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THE BULLETIN

MASSACHUSETTS CHIEF JUSTICE MARSHALL:

PROTECT INDEPENDENCE OF COURTS

*Chief Justice **Margaret H. Marshall**, the first of her gender to hold that office on the three hundred seventeen year old Supreme Judicial Court of Massachusetts, addressed the 59th Annual Meeting of the College in Boston.*

Address on page 8

THIS ISSUE: 76 PAGES

ERRATA

In the Fall 2009 issue of the Bulletin at page 32, we erroneously listed Emeritus Fellow John J. Kennelly of Oak Brook, Illinois as deceased. A mailing to Mr. Kennelly had been returned by the postal authorities, and a subsequent online search turned up the erroneous listing on which we relied in reporting his death. We apologize to Mr. Kennelly, who, as a 1958 inductee is among our most senior members. He will, incidentally, turn ninety-nine this year.

IN THIS ISSUE

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.*

American College of Trial Lawyers
The Bulletin

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FROM THE EDITORIAL BOARD

The College's Annual Meeting in historic Boston combined a trip through history with a disturbing look at modernity. Through the addresses of Massachusetts Chief Justice Margaret Marshall, of First Circuit Chief Judge Sandra Lynch, of Massachusetts Lieutenant Governor Timothy P. Murray and of author-historian William Martin, the attendees were led on the trip through history, with special emphasis on its present impact on our chosen profession.

Panel discussions on the growing awareness of the negative impact on litigation and litigants of the almost unlimited availability of information on the Internet and on the unsolved theft of priceless art treasures from Boston's Isabella Stewart Gardner Museum were sobering looks at contemporary reality.

As has become our custom, we have tried to report in separate articles the substance and the context of these presentations, both to refresh the recollections of those who attended and to give those Fellows who did not the benefit of some of the Boston program. We believe that you will find the article entitled The Dark Side of Technology to be one that trial lawyers can ill afford to miss.

Past President Michael A. Cooper's report on the pro bono representation by forty-two Fellows of Guantánamo detainees is must reading. It chronicles what may someday be regarded as one of the College's finest hours. In a similar vein, the account of the pro bono representation by newly inducted Fellow Chris Messerly of victims of the collapse of the highway bridge in Minneapolis, Minnesota describes another exemplary effort.

You will also find in this issue: a report of the elections of Officers and Regents for the coming year; an account of the rewriting of the College's Codes of Trial and Pretrial Conduct into one integrated document; a report of bylaw changes affecting Emeritus Fellows, and a reminder of the existence of manuals for both national and state and province committees that are must reading for all committee members.

And finally, we believe that in the final article, entitled In Memoriam, you will find inspiring the description of the remarkable lives of Fellows no longer among us.

COLLEGE'S FIRST WOMAN PRESIDENT INDUCTED AT BOSTON MEETING

Boston, home of the original Tea Party, the USS Constitution, Paul Revere's ride and Harvard Square, was host city for the Fifty-Ninth Annual Meeting of the American College of Trial Lawyers. In what may have been a dual first, Joan A. Lukey, the first woman President of the College, was thus installed as President at a meeting in her own home town.

Flag, fife and drum opening of the Friday session in Boston.

The meeting was launched on Thursday evening with a President's Welcome Reception in the John Joseph Moakley U.S. Courthouse. Some of the Fellows had arrived early to attend a continuing education program on Thursday afternoon entitled IP Issues: Perspectives and Policy.

Carrying the first flag of the emerging nation, a fife and drum corps, dressed in the "uniforms" of the rebelling colonists launched the Friday morning session. After an invocation by **Alain Hepner**, Q.C., FACTL, of Calgary, Alberta and a moment of silence as the names of those Fellows who had died in the preceding year were displayed, President **John J. (Jack) Dalton** of Atlanta, Georgia introduced the Honorable **Timothy P. Murphy**, Lieutenant Governor of Massachusetts, who welcomed the visitors to his State. [His remarks and those of most of the other program participants are reported separately in this issue of *The Bulletin.*]

Murphy was followed to the podium by Chief Judge **Sandra L. Lynch** of the U.S. Court of Appeals for the First Circuit, whose address, entitled *Plain, Honest Men*, challenged the lawyers in the audience to assume their proper role in addressing honestly the problems of a complex world.

William Martin of Weston, Massachusetts, author of eight books that combine American history with contemporary mystery, entitled his remarks *Americans Making and Made by the Constitution*. Drawing on his novel *The Lost Constitution,* he gave an engaging account of the birth of the United States Constitution, using vignettes highlighting the roles of lesser known historical figures who had helped to shape, or had been shaped by, the Constitution.

The Friday morning session concluded with a panel discussion of the Isabella Stewart Gardner Museum Heist, the largest, and as yet unsolved, art theft in history. Moderated by Regent **J. Donald Cowan, Jr.**, Raleigh, North Carolina, the panel was composed of **Judah Best**, FACTL, of Washington, D.C., Boston private detective **John P. DiNatale** and Gardner Museum Director of Security **Anthony Amore**.

The Friday night reception was focused on athletic teams, with the participants encouraged to wear the cap or uniform shirt of their favorite team. Needless to say, Red Sox attire was very much in evidence.

Massachusetts Chief Justice **Margaret H. Marshall**, led the Saturday program with a presentation entitled *Our American Constitution: The Grammar of Human Freedom.* The experience of Justice Marshall, who had left her native South Africa before the end of apartheid to come to the United States to further her education, was a poignant footnote to her remarks.

The Emil Gumpert Award for excellence in improving the administration of justice was presented to Pro Bono Law Ontario, whose Executive Director, **Lynn Burns** of Toronto, accepted. Gumpert Award Committee chair **William J. Kayatta, Jr.**, FACTL, of Portland, Maine, did the honors.

The Saturday morning program ended with a panel discussion with the dual title *The Dark Side of Technology in the Courtroom and Online and Wired for Justice: Why Jurors Turn to the Internet,* moderated by Regent **Philip J. Kessler.** The panelists were **Sean M. Ellsworth**, Miami, Florida, litigation consultant **Douglas L. Keene**, Ph.D. of Austin, Texas, The Honorable **Donald W. Molloy**, JFACTL, United States Judge for the District of Montana and **Elizabeth N. Mulvey,** FACTL, of Boston. The discussion dealt with the impact of the Internet and the so-called social media on the litigation process.

Retiring Regents and Committee Chairs were then recognized for their service to the College. The Saturday morning session was followed by the annual business meeting of the College, at which four new Regents were elected, and by a reorganizational meeting of the Board of Regents, at which the officers for the coming year were elected. These elections are reported elsewhere in this issue.

The inductees were guests at an informational breakfast, and they and their spouses attended a Saturday luncheon, where Past President **Warren B. Lightfoot** of Birmingham, Alabama shared his vision of the College.

The Annual Banquet commenced with an invocation by **William Usher Norwood, III**, FACTL, Atlanta, Georgia, followed by the Induction Ceremony for new Fellows. Past President **Michael E. Mone** of Boston delivered the traditional Induction Charge. **John D. Saxon**, Birmingham, Alabama responded for the inductees. Concert pianist **Virginia Eskin** of Boston, wife of Joseph D. Steinfeld, FACTL, gave a piano performance during the dinner.

At the end of the banquet, **Joan A. Lukey** was installed as President of the College, and the Fellows and their guests then enjoyed dancing or the traditional Sing-Along.

Let us be guided in our discussions, our dialogue, our understanding and to strengthen the camaraderie which has brought us all to Boston. Let us remember that our profession is a noble calling, not just about rules and rhetoric, but respecting and helping people in small and not-so-small ways to make our world a little better. Let us know that the ability we have is to do what we do and to make a difference. I am proud to be among you.

We pray for help to give our individual and collective gift to our community. Bless our countries, the United States and Canada, that they be the strongholds of peace and justice and advocates among nations. Let us think of the men, women and children who need our prayers in war-torn, oppressed countries.

The rule of law is the premise upon which our entire profession is based, a belief we all hold so dear. We pray that the momentum of justice never stops and the concept of fairness as we know it does not fail. William Pitt, the former prime minister of England, once said, "When justice ends, tyranny begins," and we can't let that happen. Let us pray that our profession maintains the spirit, the obligation and the passion to help others, and our intention remains to make a difference in a world that has grown so small that it can be explored and conquered with a click of a mouse.

For all of this, and a few doses of good luck and grace, we give thanks.

Invocation, opening session, 59th Annual Meeting
***Alain Hepner**, Q.C. Calgary, Alberta*

AWARDS, HONORS *and* ELECTIONS

David Rudovsky of Philadelphia, Pennsylvania has received the Keystone of Civil Rights Award from the American Philosophical Society of Philadelphia.

CODES OF TRIAL AND PRETRIAL CONDUCT REVISED

COMBINED IN ONE DOCUMENT

The College's Code of Trial Conduct, originally published in 1956 and revised periodically thereafter, and its Code of Pretrial Conduct, originally published in 2003, have been revised to reflect current conditions and combined in one document.

The current revision was the work of the College's Legal Ethics and Professionalism Committee, initially chaired by the late **Charles A. Harvey, Jr.** of Portland, Maine and then by **Randal H. Sellers** of Birmingham, Alabama. It includes an introduction by Honorary Fellow Chief Justice **John G. Roberts, Jr.**

The original Code of Trial Conduct represented the College's first attempt to reach beyond its members to the entire trial bar. In publishing it in its entirety in March 1957, the *ABA Journal* noted that, so far as it was known, this was the first time that any group of lawyers had "undertaken to promulgate a code of standards of ethics, deportment and conduct for the trial lawyer."

The Board of Regents has approved the 2009 revision, which has been published and now appears both in the 2010 "Blue Book" and on the College's website.

The original Code and successive revisions have been often cited by courts as setting a standard of conduct for all trial lawyers, and they have been repeatedly used by Fellows of the College in programs on professionalism.

FELLOW TO THE BENCH

The College is pleased to announce the following new Judicial Fellow:

James G. Martin, III, Circuit Judge and Chancellor,
21st Judicial District, Part 2, Franklin, Tennessee.

Continued from cover

OUR AMERICAN CONSTITUTIONS: THE GRAMMAR OF HUMAN FREEDOM

Chief Justice Margaret H. Marshall, born and raised in South Africa, earned her undergraduate degree from the University of Witwatersrand in Johannesburg. For three years she was President of the National Union of South African Students, an organization dedicated to ending oppressive minority rule and achieving equality for all South Africans. Coming to the United States to pursue her graduate education, she earned a master's degree in education from Harvard and then completed four years of doctoral studies before enrolling in Yale Law School.

After graduation, she practiced law in Boston for sixteen years, specializing in intellectual property litigation. She served a term as President of the Boston Bar Association. She became a United States citizen in 1978. In 1992, she began a long string of "firsts" when she became the first woman appointed Vice President and General Counsel of Harvard University. Four years later, she was appointed to the Supreme Judicial Court of Massachusetts and three years thereafter became its first female Chief Justice.

She is married to two-time Pulitzer Prize-winning columnist, author and professor Anthony Lewis.

Drawing on her own background as Chief Justice, as chair of both the National Conference of Chief Justices and of the National Center for State Courts and as one who grew up in a segregated society, Chief Justice Marshall addressed the central place of law in society, the fundamental importance of strong, independent state courts and the current threats to them, focusing on inadequate funding, lack of access and increasing politicization.

I want to make a few remarks today, and I do so wearing three hats . . . already touched upon.

First, I am the Chief Justice of the Supreme Judicial Court. I am the immediate past-president of the Conference of Chief Justices; and . . . I am the child of a country with no respect for the rule of law. And wearing each of those hats, I stand here this morning to deliver a sobering message to you: State courts in the United States are in peril. They are at the tipping point. I want to say a little bit about each of the three hats and then explain to you why I've reached that conclusion.

THE LEGACY OF A SEGREGATED SOCIETY

I was born and educated in South Africa, the child of parents and grandparents and great-grandparents and beyond who were also born in South Africa. And I grew up during the apartheid years, where by statute and by rule and the application of the rules, disagreement with the racial system of supremacy, white supremacy, was defined as a crime. People were silenced, isolated, imprisoned indefinitely and with no recourse to the courts.

Now, almost twenty years after the release of Nelson Mandela from his three decades of imprisonment, it may be difficult for you to imagine what South Africa was like when I was a university student there in the 1960s. Many of my teachers and my friends were imprisoned, tortured or forced to leave the country, as often as not because of the views they held and the ideas they expressed. Books and periodicals and movies that the nationalist government considered offensive were outlawed. There was no television, and stringent laws restricting the freedom of the press were enacted.

And more important, women and men were treated as subhuman simply because of the color of their skin. And there was no or little recourse to the courts to challenge that system. I am a woman, and as you can see, I am white. And those two attributes gave me a great deal of protection in South Africa. But in 1966, I became a national student leader in the forefront of anti-apartheid activities, and I traveled throughout that country, speaking and organizing against apartheid. And my activities placed me at considerable risk, and so I came to know personally what it feels like to fear a knock on the door in the middle of the night and to know that if the government arrested or banned me, as it had so many other student leaders, I could not turn to the court for refuge.

I came to this country in 1968, alone as an immigrant, and I have an immigrant's consciousness of the value of an independent judiciary. My experiences in South Africa have made me value profoundly the central place of law in American society, law in the true sense of the word. For those of you who are born here or in Canada, you may take for granted the existence of the idea of equal justice under law. But as an immigrant who came here at the age of twenty-four, I can never take that for granted. For me, it is the essence of what it means to be an American.

THE HERITAGE OF THE MASSACHUSETTS COURT

And now my second hat. For the past decade, I've served as Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts. For those of you from Virginia, hold on: the Supreme Judicial Court is the oldest court of continuous existence in our nation operating under its oldest written constitution.

The Massachusetts Constitution was adopted in 1780, drafted by John Adams seven years before the adoption of the United States Constitution. It is a great document, as vital today as at any time in our Commonwealth's history. It begins, not ends, with a ringing declaration of rights, "All people are born free and equal." It originally

said all men are born free and equal, but we changed that: "All people are born free and equal, and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties." But more of that later.

THE FUNDAMENTAL IMPORTANCE OF STATE COURTS

Third, as President of the Conference of Chief Justices, I have the great privilege of traveling across this nation meeting and talking with state court judges and their judicial staffs. The views that I express today are personal, of course, but they are deeply informed by what I have learned in my travels.

The health . . . of the entire legal system, both state and federal, depends on a strong state judiciary. These are not my words, but the words of former Justice Sandra Day O'Connor, herself a state appellate justice before her appointment to the United States Supreme Court. I agree, for as justice in our state courts goes, so goes justice in our nation.

Sheer numbers tell the story, at least in part. In 2007, the latest date for which comparative data are available, the total number of cases filed in federal, district and appellate courts, including the United States Supreme Court – and I'm talking about filings, not decisions, and excluding bankruptcy cases – was 384,000, approximately. 384,000 across the United States. For the same year, in state courts, excluding traffic offenses – perhaps you may have a number in your head – 47.3 million cases were filed in trial and appellate state courts, excluding traffic offenses. The numbers are striking, but do not tell a whole story.

Consider the texture of cases heard in state courts. The vast majority, of course, make no headlines. And of course it is federal law that unites our country under a set of common principles. But state courts are closer to the pulse of everyday life. Where do the legal meanings of such elemental concepts as birth and death and family take shape? Largely in state courts. State courts decide whether the bank may foreclose, or the tenant must vacate, whether the criminal defendant was properly charged, who gets custody of children, who complies with zoning laws, whether the worker is entitled to compensation or an injured patient to recover from her doctor. Shifting legal and social paradigms find voice in state court decisions.

The Massachusetts Supreme Judicial Court has a long, proud history of expanding the boundaries of human liberties. The first constitutional matter decided by my court – the court goes back to 1692 – but the first constitutional matter was brought by a runaway slave claiming his freedom under the first article of the newly ratified Massachusetts Constitution I have just quoted, "All people are born free and equal." And three years after the Massachusetts Constitution was ratified, the court concluded in 1783 that slavery was "repugnant" to the constitutional guarantees of equality and freedom. The case was the first anywhere in the world to abolish slavery.

And as is always the case in our judicial system, the appellate judges learned from great trial lawyers. Two great Massachusetts trial lawyers, Levi Lincoln and Theodore Sedgwick, had argued before that case to juries successfully that slavery and the new Massachusetts Constitution were incompatible. And I should say, a portrait of Theodore Sedgwick hangs in my chambers. Groundbreaking decisions.

Massachusetts courts were the first or among the first to recognize the right of workers to form unions, to improve wages and working conditions, a decision that flew in the face of settled law deeming such associations criminal conspiracies. We were the first to invalidate the use of peremptory challenges based

on race and to provide counsel for indigent defendants in criminal cases. More recently, my court was the first to recognize marriage for same-gender couples.

Other state courts have contributed significantly to paradigmatic shifts in the law. A few examples, which are so familiar to all of you: *Perez v. Sharp* was a California state case on interracial marriage that laid the groundwork for the United States Supreme Court decision in *Loving v. Virginia* nineteen years later. The *Buick Motor Company v. MacPherson*, remember that one, in which Justice Cardozo held in 1916 that Buick had a duty to third-party consumers to ensure that its automobiles were safe. *MacPherson* did not express national consensus or anything close to it. In fact, the opinion was widely rejected at first. Yet no one today seriously argues that a retail customer cannot recover from an automobile maker for a defective product. *MacPherson* led straight to the consumer protection law as we know it today.

I dwell or mention those cases as exemplars of ways in which state courts have refashioned whole areas of law far in advance of their general acceptance in the United States and elsewhere. And why this continuing vitality? I believe it is so state courts can more readily bend the law in a new direction because the implications are not as radical as when the United States Supreme Court speaks.

Justice Louis Brandeis', a Boston native's, famous description remains apt: "Our state courts," he said, "have a unique ability to 'remold' through experimentation our economic practices and institutions to meet challenging social and economic needs. It is one of the happy incidents of the federal system," he continued, "that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without the risk to the rest of the country." As justice in our state courts go, so goes justice in our nation.

I need hardly emphasize to this audience that for state courts to meet the obligation to do justice in the dizzying array of matters that come before them, they must operate fairly and equitably. They must operate efficiently, and they must be independent of outside influence, be it popular prejudice or interference from the elected branches. That is our shared belief. That is our national commitment.

For two centuries and more, we in the United States – and I might say Canada – have benefited from an independent judiciary. Do we now take that for granted? In a word, yes. A perfect storm of circumstances threatens much of what we know or think we know about our American system of justice.

Let me mention just three troubling recent developments for state courts: Inadequate funding, an inability to provide access for all and the politicization of state judiciaries.

THE IMPACT OF INADEQUATE FUNDING

First, funding. These are lean times for the states and the public sector in particular. According to the National Center for State Courts, forty-seven states, from California to Massachusetts, face shortfalls – huge shortfalls – in their budgets for fiscal year '09 and '10 and beyond. In one year, this past year, the Massachusetts judiciary has seen a decline of more than $50 million in the appropriation it receives to conduct our operations. One state, $50 million. And the picture grows gloomier every day. The result? One-half of state court systems will not be filling judicial vacancies or calling in retired judges to sit on the bench. Massive reductions in staff that provide direct adjudication support and judicial office support, are causing increased backlogs in civil, criminal, family, juvenile, all cases. Our budgets are being decimated even as we know that in times of

economic stress, people turn to the courts in even greater numbers. State courts are the legal equivalent, Chief Judge Jonathan Lippman of New York has said, of the emergency room. When the economy declines, the need for court services increases.

And this audience knows that it matters, it really matters, whether a case moves expeditiously through the court system. It matters to the business damaged by theft of its intellectual property or the crime victim seeking justice, or the injured worker with mounting medical bills. There is a funding level below which state courts will be unable to function at even minimally adequate levels. Are we at that precipice? I worry that we are.

THE NEED FOR EQUAL ACCESS

A second, and closely related, challenge for state courts is access to justice. "Freedom and equality of justice are essential to a democracy," said Boston lawyer Reginald Heber Smith in his landmark work on the law and the poor almost a century ago. "Denial of justice," he continued, "is the shortcut to anarchy." The shortcut to anarchy.

