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JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

EQUAL JUSTICE INITIATIVE FOUNDER BRYAN STEVENSON AT THE 2017 SPRING MEETING IN BOCA RATON

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FROM THE EDITOR

Stephen Grant

PLEASE SUBMIT CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

As we reflect on the excellence of the Boca Raton Spring Meeting, there are issues afoot that require comment. One of the things the College is most adept at addressing is any attack, however indirect, on access to justice. It remains a fundamental tenet of the College—as does judicial independence, a foundational construct of the Rule of Law—that access to justice must continue to be unimpeded for all, regardless of the socio-economic status of the litigant.

To avoid resolution 'in the streets' of civil disputes, our government is entrusted with promulgating and maintaining an accessible civil justice system. While there are, and continue to be, functional issues with and within the system, challenges also come from other corners.

In this instance, there is a Presidential budgetary move that would eliminate the funding of the Legal Services Corporation (self-described as "America's Partner for Equal Justice"), if not this year, then next. Even a cursory look at its website shows the profoundly important work of the LSC in assisting lower-income litigants with various forms of access to justice—foreclosures, disability claims, domestic abuse and the like— by providing funding to 133 independent non-profit legal aid programs in every state, the District of Columbia and U.S. Territories. At its essence, the LSC grantees serve thousands of low-income individuals, work that is essential in removing barriers the dispossessed would otherwise face in asserting their rights.

It is troubling not only that the actual LSC funding has declined in real dollar terms over the years but also that the proposed cut is almost a dust mote in the enormity of the budget itself. In other words, the impact it would have on those who depend on its services is so disproportionately inordinate when measured against its cost to the public as to be shameful if the cut were permitted to occur, whenever it might.

As College President Bart Dalton put it in a media release in March, defunding the LSC would have dire consequences for the country's already endangered citizens. Apart from anything else, the College's Fellows will need to be vigilant to ensure as much pro bono work as possible continues to be undertaken, almost irrespective of, but certainly if the cut is made.

The College's Access to Justice and Legal Services Committee has been keenly mindful of assessing and monitoring the fate of the LSC and its funding.

At least for this fiscal year, the crisis may have been averted. As reported by the ABA, the recent budget agreement allocates $385 million for the fiscal year ending September 30, 2017, thus ensuring the LSC grantees receive level funding through this fall. While this year's budget resolution offers hope, "advocacy for adequate funding for LSC in FY2018 continues… since … the Administration budget zeroed out LSC for FY2018."

The College, no doubt, will continue its advocacy for this essential resource to ensure ongoing and unfettered access to justice. Those who can assist should keep the work of the Access to Justice and Legal Services Committee in mind.

✦ ✦ ✦ ✦ ✦ ✦ ✦ ✦

We heard talks on everything from Presidential affairs to changing demographics, professional basketball, to boot, at the Boca Raton meeting, housed in the (more attractive, as I recall it) Boca Raton Club and Resort, all of which is captured in this *Journal* issue for those there and, sadly, those not there but missed.

Montréal is lovely in the fall. À bientôt. See you there, soon.

Stephen Grant ■

PRESIDENT'S PERSPECTIVE WITH BARTHOLOMEW J. DALTON

Since my last article in the *Journal* I have been to 20 different places. In the last two weeks I have been to Washington, DC; Toronto; St. Andrew's, New Brunswick; and Owensboro, Kentucky. What I have found with all of this traveling is that the College continues to be true to its mission through the work of Fellows in every part of the U.S. and Canada. That mission has been realized in more tangible ways by the work of the Foundation.

THE FOUNDATION

In mid-May I was in San Francisco to formally award the Immigrant Legal Resource Center the 2017 Emil Gumpert award. This is a dynamic organization that is doing great work by helping immigrant individuals and families with many of the legal hurdles they face. The event had approximately 350 attendees including the Attorney General of California, Xavier Becerra. I spoke to Attorney General Becerra (it helps to have Secretary Doug Young along with you at a social event in San Francisco) and he was very complimentary about the College and how much this award means to an organization that is obviously close to his heart. The gratitude shown me as the representative of the College by this group of committed people was inspiring. The fact that I was giving out a $100,000 made me very popular.

This is just one of the many ways that the Foundation is helping the College meet our mission. There are many more examples, so I want to urge every Fellow to contribute to the Foundation so that we can continue to benefit from their good work. The campaign started at the 2016 Annual Meeting in Philadelphia, "The Power of an Hour" has been a success. That campaign asks each Fellow to contribute the dollar equivalent of one hour of billable time to the Foundation. Past President David Beck, as President of the Foundation, has led this effort and the College owes him and the other Trustees of the Foundation a great debt of thanks.

THE WHITE PAPER ON CAMPUS SEXUAL ASSAULT INVESTIGATIONS

We have not let this excellent paper become just another part of our website. The Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence, College staff, Être Communications and I have been pushing the promulgation of the paper to many different outlets. We first made sure that the paper was sent to several different university and college General Counsels. We were advised that the best way to get this into the hands of decision makers at these institutions was to have

it placed on the website that is used extensively by university and college General Counsel—that we did. Regent Liz Mulvey then volunteered to write an article about the paper which was published in the *Chronicle of Higher Education*. This may not be a publication to which you subscribe, but it is very influential in that world. Task Force Chair Pam Mackey gave an interview to the *ABA Journal*. Liz and Past President Mike Smith have met with the editorial board of the *Richmond Times-Dispatch*. I appeared at Georgetown University to speak on a panel to a large group of educational writers about this topic. My fellow panelists were from the *Washington Post* and Buzzfeed. The paper has been mentioned or reviewed in at least twenty other media outlets. We are continuing to push. This is a controversial topic, and we have not been without our detractors. Twenty Fellows from Washington State wrote a letter of objection to us recommending a clear and convincing evidence standard. I wrote to those Fellows and had the kind of exchange with them that you would expect of Fellows. There was disagreement and collegiality within the same discussion. This paper represents what the College can do to help all parties in a difficult legal issue. The complaining witness, the accused and the institution have all been shortchanged by many institutions that have systems that fail to provide due process. Failing to provide a fair process in which to adjudicate these cases fails all involved parties. We hope that the paper will be a roadmap that helps establish the basics of a fair disciplinary system.

COMMUNICATIONS

I have been promised that the new website will be up and running by June 15. I made all parties concerned with the new website make me a solemn vow to which I am holding them. The *eBulletin* continues to be a great success thanks to the work of the College staff and the Communications Committee co-chaired by Former Regents Paul Fortino and Paul Meyer. We are getting frequent and timely updates on the many different projects our Fellows are doing. Stephen Grant continues his fine work on the *Journal* as is evidenced by this latest issue.

NOMINATIONS

I have been informed that nominations for Montréal are up approximately 20% for the fall Board of Regents meeting. It has also been brought to my attention from Regents and State and Province Committee Chairs that we will start to see some of the work we have been doing on diversity come to fruition at the Board of Regents meeting. This has been an important directive from the Board and we have been working hard to make real the directives of the diversity policy.

UPDATES

Congratulations to John Hunter for his elevation to the British Columbia Court of Appeals. We will miss John as a Regent. College bylaws precludes a judge from serving on the Board of Regents. Mona Duckett has been approved by the Board to assume John's role as the Regent for Region 3. Good luck to John and congratulations and thanks to Mona.

The Long Range Financial Planning Committee has finished their work and has reported their recommendations to the Executive Committee. A full Board discussion on their recommendations will take place in Montréal. The Committee, led by Past President Tom Tongue, are doing an excellent job of identifying issues that can be improved and by doing so improve the financial future of the College. They have our thanks.

I am looking forward to seeing many of you in my travels and at the Annual Meeting in Montréal. Dennis Maggi and his staff have done a great job in making sure that all who attend will be glad they did. President-Elect Sam Franklin has put together another program that will inform and entertain. The registration materials will go out mid-June. My recommendation is to sign up online and early. It will be a great meeting.

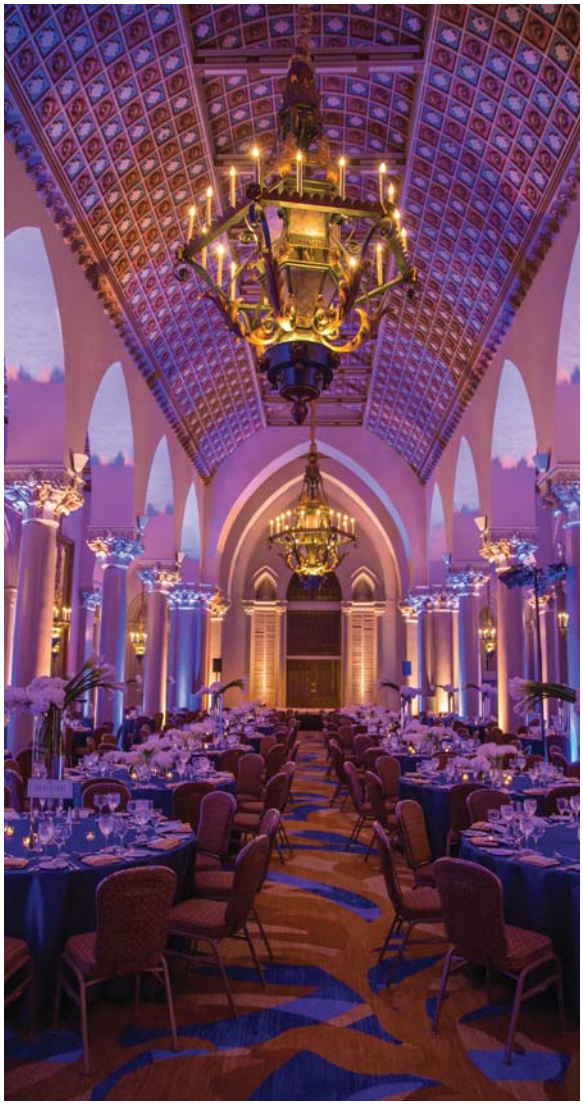
There have been times when this year as President has seemed to fly by. There have been times when it has not, but it has been the experience of a lifetime. Thanks to all. ■

2017 SPRING MEETING RECAP

BEWARE, A LUSH FAIRWAY HAS SOME CHALLENGES – A WATER HAZARD AND SAND TRAP .

THE 2017 SPRING MEETING WAS HELD AT THE BOCA RATON RESORT & CLUB IN BOCA RATON, FLORIDA. IN TOTAL, THE COLLEGE HAS MET IN BOCA RATON TEN TIMES. THE FIRST TIME THE COLLEGE MET IN BOCA WAS IN 1974.

THE CATHEDRAL ROOM AT THE BOCA RATON RESORT & CLUB ALL LIT UP FOR THE BOARD OF REGENTS RECEPTION AND DINNER HONORING FORMER AND CURRENT CHAIRS.



FLORIDA STYLE IS FRONT AND CENTER WITH PIANO PLAYER AND PINK FLAMINGOS GREETING ATTENDEES TO THE THURSDAY NIGHT PRESIDENT'S WELCOME RECEPTION

PAST PRESIDENT GENE LAFITTE AND HIS WIFE JACKIE OF NEW ORLEANS, LOUISIANA

FELLOWS, SPOUSES AND GUESTS GROOVE TO THE MUSIC AT THE FRIDAY NIGHT RECEPTION AND DINNER.

ARIZONA STATE COMMITTEE CHAIR PETER AKMAJIAN OF TUCSON, ARIZONA PREPARES FOR A MID-AIR FOREHAND SMASH WHILE FORMER REGENT TRUDIE HAMILTON OF WATERBURY, CONNECTICUT ANTICIPATES HER NEXT MOVE.

PAST PRESIDENT OZZIE AYSCUE OF CHARLOTTE, NORTH CAROLINA RECITES THE INVOCATION TO OPEN THE FIRST DAY OF GENERAL SESSION

INDUCTEE PETER AND TENLEY CALLAGHAN OF CONCORD, NEW HAMPSHIRE AND SHERRY AND SID DENAGAN OF OKLAHOMA CITY, OKLAHOMA

OUTSIDE THE MIZNER CENTER, WHERE ALL THE MEETING ACTIVITIES TOOK PLACE

THE CLOISTER AND TOWER BUILDINGS OFFER A SOUTH-FACING VIEW OF LAKE BOCA RATON.

TENNESSEE STATE COMMITTEE CHAIR JIMMIE MILLER OF KINGSPORT, TENNESSEE WITH INDUCTEE RUSTY AND CHARLEYN REVIERE OF JACKSON, TENNESSEE BEFORE THE SATURDAY INDUCTEE LUNCHEON.

TEXAS STATE COMMITTEE CHAIR ROD PHELAN AND BARRY BARNETT OF DALLAS, TEXAS; LAMONT JEFFERSON OF SAN ANTONIO, TEXAS

NEWLY INDUCTED FELLOW SUSAN AND WILLIE SAPP OF LINCOLN, NEBRASKA

FORMER SENATOR, GOVERNOR OF FLORIDA D. ROBERT GRAHAM: WHAT DO WE DO NOW?

The Honorable **D. Robert Graham** started out with humble beginnings, raised on a cattle and dairy ranch near the Florida Everglades. He attended the University of Florida then "went to a place up north as we say here in Florida, a place called Harvard Law School," said **Benjamin H. Hill III** in his introduction of Graham at the 2017 Spring Meeting in Boca Raton, Florida.

Graham returned to the Sunshine State and decided to run for the legislature, where he served for twelve years. He then decided to run for Governor of the state of Florida. At the time, Graham was not well known. Undeterred, he developed a concept whereby he started working in different jobs throughout Florida. He would spend an entire day getting to know the people in the area. "One of the most interesting places he worked was as a bell boy where he ended up carrying the luggage of the wife of his primary opponent for Governor," Hill said. Throughout his political career, he continued these work days, now totaling at 386 different places.

When Graham left the Governor's office, he received an 83% approval rating.

He ran for the U.S. Senate and to nobody's surprise, he was elected. While in the Senate, he served for three different terms, serving and chairing key committees including the Intelligence Committee and co-chaired the Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attack of September 11, 2001. "He distinguished himself as having worldwide knowledge on many issues that affect us all, primarily in the field of intelligence," Hill said.

QUIPS & QUOTES

"A Washington reporter summed it up in very briefly and he said, 'Bob Graham was a very successful, very successful governor. Bob Graham was a very successful politician.' Then he added something that I thought was kind of amusing. He said, 'Bob Graham is a nice man, for being a politician.'"

Benjamin Hill, in his introduction of Graham

He retired from public service in 2005, but in his retirement he has authored four books, including a nonfiction book *Intelligence Matters*, and novel, *Keys to the Kingdom*, drawing on his experience as chair

of the Senate Intelligence Committee, and *America, the Owner's Manual*, a guide to effective citizenship, written while he was a senior fellow at Harvard's Kennedy School of Government. Since leaving the Senate in 2005, he has been chair of the Congressional Commission on Weapons of Mass Destruction Proliferation and Terrorism, a member of the Congressional Financial Crisis Inquiry Commission, and co-chair of the Presidential Commission on the BP Deepwater Horizon oil spill. "He has continued to work as hard in retirement as he worked when he was a politician," Hill said.

One of his most noteworthy projects has been to found the Center for Public Service at the University of Florida, a school with the objective to teach enhanced civics to students, as well as to prepare them for a life of public service.

9/11 ATTACKS – A TRANSFORMATIVE EVENT

Graham began his address to the Fellows by explaining some of the more recent developments from the 9/11 hearings, specifically the unanswered questions surrounding "one of the transformative events in modern American history."

"How did nineteen people who could not speak English, had never been in the United States before and had limited education, carry out such a complex task? It's my belief that they didn't. That they, in fact, had support in that effort and that there is documentation to support that belief, but it is documentation which has been withheld from the American people. I have spent much of my time in this continuing area of interest in intelligence, in attempting to get the full facts made available to the American people.

QUIPS & QUOTES

I have learned a lot during this process. One of the things that I have learned is how difficult it is to access federal documents through the Freedom of Information Act request. I have suggested that the law should be amended to require that if you file a Freedom of Information Act request, you must also, simultaneously, file a statement of your life expectancy. In most cases that would result in you having your efforts terminated because you'll never live to see the results.

Robert Graham

"One component of those facts became so iconic that it had its own name. It was called *The 28 Pages*, which was a summary of the question of who financed the 9/11 attacks and what were the specific individuals and circumstances involved in that financing. After fifteen years of withholding that information it was finally made available to the public in July 2016. It sparked a flurry of other activity.

"Since that time there've been several hundred additional pages released about 9/11. Congress adopted legislation, which has been acronymed into JASTA, Judges Against Sponsors of Terrorism Act. It will provide a new standard when an American brings a suit in a federal court against a foreign government on the topic of sovereign immunity. How tall is that wall of sovereign immunity? I will say it is shorter to- ▷

day than it was two years ago. As a result, litigation will soon proceed on behalf of the 2,800 Americans who were the families of those persons who were killed in 9/11.

"This is going to be an important year for greater understanding of this event. I'm pleased that the American judicial system is showing its capacity, delayed as it has been, but moving forward to give to the American people truth about an issue that should be very important.

"I frequently get asked the question, "Why does anybody care about an event that is now over fifteen years old?" There are several reasons. The first is the one I've already mentioned, and that is justice the families of those killed should have their day in court.

"Second is what this has done to the psyche of the Saudis. The fact that the United States has withheld this information for so long, and in doing so has essentially protected the kingdom of Saudi Arabia, has given to the Saudis a sense of immunity. That they can do whatever they want to without fear of retribution from the U. S. They have acted on that immunity. They have continued to be the primary financiers of ISIS and other major terrorist groups while at the same time, through their mosque and madrasas [a college for Islamic instruction] have trained the next generation of jihadists.

"What we're seeing in the front pages of today's paper, relative to the Russians' attitude towards involvement in our elections, and possibly in other elections that are going to be held this year in Europe, has been influenced by what we did in 9/11. If the Russians can be charged with having been involved in the most sacred act of our democracy, the election of a president of the United States of America, and there is no response, what limits are there on the Russians continuing that involvement? Not only in our elections, but also in Germany, in France, in Poland, in the Netherlands, in other countries which will soon be electing their leaders, in an atmosphere that unfortunately seems to be encouraging more authoritarian figures.

"There are real consequences to what we have done over the last fifteen years and what is happening now and will in the future. I hope that we are on the verge of turning the page to a new chapter."

DECLINE IN CIVIC ENGAGEMENT

"One chapter that greatly discourages me is what is happening to our independence of the judiciary. As we speak, across the land, particularly in state legislatures, there are attacks against the independence of the judiciary by such things as changing merit retention laws in those states where that process is used, shortening the terms of judges, and particularly making judicial decisions accountable to and responsible to possible reversal by state legislatures.

"I might say I think the nadir of this attack on the independence of the judiciary is coming from legislators in Florida. This will be hard for you to believe, and I hope that you will not leave this meeting with a sour feeling about the intellect of our legislators, but some of them have introduced a bill, which is in the form of a resolution to Congress, asking that the Congress initiate an amendment to the United States Constitution to eliminate the judicial article from the Constitution.

"Friends, we have a challenging environment. I believe the roots of this environment come from the fact that there has been a steady decline in our country in our commitment to civic engagement.

"The United States Census, every other year, does a special evaluation through a questionnaire process of Americans' attitude towards their civic responsibility. It is the lowest today that is has been in the history of that evaluation.

"We saw it on November 8. In spite of the fact that we had one of the most contentious, interesting, captivating presidential elections in modern history, only forty-seven percent of Americans took the time to show up and vote. Groups that have as their charter civic activities are having difficulty maintaining their membership. The instances in which citizens come together with their neighbors to solve a local problem are becoming fewer and fewer. Why has this occurred? I think it has several roots.

"One is our political parties. When the waves of immigrants were coming through Ellis Island at the end of the nineteenth century, the Democratic and Republican Parties each had a desk on the dock. As people came off the boats, they were asked to start

the process towards citizenship. They were given information about our democracy. They were encouraged to become involved and as soon as possible to become citizens. Today our political parties are talking about protecting their base. They want to have the smallest electorate possible; the electorate that they have confidence is going to vote for them.

"We also had in our schools the teaching of civics, which had been a high priority since Thomas Jefferson first talked about public education in America. Wise people understood that the students who were coming into the schools in the 1880s and the 1890s were coming from places that had no experience in democracy. Therefore it was especially important that civics be a vital part of the curriculum so that they could quickly assimilate into their new home.

"Today, civics has virtually disappeared from the curriculum. When I attended Miami Senior High School, graduated in 1955, I took three one-year courses in civics between the seventh and twelfth grade. Those of you who are of that era did the same because that was the national standard.

"I have eleven grandchildren, nine of whom have graduated from high school. Most of them had no civics. The most any of them had was one semester of civics. That is the state of what we feel is the appropriate education in being a citizen in a democracy today.

"Our political system is not serving us well. Our media has largely stopped reporting on local news. If newspapers and television stations are forced, as most of them have been in recent years, to reduce their activities, the first place to go are those reporters who cover the school board and the local community organizations. If citizens don't know that there's a problem, because they have had no access to information about it, then they are not going to be responsive to solving the problem.

"We have many points of attack and interest in terms of beginning the process of reviving our civic energy and our commitment to our community and to our nation to bring the full strength of an engaged, democratic society to the benefit of all Americans.

"I don't know two issues that would be of greater service by the legal profession to this new civic energy than the issue of judicial independence and the issue of openness of government, letting the people know what the government is doing in their name.

"I challenge you to be one of the sources of renewal of our civic life. I challenge you to use that new energy to ensure that the fundamental institution for our freedom and liberty, an independent judicial system, and the fundamental process by which the American people maintain their capacity to be engaged citizens, the government sharing openly with the people of what it has done in their name. That those two goals would be an appropriate target of attention and action for the legal profession and, excuse me for my impudence to suggest this, for this very organization." ■

ENTERTAINMENT INDUSTRY VETERAN ON THE POWER OF STORYTELLING

Michael Taylor, a producer of numerous theatrical and television films, spoke to Fellows at the 2017 Spring Meeting in Boca Raton, Florida. His career in the entertainment industry began as a motion picture executive at United Artists Corporation where he served as UA's head of European productions while based in London. Among the films he supervised during that period were *The Pink Panther Strikes Again*, the James Bond thriller, *The Spy Who Loved Me*, and Ken Russell's *Valentino*.

In the independent film arena, his credits as a producer include *Bottle Rocket* in 1996, *Phenomenon* in 1996, *The Commuters* in 2005 and *Copying Beethoven* in 2006, among others. He went on to become a professor at the University of Southern California School of Cinematic Arts, which is widely recognized as one of the most prestigious film programs in the world, preparing students to pursue their ambitions in the entertainment industry.

He served as a professor and Chairman of the Division of Film and Television Production at USC and most recently, has founded and now heads the USC Media Institute for Social Change. The institute is a nonprofit organization of industry professionals who create entertainment media with impactful social messages. One recent work is *The Interpreter*, a short film about an Afghan interpreter working for the U.S. military who is hunted by the Taliban while he's in the process of seeking asylum. Another is *The Pamoja Project*, a documentary film that tells the inspiring story of three Tanzanian women working in the fields of education, micro-finance and health. The women are together working to improve the livelihoods of their fellow Tanzanians to offer them both hope and a better future.

"It is through these projects and others that Taylor has made it his life's mission to change the world one film at a time," said Georgia State Committee Chair **Richard H. Deane, Jr.** of Atlanta, Georgia in his introduction of Taylor.

TO ENTERTAIN, EDUCATE, PERSUADE

"Even before written language was developed for people to communicate, the very first cavemen etched pictures on the cave walls of animals and then they sat around the campfire at night and told stories about the hunt, those animals and what it meant to them. Those very first cave wall images started a great oral tradition of storytelling that has served us well, throughout the history of mankind. All throughout our history, those stories were used for three things: They were used for entertainment, for education, and of course, to persuade," Taylor said.

"Storytelling matters. It really makes a difference. Every single culture in the world, from the most primitive tribes to the most sophisticated cultures on the planet, continues to tell stories, and they use those stories for those same three things: entertainment, education, and persuasion. I'm a filmmaker and I've worked with writers all of my life to develop stories. Many of those stories have found their way into the movies that I've made. For all the years that I was making movies, very happily I must say, I also felt just a very small twinge of frustration. That frustration came because I always felt that the best scripts I had, the best stories I had to tell, the ones that had to do with sending messages as well as be entertaining, those scripts were still at home on my shelf. I couldn't find financing for them. Studios were not particularly interested in making those kinds of films. Why? Because one of the oldest stories in the movie business, dating back almost 100-years to the pioneers of the movie business, is very simple story. It says, 'If you want to send a message, call Western Union. We're not in the business of sending messages. We're in the business of entertainment.' One hundred years ago they didn't know that you could do both. Now we do. ▷

"Twelve years ago I was invited to the University of Southern California, to the famed School of Cinematic Arts where I was asked to become the chair of film and television production. A few years into running that program, I started feeling that same frustration when I was back in the industry. Although this time it was not about my films, it was not about my scripts. That frustration was about the students' films and their scripts. Student films are very often technically proficient. They're well-lit, they're well-shot, they're well-edited, the sound is good, but the stories are very often lacking. They're just not about anything of substance.

"The reason for this, I think, is because they are mimicking on small student budgets and student schedules what the studios are putting out. I didn't have the clout to change an entire industry when I was producing movies, but I do as chair of film and television production here at this university. I have the ability to influence what students make. If we could give them the skills to go out into the industry as the next generation of filmmakers armed with the ability to integrate issues of social change into the narrative of their films, then we could really move the needle on a number of social issues. We could make a dent.

"It was then that I started the Media Institute for Social Change. It's based on a very simple idea, really, which is that as filmmakers and television show makers, the work we do is seen by a huge audience, and with that comes an opportunity to integrate into the stories that we tell issues that are important to us and issues that might change the hearts and minds of the audience."

STORYTELLING MATTERS

"In Brazil, there's a telenovela on Brazilian television on TV Globo. Telenovelas in Latin American countries are very similar to our soap operas. They run for forty to fifty ears, they're very popular, they're like *As the World Turns* or *Days of Our Lives*. When this telenovela started, the profile of the average Brazilian woman was uneducated, unprofessional and she had five children. Without any fanfare, without calling attention to itself, the producers and writers of this show started writing roles for women. They introduced these characters into the show who were professionals. They played doctors, lawyers, business executives. Obviously they had a lot of education, and if they had children at all, they had two children.

"Cut to fifty years later. Researchers in Brazil are doing their research about the changing culture of that country. They discovered the profile of the average woman in Brazil was educated, professional and if she had children at all, she had two children. At first people were dismissive of this and said, 'Let's not be too quick to connect the dots to these things. The whole world has changed over the last fifty years. There was a women's liberation movement all over the world. Countries everywhere have changed culturally. Education has changed.'

"When they dug a little deeper and they started talking to women in Brazil, what they discovered was practically every woman when asked said, 'It was that television show that was responsible for changing the profile of women in this country. We had to see it before we could be it. We had to have role models.' Storytelling matters. It makes a big difference.

"For many years people who were opposed to capital punishment wrote plays, books, movies and episodic dramas in opposition to the death penalty. They used every dramatic point of view they could possibly come up with to explain why they thought capital punishment was wrong. It was immoral, it was unethical, it was not a deterrent and if it was wrong to take a life as an individual than certainly it was wrong for the state to take a life.

"But you know what? Not one of those movies or plays or television episodes moved the needle. They didn't make a dent. Why? Because there was an older existing story that was more powerful and more deeply rooted in our culture than any of those stories. You know it well, because it's been with us for thousands of years. It's in the Bible. An eye for an eye. A tooth for a tooth. That is one of the oldest stories in the world and it's very hard to change that story.

"Until the discovery of DNA evidence. All of a sudden storytellers were able to put a slight spin on that old story. People are writing plays and movies and episodic dramas on television about capital punishment and the spin they were saying was, 'Yes, of course we believe in an eye for an eye. It's in the Bible. But you know what? Sometimes we're killing the wrong guy.' Everybody stood up as if the culture took a collective gasp and said, 'We believe in an eye for an eye, but we don't want to kill the wrong guy. That's not right.' There

were stories about someone who had been executed and after the execution it came to light that he was in fact innocent. Slowly, state by state they started to drop the death penalty or put a moratorium on the death penalty. If you look at the statistics of capital punishment before and after DNA evidence surfaced, you'll see that executions in this country have gone down tremendously. That's because storytelling makes a difference. It really matters."

FROM SAVING THE LIBRARY TO BOOK BURNING

"There's a small town in Michigan called Troy. Back during the recession, like many small towns in the country, Troy had fallen on very hard times. Very high unemployment, people couldn't find work, people couldn't pay their bills. The town of Troy was in bad shape economically. So much so that the library board came forward and said to the town council, 'We can't afford to keep the library open. We can't afford to maintain the building. We can't afford to employ people to look after the books. We're in serious financial trouble.'

"So they hatched a plan. There was an upcoming election and they proposed a referendum in this upcoming election to raise taxes in a very small way and have that tax increase earmarked to save the library. They made the point in their campaign that it was the smallest possible tax increase that you could imagine. I think it was .00005%, so small in fact that it would be pennies to every citizen of Troy. They made this campaign and people wrote pieces in the newspaper. The Save the Library campaign was getting some traction.

"Until the new mayor of Troy, who was elected in the last election and was a member of the Tea Party, came forward and said, 'No new taxes. I do not support this effort to raise taxes for the library. I promised you that when I was elected in the last election I would not raise taxes under any consideration for any reason, for anything at all. There will be no new taxes on my watch.' Suddenly he used his bully pulpit to campaign against the library tax and he was gaining some traction.

"The library board said, 'There's something really awful going on here. This guy stole our story. He changed the story. For months, we've been talking about save the library. This town was all about saving the library and now people are only talking about raising taxes. We've got to do something to change the story back and get people's attention.' They came up with a plan. It's now a week before election.

"They designed and put posters all over town and took an ad in the local newspaper. The ad and posters invited people to a book burning. They said, 'Tuesday's the election. If the referendum on the library tax fails, we're inviting everyone in town on the Saturday after election to come down to the town square. Come to the village green for a good old-fashioned book burning. Bring the kids. We'll have cookies and lemonade and we'll burn all the books, because we won't have a building to keep them in. We won't have anyone who can look after these books.' You can imagine how quickly word spread around town. At first people thought they were kidding. They said, 'This can't be true. What kind of message is this to our children? We don't burn books, that's not who we are. We've always had a library in Troy.' Election day came around, it was the highest voter turnout in the history of Troy. The referendum for the new tax on the library passed with the highest majority ever. Today the Troy library is open and healthy and doing very well.

"In this particular case, the story changed three times. It was first about saving the library and then it changed to no new taxes and the whole story became about raising taxes. They pulled the story back and the third time, they made the story about burning ▷

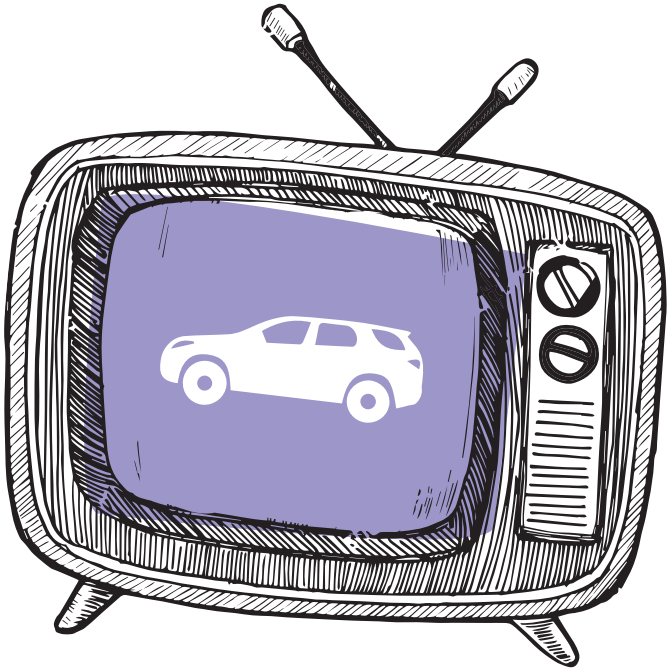
books, which was outrageous to the townspeople of Troy. Storytelling matters."

ONE SENSATIONAL CASE – TWO COMPLETELY DIFFERENT STORIES

"Back in the last century there was a fellow by the name of O.J. Simpson. I think you may remember him. He was a star athlete, movie actor and a celebrity. He was accused of killing his wife Nicole Simpson and their friend Ron Goldman. The case was televised. It captured the imagination of the American people. There have been five or six reenactments and dramatizations, television movies and documentaries made about the O.J. Simpson trial. There's something about this case that people can't quite get enough of. In fact, the documentary that won the Academy Award this year, *O.J.: Made in America* was about O.J. People can't get enough of this story.

"Here's what interests me about this story. The prosecution in this case decided to tell a story based on the evidence. I imagine that's what you're all taught in law school. You gather the evidence and you tell a story based on the evidence to persuade the jury that your point of view in the case is correct. Lord knows there was enough evidence in this case. There was the crime scene and there was blood at the crime scene and there was a footprint in the blood and there was the Bronco and blood in the Bronco and there was the chase and on and on.

"The defense in this case decided to tell a completely different story. They couldn't be completely dismissive of the evidence. The evidence was kind of there, but they told a completely different story. They told a story about an inept Los Angeles Police Department who very often bungled the evidence. They told a story about a corrupt and racist Los Angeles Police Department who very often, when the accused person was an African-American man and particularly a man who had been put on a pedestal because of all he had achieved, wanted nothing more than to pull him down off that pedestal.



"They told a completely different story. When they told a story about a bigoted, racist Los Angeles Police Department, a bungling, corrupt Los Angeles Police Department who tampered with evidence and often got evidence wrong, that may or may not have been the case we weren't sure at that point. It may or may not have even pertained to this case.

"That was a familiar story to the jury. You could actually see the heads of the primarily African-American jury nodding in agreement, because that was a familiar story to them. They knew that story. The story about the evidence was speculation, had to be proven beyond a reasonable doubt. But this corrupt police department was a familiar one to them.

"They knew stories of family members, neighbors, sons, uncles and brothers who had been victims of this racist police department. They knew that and so by the time the defense got to that ridiculous stunt with the gloves saying, 'If it doesn't fit, you must acquit,' he [defense attorney Johnnie Cochran] the defense "had them. He had that jury exactly where he wanted them, because he told a story that was convincing. Storytelling matters.

"So I must tell you, whether it's in film or television, whether it's in an election, whether it's in the courtroom or the classroom, storytelling can make all the difference in the world." ■

AWARDS & HONORS

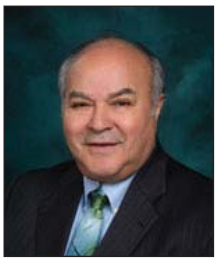
John P. Gilligan of Columbus, Ohio was recognized with the Ohio Legal Assistance Foundation 2017 Presidential Award for Pro Bono Service. The Presidential Award is presented annually to individuals, law firms or organizations that have made outstanding efforts in improving access to justice through pro bono or volunteer service. The Foundation was established in the 1990s through legislation adopted by the Ohio General Assembly. Its purpose, as outlined in the legislation, is to provide financial assistance to legal aid organizations and to enhance or improve the delivery of civil legal services to indigents. Gilligan has served as the Access to Justice and Legal Services Committee Chair. He has been a Fellow since 2006.

Stephen M. Grant, LSM of Toronto, Ontario was presented with the Ontario Bar Association Award of Excellence in Family Law in Memory of James G. McLeod. The award recognizes teaching of family law and practice; taking tough cases forward and handling precedent-setting cases, and/or being involved in advancing the practice of alternative dispute resolution; development of family law, including lecturing, scholarly writing, lobbying and development of policy and family law legislation, including new directions involving inter-disciplinary and comprehensive approaches to dispute resolution; enhancement of the practice of family law; leadership in the family law Bar. Grant is editor of the *Journal* and has served as Ontario Province Committee Chair. He has been a Fellow since 2003.

E. Stewart Jones, Jr. of Troy, New York was honored with the New York State Bar Association's 2017 Attorney Outstanding Professionalism Award at its Annual Meeting in January. The award recognizes dedication of service to clients and a commitment to promoting respect to the legal system in the pursuit of justice and the public good, characterized by exemplary ethical conduct, good judgment, integrity and civility. Jones has served on the New York-Upstate State Committee. He has been a Fellow since 1983.

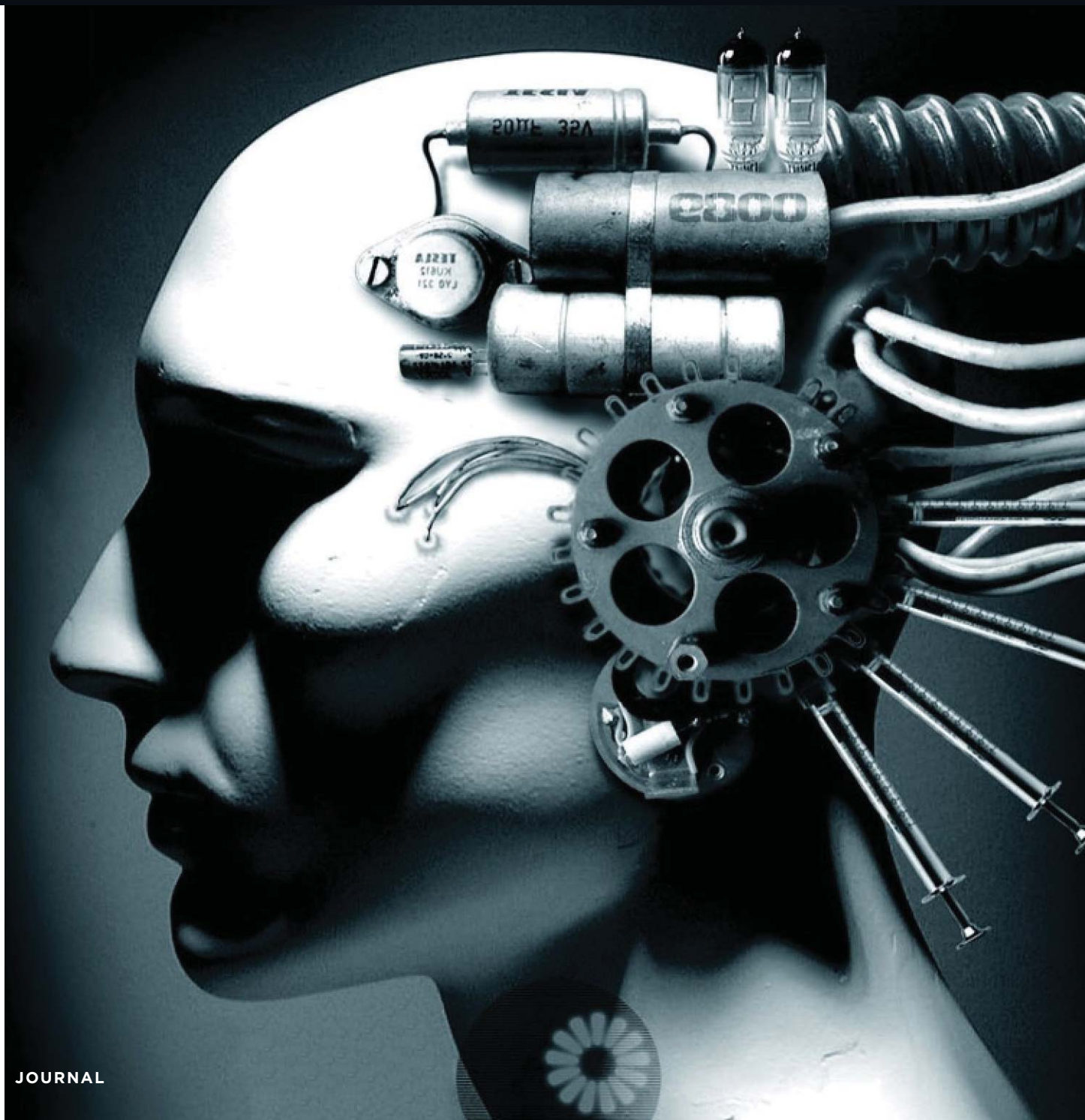
Edwin A. Harnden of Portland, Oregon has been awarded the 2017 American Bar Association (ABA) Grassroots Advocacy Award for his outstanding commitment to the justice system, the advancement of access to justice and the legal profession. The award is presented to an individual from across the nation who has made outstanding contributions to their bar associations and access to justice commissions, and who have played an integral role in successfully advocating or advancing ABA/organized bar legislative priorities in support of legal aid in Congress. Harnden is Chair of the Oregon State Committee and a member of the Access to Justice and Legal Services Committee. He has been a Fellow since 2010.

Thomas John Hurney, Jr. of Charleston, West Virginia was elected President of the Association of Defense Trial Attorneys (ADTA) at its April 2017 annual meeting in Nashville. The ADTA is an invitation-only organization of defense lawyers that accepts only one prime member in any city with a population of less than 1 million. Hurney has served the College as West Virginia State Committee Chair and a member of the Judiciary Committee. He has been a Fellow since 2007.



