact and what is not.

GRANT: You're being succeeded next month by Canadian Astronaut, Julie Payette. What advice do you have for her?

JOHNSTON: Enjoy the job. Take joy in it every day. Julie, I know very well. She won the most prestigious entrance award to McGill University when I was there. When I met her on campus, I said, 'Julie, you're even more brilliant than your dossier's suggesting.' She has been that way ever since. Second Canadian woman in space. I say to Julie that to do this job well, you have to be broad. You have to have both operational effectiveness and strategic effectiveness. You have to be conscious how moving parts function and if they function well, not at the detail level, but at least the international level. You also always have to have a strategic vision at 30,000 feet. Then I say to her, 'But you have an advantage than the rest of us because we say 30,000 feet and you say 30,000 miles.' A little wider angle on the globe.

The Governor General's full presentation can be viewed on the College YouTube channel. ■

LESSONS LEARNED FROM A LEGENDARY COACH



N EMMY-NOMINATED BASKETBALL ANALYST, JAY BILAS OFFERS UP COURTSIDE AND STUDIO COMMENTARY FOR ESPN AND CBS SPORTS. AS CO-HOST OF ESPN'S COLLEGE GAMEDAY, COLLEGE GAMENIGHT AND CBS SPORTS' COVERAGE OF THE NCAA TOURNAMENT, HE IS WELL KNOWN FOR HIS BASKETBALL KNOWLEDGE, PLAYER EVALUATION AND ANALYSIS. *SPORTS ILLUSTRATED* HAS CALLED BILAS THE BEST COLLEGE BASKETBALL ANALYST IN THE COUNTRY. WHILE AN ACTIVE LITIGATOR WITH MOORE & VAN ALLEN, BILAS DELIVERED SIMILAR HIGH-POWERED PERFORMANCES IN THE COURTROOM.





A former professional basketball player, he was drafted by the Dallas Mavericks in 1986 and played three seasons in Italy and Spain. As a four-year starter at Duke University (1983-1986) under Mike Krzyzewski, he helped lead the Blue Devils to the NCAA Final Four and National Championship Game in 1986 with a record of 37-3. He served as Krzyzewski's assistant coach for three seasons, helping to guide the Blue Devils to two national championships.

He is also a New York Times bestselling author with his book *Toughness: Develop True Strength On and Off the Court*. The book has been "quoted by countless coaches time and time again for the good lessons that it teaches," said Fellow **Harlan I. Prater, IV** of Birmingham, Alabama, in his introduction of Bilas.

Bilas spoke to Fellows at the Annual Meeting in Montréal on "the lessons that I learned from the coach that I played for. I played in college and wound up coaching under Mike Krzyzewski who I believe is the greatest coach to ever walk a sideline. Not just in basketball but in any sport."

"He refers to me as the player that put the suck in success. I hold him in much higher esteem than he holds me. The lessons that I learned as a player and as an assistant under Mike Krzyzewski, who's known by all as Coach K, have carried me through just about every day of my life. I wrote down a few that I wanted to share with you."

LESSON ONE

"Everything we do is important. When I first got to Duke, I was a freshman basketball player. We did not have a great team. We had a great recruiting class that came in. We were ranked number one in the country and all of us started because there was really nobody else to take our jobs from us. One of the first games that we had early in the year was against a team that was not highly regarded.

"A lot of college basketball teams early in the season have what I call cupcakes on their schedule. Even if you play poorly, you're going to win. Coach K came into our scouting session in the locker room. He was fired up and said, "This is the most important game on our schedule." Inside your head, you do a little eye roll saying, "No. We're playing North Carolina after this. This is hardly a big game." He said, "It's important because we're playing it. Everything we do is important. If we want to play in championship games and we do and we will, then we have to treat every game like a championship game. Prepare for every game like a championship game. When we get to that championship game and we will, we know exactly how to behave because that's what we do every day.

"That really sustained me. In 1985, I was selected to play for the United States national team. I played for Gene Keady who was the head coach of Purdue. Very tough, gruff character and I loved him. At our first team meeting, he had a chalkboard up. It had the rooming assignments, our practice times and up in the upper right hand corner of the chalkboard it said, "Team goals." Number one team goal was win the gold medal, which made perfect sense. Number two team goal was fight communism. You laugh. The Berlin Wall came down five years later. You're welcome."

LESSON TWO

"Preparation. Coach K was relentless in his preparation every day, and especially in his preparation for an upcoming opponent. We felt like we were in control of how well we prepared. We were in control of our attitude. We were in control of our preparation. From our preparation we could feel confident that we had done everything we could to prepare for this opponent so that we didn't have to think, that our instinct, our feel could take over and we could just react in the moment. That was especially important for me in my preparation as a lawyer and especially in my preparation as a broadcaster. I try to relentlessly prepare for each

QUIPS & QUOTES

It is wonderful to see so many judges and trial lawyers that I have known over the years that I have appeared before and practiced with and against, all of whom advised me to transition into broadcasting as quickly as possible.

Jay Bilas

game that I have. I try to make every game important because I'm doing it. When I step behind the microphone in the game, I know that I am fully prepared. I don't have to look at anything. I can just watch the game and react to what I see.

"I always remember something that Sir Laurence Olivier said about acting. 'You have to have the humility to prepare and the confidence to pull it off.' That's the way I felt that Coach K approached preparation not only of our team but for upcoming opponents that made us especially good."

LESSON THREE

"The concept called next play. Coach K used to tell us that basketball is a fast game. It goes from one play to another. It's the only game that he knew of where you have to play offense and defense. Everybody has to do it. There's no middle innings. There's no huddle in between. It converts from offense to defense. You have to be ready to react to all that and convert and convert mentally. It's an issue of concentration and moving on to the next thing. He used to say "next play" all the time. Whether we did something good or whether something bad happened, we have to move on to the next play.

"We could analyze it after the game. We had to move on. It has been something that I say to myself every day. Whenever something happens, I'm constantly saying, 'Next play.' We have to react to this and do something about it. We can't just sit and moan about what just happened or celebrate what just happened. We have to move on to the next play. It was staying in the moment."

LESSON FOUR

"Empathy. That may sound a little bit odd to you but empathy was a huge component in our team. In having an appreciation for what your teammates were about, what they contributed and what they did. Our roles on our team were not necessarily who we were. It's what our team asked us to do in order to win a championship.

"In order to be a great teammate, or a great colleague, you had to have empathy. You had to understand what your teammates' jobs were and what your teammates were going through. Make sure you appreciated that. Let them know how much you appreciated it. From that, you could also have more

credibility in holding them accountable and holding each other accountable.

"One of the great lessons I learned in empathy was from a law colleague of mine. My very first hearing as a lawyer, as a first year, I had done all the preparation. I felt like I was ready. One of my colleagues who was a year ahead of me at my law firm stuck her head into my office and said, 'Are you ready?' I said, 'I think I am. I'm ready to go.' She said, 'Do you know where to sit?' I said, 'No.' She walked me through all the nuts and bolts of the hearing that I had no idea about. It was a remarkable show of empathy on the part of a teammate. To prepare me for something that she had gone through and understood the areas where you could trip all over yourself. She saved me from doing that. It's something I've never forgotten.

QUIPS & QUOTE

Southern accents do very well including getting speakers for this event because Sam called and asked me:

"Jay, do you believe in America?"

"Of course, I do, Sam."

"Do you believe in our Constitution?"

"Of course, I do, Sam."

"Do you believe in free speech?"

I said, "Yes." He says,

"Then come to Montréal and give us one."

Jay Bilas

"The last is a story from Coach K that came a few years ago when Coach K was coaching the United States Olympic team. The Olympic team was in Las Vegas preparing for an exhibition game. I was out there to do an event with Coach K. He was just about to have a team meeting with the Olympic team and asked me. 'Why don't you come in and sit in the back and listen?' I went into this meeting. You had all the true superstars of the NBA on that Olympic team. LeBron James, Kevin Durant, Russell Westbrook, Chris Paul, Paul George. It was a remarkable array of talent in the room. Coach K stood before them. They have an exhibition

game that night. He went over the logistics of the day. As he finished up and was about to release the team he said, 'When you guys get back to your hotel rooms, there's going to be something in there for you. It's going to be your USA jersey, your uniform. I want you to do something. I want you to take that uniform and I want you to lay it out on the bed and just look at it. Think about how cool this is.'

"He talked to them about how at one point in your careers, all of us got our first uniform. We got our little league uniform, maybe our first varsity uniform in high school. For those of you that played in college, the first time you put on your college uniform or the first All-Star game you played in. It was an extraordinary feeling. He said, 'Now, we've been very fortunate that we've all reached a level where some of these things, if we're not careful can seem routine. They're not routine.' Then he said something that I have said to myself every day since then.

'Don't take special for granted. Don't take special for granted. Just because we do this a lot and it's become the norm for us doesn't mean it's not incredibly special.'

"I get to go into some of the great arenas in this country for high level basketball games, the games that everybody wants to watch, the highest rated games. I walk into Allen Fieldhouse at Kansas or Cameron Indoor Stadium at Duke or the Dean Smith Center at North Carolina or Pauley Pavilion at UCLA. It can be routine if you let it. I ask myself that. Have I let this become routine? Do I convey to the audience how special this is and how lucky I am to be there and convey to them why they should want to be there, too, and want to watch the game? I have thought about that every day since.

"Believe me, I do not take special for granted. Being here among so many of you is special and I want to thank you for having me here and for having me in Montréal."

David N. Kitner

Dallas, Texas

Bilas's full presentation can be viewed on the College YouTube channel.

CORRECTION/ERRATA

In the “In Memoriam” section of *Journal* issue 85, the tribute to Noel Margaret Ferris incorrectly stated she was recently elected as President of the International Association of Defense Counsel. She was elected President of the International Academy of Trial Lawyers.

Also in the tribute to Patton Greene Lochridge, it incorrectly stated he had been married to his wife for almost twenty-two years and that he had a daughter and a son. He had been married to his wife Cindy for forty-years and they had four children, one girl and three boys.

CORRESPONDENCE TO THE EDITOR

Fellow Read K. McCaffrey’s letter in the summer edition of the *Journal*, issue 84, reminds me of a similar incident that reflects well on the College. I recently received a call from a close friend looking for legal help for a young woman from Africa who was about to be sworn in as a U.S. citizen. The young woman had been cited for a traffic offense in yet another state and needed counsel there to handle the matter so that there would be no disruption in the citizenship process. I knew no lawyer in the particular community but found a name in my College directory. After taking my call, this lawyer dropped everything he was doing and arranged to see the young woman within a day or two of my call. He then accompanied her to the local courthouse, disposed of the traffic violation and went to some lengths to procure the appropriate paperwork needed for the citizenship proceeding. The citizenship process proceeded uneventfully, and the young woman is now a proud and productive U.S. citizen. My only regret is that the lawyer who rose to the occasion insists that I not use his name or identify where he lives. But he and I (and now your readers) know what the essence of Fellowship is.

Thomas E. Peisch
Boston, Massachusetts



CANADA'S MINISTER OF FOREIGN AFFAIRS DISCUSSES CANADA'S ROLE IN 21ST CENTURY WORLD ORDER



THE HONORABLE CHRYSTIA FREELAND, PC, MP SPENT NINETEEN YEARS IN JOURNALISM BEFORE SHE ENTERED POLITICS IN 2013 WHERE SHE WAS ELECTED AS THE MEMBER OF PARLIAMENT FOR TORONTO CENTRE. IN 2015, PRIME MINISTER JUSTIN TRUDEAU APPOINTED HER MINISTER OF INTERNATIONAL TRADE. IN JANUARY 2017, SHE WAS APPOINTED TO THE POSITION OF THE MINISTER OF FOREIGN AFFAIRS FOR CANADA WHERE SHE HAS BEEN GIVEN THE RESPONSIBILITY FOR THE RENEGOTIATION OF THE NAFTA TREATY BETWEEN CANADA, MEXICO AND UNITED STATES.

Freeland comes from a long line of lawyers. Her father Donald is a lawyer and a farmer and her grandfather was also a farmer and a lawyer who rode in the Calgary Stampede. Her mother, born of Ukrainian parents in a displaced person's camp in Germany in 1946, was also a lawyer.

Freeland attended Harvard College where she studied Russian history and literature and then went on to Oxford University on a Rhodes scholarship and obtained a master's degree in Slavonic studies. After Oxford, she worked as a reporter in Kiev for the *Financial Times*, *The Washington Post* and *The Economist* and then in the early 1990's, she was in Moscow as a reporter where she served as chief of the Eastern European correspondents for the *Financial Times*.

While in Moscow, she interviewed most of the people who were involved in the conversion of Russia from communism to what it is today, including the politicians, the young reformers and the oligarchs who made off with most of the state's assets.

Freeland then occupied various leadership roles in the newspaper business including deputy editor of the *Financial Times* in London and the U.S. managing editor of the *Financial Times* in New York. She's also the author of two books: *Sale of the Century: The Inside Story of the Second Russian Revolution* and *Plutocrats: The Rise of the New Global Super-Rich and the Fall of Everyone Else*.

She spoke to Fellows during the 2017 Annual Meeting in Montréal on the topic of Canada's role in the rules-based international order and Canada's place in the twenty-first-century world order.

"Canadians have been both beneficiaries and co-creators of the rules-based international order that arose from the chaos and rubble of two World Wars. A multi-lateral system that was built on shared values and standards and which has underpinned most civil global engagements for more than seven decades.

"Today, this international rules-based order that Canadians help to build after the Second World War is under siege. We need to understand why. Then we need to work really hard to find remedies - sensible, fair, pragmatic and achievable remedies - before we lose the peace and prosperity that too many of us over more than seven peaceful decades in the West have come to take for granted. I believe this is the single greatest challenge we face. This challenge comprises the global fight against climate change, which in this season of wildfires

and killer hurricanes cries out for decisive, concrete, global action.

“As I said last June in Canada’s House of Commons, international relationships that seemed immutable for decades are now being tested as never before. At the same time, anti-globalization movements which were well outside the mainstream just a few years ago feel themselves on the rise on both left and right.

“Let me be clear, the nationalist anti-trade, bigger-than-thy-neighbor position has no more intellectual credibility now than it ever had and that is precious little. It is no more rooted in economic reality or social justice than it ever was, which is not at all. Yet, it appears to have gained a new currency in many parts of the world. Why is that?

“It’s as though some people have spontaneously decided that every time-honored plank of international engagement of the late twentieth century, from the broad prosperity that stems from trade to the benefits of immigration, to the sheer survival value of pluralism, must now be reconsidered or even rejected.

“Some now embrace fascist views openly where in the past they have lurked in the shadows. For anyone familiar with the nationalist backpedaling that preceded the world wars, there is an unsettling sense that we are re-living history. In her 2013 book, *The War that Ended Peace: The Road to 1914*, the great Canadian historian Margaret MacMillan paints the Paris Universal Exposition of 1900 as an ebullient celebration of globalization.

“I’m going to quote here because it’s a wonderful book and frighteningly appropriate today. ‘The Exposition seemed a suitable way to mark the end of a century which had started with revolutions and wars, but which now stood for progress, peace and prosperity. There were astonishingly fifty million visitors to that international event 117 years ago.’

“No one can read MacMillan’s account without a shiver of unease at the speed and ferocity with which reaction can set in and the possible consequences. Yet, there are critical differences between now and the early twentieth century. Chief among them is that the scope of the challenges we face today is actually far greater than it was then.

“Consequently, so are the opportunities. Climate change, civil war, drought and natural disasters anywhere today threaten us all. Not least because they spawn globally destabilizing mass migrations, but



because democratic nations have a further shared imperative to uphold human rights at home and around the world.”

FULFILLING MORAL OBLIGATIONS

“How do we fulfill our moral obligations and also seize the opportunity to build something better than what we inherited? Here in Canada, we’re proposing two tracks. The first is to support the international rules-based order wherever and however we can, and to do it in a way that explicitly embraces the connection between security, free-trade and human rights.

“What does this mean? What does standing up for the rules-based international order mean? It means standing with the NATO Alliance as Canada is doing today in Latvia and in Ukraine. We are commanding one of the four NATO-enhanced forward presence battalions, Canada is leading the Latvian one. We have 200 Canadian men and women in uniform who are helping to train Ukrainian troops in Western Ukraine.

“It also means investing robustly in the Canadian military, as our government announced in the defense policy review in June, 2017. It means remaining solid within NORAD (North American Aerospace Defense Command). What we share as Canadians and Americans is defense of our North American continental

QUIPS & QUOTES

My dad is still disappointed that I’m not a lawyer. In fact, when the Prime Minister gave me the great honor of appointing me to cabinet, I talked to my dad and he said, “Do they allow people without a law degree to be a cabinet minister?” I said, “Yes.” He said, “That doesn’t seem right. You’re responsible for drafting laws.”

Minister Freeland

home, including when disaster strikes as it has struck our continent too often this year.

“It means advancing SITA, our groundbreaking trade pact with Europe. [SITA is the world’s leading specialist in air transport communications and information technology comprised of 200 countries]. I am so happy to tell you that SITA will enter into force next Thursday on September 21. It is a very big deal and I will certainly be celebrating. It means exploring trade liberalization with China and actively pursuing it with India, Japan and others.

“It means, and this is a personal point of pride for the Prime Minister and for me,

QUIPS & QUOTES

Her book, *Sale of the Century*, went through nine printings and is required reading for anybody who wants to understand what happened to Russia during the transition from communist central planning to a market economy. You may know that in 2014, Mr. Vladimir Putin put a whole bunch of Canadians on the no-fly list because of the sanctions that Canada imposed on Russia after the invasion of the Crimea. Although she wasn’t the minister at that point, Ms. Freeland is on that no-fly list as Canada’s Foreign Minister.

Thomas Heintzman, in his introduction of Minister Freeland

that Canada has now signed up to all eight of the ILO’s fundamental conventions [International Labour Organization]. It means pulling out all the stops to modernize and improve the North American Free Trade Agreement, NAFTA, as we are doing alongside our American and Mexican partners. The next NAFTA round will be in Ottawa in about one week.

“It means working hard to strengthen all the international bodies to which Canada belongs, to make them more responsive to the needs of the middle class, not just in Canada, but worldwide. We think these objec-

tives are morally right, we know they’re in Canada’s self interest, too. As a middle power, Canada has a vital interest in a rules-based order in which might is not always right, in which the world’s strongest countries are constrained by standards that are internationally recognized, accepted and enforced.”

INTERNATIONAL POLICY, DOMESTIC APPROACH

“The second track of our international policy is domestic. That may seem counterintuitive, but give me a chance to explain. Our very strongly held view of government is that economic justice, opportunity and higher living standards must go hand-in-hand with an open society internationally. If we want to be open to trade, if we want to be open to immigration, we have to be sure that our middle class feels secure here at home and feels it has opportunities. Otherwise, popular support for open society falls apart.

“Our very strong view is that populist anti-globalization movements haven’t sprung up in a vacuum. In most places where an angry nationalism has appeared as a political force, income inequality, a middle-class that thought the rules of the game were rigged against it that thought it was impossible to get ahead, was there first.

“That kind of hollowed-out middle class erodes people’s fundamental belief in a possible brighter future for themselves and, most importantly perhaps, for their children. At worst, and there are too many historical examples of this to name here, it undermines social cohesion and prompts unrest or even revolution.

“The truth is that globalization and, in many cases, immigration, have become the whipping boy in too many countries for the woes of the hollowed-out middle class in Western industrialized countries. That’s a false target. The real culprit is domestic policies that fail to appreciate that lasting sustainable growth in a politically cohesive society depends on domestic measures including fair taxation and progressive labor standards that share the wealth.

“That’s why in putting forward our negotiating platform at NAFTA, we put forward a strongly progressive one including chapters on labor, gender, indigenous rights and the environment. Our emphasis on the importance of progressive trade isn’t some hobby. It



is, in our view, absolutely fundamental to the furtherance, the continuation of a global trading system that can enjoy support in western industrial democracies.

“Is this achievable given the storm clouds internationally and in so many countries? Are we impossibly idealistic to think that today we can rebuild, restore, renew, recreate that international rules-based order that was built in wake of the Second World War, that we can make it fit for purpose for the twenty-first century?

“It is a tall order, but I think when we hesitate at the magnitude of that task, it’s important for us to look back to history. This time I would say not to the First World War as I did with my Margaret McMillan reference, but to the Second World War. To remember that the Greatest Generation, the era of people like my grandfather, faced a much greater challenge.

“The Americans, the Canadians, they came home, my grandfather came home with a bride facing a Western World that in many cases was truly devastated, and they set themselves the task of building a rules-based international order where that terrible carnage the world had lived through in the first half of the twentieth century would not be repeated.

“They did an outstanding job. We in the West have had more than seven decades of peace and prosperity. I believe strongly that our parents, in my case, our grandparents, did it and we can, too.”

AWARDS & HONORS



Timothy R. Engler of Lincoln, Nebraska, was installed President of the Nebraska Bar Association at its annual meeting in October 2017. He has been a Fellow since 2017 and serves on the Nebraska State Committee.



Thomas M. Hayes III of Monroe, Louisiana, was recognized as a Distinguished Attorney by the Louisiana Bar Foundation. The Foundation honored those in the legal community who have distinguished themselves and dedicated time or resources to service organizations throughout Louisiana to provide free civil legal representation to the indigent, law-related education to the public and administration of justice projects. Hayes is Regent to Arkansas, Louisiana, Mississippi and Texas. He has been a Fellow since 2001.



W. Mark Mowery of Santa Fe, New Mexico, was honored as the 2017 Outstanding Civil Defense Attorney by the New Mexico Defense Lawyers Association. Mowery is the current New Mexico State Committee Chair and has served as Vice Chair for the Alternative Dispute Resolution Committee and a member of the Judiciary Committee. He has been a Fellow since 2007.

TODAY'S CHUCKLE



"Keep going—I'm just trying to finish my kid's school project."

2017 EMIL GUMPERT AWARD: IMMIGRANT POST-CONVICTION RELIEF PROJECT, IMMIGRANT LEGAL RESOURCE CENTER



THE \$100,000 GRANT THAT THE FOUNDATION MAKES ANNUALLY IS GIVEN TO AN ORGANIZATION INTERESTED IN IMPROVING ACCESS TO JUSTICE OR IMPROVING THE ADMINISTRATION OF THE RULE OF LAW. THIS YEAR, THE RECIPIENT OF THAT AWARD IS THE IMMIGRANT LEGAL RESOURCE CENTER IN SAN FRANCISCO,” SAID U.S. FOUNDATION PRESIDENT **CHARLES H. DICK, JR.** “THE SPECIFIC PROGRAM OF ILRC IS A POST-CONVICTION RELIEF PROGRAM THAT WAS PARTICULARLY SELECTED BECAUSE IT WAS NOT ONLY INGENIOUS BUT IT WAS SUSTAINABLE. IT WAS SOMETHING THAT COULD BE REPLICATED ACROSS THE UNITED STATES. THE TRAINING MATERIALS AND THE EXPERIENCES OF THIS ONE ORGANIZATION COULD BE DUPLICATED FOR THE BENEFIT OF A MUCH LARGER AUDIENCE. THE PURPOSE OF THIS POST-CONVICTION PROGRAM IS TO PROVIDE RELIEF TO PEOPLE WHO HAVE BEEN ILLEGALLY AND UNCONSTITUTIONALLY CONVICTED OF CRIMES, OFTEN TIMES OF MOST MINOR SCOPE AND DETAIL.”

In his introduction of **Rose Cahn**, he described her as “the prime mover behind this entire program.” The purpose of vacating illegal convictions was masterminded by her and brought to the Immigration Legal Resource Center after she had effectively demonstrated not only the importance of this project but the ability of lawyers one at a time to make a difference. “She was described to me as a person who had defined this program almost single-handedly. Most recently, she has been an initial mover behind California’s enactment of specific legislation that will facilitate the remedy of people who have been convicted illegally,” Dick said.

Cahn’s remarks follow:

Thank you. I certainly don’t take special for granted. I am tremendously honored to be here with you all today. I’d like to begin by telling you a bit about some of the individuals whose lives you have already touched with the Emil Gumpert Award. First, there is José Valdes, a Dreamer. José has lived in the United States since he was two years old. This morning he woke up in his home in East Palo Alto, California, and today after work he will return back to that same home to have dinner with his U.S.-citizen wife and two U.S.-citizen children – thanks to the American College of Trial Lawyers’s investment in our project.

There is Andy Rosales. Andy is HIV positive and gay, born in El Salvador. Andy has now been granted asylum in the United States where he can receive the medical treatment necessary to live a long and healthy life free from persecution.

There’s Jessica, a medical technician and a single mother of three who has been reunited with her children and

has applied for U.S. citizenship thanks to the support of this College. There are so many, many more, some of whose names we may never know.

What do all of these people have in common? They were all born outside of the United States. They were all charged with crimes and they all received constitutionally deficient legal representation that would have led to their mandatory detention and mandatory deportation were it not for the support of the network of pro bono attorneys we’ve been able to train and engage thanks to this award.

Thankfully, they now have the opportunity to live lawfully in the United States with their families, continuing the lives they have built here and will continue to build here for many generations to come. In 2010, in the landmark decision, *Padilla v. Kentucky*, the U.S. Supreme Court recognized that deportation is an integral part, indeed the most important part, of a criminal proceeding for non-citizen defendants.

The U.S. Supreme Court held that the Constitution mandates defense counsel to advise non-citizen defendants about these specific immigration consequences of a conviction and to defend against those consequences by plea bargaining for an immigration neutral disposition.

In the wake of *Padilla v. Kentucky*, criminal defenders around the country have valiantly struggled to get up to speed about the immigration consequences of criminal convictions. Organizations like the one I work for have published manuals and led trainings, detailing crimes and their consequences, establishing hotlines and charts, yet many attorneys are still failing to live up to *Padilla*’s promise.



While all of these efforts have been essential to stemming the tide of individuals who aren't advised of the consequences of their pleas, what about the hundreds and thousands of people who have already entered legally and have valid pleas? Are we to allow them to be detained and deported based on convictions that the U.S. Supreme Court has held are unconstitutional?

With the support from the Emil Gumpert Award this year, we say no. We will no longer allow people to be deported on the basis of unconstitutional convictions. How do we do this? There are three components to our project.

First, we have launched the nation's first ever pro bono immigrant post-conviction relief project. We've recruited and trained a network of pro bono attorneys from law firms throughout the country who are committed to ensuring that no person is deported on the basis of an unconstitutional conviction. I'm proud to say that of the twenty-six cases we've placed thus far, we haven't lost one yet.

Second, we've created an online hub where we house pro se materials and tools for attorneys and immigrants including sample briefs and pleadings, infographics, practice advisories to help make it easier for everyone to defend their fundamental constitutional right to legal representation.

Finally, third, we've led trainings for legal service providers throughout the country about how they can launch their own projects and expand their practice areas. We've provided expert assistance to pro se litigants and organizations beginning for the first time to help immigrants challenge old convictions and we're just six months in.

In the next six months, we have plans to do deeper work to help seed these similar projects nationally. We have a national webinar coming up as well as trainings in Washington, D.C. and then Florida. It's no secret that immigrants in the United States have faced enhanced scrutiny since this last presidential election.

The increased rates of deportation that are anticipated underscore how essential this work is and really has always been. Although immigration in the United States has become a highly politicized issue, I believe that the question at the core of these cases is inherently apolitical.

Does the Constitution's promise of effective representation extend to all or just those who can afford to pay for it? Prior to our project, immigrant post-conviction relief was a niche practice area covered by a very small handful of private experts who could charge top dollar for their services. I know this because I worked in private practice for years with the founder of the field.

Immigrants who are low income and could not afford the cost of a private attorney simply had the halls of justice closed to them. In the Byzantine world of immigration law where a low level offense like failing to pay your subway fare can lead to mandatory deportation, this meant that many people were deported, separated from their families and subjected to lifetime banishment without access to counsel who could help them challenge their underlying convictions.

Thanks to the Emil Gumpert Award, with the launch of the Immigrant Post-Conviction Relief Project we have truly revolutionized this field. Immigrants, for the first time at this crucial time, are beginning to see ex-

panded opportunities to challenge unlawful convictions.

One critical component that has allowed this project to be so successful in just six months is the stable home and platform for it provided by the Immigrant Legal Resource Center, a national organization with offices throughout California and Washington, D.C.

The ILRC is the longest standing immigrant resource center in the country and our mission is a simple one, to protect immigrant rights and keep immigrant families together in the United States. We are the lawyers for the lawyers, but also the lawyers for the movement. We provide resources on every area of immigration law and immigrant assistance.

Defending the fundamental constitutional rights of immigrants has always been our organization's core value. For decades, we've produced cards advising community members of their Fifth and Fourth Amendment rights. In the past nine months, we have distributed 1.6 million of these cards. To put that in context, last year we distributed 200,000 total.

There's no better defense against deportation than naturalization so we're also the largest provider of citizenship application assistance in the country operating in eighteen different sites throughout the United States. We've helped process nearly 300,000 citizenship applications in the past six years. It's within this vibrant, skilled and very busy community of colleagues that the Immigrant Post-Conviction Relief Project has been able to take root and to flourish.

No matter where we may fall on the political spectrum, as lawyers we all have a sworn duty to protect and defend the Constitution for all people. I thank and applaud the American College of Trial Lawyers for supporting our work at this crucial time as we expand access to justice, fulfill the promise of *Padilla* and, fundamentally, our Constitution.

Personally, I'm deeply and profoundly honored to receive this award. But also on behalf of José, Andy, Jessica, their children, our dozens of other clients and their families and the many thousands of lives who you've already touched and have yet to touch, thank you.

Cahn's full presentation can be viewed on the College YouTube channel.



**AN EXPERT ON
NAVIGATING
WEAPONIZED
LIES, CRITICAL
THINKING IN THE
POST-TRUTH ERA**

A

RENOWNED COGNITIVE SCIENTIST **DR. DANIEL J. LEVITIN** FOR SEVENTEEN YEARS WAS A PROFESSOR OF PSYCHOLOGY AND NEUROSCIENCE AT MCGILL UNIVERSITY. HE CURRENTLY IS A DISTINGUISHED FACULTY MEMBER AT THE HAAS SCHOOL OF BUSINESS, UNIVERSITY OF CALIFORNIA BERKELEY. HE HAS A PHD IN PSYCHOLOGY AND COGNITIVE SCIENCE.