The principle of equal justice, as you know, finds its most palpable expression in our state courts. There, our most vulnerable citizens come to seek access to their most basic needs: food, shelter, healthcare, physical safety. Many have no money, and neither legal services nor pro bono assistance can help all in need. Many have limited English proficiency or are functionally illiterate, yet competent translators and simplified forms can be hard to find. The disabled are confronted by courthouses, some built 100 years or more with steep staircases and narrow corridors. You know them all. They're in all of your states. Such circumstances are intolerable in a society founded on the principle of equal justice, and they are all too common in our state courts.

Just last week, the Brennan Center for Justice released an in-depth study showing the high number of families that face foreclosure proceedings without the aid of legal counsel. The study underscored the overlap between the long-standing shortage of lawyers for the poor and the collapse of our economy. Were the results of the study a surprise? Not if you have been paying attention to what is happening in your state courts.

POLITICIZATION: THE ROLE OF MONEY

The decimation of state court budgets, lack of access to justice, and now the third danger. Last term, the United States Supreme Court decided the case of *Caperton v. A.T. Massey Coal Company*. As you may recall, the case involved a $50 million jury verdict in favor of Caperton, who charged that the coal company's predatory practices drove him out of business, a case familiar, no doubt, to many of you in this room. The West Virginia Supreme Court of Appeals – dividing three to two – reversed the judgment for Caperton and declared victory for the coal company.

But there was a problem. Justice Grant Benjamin, who cast the deciding vote in West Virginia's highest court, was newly elected to that court, and the coal company's chief executive officer had paid $3 million to help Justice Benjamin win election. Dividing five to four, the United States Supreme Court concluded that Justice Benjamin's participation in the case violated Caperton's right to due process. Justice Kennedy's opinion for the court, joined by Justices Stevens, Souter, Ginsburg and Breyer, emphasized the extraordinary facts of the case, the chief executive officer's significant and disproportionate influence on the election and the temporal relationship between the election and the pending case.

And while the outcome in the United States Supreme Court was an important victory for those of us who have grave concerns about the unprecedented amounts of special-interest money that now line

judicial coffers, four justices, including Chief Justice John Roberts, strongly disagreed, apparently dismissing out of hand the amicus brief filed by the Conference on behalf of the chief justices of fifty states and six territories.

Many of you – most of you, I suggest – live in states where all or part of your state judiciaries are elected and then face re-election. You have first-hand experience with such elections. You know full well the ways in which special-interest money, attack ads and the loosening of ethical strictures on judicial campaign speech have transformed the nature of judicial elections. What were once low-key, inexpensive contests for a seat on the judiciary have become multi-million dollar scorched-earth campaigns of the sort John Grisham described in his recent book, *The Appeal*.

When judges have to look over their shoulders before deciding a case – or worse, when they make an implied promise to look over their shoulder before deciding a case – when litigants enter the courtroom hoping that their attorney has contributed enough to a judge's election coffers, we are in trouble, deep trouble.

Once again, the eloquence of Justice Sandra Day O'Connor: "While our judiciary has always faced significant attacks, some appropriate and others not, the single greatest threat to judicial independence is fairly modern and uniquely American, and that is the flood of money coming into our courtrooms by way of increasingly expensive and volatile judicial elections." The single greatest threat to judicial elections. These are strong words from a respected, a revered, justice.

A CHALLENGE TO THE AUDIENCE

Seated this morning in this room are some of our nation's most successful and powerful attorneys. The question for me is how you will respond to the crisis in state courts. Will you simply dig deeper into your pockets to pay for ever more expensive election campaigns for judges? Will you stand mute, hoping that elected judges will criticize judicial elections? Will you remain silent while distinguished, thoughtful, impartial judges are driven from office because of baseless attacks on them? And some of you know which states I'm talking about.

Unless you speak up, do you really expect that the hate-mongering will disappear? Will you stand by while the third branch of government is brought to its knees by insufficient funding, or will you cry out that justice is not the same as transportation or yes, even healthcare? Will you go about your legal work complaining from time to time when a case is delayed or an unfair decision issued, telling yourself that there's nothing that you can do to make a real difference? Or will you use your considerable voices, your skills, your energy, your advocacy and your influence, individually, regionally and nationally, to confront this crisis?

I turn again to Justice O'Connor. "Knowledge about the ideas embodied in the Constitution and the ways in which it shapes our lives is not passed down from generation to generation through the gene pool. It must be learned anew by each generation," she said. But who will be the teachers?

What will you take away from this meeting in Boston? Collegiality, of course. A renewed enjoyment of what it means to be a trial lawyer, assuredly. A discovery that the Red Sox are surely the best. I hope so.

But as you walk the Freedom Trail and visit Bunker Hill, as you confront modern technology and learn about the effects of social media on jurors, I hope that you will also carry home with you the words of the Massachusetts Constitution: "A government of laws and not of men." When John Adams placed that phrase into the

Massachusetts Declaration of Rights in our Constitution, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded this republic, a government of laws and not of men.

In South Africa as a young student, I faced the juggernaut of apartheid. At the time the impediments to establishing a free society founded on principles of justice and equality seemed insurmountable. But the impediments were surmounted. The principles of justice and equality did prevail. How? How?

I have learned that when each of us refuses to accept what appears to be the inevitable, the consequences can be extraordinary. The only thing necessary for the triumph of evil is for good men and women to do nothing. May that charge never be made of you.

Thank you.

PHOTOGRAPH BY GEORGE PANAGAKOS

Past Presidents facing inductees as induction charge is read.

BYLAWS AMENDED AS TO EMERITUS FELLOWS

At its October meeting, the Board of Regents approved a revision of Section 3.1(c) of the College's Bylaws, relating both to the status and the dues of Emeritus Fellows.

This amendment reflects the current reality that many members who continue to practice law well beyond the traditional retirement age have in the past had the choice of paying full dues or of being listed in the College roster in a category that implied that they were retired.

Under the revision, Fellows who have been dues-paying members of the College for at least ten years and who have attained the age of seventy-eight or who have ceased to engage in the active practice of law because of age, illness, infirmity of other reasons determined by the Board of Regents to be sufficient may, upon written application, be granted Emeritus status.

The revision creates two categories of Emeritus status, which will be separately noted in the published College roster.

Those Fellows who have attained the age of seventy-eight or older, but who have not ceased to engage in the active practice of law will, upon making such a request, be designated in the College's annual roster as "*emera*." Commencing with the first calendar year after being granted such status, such an Emeritus Fellow will have the obligation to pay thirty per cent of the dues then payable by regular Fellows.

Those fellows who have ceased to engage in the active practice of law will be designated as "*emerr*" and, commencing with the first calendar year after having been granted such status, will be relieved of the obligation to pay dues. Fellows who are initially granted Emeritus status because of their age and who thereafter retire will, upon notification to the College, be reclassified as "*emerr.*"

In order to insure uniform interpretation and application of the Bylaw provisions relating to Emeritus status, including a uniform definition of "active practice of law," each such request will be routinely referred to the appropriate Regent before the Board of Regents acts on the application.

FELLOWS STEP FORWARD TO REPRESENT GUANTÁNAMO DETAINEES

"The experience of a lifetime"

A bedrock principle of the Rule of Law is the right of every person accused of crime or in the custody of a government, however despised he may be, to be represented by counsel. As we were reminded at the College's Annual Meeting in Boston, that principle had found its way to the New World by 1770, when John Adams, who would someday be President of the United States, volunteered to defend British soldiers accused of the murder of colonists in what history refers to as The Boston Massacre.

In the wake of the terrorist attack of September 11, 2001 on the New York World Trade Center and the subsequent invasion of Afghanistan, many of those captured were classified as enemy combatants and sent to the United States Naval Station at Guantánamo Bay, Cuba, a place the United States Government contended was beyond the reach of its federal courts. Later, a number of other persons who had been seized and held in other parts of the world were transferred to Guantánamo.

Their detainment has been the subject of ongoing debate. Indeed, in various national meeting programs over recent years, the College has attempted to air all sides of that debate, most recently in the Spring 2008 address of former General Counsel to the Department of Defense, William J. Haynes in Tucson.

In January 2005, the College's Executive Committee had authorized the Access to Justice Committee, which has for a number of years made known to Fellows opportunities for pro bono representation, to offer them the opportunity to represent Guantánamo detainees. As in all such cases, the Fellows who volunteered undertook the representation as individuals, and not on behalf of the College, donating both their services and the attendant expense.

College Past President and current College Foundation President Michael A. Cooper of New York, who has represented one such detainee, has undertaken to collect and document the experience of the Fellows who undertook these representations. As is the case with his representation, his signed article which follows reflects the experience—and the perspective—of an individual advocate representing a client.

New York, New York

December 2009

At least 42 Fellows have represented, and many continue to represent, detainees at the Guantánamo Bay Naval Station, almost certainly the largest number of lawyers affiliated with any organization to have responded to the need for volunteer counsel for a group who are not just unpopular, but widely despised.

That number was ascertained by comparing the College roster with a list of counsel representing detainees compiled by the Center for Constitutional Rights ("CCR"). The results of that comparison were checked against an article in the Spring 2005 edition of the College *Bulletin.* Additional Fellows may have undertaken the representation of detainees since 2006.

Fellows have volunteered from all over the country—from Honolulu, Hawaii, to Burlington, Vermont, and from Portland, Oregon, to Jacksonville Beach, Florida. They have, in the words of one knowledgeable observer, expanded the representation of detainees "from lawyers only in DC and NYC to a national pro bono project."

This outpouring of volunteer Fellows is the result of the following fortuitous coincidence. The Gibbons PC law firm in Newark, New Jersey, of which Fellow **Michael R. Griffinger** is a partner, has sponsored a public interest extern for several years. In 2004 that extern was Gitanjali "Gita" Gutierrez, who was spending the year working with the Center for Constitutional Rights ("CCR") in New York City. CCR was one of the few public interest organizations to take up the cause of the Guantánamo detainees, and indeed it was the first.

Griffinger learned of CCR's work through Gita Gutierrez and brought it to the attention of the College's Access to Justice Committee, of which he was a member. The Committee, then co-chaired by **William B. Crow** of Portland, Oregon and **Christine A. Carron** of Montreal, endorsed the concept of encouraging Fellows to represent detainees. The Committee's recommendation was enthusiastically supported by Regent Liaison **Dennis R. Suplee** of Philadelphia, and the Executive Committee concluded during a conference call on January 20, 2005 that it was appropriate for the College, through the Access to Justice Committee, to offer Fellows the opportunity to become involved.

Almost five years later, this seems an appropriate time to gather information about the experiences of Fellows who have represented detainees and to share that information with the fellowship at large. To that end, in September 2009 **James R. Wyrsch** of Kansas City, Missouri, current Co-Chair of the Access to Justice Committee, and I sent a survey questionnaire to the 42 Fellows I have been able to identify as current or former Guantánamo counsel. Twenty-six Fellows have responded. The following report is drawn from those survey responses.

* * * * * * * * * * * * * *

The 84 detainees represented by College Fellows come from twenty countries: Afghanistan (5), Algeria (6), Bosnia (6), Canada (1), Egypt (1), England (2), Iraq (2), Libya (3), Mauritania (1), Morocco (2), Pakistan (3), Qatar (1), Russia (1) Saudi Arabia (32), Sudan (1), Syria (2), Tunisia (1), Tajikistan (1), Uzbekistan (1) and Yemen (12).

My client, Adel El Ouerghi (Al Wirghi), a Tunisian, was one of four detainees needing counsel whose names were given to me by CCR. I chose to offer my services to Adel because I had the names, address and telephone number of his family, which I thought would enable me to obtain information that might be useful in representing him. The address and telephone number turned out to be incorrect, but a Tunisian lawyer with whom I was put in touch was able to track them down. A second factor affecting my selection was my assumption that, as a prosperous, developed country, Tunisia had an acceptable human rights record, which would result in Adel's appropriate treatment if he were repatriated.

(That assumption proved to be entirely incorrect. In fact, Tunisia has been found by the U.S.

Department of State to "continue to commit serious human rights abuses." *U.S. Dep't of State, Tunisia: Country Reports on Human Rights Practices—2006* (March 2007), http:www.state/gov/g/drl/rls/hrrpt/2006/78864.htm. Two former detainees whom the United States repatriated to Tunisia in 2007 have been tortured and convicted of terrorism-related offenses in trials falling far below international standards for judicial proceedings. *See* Human Rights Watch, *Ill-Fated Homecoming: A Tunisian Study of Guantnamo Repatriations,* http://hrw.org/reports/2007/tunisia0907 (September 2007).)

Each of the Guantánamo representations by College Fellows has its own story, as does each of the detainees represented. Some of those stories have had belated happy endings. Thus, within the past few months, the Uzbek client of Past President **Michael E. Mone** of Boston has been given refuge in Ireland, where he has recently been reunited with his family in County Mayo. (Mike Mone is the first to give credit for the successful resettlement of his client to his son, partner and in this instance co-counsel, Michael.)

In contrast, the representation by Charlotte, North Carolina Fellows **George Daly** and **Jeffrey J. Davis** of Mane Shaman al-Habardi ended when al-Habardi, who was on a hunger strike, refused to see George (or so George was told) and a few weeks later committed suicide. George and Jeff have been seeking information about their former client's treatment in a FOIA action in the Western District of North Carolina.

Of the 84 detainees represented by Fellows, 31 or more have been repatriated to their home countries, and 11 have been resettled elsewhere. The remainder fall into three categories: (i) some have been cleared for release and are awaiting repatriation or resettlement, after having been determined not to be a threat to the security of the United States, (ii) others are awaiting or are in trial before a federal district court or military commission, and (iii) still others are considered too dangerous to be released, but cannot be brought to trial for one or more reasons, for example, the fact that necessary, self-incriminating evidence given by them was obtained by treatment now acknowledged to have met the universally accepted definition of torture and consequently is inadmissible.

(I am not permitted to tell you into which category my client falls: a typical example of the often puzzling, indeed, seemingly quixotic determination by the Government of whether information is classified or not. What conceivable national security interest is furthered by concealing the fact that an individual once detained as an enemy combatant is now viewed by our Government as sufficiently non-threatening that he can safely be returned to his home country or resettled elsewhere?)

Most of the detainees represented by Fellows are unknown to the world beyond their families. Their names will probably die when they do. But at least three will have their places in constitutional and political history: Lakhdar Boumediene, Salim Ahmed Hamdan and Omar Khadr.

Boumediene, represented by Washington, D.C. Fellow **Seth P. Waxman**, was the successful Petitioner in the Supreme Court decision bearing his name that established three landmark propositions: (i) Guantánamo detainees are entitled to invoke the constitutional privilege of habeas corpus, (ii) the provisions of the Detainee Treatment Act of 2005 were not an adequate and effective substitute for habeas corpus, and (iii) the Military Commission Act of 2006 operated as an unconstitutional suspension of the writ. On remand, Boumediene's counsel persuaded the District Court to grant their client's habeas petition, and he now lives as a free man in France.

Another detainee, Salim Ahmed Hamdan, has been represented by Fellow **Harry H. Schneider, Jr.** of Seattle. On Hamdan's petition, the Supreme Court held in 2006 that the then existing military commission procedure had not been authorized by Congress and violated both Common Article Three of the

Geneva Conventions and the United States Code of Military Justice. In response to the decision, Congress passed the Military Commission Act of 2006, under which Hamdan was the first detainee to be tried. After a three-week trial, Hamdan was convicted, but sentenced by a military jury to serve only an additional five months.

The third detainee whose story is widely known is Omar Khadr, a Canadian citizen, the client of Fellow **Barry Coburn** of Washington, D.C. Khadr is believed to be the only Westerner remaining at Guantánamo and perhaps the youngest detainee at the age of 23. He is charged with having murdered an American serviceman when he was 15, in an encounter in which he was himself severely wounded. As of this writing, he is on trial before a military commission.

Whoever the individual client may be, the Guantánamo representations undertaken by College Fellows have certain elements that distinguish them from other court proceedings.

First, having undertaken the representation, counsel has not been able to visit his or her client until after having received security clearance, which can be a painfully slow process. It took Houston Fellow **Murray Fogler** eight months to get clearance for his first visit. In my case the process lasted five months. Securing clearance has not been the only obstacle to meeting with the client. **Mike Mone** was not permitted any contact with a client for eighteen months because the judge assigned to the case delayed ruling on an unopposed motion to enter the omnibus protective order applicable to all detainee habeas cases.

Then, there have been the complicated logistics of visiting the client. Guantánamo can be reached by counsel by only one route, a 3-3½ hour flight from Fort Lauderdale in an ancient prop plane that is deafening and has no bathroom. Accommodations are provided on the leeward side of Guantánamo Bay in the Combined Bachelors Quarters (renamed the Combined "Visitors" Quarters when the first large press contingent came to cover the initial military commission proceeding). There are two air carriers serving Guantanamo: Lynx Air and Air Sunshine, known to some as "Air Sometimes." (I have actually seen a listing of FAA-regulated carriers in which Air Sunshine's safety ranking was dead last.)
The incoming flight on Lynx Air arrives between 5:00 and 6:00 p.m., at which hour there is only one restaurant open near the CVQ, and that restaurant closes early, leaving only pizza and buffalo wings at the adjacent bar. Necessity being the mother of invention, a nice tradition has developed over the years. At the end of an interview day, counsel already on the island purchase food at the commissary for counsel who will be arriving that afternoon, and both groups dine together at a communal outdoor grill. This friendly gesture has fostered a sense of camaraderie among individuals who in most instances have not previously known each other but who have shared a common pursuit.

All but one of the Fellows serving as counsel to one or more volunteers have made the trip to Gitmo, one, **John A. Chandler** of Atlanta, as many as 20 times. In this respect, special notice must be taken of **Edmund Burke**, who has traveled from Honolulu to Guantánamo eight times, each trip requiring three or four days and travel of roughly 10,500 miles.

The routine of visits to detainees never changes. You take a bus or walk from the CVQ to the ferry dock on the leeward side of Guantánamo Bay for the 8:00 a.m. ferry. The ferry ride takes about 20 minutes to reach the dock on the windward side, where counsel is met by a military escort and van. After being given an identification badge, you are bussed to the site of your interview, which is never identified in advance. You meet your client in a secure room, where he is tethered to the floor by an ankle chain. My first four visits were in a room measuring roughly a claustrophobic 6 feet by 8 feet. On the way to the camp, the driver stops at a fast food outlet, where you can buy eggs, toast or a muffin and coffee for your client.

The interview days vary little. You arrive at the interview room

around 9:00-9:30 a.m., meet with your client until approximately 11:30, are escorted back to the fast food outlet, return to see your client at 1:30 p.m. or thereabouts (with food, if he has expressed a desire for it), and conclude the interview at 4:30 p.m. As noted above, a stop is made at the commissary for provisioning on the way to the ferry dock.

You are usually permitted to take notes during the meeting with your client, but these notes are taken by the guards at the end of the meeting and given to a military "privilege review team" to read before they are eventually mailed to you. You may not leave any documents with your client at the end of the interview. The interview is monitored by video but supposedly not wired for sound, although most counsel prudently assume that their clients interviews are being recorded.

Every once in a while, you are told upon arriving at the interview site that your client, who is not given advance notice of the interview, does not wish to see you. I was refused a meeting on my fifth visit, which I found puzzling because I thought I had developed a good rapport with my client. I wrote him a letter on the spot urging him to see me, to which he agreed. It turned out that he had been sleeping soundly when awakened for the interview, of which he had not previously been apprised, and he semi-consciously waved off the messenger, turned over and went back to sleep. I have been relatively fortunate; visits by other counsel to Guantánamo have been cancelled, without either notice or explanation, leaving counsel with nothing to show for 24 hours or more of travel.

Several Fellows have expressed dismay at the obstacles the Government has put in their way when they have sought to meet with their clients at Guantánamo. I've already noted that it has taken some Fellows several months to obtain the security clearance necessary to visit Guantánamo. Other Fellows have complained of the short interview days (shortened further when the client has not yet been brought from his cell to the interview room when you arrive) and the inability to bring certain documents into the interview room. These practices, which in many cases are varying and unpredictable, have impeded counsel's ability to provide effective representation.

Written communication between counsel and client is difficult and time-consuming. You must send a letter (in both English and a language understood by the client if he is not English-speaking) for military review, presumably to ensure that you are not communicating classified information. Only in the past year has it been possible to arrange a telephone conversation, which again is monitored by a military representative. These impediments prove difficult when counsel needs to communicate promptly with a client, as when an order affecting the client has been entered by the court or the government is proposing to transfer the client in the near future to another country.

