



THE BULLETIN

NEW PRESIDENT THOMAS H. TONGUE



Thomas H. Tongue

There might be some kind of mystical connection between fly fishing and trial practice for the College's new President **Thomas H. Tongue** of Portland, Oregon. They both require preparation, patience, practice and skill. The parallels are interesting: a stream, the well of a courtroom; slippery rocks, slippery

Continued on page 8

FROM THE EDITORIAL BOARD

In this issue, we report the Spring Meeting of the College in San Antonio. The next issue, reporting the Annual Meeting at La Quinta, will follow close on its heels.

From the address of Texas Chief Justice Wallace B. Jefferson, ending with his tribute to the Rule of Law, through Canadian Chief Justice Beverley McLachlin's timely plea for civility, investment advisor Michael K. Farr's look into the future of our troubled economy and Department of Defense General Counsel Jeh Johnson's report on the ongoing issues facing our nation to inductee Paul Mark Sandler's humorous response on behalf of the new inductees, we think you will find this issue well worth reading.

On the final pages, we memorialize the lives of 94 departed Fellows, over half of them veterans of World War II. Included among them are two former Regents of the College, two illustrious Honorary Fellows and one of the great public servants of his generation. Collectively, they epitomize the best of our profession.

This issue also marks the first of what we hope will become a regular feature of the Bulletin, an article, reporting one of the addresses at the Spring Meeting, written by a volunteer who is not a member of the editorial staff, to whom we gladly gave byline credit.



A NOTE CONCERNING DON COWAN

Following a serious stroke in late May, Don Cowan, the Secretary of the College, notified the Executive Committee that he would be unable to continue his role. Phil Kessler, who was slated to be the nominee as Secretary at the Annual Meeting (with Cowan the nominee as Treasurer), volunteered to step in on short notice and assumed the role of acting secretary for the balance of Cowan's term.

Since May, Don, with the constant support of his wife, Sarah, and their children, has devoted all of his efforts to his recovery. He spent most of June and July in the University of North Carolina Acute Rehabilitation facility in Chapel Hill. He has thereafter continued outpatient therapy at UNC and at home.

Don and Sarah are grateful for the thoughtfulness and many kindnesses the entire College family has extended to them. While recovery remains his primary focus, Don's heart remains with the work of the College, to which he has devoted many years, and he continues to follow its activities with great interest.

At present, Don's most convenient email address is **jdonaldcowanjr@gmail.com**.

AMERICAN COLLEGE OF TRIAL LAWYERS
THE BULLETIN

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A current calendar of College events is posted on the College website at www.actl.com, as is a current compendium of the ongoing projects of the College's National Committees.

SUCCESSFUL 61ST SPRING MEETING HELD IN SAN ANTONIO

Fellows of the American College of Trial Lawyers and their spouses and guests gathered on March 3, 2011 at the JW Marriott San Antonio Hill Country Resort and Spa outside San Antonio, Texas for the College's 61st Spring Meeting.



Three Tenors entertain

In advance of the Fellows' meeting, the Board of Regents had gathered on Monday, March 1, to deal with the ongoing business of the College, including the detailed individual presentation and consideration of each person nominated for fellowship.

In this thorough process, the appropriate Regent outlines for the Board both the results of the confidential poll and of his or her follow-up investigation of the credentials of each candidate. The past presidents, who are *ex officio* Board members for life without vote, though they can make and second motions, participate actively in the discussion of each candidate. Collectively they are the repository of the College's history, traditions and culture who add a unique perspective to the Board's deliberations. At this meeting, the Regents authorized the invitation to fellowship of 66 candidates.

The Board's agenda included a written or oral report from each state, province and general committee of the College. In one major item of business, the Regents commissioned an update of the College's fifty-year history, *Sages of Their Craft*, to cover the decade since its publication in 2000.

The Trustees of the College's Foundation met separately on Thursday to deal with its ongoing affairs. One major item on its agenda was the report of the official launching of a Canadian Foundation of the American College of Trial Lawyers and a discussion of how the activities of the two Foundations might be coordinated in the future. The officers and directors of both Foundations are listed in the current College roster.

On Wednesday, the Regents sponsored an outdoor picnic under the stars honoring former Regents and current committee chairs. The evening featured a lively concert by San Antonio's own counterpart of The Three Tenors.

At the President's Welcoming Reception on Thursday night, each region had a well-marked designated area of the hall, so that Fellows and their guests could gather and meet with old friends and welcome first-time attendees who would be inducted on Saturday night. During the course of the meeting inductees were honored at both an orientation breakfast to introduce them to the College and a reception and luncheon for them and their guests. This year's luncheon speaker was Past President **Mikel L. Stout** of Wichita, Kansas.

The Friday morning program, at which President **Gregory P. Joseph** of New York presided, commenced with a welcome from San Antonio's mayor, thirty-five year old Harvard Law School graduate **Julián Castro**, the youngest current mayor of a major United States city. He was introduced by his fellow San Antonio lawyer, **Emerson (Buddy) Banack, Jr.**, FACTL.

The mayor was followed by **Michael K. Farr** of Washington, D.C., president

of Farr, Miller & Washington, LLC, whose somewhat sobering address was entitled *How Sustainable Is the Recovery? The Easy Part is Over*. He was introduced by Past President **Gene W. Lafitte** of New Orleans. The seesaw ride of the economy in the ensuing months has since given Farr's analysis significant new meaning.

Past President **Michael A. Cooper** of New York then introduced **Jeh Johnson**, FACTL, General Counsel of the Department of Defense, whose address was entitled *National Security Law in the Obama Administration*.

Next came an address by Texas Chief Justice **Wallace B. Jefferson** of Austin, the first African American Chief Justice of Texas and the current President of the Conference of Chief Justices and Chair of the Board of Directors of the National Center for State Courts. Introduced by College Past President **Joan A. Lukey** of Boston, Jefferson's address combined a memorable account of his family's remarkable history, a tribute to the rule of law and a plea for more support for state courts in the face of a troubled economy.

The Friday morning program ended with a timely panel discussion entitled *Out With the*



Old—The Legality of Law Firm Retirement Policies. Moderated by Regent **Robert L. Byman** of Chicago, the panel consisted of: **Ward Bower**, Newtown Square, Pennsylvania, a principal in the legal consulting firm Altman Weil, Inc.; **John C. Hendrickson**, Chicago, Regional Attorney for the United States Equal Employment Commission, and **Bettina B. Plevan**, FACTL, of New York

On Friday evening the entire entourage was transported to Knibbe Ranch and treated to an authentic Texas ranch experience, including a sumptuous dinner, music by a western band in a rustic dance hall, a rodeo—complete with bull-riding, calf-roping, barrel racing and a clown—and a fireworks display to end the evening.

The Saturday morning program commenced with a presentation by **Neal Keny-Guyer** of Portland, Oregon, Chief Executive Officer of Mercy Corps, of his organization's relief efforts throughout the world. He was introduced by Past President **Warren B. Lightfoot** of Birmingham.

Past President **John J. (Jack) Dalton** of Atlanta next presented the Samuel E. Gates Litigation Award to **James B. Sales**, FACTL, of Houston. This award is given from time

to time to a person who has made a significant contribution to the litigation process.

The Right Honourable Chief Justice of Canada, **Beverley**



Longhorn looks down on diners.

McLachlin, P.C., an Honorary Fellow, next addressed the meeting. Introduced by Past President **Ralph I. Lancaster, Jr.** of Portland, Maine, Justice McLachlin chose as her topic *civility*, focusing on the delicate balance, too often ignored in modern discourse, between speaking one's mind forthrightly, often through the use of humor, without stepping over the line into incivility.

The morning program ended with a presentation by University of Texas history professor **Félix D. Almaráz, Jr.** of San Antonio, in which, dressed in appropriate attire, he assumed the role of Sam Houston, reciting in the first person major incidents in

the life of that hero of Texas history.

The Spring Induction Banquet on Saturday evening produced its own unscheduled excitement. As Past President **E. Osborne (Ozzie) Ayscue, Jr.** of Charlotte began to deliver the traditional induction charge, the lights in the hall dimmed, warning lights started flashing and the public address system began to intone directions for evacuation of the hall. Choosing to regard this interruption as a false alarm, and not a genuine emergency or an unscheduled fire drill, he proceeded to deliver the induction charge in the semi-darkness.

With the lights back on, President Joseph introduced **Paul Mark Sandler** of Baltimore to respond on behalf of the newly inducted Fellows. Like a true trial lawyer, Sandler began his remarks by assuring the audience that, "If the sprinkler system comes on, I will know it is time to stop."

The evening and another successful Spring Meeting, ended with dance music and the traditional sing-along that owes its origin to the College's Chancellor-Founder **Emil Gumpert**.



OFFICERS AND REGENTS ELECTED

At the Annual Meeting of the College, which will be reported in full in the next issue of the Bulletin, the following officers were elected;

President, **Thomas H. Tongue**, Portland Oregon

President-elect, **Chilton Davis Varner**, Atlanta, Georgia

Secretary, **Paul D. Bekman**, Baltimore, Maryland

Treasurer, **Philip J. Kessler**, Bloomfield Hills, Michigan

Immediate Past President, **Gregory P. Joseph**, New York, New York

The following were elected to the Board of Regents:

Region 1 (Arizona, Southern California, Hawaii)

William H. Sandweg III, Phoenix, Arizona

Region 3 (Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, Washington) **James M. Danielson**, Wenatchee, Washington

Region 5 (Iowa, Manitoba, Minnesota, Missouri, Nebraska, North Dakota, Saskatchewan, South Dakota) **Michael F. Kinney**, Omaha, Nebraska

Region 6 (Arkansas, Louisiana, Mississippi, Texas)

Rodney Acker, Dallas, Texas

witnesses; casting about, asking the right questions. More likely, however, fly fishing is an escape from the rigors of trial practice, a relaxing endeavor in the out-of-doors.

Both fly fishing and the law are family traditions in the Tongue family. Tom's father, Thomas H. Tongue, III, also a lawyer and later an Oregon Supreme Court Justice, took his sons fishing on "opening day" and on trips to Central Oregon every year. A partner at Dunn Carney Allen Higgins & Tongue in Portland, Oregon, Tom has been fly fishing in various locales in Russia, Alaska, Canada, Britain, Belize, Ireland and Argentina. His favorite is the Deschutes River, less than two hours away from Portland. He reports that many Fathers Day weekends were spent there.

"I didn't want to be in the shadow of all three prior Thomas Tongues that were lawyers in Oregon and as a result, considered a career in business. However, after I did well on the LSATs, I decided to try law school, but not in my home state." He graduated from the University of Wisconsin Law School in 1968 and returned to Oregon to take the bar exam and enlist in a U.S. Army JAG Reserve Unit. He was undecided about what type of law he might be interested in and interviewed with a number of firms. William Morrison, the founder of Tongue's firm and the 1971-72 President of the College, sug-

gested that he come to work for his firm and try trial work.

Thanks to Morrison and other trial lawyers in the firm, Tongue was given heavy early trial experience. "I have never found trial practice boring. No case lasts forever, and there will always be new matters," he says. "As a trial lawyer, you are constantly learning new information, not just about the law, but about how people do things, how they behave in their commercial life, and they pay you to listen and learn. You then organize and present their point of view to other people. I have been very blessed with handling a great number of different kinds of cases and have never been bored doing trial work."

Tongue is looking forward to his year as President. "It is an overwhelming honor to be asked to be an officer of the College and I am excited to be its President. My goal as President is to encourage Fellows to be active in addressing challenges to our judicial system. Maintaining our system of justice, including jury trials, is going to take continuing effort and commitment from a great number of people, not just Fellows in the College, but also groups and organizations that share concern for judicial independence and respect for the rule of law." Again, my goal is to get more Fellows involved at all levels. This means being active and involved in the activities of the College general

committees and, in particular, engaged at the state, province and local level."

As President-Elect, Tongue and his wife, Andrea, already have attended College functions in some states and are looking forward to further travel to state, province and regional meetings to listen and learn how each state and province is dealing with the challenges confronting our judicial system. He also is looking forward to the workshops for general, state and provincial committee chairs that will give them the opportunity to share ideas that may be useful.

Tongue also wants to encourage state and province committees to undertake local projects. "Some state committees limit their function to screening and finding worthy candidates for Fellowship." He believes that they also need to see their role as providing leadership in their communities to address challenges such as the problems created by the lack of trial experience of young lawyers and judges. "We're getting new judges without trial experience who don't feel comfortable trying cases," he says.

"Fellows in a number of states are already involved in local projects, Tongue says, "but we can do more. The College is developing teaching tools and DVD programs for use at local levels. . . . Having Fellows take leadership roles in local projects raises the

profile of the College as a whole. Such activity demonstrates that the College contains not just the best trial lawyers, but lawyers that care about our system of justice and have the best interests of the system at heart. We need to increase our efforts at the local level so the local judges know who the Fellows are and can look to them for leadership when they need help and assistance.”

In recent years, Tongue has represented law firms that have been sued by their clients. He likes to keep a low profile. “I work hard to keep the firms’ names out of print,” he says. But he is proud of the result in a well publicized 1985 case which raised a national issue. The Portland YMCA lost its property tax exemption for certain buildings after they were declared not “charitably” operated. It was initially ordered to pay \$1 million in back taxes. Tongue, who had been a counselor at YMCA camps as a young man, represented the YMCA, and after years of hearings, trials and appeals, its charitable status was restored.

Both Tongue and Andrea enjoy their contacts with other Fellows and spouses. “The ‘fellowship’ we have experienced has enriched our lives,” he reflects, “and we feel very fortunate to have a concentrated year of experiencing that ‘fellowship’ ahead of us.”



Thomas H. Tongue

Tom has been a trial lawyer for 43 years with the same Portland, Oregon firm, now known as Dunn Carney Allen Higgins & Tongue, LLP. He is the fourth Thomas H. Tongue to practice law in Oregon.

Education: B.S. History, University of Oregon, 1965; J.D., University of Wisconsin, 1968

Professional: Past President of the Multnomah Bar Association; Past President of the Oregon Association of Defense Counsel. Numerous other offices in legal organizations. Received professionalism awards from the Multnomah Bar Association and Oregon State Bar Litigation Section. Recipient of the Judge Learned Hand Lifetime Achievement Award, honoring leaders in the legal field for professional excellence and contributions to the legal community.

American College of Trial Lawyers: Inducted, 1993. Board of Regents, 2003-2007, Secretary, 2008-2009; Treasurer, 2009-2010; President-Elect, 2010-2011.

Personal: Married for 40 years to Dr. Andrea Tongue, a pediatric ophthalmologist. Two children, son Thomas M. Tongue, a fifth generation Portland lawyer, and daughter Kathryn Watts, a Law Professor and Assistant Dean at the University of Washington who previously clerked for United States Supreme Court Justice John Paul Stevens.

MAYOR WELCOMES

COLLEGE TO SAN ANTONIO

San Antonio Mayor Julián Castro, a San Antonio native and at age thirty-five the youngest mayor of a top-50 American city, welcomed the College's 61st Spring Meeting to his city.

A 1996 graduate of Stanford University with honors and distinction and a 2000 graduate of the Harvard Law School, Mayor **Julián Castro** is a practicing lawyer. Elected to the San Antonio city council at age twenty-six, he served two terms before running for mayor. Focusing on three E's, education, economic development and the environment, as mayor he has visited every middle school in the city, talking with students about the importance of staying in school and in getting an education. He has focused as well on ways to improve the local education system. He has also taught at The University of Texas at San Antonio, Trinity University and St. Mary's University.

The city has one of the fastest growing technology industries in the country. In his introduc-



Julián Castro

tion of the mayor, College Fellow **Emerson Banack, Jr.** pointed out that the JW Marriott San Antonio Hill Country Resort, the facility in which the meeting was taking place, had itself been the subject of controversy in the planning stage. "This was," Banack

noted, "a highly, highly controversial building. It sits on top of our aquifer, which is our sole source of water, and there are, I believe, six or eight inches of clay put out on those golf courses to keep chemicals from getting into our aquifer."

The mayor had voted against the project until the developer agreed to take steps to protect the aquifer, protect the environment. "Once . . . it could be done to protect not just today's San Antonio, but tomorrow's San Antonio," Barack noted in his introduction, "he then voted, supported, and you are sitting in, living proof of the merger of environmental concerns and economic development."

Extracts from Mayor Castro's remarks follow.

Bienvenidos a San Antonio; welcome to San Antonio. . . . Here are some facts about San Antonio We are the seventh largest city in the United States. We are the second largest city in Texas, with 1.3 million people. We are one of the fastest growing cities in the United States and one of the oldest in Texas. San Antonio used to be the state capital at one time. We are the most visited city in Texas, with the River Walk and the Alamo. I understand some of you all are going to get to go out and see the Alamo today. It is a great time to do that, because they're celebrating 175 years of Texas independence.

San Antonio, even though it is also thought of as [a] place that is great to visit, is also a great place to live and to work and to invest. Over the last thirty years San Antonio literally has become a power center in terms of economics and job opportunities. I remember when I was at Harvard Law School – and I am sure many of you had this same experience – they used to produce a book for on-campus interviews of all the firms that were coming to interview, and the book was arranged by city. You can imagine that for New York and Los Angeles and Chicago and Houston and Dallas there were a ton of law firms that were interviewing over there, but for San Antonio there were literally, I think, two. It is that story of San Antonio that is changing. San

Antonio is the town that now has more than 100,000 people enrolled in college and graduate schools in the city, more than Austin, more than Dallas, more than Phoenix and city-to-city, though of course not metro-to-metro, more than Boston, Massachusetts. It is a city that I'm tremendously proud of, and I welcome you.

It is always an honor to be around individuals who have committed themselves to excellence in their profession and who have achieved it. . . . [O]ne of the things that I've been doing over these last couple of years is visiting our middle schools. . . . And at the very beginning of my talk, I ask them to raise their hands and [I] throw out many different professions; and one of the ones I always ask about is, "Who wants to be a lawyer?" And every single time a whole bunch of hands go up . . . young kids who want to be an attorney. That's their dream.

I commend you for achieving your dreams and for doing so in spades, for being role models for folks in our profession, for achieving a level of distinction that truly is fabulous, spectacular, and a real honor. . . . [I]f you think about the realities of this year, 2011, and the news that we read about or see on television these days, it is very clear that the tenets of our profession – and of your excellence – are more needed today than ever

before. We live in a world that is changing faster than it ever has in the course of human history, a time when the barriers that have divided us – of nationality, of race, of gender, of sexual orientation – are crumbling at a faster rate than at any other time.

We live in a YouTube, Facebook, Myspace, Google, iPod, iPad, Android world. We live in a world where the United States is engaged in a global economic competition like it never has been before, where the Census Bureau is in the middle of chronicling sweeping demographic changes that promise either to enhance America's stature in this 21st century or to dampen it. We live in a world in which we need folks who are committed to reason, to being dispassionate, to taking care before judgment, to analyzing carefully all sides of an issue before making a decision. They could use some of that in Washington, D.C. and some of the corporations in New York, and certainly throughout the United States and the world.

And so I hope that this conference will be a wonderful opportunity for you to exchange ideas, to recommit yourself to the principles that got you into the practice of law in the first place and to dream about the future.



Thank you very much, Mayor Castro. It is a pleasure to be here just after the 175th anniversary of Texas Independence at a time when the governor wants to secede and declare independence once again.

bon mot

President Gregory P. Joseph

TEXAS CHIEF JUSTICE ADDRESSES SPRING MEETING

*A highlight of the 61st Spring Meeting of the College was the address of Texas Supreme Court Chief Justice **Wallace B. Jefferson**. His announced subject was “The Future of the State Courts,” but his audience found in his remarks far more than that. His presentation was both a tribute to the rule of law and a reminder of how far we have come as a society*



Wallace B. Jefferson

Wallace B. Jefferson was appointed to the Supreme Court of Texas in 2001, its first African American Associate Justice. In 2004 he was appointed Chief Justice, the first African American to hold that position. When he stood for retention election in 2006, he garnered more votes than any other candidate for any statewide office. In 2010, he was elected president of the Conference of Chief Justices and Chair of the Board of Directors for the National Center for State Courts.

Before going on the bench, Chief Justice Jefferson made his mark as an outstanding appellate lawyer. By the age of 35, he had already successfully argued twice before the United States Supreme Court. A 1988 graduate of the law school at the University of Texas, he spent two years in private practice before starting his own firm, San Antonio-based Crofts, Calloway and Jefferson, in 1991.

Chief Justice Jefferson and his wife, Rhonda, have been married for nearly twenty years, and they have three sons now aged 11, 14 and 17. Born in 1963, he is the son of Retired Air Force Major William D. Jefferson and Mrs. Joyce Jefferson of San Antonio. Although he grew up all over the United States as his father served his country, his family has deep Texas roots, tracing their ancestry back

to Shedrick Willis, a former slave from Waco, Texas. As College President Joan Lukey noted in her introductory remarks, Chief Justice Jefferson comes from an extraordinary family, which includes his brother, College Fellow Lamont A. Jefferson of San Antonio.

Chief Justice Jefferson's remarks, lightly edited, follow:

* * * * *

In the last week, I was in El Paso, Texas to speak to members of the FBI and the DEA. As I prepared my remarks, I wondered what I had to offer to these men and women whose job it is to make sure the violence in Mexico halts at the US-Mexico border. In El Paso, the DEA and the FBI share a building in which young – very young – agents sit at terminals and chat with Mexican drug lords about the next deal, while surrounded by white boards with pictures of thugs, living and dead, who spend their short lives in a world filled with ruthless assassinations. There is no morality in Juarez, Mexico.

I asked the FBI special agent in command, "How is it that a river – the Rio Grande – can act as a relatively impervious dam between the carnage in Mexico and order in the United States?" To give you a little perspective, in the last few years Juarez, Mexico experienced nearly 3,000 murders. Across the border in El Paso, for the same period there were only ten murders. The deaths in this one region of Mexico sometimes

exceed the violence in Afghanistan and other war-torn areas of the world. In contrast, the peace in El Paso makes it one of the safest cities in the United States. And so, I asked the agent, "What explains this disparity?"

It clearly was not geography. The Rio Grande is a puny little river. It blocks neither bullets nor human intrusion, and the wall that's been built nearby is breached with some regularity. So, how is it possible that El Paso is safe, while Juarez is a killing field? This special agent answered – and this is the message that I want to leave you with today – "The rule of law."

Now, in some ways that makes little sense. You can touch and you can feel the Rio Grande. The wall is a physical structure. The rule of law is nothing; it's just a phrase. It's not a real barrier. But, the rule of law is more than that. It is metaphysical. It exists in our minds and it is in our core. We have to remember that the rule of law, which has failed the citizens of Juarez, has failed us in this country in the recent past.

I grew up in a small house on the west side of this very city, San Antonio, near Lackland Air Force Base. A military family: six kids, three to a room. Not one of us was born in Texas. (By the way, that's a big problem if you want to run for office in the State of Texas.) Roxanne was born in Nebraska, Darrell was born in Massachusetts, Lamont in Riverside, California, my sister Celeste and I in Tacoma, Washing-

ton. Leah was born in Guam. We traveled the country to and from military bases because my father was serving his country.

I want you to imagine my brother Lamont – he's sitting right there – as an infant and my parents traveling the country seeking a hotel room and the hotel clerk saying, "Your kind is not welcome here." They were directed to the nearest negro neighborhood and told to knock on doors to see if someone would take them in. My father tells this story, not with anger, but with disappointment, trying to understand what this country was really saying to him and to my kind and to all of us in those days in the 1950s, not very long ago.

Fast forward to the late 1960s. Around the country there are riots in the cities and discord. By then, my father had received his college degree from Puget Sound and a master's from St. Mary's Law School. He had become an officer in the military. Some of my earliest memories were when the family would drive to church on a base. When we approached the guard station, the guard would stand and give a stiff salute because an officer was coming on the base. There was no distinction on the base because of race. There was respect that was earned by hard work.

What saved our family and what will save us all, is the rule of law. When I see military men and women today, I think of our Constitution, of God, of country, of security and liberty. It is very



different from what you think of when you see the military in Juarez, because there you think of fear and intimidation and corruption, violence. There is no respect for the institutions of government.

The Civil War is our own dark history. But there were seeds of the promise of liberty even in those darkest days. I had the pleasure of knowing my grandmother who was born in 1902 and died at age 96 or 97. She was born in Palestine, Texas in east Texas. She would tell me about her brothers and sisters. There were three boys and three girls in her family as well. She would tell me about her uncles, Matthew, Mark, Luke and John, and their lives in east Texas. Matthew was a dentist, having obtained his degree from Meharry in Tennessee. Mark was a pharmacist and John was a lawyer, a graduate of Howard University. She didn't remember what Luke's occupation was, but we just imagined he was a doctor. And her father, Samuel, was a postal worker.