Levitin has been a visiting professor at Stanford University, Dartmouth College, Berkeley and the University of Oregon. He's written a hundred scientific articles. He's spent seventeen years as director of the laboratory for the perception, cognition and expertise of music at McGill.

He's written four international bestsellers that include *This Is Your Brain On Music*, *The World in Six Songs*, *The Organized Mind: Thinking Straight in the Age of Information Overload* and *A Field Guide to Lies: Critical Thinking in the Information Age*. "Because he is a true public intellectual, he takes what he knows as a scientist and converts it into interesting reading," said Past President **Gregory P. Joseph** of New York, New York, in his introduction of Levitin during General Session at the Annual Meeting of the College in Montréal, Québec.

LIE. LIE. LIE.



Born in San Francisco, Levitin started studying electrical engineering at MIT and then music at the Berklee College where “he dropped out to join a succession of bands, so that wayward child or grandchild that hasn’t quite found their way may have hope yet,” Joseph said.

QUIPS & QUOTES

I began to write it [the book *Weaponized Lies*] with some urgency and then what happened were a number of odd things. I think they were summed up best by Andy Borowitz writing in *The New Yorker* who warned of a powerful new strain of fact resistant humans who are threatening the ability of the Earth to sustain life. Humans are endowed, he says with an ability to receive and process information, but these abilities have been rendered totally inactive.

Dr. Levitin

He became an extremely successful music producer, music consultant and sound engineer. He produced for the likes of Stevie Wonder and Steely Dan. He was sound engineer for The Grateful Dead and for Santana. He has sixteen Record Industry Association of America (RIAA) gold and platinum albums to his credit. He won the Best Film Soundtrack award from the Sundance Film Festival for *Architects of Victory* and a gold medal from the Venice Film Festival also for *Architects*.

“In case all of you didn’t feel inadequate enough, he also performs. He’s performed sax with Mel Tormé, guitar with David Byrne of the Talking Heads. He also sings, he does bass. He’s currently performing with a fellow named Tom Brosseau, whom some of you may know from *Prairie Home Companion*,” Joseph said.

Levitin’s presentation was titled “Weaponized Lies: How to Think Critically in the Post-Truth Era,” which

is the title of his newest book. The book was originally published in 2016 as *A Field Guide to Lies*. He began work on the book in 2001, when he started working at McGill University. At that time, he realized an entire generation of students were coming before him who were very skilled with technology, but did not know “how to interpret what they found or how to use the information in ways that might make society better, distinguishing truth from falsehoods, rumors from facts...the public have too easily given up on asking whether something is true.”

In the current state of world affairs, “I thought calling the book *Field Guide To Lies* seemed a little bit too gentle.”

Whether it was the lie that membership in the European Union was costing Britain 350 million pounds a week to the lie that Hilary Clinton was operating a slave sex ring out of a pizza parlor in Washington, D.C., lies have become weaponized.

On the matter of Clinton and the pizza parlor, “we know this was a lie. It was traced to a Macedonian teenager who was writing a bunch of stuff that wasn’t true in order to make a little bit of pocket change to buy fancy sneakers because of the click-through ad revenue that was generated by this lie. We might have suspected that it was a lie even if it hadn’t been con-

firmed to be one. It just seems implausible, right?... How plausible is it that the Secretary of State would put her career on the line in order to operate a child sex slave ring out of a pizza parlor, and there was no evidence for this. You didn’t read about it in the *New York Times* or hear about it on the CBC, the BBC or NPR. No reputable source was reporting it, but when I say the lie became weaponized, it was because a mentally unstable man from North Carolina drove to Washington, D.C. with an automatic weapon to investigate and ended up discharging a firearm.

“People are taking up arms over lies. Decisions need to be based on facts. As the great senator Daniel Patrick Moynihan once said, ‘You are entitled to your own opinions, but you aren’t entitled to your own facts.’ I’m on a mission to restore a sense of decency in public discourse that we should first agree on what the facts are and then have a civil discussion and civil conversation and debate about how we want to proceed.”

THE PROBLEM OF PSEUDO EXPERTS

Levitin focused on a problem pervasive, not just in science, but in public discourse and in court rooms. “It’s the problem of pseudo experts. People who pass themselves off as experts on a topic who are not actually experts and I think that scientists like me are partly to blame. All too often, scientists will start to pontificate about something outside their area of expertise and the rest of us don’t call them out on it and I think we need to start doing that.

“Expertise is usually fairly narrow. It takes quite a bit of time and training to become an expert in something and that expertise doesn’t transfer to other areas that might be seemingly related. I’ll give you an example. How many of you are familiar with the name Sally Clark?

“Sally Clark was a young mother in England who some years ago was put on trial for murdering her own infant. What had happened was the first infant died and the death was ruled sudden infant death syndrome, SIDS, crib death. But when her second infant died of the same thing, it was deemed suspicious. She was put on trial at that point for the double murder of two infants and the crown brought as an expert witness a pediatrician who testified that the odds of having two infants die in this way of this particularly rare form of death, the odds were astronomically against it and that she had to have murdered them.

“She maintained her innocence. Her husband maintained her innocence. It was after three years of persistent effort on the part of her husband that some DNA evidence was finally collected and autopsy was performed, DNA evidence was obtained and it was found that both infants had a congenital defect that caused their death. She was eventually exonerated. The wrongful conviction could have been avoided if her defense attorney had realized that the pediatrician

STICKS & STONES
MAY BREAK OUR BONES
BUT THAT IS NOTHING
COMPARED **TO THE DAMAGE**
WORDS CAN DO



was not an expert and should not have been allowed to give expert testimony. I don't know if this is obvious or not to most of you. It wasn't obvious to me until I started thinking what are pediatricians actually expert in? What is the job of a pediatrician? The job of a pediatrician is to keep infants alive, to make sure they reach certain developmental milestones, to inoculate them at the right time, to treat diseases of infancy, toddlerhood, childhood. If you're a competent pediatrician you'll probably go your entire career without seeing a single infant death because infant deaths are relatively rare.

"Pediatricians are not expert on how infants die. For that, you'd need an epidemiologist or a medical examiner, a coroner, somebody who's seen hundreds and studied thousands of infant deaths – that is a suitable expert. What we see playing out in court rooms all over the United States and Canada and England is people being trotted out because they have impressive credentials, but they are not an expert on the thing they're testifying on."

He presented another example of a colleague from McGill University, Jeffrey Mogil, who is one of the Canadian experts on pain. "Jeff is a pain expert and in fact, he heads a pain team, we have a pain institute at McGill. He's an editor for the *Journal of Pain* which is a peer-reviewed highly regarded journal. He's published in the *Journal of Nature and Science*. He attends the International Association for the Study of Pain annual meeting. Not one of the experts that he knows, nor he, have ever been called as an expert witness in any Canadian or U.S. trial, but there are lots of experts appearing in these trials testifying as to pain. What's going on here is that the people who are in the business of calling the expert witnesses aren't in the field. They don't necessarily know who the true experts are and...you end up with a bunch of nonsense being spewed in court. Every once in a while, it gets straightened out on appeal, but not always."

To find a suitable expert, Levitin recommends, in the sciences or medicine to approach someone listed on the masthead of a peer-reviewed journal and "whatever expertise you're looking for, I would advise to look at the professional organizations and the professional journals and find somebody who's risen within those ranks either to be your witness or to help you to recommend one."

He then brought his scientific eye to a recent newspaper ad taken out in a national newspaper that 30,000 scientists were signatories to a denial that climate change is real.

"I'm not an expert in climate change, but I do have some observations about scientific method and how it works, but what I did was I looked at those random samplings of a thousand of those 30,000 signatories. I ▶

was interested in who are these people that are denying climate change? What are their credentials? Are they climate scientists? It seemed to me that it's irrelevant if somebody denies climate change unless they actually know something about the field, right? I started looking into it and there was an MIT professor but she's an electrical engineer. I'm not sure that electrical engineering gives you the authority to start commenting about climate change. I adopted as a criterion that the people had to have their doctoral degree in climate science or a related field because not every university offers a climate science degree, but they offer things like Earth Sciences or Atmospheric Sciences. I took a pretty broad view of what I would accept as climate science. I also wanted to see that the scientists were publishing in peer reviewed climate or climate science journals, that is they were actively engaged in the field, not just somebody who took a degree maybe forty years ago and veered off into another field and no longer had expertise and wasn't staying current. Out of the thousand that I looked at, I only found three that I could argue were actual bona fide climate scientists. The fact is virtually everybody who is in climate science says that climate change is real and that it's human-caused. You're welcome to your own opinion, but I think the fact is that opinion is unsupported by people who are actually working in the field.

"A principal of critical thinking and trying to ascertain lies from truth is that a handful of unexplained anomalies does not discredit or undermine an established theory that is based on thousands of pieces of evidence... Related to pseudo expertise and trying to identify suitable experts is that when evaluating scientific or medical information or courtroom testimony, we often find ourselves in a situation where somebody has presented evidence that we can verify and authenticate as true and it may come from an expert, a true expert that is, not a pseudo expert, but it turns out that we're being given information that in a subtle way is irrelevant."

GIVING RELEVANCE TO IRRELEVANT STATISTICS

Levitin used as an example a headline *USA Today* ran that more people died in plane crashes in 2014 than in 1960.

"They argued that 2014 was a very dangerous year for air travel. If you're trying to figure out how safe air travel is, I'm not sure this is the right metric. I

looked into the number of people who died from plane crashes. I went to the FAA, to the Civil Aeronautics Board, to the Centers for Disease Control; they would keep track of all the different causes of death. I've got it on three different independent sources, more people did die in plane crashes in 2014 than in 1960, but there were a lot more people flying in 2014 than in 1960. There were a lot more flights; there were a lot more miles flown. What you really want to look at is number of deaths per million miles flown or number of deaths per thousand passengers.

"If you do that, 2014 was one of the safest years on record. It's an irrelevant statistic that has the patina of relevance. It has by association the sense that it might be a helpful statistic.

"One of the greatest assets to critical thinking is humility. I think it's the most important quality in trying to be a critical thinker. The reason I say that is that if you think you know everything, it's impossible to learn anything. But if you approach information and encounters with other people as an opportunity to learn something, you can learn quite a great deal.

"The people that you have the most trouble getting along with are probably the most important teachers. I think it's a nice sentiment and more to the point, I think approaching conversations and information with an attitude of, 'What don't I know? What might somebody else be able to teach me?' can more easily lead you to the truth.

"In order to make to our countries better, I believe we need to support these three institutions. The scientific method is not perfect, but it's a self-correcting system. The scientific method is an objective way to determine information. The free and independent press, the check and balance that they provide and the third institution is the judicial system, a fair and independent judiciary. Yes, there are corrupt judges just like there is corruption everywhere, but it's a pretty good system. We tend to root out the corruption, we tend to get to the bottom of it and in most cases, we're dealing with people who are trying to do the very best job that they can."

QUIPS & QUOTES

I don't think that facts should be politicized. I do believe that there are facts out there in the world that we can agree on—that has to form the basis of any reasonable, rational conversation.

Dr. Levitin



COLLEGE UPDATE

2018 SPRING POLLING REMINDER

For all State and Province Chairs who poll during the spring cycle, the deadline for candidate proposals is March 15, 2018. The following states and provinces are part of the spring poll: Arkansas, Atlantic Provinces, British Columbia, California (Northern), California (Southern), Colorado, Connecticut, Delaware, Florida, Indiana, Kentucky, Maine, Maryland, Missouri, Nebraska, New Hampshire, New Jersey, Ontario, Québec, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

NATIONAL OFFICE MAILING ADDRESS REMINDER

Please make sure that any correspondence mailed to the National Office—including dues payments—is sent to the College's new mailing address: 1300 Dove St., Suite 150, Newport Beach, CA 92660.

FELLOWS TO THE BENCH

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

Teresa M. Caffese

San Francisco, California

Effective November 2017

Judge

San Francisco County Superior Court

E. David Crossin

Vancouver, British Columbia

Effective August 20, 2017

Judge

Supreme Court of British Columbia

Willie J. Epps, Jr.

Jefferson City, Missouri

Effective June 2017

U.S. Magistrate Judge

Western District of Missouri

The College extends congratulations to these Judicial Fellows.

THE RIGHT HONOURABLE LORD REED RECEIVES HONORARY FELLOWSHIP



THE RIGHT HONOURABLE LORD REED OF THE SUPREME COURT OF THE UNITED KINGDOM IS ONE OF TWO SCOTTISH JUSTICES ON THE SUPREME COURT. HE WAS APPOINTED TO THE BENCH IN SCOTLAND IN 1998. HE WAS THEN ELEVATED TO THE SUPREME COURT IN 2011, WHERE HE SUCCEEDED HIS FRIEND AND MENTOR THE RIGHT HONOURABLE THE LORD ALAN RODGER OF EARLSFERRY, WHO WAS ALSO AN HONORARY FELLOW OF THE COLLEGE. LORD REED WAS ALSO A MEMBER OF THE DELEGATION FROM THE UK PARTICIPATING IN THE SECOND LEG OF THE 2015-2016 UK-U.S. LEGAL EXCHANGE, WHICH TOOK PLACE IMMEDIATELY AFTER THE ANNUAL MEETING IN PHILADELPHIA AND ENDED IN WASHINGTON, D.C. HE PARTICIPATED IN A PANEL ABOUT FEDERALIST SYSTEMS OF GOVERNMENT.

“When Lord Reed spoke in Philadelphia, he pointed out that one effect of Brexit is that the UK, one of only three common law countries among twenty-eight members of the European Union, will assuredly retain the common law as a bedrock of the British legal system and that, accordingly, the UK’s relationships with other common law jurisdictions, particularly Canada and the United States, may well assume added importance,” said Past President **Chilton Davis Varner** in her introduction of Reed. “Today, the College does its small part in strengthening the ties between the UK, the U.S. and Canada by conferring Honorary Fellowship upon Lord Reed.” Lord Reed is the forty-first jurist from the United Kingdom to become an Honorary Fellow.

After his acceptance, Lord Reed addressed the Fellows and shared his thoughts on the valuable relationship between the two countries. His remarks follow:

Fellows of the College, ladies and gentlemen, I am both honored and delighted that the College has invited me to become an Honorary Fellow. Honored when I see the list of other Honorary Fellows, indeed not just honored, but humbled. They are people of great distinction, and they include many people who have meant a lot to me personally. As you have heard, they include my mentor Lord Rodger, whose seat I succeeded to on the Supreme Court, and two of my now-retired colleagues on the Court, Lord Hope and Lord Neuberger. All people with certain characteristics in common: intellectual skills of course, but accompanied by the less-common attributes of modesty, and good humor, and perhaps rarest of all, common sense.

I’m delighted, because my wife Jane and I have so much enjoyed getting to know the Fellows of the College, and their husbands and wives, and partners. Through the Exchanges between U.S. and UK judges and lawyers, which the College sponsored in 2015 and 2016, which enabled us to take part in your meeting in Philadelphia last year, we have discovered what a friendly and welcoming group of people you are. We see my induction as not just cementing, as Chilton has said, relations between the American and Canadian judiciary and the British judiciary, but actually also cementing personal friendships.

I was a trial lawyer for the first part of my career. I have to say, it was also the most enjoyable part of my career until my appointment to the Supreme Court. As a trial lawyer, there were two occasions when I found myself working closely with American trial lawyers. The first time was when I was representing the families of men who had been killed when a Chinook helicopter carrying oil workers in the North Sea crashed in the sea in 1986. It was the world’s worst civilian helicopter disaster.



There was an official inquiry in the UK. There were also civil claims made in the U.S. The U.S. lawyers handling the claims came to Edinburgh to work with me on the inquiry. Others arrived who were acting for Boeing and their insurers. Their initial impression was that the British lawyers were very gentlemanly, treating each other and the witnesses with elaborate courtesy. But after they became attuned to the difference in culture, they realized that we had a lot more in common than they had realized. On occasion, the courtesy can be a little superficial.

The second time I worked closely with American lawyers was on the international arrangements leading to the Pan Am Lockerbie trial, where Libyan suspects were tried by a Scottish court sitting in the Netherlands for bringing down a Pan Am flight. I was then a senior prosecutor, working with lawyers from our foreign office. We had many meetings with lawyers from the U.S. Department of Justice and the State Department at our offices in London, which overlooked The Mall and St. James's Park. If you know London, you know that's very close to Buckingham Palace.

The American lawyers were initially amused when the tea trolley arrived at 4:00 in the afternoon, and we all stopped for tea. Then they were excited when they heard the clip-clopping of horses outside, and went onto the balcony to see the household cavalry going past on their way to Horse Guards Parade. Before long, they became more British than the British, as they got used to the rhythm of a day punctuated by cups of tea and the passing of the cavalry.

I stopped being a trial lawyer nineteen years ago, when I went on the bench. I had the great good fortune of being appointed to UK's highest appeal court nearly six years ago. Almost all the judges who have been Honor

ary Fellows of the College seem to have been judges of the highest appeal courts. I'd have to say, to those of you who are trial judges, and I've met quite a few over the last day or two, that I think that running your own court, listening to live evidence and having to deal with all the unexpected emergencies and problems that emerge in the course of a trial, is in my view, the heart of being a judge.

Compared with that, appellate work is, dare I say, a little dry and detached. It was, I think, an Australian judge who, speaking of appellate tribunals, said that when the battle of the first instance trial is being joined in the plain, the appeal judges sit up in the hills. At the end of the day, when the noise and dust are settling, they come down from the hills onto the battlefield and shoot the wounded.

MAINTAINING PEOPLE'S CONFIDENCE IN JUDICIARY

In his book *Making Our Democracy Work*, another Honorary Fellow of the College, **Justice Stephen Breyer** asks why the public accept and follow decisions made by the judiciary. The answer, he suggests, is the confidence of the people. [It is] what I think the Governor General of Canada [the Right Honourable David Johnston, CC, CMM, COM, CD] was talking about yesterday when he talked about trust. This is the ultimate challenge of judging: to ensure that all segments of the community, whatever their political views or their ethnic or social background, learn to have confidence that the administration of justice is fair, independent and impartial. Of course, that's vital to the rule of law.

One of the challenges the judiciary constantly faces is to maintain that confidence. This has a number of aspects. I want to focus on one which may strike a chord with you in the United States and Canada. Like your judiciary, we sometimes have to deal with politically



sensitive issues on which public opinion is sharply divided. It's easy for people who don't understand what judges do to assume that the judges simply apply their own political views. Some sections of the media seem to share that misunderstanding.

For example, at the end of last year, our High Court heard a case concerned with whether Britain's withdrawal from the EU treaties could be affected by an executive act or, instead, was required to be authorized by legislation. The Court decided that legislation was necessary. The media viewed the decision as helpful to the opponents of withdrawal. Reporting the decision, one of our most popular newspapers printed photographs of the judges on its front page under the headline, "Enemies of the People," in a format borrowed from Nazi Germany.

The appeal to the Supreme Court against that decision was preceded by analyses in the media of how pro-EU every member of the Court was thought to be, based on such things as our backgrounds and social media postings by members of our families, with each of us being given a star rating. In the event, the predictions proved to be hopelessly wrong.

As that example illustrates, many people don't understand what judges actually do. They don't understand that the fact that judgment has political implications does not mean that the judges are deciding a political question, or are giving effect to our own political views. It is important that we make it clear that the cases which come before the courts are concerned with legal questions, which persons who have studied and practiced law for many years are uniquely qualified to decide.

ENGAGING IN AN ACTIVE MEDIA STRATEGY

There's an issue here about public education. It's an issue which my court has made efforts to address in a variety of ways. The one which might be of greatest interest to you is our media strategy, and the use that we make of the Internet. We have an active involvement in social media, with accounts on Twitter and Instagram. Our Twitter account has 220,000 followers. Relative to our population, that's the equivalent of 1.2 million followers in the U.S. Our communications team cultivates positive relationships with bloggers who cover our work, recognizing the growing importance of their role in the media landscape.

We also have an active engagement with the traditional media. Our communications team seeks to develop good relationships with the journalists who cover our work, and to assist

them in reporting it accurately. Shortly before we hand down a judgment, our communications team will usually hold a briefing for the press on an embargoed basis explaining the judgment and its implications, and answering any questions. We do this because we recognize the pressure that the media are under to provide an instant response to our judgments. The embargo has never been broken. We haven't tested it in the most high-profile or price-sensitive cases. There, we do the briefings simultaneously with the delivery of the judgment.

We follow media coverage of our decisions, and point out any errors. On every occasion that I'm aware of, the error has been corrected. The communications team also organizes interviews of justices from time to time by different media outlets, and guide the justices through that process. For example, earlier this year when we had to fill some vacancies on the Court, the communications team developed a strategy to support the process, which involved the President of the Court and myself being interviewed by the BBC's main morning news program about the job of being a Senior Judge, and the attempts being made to attract a more diverse pool of applicants.

What has made the biggest impact on the general public is the fact that we livestream our hearings and the delivery of our judgments. At the delivery of the judgment, the justice who has written the lead judgment gives a short explanation of the decision to camera. I should make it clear that it is the Court itself which arranges and controls the filming, and we retain editorial control over footage which we allow the media to broadcast. The proceedings are broadcast live, subject to a delay of a few seconds in case anything confidential is accidentally mentioned.

Increasingly, the media are using footage from our proceedings, both on television and on newspaper websites. Proceedings can also be viewed at any time on our website or on YouTube, where podcasts of all our previous hearings and judgments are available.

IMPORTANCE OF CAMERAS IN THE COURTROOM

The importance of filming our proceedings was amply illustrated when the appeal about EU withdrawal reached us. The hearing in our court, unlike the hearing in the court below, was live-streamed on our website. With our permission, a number of media organizations also live-streamed the proceedings on their own websites.

The number of people watching live was over 300,000. The U.S. equivalent would be around 1.64 million. In addition to those

people, a far greater number saw highlights on the television news, and indeed there were even nightly programs devoted to the case, where pundits commented on footage rather like watching a football game.

The result was that a large element of the public actually saw that what was being discussed was an issue of Constitutional law, with discussion of British cases from the seventeenth century onwards, and also of some American cases concerned with the limits of executive power. It was dry and technical. It was rather boring. What's important is that it was entirely different from the political debate, and people could see that.

The media also were able to work out from our questioning of counsel how the decision looked likely to go. They worked out that different justices seemed to have different takes on the issues, and why. The consequence was that when our decision was issued, there was no sense of shock, no sense that the Court was playing politics, but an acceptance that that was how the Court understood the law.

At the opening of the hearing, which was shown on television, Lord Neuberger reminded people who were watching that, I'll quote him, 'The Supreme Court exists to decide points of law which fall within its jurisdiction. The justices of the Court,' he said, 'are of course aware of the public interest in the case. We are aware of the strong feelings associated with the many wider political questions surrounding the United Kingdom's departure from the European Union. However, as will be apparent from the arguments before us, those wider political questions are not the subject of this appeal. The appeal is concerned with legal issues, and as judges, our duty is to consider those issues impartially, and to decide the case according to the law. That is what we shall do.' That was shown on all our news broadcasts.

The case shows the potential of filming court proceedings to give the public insight into the nature of the court's work. I don't suggest that there is a direct parallel with the United States or with Canada, where Supreme Court hearings are much shorter and have a different character. But the UK example does illustrate how a media strategy, both in relation to traditional media and also in relation to the new social media, can help to promote a better understanding of the nature of our work, and indeed the role of all those involved in litigation, in upholding the rule of law as a pillar of democracy. That is an aim we can all share. ■



NEW ORLEANS

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

SAVE *the* DATE

U.S. DISTRICT COURT JUDGE REMINDS FELLOWS “A LEVEL PLAYING FIELD IS NOT ENOUGH”



THE HONORABLE MYRON H. THOMPSON, A JUDGE IN THE UNITED STATES DISTRICT COURT OF THE MIDDLE DISTRICT OF ALABAMA, AS PAST PRESIDENT JOAN LUKEY OF BOSTON, MASSACHUSETTS, SAID IN HER INTRODUCTION, IS FAMOUS TO MOST AMERICANS, EVEN IF THEY DON'T KNOW HIM BY NAME. JUDGE THOMPSON IS THE FEDERAL JUDGE WHO ORDERED THEN ALABAMA STATE CHIEF JUSTICE ROY MOORE TO REMOVE THE MONUMENT OF THE TEN COMMANDMENTS FROM HIS STATE COURTHOUSE. FOR AN AFRICAN AMERICAN JUDGE TO TAKE ON THE IMMENSELY POPULAR STATE CHIEF JUSTICE ROY MOORE TOOK AN IMMENSE AMOUNT OF COURAGE.

President Jimmy Carter appointed the Yale Law School graduate, Judge Thompson to the federal bench when he was only 33-years-old and he was confirmed, a remarkably brief nine days later. Since that time, not only has he issued the courageous Ten Commandments decision, he also issued another important abortion rights decision in 2014, by ruling unconstitutional Alabama's "Women's Health and Safety Act," which required all doctors performing abortions in Alabama to have privileges at local hospitals. The requirement in that Act would have effectively deprived most women of their constitutional right to an abortion because these procedures are overwhelmingly performed in abortion clinics by traveling doctors who do not have privileges at any local hospitals.

Judge Thompson began his remarks during General Session at the Annual Meeting in Montréal with a bit of humor, stating that many attendees assumed that anyone from Alabama would begin remarks with a sports metaphor but that he (unlike most Alabamians), is uninterested in football. However, despite the issues of grave importance which the judge has decided over the years, he made news for being a judge who denied lawyers a continuance to accommodate a football game. "That in Alabama, is like man bites dog." In that case, at a hearing in May, the judge had announced that trial would start on January 7 of the following year. One of the lawyers arose after conferring with his fellow twenty-nine lawyers and requested that the trial be postponed for a week. When Judge Thompson asked for the reason, the lawyer stated that on the trial date proposed, there would be a national college football championship being played. When the Judge remarked "this is May," the lawyer responded, "but Alabama will be playing." Judge Thompson responded, "that is con-

jecture" to which the lawyer retorted "no, Judge, that's a certainty." After taking a recess to confer with his law clerks, Judge Thompson came back and said, "I agree to that motion if Alabama plays Yale". To which the lawyer responded, "Judge, in my view, Yale's playing the National College Football Championship is an impossibility." Judge Thompson responded, "I share that view but only as to your motion."

The Judge then turned to the theme of his talk, "a level playing field is not enough." Judge Thompson described his meaning as follows: A level playing field is a field where everyone is treated fairly. How can we level the field? Only if judicial independence is ensured. Judicial independence is the "wall we erect against bias. It is the wall we have built around the field to help in assuring that it is level."

The second requirement for a level playing field is neutrality from judges. While the wisdom of past experience can be helpful in judging, judges need to be on the lookout for the narrow difference between helpful experience and harmful bias. Judge Thompson described his predecessor on the bench, Judge Frank M. Johnson, Jr., as the embodiment of a judge who knew that difference.

Judge Johnson had grown up in the South, steeped in Southern experience, but never allowed that experience to turn into bias. He was a Southern white judge who grew up with segregation and then dismantled "that pernicious social institution brick by brick." He was a judge who cared about those members of society forgotten by most people, including the mentally ill and prisoners locked up in state institutions, and made decisions honoring their constitutional rights. He was



one of the first judges in a society that tried not to acknowledge the existence of those with different sexual orientations to recognize their right of privacy.

Judge Thompson told a moving story about a ride he'd taken in an Uber the prior day. He had asked the driver if he was Canadian and the driver replied that he lived in Canada but was actually from Rwanda. The judge hesitated to ask any questions about whether he had experienced the horrors of his country's not so distant history. Nonetheless, the driver told him his personal story, which the judge told the audience paraphrased in the first person below:

"My family and I heard these huge bombs and sought refuge in a church. We all spread ourselves out on the floor trying to protect each other. Rebels eventually broke in to the church. I heard people screaming and saw the machetes coming down, saw limbs and even someone's head being cut off. Suddenly I was unconscious, and I don't know what happened to me. But when I woke up it was days later. I started to run. I looked around and there were pieces of bodies, lots of blood. I was sixteen-years-old and I just kept running, hiding and running until I got to the Congo. I heard that in South Africa, there might be jobs because the apartheid was no longer in place. Then I heard that Canada was offering these visas for people like me who wanted to start a new life. I applied, and I got one and eventually came to Canada. I went to the University of Montréal, got a nursing degree, started a new family and now have four children."

The judge then paused and said that the Uber driver then said something so powerful and touching that he would not paraphrase but would read his exact words: "Canada got me back to being a human being."

Judge Thompson pointed out that those beautiful, perfect words were probably also said 200 years ago by Harriet Tubman and slaves running from Alabama to Canada. To the Canadians in the audience Judge Thompson said "no one can say anything more beautiful about Canada. No one, no one can say anything more beautiful about any country. And I thank you, Canada. And I am so proud. Sometimes you have to leave your own country to find who you are."

"You can't say, 'Rwanda, we feel sorry for you. We sit comfortably in Canada. We sit comfortably in the United States. Because we have these institutions that will never let what happened in Rwanda happen here.'" After all, the German judiciary was as independent as the American judiciary and that didn't stop Hitler. The federal Southern judiciary was independent and had as many institutions as the current day, but it didn't stop Jim Crowism or lynching. The only thing that stops the most heinous acts is being a human being and acting separately and individually to stop tyranny. Each lawyer and judge, acting separately and individually, along with the noble ideals of judicial independence a level playing field, is responsible for the ideals of the law. "In short, each of us must be about being a human being."

Lisa G. Arrowood
Boston, Massachusetts

Judge Thompson's full presentation can be viewed on the College YouTube channel.

QUIPS & QUOTES

Finally, essential to a level playing field is support of the lawyers who play on it. All too often, it now appears that when lawyers seek out judges, they seek judges who will rule in their favor rather than judges who will be fair to both sides. The case is sometimes viewed as won or lost in the random selection of the judge or judges hearing the case initially. And always there are the press reports that describe the judges who have made a decision as either Republican appointed or Democrat appointed. There are even those press reports that describe an African American judge as African American, though I must candidly say, they seldom describe a white judge as white.

