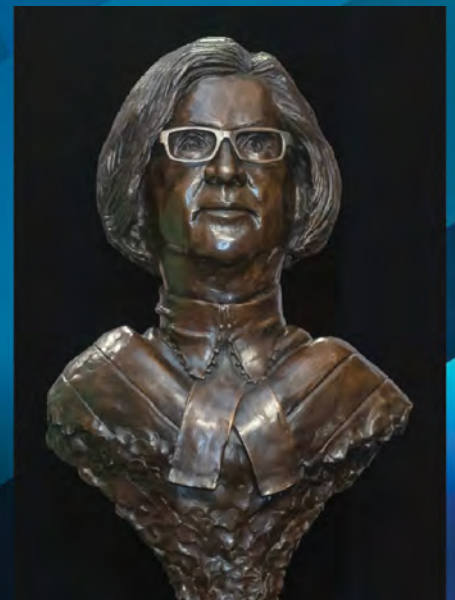
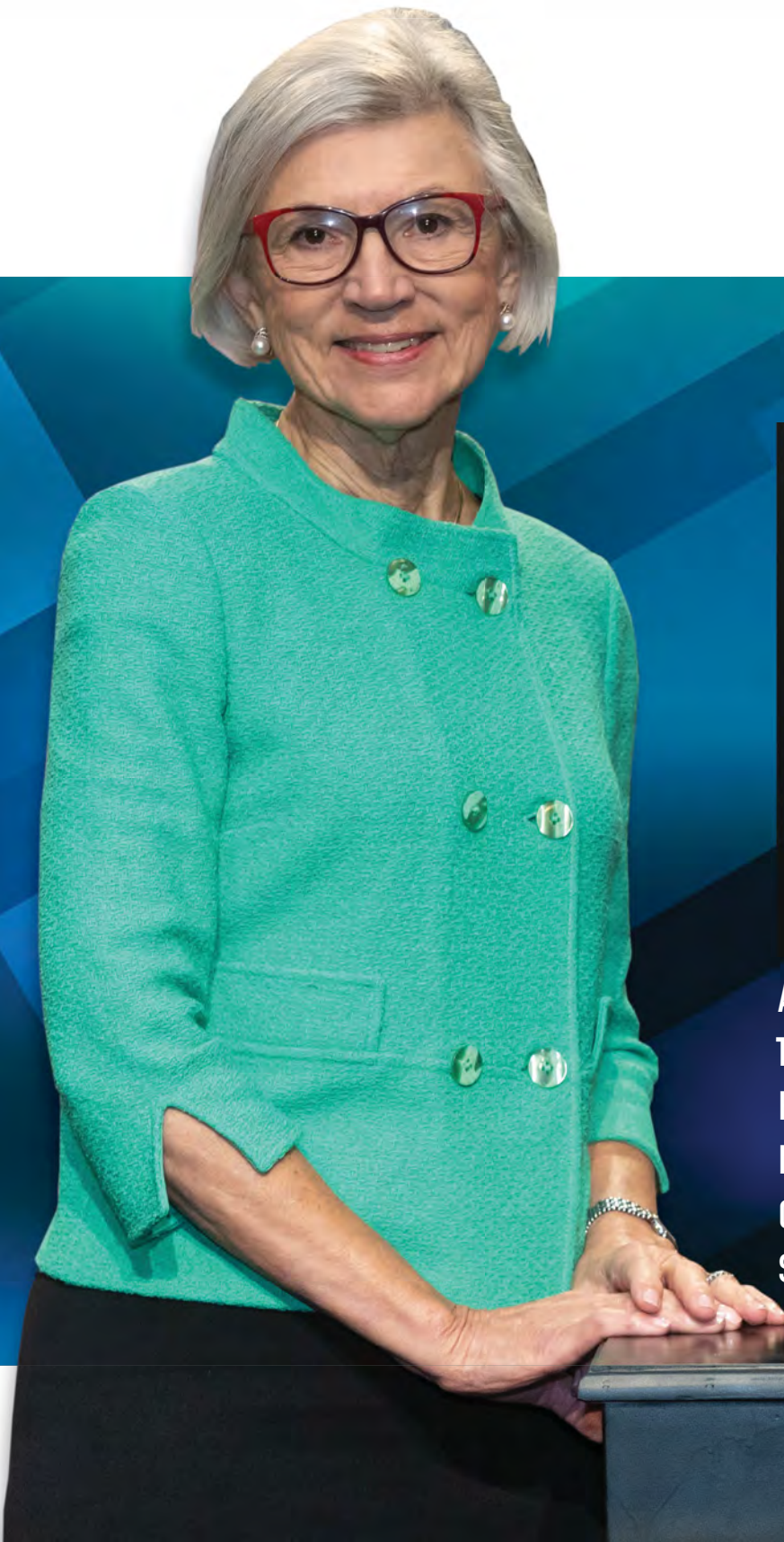




JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS



A NEW AWARD HONORS
THE LEGACY OF THE RIGHT
HONOURABLE BEVERLEY
MCLACHLIN, P.C., FORMER
CHIEF JUSTICE OF THE
SUPREME COURT OF CANADA

JOURNAL

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LETTER FROM THE EDITOR

IN THE CHARGE TO OUR INDUCTEES, WE HEAR AND REFLECT THESE WORDS: THAT WE MAY “WITH UTTER FREEDOM AND EQUANIMITY, GO FROM LABOR TO REPOSE.”

PLEASE SEND CONTRIBUTIONS OR
SUGGESTIONS TO EDITOR@ACTL.COM

I was particularly conscious of that sentiment at the New Orleans meeting. New Orleans seemed to encapsulate that charm and spirit, flecked with entertaining diversions and venues, the latter for the well-regarded Cajun cuisine. (It turns out that Cajun derives from the French Canadians who settled in Louisiana speaking an archaic form of French.) These offered great opportunity for Fellows to enjoy each other’s company in their “repose.”

With remarks by two Supreme Court of Canada jurists (one retired, former Chief Justice Beverley McLachlin, and one newly appointed, Justice Sheilah Martin), the meeting also offered, more than ever, the opportunity to strengthen our international bonds, especially as our second Canadian president, Jeff Leon, took office.

The formal program, always enjoyable for its diversity in subject matter, was also notable for its breadth of speakers. Talks by civil rights activist and Fellow Fred Gray and clarinetist and composer Dr. Michael White (with musical accompaniment) and academics and authors Brad Snyder and David O. Stewart were beyond inspiring.

In themselves, these activities are all that one needs to stimulate the creative juices. Turns out, though, that this variety of thought and experience enhances creativity, not to mention that “different fields cross-fertilize each other. We process ideas once we stop thinking about them.” (“Holidays hold the secret to unleashing creativity,” Tim Harford, *FT Weekend*, August 25, 2018). Harford cites a study where random medical students were tasked with a short course in art appreciation at the Philadelphia Museum of Art, then

tested against a control group. Those who took the course showed improvement in observing, describing, and diagnosing images of eye disease. The control group’s ability in tackling these tasks was sub-standard in comparison. Harford’s point is that repose, such as we are privileged enough to enjoy, is the key.

If this isn’t sufficiently convincing, the physicist and writer Alan Lightman says that wasting time is good for us. (“Go ahead, waste some time—it’s good for you. Here’s why.” *Washington Post*, August 21, 2018). Not giving ourselves the luxury of down time, Lightman says, endangers creative activity which “requires unstructured time and solitude away from the bustle of the world.” Chancellor-Founder Emil Gumpert must have been well ahead of his time in forging our time for “repose,” especially through our social engagements, at least twice a year. While our meetings aren’t the “stillness” Lightman says is critical, they still offer that change of pace that must be the equivalent or at least a close second. Lightman concludes, “All of us can find ways to introduce moments of stillness in our lives.” Sounds like advice worth heeding.

As usual, for those who couldn’t make this meeting, we have it all for you in this issue of the *Journal* (and on the website).

With these thoughts in mind, we wish everyone well over the winter days and look forward to recharging our intellectual batteries in La Quinta next spring.

Stephen Grant





PRESIDENT'S PERSPECTIVE



AS I WRITE THIS ARTICLE I HAVE COMPLETED SOME EIGHTEEN TRIPS AS PRESIDENT OF THE COLLEGE. FOR THE VAST MAJORITY OF THESE, CAROL HAS BEEN WITH ME AS WE HAVE ENJOYED THE COLLEGIALITY AND HOSPITALITY OF SO MANY ENTHUSIASTIC AND MOTIVATED FELLOWS AND THEIR GUESTS.

Someday I will have to calculate what this translates into miles (or kilometers for us Canadians). I am pleased to say that if these different locations are representative, our College is in good hands at the local and State and Province levels, with either plans, or the will, to make our organization stronger and more diverse and to facilitate the contribution of the College and its Fellows to upholding the rule of law and improving the administration of justice in the United States and Canada. Certainly, I am excited by what the next nine months hold in store and I know that excitement is shared by the College's dedicated Executive Committee and Board of Regents.