I always wondered how my great uncles managed to live largely professional lives in the years immediately following the Civil War. It goes back to this concept of the rule of law and the judges and lawyers who enforce it. My grandmother told me about her great grandfather Shedrick Willis. He was a slave and his owner was a Texas state court judge named Nicholas Battle. Through genealogical research, we found out more about Nicholas Battle. The records show that he was a slave-owning judge in Waco, Texas

where storm clouds of war were gathering and slavery was strong. During that period before the Civil War, a case came before him involving a free black man trying to get out of a contract in which he had sold himself into slavery. Given the time and place, the popular ruling would have been to enforce this contract. The negro race was not seen as human and treating this free black man as property, as the slaves were treated as property, would have been no surprise.

But Judge Battle ruled that the contract was void and against public policy. He said: "I will not send a free man into slavery. That is wrong." The case went all the way up to the Supreme Court of Texas and I take great pride today in pulling the book off the shelf to see the opinion where the Supreme Court of Texas affirmed Judge Battle's decision.

Judge Battle later left the bench and fought in the Civil War for the Confederacy. When he came back, he became a judge again in a community with lawlessness and people still fighting the Civil War in their own minds. In this atmosphere, he appeared at a community gathering and gave a speech that went something like this. He said, "You know me. I was a slave owner, I fought in the war alongside many of you to uphold that institution. I was a firm state's rights democrat." He said, "But I recently swore an oath to preserve, protect and defend the Constitution that today includes the 13th and 14th and 15th Amendments. I'm going to honor my oath and

any of you who contend otherwise are supporting a revolution and I won't tolerate that."

This is the sort of independence that we talk about when we refer to the rule of law. It is the sort of courage that does not now exist in Mexico. It is the sort of courage that we see judges display today when they face intimidation and must endure calls for their impeachment. It's something that we must look at very carefully and protect to make sure we do not slide back into those dire days where it was not the rule of law, but popular opinion or wealth or power, that ruled.

And, then, there are these two men. Shedrick Willis, the slave, was my great, great, great grandfather. Nicholas Battle, the judge, was his owner. The judge did what the Constitution required in his court, but no law told him that he had to engage in business with his former slave or do anything to help him. The fact is, though, that it was Judge Battle who recommended that Shedrick Willis become a public servant, a city councilman in Waco. So, right after the war, my ancestor, Shedrick Willis became a city councilman. Now, can you imagine one year you are private property and the next year you are a public servant, a leader in that community? That tells us how powerful the Constitution properly interpreted, properly amended, is and how strong the rule of law is: it opens up opportunities to everyone, regardless of our circumstances.

People often tell me that the great-

est danger facing state courts today is the appallingly low funding they receive from their legislatures. This is a real, real threat. There are courthouses closing, staff attorneys being furloughed or fired, litigation fleeing to the private sector for alternate dispute resolution. The character of our state courts is changing structurally as a result.

Nevertheless, I submit that the greatest threat is not in the funding of the courts, but in a diminishing respect for the hard deci-

sions our judges must make every day, popular or not. We need to fight for and maintain a world where the guard salutes my dad, where the Palestine of east Texas is spared the ancient turmoil that plagues Palestine of the Middle East, a country where the descendant of a slave can serve the state as Chief Justice.

You in this room have inherited the rule of law. I ask all of you to preserve and protect it so that our great grandchildren will achieve the kind of victories that

we see in this room today and in our great country.

Catharine B. Arrowood

Editor's note: This is the first of what we hope will be many Bulletin articles written by Fellows who volunteer to help produce this publication.



Lamont [Chief Justice Jefferson's brother], I hope you're here somewhere because I wanted to tell you that the Chief . . . mentioned to me . . . that the first chance he had to argue an appeal was in the state court system. Now, this was an opportunity that all of us with siblings, given what sibling rivalry can do to us, would relish; he was appealing from an unsuccessful trial verdict of his brother. Tough situation, but I would think kind of a no lose situation for the younger brother doing the appeal, because if he loses, he just says, "Well, you know, if you hadn't screwed up the trial as badly as you did, it would have been fine". And if he won, he would be a hero. Well, as chance would have it, he won and his brother's unsuccessful trial verdict was reversed and I think down here in Texas you say . . . "reversed and rendered." That is merely a lead-in to my saying that one of the Texas Fellows has given it to me on good authority that the Chief has been known to say, Lamont, that on more than one occasion he has saved your sorry [fill in the blank.]

bon mot

*Past President Joan A. Lukey
introducing Chief Justice Jefferson*

* * * * *

I want to start out, Lamont, by saying I would not be here as a lawyer, or as a Chief Justice without having Lamont as an older brother. So, there you have it; but I did save you on that one case.

Chief Justice Jefferson

bon mot

CIVILITY, THE HARDEST PATH

Canadian Chief Justice Beverley McLachlin, P.C., addressed the Spring Meeting of the College on the subject of civility. A few decades ago, an address to a group of lawyers on that subject might have seemed perhaps superfluous. Unfortunately, in a world in which incivility in public discourse has begun to infect the courtroom and the negotiating table, her remarks, using three historic figures as examples, were a timely reminder.



Beverley McLachlin

The Right Honourable Chief Justice Beverley McLachlin of the Supreme Court of Canada, an Honorary Fellow, was introduced by Past President Ralph I. Lancaster, Jr, who recounted her rapid rise in the Canadian judiciary. Born in Pincher Creek, Alberta, which at the time had a population of 1,700, she received a BA with honors in philosophy, an MA in philosophy and an LLB from the University of Alberta. Called to the Alberta Bar in 1969 and the British Columbia Bar in 1971, she was in private practice in Edmonton and Vancouver and then taught on the faculty of law at the University of British Columbia. In 1981 she was appointed, first to the Vancouver County Court, and then in that same year to the Supreme Court of British Columbia. Elevated to the British Columbia Court of Appeals in 1985, she was appointed Chief Justice of the Supreme Court of British Columbia in 1988. Only seven months later, in April 1989, she was sworn in as a Justice of the Supreme Court of Canada and in January of 2000 she was appointed Chief Justice, the first woman to hold that office. McLachlin had been a delegate to the first Canadian-United States Legal Exchange in 1987.

The author of many articles and publications and of two books, McLachlin is the recipient of at least 21 honorary degrees. As a member of the Supreme Court of Canada she is also a deputy of the Governor General of Canada, and in that capacity has served as an administrator of the government and performed the duties of Governor General. She serves as chairperson of the Canadian Judicial Council, the Board of Governors of the National Judicial Institute and the Advisory Council to the Order of Canada. A member of the Queen's Privy Council of Canada, in 2006 she was appointed a commander of the Venerable Order of St. John. In 2008 the government of France made her a Commander of the Legion of Honor. Her husband, Frank McArdle, a distinguished lawyer in his own right, is the former executive director of the Canadian Institute for Advanced Legal Studies.

In response to her introduction, Chief Justice McLachlin thanked the College for its support over the years for its vision of a college of trial lawyers that would extend north of the American/Canadian border and include all of North America. "It has," she asserted, "been an extremely fruitful vision from our perspective. . . . [A]part from the wonderful fellowship we have . . . we profit very much in our legal system from the partnership you have established."

Justice McLachlan's perceptive address, follows:

* * * * *

Civility, these days, is on every tongue.

On January 12, 2011, in a speech at the memorial service for victims of the Tucson, Arizona shooting that killed six people and wounded others, including Congresswoman Gabrielle Giffords, the President of the United States uttered a call for civility in the conduct of public affairs. He stated:

... [A] more civil and honest public discourse can help us face up to the challenges of our nation in a way that would make them proud. . . . [W]e can question each other's ideas without questioning each other's love of country.

We all agree that civility is a good thing — in our politics, in our legal system, and in our day-to-day lives. Today, I would like to look at what civility means, how it can be achieved (despite the challenges it presents), and finally, leave you with the examples of three men who, despite enormous difficulties, achieved it.

First, what does civility mean? How do we draw the line between civility and incivility? How do we reconcile the vigorous pursuit of ideas and goals and the need for exacting criticism with, to use the President's

words, "a more civil and honest public discourse"? How, in a word, do we ensure that civility does not give way to servility?

There are no easy answers to these questions. I come from a country, Canada that is sometimes praised — and often lampooned — for the "niceness" of its people. It is said that Canadians apologize a lot. When called on it, we may actually apologize for being so apologetic. Yet Canadians earned a reputation in two world wars as formidable fighters and [we] accept a Parliamentary Question Period that has been described as a "disgrace" for its rough and rude exchanges. In Canada, the Prime Minister and his government are required daily to face the questions and not infrequent taunts of the opposition, on the hot scent of a "palpable hit," to use Shakespeare's phrase. The same used to be true in the United States until James Madison, your fourth President (1809-1817), manoeuvred an end to the practice on the ground that this parliamentary device could prove "embarrassing and perplexing" for presidents. Recently, the U.S. Congressional Research described the Canadian question period as "a verbal fencing match in which precocious opposition members spar with ministers." Canadians, watching on their television screens, mutter about the decline of civilized political debate. Why am I telling



you this? To reassure you that despite our “niceness,” Canadians, like all democracies, have civility issues.

The practice of civility is easy in a dictatorship. One must be polite. One dare not offend. Civility is preserved because it must be preserved. But this is not true civility; it is servility. “Servility” is defined as “showing an excessive willingness to serve or please others.” It is rooted in the Latin word “*servilus*”, from *servus* or slave. Enforced civility becomes servility, and in the process loses all meaning and value.

It is only in a democracy of independent citizens that civility becomes meaningful. It serves as an aspirational beacon to how, in daily intercourse with those who hold different views and values, we, as free men and women, can conduct our affairs in a civil — or civilized — manner. In a democracy, we start from the premise that we are each of us, free people. The freedom we possess may be used well or badly. It may be used civilly, in a spirit of respect for the freedom of others, or uncivilly, with contempt for others.

Using freedom well, in a civil manner, is hard work. In some cases, it goes against the grain. But if we do not use our freedom well, we demean it, and if we demean it, we risk losing it altogether. Absent civility, democratic discourse descends to

demagogic rant. Compromise becomes difficult, solutions elusive. The vital processes that sustain democracy flag and ultimately fail.

What civility requires, at bottom, is acceptance that one’s co-citizens have a right to hold different opinions. It does not mean that one must agree with those positions. Nor, where one disagrees, does it mean that one cannot express that disagreement forcefully. Indeed, forceful expression of disagreement is essential to the peaceful resolution of disputes.

Court processes are a prime example. Each lawyer seeks to express the view of his other client as forcefully and persuasively as he or she can. The resultant clash permits critical evaluation of the propositions advanced and permits the court to find the best solution.

Civility may require us, however, to distinguish between criticizing an idea or a position, and criticizing the person who holds it in a way that incites hatred of her. It is one thing to express dislike — even detestation — for an idea or an opinion. It is quite another to incite public hatred for a legal or political opponent. In Canada, where we, like you, cherish free speech, we draw the line at incitement of hatred. Incitement of hatred toward groups or individuals is not permitted. Criticism is.

Civil criticism takes many forms. One is the serious, straight-forward expression of disagreement with a position or course of conduct. Another is humour, which gets the critical point across but stops short the hatred-inciting. Mocking critiques of one’s opponent stand in the best traditions of democratic debate. Sir Winston Churchill understood the value of spontaneous disparagement made palatable by wit. Of Labour Prime Minister Clement Atlee, he stated: “An empty taxi arrived at 10 Downing Street and, when the door opened, Atlee got out.” Of Sir Stafford Cripps, Atlee’s chancellor of the exchequer, he quipped, “There, but for the grace of God, goes God.” As for his cabinet colleague, John Reith, he had this to say: “There he stalks, that wuthering height.” Hatred, no. Good-humoured lambasting, yes.

This was then, as now, in the best tradition of democratic debate. Conservative Benjamin Disraeli said of Liberal Prime Minister William Gladstone, “He has not a single redeeming defect.” Labour Party leader Michael Foot more recently called Conservative Lord Tebbit, charged with immoral proclivities, “a semi-house-trained polecat,” and Sir Clement Freud dubbed Margaret Thatcher “Attila the Hen.” In Canada, in a twist on Churchill’s Cripps quip, NDP leader David Lewis stated of the then Prime Minister, “There, but for the grace of Pierre Elliot Trudeau, goes God.”

The tradition in which comments such as these fall permits criticism of one's opponents, but forbids their vilification. Civility draws the line well short of incitement to hatred. Indeed, sometimes humour can even be used to defuse enmity. In Vancouver, where I practiced law, the story is told of two Court of Appeal Judges, Justice Clyde and Justice O'Halloran, who fell out with one another. For three years, they did not speak to one another and avoided each other's company as much as humanly possible. But accidents will happen. One day, as Justice Clyde was riding up to his third floor chambers on the elevator, the door opened and in a moment of inadvertence, Justice O'Halloran entered. As the doors closed, he turned to find himself facing his arch-enemy. The two gentlemen rode up to the third floor in stony silence. As the door opened, Justice Clyde exited. Then he pivoted, and turned to face Justice O'Halloran. "I will have you know," he said, "that it is I who is not speaking to you." A simple comment that exposed the ridiculousness of the situation. Humour. Civility. The feud was over.

These examples illustrate not just humour, but a central characteristic of civility — good manners. All definitions of civility emphasize its dependence on good manners. Good manners serve an invaluable social purpose. They allow us

to converse and do business not only with our friends but with our opponents. To criticize harshly and with vulgarity is almost certain to insult and invite retaliation. As Chief Justice Burger of the Supreme Court of the United States put it, "When men shout and shriek or call names, we witness the end of rational thought process if not the beginning of blows and combat." Yet the frankest critiques, delivered with grace and good manners, may yield fruitful exchange, compromise, and problem solving.

In my experience of over thirty years as a judge, the best advocates who have appeared before me have invariably exemplified the virtues of good manners and civility. Think of the great attorneys that you all know and admire. I expect that without exception they exhibit integrity, courtesy, and that they eschew sharp practices and invective. These men and women demonstrate that there is no true conflict between zealous advocacy and civility. Vigorous, but civil, representation of one's client's interests is the most effective way to advocate on his or her behalf.

Civility, to recap thus far, is an essential condition of fruitful interaction on the political, legal and personal plane. It allows us to deal with difference rather than rejecting it. It is premised on the idea of mutual freedom and the respect for the right of others to hold views that differ

from our own. It permits blunt and forthright criticism, but does not countenance hatred. It often uses humour. It depends on good manners. And always, everywhere, it is hard work.

Let me illustrate the last proposition with three historic examples of people who struggled with civility and won: Thurgood Marshall, Nelson Mandela and Winston Churchill.

My first example is the great civil rights advocate and judge of the United States Supreme Court, Thurgood Marshall. As a youth, Thurgood Marshall was considered raucous and disputatious, and often got into mild trouble at school. No one would have predicted that he would become a model of civility. Yet he did. Today, it is perhaps difficult to imagine the extent of prejudice and animosity that he faced as a black lawyer litigating in segregated states, where his most basic rights were denied. Yet, Marshall did not let these difficulties lead him from the path of civility. The struggle, for this proud and intelligent man, must have been enormous. Yet, somehow, civility prevailed. Recalling his great courtesy, one opposing counsel said that "it is a credit to him that he could be cordial when there was no hotel, restaurant or restroom open to him near the courthouse." Marshall understood that civility was essential



to his quest for racial equality. No doubt he also understood that civility would help him win cases. And win he did, including 29 victories in the United States Supreme Court.

My second example is also a lawyer who fought against racism, Nelson Mandela. Born on the high veldt of South Africa, slated from an early age to be a hereditary Chief of his people, Nelson Mandela became a lawyer, and saw his life's direction suddenly veer. A passionate man of passionately held beliefs, he made the fight against apartheid his life quest. He detested the laws that prevailed, yet in case after case he used those laws and the civility of reasoned argument before the courts to defend his clients and further his ideals. Imprisoned on Robben Island in brutal conditions for more than two decades, he refused to let bitterness overtake him, and became the symbol of a new republic, one in which all citizens — black, white or coloured — would stand side by side in true equality. One comes away from reading his autobiography, *A Long Walk Home*, with an overwhelming sense of the power of civility, achieved against all the odds.

What is true of the great legal advocates like Marshall and Mandela is also true of our great democratic leaders. Read the biographies of Abraham Lincoln, Franklin Roosevelt, John F. Kennedy. You will find people

of great will and exceptional accomplishment. And you will find civility, maintained in the face of grave difficulties. This brings me to my third example, Winston Churchill.

Churchill was a man of conviction and moral fibre, if ever there was one. And in 1940 he was facing perhaps the greatest crisis of the 20th Century. In the darkest days of World War II, when many urged that the only choice was capitulation to the Axis, Churchill determined that England and the free world must fight the totalitarian forces of Germany and Italy, or lose forever their freedoms and democratic way of life. When most did not, Churchill saw clearly that surrender was unacceptable, and fought successfully against contrary consensus to successfully pursue the war through incredible difficulties. Unlike many around him, he never wavered on this point, refused all compromise. And it did not stop there. Churchill summoned his own conviction to beget conviction in others. He developed what Isaiah Berlin referred to as an ability “to create adamant moral conviction in the face of chaos without and darkness within.” Witness his first speech as Prime Minister to the House of Commons on May 10, 1940:

I have nothing to offer but blood, toil, tears and sweat.

We have before us an ordeal of the most grievous kind.

We have before us many, many long months of struggle and of suffering.

You ask, what is our policy? I can say: It is to wage war, by sea, land and air, with all our might and with all the strength that God can give us; to wage war against a monstrous tyranny, never surpassed in the dark, lamentable catalogue of human crime. That is our policy.

You ask, what is our aim? I can answer in one word: It is victory, victory at all costs, victory in spite of all terror, victory, however long and hard the road may be; for without victory, there is no survival.

Passionate commitment to a goal of primordial importance. Being the man he was — Berlin described him as a “hard, difficult, impossible character” — devoted passionately to the goal, as he saw it, of saving western civilization, Churchill did, on occasion, succumb to incivility. Indeed, one of his critics, Harold Laski, declaimed his “coarse, and often malignant, brutality.” Yet, Churchill fought the good fight and in all the ways that count emerged squarely on the side of civility. It was not easy. In the dark days of June, 1940, Churchill for a time slid into incivility. His wife, Clementine, wrote to him as he toiled in the darkness of the Whitehall bunker, and gently but firmly reminded him of his life-long commitment to ci-

vility. Let me share with you her letter.

10 Downing Street
27 June 1940

My Darling,

I hope you will forgive me if I tell you something that I feel you ought to know.

One of the men in your entourage (a devoted friend) has been to me & told me that there is a danger of your being generally disliked by your colleagues & subordinates because of your rough sarcastic & overbearing manner — Higher up, if an idea is suggested (say at a conference) you are supposed to be so contemptuous that presently no ideas, good or bad, will be forthcoming. I was astonished & upset because in all these years I have been accustomed to all those who have worked with & under you, loving you — I said this & I was told ‘No doubt it’s the strain’ —

My Darling Winston — I must confess that I have noticed a deterioration in your manner; & you are not so kind as you used to be.

It is for you to give the Orders. . . with this terrific power you must combine urbanity, kindness and if possible Olympic calm. You used to quote: — ‘On ne règne sur les âmes que par le calme’ — I cannot bear that those who serve the Country & yourself

should not love you as well as admire and respect you —

Besides you won’t get the best results by irascibility & rudeness. They will breed either dislike or a slave mentality ...

Please forgive your loving devoted & watchful

Clemmie

What a paean to civility! Kindness, good manners, calm — conduct engendering respect and love. These — not irascibility and rudeness — will carry the day. Churchill understood and took her advice.

In 1945, just as the war was ending, Churchill was ejected from office by the British people in an overwhelming victory for Labour. David Kynaston’s *Austerity Britain: 1945-1951* tells the story of the new Britain that emerged, a Britain that rejected Churchill’s values and leadership. Churchill must have been sorely disappointed. But he did not descend into bitterness, nor did he rail against the people and their new leaders. Adam Gopnik, in an article in *The New Yorker* dated August 30, 2010, “Finest Hours”, sums it up as follows: “Throughout the war, as Hitler retreated into his many bunkers and Stalin stormed and even Roosevelt concentrated power more and more in his single hand, Churchill accepted votes of confidence, endured

fatuous parliamentary criticism, and meekly left office after triumphing in the most improbable of victories.”

Churchill: a fighter par excellence, but also a truly civil man, who saw clearly that the democracy for which he fought ultimately depended on civility.

Each generation faces its own challenges, and meets them in its own way. Our challenges, in a world increasingly beset by lawlessness, violence and terrorism, are great. We, like Churchill, have a choice.

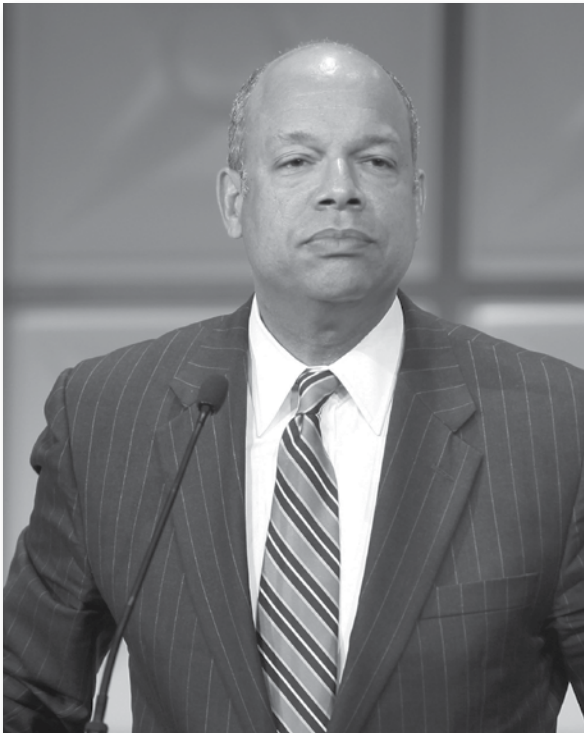
We can succumb to frustration and anger. We can let our manners deteriorate. We can find temporary solace in vilifying those who do not share our commitment or see different ways forward. We can let ourselves become hateful, irascible and rude.

Or we can, as Clementine Churchill counseled, seek the way of civility — fighting to preserve the things we hold dear in the face of adversity, without compromise, but in the spirit of respect and calm. That way is not easy, yet it is essential. In all matters — personal, political and legal — civility should be our choice.



DEPARTMENT OF DEFENSE GENERAL COUNSEL ADDRESSES SPRING MEETING

*In addressing the College's Spring Meeting, Department of Defense General Counsel and College Fellow **Jeh Charles Johnson** touched on a number of what his introducer described as burning critical issues in which he has been involved, including the implementation of the repeal of "Don't Ask, Don't Tell" and the ongoing military engagements that have followed 9/11.*



Jeh Charles Johnson

A Graduate of Morehouse College and of the Columbia University Law School, a New York City trial lawyer and a former Assistant United States Attorney in the Southern District of New York, prosecuting public corruption cases, Johnson served as General Counsel of the Department of the Air Force in the Clinton Administration. After serving on the Obama transition team, he was confirmed by the Senate in his present position where he has served since February 2009.

In introducing Johnson, Past President **Michael A. Cooper** said of him, "Jeh has had a strong commitment to his profession and to the public interest over the years. In New York City, perhaps the most important bar-related position is the chairmanship of the City Bar Judiciary Committee, which investigates and evaluates judicial candidates for federal, state and local judgeships. It is an exceedingly demanding job. Jeh chaired that committee from 2001 to 2004."

Among his other civic and professional activities, Johnson has been a director or a trustee of numerous organi-

zations, including the Legal Aid Society, the New York Community Trust, the Fund for Modern Courts, the New York City Bar Fund and the Lawyers Committee for Civil Rights Under Law. He is a member of the Council on Foreign Relations.

Excerpts from Johnson's remarks follow:

THE OFFICE OF DOD GENERAL COUNSEL

Johnson listed the areas of responsibility that fall within his office. With respect to military operations and international law, he is responsible for reviewing the legality of every military operation approved by the Secretary of Defense and the President. He is responsible for matters as varied as legal oversight of our intel collection efforts, personnel matters, ethics, the environment on military installations and base closings. Fiscal law—the legal aspects of defense procurement—is his responsibility. He is responsible for handling litigation against the Department of Defense. His office writes legislation and adopts views on legislative proposals. One area of responsibility that did not exist ten years ago, detainee affairs, is a large part of his agenda. The job of General Counsel is much bigger post-9/11, given the legal challenges presented by an armed conflict against a non-state actor, one that continues to morph over time.

His view when he came to the job was that a General Counsel should not be seen or heard publicly. The office has, however, turned out to have a much higher profile than that. In two years he estimated that, in addition to numerous press briefings, he had testified or briefed before congressional committees ten times. “It is quite an interesting experience,” he related, “testifying before the House Armed Services Committee—sixty-two members of Congress all glaring down at you, each with three minutes to ask you a question on a topic of their choosing.”