Judge Thompson

DIVERSITY IN ACTION:

A NAVAL ACADEMY APPROACH

FOR THE LAST SEVERAL YEARS, THE UNITED STATES NAVY HAS BEEN VERY ACCOMMODATING TO THE AMERICAN COLLEGE OF TRIAL LAWYERS, PROVIDING SOME OF THEIR FINEST TO SPEAK AT MEETINGS. “SOME OF YOU NO DOUBT WILL REMEMBER ADMIRAL MCRAVEN, A NAVY SEAL AND COMMANDER OF THE U.S. SPECIAL OPERATIONS COMMAND, AND THAT STERLING SPEECH HE GAVE A COUPLE YEARS AGO AT THE 2015 ANNUAL MEETING IN CHICAGO. TODAY IS NO EXCEPTION,” SAID PAST PRESIDENT **MICHAEL W. SMITH** OF RICHMOND, VIRGINIA, IN HIS INTRODUCTION OF **CAPTAIN PAT L. WILLIAMS, PH.D., PHR.**

QUIPS & QUOTES

We do a lot of surveys and we do a lot of focus groups. One of the things the midshipmen will say to us is, ‘If I can’t look at the leadership and see someone who looks like me, then why should I stay?’

Capt. Williams

Williams currently serves as Deputy Director of Field Support Activity at the Washington Shipyard in the District of Columbia. “But that’s not why she’s here. She’s here to talk about her immediately preceding post in the Navy, which was serving as the Chief Diversity Officer at the Naval Academy at Annapolis,” Smith said.

Born and raised in the Mississippi Delta, she went to Mississippi State University, where in 1982, she graduated cum laude. Not long after, she enlisted in the Navy as a yeoman. When she decided to extend her tour, her superiors, having recognized her merit, asked her and leaned on her to become an officer in the Navy.

In 1989 she was commissioned via Officer Candidate School. She graduated from the Naval Postgraduate School in December 1995 with a Master’s in National Security Affairs – Area Studies (Western Hemisphere). She went on to obtain another master’s degree, in National Security and Strategic Studies in 2001 and then a PhD. in Organization and Management, specializing in human resource management.

“Captain Williams has acquired far too many awards and commendations for us to talk about them today. It is clear, however, she rang the bell of the Navy brass. Because in 2007 she was appointed to Annapolis to the Naval Academy, the crown jewel of the United States Navy, as not only a teacher in ethics, but as its Director of Admissions. Having met with distinction the high standards in education experience in human resources, she was bumped up in 2014, but kept at the Naval Academy. That’s when she became the Chief Diversity Officer,” Smith said.

Williams credits being from the South as something that aided her along her career path. “You treat people as you would want to be treated. I just grew up that way. I’m from Mississippi. We’re laid back, we believe in Southern hospitality. We believe in respect and dignity for all persons.”

During her time as Chief Diversity Officer, “I rediscovered my passion for what I’ve found that I’m good at, and that’s working with people. Growing up, no one could have told me that I would have been interested or good at teaching, standing in front of a crowd and talking to young people. They give you so much energy at the Naval Academy. The Office of Diversity stood up in 2008 when the Navy decided not only did we want more diversity, we wanted to be more reflective of the nation of which we serve. We also wanted to focus on STEM education, and bringing young people more into the technical realm of what we are sworn to protect.

“We focused on our strategic plan, which is to admit, recruit and train the talented and diverse brigade of midshipmen. My office not only focuses on the students which we call the brigade of midshipmen, we also focus on the faculty and the staff as well. The mission of the Naval Academy is to foster inclusive excellence throughout the brigade of midshipmen, to ensure everybody is treated with dignity and respect. If you start with that realm of treating each other the way you would want to be treated, we think that goes a long way in fostering that inclusive excellence that we want to be pervasive throughout the Navy.”

One of the challenges the Navy has had to deal with is to retain young people. “How do we retain women, minorities, to rise to the top of our leadership? One of the efforts we’ve done is trying to go out and recruit young people, to hopefully help them stay longer, and make sure that their careers are conducive to service. We try and create a climate of trust in that esprit de corps. We do a number of different initiatives. We bring in young people from across the nation, from every state in the nation, every territory, and even foreign countries.... Our strength is in diversity and differences.”

The admission process ensures that entering midshipmen have the capability to meet the academic and military challenges of the Naval Academy. It’s four years of academic rigor, but 85% of those young people graduate and go off to serve our country. “We like to say we hire all of our graduates when we’re out there recruiting for America’s talent. We’re in the war for talent, as is every other Fortune 500 company and every other organization. They either go Navy, or they have the option to go Marine Corps. Sometimes we have a few who end up going Air Force or Army.” The recruited athletes graduate at a higher rate, with the last couple of years seeing a 90% graduate rate.

The path to Naval Academy typically starts one year prior, when a senior student comes to the Summer Seminar program. The Academy approaches influencers and leaders – business, community, churches – to share the many programs being done by the military. “If we can get these students for a week, then we can turn them around, and have them come to the Naval Academy.”

In addition to the Summer Seminar program, the Academy started a STEM camp (science, technology, ▶





engineering, and mathematics) for eight to eleventh grade students from throughout the country. “We’re trying to show them what we, as a service, do that’s unique,” Williams said.

The students who attend the STEM camp may “never ever serve in the military, and that’s okay. As long as they go out and contribute to society in some positive way that was one of our goals.”

CLASS PORTRAIT

The Academy looks at over 12,000 applications per year in the admissions process, with the goal to bring in a diverse range of midshipmen. “I can proudly say we have about 34% of our brigade that’s women and minorities. Of our women, we have about 26% that’s in the brigade of midshipmen, our student body. Our student body’s about 4,400. More about the class of 2020, we have representatives from 14 or so different countries.

“Last year, we celebrated the fortieth anniversary of women being admitted to all the service academies. We did a year-long celebration. They joined the class of 1976 and graduated in 1980. We had the first African American female back at the school.

“One of the struggles we went through when we were planning the celebration is some of the women didn’t want to come. Because, as you know, we have unconscious biases that we try to work through. We try to bring those to light to try to get rid of those and be inclusive so that we don’t commit those subtle micro-inequities. But we convinced the ladies to come back...and it was so emotional. There were tears running down their faces, some of them couldn’t even believe that they got up the courage to come back. They couldn’t believe the progress that we’ve made, and the progress that we continue to make. It was a healing and cathartic process for them.”

To make the incoming class as diverse as possible, the Academy works to partner with communities “where we may not be able to get into, to deal with local influencers, such as football, basketball or baseball teams.”

The Washington Nationals and the Boston Red Sox play an exhibition game where they honor the military at every event. These kind of events show potential midshipmen, “the art of the possible.”

“I used to be worried about our future, but having now spent six years at the Naval Academy, I’m no longer worried about the future. There are some amazingly gifted young folks there.”

The art of the possible is also reinforced by the list of notable graduates from the Academy. It includes one U.S. President; three Cabinet Members; nineteen Ambassadors; five State Governors; two Nobel Prize Winners; fifty-three Astronauts and fifty-nine Rhodes Scholars. “Our graduates give a lot back to their alma mater, and we’re very appreciative of that.”

Sharing best practices and benchmarking with other branches is common. A question that Williams received from the Air Force Academy was how the Naval Academy has such low attrition rates. Her answer, “It’s one of the things we call intrusive mentoring. We do one-on-one mentoring, and that’s what I find so interesting and so rewarding. You get to sit with young people.”

Williams shared the story of a young lady who the Academic Board of the Naval Academy had voted to separate from when first started working for the Academy in 2014. “The Superintendent, Vice Admiral Ted Carter, who can save the student should he desire, decided, ‘Not so fast.’ He turns to me, and said, ‘Pat, I want you to work with her.’ I’m thinking, ‘I just got here.’ So I said, ‘Roger that, yes sir.’ She’s a Latina female, she’d been on her own since she was thirteen. She’d done three years in the military, she’d served in Djibouti, Africa. Somebody saw something in her and encouraged her to apply to the Naval Academy. She comes to the Naval Academy, and she’s a little bit older, twenty-six, twenty-seven, whereas most of the students are twenty-one, twenty-two, twenty-three. She just was not getting along with these young people that she called ‘privileged.’ I said to her, ‘You know, Rosa, you’re privileged, too, to be here.

Not everybody gets to come to a service academy.’ I worked with her for two years, and after she got academically set, I said, ‘Rosa, you don’t have to come see me once a week anymore. You’re academically set, you’re going to be fine, you’re going to graduate.’ She’s like, ‘Oh no, ma’am. I want to keep coming to see you. This is the highlight of my week. I get to sit down with a Naval Captain. We can talk about whatever I want to talk about. So, yes ma’am, I want to keep coming to see you.’ Rosa came to see me for two years, every week. She met my mother, she met my nieces, she met my nephews. She’s out in the fleet now, serving proudly in Norfolk, Virginia and doing a really great job at it. At one point, people questioned whether she could go off and serve in the United States Navy. But not only is she serving, she’s excelling at it...If you don’t take care of your people, at the end of the day, then how can you as a leader say you’ve been successful?”

A CHANGING WORKFORCE

“We all know our workforce is changing every day. According to the Department of Labor, by 2050 we’re going to be more than 50% minority. If anybody asks, ‘Why should we be diverse?’ Whether it’s midshipmen or whatever company you might work in, if the young people can’t look at the top and say, ‘There’s somebody that looks like me. I want to be like that person,’ then it’s more of a challenge to keep those people around.

“Diversity and differences are important. We realize that the business case has been made. Those people who think differently, who respond differently, they can bring something tangible to the table so we continue to focus on that. We have the support of both the Chief of Naval Operations and the Secretary of the Navy. They’re very supportive of everything that we’re trying to do over there. One day, hopefully, I’ll end up again at the Naval Academy. But I’ve had a great opportunity there. I love the opportunity to develop leaders, and we will continue developing, honorable, ethical leaders of character and consequence who will go off and serve our nation’s wars as necessary.”

WHO ARE THEY NOW?



STARTING HIS LIFE IN CLARKSDALE AND FILLED WITH HOPES AND DREAMS, THIS YOUNG MAN SET OUT ON A REMARKABLE JOURNEY.

He is recognized in a Hall of Fame with Sammy "Slingin' Sammy" Baugh, Paul "Bear" Bryant, Frank Broyles, Tony Dorsett, Bo Jackson, Dan Marino, Archie Manning and Herschel Walker.

A high school All-American, he attended university and became president of his business school

class while leading his football team to victory in a major bowl game over Texas. Scoring on a 92-yard run (the record still stands) he was named the game's most valuable player. This should not be a surprise as he led his conference in passing one year and total yards in another. In his spare time, he was on the varsity baseball team and played in the college World Series.

Good enough to be named to the College All-Star Team, he and his teammates upset the defending NFL champion Detroit Lions. This was a mere stop on his way to the National Football League, where he started as a defensive back (thirteen interceptions and four fumble recoveries), punted (one was sixty yards), backed up a legend at quarterback, completed passes and rushed for yards. The team won back-to-back NFL championships and he participated in a game called by many "The Greatest Game Ever Played."

Obviously this did not fill up his day. He attended not one but two law schools—Maryland in the fall while tackling, punting, passing, intercepting and running and Mississippi in the winter and spring, while maybe resting a bit. Throw in law review too, so not much rest.

After graduation and the end of his NFL career, perhaps things returned to what most of us might think of as normal. Not quite. Add a United States Supreme Court clerkship with Justice Tom Clark, a wonderful law practice, presidency of his state bar, his alma mater's alumni association, Jaycees and Rotary, chairing his church board and a community foundation, participating on a historical commission, piloting his own airplane and frequent lecturing on the United States Constitution. Of course, he was inducted as a Fellow of the College and served as a State Committee Chair and Regent.

Recognized by the *Wall Street Journal* along with Justice Byron White and President Gerald Ford, he has received Lifetime Achievement Awards from several organizations including his state bar.

He has been inducted into his university's halls of fame (two). On January 1, 2018 he was inducted into the inaugural Sugar Bowl Hall of Fame with a list of legends.

Of all his accomplishments, dreams and hopes, the most beautiful was his fifty-six years of marriage with his beloved Carolyn, affectionately known as "Lyn" and their children, Allison, Raymond and Beverly.

What a remarkable Fellow and inspiration.

Clarence L. Pozza, Jr.

Detroit, Michigan

Editor's Note: Sadly, the Fellow featured in "Who Are They Now," Former Regent Raymond L. Brown of Gautier, Mississippi, passed away unexpectedly on December 25, 2017. The story was written before his passing. A tribute to him will appear in the In Memoriam section of a subsequent issue of the *Journal*.

NOW?

**So, who is this Fellow?
I doubt you need any hints,
but if so.....**

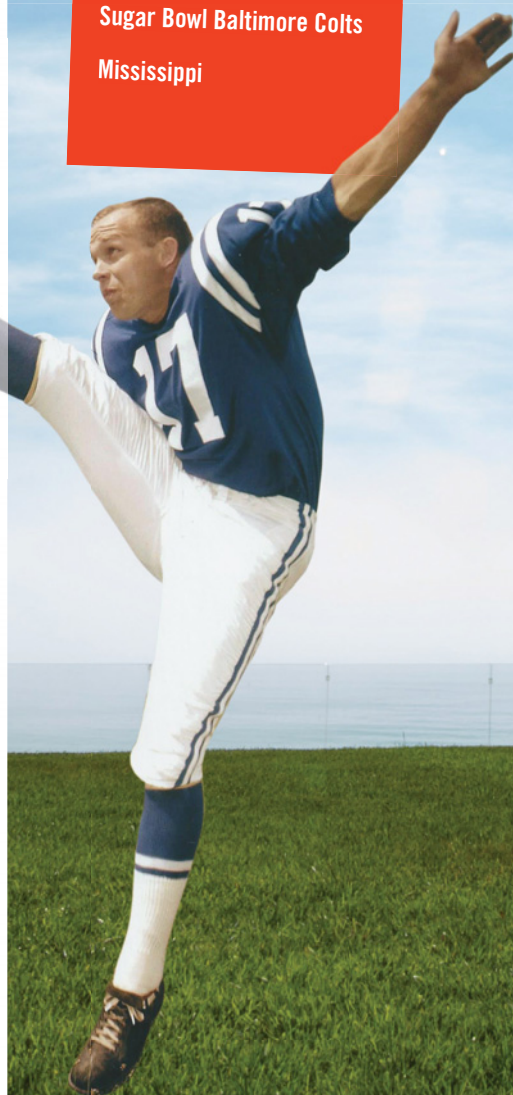
Clarksdale Johnny Unitas

Pascagoula Weeb Ewbank

Gautier Ole Miss

Sugar Bowl Baltimore Colts

Mississippi





QUÉBEC COURT OF APPEAL JUDGE ON THAT MONTRÉAL SOUND, LEGAL BILINGUALISM

THE HONOURABLE NICHOLAS KASIRER WAS NOMINATED TO THE HIGHEST COURT IN QUÉBEC, THE COURT OF APPEAL IN 2009. FROM 2003 TO 2009, HE WAS JAMES MCGILL PROFESSOR OF LAW AT MCGILL UNIVERSITY AND DIRECTOR OF THE QUÉBEC CENTRE FOR PRIVATE AND COMPARATIVE LAW AT MCGILL WHERE HE ALSO SERVED AS DEAN OF LAW. A FORMER LAW CLERK FOR THE HONOURABLE JEAN BEETZ OF THE SUPREME COURT OF CANADA, HE WAS SWORN IN AS A MEMBER OF THE BAR OF QUÉBEC IN 1987.



“His students, of among other subjects, family law and property law, revered his pedagogical prowess, and reveled in his erudite teachings, sparkled by a clever sense of humor,” said **Bernard Amyot, Ad.E.**, Chair of the Canada-United States Committee, in his introduction of Kasirer. “Many of his former students have confided that he was not only brilliant, but most importantly, always engaging and thought provoking.”

A multi-faceted individual who readily embraces diversity and constantly nurtures a dialogue between various communities, he spoke during the 2017 Annual Meeting in Montréal on the “Montréal sound,” “where English and French, common law and civil law, cohabit and nurture each other, not only in the courtrooms, but everywhere else in the city in so many fascinating and often unexpected ways,” Amyot said.

Judge Kasirer began his presentation by referencing the style of music associated with different cities. “Detroit is the home of soul, Motown. Nashville, for country and western music. New Orleans, celebrated for jazz and blues, and the distinctive New Orleans sound with its cadence and inflections and Afro-American beats, Zydeco. All making music something of an unruly mix in that great part of Louisiana. Musicologists have studied the phenomenon. They’ve observed that a common musical voice can sometimes be connected to a place, however disparate the work of the artists who live there.

“I want to suggest in a similar way to music, the law associated with a particular place, often has a characteristic sound. Western law is dominated by written words, in statutes, contracts and other juridical acts, in formal legal deeds, lawyers letters, judicial decisions,



legal scholarship. But Western laws remain, in large measure, a culture of orality, a spoken culture, in which the voice of the law plays a key part. It is not enough to think like a lawyer or even to dress like a lawyer. You must sound like one, alive to the manner in which voice plays in grounding legal authority where you practice law. The “Montréal Sound” shows the vocabulary, the everyday vernacular, its prevalent legislative and judicial style, the rhythms and cadence of courtroom pleadings and boardroom negotiation, the law in this part of Québec has a distinctive voice.

“Part of the explanation is wrapped up in Canadian legal history ... it contributes to the unique manner in which jurists from this mixed jurisdiction express legal ideas. Language, that delightful, inspiring and occasionally exasperating encounter between French and English, has been a centerpiece of Québec social life for hundreds of years. This encounter has been a key construct for Québec law and, not surprisingly, the dialogue between English and French is more than just background noise as we seek to discern the Montréal Sound of the law.”

PERPETUAL DIALOGUE ADDS TO MONTRÉAL SOUND

His remarks focused on two central enactments that give the language of Québec law its distinctive voice, the first being the Civil Code of Québec, “a civil code of which the Romanesque tradition for civilian legal ideas are given full expression in French and English.”

The second enactment is the Canadian Constitution which establishes for that Code and for Québec’s other laws that French and English have equal authority in stating the law. “My thesis, a simple one, is that these two enactments throw the languages of the law into a kind of perpetual dialogue in the production of meaning for law and for the Montréal Sound.

“This incredible book sets forth Québec’s fundamental private law and Napoleonic form. One can hear the original sound of the law in both French and English. The lexicon of private law crackles with distinctiveness. Elsewhere in North America, one will be hard pressed to encounter expressions like “aleatory contracts,” and “alienation of patrimonial rights,” the “action in passation of title.” We say... “radiation of a hypothec,” where just about everyone else in North America, with

a possible exception our Louisiana friends, will say “cancellation of the mortgage.” It does track the French “radiation d’une hypothèque,” although in English, it sounds dangerous, maybe even “nuclear.” Québec lawyers prefer “quasi-delictual obligations” to the “duty of care in tort,” or to “chirographic claims” at meetings of creditors, and without flinching refer to “servitude de bon père de famille,” to “real” as opposed to “consensual contracts.” They call a “trust” a “patrimony appropriated to a purpose,” and speak of “sumptuary improvements” to property.

“This unique lexicon reflects a different way of knowing the law and gives voice to the Romanesque connections of legal terminology, the whole mediated through the French language. Now, Lord Reed [who spoke before him] will no doubt, with his Scots law experience, recognize emphyteusis, antichresis and usufruct, recycled Greek and Latin words brought neologistically into civilian English.

“The vulgar substitution, there is no vulgarity for a well-trained Québec jurist, and who else can speak of “bare ownership,” “visattractive,” and “virile parts” in a legal document without blushing, but someone who recognizes the civil law accent of the Montréal Sound.

“The civil law in English does have a distinctive sound setting it apart lexically and conceptually from the vocabulary of the common law. Its distinctiveness is in part the result of the powerful imprint of French legal ideas and of the French language on legal parlance. A generation has passed, twenty-five years since the enactment of this modernized Civil Code of Québec with its announced ambitions to lay down the fundamental private law in French and English for Québec. The bilingual code has been around the world as a tool of law reform for legal systems in emerging free-market economy in Europe, rebuilding economies in Latin America and Asia and in the Caribbean.

“Sufficient time has passed to give an opportunity to listen and evaluate the voice of the Montréal Sound. The renewed French text in this modern civil code in many ways is a superb linguistic accomplishment, sophisticated, modern, elegant French that is if I may say so, the envy of the Parisian legal set. The French lawyers are using the Québec civil code as a model for the reform of their fundamental private law. But the Québec experience is also

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Very often French words are suavely introduced in juridical English. We speak of, in English “mitoyenneté” for the regime of the undivided co-ownership of the common laws, the “mainlevée” as a release granted on security and property. The “dation en paiement clause” sometimes called the “dation in payment clause,” where the debtor agrees to transfer ownership of a thing as an alternative to performing a contract. And one of my favorite is the “don manuel.” This is the gift of property perfected by delivery of the thing given to the donee. So “don” in French is a gift, “manuel” refers of course to the “hand,” delivered by hand. I remember the first time one of my professors at McGill said “don manuel.” I thought he was referring to a character in a Spanish opera.

Judge Kasirer

a bold reminder that the English language is fully capable of expressing the genius of the civil law without betraying the conceptual foundations of the continental legal tradition or giving in to the facility of using English words associated with the common law to do the work. English is, of course, first associated with the common law. But it is sufficiently elastic to give voice to civilian ideas. Interestingly, the common law has prospered in French, in this country, in particularly in this province, in Québec’s criminal courts.

“Key to this notion of a codified Montréal Sound, there are two equally potent voices for enacting law, French and English that enjoy equal authority of expressions of legislative intention. This linguistic equality for the manner in which Québec law is written and spoken is enshrined as I say in the Canadian Constitution. In theory at least, these languages have been tuned together, and, if not actually, harmonized by a regime for legal bilingualism, imposed on the Civil Code by history and section 133 of the Constitution Act.

“Formerly equal, perhaps, but is a matter of legal sociology, French is the principal language of expression for the law here. The French language guides the way in which the law is

lived particularly in matters of private law in Québec. While the French language is a tiny minority in North American legal culture, it thrives and that should be underscored as a linguistic setting for the development of Québec's modern civil law culture. Jurisprudence, legal scholarship, the practice of law by lawyers and notaries here, largely carried out in French although, I should say, there is a vigorous English-speaking bar with a great and storied history here. Parties can speak French or English before the Québec's courts, and miraculously sometimes do it in the same case at the same time with no translation. The parties, at least the judges and lawyers involved being expected to understand both languages at once, at least in an ideal world.

"In my own work at the Québec Court of Appeal, about 80% of our cases are beautifully pleaded in French. The law of France remains very influential to the development of Québec legal ideas and, of course, is almost exclusively encountered in French. French is the dominant language of legal education here, even when the criminal law in the English tradition is the object of study. Usage, that great tyrant and great creative genius for language, has had an impact on development of the Montréal Sound. That explains why the voice of the civil law in English bears these French inflections notwithstanding formal bilingualism. When a Québec lawyer states the laws in English, you can hear the influence of legal ideas and the French language."

COMMUNION OF TWO LANGUAGES

"This all seems very abstract - just what is the Montréal Sound? Let me give you a provision of the Québec Civil Code, one which I hope at least in substance will ring somewhat familiar to you, even if you know little French and little civil law. Article 1378 sets out a definition of contract, and a contractual obligation for this civil law. Look at first to the French paragraph and listen for the sound of the civil law: "le contrat est un accord de volonté par lequel une ou plusieurs personnes s'obligent envers une ou plusieurs autres à exécuter une prestation." Three key expressions "accord de volonté," "s'obligent" and "prestation." "Accord de volonté," being the idea of an agreement, "s'obligent," the mutual commitment inherent of the contractual promise and "prestation," the promised performance that which supports

making the contract binding. Article 1378 is not peculiar to Québec as a similar provision is found in the French civil code. Language isn't identical but very close. In turn it draws direct inspiration of this scholarship from Robert-Joseph Pothier, the eighteenth century French jurist, who explains that the contract was one of the five sources of obligations. This is classical civil law, a similar rule is found in the Italian code, the Spanish code, the German code, the Romanian code, the Argentinian code and more now.

"Listen to the English translation and its Montréal Sound: "A contract is an agreement of wills by which one or several persons obligate themselves to one or several other persons to perform a prestation." One is immediately struck by the strangeness of "agreement of wills," not immediately recognizable to most lawyers working with contracts outside this province. One hears the French "accord de volonté" as if it's shouting across the page to the codal text in English. One might have hoped for something more idiomatic as an equivalent to the French "accord de volonté," which itself is so beautiful. A different and more familiar metaphor "the meeting of the minds," for example, had been suggested by this civil code revision office but was jettisoned at the late stage by drafters who apparently thought that while identical conceptually to the "accord de volonté," a meeting of the minds sounded too English, and by that I mean, too closely allied with the English law, they preferred this Gallic sounding and to my ears slightly tinny, I say so respectfully, agreement of the wills. What about "obligate themselves" for "s'obligent," valid words of course in English but wouldn't "undertake" have been more congenial? And how does one explain a "prestation" to a lawyer in New York or Chicago, again, a legitimate English word from the Latin "prestar" to perform, to furnish, but obviously chosen to mimic the French "prestation" as a means of saying that which the debtor "must do" or "not do" as the substance of the contractual duty. So "prestation" it is, anything to save the civil law from the evils of the common law consideration, a word banished from the civil code as conceptually uncivilian.

"One might well ask whether the Montréal-sounding English version of 1378, just to take this one example is too heavily accented by the French. The texts do seem to meet the

exacting standard of the Constitution French and English have here and apparently a common meaning. But is the English text translation it too literalist to be good English, or is this just the Montréal Sound? For those of you who have taken the metro instead of the subway in your time here, or bought a pack of gum at a "dépanneur" rather than at a "convenience store." You might have an inkling of what I mean here. Article 1378 is not just word for word translation; it seems to reflect a conscious choice by those in officialdom to mark the English text with the French language. Almost as if the legislative powers that be sought to leave the source text inside the target text rendered in English. Is this a bad thing? I think not."

WHAT HAPPENS IN THE COURTROOM

"Montréal is sometimes thought of as the two sides of the legislative page. As divided linguistically and at the worst moments of Montréal history, we live at something that was described by one great novelist as 'the two solitudes,' English and French, being divided by a linguistic no-mans-land, Saint Laurent Boulevard. There is an old map that shows a red line dividing Montréal in two, the English-speaking community largely concentrated to the West and the French community largely to the East.

"This is the antithesis about what I am speaking about where encounter is the central idea. The Constitution provides that in the courtroom, either English or French may be used and indeed it is used. If you take some time in you visit here to visit Montréal's court house, Palais de Justice, which by an interesting course of local geography is located at the source of Saint Laurent Boulevard, which as I said mythically divided Montréal into two linguistic solitudes. Within that court house there is a glorious mix of English and French going on in every single courtroom, in virtually every case, you hear bits of English and bits of French as the lawyers seek to figure things out.

"I'll leave you with this image: the courthouse looking over Saint Laurent Boulevard, the once divider of Montréal as if to say this metaphor of encounter, this metaphor of exchange is what should guide us as we go forward. It is the Montréal Sound and I invite you to enjoy it in the few days that remaining of your trip here."



CNN ANCHOR TALKS ON THE ROLE OF THE PRESS DURING TRUMP'S PRESIDENCY

KATE BOLDUAN, A CNN ANCHOR AND HOST OF CNN'S MORNING SHOW "AT THIS HOUR" AND "STATE OF AMERICA" ON CNN INTERNATIONAL SPOKE AT THE 2017 ANNUAL IN MONTRÉAL ABOUT PRESIDENT DONALD TRUMP AND THE PRESS. JOINING CNN IN 2007 AS A NATIONAL CORRESPONDENT, SHE COVERED THE 2008 PRESIDENTIAL ELECTION AND ALSO SERVED AS ONE OF CNN'S CONGRESSIONAL CORRESPONDENTS. AFTER THAT SHE CO-ANCHORED "NEW DAY" WITH CHRIS CUOMO AND "THE SITUATION ROOM" WITH WOLF BLITZER.

Her professional path "is equivalent of someone who went from college to triple A, to the majors in two years and then made the all-star team in every year after that.... She is a superstar of journalists," said Past President **Robert L. Byman** in his introduction.

Bolduan began her presentation with a few quotes.

"Nothing can now be believed which is seen in a newspaper."

"The press is the enemy."

"There's that major league asshole from the *New York Times*."

She noted that while all three were said by a President of the United States about the press, none of them were by President Donald Trump. The quotes were by Thomas Jefferson in 1807, Richard Nixon in 1972, and George W. Bush in 2000. "They demonstrate that every president applauds favorable coverage in the media and disdains the critical kind," she said.

"What is new in modern times is having these private grievances aired so publicly and so often in real time. The earlier quotes were taken from a private letter, a private conversation and a taped conversation in the Oval Office. In contrast, President Trump, speaking at the CIA on his first full day in office, began by saying: 'I have a running war with the media. They are among the most dishonest human beings on earth.' In May, President Trump tweeted: 'The fake news media is officially out of control. They will do or say anything in order to get attention. Never been a time like this.'"

NEW LEVEL OF PRESS CRITICISM

"President Trump doesn't just stick to a broad list of grievances against the media as a whole, he also gets quite specific and personal. He recently tweeted: 'I heard the poorly rated Morning Joe speaks badly of me. Then how come low IQ crazy Mika along with psycho Joe came to Mar a Lago three nights in a row around New Year's Eve and insisted on joining me? She was bleeding badly from a facelift. I said no.'"

"This level of criticism is something that we have not witnessed before. It is not only the nature and frequency of the criticism of the press that sets President Trump apart from his predecessors. It is also the lack of access that President Trump has offered the press. He has broken something of a record. Every president since Dwight Eisenhower has held more press conferences than has President Trump at this point in his term.

"A July report by the Sunlight Foundation, a nonpartisan, nonprofit organization advocating for more open government, concluded that despite the perceived transparency of this President through his Twitter feed, his administration governs in a very secretive way. He has not released his tax returns, something that has been a standard ever since Richard Nixon. The daily press briefing became so restricted at one point early in this administration that CNN had to resort to hiring the sketch artist that it normally sends to court to make sketches and send him to the White House to capture the briefing.

"In April the White House announced that it was no longer making public the visitor logs of the White House. Without those logs, the public has no idea who is meet-

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How cool is it that you are important enough and recognizable enough to be spoofed on *Saturday Night Live*? And then when they try to poke fun at you, all they can think of to say is you've got great hair and a big brain.

Past President Bob Byman, in his introduction of Bolduan

ing with the President, who's meeting with his staff. Where does that all leave us? A more divided country than ever. The public's view of the press is now one more issue over which Americans fall along partisan lines.