Eduardo R. Rodriguez of Brownsville, Texas has been selected to receive the 2017 American Inns of Court Professionalism Award for the Fifth Circuit. He was presented the award by Chief Judge Carl E. Stewart and Brigadier General Malinda Dunn U.S. Army (Ret.) at the Fifth Circuit Judicial Conference in May. The American Inns of Court inspires the legal community to advance the rule of law by achieving the highest levels of professionalism through example, education and mentoring. He has served on the Texas State Committee and has been a Fellow since 2004.

PANEL: DISCUSSION ON RAPID TECHNOLOGICAL CHANGE, DIGITAL SECURITY AND PRIVACY



The topic of security and privacy in the digital world was addressed by two speakers at the 2017 Spring Meeting in Boca Raton, Florida who have been involved in the very balance of those two competing interests for a long time.

The threats to privacy and threats to security are constantly changing at an accelerated basis

"Through our courts and through our Congress, and as a result of the accelerated change, we can say that as a matter of rule of law that's where the balance is to be struck," said Regent **Robert E. Welsh** of Philadelphia, Pennsylvania in his introduction of the two speakers.

"Change is nothing new in this balance. We start with the Fourth Amendment, of course, which implicitly recognized that there's a balance between security and privacy. Over the years there's been substantial change in the way the courts look at this. Initially the courts viewed privacy as a premises-based concept. It then evolved into the notion of what is a reasonable expectation of privacy. Statutes were passed in the sixties and seventies addressing the matter of electronic surveillance.

"The rate of change is accelerating beyond all expectation and there is a substantial risk that the law will not keep up with that rate of change. But because we are a nation of laws and because we've committed the process of balancing these interests to our legal system, it's very important that the Congress keep up with these changes and that the courts be prepared to grapple with them. Not only are the threats changing, but the technology is changing equally fast," Welsh said.

The first speaker was **John Carlin**, chair of Global Risk and Crisis Management at Morrison & Foerster. He is the immediate past Assistant Attorney General for National Security of the Department of Justice, a presidential appointment position confirmed by the Senate. In that position he was responsible for marshaling the various tools that Congress and the law permit and the technology provided to assist agencies to respond to things such as investigating the Boston Marathon bombing or Edward Snowden's leaks.

He was previously the Chief of Staff for Director Robert Mueller of the Federal Bureau of Investigation, and had spent his career before that in several positions in the Department of Justice, including as an Assistant U.S. Attorney for the District of Columbia.

The second speaker was **David Howard**. Howard is Corporate Vice President and Deputy General Counsel of Microsoft Corporation. A recognized and accomplished trial lawyer, Howard was an Assistant U.S. Attorney for the Eastern District of Pennsylvania for seven years and was in private practice with Dechert LLP for sixteen years.

He has been on the front lines not only of supervising and participating in Microsoft's litigation throughout the world, but overseeing litigation with the U.S. Department of Justice, addressing important matters such as the government's rights to access foreign stored information and other matters of privacy.

JOHN CARLIN

USING TECHNOLOGY FOR TERROR

"Imagine this: You are the CEO of a company inside the United States. You make a product that's trusted and used by hundreds of millions of customers around the world. You have a trusted retail brand. You're in your office. You get a knock on the door and someone comes in from your information technology department, the guys that run your computers. They say to you, 'Boss, we got a problem. We were breached and what we've seen is a pretty unsophisticated hacker who has stolen a relatively small amount of personal identifiable information, names, addresses. Don't worry. Nothing for ▷

you to do. We got it. We got them off the system. Happens every day.'

"They leave, go back to the system. A couple of weeks later, they come back and say, 'Boss, you know about that small amount of names and addresses that were stolen? We just got an email through Gmail and it says that they are going to release the fact that they stole this information to embarrass us and they've asked for $500 through Bitcoin.'

"Relatively small amount of money, unsophisticated hack. The vast majority of companies today, when faced with a similar, handle it on their own. They either pay the $500 or they figure 'This guy is just bluffing. It wasn't that sophisticated. There's nothing we need to do. Let's get back to business.' In this case, and this is a real case, if that had happened, what they wouldn't have found out is that it wasn't the low-level crook that it looked like on the other end of that hack.

"Instead, it was an individual, a Kosovo extremist who had moved from Kosovo to Malaysia. From Malaysia, in a conspiracy with someone back in Kosovo, he had hacked into this U.S.-based company with a trusted retail name, stolen the information, and yes, they wanted to make $500. What had also happened was that guy in Malaysia was in touch with one of the most notorious cyber terrorists in the world at the time, a British-born citizen named Junaid Hussain who had moved from London to Raqqa, Syria, where he was located at the very heart of the Islamic state of Levant. "A group that had dedicated itself to using murder as a tool to intimidate civilian populations. They killed Muslims and non-Muslims alike with impunity. They used rape as a political tool to indoctrinate. From his base in Raqqa, Syria, he had befriended this individual in Malaysia named Farize. How had he met him? How did they become friends? Not in the real world. They had become friends through Twitter and direct messaging through Twitter. They had shared this radical extremist ideology. What this hacker from Malaysia did with the stolen information from the trusted U.S. company was provide these names and addresses to Junaid Hussain in Raqqa, Syria.

"Junaid Hussain culled through that list and what he was looking for was not to sell the information. What he was looking for were those who looked like they might be government employees, who had .mil or .gov email addresses. He was culling through that list and creating a kill list and with that kill list, again using Twitter, an American-made technology that's changed the way the world communicates, he blasted that kill list back to the United States and said, 'Kill these people by name where they live using the stolen information from this company.'

"That's the threat that we face now. It moves incredibly quickly. That case alone involved five different countries, the federal government and the private sector to address that threat … Think about what Al-Qaeda did with aviation. Aviation is a tool that's provided incredible public good, it's used day in and day out, but terrorists figured out how to take that western-made technological innovation and turn it into a tool to cause death and destruction.

"As we got better at blocking their use of it, we saw them switch methods to crowd-sourcing terrorism, taking advantage of social media to adopt a new strategy. Using propaganda, they would turn people, especially dis-

turbed people, into weapons to cause harm. Addressing that threat at scale and speed requires the federal government, not just here in the United States, but across the world, working with the private sector in ways that we never have before.

"In the real version of this case, the company did work with the government. Because they worked with the government, Farize, the individual in Malaysia, was arrested pursuant to U.S. charges, extradited to the United States, pled guilty and was sentenced this summer to twenty years of incarceration in the eastern district of Virginia. Junaid Hussain, who was in ungoverned space in Syria, was killed in a publicly acknowledged military strike by central command where he lived.

"Together we can address this threat, but it's going to require a change in the way we do business. In my prior post as head of the National Security Division, we were the first new litigating division in the Department of Justice in fifty years. We were created directly as one of the responses to 9/11. The idea was simple, that prior to 9/11, we had failed to share information adequately across the law enforcement and intelligence divide. In addition to certain legal changes that made it easier to share information, culturally, we needed to change our approach as well. In 2006, the division was created and prosecutors sat side-by-side with intelligence lawyers, sat side-by-side with national security lawyers who do things like oversee transactions to see if they pose national security risk and our mentality changed.

"Success would no longer be measured by the successful prosecution of a terrorist after the fact, when families were grieving and had lost loved ones. Success now had to be measured by the use of all of the legal tools in the toolkit to prevent the attack from occurring in the first place. It meant using things like the Treasury Department's ability to sanction individuals to cut off terrorists from the funds they would use. It meant doing things like helping other countries develop legal systems so that they could credibly, with the support of their citizens , bring criminal cases against terrorists in their own country. It included things like governing rules for military action. Whatever the legally available tool was, it would be in service of what the intelligence showed the threat to be, and as we got better at applying that approach to the terrorists, they changed.

THE FACE OF TERRORISM IS CHANGING

"Terrorists switched from a world in which in order to get at would-be terrorists from within the United States or another western country into Afghanistan, Pakistan, you would need to meet them in person, train them and deploy them to try and commit a spectacular attack. It used to be the assessment of the intelligence community that no one would go from idea to violent action without meeting someone in the real world—that changed. They took advantage of how younger people are communicating, trusting and developing friendships and to use that for terrorist ends. We've seen that result in terms of the cases we're bringing inside the United States. The last two years I was overseeing the division, we brought more cases linked to international terrorism than we've ever had before.

"In over half of those cases, the defendants were twenty-five or younger and they weren't confined to one geographic area. We had open investigations in all fifty states. What we were seeing, in terms of trends, were the age of the defendants, over half twenty-five or younger, and one-third were twenty-one or younger. It's never been an issue that we've confronted before with terrorism cases. As many of you know who are formal prosecutors, the use of the federal criminal court system for juveniles is very rare, but we are facing a problem that we simply haven't faced before and it's directly linked to the other trend, which is in almost every single one of those cases, they were involved on social media.

"That's what we're seeing here in the United States and to confront this threat requires a new approach. I'll tell you it's the only time in my career at the Justice Department that we brought in Hollywood types, Madison Avenue advertisers, internet service providers for an event in the Department of Justice. We walked through what we were seeing in terms of the threat and then we asked for their help. We in government, are the world's worst messenger for a disaffected, under 21-year-old, trying to figure out what to do on social media so we brought this group in and said, 'How are you going to think about it?' It was fascinating to listen to how they thought about it.

"They thought about things like, 'Look at how the Islamic state of Levant is advertising. Boy! Their camera technology is great! They use a fuzzy lens, which makes people appear more handsome.' We showed them some real videos we had seen. To recruit they don't show the terrorist video of someone being beheaded or burned alive. They do put those videos out, but that's to scare people or for people who have already drunk the Kool-Aid and joined the group. When they're recruiting, ▷

they show a softer side. What they show instead is a handsome, young terrorist, and this is a real video, handing out cotton candy to children and they say, 'This is what life will be like in the Levant. This is what it'll be like if you join the Islamic state.'

"These advertisers were brought in said, 'Yeah, they're doing that here, but they are also micro-targeting demographics, just like we do when we sell a can of Coke. Look at what they're producing in Europe.' Sure enough, when I went over to Europe to give a similar talk, they said, 'Yeah, we don't have the cotton candy one here. What we have is Nutella, because that's what kids like here.'

"They talked a little bit about our approach of countering violent extremism and said we had it wrong just in the name, that it can't be about countering. We have to come up with a positive message that affirms. That's where we are on the terrorist threat, trying to come up with new ways to keep people from being propagandized and directed from overseas and doing so in a time where in addition to having this ability to real-time connect that they have never had before….

"Governments around the world are trying to figure out how to wrestle with this new change in technology. I hope that in the current climate of fierce debate over how to handle a terrorism case that we don't lose what's made America special, which is our ability and skill to incorporate people from all different backgrounds into our culture, which is why we don't have as large a problem as some of our closest allies. What we're finding is it's a one-off disaffected individual, rather than whole communities who feel like they're not a part of the American fabric."

COMBATING CYBER THREATS

"It became clear that our approach could no longer be to watch, which had been the Cold War approach when it came to espionage threats. With this new, digitally-enabled threat, it was causing real harm to real victims now, which meant we needed to open the door to what had been on the intel side of the house, share it with prosecutors, apply the same lessons of 9/11 and start bringing pain to the adversary, start bringing deterrents to bear.

"That change of approach led to retraining all of our prosecutors when it came back over to justice. In every U.S. attorney's office there's someone who is a specialist on national security cyber threats. They know the bits and the bytes, the Electronic Communications Privacy Act, but they also know about sensitive sources and methods, know how to protect them and are shown what that intelligence has to say about what our adversaries are doing. The change in approach led to the first case of its kind - the indictment of five members of the People's Liberation Army, Unit 61398, in 2014. This was a special cadre of the second largest military in the world, and their day job was to hack into American companies to steal information to make a buck for the American companies' competitors back in China.

"This is part of this new approach of figure out who did it. We have to start making the hacks public and not making it a secret where we only know about it in government and bring a deterrence to bear. What we made public showed to those critics who said, 'Why are you doing this? This is just normal spy activity,' that it's not and, we showed that right before a company did a joint venture with a Chinese company, we watched the Chinese military go into that company's servers and steal the design specifications for the lead pipe they were otherwise were going to lease. To use another example of a solar company, we watched them go in, steal the pricing information from that solar company, price dump and force the solar company out of business. Then, to add insult to injury, when that company hired good trial lawyers to sue, they stole the litigation strategy.

"When people ask why we brought those cases, that's why. What we're seeing is theft….It's a similar concept to the idea of an easement. This is the idea that if you let someone walk across your lawn long enough, in common law, they essentially earn the right to walk across your lawn, that's the easement. That's why everyone puts up no trespass signs. International law is a law of customary law and as long as we were watching this happen and doing nothing, we were making the norm, we were making international law be that it's okay to use your military and intelligence to steal from private companies so in some ways this case was a giant 'No Trespass' sign saying, 'Get off our lawn.'

"Fast forward a little bit to Sony. We have war-game simulated many times what it would look like if a rogue, nuclear-armed, nation state decided to attack the United States through cyber-enabled means. Not once did we get it right because we never envisioned that it would be about a movie about a bunch of pot smokers, but that's what led to the first attack of its kind with

North Korea on Sony motion pictures. [*Editor's Note: Carlin is referring to the movie* The Interview *where two tabloid-TV journalists set up an interview with North Korean's Kim Jong Un and eventually are recruited by the CIA with the mission to assassinate the dictator.*]

"The reason why we treated it like a serious national security threat is because we're still figuring out what the norms look like in this world and what we figured out is that this is an attack not just on this particular movie, but on a fundamental right of free expression and if we don't send a message not just to North Korea, but to all the other countries out there who are experimenting, what are the red lines? What are the actions where if we take them, it's going to get a reaction from the United States that we're going to be sending the wrong message? With the help from Sony, in twenty-eight days, we were able to name North Korea and in an unprecedented step have the President declare that from the podium and impose sanctions.

"To offer an example of why this is one step harder than the reforms we made after 9/11, as hard as those reforms were, they were about sharing information within government. When it comes to the social media threat and trying to warn families and keep kids from being recruited from terrorists or defending our companies who are now on the front lines of national security threats from nation states in a way they haven't before, we have to figure out, not just how to share information within government, but how to get better at sharing information with private companies and how to receive information back from private companies.

"We're in the beginning stages of using that approach to improve both defensively and also to improve our deterrence. One thing we realized in the Sony case, unlike with terrorists or those who proliferate in weapons of mass destruction, we were lucky in some respects with North Korea. If it had been any other actor, there was no executive order that allowed sanctioning for someone just for cyber activities. So in April 2015, the President signed and imposed sanctions over the Sony hack.

"Plus, the case that we brought against the People's Liberation Army led to a breakthrough where President Xi of China met with President Obama and concluded it is wrong to use military or intelligence to target a private company for private financial gain. Because of that breakthrough, the G20 adopted that same norm about two months later.

"Since then, we've seen a major decrease in the use of military and intelligence to target private companies for private gain. If you think of cyber in some respects as the Wild West, one of the first steps of imposing law on the Wild West was to agree on what the laws are. Now all of us in law enforcement would be out of business if passing a law meant the activity stops, so I think the next step is to enforce those laws and agreements."

DAVID HOWARD

"We're reminded every day about how much easier technology has made life for all of us. I was reminded as I was flying here from Seattle and had the experience of using my phone to sort photos that I had taken with a camera over the last year. I'm reminded by it when I look at my wrist and I see this instrument that I have that collects all sorts of health information and location information about me and sends it to a server somewhere where I can access it from my phone or my computer on a daily basis. Technology really has made our lives easier and better.

"At the same time we all recognize the risks that the technology creates. That same information that I have, the photos that I have on my phone, which are actually stored in a data center somewhere, the health information about me that exists somewhere, the information about where I've spent my day that exists somewhere. If it's accessed unlawfully, or perhaps even lawfully, it can clearly create grave harms not only for me, but more collectively for all of us.

"We deal with these types of threats and as we deal with the threats to our privacy, we're fighting a battle using laws that were created over thirty years ago, when the type of technology that we're trying to protect didn't even exist.

"Obviously the world changed in 2013 when Edward Snowden walked out of the NSA with about 900,000 documents that he promptly leaked. What we found out about at the time was that United States was collecting phone records of millions of Americans, that there was tapping of the underwater cables of major internet providers, that we were spying on our own allies, and that caused great consternation not only in the United State, but around the world.

"We recognize that we need to figure out a way to strike a balance between protecting our privacy and protecting our security. As I said, we're fighting that battle today with a hand tied behind our back because we're using laws that don't do a good job of accomplishing either task."

NEW TECHNOLOGY,
NEW THREAT TO PRIVACY

"This is not a new problem. As technology has advanced throughout the centuries, every time there has been some advancement, there has been a new threat to our security and at the same time, a new threat to our privacy. The best way to begin that story is by talking about the telephone.

"The telephone was an amazing invention that allowed us, for the first time, to speak in real time to people who weren't in the same place as we are, sometimes hundreds or thousands of miles away. It allowed people who wanted to do bad things, to talk about doing bad things, to conspire to commit crimes not in the same room, sometimes hundreds or thousands of miles away and that obviously created a challenge for law enforcement which had to deal with a problem of, 'How do you catch criminals when they're not all planning things in the same place?' They figured out how to do wiretaps, how to listen in on phone conversations and that was one of the first times that the courts had to deal with this balance of security and privacy in the twentieth century.

"The Supreme Court dealt with that issue initially in a case called *Olmstead v. United States* and what it declared at the time was that the Fourth amendment actually didn't protect phone conversations that traveled outside the home and on the wires. Wiretapping was perfectly legal and didn't require a warrant.

"Justice Brandeis, on the other hand, in a very vigorous dissent foresaw that there would constantly be technological inventions. He even predicted the possibility, which is very close to the world in which we live today, where people could actually look into people's homes and learn about the information that are in people's desks. He recognized that the need, the needs for the Fourth Amendment to evolve as technology advances.

"In fact, about forty years after the *Olmstead* case, the Supreme Court took up the issue of wiretapping again and this time it declared that people had a reasonable expectation of privacy to their phone conversations. Yes, a wiretapped conversation violated the Fourth Amendment, and that prompted Congress to do something.

"The next year, they passed the Omnibus Crime Control Act of 1968 and that statute created a regime, still

in existence today, that governs the situation and the limitations on the ability of the federal government to wiretap people's phones and it still works.

"Phones have advanced to being much more than just instruments to talk to other people and, as that has happened, the issues of security and privacy have continued to advance. In an extraordinary opinion, in my view just a couple of years ago, was an unanimous opinion Justice Roberts wrote that unlike any other instrument, any other device, any other object that's held on somebody's body at the time of their arrest where the law is very clear that you don't need a warrant to search a container for instance or a pack of cigarettes, or a box that's found on some body when they're arrested. The situation is different with a cell phone and when there is a search incident to an arrest and a cell phone is on somebody's body, a warrant has to be obtained. This is because, as the court recognized, there may be more information contained in that phone or connected from that phone to the cloud than many people have in their homes."

COMPLEXITIES OF CLOUD COMPUTING

The issues about technology and privacy this century, this decade, don't just have to do with telephones. A lot of the issues have to do with this cluster of strange looking buildings that you see here today. This is the cloud. It is a group of servers collected in a data center and these data centers are located all over the world. Cloud computing, in and of itself, is a tremendous advance for consumers and for businesses. It's predicted that in a few years, cloud computing is going to save hundreds of billions dollars every year for industry throughout the world, but cloud computing also creates some new challenges.

"Before cloud computing, if the government wanted to get somebody's information whether it's in a letter or a diary or on a hard drive of a computer, they have to come to your house and you know about it. Or they'd have to come to your office and your company would know about it. In the world of cloud computing, all they have to do now is come to Microsoft or Google or Yahoo or another cloud provider and you might not even know about it and that creates all sorts of problems. Some of those problems have to do with respect for national borders. That brings us to the first case in which Microsoft has been involved."

MICROSOFT CHALLENGES THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

"In 2014, we received this search warrant. On its face it looks like a normal search warrant. It calls for search of certain premises and applies to information associated with somebody's Hotmail account, the account at premises maintained or operated by Microsoft at 1 Microsoft Way in Redmond, Washington. There was a problem with that and the problem was that those emails, while accessible from Redmond, Washington, were actually stored at a data center in Dublin, Ireland.

"All of this is governed by a law that was passed in 1986 called The Electronic Communications Privacy Act (ECPA), which says that a governmental entity can get a disclosure of contents of electronic information only pursuant to a warrant. The internet was in its infancy. To send emails in 1986 they would be sent from one location to another and then have to be delivered by hand in print to the recipient. Those are the laws which still govern the government's ability to access to contents of emails.

"We challenged, in the courts, the government's ability to get emails stored in Dublin, Ireland on the theory that there's a presumption against extra territoriality in the law. The Supreme Court has made very clear that, unless it's absolutely clear from a statue where it was intended to be applied outside the United States, it cannot be applied outside the United States. We lost at the magistrate court level and we lost at the district court level. Then in the Second Circuit, we assembled a huge group of allies including twenty-eight technology and media companies, thirty-six well-known famous computer scientists and twenty-three different trade organizations and advocacy organizations, and the government of Ireland, all of whom filed amicus briefs on our behalf.

"In July 2016, the Second Circuit ruled that in fact, ECPA was an extra territorial. It couldn't be applied outside the United States and that the seizure of emails that were stored in Dublin, Ireland, even though those emails were accessible from the United States, was a search and seizure in Ireland. And we won.

"The court said that the U.S. government search warrants cannot compel Microsoft to turn over customer data that is stored exclusively outside the United States. Now the case continues. We narrowly avoided an *en banc* hearing a few weeks ago by a 4-4 vote. Some of the dissenting judges had very strong things to say in- ▷

cluding that the panel's majority had put the safety and security of Americans at risk. We may find ourselves in the Supreme Court in the next few months or after some other cases that are currently percolating through the system are decided. I suspect that the real battleground is going to be in Congress. Microsoft supports a statute that we believe does a good job of balancing the interests of security and privacy and allows the government to obtain emails that are stored overseas for U.S. citizens and residents among other things and tries to modernize the mutual legal assistance treaty process that allows the U.S. government to legally obtain data stored in other countries. That's called the International Communications Privacy Act and it's been proposed by Senator Orrin Hatch.

"We've heard recently, however, that the Trump Administration is looking to completely roll back the Second Circuit's opinion. It's going to be a very interesting few months and perhaps years as Congress grapples with that issue. But the issues that cloud computing raises go beyond merely issues about sovereignty of other countries. The issues also deal with transparency. The International Communications Privacy Act, the same statute that we were discussing, permits the court to issue gag orders that prevent providers like Microsoft and Google and Yahoo and other companies from telling our customers, whether they are consumers or businesses, that the government has sought their information and the contents of their email and other electronic files. Courts can issue these orders based on a finding simply that there is a reason to believe that notification would seriously jeopardize an investigation. They can issue orders for such period of time as the court deems just.

"When we looked at our own situation, what we learned was that just in the last couple of years, more than 2,000 of these secrecy orders that we have retained contain no time limit whatsoever, meaning that even after the subject of the investigation knows about it, even after the investigation is concluded with no indictment we have no right to tell our customer that their information has been sought by the government. We brought a case in the Western District of Washington seeking to declare this provision of, ECPA, both as applied and on its face as unconstitutional under both the First and the Fourth Amendments.

"Again, we assembled a large group of supporters from academia, from civil society, from different companies and media organizations. What we learned when we did this was we were not alone. Of all of the cloud providers, more than fifty percent of the gag orders that they were experiencing had indefinite duration. In other words, it basically required them to keep secret from their customers the government's request for their information. The other thing that we learned was that law enforcement was not entirely against us. The four U.S. attorneys from the Western District of Washington from 1989 to 2009 said, 'Yes. You can accomplish the needs of law enforcement without using indefinite gag orders.'

"A few weeks ago, the district court and the Western District of Washington denied the government's motion to dismiss and permitted the case to go forward on First Amendment grounds, although it also found that Microsoft didn't have the standing to assert the Fourth Amendment rights of its customers. We'll see whether the government tries to take some sort of an interlocutory appeal on the First Amendment issues to the Ninth Circuit. It's going to be a very interesting case as it continues to develop.

"Ultimately, however, I think that there's one thing that we need to recognize, that litigation is really kind of a blunt instrument for dealing with these issues. Prosecutors aren't the people to determine what the right balance of security and privacy is. Judges aren't the right people to determine what the right balance of security and privacy is. Ultimately, it is up to Congress to do what it did in 1968 when it passed the Omnibus Crime Control Act and figure out exactly, under what circumstances, the law enforcement ought to be able to wiretap criminals' telephones, to do something along the similar lines, to govern what it accesses technology in this century as well."

Carlin and Howard's full presentation can be viewed on the College YouTube channel. ■

NATIONAL OFFICE UPDATES

CHANGE OF ADDRESS FOR NATIONAL OFFICE

As of May 16, 2017, the National Office has a new address. The new address is: **1300 Dove Street, Suite 150 Newport Beach, CA 92660**. Please use this address for all mail correspondence. Phone, fax and email remain the same. To keep up with the College on social media, follow the College on Facebook, LinkedIn and Twitter, @actl.

FELLOWS TO THE BENCH

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

Norman Douglas Boxall
Ottawa, Ontario
Effective March 1, 2017
Justice
Ontario Court of Justice

John J.L. Hunter, Q.C,
Vancouver, British Columbia
Effective April 13, 2017
Judge
Court of Appeal for British Columbia
and the Court of Appeal for Yukon

The College extends congratulations to these Judicial Fellows.

CORRECTION/ERRATA

In issue 83 of the *Journal* an article titled, "Ninety-Six New Fellows Inducted At The Annual Meeting In Philadelphia" incorrectly identified the state for four newly inducted Fellows. George R. Hall, John J. Ossick, Jr., Laura D. Hogue and J. Anderson Davis are from Georgia.

AUTHOR HIGHLIGHTS
DEMOGRAPHICS OF THE NEXT AMERICA

Paul Taylor is currently a senior Fellow at Encore.org, a group that mobilizes older adults to help children thrive, after working first as a newspaper reporter with the *Washington Post*, and then as Executive Vice President for Pew Research Center, where he oversaw demographic research and analysis. He spoke at the 2017 Spring Meeting in Boca Raton, Florida, about the upcoming transformation by millennials, generally defined as people born between 1982 and 2000. His edited remarks follow:

THE DRAMA OF DEMOGRAPHIC CHANGE

"Demographic change is a drama in slow motion. It unfolds incrementally, tick by tock, and it transforms societies in fundamental ways. America is currently undergoing two such dramas. We are en route to becoming a majority non-white country, and a record share of us, like me, are going gray. Either of these would be the dominant demographic story of its era. The fact that they're happening together has created generation gaps.

"We are at a moment in our history where young and old don't look alike, don't think alike and don't vote alike. This has the potential to undermine our social and political cohesion. We live in an era of identity politics. It's no longer my ideas against your ideas; it's my group against your group. It's my grievances against your grievances. It's my truth against yours.

"Somebody smart said, 'Politics is downstream from culture.' Let's start with the culture at the epicenter of the American popular culture, which is the Super Bowl, which in addition to being our biggest sporting extravaganza, is our biggest advertising extravaganza.

"It's also the biggest audience we assemble, and advertisers spend $5 million for thirty seconds in front of 100 million people. In the past, a television ad family had parents of the same race, the opposite sex, speaking English. That's what the old Super Bowl ads portrayed. Fast forward to the 2017 Super Bowl, where the ads shifted to the new "normal," promoting diversity, immigration and gender equality to identify with the new changing America.

"This change is driven, more than anything, by our modern immigration wave. We opened our borders to immigrants in 1965, having closed them for much of the twentieth century due to the political, social, cultural and economic backlashes caused by immigration. Along came the Great Depression and a World War. Then in 1965, we saw the Civil Rights era, with an expanding economy and expanding middle class. We opened our doors. Since then, sixty million immigrants have arrived. It's the third great immigration wave in our nation's history.

"Immigration had begun in mid-nineteenth century, mostly from northern and western Europe, with Germany and Ireland the leading sending countries. At the beginning of the twentieth century, immigration moved south and east in Europe, with Italy, Poland and Russia becoming the leading sending countries.

"About thirty-two million immigrants came in those eighty years of European immigration. In the last fifty years, sixty million additional immigrants have come, for a total of a 100 million. No other country in the world has received more than fifteen million immigrants. We are truly a nation of immigrants.

"In the modern wave, the biggest difference is where folks are coming from. It used to be white Europeans, but in the last seven years, it's only twelve percent white Europeans, with half coming from Latin America and twenty-seven percent from Asia. This is likely to continue.

"They may come from different places, but immigrants share certain characteristics: they are strivers, they are believers and they are optimists. One of the ways that they have given literal human expression to their optimism is by having a lot of kids. Immigrants tend to have about fifty percent more kids than the native born of the country to which they immigrate.

"There's a phrase called "Immigrant Stock," which demographers use to slice and dice the population. In 1960, about one in five of us was either immigrants or the children of immigrants. If current trends continue, we are on a path for thirty-seven percent of us, by the middle of this century, to be either immigrants or the children of immigrants.

"That's a lot of change, but if you look back in history, you realize that we're going forward to our past. Immigrants are driving us toward a multicolored racial tapestry. That's a lot of change. Another contemporaneous change has to do with the global economy."

UPWARD MOBILITY AND THE FUTURE

"We know the story: globalization, automation, robots and digitization have wiped out whole categories of jobs. It has created some new jobs, but it is destroyed a lot of jobs. It left some people feeling forsaken about their own future and their children's futures. As we all know, a central tenet of the American Dream is upward mobility. My kids are going to do better than me, that's just the promise of America, right?

"You ask Americans today about upward mobility and by two to one, they say, 'I don't think we are better off than our parents' This is big. If you had asked that same question when we were young, it would have been two to one the other way. But when you look at the leading economies of Europe and our neighbors to the north, and also Japan, this is a malaise that is being felt throughout the developed world.

"It has to do with the tough adjustments to a changing global economy. Look at Nigeria and China. Our per capita income is five to eight times more than China's, and it's fifteen to twenty times more than Nigeria's. This is not a statement about absolute well-being at the moment. This is a statement about the trajectory that folks in these countries believe that they are on.

"If this unsettles you, what you saw in this past election is one way to divide the population. The question is whether the economy has been good for folks or has it been bad. You see the dramatic difference. A lot of the support for Donald Trump was generated by those unsettled by the changes reflected by the TV ads. Those folks were forsaken by an economy that no longer seems to have room for them. When Donald Trump says he wants to make America great again, the operative word for his supporters is 'again.' It was hearkening back to a past that, to his supporters seemed a lot more promising than the one they look at today, whereas Hillary Clinton supporters had a very different mindset about how their group has done."

GAPS IN VALUES

"We saw this polarization in more extreme form this past year than any time I can remember, but it did not start with Hillary Clinton and Donald Trump. Pew Research Center, for decades, has asked a series of ten questions that get at people's core social, political and economic values.

"If you answer all those questions in the liberal way, you're over there on the left, you're consistently liberal. If you answer in the conservative way, you're consistently conservative. The blue are the Democrats who respond to this question, the red are the Republicans.

"We're now asking the same battery of questions, year after year, and we get to a place where Democrats have moved left and Republicans have moved right. Ninety-two percent of the Democrats are to the left of the median Republican and ninety-four percent of the Republicans are to the right. Conservative Democrats and liberal Republicans don't exist anymore.

"We send folks to Congress who reflect these changing political and identity dynamics. Look at how members of the U.S. House of Representatives did and didn't vote with a president of the opposite party fifty to sixty years ago. The incumbent president got about forty percent of the votes from members of the opposite party and about sixty percent from his own party.

"Currently, everything in Congress is a party line vote. That doesn't do well in terms of political compromise. We get gridlock. The only big thing we have done on the domestic front in the last eight years was Obamacare, which passed by the narrowest of party line votes. In the six years since it was passed, Republicans have passed sixty resolutions to get rid of it.

"In our voting, we have seen familiar identity gaps. We saw a huge racial gap, where Trump won the white vote by twenty percentage points and Hillary Clinton won the non-white vote by sixty percentage points. We saw once again a familiar gender gap, as well as an age gap.

"As this millennial generation is coming of age and coming on stream, we are transitioning to a majority non-white America. About forty-four percent of millennials are non-white. They have a set of core values that are much more liberal than predominately older whites in the population. We see an age gap opening in the way that we vote.

QUIPS & QUOTES

You have a public that sees this spectacle in Washington, and feels distant from each other to begin with, then what happens to confidence in government? Even with the social changes of the 60s and 70s, three quarters of us would have said: 'Yeah, I basically think I trust the government to do what's right.' Now we are at 19%. The approval rating for Congress is in the single digits. John McCain says of Congressional approval ratings, 'We are down to paid staff and blood relatives.' This is not a happy circumstance for a well-functioning society.

Paul Taylor

"There is another gap that is really quite striking. Take a look at the red-blue map from 2016, not by state but by county. Clinton won fifteen percent of America's 3,100 counties. You can drive diagonally all the way across the U.S. to the border between Washington State and Canada and you will not only not have to traverse a single blue state, you will not have to traverse a single blue county.

"There's never been anything quite like this. Adjust this map for population density. Remember, Clinton ▷

won the popular vote by nearly three million, as those fifteen percent of the counties have about half the population, as well as sixty-five percent of our GDP. And that's another gap that just now opened.

"The cities in this country are economically ascendant. If you look at the same counties that Clinton won last year, their share of the GDP was fifty-five percent, just ten to twenty years ago. It is now sixty-five percent. When Trump talks about forgotten people in the rural areas, he's talking about something that is quite real, that people are experiencing, whereas, folks in the big metropolitan areas are doing pretty damn well. What we have opened up is this big success for Trump with the white working class–that group wanted to send a wrecking ball to Washington.

"The economic and cultural elites of this country went for Hillary. Look at how Trump fared in four leading outposts of elite America: he got twenty-one percent of the vote in Silicon Valley and ten percent in Manhattan, which is the home of Wall Street, the home of the media industry, and the home of the fashion industry, advertising industry and of Trump; he got six percent of the vote in Cambridge Massachusetts, the home of two of our great institutions of higher education. He got just four percent of the vote in Washington, D.C., the home of our government and the new home of Trump.

OPTIMISM, OUR RESPONSIBILITY

"If you ask the American public, 'Are we more divided now than the past?' the public looks at politics and government and say, ' 'Yup.' But I am an American optimist. It is very hard to beat the optimism out of America. I am going to end with the notion that things will get better. I have faith that this millennial generation, now coming into the electorate and the workforce, will remain the dominant generation for the next several decades. Their core values will determine who we become and how we take on these challenges.

"One of the things that we know about millennials is that they are champions of diversity. We are in a moment of a generational baton pass. These young adults will be very good at handling the demographic and racial and social challenges. They're wired to do it. What they're having trouble with is getting an economic start. They are in fact, a downwardly mobile generation, and our generation is bequeathing them in our public policy $20 trillion in debt, and a Social Security and Medicare system that is not on a sustainable path, and declining investments in public education and other things that restore the future.

"We baby boomers need to ask ourselves, 'What responsibility do we have?' I work with Encore.org, whose tagline is 'Second acts for the greater good.' It encourages older adults to give something back: to be mentors, to be volunteers at youth serving organizations, to get involved in public policies that promote a better future for young adults. My favorite definition of American greatness is an ancient proverb that says, 'Societies become great when old men and women plant trees whose shade they know they will never sit under.' Fellow baby boomers, while we still all have a lot of spring left in our step, let's go plant some trees.

Carey E. Matovich
Billings, Montana

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

QUIPS & QUOTES

What has happened in the initial days of the Trump administration is this tension between the establishment in all of its forms and the wrecking ball for which half of America expressly voted. Since he's been president, he's gone after, 'so-called judges,' and he's compared the intelligence community to Nazi Germany. In a tweet, he said, 'The fake media is not my enemy, it is the enemy of the people.' That's a pretty heavy-duty indictment. A couple days after that tweet, a leading polling organization asked the American public, 'Who do you trust more?' Trump got thirty-seven percent of the vote, news media got fifty-two percent. At least in the short term, the media and perhaps other institutions will have the resources to survive what is going to be a very contentious relationship, but those numbers are cold comfort. We are in an age of disbelief and it is a challenging time for all of us.

Paul Taylor

CANADIAN COMPETITIONS SHAPE NEXT GENERATION OF TRIAL LAWYERS

The Gale Cup Moot is Canada's premier bilingual law student moot court competition that is held annually at Osgoode Hall in Toronto, Ontario. Emerging as this year's champion was Université du Québec à Montréal, composed of Marie-Ève Tremblay, Daphnée Drouin and Valérie Kelly. The Dickson Medal for Exceptional Oralist Performance in the Final Round was awarded to Drouin.

President Bartholomew J. Dalton attended this year's competition, held February 17-18, and presented the College's awards, including the Dickson Medals awarded to the top three oralists of the competition. The students were recognized locally by the Quebec Fellows at their annual dinner in March.

In the annual Sopinka Cup national trial advocacy competition, held this year in March, the west proved it was the best as this year's winning team was from the University of Saskatchewan. Team members included Anita Yuk, Sarah Loewen, Brady Knight, and Zachary Carter. The Best Overall Advocate was Lisa M. Delaney of Dalhousie University.

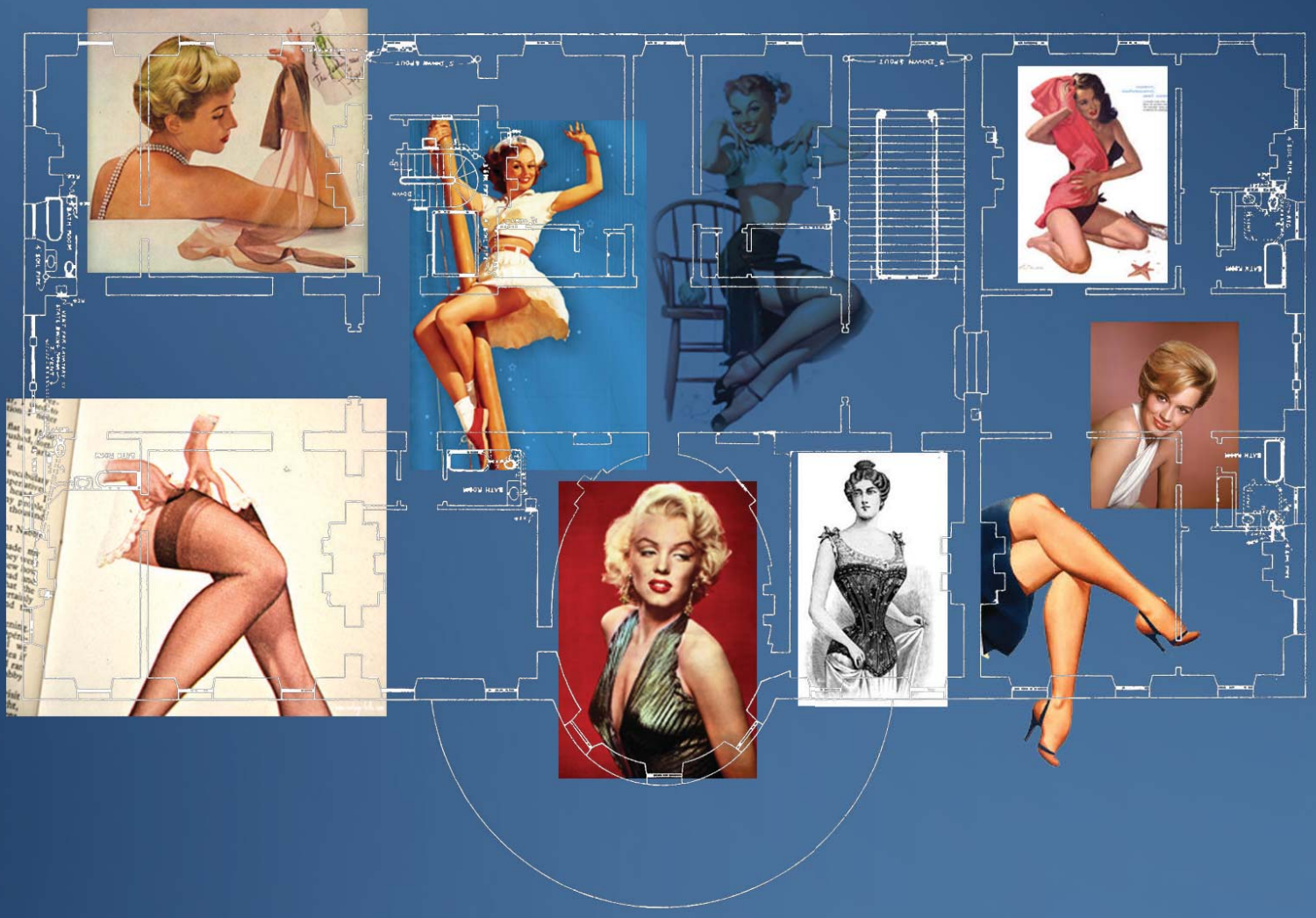
The competition was founded in 1999 and was named in honor of the late Hon. Mr. Justice John Sopinka, Judge of the Supreme Court of Canada and Fellow of the College. The competition is administered by The Advocates' Society, with the final rounds traditionally held at the Ottawa Court House.