Counsel's experience in federal court has also been frustrating. The first detainees arrived in Guantánamo in January 2002, yet it took two and one-half years to secure a determination by the Supreme Court in *Rasul* that the federal courts had jurisdiction over the Guantánamo detention facility and the claims asserted by individuals held there, and another three years for the Supreme Court to hold in *Boumediene* that detainees could challenge their detention and conditions of confinement on constitutional grounds.

Due to venue requirements, the habeas petitions filed on behalf of detainees have been centralized in the United States District Court for the District of Columbia. It is my observation, and I'm sure I am not alone, that the receptivity of the individual judges of that court to the petitions and other applications by detainees for relief has varied widely. Indeed, *Boumediene* was in reality two consolidated *certiorari* proceedings from contrary decisions by two district judges as to whether detainees could assert any constitutional rights in federal court.

Although there has been a certain amount of common treatment of procedural issues—for example, there is a single order governing the handling of classified information in all cases—

individual judges determine the merits and, in most respects, the timing of the hearing and disposition of procedural issues. As a result, some petitions have been handled with relative expedition since *Boumediene*, while others remain effectively stalled, a source of great frustration for counsel—and their clients. Some petitions have been pending for more than five years, while the petitioners have been held in conditions of close confinement with limited ability to communicate with their families and counsel.

The delays have been compounded by the reluctance of Government counsel to provide discovery unless and until ordered to do so and by the Government's predilection for making arguments that are so specious as to verge on being unprofessional. To give but one example, the Government opposed the initial next friend habeas petition I filed, before I met my client and had been retained (thus necessitating a next friend petition), on the ground, among others, that my detainee client did not need a next friend because he could have filed a petition himself—even though the client did not speak or write English and had no concept of his even arguable constitutional and statutory rights, much less any familiarity with venue limitations and procedural requirements.

I assume that every Fellow who volunteered to represent a detainee expected that within a year or two he or she would be participating in a merits hearing in either a habeas proceeding or a military commission trial. Yet four to five years later, the vast majority of the detainees have not been brought to trial, and many—perhaps most—of them never will. It is also noteworthy that in the 38 habeas proceedings, brought by Fellows and other lawyers, in which hearings on the merits have been held, the petitioners have prevailed in 30 and been denied relief in only eight.

* *

For all its frustrations, the opportunity to represent Guantánamo detainees has been for most, if not all, Fellows serving as counsel "the experience of a lifetime" (as one has put it) and, in another's words, "the best thing I have done." The treatment of detainees by our Government has been, in many respects, a stain on the history of the administration of justice in this country. The lawyers who have represented detainees have tried, each in the circumstances of his or her case, to obliterate that stain and restore the rule of law. And those of us who are College Fellows hope that our service as counsel to detainees has reflected well on the College, even though our representations have been undertaken in our individual or firm names.

I am reminded of a Boston lawyer who two centuries ago not only undertook the representation, but secured the acquittal, of the British captain charged with ordering the Boston Massacre. In his old age, that lawyer, John Adams, our second President, reflecting on his long and productive life, observed that his defense of the British captain was "the best piece of service I ever rendered my country." I, for one, feel that way about my representation of Adel El Ouerghi, and I know I am not alone.

Few of us would have had that opportunity were it not for those early conversations between Mike Griffinger and Gita Gutierrez, the enthusiasm of the Access to Justice Committee and the support of the Executive Committee. They provided the impetus for what a long-time Fellow has called "the most noble thing that has come out of the College."

Michael A. Cooper, New York
December 2009

ACTL FELLOWS who have represented Guantanamo detainees

	NAMES	CITY/STATE
1.	Ainslie, Elizabeth K.	Philadelphia, PA
2.	Barker, Scott S.	Denver, CO
3.	Bondurant, Emmet J., II	Atlanta, GA
4.	Brennan, William C., Jr.	Greenbelt, MD
5.	Brett, Thomas R.	Tulsa, OK
6.	Bruce, Carol Elder	Washington, DC
7.	Burke, Edmund	Honolulu, HI
8.	Chandler, John A.	Atlanta, GA
9.	Coburn, Barry	Washington, DC
10.	Colman, Jeffrey D.	Chicago, IL
11.	Cooper, Michael A.	New York, NY
12.	Crow, William B.	Portland, OR
13.	Cys, Richard L.	Washington, DC
14.	Daly, George	Charlotte, NC
15.	Davis, Jeffrey J.	Charlotte, NC
16.	Flumenbaum, Martin	New York, NY
17.	Fogler, Murray	Houston, TX
18.	Fortino, Paul T.	Portland, OR
19.	Greenfield, Jay	New York, NY
20.	Griffinger, Michael R.	Newark, NJ
21.	Grigg, Dicky	Austin, TX
22.	Hangley, William T.	Philadelphia, PA
23.	Hodgson, C. Clark, Jr.	Philadelphia, PA
24.	Hollander, Nancy	Albuquerque, NM
25.	Kitchel, Jan	Portland, OR
26.	Mone, Michael E.	Boston, MA
27.	Murane, William E.	Denver, CO
28.	Murphy, William J.	Baltimore, MD
29.	Nields, John W., Jr.	Washington, DC
30.	Ottaway, Larry D.	Oklahoma City, OK
31.	Pennington, C. Rufus, III	Jacksonville Beach, FL
32.	Rachlin, Robert D.	Burlington, VT
33.	Ruprecht, Louis A.	Millburn, NJ
34.	Schneider, Harry H., Jr.	Seattle, WA
35.	Shaw, Edward M.	Brooklyn, NY
36.	Spaulding, Douglas K.	Washington, DC
37.	Sullivan, Thomas P.	Chicago, IL
38.	Trainor, Harry J., Jr.	Annapolis, MD
39.	Walbolt, Sylvia H.	Tampa, FL
40.	Waxman, Seth P.	Washington, DC
41.	Weaver, Robert C., Jr.	Portland, OR
42.	West, Terry W.	Shawnee, OK

RESULTS OF SURVEY OF ACTL FELLOWS WHO HAVE REPRESENTED GUANTÁNAMO DETAINEES

Fellows representing Detainees	42
Fellows who replied to survey	26
Detainees represented by Fellows	84
Habeas proceedings	80
Habeas merits hearings*	14
Habeas petitions granted*	6
Habeas petitions denied*	3
Military Commission proceedings	3
Fellows who have gone to Guantánamo	23
Visits to Guantánamo	118+
Detainees repatriated	31
Detainees released to third countries	11

*Some responses stated that merits hearings had been held but did not state whether the petition was granted or denied or remains pending.

COLLEGE ELECTS NEW OFFICERS AT ANNUAL MEETING IN BOSTON

Joan A. Lukey of Boston, Massachusetts was installed as the College's new President, succeeding **John J. (Jack) Dalton** of Atlanta, Georgia.

Gregory P. Joseph of New York, New York was chosen as President-Elect.
Chilton Davis Varner of Atlanta, Georgia will serve as Secretary
Thomas H. Tongue of Portland, Oregon will serve as Treasurer.

THE DARK SIDE OF TECHNOLOGY IN THE COURTROOM: ONLINE AND WIRED FOR JUSTICE, WHY JURORS TURN TO THE INTERNET

"One of the social evolutions we're looking at is much less deference to authority universally and much more a sense of entitlement to their own opinions and perspectives. And so we really need to assume that they're not going to simply take the word of authority on its face without some appreciation for why it's important." Juror consultant Dr. Douglas L. Keene.

Douglas L. Keene

The Internet, emails, Google, Facebook, Twitter, MySpace and other technological breakthroughs have changed the way judges and lawyers need to deal with jury selection, jury instruction and jurors themselves, a continuing legal education panel emphasized at the College's 59th Annual Meeting in Boston.

Regent Phil Kessler of Detroit, Michigan moderated the group, which consisted of **Sean M. Ellsworth** of Miami Beach, Florida, **Dr. Douglas L. Keene** of Austin, Texas, U.S. District Court Judge and Judicial Fellow **Donald W. Molloy** of Missoula, Montana, and Fellow **Elizabeth N. Mulvey** of Boston. Ellsworth and Mulvey had been involved in cases in which the Internet played a major role. Judge Molloy had presided over such a case. Dr. Keene is a clinical and forensic psychologist and litigation consultant with a national practice.

"I think we proceed this morning on the premise that personal technology devices are, in fact, highly addic-

tive. Indeed, their use by millions of people across the country and in other parts of the world has become so ingrained as to be reflexive . . ," Kessler said in his introduction. "Given this fact of contemporary life, it was inevitable that the misuse of technology would invade the courtroom and ultimately pose threats to the fair administration of justice." He described examples where four years ago a prosecutor who was trying an infamous gang member . . . discovered that spectators were using camera phones to photograph key witnesses, so that some of those witnesses had to be relocated for their own safety.

"And then there's the case of the North Carolina judge who was recently reprimanded for friending a lawyer on Facebook," Kessler said. "The lawyer happened to be involved at the time in a child custody hearing that was occurring before the same judge. The judge was also reading and even posting Internet messages about the litigation while it was occurring. He accessed the websites of the parties as well. After the hearing, the judge disclosed his activities, disqualified himself, and ordered a new hearing."

Keene led off the panel discussion by saying the problems created by jurors' independent research are becoming worse by the month. He pointed out that 92 per cent of persons 18 to 30 use the Internet, 81 percent for those 31 to 62 and 50 percent for ages 63 and over. "Grandma has a cellphone now," Keene told the audience. "Everybody does. Even my father. It's amazing."

The legal profession is no exception, he said. "Eighty-six percent of young lawyers use social networks. But of those over 36 years old, 66 percent of them are also engaged in social networks. The American Bar Association did its own research and found that 39 percent of lawyers use smartphones in court, but it's jumped to 60 percent over the last two years."

There has been a 133 percent increase in Web use since 2000, and 73 percent of the population has Internet access, Keene said. Internet use has exploded further with the advent of more and more portable devices, such as BlackBerrys and Net Phones.

"And then we have the impulse to communicate automatically, the irresistible impulse to be sending email messages in the middle of important meetings. We see it in courts all the time where it's obvious people are using their BlackBerrys while their witness is on the stand," Keene said. "We break the rules without considering the implications of them. The judges give instructions about don't do independent research; and literally, well-intended jurors after they get caught doing Internet research will go, 'I didn't know that meant Googling,' because it's just second nature."

Keene also had a word of advice about law firm websites. "If you have in mind your website as a marketing tool and you're talking about all of your success or your view of the justice system or whatever it may be, you have to assume that jurors are reading that, and that whatever image you've created for yourself in your effort to attract clients is going to have some sort of resonance with those jurors. Whether it's good or bad, you have to know it's going to be the lens through which they listen to every word you say at trial. And so you really need to kind of take a second look at it. They . . . don't have the same value as marketing tools as they might have five or ten years ago. . . . [T]hey . . . are image tools, and your challenge is to figure out, 'Okay, what kind of image am I going to project, and how is that going to strike a balance between the image that I need my clients to see as being primary and that which a curious juror would find of interest.'"

The next panelist, Elizabeth N. Mulvey, described an actual case in which she represented the family of a 12-year-old boy who died of undiagnosed diabetes. The defendant doctor was

blogging about the ongoing trial under a pseudonym. She was able to access the blog and used the doctor's comments to settle the case.

Mulvey concluded her presentation by saying, "So the real question is, what lessons do you learn from this? The first one is obvious. When the client walks into your office, figure out, does the client have a blog? Does the client have a Facebook page? If the client is a business, what might be on that business's website that you wouldn't want your opponent reading? And 1.a. is, in light of electronic discovery obligations, is there anything you can and should do about it at that point?" She also pointed out the need for trial management to lessen the misuse of information from outside the trial record and the necessity of a lawyer's knowing what is out there that may affect his or her case.

Panelist Sean Ellsworth then continued the presentation by describing the unfortunate turn of events in a Florida trial in which he was defending a pharmacist in an Internet pharmacy trial. After two and a half months of trial, a juror admitted that he had done independent research over the Internet. When the judge polled the jury, seven other jurors admitted the same behavior and the judge declared a mistrial. Among other things, they had looked at the websites of all the defense lawyers.

It was then Judge Donald Molloy's turn to talk about the effect of electronic technology on the courtroom, asserting only half in jest that any lawyer who communicates with his client by email ought also to notify his malpractice insurance carrier. Molloy said that he read news reports about the mistrial in Ellsworth's case and used that as an occasion to modify instructions to the jury in a major case then in trial in his court. He said that he also learned the power of the Internet when he allowed University of Montana law and journalism students to blog the case and was astounded to find there were over 100,000 hits on the blog in about a three-month period.

Molloy went on to point out the problems created by the E-Government Act, and by PACER. A curious juror can access either before trial, if he knows which case he is being called for, or during trial such things as motions in limine aimed at keeping information away from jurors, plea agreements that could affect the veracity of witnesses, orders that have been entered in the case . . .indeed everything that has happened in the case that has to be put on the record. In addition, Internet research can uncover such things as prior lawsuits on the same issue involving the same parties.

When it comes to instructing jurors not to do their own research on the internet, Keene related the reaction to an article he published on the subject. "[T]here are . . . people who said, 'You will not deprive me of an opportunity to do appropriate research. That is true justice.' There is this sense of it being a kind of a grassroots sort of . . . the public finally has the power back again because they have the opportunity to investigate things on their own, and they don't have to rely on whatever's going on at the trial. . . . Nobody reflected any insight into the hazards of doing that, the hazard of not being able to confront your accuser, not having an opportunity to challenge the supposed authority, whatever that Internet information is. And I think really the vast majority of the problem is ignorance on the part of the public, just kind of a naive lack of appreciation for how it happens to create problems."

In the course of the presentation, the panelists had advice on the kind of research and trial preparation that this phenomenon calls for. Ellsworth related, "Well, the first thing I'm going to do is find out what's out there on them, whether they know it or not. . . . [W]e are now in a world where in civil cases as well as criminal cases, the expression used to be, 'Don't say anything on the phone that you

wouldn't want the government to hear' that now goes, 'Don't . . . email anything or post anything or blog anything that you wouldn't want everyone to know,' because when you're in a lawsuit . . . you come under a microscope. And the people that are looking into that microscope are making decisions that are going to affect the rest of your lives. If you have enough time and you're fortunate enough to get somebody at the beginning where you can tell them that, that's great. Sometimes they come into our office and there's too much stuff out there, and there's nothing we can do other than know what's out there. If they come into our office, we can have this conversation and we can say, 'Listen, it's a small world, everything you post is going to be something that the prosecutor is going to look at, the plaintiff's lawyer is going to look at, the defense lawyer is going to look at and the jurors are going to look at, so be careful what you post.'"

As to trial preparation, the panelists suggested that a lawyer should know everything that is available on the Internet about themselves, opposing counsel, their own client, all the other parties, witnesses and, if the jury list is available, jurors. They have to assume that their opponent and perhaps even the jurors will have done the same. They also suggested that in some instances pretrial strategy may need to be shaped in light of the possibility that jurors may examine the record in the case online. This may, for instance, call for withholding motions in limine until the case is called for trial.

Molloy observed, "I think the lawyers have to work with the local courts, state courts, federal courts, to establish what the parameters are and what the rules are going to be, because if you don't do that, you're going to get into lots of situations that there are just going to be complications." Molloy continued, "I guess my point would be that the lawyers have to be aware of this technology and all of its imaginable uses and misuses and help the courts, the judges, deal with it, because there are a lot of us who think we know something about what's going on, and we really don't."

The judge said the problem seems to be getting bigger. "[T]he tension is that in a democracy you want transparency, and you want the public to be able to understand what is going on. But the flipside of that is that in the advocacy system, the trial process, if the purpose of it is to get as close as we can to the truth and to have that judgment made by uninformed or unbiased persons, then you have this conflict with the ready access of information . . . and there's a real tension between transparency and, I think, the fairness of the process."

Molloy then quoted from a book, *In the Hands of the People,* by William Dwyer, a Federal District Judge in the Western District of Washington: "For a long time the jury remained self-informing. It relied on the knowledge it already had. As communities grew, as jurors needed more information, witnesses were sometimes called to testify. The door through which the trial lawyer would eventually walk was open. The assumption that the jury would know enough to decide without help gave way gradually to the assumption that it would need to hear evidence. Many cases were decided on a combination of what the jurors knew at the start and what they learned in court."

"By the end of the 17th century, the law required the verdict be based solely on the evidence received in court. It was seen that fairness and impartiality are served by lack of foreknowledge. We had moved from requiring that a juror know about the case to assuming that he would not know enough to requiring that he know as little as possible."

Molloy ended the program remarking, "And I think it may be back to the future."

bon mot

HUMOR FROM THE DARK SIDE

I can recall some years ago being astonished when a lawyer who I know very well, a talented, sensible, disciplined trial lawyer, told me that he routinely locks his BlackBerry in the trunk of his car when driving. . . . [H]e said, "[H]onestly, I can't resist using it if it's in the compartment of the car with me, even when I'm driving at high speeds." This technology addict is not a Generation Y lawyer. He's 67 years old. . . .

A few years ago, I was preparing to argue a case in the Sixth Circuit . . . and the general counsel of a . . . company that I was representing traveled from across the country to meet with me in my office to see to it that I was properly prepared for the argument and to evaluate the state of my presentation. He brought with him his primary outside litigation counsel. And this was a meeting that was . . . very important to the outside counsel, because he received most of his relatively vast caseload from this lawyer . . . . And so I watched with alarm in my conference room as he repeatedly succumbed to the temptation of using his new BlackBerry while the general counsel was making observations and putting important and sometimes difficult questions to me. My friend displayed all too clearly the telltale signs that you all have seen and probably displayed from time to time: eyes looking down, fingers working feverishly on the little keyboard. No one in the room misunderstood what was going on except the lawyer who was locked in the seductive trance of the BlackBerry.

So what did I do? Because he's a friend, as suddenly as I could, I began firmly kicking him under the table. . . . And . . . when I inflicted enough pain, I broke the trance. He awakened to the problem. He put his BlackBerry away, and we continued to work on the preparation for the case. This addicted friend of mine was in his fifties at the time that this occurred. He is an outstanding trial lawyer and as conscientious a professional as one could expect to find.

And by the way, if anyone in the room might be wondering if we have any addicts in the College, the answer is, "Of course we do." In fact, I have to tell you that both of the lawyers in these two stories are Fellows of the College.

Regent Philip J. Kessler,
Introducing the Dark Side Panel

bon mot

We were in the middle of the W.R. Grace case, which was the largest environmental crime charge in the history of the United States. The case had gone on for five years before we started trial. I think I have probably the record of being one of the few federal district judges to be reversed three times before the trial started.

District Judge Donald W. Molloy, JFACTL

From January to April of this year, I was in federal court in the Southern District of Florida, defending a pharmacist in an Internet pharmacy trial, and this is basically doctors and pharmacists who would interact with patients to distribute medications. We, as the defense, called it tele-medicine. The government called it drug trafficking.

Sean M. Ellsworth

But, in fact, if you have grown up in an era where that kind of access to information and dissemination of information is just automatic— Twitter: bizarre notion. Why anyone thinks anyone wants to know those things about what you're doing is just amazing, but hundreds and hundreds of millions of people are on this crazy network explaining what kind of Starbucks coffee they got today.

Dr. Douglas L. Keene

We actually had . . . somebody summoned for jury service, that wrote about a four-page letter to me, telling me that he was a good patriotic American and he was coming and he would do his jury service and that was his civic responsibility, but he was far better trained in the use of firearms than anybody in the court, and so he would serve as a juror, but under his Second Amendment rights, he was going to bring his firearm with him. So that would have been interesting in the jury room.

Judge Donald M. Molloy

Did you know that there's a search part of Google that allows you to search in newsgroups and commentaries? It's sort of terrifying. When I did it on myself, I found my mother on a food group talking about my husband's appetite, which happened to be true, but . . . .