"The Pew Research Center put out a study on this in March 2017 and found the "sharpest divide ever measured" on a pretty basic thing, which is, does critical coverage by the press keep political leaders in line, or does it keep them from doing their jobs. Some 89% of Democrats responding said that the news keeps leaders in check. But only 42% of Republicans said the same. That's a 47 point gap. Pew has been asking this very same question since 1985. They've never found it this far apart.

"It seems to suggest that there is something more going on than just a shift in the support as parties in power shift. Just last year in the middle of the Presidential primary season, 77% of Republicans supported the watchdog role of the press, as did 74% of Democrats. With that striking of a divide in the most recent 2017 poll on what is the role of the press, it should then come as no surprise that Americans largely don't view the national media as fair and do not trust it.

"Pew also found 73% of those polled in 2017 thought the media tends to favor one side when covering political or social issues. That is on par with previous years. But when they broke it down by party, they again found the current gap between Republicans and Democrats. That very same Pew study found only 11% of Republicans trust the information they get from national news, while 34% of Democrats said the same.

"Interestingly, though, when Pew asks this question about local news outlets, not national news outlets, local news organizations fared slightly better among those same groups, which of course makes you wonder whether one of the country's most consistent polling trends rings true here as well.

"When I did local news in North Carolina, I had more than one door slammed in my face for trying to report the news. Covering Congress for CNN for years, I've had veteran senators literally jump into elevators or jump into the restricted areas where the reporters are not allowed, in order to avoid taking my questions. On my own shows, it's often more commonplace for politicians to dodge the questions rather than answer them... The primary responsibility of the press is holding the government of the people accountable to the people.

"So, from the President who has taken criticism of the press to a new level, to the polling data that we've gone over that says the public

is more divided than ever in their attitudes towards the press, where does this all come from and where does this all go? That is a big question with not a lot of answers right now."

INCREASE OF NEWS SOURCES AND FAKE NEWS

"One thing to consider is scope. There are now more news outlets than ever, covering just the White House beat. Additionally, the public is getting their information in a different way than ever before. The broadcast networks, the cable networks, national and local papers, online news sources, the radio and social media, of course, and now the advent of fake news, which itself, is a very real problem. Way back in 2016, fake news meant totally fabricated stories made to appear real by their design, but they are total garbage amplified by the Internet.

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My first boss in television was the late Tim Russert (the longest-serving moderator of NBC's Meet the Press). He once said this in the aftermath of Hurricane Katrina: "The primary responsibility of the media is accountability of government, whether it's about lying under oath, which upsets Democrats, or the mismanagement of responding to hurricanes, which happens to upset Republicans."

Kate Bouldan

"Stories like 'Donald Trump gets the Pope's endorsement', 'Hillary Clinton's campaign linked to a child sex ring' – these were actually fake headlines pushed out this past election season. They were clearly fabricated, but also clearly confusing enough that people wondered if the Pope had actually weighed in on the U.S. election. And a 28-year-old man from North Carolina believed that fake Clinton campaign story enough that he showed up at a Washington, D.C. pizzeria in December with a rifle, a revolver and a shotgun because he wanted to save children being exploited. In March, he pleaded guilty to felony charges. In June, he was sentenced to four years in prison. Again, the story was completely made up, but was circulated and amplified in online articles.

"That is real fake news, if you will. There's no real answer in how to effectively combat fake news, the level of it and how fast it's coming

without getting in the way of the free press.

"There's also the other fake news these days. Or rather, the hijacking of the term now used to try to dismiss any reporting or coverage that anyone doesn't like. The scope of what the government, the public and the press are now up against in terms of just trying to get to the facts and the truth is unlike anything we have ever seen in the past. It's not just a challenge for journalists, but also any consumer of journalism as we all try to sort through what is real. What is fake? What is truth and what's spin? No matter where you stand on the political spectrum, what is abundantly clear is that we are all in this together to try to repair these crucial relationships.

"I started my remarks by reminding you that rarely does a President have a cozy, friendly relationship with the press. What fun would that be? But I will also remind you of this: It is the only business in America that is specifically protected by the U.S. Constitution. There's an important message in that. The founders understood way back when that without a free press, their fledgling experiment we call democracy would never survive. You don't have to take it from me; here's President John F. Kennedy in 1962:

"It's never pleasant to be reading things frequently that are not agreeable news, but I would say that it's an invaluable arm of the presidency as a check, really, on what's going on in the administration, and more things should come to my attention that cause me the concern or give me information. So I would think that Mr. Khrushchev operating a totalitarian system, which has many advantages as far as being able to move in secret and all the rest – there is a terrific disadvantage not having the abrasive quality of the press applied to you daily, to an administration, even though we never like it, and even though we wish they didn't write it, and even though we disapprove, there still isn't any doubt that we could not do the job at all in a free society without a very, very active press."

"That rings just as true today. We all - the President, the media and the country - need to ask ourselves the question: How do we get there again? No matter how we got here, no matter how damaged are these crucial relationships the health of our democracy, can we get back there? I'd like to say yes, but I do know the only way it's going to be possible is if we can do so together."

Carey E. Matovich
Billings, Montana

Bouldan's full presentation can be viewed on the College YouTube channel. ■



WOMEN FELLOWS LUNCHEON MENTORING AND MEETING ROLE MODELS

THE WOMEN FELLOWS LUNCHEON WAS INITIATED DURING A PHONE CALL IN 2014 WHEN THE HONORABLE PATRICIA A. SEITZ, SENIOR U.S. DISTRICT JUDGE OF THE SOUTHERN DISTRICT OF FLORIDA MADE THE SUGGESTION TO PAST PRESIDENT **CHILTON DAVIS VARNER** WHO RECOUNTED TO ME HOW IT ALL CAME ABOUT. THE CONCEPT WAS FOR WOMEN FELLOWS OF THE COLLEGE TO JOIN FEMALE JUDGES TO MENTOR YOUNG FEMALE LAWYERS WHO ASPIRE TO BE TOP TRIAL LAWYERS. THE FIRST SUCH LUNCHEON TOOK PLACE AT THE WILKIE D. FERGUSON, JR. U.S. FEDERAL COURTHOUSE IN MIAMI, FLORIDA IN THE SPRING OF 2015 DURING THE COLLEGE'S SPRING MEETING IN KEY BISCAYNE. FEMALE MEMBERS OF THE JUDICIARY INVITED TWO RISING YOUNG FEMALE ADVOCATES TO LUNCH WITH THE WOMEN FELLOWS OF THE COLLEGE. REPORTEDLY, IT WAS A SMALL GROUP. PAST PRESIDENT VARNER GAVE AN INTRODUCTION OF THE COLLEGE, ITS HISTORY AND ITS MISSION AND JUDGE SEITZ, A TRAILBLAZER HERSELF, SPOKE OF HER HOPES THAT YOUNG LAWYERS WHO HAD BEEN INVITED MIGHT FIND MENTORS THROUGH THE LUNCHEON AS WELL AS IDENTIFYING FUTURE AND DIVERSE CANDIDATES FOR FELLOWSHIP. AS A RESULT OF THIS INITIAL EFFORT, THERE HAVE BEEN WOMEN FELLOWS LUNCHEONS AT SUBSEQUENT MEETINGS IN CHICAGO, PHILADELPHIA AND MOST RECENTLY ON SEPTEMBER 14, 2017 AT MONTRÉAL'S VENERABLE MOUNT ROYAL CLUB, HOSTED BY **THE HONOURABLE MADAME JUSTICE SUZANNE CÔTÉ** OF THE SUPREME COURT OF CANADA, WHO WAS HERSELF INDUCTED AS A FELLOW IN 2005.

Admittedly, Montréal was the first occasion that I had the opportunity to attend. I was deeply gratified to see an attendance of approximately 100 women, including not only many representatives of the Québec judiciary but also former and current judges of the Canadian Supreme Court, Chief Justice of the Court of Appeal of Québec Nicole Duval Hessler, Associate Chief Justice of the Superior Court of Montréal Eva Petras, our sensational host and speaker Justice Suzanne Côté, as well as many women Fellows from all over the U.S. and Canada. It was not difficult to remember that when I began to practice law there were only two female judges on the Québec Superior Court and none on the Québec Court of Appeal or Supreme Court of Canada. In 1982, Bertha Wilson became the first female Justice of the Supreme Court. Suzanne Côté is now one of four female Justices who grace our highest Court. Both the Chief Justice of the Supreme Court of Canada and the Québec Court of Appeal are women.

Past President Varner inspired the attendees with the story of the inception of the College in 1950 and women's growing participation as esteemed Fellows of the organization.

Madame Justice Côté then took the podium to share her insights. She started her career as a young lawyer from rural Gaspé, a bit of an oddity at that time, who then made the journey to Montréal where she became an associate



Justice Suzanne Côté addressed attendees during the Women Fellows Luncheon at Montréal's Mount Royal Club during the 2017 Annual Meeting in Montréal.

at the prestigious law firm of Stikeman Elliott. She ultimately became head of the litigation department of two large law firms and recounted her trajectory to leadership and a seat on the national board of directors of her firm. Côté, of course, became one of the most successful and sought-after trial lawyers in Canada. She then joined a small elite group before she was appointed directly from the Bar in 2014 to the Supreme Court of Canada. Justice Côté reaffirmed the need for women to shed any reluctance to openly aspire to and to voice their ambitions.

The luncheon took place at the much storied and elite Mount Royal Club. Justice Côté reminded us that this historical landmark had been a male-only establishment and, in fact, the first few times that she was invited as a guest, she was directed to the side door as women were not even allowed to enter the front door. It was indeed an astounding odyssey from the side door to the top of the Canadian bench. This time she was the sought-after presence who marched right through the front door of that former male bastion.

Seated at my table were four young female lawyers who had the opportunity to enjoy casual conversations with the Chief Justice of Québec, the Associate Chief Justice of the Superior Court, Madame Justice Côté as well as Fellows of the College. It was a remarkable experience for everyone. Networking works. It provides inspiration, mentorship and the opportunity to meet role models. I personally can attest to the fact that I am still in regular contact with one of the young lawyers I met for the first time at the luncheon. I am sure many other bonds were formed.

Looking around the room of approximately 100 women representing the Bench and Bar at the highest levels, one could not help but be impressed with what a powerful event it was. It was indeed fitting that **Suzanne Pringle, Ad. E.**, the Québec Province Committee Chair, was instrumental in the organization of this wonderful occasion. It was truly a celebration of excellence and a tradition of mentoring and collegiality that is now an intrinsic part of the College fabric.

Lynne Kassie, Ad. E.
Montréal, Québec



INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT MICHAEL E. MONE

INDUCTEES, SPOUSES AND THEIR GUESTS HEARD REMARKS FROM SOMEONE PRESIDENT **BARTHOLOMEW J. DALTON** DESCRIBED AS A “GOOD FRIEND AND A TRUE MENTOR.” PAST PRESIDENT **MICHAEL E. MONE** (1999-2000) OF BOSTON, MASSACHUSETTS, SPOKE TO THE ATTENDEES OF THE INDUCTION RECEPTION AND LUNCHEON, WHICH IMMEDIATELY FOLLOWED THE GENERAL SESSION ON SATURDAY, SEPTEMBER 16, 2017 AT THE ANNUAL MEETING IN MONTRÉAL. HIS EDITED REMARKS FOLLOW:

As a Past President of the College, I want you to understand how delighted we are to have the new inductees here today. I want to apologize to you initially for those of you who don't understand me. I never believed, until I started to speak around the College when I was president that I had any kind of an accent at all. I thought I sounded like Tom Brokaw. I had that nice middle of America accent. Then, I bought a new car. The phone wouldn't go on. It had a voice activated telephone, and it ignored me. It just wanted to have nothing to do with me. The dealer and I sat in the car and neither one of us could get the phone to go on. He was from Boston, too, so we got this guy in a Mercedes to come up to tell me how to get the phone to go on. We sat in the car and he said, "Give the command, Mr. Mone." I said, "Phone start." He said to me, "Mr. Mone, there's an R in start. This phone would really like if it heard start." I will also tell you that we have four Massachusetts inductees sitting over at table 10. They will be available for simultaneous translations after this speech is over.

Why are you here and why are we so proud to have you here? We're proud because, as you will hear at the Induction Ceremony, when the Induction Charge is read to you, your name is going to add luster to our roll. We have a Blue Book, and in that Blue Book is listed all of the Fellows of the College, the men and women who have qualified as the finest lawyers in the United States and Canada. I was reminded of that when I was President-Elect of the College. When you become President-Elect of the College, they congratulate you, and then they tell you, "By the way, you need six speakers next spring for the meeting" because that's what the President-Elect does. He or she is in charge of getting the speakers. I decided that we were going to have a part of the program on the impeachment of Bill Clinton that was going on.

I had no problem getting the Clinton supporter. I got Father Robert F. Drinan, S.J. who

was my dean at Boston College Law School, and was later a Congressman and then was at Georgetown. I had no problem getting a hold of him, but I had trouble getting someone on the Republican side.

Henry Hyde [U.S. Representative who managed the impeachment trial of President Clinton] was going to do it, but then at the last minute he wasn't able to attend. One of my congressional friends suggested I call Congressman Asa Hutchinson [who was House Manager in the Impeachment Trial of President Clinton], but I couldn't get past his aide. He's from Arkansas. Finally I said, "Look, I'm going send you the page in our Blue Book of the Arkansas Fellows of the College. Would you show them to the Congressman and ask him if he would come and speak to us?" I got a call back two and a half hours later. He'd be delighted to come after he looked at the roll. We are just as proud to add your name tonight.

The process of how you got here is unique. I think it's important to your spouses and partners to understand how you got here. You can't join the American College of Trial Lawyers. I sometimes think you can't un-join either, but you certainly can't join.

We ask, not only about your trial skills and not only about your ability to get up on your feet in the courtroom and try a case, we want to know about your integrity. There's nothing more important to us in the process. Your integrity has to be fundamental for the process. The College endeavors to have as its members, as its Fellows, the very best trial lawyers in the province or state, from which you come. We don't want the top 20%. We don't want the top 5%. We want people who everybody recognizes, just by their name and by knowing them that they are amongst the best in that state or province.

By the time you finish the selection process, we are very confident that we have sitting here the finest lawyers, men and women in their state or province. We are very confident that you will be added to the rolls of the

American College of Trial Lawyers, and that you will, in the words of the Induction Charge, add luster to our rolls.

What do we want you to do? First of all, we would hope that you just don't hang the plaque on the wall and don't come back. We want you to be active. We want you to serve on state or province committees. We want you to serve on general committees of the College, and most importantly, we want you to help us recognize the next generation of trial lawyers.

We want you to be a great trial lawyer. Be what you have been in the past and continue to be that. We want you to come back to these meetings. We want you to mentor other lawyers. All of you know what it is to be a great trial lawyer. You know the things that you should and shouldn't do.



In closing, and I address this as much to your spouses and partners, you have a right to be very proud to be here. Perhaps not as proud as you are, but nonetheless very proud. I welcome you and I look forward to greeting you when you formally become a member of this wonderful fellowship. I look forward, as the Induction Charge says, to having 'many happy years with you.'



INDUCTEE RESPONDER LOUIS CHARETTE RESPONSE ON BEHALF OF NEW FELLOWS

DUTY TO LOOK BEYOND BOLD POLICY STATEMENTS

FOLLOWING THE INDUCTION OF SEVENTY-EIGHT NEW FELLOWS, **LOUIS CHARETTE** OF MONTRÉAL, QUÉBEC, RESPONDED ON THEIR BEHALF. CHARETTE IS A PARTNER OF LAVERY, DE BILLY AND PRACTICES IN CIVIL AND PROFESSIONAL LIABILITY LITIGATION, PRODUCT LIABILITY, TRANSPORTATION LAW AND INFRASTRUCTURE AND AVIATION LAW. A GRADUATE OF MCGILL UNIVERSITY, HE WAS CALLED TO THE QUÉBEC BAR IN 1995 AND TO THE ONTARIO BAR IN 1998. HIS REMARKS FOLLOW:

It is an absolute privilege for me to stand before you to represent my fellow inductees and to respond on their behalf.

In the last two days, I've come to appreciate, that for each of us, the path to this stage has been both diverse and unique.

It is truly humbling to stand and represent such a distinguished group of barristers.

Having heard the Induction Charge, it is indeed an honor for us to have been asked to join your College.

My path to this stage started when I applied for admission to the Faculty of Law at McGill University. You see, at the time a second person also named Louis Charette, applied for admissions. On paper, we could easily be mistaken for one another. We even have the same middle initial, his name is Louis René, and mine is Louis Raymond. I was accepted to McGill University, he went on to study elsewhere. But he is a lawyer practicing in the province of Québec, and so occasionally we have been, over the last few years, mistaken for one another. He sometimes got the better end of it.

Sometimes.

When I received President's Dalton's letter asking me to become a Fellow of the College, I initially assumed that we once again had been mistaken for one another. I almost called Louis René, but then I thought my path to this stage has not been about mistaken identity. On the contrary, I usually stand out for being different.

AN EARLY LESSON IN BEING DIFFERENT

The first time I stood out for being different, I was eight years old. My parents had moved from the province of Québec to Toronto, Ontario. I spoke not a word of English. This is all my classmates needed to bring on the bullying and the name calling. To this day, I have no clue what a French frog has to do with me!

My parents taught me two things from this experience. The first, if you go out and you learn how to speak English, they are going to stop bullying you. If you'll bear with me, I'm still working on that.

More importantly, however, my parents' message was that being different builds character and confidence. Once you have that, you have an obligation to help those more vulnerable than you are who cannot help themselves. I was eight years old!

That's not what I wanted to hear, nor could I appreciate the significance of their advice. Really what I wanted to learn was how to throw a punch. That, I never learned.

My father however spoke from experience. He and his own father had been staunch minority French language rights advocates. In fact, today there is this street in suburban Ontario that bears my grandfather's name in memory of his contribution to the French-speaking community.

By the time I reached high school I once again stood out, this time for being gay.



The bullies wasted no time to bring it on. I may never have figured out what French frog had to do with me, but I quickly figured out what these other names meant. Today, I sometimes wear some of those names as a badge of honor. Missy, sissy, bitchy. I've heard them all. I was lucky, my family could not have been more supportive. Once again however, my parents reminded me of those lessons to be learned. As a teenager it is hard enough to be different, it was not what I wanted to hear. But already a path had been drawn.

When I became a lawyer, although some continued to use the fact that I'm gay as a cause for bullying, I more readily understood my parents' advice and the wisdom that they had tried to instill in me. I've since tried to use my own difference to advocate for diversity, in my everyday life and in our profession.

LEGAL SYSTEM SHOULD REFLECT SOCIETY IT SERVES

I have been inspired by a number of people. More recently, in a speech delivered before the Canadian Criminal Lawyers Association, the Canadian Minister of Justice The Honourable Jody Wilson-Raybould advocated that the new Canadian process for the nomination of federal judges was meant to foster the idea that Canadians will trust the judicial system if they recognize themselves within it. In 2012, the Chief Justice of Canada, The Right Honourable Beverley McLachlin, in her inaugural lecture to the Judicial Studies Committee, spoke of the need for diversity on the bench to bring different perspectives to judging and to reflect the societies served by this system.

Those statements applied equally to our profession as a whole. A diverse profession and bench are at the core of the society based on the rule of law. Without diversity of gender, race, origin, sexual orientation and religion, there is a risk that the legal profession and the judicial process will lose the public's confidence. As lawyers, we have sworn to defend and uphold to the rule of law. We have a unique responsibility and opportunity to sustain the judicial system with broad representation and participation by all citizens. And yet, as demographics change dramatically both in Canada and the United States, our profession and the bench do not mirror or reflect such demographic shifts. Women, visible minorities, persons of the LGBT community, and First Nations remain underrepresented. On that front, I could only commend the College's initiatives to bolster diversity within its ranks, and for example for inviting Captain Williams to join us. As leaders in our profession, we in this room can make a difference.

We have a duty to look beyond bold policy statements. We must implement concrete measures and ensure that lawyers of diverse backgrounds are given equal opportunity to succeed and become the very best trial lawyers. As these lawyers take on leadership roles, they will become the role models to the next generation. And those role models can only increase the confidence in a judicial system.

In the first days of my own practice, I was lucky to have those role models. They include Fellow Raymond Doray, and Judicial

Fellow Michel Yergeau, they were openly gay, partners of my firm, Lavery, experts in the field and highly respected.

Dans un contexte professionnel qui m'était à ce moment-là tout nouveau, la rencontre de ces collègues ouvertement gays m'avait convaincu que ma différence ne serait pas un obstacle au succès.

[Translation: Within a totally new professional context, meeting my openly gay colleagues convinced me that my difference would not be an obstacle to success.]

They were also allies, Fellow Bernard Amyot, my colleagues and partners Louise Sara, Edouard Baudry and Bob Meson. Without role models and allies, I would not be standing before you this evening.

On behalf of the inductees of the class of September 2017, I wished to thank those role models. Those allies and our parents who encouraged and supported us along our paths to become sages of our craft. I also want to thank the Fellows of the American College of Trial Lawyers, we are grateful and humbled to join your ranks and for the opportunity to contribute to the core of the College. As Jay Bilas justly reminded us yesterday, "We will not take what is special for granted."

One more sentence. I've one last word, and this one is for the bullies: Bring it on!

Charette's full presentation may be viewed on the College YouTube channel.



78 NEWLY INDUCTED FELLOWS FROM 2017 ANNUAL MEETING — MONTRÉAL, QUÉBEC

INCLUDED WITH THIS CLASS OF INDUCTEES WERE THOSE WHO WILL BE MULTI-GENERATION:

Howard K. Berry III of Oklahoma City, Oklahoma, is the son of Fellow Howard K. Berry, Jr. and the grandson of Fellow Howard K. Berry, Sr.

Salvador J. Antonetti-Stutts of San Juan, Puerto Rico, is the son of Fellow Salvador Antonetti-Zequiera.

Laura E. Udall of Tucson, Arizona, is the daughter of Fellow Burr Udall.

ALABAMA

Birmingham

Kevin L. Butler
Federal Public Defender,
Northern District of Alabama

ALASKA

Anchorage

Gary A. Zipkin
Guess & Rudd, PC

ARIZONA

Tucson

William N. Poorten III
Snell & Wilmer L.L.C.

Laura E. Udall
Cooper & Udall

ARKANSAS

Little Rock

Michelle Ator
Friday Eldredge & Clark LLP

CALIFORNIA — NORTHERN

Sacramento

Dominique A. Pollara
Pollara Law Group

CALIFORNIA — SOUTHERN

Santa Ana

Susan Aramesh Price
Orange County District
Attorney's Office

COLORADO

Denver

Lorraine Parker
Parker Lipman LLP

DISTRICT OF COLUMBIA

Washington

Brent J. Gurney
Wilmer Cutler Pickering
Hale and Dorr LLP

Brian M. Heberlig
Steptoe & Johnson LLP

William A. Isaacson
Boies Schiller Flexner, LLP

Deborah L. Sines
U.S. Attorney's Office

FLORIDA

Tampa

Michael R. Carey
Carey, O'Malley, Whitaker,
Mueller, Roberts & Smith, P.A.

GEORGIA

Atlanta

David F. Root
Carlock, Copeland & Stair, LLP

Macon

Virgil L. Adams
Adams, Jordan & Herrington PC

John T. McGoldrick, Jr.
Martin Snow, LLP

Rome

Jule W. Peek, Jr.
McRae, Stegall, Peek, Harman,
Smith and Monroe, LLP

GEORGIA *Continued*

Savannah

Thomas A. Withers, Sr.
Gillen Withers & Lake, LLC

ILLINOIS — UPSTATE

Chicago

Sergio Enrique Acosta
Hinshaw & Culbertson LLP

Elizabeth A. Kaveny
Burke Wise Morrissey Kaveny
Hammond, Indiana

Thomas L. Kirsch II
U.S. Attorney's Office,
Northern District of Indiana

INDIANA

La Porte

David P. Jones
Newby, Lewis, Kaminski
& Jones, LLP

IOWA

Des Moines

Laura M. Roan
Iowa Department of Justice

LOUISIANA

Lafayette

James Parkerson Roy
Domengeaux Wright Roy &
Edwards, LLC

New Orleans

Keith Jarrett
Liskow & Lewis

MASSACHUSETTS

Boston

Nelson G. Apjohn
Nutter McClennen & Fish LLP

William J. Dailey III
Sloane & Walsh LLP

Stylianous Sinnis
Federal Public Defender

Christopher Weld, Jr.
Todd & Weld, LLP

New Bedford

John A. Markey, Jr.
Moses Smith Markey & Walsh, LLC

North Adams

Chris S. Dodig
Donovan O'Connor & Dodig, LLP

Woburn

Elizabeth A. Dunigan
Middlesex County
District Attorney Office

MICHIGAN

Grand Rapids

Ronald G. DeWaard
Varnum, Riddering, Schmidt &
Howlett LLP

Bradley K. Glazier
Bos & Glazier

Rochester

S. Thomas Wiener
Wiener & Gould, PC



MINNESOTA

Minneapolis

Jeffrey J. Bouslog
Fox Rothschild LLP

Joseph T. Dixon III
Fredrikson & Byron, P.A.

Joseph M. Price
Faegre Baker Daniels

MISSISSIPPI

Gulfport

Edward C. Taylor
Daniel Coker Horton & Bell, PA
Pascagoula

John A. Banahan
Bryan Nelson Schroeder

NEW MEXICO

Roswell

Lee M. Rogers, Jr.
Atwood, Malone, Turner &
Sabin, P.A.

NEW YORK — DOWNSTATE

New York

Michael F. Bachner
Bachner & Associates, PC

Mark S. Cohen
Cohen & Gresser LLP

David R. Marriott
Cravath, Swaine & Moore LLP

David E. Patton
Federal Defenders of New York
White Plains

Lucille A. Fontana
Fontana Giannini LLP

NEW YORK — UPSTATE

Buffalo

Lawlor F. Quinlan III
Connors LLP

NORTH CAROLINA

Charlotte

Sara R. Lincoln
Lincoln Derr PLLC
Greensboro

Kearns Davis
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.

Raleigh

Howard J. Cummings
Wake County District
District Attorney's Office

Joseph Zeszotarski, Jr.
Gammon Howard &
Zeszotarski, PLLC

OHIO

Cleveland

Dennis R. Lansdowne
Spangenberg, Shibley & Liber LLP

Columbus

William D. Kloss, Jr.
Vorys, Sater, Seymour
and Pease LLP

OKLAHOMA

Oklahoma City

Howard K. Berry III
Berry Law Firm

OKLAHOMA Continued

Stillwater

Cheryl A. Ramsey
Szlichta & Ramsey

Tulsa

Jennifer R. Annis
Atkinson, Haskins, Nellis,
Brittingham, Gladd & Fiasco

Karen L. Callahan
Rodolf & Todd PLLC

PENNSYLVANIA

Harrisburg

Jennifer C. Selber
Office of Attorney General,
Pennsylvania

Philadelphia

David F. Abernethy
Drinker Biddle & Reath LLP

Gaetan J. Alfano
Pietragallo Gordon Alfano
Bosick & Raspanti

Barbara R. Binis
Reed Smith LLP

Robert J. Livermore
U.S. Attorney's Office

David H. Pittinsky
Ballard Spahr LLP

Stephen E. Raynes
Raynes McCarty

Plymouth Meeting

Robert F. Morris
Morris Wilson, PC

PUERTO RICO

San Juan

Salvador J. Antonetti-Stutts
O'Neill & Borges, LLC

SOUTH CAROLINA

Columbia

Robert W. Foster, Jr.
Nelson Mullins Riley &
Scarborough, L.L.P.

John T. Lay, Jr.
Gallivan White & Boyd, PA

Greenville

James W. Fayssoux, Jr.
Fayssoux & Landis

SOUTH DAKOTA

Sioux Falls

Michael J. Butler
Butler Law

Clint Sargent
Meierhenry Sargent LLP

TEXAS

Austin

Alan D. Albright
Bracewell

Edwin G. (Gerry) Morris
Law Office of E.G. Morris

Houston

George Michael DeGeurin
Forman, DeGeurin & DeGeurin

WISCONSIN

Milwaukee

Mark A. Kircher
Quarles & Brady LLP

CANADA

MANITOBA/SASKATCHEWAN

Winnipeg

Robert L. Tapper, Q.C.
Tapper Cuddy LLP

ONTARIO

Toronto

Jonathan Rosenthal
Jonathan M. Rosenthal,
Barrister

QUÉBEC

Montréal

Louis Charette
Lavery, de Billy

COLLEGE ELECTS NEW OFFICERS



AT THE COLLEGE'S ANNUAL MEETING IN MONTRÉAL, QUÉBEC, THE FOLLOWING SLATE OF OFFICERS WAS ELECTED TO SERVE THE COLLEGE FOR THE 2017-2018 TERM.

2017-2018 EXECUTIVE COMMITTEE

PRESIDENT

Samuel H. Franklin
of Birmingham, Alabama

PRESIDENT-ELECT

Jeffrey S. Leon, LSM
of Toronto, Ontario

TREASURER

Douglas R. Young
of San Francisco, California

SECRETARY

Rodney Acker
of Dallas, Texas

RODNEY ACKER

Inducted in 1997 at the College's Spring Meeting in Boca Raton, Florida, Rodney has served as Chair of the Regents Nominating Committee, Chair of the National Trial Competition Committee, and member of the Texas State Committee and the Judiciary Committee. From 2011-2015, he served as Regent to Arkansas, Louisiana, Mississippi and Texas.



Rodney practices in Dallas, Texas, where his work focuses on civil trial law. He has experience in all areas of civil commercial litigation, including: securities litigation (defended issuers, underwriters and officers in class action cases; investment bankers, brokerage firms and brokers in trials and arbitrations); oil and gas (represented oil and gas companies in a variety of matters, including a gas plant accounting case; a royalty matter; and a take-or-pay matter involving a subsidiary of a gas and electric subsidiary); antitrust (defended motorsports and global parcel distribution company in Sherman and Robinson-Patman Act claims); breach of contract/fraud (defended a leading technology-based company); banking (represented lenders in lender liability and collections claims and claims between banks in loan participations); general commercial litigation (defended companies, officers and directors in securities litigation including class actions, investment banking matters, and customer-broker disputes; represented major bank holding companies and officer of major energy company in class action securities cases). He and his wife, Judy, live in Dallas. Acker has four grown children, and four (soon to be five), grandchildren.