Ontario Province Committee Chair Oliver Kott, Université du Québec à Montréal team member Marie-Ève Tremblay and President Dalton

Ontario Province Committee Chair Oliver Kott, Université du Québec à Montréal team member Daphnée Drouin and President Dalton

The Sopinka Cup winning team was from the University of Saskatchewan. Team members included: Anita Yuk, Sarah Loewen, Brady Knight, and Zachary Carter.

HISTORIAN SHARES TALES ON HISTORY OF MISBEHAVIOR IN THE WHITE HOUSE



Dr. **Robert P. Watson** is the author of forty books. He has written hundreds of scholarly articles, he has served on boards of various journals; he serves on the boards of several presidential foundations and currently that of the Truman Foundation.

"There are not many people whose destiny was written at an earlier age than Professor Watson. He grew up in Eastern Pennsylvania. His backyard was Valley Forge. Gettysburg was his playground. He was out there playing different sides, the Union versus the Confederate, on the very battlegrounds that are so dear to our rich legacy in this country," said **Eugene K. Pettis** of Fort Lauderdale, Florida, U.S. Foundation Trustee and Chair of the Legal Ethics and Professionalism Committee in his introduction of Watson.

Watson has dedicated his professional life to the history of this country. However, according to Watson, the history learned in school is a superficial history–much of it is folk tales, some not even accurate. What he has dedicated his life to is getting behind that superficial story. "The sweet spot is the hidden story in our history, the never told story that we just did not find in our history books," Pettis said "He goes out and really immerses himself in the history."

An example of his in-depth work was his most recent book, *The Nazi Titanic*, the terrible story of a doomed ship in World War II. One review of that book stated 'Author Robert P. Watson explores a tragedy that occurred in the literal last week of the war and as a result, was little known or publicized due to the chaos, the confusion and collapse of the resistance. And of course, the joyous celebration when Nazi Germany was defeated on V-Day. He has brought to life the tragic losses of life in the last days and hours of that dark day in our history.'

One of the works Watson talked about at the 2017 Spring Meeting in Boca Raton, Florida was his book, *Affairs of the State: The Untold Story of Presidential Love, Sex, and Scandal.*

Through his research, he found a long history of misbehavior in the White House. Keeping the audience top of mind during his presentation, he chose to share the stories of lawyers who misbehaved in the White House.

"What I found was that Bill Clinton was not the first and he was not the worst. I do not know that he would even make my top five list of misbehaving dogs in the White House, quite frankly. That title goes to John F. Kennedy. Kennedy was just wildly reckless. In fact, it started the night of his inauguration, January 20, 1961. The night of his inaugural, Kennedy had a ball. Jackie was not feeling well. She goes back to the White House early. Kennedy spends the evening in the penthouse upstairs with a young model who would soon become a famous actress named Angie Dickinson."

ABRAHAM LINCOLN

"I also found this and it disturbed me. Even Abraham Lincoln visited a prostitute that we know of at least twice. How do we know this? He wrote about it. It is not a conspiracy theory. It is not great sleuthing or research.

"It is one of my favorite stories from history. Lincoln's best friend is a fellow named Joshua Speed. Lincoln moves from Kentucky to Indiana to Illinois. He ar- ▷

rives in this little town in Illinois at a general store where Speed is working. Lincoln picks up tea, coffee, boots, everything. He has no money. When he is checking out, Speed says to him, 'The total will be such and such.' Lincoln says, 'You know, there's something I neglected to tell you. I don't have any money. But if you let me get this on credit, I'll work it off.' Which he did.

Lincoln is walking out of the store, promising to come back the next day and work. Speed says (this is Speed's letter I am quoting) 'Do you even have a place to stay?' Lincoln shook his head no, so Speed says, 'I have a bedroom upstairs. You can stay with me.' Lincoln, without saying a word, walks up the steps, comes back a moment later without anything in his hands and says to Speed, 'I'm all moved in.' A few days later, Speed has, how shall we say this, a practitioner of the world's oldest occupation visiting him, and that would not be agriculture. Lincoln is in the corner of the room with a pillow over his head. When the lady leaves, Lincoln says, 'Speed, I've got to have a woman. It's been forever.' Speed says, 'You could have her. She's a professional.' Only Lincoln would do this–Lincoln asks Speed for a letter of introduction.

"Lincoln visits the woman. We have a letter from the woman back to Speed and this is what she says. She was charging $5, which was a pretty good amount of money back then and Lincoln says, 'Ma'am, I've only got $3.' She says, 'Well, pay me the three and then you can pay me the other two when you come into it.' He says, 'Ma'am, I've got to tell you it could be forever until I come into another $2.' So she says to Speed, 'You know, it was the most honest sad face I've ever seen.' So she told him, 'This one's on the house.' Lincoln got up scared to death, ran out and ran the whole way home."

GROVER CLEVELAND

"Another lawyer was Grover Cleveland. Cleveland moved from New Jersey to Buffalo where he became very successful in the law. His law partner was Oscar Folsom. Cleveland and Folsom practiced law together. They went out drinking together. They went out to dinner together. They also slept with the same prostitute together. Her name was Maria Halpin. I have a feeling this will be my last speech ever for the College. Here's the problem. Oscar Folsom and Grover Cleveland are both sleeping with Maria Halpin. She gets pregnant. She has a son and none of the three of them know who the father is. She complicates things by naming the son Oscar Cleveland.

"Folsom was married and had a daughter. Cleveland was a bachelor and accepted responsibility. It became a big scandal when he was campaigning. Everywhere he went his Republican critics would yell, 'Ma, Ma. Where's my pa?' That was the joke. Then it came out right before the election that his Republican opponent had way more mistresses and illegitimate children than Cleveland. The Democrats responded to the 'Ma, Ma. Where's my pa?' with the rejoinder, 'Going to the White House. Ha, ha, ha.'

"Cleveland is a bachelor in the White House. Oscar Folsom had died. He was thrown from a carriage, broke his neck. He had a daughter named Frances. Cleveland becomes the godfather for the girl. He sends her to college. While she is in college, he is president. His letters to her change in their tone. They become hot and heavy. Cleveland ends up proposing marriage to his goddaughter. She is twenty-one; he's old enough to be her grandfather. The widow, her mother, says she needs time to think about this. They go on an ocean liner and do a European tour.

"All presidents up until Carter had a yacht. Carter sold it to save money. Cleveland sends his yacht to deliver a bunch of love letters to Frances. The captain of the ship recognizes the yacht. He opens the love letters. Eventually, he sells them to the paparazzi. The more the things change, the more they stay the same. Here is the problem. Cleveland never called Frances by her name in the love letters. He used things like cookie and cupcake and muffin and sweetie pie. The paparazzi thought he was going to marry the widow, the mother, who was only a decade or two, younger than him. When Frances and her mother come back to New York, the paparazzi gather in New York to get the story.

"Cleveland sends his yacht out. Frances climbs down the side of the ship at night, gets in the presidential yacht. The press hounds the widow; Frances goes back to the White House and, in a secret ceremony in the East Room, they get married. It is a huge scandal, as you can imagine. However, the country would come to love Frances. She would become a

major asset to Cleveland. She was ten years younger than Jackie when Jackie Kennedy became First Lady. She is a fashionista, intelligent, capable and educated. They soon forget the scandal. In fact, she gives birth in the White House to a young girl and the press follows this young girl's every step, sort of like the press did with Kennedy's two children. The young girl is named Ruth. They even named the candy bar after the baby."

ANDREW JACKSON

"Another lawyer was Andrew Jackson, also, a judge. Our story begins with a woman named Rachel Donelson. She is seventeen, from Virginia. Her father, Colonel John Donelson, is one of the first to settle in what we today know as Nashville and Knoxville, Tennessee… Rachel is the debutante, if you will, of the Tennessee territory. She does what a proper debutante should never do. She runs away and marries a much older man. His name is Lewis Robards and it is quite a scandal. Robards turns out to be a ne'er-do-well. He loses money, he drinks and he is clearly emotionally abusive to her. I suspect physically abusive, as well. She leaves him. She goes back home.

"Around this time, there is an Indian raid on the settlement. Rachel's father and most of the men and her brothers are killed. Rachel and her mother are living in the frontier in the middle of hostile Indian territory. The mother opens up their home for boarders as a way of making a living, but also for security. One of the boarders she allows to stay for free, whenever he rode the circuit, was Andrew Jackson. When Jackson's in your house, you do not need home security or a gated community or a pit bull. You got Jackson. Jackson falls in love with Rachel. Problem is, of course, she is married and women at the time could not legally divorce. Men had no-fault divorce. Jackson writes to Lewis Robards, her husband, and says you need to offer her a divorce. Robards says he will. Jackson and Rachel get married in Natchez. It is a good marriage. Rachel soothes the beast.

"They find out Robards never divorced her. Rachel is married to two men at the same time. She is known as the lady bigamist or 'The Whore of Tennessee.' That is when Jackson writes a famous and bizarre letter to Robards, which still survives. I have reprinted it in this book, where he says, 'I demand that you give our wife a divorce. If not, I will come and, with my sword, I'll cut off both your ears and something else, too.' He would have; Jackson killed a number of men in duels. Robards wisely grants the divorce.

"Jackson runs for president in the 1828 election against John Quincy Adams. It is one of the worst in history. It is on par with the most recent election, really ugly. John Quincy Adams calls Jackson the wife thief and says if Jackson is elected there will be a whore as the presiding woman. Back then we were using the title 'His Excellency' to describe the president. Jackson called Adams 'His Fraudulency.' Jackson wins the election. His wife, Rachel, is begging him not to go to the White House. She does not want to go because of the scandal. She dies of a heart attack right after the election and right before the inauguration. She is buried on Christmas Eve of 1828 in the gown that she was going to wear to the inaugural. Jackson goes to the White House. There had been all this guessing that there will be a whore as the First Lady. We did not use the word First Lady back then, but 'Presiding Mistress' was the correct term back then. It has a different meaning today. The question is who is going to be the presiding first lady?

"Before his inauguration, Jackson picks his best friend, John Eaton, a senator from Tennessee, to be his Secretary of War. Truman changed the name. We now call it defense. Secretary Eaton, on the eve of the inaugural, shocks Washington by marrying the most famous whore in the city, Peggy O'Neill. Daniel Webster, the great intellectual in Congress, an intellectual Congressman is kind of an oxymoron these days, gives a toast. 'Here is to Secretary Eaton's mistress and the mistress of every one of us as well.' Here is the kicker. Jackson announces that Eaton's new wife, the famous whore, Peggy, will be the hostess, the First Lady, of the White House. Peggy's nickname was 'The Politician's Pet.' It was said that she slept with half of Congress and everyone but one person in the cabinet. The wives of Washington boycott many of Jackson's meetings. They boycott the inaugural. It is a huge scandal.

"For Jackson's eight years, he is dealing with the Peggy factor. After Jackson leaves and goes into retirement, Secretary Eaton passes away. Peggy lives a long life. She is a scandalous woman in Washington. Late in life when she is a grandmother, there is a famous Italian ballet dancer named Antonio Buchignani. He

is around twenty. He is performing in Washington. Peggy starts sleeping with him…. then she marries him. During their honeymoon, Buchignani disappears. He went back home, took all of Peggy's money. He cleaned out her bank and sailed back to Italy. She is now destitute. She would die homeless.

"Even though the women of Washington hated her and were always jealous of her, there is a very cute obituary in the Washington paper. Because she was married to a member of Congress and the Cabinet, she was buried in what was then the Congressional cemetery. The obituary read: 'While the women of Washington hated her while she was alive, they are now about to discover that she is their neighbor forever.'"

GEORGE WASHINGTON

"This is where I got the idea to write this book, *Affairs of State*. Whenever I travel to a battlefield or presidential home or library, wherever it is I go, I always do my work that I am doing for whatever book I am writing, but then I always try to collect a couple of fun stories. Stories that I can tell my students to keep them awake. Stories that I can tell audiences like this. I always fib and say I am also doing research on such and such and I always ask the archivist or librarian to get for me what is their single favorite letter of the entire collection. Or, what is the most intriguing and scandalous story that you have about the president?

"While I was at Mount Vernon many years ago, I walked over to the archivist, trying to think of what I could ask about George Washington. We all know lots of George stories. I have written extensively about George. I ask 'Do you have any teenage love letters from George?' She looked at me and says, 'You know, I don't know. Nobody's ever asked that.' She called a couple other archivists and librarians and they did not know. I am thinking to myself, there's a book there. We found about ten teenage love letters. I am here to tell you George Washington went 0 for 10 growing up.

"Part of the reason was because Washington always tried to court older wealthy women. He went absolutely nowhere with it. He even wrote in his diary once 'I cried myself to sleep again. I'm unlucky at love.' In one poem he says, 'My poor wounded heart has been shot through by Cupid's dart.' He is a romantic at heart even though he has that stoic exterior that he presents to the world. Washington willed himself to be more monument than man, more myth than flesh and blood. Inside he is actually a passionate, volatile and romantic fellow.

"Washington is coming back from the battlefield toward the colonial capital of Williamsburg. He is a young man of twenty-five. He has lost more battles than he has won. He is not going anywhere politically. He wants to be a British officer, a gentleman, and none of that is happening for him. He is frustrated. He gets to meet with the colonial governor of Virginia, Robert Dinwiddie. Washington is racing back to be there early to meet with Governor Dinwiddie. He stops along the way to water his horse at a plantation owned by a man named Chamberlain who invites Washington to stay for dinner. Washington declines, citing the urgency to get to Williamsburg. Chamberlain says to him, 'That is a shame because joining me for dinner tonight is the wealthiest widow in all of Virginia, Martha Dandridge Custis.' Here is what we know. George changes his mind. He stays for dinner, stays the night, stays for breakfast. He is late getting to Williamsburg.

"After George's meeting with Dinwiddie, one of the first things he does is he goes to visit the widow Martha at one of her four mansions. She is enormously wealthy. She had been married to the wealthiest fellow in Virginia. He then writes a letter to her London merchant, a man named Robert Cary and in the letter, George requests an engagement ring. He moved with lightning speed. It was never a hot and steamy affair, but it was a rock solid marriage. Martha had children and all these plantations and enterprises that she needed managed. George cut a dashing image in his uniform, a physically big and charismatic man and he wanted the money so it was a match made in heaven and the rest, as they say, is history."

David N. Kitner
Dallas, Texas

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

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A MAN FOR ALL SEASONS – THE ROLE OF THE WHITE HOUSE COUNSEL

Regent **William J. Murphy** of Washington, D.C. introduced **W. Neil Eggleston** as "a dear friend of mine, a respected colleague and dedicated public servant" as well as a Fellow of the College. "Throughout his legal career, Neil's practice has exemplified the qualities of this College and our fellowship," Murphy said in his introduction during the 2017 Spring Meeting in Boca Raton, Florida.

Eggleston served as Counsel to President Barack Obama from May 2014 to January 2017. He worked as an Assistant U.S. Attorney in the Southern District of New York after graduating from Duke University and Northwestern University Law School in 1978. Between stints as a litigation partner at major law firms including most recently Kirkland & Ellis LLP, he worked as the Deputy Chief Counsel for the Congressional Committee that investigated the Iran-Contra Affair and was an Associate White House Counsel during the Clinton Administration. He had the unique mandate of representing the Office of the President during the Independent Counsel Investigation into the Whitewater and Lewinsky matters, litigating executive privilege and attorney-client privilege assertions by the President. Eggleston was inducted as a Fellow in 2004.

Eggleston was White House Counsel until 11:59 a.m. on January 20, 2017. He recounted that his office was responsible for obtaining all the last documents and electronic records out of the office as well as ensuring that the last bills were signed. He explained that absolutely nothing in the West Wing of the White House remains when the new President arrives. Everything is transferred to the National Archives and then the new administration starts over again.

He, although half-jokingly, referring to himself as "unemployed," is actually teaching a class on presidential power at Harvard Law School. As someone who ended up testifying about the Clinton White House over and over again, he has acted in every possible role: witness before the Grand Jury; witness in front of Congress; as well as representing people in the Grand Jury and in Congress—a truly unique position and perspective.

Notwithstanding the emotional moment in bidding farewell to President and Mrs. Obama, leaving the White House for the last time, he nonetheless discussed what he won't and will miss about working at the White House: he won't miss the craziness of Congress nor the craziness of the courts in political cases.

Surprisingly, Eggleston stated he would miss the crushing hours. After all, it was an opportunity to continue to work for the American people. "I never had a moment where I thought to myself while working in the White House that I wish I could be somewhere else. I knew that January 20, noon would come and this President's ability to continue working for the American people and my ability to continue to work for the American people is going to come to an end, and I never had a single moment where I thought to myself, I wish I was somewhere other than here," he said. It was exciting to advance the President's agenda. Eggleston interestingly reminisced that it was quite liberating working in the White House knowing everything that was done would be subject to criticism. Consequently, avoiding criticism was never a goal and, of course, he will always miss Air Force One. Who wouldn't?

Even cooler than Air Force One, is Marine One, the helicopter that takes the President from the White House south lawn out to Andrews Air Force Base, where taking off from the lawn one almost thinks the helicopter is going to crash into the Washington Monument. He will also miss the White House bowling alley, the President's Box at the Kennedy Center and the pomp and ceremony of State Dinners.

Being White House Counsel was especially gratifying in a scandal free presidency that was known for its ethical standards. It is with great pride that Eggleston reported that the President set a tone of ethical conduct with which everyone complied.

Having also been involved in the Clinton White House, Eggleston noted that in the heat of the Lewinsky matter, he noticed that not much else was done in the White House in that so much energy was used in responding to various different scandals and having to make various judgments responsive to the various crises and allegations of impropriety.

In the Obama Administration, Eggleston experienced a completely different type of White House where he was the principal legal advisor to the President on all sorts of issues, both domestic and international. He worked very closely with agency lawyers as well as being an advisor to the National Security Council and to the President on issues relating to foreign operations, drone strikes, the application of international law and the like. Eggleston indicated that he came to understand how important compliance with both domestic law and international law is in connection with U.S. relations with its allies and the ability of the U.S. to act as a world leader.

He played a pivotal role in responding to a variety of policy and military people constantly turning to him and asking him "can we do that?" Thus as Murphy said in introducing him, "what separates good lawyers from those at the pinnacle is good judgment" and Eggleston had the wisdom and good judgment to advise the principal players and policy makers of the most powerful nation in the world.

Eggleston also indicated that he worked on various different issues including the Clemency Project 2014. This was the initiative to inform inmates that if they complied with various guidelines, there would be an opportunity to have the President review and possibly reduce their sentences. This was probably the largest pro bono project ever to review clemency petitions for inmates to be reviewed by the Department of Justice and then ultimately to be submitted to the President of the United States. The President cared enormously about this initiative and Eggleston confirmed the President's search for the restoration of fairness in order to give an opportunity to inmates for a second chance. Ultimately, the Obama White House granted 1,700 petitions for commutation of sentences. In the last week of his Presidency, President Obama granted clemency to over 500 inmates. Eggleston as well as all the lawyers working inside the White House were particularly appreciative of their ability to work on this project. Eggleston listed some of the many achievements in criminal justice policy that mattered enormously to President Obama: reducing significantly solitary confinement and banning it for juveniles; urging state and local governments to reform their bail laws; appointing an education coordinator at the Bureau of Prisons to work on literacy for inmates. In short, it was particularly gratifying to be involved, in cooperation with the Department of Justice, in attempting to halt the criminalization of poverty.

Eggleston also spoke about the importance of the rule of law and defense of our institutions at this time, an intrinsic issue in Eggleston's Harvard topic "Presidential Power in an Era of Conflict". Thus it is paramount that the levers of power be used for the benefit of the people and not for personal benefit. Ethical conduct becomes absolutely paramount not just in its own right but because ethical conduct is required to give "policy people the opportunity to do what they do so well." Eggleston reminded Fellows that it is important to recognize the importance of government institutions. Even if someone was disappointed with a judgment, no one in the Obama Administration considered attacking the institution. It is "enormously important to the functioning and future of our democracy" not to attack the institution itself. According to Eggleston, the Administration in which he played a role never interfered in criminal investigations, never got involved in individual activities by the agencies and did whatever was necessary to ensure that issues were handled through the regular process and not through the political process.

It was important to vet executive branch nominees well before they were announced and to set a tone of civility. As Eggleston noted, "America has such a powerful impact around the country and around the world … it was important that there be a tone of civility and active discussion and we worked very hard to promote that."

Eggleston concluded by applauding the College for its role in defending these institutions and confirming that notwithstanding his many achievements and honors, one of his proudest professional moments was being named a Fellow of the College.

Lynne Kassie, Ad. E.
Montréal, Quebec ■

CANADIAN JUSTICE BROWN RECEIVES HONORARY FELLOWSHIP

Past President David W. Scott, O.C., Q.C., the Honourable Mr. Justice Russell Brown and President Bartholomew J. Dalton

The Honourable Mr. Justice **Russell Brown**, who joined the Supreme Court of Canada on August 31, 2015, was inducted as an Honorary Fellow at the American College of Trial Lawyers 2017 Spring Meeting in Boca Raton, Florida. Justice Brown is the twenty-second justice on the Supreme Court of Canada to be conferred honorary fellowship. In keeping with tradition, following his acceptance, Justice Brown addressed the Fellows and shared his thoughts about the College and its mission in the remarks that follow.

Fellows, honored guests, ladies and gentlemen,

Je tiens premièrement à remercier le Collège pour l'accueil chaleureux qu'il nous a réservé, à mon épouse Heidi et à moi, lors de cette réunion du printemps, ainsi que pour l'honneur et le privilège insignes que vous m'accordez en me nommant membre honoraire. J'accepte ce titre avec beaucoup d'humilité, connaissant bien le calibre des avocats à qui il a été conféré. Soyez assurés que je m'efforcerai constamment de me montrer digne de cet honneur.

And that, of course, was for the benefit not only of my *confrères* from Québec, but also of the Fellows from the great state of Louisiana.

Let me acknowledge the generous remarks – some might say overly generous, and some might even say the perjury, of Mr. Scott in his kind introduction. David, thank you for that kind and warm welcome to me and to Heidi. We're both delighted to be here. As will become apparent to those of you who get to know us, I married Heidi to give my kids a fighting chance in several important departments, which I won't enumerate here.

I am mindful as I speak to you this morning of the honor and privilege which the College bestows upon me in inviting me to become an Honorary Fellow. About 20 years ago, my dear colleague, the late Jim Carfra, QC, formerly of the Bars of Alberta and of British Columbia, was inducted as a Fellow. Jim was a lawyer's lawyer, a true believer in the profession's noblest ideals. Never would he have allowed the details of a case or the occasional mundanities of the business of a law firm to obscure for him a critical fact of his identity: that he was part of a vanguard – a fellowship, if you like – which, alongside the judiciary, properly sees itself as the guardian of the rule of law. That is to say, he believed – really believed – in the principle that persons and authorities within the state, including the state itself, should be bound by, and entitled to the benefit of, laws publicly made, prospectively operative, and publicly administered by an independent judiciary.

FIDELITY TO THE RULE OF LAW

And in an era dominated by discourse that is at once sclerotic and rhetorically tempestuous, and by concern for trans-border trade and national security, which are obviously critical to advancing both of our respective national interests, our shared mission – not just as Americans and Canadians but as members of the legal profession – of securing and preserving the rule of law perhaps deserves more popular attention than it occasionally receives. After all, while, by our trans-border trade, we seek prosperity, without the rule of law how can our peoples truly enjoy that prosperity? And, while national security is indisputably of utmost importance, as Justice Louis Brandeis cautioned, "experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent." If, therefore, in the name of beneficent purposes the power of the state is unduly engorged at the expense of liberty, how can the subject be truly secure?

Judges, like lawyers alike must, therefore, be militant defenders of the rule of law. And so I take deep satisfaction in joining the ranks of a fellowship that is passionately committed to the rule of law, to the institutions which sustain it and to the processes that it connotes – including an accessible justice system administered by an independent judiciary, and the fair and just representation of all parties to legal proceedings.

Fidelity to the rule of law is, of course, a quality that we seek not only in lawyers and judges, but also in those who exercise legislative and executive powers. As a judicial quality, then, it is, despite its importance, not an exclusively judicial quality. Nor is it the sole judicial quality. There are many others.

Judges must, for example, occasionally be courageous, while exhibiting a restrained temperament. They must deploy judicial intelligence, in the sense of understanding the law and its reason.

But there are, I think, even more fundamental judicial traits. And, over the past two or three decades, legal academics, judges and practicing lawyers have engaged in a sometimes impassioned debate about them – about what judges ought to do, and how they ought to do it. The various labels for these standpoints are well known, if sometimes misunderstood – conservatism, liberalism, activism, formalism, realism, just to name a few.

One of the ways of thinking about and identifying truly judicial qualities that has emerged in academic discourse over the last twenty or so years views adjudication as an exercise of what Aristotle called "practical wisdom."

But as to just what being "practically wise" entails, Aristotle really doesn't offer much more than the most general sorts of guideposts. One thing he does say, however, rather cryptically and without explanation, is that virtues of character are important. So, what are those virtues?

Some of the academic commentary on practical wisdom posits that two virtues are necessary in order to properly engage in truly judicial deliberation: empathy, and detachment. Empathy is intended to open our minds to the accounts and circumstances of others. It resembles, I think, what the Chief Justice of Canada Beverley McLachlin calls "conscious objectivity," which she describes "as an act of the imagination" by which a judge puts himself or herself "in the shoes of the different parties, and thinks about how it looks from their perspective, and really thinks about it, [without just giving] it lip service."

Tempering empathy, however, is the converse virtue of detachment. One cannot empathize to the point of identification. Thus, while a person of practical wisdom must make an effort to see the claims of each side in its best light and to appreciate for himself or herself their appeal, that person must at the same time be able to remain fixed upon the distant standpoint of decision-maker, and make a genuine choice between the alternatives.

BALANCING MERCY AND JUSTICE

Now let me, to carry this discussion further, shift the language slightly, so that we are dealing with concepts that are more conventionally legal. While I appreciate they are not totally synonymous terms, I am going to substitute "mercy" for "empathy," and "justice" for "detachment." Since the challenges of striking a judicial balance between empathy and detachment are, I think, sufficiently similar for my purposes to those which apply to balancing mercy and justice.

While I think it is right to identify mercy and justice as virtues which facilitate practical wisdom, we should recognize that they each reflect different and sometimes mutually irreconcilable standpoints. As such, their identification as central virtues to exercising practical wisdom leaves some important questions unanswered. How do we reconcile these competing virtues or integrate them at once into making a good judgment? How do we know if we are leaning too far in one direction or the other? Here, the academic commentary stresses the importance of experience, forsaking child prodigies for the wisdom of seasoned jurists.

But this seems to me at best a partial answer, and perhaps even an incorrect answer. Experience doesn't always breed wisdom. The longest-serving judge is not always the best judge. And judges don't become good judges just by being told to be both merciful and just. It's really not that easy. Mercy and justice are characteristics that each lie on a different spectrum. Justice lies on a mean between injustice (a complete disregard for what is just) and vengefulness (an overwrought obsession with justice). Similarly, a person who is insufficiently merciful is cruel, while one who is overly merciful will be indulgent. It follows from all this that one's commitment to each of justice and mercy can be underdone or overdone, and that the judicial role is not only to arrive at the ideal point on each spectrum, but also to find the point of intersection between the two spectrums, the location of which will be unique to each case.

So, how do we do this? How might we integrate or reconcile these competing demands, this internal tension?

This is not, by the way, some abstraction, but rather a concrete problem. For example, a trial judge sentencing an offender will be faced with the competing demands of justice's claim for denunciation and deterrence in arriving at a fit sentence, and mercy's claim for rehabilitation and having close regard to the individual circumstances of the offender. Indeed, cases often arise where justice and mercy are mutually exclusive: mercy may destroy the work of justice, and justice may destroy the work of mercy. If laws are not enforced and punishments not inflicted, justice cannot be done. But if justice is implemented unflinchingly, mercy is not possible.

So how do we navigate, or mediate between these two poles?

The direction that we are to be both merciful and just is found, like so many long-standing historical injunctions, in the Bible. Specifically, it is found in the sixth chapter of the book of the prophet Micah. And Micah writes in language that is acutely familiar to lawyers. The mountains are described as the jurors before whom – and this is the word Micah uses – "the people of Israel are called upon to plead." And God is presented as the prosecutor who – and again, this is the word Micah uses – "indicts the people of Israel." And this is, by the way, clearly more of an inquisitorial model than an adversarial model, since the mountains and God are presented as being one and the same; so, therefore, the jury and the prosecutor are also one and the same. Or, at the very least, because we are also told that the mountains bow before God, God would appear to have this jury in his back pocket. Then the people of Israel present their defense – which isn't much of a defense, since they plead guilty, and move straight into plea-bargaining, offering to sacrifice calves, thousands of rams, ten thousand rivers of oil, their firstborns, that sort of thing.

To which, Micah records, God responds by imposing a mandatory injunction. "Do justice," he says, and "love mercy," and "walk humbly."

And my claim is that walking humbly – adopting a standpoint of, and inculcating, humility – may be the key to unlocking the justice/mercy paradox; to striking a practically wise balance between those competing virtues.

PRACTICING CONSCIOUS HUMILITY

But what is humility in the judicial context? What about it helps us navigate between the competing imperatives of mercy and justice? The literature about the importance of humility in discharging the judicial office is, putting it mildly, sparse. Acknowledgments of that importance have typically been limited to investiture speeches, retirement tributes and funeral obsequies. And usually it refers to an attractively self-deprecating tendency of the person being honored.

But this leaves unanswered the question: what does humility entail? And this is, I think, a particularly difficult question to answer, because humility is a peculiar kind of virtue. It is uniquely anti-reflexive, by which I mean that it is, inherently, impervious to self-evaluation. Once one decides what humility entails, one cannot really "strive" for it, since to strive to be humble is really an instant disqualifier for anyone who actually desires to be humble. Someone who lacks humility but who actively strives for it should remind us of Uriah Heep, with his fulsome insincerity parading in the guise of humility. The point is that, in striving to be humble, we risk becoming paradoxically satisfied with ourselves for doing so. Country music aficionados like me will recognize this as "Mac Davis Syndrome": "Oh Lord, it's hard to be humble when you're perfect in every way."

So striving for humility being self-defeating, what we can do, and what judges must do, is to strive to emulate humility. To strive to do what humble people do. Another way of putting this is to recall my Chief Justice's counsel that we account for our inherently subjective standpoint by practicing "conscious objectivity." What I advocate today is practicing "conscious humility."

This entails, as judges, reminding ourselves – and I mean, actually, consciously, reminding ourselves – that the lawyers who come before us may actually be the smartest people in the room. They are certainly the most knowledgeable people in the room regarding the litigation. It entails consciously and deliberately striving to maintain a standpoint of open-mindedness – not so open that our brains fall out, but open enough to remain willing to learn from arguments, appreciate from evidence, then, where appropriate, to reassess and change our views. To see other people or other people's stories as being capable of teaching us important things. To be open to the possibility that our predispositions or our conclusions are wrong, that our perspectives are limited, and that sometimes even our most settled opinions merit reconsideration. To seek the insights and viewpoints of others and to develop the discipline of methodical and sustained contemplation of an argument or insight that compels re-thinking of long-held opinions or pet theories.

That ideal of openness to the views of others extends to counsel's submissions. More often than not, taking ▷

those submissions seriously – reading, listening to and really reflecting upon them, combined with exercising diligence in discerning and applying the law, all the while not taking one's own predispositions too seriously, should usually lead to a conscionable outcome. All these things are part of the exercise of practical wisdom that tempers justice with mercy, and mercy with justice. A judge who is consciously humble – to say nothing of a judge who is actually humble – is, therefore, in my view more likely to be appropriately just and merciful than a judge who is not humble. That is to say, because a consciously humble judge strives to keep an open mind, to consider unfamiliar ways of looking at an issue, or a person, or a case, or to see differences between himself or herself and others as small, and to appreciate that but for chance and the vicissitudes of life he or she could easily be facing the other way in a courtroom, such a judge is better able than a proud judge to navigate the rocky strait between justice and mercy – between, if you like, judicial duty and judicial conscience. A consciously humble judge will be mindful of duty, but will not stubbornly cling to his or her idiosyncratic notions of duty where it works an injustice. Conversely, this serves as a check on allowing one's own idiosyncratic notions of what is appropriately merciful to govern the outcome. A consciously humble judge will empathize with the parties before him or her, but will not allow a predisposition to empathize more with one party or the other to dominate his or her thinking. Rather, he or she will strive to view the controversy from the perspective of each of the contending parties.

It follows from all of this –from the argument that humility is an important attribute of judicial character and an important quality of judicial practice because it helps one balance the competing imperatives of justice and mercy – that we should want consciously humble judges. Judges whose wielding of power becomes service, not dominion.

But even if I'm wrong – even if emulating humility does not do what I think it does by disciplining judges to find the appropriate balance between mercy and justice – I also think that we should want judges who emulate humility because the opposite – having judges who fail to discipline themselves by consciously resisting the natural tendency towards pride and arrogance – is undesirable.

RESISTING THE MANTLE OF "HERO JUDGE"

And this is an important point, since I believe it is fair to say that we are all likely to be tempted to err on the side of having too little humility than too much. This is especially true of judges. Inside and outside of court, we are used to people deferring to us. We are accustomed to people ceasing speech when we speak. We are used to people laughing at our jokes, or prefacing their answers to even our dumbest questions with the phrase "that's an excellent question."

It is easy, given our human frailties and vanities, to be seduced by all this. To actually believe what people say about us and about what we say. To become proud.

For judges, I think all this means resisting and, when necessary, outright disclaiming, the mantle of "hero judge," and keeping judicial decisions as narrowly framed as necessary to decide cases. This is not to say that present needs should not spawn further legal development. Courts exist to develop the law, as well as to discern it and to state it. But in doing so, we should be mindful of our own frailties, and that we might well be getting it wrong.

I should add that I think judges in the Western mode have one important advantage over the judges of the Old Testament and other places and times when it comes to avoiding the problems that come with pride. And that is that our role is not sufficiently discharged by merely pronouncing the law from some Delphic throne on high. They must demonstrate, by reasons, why the solution we arrive at fits within the legal order. Our legal tradition is reasoned. It is not merely a system of rules. Which makes it harder for judges to indulge in the prideful claim that their own idiosyncratic view of the world is the view that should prevail.

Still, all of us – judges as much as anyone – must admit that humility is out of fashion in today's world and seems unappealing to most of us. But, if we accept, as I think we must, that striving consciously to emulate humility is one of the most essential things that characterize truly good judging, judges must so strive.

At the same time, we must all recognize that, being imperfect, we will sometimes fail. Fortunately, that experience itself can foster humility. After all, while it's always discouraging to fall short, what I've always found humbling is finding out that either nobody noticed it, or (even worse) nobody who noticed it was particularly surprised by it.

And with that, let me conclude by reiterating the sense of honour that I feel to join your ranks as an Honorary Fellow. Thank you for your hospitality and your attention, and also for this opportunity to say these few words. Merci beaucoup. ■

FOUNDATION UPDATES

NEW FOUNDATION TRUSTEES BEGIN IN JULY

As of July 1, 2017, the Foundation Board of Trustees has a new roster. Here is the new slate of officers and Trustees

President	**Charles H. Dick, Jr.**	San Diego, California
Secretary	**James L. Eisenbrandt**	Prairie Village, Kansas
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Trustee	**Patricia D.S. (Trisha) Jackson**	Ottawa, Ontario
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Trustee	**David R. Kott**	Newark, New Jersey
Trustee	**Eugene K. Pettis**	Fort Lauderdale, Florida
Trustee	**John S. Siffert**	New York, New York
Trustee	**Thomas H. Tongue**	Portland, Oregon
Trustee	**Francis M. Wikstrom**	Salt Lake City, Utah

2017 EMIL GUMPERT AWARD SELECTED

The 2017 Emil Gumpert Award has been given to the Immigrant Post-Conviction Relief Project at the Immigrant Legal Resource Center in San Francisco. The project serves immigrants facing deportation because of unconstitutional criminal convictions. The check was presented by President Dalton at a May ceremony, and a representative of the organization will address the Fellows at the Annual Meeting in Montréal.

TAKE ACTION: DONATE TO THE POWER OF AN HOUR CAMPAIGN

The Foundation's Power of an Hour campaign this year has been a resounding success. Fellows across the United States and Canada are responding to the call to contribute the equivalent of one billable hour. Please join them and make your contribution today by visiting the College's website at actl.com and clicking 'Donate' at the top of the page. ■

INSIDE LOOK:
EXECUTIVE DIRECTOR OF THE NATIONAL BASKETBALL PLAYERS ASSOCIATION

Michele A. Roberts was the fourth of five children, raised by a single mother in the South Bronx, in a public-housing development. "You might say she was born with two strikes against her. It's probably also true, that many people in this room, before they reach their teens had no idea what they wanted to do when they grew up. Not Michele Roberts. You see, her mom was a court watcher. She would go to court, watch the proceedings for the knowledge, the entertainment, the drama, and she took her daughter Michele with her. Michele, at a very early age knew that she wanted to be a lawyer," said **Robert P. Trout** of Washington, D.C. in his introduction of Roberts where she spoke in a question-and-answer session to the College at the 2017 Spring Meeting in Boca Raton, Florida.

Roberts watched her brother's friends get eaten up by the criminal justice system. She knew at a very early age she wanted to be a public defender, but first she had to get an education. She was lifted up out of the South Bronx by way of a scholarship to Masters School, a private boarding school in Westchester County, New York, less than twenty miles, yet a galaxy away, from where she grew up.

From there she went to Wesleyan University, and then on to Boalt Hall for law school at the University of California in Berkley. Then she came to Washington to become a public defender. She quickly separated herself from the pack, and rose to become chief of the trial division at the Public Defender Service.

After about eight years, Roberts and a couple of her colleagues set up their own small law firm. She continued to try criminal cases in D.C. making a reputation for herself as a trial lawyer. Eventually she looked for bigger, better and broader and joined Shea & Gardner. Eventually she became a partner at Akin Gump Strauss Hauer & Feld in 2004, then Skadden, Arps, Slate, Meagher & Flom LLP in 2011. She became a Fellow of the College in 2003.

The year is now 2013. The NBA players union is in turmoil and they have fired Billy Hunter, their executive director. The players are operating under a collective bargaining agreement that they do not care for, and they are searching for a new Executive Director.

It's been reported that there were over 300 applicants for the job, with seventy applicants actually interviewed. The field was narrowed to three. Roberts was one of the three. They were to be given forty-five minutes for a final pitch to the players who were going to be deciding on their next Executive Director.

Historically, every union leader has been male. The arena of professional sports is a male-dominated field. Despite these circumstances, Roberts stood apart from the rest of the applicants and "hit nothing but net" to become the first female Executive Director of the National Basketball Players Association.

Excerpts from her engaging discussion with Trout follow:

OUTSIDE SHOOTER CALLING THE SHOTS

TROUT: There's all this turmoil in the NBA. The players don't like your predecessor, who has been fired. The players don't like the collective bargaining agreement that they're playing under, and you're a woman wanting to enter a man's world. Why in the hell did you want to do that and how did you make it happen?

ROBERTS: I honestly didn't plan it. I was having a fabulous time at Skadden. I had great clients. I loved my colleagues, but I've always loved basketball. More importantly, I've always loved basketball players, and I'll tell you why. The odds against my becoming a successful lawyer, or becoming a lawyer at all, it's always been something I appreciated. If you end up being an NBA player, you have defied odds that are outrageous. There was something special about basketball players from my perspective for many years, and I admired that population. Frankly, when I began to look at the circumstances that led to my predecessor's ouster, it just seemed a no-brainer that that's a job that could be done if you simply did the job. The minute I began to enter- ▷

tain the possibility of applying, I couldn't get it out of my brain, and so I thought, 'Well, why not?'

TROUT: Were there any other women in the applicant pool?

ROBERTS: The way the process worked, I didn't know who I was competing against. I assumed that they were predominantly men because that's the world. But after I got the job, I did inquire the headhunter that had been employed by the union to identify candidates how many women had applied, and the number was three including me.

TROUT: You're getting prepared for the process. Did you have any insiders who gave you the secret sauce, kind of what you needed to be talking about?

ROBERTS: No, but what I did have was the benefit of an internal investigation that had been conducted on behalf of the union by Paul Weiss that pointed out all of the issues that lead to my predecessor's ouster. It gave a great picture of how the union was or was not functioning. That was a bit of a primer, and then frankly I began to ask questions. I'd talk to former players; I'd talk to current players who were not involved in the hiring process. But the good news is this all happened at a time when the Internet allows for all sorts of due diligence, and that's what I did. I spent a lot of time figuring out what I didn't know, and then learning it.