Elizabeth Mulvey

bon mot

THE THEFT FROM THE GARDNER MUSEUM

THE WORLD'S LARGEST UNSOLVED ART THEFT

In the early morning hours of Sunday, March the 18th, 1990, as Boston was recovering from Saint Patrick's Day, two men wearing police uniforms knocked on the side door of the Isabella Stewart Gardner Museum and in less that an hour and a half committed what remains the world's largest unsolved art theft. They cut paintings, including three Rembrandts, a Manet and a Vermeer, out of their frames, stealing a total of eleven paintings and drawings, one Chinese artifact and the gold finial from a frame housing a Napoleonic flag, art works valued today at over $500 million.

Gardner Heist Panel (left to right) Judah Best, Anthony Amore and John P. DiNatale

In a far-ranging panel discussion moderated by Regent **J. Donald Cowan, Jr.,** three speakers addressed different aspects of the Gardner theft. College Fellow **Judah Best**, a frequent lecturer on art theft, addressed the modern response of museums. Boston Private Detective **John P. DiNatale,** who had initially evaluated the museum's security system, but had not been involved in the ongoing investigation, described how the heist was carried out and gave what he termed a "street view" of where the stolen works might now be. **Anthony Amore**, the current Director of Security at the Museum, described his ongoing efforts to solve the theft and to recover the stolen art works.

THE THEFT

Designed, constructed and completely financed by Isabella Stewart Gardner, a wealthy patron of the arts, the Museum was opened to the public in 1903 and soon became recognized as one of the finest private art collections in the world. On the night of the theft, there were two museum guards inside the Gardner, one seated at a panel of video camera screens, the other seated next to an alarm directly connected to the police. When two men wearing police uniforms appeared at a side entrance to the museum and told one of the guards that they were there to investigate a disturbance on the grounds, he let them in. He was soon lured from behind his desk, where the alarm was located, and was then handcuffed and heavily taped, as was then the second guard. Both were taken to the basement of the Gardner, where they were found the next morning, handcuffed to pipes.

The two men wearing police uniforms proceeded to go through the Gardner art collections. When one of the men began to cut a Rembrandt from its frame, an alarm went off. He smashed the alarm, nothing happened and he went on about his mission. Incredibly, the thieves left untouched a painting by Titian, *The Rape of Europa*, then considered to be one of the finest paintings in the world.

There was no insurance on the stolen objects. There is a standing $5,000,000 reward, offered by the museum itself, for their return. The statute of limitations has run on the original crime, yet nineteen years later it remains the world's largest unsolved art theft.

MODERN MEASURES TO PREVENT ART THEFT

Judah Best, of Washington, D.C., a past chair of the ABA Litigation Section and a Commissioner of the Smithsonian Museum of Art, began his presentation by showing slides of the stolen Gardner Museum works and of many other famous works of art, including the *Mona Lisa*, that have been stolen in the past, some eventually recovered, some still lost. These thefts have victimized public museums, private museums, private homes and churches.

Modern art theft and issues of ownership and authenticity prompted the 1969 creation of the International Foundation of Art Research (IFAR) to study and combat fraudulent art practices, including theft. IFAR, along with insurance companies, helped to create the Art Loss Register, which uses data from its register and from Interpol to publish a quarterly stolen art report. It has the world's largest database of stolen art and antiquities. Over twelve hundred items are added each month, and over 120,000 stolen paintings and other works of art are listed in its files. Its staff scans art auction catalogs, eBay and art fairs worldwide. The FBI has an art crime team, which also maintains a file on stolen art. It estimates that losses from art thefts approach $8 billion each year.

The usual reasons for stealing art are to create forgeries and sell the original, to steal on "consignment" from corrupt collectors or to collect a ransom, usually from an insurer. Security creates a conundrum. The expense of modern security is burdensome to galleries, and some security devices make the art inaccessible to viewers. Some security experts regard inside jobs as a larger threat than even a professionally planned break-in.

Modern technology raises the possibility of implanting microchips in works of art to utilize radio frequency identification (RFID). This is a measure, however, that curators fear will damage or compromise the work of art. In addition, this would require some sort of global positioning system to track the location of the stolen work. Several larger galleries are already employing this technology.

Best summarized his presentation thus: "[T]he tide is turning with regard to the protection of art. Electronic information

about art makes registration simpler. Sophisticated databases make accurate provenances easier [to document]. RFID and global positioning will make art identifiable and locatable. Security is more sophisticated, and the public is more aware of potential damage and danger to fragile works of art."

Nevertheless, he concluded, "thieves will always be with us, so take care."

THE STREET VIEW

John P. DiNatale has two college degrees and thirty-two years of investigative experience. One of his clients was a trustee of the Gardner Museum, and so he was called in to do an initial evaluation of the museum's security and how the theft could have happened. "As my dad [a Boston policeman] used to say, 'Security systems are designed to keep honest people honest. You need to catch the thieves one at a time.'" Indeed, he found that the museum's security system was designed principally to make sure that no one did anything to harm the paintings while the museum was open.

He asked the museum staff, "[H]ad there been any sort of incidents involved in the last week or the last month, anything at all that would lead you to believe that maybe you were being watched?" And the museum's then director of security said, "As a matter of fact, there were. You know, we had an incident where there looked to be a fight out on the street and somebody banging on the door, 'help us, help us, help us,' but the guards didn't let them in.." And there had been another incident involving some problem out on the street. From this DiNatale deduced, "Clearly the people who were involved in this were looking to see what is it going to take to get somebody out? And if we can't get them out, we're going to have to figure out how to get in."

DiNatale speculated that the thieves had had the museum under surveillance for a time. They could watch people come and go. They could take down license plate numbers and get the name and address of the owner of the vehicle from the Registry of Motor Vehicles. Thus, they probably knew who the guards were. They had learned that they were not going to get them out of the museum, and so they had to devise some way of getting in. Clearly the security staff was ill-trained to prevent this.

DiNatale, not involved in the ongoing investigation of the theft, speculated about the present whereabouts of the art works. He remarked that ongoing animosity between local law enforcement people and the FBI had hampered the investigation. Offering his "street level" perspective, he noted that in the past, stolen art had been used as a "get out of jail card" by people arrested for other crimes and who had traded the art for a lighter sentence. In preparation for his appearance, he had inquired among his former clients, in and out of jail, their counsel, retired law enforcement people and corrections officers about where the stolen works might be. He could eliminate many of the usual suspects, since they had served long prison terms and had not used the works as a "get out of jail card."

His conclusion was that the crime was committed by local people, that the people directly involved might long ago have been paid off by those for whom they carried out the heist and thus would not now know where the art is, that the art may still be in the Boston area and that it may well someday surface.

THE VIEW FROM INSIDE THE MUSEUM

Anthony Amore, who after 9/11 was instrumental in reorganizing national security efforts and was the Federal Aviation Agency's lead agent in responding to the attempted terrorist attack of Richard Reid, the so-called "shoe bomber," has been the Gardner Museum's Director of Se-

curity since 2005. He began his presentation by asserting that he believes the stolen art is in the local area and that it will not be long before it is seen again.

He noted that for fifteen years the museum had sat back and let the public authorities do the investigation their way without success, and that he himself has now undertaken to sort through the evidence, trying to narrow the possibilities. Noting that many retired investigators have kept their records, he has undertaken to create a database to use for what had come to be known in his former employment with Homeland Security as "link analysis," finding commonalities between leads that come in, information he has researched himself and things that were known from the beginning.

Amore asserted that the $5 million reward comes from the museum itself and that he is willing to deal directly with whoever now has the stolen art and to go to the government authorities to seek an immunity agreement in exchange for its return. He ended his presentation by soliciting any information that might aid him in his efforts.

bon mot

And, in fact, they started binding the hands of the two security guards [at the Gardner Museum]. The guards said, "Why are we being arrested?" They said, "You're not being arrested. This is a robbery. Just keep your mouth shut, and you won't get hurt.". . .

About . . . the fifth year anniversary [of the Gardner Museum theft], I got a call from a reporter . . . . She said, "You know, one of the things that's come up is people don't really think these people were professionals that pulled this off." I said, "Well, I don't know, but it's been five years. They just walked away with the largest art heist in the history of the United States. They left no physical evidence. Nobody knows who they are or where they are. I'd have to say if they weren't professionals then, they're professionals now. If there's a test you have to take, they passed it. . . .

I've been involved in the return of a priceless Stradivarius violin that had been stolen from an individual. My dad [a policeman] happened to be friends with the owner of the building where he [the thief] lived, and they got us involved, and we got involved with the FBI. And it was one of the first times I had been really working on the street with the FBI and got to see how they work first-hand. And my job was, when I got a high sign from my father, that I was going to come over with $25,000 in cash, hand it to the driver. My dad was going to take the violin, and we were all going to get arrested.

So I got the high sign. I went in. I gave him the money, and the next thing, the big bullhorn. "This is the FBI." And everyone's looking and everybody's hands are up in the air. . . . We get arrested, we get handcuffed, we're thrown in the back of the car. They take the perpetrators off, and my dad and I get out, and they take the handcuffs off us."

Well, around 9:30, 10:00 that night, my dad calls me. He says, "Where's the money?" I said, "What are you talking about?" He said, "The FBI just called me, and they said you still have the money." I said, "Dad, I gave the guy the money. He put it under the front seat." "I'll call you back." He calls me back ten minutes later. "Guess what? They let them go, and they gave them the car."

*Detective **John P. DiNatale**,*
Speaking about the Isabella Stewart Gardner Art Theft

FIRST CIRCUIT CHIEF JUDGE ADDRESSES BOSTON MEETING

Sandra L. Lynch, Chief Judge of the United States Court of Appeals for the First Circuit, the first woman appointed to that court, filling the seat vacated by Associate Justice Stephen Breyer, addressed the 59th Annual Meeting of the American College of Trial Lawyers.

Sandra L. Lynch

A graduate of Wellesley, where she was a philosophy major, and of the Boston University Law School, where she was Articles Editor of the Law Review, she clerked for Judge Raymond J. Pettine of the U.S. District Court for Rhode Island, then served for one year as an Assistant Attorney General of the Commonwealth of Massachusetts and four years as General Counsel to the Massachusetts Department of Education. She then practiced law for seventeen years at Foley, Hoag and Eliot in Boston, where she was head of the litigation department, handling complex litigation. She also served a term as President of the Boston Bar Association.

Named to the Court of Appeals in 1995, she became Chief Judge in 2008. One law review survey found that among all the United States Circuit Court Judges hers were the most frequently cited opinions.

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"Plain, Honest Men."

I welcome you to the ranks of local counsel in Boston, and this is indeed a special group of lawyers. Why the title of my speech? Well, it actually is not a description of the male population of Boston. It's like Lake Wobegon. We all know they're all handsome and clever and everything else.

But the title is "Plain, Honest Men," and it actually comes from a phrase used about the framers of the Constitution. Now early on, the brilliance of the Constitution as a document, as a theory of government, was recognized; and so the framers were duly complimented, and then some. The framers were back at the time compared to gods who had given us a sacred text.

Now, one of the framers became annoyed by this deification, and he would have none of it. Gouverneur Morris of Pennsylvania, who played a key role, said, "While some have boasted of the constitution as a word from heaven, others have given it a less righteous origin. I have many reasons to believe that it is the work of plain, honest men."

LAWYERS AND HONESTY

That is the reason for the title, and I want to tie and talk about lawyers and honesty. Early in April of this year, the New York Times had a story which was headlined "A Land in Mourning for Honesty." I read the headline, and I thought they were talking about this country, because in many ways our country is a land in mourning for honesty. But it was not about the United States. It was about Argentina. And it was about the outpouring of grief, the spontaneous outpouring of grief of hundreds of thousands of people in Argentina on the death of their former president, Raúl Alfonsin.

Now, he had last been president in 1989, about twenty years earlier. And why was he so spontaneously mourned? One citizen said that Mr. Alfonsin represented honesty, consensus-building, dialogue and transparency. I thought the phrasing was memorable: honesty, consensus-building, dialogue and transparency.

And I then thought about American presidents, and it reminded me of the great American president who was known for his honesty and integrity, Honest Abe, Abraham Lincoln. You all know the story that a client sent him $25 and he returned $10 and said, "You must think I'm a high-priced man. You're too liberal with your money. $15 is enough for the job. I send you a receipt for 15 and return to you a $10 bill." Lincoln was not only honest himself, but he valued honesty. In eulogizing a friend, he said, "In truth, he was the noblest work of God, an honest man."

Both of these honest and decent presidents were lawyers, and there is no surprise in that. Honesty is an important part of being a good lawyer, important to our profession, and, for reasons I want to discuss, important to our country. Now, we all know many of the substantive doctrines of law are meant to reinforce honesty. Our securities laws require full disclosure of material information without misrepresentation. A demand for honesty is woven into the fabric of the law. It underlies our formal system of ethics and our status as a profession.

COMPLEXITY AND HONESTY

I'm not going to use the term "honesty" to talk about our system of ethics. You are a

very sophisticated group of people, and I would not demean you. But what I want to talk about is the relationship between complexity and honesty, and the fact that lawyers are very well-suited to look at complexity, analyze it and pierce it. That's because in the law, our problems are rarely black and white. To use the song from the '60s, they're often paler shades of gray.

The problems facing our country and our profession now seem to be, to me, more difficult than any of the problems we have faced during my lifetime. And so, when we look at our present dismal economic crisis, what can we learn about honesty?

I'd like to reject two themes about how we got into this mess, and they're themes you've heard. The first is that the major reason for our economic woes is simply that there was massive, old-fashioned fraud of the sort practiced by Bernie Madoff. Surely there was old-fashioned fraud, but that is entirely too simple an answer.

Another thesis is that the crisis was caused by irrational behavior. I don't think so. Being rational is not the same thing as being right. You can very rationally reach the wrong result.

Judge Posner, Seventh Circuit, has said, "What has now plunged the world into depression is a cascade of mistakes by rational businessmen, government officials, academic economists, consumers, homebuyers, operating in an unexpected, fragile economic environment." He went on to say that what is retarding recovery is not the unreasoning fear of which Franklin Roosevelt so famously spoke, but the rational fears of everyday people.

So if the explanation is not downright fraud and it is not irrationality, what was going on? Well, partly, as Samuel Johnson said over 200 years ago, "It is much more from carelessness about truth than from intentional lying that there is so much falsehood in the world." But I also think, in part, we are here because of a fear of complexity, that many people simply did not understand the financial instruments that led us to this situation.

Arthur Levitt, the former chair of the SEC, said, "Regulators should have considered the implications of the exploding derivatives market." And I heard Christina Romer, head of the Council of Economic Advisors, speak two nights ago, and she said, "We, as a country, simply did not realize the financial regulatory structure we put in place after the Depression had not kept up." And she identified a series of things. Some of them had to do with we simply didn't understand the effect of the instruments from non-bank financial institutions. But more than that, more seriously, she said we had no mechanism to assess the risk to the entire financial system, because it never occurred to us that individual failures could trigger a risk to the entire financial system.

So why did this failure to understand complexities and consider the implications of complexity happen? One answer, of course, is the simple fear of thinking about complexity. Another answer was given by Attorney Brooksley Born, of whom I'm enormously proud. She was then the chair of the Commodity Futures Trading Corporation. She predicted what would happen, but no one would listen to her. Her explanation was, while it's complex, recognizing the danger wasn't rocket science, but it was contrary

to conventional wisdom and contrary to the economic interests of Wall Street at the time.

Even Larry Summers in his baccalaureate speech to Harvard students as he left in 2006 warned students to be mindful of the threats that come from elevating the values of consensus, conformity and comfort above the truth.

LAWYERS AND THE PRESS IN A COMPLEX WORLD

Now, there's one group of people in our society who do have the skills to analyze and address complexity and give honest assessment of risks. It's lawyers, and in particular it is trial lawyers, and in particular it is this group. I think that there is an even greater need emerging now in this country for lawyers to play that role of being the honest brokers in our society.

Some people predicted that we would see changes in our culture which would ultimately demand greater honesty and greater compliance with the law. Tamar Frankel wrote a book called *Trust and Honesty: America's Business Culture at a Crossroad* in 2006. I think she has quite a passion. There is a huge public rage out there about the failure of honesty in our economic institutions and in our government.

Now, in my view, in our society there have been two great outside forces which have kept our government and our private institutions to standards of integrity and honesty. One is the bar and the law. The other is a free investigative press.

But let's consider the present status of the free investigative press. In Boston, one of our newspapers, a great newspaper, *The Boston Globe*, its very survival is at risk. The *Globe's* investigative stories revealed sexual abuse of children by priests and the corruption of FBI agents cooperating with organized crime. This exposure, along with the work of trial lawyers on both of those topics, led to reform.

I am very worried about what happens to the integrity of our institutions when there is no longer any press watchdog and there is no one taking the place of investigative journalists. One might predict there will be a rise in corruption in public and private institutions because there is less of a check on improprieties by those in power.

I think in that context, lawyers are going to have to play a larger role in ensuring the honesty of our institutions. Honest lawyers willing to take on big and complex issues are needed in our country even more today than in Abraham Lincoln's time.

Our former Treasury Secretary, Robert Rubin, in his book *In An Uncertain World*, said that we have to recognize that almost all significant issues are enormously complex and demand that one delve into the complexities to identify the relevant considerations and the inevitable tradeoffs. There is a risk as we delve into those complexities that we will do what H.L. Mencken warned about: "For every complex problem," Mencken said, "there is a solution which is neat, simple and wrong."

I'm asking your help in keeping our society honest. I think you are the best group out there that could possibly address this need.

Thank you very much.

bon mot

She joins us today to address the topic *Plain, Honest Men*. Chief Judge Lynch, I must say, that the title for your talk has the men here this morning expecting your remarks are all about them, yet the women here this morning know better. Please welcome Chief Judge Sandra Lynch.

President John J. (Jack) Dalton, introducing
First Circuit Chief Judge Sandra L. Lynch.

Judge Lynch: Of course I'm using the term "men" in a generic sense.

* * * * * * * * * * * *

I'd like to share with you one of my favorite stories from the federal judiciary. It's not about a Court of Appeals judge. It's about a federal trial judge in New York who is a former criminal prosecutor and had been an experienced trial judge for a while. A criminal defendant appears before him, and the man is standing there alone, and he's wearing a long white flowing robe, and he's got his hair down to his shoulders. The judge looks at the defendant rather quizzically and says, "Don't you have a lawyer with you?" And the defendant said, "God is my lawyer." And the trial judge said, "I suggest you get local counsel."

Chief Judge Sandra L. Lynch
First Circuit Court of Appeals

bon mot

NATALIE DEWITT RETIRES

Natalie DeWitt, former Membership Manager for the College, retired December 31, 2009 after 17+ years of service for the College. Her organizational skills and wide ranged base of knowledge and experience through the years will be greatly missed by her colleagues. Her tenure began in 1992 with the Annual Meeting in London and Paris and her final venue in 2009 was the Annual Meeting in Boston. She looks forward to spending more time with her family and to future endeavors and new opportunities in retirement.

GUMPERT AWARD TO PRO BONO LAW ONTARIO

The 2009 Emil Gumpert Award for Excellence in Improving the Administration of Justice, went to Toronto-based Pro Bono Law Ontario (PBLO). The fifth winner of this award, PBLO had originally established a pilot program in Toronto that recruited, organized and trained private practitioners to staff a courthouse facility where income-qualified litigants could receive in-person brief services.

Named in honor of the College's founder and chancellor, the Gumpert award is the most prestigious award conferred by the College upon a public or private program.

According to Gumpert Committee chair **William J. Kayatta, Jr**. of Portland, Maine, the Committee found that in Canada there have not been as many institutionalized structures for matching eligible clients with private practitioners who are willing to provide pro bono assistance as there are in many parts of the United States. There are private lawyers willing to fill that need, but a relative absence of structures for matching them with clients.