DON'T ASK, DON'T TELL—THE PROCESS

Johnson first turned to the legislation repealing Don't Ask, Don't Tell, which the President signed on December 22, 2010. “This,” he related, “was a topic I pretty much managed to avoid when I was Air Force General Counsel, but when I came into this job, given this President's position on repealing the law, it was something that inevitably I was going to have to deal with. In his State of the Union a year ago, President Obama said, ‘I will work with the military and the Congress to repeal the ‘Don't Ask, Don't Tell law this year, meaning 2010,’ and we actually did that.”

In February 2010, the Secretary of Defense appointed Johnson and General Carter Ham, commander of US Army Europe, to

lead a working group to study the risk to military effectiveness, readiness, unit cohesion, recruitment and family readiness if that law were repealed so that gays could serve openly in the armed forces. They were further charged with making recommendations for new policies, new regulations, in the event of repeal.

“We had,” Johnson continued, “sixty-five people working with us, forty-six military, nineteen civilian, from across all the services. Over the next ten months, from February 2010 to December 2010, we studied the effects of a repeal of the law on the military. We did that by a systematic engagement of the military. We, in effect, had a conversation with the entire United States military about the effect of repeal, whether or not the military was basically ready to make this change. It was one of the largest, if not the largest, engagement of the US military on any personnel-related issue. We sent out a survey to 400,000 members of the military. We got 115,000 responses. We sent out a survey to 150,000 military spouses. We got back 44,266 responses from spouses. We received 72,384 e-mails that we solicited on the topic. We conducted ninety-five large-group sessions on military bases, fifty-one installations around the country and around the world. We conducted 140 focus groups and talked to numerous interested outside groups—



for repeal, against repeal, veterans organizations, members of Congress.”

DON'T ASK, DON'T TELL—THE RESULTS

The thing that the media focused on most from our report was the survey results.

[B]asically, the results were frankly somewhat surprising. We asked the question numerous different ways. We found that there was this large group of the military, between 50 and 55 percent, that saw basically mixed effects of repeal . . . and another 15 to 20 percent that saw a positive effect if the law were repealed and a 30 percent group saw a negative. So, the media immediately put together the 50 percent block with the 20 percent block and wrote 70 percent of the military doesn't care if the law is repealed, and that was the headline for every description of our report which went public on November 30, 2010. . . .

“I did probably half of those IEFs myself and came face to face with probably 20,000 service members myself on this topic What we found was that there was a wide misperception about what being openly gay in the military would mean. To a service member who had never had the experience of serving with someone who was openly gay, it conjured up an image for them of gay pride parades, overt behavior and the like. When we focused service members on the

actual experience that they've had working with someone they believe to be gay, the experience was pretty much normal.”

“One of the other things the survey results revealed was that 69 percent of the United States military had already had the experience of working with someone in their unit they believed to be gay; but we found this widespread misperception about what open service would mean if the law were repealed and that that word ‘open’ somehow conjured up a bad image and so we wrote this in our report. In the course of our assessment it became apparent to us that aside from the moral and religious objections to homosexuality—and there were many in our military—much of the concern about open service is driven by misperceptions and stereotypes about what it would mean if gay service members were allowed to be open about their sexual orientation. Repeatedly we heard service members express the view that open homosexuality would lead to widespread and overt displays of femininity among men, homosexual promiscuity, harassment and unwelcome advances within units, invasions of personal privacy and an overall erosion of standards of conduct, unit cohesion and morality.

“Based on our review, however, we concluded that these concerns about gay and lesbian service members who are permitted to be open about their sexual

orientation are exaggerated and not consistent with the reported experiences of many service members. In communications with gay and lesbian current and former service members, we repeatedly heard a patriotic desire to serve and defend the nation, subject to the same rules as everyone else. In the words of one gay service member, ‘Repeal would simply take a knife out of my back. You have no idea what it is like to serve in silence.’ Most said they did not desire special treatment, to use the military for social experimentation or to advance a social agenda.

“Some of those separated [from military service] under Don't Ask, Don't Tell would welcome the opportunity to rejoin the military if permitted. From them, we heard expressed many of the same values that we heard over and over again from service members at large: love of country, honor, respect, integrity and service over self. We simply cannot square the reality of these people with the perceptions about open service.

“And then one last line from the report, which I know was the President's favorite line in this report. As one special operations force fighter told us, ‘We have a gay guy in the unit. He's big, he's mean, and he kills lots of bad guys. No one cared that he was gay.’

“This report was issued November 30. If you had said to me

six months ago that we were going to issue our report on time . . . and that Congress would repeal Don't Ask, Don't Tell three weeks later, I would have said you were predicting something that was not going to happen; but it did [happen] in the lame duck session. A number of Republicans supported repeal, so it was truly a bipartisan effort, and we are on track to implement repeal now sometime this year. I find it remarkable and quite heartening that I'm getting e-mails from law school deans, Ivy League law schools, telling me, 'I just wrote our university president recommending that ROTC return to our university in light of repeal.' So, we're very much on track for repeal. This was no small effort, but we're very much on track."

AL QAEDA

Turning to another major subject on his agenda, Johnson continued. "In terms of the current armed conflict against Al Qaeda and its affiliates, I have two observations I'd like to offer here. One is that Al Qaeda is a very different organization than the one that attacked us in New York City and in Washington ten years ago. Al Qaeda then was a very centralized organization. Al Qaeda's core leadership, the Al Qaeda core that the intelligence community likes to talk about, is to a large extent degraded, and their operations are decentralized, and Al Qaeda relies much more on affiliates to

carry out and plan terrorist attacks. I agree with the testimony that the director of the National Counterterrorism Center offered a couple of weeks ago that Al Qaeda in the Arabian peninsula is probably the most active and dangerous Al Qaeda affiliate today in terms of planning terrorist attacks against the United States.

"In the Middle East we are seeing historic events. It seems as if we in the Pentagon are focused on one country a week. Things are happening so quickly. What the Middle East will look like after this is all over, no one I think can really predict. There are fast-moving events, and I believe we are in the midst of historic change there.

"One interesting article that was written in *The New York Times* on Monday by Scott Shane, I thought was a very interesting analysis. I don't know whether to accept it or not, but I thought it was an interesting observation . . . about events in the Middle East." Shane wrote that for nearly two decades, the leaders of Al Qaeda have denounced the Arab world's dictators as heretics and puppets of the West and called for their downfall. Now, people in country after country have risen to topple their leaders, and Al Qaeda has played absolutely no role. In fact, the motley opposition movements that have appeared so suddenly and proved so powerful have shunned the two central tenets

of the Al Qaeda credo, murderous violence and religious fanaticism. The demonstrators have used force defensively, treated Islam as an afterthought and embraced democracy, which is anathema to Osama bin Laden and his followers. For many specialists on terrorism in the Middle East, though not all, the past few weeks, Shane concluded, have the makings of an epochal disaster for Al Qaeda, making the jihadists look like ineffectual bystanders to history, offering young Muslims an alternative to terrorism.

"For me," Johnson continued, "in evaluating our military options, the thing against which I must evaluate these operations is the authorization to use military force passed by the Congress one week after 9/11. It's very much the name of the game in evaluating the legality of our legal operations against Al Qaeda and its affiliates. We deal with Somali pirates on a regular basis, and then there's detainee affairs. We remain committed to closing Guantanamo Bay. We reformed military commissions in 2009 with the passage of the Military Commissions Act of 2009. I personally testified four times before Congress in July 2009 in support of the law. We have now what I believe is a credible process in the Commissions. We have rewritten the press rules for access to the Commissions trials, hired a new convening



authority and done a number of things.”

OTHER ONGOING CHALLENGES

Among the other issues on his agenda, Johnson pointed to: the aftereffects of *Snyder v. Phelps*, the decision involving the Westboro Baptist Church, permitting members of that church to picket military funerals; the controversy surrounding the Mt. Soledad, California war memorial, a cross sitting on top of a mountain surrounded by a war memorial, which became federal property by Act of Congress and had been held to violate the Establishment Clause; a lawsuit alleging that the military maintains a system that permits sexual assault; ongoing uncertainties in funding; procurement of a new Air Force tanker, and continuing challenges presented by Wikileaks.

A TRIBUTE TO THOSE IN MILITARY SERVICE

“One thing I would like to close with,” Johnson continued, “is to . . . remind you of the commitment and the dedication and the enthusiasm of our men and women in uniform, both in the United States and in Canada. I have had the privilege of working alongside our own men and women in uniform. I’ve had the privilege to work alongside Canadians in uniform, Canadian JAGs. It is true that in the United States less than one percent of our population is doing 100 per-

cent of the fighting for us. In the course of my two years in office, I have been to MacDill Air Force Base, Fort Benning, Fort Hood, Fort Bragg, Camp Lejeune, Parris Island, Norfolk, Langley, Peterson, the Coast Guard station on Staten Island, Landstuhl, our hospital in Germany for our wounded warriors, Walter Reed, Bethesda Naval Hospital, Iraq, Qatar twice, Afghanistan twice and Kuwait. The thing that is most remarkable to me when I go to places like Afghanistan and I see our young men and women in uniform—and they are young, as young as 20, 21, younger than your summer associates—is the enthusiasm and the dedication for the mission among these remarkable young men and women, working under very, very difficult circumstances, very dangerous circumstances.

“The most remarkable thing about a military hospital, when you visit a wounded warrior who’s been shot in the neck or lost a leg as a result of an IED on a road someplace, is . . . [though] they were injured only forty-eight hours before, because unit cohesion is such a powerful thing in the military, the first thing they say to me is, ‘I want to get back to my buddies in the unit. How can I get back to my friends in the unit that I just left?’ I once encountered a triple amputee at Walter Reed who said to me, ‘Mr. Johnson, do you think this will affect my ability to get a command?’

“These are remarkable men and women and I simply ask that when you encounter a member of the military in an airport or someplace, you thank them for their service.

“In terms of what this organization [the American College] can do, I would respectfully suggest that we consider outreach to our trial lawyers in this country and in Canada who wear the uniform. It is the case that a JAG has the opportunity to be the prosecutor, the defense attorney and the judge in the course of his career. Many JAGs in the course of a twenty-year career try over 100 cases involving capital offenses, alleged detainee abuse, trials of situations in forward deployed areas involving classified evidence, fraud, military commissions, the handling of classified information. I know Navy JAGs who have tried or presided at trials in over 100 cases, argued over 200 appeals, received Bronze Stars for their rule of law efforts in Iraq. I have had the privilege of working with my Canadian counterpart, Brigadier-General Blaise Cathcart and his predecessor, Brigadier-General Ken Watkin, who is a well-known international law expert, and I would suggest to you that these men and women in uniform [from both countries] deserve our respect and our admiration.”



bon mot

I learned public speaking and the skill of trying a case in the United States Attorney's office in the Southern District of New York. By the time Rudy Giuliani had offered me the job in the fall of 1988, I was no longer afraid of public speaking. I was no longer afraid to try a case. I had been a big firm associate for six years. I was ready; I was ready to be unleashed. . . . My first trial, which of course, when it's your first trial, it's the trial of the century . . . and the thing I looked forward to most was the opening statement, that first opportunity to address the jury that you all know about. And I had written this really dramatic, powerful opening statement in this case involving a buy and bust in the post office in Manhattan involving three bags of cocaine. My second chair heard my opening statement and he said, "No, no, you cannot give that opening statement. The judge will really rein you in. He'll call the US Attorney and complain." Every opening statement that we give in the Southern District of New York has to follow the same pattern, which was beat into me over three years: You get up in front of the lectern, in front of the jury, and before you even introduce yourself to say, "My name is Jeh Johnson, I represent the government." You're supposed to walk away from the lectern, walk over to the defense table, point at the defendant and say, "That man sold three bags of cocaine at the corner of 28th and 8th on May 9th, 1988 and I'm going to show you how he did it." You're supposed to go over, supposedly, and get in the defendant's face, point the accusatory finger at him because, I was told, if you don't do that, the jury will not have the backbone to convict the defendant.

So, I rehearsed my "point" and I was told every sentence about the evidence in an opening statement must begin with the words "the evidence will show, the evidence will show, the evidence will show." You're not supposed to assert anything as a matter of fact in your opening statement because it hasn't been proven yet. . . . And then in the end you're supposed to say, "And in conclusion, ladies and gentlemen, I ask you to do three things: One, listen to the evidence; two, listen to the instructions on the law that judge so and so will give you; and, three, use your common sense. And if you do all three of those things, I'm confident you will find the defendant guilty as charged."

So, I went through my opening statement that had been beat into me by my supervisors. I did my point and the defendant had rehearsed his own little act, which is he broke down and cried like a baby after I gave my opening statement and I did my point perfect. You know how the president practices his salute? I practiced my point, and he cried, and it distracted the jury. They weren't listening to a word I was saying because this man was bawling his eyes out. So, anyway, I did this twelve times as a prosecutor.

Then, after I left the US Attorney's office and was doing some criminal defense cases, I got on the CJA panel in the Southern District of New York, did a couple of pro bono cases; and I had my first criminal defense against my former office. Now, this was really going to be the opportunity to be unleashed, because I was no longer the attorney for the government, I was the attorney for the accused, and my client was an individual by the name of Joselito Rodriguez, who couldn't understand a word of English. He was penniless, and the government's theory was he was basically working for his crack in this crack house in Washington Heights. His defense consistently to me and to everybody else was, "I'm a user, I'm not a seller. Mr. Johnson, please believe me, I'm a user, not a seller." He would insist that through his translator constantly, and so we basically mounted the mope defense: this guy is a "mope," he shouldn't be convicted of a serious federal offense, and there's no real proof against him except the word of the informant. And I talked to Joselito about the "point" and I said to him, "The prosecutor's going to walk over to you and point at you. I want you to be prepared for this." And I said to him, "Now, a trial is an emotional thing and if during this you feel like you need to kind of let go, it's really okay." So, the junior AUSA, right on cue, walks over to Joselito, points at him and right on cue Joselito breaks down and starts crying—the same thing that happened to me. And then I got up, and with just a couple of notes, started talking to the jury, and I left the lectern just like the prosecutor, except I went and I stood behind the defendant, I put my hands on his shoulders and I said, "Ladies and gentlemen, this man is a penniless crack addict. He can't even understand a word I'm saying. He was arrested with nothing in his pockets" and went on and on and on. I knew I was giving an effective opening, because the AUSA was objecting to my opening.

And then I got a little carried away and I went onto autopilot, and I was just going and going and going and then I got to the end and I said, "Ladies and gentlemen, in conclusion I want you to do three things. I want you to listen to the evidence, I want you to listen to the law as judge so and so gives it to you, and if you—I am not making this up—and if you do all three of those—if you do those things, I am convinced you will find the defendant guilty as charged."

The court reporter, who was sitting about as far away from me as Greg, was saying "Not guilty, not guilty, right?" Okay. Joselito was convicted. I did have a moral victory though. The jury was out probably an additional two hours.

*Department of Defense General Counsel
Jeh Johnson*

bon mot

SIXTY-SIX INDUCTED AT SAN ANTONIO



UNITED STATES

ALABAMA:

Gloria A. Bedwell,
Mobile

ARKANSAS:

John Kendal (Ken) Cook
and Jack T. Lassiter,
Little Rock;
David R. Matthews,
Rogers

CALIFORNIA:

Robert J. (Hoot) Gibson,
Costa Mesa;
Richard D. Carroll,
Long Beach;
Jon C. Cederberg,
Kenneth D. Klein,
Brian R. Magana

and Edith R. Matthai,
Los Angeles;

Jonathan E. Gertler,
Mill Valley;
Nancy J. Sheehan,
Sacramento;

James A. Murphy
and Elliott R. Peters,
San Francisco

COLORADO:

Edward A. Gleason,
Colorado Springs;
Brian G. McConaty,
Denver;
John Gehlhausen,
Lamar

CONNECTICUT:

James I. Glasser,
New Haven

DELAWARE:

John D. Balaguer,
William M. Lafferty
and Ferris W. Wharton,
Wilmington

FLORIDA:

Richard T. Woulfe,
Fort Lauderdale;
Maurice C. Grant, II,
Jacksonville;
Hilarie Bass and
Richard H. Critchlow,
Miami;
Larry D. Simpson,
Tallahassee;
Robert E. O'Neill
and Timon V. Sullivan,
Tampa;
Christian D. Searcy,
West Palm Beach

GEORGIA:

Lynne Y. Borsuk,
Atlanta

IDAHO:

Andrew C. Brassey,
Boise

INDIANA:

Anthony W. Patterson,
Lebanon

LOUISIANA:

Ansel M. (Marty) Stroud, III,
Shreveport

MARYLAND:

Allen W. Cohen,
Annapolis;
Kurt J. Fischer,
E. Philip Franke, III



and Paul Mark Sandler,
Baltimore;
Christopher R. Dunn,
Bowie

MASSACHUSETTS:
Michael J. Connolly,
Boston

MISSOURI:
Paul L. Redfearn, III,
Independence;
Timothy M. Aylward
and William A. Lynch,
Kansas City;
Louis J. Leonatti,
Mexico;
Gerard T. Noce
and John G. Simon,
St. Louis

NEBRASKA:
David D. Ernst,
Omaha

NEW JERSEY:
Kenneth G. Andres, Jr.,
Haddonfield;
Carolyn Reinhard Sleeper,
Marlton

NEW YORK:
Stephen Fishbein and
Avraham C. Moskowitz,
New York

OHIO:
Jeffrey D. Lingo,
Toledo

OKLAHOMA:
Edwin D. Abel,
Oklahoma City

SOUTH CAROLINA:
Eugene C. Covington, Jr.,
Greenville

TEXAS:
Dan L. Cogdell,
Houston;
John A. (Jad) Davis,
Midland;
Charles J. Muller, III,
San Antonio

VIRGINIA:
William E. Glover,
Fredericksburg;
John E. Lichtenstein,
Roanoke

WASHINGTON:
Robert N. Gellatly, Jr.,
Seattle

WYOMING:
Jeffrey C. Brinkerhoff,
Casper

CANADA

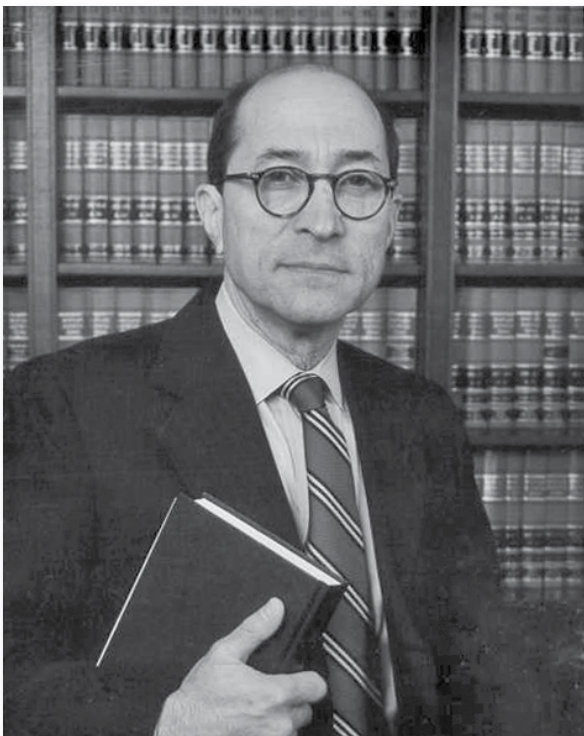
ONTARIO:
Pasquale Santini,
Ottawa;
Michal Fairburn,
Sandra A. Forbes
and Harold Niman,
Toronto

QUEBEC:
Raymond L. Doray, Ad. E.,
and James A. O'Reilly, Ad. E.,
Montreal



INDUCTEE RESPONDS

*It is traditional for one of the newly admitted Fellows of the College to respond on behalf of his or her fellow inductees at the Induction Ceremony. At the Spring Meeting in San Antonio, **Paul Mark Sandler** of Baltimore, Maryland delivered an insightful—and entertaining—response. It reflected the instructions he related that he had been given by President Greg Joseph: "Talk a little about yourself and about the significance of the occasion. Do not preach, do not lecture, do not bore, keep it light and some humor would be appreciated." Excerpts from Sandler's response, including his account of his early encounter with the legendary humor of Justice-to-be Thurgood Marshall, follow.*



Paul Mark Sandler

I knew I wanted to be a trial lawyer when in high school I read Stephen Vincent Benet's "*The Devil and Daniel Webster*." As a 16 year old I was fired up. If Daniel Webster can beat the Devil and silence him, I thought I could do the same. I am sure that all of us feel the same way, but, as trial lawyers, we know that, even though we can beat the Devil sometime, we can't win every time, and we can never silence him. We all may have our own versions of the Devil — be it a defense lawyer, a plaintiff's lawyer, a prosecutor or whatever. When the trial is over, the Devil is just going to prepare for the next one and keep on coming.

My desire to be a trial lawyer was confirmed two years later in college when I had an unusual meeting with a remarkable man, Thurgood Marshall. At the time he was the Solicitor General of the United States I was writing a thesis . . . [about] Marshall I thought it might be interesting to meet General Marshall, and so I called his office and

asked for an appointment. His secretary laughed, but remarkably arranged for a meeting. . . .

Off I went to meet this great man. So, Mr. Marshall and I began to talk: “What brings you here, young man?” “I am writing about you sir, and I thought it would be good to meet you. I read about you in *The New York Times Magazine* last week and saw your picture. I read that when you were asked about the pace of civil rights in this country you were quoted as saying ‘Tsk, tsk.’ What did you mean?”

Then Marshall put his feet up on the desk, displaying non-matching socks, and said, “Young man I am misquoted. I did not say ‘Tsk, tsk.’ I said, “Holy [expletive], are you kidding me? And then I said. “The state of civil rights in this country is for [expletive], but the press never gets it right. ‘Tsk, tsk’ — who are they kidding?”

I almost fainted with surprise. I was stunned that Mr. Marshall would talk that way, but he roared with laughter, and I joined with him. I then felt at ease. When we did get down to business during this meeting, I questioned him about *Brown vs. Board of Education*.

This is what he told me: In preparing for oral argument the day before argument in the *Brown* case in the United States Supreme Court, he conducted what he called a moot court ses-

sion at Howard University Law School. I had no idea what he was talking about, but he explained to me that moot court was the term used to describe a simulated argument for practice. “You can iron out the wrinkles of your argument,” he said, “and observe the reaction of your listeners for purposes of strengthening your case. This session was the last of many, and it went on forever. I would argue to the mock judges— law students — they would pepper me with questions. To my surprise, one student asked me a question I could not answer. I was shocked and also weary. By this time it was after midnight, but, young fella, the duty of a lawyer is to push forward. And so we did, and we worked out an answer.”

“Then the day of the hearing,” he continued, “damned if one of the Justices didn’t ask the same question. I just looked at the Justice; put my hand on my chin, looked down and gathered my thoughts, and pow, right in the kisser, nailed the question.”

“So do you think that you will study law?” he asked. I told him that I wanted to, and he told me to remember the value of moot court and “don’t let anyone tell you differently.” Then, after two hours of what was scheduled as a ten-minute meeting, Marshall waved his hand and abruptly ended the interview. But for me, it was a beginning of my love for my future profession, and, “Who knows maybe, I would do

this moot courting,” I thought to myself as an 18 year old.

After law school at Georgetown Law, I returned to Baltimore to look for a job. It was no easier then than it is today. There were few openings, and there was no such thing in Baltimore as a general boutique litigation firm or a firm large enough to have a litigation department. There were few books available for a budding trial lawyer seeking to improve himself. There was no such thing as CLE. You learned to be a trial lawyer by trial and error— mostly error— and that is exactly how I learned. I obtained a position in a small firm and had a lot of trials and made a lot of errors.

[In] my first case . . . I was court-appointed in a murder prosecution. There was no public defender in those days. One sat in courtroom in the mornings and hoped to be assigned a case by the Judge. My client was charged with first degree murder. He was in jail in Northern Virginia. I drove to see him. He was big, very big, and I was small, very small— and nervous. The guards locked me in his cell with him. He looked down at me and asked: “Are you scared of me?” I said, “No,” but not convincingly. I recommended to him a guilty plea. He agreed, and on the day of court we appeared.



The year is 1972. The defendant is in chains, and the judge calls the case. Procedures were different then from what they are today. In one hearing the defendant could plead guilty and be sentenced. We all go up to the bench. The Judge asks the defendant: "How do you plead?" He answers, "Guilty." He turns to the defendant and says: "Do you have anything to say before I pass sentence?" "Excuse me," I interrupt. The judge stares at me, and exclaims: "What?" I answer, "Aren't you supposed to read him his rights?" The judge answers: "Look at your client young man"—not even calling me "counsel." Do you see him?" "Yes sir," I replied. "Well he has more court experience than you; he has been in court more than you, and before me more than you. He knows his rights better than you."

"Now," stated the judge in a most unfriendly voice: "I sentence you to 30 years, etc." My knees were weak; remember this was my first experience in court, and there was no one to help me.

After he pronounces sentence the judge bellows: "Now go with the marshal." I turned to the marshal and walked toward him. The Judge spoke loudly, and I felt the gaze of everyone in the courtroom on the back of my neck. "Not you, Sandler. It is your client who is going with the marshal to jail. You, I hope, are going back to your office to do a bit more work."