TROUT: Take us into the process in terms of the meeting with the players, the pitch that you made and what worked.

ROBERTS: At the beginning, I needed to be interviewed by members of the union's executive committee. The union has a board of player representatives where two members of each team are on the board, then that board has an executive committee of eight. I had to be interviewed by every member of the executive committee during the season which meant I had to wait until they were available. It was fascinating because I'd never had an opportunity to sit down and be interviewed by basketball players. It's fascinating because you stupidly walk into a room assuming that these men know nothing but basketball, and within seconds you realize that you're wrong. These were men who I had admired as athletes, but didn't really know as people. Finally when I had to present in front of the board, I knew that the players had been told that they should not comment or ask questions related to my gender or my race. I knew that, and I also thought that I would be insane if I didn't go ahead and allow them to have those questions and those discussions. Not surprisingly when I invited them to ask any questions they had about my experience, one of the players said to me, 'Ma'am, when you're meeting with the league, you will be surrounded by probably all men, and probably all white men, and you may be the only woman in the room. How in the world are you going to deal with that?'

I immediately said, 'You have no idea what kind of work I've been doing, do you?' Once they realized that this is not going to be new and different for me, I think they relaxed and then they asked questions and tested my knowledge of the business of basketball. They didn't care if I knew the game because they got that, right? Once they appreciated that I understood the business of basketball, it was smooth sailing.

TROUT: Tell us about your relationship with Adam Silver, who is the commissioner of the NBA.

ROBERTS: If you follow football at all or at least the relationship between that union and the league, it is incredibly contentious. I don't know why, but they don't talk to each other unless they are in a courtroom. Adam was a new commissioner, though he was not new to the game. I was new, and we agreed that we had no history with respect to each other, and therefore, had no reason to dislike each other yet. We then agreed that we could probably get along if we didn't lie to each other, and so I made the promise to him that I wouldn't lie to him unless I discovered that he had been lying to me. I must say, he might be a very good liar, but I'm not aware of one that he's told and have not been confronted by one. My view is he's got a constituency that he has to protect. He fully appreciates that I have a constituency that I have to protect. We both understand that the success of the game is critical for both our constituencies, and we behave like adults. So, we get along.

SUPERSTARS, SCUFFLES, THE 'NUCLEAR OPTION'

TROUT: You have superstars, Chris Paul, Steph Curry, Lebron James, Carmelo Anthony, and you have journeymen. You report to an executive committee, which includes these superstars. How do you balance the interest of the many in the middle and at the bottom versus the relative few at the top?

ROBERTS: The good news is, or maybe it's not good news, but the news is we've got a very limited pot. I know how much money my players are going to share every year. The Carmelos, the LeBrons, the Chrises, they make a ton of money outside of the game. They know that and everybody knows that, and so there is not this internal struggle for the dollars that are generated through a collective bargaining agreement because these men are making, frankly, a lot more money outside of the game and with sponsorships than they are internally.

That helps, and then the other piece is that these men on my committee understand and view their work as assisting the journeymen. They know that the journeymen will make their money, and only make their money, consistent with the money generated from the collective bargaining agreement. This is their way of appreciating their bench. When we were negotiating the collective bargaining agreement, there was never a time when I or my team was told by the players that we needed to sacrifice one group of players for another.

The entire membership ended up getting a huge lift in terms of financial growth as well as other things. My membership does not find itself pitched against each other. It's largely because the LeBrons and the Chrises are able to generate income outside. It is absolutely the case that these men appreciate that as good as a LeBron James is, he knows that he can't carry the team. Well, he may not know it all the time, but at the end of the day he appreciates that the fifteenth man on that roster is responsible in large part for his success. Despite some of the fighting you might see during games, it's a very cohesive union.

TROUT: Fighting raises an interesting question. Let's say there's an incident, maybe it's on court, maybe it's off the court. You know discipline is coming. What do you do?

ROBERTS: We have a team of five lawyers. When I'm watching a game or learn about somebody being assessed a technical, we're immediately preparing for the conversations that are going to be handled with the league. It's much like a mediation, the player is immediately interviewed, we get tape ... I mean, we prepare for trial, as it were. But a lot of those things end up being negotiated now.

TROUT: How much does the union get involved as opposed to the player's agent?

ROBERTS: We take that on in every instance.

TROUT: There's been a history of lockouts with the NBA, and if I recall correctly, there have been in advance of recent collective bargaining agreements three lockouts. You had a constituency that was unhappy with the previous collective bargaining agreement, and this past December, without any fanfare, and contentiousness, you all came to agreement. Apart from the brilliance of the negotiator for the union, how did that happen?

ROBERTS: There was no fanfare, but there was intense preparation. Within seconds after getting the job, I began to prepare for negotiations. It meant both conducting an autopsy of prior negotiations, but also the appreciation of what the players were prepared to be locked out or walk out for. Unlike my predecessor, I spent a lot of time talking to the players to find out what it was that they wanted, and I spent a lot of time trying to understand what it was that the owners were willing to lock us out for, if it came to that. I didn't know we were going to be locked out by December of last year, or know we were going to walk out. Quite frankly it was a $24 billion TV deal. The owners did the math. We did the math, and we all understood how much money was going to be lost if we stopped games.

TROUT: Just to understand this, the lockout is the nuclear option that the owners have, correct?

ROBERTS: Yes.

TROUT: What is your nuclear option?

ROBERTS: We could strike. Once the collective bargaining agreement expires, then you're done. My nuclear option though, at the end of the day would have been to de-certify the union. It's never been done, and it's because no one's ever exercised the option, but if you de-certify the union, then players can negotiate contracts, any sort of contract that they want. There's no uniformity, the league needs to have uniformity. It cannot sustain itself if players can negotiate whatever and go to whatever team they want to. There's need to have some level of order. It needs the union in many ways more than the players need the union. But it's something that has never been done by basketball. It has been done in football.

TROUT: There was a collective bargaining agreement which provided for revenue sharing where the players got fifty-seven percent of the revenues. One of the reasons why there was a lot of discontent about the succeeding collective bargaining agreement is that was reduced from fifty-seven percent down to about fifty to fifty-one percent. In your most recent collective bargaining agreement, you maintained that same percentage. And no one's fussing. Why not?

ROBERTS: Because we got the money in other ways. What we're talking about with that split is how much money stays on the owner's side of the ledger, and how much money stays on the player's side of the ledger. We simply found a way to get the money in other ways. For example, the pension that's going to be provided to players increased by twenty-seven percent. Our salaries increased by forty-five percent. Our share of basketball related income, though it's still not fifty-seven percent split, we enlarged the pie to include more. We figured out how much money the split cost, and then made it up in other ways. ■

FELLOW JUDY CLARKE RECEIVES GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY

The Griffin Bell Award for Courageous Advocacy is the highest award that the American College of Trial Lawyers can present to any individual. The award honors trial lawyers who have persevered in the pursuit of an important cause despite substantial personal danger, fear, unpopularity, opposition or other extreme difficulties. In its fifty-three years of existence, the award has been extended previously only fourteen times.

Past President Michael E. Mone, Fellow Judy Clarke and President Bartholomew J. Dalton

Fellow **Judy Clarke** was awarded the Griffin Bell Award at the 2017 Spring Meeting in Boca Raton, Florida.

Clarke's cause is opposition to the death penalty, and she has represented some of the most notorious defendants in American history. They include Dzhokhar Tsarnev, one of the two Boston Marathon bombers; Jared Loughner, the gunman who severely injured Congresswoman Gabrielle Giffords and killed six others; Eric Rudolph, the 1996 Olympic Park Bomber who bombed an abortion clinic in Birmingham, Alabama; Ted Kaczynski, the Unabomber; and Susan Smith, the mother who drowned her two sons in a lake. Clarke's nomination noted of the death penalty that, "thoughtful persons may disagree on the issue, but it is surely important."

Clarke began her career as a criminal defense lawyer in the late 1970's, when female trial lawyers were few and female criminal defense lawyers were fewer. She has served as an Executive Director of Federal Defender offices in Southern California and Eastern Washington and Idaho, taught at Washington and Lee University School of Law, and now practices in San Diego with the firm of Clarke Johnston Thorp & Rice. Her husband, Thomas H. "Speedy" Rice, also a devoted opponent of capital punishment, focuses his work on international human rights, rule of law and anti-corruption projects. She has served as President of the National Association of Criminal Defense Lawyers and as faculty at the National Criminal Defense College. She has argued two cases before the Supreme Court of the United States.

Past President **Michael E. Mone** introduced Clarke to the Fellows at the 2017 Spring Meeting and described how she responded to the call to defend Tsarnaev:

"Notwithstanding criticism and death threats, Judy Clarke and her colleagues, acting in the highest tradition of the trial bar of this country, sought to defend the young man who they admitted was one of the bombers. It was in keeping with Judy Clarke's entire career because for over thirty years, Judy Clarke had defended some of the most notorious defendants in our lifetimes…. Many lawyers oppose the death penalty courageously, but Judy Clarke has courageously, on multiple occasions, stepped forward

to defend persons who the public thinks are not even worthy of a defense. [This was] something you could even hear from lawyers in Boston after the Boston bombing. She is fearless on behalf of these clients, who she has defended in the face of death threats to her life, a hostile press and public scorn. As one of her colleagues has said, it is one thing to have a death threat but it is an entirely different thing to receive multiple death threats in one case, but she has persisted. Judges and prosecutors, and certainly the judges and prosecutors who worked with her in the Boston Marathon case, are uniform in their praise of her extraordinary professionalism that she has displayed in the face of such extraordinary challenges, extraordinary challenges that many of us can only conceive and never face.

"She has never sought publicity or accolades for her work and has never missed an opportunity to give credit to others. Her persistence in the face of public anger and scorn mirrors an earlier advocate who stood only a short distance in Boston from the federal courthouse where Judy Clarke defended the Tsarnaev brother. In Boston 250 years earlier when John Adams defended the British soldiers who faced the death penalty for their actions in the Boston Massacre, Adams stepped forward with Josiah Quincy to defend Captain Preston and the other English soldiers. Adams, late in his life, after he had been President of the United States, after he had been one of the moving forces behind the Declaration of Independence, said that one of the finest services he had ever done for his country was the defense of the British soldiers in the Boston Massacre.

"Judy Clarke, you stood in the shoes of John Adams and are an inspiration and an example to every American trial lawyer who has ever provided defense under the most difficult of circumstances. As a member of the Massachusetts legal profession and as a resident of the city of Boston, Judy, we can never adequately thank you for what you did."

Clarke expressed her thanks for the award and addressed a question she hears often: "'How do you represent those people?' Actually, the question comes from a good place. That's what we do as lawyers. We help people who can't help themselves.

"I would be remiss if I didn't spend a moment with this incredible body of lawyers and take this opportunity to ask this College to fulfill its mission in looking at the criminal justice system and in our administration of justice, which is part of the mission. The lesson is when you see the death penalty up close and personal, you can see it as barbaric. The United States stands as one of four remaining so-called industrialized countries that still have the death penalty, along with Japan, South Korea and Taiwan. In 2015, we stood number six in the number of executions in the world, just behind China, North Korea, Iran, Pakistan, and Saudi Arabia. Not the kind of company that I think we want to stand with for long.... It is a punishment that we should no longer support as a civilized country."

The Award for Courageous Advocacy was created in 1964 and re-named in 2008 for Griffin Bell. It may be made to any trial lawyer, whether or not a Fellow of the College, who has demonstrated outstanding courage in unpopular or difficult cases. Bell was an attorney and judge of the Fifth Circuit Court of Appeals. He served as the United States Attorney General during President Jimmy Carter's administration. Bell was president of the American College of Trial Lawyers in 1985-1986. The award was last presented in 2013 to Honorary Fellow Louis Arbor, President and Chief Executive Officer of the Brussels-based International Crisis Group. ■

FOUR THINGS FELLOWS CAN DO TO MOVE TOWARD JUSTICE

The final speaker at the College's 2017 Spring Meeting was **Bryan Stevenson**, the founder and Executive Director of the Equal Justice Initiative, Montgomery, Alabama. Stevenson had earlier received the College's award, now called the Griffin Bell Award for Courageous Advocacy, at the 2004 Annual Meeting that celebrated the fiftieth anniversary of *Brown v. Board of Education*.

In his introduction, Judicial Fellow and Delaware Supreme Court Justice **Collins J. Seitz, III** reminded the audience that Stevenson "received that award in recognition of his groundbreaking work to reform the criminal justice system, particularly for the poor, the young and the vulnerable."

Noting that Stevenson, like himself, grew up in Delaware, Seitz called attention to "a little known fact about Delaware that we're always proud of: of the five cases from different states that were combined into the appeal in *Brown v. Board of Education,* the Delaware decision was the only one affirmed by the United States Supreme Court."

Two connected pieces of a long and continuing history went unsaid. First, what Justice Seitz modestly did not say was that the opinion in the 1952 Delaware Chancery Court case, *Gebhart v. Belton*, that became a part of *Brown* had been written by his father, the late Chancellor Collins J. Seitz, Jr.

Second, at that 2004 College meeting, Stevenson, in accepting his award, had pointed out that his education had begun in a small segregated shack of a schoolhouse in southern Delaware that did not go past the eighth grade, but had ended with degrees from Harvard's Law School and its Kennedy School of Government. He pointed out in the audience then-ninety-seven-year old Fellow **Oliver Hill** of Richmond, Virginia, who had been one of Thurgood Marshall's young lieutenants. Hill, himself one of only fifteen recipients of the Courageous Advocacy Award, had come to Delaware in the wake of *Brown* to see to its enforcement. "Oliver Hill," Stevenson said, "is responsible for my being here. I am a product of *Brown*. . . . But for that commitment, but for that advocacy, I would not be here talking to you this morning."

In an introduction laced with humor, Seitz went on to trace Stevenson's remarkable career from a musician with an undergraduate degree in philosophy to a law school internship with the Southern Prisoners Defense

Committee (now the Southern Center for Human Rights) that led to his establishing, with a MacArthur grant, the Equal Justice Initiative of Alabama — in the only state that did not furnish legal assistance to people on death row. Paying tribute to Stevenson's "boundless energy and enthusiasm," Seitz went on to say, "He has taught and inspired students at NYU Law School and he has written an award-winning memoir (*Just Mercy*) about his fight for justice." He went on to list some of the awards that Stevenson has won — from a Carnegie Medal for nonfiction for *Just Mercy* to honorary degrees bestowed on him by twenty-six universities.

He ended by quoting Stevenson's grandmother's admonition, taken from *Just Mercy*, "Keep close Bryan. You can't understand most of the important things from a distance. You got to get close." That admonition would underlie the Stevenson's first point in his address that follows.

{EDITOR'S NOTE: In the April 1 eBulletin*, the College's new and timely way of communicating with its Fellows, President Bart Dalton strongly suggested that every Fellow take the time to go online to the College's website and watch Justice Seitz's introduction and Bryan Stevenson's address, summaries of both of which are included in this article. Only in that way can one appreciate the warmth, humor and storytelling eloquence of those presentations. Simply go to actl.com, click on the YouTube symbol in the center of the upper margin, the one just to the left of the space for your password (which you will not need), and then click on and watch the introduction and the address. And if you are of a certain age and have trouble doing so, recruit your nearest grandchild to show you how! }*

Following up on Justice Seitz's introduction, Stevenson began, "I grew up in a home dominated by my grandmother, who was the architect of everything that happened in our lives. She was a traditional African-American matriarch. My grandmother was tough and strong. She was the end of every argument in our family; she was also the start of a lot of arguments . . . . But my grandmother had these qualities that just never left you. When I was a little boy, she'd come up to me and she'd give me these hugs and she'd squeeze me so tightly I could barely breathe. You thought she was trying to hurt you, and then she'd see you an hour later and she'd say: 'Bryan, do you still feel me hugging you?' And if I said 'No,' she would jump on me again. By the time I got to be nine or ten, she had taught me and all of her other grandchildren that as soon as we would see her, the first thing we would say is: 'Momma, I always feel you hugging me,' and she would let us be. ▷

"We, as a community," he continued, "create identities . . . . We wrap our arms around people who are trying to fight the good fight. When we wrap our arms around people who have been excluded and marginalized, people whose rights are being questioned and threatened, I think we do the things that justice requires. That's when I think we create an identity for the legal profession . . . that can inspire our country, our civilization, to do what's right, even when it's hard. There are challenges that we are facing that, I think, we have to wrap our arms around people to confront."

Later in his address, Stevenson returned to this thought, which he labeled proximity, not trying to solve problems from a distance, as his first principle for solving the problems he went on to describe.

First, he proceeded to describe some of our problems. "We have gone from 300,000 people in jails and prisons in 1972 to 2.3 million today. We have become the most punitive country in the world. We have six million people on probation or parole. There are seventy million Americans with criminal arrests, and when they try to get a loan or to get a job, they are sometimes disfavored because of their arrest history. The percentage of women going to prison has increased 646% in the last twenty years. Seventy percent of the women that we send to jails or prisons are single parents with minor children . . . . When these women go to jails or prisons, their children get displaced.

"We do terrible things to people coming out of prison. The President came to my State of Alabama in 2015 to commemorate the fiftieth anniversary of the Selma-to-Montgomery March. Eighty thousand people, members of Congress came. They marched across the Edmund Pettus Bridge, knowing that this historic march led to the passage of the Voting Rights Act of 1965. Very few of them realized that today in the State of Alabama, thirty percent of the black male population has permanently lost the right to vote as a result of criminal convictions. . . . The Bureau of Justice now predicts that one in every three black male babies born in this country is expected to go to jail or prison during his lifetime. That was not true in the twentieth century. That was not true in the nineteenth century. That has become true in the twenty-first century. That statistic for Latino boys is one in six."

PROXIMITY

Asserting that he wanted to use his time to talk about the need to create a larger, louder voice for justice for fairness, and his recipe for doing that, he urged, "I believe that we [lawyers] have the kind of identity in our community, in the legal profession, that we can actually make even more movement towards justice across the world, but there are four things we have to do. . . . The first thing I am persuaded that we have to do, in our individual capacity as lawyers or professionals . . . [is to] get closer to people whose rights are being violated. We have got to get closer to people who are being excluded and marginalized or being oppressed by systems that don't recognize their humanity and decency.

"I say that because I believe there's power in *proximity*. The best lawyers know their cases inside and out, . . . know the courtroom, . . . know what they're dealing with. . . . They understand that winning happens when you are proximate — close to the decision-makers. Proximity is key to being effective. We have a lot of policy-makers in our nation trying to solve problems from a distance, trying to describe and prescribe solutions from a distance. They have not gotten close enough to hear the nuances and the details of the problems. And I believe that they're not going to work. We've got to get closer.

"Most of us have been taught our whole lives that there's a part of town where the schools don't function very well, where there's a lot of violence or abuse or neglect or despair. Most of us have been taught to stay as far away from those parts of town as possible. I actually believe that we need to get closer to the people in our communities that are living in the margins that are excluded. We have got to get closer to people in jails and prisons, closer to people coming out of jails and prisons, and I am persuaded that when we get proximate, we will find the power to articulate why the Rule of Law is so key, why justice is so important, why mercy can be so powerful. It is in proximity that we find our strength, our voice, our courage.

"I have gotten close to children prosecuted as adults. It is one of the great challenges, heart-breaking challenges that I've seen. We had people going around thirty years ago arguing that some children aren't children, and these criminologists persuaded our policy-makers that there were some kids who look like kids and sound like kids, but they're not kids. These criminologists came up with the new word; they said these children are 'super predators.' That's the word they used, and they demonized a generation of children, mostly black and brown kids, and every state in the country lowered the minimum age for trying children as adults.

"You are sitting in a state, Florida, that has no minimum age for trying children as adults. I have represented nine- and ten-year-old kids in this state facing sixty- and seventy-year sentences. There is a thirteen-year-old in Florida condemned to life in prison without parole for a non-homicide offense. This epidemic of persecution and prosecution of children broke out all over the country. We created a pipeline from schools to jails. We started putting five- and six-year-old children in handcuffs. We did destructive and terrible things."

Stevenson went on to describe a case he had handled. The boy, age fourteen, lived in a household subject to repeated domestic violence from his mother's boyfriend, who got violent when he drank. One day the boyfriend came home drinking, summoned her to the kitchen and punched her in the face. The boy found her lying bleeding and unresponsive, and he thought that she was dead. He started to call the police or an ambulance, but then he remembered that the boyfriend kept a pistol in his dresser drawer, and he went to remove it. He ended up panicking and shooting the boyfriend. The boy had never been in trouble before, had no juvenile adjudications, but a judge certified him to stand trial as an adult because the boyfriend he had killed was a deputy sheriff.

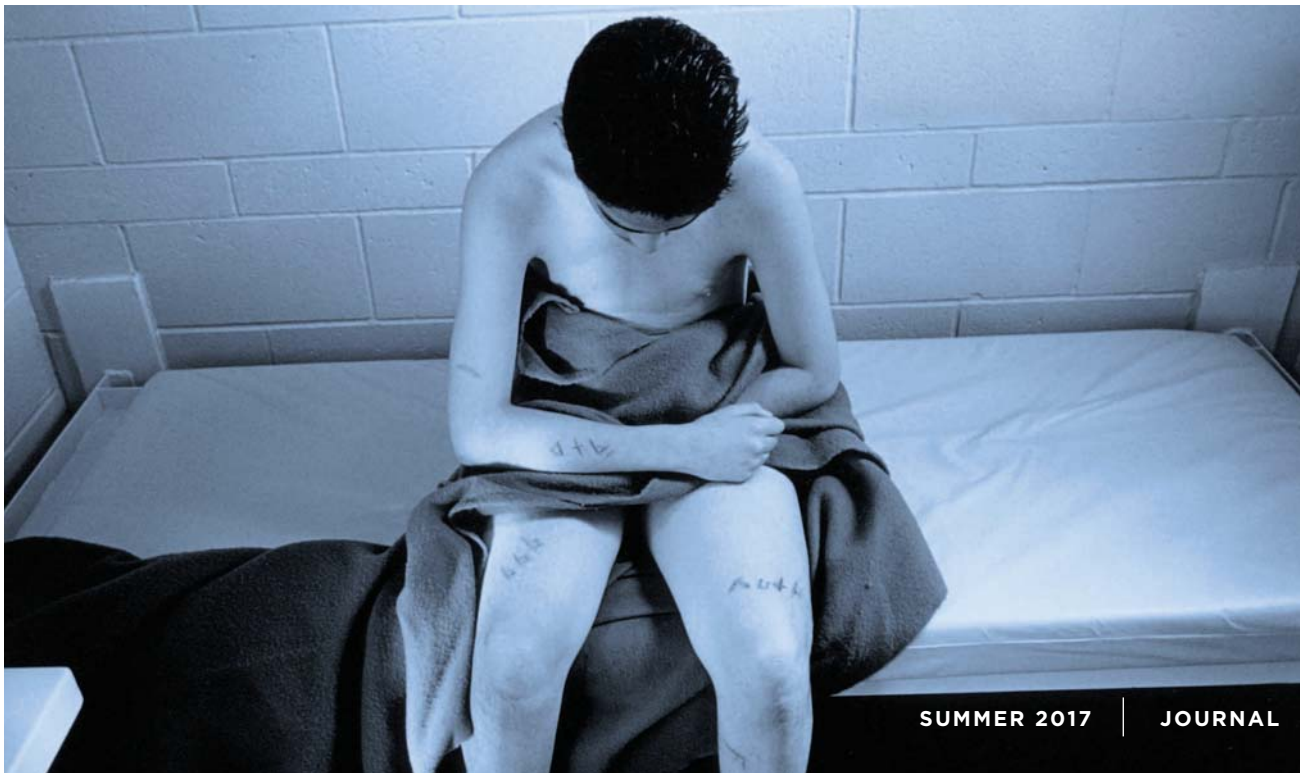
The boy, under five feet tall, weighing less than one hundred pounds, had been in jail for three days before his grandmother got Stevenson involved in his case and he went to the jail to see him. When the little boy, who had refused to speak, finally started crying, cried for an hour and then began to speak. He began talking, not about what happened with his mother, not about what happened with the boyfriend, but about what had happened at the jail. In the three days he had been in jail, he had been repeatedly raped by other inmates.

After assuring him, "I am going to get you out of here." Stevenson left. "And as I left that jail," Stevenson related, "the question I had in my mind was, 'Who is responsible for this?' And the answer is, 'We are. We are.' We have allowed these narratives to evolve and to be applied to children. We've allowed our country to actually demonize children. We have gotten distant from the most tragic and vulnerable and abused children in our society, and we have got to get closer if we really want to protect our future. I believe that all children are children, and it is the kids that are actually struggling, the kids that are dealing with violence and abuse, the kids that are born into violent families, living in violent neighborhoods, going to violent schools, the kids with trauma disorders, the kids that feel like their only recourse is to join a gang. It is the kids whose lives are oppressed by drug addiction, by violence, who are the true objects of our call to justice.

"I don't think we are great society by the way we treat privileged children and gifted children. I think we become a great society by the way we respond to needy children, vulnerable children, poor children. *Proximity* will do some things. It made me understand that we've got to change the law, that's why we have been to the United States Supreme Court arguing for an end to life without parole for children, arguing for reforms. There are 10,000 children in adult jails and prisons today, and I believe, if we get close to them, we will find an end to that."

CHANGING THE NARRATIVE

"But proximity won't be enough," he continued. "The second thing I'm persuaded we have to do is we've got to change some of the narratives that bar us from doing justice, that block us from achieving the Rule of Law. I've seen this happen. We have mass incarceration in America because we made some policy choices. We decided to deal with drug addiction and drug dependency as a crime issue. We said, 'Those people are criminals.' Now, we could have said, 'That's a health issue.' We have countries around the world that recognized that addiction and dependency is a health problem, but we didn't do that. We said, 'It's a crime problem,' and now we've put hundreds of thousands of people in jails and prisons because of their dependency.



"For alcoholism, we said, 'That's a health problem, that's a disease." We have an understanding that if we see someone going into a bar who's an alcoholic, we're not supposed to call the police, but we didn't do that for drug addiction. The reason why we didn't do that is, I believe, because we were being led by a political mindset that was rooted in what I call 'the politics of fear and anger.' And when we allow ourselves to be governed by fear and anger, we will actually tolerate injustice, we will tolerate inequality.

"If you go anywhere in the world and you see breakdown in the Rule of Law, if you see oppression and abuse, and you ask the oppressors to justify what they are doing, they'll give you a narrative of fear and anger. I believe that the Rule of Law stands to resist, to fight, to block the power that can be unleashed when we are governed by fear and anger. We have got to change these narratives of fear and anger. We have got to stand up for courage and reason. That is what is at the heart of the Rule of Law. Changing narratives is hard, but I think it's essential if we going to have a recipe that really moves us towards justice. I think we have to change the narrative about race in America, because I'm not persuaded we are yet free.

"I think we are burdened by a history of racial inequality that hovers in the atmosphere like smog. I think what we've done in this country over the centuries has created real injuries, and we haven't treated these injuries. I think we have got to change the narrative of racial difference that still shapes our lives, and the way we do that is by talking about things that we haven't talked about.

"I think we have to talk about the fact that we are living in a post-genocide society. Both in this country and in Canada there were native people here before white settlers came, and millions of them were killed through famine and war and disease, and we didn't really acknowledge that the way we should have. We didn't say that was genocide. We said, 'No, those people are different. . . . They're savages.' And we used this narrative of racial difference to legitimate that violence.

"It is that same narrative that I believe sustained centuries of slavery. I don't think the great evil of American slavery was involuntary servitude or forced labor. I believe the great evil of American slavery was the narrative of racial difference that we created to legitimate enslavement. We wanted to feel moral and just and Christian while we owned other people, and so we made up these narratives. We said, 'All black people are different from white people. They can't do this, they can't do that. They are hopefully human, but they're not evolved, they're not this.' This ideology of white supremacy was the true evil of American slavery. If you read the Thirteenth Amendment, it only talks about involuntary servitude and forced labor. It doesn't talk about the narrative of racial difference, and because of that, I don't think slavery ended in 1865, I think it just evolved.

"There were decades of lynching and terror and violence that followed Emancipation. From many parts of this country, black people were pulled out of their homes, they were burned alive, they were hung, they were menaced, they were beaten, they were brutalized. Older people of color come up to me sometimes and say, 'Mr. Stevenson, I get angry when I hear people on TV talking about how we're dealing with domestic terrorism for the first time in our nation's history after 9/11.' They say, 'We grew up with terrorism, had to worry about being bombed and lynched and menaced every day of our lives.' The demographic geography of this nation was shaped by terror lynching. The black people in Cleveland and Chicago and Detroit and Minneapolis and Boston and Los Angeles and Oakland did not go to those communities as immigrants looking for new economic opportunities. They went to those communities as refugees and exiles from terror in the American South.

"If you know anything about a refugee community, you know you have to deal with that trauma, which we didn't do. And then we moved into the era of segregation and civil rights. It's great that we honor the leaders of the civil rights movement, but I worry we've gotten too celebratory when we talk about that period of American history. I hear people talking about the civil rights movement and sometimes it starts to sound like a three-day carnival: On day 1, Rosa Parks didn't give up her seat on the bus; on day 2, Doctor King led the March on Washington; on day 3, we changed all the laws, and racial bias was over. It would be great if that is our history but that is not our history.

"I can tell you, as a child who started his education in a colored school, I can tell you as a child of people who had to see those signs, 'White' and 'Colored,' there were injuries done during this period. We said to black kids, 'You can't go to school because you're black.' We said to black people, 'You can't vote because you're black.' Those signs were not directions; they were assaults and they created wounds, and we haven't treated those wounds. We should have committed ourselves to a process of truth and reconciliation, but we didn't do it. And today, we're still living at a time where there's a presumption of dangerousness and guilt that gets assigned to people of color. As I get older, I would tell you having to carry this presumption, to navigate my way around it, is starting to be overwhelming. You get tired."

Stevenson went on to relate a recent incident in which he arrived early to a courtroom in the Midwest, sitting in

suit and tie waiting for court to begin. The judge came in and ordered him out, saying that he did not want a defendant sitting in the courtroom alone. Stevenson stood and introduced himself as the defendant's lawyer. The irony of the situation was compounded when his client, a young white boy, was brought into the courtroom. After the hearing, Stevenson reflected that when the judge saw a middle-aged black man, it did not even occur to him that he was the lawyer. "What that is," Stevenson reflected, "is this narrative of racial difference and it undermines our ability to be free to do justice."

"If you go to South Africa," he continued, "they will make you hear about the history of apartheid. If you go to Rwanda, they will make you understand the damage done by the genocide. If you go to Berlin, Germany today, you can't go 100 meters without seeing a marker or stone that was placed next to the home of a Jewish family during the Holocaust. The Germans want you to go to the Holocaust Memorial. But in this country we don't talk about the genocide, we don't talk about slavery, we don't talk about lynching, we don't talk about segregation and we're not going to get where we need to go until we talk about it. Changing the narrative is, I believe, essential if we're actually going to be that institution that pushes us towards justice."

STAYING HOPEFUL

"But that is not going to be enough. Proximity is the key and changing the narrative is the key, but the third thing I'm persuaded that we have to do is that we have to stay hopeful. . . . Our hope is critical to our ability to actually be vigilant protectors of the Rule of Law. Because I am persuaded that hopelessness is the enemy of justice. I believe that injustice prevails when hopelessness persists. You have got to stay hopeful about what you can achieve, and I understand it's hard. There are a lot of things going on that can break down your capacity to stay hopeful, but please know that hope is the thing that gets you to figure out those complex problems. Hope is what gets you to stand up when other people say, 'Sit down.' It's hope that will get you to speak when other people say, 'Be quiet.' "

Stevenson described the things that make him feel hopeless, starting with living in what he described as the worst place in America for a black man to live, a place where the names of holidays and the schools are those left over from the Confederacy, where people talk about the "good old days" of the 40s and 50s, and Confederate flags, resistance to integration, are all around.

He then went on to relate a story of hope that had had unexpectedly emerged from apparent hopelessness. He had gone to a prison to meet a client, and he parked his car in the prison parking lot. There was a truck in the lot that was like a shrine to the Old South. It had the standard ▷

gun rack, about ten Confederate flags and a collection of bumper stickers, one of which read, "If I'd known it was gonna be like this, I'duv picked my own cotton."

The white guard, expressing disbelief that he was a lawyer, sent him back to his car to retrieve his bar card, required him to go through a bathroom strip-search and then required him to go back and sign the visitation book. Then, as Stevenson walked by him, he grabbed him by the arm and said: "Hey, hey. Let me ask you something." "Did you see that truck out there with all of those bumper stickers and flags?" He said: "I want you to know that's my truck."

Stevenson's client was a young African-American man he had never met before. The first thing he asked was, "Did you bring me a chocolate milkshake?" He told the client that he was his lawyer and that he was there to represent him. As he started asking questions, he realized that the client was not paying attention, and so he put his pen down and said: "Look man, I'm sorry I didn't realize you wanted me to bring you a chocolate milkshake. The next time I come, if they let me, I'll bring you a chocolate milkshake." When the client smiled and smiled, Stevenson realized that he was severely disabled.

It turned out that he had been diagnosed with symptoms of bipolar disorder at the age of thirteen. He had been in twenty-nine foster homes by the time he was ten. When he could not get medical care, at thirteen he began using crack cocaine. At fifteen, he began using heroin. At sixteen, he had evidence of schizophrenia. At seventeen he was homeless. At eighteen, he began having psychotic episodes. At nineteen, in the midst of a psychotic episode, a man walked by him while he was sitting on the street. The client thought that the man was a demon come to destroy him and stabbed him to death. He was convicted of capital murder and sentenced to death. The trial lasted a day and a half. The trial record was devoid of reference to mental health, mental disease or mental disability.

"He was terribly defended," Stevenson reflected, "and we still have too many places in this country where our criminal justice system treats you better if you're rich and guilty than if you're poor and innocent. Wealth is still the determining factor."

"We tried to present a new case for this man," Stevenson continued. "We wanted to overturn his conviction. We wanted to persuade the court that he should not be executed. . . . The question of the death penalty in this country cannot be decided by asking whether people deserve to die. We have got to first ask the question, 'Do we deserve to kill when we have a system that does not treat the poor fairly, when we have a system that's been compromised by politics and bias and all of these arbitrary factors?'"

The guard who had treated Stevenson so badly brought the client to the courtroom and heard the entire three-day presentation.

About a month later, Stevenson went back to the prison to see his client. When he saw the guard's truck in the parking lot, he almost turned around and left to come back another day in spite of the two-hour drive, but he decided to go on into the prison. When he began to introduce himself, the guard told him that he did not need to see his bar card or be strip-searched and that he had seen him coming and had signed him in. As the guard began to unlock the door, his hands started shaking. When he finally got his hands steady enough to put the key in the lock and unlocked the door, he turned around, his face bright red, and said: 'Mr. Stevenson. Mr. Stevenson. There's something I have to say to you. I want you to know that I was in that courtroom when you did that hearing, and I was listening. I want to tell you something. I want you to know I came up in the foster care system too. I didn't think anybody had it as bad as I did. But listening, I realized that maybe your client had it worse than I did.' And then he said: 'Mr. Stevenson, I'm glad you're here. There's something I want to say to you.' And then this man looked at Stevenson and said: 'Mr. Stevenson, I hope you keep fighting for justice. I hope you keep fighting for justice. Mr. Stevenson, I hope you keep doing what you're doing.' And then he asked, 'Sir, can I please shake your hand.' And as Stevenson turned to go into the prison visitation room the guard grabbed him by the arm and said: 'Wait, wait, wait. I've got to tell

you something else. I just want you to know I did something after the hearing with your client. On the way back from the courthouse to the prison, I decided to take an exit, and I took your client to a Wendy's and I bought him a chocolate milkshake.'"

Stevenson reflected, "It's a really silly story, but I say it to you because we've got to be people who are willing to stay hopeful when other people say, 'No, this person is beyond redemption, this person is beyond the Rule of Law, this person is beyond justice, these people don't deserve protection, these people don't deserve the Rule of Law.' We've got enough hope to say 'No.' We fundamentally stand for the Rule of Law for everyone."

DO UNCOMFORTABLE THINGS

"Proximity and changing the narrative and staying hopeful will get us a long way, but the fourth and final thing I think we have to do if we truly want to be guardians of an institution that is committed, rooted in fairness, justice and equality, rooted in the Rule of Law, we've got to be willing to do uncomfortable things. I wish I could tell you that we could be guardians of justice and never have to do things that are inconvenient or uncomfortable, but it doesn't work like that.

"I've looked for some examples where people prevailed, where oppression was overcome, where justice prevailed, where equality triumphed and nobody had to do anything inconvenient or uncomfortable. It doesn't work like that. It only happens when good people are prepared to make difficult decisions and because we're human, we have to make a decision to do the uncomfortable, . . . positioning yourself sometimes in difficult places.

"I was giving a talk in a church some years ago. An older man came into the church. He was in a wheelchair, he was sitting in the back just staring at me, and I couldn't figure out why he was just staring at me like that, but he was just in the back staring. He looked angry; he had this stern look on his face. I got through my talk, and people came up and they were very nice and appropriate, but that older man was still sitting the back. And when everybody else left, he got a young person to wheel him to the front of the church, and he came down the center aisle of that church with this stern, angry look on his face, and when he got in front of me he put his hand up and said, 'Do you know what you're doing?'

"And I stood there and I just looked at him. And then he asked me again, 'Do you know what you're doing?' And I stepped back and I mumbled something. And then he asked me again, 'Do you know what you're doing?' And then that man looked at me and he said, 'I'm going to tell you what you're doing.' And this man looked at me, and he said, 'You're beating the drum for justice. You keep beating the drum for justice.'

"I was so moved, I was also really relieved, because I just didn't know what was about to happen. Then that man grabbed me by my jacket and he pulled me in to his wheelchair and he said, 'Come here, come here. I'm going to show you.' And I watched this man turn his head. 'Do you see this scar I have behind my right ear? I got that scar in Greene County, Alabama, 1963, trying to register people to vote.' He turned his head. 'You see this cut? I got that cut in Philadelphia, Mississippi, 1964, trying to register people to vote.' He turned his head. 'You see this dark spot, I got my bruise in Birmingham, Alabama, 1965, trying to register people to vote. I'm going to tell you something young man. People look at me, they think I'm some old man sitting in a wheelchair covered with cuts and bruises and scars, but I'm going to tell you these aren't my cuts, they're not my bruises, these are not my scars. These are my medals of honor.'

"I am persuaded," Stevenson urged as he ended his address, "that we can — and must — create a force moving toward justice on behalf of everyone. . . . I believe that each of us is more than the worst thing we've ever done. I think if someone tells a lie, they're not just a liar. I think even if someone kills someone, they're not just a killer. Justice requires that we know the other things they are. I am persuaded that in this country the opposite of poverty is not wealth. I believe the opposite of poverty is justice, and when we do justice, we deconstruct the conditions that give rise to inequality. Finally, I believe our commitment to the Rule of Law, our character as guardians, custodians of the Rule of Law, cannot be judged looking at how we treat the rich and the powerful and the privileged. We will be judged on how we treat the poor, the disfavored and the incarcerated.

"I am honored to be with this community. I am proud to celebrate this moment with you. I hope you'll get proximate; I hope you'll change narratives; I hope you'll stay hopeful; I hope you'll do uncomfortable things. I know that we can advance justice for people who desperately need it.

"I want to thank you for this wonderful privilege to speak to you. I wish you all well."

E. Osborne Ayscue, Jr.
Charlotte, North Carolina

INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT ROBERT L. BYMAN

Inductees, spouses and their guests were honored with a recognition luncheon on Saturday, March 4, 2017, immediately after General Session. Past President **Robert L. Byman** of Chicago, Illinois offered remarks during the luncheon. His edited remarks follow:

Here's the thing about today's speech, this is a speech that the majority of the people in this room have heard before. The inductees and their guests of course have not heard it unless they snuck in or were in the wait staff somehow, but the Past Presidents, for example, who stood up before we started this, they've all heard it multiple times.

I personally have heard this speech. I count, maybe thirty-five times. My wife Jane has heard it thirty-five times. She's heard it so many times she could give this speech in her sleep. Actually, in her sleep is the way she has heard it. The only way you can actually stay awake during a banquet speech is to give it, and so that's the reason I volunteered. This will be the first time, I think that I can say with confidence, I will have heard everything in this speech and I can't wait to hear what I have to say.

A man walks into a bar in Midtown Manhattan. He's wearing dusty old snakeskin boots, faded jeans, a belt buckle the size of a hubcap, a Stetson that is water stained and sun bleached and he sits down at an empty stool on one side and an attractive woman on the other. She looks at him and she says, "Are you a real cowboy?"

He says, "Well, ma'am, I get up every mornin' and I think about my cattle. I spend my day thinkin' about cattle. I spend my nights thinkin' about cattle and I can't go to bed unless my cattle have been taken care of. So yes, ma'am, I reckon I am a real cowboy. Say, ma'am, could I buy you a drink?"