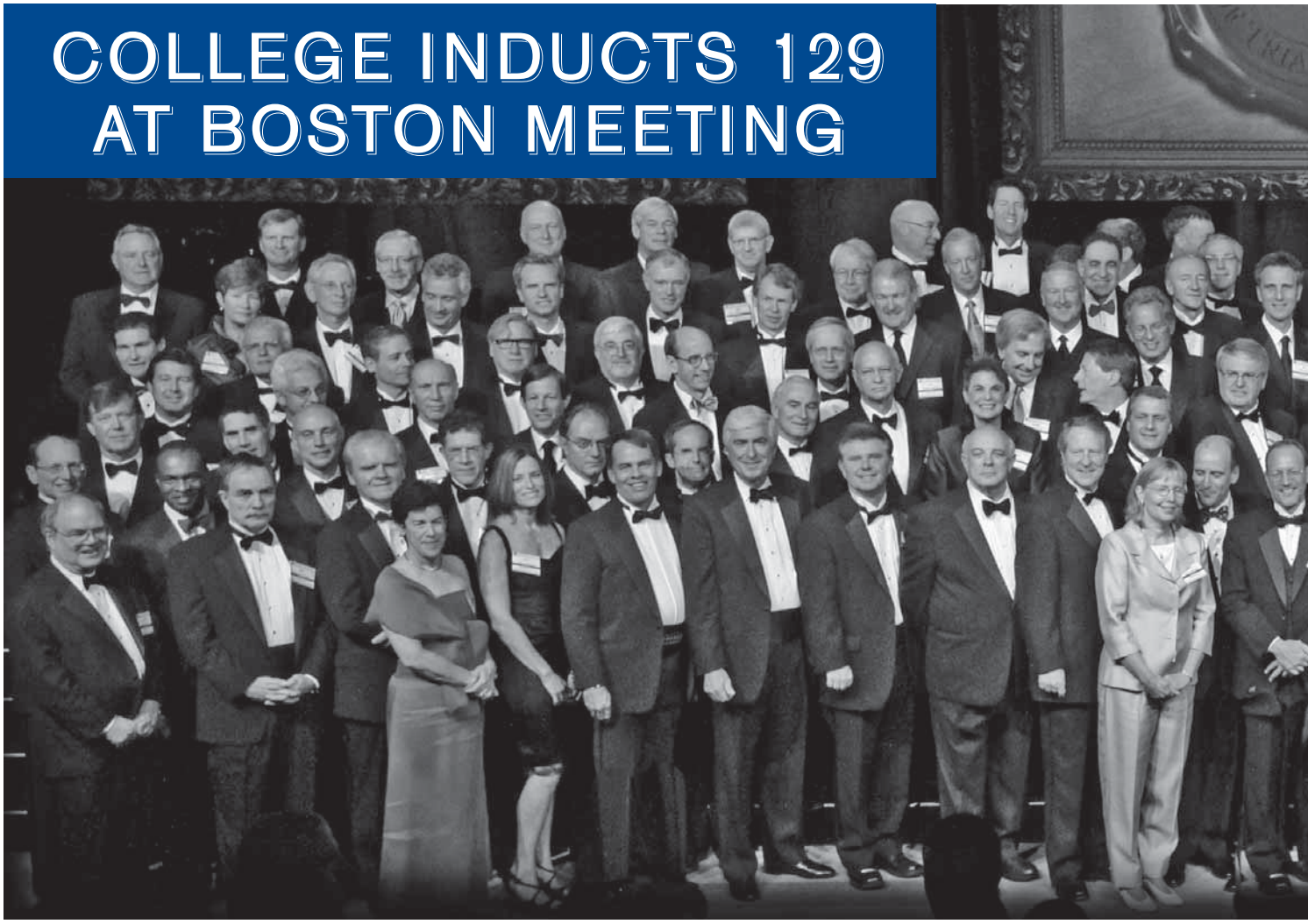
PBLO proposed in its application to the Gumpert Committee to use the $50,000 grant that accompanies the award to open up a full-blown office in Ottawa, the nation's capital, with the hope that it would succeed in and of itself, but more importantly, that it would spark replication across Canada.

Kayatta noted that all nineteen members of the Gumpert Committee had read every one of the thirty-five applications, narrowing them down to three finalists. Then, due diligence teams composed of two committee members each visited each finalist. From the reports of those teams, the committee recommended a winner to the Board of Regents.

Kayatta said, "By selecting PBLO, we sought to encourage and challenge our colleagues in Canada to speed up and broaden the change in the culture and practice of organized, systematic pro bono representation of low-income Canadians.

PBLO Executive Director **Lynn Burns**, accepting the award, disclosed that it would go to help launch the Law Help Ottawa Center. She noted that the Toronto pilot program had demonstrated the existence of a huge unmet need by serving 4,000 low-income unrepresented people in the first eight months of 2009.

COLLEGE INDUCTS 129 AT BOSTON MEETING



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Joe R. Whatley, Jr., *Birmingham*

ARIZONA:
Anthony J. Hancock,
Phillip H. Stanfield, *Phoenix,*
Anna C. Ortiz, *Globe,*
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Richard C. Bennett, *Oakland,*
Patrick W. Emery,
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Richard H. Schoenberger, *San Francisco,*
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Steven L. Larson, *Libertyville,*
Paul R. Lynch, *Mount Vernon,*
James E. Neville, *Belleville*

IOWA:
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John C. Gray, *Sioux City,*
Thomas D. Waterman, *Davenport*

KANSAS:
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Scott K. Logan, *Prairie Village,*
Zackery E. Reynolds, *Fort Scott*

KENTUCKY:
James T. Gilbert, *Richmond*

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Charles S. McCowan, Jr.,
John Michael Parker, *Baton Rouge*

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Gregg L. Bernstein, *Baltimore,*
John J. McCarthy, *Rockville,*
Timothy J. Sullivan, *Greenbelt*

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New York

UPSTATE NEW YORK:
Joseph E. Zdarsky,
Buffalo

NORTH CAROLINA:
W. Douglas Parsons,
Clinton,
Mack Sperling,
Greensboro

NORTH DAKOTA:
Keith W. Reisenauer,
Fargo

OHIO:
Robert M. Kincaid, Jr.,
Columbus,
John F. McCaffrey,
Roger M. Synenberg,
Cleveland

OKLAHOMA:
David B. Donchin,
Robert G. McCampbell,
Oklahoma City

OREGON:
Joseph C. Arellano,
Robert A. Shlachter,
Portland

PENNSYLVANIA:
Samuel W. Braver,
Kevin P. Lucas,
Pittsburgh,
Francis J. Deasey,
Dianne B. Elderkin,
John A. (Jack) Guernsey,
Michael M. Mustokoff,
Philadelphia,
Steven E. (Tim) Riley, Jr.,
Erie

PUERTO RICO:
Francisco J. Colon-Pagan,
San Juan

RHODE ISLAND:
Marc DeSisto,
Providence

SOUTH CAROLINA:
Terry E. Richardson, Jr.,
Barnwell,
G. Trenholm Walker,
Charleston

TENNESSEE:
Olen G. Haynes,
Johnson City

TEXAS:
Sam F. Baxter,
Marshall,
Eugene W. (Chip) Brees, II,
Austin,
Jim Burnham,
Dallas,
Tom Godbold,
Houston,
Douglas W. Poole,
Galveston

VERMONT:
Richard I. Rubin,
Barre,
Robert L. Sand,
White River Junction

VIRGINIA:
Robert M. Galumbeck,
Tazewell,
C. J. Steuart Thomas, III,
Staunton

WASHINGTON:
John L. Messina,
Tacoma,
Martin L. Salina,
Spokane

CANADA

ATLANTIC PROVINCES:
Robert G. Grant, Q.C.,
Raymond F. Larkin, Q.C.,
Halifax

BRITISH COLUMBIA:
Richard B. Lindsay, Q.C.,
Vancouver

ONTARIO:
Peter Cronyn,
Ottawa,
Patrick J. Ducharme,
Windsor,
Marie Henein,
Michael E. Royce,
Toronto

QUEBEC:
Yvan Bolduc,
Marie-Josee Hogue,
Doug Mitchell,
Montreal

INDUCTEE, RESPONDING, PRAISES JURY SYSTEM

As the verdict was read, Albert, not that tall but with a broad chest and strong arms, threw his arms around me and hugged me so tightly I literally had trouble breathing. With tears streaming down that grown man's cheeks, he said, "Thank you. I have never had anybody fight for me before. Thank you." And that's why I'm a trial lawyer.

John D. Saxon
Photograph by George Panagakos

The response of inductee **John D. Saxon** of Birmingham, Alabama, given on behalf of his fellow inductees, was an eloquent tribute both to the trial bar and to the jury system.

* * * * * * * * * * * * * * *

[I]am a first-generation lawyer. There were no lawyers or judges in my family. My father never got past the eleventh grade, my mother never got past the seventh grade. No lawyers lived in our neighborhood or went to our church. The first lawyers I met were at a men's clothing store at 1018 Noble Street in Anniston, Alabama called The Locker Room. I had worked there in high school and during college breaks. . . .

In my practice in Alabama I represent individuals, usually in Federal court, who have been mistreated in the workplace, of which we have no shortage. For all the things I do, for all the things I enjoy, there is nothing, nothing, like trying a case. You all know that, or you wouldn't be here. I'll never forget Albert Watson, an African-American truck driver for an independent petroleum company, called a racial slur by his boss. He objected. The company took prompt remedial action: it fired him. We tried his racial retaliation case . . . . When the jury returned, and it didn't take them long, they found for the plaintiff and awarded a six-figure verdict.

As the verdict was read, Albert, not that tall but with a broad chest and strong arms, threw his arms around me

and hugged me so tightly I literally had trouble breathing. With tears streaming down that grown man's cheeks, he said, "Thank you. I have never had anybody fight for me before. Thank you." And that's why I'm a trial lawyer.

You are no different. You are all here because of your God-given talent, your skills, your discipline, your hard work, your tenacity, a little bit of luck, an overriding commitment to your clients and to the adversary system and a bed-rock belief in the rule of law. We are all North America's advocates, whether we represent the government or the accused, corporations or individuals, employers or employees, manufacturers or consumers, insurers or insured, doctors or patients, plaintiffs or defendants. We are fighters and crusaders to defend and vindicate the rights of our clients in the cause of justice.

The product liability lawyers in the room know that a piece of earth-moving equipment made by Caterpillar can literally level a hill in no time, that a blast-hole drill manufactured by Ingersoll Rand can tear away the face of the cliff. But we all know in our minds and believe in our hearts that the greatest leveler known to man is not a piece of equipment. It is the courtroom.

Only in the courtroom is the tiniest, loneliest, frailest individual or the smallest of businesses on equal footing with the most powerful corporation or entity of government. Only in the courtroom is the holder of a single share of stock on equal footing with the most respected, savviest board of directors. Only in the courtroom is the lowly employee on the shop floor who's been grabbed and groped, called the N-word, made fun of because of a disability or denied a promotion because of her age, only in the courtroom does the word of that employee count as much as the foreman on the line, the HR director, the plant manager, the senior VP for Human Resources, only in the courtroom, that great leveler of North American society.

With our judges as our gatekeepers, we then do something that is absolutely astonishing. While not every case results in a jury trial, in many cases we entrust the resolution of our disputes and disagreements, matters often involving life and death, matters often involving large sums of money, to a collective group of individuals— not the learned class, not men and women trained for their role as finders of fact, but average people off the street— the woman who changes our sheets at the motel, the man who handles our bags at the airport, the retired English teacher, the secretary, the unemployed handyman, the doctor's wife, the purchasing manager of the local utility, the banker who loans us money to buy our cars, the salesman at the dealership who sells it to us, the mechanic who works on it, these are our jurors.

They come together, most often having never met before, six or twelve strong, and they come knowing nothing, nothing of self defense or reasonable doubt or bad faith or stress fractures on ball joints or the failure to warn or the failure to heed warnings, of the last clear chance doctrine, of comparative or contributory negligence, of the standard of care for inserting a catheter or whether the employee's rights have been interfered with under the Family and Medical Leave Act. And yet they do come together, choosing using one of their own to lead them. They then debate and discuss and deliberate. They sift and sort the charts and the graphs, the accident reports and the photos, the fire code records, the emails, the memos, the performance evaluations, the conflicting testimony, the arguments of counsel and the charges, often confusing charges, or special jury interrogatories given them by the judge.

Miraculously, out of that process these judicial novices, these newcomers to the courtroom give us a product called justice. It's absolutely amazing. When we finally hear that knock on the door, we bolt upright in our chair, the adrenalin pumping, our hearts racing, and we listen in rapt attention as that verdict is read, for the courtroom, lest we forget, is not for the faint of heart. Half of us rejoice at that verdict, but half do not. And let's be honest. All of us, all of us in this room have won cases we thought we would lose and lost cases we thought we would win.

But for all its failings, all its imperfections, all its limitations, all its shortcomings, the jury system is unlike any other. It is majestic. And most of the time they get it right: The duty was breached, plaintiff was harmed, causation proved and the plaintiff recovered, or the plaintiff is exposed as a malingerer or a faker. The defendant was guilty of the crime and was convicted, or the jury concluded that, even though they might have thought that the defendant did it, on this particular day in this particular courtroom, the prosecution did not

meet its burden of proof, and the defendant walks. For novices, they do it pretty well.

It is because of that level playing field called the courtroom, it is because of that magical collection of individuals called the jury that I am proud to say that I am a lawyer, that I am especially proud to say that I am a trial lawyer, and that I am honored tonight, as are my fellow inductees, to be a Fellow of the American College of Trial Lawyers. There is no nobler profession, there is no higher calling, there is no greater group of lawyers than trial lawyers, and there is no higher honor for a trial lawyer than to be a Fellow of the College, for which high honor we sincerely thank you.

bon mot

One of my courtroom heroes back in Alabama is Warren Lightfoot, President of the College from 2002-2003. Tonight (y'all can clap), tonight in tribute to Warren, I am going to deliver these remarks on behalf of all the Inductees in the same way in which he gave his closing arguments. I am going to start very slowly and just gradually peter out. . . .

I want to thank Jack Dalton for extending the invitation to me and the high honor to respond on behalf of my fellow inductees. When President Jack called, I was in Mobile in depositions. I returned to find a voicemail message that said, "This is Jack Dalton. I am a lawyer in Atlanta and President of the American College of Trial Lawyers. I need you to call me back." I thought, "Uh-oh, he's going to say there's been a mistake, or a recount, that as fine a fellow as I am, and as good a lawyer, I am just not quite American College of Trial Lawyers material, and because it would be so embarrassing for the College, they were going to make the President himself call that guy down in Alabama, and tell him the bad news."

Well, thank God, he didn't say anything like that. All he said was that he wanted me to stand up and speak on behalf of all the inductees to the very best trial lawyers in North America. Thanks Jack, no pressure there.

My wife asked me about this. She said would there be a lot of speeches, a lot of drinking. I said, "No, honey, actually, I don't think there will be much of either. It's just going to *be* lawyers and judges.". . .

I mentioned my wife, Betsy. The honor of my induction belongs at least fifty percent to her. For thirty-six years she has supported me in my every endeavor. She is my best friend, my biggest fan and my harshest critic. . . . Someone recently asked me . . , "Gosh, thirty-six years, that's a long time. What's the secret to being married for thirty-six years?" I said, "It's easy. For thirty-six years we've both been in love—with the same man.". . .

I . . . learned from Senator [Howell] Heflin that a good lawyer has to have a sense of humor. You have to indulge the foolishness we put up with from some of the judges we appear before. Senator Heflin regaled . . . with his stories of a small-town lawyer in northwest Alabama named No-Tie Hawkins. You would hear how No-Tie would win a case and go out and celebrate. He would stagger home at night, fumble with his keys, stumble across the threshold, falling down in the process. The commotion would wake his wife and she would holler down the stairs, "What do you have to say for yourself?" And No-Tie would holler back, "I don't have an opening statement, but I will take questions from the floor." Or No-Tie would lose a case and drown his sorrows at the pub. Again, he would stumble home, again he would wake his wife, again she would shout down the stairs. She said, "What do you mean coming home half drunk." And he would say, "I ran out of money."

John D. Saxon

PRO BONO EFFORTS GO BEYOND COURTROOM

Most successful pro bono efforts do not involve a trip to the legislature to lobby for a new law, but that's exactly what Fellow Chris Messerly of Minneapolis, Minnesota had to undertake in his efforts to achieve justice for victims of the 2007 collapse of the I-35W bridge.

Thirteen people died and 145 were injured when the bridge over the Mississippi River at Minneapolis fell on August 1, 2007.

But most victims would receive very little, Messerly knew, since Minnesota law capped the state's liability for any single incident at $1 million, to be divided among all the victims.

Chris Messerly

As president of a statewide trial lawyers group, Messerly had experience lobbying the state legislature, and so he led the effort to St. Paul to gain more compensation for victims and their families.

During the 2008 session, Messerly testified more than fifteen times before various committees, accompanied by some of the victims of the disaster. Eventually he helped draft the legislation that created a special state fund of $36.64 million for 117 clients.

Messerly, a partner in Robins, Kaplan, Miller & Ciresi, was the chief counsel for his law firm and a consortium of 20 small firms across Minnesota who decided to take on the case pro bono.

His firm donated more than $2 million in time—2,250 hours in 2008 alone. The firm also spent more than $1.2 million on medical and engineering experts and other expenses.

Messerly is the recipient of the second annual "Pro Bono Award" from the American Association for Justice for his role in the bridge collapse effort.

AMERICANS MAKING AND MADE BY THE CONSTITUTION

Massachusetts author William Martin, who has blended the historical novel and the mystery-thriller to create a unique genre, kept the Annual Meeting of the College in Boston spellbound with an address entitled, Americans Making and Made by the Constitution.

William Martin

Drawing on his own work, particularly his latest book, *The Lost Constitution*, he gave his audience a tour, laced with humor, of some of the lesser-known byways of American history. In introducing him, Past President Stuart D. Shanor described Martin's art as a master storyteller thus:

"In alternating chapters, William Martin creates . . . a fictional family, the members of which interact with . . . players in American history. He details the triumphs and the tragedies of this family from one generation to another . . . as he traces the devolution of an historic treasure. That historic treasure becomes the object of the . . . modern-day search of [his protagonist] Peter Fallon. . . . [H]e truly brings history to life . . . with meticulously researched historical fact and with vivid descriptions of the roads and the highways, the trails, the streets, landscapes, historic buildings, the well-known watering holes of Boston and New England as they were then, and as they have evolved to a modern day."

Descended from a long line of Irish storytellers, Martin, by his own account, majored in English before lunch at Harvard, worked as a historical research

assistant in the afternoon and directed theater at night. Setting out for Hollywood, he earned a Masters in Fine Art in Motion Picture Production from the University of Southern California. He had written his first novel, *Back Bay,* which had not yet been published, when he was given an opportunity to write the script for his only movie, *Humanoids from the Deep,* which became a cult classic.

Back Bay became a New York Times best seller, and Martin has since written seven more historical novels, has over three million copies of his books in print, and has authored a PBS documentary on the life of George Washington.

Plunging into his subject by commenting on the procession that had launched the morning program, Martin led the audience on a trip through some of the more obscure byways of history. His remarks, edited for brevity, follow:

THE FLAG OF THE GRAND UNION

It was a pleasure to walk in [to the dais] behind the flag of The Grand Union. . . . [S]ome of you may have noticed . . . the 13 stripes and the Union Jack in the canton. It's just one more little piece of New England history. . . . [T]he first time that the British ever saw that flag was right over here on Prospect Hill in Somerville . . . . It was January 1, 1776. George Washington had been watching his army melt away . . . . The enlistments had ended on January 1st. The British could have broken out of Boston (which was under siege at the time) . . . in any direction and knocked a hole in the Continental line and probably ended the Revolution right there.

But George Washington said, "Let's put on a show." And so, he had that flag, which had just been agreed upon. . . the thirteen colonies, but the Union Jack in the corner, showing that . . . [they were] still loyal to the King, because they had made something called the "Olive Branch Petition" to the King, and they were hoping that there could be reconciliation.

They rode out to the hill in Somerville, and they raised the flag. And the British on Bunker Hill looked over and thought, "Those look like a clown's pantaloons. Or is it a surrender flag?" Well, they found out differently over the next eight years. [T]hat story just popped into my mind as I walked in behind that flag. . . .

AMERICAN HISTORY BEGINS

But Massachusetts history does not begin in 1776, and whenever I come down here, I . . . look out in that harbor, and I see the ship *Arabella* coming into Massachusetts Bay and up into Boston Harbor in 1630, the arrival of the Puritans. They dropped anchor, and John Winthrop gave a speech, a sermon, on the deck of the ship . . . in which he looked out at this land, which then was all green and much hillier and completely wild, and he said, "We must make of this a city upon a hill. And if we fail at this work, we will become a story and a byword for all the world." And so, that in a way is where American history begins. . . . And I guess that's what we like to think we have been trying to do in American history ever since. . . .