SUSAN S. BREWER

serves as Regent to North Carolina, South Carolina, Virginia and West Virginia, as well as Regent Liaison to the Judiciary and Special Problems in the Administration of Justice (U.S.) Committees. She has served on the Access to Justice and Legal Services, Bulletin, National Trial Competition and Teaching of Trial and Appellate Advocacy Committees. She also served as the West Virginia State Committee Chair for two terms. Brewer was inducted at the 2001 Spring Meeting in Boca Raton, Florida where she gave the response on behalf of the induction class. She graduated from Duke University and George Mason University School of Law. Susan has spent her entire career at Steptoe & Johnson PLLC. She has had an extremely active litigation practice focusing on professional liability defense, with a record of trying jury trials in almost all fifty-five counties of West Virginia, western Pennsylvania and various federal courts. She has served as CEO/Managing Partner of her firm since 2009. She is currently Chair of the West Virginia University Foundation Board. She and her husband, Bill, live in Morgantown, West Virginia. They have four grown children.



JOHN A. DAY

serves as Regent to Kentucky, Michigan, Ohio and Tennessee. He has served as Chair of the Tennessee State Committee along with the Access to Justice and Legal Services and Complex Litigation Committees. He was also a member of the Retreat Task Force on National and Regional College Meetings. John became a Fellow at the 2002 Spring Meeting in La Quinta, California. His boutique litigation firm focuses on plaintiff's personal injury work and occasional commercial litigation matters. He has served as President of the Tennessee Trial Lawyers Association and the National Board of Trial Advocacy. He and his wife, Joy, live in Brentwood, Tennessee.



RICHARD H. (RICK) DEANE, JR.

serves as Regent to Alabama, Florida and Georgia as well as Regent Liaison to the Admission to Fellowship and Griffin Bell Award for Courageous Advocacy Committees. He has served as Chair of the Georgia State Committee and on the Admission to Fellowship, Federal Criminal Procedure and Regents Nominating Committees. Rick became a Fellow at the 2008 Annual Meeting in Toronto, Ontario. Rick represents clients who are facing all types of criminal or civil investigations by the United States Department of Justice and other investigative agencies. He has extensive experience in dealing with federal grand jury investigations. He has broad experience trying cases in state and federal courts and has extensive experience appearing before the Fifth and Eleventh Circuit Courts of Appeal. In addition to his criminal trial work, he handles general litigation matters. Rick lives in Atlanta, Georgia.



MONA T. DUCKETT, Q.C.

serves as Regent to Alaska, Alberta, British Columbia, Idaho, Montana, Oregon and Washington as well as Regent Liaison to the Sandra Day O'Connor Jurist Award and Special Problems in the Administration of Justice (Canada) Committees. Mona became a Fellow at the 2003 Annual Meeting in Montréal, Québec, and is the Canadian Foundation Secretary-Treasurer. She has developed a well-recognized expertise in the preparation and conduct of criminal appeals to both the Court of Appeal and Supreme Court of Canada. She served as a Bencher with the Law Society of Alberta from 2000 to 2006, finishing her tenure there as its president and is a current member and past president of the Criminal Trial Lawyers Association. She has served on many Boards and is currently Vice Chair of the Alberta Law Reform Institute. She is active in educational programs and is a sessional instructor in Advocacy at the University of Alberta. Mona and her husband, Peter, live in Edmonton, Alberta.



MARTIN F. MURPHY

serves as Regent to the Atlantic Provinces, Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island as well as Regent Liaison to the Emil Gumpert Award and Jury Committees. He became a Fellow at the Spring 2009 Meeting in Fajardo, Puerto Rico. He is a partner at Foley Hoag where he divides his practice between government investigations/criminal defense work—mostly white collar cases—and civil cases which cut across a number of areas, including commercial disputes, employment discrimination, and legal malpractice. He represents indigent defendants in federal criminal cases and state murder cases. He was a federal and state prosecutor for ten years before returning to private practice twenty years ago. Marty and his fiancée, Jill Reilly, live in South Boston, Massachusetts.

THE NEW REGENTS REPLACED THE FOLLOWING OUTGOING REGENTS:

W. Francis Marion, Jr., Greenville, South Carolina
C. Rufus Pennington III, Jacksonville Beach, Florida
Kathleen M. Trafford, Columbus, Ohio
John J. L. Hunter, Q.C., Vancouver, British Columbia
Not pictured: Elizabeth N. Mulvey, Boston, Massachusetts





PRESIDENT'S REPORT

2016-2017 PRESIDENT BARTHOLOMEW J. DALTON

WRITE THIS HAVING JUST RETURNED FROM MY LAST REGIONAL MEETING IN SUN VALLEY, IDAHO, FOR THE NORTHWEST REGIONAL MEETING. THIS AUGUST I HAVE ALSO BEEN TO THE EXECUTIVE COMMITTEE RETREAT AT THE COLLEGE'S NEW HEADQUARTERS IN NEWPORT BEACH, CALIFORNIA, SAN JUAN, PUERTO RICO, FOR THE FELLOWS DINNER; ATLANTA, GEORGIA, FOR THEIR ANNUAL BLACK TIE DINNER; AND WICHITA, KANSAS, FOR THE 10TH CIRCUIT REGIONAL MEETING. THAT WAS THE LAST OF 47 TRIPS ON BEHALF OF THE COLLEGE. IT WAS A WONDERFUL WAY TO SEE THE UNITED STATES AND CANADA. AT EVERY STOP EILEEN AND I WERE TREATED WITH GRATITUDE, AFFECTION AND GRACE. IT WAS A VERY SPECIAL YEAR FOR BOTH OF US. EILEEN WAS WITH ME THROUGHOUT THIS ADVENTURE OF A YEAR.

I AM PLEASED TO REPORT THAT THE COLLEGE IS IN REMARKABLE SHAPE IN ALL ASPECTS OF OUR ORGANIZATION. LET ME SHARE SOME OF THE HIGHLIGHTS.

2016 CHAIRS WORKSHOP

Following the 2016 Annual Meeting in Philadelphia, Eileen and I were off and running, attending several State and Province Fellows dinners before heading to Colorado Springs for the annual College leadership conference which was held at The Broadmoor. The Chairs Workshops are where the College gathers the Board of Regents and Chairs for our General, State and Province Committees to review how the College conducts its business and to share with each other what is going on with our General, State or Province Committees. The highlight of this meeting was the several talks and discussions by our invited guest Margaret Marshall, former Chief Justice of the Massachusetts Supreme Court, on the issue of diversity. I had not previously met Margie, as she likes to be called, but she was able to set a tone for the rest of the year: Do not fear diversity but embrace it and it will make us stronger. Past President Joan Lukey ended the meeting with a speech that inspired us all to take what we learned and move the College forward. The weekend certainly inspired me to do the best I could to move the mission forward.



COMMUNICATIONS

Immediate Past President Mike Smith started an initiative to improve College communications when the Board decided that our internal communications were lacking. We gave internal communication our first priority. Communications Committee Co-Chairs Paul Fortino and Paul Meyer took on the assignment to start the *eBulletin*. We asked Fellows to send us news about what the College was doing in their state and province chapters. Our goal was to publish the *eBulletin* six times in the first year. We actually published the *eBulletin* eleven times last year, including the special issues regarding single important issues. This tool has allowed the College to communicate with the Fellows about what their College is doing. When I began my term as President I would frequently get the question from Fellows, “What is the College doing?” Because of the work of the Communications Committee, with great assistance from Communications Manager Eliza Gano, that question is no longer asked. A review of the last *eBulletin* and the amazing number of things that the Fellows are doing every month shows just how dynamic the College is. Paul Fortino and I had a conversation recently at the Northwest Regional meeting where we contemplated the question whether there are far more seminars and other events occurring because of the internal communications or whether those things were always being done and we just now know about them. My answer is that I do not care. The *eBulletin* proves that the mission of the College is being embraced and moved forward by our Fellows.

In July the College launched a new website at the same address, www.actl.com. With the assistance of Être Communications the staff was able to bring this project to conclusion. My mantra in the many calls I had regarding the website was that it had to be simple to use. We are not inundated with technically savvy Fellows. We tested it in many different formats with the help of a Task Force. I think it is working well but the proof will be in the use it gets. We are tracking this and the results are encouraging. I have also appointed Fellows to a Task Force on the College’s Online Presence who are more

adept with technology to review our needs on an ongoing basis. Some of this change is hard. When we shifted to electronic polling, the College staff and I worked the phones for weeks helping Fellows who were having problems and exhorting State and Province Chairs to talk to their Fellows and help them with the ballots. I can report that the College is now in the 21st Century. We came to this point kicking and screaming at times but we now have a technical platform and a group with the knowledge to stay ahead of the ever-changing curve.

Finally, circumstances have prompted us to comment publicly on two issues that were thought to directly impact our mission. Bringing those issues to the Board and Past Presidents is not the best of days for a President. We treasure our collegiality as we should. However, this important element of the College should not make us unwilling to stand up publicly for the mission of the College. Fellows of this College are renowned for their ability to handle difficult and sometimes emotional issues with opposing counsel and in the end disagree in a professional manner. We have all tried cases against friends with whom we have disagreed. They are still our friends. Who better than us to be able to disagree agreeably and maintain our collegiality? We need to jealously guard against being too aggressive on public comments but we need to be just as wary about failing to comment when the goals of our mission are being attacked. In looking at the history of the College in *Sages*, I noted that our history is replete with public comments on issues as different as the loyalty oaths of the 1950s to a position on class actions. Criticizing a public official who castigated a federal judge and standing against defunding legal services for the poor directly impacts our mission. I am proud that the Board stood up to these challenges. I have been asked by Fellows to comment on several other issues in the past year. We took each such request seriously and each time the Executive Committee unanimously decided not to bring those issues to the Board since it was our view that they did not directly impact our mission. ▶

DIVERSITY

The Board, through the adoption of its policy on diversity, gave good direction on what course we should follow. I spoke on diversity at every stop I made throughout the year. I appointed a diversity liaison for each state and province chapter. It took a little time and many calls and emails before I could fill every position, but once that was completed we wanted to give real direction to our liaisons, State/Province Chairs and Regents. Georgia State Chair, Rick Deane, and I authored a checklist based on the policy. It was sent to the liaisons. I then conducted a series of telephone conferences with the liaisons to get updates on their progress and how they were moving through the checklist. We made it clear in these communications that their Regent would be asked at the Board Meeting in Montréal about this progress. I have received much positive response from the liaisons and chairs. My expectation is that we will see some of the fruits of our efforts at the Annual Meeting. However, this cannot be a one-time event. This needs to be something we continue through the years but our first steps have been encouraging.

TASK FORCE ON THE RESPONSE OF UNIVERSITIES AND COLLEGES TO ALLEGATIONS OF SEXUAL VIOLENCE

The Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence showed, in my view, the College at its best. Chaired by Fellow Pamela Robillard Mackey and joined by Regents Elizabeth N. Mulvey and Ritchie E. Berger, Past President Earl J. Silbert, and Fellow A. Gilchrist Sparks, III, the group did the hard work of drafting and completing the White Paper on Campus Sexual Assault Investigations that the Board approved at its meeting in the Spring. But that was just the beginning. Following approval of the White Paper, we formed a sub-committee of the Task Force, along with Être Communications and National Office staff, to make sure that the report did not just sit on the website. The paper was discussed in at least 25 media outlets, most dealing with educational issues. Pamela Mackey did an interview with the ABA Journal. Regent Mulvey and Immediate Past President Smith met with the Editorial Board of the Richmond Times-Dispatch, which published an Op-Ed. Regent Mulvey authored an Op-Ed for the Chronicle of Higher Education which is the primary source of news, information, and jobs for college and university faculty members and administrators. I was invited to speak at the 70th Education Writers Association National Seminar regarding the College's White Paper. Regent Berger represented the College at a symposium on Title IX, due process, relating to campus sexual assault investigations hosted by U.S. Secretary of Education DeVos. Multiple college and university counsel have been given the White Paper and we have been advised that the National Association of College and University Counsel have posted the paper on their website. This is an issue that spurs great feelings and I received an objection from Fellows in the State of Washington. This objection was reviewed at the Board meeting in Montréal.

LONG RANGE FINANCIAL PLANNING COMMITTEE

Past President Tom Tongue chaired the Long Range Financial Planning Committee and was assisted by Past President Bob Byman, President-Elect Sam Franklin and Fellow Jeffrey E. Stone. Following the completion of their work, the report was presented to the Executive Committee in June. At its retreat in August, the Executive Committee further discussed each recommendation and the potential impact to the College's annual budget. During this meeting, the Executive Committee reviewed the annual audit of the College and the Committee asked several questions and discussed some of the recommendations with Jennifer Farr, Partner at the College's auditor, Davis Farr LLP, and the potential impact it would have on the College. Following review and discussion of the Long Range Financial Planning report, the Executive Committee submitted recommendations to the Board of Regents for action at their meeting in Montréal. This was an important effort well led and well done. It will help keep the College on sound economic footing.



SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE (U.S.) COMMITTEE

The Special Problems in the Administration of Justice Committee (U.S.) has been working as hard as any Committee in the College on a single issue - helping our disabled veterans. Chair John Chandler has persisted in the face of unbelievable bureaucratic obstacles and is truly inspiring. Assisted by Fellows Elizabeth V. Tanis, Denny Shupe, Stephen D. Raber and their respective firms, a brief was recently filed in the U.S. Court of Appeals for the Federal Circuit that argues that the unconscionable delays of more than four years in deciding appeals violates due process. There is not a more important area of work that the College is doing than this. We all owe a debt of thanks to these Fellows.

INTERNATIONAL COMMITTEE

The International Committee continues to be a beacon of light in the push for the Rule of Law. Following the success of the Palau Trial Advocacy Training program held in November of 2016, the Chief Justice of the Supreme Court of Guam asked the College to conduct a legal training seminar for judges and lawyers practicing in countries and territories in the western Pacific Ocean. In addition, the College has been asked to participate in a program that celebrates the 50th Anniversary of the Eastern Supreme Caribbean Court. These projects, along with the College's ongoing support of other Rule of Law initiatives around the world, demonstrate how the International Committee is always on the move.



TEACHING OF TRIAL AND APPELLATE ADVOCACY COMMITTEE

The Teaching of Trial and Appellate Advocacy Committee continues what seems like a non-stop schedule to promote the College through trial advocacy training efforts. Recently the Committee conducted two outstanding programs. The first, in Austin, Texas, co-sponsored with the Texas College of Law and the American Academy of Appellate Lawyers put on a program entitled “May It Please the Court: Effective Oral Advocacy.” The second was a one-day Bootcamp Trial Training program held in July and hosted by the Northern California Fellows and co-sponsored by the San Francisco Bar Association and the ABA Litigation Section. Both programs were a huge success and continue to further the College’s mission.

NATIONAL OFFICE

There have been significant changes in the National Office. In May I visited the office before attending the Southern California Fellows Annual Dinner in Los Angeles. During that time I had the opportunity to speak with the staff about the affairs of the College and specific projects. Before leaving for the Fellows dinner, Eileen and I had the opportunity to enjoy lunch with all the staff where we discussed a number of topics. I also visited the new office space the College would move to later that month. One of the Long Range Financial Planning Committee’s recommendations was to look for ways to reduce overhead at the National Office. The move of the National Office and the reduction of space accomplishes this and is just one of the many ways the staff is continuing to work to reduce overhead. The National Office staff is exceptional and is everything I could hope for from an organization to help me negotiate the year.



CLOSING THOUGHTS

My time as President has been thrilling. I am constantly asked how I am able to be President and run a small law practice. Most of the Fellows with whom I speak to in my travels ask that question. I tell them that it is far easier than it was ten years ago or even five years ago. Advances in communication technology have made the job more efficient. I recently flew to the West Coast and worked on the airline Wi-Fi the entire time. It was like being at my desk without the interruptions. My firm has done well and has actually expanded through the year. Being a Delaware lawyer makes one pretty popular in these times. It certainly helps to have a great staff at the firm. But the question of the tougher parts of being President always glosses over the once-in-a-lifetime experience of being President. There have been a few tough days but they are so outnumbered by the great days that it is not even worth mentioning. I tell people it is like being in trial for a year. There are no days off but I am trying a great case and having a lot of fun. This has been a great honor and I thank all of you for helping me do what I could do to advance the mission of this important organization.



ALL IN THE COLLEGE FAMILY

a series

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

LAURA FOLLOWS UDALL HISTORY-MAKING TRADITION ON HER TERMS

IT IS FITTING THAT LAURA “LOLLY” UDALL’S OFFICE IS LOCATED IN THE TUCSON BARRIO IN A BUILDING WITH HISTORY. LIKELY BUILT IN THE LATE 1800S TO EARLY 1900S, ITS FIVE EXTERIOR DOORS SERVE AS A CLUE TO ITS FUNCTION AS A DORMITORY OF SORTS FOR WORKERS ON THE SANTA FE PACIFIC WHEN THE RAILROAD MADE ITS WAY TO THE OL’ PUEBLO. ONE PROBABLY WOULDN’T KNOW ABOUT THE HISTORIC “RAILROAD HOUSES,” BUT MENTION THE NAME “UDALL” AND BELLS RING AND WHISTLES GO OFF.

Levi Udall, Laura’s grandfather, served as Chief Justice of the Arizona Supreme Court and famously authored the opinion giving Native Americans the right to vote. Her uncle Stewart served as Secretary of the Interior under Presidents John F. Kennedy and Lyndon B. Johnson. Her uncle Morris “Mo” was a U.S. congressman, a candidate for President of the United States and author of Arizona’s first book on the law of evidence. Her father **Burr**, inducted into the American College of Trial Lawyers in 1979 and the namesake of arguably Tucson’s most reputable law firm, continues at eighty years young to practice tort and insurance law. Burr is best known as the quintessential standard for integrity, good sense and excellence both in and out of the court room in Arizona for over sixty years.

Laura chose the University of Utah Law College for her legal education, unlike her father and uncles all of whom had matriculated at the University of Arizona. Burr claims she made that choice because, of the schools on her list, Utah had the best skiing. Laura adds that Salt Lake City was her choice because she enjoyed the challenge of living “where you had to try much harder to have a good time.”

With such a remarkable pedigree, it would surprise no one if Laura had taken advantage and chosen to work with her father after a clerking stint for the revered Judge Alfredo Marquez. In fact, Burr recalls that he suggested that very thing to Laura only to have her politely decline, saying, “If I do a good job, you will get all the credit. And if I do a bad job, I will get all the credit.” Nonetheless, she gave civil law practice a try but didn’t find it to her liking.

So instead, Laura took a \$20,000 pay cut and forged her own path to stardom first working



Laura Udall with her father, Burr, at the 2017 Annual Meeting in Montréal where she was inducted as a Fellow.

in the Pima County Public Defender’s office and later forming the firm of Cooper & Udall where since 1992 she has distinguished herself as one of Arizona’s leading criminal defense attorneys. Why? Dad always said in choosing a career, “If you don’t like it, don’t do it.” Laura found that she finds criminal law the most gratifying because you are helping people when they are at the lowest point in their life.

In fact, Burr reports that several judges have called him to say she is a better trial lawyer than he. Burr’s response? “I disagree, but thanks for the compliment.” Early in her trial career Dean Charles Aires served as judge pro tem on one of her cases and told Burr, “she looks like your wife and she practices like you,” referring primarily to her penchant for candor with the court.

Laura has defended folks on criminal charges ranging from DUIs to capital murder cases, where she has “learned counsel” status. One

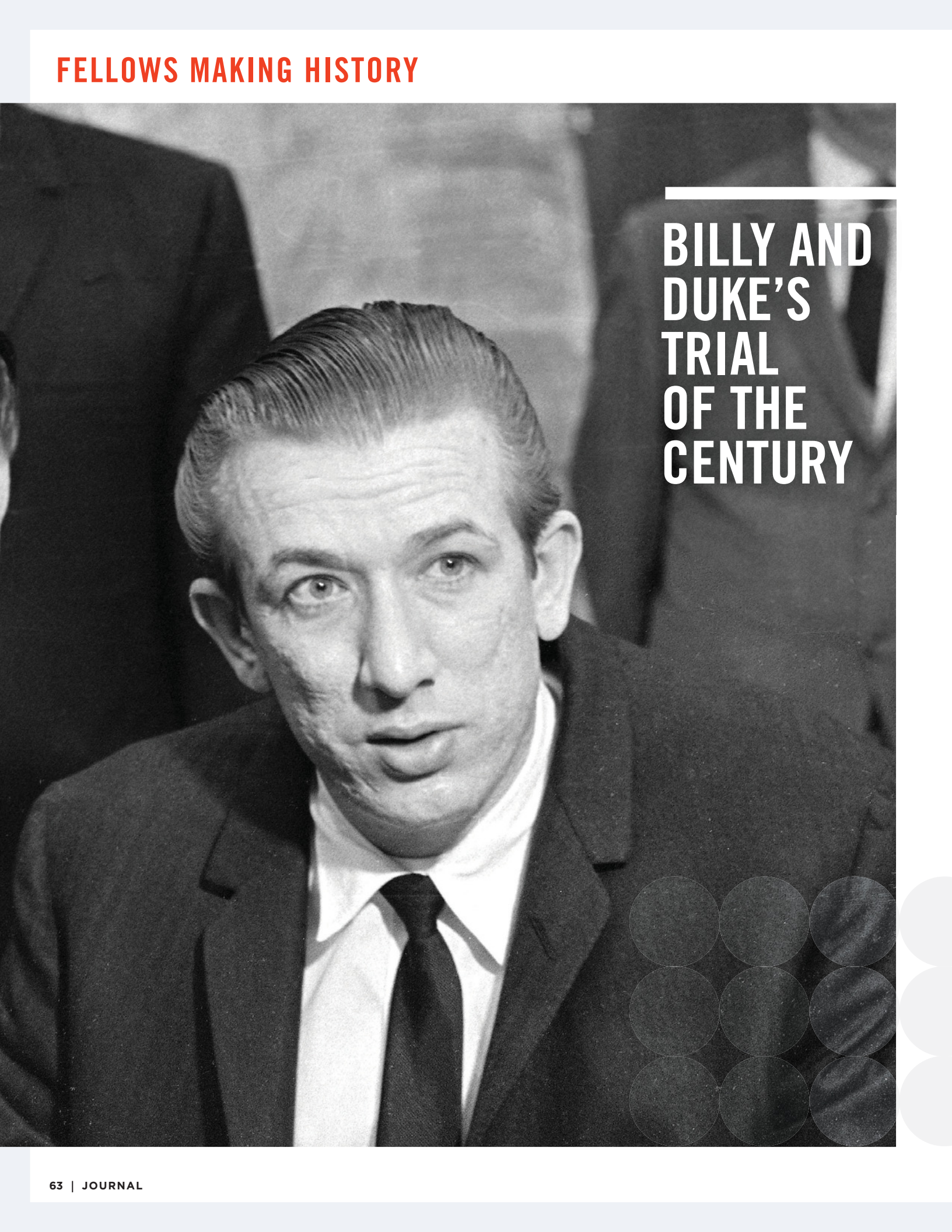
of her more famous cases was the triple homicide at a Tucson pizza joint. She tried that case three times, once on a change of venue in Prescott with a double jury, one on each side of the bench. Talk about theater in the round. She accomplished what seemed the impossible with the deck stacked against her, obtaining a not guilty verdict for her client on the first-degree murder and robbery charges.

Surprisingly, Laura has sat in on only one of Burr’s trials, a tort and scope of employment case in Nogales. As sometimes happens in Arizona’s more rural areas, the bailiff on the case was married to the foreman on the jury. Burr quipped to the bailiff, “This is your lucky week.” She looked puzzled. “You don’t have to talk to him for four days.” Burr won the case. What did Lolly learn about her father? He is the master of brevity. He cuts to the core, gets to the point, and then shuts up and sits down. Judges and juries love and respect him for it.

Here is where Laura’s and Burr’s paths cross. In July 2017, Laura was inducted into the American College of Trial Lawyers. Laura and Burr are the first and only father and daughter to become Fellows in Arizona and one of only a handful in all of North America.

Laura brags that the “best thing about being me is that nobody ever says a bad thing about my Dad. It’s so easy to be proud of him. Always helping others and setting the example for everything a lawyer should be.” In that respect, the apple has not fallen very far from the tree.

Ted A. Schmidt
Tucson, Arizona



BILLY AND DUKE'S TRIAL OF THE CENTURY

AND THE PROSECUTION ARGUMENT THE JURY NEVER HEARD

THE MURDERS

On a sweltering 100 degree July 14, 1966, drifter Richard Speck broke into a Chicago townhouse at eleven o'clock at night. Carrying a gun and a switchblade knife, he ordered eight student nurses to sit in a circle, assuring them he would not hurt them as he tightly bound their hands and ankles with cut strips of bed sheets. Over five hours he would sodomize one, strangle her and four others to death and stab three more twenty-two times – washing his hands after each murder. A ninth student, Corazon Amurao, originally from the Philippines, hid terrified under a bunk bed and survived only when the seaman lost track of the number of nurses he had tied up. At daybreak, and still in shock, she crawled through a river of carnage onto a balcony. There she screamed for help for twenty minutes, “Oh my God, they are all dead!”

THE MANHUNT

Within hours a city-wide manhunt began for the serial killer. Extraordinary detective work would connect witnesses at a nearby union hall, taverns and gas stations to the man with a Texas drawl whom Amurao under the bed overheard Speck say he was “going to jump ship to New Orleans.” The ex-con, knowing the police were patrolling the ports, trains and bus stations, headed for safety to the north side of Chicago. Meanwhile, the crime lab lifted three fingerprints from a door frame in the nurses’ blood-splattered apartment.

In the next forty-eight hours Speck cabbed to a housing project, picked up a Rush Street prostitute in a bar and was thrown out of the tawdry Raleigh Hotel for bringing her to his room. Using the name “R. Franklin,” he next checked into a ninety-cent a night chicken wire cubicle at the Starr Hotel on the West Side. Chicago’s Police Superintendent released a photo and description of the suspect Richard Speck to the city’s four newspapers. Drunk, the twenty-four-year-old loner slashed his wrists with a jagged wine bottle in the Skid Row flop house. Hours later the semi-comatose Speck was transported to nearby Cook County Hospital.

A first-year resident washed away the caked blood on “R. Franklin” and saw a serpent tattoo “Born to Raise Hell,” the same he had read about in the *Chicago Tribune’s* description of suspect Richard Speck. The doctor alerted a policeman on duty near the emergency room. Fifty squad cars converged on the hospital in minutes.

THE YOUNG PROSECUTORS AND THE VETERAN PUBLIC DEFENDER

Cook County State’s Attorney Dan Ward, a highly respected former law school dean about to run for Chief Justice of the Illinois Supreme Court, First Assistant State’s Attorney John J. Stamos and Criminal Division Chief **Louis B. Garippo**, a Fellow of the College, assigned the lead prosecutor role to a twenty-nine-year-old Assistant State’s Attorney **William J. Martin**, also a College Fellow. Selected from a pool of over thirty criminal courts prosecutors, many much older and with far more felony trial experience, Martin had earned the respect of Ward and his chief assistants. The trio put aside their own ambitions and let talented young assistants prosecute what a stunned coroner solemnly called “The Crime of the Century.”

Martin attended Fenwick High School in Oak Park, Illinois, Loyola University in Chicago and Loyola’s law school where he was voted the outstanding student. A believer in the Bill of Rights, the stocky liberal first applied to the office of Cook County Public Defender Gerald W. Getty, a veteran of 400 death penalty cases for which not one client had ever been sentenced to death. Turned down by Getty, Martin successfully applied to the State’s Attorney’s Office where he began in misdemeanor court amidst a sea of conservative prosecutors. There he convicted a thief and promptly urged probation. A shocked judge put the man behind bars for a year. Introverted and shy, Martin, who played a scrappy style of hockey into his seventies, quickly earned a reputation as well-prepared, thoughtful and fair.

Martin immediately set the fairness standard in the Speck case. His only meeting with Speck occurred after the defendant was transferred to a prison hospital. Asked how he felt, Speck replied “Sleepy and dopey.” The young prosecutor, determined to zealously protect the defendant’s rights, terminated the interview. He would try the case without a confession or statement by Speck.

Due to the decision of Martin, the Cook County State’s Attorney’s Office for the first time ever did not oppose the transfer of a case to another county due to pre-trial pub- ▶



George Murtaugh stands behind William Martin during a press conference.

licity. He would also scrupulously comply with the Supreme Court edict in *Brady v. Maryland* to turn over exculpatory evidence to the defense; and in an era where many prosecutors were wood-shedding their witnesses, Martin would make all state witnesses including Cora Amurao available for interviews by the defense.

Team Speck included Martin, James Zagel, a scholarly twenty-five-year old Harvard Law School graduate who would conduct research as the “law man” on the case, and **George J. Murtaugh, Jr.**, a twenty-six-year-old who had only been in the prosecutor’s office one year. Murtaugh would be inducted into the College in 1986. Zagel would become a distinguished federal judge in Chicago. Murtaugh, a St. Rita High School basketball star in the Chicago Catholic League and at Saint Mary’s University in Winona, Minnesota, had graduated from Chicago Kent College of Law. Like Martin, “Duke” Murtaugh had enjoyed a meteoric rise in the State’s Attorney’s Office. The self-assured and fierce competitor, equally capable of charm or bluntness, became Martin’s closest confidant at trial. As the lead prosecutor Martin handed out assignments with the friendly question, “What is the most important part of a criminal case?” and then gave the answer, “Whatever part you’re doing.”

THE TRIAL

In the winter of 1967 the pair of choir boys presented the state’s evidence in deliberately understated fashion to a packed courthouse in Peoria, Illinois. They adhered to John Stamos’s admonition to try the case in the courtroom and not in the press. Their courtroom opponent was none other than Cook County Public Defender Getty and two seasoned, gray haired deputies. The defense had the benefit of a client who had not given a statement. The unknown was whether Getty would use an alibi or an insanity defense. The veteran public defender did not commit to either in his opening statement.

Martin methodically put in most of the State’s case, beginning with an FBI model of the townhouse, family members to identify the victims and Southeast

Side tavern customers and gas station operators who brought out Speck’s proximity in time and place to the murders and his “shipping off to New Orleans” remark. He next called the eighty-five pound Amurao to recount the night of terror and identify the killer. After detailing the townhouse slaughter, the tiny nurse electrified the courtroom when, to Martin’s surprise, she stepped down from the witness stand, thrust a finger in Speck’s face and said, “This is the man.”