She says "Well that's mighty nice, cowboy, but I feel I should tell you that I'm a lesbian."

He looks confused and says, "Well ma'am, I'm sorry but I'm just a little country boy from Waco, and I don't know what that word means. What's a lesbian?"

She says, "Well cowboy, when I get up in the morning I think about women. During the day I think about women. At night I think about women, and most important, when I dream, I think about women."

The cowboy doesn't know what to make of that, they make a little bit of small talk, and finally she takes her leave and another woman sits down at the other stool. The empty stool on the other side. And she looks at him and says, "Are you a real cowboy?" He says, "Well, ma'am, I used to think so, but I just found out I'm a lesbian."

Now, Jane did not want me to tell this story. She was afraid I might offend the cowboys in our group. But I mean no offense. I tell that story simply to make one little point. Sometimes when we self-describe ourselves, sometimes when we attach labels to ourselves, we don't do ourselves justice. We don't do it properly. I'm guessing that for those inductees, and by the way this speech is aimed at you, the rest of these people have heard this speech. They're already asleep. But when you meet somebody for the first time, and somebody says, "What do you do?" chances are you say, "I'm a lawyer." Or you say, "I'm a trial lawyer." But you're not.

That's not a very good descriptor. What you are is an exceptional trial lawyer. A superlative trial lawyer. The best of the best trial lawyers. I know that because of the path you have taken to get here.

Now here's the thing, none of us became trial lawyers without a pretty good sense of self-worth. We have egos. Egos can sometimes be a dangerous thing. We had an inductee responder a couple of years ago who I think said it best. "The secret of my marriage is that my wife and I

have so much in common. We are after all, in love with the same man."

Pete Rose had the best beginning, 'aw shucks' commentary, coupled with ego. He said, "Hey look, I'm no different than any other man with two arms, two legs and 4,200 hits. Ego is a natural part of who we are, but we're smart enough, most of us are smart enough, to know that we can't display it in its full unbridled, raw intensity. We know, as John Ruskin said, that 'A fellow who gets all wrapped up in his self makes a pretty small package.'"

We try to temper our egos with some sincere humility. As George Burns said, "Sincerity is the most important trait a person can have. If you can fake that, you've got it made." So, we fake it. We know we're pretty good, but we fake it. We aw shucks it, but not today, not in this room. Today, just today, and I mean it just today. On Monday get over yourself, go back to faking it. But today ego is allowed. Ego is encouraged. Ego is celebrated. Wallow in it. Bask in it because you really are the best of the best and I know it. I know it again because of the path you have taken.

Now you heard Past President **David Scott** this morning talk about the College and how we are unique. We are the only organization of lawyers in which every justice of the two highest courts of Canada and the United States have accepted honorary fellowship. David glossed over something that isn't entirely true. It's not true of Justice **Lewis Powell**, for example, our Past President who was already a Fellow before he went on the Supreme Court. It's not true of Madame Justice **Suzanne Côté**, who was already a Fellow before she went on to court. But every other member of those courts has accepted honorary fellowship.

I don't mean just accept it. I don't mean, say, 'Okay I'll open the mail and get this plaque and put it on.' You saw what Justice **Russell Brown** did during General Session. You heard his remarks. He didn't make those up on the flight down here. He had to work to put that together, and it was a particularly good set of remarks. Every justice has taken the time to do it.

When Justice **Anthony Kennedy** went to testify before Congress on a bill for judicial compensation, he brought with him one reference material. He cited one reference material. It was the College's White Paper on Judicial Elections.

In 1956 when the College published its first Code of Trial Conduct for lawyers, which went far beyond what any bar association or state had asked of their lawyers, Chief Justice **Earl Warren** wrote the preamble urging all lawyers to aspire to that higher standard. In 2009 when we revised the code and updated it, Chief Justice **John Roberts** did the same thing.

The College is unique and I say without fear of contradiction, we are the premier organization of lawyers in North America. We do not, lately, ask people to join our ranks. In order for you to be here, in order for this new group of inductees to be here, you had to literally run a hurdle race.

If you pass all the hurdles, you get invited to this luncheon and you have to sit through this speech which by now you could give yourself.

So, inductees, I don't know you but here's what I do know: I know that you are somebody with whom I have much in common. I know you are somebody that I would like to have a drink with. I know you are someone I can trust. I know you are somebody I could play poker with over the phone. And I know you are a truly exceptional trial lawyer who has passed all of those hurdles, and has really accomplished something at the bar. So if you find yourself in a bar, and somebody asks if, "Are you a real cowboy?" Say, "Well, ma'am I used to think so, but I just found out I am a truly exceptional trial lawyer." ■

RESPONSE ON BEHALF OF NEWLY INDUCTED FELLOWS

FIVE STAGES OF BEING A FELLOW

Following the induction of sixty-five new Fellows, **Lorna S. McClusky** of Memphis, Tennessee responded on their behalf. Her remarks follow.

Good evening ladies and gentlemen, Mr. President, Regents and Fellows. We, the members of the class of 2017, are humbled by this great honor. To be included in this noble assembly of renowned and venerated lawyers is a truly remarkable moment in our lives. It is an honor of such great magnitude, that we simply could not fully absorb it when we received the letter last fall.

We opened the letter, we read the letter, and we were suspended. Background noise fell away, time stopped, comprehension failed, we were frozen. Then, in an instant, our minds were moving at light speed. When a life impacting event happens to us, we have this fireworks-like shower of thoughts and emotions. The time in which it occurs can be measured in mere heartbeats. The letter for us was a life impacting event. Our first thought was disbelief. And our audible responses were, among other things, "No, uh-huh. Shut up!"

"Get out!"

"Somebody made a really big mistake."

"Is that really my name?"

Complete and utter disbelief. Many of us wondered, "How on earth can this letter be for me?"

Then, we considered the source. Every one of us had the same thought, "Who am I to question them?"

In that instant, possibility swirled in our minds.

Those among us who took this possibility very slowly, thought, "Yes. I'll accept, I'll go. But I'm sitting in the back of the room and I'm keeping my head down."

Our more pragmatic members developed a plan. They would come, but they would know the history of the College. They would read all of the white papers, they would read all of the back issues of the *Journal*, they would be here and they would be prepared.

Now, the bold among us, they looked at that letter and they said, "Hmm, my name could be at the bottom of this letter one day."

Once we had accepted the possibility that we could be here, a barrage of questions ran through us and creativity flowed through us. We imagined what experiences we might have, what tasks we might be assigned, what projects we might assist. In so few moments, we had gone from disbelief to possibility to creativity. Then the ideas slowed, just a bit. Because if we could imagine ourselves here, then we had the determination to commit ourselves to the goals and aspirations of this eminent society. Deep within each of us, determination galvanized.

We settled our focus on being true in fellowship with you. A new sensation struck, when you are energized and committed and determined, you're full of hope. Hope was what we felt when we folded the letters and put them

away. But the letter did not let us rest. Over the next few days and weeks, we were increasingly more careful of our own conduct. We had experienced change.

Now, I don't know why, but change seems to prefer quintets. Consider this, we change throughout our lives. There are five stages of life, love evolves, there are five stages of love, there are five stages of learning, five stages of consciousness, five stages of death, five stages of play and five stages of cycling.

I propose to you tonight that there are five stages of being a Fellow. All of us were introduced to them in those few moments when we read our letters. Disbelief, possibility, creativity, determination and hope. As novices, we experienced these stages in profoundly personal ways and very quickly. The result was a move towards excellence in our selves - the place all moves toward excellence should begin.

Chancellor Gumpert experienced these stages more maturely. He experienced them in a public atmosphere and over extended periods of time. He looked around Stockton, California and did not like what he saw. You can imagine him going to his close friends and expressing disbelief that the situation was not getting better. Perhaps he, too, was frozen for a moment, but he didn't waggle his head and walk away. He entertained that it was possible to raise the standards of trial practice, to raise the standard of our profession, to raise the standard of ethics and even to raise the standards of the administration of justice.

From that possibility, came his creativity, and wasn't he creative. He thought beyond his court house, beyond his district, beyond his state. It was his creative mind that envisioned this organization. A gathering of lawyers dedicated to the pursuit of the highest standards.

When you seek excellence in trial practice and professionalism, you better be determined. When you seek excellence in the ethical standards, you better have some real determination. When you seek to ensure excellence in the administration of justice, you better have some rock solid determination. And, he did.

Look around this room. His determination brought all of us together. This is a time for each of us to remember the good one person can do. Hope, that fifth stage, hope. Chancellor Gumpert had hope. He lived hope with his first act for this laudable cause. He heard hope each time there was a newly raised standard announced. He saw hope in the face of every lawyer that joined the cause. He knew hope as his vision spread across this hemisphere.

This room is filled with hope tonight because it's filled with trial lawyers who dare to share his vision. Now, trial lawyers are testament to hope, but we don't think of ourselves that way. But we are, we have to be. Who else would work hours, days, weeks, months, even years abandoning family and friends, and then turn it over to twelve people they don't even know?

Men and women of hope.

The five stages of being a Fellow will visit upon us all again. We will not shake our hands and waggle away when we see things we just can't believe. We will envision possibilities, we will meet challenges with creativity and we will stand determined. And we will always have hope. We will cycle through these stages again and again and again. Each time, there will be more movement toward excellence.

Thank you, ladies and gentlemen. Enjoy your night. ■

65 NEW FELLOWS INDUCTED AT THE 2017 SPRING MEETING IN BOCA RATON, FLORIDA

Fellows are listed according to chapter affiliation.

ALBERTA

Calgary
Perry R. Mack, Q.C.
Peacock Linder Halt & Mack LLP

ARKANSAS

Little Rock
Steven W. Quattlebaum
Quattlebaum, Grooms & Tull PLLC

CALIFORNIA - NORTHERN

Menlo Park
Lynne C. Hermle
Orrick, Herrington & Sutcliffe LLP

Redwood City
George E. Clause
Hayes Scott Bonino Ellingson & McLay, LLP

CALIFORNIA - SOUTHERN

Costa Mesa
Daniel S. Rodman
Snell & Wilmer L.L.P.

Los Angeles
Christopher G. Caldwell
Caldwell Leslie & Proctor

Marc Harris
Scheper Kim & Harris LLP

A. Howard Matz
Bird Marella Boxer Wolpert Nessim Drooks Lincenberg Rhow APC

Jeffrey H. Rutherford
Crowell & Moring LLP

Newport Beach
Gerald A. Klein
Klein & Wilson

CONNECTICUT

Hartford
Thomas O. Anderson
Morrison Mahoney, LLP

New Haven
David Rosen
David Rosen & Associates

Stamford
Joseph W. Martini
Wiggin and Dana

DELAWARE

Wilmington
Thomas A. Foley
Thomas A. Foley, Attorney at Law

David E. Ross
Ross Aronstam & Moritz LLP

DISTRICT OF COLUMBIA

Washington
Mary C. Kennedy
Arnold & Porter Kaye Scholer

FLORIDA

Coral Gables
Alex Alvarez
The Alvarez Law Firm

GEORGIA

Atlanta
William L. McKinnon, Jr.
U.S. Attorney's Office, Northern District of Georgia

Valdosta
Gregory T. Talley
Coleman Talley, LLP

ILLINOIS - UPSTATE

Chicago
Bruce R. Pfaff
Pfaff, Gill & Ports, Ltd

INDIANA

Indianapolis
Andrew M. McNeil
Bose McKinney & Evans LLP

IOWA

Davenport
Michael K. Bush
Bush, Motto, Creen, Koury & Halligan, PLC

Des Moines
David H. Luginbill
Ahlers & Cooney, P.C.

KENTUCKY

Lexington
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Jennifer B. Schiffer of Baltimore, Maryland was inducted by President Bartholomew J. Dalton on December 19, 2016.

Michael J. Strickroth of Irvine, California was inducted by Past President Robert L. Byman on January 9, 2017.

STYLE IS THE MEASURE OF THE ARGUMENT

Plato, in his work *Phaedrus*, eloquently described rhetoric "as the art of winning the soul by discourse." In simpler terms, rhetoric is the art of selecting the most effective means of persuasion, which ultimately translates to the refinement of your own style of expressing yourself in the courtroom. Words are important, yes, but it's how you use them that matters most.

The three most important ingredients of a well-crafted argument, as suggested by Aristotle, are *ethos* (the listener's perception of the speaker's character), *pathos* (emotion), and *logos* (logic). Allow these three principles to guide you as you polish your individual style—perhaps the most important rhetorical element of persuasion.

When asked to explain his success in court, Daniel Webster—one of the all-time greatest trial lawyers—spoke of his style in terms of clarity:

> In addressing the understanding of the common person, I must use language perfectly intelligible to them. You will therefore find in my speeches … no hard words, no Latin phrases.…

If you doubt its importance, just consider the peril when clarity is not achieved in the courtroom. Take, for example, an appellate court oral argument in a case involving a question of jurisdiction. The judge asked counsel: "Well, how did you get here?" Counsel responded: "I drove from Baltimore." Observers promptly burst out laughing. Had the judge replaced "you" with "the case"— and asked "how did the case get here?"—the question would have been sufficiently clear.

This example calls to mind Mark Twain's quip: The difference between one word is the difference between lightning and lightning bug.

Words can be symphonic, and elevate our emotions. Words can also be clumsy tools that cut our very own fingers. Carefully selecting your choice of words—and arranging them to achieve eloquence—is the essence of style.

Consider Emerson's appraisal of Montaigne's use of words:

> The sincerity and marrow of the man reaches to his sentences. I know not anywhere the book that seems less written. It is the language of conversation transferred to a book. Cut these words, and they would bleed.

Now take, for example, two personal injury cases. Both trial lawyers seek damages in their closing arguments. Imagine one lawyer exhorting, "Let's turn to the measure of damages." Now imagine the other quietly stating, "Let's turn to the grim, grueling audit of pain." Which style is most effective? It is impossible to evaluate without first knowing to whom these lawyers are speaking. Tailoring the argument to the listener is, therefore, a significant principle of rhetoric. So, in choosing your style, you might select the first version if arguing before a judge, but—if arguing before a jury—the second version may serve you well, if you believe members would be receptive. Remember: choosing the appropriate style is important. But it is perhaps even more important to know when to alter that style.

Select carefully and tailor your language to your listeners so that your style choices do not backfire. During closing argument for a jury trial in Los Angeles, defense counsel from Baltimore once used the term "waterman" in an effort to come across as down to earth. However, the jury had no idea what that word meant. While those from Baltimore know that a "waterman" is one who fishes the Chesapeake Bay, this West Coast jury was confused. Word choice clearly matters. The right choice can make you relatable; the wrong one can just as easily alienate the listener.

With diligence, you can improve your style. While some have natural born talent as advocates, many of the best

have perfected their skills through hard work and practice. Consider Demosthenes, often regarded as the supreme example of the perfect advocate. When he was young, he spoke with an impeding stutter. In an attempt to completely alter his style, and to eradicate the stutter, Demosthenes practiced speaking with pebbles under his tongue—and it worked. His "Philippics" against King Philip of Macedon are legendary.

Woodrow Wilson practiced his speeches alone in the woods, carefully crafting his language over time. Winston Churchill spent hours working on and practicing his speeches. Often, listeners thought Churchill was speaking extemporaneously. He was not. His speeches were the result of a deliberate choice of style.

Ultimately, style is personal so you should develop one that is your own. Regardless of which words you choose, always strive for clarity with logic and emotion when appropriate.

So how can you polish your style? One effective means is to study the classical rhetorical figures of speech known as schemes and tropes.

An example of a scheme is when you change the traditional—or expected—order of words in a sentence for effect or drama, such as: "A great lawyer was Hank."

Tropes are figures of speech that occur when you change the significance of the words in a sentence. The most familiar examples of tropes are metaphors and similes. Metaphors are implied comparisons between two things that are unalike, but that have something in common: "The defendant's case went down in flames." A metaphor transforms a word or phrase from its literal meaning into something else. A simile, however, uses "like" or "as" to explicitly compare two things that are not alike: "These facts are clear as a fire bell in the night."

The proper use of schemes and tropes will add zest to your courtroom arguments, and will enhance your arguments and the testimony of your witnesses, should counsel help them in expressing their answers with "style."

Studying these figures of speech can be tedious—and even dry—but, oh, how you will reap the rewards of your efforts. If you consider them carefully, and mull over them, you will accomplish impressive improvement in persuasive abilities. But do not be hasty. Learn just one or two schemes and tropes at a time. Then attempt to use them. Even Shakespeare recommended a conservative approach. He suggested to "practice rhetoric in your common talk."

The following are ten classical schemes and ten classical tropes that you—as the modern advocate—should study. Practice using them if the inclination strikes you.

SCHEMES

1. Changing the normal order of words in a sentence. *(Anastrophe)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
On direct examination: "Mrs. Smith, how would you describe your late husband?" "John was a wonderful man."	"A wonderful man was my husband, John."	Adds drama; emphasizes an important point under the doctrine of primacy—the judge/jury remember best what they hear first.

2a. Repetition — Consecutive repetition of words in a sentence. *(Epizeuxis)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
On direct examination: "How do you feel about what happened?" "I feel sad."	"I feel sad, sad, sad about what happened."	Emphasizes your point pursuant to the doctrine of frequency (repetition), which helps judge/jury remember and appreciate your witness's reaction.

2b. Repetition — Consecutive repetition of phrases. *(Epimone)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At opening statement: "We shall prove that the landlord was negligent for not repairing the screen door that Mr. Jones fell through when he was pushed."	"This is the case of the careless landlord. He was careless because he did not care for the safety of little Tommy Jones, and he was careless because he did not repair the screen door."	Uses repetition to emphasize a main point with rhythm to engage the judge/jury.

2c. Repetition — Repetition of words at the beginning of a sentence. *(Anaphora)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
On direct examination: "What was your reaction to what you observed?" "Despair."	"Despair, despair, despair."	Injects emphasis and drama at the outset of the sentence for primacy and repetition (frequency).

2d. Repetition — Repetition of words at the end of a sentence. *(Epistrophe)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "You should conclude that the evidence of liability for breach of contract and fraud is overwhelming."	"The evidence of breach of contract is overwhelming. The evidence of fraud is overwhelming."	Adds drama and effect; takes advantage of recency—judge/jury remember what they hear last.

2e. Repetition — Repetition of words at the beginning and end of a sentence. *(Symploce)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "This case is about Ms. Walters' breach of her duty of care to Ms. Johnson. Based on the evidence, you should render a verdict in favor of Ms. Johnson."	"Negligence is what this case is about, and based on the evidence, you should find Ms. Walters liable for her negligence."	For effect, employs both primacy (what is heard first) and recency (what is heard last).

3. Interruption of normal flow of words by inserting a phrase. *(Parenthesis)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At opening statement: "The evidence will show that the plaintiff herself contributed to the accident."	"The evidence will show, and you will believe, that the plaintiff herself contributed to the accident."	Injects sincerity; emphasizes your point without pounding the table or using more words.

4. Deliberate omission of words implied from the context of the subject. *(Ellipsis)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At opening statement: "To prove our case, we shall call an expert from whom you will learn that the defendant was negligent, and hence liable to the plaintiff."	"From the testimony of our expert, you will find negligence, from negligence, liability."	Conveys your point concisely and with good effect.

5. A sudden halt in speech for effect. *(Aposiopesis)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "His suffering was too much to bear."	"His suffering (silence) was too much to bear."	Draws additional attention to your point, and the moment of silence evokes emotion.

6. Stating something by not saying it, or disregarding it. *(Praeteritio)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "Of great importance is the rate of speed the defendant drove his car."	"I shall not remind you about the speed the defendant drove his car."	Engages the judge/jury to think about the point you are making.

7. Correcting yourself. *(Metanoia)*

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "The defendant's fraud will be clear from the evidence."	"The defendant's unfairness, I am sorry, the defendant's fraud will be clear from the evidence."	Adds a bit of irony for effect.

8. Anticipating the opponent's objections and meeting them in advance. ***(Prolepsis)***

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
On direct examination: "I walked into the food market and slipped on a very wet floor." "Did you suffer any injuries?"	"Tell us what happened to you that day." "I walked into the food market and slipped on a very wet floor." "Did you see a sign warning that the floor was slippery?" "No." "Why not?" "There was no sign." "Really?"	Immunizes the witness from cross-examination; continues your argument/theme of case from opening statement: "Mrs. Smith will prove that the owner of the store was negligent by not warning pedestrians of the wet floor. The defense will claim contributory negligence. But we shall prove otherwise."

9. Using the same letter or sound at the beginning of adjacent—or closely connected—words. ***(Alliteration or Assonance)***

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
At closing argument: "This action was no mistake. It was purposeful."	"This big, bad mistake was no accident."	Engages the listener with rhythm.

10. Repeating the ending of the sentence at the beginning of the next. (Anadiplosis)

TRADITIONAL USAGE	SCHEME	BENEFIT TO ADVOCATE
On direct examination: "What did you observe?" "I saw Mr. Smith speeding through the red light." "Then what did you observe?"	"What did you observe?" "I saw Mr. Smith speeding through the red light." "After you saw Mr. Smith speeding through the red light, did you see anything else?"	Emphasizes your point through repetition.

TROPES

1. An implied comparison between two things that are unalike, but have something in common. ***(Metaphor)***

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At closing argument: "The conduct of the corporate defendant was horrendous. You know that. I know that."	"The conduct of the corporation was despicable. You know that. I know that. This is a case for punitive damages.... The only way to stop a beast in the woods is to stab it in the heart. The only way to stop this corporate monster is to stab it in the pocketbook."	Adds drama and effect; paints a picture with words.

2. An explicit comparison using words introduced by "as" or "like." ***(Simile)***

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
On direct examination: "How could you see what occurred when it was 11:00 p.m. at night?" "The moon was bright."	"The moon was bright as the sun that evening."	Engages the judge/jury; paints a picture with words.

3. Asking a question, and not answering it—also known as a rhetorical question. ***(Erotema)***

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At closing argument: "As you can observe, and have observed during the trial, Lucie Baines does not even look like the type of person who could have committed this heinous crime."	Look at her, ladies and gentlemen. Does she look like the type of person who could have committed this heinous crime?"	Empowers the judge/jury to render the answer you desire without explicitly being told to do so; makes them feel engaged in forming their own opinions.

4. Asking a question, and then answering it. ***(Hypohora)***

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At closing argument: "Mrs. Livingston brought this case to seek recompense."	"Why did Mrs. Livingston bring this lawsuit? Because she seeks recompense for the horrible treatment she received from her employer, the defendant Mr. Jones."	Engages judge/jury by reinforcing the theme of your case in a sophisticated way.

5. Understatement, by expressing the affirmative in the negative of its contrary meaning. ***(Litotes)***

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At closing argument: "You heard her testimony; her memory was excellent. You will be pleased to believe her and happy with your verdict of not guilty."	"You heard her testimony; her memory was not bad. She told us exactly what occurred. You, as members of the jury, would never be sorry that you believed her. You will never be ashamed rendering a verdict of not guilty."	Implicitly rallies support for your witness.

6. Understatement, by giving the impression that something is less important than it is. *(Meiosis)*

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
On direct examination (plaintiff is testifying about noticeably serious injuries that she suffered when she fell many feet to the ground through a wooden deck): "So now, Ms. Bursum, will you please describe for us the injuries you suffered as a result of the serious incident?"	"So now, Ms. Bursum, will you please tell us about the injuries you suffered from this little incident?"	Compels the judge/jury to view the situation seriously with your ironic understatement of it; the opposite of hyperbole.

7. Exaggeration. *(Hyperbole)*

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
On direct examination: "Mr. Smith, how would you describe the sound from the rifle shot?" "It was very loud."	"It was so loud it could be heard around the world."	Infuses dramatic exaggeration for effect; stirs the judge/jury to see the case your way.

8. Addressing someone or some personified abstraction that is not physically present. *(Apostrophe)*

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At closing argument: "Ladies and gentlemen of the jury, in conclusion let your verdict be just."	"Justice. Justice cries out: Let your verdict be for Mrs. Jones."	Adds dramatic effect.

9. Using words to convey the opposite of their literal meaning. *(Irony)*

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
At opening statement: "Ladies and gentlemen, he blatantly breached his duty to those who elected him, and stole valuable artwork from the museum."	"His great love of art caused him to borrow indefinitely the museum's most cherished possessions."	Pairs drama with sarcasm to engage the judge/jury, and to keep them working with you for the "proper" result.

10. Omitting the major premise of syllogistic reasoning in deductive arguments when the listener knows the premise. *(Enthymeme)*

TRADITIONAL USAGE	TROPE	BENEFIT TO ADVOCATE
"Ladies and gentlemen, we know that when a witness looks at you in the eyes, he is testifying honestly and is someone you can believe. John Jamaca looked you in the eyes when he testified. You can believe him."	"Ladies and gentlemen, John Jamaca looked you in the eyes when he testified. You can believe him."	Eliminates the formality of the argument; creates a bond with the judge/jury based on shared values of the valid major premise.

Schemes and tropes have come down to us through the ages, and you should continue to extoll their value. Consider Cicero's view of style more than 2,000 years ago in his seminal work, *Oratoria*:

> [A]s soon as we have acquired the smoothness of structure and rhythm … we must proceed to lend brilliance to our style by frequent embellishments both of thought and words with a view to making our audience regard the … (case) which we amplify as being as important as speech can make it.

By "embellishments," Cicero was referring to schemes and tropes. Some might classify these figures of speech as ornaments, like musical flourishes within a symphonic masterpiece. However, the masterpiece excels because of its flourishes. So will you in court, if you master your style using schemes and tropes.

Of course, perfecting your style involves more than studying the schemes and tropes mentioned above. You must consider other important traits of style, such as clarity of expression, and selecting words that you believe will resonate with the listener—words that convey humor, emotion, or anger. Consider whether you desire an active or passive voice, or concrete or abstract words, and whether you wish to employ short or lengthy sentences.

Above all, ensure that the language you use is clear and particularly tailored to the listener. Simply put, do not insult or confuse the very listener you hope to persuade. Knowing your audience, judge, arbitrator, or jurors—before you present your case—is a critical step in choosing your words wisely.

Paul Mark Sandler
Baltimore, Maryland

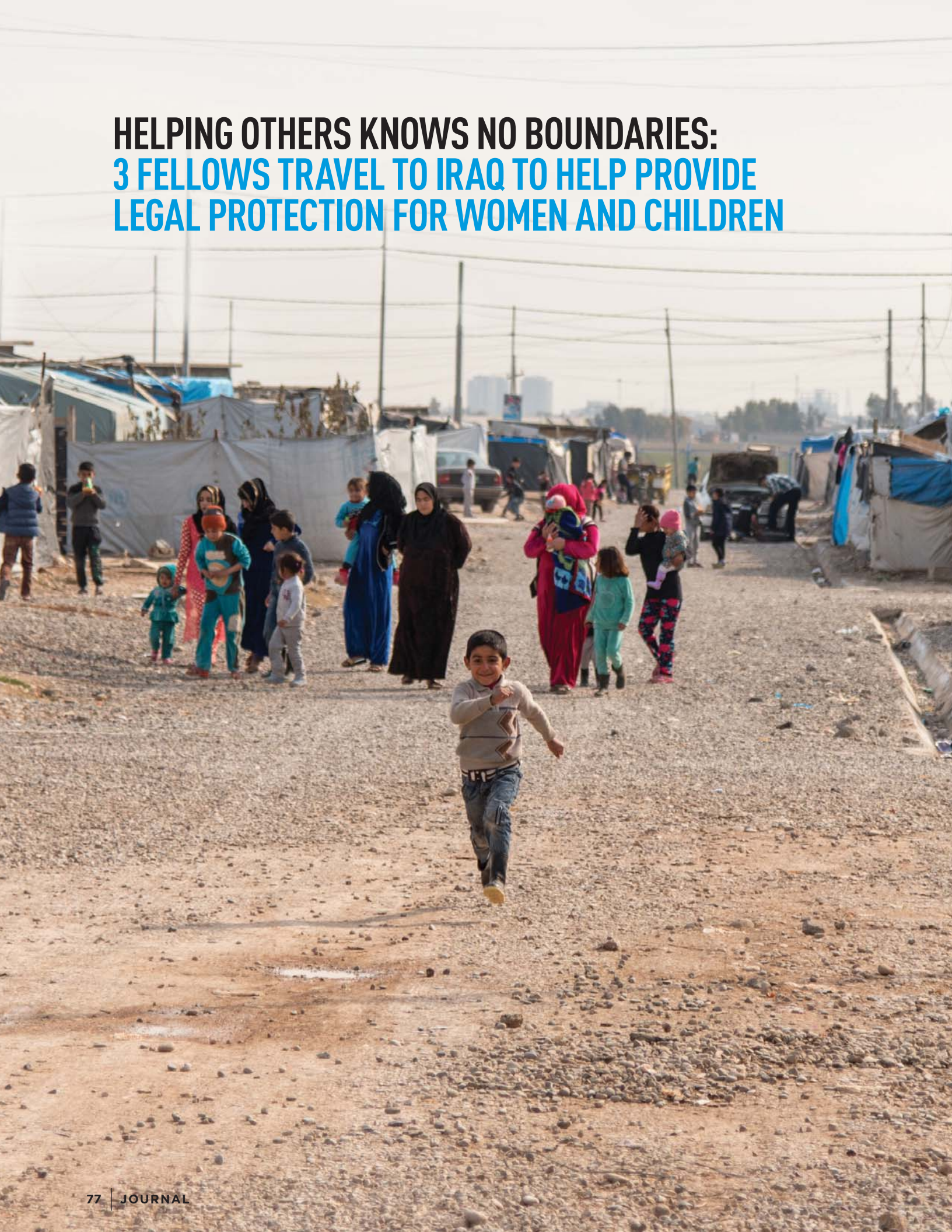
A full version of this article with footnotes is available on the College website, www.actl.com. ■

FELLOW TAKES TO HEART
FLYING THE FRIENDLY SKIES

I believe you may enjoy this tale as it reflects well on ACTL. I was returning from a hearing in the U.S. District Court for Minnesota at the end of March, flying back to Naples, Florida, and was seated next to a young Marine who had recently returned from Afghanistan. We talked and I became aware of his involvement in domestic litigation in his hometown of Syracuse, New York. His counsel had apparently exited the scene and this young man seemed both confused and fearful of what he should do. Yes, he had notices from the court but "just didn't understand the system." A week later I sent emails to three attorneys in Syracuse, selected at random from my ACTL members' roster (although I did make sure they were old enough to perchance have a few military memories) and explained my encounter. Within a few days there was a response from a Syracuse firm and a partner within that firm who handles many matters for veterans - many pro bono. In addition he advised that there was counsel in the domestic litigation arena who volunteered his time. Finally, this gentleman advised that he worked with the University of Syracuse law school as well as legal aid helping veterans. I communicated all of this wonderful news to the young Marine and he was relieved and ecstatic. I have provided no names. In my opinion this moots all of the bad lawyer jokes and makes me realize even more how terrific our organization is.

Read Kemp McCaffrey
Mashpee, Massachusetts

HELPING OTHERS KNOWS NO BOUNDARIES:
3 FELLOWS TRAVEL TO IRAQ TO HELP PROVIDE LEGAL PROTECTION FOR WOMEN AND CHILDREN



Shortly before Christmas last year, **Richard C. Busse**, Chair of the International Committee, sent an email to all Fellows. The subject line was "Seeking A Volunteer: War Child - Erbil, Iraq" and contained the following description of the College's participation:

> The proposed War Child mission is an assessment mission (more of a feasibility assessment) to look at what exists on the ground (local capacity) and the anticipated needs moving forward insofar as promoting and upholding the rule of law, access to justice and advancing legal protection strategies for women and children in particular.
>
> […]
>
> While it is an initial feasibility assessment, we would anticipate having enough information from this trip to pull together a more detailed proposal for potential funding agencies (which the War Child staff would handle). We hope that the participating team would provide their formal recommendations, whether in writing or verbally at the end of the assessment, and possibly letters of support for any funding application if these are required.

The email explained that the College was being asked to aid the NGO War Child in assessing the current legal environment in Kurdistan (Northern Iraq) and whether the organization should add legal protection work to its ongoing programming in the region. War Child, a registered charity in both Canada and the United States, focuses on the needs of women and children in war zones, already operates in Iraq in addition to Afghanistan, the Democratic Republic of the Congo, Jordan, South Sudan, Sudan and Uganda. In Afghanistan and Uganda War Child is a registered law firm that provides pro bono legal services through local attorneys and legal workers. War Child's model is to initiate the groundwork and then support local people in providing needed services, rather than recruiting foreign volunteers. This model allows the NGO to operate with a particularly lean, efficient and nimble infrastructure while also investing in the capacity and resiliency of local communities with the goal of promoting long-term peace and development.

A number of Fellows expressed interest; Fellow **Michael A. Eizenga** conducted screening interviews; and a team was assembled. War Child founder Samantha Nutt, M.D., headed the team along with Nikki Whaites, War Child's Deputy Director of International Programs The Fellows on the team were myself, Eizenga of Bennett Jones LLP in Toronto, Ontario, and **Carolyn P. Short** of Reed Smith LLP in Philadelphia, Pennsylvania. Dr. Nutt had been to Iraq a few months earlier to lay the groundwork for our trip. She is a dynamic humanitarian who spoke at the College's 2015 Spring Meeting in Key Biscayne, Florida, and was awarded Canada's highest civilian honor the "Order of Canada" as well as "The Queen's Jubilee Medal." Her book, *Damned Nations: Greed, Guns, Armies, and Aid* was a Canadian best seller, and her TED Talk last year on the global menace of small arms has already garnered more than one million views. In January 2017, our group of five met in Dubai to fly into Erbil.

Erbil is in the Kurdish area of Iraq, about fifty miles from the Iraqi city of Mosul, the site of heavy fighting between the ISIS forces that controlled the city and the Iraqi government forces intent on retaking the area. It is home to Kurds, Arabs, Christians and small sects such as the Yazidis who have suffered so much at the hands of ISIS. Kurdish Iraq, given its proximity to Mosul, is now home to thousands fleeing ISIS.

Upon landing in Erbil, the airport is noticeably fortified with two story concrete block houses and strong surrounding fences. Up until a few years ago, Kurdistan, in general, and Erbil, in particular, were relatively prosperous. Construction had begun on numerous tall apartment buildings but, today, they stand empty and unfinished as mere symbols of a now distant future. Falling oil revenues have crippled the economy.

From the airport we went to our aptly named "The Classy Hotel." The security was evident in the massive concrete barriers shielding the hotel from the street and in the private security guards in body armor casually toting folding stock Kalashnikov assault rifles. Once inside, however, the hotel displayed typical, if modest, Western amenities such as a lobby bar, restaurant and a gym.

Our first meeting was with a female human rights defender (we have specifically avoided naming people in Erbil who assisted us) who works with displaced ▷

women to assist them to become economically self-sufficient by helping them develop employable skills and by addressing their legal problems. She told us of the legal problems the women faced including enforcing rights to support and being unaware of the legal rights and remedies that are potentially available with the resources to pursue them.

Ironically, the most pervasive and consequential legal issue for displaced persons is the lack of legal documents. Iraqis must have both an identity card and a nationality card (which includes religious affiliation). Displaced persons, however, often have lost their cards and cannot have them easily replaced. The simple explanation for the inability to replace lost or stolen documents is the loss of records during the 2003 Iraq war. Despite the obstacles, however, the lawyer we met was hopeful because the internal war with ISIS is ending and there is a basic legal system, sometimes capable of delivering justice to its people.

Our second day started with a visit to a prison housing both women and youth in separate sections. Our group split up and met separately with a group of boys and a group of women. I use the term "boys" intentionally; these inmates ranged in age from thirteen to seventeen and were accused of being "supporters of ISIS." A significant amount of the boys had come from displaced persons camps (IDPs, or Internally Displaced Persons, refers to residents of a country who had to flee their homes as opposed to "refugees" who fled from another country) where someone had accused them of being an ISIS follower. While it was unclear what all the changes against the boys were, some may have been gang pressed into being cooks, porters and runners for ISIS under threat of death or retaliation against their families. Others may have fallen suspect simply because an older relative had joined ISIS.

There were thirty-three boys living in this section of the prison. We met with a group of twenty-two of them. All thirty-three live in a room about 20' x 20' with six beds. The ones without beds sleep on chunks of foam rubber that they stack during the day to create living space, but spread out to cover the entire floor at night. Before being imprisoned, the boys reported that they had been through closed tribunals prior to being turned over to prison officials. The tribunals allegedly decide if suspects will be released, continue to be held, or passed on to civilian authorities for prosecution. The teens were in this third category and only one of the twenty-two reported that they had a lawyer. Some had been held for as long as a year. There was a school within the prison that they could have attended, but prison officials explained that they were not allowed to "because they came here without any identity papers."

We also met with a group of women prisoners some of whom had been married to ISIS fighters and were accused of being ISIS members, by association. We spoke to one such woman. Her husband was an ISIS fighter and threatened her with death if she told anyone; she was subsequently arrested, convicted and sentenced to fifteen years for protecting an ISIS fighter.

Not all of the women prisoners were alleged ISIS supporters; some were accused of robbery or other offenses. While we did not speak to any women accused of adul-

tery, this is an example of where the law is biased against women. A husband's claim alone is enough to have his wife arrested for adultery, a crime under Iraqi law that is defined differently for men and women. For men, adultery is having sex in the actual marital bed with another woman. For women, adultery is sex in any place with someone other than their husband.

We later went to a camp for IDPs. The camp had hundreds of housing units. These were boxes, about ten by fifteen feet, with a door, but often no windows. Some had solar panels and even satellite TV antennas. Some of the residents had been there for over three years. The attitude of the residents varied. One woman invited us into her home. It had a dirt floor and scorch marks on the wall from the jury-rigged electrical system. Heat came from an open burner attached to a small propane tank.

The woman was a testament to the human spirit. She was sad from her lost home, lost relatives, and disrupted life, but she remained dignified and optimistic. After a few minutes of discussion our interpreter realized that the woman's husband was a teacher at her college.

Another woman sought us out as we walked through the camp. She was very distraught. Her home was in total disarray. She wanted us to see her nephew. He sat on his bed staring blankly. She explained he had been brain injured at birth and required constant care. His mother and father had been killed by ISIS and now she had to care for him.

We were also able to meet with representatives of the legal sector in Erbil. War Child arranged a dinner where we had a chance to meet with judges, prosecutors and private attorneys, amongst others. What we were hearing about was a functioning legal system that was substantially hampered by a loss of funding. Public employees in Kurdistan have seen their paychecks delayed and reduced because of the economic crisis. Also, the influx of refugees has strained all government operations including the nascent legal system.

Overall, our legal assessment showed a strong need for legal support to assist the people of Iraq. Only in helping to build a sustainable, functioning and unbiased legal system will Iraq being to recover and move forward towards a positive future. Specifically we found:

- There is a lack of knowledge of the formal legal system amongst vulnerable populations including people not knowing what the role/job of a lawyer is;
- There is a lack of direct legal aid support for those who cannot afford a lawyer;
- Legal duty bearers lack access to ongoing training and education opportunities with lawyers and judges applying a strong gender bias to the law at times;
- There are concerns that communities will resort to using tribal justice as opposed to the formal legal system;
- There is a general distrust in the legal system, including of judges;
- There are discriminatory practices by police towards displaced populations and/or women;
- Community reintegration opportunities for women and youth released from prison are lacking;
- There is a lack of community awareness on legal rights and human rights, and;
- There is strong discrimination/distrust in communities towards those believed to have associations with ISIS.

In the end, we Fellows left Iraq with our eyes and hearts opened to the staggering problems facing displaced persons, particularly women and children, as it relates to the legal system. The need to implement legal protection programming is clear and it is encouraging that there is a nascent legal system and professionals willing to assist. As War Child moves forward with its assessment, stay tuned for more information and opportunities to assist.

W. Bruce Maloy
Atlanta, Georgia

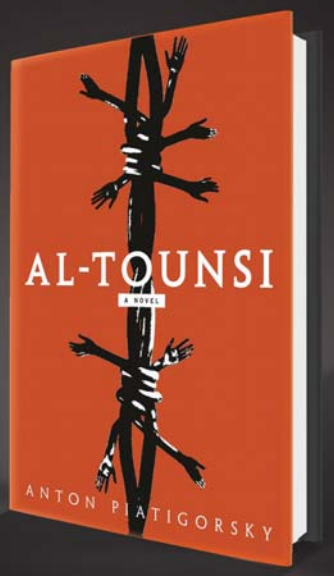
To learn more about War Child's work around the world and to support their important efforts please visit www.warchild.ca (Canada) and www.warchildusa.org (USA). War Child's offices are located in Toronto, New York and Los Angeles. ■

BOOK REVIEW

AL-TOUNSI: DRAMA ON AND OFF THE HIGH COURT!

By: Anton Piatigorsky

335 pp. Ankerwycke/ABA



What if the petty twists and turns of the private lives of the justices of the United States Supreme Court determined how cases are decided? And how would a novel on that topic be constructed by a dramatist with a flair for storytelling and a penchant for diving deep into the human condition and mulling over what makes people tick? What would make an appropriate context for that story?