MARTIN'S APPROACH TO HIS WORK

Why am I drawn to historical fiction? . . . First of all, you can never have writer's block . . . there's always research to do. Secondly, there are always characters, . . . characters you love, characters you love to hate, characters you hate. . . . And you always have three-act structures. . . . [Y]ou can analyze something as enormous as the movement of those white Europeans from Boston Harbor . . . all the way to the West Coast of America, or something as discrete as the three days at Gettysburg,

and you will see the three-act structure by which all good storytelling exists, the beginning, the middle, the end: the character confronts the decision to act; the character acts, the character confronts the consequences of his actions. Or, as I like to say, get the character up in the tree, throw rocks at him, and get him down out of the tree. Three-act structure is implicit in historical momentum and in historical movements. . . .

[A] little bit about some of my books and about the idea of the lost artifact that becomes a talisman that holds a a story together. I have used that artifact through several books: a lost tea set in *Back Bay*, the lost log of the Mayflower in *Cape Cod*, a lost Shakespeare manuscript in *Harvard Yard* . . . . One of the things I try to do in these novels is not just to show you the grand ideals of the historical figures that pass through the story, but also some of their failings as well. . . . [*Harvard Yard*] is about a lost Shakespeare manuscript, lost in the John Harvard Library. And if those Puritans had gotten their hands on it, they would have burned it, because they hated Shakespeare. . . . .

THE GENESIS OF THE LOST CONSTITUTION

[A]fter I finished *Harvard Yard*, my agent said to me, "That one did pretty well . . . . That Peter Fallon character is really becoming a franchise character for you. . . . [A] few years ago when I was thinking about what my next Peter Fallon novel would be, I sat down with my agent in New York, . . . and he said to me, "How about a novel about a lost first draft of the United States Constitution on which all of the delegates have left their thoughts on what the government really ought to look like? And if we can get our hands on that lost first draft, we will find that their vision of what America was supposed to be all about was completely different from what it turned out to be."

Well, I poked a few holes in that. I said, "First of all, nothing was supposed to leave the room. There was a pact made by those gentlemen as they sat and debated through those three long months in Philadelphia that nobody would talk outside of the room unless they were in committee session.". . . I mentioned also that they did ratify a Constitution eventually, and so what did it matter what the notes were on the first draft?

None of these things would sway him. . . . I called up a friend of mine at the Massachusetts Historical Society . . . and I said, "Peter, have you ever heard of a first draft of the Constitution that's been annotated?" And without missing a beat, he said, "We have one.". . .

When I walked into the library of the Massachusetts Historical Society, . . . waiting for me on a library table were three manila folders. I opened the first folder, and there, by God, is the first draft of the United States Constitution. Fifty-five copies printed on August 6, 1787, after they've gone through a lot of the debates, but before they've hammered out the details, before they're finished. . . . The paper was heavy, heavy and well-made paper, large folio sheets, four of them, seven columns of type on the four folio sheets, large column of type down the right side of the page, 16-, 18-point type, large enough to read from a distance, and then a column that was blank. The column on the left was available for notations.

Then I moved to the second draft. September 16, 1787, that one quite similar to the first draft. And then I moved finally to the third folder. I opened that, and there was the printed copy as it was promulgated in "The Broadside," printed in the *Pennsylvania Packet and Daily Advertiser,* September 17, 1787, the final Constitution, the one that they're going to try to get ratified. Now, that

copy, of which thousands were printed, today . . . the last . . . one . . . went for $250,000 at auction. . . . I go back and look at that first one again: fifty-five copies printed for the fifty-five delegates. Only sixteen of those copies still exist. George Washington's copy is at the National Archives. There is not a mark on it. . . .

The draft that I'm looking at there, though, belonged to Elbridge Gerry of Massachusetts, a delegate to The Continental Congress, a delegate to The Constitutional Convention, later the Governor of Massachusetts, Vice President of the United States, and the man who gave his name to the term "gerrymandering." Elbridge Gerry's draft of the Constitution contains his annotations. It contains some of his thoughts and ruminations.

Then I go back and look at it more closely. . . . There are additions; there are deletions; there are things marked out, there are little carets with little sentences written in the margins. A period is changed to a semicolon, a comma to a colon, et cetera, et cetera. When you look at this document, when you look at Elbridge Gerry's notations on the document, you are reminded of something that James Madison wrote: "Every word, every punctuation mark in this document decides a question between liberty and power."

The last article on that first draft was the one that made me decide that I wanted to write a novel . . . . The last article in the first draft, it later got folded in a little bit earlier in the second draft, states that every office holder in this government, federal, judiciary and legislative branches, shall take an oath to this Constitution. . . . We all accept that. But then Elbridge Gerry, in his small, tight careful little script, puts in a caret between the word "Constitution" and the period, and writes beneath it "but no religious test shall ever be required of any officeholder in this government."

Just in case you've missed the part about the separation of church and state, there it is in his handwriting. I saw that, and . . . it gave me chills. I said, "I have to write a novel about this." And so, I hatched a novel about a first draft of the Constitution that belongs to one of the New England delegates, and the New England delegates in caucus all start leaving their notations on it, because Elbridge Gerry is saying to them "I will not sign this unless it has a Bill of Rights," and so they all leave their thoughts on the document as to what a Bill of Rights ought to look like, and that's the jumping off point.

And in the modern story, Peter Fallon gets involved because there is a move afoot to repeal the Second Amendment, "A well-regulated militia being a necessity to the security of the free state, the right of the people to keep and bear arms shall not be infringed." You all know that one. . . . I just use that as a jumping-off point into a novel about the United States Constitution and some of the people who have, in the process of being changed by it, helped to change the country. Let me introduce you to three of them.

SHAYS REBELLION

The first of them is a stolid farmer, a man who basically tills the soil, leaves no great thoughts behind, leaves very little written record of himself. We don't really even know what he looked like. He arrived back from the American Revolution . . . at his farm in Pelham, Massachusetts in the early 1780s and soon saw his neighbors losing their farms.

They were losing their farms because . . . Massachusetts had raised the taxes and had

stopped taking the Continental script that these men had been paid after their service in the American Revolution. The state was only taking gold, because it was with the gold that they were paying back their debts from the American Revolution. And every fall, the courts [came] . . . . There would be bankruptcy proceedings issued against farmers who had come back from the American Revolution, and they would lose their farms, one after another.

Daniel Shays joined with a group of other farmers throughout Massachusetts and said, "This must stop. We will close the Courts of Common Pleas, and we will rebel, and we will keep this rebellion up until the State of Massachusetts gives us some kind of relief." And so in the fall of 1786, they marched on the courthouse in Northampton, and then on the courthouse in Worcester, and then on the courthouse in Taunton, and nearby here in Concord, and in Western Massachusetts as well.

This was Shays' Rebellion. In January, in a blizzard, he and a column of farmers, some of them former military men, attacked an armory on the high plain above Springfield. . . . Grapeshot was fired over their heads, and then grapeshot was fired into them, and they retreated, disappeared back through a blizzard, back into the hills of central Massachusetts.

While this rebellion was going on, men from across America were watching it. George Washington watched it and said in a letter to Henry Knox, "Only a Britain or a Tory could have conceived of such a dark cloud rising upon the brightest sun that has ever risen upon democracy.". . . From France, Thomas Jefferson observed what these Massachusetts farmers were doing and said with his sort of sanguine way in a letter to the president of Yale, "Oh, what signify the deaths of a few in a few centuries. The tree of liberty must be watered from time to time by the blood of patriots and tyrants both. It is the natural manure.". . .

Henry Knox wrote back to George Washington in a letter something that was also echoed by Alexander Hamilton in one of the *Federalist Papers*. "This time it's just a farmer from Massachusetts, just a lieutenant from your army. Next time it could be a Caesar or a Cromwell. What will we do then?"

THE BIRTH OF THE CONSTITUTION

With that knowledge that they needed systems by which to address the complaints of farmers like this, they needed a financial system that did not work on the basis of barter and only within the States, but would communicate across the thirteen states. And they needed a real army to put down rebellions like this.

With all of that in mind, the men who went to Philadelphia in May of 1787 . . . . had gone there only to address the Articles of Confederation, but with the awareness of what rebellion like Shays' Rebellion could do, they went hammer and tongs at the Articles of Confederation. They went completely outside of the purview of their charge from the individual states and began the process of creating a Constitution under which we now live. . . .

[Y]ou can walk all over Boston and see the homes of the men who helped to start the American Revolution. But when you go out to central Massachusetts to see Daniel Shays's house, you won't see it. . . . [W]hile the house survived in a falling-down condition until the early 1900s, the men of Boston finally had their victory. They bought up four towns in central Massachusetts in the 1930's and damned the Swift River, and it began to rise and inundate those four towns. And one of the

first things that it inundated was the property on which Daniel Shays had done his farming. It then inundated the property on which the tavern had stood where the rebellion had begun. . . . So all physical evidence of Daniel Shays—even how he looked—has been erased.

THE ROLE OF PLACE

One of the things that I like to do in these novels is write about places as much as about people and give you a perspective on places, like Daniel Shays' home having been transmuted into the Quabbin Reservoir.

There is a place in Brunswick, Maine where you can stand and you can look to your left and you can look to your right, and in one span of your gaze, you will see the very beginning and the very end of the American Civil War, the alpha and omega. To your left you will see a Carpenter Gothic church, in which on a March Sunday in 1851 a woman . . . the wife of Calvin Stowe, Professor of Natural and Revealed Religion at Bowdoin, . . Harriet Beecher Stowe, had a vision of a slave rising up to his rightful reward. She went home and wrote a novel. Ten years later, Abraham Lincoln met her in the White House, shook her hand and said, "So you're the little woman who wrote that book that started this great big war?"

Directly across the street from that house is a . . . house . . . that was lived in by a young professor of rhetoric by the name of Joshua Lawrence Chamberlain. Chamberlain saw what was happening in the Civil War, and even though he was supposed to have gone on sabbatical in the spring of 1862, . . Chamberlain looked at [a] . . . small civil war between a couple of religious groups [at Bowdoin] and decided that the much larger civil war that was exploding on the American scene was a far more significant event, went to Augusta, Maine and told the governor that he'd like to be part of the next regiment that was raised.

And the governor of Maine said to . . . Chamberlain, "You don't know a lot of military matters." And he said, "No, but I have always been interested, and what I don't know, I will learn." . . . Joshua Lawrence Chamberlain learned so well that on the second day at Gettysburg, he made a series of command decisions worthy of a four-year graduate of West Point, which saved the federal left on that day. . . . "Stand firm, ye boys from Maine."... You will meet him in *The Lost Constitution.*

Chamberlain was wounded at Petersburg. . . . He was left for dead on the field. He was breveted to brigadier general at the time. He went home, he recovered, and then he announced that he was going back. And they said, "Why are you going back? You've served enough." He said, "It is fate. It is ordained. The South has defied the honor and authority of the Union. They have defied the Constitution."...

[His] service was so highly regarded that at the end of American Civil War, the very end when the Grand Army of the Republic paraded down Pennsylvania Avenue that spring, the last man in the parade, riding on his horse, carrying the American flag in the position of absolute honor, was Joshua Lawrence Chamberlain. He went back to Maine, returned to that little house across the street from the church where Harriet Beecher Stowe had been inspired. He would become the president of Bowdoin, he would teach every course at the college and he would become the Governor of Maine.

WOMEN'S SUFFRAGE

In 1870, . . the final amendment of the American Civil War was ratified in the Constitution . . . the 15th Amendment.

That amendment stated that voting rights would not be withheld or rescinded on the basis of race, color or previous condition of servitude. During that period of the Civil War, there had been women on Capitol Hill who had been working very hard, led by Susan B. Anthony and Elizabeth Cady Stanton, trying to have one more word put into the 15th Amendment: "Gender." And they could not get it.

About year after. . . Chamberlain became governor, a young woman was born in Melrose, Massachusetts. . . . [Her] name was Maud Wood Park . . . . She grew up, attended Radcliffe College, graduated in the class of 1898 and was astonished to find that . . . only two of the 72 graduates with her agreed that women should have the vote. She became an important figure in the National Woman's Suffrage Association. She attended the last convention at which Susan B. Anthony spoke. She emerged into a period of enormous constitutional change or enormous period of amendment activity.

From 1870 to 1913, there had not been an Amendment, and then in short order, we saw the income tax amendment . . . . We saw the direct election of senators amendment, and we saw the enactment of Prohibition as well. But there was another amendment that needed to be enacted. And in 1916, she joined with other women and formed what was called the Front Door Lobby. They went to Capitol Hill and pounded on every door of every Senator and every Representative in order to get them to get that amendment out to the States.

Now, as you all know, the Constitution provides . . . a mechanism for its own change, but it isn't a very easy mechanism to make operate: two-thirds majorities in the House and Senate, and then you have to go back and get a three-quarter majority of the States approving the amendment. Is it any wonder that since the Bill of Rights in 1791, there have been some 10,000 efforts to amend the United States Constitution and only 17 successful amendments beyond that initial 10?

But she succeeded. A Senator would later say of Maud Wood Park, "She gave lobbying a good name.". . . When the National Woman's Suffrage Association achieved victory in 1920, she went on to form the League of Women Voters, a new way to educate women into their new role in American society. And it was all done through her work with the mechanism that the Constitution had left for her.

CONCLUSION

So, there you have three Americans making and made by the Constitution: A reluctant farmer, a ferocious defender of the Constitution and a woman who used the system in its most sophisticated way in order to achieve an important change in American society.

When Ben Franklin left the Constitutional Convention on the night after it had been signed, after the Constitution had been signed in Independence Hall, . . Mrs. Powell . . . the party-giver at the time in Philadelphia , . . looked at Ben and said to him, "So what have you given us, a republic or a monarchy?" To which Franklin replied, "A republic, if you can keep it."

A few years later, Ben wrote to a friend in Paris, "The Constitution is now well-established and seems to give an appearance of permanence. But in this life, it can be said that nothing is certain except death and taxes."

And so, ladies and gentlemen -- and this is an audience to which I do not need to make this final urging: be vigilant.

HUMOR OF WILLIAM MARTIN

One more little story about the American Revolution: the commandant of the British troops who were occupying the City of Boston of course had to report back to King George, and in one of his reports, he was asked about the revolutionary fervor in New England. And he said "If I could just get rid of all of the lawyers in Boston, this revolution would die."

* * * * * * * * * * *

I graduated from Harvard, and I said to my father, "Dad, I want to go to film school." And he said, "Film school? I'd really rather see you go to law school. But if you don't do what you want to do when you're young, you'll spend the rest of your life looking over your shoulder. So I went to film school."

Some 30 years later, my second son graduated from Harvard and said, "Dad, I want to go to film school." And I said, "Film school? I'd really rather see you go to law school, but as your grandfather said to me . . . ."

He's now working in Hollywood.

* * * * * * * * * * *

I write novels. Or, as one of my kids once said when he was six or seven years old—they were all talking about what their fathers did— and he said, "Well, my dad goes up into a room every day and makes stuff up." And so I have been doing that, and believe me, it beats real work.

* * * * * * * * * * *

They said to me, Bill, we have the title, and we have the tagline . . . .[for the only movie script that Martin wrote, *Humanoids from the Deep*. . . .] And the tagline, forgive me, ladies, was, "They're not human, but they hunt human women, not for killing—for mating." So, now you know why my wife was embarrassed to stand up and take a bow.

* * * * * * * * * * *

[From a conference with his literary agent] "Bill, you've got to do this book. You've got to do this book. This could be like, this could be like, like *The DaVinci Code*.

Every day since that book was published, there has been, somewhere in New York, an agent sitting with a writer, leaning across the table, and saying, "It could be like *The DaVinci Code*."

SHANOR RECOGNIZED FOR COLLEGE FOUNDATION LEADERSHIP

Stuart D. Shanor

At the Annual Meeting in Boston, **Stuart D. Shanor** of Roswell, New Mexico, retiring President of the Foundation of the American College of Trial Lawyers, was recognized for his leadership of the Foundation. President of the College in 2001-2002, after his term on the College's Executive Committee was over, Shanor had become a Trustee and then President of the Foundation.

In recognizing Shanor's contribution, College President **John J. (Jack) Dalton** said:

"As the 501(c)(3) nonprofit arm of the College, the Foundation is funded by your voluntary contributions, memorial gifts and bequests. The Foundation awards grants to assist worthy groups making contributions to the legal community. A few of the past recipients have been the National Criminal Defense College, the National College of District Attorneys and awards to law students in debate competitions and essay contests in both the United States and in Canada. The significant grant of funds in the Emil Gumpert Award comes from our Foundation."

"Stu Shanor first served as a member of the Board of the Foundation for two years, and then for four years as its President, increasing and monitoring both contributions and gifts with patience and precision. His professionalism and devotion to the ideals of College have been boundless. This commitment to those of us lucky enough to know him and work with him has been appreciated by all."

"I am proud to recognize Stu Shanor for his many contributions to the College."

COLLEGE MANUALS: "MUST" READING FOR ALL FELLOWS

The College functions principally through its committees. Both the Manual for General Committees and Chairs and the Manual for State and Province Committees and Chairs are posted in the Publications section of the College website.

In the wake of the recent chairs workshops, at which it became apparent that these manuals are not being fully utilized or in some instances are being ignored, it came to light that these manuals are listed on the website under titles that erroneously imply that they are intended for committee chairs only. On the contrary, they are intended to guide every member of a College committee.
It is important that every member of a committee, and not just the chair, becomes familiar with the contents of the relevant manual.

The website listings are being revised to reflect that they are indeed intended to be read and followed by all committee members, and not just the chairs.

In the past, lack of familiarity with these manuals has in some instances led general committees or subcommittees to undertake projects that have not been approved in advance by the Board of Regents or the Executive Committee. This approval process is necessary to assure that a proposed project is an appropriate one for the College and is not redundant of past or ongoing work of another committee. Some projects have been unnecessarily delayed by the drafting of a proposed publication that did not follow the publication guidelines contained in Appendix C to the Manual for General Committees and Chairs.

These oversights have in turn led to frustration on the part of those who have invested time and energy in such projects. On occasion, a lack of general familiarity with previous College publications listed on the website has led to consideration, discussion and debate on issues dealt with in the past on which the College had already taken a position.

At the state and province level, the Manual for State and Province Committees and Chairs, a substantial part of which describes the process by which potential new Fellows are identified and processed, should be required reading for *all* Fellows. The College's continued viability as the leading organization for trial lawyers is diminished when lawyers who should be considered for membership are overlooked because of a lack of general understanding of the qualifications for fellowship and the process by which they are identified and evaluated.

Every Fellow is encouraged to log onto the College website, entering his or her name and password, so as to gain access to these internal publications, which are located in the "members only" section of the website, and to take the time to become familiar with the contents of these manuals.

JOAN LUKEY INSTALLED AS FIFTY-NINTH PRESIDENT

FIRST FEMALE PRESIDENT

In accepting the maul that is the symbol of the presidency of the College, ***Joan A. Lukey*** *of Boston, the College's first female president, placed the College's recent history in a larger historical context.*

Joan A. Lukey and John J. (Jack) Dalton

Photograph by George Panagakos

President Lukey pointed out that there was "a trial less than a mile from here in 1768 that involved the young John Adams in his early years as a trial lawyer. I am not speaking of the Boston Massacre trial . . . . This was a case of much less note in terms of the substance of what was involved, but you will understand in a moment why it was so important. In 1768, John Hancock was prosecuted by the Crown for allegedly smuggling 300 barrels of wine into the port on his sloop, the *Liberty*, and he smuggled it in order to avoid paying the customs taxes on it. . . .

"Now Adams was hired by Hancock to represent him in that, and the outcome isn't very important. It was sort of a compromise outcome. What was important was the nature of the court in front of which the young Adams was required to defend his friend. It was called the Vice-Admiralty Court. The judges' compensation was a contingent fee based on the amount of the tax they imposed on the litigants in front of them. . . .

"John Adams was so appalled by the notion that a court could be one whose compensation was determined by whether, and to what extent, it imposed penalties on the litigants being prosecuted that he became passionately committed to the concept of an independent judiciary. That passion appeared in the Massachusetts Constitution, for which he was the principal drafter, and as you heard from Chief Justice Marshall, that Constitution was the principal basis of the United States Constitution, under which we still live today. Now, two and a half centuries later after the trial of John Hancock, we have obviously come a very long way in terms of the independence of the judiciary and the administration of justice generally."