The courtroom erupted with glee and laughter. I wanted to quit the law before I began, I was so embarrassed. But my learning point from the experience: Know your audience, the judge. If I had known about the judge, I could have tailored my presentation to his predilections and requirements.

Another early case taught another lesson. It was a medical malpractice case, a botched surgery. Representing the plaintiff, I sensed that the jury was not going my way, but during a recess, the judge called us into chambers. He said to defense counsel in a friendly manner: "Paul is putting on a great case; you should settle this case." I did not share the judge's view, but for once held my tongue. After the conference, defense counsel offered a settlement. I proudly presented this proposal to my client. My client was receptive. I was delighted, but as fate would have it, my client said: "What were you talking about with the judge?" I said: "Oh he said I was putting on a great case, and the defense should settle with us."

The client then instructed me to reject the settlement offer. He, like many other litigants, wanted more—in this case more money. I begged my client to take the settlement. He said, "No," and so did the jury. I learned three things from this mistake: Use discretion in what you convey about off-the-record conversa-

tions, stop bragging and half a loaf is sometimes better than none. . . .

Recently I represented a young man who had served as a senior staff member for a major political figure, responsible for fundraising. . . . It was a serious and complex case. There was a lot at stake for many. The case involved a Who's Who in public and private life. The Justice Department was determined in its quest for a guilty verdict.

During the trial, one of my concerns was that the judge prohibited counsel from stepping more than one arm's length from the podium. This was bothersome to me because I, like many of you, need to be close to the jury, and as a few of you can appreciate, I could not see well over the podium. I mentioned to the court clerk that I felt the court's rules were not fair, and, without realizing it, the judge was favoring the government. The clerk asked why, and I said the prosecutor's arms were twice as long as mine; and he was getting closer to the jury than me since he was much taller. He towered over the podium, and I was stretching to reach over it. I was joking—big mistake!

Not too much later, the clerk said that the judge wanted to see me. The prosecutor asked if that included him. When the clerk said "No," I said to myself, "Here I go again." I did not know what to expect. I enter the cham-

bers. The judge steps out from behind his desk and greets me: “Mr. Sandler, Sir,” he says with a broad grin, “You should not be disadvantaged in the courtroom because of your height.” I realized that he and I were the same height. He then gave me his own personal stepping stool and declared that I could have two arm’s lengths from the podium. I was grateful.

The lesson was simple: Every inch counts. Get as close to jury as you can without invading their space. . . .

All of us may have had experiences similar to those I have shared with you. We new Fel-

lows have something else we share with you: this night. Tonight is a significant occasion for your new Fellows. We know that with this honor come responsibilities. These include the responsibility to keep and maintain the right to trial by jury, the responsibility to address the current changes to our judicial system, including the vanishing jury trial, and the responsibility we have to the next generation of advocates to insure their ability to carry on the traditions that this College holds so dear.

In conclusion, we inductees are honored to become Fellows of the American College of Trial Lawyers. We are humbled by

the heightened responsibilities that necessarily accompany that honor, and we welcome the chance to take them on. We— all of your new Fellows— thank you for inviting us to join in this esteemed organization and sharing in this honor. We accept. May we forever be worthy. May we also continue to bring credit to ourselves and to the American College of Trial Lawyers, for in the hearts of your new Fellows burns a desire to do our part to assure that the law remains a vital instrument of justice.

Thank you.



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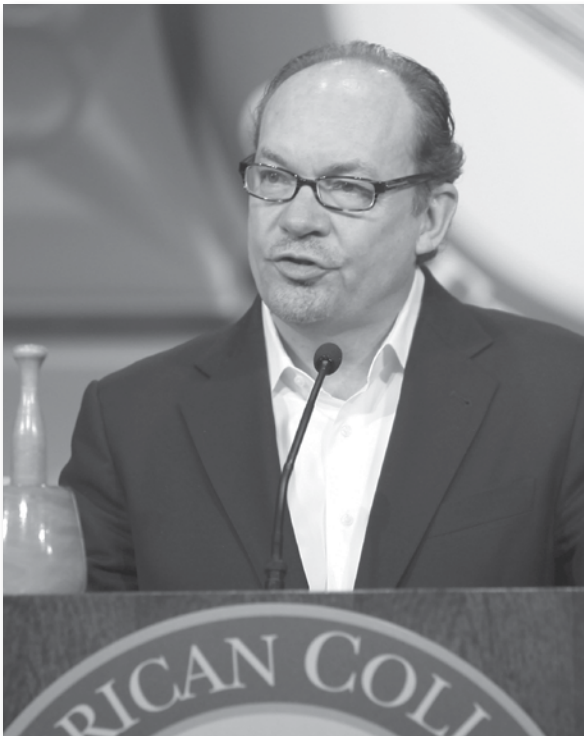
We have many blessings to be grateful for. It is said that in the beginning God created only one man so that no one might say my father is better than yours. We are blessed because in this nation no race, no religion and no creed is better than any other in the eyes of the law. Those of us present this morning have the added blessing to be honored by the fellowship in this College. We should remember that the honor belongs not to us, but to those who preceded us. We also should be mindful that the good fortune with which we are blessed is not ours to spend. It is the fortune that belongs to future generations. It is our privilege to uphold the laws through which we enjoy our most precious blessing, the liberties that our forefather’s saw fit to establish so that they may be enjoyed by our children’s children. In the face of these blessings, let us bear in mind what Abraham Lincoln wrote in September 1862. “Let us not become too self-satisfied to feel the necessity of redeeming and preserving grace.” So, we pray for those who defend us against the enemies of our precious liberties and for the courage to do our part.

John S. Siffert
Opening Prayer

”

POVERTY IS A HUMAN RIGHTS ISSUE

“In the world in which Mercy Corps often operates, I can affirm to you that the biggest constraint that we often face to sustained progress is not extreme poverty, although that’s a tough challenge. It’s not the startling health statistic; those are tough as well. But it is really poor governance and a lack of rule of law. If we could do a better job creating public justice systems that function, my organization’s work would be much easier and much more effective.”



Neal Kenny-Guyer

With that introduction, **Neal Kenny-Guyer**, Chief Executive Officer of leading international humanitarian and development organization Mercy Corps, drew a direct relationship between the work of his organization and one of the College’s major goals.

In introducing the speaker, Past President **Warren B. Lightfoot** related that Kenny-Guyer, a native of Knoxville, Tennessee who now lives in Portland, Oregon, graduated from Duke University with a BA in public policy and religion and from Yale University with an MA in public and private management. In 1976, he began his career with Communities In Schools, working with at-risk youth in the inner cities of Atlanta and Washington, D.C. Moving to Thailand in 1980, he focused on Cambodia’s refugees and war victims for CARE/UNICEF. In 1982 he became Save the Children’s director for the Middle East, North Africa and Europe, supervising a staff of 900 in ten countries. He designed and implemented high-impact relief and development programs in some of the most war-torn and politically sensitive regions on earth, including Lebanon, West Bank/Gaza and Sudan.

After several years as a consultant, in 1994 he joined Mercy Corps, which now has ongoing operations in nearly fifty countries, a staff of over 4,000 and an operating budget of \$308 million. Under his leadership, Mercy Corps has

implemented global mergers and strategic alliances, placing human rights, civil society and social entrepreneurship at the forefront of its humanitarian mission and building an organizational reputation for groundbreaking, innovative programming in the world's toughest environments.

Kenny-Guyer began by saying to the Fellows of the College, "The first thing that I have to do is to take my hat off to all of you, to thank you for the work that you do, your commitment to the rule of law, to good governance, to human rights. In the world in which Mercy Corps often operates, I can affirm to you that the biggest constraint that we often face to sustained progress is not extreme poverty, although that's a tough challenge. It's not the startling health statistics; those are tough as well. But it is really poor governance and a lack of rule of law. If we could do a better job creating public justice systems that function, my organization's work, would be much easier and much more effective. So, I take my hat off first to all of you, because I know each in your own way, you do so much pro bono and volunteer work to represent so many poor, marginalized populations and to pursue a more just and a more fair society for all. I know we're on the same team, but thank you."

Founded over thirty years ago in response to the killing fields of Cambodia, Mercy Corps has grown into a worldwide organization, working in places like Sudan,

Somalia, Afghanistan, Pakistan, Haiti and Iraq and even in North Korea. "And because of those places and often the insecurity that is involved, I have to say," he reflected, "that not a day goes by, not a morning passes, that I don't wake up wondering if some team member, someone affiliated with Mercy Corps, has suffered some harm or injury on the front line. In the course of our organization's history, we have lost ten people directly to violence"

"We really believe," he continued, "that the promotion of human rights and the pursuit of peace are fundamental to our mission. It is in the DNA of the organization, because injustice deepens poverty. We work with people to help them mobilize to gain a voice in their societies and to create more fair and inclusive governance in many, many countries. Traditionally, oppressed people realize their rights and change their own lives when they have the tools to move forward. We also believe that promoting peace is critically important"

Kenny-Guyer then turned to the five lessons of success that he has gleaned from his work as a humanitarian leader:

The first lesson: *Focus on the bottom billion*. In many parts of the globe, we have made great progress, but there are about fifty countries, two-thirds of them in Africa, where there are about one billion people trapped by poverty, by conflict, by poor governance and often by a resource curse. "These are people

who live," he related, "on less than a dollar a day. . . . In places where the bottom billion live . . . life expectancy is fifty years In the rest of the developing world . . . life expectancy is sixty-eight. In the countries where the bottom billion live, child mortality is fifteen percent; in the rest of the developing world it is four percent. In the places where the bottom billion live, children's malnutrition is thirty-six percent; in the rest of the developing world it is less than twenty percent. And in those very same countries where the bottom billion live, economic growth has stagnated or declined over the last twenty-five years; in the rest of the developing world it has expanded by more than four percent. So, if we're going to make a difference for the bottom billion on our planet, we have to focus and target our interventions in those countries like a laser, and that is why my own organization uses those countries as the lens where we work."

The second lesson: *View crisis as opportunity*. "What we have found in our work," he continued, "is that during time of crisis, conflict, natural disaster, that crisis is often an opening for positive change. Old systems are disrupted, old assumptions are challenged, old solutions are judged insufficient. It gives us the chance, in many places, to build back better. We've seen in our thirty years of doing humanitarian relief and development work that where there is disaster, turmoil and collapse, there are always incredible opportunities for positive change. At that very intersection of extreme



poverty, fragile or failing states, in conflict or disaster, that is where Mercy Corps and so many other good organizations are able to add their greatest, greatest value.” He used as examples Tunisia, Egypt and Libya, where people are speaking up for leadership changes and policy reforms that finally address their needs, for an end to corruption and cronyism, for the rule of law, for jobs that can support their families and for a voice in their government. “What these uprisings so vividly illustrate,” he continued, “is that, yes, they create a crisis; but out of that crisis comes the opportunity to transition toward stability, prosperity and for peace”

The third lesson: *Put people first, nurture the bright lights.* “In our world it seems so often that people want to start with strategies hatched somewhere else or with technical solutions that they want to plop in to a local situation. What we have learned is that you have to start with people, and if there’s one truth in our work, it is this: that in every crisis or disaster, the people most affected are always the best agents of their own recovery. So, from day one we need to be consulting with local people, getting their ideas, supporting the local leaders, who I call the “bright lights,” and engaging them directly in their own recovery, connecting them to markets and supporting them in rebuilding their communities.”

The fourth lesson: *Find positive, healthy interactions among the three legs of the societal stool;* private sector, government and civil society. Healthy interactions

among those three pillars are built on three major principles: accountability and transparency, inclusive participation and mechanisms for peaceful change. Without these, no change is sustainable. Important in this relationship are protection of human rights and functioning public justice systems based on the rule of law.

The final lesson: *Promote social innovation.* “In so many ways.” Kenny-Guyer continued, “our role as . . . international nongovernmental organizations is to be the social entrepreneurs. We are charged, in my view, with bringing innovative ideas, creative partnerships and new approaches to traditional problems and challenges. And here . . . I am very proud of my own organization because, of the big mainstream relief and development organizations, I do not know of anyone who has positioned around social innovation, invested more than have we.”

He gave as an example micro finance, micro loans that enable very poor people to start their own business, very small businesses to create jobs, where that economic activity can support gains in health, education or social welfare. He went on to describe a vision of a wholesale bank, a bank of banks for all of the micro finance banks, and the creation of a technology platform that can tie together the thousand top micro finance banks that are already serving fifty million people; to enable them to reach the fourth million people that are unbanked, and through

that platform to introduce mobile banking. With funding from the Gates Foundation, Mercy Corps has set about to create such an institution. “We have to push ourselves to think beyond the traditional strategies, . . . push ourselves to think out of the box to develop social innovations that can make a difference for inclusive societies, for economic opportunities and for fairness for so many people.”

His final thoughts: “[S]ometimes when we look at the challenges in our world, they can seem daunting, beyond our capacities and reach to make a fundamental, real difference. . . . I think groups like the ACTL and groups like Mercy Corps, may work in different ways; but our work is complementary and in so many ways we share the same mission. So, I urge us all to act to build a better world in the belief that we can, each in our own way, make major differences and that, as Albert Schweitzer told us, ‘We are all called to serve. . . .’”

“I think it is so important, particularly in our world today, that we remain positive. In fact, . . . scientists, are always wrestling with the enigma of where did life begin, out of the primordial soup, how did life arise? And we apparently now know that life arose because the positive forces outweighed the negative forces.” Quoting President Bill Clinton, he suggested that as a great paradigm for life itself.



FELLOWS TO THE BENCH

The College is pleased to announce the elevation
to the bench of the following Fellows:

Mae D'Agostino, Albany, New York,
United States Court for the Northern District of New York

R. B. (Skip) Dalton, Jr., Jacksonville, Florida,
United States Court for the Middle District of Florida

Thomas D. Waterman, Des Moines, Iowa, Iowa Supreme Court

Michael H. Simon, Portland Oregon,
United States Court for the District of Oregon

Kenneth N. Affleck, Vancouver, British Columbia,
Supreme Court of British Columbia

Maureen P. Kelly, Pittsburgh, Pennsylvania,
United States Court for the Western District of Pennsylvania

R. Brooke Jackson, Denver, Colorado,
United States Court for the District of Colorado

Richard G. Andrews, Wilmington, Delaware, United
States Court for the District of Delaware

bon mot

When I began to read about Neal, I was reminded of the story of the preacher who asked rhetorically from the pulpit one Sunday who among us is perfect. He was startled to see a man rise in the rear of the church and remain standing. The preacher said, "Sir, you perhaps misunderstood what I said. What I said was who among us is perfect?" The man said, "Oh, no, I understood what you said. I'm not standing for myself. I'm standing for my wife's first husband."

*Past President Warren Lightfoot
Introducing Neal Keny-Guyer*

SALES RECEIVES GATES AWARD

This award honors a lawyer or judge who has made a significant contribution to the improvement of the litigation process.



James B. Sales

At the Spring Meeting of the College, **James B. Sales**, FACTL, of Houston, Texas became the twenty-second winner of the Samuel E. Gates Litigation Award. Named in memory of Gates, who died while serving as president-elect of the College, the award is funded by a grant from Gates' former law firm, Debevoise and Plimpton.

Previous winners of the award have included eleven leading jurists, five noted law school professors, and five Fellows of the College. Among them were Harvard Law School Dean Erwin N. Griswold, Associate Justice William J. Brennan, Jr., College Past Presidents Joseph A. Ball, and Robert W. Meserve, Federal Judicial Center Director, Judge William W. Schwartz and California Chief Justice Ronald M. George. The award was last given in 2008 to The Honorable Judith S. Kaye, Chief Judge of the New York Court of Appeals, a Judicial Fellow.

In presenting the award, past president **John J. (Jack) Dalton** described Sales as follows: "Jim is all Texas. He was born in what he describes as the hardscrabble country in the central part of the state. He worked hard to get away from that area, running, as he says, 'lean and mean,' [working on] construction sites and in cotton gin operations. It is this background he attributes to most of his life 'running scared.'"

A graduate of the University of Texas with a degree in history and English, after serving in the United States Marine Corps, he entered the University of Texas Law School, where he was a 1960 honors graduate, a member of the Order of the Coif, serving as an editor of the Texas Law Review. He has spent his entire career at Houston's Fulbright and Jaworski, where he is now of counsel, having chaired its litigation department for twenty years,

As president of the Houston Bar, he initiated a program that is now the Houston Volunteer Lawyer Program, a *pro bono* program representing the working poor in the city of Houston. He created the Houston Bar Foundation to fund this volunteer program, served as its first chair and was the first recipient of the Texas Center for Legal Ethics and Houston Bar Association Professionalism Award.

He then served as President of the State Bar of Texas, leading the successful restructuring of the Texas disciplinary rules of professional conduct. He also implemented a plan to eliminate improper solicitation by attorneys in mass disasters in Texas, a program that now serves as a model for many other states. He helped establish the Texas Lawyer Assistance Program to aid Texas lawyers impaired by substance or alcohol abuse.

Recognizing the absence of minority leadership in the State Bar of Texas, he set aside three leadership positions reserved for minority lawyers, now a permanent part of that Bar's leadership structure. He served on the Board of Trustees and as chair of the Texas Bar Foundation. In 1998 the Foundation gave him its Lola Wright Foundation Award for enhancing legal ethics in Texas. He also served for twenty years in the American Bar Association House of Delegates. An author and frequent continuing legal education lecturer, he has been a leader in every aspect of the legal profession in Texas.

In 2004, the Texas Supreme Court appointed him the first chair of the Texas Access to Justice Commission. Created by that Court to enhance quality of justice in civil legal affairs, it has over time served five million low-income Texas citizens and has had a significant impact on the administration of justice in Texas. He lobbied the Texas Legislature and the United States Congress for improved legal services to the poor, and he involved major Texas corporations in *pro bono* efforts, including helping to fund this program.

SALES RESPONDS

In accepting the award, Sales paid tribute to two of his mentors, the late Leon Jaworski and Kraft Eidman, both past presidents of the College, for

the example they set. "What was striking to me and is still indelibly etched in my mind's eye," he related, "were the core values that these legendary trial talents exemplified: excellence, integrity and service to the profession and to the community. Excellence to them meant getting it right. 'Almost right' simply was not an option. Integrity meant that a lawyer's word was his or her bond, and any breach of that bond would never be tolerated under any circumstance. And service meant giving back generously — emphasizing the word 'generously'— both to the profession and to the community we serve."

Undertaking the task of leading the Texas Access to Justice Commission, Sales quickly learned that in a state whose population borders on 26 million, there are approximately 5.7 million, perhaps more, Texans who qualify for, but cannot afford legal representation under any circumstance. They are essentially barred from the justice system for one very simple reason: they cannot afford to hire a lawyer.

"In our society, the way it is structured," he reminded the audience, "the lawyers hold the keys to the courthouse and therefore the keys to the justice system. . . . [T]he concept of justice which we take as a real important duty and burden when we take our oath, is truly



nothing but a meaningless and hollow promise for the people who cannot afford legal representation to get access to that system Now, despite the unrelenting efforts of this Commission . . . we are able to provide legal help to only about twenty percent of those who seek legal help and need legal help at any given time. . . . That means that there are at least eight [out of every ten] Texans who have to return back to their original environment, left adrift without any assistance or help. Unfortunately, today the need is accelerating exponentially.”

“At the same time,” he continued, “our financial resources from IOLTA, from the legislature and from the Congress are decelerating at almost the same rate. This truly is what I call a Sisyphean nightmare. Now, lawyers ask me all the time, ‘Who are these poor people you talk about?’ Well, they are the spouses and children of domestic abuse, who without legal assistance are often compelled to return to the environment of their original abuse, there only to suffer, usually more serious, if not catastrophic, abuse. They are the elderly who are wrongfully denied medical and disability benefits on which they totally depend for their very survival. They are the veterans who have gone in harm’s way for this country and who upon their return, often injured, often broken, often with their marital status in a precarious state, are denied critical medical help or

denied the disability that they earned on the battlefields of Ramarah and Kandahar and all those places. And they are those whose homes have been wrongfully foreclosed, who are then forced into the shelters or, even worse, they and their families are forced into the streets of our community. This is, again, reality.”

“The Supreme Court gave me two mandates when I took this job. It’s a well-paying job; it gives you lots of opportunity. As I said to my friends, ‘It’s amazing how much work you can get if you work for free.’ The first mandate was to help coordinate delivery of the legal services that are available to the poor and low income people throughout the state. The second was study this problem and come up with some solutions and implement those solutions on a statewide basis to start increasing and expanding the delivery of legal services to those in need.”

THE COLLEGE PLAYS A ROLE

Of the ten major programs that the Commission Sales headed created, he chose to focus on its trial training program for legal aid lawyers, “those lawyers who work full time in the field on the front lines of need.” He persuaded the Dean of the University of Texas Law School to make his school’s state-of-the-art trial training facility available to the Commission free of

charge. The Commission was given a two-week window each June, and with the College’s endorsement, staffed it with Fellows of the College who then undertook to develop a comprehensive trial training program of five full days, using twenty-eight Texas Fellows to produce the first program.

They traveled to Austin at their own expense and took time from their schedules to help teach the art and philosophy of effective trial advocacy and then to demonstrate to the legal aid lawyers how the best techniques and skills are used in conducting each phase of a trial. The participating Fellows then acted as mentors and as critiquers for each of the legal aid lawyers as they themselves went through the exercise that they had witnessed. These exercises were videotaped, both their demonstration and the critiques, and the recordings were given to them to take back to their respective homes to study and to learn from reviewing them.

The legal aid lawyers were later interviewed about their experience in these trial academies. Almost without exception they have said that this trial training notably enhanced their ability, their technique and their skill in representing their clients. In addition, it has given them an added sense of confidence in themselves in the courtroom. They were also particularly impressed that preeminent trial lawyers from across this state

would take time from their busy trial schedules to come to Austin to teach them to be better trial lawyers and better representatives for the poor.

“[T]hese legal aid lawyers,” Sales continued, “whether it’s right or wrong, feel that neither the legal profession nor individual lawyers fully appreciate or understand exactly what they do for the poor people in the front lines of need. It is amazing that these legal aid lawyers were so energized by the recurring comments of the Texas Fellows during these trial training programs . . . that the work they were doing in representing the poorest of the poor was in keeping with the highest and most honored tradition of the most noble profession on the

face of the earth. The positive impact of these Texas Fellows on the legal aid lawyers cannot be overemphasized. And I will tell you, I have never been prouder to be a Fellow of this College than I have been in participating in this trial training program each year with the legal aid lawyers.”

SALES’ CLOSING REMARKS

Concluding, Sales told the audience, “The work of lawyers in helping a needy individual or a poor family profoundly changes the life of that individual or that family forever. . . . I believe that we will ultimately be judged by the difference we have made in the lives of the people we have touched and by the efforts we have made to

make our communities a better place in which to live.”

“Sir Winston Churchill offers a very poignant summation of a life well lived: . . . ‘We make a living by what we get, but we make a life by what we give.’ In light of Sir Winston’s sage observation, perhaps the real issue is whether we, as lawyers in the justice system, when judged in the fullness of time, will be viewed as having made a real difference because we passed this way.”

“Thank you so much for this wonderful and gracious honor that the Fellows have bestowed on me.”



bon mot

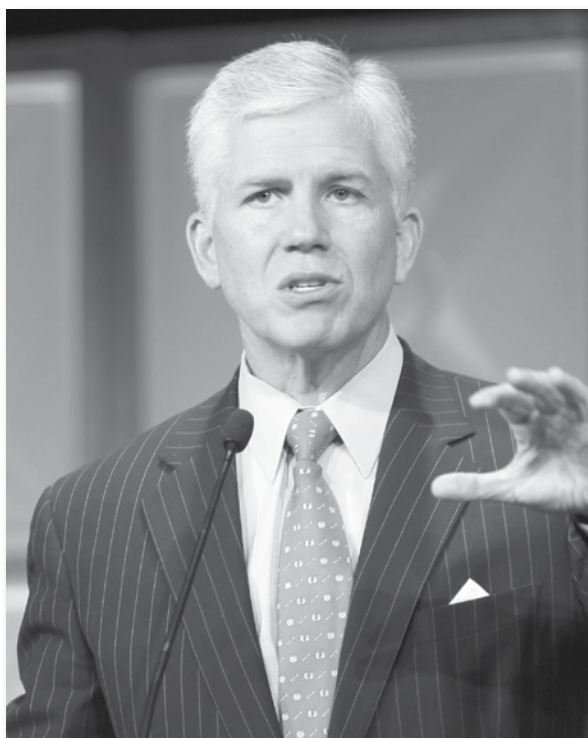
Ladies and gentlemen, I think you can see why Jim got the award, why Jim deserved the award. And while you have his wonderful Texas twang ringing in your minds, I want to say last night I heard another interesting conversation between a Texas Fellow and a Boston Fellow, and it tells you something special about the Fellows down here in Texas. The Texas Fellow was commenting on the bravery, the enormous heroism, of Texans and focusing, of course, on the Alamo, given where we were, And he said to the Fellow from Boston, “You don’t really have folks like that up there, do you?” The Fellow from Boston said, “Well, of course we do. You’ve never heard of Paul Revere?” And the Texas Fellow said, “Isn’t he the guy that ran away and called for help?”