Al-Tounsi turns out to be the extraordinary and unexpected answer. In this erudite debut novel, Anton Piatigorsky selects as his basic canvas the prolonged Supreme Court battle with the Bush Administration from 2004 to 2008 over whether the alleged terrorist detainees at Guantanamo Bay had a right to seek habeas corpus review in federal court to challenge their detention. Was the Executive Branch beyond the reach of the Judicial Branch during the war on terror with respect to its actions outside the territorial United States?

To do the work of a novelist, Piatigorsky wields the tools of imagination, alchemy and literary license to change the scene and the players ever so slightly (and sometimes a good bit more) to pursue his themes. Thus, Guantanamo Bay becomes Subic Bay in the Philippines, President Bush becomes President Shaw and the sitting justices are re-named, ever so thinly disguised and given back stories with details that could set the tabloids humming.

A thumbnail sketch cannot do justice to this engaging and challenging novel. The fictitious case of *Al-Tounsi v. Shaw, No. 07-1172* comes before the Court on a petition for certiorari – with all the right trappings, fonts and formalities of its real world doppelganger *Boumediene v. Bush, 542 U.S. 466 (2008)* (consolidated with *Al Odah v. United States*). The case presents the question of whether US Constitution., Article I, 9, clause 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.") extends to noncitizens detained by the United States in a foreign land over which the United States is not sovereign. As in *Boumediene*, the fictional *Al-Tounsi* court initially denies certiorari only to reverse itself on that decision for the first time in sixty years a couple of months later. In the end, as in the real world counterpart, the detainees prevail on the merits.

In part, the protagonist of this tale is the law itself and all the deep questions of habeas corpus, the rights of noncitizens, the challenges of the war on terror and the role of the court. But the true stars are the imaginary justices and the events that drive them.

Of the nine, five are fully fleshed out characters while the remaining are walk-ons. The focus is on the colorful group of five–Justices Rodney Sykes, Sarah Kolmann, Gideon Rosen, Killian Quinn and Elyse Van Cleve. Sykes is an African-American justice who suppresses his emotions, struggles with his place on the Court and is estranged from his daughter Cassandra who clerks on the Ninth Circuit. Kolmann is a liberal justice and hero of the woman's movement whose husband is dying of cancer. Rosen is a Jewish liberal justice who worships Justice Brandeis and faces pressure from his wife to retire from the Court before he has truly made his mark.

Quinn is a big-bellied, Catholic, conservative textualist with a loving wife and a big family who has periodic trysts at a hotel near the Court with the young director of the Folger Shakespeare Library. Justice Quinn declares the pivotal reversal on certiorari to be "Drama on the Court!" But it is drama off the court that wags the tale.

Elyse Van Cleve grew up on a horse farm in Kentucky and suffers a fatal stroke while tossing a tennis ball in the air to serve ad out. Her death creates a vacancy to be filled by Ninth Circuit Judge Emmanuel Arroyo, who just happens to have had an affair with Cassandra Sykes, impregnating her before his nomination which requires

considerable spin control during his confirmation hearings. Judge Arroyo worked with Justice Sykes years back and a rift understandably arose when rising star Arroyo refers to Justice Sykes as Adolf Eichmann for his unwavering allegiance to the law.

In the end, the fictionalized Court votes to grant the Subic Bay detainees habeas corpus review based on the swing vote of Justice Sykes. Sykes is convinced that the Constitution and the existing case law cannot be fairly read (as his unconstrained colleagues in the majority read it) to extend the reach of habeas corpus to detainees on foreign soil, but he concludes that the vulnerable detainees should be afforded that protection nonetheless. Justice Sykes offers a concurring opinion printed for us to read in the Afterword. It is a very authentic-looking counterfeit opinion with a pitch-perfect presentation of Skye's newly-minted doctrine of "subversion" – a doctrine to be invoked in those rare circumstances when it is necessary to ignore the law because the petitioner is in a very vulnerable position and the Court is his or her last and only chance for relief. This preposterous doctrine arises from Justice Sykes personal remorse over how he cared for his deceased wife's cat. Sykes largely ignored the vulnerable cat which died in his care, and he has sworn a private oath never again to let down the vulnerable when he is their last chance for relief.

Against the backdrop of this comedy of the absurd, Piatigorsky shows us the machinery of a landmark case and the inner workings of the high priesthood of the Supreme Court. The ultimate observation that emerges is that every human being is unavoidably the product of his or her own individual circumstances. It is not mean-spirited or ill-intentioned or evil – it is simply the human condition. Lawyers regularly argue and believe that legal outcomes are dictated by a discernible rule of law and should not vary with the length of the Chancellor's foot, to paraphrase the eminent 17th century jurist John Selden. Piatigorsky's conclusion seems to be that justices as human beings just cannot help themselves.

Thus, Killian Quinn's textualism is tied to his rote learning of the Baltimore catechism. Sarah Kolmann's battle for women is tied to her discernment of a definition of personhood in the Ten Commandments – coupled with a discovery of discrimination against women therein as well. Justice Sykes is driven not only by his wife's cat, but by his opposition to affirmative action.

This cynical assessment stands in contrast to Piatigorsky's deep affection for and understanding of his characters which shines through in the novel. It is clear that he loves them and forgives them and admires their intellects. At times, there are too many mundane details, with observations of peristalsis, rising bile, the viscera of a tomato, the tines of a fork – but they also stand as evidence of an author who fully embraces the humanity of his characters.

The novel reflects meticulous research on the wellsprings of the law and the inner workings of the Supreme Court of the United States. Piatigorsky is not a lawyer, but his novel sings in a lawyer's voice telling the story of a case by the name of the plaintiff – and *Al-Tounsi* ultimately rings true – even in its extremities.

Piatigorsky's book is not limited to imagining how Supreme Court justices develop their opinions. His book begins with a quote from Lord Atkin who asks "[w]ho then, in law, is my neighbor?" In part, *Al-Tounsi* is a book about treating our neighbors like ourselves – which Sykes does by managing to feel sorry for the noncitizen detainees. But Piatigorsky's novel is also about demystifying the court and all of its majestic rituals and ancient mysteries like habeas corpus. Habeas corpus has been variously said to mean "produce the body" or "bring me the body." *Al-Tounsi* searches not only for the body but for the heart. It is a novel in which Piatigorsky brings his art to bear to get to the heart of things.

If you succumb to it, *Al-Tounsi* can be a rigorous workout of a novel. Reading it is an active adventure for the mind with frequent stops along the way for weighty discourse between the characters – especially when the Quinns visit the Kolmanns for their annual New Year's Eve dinner, where the lions and the lambs lie down and find common ground on their otherwise separate ideological planets.

But some of you will go further. You will pull out the actual cases from *Rasul v. Bush, 542 U.S. 466 (2004)* all the way up to *Boumediene* in 2008 – hundreds of pages in splintered opinions. You will map out the Court itself and likely match the reimagined justices to their counterparts and amalgams. You might retrace the relative timing of Elyse Van Cleve bowing out to a stroke and Justice O'Connor bowing out to retire midstream in the habeas cases. And in your journey through the real cases and the real battles, you will hear echoes of *Al-Tounsi* in every corner.

Recently, I had lunch with a young woman who just finished clerking for one of our sitting justices. I briefly recounted the tale of Al-Tounsi. "Oh," she said, "I want to read that book." Yes, you do, I said. Yes indeed.

Richard A. Schneider
Atlanta, Georgia ■

PERSONAL REFLECTIONS: EARL J. SILBERT

Earl J. Silbert graduated magna cum laude and Phi Beta Kappa from Harvard University in 1957, and cum laude from Harvard Law School three years later. In 1977, he was inducted as a Fellow of the College. He became President of the College at its 50th anniversary meeting in October 2000, which conveniently was held in Washington, D.C.

Silbert has had an amazing professional life as a lawyer. After law school and several years at the Department of Justice, he joined the U.S. Attorney's Office, becoming the U.S. Attorney for the District of Columbia in 1974. He joined Schwalb, Donnenfeld, Bray, and Silbert in 1979, but left there in 1998 for DLA Piper.

DEAN OF THE CRIMINAL DEFENSE BAR IN D.C.

David J. Hensler, a Former Regent of the College, described him as "one of the most revered lawyers" in Washington, D. C. and a "legend in the national white collar bar," adding he "is universally loved and admired in Washington." **John D. Aldock**, another Fellow in D.C., was an Assistant U.S. Attorney under Silbert's watch. Aldock observed that people view Silbert as the "Dean of the Criminal Defense Bar in D.C.…. Because everyone, including people still in government, so respect his judgment and his integrity, Earl is someone who is regularly consulted on criminal defense matters."

Notwithstanding his stellar credentials and reputation, Silbert is the most down-to-earth person you could ever meet. The *Journal*'s interview with him early on Election Day 2016 was most enjoyable.

The conversation began by discussing the 1987 federal sentencing guidelines, which were an important issue for the College during his term as President. As he explained, "the guidelines, perhaps unwittingly, shifted power to the prosecutor, rather than the balance intended by the law. The power of the judge was weakened, and the process became unbalanced."

In 2013, Silbert addressed this subject in presenting the annual Judge Thomas A. Flannery Lecture, a lecture series given in memory of this former U.S. Attorney for D.C. (and later a judge in D.C.), for whom Silbert was Principal Assistant U.S. Attorney. In this talk, he declared that the minimum mandatory sentences were so draconian that the constitutional right to a jury

trial were in jeopardy. "Few defendants want to risk the stiff sentences if convicted at trial and will plead guilty to a lesser sentence instead," he said.

He is proud that the College took an active role on this issue by preparing white papers, which were "well done and effective." Ultimately, as a result of litigation, the mandatory guidelines became advisory. This returned a significant degree of discretion to the district courts although, as a practical matter, some trial judges still tend to treat the guidelines as mandatory and are hesitant to depart from them. He noted that the courts are still "working their way through these issues," but he believes the College's work both before and after his term as President was an important part of this evolving process.

He also is very proud that the College has been, and continues to be, effective in working to improve the professionalism of trial lawyers in the framework of the adversarial process, while still ensuring that they provide the most effective representation of their clients. "To its credit," Silbert said, "the College is expanding its teaching programs, especially for public interest lawyers. In this way too, the College has furthered its mission of advancing the administration of justice."

WATERGATE: "THE MOST CHALLENGING CASE OF MY CAREER"

Before becoming President of the College, Silbert had a chance to observe and address first-hand issues of professionalism of lawyers, including prosecutors. In 1972, as the newly named Principal Assistant U.S. Attorney for D.C., he served as the lead prosecutor for the 1972 Watergate break-in case. He said it took him only a few days to realize that, as a career prosecutor, he had to "remain non-partisan in an extremely partisan environment….I had to walk a non-political line in a monumentally political case. I told friends of mine at the time, 'I am not going to come out of this in one piece.'"

The prosecution was, to say the least, controversial. He explained: "Some Republicans thought I was worse than Attila the Hun. Some Democrats thought I was dragging my feet. What I tried to do was to be fair to all persons involved in the investigation, from the burglars to the White House."

Decades later, he still describes it as "the most challenging case of my career. Stories still abound about this case, books have been written, and Watergate is definitely not forgotten." He now is writing an account of the Watergate prosecution, using his journal from 1972 to 1973. He hopes this account will be the as yet untold story and missing piece of Watergate history. He shared with the *Journal* one story about the beginning of the Watergate saga.

> On the night of the break-in, the Watergate burglars had stationed a look-out in the Howard Johnson motel across the street from the Democratic National Committee office in the Watergate. He was supposed to warn if anyone was coming to the offices. It was a Friday night, however, and the intended look-out became absorbed in a horror movie on TV in his hotel room. He was not paying attention, ▷

then, to the Watergate building when three plain clothes officers went there to investigate a call advising there was a problem. As a result, the police entered the building without being noticed, because the supposed look-out was not looking out and failed to give his cohorts the expected warning that the law was on the way.

One only can wonder how events might have unfolded had the look-out left the TV off and done his job. Watergate might have been a common, unsolved break-in, with no effect whatsoever on the Nixon presidency, rather than a defining presidential event.

Another "stand out" case Silbert talked about was his representation of Judge Griffin Bell. Judge Bell was sued for defamation arising out of a report he prepared and distributed of an internal corporate investigation he and his law firm conducted. He was sued by a middle manager. The suit was filed in D.C. and demanded a jury trial. Judge Bell retained Silbert. "It was quite an honor; I had known him when he served as Attorney General and I was the U.S. Attorney for D.C.

"I was under tremendous pressure to win in this highly publicized case. But Judge Bell charmed the jury. After a three week trial, the jury–in less than two hours–found Judge Bell not liable of all the charges. What a relief! Judge Bell never tried to tell me how to try this case. He intensely disliked being a defendant in a court case, but he never attempted to play lawyer for himself.

"Judge Bell had been a President of the College in the mid-eighties. He and I remained good friends and I enjoyed his company immensely at ACTL meetings for many years. I considered him a fine mentor. I last saw him while he was on dialysis shortly before he died. That was a great loss to me."

LIFE OUTSIDE THE PRACTICE OF LAW

He continued in our conversation with thoughts outside of the practice of law. "Aside from my law firm work I have been active in several philanthropic and legal organizations. I have been a part of The Fishing School in Washington, D.C. for twenty years; I'm currently vice-chairman of the board and vice-chair of the board of directors. This nonprofit was founded by an ex-police officer, Tom Lewis, who felt a great need to help D.C. underprivileged kids. The school is an after-school program to supplement and give a leg up to kids who need some academic help. We started small and now, with a new building and larger budget, we work with kids in the schools, after school. Twenty years is a long time to work with one organization, but the spirit there and the success of our work has been most gratifying to me."

He served as President of the Council for Court Excellence in D.C. for six years, an organization that works to improve the administration of justice in the courts and also helps with issues involving legislative and executive branches of government. For example, it works to help "returning citizens," people coming out of jail, to integrate and form new lives. Also, it published a handbook in English and Spanish to help guide people negotiating the court system for juveniles.

Despite his busy professional life, Silbert found time over the years to play both hockey and tennis. He has cut down on some of those sports, but regularly walks the neighborhood with his dog. In the summer, he and his wife, Pat, spend two months at their house in New Hampshire, where they have been spending time each summer for over forty-five years.

"Every year we looked for a house on this lake while staying with relatives. There never was a good enough place. Almost twenty years ago, Pat found the house. It was an old mess, depressing, needing lots of work. She loved it. I told her that I didn't want to see it again until she had finished fixing it up and furnishing it. In a year, she took care of the whole thing and I now enjoy the fruits of her labors."

The summer home is near their eldest daughter and her family, so their grandchildren often visit, as do as their younger daughter, friends and relatives. He is able to work up there. Pat paints, gardens, cooks, kayaks, swims and "all relax."

The Silberts still always have time for College activities, which remain an important part of their life. They look forward to spending time with friends made in the many College meetings they have attended. The College truly is fortunate to have them involved in it.

Sylvia H. Walbolt
Tampa, Florida ■

WAR STORIES FROM FELLOWS

Below is a continuing series in the *Journal* featuring war stories from our very own Fellows. These stories will feature something a Fellow did or something that happened to a Fellow during a trial.

Please send stories for consideration to editor@actl.com

THE HAZARDS OF IN-COURT DEMONSTRATIONS

On a bitterly cold day in January 2004, I had the pleasure of witnessing a moment of which many attorneys only dream. My colleague and I had just spent several days in front of a jury presenting evidence that a loving wife and mother, who went into the hospital for an elective caesarean section, had been killed during the procedure by the negligence of an anesthesiologist. In short summary, a nurse anesthetist had attempted to place a "spinal block" but failed to do so. The anesthesiologist arrived, and hurriedly performed the procedure. The otherwise healthy victim was injected at approximately 8:20 am, and was dead by 8:30 a.m. It was discovered on autopsy that the anesthetic injected in her was in her bloodstream, and none of it in her cerebral spinal fluid where it was supposed to be placed. The defense argued that her death was triggered by "natural causes," essentially arguing that that was the date and time on which she would have died had no injection occurred. In the end, the doctor ended up being his own worst enemy.

As anyone who has undergone a "spinal block" knows, the anesthesia is injected through a small needle that is put into the lower region of the patient's back. The anesthesia itself must be carefully injected under the skin into the space surrounding the spine, where the cerebral spinal fluid ("CSF") flows. It is called the "subarachnoid space." The anesthesiologist's job is to "feel" which space the needle is in before injecting the anesthesia. There are specific steps that a doctor administering a spinal block should take to be safe, but one of the most important is for the doctor to slightly pull back the plunger of the syringe once he believes he has guided the needle into the proper location. CSF is clear, so if no color comes back into the syringe after pulling back the plunger, the doctor is in the right space and he can safely inject the anesthesia. However, if the doctor has mistakenly placed the needle in a blood vessel, he may see fluid with a red or pink tinge returned when he pulls back the plunger, at which point he should stop because he may be in an artery or vein next to the spine.

A spinal block that is misplaced can be deadly, as it was in our case. Our healthy, athletic female victim went into cardiac arrest within ten minutes of the injection of anesthesia. She could not be revived. By some miracle, her baby boy was able to be delivered and had no medical complications associated with the spinal block.

The crux of our case against the anesthesiologist was that he had not exercised the expected and requisite degree of care when he performed her spinal block and injected the anesthetic into a vein rather than the CSF.

The case went to trial. We presented the jury with evidence that after the nurse anesthetist failed to properly place the spinal, the defendant doctor hurried into the operating room, was rushed and failed to retract the plunger so that he could recognize that the needle was not in the CSF fluid. The best evidence we had was the fact that the patient died so quickly after the injection and was unable to be revived, which was consistent with what one would expect when a cardiotoxic substance (like this anesthetic) is injected into the blood stream. Moreover, on autopsy we were able to show that the injection site was a bloody mess under the skin, and there was no anesthetic in her CSF; all of it was in her bloodstream. And then it happened.

At the defendant doctor's insistence (and no doubt against the wishes of his counsel), he decided that he would demonstrate the skill that he brought to bear on the procedure by giving an in-court demonstration of how the procedure was performed. He brought into the courtroom an identical anesthesia tray as was used during the procedure when the victim died. The doctor approached the jury to demonstrate his "skill," tearing open the tray of anesthetics and needles. He broke open the ampoule of anesthetic, drew it up into the syringe and started to demonstrate to the jury how he placed the back of his hand against the patient's back so he could feel any movement from the patient. From then on, the demonstration was surreal.

Midway through showing the jury how carefully he claimed to have administered the anesthetic to the victim, the defendant doctor pressed down the plunger of the syringe containing the anesthetic and squirted the anesthetic on some of the jurors sitting in the front row. The jury was surprised and more than a little concerned – one actually asked after being squirted, "Is this stuff going to hurt me?" Because the case was being reported on the local news every night, a video of the event was made, and a still photograph of the precise moment he sprayed the jury was captured. The fluid can be seen against the American flag. Defense counsel was dumbfounded.

During closing argument we were able to remind the jury of the skill the doctor brought to bear on this tragedy – we had all witnessed it firsthand. The widower and his children were awarded $6,691,422.

James E. Arnold
Columbus, Ohio

"MEETING MR. WRIGHT"

Three years out of law school I was appointed to represent Walter Wright, then incarcerated, in connection with his post-conviction petition. We all hope to find that our new client is a completely innocent guy who has been victimized by the system. But, alas, we must play the cards we are dealt. The case started out looking like a sure winner, then looked like a sure loser.

The underlying crime was all too prosaic. Two guys hold up a bar; one has a gun; "nobody is supposed to get hurt"; the guy with the gun gets jittery and shoots and kills the bartender. Wright was the other guy. Wright said he had withdrawn from the conspiracy to hold up the bar moments before the shooting. Not an easy defense. Wright was convicted by a jury of murder in the first degree and given a sentence of life imprisonment. The Pennsylvania Supreme Court reversed and granted a new trial, ruling that the prosecution had improperly cross-examined Wright about evidence that had been suppressed by the trial judge.

On the day Wright's new trial was to commence, there was an on-the-record colloquy in which the trial judge cautioned Wright that if he were to go to trial and be convicted, he ran the risk that this time he might get the death penalty. Following that colloquy, Wright pled guilty in exchange for a sentence of 9-to-20 years.

In January 1970, Wright filed a post-conviction petition alleging that his plea had not been knowingly and intelligently entered because, contrary to the trial judge's caution, having once been convicted and sentenced to life, he could not as a matter of constitutional law be given the death penalty if convicted again.

Soon after being assigned the case, I huddled with Tom Carroll, a real criminal defense lawyer (and later a Fellow of the College). Tom's reaction: "You have a winner! See *Commonwealth v. Littlejohn*."

Tom was right. In *Littlejohn*, the defendant was convicted of first degree murder and sentenced to life. He filed post-trial motions but then withdrew them because his lawyer told him that if he won a new trial, this time the result might be the death penalty. Years later the defendant filed a petition contending that, having been sentenced to life at his first trial, he could not, as a matter of constitutional law, be given the death penalty at a new trial. He argued that his withdrawal of post-trial motions because of fear of the death penalty was not a knowing and intelligent waiver of his right to appeal. The Pennsylvania Supreme Court accepted that argument and so held.

The same principle, it seemed, should apply to Wright's decision to forego his right to go to trial and, instead, to plead guilty. The case was a sure winner.

But then things went wrong with the law. In May 1970, the U.S. Supreme Court decided *U.S. v. Brady* and *North Carolina v. Parker*, which appeared to cut the legs out from under *Littlejohn*. In both cases, the defendants contended that they pled guilty because they were charged under statutes that removed the risk of the death penalty if they pled guilty rather than exercised their right to a jury trial. After those statutes were found unconstitutional, the defendants petitioned to revoke their pleas. In both cases the U.S. Supreme Court affirmed the denial of the defendants' petitions. The obvious question: what, if anything, was left of *Littlejohn*?

As if that wasn't bad enough, things then went wrong with the facts. When I first interviewed the defense lawyer who represented Wright at the time of the now-challenged guilty plea, he said that he had separately given Wright the same caution as the trial judge, that is, that the net result of a new trial might be the death penalty. I later learned that defense counsel had flipped and was now going to testify just the opposite, that is, that he had told Wright in a private conversation before the on-record colloquy that he could not be given the death penalty at a new trial.

At that point, the case looked like a sure loser.

The hearing went in predictable fashion. I relied on the on-record colloquy preceding the guilty plea and *Littlejohn*. The ADA relied on defense counsel's revised account of the advice he had supposedly given Wright before that colloquy and on *Brady/Parker*. I thought I did a good job of cross-examining defense counsel as to why, if he had really given such advice, he did not speak up when the judge told Wright just the opposite. And I argued that *Brady/Parker* were distinguishable from *Littlejohn*. More about that below.

Relying on original defense counsel's implausible testimony and the all-too- plausible *Brady/Parker* cases, the trial judge denied our petition. I appealed.

By the time of the Supreme Court oral argument, after months of wrestling with the cases, I had developed and felt comfortable with an argument that *Brady/Parker* were distinguishable from Littlejohn (and Wright's case) because different questions are involved where the court must determine whether a guilty plea was voluntarily entered (the key issue in Brady/Parker) as distinguished from whether it was knowingly and intelligently entered (the focus in Littlejohn). The distinction gave me a toehold. My hope was that I could persuade Justice Samuel Roberts to accept that distinction. Justice Roberts had taken a special interest in the then steady stream of cases from the U.S. Supreme Court expanding criminal defendants' rights. He was sometimes irreverently but fondly referred to by the criminal defense bar as "Freedom Sam."

Barely a minute into my oral argument, Justice Roberts leaned forward to ask a question. I expected support, but the Justice was not buying my effort to distinguish *Brady/Parker*. Still, in spite of an unrelenting barrage of unfriendly questions from, of all people, Justice Roberts, I managed to maintain my toehold. Finally, with about two minutes left I managed to say, "I know *Littlejohn* is still good law because, after the *Brady/Parker* cases were decided, this Court followed *Littlejohn*." And I cited the case. With that, Justice Roberts leaned back and ended the grilling.

What I said was true. During the several months between the date Brady/Parker were handed down and the date of my argument, the Pennsylvania Supreme Court had followed Littlejohn. But, since that opinion did not even mention Brady/Parker, it seems likely that the ADA involved in that appeal had not called the Court's attention to those cases. That would not be so surprising because, back then, new cases were not instantaneously available as they are today. Although my oral argument ended on a positive note (with the reference to the case in which the Court had followed Littlejohn), the overall tenor of the questioning was so skeptical that it was hard to be optimist.

Five months later the Supreme Court handed down a unanimous opinion in favor of Wright! It sent the case back for a new trial. In its opinion, the Court accepted that Littlejohn was still good law on the basis of the distinction argued, and dismissed the testimony of Wright's trial counsel as "evasive in material part."

Following remand, I filed a motion arguing that, if convicted again, Wright could not be sentenced to more than nine to twenty years, the sentence he received following his now-vacated plea. The argument was a variation on Littlejohn: if a defendant given a life sentence could do no worse on retrial, then a defendant given a nine-to-twenty year sentence could do no worse on retrial. Motion granted.

Then a new motion to suppress. The background: Wright was arrested hours after the crime. The police asked his permission to go to his apartment and ask for any shoes that belonged to him. It was raining at the time of the robbery and they were hoping to find a pair of wet shoes. Wright gave permission. ▷

As the two police officers stood outside Wright's apartment, one of them, Officer McGill, got an idea. When Wright's wife answered the door, McGill said, "Your husband has confessed, and he says to give us the stuff." Both parts of that statement were false: Wright had not confessed and he had not said that his wife should "give [the police] the stuff." Based on that false statement, Wright's wife gave McGill a child's doll, inside of which was $120, half the proceeds of the robbery.

McGill went back to the police station, walked into the room where Wright was being interrogated, and held up the doll. Soon after, Wright gave an inculpatory statement.

Before Wright's first trial, his original defense counsel was successful in getting the doll and the cash suppressed because they had been obtained on the basis of false misrepresentations to Wright's wife.

My new motion sought to suppress Wright's inculpatory statement as "the fruit of the poison tree," because it was the direct result of McGill showing Wright the illegally obtained doll.

A second basis for the motion became the focus of much of the testimony at the hearing. Wright claimed that, after holding up the doll, McGill told him that they had his wife at the station, and that if he did not confess, they would bring charges against her.

At the suppression hearing the ADA went first. He put up Officer McGill to show that Wright's statement was knowingly and intelligently made. During his testimony, McGill described bringing Wright's wife to the station, and said that, soon after he held up the doll to Wright, he told him that they had his wife "in custody."

That sounded pretty good for our side. But, not being smart enough to leave well enough alone, on cross I asked, "You told Mr. Wright that you had his wife 'in custody'?" "Yes," said McGill.

The ADA figured that did not sound too good for his side so he asked McGill directly, "What did you mean when you said you had his wife 'in custody?'" McGill replied, "I just meant that she was there in the building."

My turn. Sometimes, when the unexpected happens (as with McGill's testimony that "in custody" meant only "there in the building"), the next question seems to come from out of nowhere. This was one of those times. So, I asked, "Officer McGill, suppose I walk into the police station to report that my car has been stolen. Is it your testimony that since I am 'there in the building,' I am 'in custody?'" "Well," said McGill, "if your wife happened to telephone the station at that very moment, I might very well tell her that we had you 'in custody.'"

With that, the trial judge, who wore a green eye shade and sat hunched over a large pad while taking copious notes, sat bolt upright and looked at McGill with incredulity. This time I had the good sense not to say another word. (It's the only time my wife Pat has made her way into a trial transcript.)

The judge granted the motion to suppress the statement as the fruit of the poison tree. He said nothing about the second ground, the threat to bring charges against Wright's wife, but I have always thought that the judge's reaction to McGill's testimony tilted things our way.

The case was set for trial. Although Wright's statement, the doll and the cash had all been suppressed, there was one key witness left: Wright's alleged coconspirator, the shooter. He was incarcerated on a life sentence. I met with him twice. The account he gave, if true, was very troubling: Wright was "in it at the beginning, in it in the middle, in it at the end." But the shooter vacillated as to whether he would testify, first saying that he might, then that he would not. My guess was that he would end up testifying. Doing so might help him if and when he sought to commute his life sentence to a term of years. I had nothing to offer.

From the start, every ADA with whom I dealt told me that there would be no deal, and that, no matter how many motions I won, Wright was going to be convicted all over again, and would end up right back where he started. So, I was surprised when, just before the start of the trial, the ADA told me that he would agree to a sentence of time served if Wright pled guilty.

Had the shooter refused to testify? It didn't matter. By this time Wright was out on parole and starting to chafe at the restrictions that carried. He had ten more years of parole ahead of him, during which time he would be subject to re-incarceration in the event of a parole violation. The proposal was the proverbial offer that could not be refused. The judge imposed the agreed-upon sentence, and Wright walked out of the courtroom with no restrictions.

End of case.

Dennis R. Suplee
Philadelphia, Pennsylvania

WE ARE NOT FINISHED YET: DISCOVERY REFORM IN CANADA AND THE UNITED STATES

The author is grateful for the assistance of Maura R. Grossman, a research professor in the School of Computer Science at the University of Waterloo as well as an e-discovery attorney and consultant in New York City. She is a noted author on the subject of technology-assisted review.

"We are not finished yet." With those words, former Colorado Supreme Court Justice Rebecca Love Kourlis concluded her acceptance remarks after receiving the Samuel E. Gates Litigation Award from the American College of Trial Lawyers in September 2016 at the Annual Meeting in Philadelphia.

This article highlights the state of discovery reform, both in Canada and the United States, with an emphasis on the continuing cost of the most significant part of documentary production: e-discovery.

The challenge in both countries will continue to be that rules alone will not achieve the reduction in time and cost associated with the discovery process, essential for preserving the civil justice system. The pace of technological change, which affects the retrieval, availability and production of digital information, is such that, without clear principles which are understood and accepted by lawyers and their clients, rules may complicate rather than solve discovery problems.

Lawyers need to know how and to what extent technology can assist in the discovery process. In the United States, the comments to the American Bar Association (ABA) Model Rules of Professional Conduct addressing attorney competence were amended in August 2012 to state that "[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of … the benefits and risks associated with relevant technology."

DISCOVERY OBLIGATIONS DISTINGUISHED

The U.S. *Federal Rules of Civil Procedure* provide that a requesting party is entitled to receive from responding parties documents in their possession, custody and control that are relevant and proportional to any party's claim or defense, which the requester asks for with specificity. The cost of production is generally borne by the responding party.

In Canada, in general terms, with the exception of Quebec, each party may be required to supply an affidavit of documents attesting that all relevant documents in its possession and control have been listed. In theory, the requesting party is obligated to pay for the cost of production.

In both Canada and the United States, exceptions are made for various kinds of claims of privilege. Under both regimes, issues of identification, preservation, collection, processing, review and production of electronically stored information (ESI) arise in a rapidly changing world where forces outside the particular litigation that involve privacy, confidentiality, parallel proceedings and often multiple jurisdictions may affect discovery obligations.

Document review is the most costly part of the discovery process.

DISCOVERY REFORM IN THE U.S.

It is not possible in such a brief article to detail the many efforts being made in the United States to advance discovery reform, so this article will focus on three of the more prominent areas.

Pilot Projects

The award that Justice Kourlis accepted on behalf of her team represented the culmination of the work she initiated in 2009 and concluded in 2014, with ongoing results. Her task force recommended the establishment of several pilot projects, a number of which have come to fruition, adopting the following major principles:

- that a single judge be assigned to manage each case from commencement through to trial;
- that a firm trial date be set early in the process; and
- that an early and mandatory identification and exchange take place of those documents counsel know will likely be used at trial.

The goals of the pilot projects appear to be working in a number of states, although some counsel still resist locating and producing, at an early stage, those documents they know will likely be used at trial – particularly when they are not helpful to the responding party's cause. Apparently, "hiding the ball" of "bad documents" is still regarded by many as an acceptable tactic.

Without a firm timetable, there is often a lack of incentive for at least one side in litigation to cooperate, such that discovery often becomes an end in itself.

U.S. Federal Rule Changes

In December 2015, amendments to the U.S. *Federal Rules of Civil Procedure* came into effect regarding discovery obligations. As revised, Rule 26(b)(1) permits a party to obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence to be discoverable.

Commentary has explained that the revisions do not change the existing responsibilities of the parties and the court to consider proportionality but, rather, were intended to send a message about the need for reductions in cost and delay.

Among other things, U.S. Federal Rule of Evidence 502, enacted in 2008, addressed waiver of privilege in the event of inadvertent disclosure, when the privilege-holder took reasonable steps to prevent such disclosure and took prompt measures to rectify the error.

Guidelines

Recent U.S. case law has emphasized the importance of proportionality in document discovery, addressed the specifics of preservation and encouraged the use of technology in the e-discovery process. Guidelines and principles, available from various sources, have become increasingly more important to meet court expectations in this respect.

Prominent among those promoting guidelines and principles is the *Sedona Conference*, which continues to produce commentaries on various aspects of e-discovery, both in the domestic U.S. context and in connection with international and cross-border issues. As well as providing practical assistance to lawyers and their clients for dealing with e-discovery issues, the *Sedona Guidelines and Principles* have increasingly been accepted by the courts as authoritative guidelines for resolving disputes in that area.

In a recent report from the College, in association with the Institute for the Advancement of the American Legal System, titled *Working Smarter, Not Harder: How Excellent Judges Manage Cases*, interviews with leading state and federal judges focused on how active case management and the application of proportionality can efficiently and effectively ensure a proportional process to resolution, including trial. Cooperation, communication and a firm timetable are key elements in that process.

CANADIAN DISCOVERY REFORM

The *Sedona Canada Principles*, following those in the United States, were first published in 2008 and followed the report of an Ontario Task Force on e-Discovery.

The principles were incorporated into the *Ontario Rules of Civil Procedure* in amendments in 2010, which included two new Rules: Rule 29.1, which imposes an affirmative obligation on the parties to agree to a discovery plan; and Rule 29.2, mandating proportionality in discovery. Rule 29.1 requires that, "in preparation of the Discovery Plan, the party shall consult and have regard to … *The Sedona Canada Principles Addressing Electronic Discovery*."

In Ontario, it has been held that failing to comply with the *Sedona Canada Principles* is a breach of the *Rules of Civil Procedure*. Those principles have come to play a prominent role in Canadian civil procedure beyond Ontario, not as a set of national rules but as guidelines and best practices that can assist parties and judges in deciding how best to manage discovery in a range of circumstances.

The *Sedona Canada Principles* (second edition, February 2016) were updated not only to reflect the 2010 Rule changes in Ontario, but also to provide reference to process changes in other provinces, including changes in practice related to the growing use of technology both in providing additional sources of access to ESI and in helping to lower the cost and time of its preservation and production.

The Uniform Law Conference of Canada, building on the *Sedona Canada Principles*, has undertaken a project to propose common e-discovery rules across the country.

Hryniak v. Mauldin

In a 2014 decision, the Supreme Court of Canada took the opportunity to discuss the role of proportionality in the Canadian civil justice system and emphasize the need for a shift in legal culture to maintain the goals of a fair and just process that results in a just adjudication of disputes.

The decision itself was an appeal of a summary judgment motion, but the court dealt with the developing consensus that an extensive pre-trial process no longer reflects modern reality and a new and proper balance requires proportionality in process and a procedure for adjudication in a timely and affordable way. To date, the decision has resulted in a lively debate about just what proportionality means in practice.

Case Management

Active case management is alive and well across Canada, although to a limited extent in some courts and with some judges, including those of the Federal Court of Canada. Availability of case management is often confined to large commercial cases with urgency or potentially long and complicated trials.

A recent paper from the Canadian fellows of ACTL, *Working Smarter but Not harder in Canada: The Development of a Unified Approach to Case Management in Civil Litigation*, urges more widespread availability and implementation of active case management to assist not just with discovery but with the entire process, including trial.

In the busiest jurisdictions, two major issues impede access to effective case management. The more important one is resources. There are simply not enough judges assigned to civil cases who are willing, or who have the time or administrative assistance, to do the job as necessary. Those judges who have civil duties must be aware of the priorities that criminal and family cases take in the justice system. Far-off motion dates for discovery-related issues impede the ability to fix a trial date. And, once that date is fixed, the parties may find themselves waiting many months, or years, for the trial itself. As a result, many issues of documentary production are solved by further costly production as a way of moving the case forward.

In addition, there is insufficient administrative assistance to enable most judges to work efficiently. Compounding the problems with judicial resources are those lawyers and clients who feel that their best interests are served by the delay. In many of those cases, proportionality is simply illusory.

WHERE DO WE GO FROM HERE?

Change in legal culture moves slowly both in Canada and the United States. At the same time, resources allocated to deal with civil cases continue to diminish. There are lawyers–and sometimes clients–in both countries who may welcome the absence of access to judicial assistance in civil cases and appear impervious to the idea of the matter actually getting to trial or of the cost of delay. These lawyers are not interested in using technology that might lower the cost or expedite the process of production.

Some lawyers and firms thrive on–indeed, profit from–a first-pass, page-by-page review by junior lawyers or clerks, followed by a second-pass review by a senior lawyer of documents that have been printed from an electronic source for that purpose, seemingly without considering how long the process might take. Such activity has provided a profit center for many firms at higher and higher hourly rates.

The litigation world is changing. Increasingly sophisticated clients who have become aware of what advanced-search technology can do to reduce the burden and cost of disclosure are demanding better service from counsel or turning to other means of dispute resolution to produce faster and cheaper results. This trend occurs in all kinds and sizes of cases.

In a brief period, we have moved from litigation that included a very few hard-copy documents and oral recollections to a process in which the culling of digital information from an increasing number of sources and devices has become the norm. Greater use of technology and cultural change in the legal profession will be required to respond to the increasing sources and volume of digital information.

In a growing number of cases–in the United States, the United Kingdom, Ireland and Australia–courts have approved the use of technology-assisted review (TAR, also known as predictive coding) as a reasonable means of reviewing ESI for production. The justice system cannot afford to continue to resort to antiquated methods for the search and review of ESI, nor can it tolerate counsel who refuse to learn about and avail themselves of reasonably accessible technology to reduce the burden and cost of e-discovery.

We also see a growing use of early mediation, where knowledgeable lawyers help their clients recognize that the production of essential documents and an early opportunity to discover whether there is common ground with the other side is preferable to costly discovery disputes. Even in cases where there is no settlement, issues can be narrowed.

QUIPS & QUOTES

The justice system cannot afford to continue to resort to antiquated methods for the search and review of ESI, nor can it tolerate counsel who refuse to learn about and avail themselves of reasonably accessible technology to reduce the burden and cost of e-discovery.

Clients in both large and small cases are taking greater control of the information governance and e-discovery processes. In large institutions and corporations, more work related to active records management and e-discovery is being done in-house. For smaller entities, clients are choosing to represent themselves to avoid the cost of lawyers.

To maintain a viable civil justice system, lawyers will have to recognize that good advocacy can encompass co-operation and communication instead of all-out warfare at any cost. Proportionality is the focus of rules and guidelines in both Canada and the United States. And cooperation has become the hallmark of proportionality.

With the prescription in *Hryniak* and the cases that have followed in Canada, as well as similar decisions in the United States, perhaps more cases with narrowed issues can go to trial and many more be settled much earlier in the process. In the United States, much is being achieved by those judges willing to take an active role in case management and familiarizing themselves with the issues surrounding e-discovery.

The framework for change of civil justice has been set. However, as noted by Justice Kourlis, more needs to be done to finish the task of changing the legal culture.

The Honourable Colin L. Campbell, Q.C.
Toronto, Ontario

A full version of this article with footnotes is available on the College website, www.actl.com.

67TH ANNUAL NATIONAL MOOT COURT COMPETITION

Law student teams from Wake Forest and Ohio State competed for the College's coveted Davis Cup trophy and other prizes in the final round of the sixty-seventh annual National Moot Court Competition, held February 2, 2017 at the New York City Bar Association building in Manhattan. The final championship round followed more than five months of preparation and arguments by 185 teams from over 120 law schools across the country. The top two teams from each of fourteen regional competitions advanced to the February final rounds in New York City.

After an hour of superb arguments by both teams, Wake Forest University School of Law prevailed, sweeping honors for best team, best brief and best oralist, awarded to Wake Forest's Mia Falzarano. Her teammate Blake E. Stafford (also the primary brief writer) was selected as runner-up for best oralist. Matthew Cloutier rounded out the Wake Forest championship team, coached by Professor John Korzen. As the winner, the school was also presented the Fulton Haight Award of $2,500.

The Ohio State University Moritz College of Law took second place overall honors, along with the award for runner-up best brief. Ohio State's team consisted of law students Sara Coulter, Audry Klossner, and Arlene Boruchowitz, and was coached by Professor Mary Beth Beazley. President **Bart Dalton** was one of six judges for the championship final round. He was joined by Hon. Raymond Lohier, judge on the U.S. of Appeals for the Second Circuit; Hon. Ellen Gesmer, Associate Justice, Appellate Division of the Supreme Court of New York State, First Department; Hon. Jenny Rivera, Associate Judge of the Court of Appeals, State of New York; Hon. Brian M. Cogan, Judge, U.S. District Court, Eastern District of New York; and John S. Kiernan**,** President of the New York City Bar Association and a partner at Debevoise and Plimpton.