Lukey then went on to point out the respects in which the College, either acting collectively or through its Fellows acting individually, has played a key role in furthering the administration of justice over the last fifty-nine years. First, she reminded the Fellows that when the Supreme Court decided to end racial segregation and Alabama Governor George Wallace announced his intention to defy that, "[I]t was Fellows of this College who called him out on that and ultimately forced the Governor to comply with that . . . Supreme Court decision."

"Secondly," she continued, "when we in our generation had our own version of the Teapot Dome Scandal— I am referring, of course, to the Watergate years— it was both a Fellow of the College who defended President Nixon, my former partner, now deceased Jim St. Clair, and it was a Fellow of the College, Leon Jaworski, who prosecuted that matter in perhaps the greatest political scandal of our generation."

"And finally," she concluded, "and I think maybe of most import to the crowd that sits here today, many, many Fellows of this College have defended the Great Writ, the writ of *habeas corpus*, by defending disenfranchised, vulnerable detainees at Guantánamo Bay. They have done it with skill, they have done it without compensation, and they have done it because it was the right thing to do."

Lukey enumerated some of the more recent significant accomplishments of the College, including the publication of an updated aspirational code of pretrial and trial conduct, with a glowing preface by Chief Justice John Roberts, the publication of a new work, *The Anatomy of a Patent Case,* and the approval by the Board of Regents of Model Rules, prepared by the College's Task Force on Discovery and Civil Justice, "an attempt to make suggestions to the state and federal judiciary as to ways in which we might stem the tide of the vanishing jury trial."

"As we heard from our wonderful responder tonight," she observed, "the jury trial is the core of what we do. If we don't save it, nobody will."

Quoting Associate Justice Sandra Day O'Connor about the burden of being the first at anything, Lukey thanked all of those who have stepped forward to assure her of their support in making her year at the helm of the College a success.

bon mot

This week you have seen and heard a lot about the historic city of Boston and Commonwealth of Massachusetts. I just wanted to quickly be sure that you were aware of some of the laws and statutes of this jurisdiction that can't be found, as far as I know, anywhere else in the country, or probably the world. For example, it is of historic significance that you can duel to the death on Boston Common on Sunday, but only if the Governor is present. . . [Y]ou cannot be either a Quaker or a witch in Massachusetts, but equally important, you may not add—I'm not kidding—you may not add tomatoes to your clam chowder, which would make it too close to Manhattan chowder. And my personal favorite—this is an existing law—it is illegal to keep a mule on the second floor of a house unless you have two exits.

***Joan A. Lukey**, in her acceptance speech*

PATENT CASE MANUAL IS NOW AVAILABLE

In response to the recent increase in patent litigation, the College's Complex Litigation Committee has produced a concise manual to detail each phase of a patent case for judges and lawyers.

Titled *Anatomy of a Patent Case*, the manual is available for $155 through the College's Web site, actl.com.

A Judicial Board of Advisors from the U.S. Courts of Appeals for the Federal Circuit, the Third Circuit and District Courts reviewed the written manuscript to provide commentary and the benefit of their expertise.

"District judges confronting a patent case and the lawyers litigating the case owe a debt of gratitude to the (College's) Complex Litigation Committee . . ." commented Hon. Avern Cohn, Senior District Court Judge for the Eastern District of Michigan. "It is a practical guide which puts judges and lawyers on the same page in the handling of a patent case, starting with a proper read of the patent through the appeal and possible remand."

Hon. Paul R. Michel, Chief Judge of U.S. Courts of Appeals for the Federal Circuit, added, "In this unique manual, a group of veteran patent litigators and a Judicial Board of Review of appellate and district court judges combined their talents to guide trial judges and practitioners through the web of complex problems arising in patent infringement actions as they proceed from filing to trial judgment. Perfectly meshing legal theory with trial practice, this manual will serve advocates and adjudicators equally well."

Fellow **George F. Pappas** is chair of the Complex Litigation Committee.

FOUR NEW REGENTS

Bartholomew J. Dalton, Dalton & Associates, PA, Wilmington, Delaware, is a 1974 graduate of St. Joseph's College in Philadelphia and received his law degree in 1977 from the University of Tulsa College of Law. A Fellow since 2004, he was Delaware State Chair in 2005-2007 and is a past president of the Delaware Trial Lawyers Association. He becomes Regent for Delaware, New Jersey and Pennsylvania.

John M. Famularo, Stites & Harbison PLLC, Lexington, Kentucky, is the new Regent for Kentucky, Michigan, Ohio and Tennessee. A 1992 inductee, he is a 1968 graduate of Loyola University and received his J.D. in 1971 from the University of Kentucky. A former Kentucky assistant attorney general, he also has served as assistant commonwealth attorney, and as chief district court judge.

Samuel H. Franklin, of Birmingham, Alabama takes over as Regent for Alabama, Florida and Georgia. A founding partner of Lightfoot, Franklin & White, LLC, he graduated with high honors in 1969 from Auburn University and received his law degree in 1972 from the University of Alabama School of Law. He then received his LL.M. degree in 1973 from Harvard University. A Fellow since 1992, he was Alabama State Chair in 2006-2008 and is a past president of the Alabama Defense Lawyers Association and the Alabama Law Foundation.

Michael W. Smith, Christian & Barton LLP, Richmond, Virginia, a Fellow since 1989, is the new Regent for North Carolina, South Carolina, Virginia and West Virginia. A 1966 graduate of Presbyterian College in Clinton, South Carolina, he received his law degree in 1969 from the University of South Carolina. A past president of the Richmond Bar Association, he also served as clerk for U.S. District Court Judge Robert R. Merhige.

LIEUTENANT GOVERNOR WELCOMES COLLEGE TO BOSTON

The Honorable Timothy P. Murray, Lieutenant Governor of the Commonwealth of Massachusetts and former three-term mayor of that state's second largest city, Worcester, welcomed the College to Boston, reminding the Fellows of that city's place in American history. His remarks follow:

Timothy P. Murray

On behalf of the people of Massachusetts, it is my pleasure to welcome the American College of Trial Lawyers here to Boston and to the Commonwealth, the birthplace of our American freedom . . . . And we are certainly proud that one of our own, Joan Lukey, is stepping up to lead this fine organization shortly. We wish you, Joan, great success in your presidency. . . .

Of course I may be biased, but I can't think of a better place for you to host this event because of your mission and because of the history of our American judicial system. It traces its roots right back to the city.

So let me welcome you to Massachusetts by relating two brief stories from our Commonwealth's legal history. The first story may be familiar, and the second may not. First, the rule of law, equal rights for all, the ability to resolve disputes peaceably, these are the workings of our judicial system. They're what separate our society from the tyrannies of this world, and they were framed for America right here by the Massachusetts Constitution, ratified on June 16, 1780, and which served as the template for the United States Constitution.

John Adams, the principal author of our state constitution, included within it a Declaration of Rights, which is the

template of the US Bill of Rights. The fundamental contract in that declaration, as Adams wrote, is that Massachusetts must "have a government of laws, not of men." Adams believed that liberty rests on a judicial system that protects the rights of all people, and that a proper defense for anyone accused is a critical element of its system. Without a proper defense, all of our freedoms are in jeopardy.

Adams not only believed in it in theory, he also lived it. As a lawyer in Boston in the midst of a revolution, John Adams stood up and defended the British soldiers accused in the Boston Massacre, and he won acquittal for all but two of them, because in fact they were acting in self-defense. John Adams, an ardent patriot, who worked to throw off the yoke of colonial oppression, took that case because he knew that the rule of law and the integrity of our justice system were more important to establishing a free society than the passions of the day. He called it one of the most important contributions he made in public service . . . .

Now, a bit of Massachusetts history you may not know. Levi Lincoln, Sr. was a lieutenant governor and a governor of Massachusetts, and he served as US Attorney General for Thomas Jefferson. Before all of that, Levi was a lawyer in Worcester, Massachusetts. And in 1781, he took a case of a runaway slave named Quock Walker. Walker was an African sold into slavery as an infant in 1754, along with his parents, to a farmer named James Caldwell. After Caldwell's death in 1763, his widow married Nathaniel Jennison, and Quock Walker became the property of Jennison.

Some eighteen years later when Walker was twenty-eight years old, he ran away from the Jennison farm to assert his freedom. Walker said that his original master, the elder Caldwell, had promised him freedom by the age of twenty-five. Walker fled to the old Caldwell homestead, where his former master's sons gave him shelter and supported his claim for freedom. Jennison, however, recaptured Walker, hauled him back to his own farm, beat him severely for his attempted flight to freedom.

When word spread of the incident and the assault, two of Worcester's leading attorneys, Caleb Strong and Levi Lincoln, Sr., took up the case in Walker's defense. Not only did Levi Lincoln and many of his contemporaries believe slavery was morally wrong, they believed it violated the newly ratified Massachusetts Constitution. A series of civil and criminal cases ensued, and eventually Quock Walker's case made it to the Massachusetts Supreme Judicial Court. At that trial, Levi Lincoln, Sr. took the lead and based his argument on the freedoms John Adams wrote in our state Constitution.

Given the rules of the day, the case was tried before a Worcester County jury, sitting with the Supreme Judicial Court. In his charge to that jury, Chief Justice William Cushing said the following, and I quote, "The framers of our constitution of government, by which the people of this Commonwealth have solemnly bound themselves, declare that all men are born free and equal, and that every subject is entitled to liberty and to have it guarded by the laws, as well as his life and property. In short, slavery is, in my judgment, as effectively abolished as it can be." The jury convicted Jennison, fined him 40 shillings, and set Walker free. This case ended slavery in Massachusetts and stoked the passions of abolition elsewhere.

It would take another generation in the searing heat of the Civil War to finally consume the awful institution of slavery throughout the United States, but ideal of true freedom for all people in this country began here in Massachusetts. It echoed with the shot heard 'round the world. It followed through the quill pen Adams used to draft our Constitution. It leapt to life on the floor of the Supreme Judicial Court as Levi Lincoln, Sr. argued his case, and it was codified for the nation by Levi Lincoln's descendant, Abraham Lincoln, with his Emancipation Proclamation.

So as you see, the planners of this conference had great historical wisdom to bring you here, to the very place where our judicial system was built and where the legacies of Lincoln and Adams continue to inspire us all to do our part for freedom, justice and equal rights for all Americans.

IN MEMORIAM

In this issue we note the passing of 37 Fellows, the oldest at 96, the youngest at 48. Twenty-six of these had some sort of military service, 20 of them in World War II, 5 of whom also served in the Korean Conflict, 4 who served solely in the Korean Conflict and two with peacetime service. They include: a World War II veteran who, part of the prosecution team at Nuremberg, interviewed Hermann Goering, head of the Luftwaffe and organizer of the Gestapo; one who served in General George Patton's army and later led a M.A.S.H. unit in Korea; one who participated in two of the bloodiest battles in Marine Corps history, witnessed the raising of the flag on Mount Suribachi during the battle for Iwo Jima, then fought in the Battle of Chosin River; one who at his retirement as a Major General was the highest ranking member of the Marine Corps Reserve, and one who flew a weather reconnaissance mission westward from Guam on the eve of the bombing of Hiroshima. They include civil rights activists: one who participated in Martin Luther King's march from Selma to Montgomery; one whose experience as an African- American soldier stationed in the South led him to participate in civil rights cases, and ultimately to become a criminal lawyer whose clients had included Reuben "Hurricane" Carter and a number of black radicals such as H. Rap Brown in the turmoil of the sixties; one who was a national figure in the legal services movement; one who represented the Diocese of Washington, defending against a suit challenging the permit that allowed Pope John Paul II to celebrate Mass on the National Mall, and one who, as a retiree in his late seventies working through an Innocence Project, achieved the release on DNA evidence of a defendant wrongly imprisoned for life. They include athletes: one who won his state's open men's doubles tennis championship four times, playing each time with a different partner; one who was captain and most valuable player on his college lacrosse team, and one who, as a catcher playing AAA ball, regularly caught for major league pitcher-to-be Vic Raschi. They include outdoorsmen and adventurers: one who first went skydiving at age 69 and who, two months before his death of cancer, rode the world's longest alpine zip line; one who was instrumental in the creation of Biscayne National Park, and chose to have his ashes scattered over the waters of Everglades National Park; one who organized a legendary Sea Scouts group, and one who in retirement became an avid sailor who chose to be buried at sea. One was a high school graduate at 15; one was a former Regent of the College who had mentored four young lawyers who became judges; one was the husband of a sitting state Secretary of State and one the father-in-law of a sitting United States Senator. Perhaps most remarkably, many of those who knew them did not know their histories while they were alive.

Note: The numbers in parentheses note the year of the Fellow's induction into the College.

Roger W. Barrett (63), a Fellow Emeritus, from Winnetka, Illinois, retired from Mayer Brown, died January 5, 2010 at age 94. The son of a lawyer and a graduate of Princeton and of the Northwestern University School of Law, he had practiced law briefly before joining the US Army in World War II. After the war, he was assigned as a JAG officer to the prosecution team for the Nuremberg war crimes trials and given the task of assembling the prosecution's evidence against the Nazi defendants. In the process, he went over some of the evidence with former Luftwaffe commander Hermann Goering, founder of the Gestapo and one-time heir apparent to Adolph Hitler, and sat at the table with Supreme Court Associate Justice Robert Jackson, the chief prosecutor, during the trials. After the war, he and Justice Jackson's son had co-authored the official eight-volume work on the evidence at Nuremberg. His career included many high-profile trials, including representing the executor of an heir to the King Ranch in a breach of trust case and defending ADT in a suit brought by Brinks in the wake of the famous Brinks Boston burglary. Following in the footsteps of his father, who collected Lincoln memorabilia and whose collection was a major resource for Carl Sandburg's six-volume biography of Lincoln, Barrett collected both historical documents and modern art. He had been senior vice-president of the Museum of Contemporary Art in Chicago. A widower, his survivors include two daughters.

Robert J. Beckham (82), Jacksonville, Florida, a Fellow Emeritus and a member of Holland & Knight, LLP, died September 14, 2009 at age 79 of heart-related problems. A native of Miami and a personal injury and professional malpractice lawyer, he was a graduate of Emory University and of the University of Florida College of Law, where he was editor-in-chief of his law review and a member of the Order of the Coif. In his late seventies, working pro bono through the Innocence Project, he had, using DNA evidence, helped to secure the release of a prisoner serving a life sentence for murder. He had been retained by the Governor of Florida to handle major matters involving mining and mineral rights in Florida waters, had both represented appellate judges before the Judicial Qualifications Commission and served as chair of the Judicial Nominating Commission for the Florida Supreme Court. His survivors include his wife and three sons.

Raymond A. Brown (68), Newark, New Jersey, Brown & Brown PC, died October 9, 2009 at age 94 of chronic obstructive pulmonary disease. Born in Florida, the son of a railroad mechanic, he was a graduate of Florida A&M

University and, paying his way by working as a longshoreman, attended and graduated from Fordham Law School. Motivated by his experiences as an African-American soldier assigned to Army bases in the South in World War II, he developed his reputation in southern civil rights cases in the sixties. His practice ranged from civil rights cases to defending in criminal cases a mayor prosecuted in the Abscam bribery case, boxer Reuben "Hurricane" Carter in his original murder trial, an alleged Soviet spy, a New Jersey doctor accused of murdering patients with an overdose of muscle relaxant, and a number of black radicals, including LeRoi Jones, members of the Black Liberation Army and the Black Panthers and H. Rap Brown. He had been president of the New Jersey NAACP for twelve years. During the Newark riots in 1967, he was serving as a member of the National Guard, walked the streets to quiet the disturbances. He was later appointed vice-chair of the commission that investigated the incident. A widower who had remarried, his survivors include his second wife, two children and two step-children.

Althea Lorraine Buafo (09), Macon, Georgia, died October 20, 2009 of cancer of the brain at age 48. Fearing that she might succumb to the disease before she could be inducted as a Fellow at the next national meeting of the College, then President John J. (Jack) Dalton, with the concurrence of the Board of Regents, had inducted her in a special ceremony in Macon on April 7, 2009. Of Jamaican and African heritage, she was born in England and came to the United States with her parents when she was ten years old. She was a graduate of Eckerd College and of Mercer University Law School. A colorful criminal defense attorney and a charismatic figure who wore Mohawk dreadlocks, she had defended the accused in numerous high-profile criminal cases. She had been a Court TV commentator and was a frequent continuing education lecturer. She had served as chair of the State Bar Disciplinary Panel Review Commission, as a special prosecutor for the Judicial Qualifications Commission and as vice president of the Georgia Association of Criminal Defense Lawyers. She had also served as General Counsel for the Greater Macon Chamber of Commerce and had been a part-time Municipal Court judge. A lover of reggae music, she had frequently served as a DJ for weekend parties, weddings and other occasions. Her survivors include her parents, three children and a life partner.

Hon. Robert E. Cahill, Sr. (78), a Judicial Fellow, retired from the Baltimore (Maryland)

County Circuit Court, died December 14, 2009 of gallbladder cancer at age 77. The son of a tavern owner who had not finished grammar school, he was a graduate of the College of the Holy Cross and of Georgetown University Law School. After serving as an Assistant United States Attorney and as a senior trial attorney in the tax division of the United States Department of Justice under Attorney General Robert F. Kennedy, he engaged in private practice until his 1990 appointment to the bench. A member of the Board of the Pawtuxet Institution, he had been president of the Baltimore City Bar Association and had chaired its ethics committee. He had served two terms on the Board of Governors of the Maryland State Bar Association and was a long-time member of its character committee, which screens applicants to the Bar. He had chaired the College's Attorney-Client Relations Committee. Proud of his Irish heritage, he was a member of the Friendly Sons of St. Patrick and of the Ancient Order of Hibernians. His survivors include his wife, four sons and a daughter. His brother, William W. Cahill, Jr., also a Fellow, predeceased him.

Andrew V. Clark (70), a Fellow Emeritus, retired to Delray Beach, Florida from Seaman & Clark, Perth Amboy, New Jersey died February 13, 2009 at age 84. He had served as a ball turret gunner in the 8th Air Force in World War II. A graduate of Seton Hall and of Rutgers Law School, he had been for ten years a trial attorney for the Motor Club of America. He had been president of his county Bar, a trustee of the New Jersey State Bar and President of the Trial Attorneys of New Jersey. His survivors include his wife of sixty years, who died seven weeks after his death, a daughter and two sons.

Edward L. (Ned) Clark, Jr. (81), a Fellow Emeritus, retired from Clark, Marsh, Lindauer and McClinton, Salem, Oregon , died October 30, 2009 at age 86 of Alzheimer's and Parkinson's diseases. The son of a college president, he was a Phi Beta Kappa graduate of Occidental College in Los Angeles. A Marine Corps veteran of World War II, he graduated from the University of Oregon Law School and was called back into service as a JAG officer during the Korean Conflict. He had served as President of the Oregon State Bar and in 1995 had received that organization's Award of Merit. In 2002 he had been named Trial Lawyer of the Year by the American Board of Trial Advocates and in 2006 received his local Bar's Professionalism Award. He had also served in or as counsel to various governmental organizations. He had served on the board of the Methodist Home in Salem and in retirement

was involved in a food bank at his church. His survivors include his wife and five sons.

John T. Conners, Jr. (81), a Fellow Emeritus from Nashville, Tennessee, retired from Boult, Cummings, Conners & Berry, died September 8, 2009 at age 89. A graduate of Vanderbilt and of its School of Law, he had begun his career defending civil cases, but switched to representing plaintiffs in 1980. He had served on the Boards of Saint Thomas Hospital and the Middle Tennessee Medical Center. His survivors include nine children.

Earle C. Cooley (83), Boston, Massachusetts, a founding partner of Cooley Manion & Jones, LLP, died October 16, 2009 at age 77. A graduate of the University of Connecticut and of the Boston University School of Law, where he was editor-in-chief of his law review, the faculty had selected him as the outstanding member of his graduating class. He had been president of his law school's alumni association, a trustee and then Chair of the Board of Trustees of Boston University. Once divorced, his survivors include his second wife, four daughters, two sons, two step-sons and two step-daughters.