President Gregory P. Joseph

bon mot

HOW SUSTAINABLE IS THE RECOVERY? THE EASY PART IS OVER.

*With this as his topic, investment advisor **Michael K. Farr** sounded a warning about the long road ahead for recovery of the national economy from the 2008 downturn. Delivered in the Spring of 2011, his predictions did not foresee the impending stalemate in the United States Congress in addressing the nation's economic woes. His factual observations and his analysis may be even more relevant in many respects in the light of what has since transpired.*



Michael Farr

Michael Farr is president and majority owner of the Washington, DC, investment firm Farr, Miller & Washington. In introducing him, Past President **Gene W. Lafitte** noted that he is a contributor to CNBC television and a recurring commentator and guest host for the Today show, Good Morning America, NBC's Nightly News, CNN, Bloomberg, Reuters and the Nightly Business Report. He is regularly heard on Associated Press Radio and National Public Radio. Quoted regularly in the *Wall Street Journal* and *Forbes* and *Fortune* magazines, he was a long-time recurring panelist in the PBS Wall Street Week.

Farr began his presentation with a note of caution: "I am going to try . . . to go through how I look at the world and try and figure out this economic sort of puzzle . . . and walk you through just how I see numbers . . . the problems that I see in front of us, and give you my thoughts about where I think we are going and why. . . . I may or may not have it right and a lot of it could certainly come down to timing. . . . We saw unemployment fall below 9 percent to 8.9 percent this morning. . . . I'm not convinced that all of the drop to 8.9

percent was as much from people getting jobs as [from] people leaving the pool of unemployed and becoming more discouraged”

The following summarizes the major points in Farr’s presentation, given in the context of March 2011.

THE SUSTAINABILITY OF RECOVERY.

Economic growth has clearly improved since last year, but at what price? The sources of growth have been troubling. Gross Domestic Product (GDP) is the sum of personal consumption, private investment, net exports and government spending. Government spending and some change in private indebtedness had essentially been driving the economic growth. Consumer spending represents 70 percent of GDP, and all of a sudden in the fourth quarter of 2010 the consumer showed up. Consumer spending is what is going to take us out. It has to continue. Farr then raised, and later attempted to answer, the question, “Where is consumer spending coming from?”

THE ROLE OF UNEMPLOYMENT, UNDEREMPLOYMENT

We have to replace seven million jobs lost since the start of the recession. We know who the *unemployed* are; they are filing for unemployment. The *underemployed* are those who are working a 20-hour week who would like 30 hours or 40 hours and can-

not get the work that they want. And then, there are those who are now what they call in government “*desperately discouraged*,” those who have said, “I’m going to quit looking for a job and I’m going to quit listing myself as unemployed and looking. Just take me out of the numbers.” One of the things you see just prior to a recovery is a spike in the unemployment rate. You see it because those who had been discouraged suddenly get some hope that they might get a job, and they start counting themselves as unemployed again. And so, we look for a spike in unemployment figures before we get a sustainable recovery

THE CRITICAL ROLE OF CONSUMER SPENDING

We have come to a stage in society that Farr calls “*egonomics*,” the notion of “I deserve it,” which he considers to be a problem. For all the pressures that are on so many of us, we buy our way to feel better. He sees the notion that if you stop spending, you stop living as a critical flaw and a real cancer in our society and in our economy. We need the consumer to come back, but what are they going to spend if they do not have jobs? We see an unemployment rate of 9 percent, job growth still anemic, income growth still very unbalanced. At the fourth quarter 2010 pace, it is going to take about ten years to replace those lost jobs. We have to add about a million jobs every year just to keep up with population growth, new people entering the job force.

WHERE RECENT GROWTH HAD COME FROM

From the fourth quarter of 2007 through the fourth quarter of 2010, all of the total growth in personal income came from transfer payments, government payments—Social Security, welfare and government program payments. All the money that added to personal income growth since 2007 had essentially come from the government. That is not organic growth. We saw non-farm payrolls rise in the fourth quarter of 2010, a good thing. Incomes were growing again, but growing from depressed levels. We saw incomes increase \$106 billion over the six months leading to March 2011, but the increase in food and gasoline spending was \$111 billion. And so, the \$106 billion in wage gains was offset by increased food and energy costs. In a way, they wiped each other out.

THE IMPACT OF INCOME DISTRIBUTION

Income growth and wealth are becoming more distantly bifurcated. Supply and demand for credit is still weak; those who desperately want it cannot get it. Those who do not need it—those who can get it—do not want it. Confidence is improving, relatively low, but improving. Housing prices were still falling. Consumer debt levels remain very high. Retirement savings are inadequate. All the baby boomers who thought they had it made when the market was at its peak in 2007 are now wondering



how many more years they have to work. Certainly if we address Social Security in any way, it might take them a good deal longer. Spending will remain very unbalanced, with wealthier consumers doing all of the shopping. The top one percent of earners captured 52 percent of the total income growth from 1983 to 2008. The top one percent of incomes picked up 3.9 percent; the bottom 99 percent of all workers picked up eight-tenths of a percent of all the income growth over that period.

We are in a unique economic phase that economists call a plutonomy, where a larger and larger portion of wealth is concentrated in fewer hands. The really rich are getting richer; nobody else really is benefiting. The last time we saw this distribution skewed as widely as it is now was around 1928, just before the Great Depression, and we have done it again: a huge concentration of wealth in a small number of hands. If you have all the wealth among a very small group, who, he asked, is going to drive the spending for that 70 percent of GDP that is consumer spending? Who, he asked, is going to be driving all the purchases at Wal-Mart? Saks, Coach, Tiffany—high end—have, on the other hand, done beautifully well.

THE SOURCE OF THE THEN-CURRENT REBOUND

The rebound in net worth as of March 2011 was largely driven by stock gains. We lost about

13 trillion dollars in stock values from previous top to the market dip in 2008, 2009. Then in the two years from March 6th, 2009, the stock market went up about a hundred percent, from August 2010 up about 24 percent. Who holds stocks; who owns them? A lot of people hold stock in 401(k)s and pensions; that was where the real wealth had come from. It had not come from housing gains. The average Wal-Mart shopper had not seen his stock portfolio appreciate, and so he did not have more money to spend. Wealthy Americans were clearly driving the lion's share of spending growth. Consumer access to credit had been sharply reduced. Again, those who were desperate for it could not get it. If we do not have increased incomes and our houses are not worth any more, what have we got to do to sustain spending? We have got to borrow, but, again, those who want it cannot get it and those who can get it don't need or want it.

DEBT LEVELS

Savings rates had rebounded, but debt levels remain very high. In 1980, household debt to household income was 55 percent. For the average American, it was 111 percent in 2007, completely doubled in 30 years, double the debt to income ratio. That meant that the average American has a lot of credit card debt, mortgage debt, car payments. Back when we had the low interest rates in '06 and '07, we had RV payments, boat payments, everything that you wanted to buy, including the flat screen TV. The feeling was,

"We can buy it all on time, and interest rates are cheap." And, in addition, a lot of home buyers bought at those little teaser rates.

THE ROLE OF HOUSING

Housing prices have resumed a downward trend. This is a matter of supply and demand. There is plenty of supply; we do not need to build any more. We are not building, and we have a very flat, static situation. Farr sees the housing market as key to sustainable economic improvement. Despite the government initiatives, however, foreclosures and delinquencies remain very high. In this country, over 13 percent of total mortgages are in foreclosure or are delinquent. Tax credits have now expired. Inventory of "for sale" homes and "shadow inventories" remains very large. Shadow inventories could be the inventories at a bank on which they are foreclosing and that they are going to list for sale.

There are a high number of underwater mortgages; 23 percent are under water. This leads to a phenomenon bankers call "jingle mail," when people put their house keys in envelopes and send them back to the bank, and the mail bags jingle and shake. Eleven percent of the homes in this country are vacant.

THE ROLE OF GOVERNMENT SUPPORT

We have had an amazing amount of monetary and fiscal stimuli that rescued the banking system. We averted crisis. We have had hous-

ing support and financial regulatory reform and health care reform, a lot of that leading to higher expense and a lot higher bills for the government. The positive effects of this have been many. Collapse has been averted; credit markets have normalized. Interest rates remain low for now. Housing prices have been strongly supported. Farr is very concerned about what happens when this government support goes away. When you look at all of the mortgages originated in the United States in 2010, 97 percent were bought by Fannie Mae, Freddie Mac or FHA. The government is still providing the liquidity of that market, and we were already hearing rumblings on Capitol Hill, getting louder, and we were hearing a consensus from the Federal Reserve that it was going to shut and close down and squeeze out Fannie and Freddie Mac. The Fed governors want to turn them over to the private operators. That is a huge issue. Corporate earnings rebounded 37 percent in 2010, and stock prices went up. Government spending to support the economy was massive. We had thrown trillions of dollars into our economy in the preceding two years. And after we shoved a couple of trillion dollars into the economy, we have seen it go back up, and everybody is heralding the resilience of the economy.

THE ROLE OF GOVERNMENT DEFICITS

These deficits are growing, and Farr thought this a huge problem. Debt levels were reaching uncharted territories. The govern-

ment was reporting around a 70 percent debt-to-GDP ratio. An academic study of eighteen different economies over 200 years has shown that any time debt-to-GDP got to 90 percent, you started trimming at least a full percentage point off of future GDP just to make interest payments. So, as debt-to-GDP gets high, you slow growth. If you add the \$5 trillion in debt that Fannie and Freddie had outstanding when the government assumed those obligations, we were already over a hundred percent debt-to-GDP ratio.

As for future ramifications of massive government deficits, they crowd out private investment. We have a falling dollar. Higher inflation is coming. We cannot grow ourselves out of this depth of debt and so have to have higher inflation in the future. Taxes have to go up at some point. Massive government spending has contributed to that fallen dollar and commodity price inflation. We were already seeing those prices rise.

THE PSYCHOLOGY OF THE MOMENT

Farr saw a lot of headwinds in the path and he felt that exuberance was outpacing the facts by a good measure. Interest rates had started to rise, presenting new risks to the recovery. What happens, he asked, when interest rates go up and you have the genesis of a recovery? If you see a one percent increase from four and a half percent to five and a half percent on a mortgage rate, you basically increase that payment by about 12

percent, or you lower the affordability of that house by 12 percent. Those increases are thus going to reduce the purchasing power for the available houses for sale. And if you already own a house and you are making a payment and you have one of those adjustable rate mortgages, your payment will go up as these rates go up. And so, again you have fewer discretionary dollars to spend. He predicted that in the future we could see higher mortgage rates, continued home price declines, increased debt service costs, still massive consumer debt outstanding and increased debt service costs on huge federal government debt.

THE ULTIMATE IMPACT OF GROWING NATIONAL DEFICITS

Look, he suggested, at what has happened in Ireland and Greece. You get into higher deficits and you keep these deficits growing and your debt is growing, and then all of a sudden you get a credit rating downgrade. People do not think you are as creditworthy as a nation, and your borrowing costs start to go up and then you have got a problem. Think, he suggested, about that massive debt the United States has outstanding and about the impact of increasing the interest payments on it as rates rise.

PERSONAL INVESTMENT OPPORTUNITIES

What then are you going to do with your own money? Farr thinks that balance sheets for multinational



big blue chip companies look great. Their growth and profitability are less tied to the US economy than in the past. They have exposure to high-growth emerging economies. Basically, if we do not have growth here, we have to figure out how we are going to benefit from growth overseas in these emerging markets. That can be done through investing in these sorts of companies. They have attractive dividend yields, monetary and fiscal policy. With QE2 in August 2010, Ben Bernanke said that as one of the goals he wanted to see was higher share prices. Farr had never before heard a Fed chairman say that he cared what the stock market did. The whole idea of higher stock prices is that all of the people who have stocks will feel better. That, Farr said, is pure trickle-down economics. It may work; that is what they are hoping for—that the really rich people will spend more, create jobs and feel better about hiring. Investor psychology, he noted, favors bonds. That is bullish for stocks. The investor psychology is usually wrong, but investors had been buying bonds. Farr saw great risk in the bond market, particularly if rates go up. He saw huge risk in the municipal bond market. Stocks offer a hedge against inflation that bonds do not, and he thought stocks to be probably the most attractive asset class of investment he could find. Valuations were then attractive and the upside of growth of corporate earnings gave a better return than on bonds.

SUMMARY

Farr saw the recovery as looking increasingly like a plutonomy: wealthy consumers driving the income and spending increases. He predicted that the process of consumer deleveraging, paying off debts, would play out over a number of years. Two things, he noted, never turn quickly. One is a housing market; real estate markets do not turn on a dime. And credit markets do not turn on a dime. They are rebuilt very, very slowly. Baby boomers are ill-prepared for retirement. That can cut both ways: they are not going to be spending the way they have been, but they are going to continue to be productive for years longer.

Policy initiatives to stimulate growth and prevent deflation are risky. Government saved us from crisis, but he felt that we get in real trouble when government tries to keep spending money to save the voter from consequence; we simply keep passing consequence along. The banks divided the consequence of their actions up and passed it on in all of the mortgages that were going bad. None of the Wall Street moguls, he noted, have really suffered. They keep making all of their money through all of the “shenanigans” that have gone on. Homeowners are being met with plans to help address some of the foreclosures, but sooner or later, if we keep removing the consequences, we are going to change behavior, and not in a good way. Stressing the importance of met-

ing out punishment fairly but in a timely way, Farr drew a parallel to the constructive way to deal with one’s children’s faults. Otherwise, you do not change behavior.

THE LONG-TERM OUTLOOK

Farr concluded his presentation with the following, somewhat more optimistic, comments:

“No matter how bad things can look to us at any moment, you should not bet against the USA or think that things will not change or will not work out. We have a stable democratic government. We’re seeing the value of that with governments around the world that are not stable, that do not have a tradition of leadership. We have an educated work force that we need to continue working on. Productivity is still strong. We are growing our demographic trends. Inflation and interest rates still being held at bay, and stock valuations are reasonable. This is a good place to do business. I do not think you bet against our tenacity or our ingenuity here. I think this recovery at this point is very fragile. It is under way, but stock prices and sentiment have gotten well out in front of the hard data. Expect things to grow, but not without pull-backs, not without bumps in the road, but we will make it through. It will get better. There will be places to make money.”



OUT WITH THE OLD LAW FIRM RETIREMENT POLICIES

A highlight of the Spring Meeting was a panel discussion on the changing dynamics of traditional mandatory law firm retirement policies in light of increasing life spans, evolving organizational structures, particularly in large multi-office law firms, pressures from the ongoing recession and the impact of the federal age discrimination law.



Panel members Robert Byman, Ward Bower, Bettina Plevan and John Hendrickson

Moderated by Regent **Robert L. Byman** of Chicago, the panel consisted of law firm consultant **Ward Bower** of Newtown Square, Pennsylvania, **Bettina B. Plevan**, FACTL, of New York City and EEOC regional chief legal officer **John C. Hendrickson** of Chicago.



Plevan is a partner and member of the executive committee at New York's Proskauer Rose, where she co-chairs two practice groups, international labor and employment and class and collective actions. She is a member of the American Academy of Appellate Lawyers and a past president of the Association of the Bar of the City of New York City.

After a stint with a large Chicago law firm, Hendrickson joined the EEOC in 1981. In 2006, he was named chief legal officer of its Chicago region. He has presided over and produced more than \$120 million in consent decrees over the years, including one notable proceeding against the law firm of Sidley & Austin for age discrimination. That case was ultimately settled with the payment of \$27.5 million, dispensed to 32 aged partners, and the entry of a consent decree. Hendrickson is a Fellow of the College of Labor and Employment Lawyers.

Ward Bower is a member of the Pennsylvania bar and a principal in the consulting firm of Altman Weil, an international firm that consults exclusively in the legal profession.

Byman launched his introduction of the program by remarking to the audience that "it's a sad fact, despite the fact that we try to change it, that if I were to take a dart and throw it at random into this audience,

the victim of my tort more likely than not would be a person of elderly persuasion. . . . And that person would be someone whose partners believe that he or she ought to be thinking about retirement, and, in fact, more likely than that, that person may have partners who had put in a policy to make that retirement mandatory."

HISTORY

Bower launched the panel discussion with a bit of history, noting that in the late 70s and 80s many firms were considering adopting mandatory retirement policies for four reasons:

First, such a policy would provide predictability with regard to transition within the firm.

Second, it would provide both the firm and individuals a motivation to fund their retirement.

Third, it would force thought on the issue of succession planning, so that a firm would not have a partner who is very important to the firm in client representation come to the end of his or her career without the firm's having built the bridges with that partner's clients to ensure that they stay with the firm after that departure.

Fourth, such a policy would avoid tough conversations with people who no longer have the skills and the mental capacity to continue to serve clients and perhaps even having to tell someone who has been your partner for years, but who has not made adequate provision for retirement,

that he or she will no longer be drawing income from the firm.

NATIONAL SURVEY RESULTS

Bower summarized the results of two 2008 national surveys, one of law firms and one a flash survey of lawyers, on the subject of retirement: They showed that;

—About half of the firms surveyed had mandatory retirement policies.

—Prevailing mandatory retirement ages ranged from 65 in a survey of lawyers to 70 in a law firm survey somewhat weighted toward smaller firms.

—Males surveyed thought that 65 to 70 was the appropriate retirement age, while females tended to think 70 appropriate.

—Virtually all lawyers in their 70s thought that 70 was the appropriate age.

—Half of those in the 60 to 69 group thought 65 appropriate, but 30 percent said 72.

—Lawyers under 50 were evenly divided between age 65 and age 70.

—Almost half of those surveyed disagreed with the idea of enforcing mandatory retirement, even if provided for in the firm's partnership agreement.

—As for their own careers, almost 30 percent planned to retire at the normal age, 27 percent planned to retire ear-

lier and 30 percent later. Four percent planned to die with their boots on and 11 percent were undecided

—Remarkably, 61 percent planned to work after retirement, so that the definition of “retirement” was itself undergoing change.

—Forty-eight percent of those who planned to work would do so both for income and to stay active.

—Forty percent named only staying active as a reason.

—Only 5 percent gave the need for income as the sole reason.

Bower feels that today fewer than fifty per cent of the firms that had mandatory retirement provisions at the time of these surveys still have them. Many have abandoned them in the past few years, and the movement of mandatory retirement age has gone upward to 70 or more. Because of the impact of the recession on retirement savings in the past three years, he would expect to see an increasing number of lawyers planning to work beyond normal retirement age or to work after retirement.

MANDATORY RETIREMENT AS A TRADITION

Byman then pointed out that the American Bar Association had urged law firms to abandon

mandatory retirement policies, as had the New York Bar, and that in the highly publicized case the Chicago firm Sidley & Austin had agreed to pay \$27.5 million to thirty-two retired partners and to end its mandatory retirement policy. “Why,” he asked Plevan, “do we still have these policies?”

Her response was that in many firms mandatory retirement was a tradition. Many firms have had these policies for a very long time and they have built up structure and practices that deal with succession planning, with transition of clients, the transition of firm leadership and compensation. Some of the policies have existed for decades and predate the 1967 adoption of the Age Discrimination Act, which, when it was enacted, protected only those from ages 40 to 65. It was almost 20 years later that the law uncapped the age limit on discrimination so that these issues could be raised. Aside from the four reasons Ward Bower gave, she noted, there has been a sort of tradition within the profession, a compact among partners, that a law firm is really different from a corporation and that new partners can expect that over the years the more senior partners will pass on to them client relationships and clients so that in due course they too will have the opportunity to become senior partners after the earlier senior partners had departed in an orderly way.

She also underscored Bower’s observation that having a mandatory retirement rule avoids the very difficult decisions that law firm management faces in deciding who should stay and who should leave, when, as the years go on, some become less productive and less able to handle client matters.

THE VIEW OF THE EEOC

Byman then asked Hendrickson, “What is wrong with these policies? Who cares? Why is it wrong for a law firm to say, ‘Retire’?”

Hendrickson first noted that in his view, discrimination goes hand in hand with other management problems. He sees age discrimination that no longer exists in the business community persisting in the legal community because a lot of people responsible for law firm management do not want to manage the firms they are charged with managing. “We are talking about lawyers,” he continued, “who have no problem structuring RIFs [reductions in force] involving thousands of employees that they do not have any problem letting go, and advising corporate executives about how to do it. But it is too hard for them to tell somebody else in their firm that . . . they are not cutting the mustard, that they are not producing, [that] they either



need to take less pay . . . bill more hours . . . work longer hours or . . . find another job. It has never been an excuse for discrimination that it's too hard to manage." He asserted his unwillingness to accept any of the justifications given for perpetuating this practice, justifications that are not permitted elsewhere in American business.

Hendrickson went on to point out that at the time the EEOC sued *Sidley & Austin*, that firm had 1,500 lawyers spread all over the world, as do other high-end professional service organizations. These are no longer law firms that can hold a partnership meeting in one room where everyone can see everyone else face to face, as was the case several decades ago.

PARTNERS AS EMPLOYEES

Byman then raised the question whether, and if so why, it is illegal for law firms to discriminate, when all the partners are employers, and not employees. The definitional issue that this raised consumed much of the remaining discussion. Hendrickson pointed out that the real issue here is who is in control of the organization. In the *Sidley* case, there were apparently no real elections of management. The firm was governed by an executive committee and a management committee whose members, and not the other partners, elected

themselves and their successors. That made theirs an easy case for the EEOC.

A tougher case would arise if there had been annual elections in which all partners, including those who were terminated, voted. The question would then be whether these were real elections and the inquiry would focus on who selects the candidates, who selects the selectors, how the votes are collected, whether the proceeding is real or a pretext. The facts are critically important, and they can vary dramatically from firm to firm.

THE FACTUAL ANALYSIS

The moderator then asked Ms. Plevan what she does when defending law firms charged with age discrimination and how she counsels law firms to stay on the right side of the law. She pointed out that the law itself does not define an employer or an employee, and that the courts have applied different tests. Different cases with factually similar fact situations have been decided differently in different federal circuits. Some look at the economic reality of the organization. Others apply principles of agency law. All cases are fact-specific. It is thus difficult to predict the outcome of any case.

The essence of a law firm is common conduct in a shared enterprise. The key factors are participation in decisions

such as electing management, choosing new partners, opening offices, entering into mergers, sharing of profits, responsibility for liabilities, capital contributions and how tenure is treated. She noted that the advent of the LLP, the limited liability partnership, has complicated that analysis. A firm run by majority vote is easier to defend than one where an executive committee has the power to remove an equity partner. Issues such as what kind of authority a lawyer has to sign an opinion letter, decide how a matter will be handled, how it will be staffed, making judgments, supervising others, deciding to take on a representation may all be relevant. The increasing existence of "non-equity" partners is clearly a complicating factor.

Byman then asked Bowers how he advises his law firm clients to achieve their business purposes without violating the law. Bowers noted that law firms do not change fast. They are relatively conservative organizations, bound by a lot of tradition. Their cultures reflect values that are important to them, and getting them to move away from what may be traditional ways of doing things that could possibly jeopardize their legal position is sometimes difficult. Bowers is aware, nevertheless, of literally dozens of firms that have either adjusted or rethought what were once mandatory retirement provisions.

Other firms simply no longer enforce them. The provisions are there because they were historically there in a partnership agreement, but the firms are not about to try to enforce them in the current legal environment.

THE IMPACT OF LONGER LIVES

Bowers sees an increasing awareness of the issue in law firms. He also feels that change is being driven by the fact that there are a lot of partners in law firms who are well past what was once normal retirement age, but who are some of the most productive lawyers in the firm. This is partly the result of people living longer and staying healthier longer. That is likely, in and of itself, to present the best business case for not having mandatory retirement provisions in the future.

In response to a question from Byman, Hendrickson conceded that in a true partnership where there is no employer-employee relationship, it may be wrong to discriminate, but it is not illegal. The issue then becomes when someone crosses the line from employer to employee. Bynum noted that by definition, the thirty-two partners at Sidley who were let go obviously did not control the business; they would not have voted for themselves being let go. So, why, he asked, does not that simply answer the question? Why do you have to go any further than

saying that if you do not have enough control to prevent your own discharge, you must be an employee? Hendrickson responded by saying that having the right to vote does not mean that you always have your way. Having a say in a decision is all that really counts.

OLD PRINCIPLES IN A NEW ENVIRONMENT

Byman then asked whether the analysis should be specific to the type of organization. In an LLC or an LLP, can you be an owner or controller for some purposes, but an employee for others? Hendrickson noted that the framers of the Uniform Partnership Act, in effect in many states, and the framers of the Civil Rights Act and all of the laws relating to partnerships never envisioned the kind of business organizations we have today that we call “partnerships.” He noted that not so many years ago Goldman Sachs was a partnership and had many of the same attributes that large law firms do today. It is now a publicly held and publicly traded organization. Partnership may indeed be a dying concept in the mega partnerships where this is an issue. We will continue, he noted, to have small to medium size firms where the partnership will be a reality and where people that can still gather in one room and truly share in the benefits and burdens of the firm and the benefits and burdens of

firm management. In that event the employment discrimination laws do not apply. Many law firms are, however, trending away from that.