Fellows participating as judges in the two semifinal rounds included Past President **Michael Cooper**, as well as Regent **Ritchie Berger**, former New York-Downstate Chair **Larry Krantz** and **David Weinstein** (Chair of the College's National Moot Court Competition committee).

The hypothetical appellate case involved two issues steeped in the internet era: (1) the constitutionality of a state's sales and use tax against an internet-based seller lacking a physical presence in the state, and (2) the scope of the "private citizen search" exception to the Fourth Amendment in the context of electronic devices.

The College co-sponsors this moot court competition with the New York City Bar Association. Past winners of the competition's best oralist award are Past President **Joan Lukey** and Weinstein. A list of winner teams in previous years' competitions is on the College's website at www.actl.com.

The winning Wake Forest team was introduced and honored at the North Carolina Fellows meeting held March 23-26 at the Inn on Biltmore Estate in Asheville, NC.

David B. Weinstein
Houston, Texas

FELLOWS WHO WERE WINNING TEAM MEMBERS

Carey E. Matovich (1980)
David B. Weinstein (1979)
Joan A. Lukey (1973)
Joe Thrasher (1969)
David R. Noteware (1965)
Bryan J. Maedgen (1965)
John C. McDonald (1960)
Walter E. Workman (1958)
Alfred H. Ebert, Jr. (1958) **
Howard F. Gittis (1957) **
J. Harold Flannery (1957) **
Patrick A. Williams (1956) **

**deceased

PERSONAL REFLECTIONS: NOT YET MOOT

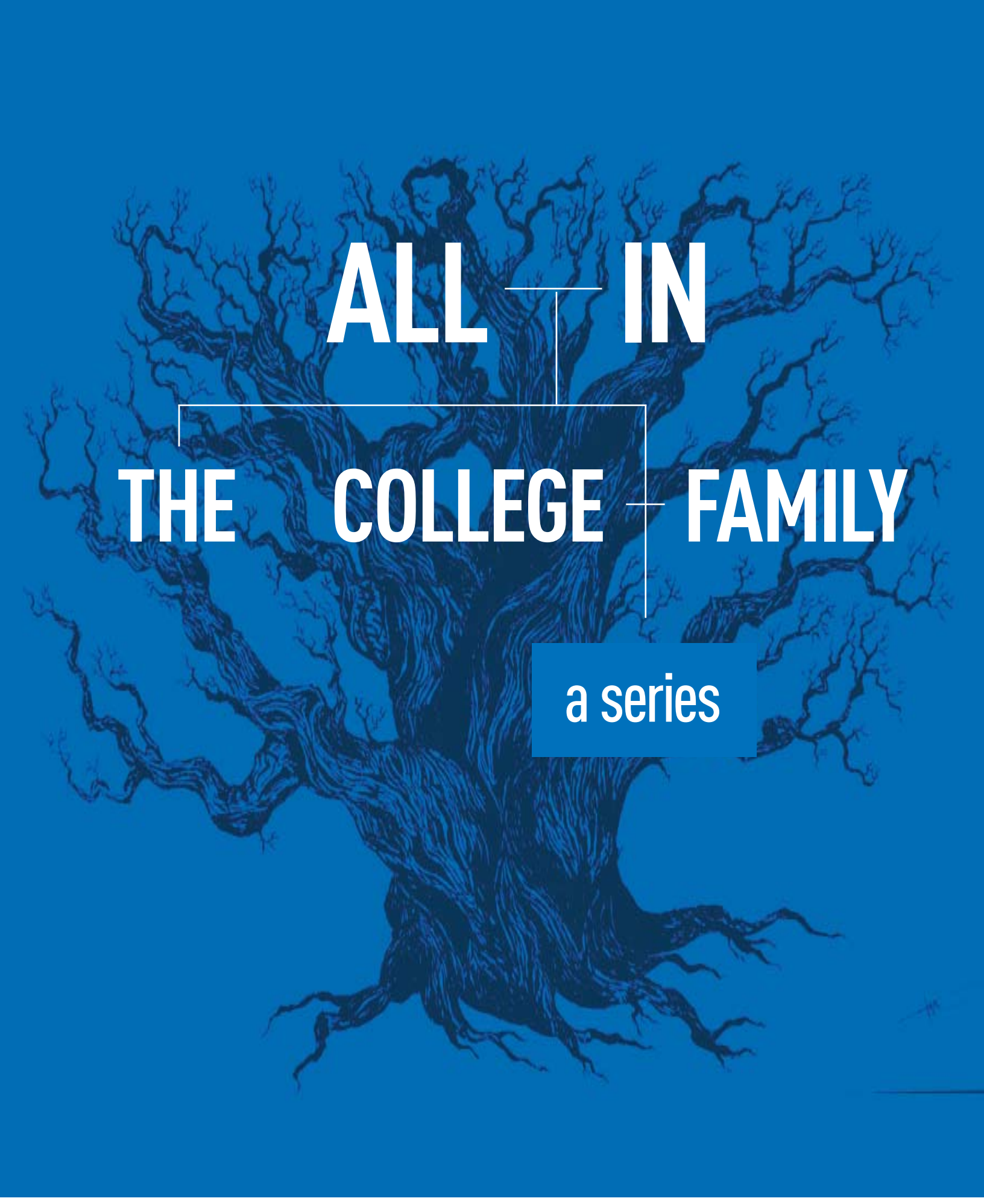
I participated in the Competition in New York on the team from Villanova Law School in 1954 and 1955 (or 1955 and 1956 depending on the time of the year). We were considered upstarts because we were the first class to matriculate at Villanova Law, which had opened its doors only in 1953. We won the Regional Finals in Philadelphia and went on to NYC for the final rounds. I really don't remember precisely what we did or how we fared in New York in each of those years and any documents that might have existed have, like me, faded with age. I do remember, however, one of the arguments at the Headquarters of the Association of the Bar of the City of New York (not then the "New York Bar Association"). It was against a team from Georgetown Law School (not then "Law Center") and their lead counsel was a blind student who argued from Braille cards. His team won the competition that year and he was selected as top oralist. We lost, of course. Although I am hazy about whether that loss was in the championship round or a preliminary round, I do remember the magnificent prizes: copies of *Wigmore On Evidence* and some other equally revered text with prize citations pasted inside the front covers. I don't know what has become of them in this anti-book era but for several years I kept them on my bookshelf in a place of honor between my autographed biography of Johnny Unitas and my well-worn copy of Allen Weinstein's great Hiss/Chambers book, *Perjury*. In any event, I remember the experiences with delight even though the details are lost to me. The best prize was the experience itself.

James P. Garland
Baltimore, Maryland

My 1980-81 team from the University of Maine Law School was "Berger, Black & Darrow," eliciting in the Northeast Finals a comment from Massachusetts Supreme Judicial Court Chief Justice Edward Hennessy, "How the hell did you come up with that law firm?!" We won the finals, probably due to our "law firm" name, and I was named Best Oralist (I still have the Lewis F. Powell Jr. medallion and the Tiffany bowl in my office).

We went on to the Big Apple but fell short. I can't remember who defeated us but just arguing in the Association of the Bar of the City of New York was a wonderful experience for this country kid.

Ritchie E. Berger
Burlington, Vermont


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 other Fellows. Perhaps there are others out there? If so, the *Journal* would like to know of any special relationships with other Fellows, as this is meant to be a continuing series.

THE KITCHELS:

Two marriage-related Fellows are **Chris Kitchel** and **Jan K. Kitchel,** who both practice in Portland, Oregon.

Chris has been a trial lawyer with Stoel Rives, LLP, in Portland, Oregon, for more than thirty years. She got her J.D. at Northwestern School of Law at Lewis and Clark College in 1981, and joined Stoel Rives in its corporate department that year. Chris had moved to Oregon in 1973, as a CPA, obtained her MBA and planned to get a doctorate in accounting before she took the LSAT on a fluke, did well, and decided to go to law school.

Jan started practicing as a civil defense lawyer after graduating from Willamette University College of Law in 1978. He recently switched to the plaintiff's practice, joining Cable Huston several years ago. Jan was the first in his family to go to college, let alone law school, but the law truly is a calling. Trial law was his first real love, not counting Chris.

Chris and Jan met after she had finished law school, and they were married in in 1982. Chris had one daughter from a previous marriage, and two more daughters followed quickly, in 1983 and 1984. Chris said Jan talked her into changing from corporate law to trial law. Jan said he really didn't talk her into the trial practice – she just saw what he did and decided it was far more interesting than corporate law

The two have always been a team, especially with family life. Back in the early '80s, law firms didn't provide parental leave. When Chris became pregnant, she was asked by her firm if she wanted to defer partnership. The answer was a quick "no." So with each child, Chris would take her three week annual vacation, and then continue to meet her 1,800 billable hour per year requirement.

At that point in time, cell phones and computers did not exist. Working from home was not an option. So they juggled. They would split Saturdays, with each parent working at his or her respective office for half days, and otherwise exercising good co-parenting skills to spend as much time as possible with the girls, while managing active trial practices. Chris said they kept the kids up late at night, as that was the only time they could spend time with them. Fortunately, in all the years the girls were growing up, Chris and Jan never had a trial at the same time. She was the organizer, and kept color-coded calendars so that they could keep track of all the different sports that each girl chose, and they made it to about ninety-five percent of their activities.

The daughters thrived on the busy home life/work environment, and their youngest, Molly (31 at the time of writing), chose the law as her profession; she has now been a trial lawyer about four years.

Chris and Jan never practiced together, but Chris said they "talk law all the time." Their practices and styles are very different, but they talk strategy and have fun. They have never competed, in life or in law, and purposefully stayed out of the others' area. Their offices (and that of daughter Molly) are all within a block. Chris and Jan drive to a gym for a workout nearly every morning, and then drive to work together.

What makes Chris an excellent trial lawyer? Jan said she is very thorough, uncovers all that can be discovered. She can integrate 1,000 different facts into a pattern, and she turns that pattern into a story.

Jan's ticket to success: he thinks he won his earlier trials because the jurors thought he was such a nice young man. He has always tried not to make bad tactical decisions, as he believes more trials are lost due to mistakes than any good decisions that are made.

Chris said the best thing about their marriage is that they are best friends. They collaborate a lot, and they never compete. For fun, they travel, hike, ski and golf, and both are huge readers. Both are adamant that while they talk law at home, there is never any competition. They give each other advice all of the time, as well as advising daughter Molly.

Sacrifices? Chris said there were none. She loved being a mom. She is also glad that she stayed with her career. For many years, she survived on four to five hours of sleep each night. She said she had a lot of options as a baby boomer, and took advantage of all of them. Life has been an incredible ride.

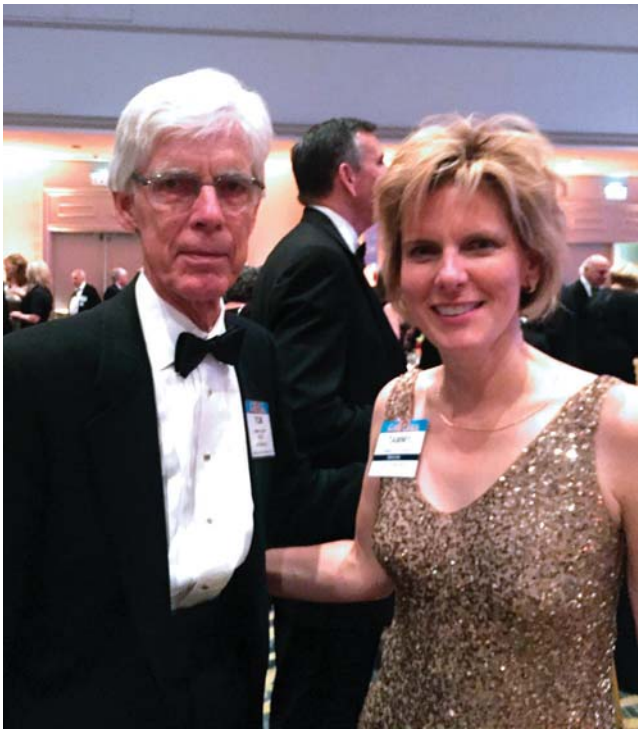
In 2011, Chris traveled to Kenya as part of a Lawyers Without Borders program, working with victims of sexual aggression and domestic violence, which she described as the single event that taught her the most about life. She said, "It had a profound effect on my perception of where I had value in my world – and where I did not, and forced me to evaluate what was important to me and what was not." Her two and a half months were incredible, as she attempted to assist the lovely, smart and strong women there whose world is "apples and oranges" from ours. She learned how incredibly blessed she is to be born as a baby boomer in the United States. "Although we obviously can do a lot to make life better here, I don't think we appreciate how much we have accomplished for women in one lifetime," she said.

The single event that taught Chris the most about law was the College's involvement in finding representation for the Guantanamo prisoners, and Jan's subsequent representation of one of them. What they learned is that "we, as lawyers, have to fight to make sure that our legal system remains ethical and true to its constitutional directives – if we do that, our justice system is the best around. And that we can make a difference."

Jan noted that the law is "a slow process of learning, and I learn something new with every case. I learn more on cases I lose." He also has learned that "trials are about the optics. The facts are not as important as how the clients, witnesses and lawyers come across."

What Jan most admires about Chris is her intelligence and perseverance. She can do anything she wants to do. Of course, he claims he learned that within half an hour of meeting her. What Chris most admires about Jan is his curiosity and ability to talk openly and candidly about pretty much anything and his sense of humor. And the way he tends to people he cares about.

TAMARA BEATTY PETERSON & THOMAS D. BEATTY:



Another set of related Fellows in the College is **Tamara Beatty Peterson** and her father, **Thomas D. Beatty**, both of Las Vegas, Nevada.

Talking to Tammy seemed an Atticus Finch/Scout moment. Her earliest memories of her father were not walks in the park or camping trips, but his taking her to a murder trial when she was just five-years-old. As they entered the courtroom, Tom carefully explained to her that this was a man charged with murder. When she asked what that was, he told her that was when you kill somebody. She blurted out – in front of the prospective jury, of course – "You mean this man killed someone?" At which point, Tom began explaining "reasonable doubt" and other legal concepts to her, simultaneously educating the jurors who could hear.

Tammy said that while she was growing up, Tom brought all of his cases to the family dinner table, and told her that if she wanted to be a good lawyer, she had to know a lot about a lot of things. As a teenager, there was always a level of competition, as she was always trying to outsmart her father. At one point her father tried to dissuade her from the law, but he would then talk about the law with such passion that she couldn't resist following his lead.

Other than interning for her father after her first year of law school, they have never practiced together. She believes he will practice forever. He is a solo practitioner; primarily in civil litigation, and his secretary has been with him as long as Tammy can remember, even typing reports for Tammy when in high school.

One significant moment for Tammy was when her younger sister (Jennifer Beatty Brinton) passed the bar and was sworn in as the third attorney in the family. Tom spoke at the ceremony and was introduced by a Nevada Supreme Court justice as an "architect of the law." Tom always thought Jennifer would be a psychiatrist, as with two lawyers in the family, he thought they would need one. She chose instead to follow her sister and father's careers, although her practice is primarily real estate and corporate securities law.

Growing up, Tom said he led an itinerate lifestyle, as his father was an aerospace engineer with short-term, high per diem jobs, which took him all over the country. His first twelve years of education occurred in twenty-four different schools, until he graduated from high school in Ogden, Utah in 1959.

He started college at Nevada Southern University, now UNLV, and graduated in June 1963, with a degree in history and a pre-law minor. He was then accepted at Hastings College of Law at the University of California, but he did not have enough money to attend. He worked for a year and then reapplied, and was accepted in 1964, graduating in 1967. Why law school? He explained, "I have a passion for justice – from both sides."

The year of his law school graduation carried a lot of other exciting events: He not only graduated from law school in June, but he was married July 1, took the bar in September, was admitted to the bar in October, and then drafted in November 1967. The U.S. Army decided he should be a military policeman, and he arrived at Fort Carson on April 18, 1968. Instead of training, he was put on duty immediately because Martin Luther King had just been assassinated. Thereafter, he was transferred to Germany, landing at Rhein-Main-Air Base in January 1969. When he arrived, and acknowledged that he was a lawyer, he was sent to the JAG, where he worked as an attorney, giving advice to Vietnam veterans.

After returning home, he had a short stint in private practice, but on April 6, 1970, he started work at the Clark County Public Defenders' office. He worked there as chief deputy and assistant public defender (number two slot) for nearly four years. Then, after a year writing the Nevada Review of the ABA Standards for Criminal Justice, he was the Assistant District Attorney for Clark County. In those days, he actually responded to homicide scenes. He left the public practice to join another attorney in civil practice, where they managed a civil mass tort disaster practice for insurance companies – dealing with the MGM Grand Fire and others, representing a plastic laminate manufacturer. He described himself as the "local yokel." He worked in mass tort defense for fifteen to twenty years, but also continued doing criminal defense.

He tried all sorts of matters, even an admiralty case involving a Bayliner that ran into an island in the middle of Lake Mead. The plaintiff had claimed the boat was defective because it was not crashworthy. Tom suggested resolution by placing a plaque on all boats, stating they were to be "operate[d] on water only."

In 1983, he became a solo practitioner, and in 1993, was inducted as a Fellow in the American College of Trial Lawyers in Washington D.C. He was ecstatic when Tammy was inducted in 2015.

Why are he and Tammy trial lawyers? "We wouldn't know what else to do." When you look back on life, the choices you could have made, the real question is are you satisfied with all you've done? The decisions you've made?" Tom wouldn't change a thing.

Carey E. Matovich
Billings, Montana ■

THE 42ND ANNUAL NATIONAL TRIAL COMPETITION — A BEAUTIFUL COLLABORATION

This past spring the American College of Trial Lawyers and the Texas Young Lawyers Association hosted the finals of the National Trial Competition in Fort Worth, Texas. Twenty-six teams from the fourteen regions arrived on March 22 with the hope of being crowned the 2017 National Champion at the awards banquet on Saturday, March 25. These teams were selected as finalists from over 150 teams that entered the regional competitions. Before getting to the results, some history is essential.

The National Trial Competition traces its origins to 1974 when Past President **David J. Beck** saw a need for promotion of trial advocacy at our nation's law schools. He approached the Texas Young Lawyers Association (TYLA) and asked it to establish the competition. TYLA agreed and left it to Beck. Working with his partner at Fulbright & Jaworski, **Kraft W. Eidman**, a Past President of the College, the concept was presented to the College in 1975 and approved by the Board of Regents.

The College and TYLA co-host the Competition and it is truly a beautiful collaboration. Commencing in January and February, teams compete in the fourteen regional competitions which are hosted by a law school in the region. The regional and final case problem this year was drafted by Fellow **Pamela Robillard Mackey**, who provided the student advocates interesting and challenging cases to present. TYLA works closely with the host schools on the hundreds of details to run a successful regional round.

The National Trial Competition Committee, together with liaison Fellows also work with TYLA and the host schools focusing on recruitment of Fellows, sitting judges and other experienced trial attorneys to serve as judges in the regionals. **N. Karen (Kay) Deming** served magnificently as Chair of the Committee for the past two years and was assisted by Vice Chair **R. Gary Winters** and Regent **Kathleen Flynn Peterson**, the NTC Regent Liaison.

In 2017, 263 Fellows participated in the regionals and judged an impressive 413 regional rounds. Some Fellows judged all five regional rounds and in many of the Regions a social event was held on Saturday evening for Fellows, spouses and guests. This is a very big effort but one that is very rewarding. The students appreciate having experienced judges and the feedback they receive is worth its weight in gold. The Fellows enjoy judging, have fun and get a chance to be together in the courtrooms and later at the social event. And for those lacking a good grasp of the intricacies of the hearsay rule and exceptions, judging refreshes that knowledge and helps keep a trial lawyer stay on their toes. A sincere thank you to all the Fellows who helped makes the 2017 competition such a success.

As Deming's term as Chair comes to an end, Fellow participation is at an all-time high and incoming chair Winters plans to make it even better.

"I am excited to follow Kay's extraordinarily successful tenure as the Chair, and am looking forward to taking Fellow participation at the regional competitions beyond 2017's historic levels. We are fortunate to have on the NTCC a group who are among the College's hardest working Fellows, committed to the training and development of the next generation of great trial lawyers. If you participated as a judge in the regionals, you know what a wonderful experience it is for the Fellows and the students. If you have not judged before, sign up for 2018. You will be glad you did," Winters said.

On to Fort Worth. Members of the NTCC usually arrive on the Wednesday before the competition, which allows a lively evening together and an opportunity to conduct a detailed review of the rules of evidence. Thursday morning, armed with this refresher, presiding and judging took place at the Tom Vandergriff Civil Courts building. Following these two Thursday rounds, a reception was hosted by ACTL for TYLA and all the teams. President **Bart Dalton** gave stirring opening remarks and the committee headed to dinner at Reata where refreshers were given on the rules of evidence.

The semifinal round occurred on Saturday morning, followed by a Texas barbecue luncheon to prepare for the tense final round. Traditionally presided over by the President, Bart Dalton took the bench and the entire committee served as scoring judges.

The National Champion and Best Oral Advocate are not announced until the awards banquet on Saturday evening and the competitors have to nervously await the results. At the awards banquet, President Dalton and Deming provided heartfelt and inspirational remarks about the College, the College's mission and the competition. All teams, even those eliminated on Friday, stay and attend the banquet. Each competitor is brought to the awards table; their name is announced and then they receive the Lewis F. Powell medal as a tribute to the accomplishment of being a regional finalist and reaching the national competition in Texas.

This year the Northwestern University Pritzker School of Law team of Douglas Bates, Garrett Fields and Stacy Kapustina received the champion's Kraft W. Eidman Award endowed by Norton Rose Fulbright US LLP, which includes $10,000 to the school and plaques to the team members. This was Northwestern's fifth national title, tying it with Stetson University for the most ever. The Georgetown University Law Center team of Amarto Bhattacharyya and Jordan Dickson received the runner-up award, with the school receiving $5,000 from Beck Redden LLP. The semifinalist teams from the University of California, Berkeley and University of Alabama received an award of $1,500 from Polsinelli.

The committee selects a single individual to receive the George A. Spiegelberg Award for Best Oral Advocate donated by Fried, Frank, Harris, Shriver & Jacobson. Amarto Bhattacharyya of Georgetown was selected to receive this prestigious award.

To the members of the National Trial Competition Committee, it is truly a labor of love. In addition to Deming, Winters and Peterson, members include **Joseph R. Alexander**; **Gloria A. Bedwell**; **Monte P. Clithero**; **Joseph C. Crawford**; **Tom Alan Cunningham**; **James M. Danielson**; **Don L. Davis**; **William B. Dawson**; **Eugenia Ehyerabide**; **Sally J. Ferguson**; **Timothy J. Gearin**; **John C. Hueston**; **Chris Kitchel**; **Larry H. Krantz**; **Pamela Robillard Mackey**; **Donald R. Morin**; **Susan Daunhauer Phillips**; **Clarence L. Pozza, Jr.**; **Orlando R. Richmond, Sr.**, **Hon. Karen S. Townsend**; **Sheryl J. Willert**; **Richard M. Zielinski**; and **Hon. Jack Zouhary**. It was particularly delightful to see the Committee so ably preside over the trials. "We are proud to serve on the committee and truly enjoy working on the success of the competition. We also know that our new Chair, Gary Winters is preparing those legendary committee emails which inspire us every week. We look forward to working on the 2018 competition and hope each Fellow participates in the Regionals rounds," Pozza said.

Clarence L. Pozza, Jr.
Detroit, Michigan ■

COMMITTEE UPDATES

REGION 12 HOLDS FIRST TRIAL SKILLS PROGRAM

With the help of many, many Fellows, the experimental First Region Twelve Trial Skills Program on Opening Statements at Suffolk Law School exceeded expectations by selling out. The one-day program had 147 participants for the small group workshops, with 160 participants for the large group demonstrations. **Paul Mark Sandler** spoke on Cicero, Rhetoric and the Harmonica for about fifteen minutes and actually played a few bars to the audience's delight. Maine State Committee Chair **Karen Fink Wolf** gave a presentation with movie clips on Openings in Hollywood, including *A Few Good Men*, *My Cousin Vinny* and a few others. Past President **Michael E. Mone** welcomed the attendees. Past President **Joan Lukey** and **Michael B. Keating** did the civil trial openings. **Peter A. Mullin** and **Pamela Robillard Mackey** spoke on criminal trial openings. Forty-five volunteer coaches from Region Twelve Fellows, some from as far away as Puerto Rico, were on hand for the small group workshops. The program included 4 presenters, 2 discussion facilitators and 3 judges all drawn from Fellows. Co-sponsorship and participation included members from the Atlantic Provinces, Connecticut, Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island. A number of donations to the Foundation allowed the price for the event to be at a low, affordable cost, which resulted in providing more than 70 full and partial scholarships, and covered related expenditures for the event. Leading up to the event, the program had weekly full or partial publicity for two months with program partners, the *Massachusetts* and *Rhode Island Lawyers Weekly*, publications that reach almost 25,000 lawyers each week. Distant traveler awards go to: Fellow **Maria Dominguez** from Puerto Rico; attendee Michael Blades of Nova Scotia; Fellow Paul Mark Sandler of Maryland and Fellow Pam Mackey of Colorado. Early feedback from participants includes many responses such as, "This was a great way for young attorneys to get an opportunity to practice trial skills, [an opportunity] which is disappearing" and "Wonderful program. Please do this again." Plans are already in the works for next year's program.

ALABAMA FELLOWS HONOR JERE F. WHITE, JR.

On November 11, 2016, the Alabama Fellows honored the life of Jere F. White, Jr. with a dinner and presentation of the Jere F. White, Jr. Trial Advocacy Institute. This all-day program was first held in 2012 and repeated in 2014. The program focuses upon the major components of a trial, beginning with voir dire and continuing through closing argument. Each segment is divided between the two Fellows who give their perspectives from the plaintiff and defendant's sides. The 2016 event was attended by over 300 attorneys and viewed as a great success. Alabama Fellow and noted civil rights attorney, **Fred Gray**, served as the luncheon speaker. Gray provided a touching commentary on his challenges in representing the underserved and the continued need for diversity in the legal profession. Among the participants for the seminar were President

Bart Dalton; President-Elect **Sam Franklin**; Past Presidents **Mike Smith**, **Chilton Varner**, **Warren Lightfoot**; and Regent **Rufus Pennington**.

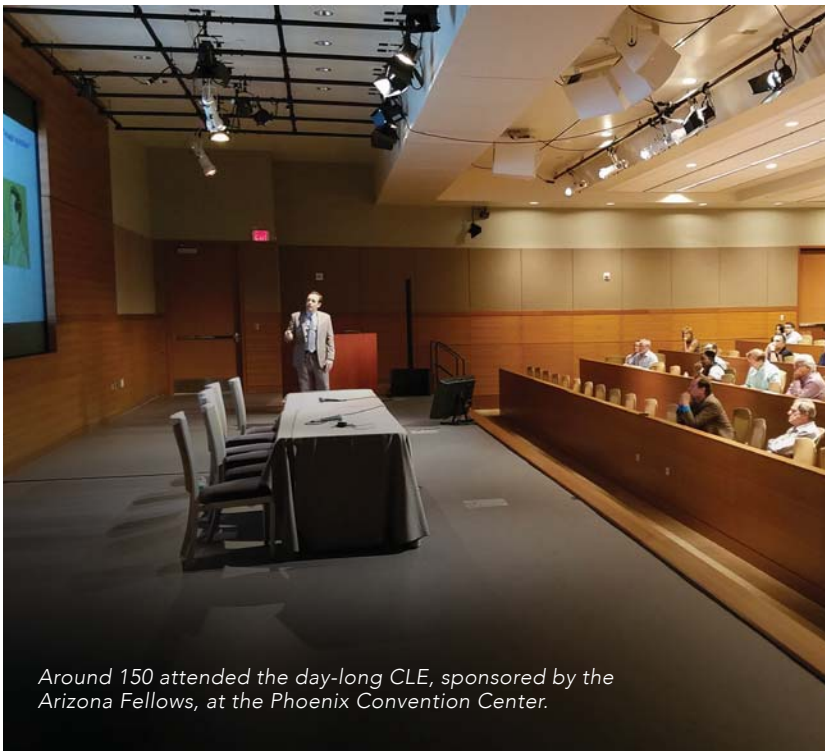
The program featured a tribute to White by President-Elect Franklin, which included a video of White addressing his associates in 2011 about the ten characteristics of a great trial lawyer. The Alabama Fellows were pleased to welcome as their guests thirty law students from Cumberland School of Law, University of Alabama School of Law, Faulkner University and Miles College. Each attendee of the seminar received a copy of Gray's book, *Bus Ride to Justice*. The proceeds are contributed to the Jere F. White, Jr. Fellows Program at the Cumberland School of Law, which was established by Jere and Lyda White prior to Jere's death. To date, over $285,000 has been raised from the Trial Institute.

On the evening of November 10, 130 Fellows, spouses and guests joined Lyda White and her family for a dinner at the Country Club of Birmingham to celebrate Jere's legacy. The Alabama Fellows welcomed special guests, including President Bart Dalton and his wife, Eileen; Past-President Lightfoot and his wife Robbie; President-Elect Franklin and his wife Betty; Regent **Frankie Marion** and his wife Beverly; and Regent Pennington. President Dalton spoke of White's courage and the example that he set for all lawyers. Georgia Fellow **Bobby Lee Cook** shared several courtroom stories.

ARIZONA FELLOWS HOLD CLE, LAUNCH NEW CHAPTER WEBSITE

On April 28, 2017, the Arizona Fellows sponsored a day-long CLE regarding "The Science of Decision Making" presented by a distinguished faculty of social science experts and a panel of Arizona Fellows. The Arizona Fellows panel consisted of Diane Lucas, Pat McGroder, Georgia Staton, Joseph Mais and Tom Henze. The presenters included: John Campbell, JD; David Yokum, JD, PhD; Christopher Robertson, JD, PhD; Bernard Chao, JD; and Jessica Salerno, PhD. The seminar was held at the Phoenix Convention Center and was attended by around 150 people live, while many others participated via a live webcast. The materials from the seminar should be available on the ACTL website in the very near future. Following the CLE, the Arizona Fellows hosted a reception at the Talking Stick Resort in Scottsdale, followed by a weekend meeting of the Arizona Fellows. The reception and dinner on Saturday night included a video tribute to five recently deceased Arizona Fellows. All who attended agreed that this tribute was beautiful and touching. The Arizona Fellows were honored that Regent Bob Warford and Treasurer Jeff Leon attended and shared this time with them. All in all, this was a successful, educational and most enjoyable weekend.

The Arizona Fellows have a new site dedicated to the Arizona Chapter. The web address is: http://azactl.com/.



Around 150 attended the day-long CLE, sponsored by the Arizona Fellows, at the Phoenix Convention Center.

TEACH OVERSEAS THROUGH VISITING PROFESSORSHIP

The Visiting Professorships for Senior Lawyers, organized through the Center for International Legal Studies (CILS) in cooperation with law faculties in Eastern Europe and the former republics of the Soviet Union, will offer short-term appointments to senior lawyers in spring and autumn 2018. A senior lawyer has accumulated at least 15 years of significant practice experience in the area in which he or she proposes to lecture. The teaching term ▷

may be from two to six weeks. The subject areas are not limited, but there is special interest in corporate and business law, intellectual property, arbitration and criminal procedure. The purpose of the seminars will be to introduce particular areas of common law legal systems to the law students and the junior faculty of the host university. Visit the http://cils.org/slfaqs.php for more information or to submit an application. Contact South Carolina Committee Chair and International Committee member **Thomas H. Pope, III** (thpope@popeandhudgens.com or Dennis Campbell, CILS Director (seniorlawyers@cils.org) with any questions.

PENNSYLVANIA FELLOWS STRENGTHEN BOND BETWEEN COLLEGE, PUBLIC INTEREST BAR

On March 21, 2017, Fellows, **Joseph C. Crawford**, **John P. McShea III** and **Timothy R. Lawn** and Pennsylvania State Committee Vice Chair **Catherine M. Recker** made presentations at the Pennsylvania Legal Aid Network's Regional Training Seminar in Philadelphia. The Pennsylvania Legal Aid Network (PLAN) is a consortium of agencies and programs that provide legal representation in civil litigation matters to low income individuals and families throughout Pennsylvania. The public interest lawyers from the various organizations that make up the PLAN network get involved in, among other things, securing Veterans' benefits, fighting wrongful evictions, advocating for farm workers and protecting low income earners from wage theft. Noted civil trial attorney and now Judicial Fellow, **Gerald A. McHugh Jr.** of the United States District Court for the Eastern District of Pennsylvania served as Chair of the Board of PLAN while in private practice. He has encouraged Fellows in Pennsylvania to not only financially support the excellent work done by these public service agencies, but to also become actively involved with assisting in the training and development of PLAN lawyers across the Commonwealth.

Crawford and Recker gave a 90-minute presentation on negotiation skills, during which they shared advice and suggestions on how to effectively resolve cases through negotiation. McShea gave a 60-minute presentation on conducting direct and cross-examination of expert witnesses. Lawn gave a 60-minute presentation on effective trial advocacy techniques. Before preparing their materials and making their presentations, the Fellows discussed with PLAN's Executive Director and Training Coordinator the negotiation and litigation issues commonly faced by legal aid lawyers in their network. Each year PLAN surveys their members to learn what litigation issues they are facing in their practices. The Fellows' presentations at the training seminar were tailored to address the issues these public interest lawyers face, which are not the issues the Fellows see in their respective practices. For instance, Recker and Crawford spent considerable time addressing the ethical dilemmas presented in negotiating with unrepresented opposing parties and in negotiating cases where legal aid programs have a statutory right to receive an attorneys' fee. McShea's presentation was designed towards examining expert witnesses that public interest lawyers see in their practices; such as a child's treating physicians and psychologists. In his presentation Lawn discussed the importance of developing sound case themes, and tailoring persuasion and advocacy skills to the finder of fact for that particular setting; be it a jury, administrative law judge or arbitrator.

All three sessions were designed to be interactive and encouraged questions from the attendees. The result was lively question and answer formats that covered issues important to these lawyers, and went far beyond the prepared written materials. The goal envisioned by Judge McHugh, and shared by these Fellows, is the College's assistance in providing interesting seminars and insight to less experienced public interest lawyers will help them in their representation of the less fortunate members of our society. A strong bond between the College and the public interest bar will inure to the benefit of both. Fellows Recker, Crawford, McShea and Lawn encourage Fellows across the country to get involved in their local community legal aid societies to help ensure equal access to justice for all.

Timothy R. Lawn
Philadelphia, Pennsylvania ■

COLLEGE UPDATES

LATEST ACTIONS BY THE BOARD OF REGENTS

At the Spring Meeting in Boca Raton, the Board Regents undertook several important actions. These included:

- The Board approved the Treasurer's Report and the Fiscal Year 2018 Budget
- The Board approved 78 candidates
- The Board voted to present honorary fellowship to The Honourable Malcolm Rowe,a Puisne Justice of the Supreme Court of Canada
- The Board approved the White Paper on the Funding of Indigent Defendants
- The Board approved the White Paper on Campus Sexual Assault Investigations

NEEDED: CURRENT FELLOW CONTACT INFORMATION

The polling process is now conducted online. These changes mean it will be easier and faster to complete your poll. Please ensure National Office has your current email address. Printed polls will not be mailed. It will also be helpful to know your website login credentials. If you have any questions, email nationaloffice@actl.com or call 949-752-1801.

COLLEGE COMMITTEES: AN OPPORTUNITY TO SERVE

This summer the incoming President and President-Elect will appoint members to the College's committees for the 2017-2018 term. State and province committees focus on the nomination of new Fellows and local outreach, while general committees each have specific mandates to guide their work. If you are interested in serving on a College committee, please contact the National Office. A list of committees and their mandates is available on the College website, www.actl.com.

IN MEMORIAM

The following forty-two memorials to Fellows of the College whose deaths have recently been reported bring to 1,430 the total that we have published over the years since we began this feature of the College publication. The professional stature of each is presumed from their having been invited to become a Fellow. The stages on which each of their personal and professional lives played out are often remarkably different. In these memorial tributes, we concentrate on what sets each of them apart, where they came from, the course of their professional lives and of their lives outside the law on through their post-retirement lives.

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Their origins and early lives often set them apart. The grandparents of one were immigrant Basque sheepherders. Two spent a part of their lives in remote mine sites. A one-room schoolhouse pops up. The early life of one was spent in a gardener's cottage on the estate of a wealthy business owner. One grew up on a riverboat, a part of his family's fleet that included the Delta Queen. One was the son of a United States Senator. One was the son of a naval aviator whose bride, four months before that son's birth, watched from their waterside apartment at Pearl Harbor as Japanese warplanes sank the *USS Nevada* outside her window on December 7, 1941.

✦

More than a few were the first in their families to go to college. The arc of their lives from those origins was often remarkable. The son of a police chief became a force for fighting governmental corruption. The journey of the girl who grew up in the gardener's cottage took her from Woodstock at age sixteen to a tour as a VISTA Volunteer to becoming the valedictorian of her law class. The boy whose mother was an eyewitness to the attack on Pearl Harbor flew 100 missions in a fighter jet in Vietnam and came home with a Distinguished Flying Cross with ten Oak Leaf Clusters. His father, who had remained in service, flew a B-52 bomber in that same war.

✦

Several were college athletes, from golf, track and swimming to football. Three, one of whom was an all-conference lineman, played football. One played tennis, soccer and basketball, was the team captain in two of those sports and earned seven athletic letters. One was an All-American swimmer and water polo player.

✦

Their paths to the law varied. One went to college on a debate scholarship. Others utilized the GI Bill. Several were editors of their law reviews. One delivered the Harvard Oration at his undergraduate commencement. Several were law clerks for federal judges; one served as a law clerk for a Justice of the United States Supreme Court.

✦

Some went to work for prestigious national law firms; others hung out their shingles. Some practiced their entire careers with one firm; others changed firms as the times and their own circumstances changed. One ten-year state court judge who had been re-elected for another term, left the bench for private practice in order to ensure that he could give all seven of his children a college education.

✦

Many of their careers were exceptional. Others were quite colorful. One supervised the investigation of alleged local political corruption that unexpectedly led to evidence that ultimately resulted in the resignation of Vice President Spiro T. Agnew. One defended eight alleged members of the Communist Party against allegations of Smith Act violations in the Joseph McCarthy Era. One was an honoree of the College's Courageous Advocacy Award years before he became a Fellow. One who practiced in Nashville, Tennessee, Music City USA, represented country music singer-songwriters Kris Kristofferson and George Jones in litigation. One reopened a death row case and cleared his client in one of the first cases utilizing the then newly-discovered use of DNA evidence. One Canadian Fellow helped his government to frame the provisions of NAFTA, the North American Free Trade Agreement. One was called on to defend two Justices of his state's Supreme Court against allegations of ethical violations in legal proceedings brought by a then barely known lawyer named John Paul Stevens. Many were leaders of their local, state or province bars. The term of one state bar president saw the creation of a mandatory continuing legal education program, an IOLTA (Interest of Lawyers Trust Accounts) program to support legal services for the poor and a state bar foundation. A number had served the College as State or Province Committee Chairs and as General Committee chairs.

An unusual number became judges. One sat on the Supreme Court of British Columbia. One, an Honorary Fellow, was a British Law Lord, known as a forward-thinking jurist. Three were United States Federal District Judges, one of whom was elevated to a Circuit Court of Appeals. One of those handled the twenty-seven-year saga involving the desegregation of Yonkers, New York schools. Two sat on cases that were memorialized in books and video productions. One became the Chair of the National Conference of Federal Court Judges. One was an early appointee to FISA, the Foreign Intelligence Surveillance Court.

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Their lives outside the law were equally varied. In the civic arena, one had been the driving force behind the organization of a local fire department and 911 network, in the process himself becoming a certified EMT (Emergency Medical Technician) and a 10-plus gallon blood donor. One was the chair of a local group whose role is to preserve the historic architecture of one of the United States' oldest cities. One sat on the Infractions Committee of the National Collegiate Athletic Association. One sat on the Board of the Canadian Broadcasting System. One, as a young bar leader, had been involved in creating three pro bono law offices on the Gulf Coast to help victims of Hurricane Camille through the legal aspects of their recovery. One, a former Eagle Scout, was honored with a Silver Beaver Award for his contribution to Scouting as an adult leader. One, a Shriner with a pilot's license, flew injured children on mercy missions for treatment at Shriners' Hospitals. Many had been lecturers and writers on legal subjects, teachers of law students and young lawyers.