First let me wish you all a happy, healthy, and prosperous new year. We have much to look forward to and much to be thankful for in the year 2019. I also want to express my appreciation to Dennis Maggi, our Executive Director, Amy Mrugalski, our Board/Executive Administrator, Suzanne Alsnauer, our Senior Meetings and Conference Manager, Geri Frankenstein, our Senior Manager, Membership, Eliza Gano, our Communications Manager, Katrina Goddard, our Meetings and Conference Coordinator, and Cheryl Castillo, our Office Administrator. I had the privilege of visiting our National Office in November, and I am pleased to report that our dedicated staff is working hard as a cohesive unit to keep the College running smoothly. We are lucky to have these people on our staff. For those of you who don't know, Amy will be taking a maternity leave early this year. We wish her well and look forward to seeing her back in the office very soon.

There is a practice in my law firm, which I think is a good one, to recite our Mission Statement at the beginning of every meeting. So allow me to do the same here:



The American College of Trial Lawyers is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality.

The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its Mission. The College strongly supports the independence of the Judiciary, trial by jury, respect for the rule of law, access to justice and fair and just representation of all parties to legal proceedings [emphasis added].

We continue with our Statement on Diversity:

Consistent with its Mission Statement, the College seeks to promote treatment of every person with dignity and respect, and to foster an inclusive, collegial environment that values the unique background, experiences, perspectives and contributions of all. Under a singular standard of excellence that values and appreciates differences in its membership, the College endeavors to identify talented and accomplished trial lawyers as possible fellows, including women and persons of color, varying ethnicities, disabilities and sexual orientation.

Our Mission should be a source of pride for all Fellows. Allow me to report on what is currently being done to advance that Mission.

I will begin with **Diversity**. I am pleased to report that over the past several years, our efforts to improve the diversity of the College have



been succeeding. In my travels, I have noted that our State and Province Chairs make the need to identify diverse and younger trial lawyers as candidates for fellowship in the College a priority in their remarks at the various dinners and other events. While leadership on this issue is critical, in my view, contributing to this initiative must be the responsibility of each Fellow. We still have a long way to go to achieve our diversity goal, and I believe this goal is achievable through broad-based efforts in each State and Province to identify appropriate candidates for fellowship. Regents Rick Deane and Joe Caldwell have agreed to spearhead an examination of the progress we have made to date on diversity and to make recommendations for what else can be done to continue to increase our diversity and to make diverse Fellows feel welcome in the College.

Our continued prosperity as an organization also demands that we increase our efforts to identify younger trial lawyers as potential candidates for fellowship. The membership of the College is aging and we need to do more to ensure our ongoing vitality as an organization. This does not involve any changes to our standards but it does require an increased and open-minded effort to invest in our future by bringing along younger qualified candidates. Related to this, we should be doing more to ensure that in these days of “fewer trials,” we as Fellows of the College are doing all we can to mentor, sponsor, and encourage younger lawyers to develop their skills as trial lawyers, not only for the sake of the College, but also to ensure the continuation of the trial as a primary and vibrant means of resolving disputes.

Some fifteen years ago, the College undertook an examination of “the vanishing trial” through an Ad Hoc Committee on the Future of the Civil Trial chaired by now Past President Greg Joseph. Interestingly, the report of the Committee stated as follows:

One area of particular concern is the shrinking number of trial opportunities for younger lawyers. The College should communicate to the Fellows the importance of mentoring and creating opportunities for young lawyers to get trial experience. The

College already sponsors trial competition programs for law students. In part, this is to promote the development of advocacy skills and to encourage interest in becoming a trial lawyer. Many of the College’s State and Province Committees have also begun, or are in the process of considering, local projects devoted to teaching trial skills to younger lawyers, and these local projects should be encouraged and nurtured by the College. Consideration should be given to whether there is an appropriate means of addressing the fear factor, frustration and demoralization experienced by young lawyers who want to be trial counsel but are confronted by lack of opportunity. In doing so, it may be possible to assist young lawyers in breaking out of the circle that is created where a lack of trial experience discourages young lawyers from taking advantage of the opportunity to go to trial where that opportunity exists.