At this point, Bower added a note from the management perspective. Issues relating to management, voting and control influence who you are going to put in position to be allowed to vote on and to deal with firm issues. He noted that he has seen situations where, without thinking about it, firms have ended up with “the inmates running the asylum” through management and voting rights. As he noted, in these kinds of situations, to paraphrase an English expression, “Turkeys never vote for Thanksgiving.” Who has a vote, who does not, is an issue that Bower sees even old established firms with a lot of tradition wrestling and struggling with today.

WHY SHOULD THE EEOC CARE?

Byman then asked Hendrickson why the EEOC cares if “a bunch of rich white people” are losing their jobs. He responded that that was an argument the EEOC heard throughout the Sidley case. First, he noted, he had no doubt that the people whose claims he was pursuing were victims of age discrimination, and at the EEOC there is no means test for any kind of discrimination it challenges.



That applies to sex discrimination and race discrimination. There is no “rich white woman defense” in a sex discrimination case. The EEOC challenges discrimination wherever it finds it. He expressed the opinion that because the rule of law is essential to the welfare of society, it is important to challenge perceived violations among those engaged in the practice of law. For that reason, Sidley was an important case to do. The EEOC was, he asserted, making a significant point of law, and not a political statement.

Byman pointed out that the *Sidley* case was not based on a charge brought by one of the terminated lawyers. Hendrickson responded that the Age Discrimination Act does not require that an individual charge be filed. The EEOC can initiate its own investigation to institute a case. It does not stand in the employee’s shoes. Its role is to protect the public interest and that is not derivative of the rights of any individual party.

ACCOMMODATING TO CHANGE

The moderator then asked Plevan where this leaves law firms. Her response was that the first line of defense to a charge would be that the lawyers are partners and not employees. Sidley did not adjudicate that issue before it was resolved by consent and there is yet no clear guidance on this issue. The Act exempts from coverage bona fide executives or high policy-making employees, a principle that might be applied to a law firm’s partners.

There are, she pointed out, ways that law firms can address this issue. Many firms are trying to avoid it by abandoning the policy, or perhaps even more commonly, being flexible in its application, ignoring or selectively ignoring the policy, so that people the firm believes are highly productive are being given extensions or being allowed to remain.

Hendrickson pointed out that Sidley was enjoined from us-

ing age as a basis for separating people from the partnership and that during the term of the decree every separation and the reasons for it were reported. “I think,” he said, “they really got their house in order. . . . I think that they are now managing in a much more hands-on way and making decisions about which partner should stay and which could go on the merits and clueing the partners in perhaps earlier I think to the extent that firms do that . . . they are going to be happier, better-managed firms and they are not going to have any problems with the EEOC.”

In response to a question, Hendrickson also indicated that many firms now seem to be handling the problem of the underperforming older lawyer through compensation based on productivity, rather than on forced retirement.



AWARDS *and* HONORS

David J. Beck, *Houston, Texas*
American Inns of Court Professionalism Award

Emmet J. Bondurant II, *Atlanta, Georgia*
American Inns of Court Professionalism Award

Alan W. Duncan, *Greensboro, North Carolina*
North Carolina Bar Association Advocates Award

IN MEMORIAM

*In this issue, we record the deaths of ninety-four Fellows of the College. Fifty-three of them served in World War II, thirteen in the Korean Conflict (of whom four had also served in World War II), and one in Vietnam. Another seven served in peacetime. They include two who were prisoners of war, one survivor of Pearl Harbor, two who landed on the beach in Normandy on D-Day, one plane crash survivor, two whose ships were sunk out from under them, two survivors of kamikaze attacks, one who was at Remagen Bridge when the Allies first crossed the Rhine into Germany and several who participated in the invasions of Guadalcanal and other Pacific islands. Among them are recipients of a Navy Cross, two Silver stars, one Distinguished Flying Cross, numerous Air Medals and Bronze Stars and two Purple Hearts. They include one former United States Secretary of State, an Honorary Fellow who held all three of the highest judicial offices in England and was the only jurist ever to be made a Knight of the Garter and one Honorary Fellow who was the highest judicial officer in Scotland. One managed five senatorial campaigns and one presidential campaign and pinch-hit for former President Harry S. Truman at an international conference. One worked on the appeal to the United States Supreme Court in *Erie v Tompkins*. Two handled cases that became the subject of books, one of which was made into a Robert Redford movie. One lost the suit brought to keep Lady Chatterley's Lover from distribution in the U.S. mail. One received the Presidential Medal of Freedom. Ten were college athletes. One celebrated his 80th birthday by skydiving—with an artificial leg. One celebrated a birthday in his eighties by navigating a sailing vessel across the Atlantic Ocean. One walked across the Golden Gate Bridge the first day it was opened. One was a founder of the world's largest privately owned commercial trout company.*

The number who lived beyond their eighties equaled the number who died before their eighties. Two died at age one hundred. The wife of one died twenty and one-half hours after her husband's death. Two were former Regents of the College. Only one was from Canada.

As is our custom, the date that follows the name of each deceased Fellow is the date of his or her induction into the College.

Hon. Daniel Arthur Alsup '70, a Judicial Fellow from Spearfish, South Dakota, died in June 2008 at age 90. A graduate of Weber College in Ogden, Utah and of the University of Utah School of Law, he was an officer in the U.S. Army Air Corps in World War II. A Utah Supreme Court Secretary before entering private practice in Ogden, Utah, he had also served as Assistant General Attorney for the Union Pacific Railway and was for a number of years a Federal Magistrate. He had served for two years as the College's Utah State Chair. A widower, his survivors include two sons.

Jack Rolland Alton '68, a Fellow Emeritus from Columbus, Ohio, died February 14, 2011 at age 85. His education interrupted by World War II, he served as an officer in the U.S. Army Air Corps, then returned to graduate from Ohio State University and from its School of Law. He was a founding partner of Lane, Alton & Horst and a past president of the Columbus Bar. He had received the American Judicature Society's Herbert Harley Award for his contribution to the administration of justice in his state. His survivors include his wife of 63 years, two daughters and a son, John, also a Fellow of the College.

Gary A. Banas '77, Massillon, Ohio, a Fellow Emeritus retired from Buckingham, Doolittle & Burroughs, Akron, Ohio, died August 23, 2010 at age 76 of progressive supranuclear palsy. A U.S. Army veteran and a graduate of Kent State University and of the Case-Western Reserve School of Law, he had served as the College's Ohio State Chair. His survivors include his wife of 55 years and two daughters.

Robert D. Barbagelata '79, a Fellow Emeritus from San Francisco, California, died November 6, 2010 at age 85. His undergraduate education at the University of San Francisco interrupted by service as an officer in the U.S. Navy in the South Pacific in World War II, he was a graduate of that University and of its School of Law. He had served as President of the San Francisco Trial Lawyers Association and of the local chapter of ABOTA, both of which had honored him with their Lifetime Achievement Awards. He also served a term as Judge Pro Tem on the Superior Court of San Francisco. Growing up in the Marina District of San Francisco, he was one of the first people to walk across the Golden Gate Bridge the day it was opened. His survivors include his wife of 54 years, a daughter and two sons.

E. Lawrence Barcella, Jr. '93, a member of Paul, Hastings, Janofsky & Walker LLP, Washington, District of Columbia, died November 4, 2010 at age 65 of bladder cancer. A graduate of Dartmouth College and of the Vanderbilt University School of Law, he began his career as an Assistant United States Attorney for the District of Columbia, where he served as Deputy Chief of the Major Crimes Division and then as Senior Litigation Counsel. He had led the initial investigation of the assassination of Orlando Letelier, a former Chilean foreign minister who had died in 1976 when a bomb planted under his automobile exploded. He was also involved in the investigation of the 1983 bombings of the American Embassies in Beirut and Kuwait and the Marine garrison in Beirut and the 1985 hijacking of the cruise ship Achille Lauro. His prosecution of Edwin P. Wilson, a former Central Intelligence Agency operative who had used proprietary companies secretly owned by the CIA for his own benefit, including supplying Libyan dictator Colonel Muammar el-Quaddafi with plastic explosives and other military equipment, was the subject of Peter Maas' 1986 book *Manhunt*. He had practiced with several Washington law firms before

joining Paul Hastings. His survivors include his wife and a daughter.

Lane DeWitt Bauer '79, Kansas City, Missouri and Mesa, Arizona, died February 7, 2011 at age 84. A varsity basketball player at the University of Missouri, his education had been interrupted by World War II, in which he served in the U.S. Army in the occupation of Japan. He was a graduate of the University of Missouri and of its School of Law and was the seventh lawyer in Shook, Hardy & Bacon, Kansas City, where he spent his entire career until his retirement in 1997. He had authored a number of articles and chapters of other legal publications. A widower who had remarried, his survivors include his second wife, two daughters, two sons and a step-daughter.

The Right Honourable Lord Bingham of Cornhill, '94, an Honorary Fellow, died September 11, 2010 of lung cancer at age 76. Characterized by one of the news articles that reported his death as "widely recognised as the greatest judge of his time," Thomas Henry Bingham was the first to hold all three of the top legal posts in the British judiciary: Master of the Rolls (1992), Lord Chief Justice (1996) and Senior Law Lord (2000-2008). He was also



the first judge to be made a Knight of the Garter. In many ways a man ahead of his time, he was an early supporter of the move to give rights of audience in the High Court to both barristers and solicitors, of Lord Woolf's proposals to overhaul the civil justice system, of the incorporation of the European Convention on Human Rights into English law and of divorcing the judicial branch of the House of Lords from Parliament to create a separate Supreme Court. After service in the Royal Ulster Rifles, he had entered Balliol College, Oxford, where he won a Gibbs Scholarship and earned a First in Modern History. Choosing the law over academia, he studied for the Bar as Eldon Law Scholar, passed at the top of the Bar exams and was called by Gray's Inn in 1959. He "took Silk" (was made Queens Counsel) in 1972 at age 38. His judicial career began in 1973 with his appointment as a recorder of the Supreme Court and was followed by a 1980 appointment as a High Court judge in the Queen's Bench division and by promotion to the Court of Appeal in 1986. In 1977, he had chaired the inquiry into allegations of breaches by oil companies of the United Nations trade embargos against Rhodesia and in the early 1990s led a high-profile inquiry into the collapse of Bank

of Credit and Commercial International (BCCI). In the wake of 9/11, he wrote many of the more significant judgments calling into question some of the authoritarian antiterrorist legislation that had followed that tragedy, including judgments that foreign terrorist suspects could not be held indefinitely without charge and that evidence procured by torture anywhere in the world was inadmissible in the courts of England.

Baron Bingham was a frequent participant at meetings of the American College of Trial Lawyers. With his characteristic understated sense of humor, he once described the Inns of Court to his United States and Canadian audience as "nurseries for orators." He had chaired the British delegation to the 1999-2000 Anglo-American Legal Exchange at a time when many of the reforms that were to modernize the British legal system were in their early stages. When the College met in London in 2006, he had arranged for the Regents and Past Presidents to be invited to represent the United States at the Memorial Evensong in Westminster Abbey on the fifth anniversary of 9/11.

A staunch defender of judicial independence, he was the author of two widely regarded texts, *The Business of Judging* (2000) and *The Rule*

of Law (2010). Those Fellows of the College who attended its 2006 London meeting or who read the account of that meeting in *The Bulletin* will recognize in his address at that meeting the principles that ultimately became the framework for the second of these works. His survivors include his wife, Elizabeth, a son and a daughter.

Jules F. Brown '76, of Hoskins, Brown & Kainins, a Fellow Emeritus from Lancaster, Wisconsin, died January 24, 2010 at age 87. His undergraduate education, interrupted by military service in World War II, he graduated from St. Olaf College in Northfield, Minnesota and from the University of Wisconsin-Madison School of Law. A widower, his survivors include two daughters and a son.

Carl Prosser Burke '68, Boise, Idaho, died June 29, 2011 at age 86. His education was interrupted by World War II, in which he served in the 44th Division, 114th Infantry Regiment of the U.S. Army in combat in northern France, Germany and Austria, winning, among other decorations, a Purple Heart. A graduate of Stanford University and of its School of Law, after law school he served as a law clerk for United States District Judge and former Idaho Governor Chase Clark. He practiced for fifty-three years in the Boise firm

Elam & Burke, of which his father was a founder, and then practiced with his son in Greener Burke Shoemaker for another three years before retiring. A founder and the first chair of the Idaho Association of Defense Counsel, he was a Past President of his local Bar and had received the Idaho Bar Association's Distinguished Lawyer Award. He chaired and managed five senatorial campaigns for his life-long friend, Senator Frank Church, and chaired Church's 1976 campaign for the United States presidency. He was Idaho State Chair in the presidential campaigns of John F. Kennedy and Lyndon B. Johnson. In 1959, he served as a United States Delegate to the first Atlantic Conference of NATO, replacing former President Harry S. Truman, who was unable to attend. He had served as the College's Idaho State Chair on three different occasions. His survivors include his wife, a daughter and two sons.

Hon. Clayton C. Carter '69, a Judicial Fellow from Centreville, Maryland, a retired Maryland Circuit Court Judge, died July 30, 2011 at age 92. A graduate of Duke University and of the University of Maryland School of Law, his law school education had been interrupted by World War II. Volunteering for induction in



the U. S. Army Signal Corps, he served in the China, Burma India Theater with the 835th Signal Service Battalion, then attended Officer Candidate School and became a commissioned officer before his discharge. After practicing first in Baltimore and then in Centreville, he had served as a State's Attorney and as a County Commissioner before his 1971 appointment to the bench. At age 70, he had retired as Chief Judge of his Circuit. He had been President of his county and circuit Bars and Vice-President of the Maryland State Bar Association and was one of the original directors of both that organization and the Maryland Bar Foundation. He had also served on the vestry and as Senior Warden of his Episcopal Church. Divorced and remarried, his survivors include his second wife and three daughters.

Michael A. Cerussi, Jr. '96, a founder of Cerussi & Spring, White Plains, New York, died February 14, 2011 at his home in Riverside, Connecticut at age 61. He was a graduate of Iona College and of Hofstra University School of Law. His survivors include his wife of 43 years and a son.

John J. Chester '79, Columbus, Ohio, who had practiced for 65 years—until the year before his death— in the firm, now Chester Willcox

& Saxbe, LLP, founded by his grandfather in 1884, died July 24, 2011 at age 91. A graduate of Amherst College and of the Yale School of Law, he had served as a destroyer officer in the U. S. Navy in World War II. He had served three terms in the Ohio House of Representatives and in 1974, was appointed Special Counsel to President Richard M. Nixon during the Watergate scandal. He had served on the boards of a number of hospitals and health-related organizations, frequently as chairman, over a period of twenty-five years. Beginning when he was 80 years old, he had taught for ten years as an Adjunct Professor of trial preparation at Ohio State's Moritz College of Law. He had received the Columbus Bar Association's Professionalism Award and Ohio State University's Distinguished Service Award. A widower, his survivors include three sons and a daughter.

Warren Minor Christopher '70, Senior Partner in O'Melveny & Myers LLP, Los Angeles, California, and former United States Secretary of State, died March 18, 2011 at age 85 of cancer. A *magna cum laude* graduate of the University of Southern California, he was called to active duty in World War II as an officer in the U.S. Naval Reserve, serving in the Pacific Theater. At the Stanford School of Law, he was the President

of the Board of Editors of Volume 1 of its law review and a member of the Order of the Coif. He served as law clerk to United States Supreme Court Associate Justice William O. Douglas before joining O'Melveny & Myers. Over his career, he moved seamlessly between law practice and public service, taking a major role in many of the pivotal events of the second half of the Twentieth Century. He served as Deputy Attorney General of the United States in the Johnson Administration and as Deputy Secretary of State in the Carter Administration. He had a role in the ratification of the Panama Canal Treaty and spearheaded the negotiations that led to the release of 52 American hostages in Iran. At the end of his term, President Jimmy Carter awarded him the Presidential Medal of Freedom, the nation's highest civilian honor. Christopher then served for ten years as chairman of his firm, leading its expansion into one of the first global law firms. Sworn in as the 63rd Secretary of State in 1993, he played a major role in the post-World War II entrance of the Czech Republic, Hungary and Poland into NATO, in initiatives to improve relations with China, in bringing about the restoration of diplomatic relations with Vietnam and in the 1994 Israel-Jordan Peace Treaty. He served as the nation's chief diplomat

in the negotiation of the Dayton Agreement that ended the Bosnian War. As Secretary of State, he logged in 704,487 air miles. Called on for leadership roles in innumerable organizations and in several high-profile fact-finding commissions, he served as Vice-Chair of the McCone Commission that investigated the causes of the Watts Riots of 1965 and chaired the independent commission that came to be known as the "Christopher Commission" that led to reforms in the Los Angeles Police Department. He had served as President of the Board of Trustees of Stanford University, Chairman of the Carnegie Corporation Board of Trustees and as a Director and Vice-Chairman of the Council on Foreign Relations. The author of four books, for seven years up to 2010, he taught an undergraduate Honors Collegium class on international affairs at the University of California at Los Angeles. In 1992, his firm had created the Warren Christopher Scholarship Program, which has awarded four-year college scholarships to 138 promising, but disadvantaged, Los Angeles Unified School District students. In his memoirs, President Carter called Christopher "the best public servant I have ever known," and President Clinton observed that he had "left the mark of his hand



on history.” His survivors include his wife, two daughters and two sons.

Hon. Charles Clark ’69, Jackson, Mississippi, former Chief Judge of the United States Court of Appeals for the Fifth Circuit, died March 6, 2011 at age 85. An Eagle Scout and a graduate of Tulane University, he was an officer in the U.S. Navy in World War II. A graduate of the University of Mississippi School of Law, he had been recalled to active duty during the Korean Conflict. A founding partner of Cox, Dunn & Clark, he served on the Fifth Circuit Court from 1969 to 1992. While on the bench, he had chaired the finance and executive committees of the Judicial Conference of the United States. Following his retirement from the bench, he returned to practice with Watkins & Eager, retiring in 2009. He had received an honorary Doctor of Laws degree from Mississippi College and was a charter member of the University of Mississippi Law School Hall of Fame. The local Inn of Court is named in his honor. His survivors include his wife of 63 years, two daughters and four sons.

Ben Thomas Cooper ’62, a Fellow Emeritus from Louisville, Kentucky, died May 8, 2011 at age 100. A graduate of the University of Kentucky and of its School of Law, he began

his practice in Benton, Kentucky in 1936. After serving in World War II in the U.S. Army Air Corps’ 363rd Fighter Squadron in the European Theater and later in the Judge Advocate General Corps, he joined the United States Attorney’s office in Louisville. He then became a partner in Meyer, Cooper & Kiel, where he practiced for most of his career. He had chaired the Board of Stewards of his church and for years sang in the church choir. His survivors include one daughter.

Joseph Michael Costello ’75, a Fellow Emeritus from New York, New York, a son of Irish immigrants, died May 15, 2007 at age 82 from complications from a fall. His college education at Iona College was interrupted by his enlistment in the U.S. Army in World War II. Taken prisoner in the Battle of the Bulge in December 1944, he was freed in May 1945. Completing his undergraduate degree at Iona, he then attended and graduated from Fordham School of Law. He was a founding partner of the New York firm, Costello, Shea & Gaffney. A former chair of the Trial Lawyers Section of the New York State Bar, he had lectured at Fordham and had served as justice, trustee and police commissioner of the Village of Plandome, New York. His survivors include his wife, a daughter and six sons.

George J. Cotsirilos '62, a Fellow Emeritus from Chicago, Illinois, a former Regent of the College, died March 27, 2011 at age 90 following a stroke. The son of Greek immigrants, he finished high school at age 16, graduated from the University of Chicago and then, at age 21, from its School of Law. An officer in the U.S. Navy in World War II, he participated in five invasions in the Pacific Theater. He prosecuted felonies for three years as Assistant State's Attorney for Cook County, Illinois and then went on to form his own firm, becoming a legendary criminal defense lawyer, involved in many high-profile cases. One of the early cases in which he was involved later became the basis for Bernard Malamud's *The Natural*, which was later made into a Robert Redford movie. He had taught at the John Marshall School of Law, was an original member of the Registration and Disciplinary Commission of the Illinois Supreme Court, chaired the Complex Crimes Committee of the American Bar Association Litigation Section and in 2002, received the John Paul Stevens Award for integrity and public service. A widower who had remarried, his survivors include his wife, Joan M. Hall, herself a Fellow, the third woman inducted into the College, two sons, a daughter,

two stepsons and two stepdaughters.

Thomas L. Dalrymple '68, a Fellow Emeritus from Toledo, Ohio, died April 14, 2011 at age 89. A Phi Beta Kappa graduate of the University of Michigan and of its School of Law, where he was a member of the Order of the Coif, his education had been interrupted by World War II. An infantry officer in General George S. Patton, Jr.'s 3D Army in the European Theater, he was awarded both a Silver Star for valor in combat and a Purple Heart. He had served as the College's Ohio State Chair. A widower, his survivors include a son.

George C. Dalthorpe '84, Billings, Montana, died March 15, 2011 at age 81. Growing up in the depths of the Great Depression on a Montana farm with no running water, electricity or telephone, he professed never to have known that he was poor. After graduating from Montana State University, he served in the U.S. Navy during the Korean Conflict. Intending to return to Montana to start a beet farm, he was instead persuaded by a friend to go to law school. After graduating from the University of Montana School of Law, he clerked for a United States District Judge before joining Crowley Fleck



PLLP, where he practiced for the remainder of his career. An outdoorsman who had hiked 26 miles over the Beartooth Range on his 70th birthday, he made his last backpack trip in 2007 at age 78. His survivors include his wife of 54 years, two daughters and two sons.

Mabry Chambliss De Buys '02, Seattle, Washington, died June 7, 2011 at age 64 of cancer of the brain. A senior partner in K&L Gates LLP, she had served as Washington State Chair of the American Academy of Matrimonial Lawyers. She had also served on the Board of her local Family Law Court Appointed Special Advocates, created to protect children caught in family domestic conflicts, and had received its Founders Award. A transplanted southerner, the great granddaughter of a Chief Justice of the Tennessee Supreme Court, she had attended Sweetbriar College and graduated from Swarthmore College with a degree in classical philology. She had come to Seattle to seek a graduate degree in Greek and Latin, but had instead graduated from the University of Washington School of Law. She is survived by her husband of 31 years.

John C. Deacon '79, a Fellow Emeritus from Jonesboro, Arkansas, died July 15, 2011 at age

90. A graduate of the University of Arkansas, his legal education was interrupted by service as an officer in the U.S. Army Intelligence Corps during World War II. After completing his legal education at the University of Arkansas School of Law, he began his practice with the Rose Law Firm in Little Rock. He returned to active duty in the Pentagon during the Korean Conflict, then began practice with his father-in-law in Jonesboro in the firm that became Barrett & Deacon. By the end of his career, he had practiced with four generations of his family. He had served as President of the Arkansas Bar and of the Commissioners on Uniform State Laws and served on the governing board of the American Bar Association. He was a founding member of the United Way of Northeast Arkansas and for many years served as chair of the board of a local medical center. His survivors include his wife of 63 years, three sons and a daughter.

Joseph M. Delaney '83, a Fellow Emeritus from Wallingford, Connecticut, died April 29, 2011 at age 86. Enlisting in the U.S. Navy upon his graduation from high school, he had served on an LST in the Pacific Theater in World War II. A Phi Beta Kappa graduate of Catholic University and of Harvard Law School, he began his law practice in New Haven, then practiced

in Meriden, but soon thereafter settled in Wallingford, where he had served the community for over 50 years as town attorney, town prosecutor and later as a judge of the town court. In 2003 he retired from the firm he founded, Delaney, Zemetis & Triplett, and was living in Florida at the time of his death. His survivors include two sons.

John A. Diaz '98, a Fellow Emeritus, retired to Rancho Mirage, California, died September 2, 2009 at age 78. A graduate of Lehigh University and of the George Washington University School of Law, he had practiced as a patent lawyer and had been the chairman of Morgan & Finnegan LLP, New York, New York until his retirement. A widower who had remarried, his survivors include his wife, three sons and two daughters.

Gerald L. Draper '82, a Fellow Emeritus, retired to Henderson, Nevada, died April 11, 2011 at age 69. A graduate of Muskingum College and of Northwestern University School of Law, he had begun his practice with Bricker & Eckler, Columbus, Ohio and had retired in 2004 from Roetzel & Andress. He had served as President of both his local Bar and of the Ohio State Bar Association and had served on the boards of his undergraduate college and a

number of church and nonprofit organizations. His survivors include his wife of 50 years, a daughter and a son.