For ten months Martin and a police detail had comforted the scared, lone survivor whose family wanted her to return home while magazine and book publishers offered her large sums for her story. The stoic nurse, who came from poverty, did not succumb and mortally wounded the defendant in court.

The State introduced the testimony of cops, cab drivers, day laborers and sailors to track Speck’s path across Chicago. A forensic pathologist detailed the gruesome causes of death. A last-minute substitute fingerprint expert confirmed Speck’s union card fingerprint with the three latent finger prints lifted from the townhouse door frame. Following Amurao’s chilling identification of Speck, Getty’s veiled suggestions that the townhouse fingerprints had been planted by the police and that his client suffered “organic brain syndrome” soon fell to the wayside. He chose not to call Speck or anyone else in the defense.

THE ARGUMENT THE JURY NEVER HEARD

Martin and Murtaugh had their first and only argument about the case in a Peoria Ramada the night before the Speck summations. The State’s Attorney’s office had an unwritten rule that opening and rebuttal arguments were to be split between the two trial assistants. Martin assigned Murtaugh the opening. But Duke refused, stating he was just glad to have been asked to try this case. He said “Billy Boy, this is your case. You’ve worked on it day and night for nine months. You should have both arguments.” The lead prosecutor responded, “Duke, we’ve been together since the first day of the case and we’re sticking together now.”

Murtaugh countered that he had never even tried a death penalty case before and argued he might commit reversible error. Martin replied “You’ve never tried a ‘chair’ case?” I haven’t either!” Both men stopped talking. Knowing that time was precious, Martin took command. “Duke, I’m in charge down here. And I’m telling you you’re going to argue. You open, I close. Here’s the transcript. Dammit, go to work.”

The next morning in the Ramada lobby Martin needled his young trial partner “Showtime?” A confident Murtaugh smiled back and said, “Showtime.” No longer would the two prosecutors remain understated in the Peoria courtroom.

THE FINAL ARGUMENTS — A “PROPER CASE”

The twenty-six-year-old South Sider delivered what Martin would call the most eloquent, powerful clos-

ing he ever witnessed. Without a note the steely, blue eyed Murtaugh gave a masterful witness-by-witness condemnation of the man he called “the tailor of death.” The athlete who had a habit of walking gracefully on the toes of his feet moved across Courtroom A with command. At one point, he guided his hand before the jury to Speck and said, “This man has the face, the mind, the heart of a murderer. Death stalked the hallway that night, and it wasn’t with a sickle, and it wasn’t with a skull and cross-bones. Death that evening carried a small black pistol and a four-inch knife. ‘Eight girls against me. I better have some insurance so I have a knife and I have a gun. And, brother if you move, you’re in trouble.’

“Now, he’s ready to go to work, Mr. Richard Franklin Speck. He’s got what he needs. He’s got the binds, he’s got the gun, he’s got the knife and he’s got the innocents so the march of death begins.” Referring to the first victim nurse, Murtaugh continued, “You my friend, I’ve chosen you to die first. Me, Mr. Richard Franklin Speck, self-ordained judge, jury and executioner. There is no trial for you. There never will be. There is no justice. There never will be. I will do what I feel, when I feel and how I feel.”

Alluding to the nurse who was raped, Murtaugh, without explicitly mentioning the crime, declared, “She was the defendant’s choice. ‘I’ve got something special for you.’” He moved onto the brave survivor, “Corazon Amurao testified - eighty-five pounds of flesh, two tons of hardened steel. She was a breath, a cough, a sneeze away from extermination by that man right there.”

Murtaugh looked into the jurors’ eyes and in a near whisper asked, “Do you realize what it takes to strangle somebody? Do you have any idea? It’s not just a slight movement, it’s pulling until there is no breath left, there is no life, and you’re dead – you’ll never get up.” The prosecutor then wheeled on the toes of his feet, pointed at Speck’s heart and thundered in words soon repeated throughout the building, “There he is, the executioner. Nothing else.”

For his finale Murtaugh asked the jury dramatically, “Are we going to sit here and permit in 1966 what wasn’t done in 15 B.C.? This was a crime not only against those eight girls, but a crime against the peace, the dignity and the law and order of this whole country. In the interest of self-preservation, remove a cancer. Give this man the death penalty.”

Duke Murtaugh’s passionate summation was devastating. It created such an emotionally charged atmosphere in the building that the trial judge declared a lengthy recess to give the Public Defender of Cook County, a lawyer twice Murtaugh’s age and a veteran of hundreds of murder cases, a chance to recoup. Getty would be forced to begin his argument speaking of “how young men think light of what they are doing. They think light of the taking of the life of a person.” After questioning the credibility of various state witnesses and criticizing the police department’s “rush to judgment,” Getty urged the jury to make a proper decision in the case rather than to find the defendant not guilty. The jurors had been instructed and taken an oath at the outset of the trial to, if they found the defendant guilty of the murders, inflict the death penalty only if they believed this was a proper case.

QUIPS & QUOTES

Now, he’s ready to go to work, Mr. Richard Franklin Speck. He’s got what he needs. He’s got the binds, he’s got the gun, he’s got the knife and he’s got the innocents so the march of death begins. Referring to the first victim nurse, Murtaugh continued, “You my friend, I’ve chosen you to die first. Me, Mr. Richard Franklin Speck, self-ordained judge, jury and executioner. There is no trial for you. There never will be. There is no justice. There never will be. I will do what I feel, when I feel and how I feel.”

George Murtaugh in his closing argument during the Speck trial

Martin, a liberal who had never thought light of taking the life of another, gave the final summation. He systematically countered Getty’s attacks on the government’s proof. He returned to Cora Amurao’s spellbinding “This is the man” testimony. Addressing the burden of proof, Martin said, “Ladies and gentlemen, there is no doubt about the defendant’s guilt. If you doubt his guilt, send him home tonight. But if you find him guilty, this is the proper case.” He told the jury that if the Speck case was not a proper case, “there will never be at any time or any place a proper case.”

Martin was the quintessential ethical, fair and conscientious lawyer, whether for the prosecution or defense. The eloquence of his

Speck closing words evoked memories of legendary Chicago attorney Clarence Darrow:

And write it (the verdict) not with vengeance toward Speck as a man, because the law doesn’t bear vengeance toward men. The law is here to control society and to deter crime in the future. Write that verdict not in hatred, write that verdict not with any sense of animosity. But write it in truth, because this is the proper case. And write it because this is the only just verdict that can be returned in this case. Find him guilty and fix his punishment at death.

Martin would find humanity in the hundreds of defendants he prosecuted and defended the next fifty years. The evil Richard Speck was the lone exception. His was the only “proper case” Martin would ever handle.

The tired prosecutors prepared for a lengthy jury deliberation. But the jury’s verdict came back in forty-nine minutes: Guilty on all eight murder counts with a death penalty recommendation. Afterwards Martin commended the jury’s work to the press in two sentences. The trial judge adopted the recommendation and ordered Speck’s electrocution to take place on September 1, 1967. After the Supreme Court declared the death penalty unconstitutional, Speck was resentenced to eight consecutive terms of fifty to 150 years. On December 5, 1991 the mass murderer died in Stateville Prison of a massive heart attack on the eve of his fiftieth birthday. Although Speck was cremated, his brain was sent for study at Harvard University, where it mysteriously disappeared forever. Before his death Speck spoke on a bootleg prison tape of the fate of the eight student nurses July 14, 1966: “It just wasn’t their night.”

Billy and Duke “stuck together” as the best of friends the rest of their lives.

Robert W. Tarun

San Francisco, California

Note: Tarun, a Former Regent, was honored and privileged to try cases in Chicago against Martin and Murtaugh. Each remained humble about the Speck trial and credited the other with its success. The author is grateful to Dennis L. Breo, co-author with Martin of *The Crime Of The Century* (reissued in 2016 by Skyhorse Publishing), for permission to use parts of the superb true crime work here.

A SERVANT OF THE COURTS AND COMMUNITY



AUL H. TITUS, A LONGTIME FELLOW OF THE COLLEGE WHO PRACTICES LAW IN THE PITTSBURGH OFFICE OF SCHNADER HARRISON, RECENTLY WAS HONORED, ALONG WITH TWO OTHER LAWYERS, WITH THE 2017 ALAN JAY JOSEL ADVOCACY AWARD, PRESENTED AT THE ANNUAL CONFERENCE OF THE PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. HE WAS RECOGNIZED FOR HIS WORK ON AN AMICUS BRIEF ON BEHALF OF THE ASSOCIATION IN A CASE IN WHICH THE PENNSYLVANIA SUPREME COURT HELD THAT CLAIMS FOR ANTICIPATED SIXTH AMENDMENT INEFFECTIVE ASSISTANCE OF COUNSEL VIOLATIONS COULD PROCEED AGAINST COUNTIES THAT UNDERFUND PUBLIC DEFENDERS.



This award is just the latest of the honors Titus has received over the years. He has received those well-deserved awards even though he refuses to assist those who are seeking to give him recognition and credit for his efforts. Each person spoken to for this article emphasized his modesty and humility.

He believes that as members of the legal profession, all have a duty to help those in need of access to justice, without seeking recognition or credit for doing so: “As a lawyer, you need to put your learning to work to help and serve others.” But he deserves recognition from for the example he has set for the profession. Given the College’s emphasis on the importance of assuring access to justice, Titus’s example stands as a reminder to all Fellows of the obligations as persons having the privilege to practice law.

Just a few matters demonstrate his extraordinary pro bono service and community service over the years.

In early 2000, the federal public defender’s office in Philadelphia asked Titus if he would assist in the appeal of the murder conviction of Thomas H. Kimbell, Jr. to the Pennsylvania Supreme Court. In 1996, following a jury trial, Kimbell, a former drug addict with a long history of psychological problems, had been convicted of the brutal murders of a young mother, as well as her two daughters and a young niece, who were just seven, six and four-years-old.

During trial, the court sustained the prosecution’s objections to certain exculpatory evidence on the ground that a party cannot impeach his own witness. When a neighbor was deposed, she had testified that the murdered mother had interrupted their phone conversation with a statement to the effect that she had to get off the phone because her husband was pulling up in the driveway. At trial, the neighbor testified only that the victim said she had to get off the phone because a car was pulling up in the driveway.

The intermediate appellate court sustained the prosecution's objection to the admission of that deposition testimony. In October of 2000, the Pennsylvania Supreme Court overturned the conviction, holding the evidence should have been admitted. It ordered a second trial.

Titus was asked to assist in the second trial and did so. While preparing for the retrial, he uncovered a key piece of medical evidence that had previously been overlooked. Kimbell is a hemophiliac, and had checked into a drug rehabilitation center for the day after the murders. A routine full physical at that time showed he had no bruises or marks on his body.

DNA evidence also proved critical on retrial. There was no evidence of Kimbell's DNA anywhere at the crime scene; on the other hand, the DNA of the victim's estranged husband was found on several washcloths in the bathroom. Moreover, the estranged husband was at the crime scene on the day of the murder and, according to testimony, was the person who found the bodies. A photo taken the day of the murder by police showed that the husband's hands were covered with cuts and bruises. Titus presented this and other key medical evidence to the jury.

After twelve hours of deliberation, the jury returned a unanimous verdict of not guilty. Titus since has brought a malicious prosecution case against the arresting state troopers, alleging they ignored significant evidence that the husband was the murderer and improperly prosecuted Kimbell. This matter is ongoing.

Another example of his pro bono work concerns a case where the city of Hazelton enacted ordinances to prevent persons without legal immigration status from renting housing in the city on the grounds that an influx of illegal aliens would cause an increase in crime and downturn in the economy. After the court held the ordinances invalid and the city appealed, Titus filed an amicus brief on behalf of twelve interfaith organizations in support of the decision invalidating the ordinances. He argued that every immigrant group in our nation's history had met false charges that their immigration would increase crime and hurt the economy. Ultimately, the ordinances were invalidated.

Yet another example involved the Pennsylvania Department of Corrections concerning the witnessing of lethal injection executions, which prevented members of the public and the press selected to witness such executions from viewing the executions in their entirety. In particular, the policy prevented witnesses from observing whether technicians encountered difficulties in inserting the IV lines and also blocked the witnesses from determining if the lethal drugs were working as intended or causing traumatic injury or mental anguish to the inmate.

In September of 2012, he partnered with the American Civil Liberties Union of Pennsylvania to challenge the policy on behalf of the *Philadelphia Inquirer* and the *Harrisburg Patriot-News*. They filed a Section 1983 action in federal court and immediately moved to preliminarily enjoin enforcement of the policy during two executions that were scheduled to occur in the near future. After expedited discovery and an evidentiary hearing, the court granted the injunction.

In the end, as part of a negotiated settlement, the Department of Corrections agreed to amend its policy and permit the viewing and hearing of executions from the time the inmate enters the execution chamber until he/she is declared dead.

Throughout his notable legal career, Titus not only has served as a leader and a mentor to attorneys at Schnader, but has also served as a leader and role model through his work with many different educational, civic and community organizations in and around Pittsburgh.

Among other things, he has been very active with the Sr. Thea Bowman Catholic Academy in Wilkensburg, a working-class suburb of Pittsburgh. He teaches constitutional law to the school's eighth grade students, and also runs a mock trial program for them, in which he meets with the students monthly and recruits other attorneys in town to serve as coaches. He set up the program and essentially runs it himself. As part of this program, he also takes the students on trips to Harrisburg and Washington, D.C., where they visit the Supreme Court and local legislators.

On top of all this, Titus finds time for bar work at the local, state and national level, as

well as serving as Chair of the Board of the American Judicature Society. He is a founding member of Pennsylvanians for Modern Courts, and has been a stalwart advocate of merit selection for decades (Pennsylvania elects all its judges in partisan elections.) He has been active in the College as well, serving on both the Access to Justice and Legal Service Committee and the Teaching of Trial and Appellate Advocacy Committee, as well as the Pennsylvania State Committee.

Titus is one of the most respected lawyers in the state, for both his litigation skills and his unwavering commitment to justice. He has been a member of the Schnader Harrison law firm since 1999. In 2003, he received the Firm's "Earl G. Harrison Pro Bono Award."

Dennis R. Suplee, a Former Regent of the College, said "In reality, the firm could give Paul the award every year for his continued pro bono efforts. But of course Paul would reject all such recognition."

When Titus is not in the office, Bonnie, his beloved wife of sixty years, is never far from his side. Paul and Bonnie have three children and two grandchildren, who still gather to share Sunday dinners together. He is a lover of nature, and looks forward to spending quiet weekends at his country house in the woods.

In the Pittsburgh community, and beyond, Titus is sought after for his wisdom, compassion, and judgment. He exudes calm and peace, and never has a bad word to say about anyone. His Schnader colleague, Nancy Winkelman, immediate past President of the American Academy of Appellate Lawyers, described him as "one of the most beautiful people I have ever known, kind and gentle, with a healthy dose of irreverence and humor!... Walking through Pittsburgh with him is quite an experience," she said. "He keeps his pocket full of \$5 bills, and stops to give one to every homeless person he sees." His impact on the community and the profession, in small and great ways, is an inspiration to us all.

Sylvia H. Walbolt
Tampa, Florida

PERSONAL HISTORY: WORKING AS A VISITING PROFESSOR IN EASTERN EUROPE



TARTING IN 2008, I HAVE PARTICIPATED ON FIVE SEPARATE ASSIGNMENTS IN THE VISITING PROFESSOR PROGRAM, WHICH IS RUN BY THE CENTER FOR INTERNATIONAL LEGAL STUDIES, A 501(C)(3) NON-PROFIT ORGANIZATION. IT ASSIGNS EXPERIENCED LAWYERS, MOSTLY FROM THE U.S., TO TEACH IN LAW SCHOOLS IN FORMER SOVIET-DOMINATED COUNTRIES FROM THE BALTICS (SUCH AS LATVIA) TO THE SEA OF JAPAN (VLADIVOSTOK) TWELVE TIME ZONES TO THE EAST. EACH LAWYER-PARTICIPANT IS REQUIRED TO GIVE A MINIMUM OF TWO WEEKS' TIME TO THIS ENDEAVOR. THE PROGRAM IS ENTIRELY PRO BONO. IT ALLOWS U.S. LAWYERS TO TEACH AMERICAN LAW TO STUDENTS IN EASTERN EUROPE, THE VAST MAJORITY OF WHOM ARE VERY GRATEFUL TO LEARN ABOUT OUR LEGAL SYSTEM. THE EXPERIENCE IS EXHILARATING.

From 2008 through 2017 I have taught “American Civil Litigation and Trial Advocacy” in Budapest, Hungary; Tirana, Albania; Pristina, Kosovo; Dnipropetrovsk, Ukraine; and Tbilisi, Georgia. Each experience is different. As a visiting professor I have taught on my own. There are no other Americans around, and there is no bureaucracy or supervision involved. The best part of the program is the rare opportunity for a visiting professor to interact with students and local professors and gain insight into the cultural and legal systems of struggling democracies not afforded to typical visitors. In addition, a visiting professor learns about the personal struggles of these Eastern Europeans who have been through the horrors of Communism and the chaotic aftermath when pandemonium broke out in all former Soviet republics.

I have been privy to many personal stories during my time teaching. Some stories that stand out in my mind are:

- The dean of the law school in Tbilisi whose grandfather was imprisoned in Siberia on “trumped up” charges by Joseph Stalin.
 - The French student in Budapest whose family was originally from Germany but left during World War II due to Hitler’s purge against Jews. Leaving all their possessions behind, the student’s family had to rebuild their lives from scratch, with her grandfather refusing to ever speak German again.
 - The student in Kosovo whose parents were arrested by Serbs, whose home was burned to the ground, and who had to walk 200 miles to a refugee camp to survive.
 - The university staff person in the Ukraine whose family was forced out of Crimea in 2015 (leaving their home behind) because they were not pro-Russian.
 - The taxi driver in Kosovo who, upon learning that I was an American, stopped the taxi, got out, and shook my hand saying “thank you” in gratitude for the U.S. support of Kosovo’s independence in 2008. In the capital city of Pristina, there is a Bill Clinton Boulevard and a George W. Bush Boulevard, both tributes to Kosovo’s gratitude to America.
 - The Assistant Dean of the Tirana University law school in Albania warned me to walk carefully at night in the capital city because frequently thieves would steal manhole covers.
- Only nine years ago, Russia invaded Georgia and “annexed” portions of northern Georgia as part of the Russian Federation. Most of these countries have tense relationships with Russia, and corruption is common.
- I have found that the students are well aware of American culture, music and the fact that we have what is considered to be the fairest legal system in the world (notwithstanding some glaring deficiencies on which they comment).
- Each country has unique national traits, unique foods and the citizens are generally happy to share meals and stories with visiting professors.
- The level of English varies from country to country, but from my experience virtu-



Fellow Tom Pope in front of the Kosovo Court of Appeals with Kosovo Law Professors, 2013



Pope with his class in Budapest, Hungary, 2008

ally all of the students comprehend English, even if they do not speak it well. As a visiting professor, you can teach whatever you wish. As a Fellow in the College, I naturally chose a topic that required no serious preparation: trial advocacy. As a teaching aid, I also show the film *My Cousin Vinny* to the classes I teach. The students not only absorb the humor of the movie but also the lessons to be learned about cross-examination.

The additional benefit of being in a country for two weeks is the experience of traveling and exploring the countryside and the histories of those countries. I traveled to the wine country in Georgia, where I surprisingly learned that Georgians have been making wine for over 6,000 years, and that their wines are as good as any in the world, comparable to anything from France or California. While in Albania, I saw some of the 300,000 concrete bunkers that the Albanian Communist dictator constructed throughout the countryside because of his paranoia over possible attacks from abroad.

The hospitality of Eastern Europeans towards their visiting professor is uniformly effusive. Some of my most interesting moments of teaching are the times when I shared coffee or a meal with students.

Georgia has a strong tradition of hospitality towards visitors. The dean of the law school took me to lunch every day after class. Lunch included wines, meats, salads, and breads, and the dean graciously refused to allow me to pay for any of it.

I culminate each teaching trip with a party for my students (which includes professors and the dean). This is not only a widely appreciated treat by the students, but it also affords me the opportunity to hear stories from the law students who will soon practice law or work within the judicial system of their respective countries.

All my assignments have introduced me to many off-the-wall insights into Eastern Europe.

- Every country has its own version of “moonshine.” In Albania, it’s raki. Hungary has palinka. Georgia’s is chacha.
- The people in all countries are in awe of America and have great respect for our open society (even though they acknowledge our faults, such as gun violence).
- The students openly express their gratitude to visiting professors from America for giving time to share our legal system with them.
- The legal systems in Eastern Europe are still burdened, in varying degrees, with corruption, and the students express skepticism about jury trials. They are impressed that juries can function in the U.S. without interference. Some progress is underway, particularly in Kosovo and Georgia, to implement jury trials.
- American culture and music are present even in the poorest parts of East-

ern Europe. For example, even in an impoverished country like Albania, all traditional weddings include American music.

- In Albania, people nod to signify “no” and shake their heads for “yes.”
- The most popular food in Ukraine is salo, which is fatback soaked in brine for days and then seasoned with garlic and thyme. One of my students had his father send him some homemade salo via the train. After running three miles to the train station to retrieve the package, the student happily presented it to me as a gift. Delicious with beer.

CONCLUSION

All Fellows ought to consider giving their time to the Visiting Professor program. What’s not to like? The College is committed to the Rule of Law and pro bono work. The two weeks spent teaching civil litigation is extremely rewarding. There are no dangers; the cities in Eastern Europe are at least as safe as cities in the U.S. Travel to non-traditional destinations is fascinating, and the food is uniformly good. You feel a sense of pride in our American legal system and, in a very small way, you can make a difference.

Thomas H. Pope, III
Newberry, South Carolina



A class photo in Tbilisi, Georgia, 2017

WAR STORIES FROM FELLOWS



BELOW IS A CONTINUING SERIES IN THE *JOURNAL* FEATURING WAR STORIES FROM OUR VERY OWN FELLOWS. RANGING FROM ENTERTAINING TO INSTRUCTIVE, THESE STORIES WILL FEATURE SOMETHING A FELLOW DID OR SOMETHING THAT HAPPENED TO A FELLOW OR ANOTHER FELLOW DURING A TRIAL. [Please send stories for consideration to editor@actl.com.](mailto:editor@actl.com)

NUMBER SPEAKS FOR ITSELF

I was representing the wife in a divorce proceeding and we were alleging adultery as the ground for the divorce. The husband took the stand and his attorney, in an effort to mitigate the forthcoming and damning testimony my client was prepared to present, asked him if indeed he had committed adultery. He replied in the affirmative and the attorney asked him to explain himself to the judge. He said it was because his wife had not had sex with him in five years. She leaned over to me and whispered, "He is a liar, it has been seven!"

THOU SHALT NOT LIE

We were in voir dire and the opposing lawyer asked the venire if anyone attended church with me, and one very sweet looking elderly lady said, "Yes, we both go to the same Episcopal Church in town." The opposing counsel responded, "Well, I go there also" to which the lady said, "Maybe so, young man, but I have never seen you there!"

THE HAZARDS OF JURY DUTY

The jury in Marengo County had been deliberating in our case for almost the entire day when it was reported that they had a question. When the judge assembled them he asked the nature of the question and a young lady said: "Does anyone have a Tylenol? These other jury members have given me a headache."

Wilbor J. Hust

Tuscaloosa, Alabama

BROWN BRINGS THE FULL FUNK

I represented the soul singer, James Brown, most of my legal career. We were in the New York Tax Court because he had not filed taxes for some six years and the IRS had all the W-2 forms but none of his expenses. I called his office in Augusta, Georgia, and asked him to send over all of his records so we could respond to the IRS. He assured me that he would. The next day his representative came to our office in Barnwell, South Carolina, and I sent my paralegal down to help get the records in the office. She came back up and said I needed to come down to the car. I went down and we opened his trunk and he had every recorded song that he had on 45's and albums that he ever produced. The Godfather of Soul could sing, but he had a different definition for "records."

Terry E. Richardson, Jr.

Barnwell, South Carolina



COMMITTEE UPDATES

ARIZONA CHAPTER SPONSORS ANNUAL JENCKES CLOSING ARGUMENT COMPETITION

On November 3, 2017, the Arizona Chapter held its annual Jenckes Closing Argument Competition at the Sandra Day O'Connor School of Law at Arizona State University. The team of Angelika Doebler and John Thorpe from Arizona State were declared the winners, ending the winning streak of the University of Arizona. The Jenckes Competition is a closing argument competition sponsored by the Arizona chapter. The competition is between law students at Arizona State University and the University of Arizona. It is held in honor of **Joseph S. Jenckes**, a prominent Phoenix attorney and Fellow of the College. Students are given two weeks to master the facts and present a closing argument after reviewing trial transcripts and exhibits from a case that was actually tried. Over thirty-five Fellows were in attendance and acted as jurors deciding which team presented the most compelling argument. The evening ended with a social hour attended by Fellows, their spouses and students from both universities.

COLORADO FELLOWS REACH OUT TO JURORS

Colorado Fellows, along with the Colorado chapter of ABOTA, the International Academy of Trial Lawyers, the Institute for the Advancement of the American Legal System, the Denver Bar Association Young Lawyers Division and the Civil Jury Project sponsored the first Denver Jury Improvement Lunch on Thursday, November 2 at the Denver Ritz-Carlton. The purpose of the lunch was to honor the jurors and to learn from them about what can be done to improve civil trials.

MISSISSIPPI FELLOWS PRESENT AT MISSISSIPPI TRIAL & APPELLATE JUDGES FALL CONFERENCE

On Thursday, October 26, 2017, members of the Mississippi Chapter presented a program titled "Courtroom Demeanor and Control: Abusive Cross Exam; Inadmissible Evidence at Trial; and Improper Closing Argument" to the Mississippi Trial & Appellate Judges Fall Conference in Jackson, Mississippi. Fellows used the Judicial Demeanor and Courtroom Control Practices video, available on the College YouTube channel, prepared by the Federal Judicial Center and ACTL, as the basis for the role playing. Mississippi State Committee Chair **John G. Wheeler** introduced the program while **Roy D. Campbell III** moderated the program. Mississippi State Committee Vice Chair **J. Cal Mayo, Jr.** coordinated the program along with Campbell. The following Fellows presented during the program: Abusive Cross Exam: **Phil B. Abernethy**, **William M. Dalehite, Jr.** and Immediate Past Chair of the Mississippi State Committee **David W. Mockbee**; Inadmissible Evidence at Trial: **David L. Ayers**, **William R. Purdy** and former Mississippi State Committee Chair **Stephen L. Thomas**; Improper Closing Argument: **R. David Kaufman**, **William Liston III** and **Walter C. Morrison IV**. The program received positive feedback and requests to return to the conference next fall for another program.

TRIAL INSTITUTE CONTINUES TO HONOR NEBRASKA FELLOW

The memory and legacy of **Daniel D. Jewell**, a Nebraska Fellow who passed away in 2013, lives on through the Dan Jewell Trial Institute. Jewell was inducted to the College in 1972

and was a prominent trial lawyer for many years. When he passed away, Dan and his family established a fund with the Nebraska State Bar Foundation with the vision that the fund should support a program to teach younger lawyers to try lawsuits. Through a committee formed by the Foundation, they developed materials concerning a will contest for the institute. Younger, inexperienced lawyers applied to the institute which involved a day and a half program. Each student was required to select a jury from volunteer jurors, make opening statements, examine and cross-examine volunteer witnesses, offer evidence, including selected deposition testimony, submit requested instructions and complete an instruction conference with the judge. Thereafter, they made final arguments. The first Institute was held in 2016 at Creighton University School of Law. A U.S. District Court Judge, an active State Court trial judge and a retired State Court trial judge presided in three courtrooms. Each student was assigned a mentor to critique each student's performance and provide advice. The volunteer mentor lawyers were all Nebraska Fellows. The first Institute was a success, and a second Institute was held in 2017 at the University of Nebraska College of Law. Once again, volunteer mentors were all College Fellows. The presiding judges, two female and one male, included two current and one retired state trial court jurists. The third Institute is planned for the summer of 2018 at Creighton University Law School. All three Institutes have been organized and coordinated by Fellows. Plans are in the works to double the number of students participating in the 2018 Institute because of the demand. "The Nebraska Bar Foundation's goal was to create a program that Dan would be proud of. We think we have accomplished that goal, and we look forward to conducting the Institute in the future," said **Charles F. Gotch**, former Nebraska State Committee Chair.