Edward S. Corlett, III (82), a Fellow Emeritus from Pinecrest, Florida, retired from Corlett Killian, Coral Gables, died November 23, 2009 at age 85 of cancer and heart disease. A World War II veteran, he was a graduate of the University of Florida and of its School of Law. A civil defense lawyer, he had been President of the Federation of Insurance Counsel, of the Florida Defense Lawyers' Association and of the Southeast Defense Bar Association and had been a member of the Board of the Defense Research Institute. He had served on a Federal Judicial Nominating Commission in the Reagan Administration and on an advisory panel to the Department of the Interior in the George H. W. Bush Administration. An avid outdoorsman and fisherman, he was one of the leaders in the creation of Biscayne National Park. A master Angler, he was past President of the Metropolitan Fishing Tournament. He was Chairman of the Board of Trustees of the International Oceanographic Foundation. His ashes were spread over the waters of Everglades National Park. His survivors include his wife, a son and a daughter.

C. Harris Dittmar (69), a Fellow Emeritus and former Regent from Jacksonville, Florida, retired from Bedell, Dittmar, Devault, Pillans & Coxe, the firm in which he practiced for his entire career, died September 13, 2009 of complications from heart and lung problems

at age 83 after a lengthy illness. Entering the United States Army when he graduated from high school, he served in the infantry in Europe in World War II, then entered the University of Florida, where he earned his undergraduate and law degrees, serving as editor-in- chief of his law review and graduating with high honors. He had served on the Board of Governors of the Florida Bar and in the American Bar Association House of Delegates. He had served as chair of the College's Admission to Fellowship Committee and of the Courageous Advocacy Award Committee. A generalist, both a civil and criminal lawyer, he had successfully defended a sitting United States Senator in a prolonged criminal trial and, representing a plaintiff in a civil fraud trial, recovered what was for that time a huge verdict. He was the mentor to at least four lawyers who became judges. As a member of the College's Board of Regents representing Florida, Georgia and Alabama, his wit was legendary. Once a past president somewhat grumpily interrupted his presentation of a controversial nominee by asking, "What is the Regent's recommendation?" Dittmar laughed and replied, "I need to finish hearing the rest of what I have to say before I decide." His description of one nominee as a "prismatic SOB: no matter how you hold him up to the light, he is an SOB" thereafter became a part of Board of Regents' lexicon. His survivors include his wife, a son and a daughter.

Hon. Roger J. Donahue (68), Barnstable, Massachusetts, a retired Massachusetts Superior Court Judge, died October 27, 2009 after a brief illness at age 86. Originally enlisting in the infantry in World War II, he became an aviation cadet, then became a flight officer and was ultimately the navigator of a B-24 bomber. A post-war graduate of Harvard and of the Harvard Law School, he began practice with Warner Stackpole in Boston and in 1954 founded his own law firm. He had served as Assistant Attorney General of Massachusetts. He had been President of the Massachusetts Junior Bar Association and a member of the Executive Council of the Boston Bar Association. He had taught as an adjunct professor at several Boston area law schools. Appointed to the bench in 1973, he had chaired numerous committees within the court's structure. His survivors include his wife and two sons.

R. Nicholas Gimbel (07), Philadelphia, Pennsylvania, McCarter & English LLP, died November 19 of amyotrophic lateral sclerosis (ALS) at age 58. A magna cum laude graduate of Yale, he received his law degree from the University of Chicago, where he was Comment

Editor of the law review. Early in his career he had been an Assistant United States Attorney, had served in the Office of the General Counsel of the Securities and Exchange Commission and had been a partner in two other firms before joining McCarter & English in 2002. In one high profile case, he had recovered a jury verdict in excess of $100 million. He had served as editor of *Litigation*, the publication of the American Bar Association Litigation Section. His survivors include his wife and two daughters.

Jack R. Givens (89), Tulsa, Oklahoma, Givens & Givens, PLLC, died August 31, 2009 at age 80. A graduate of Oklahoma State University and of the University of Oklahoma Law School, where he finished second in his class, he was a veteran of the Korean Conflict. He was a past president of his local bar and a past Vice-President of the Oklahoma State Bar and was a co-founder of the American Inn of Court in Tulsa. His survivors include his wife, a daughter and a son.

William A. Grant, Q.C. (81), a Fellow Emeritus from Knowlton, Quebec, died November 9, 2009 at age 88. Educated at Ashbury College and McGill University, he served as an officer with the Canadian 1st Infantry Division, in World War II, landing in Sicily, seeing action at the victory at Ortona, and participating in the final push through Holland. He led the litigation department of Brown Montgomery (now Olgivy Renault LLP) for many years. A widower who remarried, his survivors include his wife, a daughter, a son and four step-children

Charles Tilden Hagan (73), a Fellow Emeritus from Greensboro, North Carolina, retired from Adams, Kleemeier, Hagan, Hannah & Fouts, died October 16, 2009 at age 96. Educated at the University of North Carolina and the University of Virginia School of Law, in the thirties he had joined the United States Marine Corps Reserve, participating in its first platoon leader's class. Called to active duty in February 1941, he first served in Brazil. After the attack on Pearl Harbor, he joined the 4th Marine Division, serving in Saipan, Roi-Namur, Tinian and Iwo Jima. He received a Bronze Star with Combat V for heroic achievement on Tinian, a Letter of Commendation, a Presidential Unit Citation and numerous campaign ribbons. Following the war, he remained in the Marine Corps Reserve and, as a member of the Reserve Forces Policy Board, served in Vietnam during the Vietnam War. When, as a Major General, he retired from the Marine Reserves in 1973, he was the highest ranking USMC Reserve

officer in the country. He began practice as a local prosecutor and was later called on by the state's Attorney General to prosecute high-profile white-collar crimes. An Elder in his church, he had served as President of both the Greensboro Bar Association and the Greensboro Chamber of Commerce and for many years was Chairman of the Greensboro Coliseum Commission, which created the Greensboro War Memorial Coliseum. Pursuing his love of sailing, in his middle twenties he organized a Sea Scout Ship, the Davey Jones, which was the National Flagship of Sea Scouting for three consecutive years. A mentor to many young lawyers, his irrepressible sense of humor and his personal modesty despite his resume made him a role model. A widower who was also predeceased by one son, his survivors include five children. His daughter-in-law, Kay R. Hagan, is a member of the United States Senate.

Robert B. Hensley (82), Hensley & Ross, Horse Cave, Kentucky, died November 11, 2009 in Casablanca, Morocco at age 76. A graduate of Western Kentucky University and of the University of Kentucky Law School, he had served in the United States Army. A former county attorney, he had served as a Special Justice on the Kentucky Supreme Court. A civic activist, he was a founding member of the Caverna Memorial Hospital and the Horse Cave Theater and had served on numerous boards, including that of Commonwealth Health Foundation and P.B.I. Bank. His survivors include his wife, three daughters and a step-daughter.

Henry A. Hentemann (95), Davis & Young Co. LPA**,** Cleveland, Ohio, died October 19, 2009 at age 74 after an extended illness. A graduate of Cleveland State University and of the Cleveland-Marshall School of Law, he had served as president of the International Association of Defense Counsel. He was the author of the *Hentemann Handbook for Trial Attorneys*, an annually updated publication on Ohio insurance law. Before his death, he had been selected to receive the Ohio Association of Civil Trial Attorneys' award for Distinguished Contributions to the Profession, and the award was given posthumously at that organization's annual meeting. His survivors include his wife, a daughter and three sons.

Frank M. Hockensmith (65), a Fellow Emeritus from Grand Junction, Colorado, long retired from Younge & Hockensmith has died. We have been informed that he probably died in 2002. Born in 1919, he was a graduate of the University of Colorado and of its School of Law and had been President of his county Bar.

Daniel S. Hoffman (72), Denver, Colorado, Of Counsel to Hogan & Hartson, died August 8, 2009 at age 78 of a stroke. Graduating from high school at age 15, he entered the University of Colorado at age 16. After graduating from the University of Denver School of Law, he was first employed as safety manager in the local government in Denver, charged with cleaning up a thievery ring in the Denver police department. He participated in Martin Luther King's march from Selma, Alabama to Montgomery, was state director for Senator Robert Kennedy's 1968 presidential campaign and then joined the protests later that year at the Democratic National Convention in Chicago. In the early 1970s he became part owner of the Denver Nuggets of the old American Basketball Association and negotiated the merger of the ABA with the NBA. From 1978 to 1984 he was Dean of the Denver University School of Law. He once represented Michael Jackson in civil litigation in the local federal court and in the course of his direct examination, had Jackson sing for the jury. He had served as the College's Colorado State Chair and was a member of its Access to Justice and Legal Services Committee at the time of his death. His survivors include his wife and three daughters.

William Henry Holdford (92), Narron & Holdford**,** Wilson, North Carolina, died November 28, 2009 at age 77 of cancer. A graduate of the University of North Carolina and of its School of Law, he had once been the subject of an article in *True Detective* when he defended a first degree murder case that was being prosecuted by his brother. A civil and criminal trial lawyer, he had been President of both his county Bar and the North Carolina Academy of Trial Lawyers. A founding member of Lawyers Mutual Liability Insurance Company, the first state-bar-sponsored malpractice insurer, for twenty years he chaired its claims committee. He had served as Senior Warden of his Episcopal church, as a Scoutmaster and as chair of the local chapter of the American Cancer Society. He had been inducted into the North Carolina Bar Association's General Practice Hall of Fame. An adventurer, he had sailed, skied, hiked and kayaked, at age sixty-nine had made his first skydive and two months before his death had gone glacier trekking in Alaska and taken a ride on the world's longest alpine zip line. A widower who had remarried, his survivors include his wife, Elaine Marshall, the North Carolina Secretary of State, and two daughters.

James M. Howley (78), Scranton, Pennsylvania, founding partner of Scanlon, Howley & Doherty, died December 3, 2009 after a long illness at age 81. A graduate of the University of Scranton and of the University of Pennsylvania School of Law, he had served as county prosecutor and as counsel to the Lackawanna Industrial Development Authority. A past chair of the Pennsylvania Ethics Commission, he had served on a number of judicial selection committees and on the Lawyers' Advisory Committee of the Federal Middle District of Pennsylvania and the Third Circuit Court of Appeals. He had served on and chaired the Board of Trustees of Marywood University and had received its highest award, the Presidential Medal. He had also served as the director of the local March of Dimes and the American Cancer Society. His survivors include his wife and a daughter.

Alexander Gray "Sandy" Jones (82), a Fellow Emeritus from Chestertown, Maryland, died October 31, 2009 of multiple organ failure at age 82. A veteran of World War II, he had graduated from Washington College in Chestertown and the University of Maryland School of Law and had studied at the University of Sheffield in England on a Fulbright Scholarship. He had practiced in Princess Anne with Jones & Jones, a firm established by his grandfather, until his retirement. A civil rights activist, he had been President of his local Bar and as Vice-President and a member of the Board of Governors on the Maryland State Bar Association. For years he was a member of the Maryland Court of Appeals Committee on Rules of Practice and Procedure. He had been President of the Washington College Alumni Association, served on the college's Board of Visitors and Governors for over thirty years, and had been honored by his alma mater with a number of awards. His survivors include his wife, two daughters and a son.

John Keith Madden, Jr. (82), of counsel to Blackburn & McCune, PLLC, Nashville, Tennessee, died October 28, 2009 of a heart attack at age 82. After serving in both the United States Army and Navy at the end of World War II, he completed his undergraduate and law degrees at Vanderbilt University. His survivors include his wife and three daughters.

F. Wm. McCalpin (78), a Fellow Emeritus from St. Louis, Missouri, died December 9 at age 88 of complications from a fall. Graduating from St. Louis University, he joined the United States Marines, served in the Pacific Theater in World War II and, after graduating from Harvard Law School, was recalled to duty in

the Korean Conflict. Widely regarded as a hero in the Legal Services community or his public stand when the Reagan Administration had tried to defund the Legal Services Corporation, he had chaired the American Bar Association's Committee on the Availability of Legal Services, its Committee on Legal Aid and Indigent Defendants and its Commission on Legal Problems of the Elderly. He had also been Director of the Legal Aid Society of St. Louis, President of the Missouri Legal Aid Society and President of the National Legal Aid and Defender Association. His survivors include his wife, two sons and three daughters.

F. Timothy McNamara (86), Hartford, Connecticut, F. Timothy McNamara, PC, died December 10, 2009. Born in 1926, he had earned his undergraduate, masters and law degrees from the University of Connecticut, the latter as valedictorian of his class. He had served in the 11th Airborne Division in both World War II and the Korean Conflict. He had served in the United States Attorney's office, in the Connecticut House of Representatives and as Executive Director of the Judicial Review Council and had been town attorney for East Hartford. He owned and flew his own plane. His survivors include his wife a son and a daughter.

Leonard Brown Melvin, Jr. (93), Melvin & Melvin**,** Laurel, Mississippi, died October 16, 2009 at age 84. A graduate of the University of Mississippi and of its School of Law and a tank commander in General George S. Patton's Third Army in World War II, he commanded a M.A.S.H. unit in the Korean Conflict. He had been a county prosecuting attorney and had served as President of the Mississippi chapter of the Federal Bar Association, the Mississippi Bar Association, the Mississippi Association for Justice and the Mississippi chapter of ABOTA. A widower, his survivors include a son, a daughter.

The Honourable Gerald R. Morin (86), a Judicial Fellow from Ottawa, Ontario, died September 4, 2009 at age 72. A graduate of the University of Ottawa Law School, first in his class, he was called to the Bar of Ontario in 1965 and was appointed Queen's Counsel in 1979. A partner in the Ottawa firm, Solway, Wright, he was appointed a judge of the Ontario Superior Court of Justice in 1991. He had been honored with the Carlton County Law Association Medal in 2005. He had retired in May 2008. His survivors include his wife, two daughters and two sons.

Ronald E. Oliveira (91), Martin & Oliveira, Pittsfield, Massachusetts, died December 7

at age 74. A graduate of the University of Massachusetts and of the Boston College School of Law, he had been President of his county Bar and for ten years an adjunct professor of law at Harvard. A widower, both of his sons predeceased him.

Joe H. Reynolds (62), Schwartz Junell Greenberg & Oathout, LLP, Houston, Texas, died December 18, 2009 at age 88 of natural causes. A graduate of Tyler Junior College, Baylor University and Baylor Law School, where he was first in his class, he had served in the United States Marine Corps in World War II and in the Korean Conflict. A veteran of two of the bloodiest battles in Marine Corps history, on Iwo Jima, he witnessed the famous raising of the flag atop Mount Suribachi and was seriously wounded. Called back to serve in the Korean Conflict, he landed at Inchon and fought in the Battle of the Chosin River, the "Frozen Chosin," where he suffered severe frostbite and other injuries. He had first served in the trial division of the Texas Attorney General's office. He was recently named a "Texas Legal Legend" by the State Bar of Texas. He had opposed the late Thurgood Marshall in a landmark case. He had served for sixteen years as a Regent at Texas A&M University, whose medical school is housed in the Joe H. Reynolds Building. He also organized the Board of Visitors of Texas Southern University School of Law and served on its board for ten years, as well as serving as a Trustee of the Southwestern Legal Foundation. A chair has been named in his honor at the University of Texas. A biblical scholar, he taught a Sunday School class at his church and held various positions in the Southern Baptist Convention. His survivors include his wife and two sons.

James D. Robinson (89), Chattanooga, Tennessee, died August 28, 2009 at age 76. A graduate of the University of Tennessee and of its School of Law, he had served in the United States Army before beginning the practice of law. At the time of his retirement, he was a senior partner in Robinson, Smith & Wells. He had served as Special Judge in the Circuit Court of Hamilton County and as President of his local Bar. He had served as vice-president of the Tennessee Defense Lawyers Association. He had served as an adjunct professor at the University of Tennessee at Chattanooga and was a charter member of his local Legal Aid Society. A college tennis player, he had won the Tennessee State Men's Open Doubles Championship four times with four different partners. He had run the USLTA Boys' 14 and under National Tennis Tournament and various other amateur tennis tournaments in Tennessee. He had served on the Board of the SENTENGA

Chapter of the Multiple Sclerosis Foundation. In retirement, in remembrance of his late wife's public school teaching career, he had worked as a volunteer reading tutor for students at a local elementary school. He is survived by a son.

Matthew J. Ryan, Jr. (79), a Fellow Emeritus from Springfield, Massachusetts, retired from Doherty, Wallace, Pillsbury & Murphy, PC, died August 22, 2009 at age 91. A graduate of the University of Massachusetts, he quarterbacked the football team and was the starting catcher on the baseball team. Playing Triple A baseball, he frequently caught for major league pitcher-to-be, Vic Raschi, the "Springfield Rifle." A graduate of the Georgetown University School of Law, he served in World War II as navigator on a modified B-24 in the 55th Weather Reconnaissance Squadron, stationed on Guam. He flew a reconnaissance mission just prior to the bombing of Hiroshima. He was the catcher on the Marianas Island All-Star baseball club that won the Army Olympics Mid-Pacific Championship and played on the basketball team that won the island championship on Guam. For thirty-two years he was a prosecutor at the city and district court level, trying over twenty-five murder cases. A political activist, he was a delegate to three Democratic National Conventions, was a part of the team that engineered John F. Kennedy's nomination in 1960 and then helped coordinate his campaign in New Jersey, managed the Borough of Queens in Robert Kennedy's 1964 senatorial campaign and participated in his presidential campaign and in the campaigns of Senator Edward Kennedy. He initiated drug education programs in public schools, introduced both witness protection and victim compensation programs as a District Attorney and was instrumental in establishing a national witness advocate program. His survivors include his wife, three sons and two daughters.

Warren S. (Turk) Stafford (90), Taylor, Stafford, Clithero, FitzGerald & Harris, LLP, Springfield, Missouri, died October 26, 2009 at age 81. A graduate of Southwest Missouri State University and of the University of Missouri School of Law, he served in the United States Navy in World War II and in the Korean Conflict. He had been president of his local bar, which had honored him with its Distinguished Attorney Award in 2004. A daughter survives.

James K. Thomas (72), a Fellow Emeritus from Ft. Myers, Florida, died September 11, 2009 at age 87. An officer in Battery B, 557th Anti-Aircraft Artillery Automatic Weapons Battalion in World War II, he saw action in Northern France, the Ardennes, Rhineland

and Central Europe. He graduated from the Pittsburgh Law School and practiced in Harrisburg. He had been President of his County Bar and of the Cumberland County School Board. In his retirement he became an avid sailor and was Commodore of the Royal Palm Yacht Club. His life was celebrated by burial at sea. A widower, his survivors include two sons and a daughter.

Robert C. Tilden (75), a Fellow Emeritus from Cedar Rapids, Iowa, retired from Simmons Perrine, died October 12, 2009 at age 81. A graduate of the University of Iowa, for both undergraduate and law degrees, he served as Notes Editor of his law review and graduated with honors. He had served in the United States Army JAG Corps during the Korean Conflict. He was a charter member of the Iowa Academy of Trial Lawyers. He had served as President of his county Bar and had also served on the Iowa Supreme Court's Advisory Committee on Rules. He had served on several local civic and charitable boards and as general counsel and a director of Perpetual Savings Bank. His survivors include his wife, three daughters and a son.

Richard J. Tonkin (77), a Fellow Emeritus from Harper Woods, Michigan, retired from Vandeveer Garzia, died October 17, 2009 at age 85. He was a graduate of the University of Michigan Law School and a veteran of World War II.

Stephen Asbury Trimble (77), a Fellow Emeritus from Washington, District of Columbia, retired from Hamilton and Hamilton, died August 5, 2009 from complications from emphysema at age 76. A graduate of the University of North Carolina, where he was Battalion Commander of the Navy ROTC unit and the co-captain and the most valuable player on the lacrosse team. He had served for three years in the United States Marine Corps. After graduating from Georgetown University Law School he served as Assistant Corporation Counsel for the District of Columbia. He was a past president of the Bar Association of the District of Columbia and of the National Association of Railroad Counsel and had chaired the College's State Committee for the District of Columbia. He had successfully represented the Archdiocese of Washington in a 1979 suit brought by an atheist in an attempt to prevent Pope John Paul II from celebrating Mass on the National Mall. His wife had predeceased him.

THE BULLETIN
of the
AMERICAN COLLEGE OF TRIAL LAWYERS
19900 MacArthur Boulevard, Suite 610
Irvine, California 92612

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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