Hon. George Farrell, III '76, a Judicial Fellow from Salem, New Jersey, died March 18, 2010 at age 83. A World War II veteran of the U.S. Navy, he had attended Rutgers University, Muhlenburg College and Villanova University and was a graduate of the Tulane University School of Law. Formerly a partner in Farrell, Eynon & Munyon, first in Haddonfield and then in Salem, New Jersey, he had been the first full-time prosecutor for Salem County and had served on the New Jersey Superior Court from 1978 until his retirement in 1995. His survivors include his wife of 60 years, three daughters and two sons.

Hon. John Feikens '62, a Judicial Fellow from Detroit, Michigan, one of the country's longest-serving federal judges, died May 15, 2011 at age 93. Born on a New Jersey dairy farm to immigrant parents from the Netherlands, he was a graduate of Calvin College, Grand Rapids, Michigan and a 1941 graduate of the University of Michigan School of Law. After spending the war years in the Department of Priorities and Wartime Allocation of a Detroit manufacturing



company, he entered private practice in Detroit in 1946. Chair of the Republican Party of Michigan and a member of the Republican National Committee in the middle 50s, he was first nominated to the federal bench by President Dwight D. Eisenhower in 1960, and later received a recess appointment. He was renominated by President John F. Kennedy, who later withdrew the nomination in the face of opposition from a Michigan Senator. In 1968, he became co-chair of the newly created Michigan Civil Rights Commission. Following that, he was a trustee of New Detroit, Inc. until his third, and finally successful, 1970 nomination to the bench by President Richard M. Nixon. At that point he had practiced law for 22 years in the Detroit firm Feikens, Dice, Sweeney & Sullivan. The Chief Judge of the Eastern District of Michigan from 1979 to 1986, he took senior status and remained on the bench until his reluctant retirement on account of age six months before his death. He had served as a Trustee of his undergraduate college and on the Board of Visitors of his law school and had served on the College's Michigan State Committee for ten years. Best known for his thirty-plus-year supervision pursuant to a 1977 consent judgment under the Clean Water Act of the Detroit Water

and Sewerage Department, a long-running and often contentious environmental controversy arising from a sewage disposal plant that discharged into the Detroit River, he acquired the nickname "the sludge judge." His wife of 67 years died in 2007. His survivors include three daughters and two sons.

Joseph Mark Fitzpatrick '75, New York, New York, an intellectual property lawyer, died July 22, 2011 at age 86. A graduate of Stevens Institute of Technology and of the Georgetown University School of Law, he began his career in the Patent Section of the Antitrust Division of the United States Department of Justice. He served as an officer in the U.S. Navy and after several years in another firm, became a founding partner of Fitzpatrick, Cella, Harper & Scinto. His survivors include his wife, two daughters and two sons.

Robert G. Fraser '61, a Fellow Emeritus retired to Alexandria, Virginia, whose death had previously gone unreported, died March 5, 2000 at age 85. A graduate of Creighton University and of its School of Law, he had served in the U.S. Army in Europe in World War II. He practiced with his father in the Omaha, Nebraska firm Fraser, Stryker, Marshall & Veach and had served as the first Chair of the Omaha Airport

Commission. He had initially retired to Jackson, Wyoming before moving to Alexandria.

Stanley R. Gabert '68, a Fellow Emeritus from Appleton, Wisconsin, retired from Gabert, Williams & Farb, died February 1, 2010 at age 94. A graduate of the University of Wisconsin at Madison and of its School of Law, he served in the U.S. Navy in the Pacific Theater in World War II. His ship, the *USS Bunker Hill*, was badly damaged by a Japanese kamikaze attack in May 1945 with a loss of hundreds of her crew, becoming one of the most heavily damaged carriers to survive the war. Gabert was awarded a Silver Star for his heroic actions during that attack. A widower, his survivors include two sons and two daughters.

Clinton J. Gatz '83, Norfolk, Nebraska, died July 17, 2011 at age 78. After serving in the U.S. Army during the Korean Conflict, he graduated from Creighton University and from its School of Law. He had begun his practice in North Platte, where he became a partner in Maupin, Dent, Kay, Satterfield & Gatz. He later moved to Norfolk, where he became a partner in Jewell, Otte & Gatz. One of the founders of The Link Halfway House in Norfolk, he was one of the founding members of the Nebraska Bar Association's

Lawyer's Assistance Program. He had served on the Executive Council of the Nebraska Bar Association and as President of the Nebraska Association of Trial Attorneys and had served the College as Nebraska State Chair. His survivors include his wife of 54 years and two daughters.

Theodore William Geiser '70, retired to Warren, Vermont, died August 3, 2008 at age 83. After serving in the U.S. Army in World War II, he graduated from Rutgers University and from its School of Law. He was a founding member of McElroy, Connell, Foley & Geiser, Newark, New Jersey, where he practiced until his health declined. His survivors include a son and a daughter.

Samuel Hazard Gillespie '56, New York, New York, died peacefully on March 7, 2011 at age 100 of pancreatic cancer. He was a graduate of Yale College and of Yale Law School. The first summer clerk at what is now Davis, Polk & Wardwell, he joined the firm two years later and began his 75-year tenure with the firm as assistant to John W. Davis. One of the first cases on which he assisted Davis was the appeal to the U. S. Supreme Court in *Erie Railroad v. Tompkins*. During World War II, he was chief



of operational research for the Second Division of the U.S. Army Air Corps Eighth Air Force. After serving as President of the New York State Bar Association, which later presented him with its highest honor, he was United States Attorney for the Southern District of New York in the Eisenhower Administration. In that post, he was the reluctant prosecutor in the government's ultimately unsuccessful attempt to prevent, on grounds of obscenity, *Lady Chatterley's Lover* from being shipped through the mail. During his career at Davis Polk, he represented a long list of corporate clients, as well as celebrities such as Mary Pickford, Douglas Fairbanks, Tallulah Bankhead and Maurice Chevalier. He defended the insurer of TWA in a case arising from a 1956 mid-air collision between one of its planes and a United Airlines plane over the Grand Canyon, at that point the worst air disaster in history. Setting up camp on the canyon floor after flying in by helicopter, his team found a wingtip of the United plane with material from the rear bathroom of the TWA plane embedded in it, establishing that it had struck the TWA plane from behind. That crash ultimately led to the development of a national radar system and the creation of the Federal Aviation Administration. In the early 1960s,

Governor Nelson Rockefeller had appointed him head of the Moreland Commission to investigate the state's welfare system. He had navigated a sailboat across the Atlantic in his 80s to celebrate a birthday. Retiring in 1980, he became Senior Counsel to the firm and continued to visit the office daily until he reached age 100. He had served the College as New York State Chair. His survivors include his wife, a daughter, a son, a stepdaughter and a stepson.

Howard Battle Gist, Jr. '72, Of Counsel to The Gist Firm, Alexandria, Louisiana, died in August 2011 at age 91. A graduate of Tulane University and of its School of Law, he was a past president of the Louisiana State Bar. His obituary notes his membership in the American Legion, but details of his military service, probably during World War II, are not available. His survivors include his wife of 61 years, four sons and two daughters.

Hubert W. Green '74, San Antonio, Texas, a former Texas State Chair and a former Regent, died March 26, 2011 at age 84 as the result of a stroke. He had served in the U.S. Army Air Corps in World War II. A graduate of the University of Texas and of its School of Law, where he was a contributing editor of his law review and a member of the Order of the Coif,

graduating with honors, he began practice in his father's firm. At age 29 he was appointed District Attorney for Bexar County, serving for three years. In 1971 he had served as General Counsel of the Texas Senate General Investigating Committee in a bank fraud investigation that resulted in the indictment of several state officials. The San Antonio Bar Association had honored him with its Judge Joe Frazier Brown, Sr. Award of Excellence. Three weeks before his death, he had attended a reception honoring committee chairs and past Regents at the College's Spring Meeting in San Antonio. His survivors include his wife of 61 years, a daughter and two sons, one of whom, Paul W. Green, is a Justice of the Texas Supreme Court.

John Marshall Grower '87, a Fellow Emeritus from Jackson, Mississippi, died March 23, 2011 at age 86. A graduate of Mississippi State University and of the University of Mississippi School of Law, between undergraduate and law school he had served in the U S. Naval Air Corps during World War II. Until his retirement in 1992, he was a partner in Brunini, Grantham, Grower & Hughes. Active throughout his life in church-related organizations, in 2010, Catholic Charities of Mississippi had named him its

Man of the Year. His survivors include his wife, two daughters and two sons.

Lawrence Gunnels '79, a Fellow Emeritus living in Odenton, Maryland, died December 30, 2004 at age 73 of atherosclerosis. A graduate of Ottawa University, Ottawa, Kansas and of the Washington University School of Law in St. Louis, where he finished at the head of his class, he had served as law clerk to Associate Justice Charles E. Whittaker and then as the first law clerk to Associate Justice Byron R. White. He began his practice in the Washington office of Kirkland & Ellis, and after becoming a partner in the firm, moved to its Chicago office. He then became a partner in Reuben & Proctor before becoming Vice President of Legal Affairs of the Tribune Co. in 1983. After retirement in 1989 he had lived in Mississippi before returning to the Washington area early in the year of his death. Once divorced, his survivors include his second wife, a daughter and a son.

J. Stewart Harrison '81, a Fellow Emeritus from Kentfield, California, died August 1, 2009 at age 85. The son of an oilman who moved frequently, he had graduated from high school in Aruba. A graduate of Virginia Military Institute,



he was scheduled for deployment to the Pacific Theater in the U.S. Army when he contracted polio. After several years of recuperation, he graduated from Stanford University School of Law, where he was a member of the golf team. After two years in private practice, he spent two years as a trial attorney in the Admiralty Section of the Department of Justice, then joined Brobeck, Phleger & Harrison in San Francisco as an admiralty trial attorney, where he practiced for the rest of his career. A widower, his survivors include a daughter and a son.

John Merrill Heaphy '86, a Fellow Emeritus from Shorewood, Illinois, died in March 2011 at age 83. Enlisting in the U.S. Navy after graduating from high school in Detroit near the end of World War II, he later graduated from the University of Michigan and the Wayne State University School of Law. After a three-year stint as an Associate Attorney in the United States Department of Health, Education and Welfare, he returned to Detroit, ultimately joining the firm now known as Vandever, Garzia, Tonkin, Kerr & Heaphy, where he practiced until his retirement. His survivors include his wife of 60 years, two daughters and a son.

Frederick George Helmsing '01, Mobile, Alabama, died July 9, 2011 at age 70 after an unsuccessful liver transplant necessitated by grave internal injuries he had suffered five years earlier when struck by an out-of-control vehicle while on his way to the courthouse. A graduate of Spring Hill College in Mobile, of the University of Alabama School of Law and of New York University School of Law, where he earned an LLM, he was a senior partner in Helmsing, Leach, Herlong, Newman & Rouse, which he had founded with his brother-in-law. His survivors include his wife of 42 years, a daughter and two sons.

John Clifford Hepworth '77, a Fellow Emeritus from Twin Falls, Idaho, died July 10, 2011 at age 84 from complications from Parkinson's Disease. Following high school, he served in the U.S. Navy on the escort carrier *USS Attu* in the Pacific Theater in World War II. A graduate of the University of Utah and of its School of Law, he first practiced with Hepworth, Nungester & Felton in Buhl, Idaho, later moving to the firm's office in Twin Falls. One of the founding members of the Idaho Trial Lawyers Association, he had been a member of the National Board of the American Board

of Trial Advocates and was the only Idaho member of the Inner Circle of Advocates. He had served as President of his district Bar. With a friend, he had founded Clear Springs Trout Company, which became the world's largest privately owned commercial trout company. He was also involved in the creation of the College of Southern Idaho and served on its Board for many years. He had retired from law practice at age 75. A widower who had remarried, his survivors include his wife, two daughters, two sons and a stepson.

Emanuel H. Horn '81, a Fellow Emeritus from Lutherville, Maryland, died July 26, 2010 at age 90. A graduate of Baltimore City College and of the University of Baltimore School of Law, his law school education had been interrupted by World War II, in which he served as a Lieutenant Commander in the U.S. Naval Air Corps. He had practiced with Dickerson, Nice, Sokol & Horn in Baltimore. and at the time of his retirement in the early 1990s, was practicing with Horn, Bennett & Redmond, PA, Baltimore. A widower, his survivors include two daughters.

Mark Hulsey, Jr. '72, Jacksonville, Florida, died July 22, 2011 at age 88. Immediately upon graduating from the University of Florida, he

joined the U.S. Navy and, as Communications Officer of an LST, landed on Omaha Beach Dog Red in Normandy on June 6, 1944, D-Day. His ship subsequently completed more than 100 crossings of the English Channel. After graduating from the University of Florida College of Law, he practiced as an associate with the late Chester Bedell, FACTL, then served as an Assistant United States Attorney before joining the Jacksonville firm that became Smith, Hulsey, Schwabe, Spraker & Nichols, from which he retired as Chairman Emeritus in 2005. He had been recalled to active duty during the Korean Conflict, and he remained in the Naval Reserve until his 1965 retirement as a Captain. President of the Jacksonville Bar Association, the Florida Bar and the Florida Supreme Court Historical Society, he had served in the American Bar Association House of Delegates and had chaired the Florida Judicial Qualifications Commission, the Florida Law Center Association and the Chester Bedell Memorial Foundation. In the civic arena, he had been President of the Jacksonville Chamber of Commerce and chaired the Jacksonville Port Authority. He had served as Senior Warden of his church and as Chancellor of the Episcopal Diocese of Florida and had received numerous



awards from his alma mater and from various legal organizations. He suffered the amputation of a leg in 1988 after a hip replacement, but went on to sky dive on his 80th birthday. A widower, his survivors include two daughters and two sons.

John Edward Hunt '74, a Fellow Emeritus, retired to Fearington Village, Pittsboro, North Carolina, died April 19, 2011 at age 87. His undergraduate education interrupted by World War II, he served as a U.S. Army Air Force weatherman. A graduate of Hamilton College and of the Albany School of Law, he practiced his entire career with Kernan & Kernan, PC, Utica, New York. He had served as President of his county Bar. His survivors include his wife of 59 years, four sons and two daughters.

Max Killian Jamison '73, Springville, California, died July 2, 2011 at age 92. A graduate of the University of California at Berkeley, he had served in the U.S. Army Air Force in World War II and had graduated from Hastings School of Law. After practicing with his father in his home town of Porterville, he moved to Los Angeles, first practicing with Hannah & Morton. At the time of his induction in the College, he was practicing with McCutchen, Blank, Verleger & Shea in Los

Angeles. After the death of his wife, he had returned to live in the Porterville area.

C. Paul Jones '84, a Fellow Emeritus from Eden Prairie, Minnesota, the state's first public defender, died April 19, 2011 at age 84 of complications from cancer. A graduate of the University of Minnesota and of its School of Law, he had earned an LLM at William Mitchell College of Law. After two years in private practice, he was Chief Deputy County Attorney in Hennepin County and then an Assistant United States Attorney. After four more years in private practice, he was named Minnesota State Public Defender, setting up shop in a 100 square foot basement office in St. Paul. He held that post for the next 25 years, retiring in 1989. He founded the Minnesota Criminal Justice Institute and served on the Minnesota Supreme Court's Rules of Criminal Procedure Committee for thirty years. Authoring two textbooks on criminal law, he had a parallel career as a teacher, serving as Professor and Associate Dean of Academic Affairs at William Mitchell College of Law for more than forty-five years. He also served for twenty years as Adjunct Professor of Law at the University of Minnesota School of Law. His wife of 54 years, Edina, died after a long illness

twenty and one half hours after his death.

Their survivors include two daughters.

John David Jones '75, a Fellow Emeritus from Atlanta, Georgia, died August 3, 2011 at age 82. A graduate of Auburn University, he served as an officer in the U.S. Army during the Korean Conflict. Graduating with distinction from the Emory University School of Law, he joined the firm, now Greene, Buckley, Jones & McQueen, in which he practiced until his death. A founding member of the Georgia Defense Lawyers Association, on whose Board of Governors he served, he was a frequent lecturer, one of the initial faculty of the Emory Law School's first trial practice course and a faculty member of that school's NITA course. His survivors include his wife of 58 years and five children.

John McDougall. Kern '05, San Francisco, California, died February 28, 2011 at age 64. Entering the Jesuit Novitiate for two years at St. Bonifacious, Minnesota, he left for Creighton University, from which he graduated. After graduating from George Washington University National Law Center, he was an Assistant United States Attorney for the District of Columbia for five years, handling criminal prosecutions, and then Assistant United States

Attorney for the Northern District of California, handling civil litigation, for four years. For twenty years thereafter, he practiced with Crosby, Heafey, Roach & May, PC in Oakland California, then spent the rest of his career as Of Counsel to Carlson, Calladine & Peterson, LLP, San Francisco. His survivors include his wife, a daughter and a son.

William K. Kerr '69, a Fellow Emeritus, died November 21, 2007 at age 91. A graduate of Colgate University, his education at Harvard Law School was interrupted by World War II, in which he served first as an FBI agent and then as a Naval Intelligence Officer on the *USS Princeton*, a light carrier that was lost in the Battle of Leyte Gulf in 1944. After finishing law school, he joined Fish, Richardson & Neave, New York, where he was a patent and antitrust trial lawyer and ultimately, for several years managing partner. A widower, his survivors include four stepdaughters.

Thomas S. Kilbane '87, Cleveland, Ohio, died April 28, 2011 at age 70. A graduate of John Carroll University and of the Northwestern University School of Law, he had joined Squire, Sanders & Dempsey. He served in the U.S.



Army during the Vietnam War, first as Legal Officer, Special Troops, at Fort Eustis, Virginia and then in Vietnam. He returned to Squire Sanders, where he practiced for the rest of his life. His survivors include his wife, two daughters and two sons.

Charles E. Lugenbuhl '75, a Fellow Emeritus from New Orleans, Louisiana, died August 14, 2011 at age 83. A graduate of Tulane University and of its School of Law, he had served in both the U.S. Navy and the Army, the latter during the Korean Conflict, when he was Labor Advisor to the Assistant Secretary of the Army in the Procurement Law Division of the Judge Advocate General Corps. A maritime lawyer, he began his practice with Lemle, Kelleher, Kohlmeier & Matthews in New Orleans. He left the practice for several years to be Executive Vice President of Halter Marine, a company started by a client boat-builder in his own backyard that became one of the world's largest builders of offshore supply vessels. He then returned to private practice, founding his own firm, Lugenbuhl, Wheaton, Peck, Rankin & Hubbard. For 32 years he was an Adjunct Professor of Maritime Law at Tulane School of Law and was a founding member of the Tulane

Admiralty Law Institute. His survivors include his wife and a daughter.

Michael J. Manzo '02, Pittsburgh, Pennsylvania, died May 30, 2011. Born in 1948, he was a graduate of Princeton University, received an MBA from the University of Scranton and his law degree from the University of Virginia School of Law. After undergraduate school, he had served a tour of duty in the German border regions with U.S. Army Intelligence. He had played on Princeton's 1969 Ivy League Champion football team and was an All-Ivy League and third team All-American lacrosse player. After law school he had clerked for the Chief Justice of the Pennsylvania Supreme Court, then joined Klett, Rooney, Lieber & Shorling, Pittsburgh, which in a later merger became Buchanan, Ingersoll & Rooney. He had served in leadership roles in a number of legal services organizations and had been an Adjunct Professor at the University of Pittsburgh School of Law. He had coached numerous youth lacrosse teams and was inducted into the Western Pennsylvania Interscholastic Athletic Hall of Fame. Among his clients were the Pittsburgh Steelers. His survivors include his wife of 33 years, three daughters and a son.

Leonard Maro Marangi '90, Pasadena, California, died February 21, 2011 at age 82. A graduate of the University of California, Los Angeles, where he was Battalion Commander of the Naval ROTC, he served as an officer in the U.S. Navy during the Korean Conflict. A graduate of the University of Southern California School of Law, where he was a member of the Order of the Coif, he spent his entire career with the Pasadena firm Hahn & Hahn and was for many years its managing partner. A former president of his local Bar, which had honored him with its Distinguished Service Award, and a Fellow of the American Academy of Matrimonial Lawyers, he held leadership roles in many local civic and philanthropic organizations. His survivors include his wife of 52 years, two daughters and two sons.

Gerald P. Martin, Jr. '78, a Fellow Emeritus from Lafayette, California, died April 11, 2011 at age 80. A graduate of St. Mary's College, he served as an officer on the submarine *USS Segundo* during the Korean Conflict. After law school at Boalt Hall of the University of California at Berkeley, he served as a Deputy District Attorney in Alameda County and

practiced in San Francisco and Oakland before forming his own firm, Martin, Ryan & Martin in Oakland. His survivors include two daughters and three sons.

Robert Martin '72, Wichita, Kansas, died July 18, 2011 at age 87. His undergraduate education was interrupted by World War II, in which he served in the U. S. Army Air Corps as the pilot of a B-24 Liberator. He was a graduate of the University of Kansas and of the University of Colorado School of Law. After law school, he clerked for the Chief Judge of the United States Court for the District of Kansas, then began his practice with Collins, Williams, Hughes & Martin in Wichita. In 1967-68, he served as Special Assistant Attorney General of Kansas in political fraud proceedings and at various times in his career, had been Special Assistant Attorney General for the State of Kansas in antitrust prosecutions. At the time of his induction into the College, he was a partner in Martin, Pringle, Scholl & Fair. He served for decades as Chief Legal Counsel for Beech Aircraft Corporation and was coauthor of the General Aviation Revitalization Act. He had served as President of the Kansas Bar Association. An avid hiker, skier and hunter,



he played polo for over 30 years. His survivors include his wife, two daughters and three sons.

Hon. James F. McAuliffe, Jr. '75, a Judicial Fellow, died April 30, 2011 at age 80. A graduate of Montgomery College and of the Washington College of Law at American University, he had served in the U.S. Army during the Korean Conflict. At the time of his induction into the College he was a partner in Heeney, McAuliffe & Rowan, Rockville, Maryland. During his career, he had served as Assistant State's Attorney for Montgomery County, Maryland and had served in the Maryland House of Delegates and the Maryland Senate. Appointed to the Montgomery County District Court, he then moved up to the Circuit Court, where he served from 1978 to his retirement in 1992. His survivors include his wife of 49 years and four children.

James Joseph McCabe '82, a Fellow Emeritus from Philadelphia, Pennsylvania, died April 20, 2011 at age 81. A graduate of LaSalle College and of the Temple University School of Law, he was a partner in Duane, Morris & Heckscher, where he had served as head of its Trial Practice Group for eleven years. A founder and President of the Pennsylvania Chapter of the American Board of Trial Advocates and a past President

of the Philadelphia Association of Defense counsel, he had been a Director of the Defense Research Institute. Particularly well known for his work in the medical malpractice field, he was an Adjunct Professor at the Jefferson University School of Medicine. A widower who had remarried, his survivors include his wife, two daughters and a son.

Donald P. McCarthy '81, a Fellow Emeritus, died March 15, 2011 at age 80. A graduate of LeMoyne College and of Cornell University School of Law, he was a partner in Hancock & Estabrook, LLP, Syracuse, New York. His survivors include his wife, four daughters, two sons and a step-son.

Hon. Richard Cameron McLean '76, a Judicial Fellow from Denver, Colorado, died May 7, 2011 at age 79. A graduate of Stanford University and of the University of Colorado School of Law, he clerked for a Judge on the Tenth Circuit Court of Appeals before entering private practice in the Denver firm that was to become Sheldon, Bayer, McLean & Glasman, PC. An outdoorsman, he was the author of the Colorado Ski Safety Act. He had been President of the Colorado Defense Lawyers and Chair of the Boulder County Democratic Party and

had served on the Boulder City Council and as Mayor of Boulder. He was appointed to the Colorado District Court, 20th Judicial District, where he sat for fifteen years and for another two years as a senior judge following his retirement. Divorced and remarried, his survivors include his wife, a daughter, a son and a stepson.

W. Donald McSweeney '84, Chicago, Illinois, died on February 12, 2011 at age 90. After graduating from Harvard College, where he was a member of the basketball team, he served as a field artillery officer in the U.S. Army in the European Theater in World War II, participating in action at the famous Remagen Bridge, where Allied troops first crossed the Rhine River into Germany. A graduate of Harvard Law School, he served as a Trial Attorney in the Midwest Office of the Antitrust Division of the Department of Justice before joining the Chicago firm Schiff Hardin & Waite. He was an accomplished tennis, squash and racquets player. His survivors include his wife of 56 years, two daughters and two sons.

Charles D. Meadows '69, a Fellow Emeritus from Pleasant Ridge, Michigan, died March 7, 2011 at age 94. A graduate of Detroit Institute of Technology and of the Detroit College of

Law, he was a founding partner of the Detroit firm Foster, Meadows & Ballard. An officer, he had served as a Special Agent in the U.S. Army Counter Intelligence Corps in World War II, and had landed on the beach in Normandy on D-Day. Twice a widower, his survivors include two daughters.