NORTH CAROLINA FELLOWS PRESENT TRIAL SKILLS CLE FOR LEGAL AID

On Friday, November 3, 2017, North Carolina Fellows presented a trial skills CLE for Legal Aid of North Carolina at its Legal Services Task Force Trainings in Greensboro. The CLE was attended by legal aid attorneys from across the state. The following CLE sessions were presented by Fellows: "Using Expert Witnesses" - **Tamura D. Coffey** and **Sara R. Lincoln**; "Discovery Limits, Protective Orders and Motions in Limine" - **Reid L. Phillips**; "Defend-

ing Depositions” - **Dan Johnson McLamb** and **C. Mark Holt**; “Rule 41 Dismissals and Rule 56 Summary Judgments” - **J. Dennis Bailey**. Holt, North Carolina State Committee Chair said that “providing this service to Legal Aid is consistent with the College’s mission to improve and elevate standards of trial practice, the administration of justice and the ethics of the profession.” Fellows utilized the *ACTL Code of Pretrial and Trial Conduct* in their presentations and provided copies of the Code to CLE participants. Celia Pistolis, Litigation Director of Legal Aid of North Carolina, said “we are so pleased to partner with ACTL and its Fellows to provide high quality training to legal services attorneys across the state.” This is the second year in a row the North Carolina Fellows have provided training for Legal Aid. At last year’s CLE, one of the Fellows who spoke was the Honorable **William Douglas Parsons** of Clinton, North Carolina. Judge Parsons died unexpectedly on September 24, 2017. In addition to providing the recent CLE training, the North Carolina Fellows also are making financial donations to Legal Aid of North Carolina in memory of Judge Parsons. Thus far, these donations from the North Carolina Fellows to Legal Aid total approximately \$6,000. For more information, contact: Mark Holt, mark@holtsherlin.com or Celia Pistolis, celiap@legalaidnc.org

PENNSYLVANIA FELLOWS LAUNCH INAUGURAL TRIAL SKILLS PROGRAM WITH TEMPLE UNIVERSITY

A trial skills CLE training program was presented at Temple University Beasley School of Law in Philadelphia on November 4, 2017 under the joint sponsorship of the Pennsylvania State Committee and Temple’s Trial Advocacy Program. **Nancy J. Gellman** and **Catherine M. Recker**, respectively Chair and Vice Chair of the Pennsylvania State Committee, approached Temple to discuss how the College might be a resource to the law school as part of the Committee’s effort to increase outreach and opportunities for service to the legal community. Professor Jules Epstein, the Director of Advocacy Programs at Temple, suggested an annual trial skills program entitled “Masters of Litigation.” Fellow **Joseph C. Crawford**, Vice Chair of the College’s Teaching of Trial and Appellate Advocacy and the Outreach Liaison for the Pennsylvania State Committee, participated in planning and recruitment of Fellows to participate as speakers. The central concept

is for the College and Temple to work together to present an annual trial skills program designed for practicing lawyers, participants in Temple’s trial advocacy LL.M program and law students. The November 4 program was a sell-out, filling the lecture hall at Temple. The program began with an introduction by Regent **Robert E. Welsh, Jr.** about the College and the collaboration with Temple. College speakers included a federal prosecutor, a public defender, criminal defense lawyers and civil trial lawyers. Fellows **Linda Dale Hoffa**, **Robert J. Livermore** and **John P. McShea III** gave a presentation on opening statements during which they shared advice and suggestions on effective story telling in openings, establishing themes for direct, cross and closings, use of exhibits and other issues in openings. Fellows **Patrick J. Egan**, **William J. Ricci** and **Leigh M. Skipper** gave a presentation on telling a winning story through cross-examination of lay and expert witnesses. Temple Professor Barbara Ashcroft and jury consultant Melissa Gomez discussed jury decision-making and current attitudes of jurors about alleged abuse of power. Professor Jules Epstein spoke about “Evidence Lessons Your Mother Never Taught You.” Written materials prepared by the presenters were also distributed. The audience included civil trial lawyers, criminal lawyers and law students. As part of the College’s outreach efforts, the Foundation provided scholarships to public service lawyers from the Philadelphia District Attorney’s Office, the city and federal Public Defender Offices, Community Legal Services and the Juvenile Law Center.

TEACHING OF TRIAL & APPELLATE ADVOCACY COMMITTEE HOLD TWO NOVEMBER PROGRAMS

The Teaching of Trial and Appellate Advocacy Committee presented two programs in November. On November 9, the program “Internet and Social Media Searches About Potential and Actual Jurors During Voir Dire and Trial” took place under the leadership of Committee Vice Chair **Joseph C. Crawford**. On November 17, the committee co-sponsored the One Day Boot Camp Trial Training Program with the ABA Litigation Section. The program was offered to legal services lawyers from northern Virginia, Washington, DC, Maryland and southern Pennsylvania and was held in the ceremonial courtroom of the United States District Court for the District of Maryland. The following Fellows participated in the program: **Harriet E. Cooperman, Esq.**, co-chair of the program; **M. Natalie McSherry,**

Esq.; **Andrew D. Levy, Esq.**; **William J. Murphy, Esq.**; Maryland State Committee Vice Chair **Richard C. Burch, Esq.**; **Barry Coburn, Esq.**; **James P. Ulwick, Esq.**; **Joshua R. Treem, Esq.**; Former Regent **Paul D. Bekman, Esq.**; Maryland State Committee Chair **Daniel R. Lanier, Esq.**; and Teaching of Trial and Appellate Advocacy Committee Chair **Paul Mark Sandler, Esq.** The committee will also present a CLE during the 2018 Spring Meeting in Phoenix, Arizona titled “Mock Pre-Trial Hearing on Counsel’s Request to Use Social Media Searches of Jurors Before, During and After Trial.” After the mock hearing and ruling by the court, a panel discussion among judges, lawyers, a former juror and jury consultant will debate the many aspects of the topic.

TEXAS FELLOWS’ FIRST ETHICS CLE A SUCCESS

On September 28, 2017 the Texas Fellows sponsored a one-day seminar – “Ethics and Litigation: A Radically Different Approach” – for Texas Fellows and lawyers in their firms. Approximately 100 lawyers attended including young lawyers, experienced lawyers and Fellows in the College. Attendees received up to six hours of CLE credit. The seminar involved a legal malpractice case with negligence and conflict of interest issues. The Honorable Lee H. Rosenthal of Houston, Chief United States District Judge of the United States District Court for the Southern District of Texas, presided over the trial which had opening statements, direct and cross examination of legal experts for the Plaintiffs and Defendant and closing arguments. A twelve-person jury rendered a verdict and provided feedback on their decision. The seminar ended with a panel discussion led by Judge Rosenthal. The following Fellows participated in the seminar: Former Regent **Wayne Fisher**, Past President **David J. Beck**, **Barry Barnett**, **Steve McConico**, **Thomas H. Watkins**, **William D. Cobb, Jr.**, **David Gerger**, **Russell Hardin, Jr.**, **David N. Kitner**, **E. Leon Carter** and **Richard Warren Mithoff**. The seminar was well-received by all attendees. Comments included: “I got to see really great lawyers I would never have seen otherwise;” “best seminar ever;” and “first time I never left during a seminar to take a call or do other business.” Past President Beck organized the seminar and recruited the participants. Other states interested in doing a similar seminar should contact him for further information at dbeck@beckredden.com.

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

August 24-27, 2017

Sun Valley Lodge, Sun Valley, Idaho

REGION 3: NORTHWEST REGIONAL MEETING



THE FAMOUS SUN VALLEY LODGE PROVIDED THE SETTING FOR THIS 2017 NORTHWEST REGIONAL MEETING HOSTED BY THE IDAHO FELLOWS AND IDAHO STATE COMMITTEE. ALTHOUGH RECENTLY REFURBISHED, THE LODGE RETAINS THE SAME LOOK, CHARACTER AND FEEL AS BUILT IN 1936 BY THE UNION PACIFIC RAILROAD FOR THE FIRST SKI DESTINATION RESORT IN THE UNITED STATES. FELLOWS AND THEIR GUESTS FROM SIX OF THE SEVEN STATES AND PROVINCES GATHERED. PRESIDENT **BARTHOLOMEW J. DALTON** AND EILEEN AND REGENT **MONA T. DUCKETT, Q.C.** ATTENDED ALONG WITH PAST PRESIDENT **FRANCIS L. WIKSTROM** AND LINDA JONES, PAST PRESIDENT **THOMAS H. TONGUE** AND ANDREA, FORMER REGENTS **PAUL FORTINO** AND CAROL, AND **JAMES M. DANIELSON** AND CAROL. THE DALTONS TRAVELED A LONG WAY, 2,386 MILES TO BE EXACT, BUT THE DISTINCTION FOR TRAVELING THE FARTHEST WENT TO **HOWARD A. LAZAR** AND DOROTHY, WHO TRAVELED 2,881 MILES FROM ANCHORAGE.

Thursday night's Welcome Reception was on the Lodge's terrace where Warren Buffett, the Murdochs, Bill Gates, Mark Zuckerberg, Harvey Weinstein (before the fall) and moguls from the tech, media and business worlds gathered earlier in the summer for Allen & Company's annual conference.

FRIDAY SPEAKERS

The Friday morning program kicked off with "A History of Ketchum and Sun Valley: From Sleepy Mining Town to World-Class Destination" presented by **Wendy Jacquet**. Jacquet moved to the Ketchum/Sun Valley area over forty years ago with her husband Jim, served as Director of the Sun Valley Chamber of Commerce, and recently closed out eighteen years in the Idaho House of Representatives as Democratic Minority Leader.

Sun Valley has its roots in the nearby town of Ketchum and the discovery of silver and lead in the 1880s. By 1884, Ketchum had a population of 2,000, along with thirteen saloons, four restaurants, three hotels, three blacksmith shops, six livery stables, and seven stages per day. After the silver market deteriorated, the area evolved into a sheep capital of the world, second only in the 1920s to Sydney, Australia, for the number of sheep shipped annually.

To promote winter travel on the Union Pacific, Governor W. Averell Harriman, Chairman of the Board, dispatched an Austrian Count to look for a rural, remote area to establish a ski resort. In January 1936, Count Felix Schaffgotsch found



Ketchum and reported back: “among the many attractive places I have visited, this comprises more delightful features of any place I have been in the United States.” The world’s first chairlifts were installed that fall. The Lodge was completed in December, and Sun Valley was born. Harriman promoted the area by inviting celebrities to the Lodge; Ernest Hemingway came in 1939, completing the final chapters of *For Whom the Bell Tolls* in Suite 206 of the Lodge.

Jacquet told entertaining and delightful stories. This anecdote is just an example: a Republican female legislator, married to a hotelier, thought economic development would be spurred if Idaho had a “quickie divorce law.” A six-week residency requirement was thus established for divorce in Idaho, bringing lots of famous and infamous folks to untie the knot while staying in the Sun Valley area. Fast-forward to the late 1970s when Robert Earl and Carol Holding—whose motto is “anything worth doing is worth overdoing”—acquired the resort and with a sizeable fortune based on the Sinclair Oil Corporation, moved Sun Valley into the modern era as a thriving destination resort for all seasons.

The next speaker, Fellow **William G. Dryden** from Boise, has a special history. He was inducted on the fiftieth anniversary of his father, Los Angeles trial lawyer

Lowell I. Dryden, who was among the first twenty inductees of the newly-formed American College of Trial Lawyers in 1950. The scheduled speaker on endangered species in the Northwest (animals, not Democrats) had emergency back surgery. Bill and his spouse, Debrha Carnahan were called on to help. They are world travelers and had returned a few weeks before the meeting from a Stanford University travel/study expedition inside the Arctic Circle (72nd parallel to be more precise).

His photo presentation covered the globe, sharing glimpses of beauty, nature, archeology, culture, governments, the walls which continue to separate people, the arts, and yes, the violence around the world. From the Arctic to the Antarctic, beluga whales to penguins; Northern Ireland (the wall separating Protestants and Catholics in Belfast, Northern Ireland, third photo on page 77) to the Mayan ruins and pyramids there to the Nile and the pyramids in Egypt; Mt. Fuji from a bullet train during a trip with nothing but baseball; the beautiful city of Buenos Aires to Budapest (“pretty hard to beat”); the Golan Heights before Syria “got seriously hot and heavy”; and Tehran, where Bill was surrounded by female students laughing and talking with no one quite sure what the other person was saying. The realization that whether it’s the Cham peoples in Southeast Asia, the Greeks, Romans, early

Egyptians, or the Pueblan peoples in North America, these cultures were all doing very similar things at about the same time in history. He stitched together his amazing photographs with a narrative grounded in brevity, humor and thought-provoking observations. Dryden’s theme: Why should any of us travel in this day and age? And his answer is perspective; perspective that comes from meeting people from different cultures.

As Jacquet told the audience, Ernest Hemingway first came to the area as part of the strategy to promote Sun Valley, setting up the final speaker on Friday. **Marty Peterson** is a well-known Hemingway scholar, historian and friend of the Hemingway family. He is now in his fifty-first year of public service in Idaho, having served on the staffs of Senator Frank Church and Governor Cecil Andrus and as a special assistant to seven presidents of the University of Idaho. Peterson, a member of the Hemingway Society, co-chaired the International Hemingway Conference in 1996, served as the Chief Financial Officer for the Hemingway Foundation, which preserves and manages the Hemingway copyrights, correspondence and unpublished manuscripts.

Hemingway arrived in Idaho in 1939 with Martha Gellhorn, the war correspondent he met during the Spanish Civil War. They stayed in the Lodge where he finished the



manuscript of *For Whom the Bell Tolls*. Peterson said Hemingway was taking a “re-spite” with Gelhorne from his second wife Pauline, to whom he was still married.

Hemingway quickly fell in love with the Wood River Valley and the area around Ketchum and Sun Valley. He was convinced Idaho was the last frontier in the U.S. Hunting and fishing were excellent. He liked the people, especially the Basques (Idaho has the largest population of Basque people outside of Spain). He found comfortable bars, and the people here respected his desire for privacy.

Hemingway returned to Idaho at the end of World War II with his fourth wife Mary Welch, another war correspondent he met in London. Hemingway left Idaho in 1948 and did not return for ten years, spending most of that time in Cuba and garnering Pulitzer and Nobel prizes for literature in the interim. He and Welch returned to Sun Valley in 1958 and bought the house in which he died by his own hand on July 2, 1961. On seventeen acres with a mile of undisturbed river frontage, Hemingway would, among other things, shoot skeet off his front porch, which Peterson confirmed by remnants of clay pigeons he found years later. Hemingway is buried in the Ketchum cemetery surrounded by his wife Mary, son Jack, daughter-in-law Puck, granddaughter Margaux, and friends with whom he hunted, ate and drank.

Peterson’s intimate knowledge of Hemingway, his friendship with the family, his many trips to Cuba, including four hours “listening to” Fidel Castro (a “great fan of Hemingway’s”) provided an insider’s perspective of a cultural icon, demonstrated, Peterson suggested, by a Google search that produced 11.2 million hits compared to 127,000 for William Faulkner, 325,000 for John Grisham, and 192,000 for Leo Tolstoy.

The Hemingway House was donated to The Nature Conservancy and is now owned by the Ketchum Community Library. The House has been preserved as it was at the time of Hemingway’s death, but it is not open to the public. Wealthy neighbors in the secluded area vowed to lawyer-up and spend everything it takes to keep the tourists away. Through a couple of calls and the generosity of the Library, however, forty attendees were treated, in separate trips to keep the numbers down, to visits to the home on Friday



afternoon. This rare opportunity was much talked about through the rest of the weekend.

The Friday night dinner was a western-style barbecue on the beautiful grounds of the Trail Creek Cabin. Music was provided by the Bruce Ennis Band. Fellow **J. Patrick Peacock, Q.C.** played with Bruce during high school before choosing a career as a barrister over a folk rock star.

SATURDAY SPEAKERS

The Saturday program was focused on issues raised by the 2017 election. The first presentation was by Ph.D. jury consultants from Denver-based Persuasion Strategies, **Ken Broda-Bahm** and **Kevin Bouilly**. Entitled “Jury Persuasion in an Alt Fact World,” the pair provided an interesting, and often-troubling, discussion against this backdrop: In today’s digital environment, access to information is instantaneous. Simply by following the news and through social media accounts, people exist in an era of increasing complexity and competition when it comes to persuading others. Facts are not easily accepted, but rather, questioned and internalized based on beliefs, emotions and social affiliations that often go unacknowledged or underappreciated. This presentation analyzed the following questions:

Why is resistance to persuasion is greater than ever before; how do dominant narratives shape fact finders’ perceptions today and what key strategies are effective in overcoming dominant narratives in the courtroom; why is authoritarianism playing such a focal role in jury verdicts and how should advocates best deal with authoritarianism in the courtroom; what is the current role fear plays in civil litigation and how should these appeals be best addressed today; what is “Tribalism,” how influential is it in civil and criminal litigation, and what are proven strategies for addressing tribalism in litigation.

They concluded with a reminder for trial lawyers: “Part of our method goes back to what the Greeks knew. It’s not a matter of improving or reforming or fixing your audience. If you ever feel like you’re trying to do that to a jury, you’re probably on the wrong track. It’s about adapting to the audience. Figuring out, estimating, analyzing where they were and we are, and finding a route to your preferred outcome from there. It’s not about fixing them or reforming them. It’s about adapting your outcome to

their beliefs.” And the reassuring conclusion about juries, despite significant questions about whether facts really count anymore, was this: “We haven’t seen this huge flight from facts in the jury room.” The presentation later turned into an article for 360 Law that was published November 2017 (<https://www.law360.com/articles/982244/jury-persuasion-in-an-alt-fact-world>).

The final speaker was **Brooks Kochvar** on the topic “2016: A Vote for Change: Explaining Trumpism in a Deeply Divided America.” Kochvar is a partner in the GS Strategy Group. Based in Boise since 2010, they perform polling and public opinion research both domestically and globally for such clients as GE, Boeing, Uber, Snapchat, Under Armour, Wendy’s and the American Cancer Society. A primary focus of their work is for Republican political candidates throughout the country, particularly “blue state” Republicans. His firm has done more polling in 2017 than in all of 2015 and 2016 combined because people “really want to know what’s going on in America. What do people really think?”

He provided a look at the macro trends of the 2016 election, how they elevated Donald Trump to the presidency—their impact on today’s political and public policy debates and the potential implications for trial lawyers, including an examination of the effect of the court of public opinion, populism and the Trump agenda. The takeaway was that the facts—gleaned from a vast amount of polling data—do not support many of the perceptions about why Trump beat Clinton.

Contrary to what might be considered conventional wisdom, the 2016 election was not about issues or personalities. “It really ended up being an election about continuity versus change, and desires for change.” Overwhelmingly, Donald Trump was the change candidate. Among women, for example, the idea that Trump was going to get beat by record numbers “just isn’t out there.” Trump only lost the female vote by twelve points. Brooks considered that “fairly astonishing” as it was a loss by fewer than Mitt Romney.

“Sixty-three percent of the voters said they were bothered by the Hillary Clinton email issues. Seventy percent said they were bothered by Donald Trump’s treatment of women. A larger percentage was concerned about

Trump’s treatment of women than were concerned about Hillary’s email, but those were not the issues that really drove the election.” Of the eighteen percent of people who didn’t like either candidate, 49% voted for Donald Trump, 29% for Hillary Clinton, and the others sat out and didn’t vote in the election. “Donald Trump was able to carry the election because he carried the larger number of people who hated both of them, that’s ultimately what ended up happening.”

Kochvar observed that arrogance and overconfidence also played a critical role. No reputable entity, including the Clinton campaign, did polling in Pennsylvania, Michigan and Wisconsin because nobody thought Trump could come close in those states. “The idea the polling was wrong—the fact is there was actually no polling done in those states.”

A seemingly bright spot for trial lawyers, the courts continue to have “pretty strong numbers” in terms of trust compared to Congress, the news media and banks and financial institutions. Brooks concluded by reflecting that “when you look across the modern population, there are a lot of people out there who do not necessarily think the way we do, and we need to think about how we address them, talk to them, and attempt to persuade them.”

Saturday afternoon provided time for golf, enjoyed by a number of Fellows and their guests, hiking, leisure time, and Regent Duckett took advantage of a fly fishing guide for a “blast” along one of the many well-stocked streams in the Valley.

The meeting concluded with cocktails, laughter, stories and dinner. President Dalton, who was attending his last Regional meeting, then spoke eloquently and with passion about the diversity statement of the College, its ongoing mission to protect the Rule of Law and, as a timely precursor to events of the past month or so, the protection of women from sexual harassment in colleges and universities.

The night ended with the dance floor filled to the music of the Joe Foss Band, led by Joe Foss who has played jazz piano and other standards in the Sun Valley Lodge Duchin Room Bar for forty years.

Newal Squyres
Boise, Idaho

Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming

August 17-18, 2017

Ambassador Hotel, Wichita, Kansas

REGION 4: 10TH CIRCUIT REGIONAL MEETING



THE FATES WERE SMILING, WHEN IN THE MIDDLE OF THE DOG DAYS OF SUMMER, ATTENDEES AT THE 10TH CIRCUIT REGIONAL MEETING IN WICHITA, KANSAS, WERE GREETED BY REMARKABLY COOL WEATHER. WHILE EFFORTS BY KANSAS FELLOWS TO CONVINCE OUT-OF-STATE GUESTS THAT THIS IS HOW KANSAS ALWAYS IS IN AUGUST PROVED UNSUCCESSFUL, THE SURPRISINGLY COMFORTABLE TEMPERATURES DID PROVE TO BE AN OMEN OF WHAT WOULD BE A VERY WELL RECEIVED MEETING.

The meeting was held at the recently restored Ambassador Hotel, housed in a historically significant building in Wichita's downtown corridor. First up was a welcome reception in the Apothecary, a hotel tavern designed in the tradition of a prohibition-era speakeasy. Located in the hotel basement, just beyond a darkened hall, one can easily imagine knocking on the Apothecary's door during prohibition, assuring the guard that you are not a federal agent before quietly entering. The event was attended by both Wichita and out-of-town fellows and guests, who enjoyed conversation, hors d'oeuvres and specialty drinks created just for this occasion.

The Friday morning program opened with a presentation on the Dockum Sit-in, a very important event in the history of the civil rights movement. Interestingly, the sit-in took place at the current location of the Ambassador Hotel. In July of 1958, the Dockum Drugstore in Wichita would have seemed an unlikely place for history to occur. Yet, history was made when a small number of African-American teenagers began one of the nation's earliest - quite likely *the earliest* - sit in to protest the unfair treatment they had received at the store's lunch counter. Persons of color were prohibited from sitting at the counter to eat; instead, they were forced to purchase and pay for food at the end of the counter and then take it away in a brown bag.

Beginning July 19, 1958, ten well-dressed and consistently polite teenagers entered the store and sat at the counter. They endured taunts, jeers and threats, but did not respond in-kind. After three weeks, the store's manager finally said to "serve



them –I’m losing too much money.” This success was followed by similar protests throughout the nation.

The Kansas State Committee was pleased to be able to present the three participants who were kind enough to speak with copies of a tribute, prepared for the occasion and signed by civil rights legend, Congressman John Lewis.

The Friday program next featured **Richard Crowson**, for years a political cartoonist with the *Wichita Eagle*, as well as being an accomplished banjo player. Political cartooning and banjo playing may seem like an odd combination, but it is pure gold in Crowson’s case. Putting both skills to good use, he provided attendees with an entertaining presentation that produced much laughter.

The last presenter in the Friday session was **Mark Holden**, Senior Vice Presi-

dent, General Counsel and Corporate Secretary of Koch Industries, who spoke on the Koch Criminal Justice & Policing Reform initiative. The “Koch brothers” are, of course, famous, or infamous, depending on one’s perspective, in their support of conservative political causes. This makes it especially interesting that Charles Koch and Koch Industries have also become deeply involved on the subject of criminal justice reform. Holden provided an overview of the initiative’s activities, including pursuing reform in criminal sentencing and addressing specific injustices resulting from severe mandatory minimum sentencing.

Friday afternoon brought the first optional tour, a visit to Doc, the recently restored B-29 aircraft. Manufactured by Boeing in Wichita in 1944, Doc is one of only two flyable B-29s which remain in existence.

The name Doc was taken from Snow White and the Seven Dwarfs, all of which had B-29 aircraft named after them. Salvaged from a junkyard, Doc was returned to Wichita in 2000 and went through years of restoration, much of it provided by a large group of dedicated volunteers.

One of those volunteers was Connie Palacios. Connie was one of the famous Rosie the Riveters. She personally worked on Doc in the early 1940s, and then more than a half century later actively participated as a volunteer in the restoration effort. Attendees were honored to have Connie, dressed in her Rosie the Riveter outfit, personally discuss her experiences with our group. Many participants took advantage of the once-in-a-lifetime opportunity to have their photograph taken with an actual living Rosie the Riveter.



In addition to meeting Connie, participants were able to climb into the body of the aircraft and view the cockpit. Many were struck by the tight space within which the crew worked. Most participants then climbed down from the aircraft on a fairly intimidating ladder, one clearly designed for young airmen rather than not-quite-so-young lawyers. Everyone was able to dismount without incident and in a few cases with praiseworthy style. Everyone who participated in the tour enjoyed the experience.

Wichita is known as the Air Capital of the World. A full seventy percent of all general aviation aircraft currently in service were manufactured in the City of Wichita. Wichita's aviation history began in 1915, when Jake Moellendick came to Kansas in search of oil. A very successful wildcatter, he was then bitten by the aviation bug after being given an airplane ride to a meeting. While it is a much longer story, ultimately his investment in aviation led to two of his former employees, Lloyd Stearman and Walter Beech, joining forces with another flyer, Clyde Cessna, to open the Travel Air Manufacturing Co. in January of 1925. Ultimately, the three took separate paths leading to the creation (one each) of Boeing Aircraft, Cessna Aircraft Company and Beech Aircraft Corporation.

In celebration of this aviation heritage, dinner on Friday evening was held at the Kansas Aviation Museum (KAM), housed in the historic administration building for the original Wichita Airport, a building on the National Registry of Historic Places. As with Doc, KAM exists, in large part, due to a large number of dedicated volunteers, including a group of largely elderly individuals, most retired from the air force and/or aircraft manufacturing, who have put together one of the most successful vintage aircraft restoration programs in the world. In addition to enjoying cocktails and dinner, guests were able to view the museum's many historic aircraft, including several restored by the group described above, on at least one occasion, starting the process with little more than two buckets full of disassembled parts. Some of these exhibits can be found nowhere else in the world.

The Saturday morning session began with a panel discussion on the subject of judicial independence in an era in which the judiciary

is under attack. Over the last several years, Kansas has been in the center of the cyclone on the issue of judicial independence. Conflicts between Governor Sam Brownback and the Kansas Supreme Court, particularly on the issue of school financing, led to a well-financed campaign in the 2016 retention election (general election) seeking the ouster of four justices of the seven-member Kansas Supreme Court. A large number of members of the Kansas Bar organized in opposition to this attack, collected funds for the necessary advertising and mounted a successful defense of the judiciary. Ultimately all of the justices were retained by large margins. Many individual Kansas Fellows dedicated time and money to this effort. The Kansas Chapter, with the unanimous consent of all voting members, also published a letter to the editor in opposition to the campaign to remove the justices, which was published in three of the four highest-circulation newspapers in the state, as well as several smaller papers.

Members of the panel discussion included the Honorable **Carol A. Beier**, Justice of the Kansas Supreme Court, **F. James Robinson, Jr.**, a Wichita attorney deeply involved in the campaign and **John Rowley**, a nationally prominent media consultant, who was also involved in the campaign. The discussion within the panel was both interesting and informative. Justice Beier provided historical background regarding some of the events and circumstances leading to the fight, while Robinson discussed the underlying legal principles. Finally, Rowley provided an entertaining presentation, which included clips from a number of advertisements, from various related campaigns across the country.

The second half of the Saturday morning session involved a presentation by **Stephen D. Susman** and the Honorable **J. Thomas Marten**, Chief Judge, U.S. District Court of Kansas, senior status, on the subject of innovative jury trials. Susman is a nationally prominent authority on this subject and created the Trial by Agreement approach to litigation. Judge Marten has worked closely with Susman and has instituted a number of innovations in trials in his courtroom. A lively discussion ensued, including comments emphasizing the importance of devel-

oping innovative strategies in order to keep the jury trial alive in the United States.

Saturday afternoon offered, as the second optional tour, a visit to the Cosmosphere in Hutchinson, Kansas. Although Hutchinson is a fairly small community, the Cosmosphere is universally regarded as one of the finest space museums in the world. It houses many original artifacts, including the actual capsule from Apollo 13, the ill-fated moon shot featured in a major motion picture of the same name. The group received a tour of the museum as well as seeing a movie in the Digital Dome Theater. All participants appeared to enjoy the experience, as evidenced by the fact that the return trip to Wichita was delayed slightly due to Fellows and guests wanting to revisit parts of the museum after the film, before leaving.

Finally, the meeting closed with dinner at the Ambassador Hotel. Both President **Bartholomew J. Dalton** and Regent **Paul J. Hickey** shared thoughts with the group. In addition to President Dalton, attendees were honored to have two other Past Presidents: **Andrew M. Coats** and Kansas favorite son **Mikel L. Stout**.

To end with a splash, the Kansas State Committee had two surprises in store during dinner. The first was a previously unannounced dinnertime presentation by **Paul Bowen**, widely regarded as one of the top aviation photographers in the world. His photographs have graced the covers of magazines on hundreds of occasions. In addition to speaking, Bowen presented a series of stunning photographic images he had collected over the years.

As one final surprise, and most likely one final once-in-a-lifetime experience for many, the group was entertained by a musical group which included Judge Marten. In other words, one of the performers of the music during the cocktail hour, in addition to Kansas State Committee Vice Chair **Randy Rathbun**, was a United States District Court judge.

And they were darn good. Who'd of thunk it?

Steven C. Day
Wichita, Kansas

IN MEMORIAM

The following twenty-four memorials to departed Fellows of the College whose deaths have been recently reported bring to 1,492 the total that we have published over the years since we began this feature of the *Journal*. One Past President has described the American College of Trial Lawyers as a “no one need apply” organization. Each person invited to membership has been thoroughly vetted by his or her peers before the invitation is given. The stature of the Fellows of the College is thus presumed to be a given.

This feature of the *Journal* focuses, therefore, on who the departed Fellows of the College were as individuals, what they became and how they lived their lives, saving references to their trials only for those that became legal landmarks. Over time, the rich fabric of the collective lives of the almost 1,500 Fellows who have passed from among us has become the fabric of the College’s collective history.

Where these Fellows came from is revealing. One black student, told by a teacher in his thinly desegregated school that he would someday be a wonderful chauffeur, finished first in his class at Harvard Law School. Another, of Hispanic origin, grew up on a farm and eventually became the first Hispanic partner in a major law firm in his state. Two were Eagle Scouts, one of whom had a live poisonous snake in a cage in his parents’ house. One earned his pilot’s license in high school and, to his mother’s chagrin, saved his money and bought a small airplane.

Many were athletes, both in college and beyond. They included varsity lacrosse, ice hockey, track, basketball and football players. In later years, many became avid golfers. Several boasted of shooting their age. One had five holes-in-one and, on the side, became a Life Master in duplicate bridge. One, accustomed to playing golf until it was dark, was nicknamed “Captain Midnight.”

Two went to law school at night while carrying full daytime jobs. One of those finished at the head of his class. On the other hand, another studied law by day while occupying a night job, commuting between the two. One was President of both Phi Beta Kappa and his university’s student body. Several were law review editors. One was a Rhodes Scholar. Two

were law clerks to Associate Justices of the United States Supreme Court. One worked on the Pentagon Papers Case and was asked by his Justice to be in charge of disposing his papers when he died.

Their lives went on from there. One assisted Thurgood Marshall in the research that chose the five cases that became *Brown v. Board of Education*. One was the current General Counsel of the United States General Services Administration. One, a member of the Warren Commission that investigated the assassination of President John F. Kennedy, was tasked with meeting with Fidel Castro at his request on a fishing boat off the Cuban coast to ensure the Commission that he had nothing to do with Kennedy’s death. One led a lawsuit to require maintenance of the level of public education required by his state’s constitution, a suit that remains open for court supervision through its second decade and beyond his death.