✦

On the more personal level, one lived on an organic ranch an hour's drive from his office. Two raised thoroughbred horses. The first wife of one, whom he met on a summer job working with a circus, was the first female human cannonball. One worked out with weekly fifty-mile bike rides in preparation for her annual weeklong bike outing with a group of her law school acquaintances, their agreement being that they would seek shelter only on the second night of rain. One was a bridge Life Master, who flew to tournaments in his own plane. One had run twenty-six marathons and was an accomplished actor. One, in retirement, had visited twenty-five different countries with his wife. Another had climbed Mt. Kilimanjaro and rafted the Grand Canyon with his wife, as well as flying his own plane, learning to scuba dive, scoring three holes-in-one on the golf course and parachuting on his eightieth birthday. Another had two hundred jumps as a skydiver.

✦

The ranks of those who served in the armed forces become thinner with each passing year, but seven among those here memorialized served in World War II, and names such as The Battle of the Bulge, Kwajalein, Saipan and Leyte Gulf still crop up.

✦

In continuing testimony to the value of engaged lives, exactly one half of the forty-two lived to age eighty-five or older, ten of those into their nineties, and only five were less than seventy-five years old. Of the eleven the duration of whose marriages was included in their obituaries; eight had been married fifty years or longer.

✦

The College is in essence the sum of all of its Fellows. Collectively, this growing body of memorials has begun to become a history of the College over its now sixty-seven years. The reader will note that, sadly, several of our memorials are devoid of the kind of information that we had to describe the lives of the rest of those we memorialize. Some deaths had been too long in being reported. Some published obituaries are so sparse that we know only the identity of the Fellow's survivors. We continue to urge that, as Fellows in your area die, you send to your State or Province Committee your own recollections that can then be collectively forwarded to us for our use in writing these memorials. We owe our departed Fellows no less.

E. Osborne (Ozzie) Ayscue, Jr.
Editor Emeritus

Charles W. Abbott, '84, a Fellow Emeritus, retired from Holland & Knight, Orlando, Florida and living in Winter Park, Florida, died September 29, 2016 at age eighty-six. A graduate of the University of Florida and of its law school, he served in the United States Air Force Judge Advocate General Corps, before entering private practice in Orlando, Florida. In 1998, his firm, Maguire, Voorhis & Wells, merged with Holland & Knight, with which he then practiced until his retirement in 2006. Principally a medical malpractice defense attorney, he was a founding member of the American Board of Trial Advocates, a national director of the Defense Research Institute, President of the Florida Defense Lawyers' Institute and a founding member and President of the American Inns of Court–Central Florida Chapter. He established an Appellate Advocacy/Moot Court Endowment at his law school to support the school's participants in annual national moot court competitions. In the civic arena, he was the driving force behind the establishment of a local fire department and its 911 service. A certified EMT (Emergency Medical Technician), he was a 10-plus gallon blood donor. His survivors include his wife of fifty-seven years and three daughters.

John Whitman Appel, '78, a Fellow Emeritus, retired from Hoge, Fenton, Jones & Appel, San Jose, California, died December 13, 2013 at age eighty-five. The son of a San Francisco lawyer, he did his undergraduate work at the University of California, Berkeley and began law school at Hastings College of Law. Halfway through law school, he joined the United States Army in the Korean Conflict era. He then earned his law degree at Golden Gate College Law School. Passionate about organic ranching and farming, he and his wife lived from 1964 on at their ranch at Paicines, California, an hour's drive south of San Jose, where he roped steers, rode horses, hunted, played the piano and cooked. A widower, whose wife of over fifty years predeceased him, his survivors include a daughter.

George Beall, '90, a Fellow Emeritus, retired from Hogan Lovells US, LLP, Baltimore, Maryland, died January 15, 2017 at age seventy-nine, of cancer of the brain. A graduate of Princeton University and of the University of Virginia School of Law, between undergraduate and law schools he served for two years as a United States Army paratrooper. He then clerked for United States Fourth Circuit Court of Appeals Judge Simon Sobeloff before entering private practice. Appointed in 1970 by President Richard M. Nixon as United States Attorney for the District of Maryland, he launched a local public corruption investigation that ultimately uncovered an alleged eleven year old kickback scheme involving Vice President Spiro T. Agnew, who had been a state official at that time. The investigation and the prosecution that followed led to the 1973 resignation of the Vice President. Beall's father and his brother, both Republicans, served in the United States Senate, his father for twelve years and his brother for six years, the latter in a term that embraced the time of the Agnew prosecution. Thirty-six-year-old Republican George Beall's pursuit of a Republican Vice President for corruption is widely remembered as an exemplary example of integrity and commitment to justice. His other prosecutions included several high ranking officeholders and Arthur H. Bremer, who attempted the 1972 assassination of presidential candidate

George Wallace during a campaign event in Maryland, leaving Wallace permanently paralyzed from the waist down. In private practice, Beall was involved in the relocation of the Baltimore Ravens from Cleveland to Baltimore. His survivors include his wife of thirty-seven years, a daughter, a stepdaughter and two stepsons.

Stanton Bloom, '08, Tucson, Arizona, died December 7, 2016 at age seventy-nine. A graduate of Ohio State University and of Northwestern University School of Law, after three years in private practice in a Chicago, Illinois law firm, he became Cook County Public Defender, a post he held for seven years. He then moved to Tucson, where for three years he was Pima County Public Defender before going into private practice. A sole practitioner who handled major felony, wrongful death and post-conviction relief cases, he was the 1990 honoree of the College's Courageous Advocacy Award, a fact of which his cryptic obituary modestly made no note. Defending the accused kidnapper-murderer of an eight year old girl whose body was found seven months after her disappearance, he was besieged with hate mail and death threats. Neglecting a previous heart condition, he was hospitalized. Against the advice of his physicians, he left the hospital and completed the ten-week trial, conducted under gavel-to-gavel television coverage. The College's award citation referred to his defense of his client, who was convicted, at great sacrifice to both his health and his practice. His survivors include his wife.

George W. Bramblett, Jr., '89, a member of Haynes & Boone, LLP, Dallas, Texas, died November 21, 2016 at age seventy-six of an apparent heart attack. He earned his undergraduate and law degrees at Southern Methodist University. In high school he was a disc jockey on a local radio station and a drummer in a local band. A trial generalist, he was President of his American Inn of Court. Both the Southern Methodist Law School and the Southern Methodist University honored him with distinguished alumnus awards. In the civic arena, he served as Chair of the Alliance for Higher Education of the College and University System of Texas and as Chair of the Dallas Zoological Society, chaired the Board of Trustees of the Baylor College of Dentistry and was a Trustee of the Southwestern Medical Foundation. The Dallas Anti-Defamation League honored him with its Jurisprudence Award and the Dallas Lawyers Auxiliary gave him its Justinian Award for dedication to community service. He served the College as Texas State Committee Chair. His survivors include his wife, a daughter and two sons. His brother Eugene, is also a Fellow of the College.

Hon. Earl Hamblen Carroll, '68, a Judicial Fellow from Phoenix, Arizona, died February 3, 2017 at age ninety-one. He spent his early years living on a remote gold mine site called Silver Flag under the tutelage of live-in teachers sent by the state to educate rural students. Partway through undergraduate school at the University of California at Los Angeles, World War II resulted in his being taken into the United States Navy V-12 Program, after which he served as a naval officer in the Pacific Theater. After the war, he completed his undergraduate and legal education at the University of Arizona, finishing second in his law class. Following a clerkship with a Justice of the Arizona Supreme Court, he began law practice in Phoenix. He served for five years as Special Counsel for the City of Tombstone, Arizona, for a year as a Special Assistant Attorney General and for two more years as Special

Counsel for Tucson, Arizona. Nominated to the Federal District Court in 1980 by President Jimmy Carter, he took senior status in 1994, continuing to handle a caseload until his retirement in 2011 after over thirty years on the bench. In 1993, Chief Justice Rehnquist had appointed him to the United States Foreign Intelligence Surveillance Court, and in 1996 he became the Chief Judge of the U.S. Alien Terrorist Removal Court. In the civic arena, he served on the local elementary school board for twelve years and on the University of Arizona Board of Regents. He and former College Regent the late Thomas Chandler jointly created a public service scholarship at the University of Arizona. His survivors include his wife of sixty-four years and two daughters.

John Mitchell (Mitch) Cobeaga, '97, founder of the Cobeaga Law Firm, Las Vegas, Nevada, died April 24, 2017 at age seventy-five of complications related to hip replacement surgery. He was the grandson of Basque sheepherders who migrated to Nevada from Spain in the late 1800s. On December 7, 1941, four months before he was born, his mother, the wife of a naval aviator, watched from her harbor-side window at Pearl Harbor, the sinking of the *USS Nevada*. Following in his father's footsteps, Mitch attended the United States Air Force Academy, went on to learn to fly the F-4 Phantom fighter jet. He flew 100 missions in the Vietnam War, coming home with decorations that included a Distinguished Flying Cross with ten Oak Leaf Clusters. His father, who had remained in the Air Force, flew a B-52 bomber in that same war. After seven years in the Air Force, Mitch earned his law degree with distinction from the McGeorge School of Law at the University of the Pacific. After serving as a law clerk for the Chief Judge of the United States Court for the District of Nevada, he practiced for seventeen years in a Las Vegas firm. In 2001 he formed his own firm, where he practiced for the remainder of his life. President of his local Bar and a frequent lecturer, he was a founder of the Nevada Inn of Court and a founding member of the Southern Nevada Legal Aid Center's Veterans Ask a Lawyer program, a free legal services program for veterans in need of help. He also served as a member of the Board of the USAA Savings Bank, a national insurance entity for former military personnel. A widower who had remarried, his survivors include his second wife, two sons from his first marriage, three stepdaughters and a stepson and a daughter and a son, twins, from his second marriage.

John Francis DeMeo, '90, a member of DeMeo, DeMeo & West, Santa Rosa, California, died October 6, 2016 at age eighty-two, of myeloma. A graduate of the University of San Francisco and of its Hastings College of Law, he practiced for fifty-eight years in a firm founded by his father and his uncle. He helped to create a foundation to support the Valley of the Moon Children's Home, a group home for abandoned, neglected and abused children. For years he funded scholarships for children who found refuge there. He and his wife had been instrumental in raising the funds to allow a group of drama students from the local high school to perform at the Edinburgh (Scotland) Festival Fringe. They performed a similar role at the local private Catholic school. He served as President of the Sonoma County Fair, and he and his wife were widely known for decades of breeding and raising thoroughbred horses. A lover of music,

he was a student of jazz and a jazz pianist. His survivors include his wife, a son who is a state court judge and a daughter. A granddaughter is also a member of the family law firm.

William I. Edlund, '79, Fellow Emeritus, retired from Bartko, Zankel, Bunzel & Miller, San Francisco, California, died December 24, 2016 at age eighty-seven, of cancer. The first of his family to attend college, he did his undergraduate work at Stanford University, where he played football. He earned his law degree from Boalt Hall at the University of California, Berkeley. He also did graduate work in economics at the University of California, Berkeley and studied at the London School of Economics as a Ford Foundation Fellow. He served in the United States Army in the Korean Conflict era. In a career marked by many high-profile cases, he spent forty-three years at Pillsbury Madison & Sutrow, San Francisco, and then spent the next seventeen years with Bartko Zankel, where he practiced until his death. He served as President of the Boalt Hall Alumni Association and of the Law Center to Prevent Gun Violence. A collector of rare books and a student of legal history, he had served on the boards of three related organizations, including the United States Supreme Court Historical Society. He was a Commissioner and Chair of the California Judicial Nominees Evaluation Commission, vetting nominees to the California state courts. A widower who had remarried, his survivors include his second wife, a daughter and a stepdaughter.

Kathleen Eldergill, '98, Beck & Eldergill, P.C., Manchester, Connecticut, died February 28, 2017 at age sixty-four, of lung cancer. She grew up in a gardener's cottage on the estate of a Greenwich, Connecticut millionaire. A news article that chronicled her life disclosed that she "rocked out at the iconic concert at Woodstock when she was 16 and occasionally wore Birkenstocks when she appeared in court," but that "other lawyers remember her, not as a hippie, but as the smartest and best prepared lawyer they knew." After attending New Mexico State University for a year, she went on to earn her undergraduate degree with highest honors from the University of Connecticut, where she was a member of Phi Beta Kappa. She then became a VISTA Volunteer, working in a legal services program representing low-income clients. That experience led her to law school at the University of Connecticut, from which she graduated with high honors, finishing first in her class. She then applied for a part-time job with the Manchester firm, where she spent her entire career as a lawyer. A President of the Connecticut Trial Lawyers Association and the Connecticut Employment Lawyers Association, she served as a part-time instructor at her law school and as Chair of the Connecticut Federal Grievance Committee. An adventurer, she trained on weekends with fifty-mile bicycle rides to prepare for what became over thirty annual week-long bicycle trips with a group of her former fellow law students. Their informal internal rule was that they would not seek shelter until the second night of rain. A mother who attended all of her sons' athletic events and came home to cook her family's dinner and read to her two sons before returning to the office, she explored the world from Antarctica to Tibet and Nepal. An organic gardener who practiced yoga, for over forty years she hosted a legendary summer solstice party, picking many quarts of strawberries to make margaritas for up to 100 guests. The news article at the time of her death cryptically disclosed that she was so unassuming that she had to be talked into going to "a ceremony in California to be inducted

into an association of distinguished lawyers," (clearly the College's Spring meeting, held in California in the year of her induction). Her survivors include her husband and law partner, two sons, a stepdaughter and a stepson.

Richard Ashby Farrier, Jr., '14, K& L Gates, LLP, Charleston, South Carolina, died March 24, 2017. He was a graduate of The Citadel, where, as an offensive tackle, he was captain of the football team and in his senior year a first-team All-Southern Conference lineman. After earning his law degree from the University of South Carolina, he clerked for a United States District Judge, and then practiced in Charleston for twenty-six years with Nelson Mullins Riley & Scarborough before becoming head of the South Carolina litigation department of K&L Gates. A member of The Citadel Hall of Fame, he chaired the City of Charleston Board of Architectural Review, devoted to preserving the historic beauty of one of the oldest cities in the former colonies. His survivors include three daughters and a son.

George Stanley Finley, '90, Fellow Emeritus, retired from Smith, Rose, Finley, Harp & Price, San Angelo, Texas, died December 31, 2016 at age eighty-nine. A graduate of Southern Methodist University, where he was a member of the golf team, and of its law school, he had served in the United States Navy. After several years in Dallas as an assistant prosecutor and in-house counsel, he went to San Angelo to join the firm where he practiced for the rest of his career. A bridge Life Master, he flew across the country with his wife, also a bridge player, to participate in bridge tournaments. His obituary humorously noted that he drove a beat-up old pickup truck and was known to be safer in the air than on the ground. He served his county as the President of its Bar. His survivors include his wife of forty-three years, four daughters and two sons.

James D. Foliart, '69, a Fellow Emeritus, retired from Foliart Huff Ottaway & Bottom, Oklahoma City, Oklahoma, died April 8, 2017 at age ninety-seven. The son of Depression-era educators, he had gone to school in four different towns, graduating from high school at age sixteen. He earned his undergraduate degree from Oklahoma's Northwestern State College, which he attended on a debate scholarship, and then earned a master's degree in history and government at the University of Oklahoma. His legal education was interrupted by World War II, in which he served in the United States Army Air Corps. After returning to the University of Oklahoma to complete his legal education, he founded the firm with which he spent his entire career. A lawyer from another age, he recalled many weeks when he tried two cases, and he tried cases in over sixty different counties. A widower, his survivors include a son.

The Rt. Hon. The Lord Goff of Chieveley, '97, an Honorary Fellow, Cambridge, England, died August 14, 2016 at age eighty-nine. Educated at Eton College, in World War II, he spent four years in the Scots Guards. He then earned a first in jurisprudence at New College, Oxford and then was a Fellow and Tutor at Lincoln College, where he helped to write *The Law of Restitution*, a textbook on unjust enrichment. He was called to the Bar, Inner Temple, in 1951, was appointed a Recorder in 1974 and was elevated the next year as a High Court Judge, serving on the Queen's Bench. He was made Lord Judge of Appeal and a member of the Privy Council in 1982. In 1986, he was

appointed Lord of Appeal in Ordinary; in 1996 he became a Senior Law Lord and he retired in 1998. Among his other posts, he served for six years as Chair of the Council of Legal Education, for five years as Chair of the Court of London University and for fourteen years as Chair of the Pegasus Scholarship Trust, a program involving exchanges of young American and English attorneys and barristers. In the course of his tenure on the bench, he participated in many high-profile judicial decisions. Forward-looking, he took the view that the Law Lords had greater freedom than the rest of the judiciary to "mould and remould the authorities to ensure that practical justice is done within the framework of principle." He wanted justices to deliver individual judgments, rather than a joint one, feeling that this would lead to further development of the law. He also did not hesitate to consider doctrines of other jurisdictions. Among his honors was the Grand Cross (First Class) of the Order of Federal Republic of Germany, in recognition of his contribution to British awareness of German law. The year after he retired, he was honored with the publication of *The Search for Principle: Essays in Honour of Lord Goff of Chieveley.* His survivors include his wife of sixty-three years, two daughters and a son.

Arnold M. Gordon, '88, a Fellow Emeritus, retired from Gordon & Gordon, PC, Farmington Hills, Michigan and living in West Bloomfield, Michigan, died in February 2017. He was a graduate of Wayne State University and of its law school. His survivors include his wife and seven children. No further information was available.

Gordon Christopher Greene, '78, a Fellow Emeritus from Cincinnati, Ohio, died March 14, 2017 at age eighty-one. He had grown up on the Ohio River aboard one of the family-owned steamboats, which included the Delta Queen. A graduate of the University of Cincinnati and of its law school, he played football, ran twenty-six marathons, was an accomplished actor and a founder of the Ensemble Theater of Cincinnati. He last practiced with Waite, Schneider, Bayless & Chesley, Co., LPA before undertaking a solo practice and acting as a mediator. His survivors include his two sons, one of whom who was a United States Navy fighter pilot and the other a Navy SEAL.

Edward Stephen Halsey, '81, a Fellow Emeritus, Newcastle, Wyoming, died January 28, 2017 at age ninety-six. A graduate of the University of Wyoming and of its law school, he had served as a municipal court judge and as President of the Wyoming State Board of Bar Examiners. A hiatus in his law school education would indicate military service during World War II, and his listings in successive College directories indicate that he was a sole practitioner. In the absence of a published obituary, regrettably no further information is available.

Hon. Ronald Bruce Harvey, '82, West Vancouver, British Columbia, a Judicial Fellow, retired from the Supreme Court of British Columbia, died November 24, 2015 at age eighty-four. He received his undergraduate and law degrees from the University of British Columbia. After thirty-five years in private practice, he was elevated to the bench in 1990. He had served the College as Province Committee Chair. His survivors include his wife of sixty years, two daughters and two sons.

Roy Lacaud Heenan, O.C., '05, a Fellow Emeritus, Montréal, Quebec, died February 3, 2017 at age eighty-one, of prostate cancer. An honors graduate of McGill University and

of its law school, he had also studied law for a year at Université de Montréal. He was born in Mexico City to a mother whose French family had immigrated first to Argentina and then to Mexico, where her family owned and operated a mine and a father who was an international insurance salesman. Heenan spent two years in China as a toddler before returning to Mexico to escape the threat of war between China and Japan, and he grew up riding donkeys to the mine. After his parents were divorced, his mother moved to Canada, where he spent the rest of his life. In 1972, he and two other McGill graduates founded Heenan Blaikie, a Montréal firm that became one of Canada's largest, where he practiced until his retirement. A labour lawyer, he had helped to frame the North American Free Trade Agreement (NAFTA). An art lover and collector, he had an extensive collection of modern art. He was Chairman of the Montréal Museum of Contemporary Art and a member of the Board of the Montréal Museum of Fine Arts. After Pierre Trudeau was no longer Prime Minister of Canada, Heenan, a long-time friend, took him into his firm. The two were once invited to a ball hosted by the Aga Khan, the spiritual leader of the Ismaili branch of Islam. Trudeau, who was famously introverted, hesitated at an invitation to speak, and Heenan came to his rescue with an impromptu speech, praising the contribution of the Ismaili Muslims and Trudeau's role in admitting many of them to Canada after their 1972 expulsion from Uganda. Heenan was an adjunct professor at McGill, which honored him with an Honorary Doctor of Laws degree and had taught at several other institutions. He was a founder and chairman of the Pierre Elliott Trudeau Foundation and a member of the Board of the Canadian Broadcasting System. He had been honored as an Officer of the Order of Canada. His survivors include his wife of fifty-one years, the product of a courtship in which each once bought a painting for the other, and three daughters.

Charles C. Hileman, III, '88, a Fellow Emeritus, retired from Schnader Harrison Segal & Lewis, Philadelphia, Pennsylvania and living in Rydal, Pennsylvania, died April 1, 2017 at age ninety-two, of an infection. His studies at Allegheny College were interrupted by World War II. Initially classified for "limited duty" because of nearsightedness, with the help of an optometrist, memorizing the eye chart and exercises, he passed his induction physical. Discharged as a Staff Sergeant in the 290th Infantry Regiment, 75th Division, he saw duty in the Rhineland, the Ardennes and Central Europe, including the Battle of the Bulge. He was awarded a Bronze Star and the European-African-Middle Eastern Theater Service Medal with three Stars. Returning to Allegheny, he graduated magna cum laude, a member of Phi Beta Kappa. A tennis, soccer and basketball player, he earned seven athletic letters and was the captain of the tennis team and the Most Valuable Player on his basketball team. Then earning his law degree at the University of Pennsylvania, he was Editor of the law review and a member of the Order of the Coif. He then clerked for a judge on the United States Court of Appeals for the Third Circuit and then for Associate Justice Harold Burton. He spent his entire career with Schnader Harrison. Among his notable cases were the defense of eight members of the Communist Party, charged with violations of the Smith Act during the McCarthy Era and the defense

of NBC against quiz-rigging/payola charges arising from its quiz shows. He had served his Presbyterian Church as deacon, trustee and elder and the College as chair of its Legal Ethics and Professionalism Committee. In retirement, he and his wife visited twenty-five countries in every corner of the world. A widower whose wife of sixty-five years predeceased him, his survivors include two daughters and a son.

Hon. James Clinkscales Hill, '71, a Judicial Fellow, Jacksonville, Florida, died March 31, 2017 at age ninety-three. His undergraduate education at the University of South Carolina was cut short by World War II, in which he served in the United States Army Eighth Air Force as a cryptographer. After earning his law degree from Emory University, he practiced law in Atlanta, for twenty-six years, the last six in Hurt, Hill & Richardson, of which he was a founder. In 1974, President Richard Nixon appointed him to the United States Court for the Northern District of Georgia. Two years later, President Gerald Ford appointed him to the United States Court of Appeals for the Fifth Circuit, which later became the Eleventh Circuit Court of Appeals. He took senior status in 1991. World travelers, he and his wife had climbed Mount Kilimanjaro, rafted down the Grand Canyon and done many other similar things, visiting every continent but Antarctica. He flew his own Beechcraft Bonanza, learned to scuba dive, made three holes in one on the golf course, celebrated his eightieth birthday with a parachute jump and heard cases after he had turned ninety. A widower whose wife of over sixty years predeceased him, his survivors include two sons.

Edward Allen Hinshaw, '85, Hinshaw, Marsh, Still & Hinshaw, LLP, Saratoga, California, died March 21, 2016 at age seventy-eight, of a ruptured aneurysm. After earning his undergraduate degree at the University of the Pacific, he served for two years in the United States Army and then earned his law degree at Santa Clara University. He was a collegiate All-American swimmer and water polo player. His career was devoted to representation of physicians and hospitals. He had received a Citizen's Award from his county medical association. An expert fly fisherman and hunter, he was a champion open-water swimmer and held numerous world masters swimming records while competing for the Olympic Club. His survivors include his wife of fifty-seven years, two daughters and two sons.

Steven August Hirsch, Sr., '15, Quarles & Brady, LLP, Phoenix, Arizona, died December 1, 2016 at age sixty-one. A graduate of the University of Arizona and of its law school, he clerked for a judge of the Arizona Court of Appeals. The son of a noted outdoor writer and radio personality and a wildlife artist, he was the consummate outdoorsman. He was a leader in Wildlife for Tomorrow, the charitable organization of the Arizona Game and Fish Department and had filled a large variety of leadership roles in the Boy Scouts of America, both locally when his sons were Scouts and statewide. His survivors include his wife of thirty-seven years and two sons.

Dan Fredrick Hoopes, '03, a Fellow Emeritus, retired from Hopkins Roden Crockett Hansen & Hoopes, PLLC, Idaho Falls, Idaho, died July 12, 2016 at age seventy-five, of Parkinsons Disease. A graduate of Brigham Young University, he had attended American University in Washington, DC while employed by the late Senator Frank F. Church. He earned his law degree from Texas Tech University. He was President of both the Idaho State Bar and the Idaho Trial Lawyers Association, a member of the Board

of the Association of Trial Lawyers of America and of the Idaho Association of Criminal Defense Lawyers. He was a recipient of the Thurgood Marshall Liberty Award, given for his successful defense of a death row inmate in one of the early cases relying on DNA evidence, and of his state bar's Distinguished Lawyer Award. He was an adjunct professor and visiting lecturer at the University of Idaho law school. His survivors include his wife of forty-seven years and two daughters.

Richard T. Horigan, '94, a Fellow Emeritus, retired from Horigan, Horigan & Lombardo, PC, Amsterdam, New York, died November 4, 2015 at age ninety. He had entered the United States Navy at age seventeen, serving in World War II. After the war, he earned his undergraduate and law degrees from Georgetown University. A year-round outdoorsman, at the time of his induction into the College, he owned a small horse-racing stable. Twice a widower, his survivors include eight sons and four daughters.

Norman Charles Kleinberg, '95, a Fellow Emeritus, retired from Hughes Hubbard & Reed, New York, New York, died May 2, 2016 at age sixty-nine. A graduate of Tufts University and of Columbia University Law School, he clerked for a United States District Judge before commencing his career with Hughes Hubbard, where he ultimately became chair of its litigation department. His survivors include his wife and two daughters.

Hon. Frederick Bernard Lacey, '91, a Fellow Emeritus, retired from LeBoeuf, Lamb, Leiby & MacRae, Newark, New Jersey, died April 1, 2017 at age ninety-six. The son of the Newark Chief of Police, he was a Phi Beta Kappa graduate of Rutgers University. After serving as a Lieutenant Commander in the United States Navy in World War II, he earned his law degree from Cornell University, where he was Editor of the law review and a member of the Order of the Coif. In an early career as a crime-fighter, he was an Assistant United States Attorney in New Jersey in the early 1950s and then a United States Attorney from 1969 to 1971. There, he successfully led large-scale prosecution of New Jersey leaders and Mafia bosses for corruption. He prosecuted Albert Anastasia, the former head of Murder, Inc., for tax evasion. In 1969, President Richard Nixon nominated him to the United States Court for the District of New Jersey where he served for fifteen years. On the bench, he handled trials involving Soviet spies and payola charges against various entertainment entities. He sentenced the confessed heroin smuggler in the case that became the subject of the movie *The French Connection*. In 1979 he was appointed to the newly created Foreign Intelligence Surveillance Court, where he served for five years. During his fifteen years on the bench he taught courses in civil trial practice and evidence at the law schools at Seton Hall University and Rutgers University. Retiring from the bench in 1986, he joined LeBoeuf Lamb. His induction into the College came while he was practicing with that firm. He served as a court-appointed administrator of the International Brotherhood of Teamsters, a monitor of a national corporation after an accounting scandal and a special master to remap New York congressional and legislative districts. He chaired the Supreme Court Committee on the Federal Rules of Criminal Procedure, was Chair of the National Conference of Federal Trial Judges and was an adviser to the 1985 United Nations Conference on Organized

Crime. He also served for a number of years on the Committee on Infractions of the National Collegiate Athletic Association. A widower whose wife of sixty-one years predeceased him, his survivors include three daughters and four sons.

Frank Love, Jr., '72, a Fellow Emeritus, retired from Powell, Goldstein, Frazer & Murphy, LLP., Atlanta, Georgia, died on January 24, 2017, at age eighty-nine. Near the end of World War II, he served briefly in the United States Navy before earning his undergraduate and law degrees at Washington & Lee University. He served as President of the Georgia Defense Lawyers Association and of the Georgia State Bar. His term as state bar president saw the creation of mandatory continuing legal education, the creation of an IOLTA (Interest on Lawyers Trust Accounts) program to help finance legal services for the indigent and of the Georgia Bar Foundation, of which he was the first President. He served the College as Chair of the Award for Courageous Advocacy Committee. A cornet player, beginning in high school, he had played in dance bands and in college, organized his own dance band, Frank Love and His Hungry Five. He and his wife had been leaders in several secondary education level schools. A widower whose wife of fifty-eight years had predeceased him, his survivors include a daughter and a son.

John Joseph McLean, Jr., '84, a Fellow Emeritus, retired from Buchanan Ingersoll & Rooney, PC, Pittsburgh, Pennsylvania, died December 24, 2013, at age eighty-six, of melanoma. He served in the United States Navy in World War II, then earned his undergraduate degree from Mt. Saint Mary's College and his law degree from Harvard Law School. He then served in the United States Army in the Korean era. After eleven years in private practice, he was elected Judge of the Court of Common Pleas of Allegheny County, Pennsylvania. Despite having been elected to a second ten-year term, he left the bench to return to private practice, at least in part so that he could send his seven children to college. While still on the bench, he was known to walk his children's paper route with them. His survivors include his wife of fifty-seven years, three daughters and four sons.

William Celestine Murphy, '80, a Fellow Emeritus, retired from Kinnally, Flaherty, Krentz & Loran PC, Aurora, Illinois, died November 26, 2016, ten days short of his ninety-sixth birthday. As a high school student, he had placed second in a national extemporaneous speaking competition. A magna cum laude graduate of Harvard College, which he attended on a scholarship, and a member of Phi Beta Kappa, he was selected by his classmates to deliver the Harvard Oration at their graduation. He then served in World War II as an officer on the attack aircraft carrier *USS Corregidor, CVE-58*, participating in the invasions of Kwajalein Island and Saipan and in the Battle of Leyte Gulf. After returning and earning his law degree from Harvard Law School, he began a sixty-eight year career in private practice. In his early years, he was city attorney and corporation counsel of the City of Aurora. His many major cases led to significant developments in Illinois law and major damage verdicts. He was also called on to represent two Justices of the Illinois Supreme Court accused of ethics violations, a proceeding in which his opponent was John Paul Stevens, who went on to sit on the United States Supreme Court. An accomplished artist, Murphy had built a second home in Ireland. Remembering his own undergraduate scholarship, he had established three scholarships at the local community college. He had been recognized as a Laureate of the Illinois State bar. Twice a widower, his survivors include two daughters and a son.

Jack Norman, Jr., '83, a Fellow Emeritus, a retired sole practitioner from Nashville, Tennessee, died August 28, 2016 at age eighty-nine. The son of a Nashville attorney, after serving in the United States Army in World War II, he attended George Peabody College for undergraduate work while using the GI Bill to study law in night school at the Nashville Y.M.C.A. (now Nashville School of Law). He was co-owner of Entertainment Production Company and legal counsel to the International Country Music Buyers Association. His clients in high-profile cases had included country music stars Kris Kristofferson and George Jones. He was equally well known for his life outside the courtroom. He spent his summers as a handyman at Nashville's Shrine Circus, initiated by his father, helping to set up and take down the circus. There he met his first wife, human cannonball Duina Zacchini, from whom he was later divorced. He had made over 200 jumps as a skydiver, learned to pilot an airplane and retired as a Lieutenant Colonel, the commander of the 118th Aeromedical Evacuation Squadron. His survivors include his wife of thirty-seven years and three daughters.

Lionel H. Perlo, '82, a Fellow Emeritus, retired from Ficksman & Conley, LLP, Boston, Massachusetts, died February 27, 2017 at age ninety-two and a half. Born in Montréal, Canada, he had successively attended Tufts University, Yale University and the University of Michigan, from which he received his undergraduate degree, and Harvard Law School. The only other information available is that among the things he enjoyed in his long life were "tennis, bike riding, walking, collecting antiques, time on the Cape and in the Berkshires and single malt scotch." A widower whose wife of fifty-three years predeceased him, his survivors include two sons.

John Joseph (Jack) Quinn, '76, Arnold & Porter LLP, Los Angeles, California, died March 26, 2017 at age eighty-four. He earned his undergraduate and law degrees at the University of Southern California with a two-year hiatus in the middle while he served in the United States Army in Germany during the Korean Conflict era. He had been the youngest president of the Los Angeles County Bar and has received its Shattuck-Price Award and the American Jewish Committee's Learned Hand Award. He and his wife, active in the art world, had an extensive collection of California-focused art. His survivors include his wife of fifty-five years and twin daughters.

Payne Harry (Darb) Ratner, Jr., '79, a Fellow Emeritus, retired from Ratner, McClellan, Pirtle & Mattox, Wichita, Kansas, died February 11, 2017 at age ninety-two. The oldest son of a two-term Governor of Kansas, his education at the University of Kansas, where he earned both his undergraduate and law degrees, was interrupted by service as an officer in the United States Navy in World War II. He also spent a year at the Wharton School of Business. He served three terms as a Kansas State Representative. An active pilot and a member of the Flying Fezzes of Midian Shrine, he often ferried injured children to Shrine Hospital Burn Institutes. He was a founding member of the Kansas Chapter of the American Board of Trial Advocates. A widower, his survivors include two daughters and two sons.

Paul Allen Rosen, '93, Rosen & Lovell PC, Southfield, Michigan, died February 17, 2017 at age seventy-eight. He earned his undergraduate and law degrees from Wayne State University. A frequent lecturer, he had been an adjunct professor at both Wayne State and the University of South Florida. He was honored with the

Richard Baxter Trial Lawyer of the Year Award by the Michigan chapter of the American Board of Trial Advocates and the Respected Advocate Award by the Michigan Defense Trial Council. His survivors include his wife of over fifty-three years, two daughters and a son.

Hon. Leonard Burke Sand, '76, a Judicial Fellow from New York, New York, died December 3, 2016 at age eighty-eight. A graduate of New York University and of Harvard Law School, where he was Note Editor of the law review, he served as a law clerk for a United States District Judge in the Southern District of New York, as an Assistant United States Attorney in that district and as Assistant Solicitor General of the United States, arguing thirteen cases before the United States Supreme Court. After almost twenty years in private practice as a member of Robinson, Silverman, Pearce, Aronsohn, Sand & Berman, he was nominated to the United States Court for the Southern District of New York. He took senior status in 2003 and retired in 2016. He is best remembered for the twenty-seven year landmark case in which he found that Yonkers had intentionally segregated public housing and schools along racial lines, leading to a segregated school system. This saga was the subject of a book and an HBO mini-series entitled *Show Me a Hero.* He also presided over the trial of the four terrorists who were convicted of conspiracy in the 1998 bombing of two American embassies in East Africa that killed 224 people. He was an adjunct professor at the New York University law school and one of the authors of *Modern Federal Jury Instructions.* He received the Federal Bar Association's Learned Hand Medal, the American Arbitration Association's Whitney North Seymour, Sr. Award and the New York City Bar Association's Association Medal. His survivors include his wife, one daughter and two sons.

Patrick Hugh Scanlon, Sr., '84, a Fellow Emeritus, retired from Watkins & Eager, PLLC, Jackson, Mississippi, died February 25, 2017 at age eighty, of renal failure. He earned his undergraduate degree at Louisiana State University, where he was a member of the varsity tennis team. He was a graduate, with distinction from the University of Mississippi Law School, where he was a member of the law journal, a class officer and a member of Omicron Delta Kappa leadership society. He served in the United States Army Judge Advocate General Corps before entering private practice. In 1969, as President of the Mississippi Junior Bar, he was involved in setting up and arranging for staffing of three pro bono offices on the Gulf Coast in the wake of Hurricane Camille to assist victims of the storm. He served as President of his county Bar, of the Mississippi Chapter of the Federal Bar Association, as President of the Mississippi Bar Association and the Mississippi Bar Foundation, as President of the Ole Miss Law Alumni and as the first Chair of the Mississippi Judicial Performance Commission. A frequent contributor to legal publications, he was an instructor at the Jackson School of Law, now the Mississippi College School of Law. A duplicate bridge player, he had been President of the Mississippi Bridge Association. His survivors include his wife of fifty-six years, two daughters and two sons.

Gerald Robert Schmelzer, '80, Fellow Emeritus from Coronado, California, died March 11, 2017, three weeks short of his eighty-eighth birthday. Born on a rural Iowa farm, he rode a cow to a one-room schoolhouse taught by his older sister. He graduated from high school and stayed on the farm until he was twenty-two. He then enrolled in the College of Veterinary Medicine at Iowa State University. After three years, he changed his major to business and finance. He began a career

with IBM, but after two years, he enrolled at Hastings College of Law, graduating second in his class, a member of the Order of the Coif. After some years in a San Diego firm, he became a sole practitioner for the remainder of his career. He served as President of the San Diego chapter of the American Board of Trial Advocates and as a member of its national board. He was named the San Diego Trial Lawyers Association's Trial Lawyer of the Year. He also served as a faculty member in the local American Inn of Court. His survivors include his wife of over fifty-nine years, a daughter and a son,

Cubbedge Snow, Jr., '72, a Fellow Emeritus, retired from Martin Snow, LLP, Macon, Georgia, died December 4, 2016 at age eighty-seven after a long illness. A Phi Beta Kappa graduate of Emory University, he was a magna cum laude graduate of the Walter F. George School of Law at Mercer University. He then was a legal officer in the United States Air Force and he remained in the Air Force Reserves, retiring as a full colonel. He had served as President of his local Bar and of the State Bar of Georgia. He also served in the American Bar Association House of Delegates and on its Board of Governors. He had received the Sol Clark Award from the State Bar of Georgia Access to Justice Committee and the Champion of Justice Award from the Georgia Legal Services Foundation. He had taught Sunday school in his Methodist church and had served as Chair of both its Administrative Board and its Board of Trustees. An Eagle Scout, he had received the Silver Beaver Award for his leadership of the Central Georgia Council of the Boy Scouts. His survivors include his wife of sixty-six years, a daughter and two sons.

James Earl Spain, '91, a Fellow Emeritus, retired from Spain, Miller, Galloway & Lee, LLC, Poplar Bluff, Missouri, died January 8, 2017 at age eighty-two. A graduate of Southeast Missouri State University, where he lettered in track, he earned his law degree from the University of Missouri, where he was a member of the law review. Between undergraduate and law schools, he served two years in the United States Army, stationed in Fairbanks, Alaska. He served on a number of law-related boards and commissions, served in the Missouri legislature for six years and was Chairman of the Democratic Missouri State Committee. A widower whose wife of sixty years died less than three months before his death, his survivors include two daughters and a son.

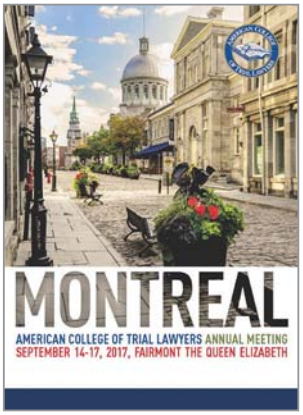
John Jerome Swenson, '96, a Fellow Emeritus, retired from Gibson, Dunn & Crutcher, Los Angeles, California, died November 17, 2016 at age seventy-four. He was a graduate of the University of Minnesota and a magna cum laude graduate of its school of law. No further information is currently available.

James Clayton West, Jr., '79, a Fellow Emeritus retired from West & Jones, Clarksburg, West Virginia, died December 23, 2016 at age eighty-four. His undergraduate education was interrupted by service in the United States Navy. Returning to the University of West Virginia, where he earned his undergraduate and law degrees, he served as the Editor of his law review. After a clerkship for a judge of the United States Court of Appeals for the Fourth Circuit, he practiced for fifty-six years in the same law firm. He served as President of both the West Virginia Trial Lawyers Association and the West Virginia Bar Association and served the College as West Virginia State Committee Chair. His survivors include his wife of sixty-three years and a daughter, herself a lawyer. ■

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 'Event Calendar' section.

NATIONAL MEETINGS



2017 Annual Meeting
Fairmont The Queen Elizabeth
Montréal, Quebec
September 14-17, 2017

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

REGIONAL MEETINGS

REGION 4
10th Circuit Regional Meeting
Wichita, KS
August 17-20, 2017

REGION 3
Northwest Regional Meeting
Sun Valley, ID
August 24-27, 2017

STATE / PROVINCE MEETINGS

July 15, 2017	**Colorado Fellows Dinner**
July 25, 2017	**Minnesota Fellows Dinner**
August 11, 2017	**Puerto Rico Fellows CLE and Dinner**
August 17, 2017	**Georgia Black Tie Dinner**
August 25-27, 2017	**Iowa Fellows Meeting**
September 20, 2017	**Vermont Fellows Meeting**
September 22-24, 2017	**New Mexico Fellows Meeting**
September 29, 2017	**Nebraska Fellows Dinner**

JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660

"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.