Eugene Lance (E.L.) Miller '74, a Fellow Emeritus from Coeur d'Alene, Idaho, died July 10, 2011 at age 89. A graduate of the University of Toledo and of the University of Idaho School of Law, he was a Captain in the U.S. Army Air Corps in World War II. He had last practiced with Paine, Hamblen, Coffin, Brooke & Miller, LLP until his retirement. In 1971, he had been President of the Idaho State Bar.

Stephen A. Milwid '60, a Fellow Emeritus from Chicago, Illinois, died October 10, 2009 at age 94. A graduate of Harvard College and of Harvard Law School, he had practiced with Chicago's Lord Bissell & Brook. His survivors include a son and a daughter.

Arthur Montano '74, a Fellow Emeritus, retired to Punta Gorda, Florida, died in May, 2011 at age 88. A graduate of Villanova



University and of the Rutgers University School of Law, he served in World War II as the navigator of a B-17 Flying Fortress in the U. S. Army Air Corps, 8th Air Force, flying 35 missions over Germany and Poland. At the time of his induction into the College, he was practicing in Camden, New Jersey. Over his career he also practiced in Cherry Hill and Audubon. At the time of his retirement, he was a senior partner in Montano, Manuel, Summers & King. He had served as a Trustee of the New Jersey State Bar Association and was the recipient of numerous honors, including the 1978 Trial Bar Award from the Trial Attorneys of New Jersey, the Peter J. Devine Distinguished Service Award from the Camden Bar and the Professional Lawyer of the Year Award from the New Jersey Commission on Professionalism. He had been an Adjunct Professor at Rutgers School of Law for ten years, teaching trial advocacy. A widower, his survivors include six children.

Raphael J. (Ray) Moses III, '62, a Fellow Emeritus from Boulder, Colorado, died June 8, 2011 at age 97. Orphaned before his first birthday and raised by an aunt and uncle, he was a graduate of the University of Colorado and of its School of Law. An officer in the U.S. Navy in World War II, he was rescued from the East

China Sea after his destroyer, the *USS Bush*, had been sunk by a Japanese kamikaze aircraft on April 6, 1945. He had served as attorney for the Colorado Water Conservation Board, representing Colorado in all of its interstate litigation over water rights, and had written extensively on water law. President of both his local Bar and of the Colorado Bar Association, he had served as a Regent of the Colorado Law School and had received numerous awards from both it and the University. A chair and a classroom at the University of Colorado School of Law bear his name. He had served the College as Colorado State Chair. A widower who had remarried, his survivors include his wife, a daughter, two stepdaughters and a stepson.

John Stephen Murtha '75, a Fellow Emeritus from Hartford, Connecticut, died May 26, 2011 at age 98. He was a graduate of Yale University and of its School of Law. His law practice was interrupted by World War II, in which he served in the U.S. Navy, first as commanding officer of an LCI (an infantry landing craft) in the Mediterranean Theater and then of an LST (landing ship, tank) in the Pacific Theater. After the war, he was Assistant States Attorney for Hartford County for five years, then returned to his old law firm, presently Murtha Cullina,

LLP, where he practiced until his retirement in 1989. His incredibly diverse civic and charitable contributions include: serving as Chair of the Hartford Foundation for Public Giving and of its Foundation, President of the United Way of Greater Hartford, President of the Oxford School, President of the Yale Club of Hartford, Vice-Chair of the Greater Hartford Chapter of the American Red Cross, Director of the Fidelco Guide Dog Foundation, The Boys and Girls Club of Hartford and of three local hospitals, Trustee of Saint Joseph College, the St. Thomas More Center at Yale, the Loomis-Chaffee School, Ethel Walker School and The Hartford Rehabilitation Center. He was First President Council of his church. He also served as a director of a number of local business corporations. His numerous honors included Yale University's Nathan Hale Award. The Catholic Church had honored him as a Knight of St. Gregory. A widower, his survivors include a son and two daughters.

Amil N. Myshin '10, Boise, Idaho, died August 6, 2011 at age 65. A graduate of Washington and Jefferson College and of the George Washington University Law Center, he had devoted most of his career to public service. After two years in private practice, in Virginia,

he began work in a series of Legal Aid offices, including those in Fairfax, Virginia, Boise, Idaho and Lynchburg, Virginia. After four years in private practice in Boise, he became the Ada County Public Defender in Boise, a position he held at the time of his induction into the College, retiring in 2011 after 26 years of service. He was an avid wildlife photographer and outdoorsman. His survivors include three sons.

Russell Vaughn Palmore, Jr. '97, Richmond, Virginia, died unexpectedly on April 7, 2011 at age 64 after outpatient cataract surgery. A graduate of Hampden-Sydney College, where he was captain of both the football and baseball teams and president of his fraternity, and of the University of Virginia School of Law, he spent his entire career with Richmond's Mays, Valentine, Davenport & Moore, now a part of Troutman Sanders. A Past President of both his local Bar and of the Virginia Law Foundation, he served on the Board of the John Marshall Foundation and the Edgar Allen Poe Foundation. He served his local Episcopal Church as Senior Warden, the Diocese of Virginia as Chancellor and a member of the Standing Committee, and the National Church as a member of its Executive Council and as a Deputy to nine



Triennial General Conventions. His survivors include his wife and two daughters.

William James Peeler '84, a Fellow Emeritus from Waverly, Tennessee, a partner in Porch, Peeler, Williams & Thomason, died January 24, 2008 at age 80. A graduate of Cumberland University and of its School of Law, he had served in the U.S. Army. He served in the Tennessee House of Representatives for four years and in the Tennessee State Senate for eight years, serving as Senate Majority Leader for two terms. He regarded as his finest contribution to public service the legislation establishing a uniform system of state trial courts, which he authored and sponsored. A former County Attorney, he had been President of the Young Democratic Clubs of Tennessee and had served as General Counsel for the Young Democratic Clubs of America. He had served on the Board of Trustees of his alma mater, which had bestowed on him its highest honor, the Award of the Phoenix. A widower, his survivors include three daughters.

Robert L. Pennington '79, a Fellow Emeritus from Atlanta, Georgia, retired in 2000 from Troutman Sanders, died May 17, 2011 at age

78. A graduate of Emory University and of its School of Law, he was admitted to the Bar at age 21. An officer in the U.S. Army Judge Advocate General Corps, he had served in the headquarters of the 7th Army in Stuttgart, Germany. His survivors include his wife of 57 years, and four daughters.

Paul Geddes Pennoyer, Jr. '71, a Fellow Emeritus from New York, New York, died January 7, 2010 at age 88 of congestive heart failure. A graduate of Harvard College, where he was an oarsman on the undefeated 1941 Harvard crew, and of its School of Law, he was a torpedo bomber pilot in the U.S. Navy in World War II. During a month-long crossing of the Pacific on a supply ship en route to his assignment, he became a lifelong friend of a fellow passenger, future President John F. Kennedy. Flying in Air Group 8, attached to the light carrier *USS Monterey*, he participated in the Battle of the Philippine Sea, generally regarded as the turning point of the war in the Pacific. He was awarded the Navy's second highest honor, the Navy Cross, for heroism in that engagement. He was later awarded an Air Medal and two Gold Stars in lieu of subsequent Air Medals for his role in air operations in the Solomon Islands and the

invasion of the Philippines. He first practiced with Bingham, Englar, Jones & Houston, later joining Chadbourne, Parke, Whiteside & Wolf, where he spent the next 30 years, retiring in 1992. A grandson of J. P. Morgan, his obituary contained an observation from his memoirs, entitled *A Descendant, But Not an Heir*, addressed to his own descendants, that the legal profession, more than any other, gives one a clear picture and understanding of what makes our society work and, in some cases, not work, and gives one a view of the good side and of the ugly side of human nature in all its shadings of the good and the bad. His survivors include his wife of 62 years, two daughters and three sons.

Sam M. Phelps '79, a Fellow Emeritus from Tuscaloosa, Alabama, retired from Phelps, Jenkins, Gibson & Fowler, died April 18, 2011 at age 79 in a nursing home. A graduate of Auburn University and of the University of Alabama School of Law, between undergraduate and law school he had served as an officer in the U.S. Air Force during the Korean Conflict. He had served for 26 years on the Board of his local health care authority, for the last 23 years as its Chair. He was also the founder of a local bank. He had been

honored as a Pillar of the Community by the Community Foundation of West Alabama. His survivors include his wife and a son.

George Robert Reinhart, Sr. '73, Tifton, Georgia, died February 20, 2011 at age 83. A graduate of the University of Georgia and of its School of Law, he had served in the U.S. Air Force before going to college. A founder or Reinhardt, Whitley, Summerlin & Pittman, he had practiced in that Tifton firm for 59 years. He had been President of his local Bar and of the State Bar of Georgia and had received the State Bar's first Tradition of Excellence Award. He had served on the Georgia Judicial Nomination Commission and the Georgia Judicial Qualifications Commission, as a Trustee of the UGA Foundation and as Chairman of the University of Georgia Law School's Board of Visitors and had been honored with the Law School's Distinguished Service Award. A charter member of the Tift County Development Authority, he had been President of the Tifton-Tift County Chamber of Commerce. He had chaired the Administrative Board of his church. His survivors include his wife of 61 years and three sons.



Donald C. Robinson '96, a Fellow Emeritus from Butte, Montana, died July 19, 2011 at age 70 of complication from pneumonia and sepsis. A graduate of the University of Montana and an honor graduate of the George Washington University School of Law, he had worked in the office of Senate Majority Leader Mike Mansfield during law school. He then worked as a public defender in Washington for a year before returning to Montana, where he was for a year an Assistant United States Attorney before forming the firm that is now Poore, Roth & Robinson. A charter member and past president of the Montana Chapter of the American Board of Trial Advocates and a Delegate to its National Board of Directors, he had also served on the Montana Supreme Court's Commission of Practice. He was a member of the faculty of the Minnesota School of Law Advanced Trial Advocacy Program. His survivors include his wife and two sons.

The Rt. Hon. Lord Rodger of Earslferry '08, an Honorary Fellow, a Justice of the Supreme Court of Great Britain, died June 26, 2011 of a brain tumor at age 66. Baron Allen Ferguson Rodger, a native of Glasgow, Scotland, read law at Glasgow University and was the last undergraduate to earn a double First in Scots

and Civil Law. He then studied at New College, Oxford, earning an MA and a DPhil. His area of specialization was Roman Law. He remained at Oxford as a Junior Research Fellow at Balliol College and then as a Fellow and Tutor of New College.

Clearly destined for a distinguished academic career, in 1972, he chose instead to practice law rather than to teach law, resigned his fellowship and left academia to join the Faculty of Advocates, an independent body of lawyers who practice as advocates before the courts of Scotland. Four years later, his peers chose him Clerk of the Faculty. In 1985, he became Queens Counsel, and in that same year was appointed Advocate Depute, an advocate with rights of audience in the High Court. In that role, he undertook the role of prosecutor of serious crime. In 1989, he became Solicitor General of Scotland. Promoted to Lord Advocate in 1992, he joined the Privy Council and was created a Life Peer. In 1995, he was appointed a Senator of the College of Justice, a Judge of the High Court of Justiciary and Court of Session. In less than a year, he was promoted to Lord President of the Court of Session and Lord Justice General of Scotland. In this capacity, he presided over

the incorporation of the European Convention on Human Rights into United Kingdom law. While holding this office, he was a participant in the College-sponsored 1999-2000 Anglo-American Legal Exchange, which had its first sessions in Edinburgh, where he served as host. In 2001, he was appointed Lord of Appeal in Ordinary, more familiarly referred to as a Law Lord. He was again a delegate to the 2005 Anglo-American Legal Exchange. Upon the 2009 transition of the highest appellate tribunal from the House of Lords to a new Supreme Court, he became a Justice of that Court, a position he held until his death.

He never entirely left the academic world. He continued to write and in 1991 was appointed a Fellow of the British Academy. From 2008 until his death, he was High Steward of the University of Oxford. His professional career as an advocate, a law officer, a judge, an internationalist and a scholar and historian set him apart. His memorable tongue-in-cheek dissertation at his 2008 induction as an Honorary Fellow on the propensity of law students and lawyers to find reasons to meet and study abroad, and the report of a delegate to the 2005 Exchange that he was much in demand by

the wives of delegates as a dinner companion, provided a window into his wit, his intellect and his human warmth. Unmarried, his survivors include a sister and a brother.

Robert Ruberg, Sr. '69, a Fellow Emeritus from Covington, Kentucky, died July 14, 2011 at age 83. A graduate of the University of Kentucky and of its School of Law, he was a past member of the Kentucky State Board of Education and the Board of the Legal Aid Society of Northern Kentucky and had served on the boards of numerous other religious, educational and medical organizations. He had served for fifteen years as a Juvenile Court Judge. He was the recipient of numerous honors, including a Doctorate of Law degree from Thomas More College, whose Board of Trustees he had chaired. A widower, his survivors include six sons and three daughters.

Donald Allen Ruston '77, a Fellow Emeritus from Newport Beach, California, died April 8, 2011 at age 81. A graduate of Pepperdine University and of the University of California School of Law, he had worked in the legal department of an insurance company in Los Angeles before entering private practice.



A founding partner of Ruston & Nance, before his retirement he had been associated with Lewis, Brisbois & Biesgaard, Costa Mesa. His survivors include his wife, three daughters and a son.

Murray Sams, Jr. '83, Hollywood, Florida, died August 5, 2011 at age 88. A graduate of Dartmouth College and of the John B. Stetson College of Law, he was a pilot in the U.S. Navy in World War II, serving in the Pacific Theater. At the beginning of his career, he had been an Assistant Attorney General in Florida before entering private practice. A high-profile plaintiff's personal injury attorney, the bulk of his practice was in South Florida and Jacksonville. His survivors include his wife, four daughters and four sons.

Will J. Schaaf, 73, Erie, Pennsylvania died July 5, 2011 at age 92. A graduate of Edinboro State College, he was a U.S. Army Air Force B-17 Flying Fortress pilot in World War II, attached to the 390th Bomb Group. He flew 30 raids over Germany, earning a Distinguished Flying Cross with two oak leaf clusters and an Air Medal with three oak leaf clusters. On his return to the United States, he was an instructor pilot. A graduate of the Cornell University School of

Law, he was Co-Editor of his law review and a member of the Order of the Coif. He practiced with Marsh, Spaeder, Bauer, Spaeder & Schaaf in Erie and had been President of his local Bar. A widower, his survivors include a son. ..

John Leonard Schwabe '72, a Fellow Emeritus from Portland, Oregon, died January 29, 2011 at age 91 at his retirement home in Tucson, Arizona. A graduate of Oklahoma State University and of the Ohio State University School of Law, he was an officer in the U.S. Marine Corps in World War II, participating in the invasions of Guadalcanal, Tarawa and Saipan. For his service, he was awarded a Silver Star, five Bronze Stars and a Presidential Citation for Valor. After law school he practiced in Silverton, Oregon for four years before joining the Portland firm that eventually became Schwabe, Williamson & Wyatt. He had been President of his local Bar and of the Oregon State Bar and had served as the College's Oregon State Chair. His survivors include his wife two daughters and a son.

John C. Setright '75, a Fellow Emeritus from Manlius, New York, retired from Setright, Ciabotti & Longstreet, Syracuse, New York, died May 23, 2011 at age 86. A graduate of

Yale University, where he played baseball, he was an officer in the U.S. Navy in World War II. He graduated from Syracuse University School of Law. A widower, his survivors include three daughters.

La Var Ernest (Bud). Starke '80, Ogden, Utah, died February 25, 2011 at age 87. He served in the U.S. Navy in World War II and volunteered for service in the Korean Conflict. He retired from the Naval Reserve with the rank of Lieutenant Commander. A graduate of the University of Utah and of its School of Law, he had served as an Assistant Attorney General of Utah. He was a Past President of the Utah State Bar Association, which awarded him its Amicus Curiae of the Court Award, and of the University of Utah Law Alumni.

Hon. Roscoe Bolar Stephenson, Jr. '69, a Judicial Fellow from Covington, Virginia, a former Justice of the Virginia Supreme Court, died May 30, 2011 at age 89. A graduate of Washington and Lee University and of its School of Law, he served in the U.S. Army in World War II. A former Commonwealth Attorney for Allegheny County, he was first elected a Judge for the Twenty-Fifth Judicial Circuit and in 1981 was appointed to the

Virginia Supreme Court, where he served until 1997, continuing as a Senior Justice until mid-2010. A recipient of the Roger Groot Professionalism Award from his local Inn of Court, he had served as a member of the Virginia State Bar Council and as Vice-President of the Virginia Bar Association. His survivors include his wife, and two sons.

Grady Bernell Stott '74, Gastonia, North Carolina, died June 25, 2011 at age 89. A graduate of Duke University, which he attended on a baseball scholarship, his undergraduate education was interrupted by World War II, in which he served as an officer in the U.S. Marine Corps. He graduated from Duke University School of Law and practiced until his death in the firm of Hollowell, Stott & Hollowell, going to the office daily until a week before his death. He had been a local prosecuting attorney early in his career and had served on the Board of Governors of the North Carolina Bar Association and as a Councilor and later President of the North Carolina State Bar. He had chaired the State Board of Legal Specialization and was honored as a member of the North Carolina Bar Association General Practice Hall of



Fame. His survivors include his wife of 59 years and two daughters.

Hon. George Dwight Otty Stoughton '73, a Judicial Fellow from Bloomfield, Connecticut, died June 1, 2011 at age 91. A graduate of Trinity College, Hartford, Connecticut, he served in World War II in the U.S. Army Coast Artillery Corps in the European Theater. After the war, he earned his law degree at Dalhousie University School of Law in Halifax, Nova Scotia. After working for an insurance company for two years, he began his legal career with Pelgrift, Dodd, Blumenfield & Nair in Hartford. For ten years before his elevation to the bench he had served as Assistant State's Attorney and then as State's Attorney in Hartford. Appointed to the Superior Court Bench in 1979, he was elevated to the Appellate Court in 1987 and later served as a State Referee until his death. In 2007 he was inducted as a member of The Most Venerable Order of the Hospital of St. John of Jerusalem, a royal order of chivalry. His survivors include his wife of 57 years, two daughters and a son..

Roger B. Todd '78, a Fellow Emeritus from North Bend, Oregon, retired from Flaxel, Todd & Nylander, died May 19, 2011 at age 85. He

served in the U.S. Army in the European Theater in World War II. His squad had been captured by the German Army in 1944 and was liberated when the Russian Army overran the prison camp where it was being held. After the war, he attended Willamette University and its School of Law and practiced with Flaxel, Todd & Nylander in Salem, Oregon until his retirement in 1986. His survivors include his wife of 64 years and a son.

Bonnie Ann Tough '02, Toronto, Tough & Podrebarac, Ontario, Canada, died May 6, 2011 of glioblastoma, a cancer of the brain, at age 59. A graduate of the University of Waterloo, she received her law degree from Osgoode Hall Law School, clerked at the Supreme Court of Canada and earned a Master of Laws degree from Oxford University. A Bencher of the Law Society of Upper Canada, she had received the Ontario Bar Association's Award for Excellence in Civil Litigation. The Law Society of Upper Canada had bestowed on her an Honourary Doctor of Laws. She had taught at Osgoode Hall Law School for several years. At age 50, she had taken up running and ran four half-marathons. After undergoing radiation and chemotherapy for her cancer, she had walked

a half-marathon, leading a group of friends. Her survivors include her partner and spouse.

Edward Downtain Vickery, Sr. '65, a Fellow Emeritus from Houston, Texas, died April 29, 2010, one day short of his 88th birthday. An Eagle Scout, he attended North Texas Agricultural College for two years, then transferred to the University of Texas. In World War II, he joined the U.S. Army Air Corps and taught instrument flying to British and Canadian pilots. After the war, he returned and graduated from the University of Texas, where he played on the tennis team, and then, with honors, from its School of Law. Having gone through law school with the combination of scholarships and a variety of jobs, he made helping to finance the education of students a lifetime goal. He and his wife established an endowed scholarship for women athletes at his alma mater. He spent his entire career at what is now Royston, Rayzor, Vickery & Williams, LLP, Houston, Texas, where he was managing partner for eight years. Active in the banking industry, at the time of his death he was Chairman and the principal stockholder of a local bank. He had been a Deacon and then an Elder in his church and twice chaired the Board of The Austin Presbyterian Theological

Seminary. A widower, his survivors include a son and a daughter.

William Maginnis Walsh '78, a Fellow Emeritus from Memphis, Tennessee, died May 11, 2011 at age 90. A graduate of Spring Hill College, Mobile, Alabama, he enlisted in the U.S. Army Air Corps in World War II and survived a plane crash in the Pacific Ocean. A graduate of Vanderbilt University School of Law, he practiced his entire career at what was at his death Harris Shelton Hanover Walsh, PLLC, Memphis, until his retirement in 2007. He had been a trial attorney for the Office of Price Stabilization for a year. He taught business law at the University of Tennessee, Memphis for 20 years and had been a Trustee of Christian Brothers College, Memphis. He had received the Memphis Bar Association's Lawyer's Lawyer Award. A widower, his survivors include two daughters and two sons.

Kenneth Raymond Webster '82, a Fellow Emeritus from Edmond, Oklahoma, died June 27, 2011 at age 70. A graduate of The University of Notre Dame and of the University of Oklahoma School of Law, where he was a member of the Order of the Coif, he had



served at the Pentagon in the U.S. Army Judge Advocate General Corps before practicing in Oklahoma City with McKinney, Stringer & Webster. He retired in 1993. His survivors include his wife and two daughters from a previous marriage.

James B. Wham '64, a Fellow Emeritus from Centralia, Illinois, died May 20, 2011 at age 92. A graduate of the University of Illinois and of its School of Law, where he was a member of the Order of the Coif, he was a World War II veteran. He practiced his entire career with Wham & Wham, a 121-year-old Centralia firm, five of whose members have been members of the Wham family. During his career, James Wham had served for eight years as a Judge on the Illinois Court of Claims. His survivors include his wife and two daughters.

Hon. Richard Leroy Williams '68, a Judicial Fellow from Richmond, Virginia, died February 19, 2011 at age 87. The son of a policeman and a farm wife from Morrisville, Virginia whose education began in a one-room schoolhouse, upon finishing high school, he lied about his age and enlisted in the U.S. Army Signal Corps. He was a survivor of the December 7, 1941 Japanese attack on Pearl Harbor. He attended

the University of Virginia and graduated from its School of Law without completing an undergraduate degree. Beginning his career at Parrish, Butcher & Parrish in Richmond, he was a founding partner of what is now McGuireWoods, LLP. After serving as a Circuit Judge for four years, in 1980 he was nominated by President Jimmy Carter to the United States Court for the Eastern District of Virginia. Taking senior status in 1992, he continued to carry a caseload through his thirtieth year on the bench, handling matters from his home to the time of his death. In his judicial career, he had presided over many high-profile cases, including overturning as unconstitutional Virginia's ban on late-term abortion and finding that the failure to mail absentee ballots to military personnel and other citizens who were overseas in sufficient time for them to be counted in the 2008 presidential election violated their voting rights. He was a renowned storyteller and master of hyperbole who appeared to others to have forgotten nothing that happened during his life. His survivors include his wife of 63 years, two daughters and two sons.

Ronald D. Williams, Sr. '79, a Fellow Emeritus from Trumbull, Connecticut, died June 8,

2007 at age 80. A graduate of the University of Virginia and of its School of Law, at the time of his induction he practiced with Pullman, Comley, Bradley & Reeves in Bridgeport. He was last listed before his retirement at Williams, Cooney & Sheehy in Bridgeport, which he founded in 1988. He had been President of the Bridgeport Bar Association and had served on the Board of Governors of the Connecticut Bar Association and the Board of Directors of the Connecticut Bar Foundation.

Stanley P. Wilson '76, a Fellow Emeritus from Abilene, Texas, died May 11, 2011 at age 88 after an extended illness. A graduate of the University of North Texas, he was an officer in the U.S. Navy Supply Corps, assigned to the *USS Rawlins*, an attack transport, participating in the invasion of Guadalcanal. After graduating from the University of Texas School of Law, he practiced with McMahon, Springer & Smart in Abilene until 1981, when he became General Counsel of a Dallas utility holding company. After retiring from that position in 1988, he became Of Counsel to his old law firm, now the McMahon Law Firm. He had served as President of his local Bar and served on the boards of a number of local civic, educational

and religious organizations, including the local School Board, and on the Board of Directors of two banks. His survivors include his wife of 66 years, a daughter and two sons.

William P. Wooden '78, a Fellow Emeritus from Indianapolis, Indiana, died February 19, 2011 at age 77. A graduate of DePaw University, where he was a starter on the football team, and of the University of Michigan School of Law, where he was Assistant Editor of the law review and a member of the Order of the Coif, he began his practice with Barnes, Hickham, Pantzer & Boyd in Indianapolis. In 1970, he co-founded Wooden & McLaughlin, where he practiced for the rest of his career. He had chaired the Young Lawyers Section of the Indiana State Bar Association and the House of Delegates of the Indianapolis Bar Association and had served the College as Chair of the Indiana State Committee. His survivors include his wife, two daughters and a son.



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.



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