Three were presidents of their state bar organizations. One was a legendary United States District Judge who presided over the criminal trial of Panamanian dictator General Manuel Noriega, taking a six-week recess while he underwent heart surgery, rather than requiring the case to begin all over again before another judge. Two were state Supreme Court Justices.

One supervised an interstate highway system that included the tunnel that passes under the continental divide in the Rocky Mountains west of Denver. One pursued a Supreme Court case that established major precedents with respect to Native American governance. The Fellows in one state spontaneously donated memorial gifts to a state court judge who had been a teacher in his State Committee’s continuing education program for legal services lawyers. One who had served in some capacity from every United States President from Dwight Eisenhower to George W. Bush was awarded a Presidential Medal of Freedom.

Their personal lives were varied. Some traveled widely. One became a Peace Corps volunteer in Kazakhstan. One raised his four sons on a cattle ranch. One had a Father-Daughter Field Day Award named for him in honor of his participation in thirty-five field days at

the school where his six daughters were students. One and his wife devoted their lives to rescuing and dealing with abused dogs, especially “court case” dogs, whose trauma had been placed in evidence in criminal trials.

The ages to which they live continue to be revealing. In spite of a growing trend of Fellows who died too young, virtually all of them from afflictions were not in our medical vocabulary two decades ago, fourteen of the twenty-four lived to be eighty-five years or older, seven of those into their nineties. One wife, herself a lawyer, retired at age ninety.

Six of the twenty-four served in a war that ended seventy-two years ago, and names such as Guam, Iwo Jima, Guadalcanal and Okinawa still crop up. Two were married on Christmas Day 1944. The total of veterans of the Korean and Vietnam sagas and the Cuban Missile Crisis has crept ahead of the World War II veterans.

Their obituaries vary widely. Some have obviously decreed that their obituaries document only the barest essentials of their lives. In some of those cases, we can find much of their lives by research on the Internet. For others we can find little in this fashion, particularly for older Fellows and for those who retired to a place away from where they practiced law. Others are full of warm descriptions by those left behind, but are thin on factual details about the Fellow’s life.

In the following memorials are several from North Carolina that you will find full of detail about its deceased Fellows. Its State Committee Chair passes a notice of a death to all its Fellows by email, attaching an obituary and noting the timing of any funerals or memorial services. Fellows who are so inclined thus have a vehicle for sharing their recollections of the departed. These have created some delightful anecdotes and other useful information that is collected and sent to your editor for use in composing these memorials.

Such a response enables us to create a far more accurate and relevant story of the lives of our Fellows. We owe this kind of tribute to one another and to the College.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

As this issue of the *Journal* was going to press, we were notified of the death of **Charles Byron Renfrew**, San Francisco, California, the forty-fifth President of the American College of Trial Lawyers, who died on December 14, 2017 at age eighty-nine. A memorial tribute to him will be appear in our next issue. ▶

Marcus Clay Alspaugh, '94, Smith & Alspaugh, P.C., Birmingham, Alabama, died in late October 2017 at age seventy-two. A graduate of Vanderbilt University, he earned his law degree from Cumberland School of Law at Samford University. He served for six years in the United States Army Reserves and was a Past President of the Birmingham Bar Association and the Alabama Trial Lawyers Association. His survivors include his wife of forty-seven years, a daughter and three sons.

Richard William Beckler, '96, Bracewell & Guiliani, LLP, Washington, District of Columbia, died September 25, 2017 at age seventy-seven. A graduate of Williams College, where he played varsity lacrosse, he served for four years in the United States Navy in the Vietnam Era, much of it on the *USS Yorktown* (CVS-10), emerging as a Lieutenant Commander. He then earned his law degree at Fordham University School of Law and began his career in the Manhattan District Attorney's Office under Frank Hogan. Four years later, he practiced as an associate in a Connecticut law firm for a year before being recruited by the Criminal Division of the United States Department of Justice. Seven years later, he became Chief of the Criminal Division's Fraud Section. He entered private practice with Fulbright & Jaworski, LLP in Washington, D.C., and practiced in the white collar criminal arena until he was appointed Chief Legal Advisor and General Counsel of the General Services Administration under President Donald Trump. The private day school that his daughters attended had named its Father-Daughter Field Day Award for him in recognition of his having attended thirty-five field days. His survivors include his wife and six daughters.

Joseph Monroe Best, '76, a Fellow Emeritus retired from Best & Sharp, Skiatook, Oklahoma, died August 25, 2017 at age ninety-one. In 1943, at age seventeen, he joined the United States Marine Corps, serving in the Pacific Theater and seeing action at Guam, Iwo Jima and Guadalcanal. Entering Oklahoma A&M College for two years, he transferred to the University of Oklahoma for the rest of his undergraduate work and then earned his law degree at the University of Tulsa. For the next fifty years he practiced law with the same partner. He had been

President of the Oklahoma Federation of Defense and Corporate Counsel and served the College as its State Committee Chair. A widower, his survivors include four boys whom he had raised on a cattle ranch

Henry Grattan Bodkin, Jr., '82, a Fellow Emeritus, Los Angeles, California, died September 25, 2017 at age ninety-five. After graduating from Loyola University of Los Angeles, he entered the United States Navy as an officer in World War II. He then earned his law degree at Loyola, and later returned for two more years of service in the Navy during the Korean Conflict. His survivors include his wife of seventy-four years, two daughters and a son.

John Wishart Campbell, '73, a Fellow Emeritus from Lumberton, North Carolina, died peacefully on October 27, 2017 at age ninety-four. An Eagle Scout, he attended Davidson College for two years before joining the United States Army Air Corps in World War II. Awarded his pilot's wings, he was trained to fly both the B-24 and B-25 bombers. After the war, he entered the University of North Carolina to complete his undergraduate education and then earned his law degree there. Retaining his status in the United States Air Force Reserves, he retired a Lieutenant General in its Judge Advocate General Corps. Over the years he practiced with two Lumberton law firms before establishing a solo practice in an office in his grandfather's old downtown store building. In later years, he also had an association with a Raleigh, North Carolina, firm, retiring in 2013 at age ninety after sixty-three years of practice. He had been President of his District Bar, a member of the Board of Governors of the North Carolina Bar Association (the statewide voluntary bar), President of the State Bar of North Carolina (the regulatory bar) and an honoree of the North Carolina Bar Association's General Practice Hall of Fame. His statement of qualifications at the time of his induction into the College indicated that by 1973 he had already tried over 18,000 cases, 10% of them before a jury. Living in a county seat on the main route from west and central North Carolina to the lower North Carolina and upper South Carolina beaches, one might well surmise that most of the rest of his cases involved drivers speeding through Scotland County in a hurry to get to the beach! In

his spare time, Campbell shot his age on the golf course at age sixty-eight and scored three holes-in-one at Pinehurst. His survivors include his wife of seventy-two years, whom he had married on Christmas Day, 1944, two daughters and a son.

Michael White Clancy, '09, Clancy Law Services, St. Charles, Illinois, was found dead on February 4, 2017 at age fifty-seven. A cum laude graduate of Amherst College, where he played varsity hockey, he earned his law degree at Boston College Law School. A fourth-generation lawyer, whose father, grandfather and great-grandfather have also practiced law, he practiced in Worcester, Massachusetts for eight years before moving to St. Charles, where he practiced with his father and then as a solo practitioner and mediator. A frequent lecturer and author, he and his wife had a deep passion for helping dogs that were not readily adoptable, particularly abused dogs and those referred to as "court case" dogs, who had been placed in evidence at trial and who were often thereafter impounded as unadoptable because of their prior abusive experiences. His survivors include his wife of nineteen years.

William Thaddeus Coleman, Jr., '69, a Fellow Emeritus, retired from O'Melveny & Myers, LLP, Washington, D.C., died March 31, 2017 at age ninety-six of complications from Alzheimer's disease. The son of a middle-class black moderate Republican Philadelphia family, one of his mother's ancestors, an Episcopal minister, was an operator of the Underground Railroad. His father was the director of a boys' club. He was introduced at an early age to visits in his home by scholar and civil rights leader W.E.B. Du Bois and by poet Langston Hughes. Educated in a racially segregated elementary school, he was one of seven black students in his high school, where a teacher once congratulated him that he would someday be a wonderful chauffeur. Instead, he graduated summa cum laude, a member of Phi Beta Kappa, at the University of Pennsylvania and began his studies at Harvard Law School. After a year, he joined the United States Army Air Corps and, failing in his attempt to join the Tuskegee Airmen, spent the duration of World War II as a court-martial defense counsel. Resuming his studies at Harvard, he was one of the first black students to serve on the *Harvard Law*

Review, graduated magna cum laude and ranked first in his class. After a year of graduate study at Harvard, he served as a law clerk for a judge on a United States Court of Appeals and then, again a first, became a law clerk for Associate Justice Felix Frankfurter of the United States Supreme Court. After a year in private practice, he was recruited by Thurgood Marshall at the NAACP Legal Defense and Education Fund to assist in the preparation of what would become *Brown v. Board of Education*. He was credited with much of the research that ultimately centered on the five cases that were consolidated into *Brown* and for framing the legal briefs and arguments that supported it. He was an advisor in some capacity to every President, Republican and Democrat, from Dwight D. Eisenhower to George W. Bush. He was a delegate to the twenty-fourth session of the United Nations General Assembly. His public service included acting as a Senior Counsel to the Warren Commission in its investigation of the assassination of President John Kennedy. In that capacity he was sent to a fishing boat off the coast of Cuba to confer with Fidel Castro, who had asked for a personal audience to assert that he had nothing to do with the assassination. President Gerald Ford, aware of his private practice in transportation law in his Philadelphia law firm, appointed him Secretary of Transportation, the United States' second black cabinet secretary, during an era of tangled conflict between environmental concerns and a badly outmoded transportation system. He was once quoted by a Washington reporter thus, "I really don't think that 'first black' this and that is relevant. I'm trying to make a reputation in this town that's not based on color." In the civic arena, he served as President and later as Chairman of the NAACP Legal Defense Fund. After his term as Secretary of Transportation, he joined O'Melveny's Washington office. In the course of his trial work over the years, he appeared before the United States Supreme Court nineteen times in cases ranging from an early case that helped to eliminate state prohibitions against interracial marriages to one that prevented a private college that practiced racial discrimination from receiving federal tax exemptions. President William J. Clinton presented him with the United States' highest civilian honor, the Presidential Medal of Freedom. His survivors include his wife of seventy-two years, a daughter and two sons.

Eli Leslie Combs, Jr., '95, a Fellow Emeritus who practiced in Las Vegas, Nevada, before moving in retirement to Prospect, Kentucky, died October 21, 2015 at age sixty-eight. Born in a small Appalachian town in Kentucky, he delivered newspapers as a child and earned his Eagle Scout badge. His education at the University of Kentucky was interrupted by service in the United States Army during the Korean Conflict. Returning to the University of Louisville, he completed his undergraduate education and earned his law degree, carrying a full-time day job at the Louisville and Northern Railroad while carrying a full class load at night. After graduation he moved to Las Vegas, Nevada, where he had a short stint as a professional gambler before beginning the practice of law. A President of his County Bar and a member of the Board of Governors of the State Bar of Nevada and a Director of the American Heart Association, the Nevada Supreme Court awarded him a Certificate of Special Recognition for his outstanding service as a volunteer in his county's Neighborhood Justice System. He joined the Peace Corps in retirement and was assigned to Kazakhstan, where he learned Russian and taught business classes. In the middle of his Peace Corps duties, he was diagnosed with Parkinson's disease, which slowly progressed over the years. Deep brain stimulation surgery prolonged his years, and he ultimately passed away peacefully. Unmarried and without children, his survivors are his siblings.

Gregory B. Conway, '88, Liebmann, Conway, Olejniczak & Jerry, S.C., Green Bay, Wisconsin, died September 15, 2017 at age seventy-three, of complications from dementia. A graduate of Marquette University and of its Law School, he then served as a law clerk for a Justice of the Supreme Court of Wisconsin. His father, grandfather and brother were lawyers, as were one daughter and a son. A Past President of the State Bar of Wisconsin, he was appointed by three governors to public positions. A lecturer at the law schools of both Marquette and Wisconsin and Marquette's Alumnus of the Year, he served the College as Wisconsin State Committee Chair. His habit of playing golf until the sun disappeared caused the local course pros to nickname him "Captain Midnight." His survivors include his wife of forty-nine years, a daughter and a son.

William Andrew Copenhaver, '05, Womble, Carlyle, Sandridge & Rice, LLP, Winston-Salem, North Carolina, died October 12, 2017 at age seventy of pancreatic cancer. A graduate of Duke University, where he was a record-setting captain of the track team and of the University of North Carolina School of Law, he also earned a Certificate of International Law from City University of London. He led his firm's antitrust and trade regulation group before establishing the firm's office in Washington, D.C., where he then led that office for six years. He was Chair of the North Carolina Federal Advisory Council and the editor of the North Carolina section of the Fifty-State Guide on Business Torts. His survivors include his wife of forty-four years, a daughter and two sons.

Hon. William Marcellin Hoeveler, '70, a Judicial Fellow from Miami, Florida, died November 19, 2017 at age ninety-five. Born in Paris, France, to a father who had served in the United States Marine Corps in World War I and a mother who sang French operas, the 6' 4" Hoeveler entered Temple University on a basketball scholarship. After transferring to Bucknell University, he joined the United States Marine Corps in World War II, then returned to Bucknell to complete his undergraduate education. He earned his law degree at Harvard Law School, where he was co-president of his class. He then joined his new wife's father's law firm in Miami, Florida, where he principally defended professionals accused of malpractice. In his middle fifties, he chose to become a Federal District Judge, expressing the desire to "give something back," and he was appointed to the bench in 1977 by President Jimmy Carter. Described as a towering figure in the legal community, he was admired by the rigor of his rulings, his fierce sense of fairness, dignity and courtly demeanor that invited civility, especially when the issues were most contentious. He once loaned a sweater to a drug trafficking defendant on trial in his court. Those who appeared in his court described him as the Abraham Lincoln of the federal bench. Perhaps his most famous case was the criminal trial of deposed Panamanian dictator General Manuel Noriega, who had been captured by United States armed forces that had invaded Panama in 1981. In the middle of the trial, Hoeveler underwent coronary bypass surgery. Rather

than declaring a mistrial or turning the trial over to another judge, he declared a recess, undertook the surgery and returned to the bench six weeks later to continue the trial. He declared Noriega a prisoner of war under the Geneva Conventions and crafted the conditions of his incarceration accordingly. Convicted of cocaine trafficking and racketeering, Noriega was given a forty-year sentence. His public response after the trial was over was, "The shining light throughout this legal nightmare has been Your Honor. . . . You have acted as honest and fair as anyone could hope." Outside the bench, Hoeveler inspired and helped to launch the Center for Historic Black Church program, a multi-party consortium of sixty inner-city churches in south Florida. He was honored with the Federal Bar Association's Judicial Excellence Award, and the University of Miami School of Law Center for Ethics and Public Service established an annual award in his name. After his first wife died, he had remarried. His second wife survives, along with his three daughters, a son, a stepdaughter and a stepson.

Charles William Lane, III, '84, Jones Walker LLP, New Orleans, Louisiana, died November 15, 2017 at age eighty-five. He obtained a pilot's license while in high school, and, to his mother's chagrin, saved his money and bought a Piper Cub airplane. After graduating from Tulane University and entering its law school, his studies were interrupted when he was called to active duty in the United States Air Force during the Korean Conflict, where he became a jet and transport pilot. Years later, he retired from the Air National Guard as a Lieutenant Colonel. After returning to law school and graduating, he joined the firm in which he practiced for his entire career, specializing in antitrust litigation and becoming for many years the Chairman of its Executive Committee. In typical New Orleans fashion, he was a member of numerous social and carnival organizations, including riding in the annual Rex Parade. His survivors include his wife, two daughters and a son.

Hon. David Alexander McLaughlin, '87, New Bedford, Massachusetts, a retired Justice of the Massachusetts Superior Court, died December 9, 2017 at age seventy-eight after a series of illnesses. After earning his undergraduate degree at Boston College, he entered the United States Marine Corps,

serving for three years during the Vietnam War era. Returning to law school at Boston College Law School, where he earned his law degree, he then earned an LLM at the Boston University School of Law. After a year with a private law firm, he formed a law partnership, McLaughlin & McLaughlin, with his wife. The two had been fellow students as well as partners and finalists in the Boston College Law School moot court competition. He had been Assistant City Solicitor on New Bedford and then Counsel to the Assessors of the City of New Bedford. Appointed to the bench in 1999, he retired in 2010. His survivors include his wife of forty-nine years, three daughters and three sons.

Joseph Mack Montano, '97, a Fellow Emeritus, Denver, Colorado, retired from Faegre & Benson, LLP, died January 20, 2017 at age eighty-nine. A fourth generation Coloradoan whose Hispanic ancestry in the United States dated back to 1598, he was born in a tiny farming town. After finishing his undergraduate education at Denver University, his legal education at that institution was interrupted by service as an air traffic controller during the Korean Conflict. Returning to Denver University, he graduated second in his law school class. After working for the Texaco Company for several years, he became an Associate Attorney General of Colorado and then became Counsel of the State Highway Department for eight years. In that capacity, he was a major factor in the development of the regional interstate highway system and the Eisenhower Tunnel, which carries Interstate Highway 70 under the Rocky Mountain's continental divide. He then entered a private law firm, becoming the first Hispanic partner of a major Colorado law firm. Several years later he joined Faegre & Benson LLP. Known as the "dean of eminent domain," he represented private landowners in the sale of some of the largest public works projects in Colorado, including the Rockies Baseball Stadium, two urban Denver highways and the Denver International Airport. His law firm established a major scholarship at Denver University's Sturm College of Law in his honor, and his law school honored him with its highest alumni achievement. A widower whose wife of thirty-four years predeceased him, his survivors include two daughters and a son. ▶

Hon. William Douglas Parsons, '09, a Judicial Fellow from Clinton, North Carolina, died unexpectedly in his sleep on September 23, 2017, less than a week after he returned from the College's Montréal meeting, at age sixty-six. A graduate of the University of North Carolina at Chapel Hill and of the Wake Forest University School of Law, he commenced the first four years of his career as an Assistant District Attorney and then became an Associate United States Attorney for the Eastern District of North Carolina. In private practice in a small eastern North Carolina town, his practice was centered on criminal defense and public corruption cases. In the last five years of his life, he was a North Carolina Superior Court Judge, initially appointed and later elected without opposition. He served as a member of the North Carolina Courts Commission and a Commissioner of the North Carolina Wildlife Commission, was a member of the North Carolina Judicial Standards Commission and recently completed a term on the Board of Trustees of the University of North Carolina at Chapel Hill. Fellow Mark Merritt, the General Counsel of that institution, delivered a tribute to him at the next board meeting. In 2017, he was a lecturer at the North Carolina Fellows' program for legal aid lawyers and a continuing education lecturer at the 2017 meeting of the North Carolina State Fellows. At his death, the North Carolina Fellows spontaneously sponsored contributions in his honor to the College's North Carolina Legal Aid continuing legal education project, to which he had participated as a teacher. His survivors include his wife, three daughters and a son.

Patrick M. Roby, '88, a Fellow Emeritus, retired from Elderkin & Pirnie, P.L.C., Cedar Rapids, Iowa, died September 27, 2017 at age seventy. Born in Bremerhaven, Germany, he spent most of his childhood in his mother's native France while his father was fighting in World War II. He attended Upper Iowa University on a basketball scholarship and earned his law degree from the University of Iowa College of Law. A past President of the Iowa Defense Counsel Association and of the Iowa chapter of the American Board of Trial Advocates, he also participated as a member in a number of Iowa Supreme Court committees. His

survivors include his wife of forty-seven years and a daughter, who practiced law with him.

Urban Leo Roth, '89, a Fellow Emeritus retired from Poore, Roth & Robinson, P.C., Butte, Montana, died January 9, 2016 at age eighty-five from complications from a broken hip. He began his undergraduate education at the University of Maryland, then transferred to Montana State University, where he played football, earned his undergraduate degree and went on to earn his law degree. He then acted as a law clerk for the Chief Justice of Montana. President of the Montana chapter of the American Board of Trial Advocates and Secretary of the Montana Bar, he was the author of books on oil and gas and mining. He was the chief negotiator for the State of Montana for its reserved Water Rights Compact Commission. As Special Attorney General of Montana, he argued successfully the case of *Montana v. United States*, establishing a precedent for Native American tribal treaty rights and sovereign governing authority on tribal lands. His survivors include his wife of fifty years and six sons.

Robert Worthington Spearman, '99, a Fellow Emeritus retired in 2010 from Parker Poe Adams & Bernstein LLP, Raleigh, North Carolina, died December 3, 2017 at age seventy-four after a long decline from dementia and Parkinson's disease. The son of a beloved professor at the University of North Carolina, he delivered the local newspaper and earned his Eagle Scout badge. He became only the second student in the history of Groton School to have made no grade below an A. Entering the University of North Carolina at Chapel Hill on a John Motley Morehead Scholarship, he became the first and only student to become President of both the Student Body and Phi Beta Kappa. He worked alongside the Chancellor, Greater UNC President William Friday and Governor Terry Sanford to oppose the infamous Speaker Ban Law, which excluded certain speakers from campus in the McCarthy era. Graduating with highest honors, the winner of the John J. Parker Award for student leadership, he then went to Oxford University (Merton College), where he won highest honors in Philosophy, Politics and Economics. After earning his law degree at Yale University Law School,

he was a law clerk for Justice Hugo Black. Assisting in drafting the Supreme Court opinion in the Pentagon Papers Case, he had also been charged by Justice Black with the task of destroying his papers after his death. He began law practice in Raleigh in a firm that ultimately transitioned into Parker, Poe. His most celebrated case was *Leandro v. North Carolina*, a suit brought in the middle 1990s to enforce the right to a sound basic public education for all students, including those in poor rural sections of the state, under the North Carolina Constitution. The case has twice been affirmed by the North Carolina Supreme Court and remains open to allow the trial court to monitor its compliance. As a teacher, Spearman has served as an Adjunct Professor of Trial Practice at the UNC Law School, taught at the National Institution of Trial Advocacy and was a frequent lecturer. As a citizen, he chaired the North Carolina Elections Board, served as a Director of the American Judicature Society and was the founder and Chair of the North Carolina Center for Public Policy Research. He had a classic sense of humor. At Oxford, he played on a basketball team with All-American Bill Bradley. His observation: "If Bradley was open and you shot, you went to the bench." Two personal notes from your editor: I first encountered Bob when he was ten years old. In his parents' kitchen was a cage containing a live copperhead snake he had captured. Our second, less threatening, meeting came years later when his firm asked me to sit first chair in a newly filed case in the Western District of North Carolina alongside its then second-year partner, Bob Spearman. Eighteen months later, our three and a half-week trial ended with the then largest collected jury verdict in North Carolina history. A post-trial hearing produced another six figures in interest and costs, and Bob, in his characteristic humor exclaimed on the way out the courtroom door, "That is the *second* largest judgement I have ever been a part of." As one of his fellow lawyers commented at his death, "Bob Spearman was a giant intellectual, a humble man and a kind and caring human being—a true public servant." His survivors include his wife of forty-four years, and two daughters.

Richard Paul Sperandeo, '86, a Fellow Emeritus from New Haven, Connecticut, died November

23, 2017 at age ninety. He was a graduate of the United States Merchant Marine Academy and the University of Connecticut who earned his law degree from the University of Connecticut School of Law. He served as a New Haven County Public Defender for three years and Chief Assistant Attorney for New Haven County for seventeen years before joining Sperandeo, Weinstein & Donegan. He had served on the Grievance Committee for New Haven County for seven years, as a member of the Grievance Committee of the United States District Court for the District of Connecticut and a member of the Connecticut Statewide Grievance Committee. He was then appointed a State of Connecticut Trial Referee. His survivors include his wife of sixty-one years and two daughters.

John Sutton Stump, III, '85, a Fellow Emeritus, retired from McGuire, Woods, Battle & Boothe L.L.P., Tyson's Corner, Virginia, died August 11, 2017 at age eighty-eight. After earning his undergraduate degree from the University of North Carolina, where he was a member of Phi Beta Kappa, he entered the United States Navy as an officer during the Korean Conflict. Remaining in the Naval Reserve, he was recalled to active duty for a year during the Cuban Missile Crisis. He earned his law degree at Washington & Lee University, where he was Assistant Editor of the Law Review, a member of Omicron Delta Kappa and the Order of the Coif, graduating summa cum laude. After a year in Charleston, West Virginia, he joined Boothe, Pritchard, Dudley, Koontz and Blankingship and was later instrumental in the merger of that firm with McGuireWoods. He chaired Virginia's Continuing Legal Education program and served the College as its Virginia State Committee Chair. A widower whose wife of forty-two years predeceased him, his survivors include two sons.

Richard Joseph Thornton, '73, a Fellow Emeritus, retired from Thornton Davis & Murray, P.A., Miami, Florida, died January 21, 2015 at age ninety-two. His undergraduate education at Indiana University was interrupted by service in the United States Army in World War II, where he saw duty in the Pacific Theater on Okinawa. After the war, he served in the Judge Advocate General Corps during the

early occupation of Japan. He then earned his law degree at the University of Miami School of Law and served as Assistant City Attorney in North Miami. After thirty-three years with Walton Lantaff in Miami he formed Thornton, Davis & Fein, where he specialized in aviation law. An avid golfer who shot his age many times, he garnered five holes-in-one in his lifetime. He was also a Life Master in duplicate bridge, an active player until shortly before his death. A widower whose wife of almost fifty years he married on Christmas Day 1944 predeceased him, his survivors include a daughter and a son.

Raymond Moran Tierney, Jr., '79, a Fellow Emeritus from Little Silver, New Jersey, died September 19, 2017 at age eighty-five. Born in Brooklyn, New York, he was a cum laude graduate of Notre Dame University. After then serving for three years as an officer in the United States Marine Corps during the Korean Conflict, he worked by day at Hanover Bank while attending night school at Fordham University School of Law, finishing at the top of his class. After serving as a law secretary to a Justice of the New Jersey Supreme Court, he joined Shanley & Fisher, Newark and Morristown, New Jersey, retiring in 1999. He served as President of the Trial Attorneys of New Jersey, as Chair and President of the New Jersey State Law Foundation and as Trustee and Regent of St. Peter's College in Jersey City. He was a lecturer at the Trial Advocacy Institute at the University of Virginia, a lecturer at the William J. Brennan Inn of Court and an adjunct professor at the Business School at Monmouth University. He received the St. Thomas More Medal at Seton Hall University and a Distinguished Alumni Award from Fordham

School of Law. He also once scored a hole-in-one on a golf course in Ireland. His survivors include his wife of sixty-one years, two daughters and three sons.

Eugene Jacob Wait, Jr., '77, a Fellow Emeritus from Reno, Nevada, died October 27, 2017 at age eighty-eight. He earned his undergraduate degree from the University of Nevada, Reno, and his law degree from the University of California's Hastings School of Law, where he graduated summa cum laude, first in his class and a member of the Order of the Coif. After a year's practice in Sacramento, California, he and his brother opened a law firm together in Reno. Eight years later he created a solo practice and, for the remainder of his career, pursued a boutique civil defense practice, sometimes as a solo practitioner and sometimes in a small firm. He was a judge pro tem of his local municipal court and served the College as its Nevada State Committee Chair. Divorced and remarried, his survivors include his wife and a daughter.

John A. Wickstrom, '77, a Fellow Emeritus retired from Wickstrom Morse, LLP, Worcester, Massachusetts, died November 3, 2017 at age eighty-five of pancreatic cancer. A graduate of the College of the Holy Cross and of the Boston University School of Law, he worked at night during law school and commuted by day to attend classes. He spent two years as Town Council of his community, then served as President of the Planning Board of the Town of Northbridge and as Chair of the Massachusetts Board of Bar Overseers. A historian, he finished reading his last book two weeks before he died. His survivors include four daughters and three sons.

AN ADDITIONAL LOSS TO THE COLLEGE FAMILY

Nancy Duckworth Kinnebrew Bell, the widow of Past President Griffin B. Bell, died September 20, 2017 at her home in Americus, Georgia, at age ninety-four. After Griffin's first wife, Mary, had died, he and Nancy, herself a widow, born in Americus as was Griffin, were married in 2001, eight years before his death in 2009.



UPCOMING EVENTS

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

NATIONAL MEETINGS



2018 Spring Meeting
Arizona Biltmore
Phoenix, Arizona
March 1-4, 2018



2018 Annual Meeting
The Roosevelt
New Orleans, Louisiana
September 27-30, 2018

REGIONAL MEETINGS

Region 6

Arkansas, Louisiana, Mississippi, Texas

April 20-22, 2018

Oxford, Mississippi

Region 13 THIRD CIRCUIT

Delaware, New Jersey, Pennsylvania

May 18-20, 2018

Wilmington, Delaware

Regions 1&2 SOUTHWEST REGIONAL

Arizona, California-Southern,
California-Northern, Hawaii, Nevada

June 8-10, 2018

Lake Tahoe, California

Region 12 NORTHEAST REGIONAL

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

June 22-24, 2018

Portland, Maine

Region 3 NORTHWEST REGIONAL

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

August 23-26, 2018

Whitefish, Montana

STATE/PROVINCE MEETINGS

March 15-18, 2018	North Carolina Fellows Meeting	May 4-6, 2018	Missouri Fellows Annual Retreat
March 20, 2018	Québec Fellows Dinner	May 10, 2018	Alberta Fellows Dinner
April 10, 2018	Downstate New York Fellows Dinner	May 10, 2018	Upstate New York Spring Fellows Dinner
April 13-14, 2018	Virginia Fellows Meeting	June 9, 2018	Maryland and Washington, D.C. Dinner
April 14, 2018	Michigan Spring Black Tie	June 13, 2018	Kentucky Fellows Dinner
May 4, 2018	Southern California Fellows Black Tie Dinner	June 16, 2018	Idaho Fellows Dinner

JOURNAL

American College of Trial Lawyers
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"In this select circle, we find
pleasure and charm in the illustrious
company of our contemporaries
and take the keenest delight
in exalting our friendships."

*Hon. Emil Gumpert
Chancellor-Founder
American College of Trial Lawyers*

Statement of Purpose

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.