Well, better late than never. Regents John Day and Kathleen Flynn Peterson are heading up a **Task Force on Mentoring the Next Generation** to study this issue and to develop a paper on best practices to promote mentoring and sponsorship of young trial lawyers. Also, under Fellows Paul Mark Sandler and Paul Bekman, we have created a **Task Force for Boot Camp Trial Training Programs** to expand on the previous good work being done in teaching young lawyers trial skills through practical training.

The College strongly supports the independence of the Judiciary and the Rule of Law. Last year, under now Immediate Past President Sam Franklin, a **Task Force on Judicial Independence** was established under the leadership of now Former Regent Kathleen Trafford. That Task Force has worked diligently to prepare a “state-of-the-art” consideration of judicial independence in the United States and Canada and of what we as a College can and should do to ensure a strong and independent judiciary in both of our countries. We eagerly anticipate receiving the report of the Task Force. Having read a recent draft of the Report, I can assure you that we will now have a new roadmap for the College in promoting judicial independence, one that we can be proud of

and one that we can widely disseminate within the organization, to the trial bar in general, to the judiciary, and beyond.

Recently the College issued a statement in support of the response by Chief Justice Roberts to remarks by President Trump concerning the federal judiciary. The Executive Committee took the action consistent with College policies to speak out when appropriate to do so. The response to this statement by our Fellows and others has been overwhelmingly positive and many indicated that they took great pride in the fact that the College undertook a timely and forceful public statement in strong support of judicial independence.

ACCESS TO JUSTICE AND THE ADMINISTRATION OF JUSTICE

The College has taken great strides forward in facilitating its Fellows' ability to create access to justice for those in need of legal representation. In New Orleans, we inaugurated the Beverley McLachlin Access to Justice Award (named in honor of the recently retired Chief Justice of the Supreme Court of Canada) to be presented when appropriate to individuals who have made an outstanding contribution to access to justice in the United States or Canada. It is so important that we recognize those who have and continue to make such contributions. Further, as reflected in the article by Mark Surprenant elsewhere in this issue of the *Journal*, we have moved forward with our first class of Access to Justice Distinguished Pro Bono Fellows who are paired with partner/host organizations to facilitate the provision of pro bono services. I urge you to read Mark's article, to congratulate our Distinguished Pro Bono Fellows, and to consider whether you want to become a part of this significant program that has the potential to do so much good to, in the words of our Mission Statement, "promote fair and just representation for all parties to legal proceedings."

In Ontario, Pro Bono Ontario was at risk of having to close its court-based services for unrepresented litigants. This would have included the closure of a help center in Ottawa's Elgin Street Court House that was launched

as a result of Pro Bono Ontario receiving the College's Emil Gumpert Award in 2009. This help center provided a model for replication throughout Canada and the United States as an effective method to provide legal services to those in need. As your President, I wrote to the Attorney General of Ontario encouraging the Ontario government to consider providing the funds necessary so that these services could continue to be provided for those in need of legal assistance and representation. While the government of Ontario did not respond with funding, I am pleased to report that the federal government of Canada, along with other organizations, law firms, and individuals did respond to publicity surrounding this situation and that Pro Bono Ontario now has the funds to continue to operate the help centers. To the extent that the College's response contributed to this, we can all take pride.

We are all aware of the great work done under the auspices of our Special Problems in the Administration of Justice (U.S.) Committee in support of eliminating the delay experienced by **veterans** in obtaining benefits. Last month, the College Foundation recognized the success of the Kansas City Metropolitan Bar Foundation's signature legal program called "Legal Connection: Military Matters" through a \$50,000 grant. This program provides legal services to local veterans and active-duty military who do not qualify for legal aid assistance based on finances or type of legal matter. This grant will enable the program to increase its efficiency through digitization of their online referral process, as well as to raise local community awareness of the program. Again, something that should be a source of pride for all of us.

Speaking of the Foundation, we are all aware of the important contributions being made to the administration of justice in the United States and Canada through grants from our own Foundation. For those of you who would like to see some of the concrete results in this regard, I urge you to take a few minutes to review the Foundation's video on the College's website. Please consider a donation to either the U.S. Foundation or the Canadian Foundation through our Power of an Hour Campaigns



by contributing the monetary equivalent of one billable hour. At the recent Leadership Workshop in Nashville, a challenge was issued to the College leadership to see if we collectively could set the example and make a significant contribution to the Foundations. As a result of that request, I am pleased to report that around \$40,000 was raised. With your help, the College can do so much more.

ETHICAL CONDUCT, INTEGRITY, PROFESSIONALISM AND COLLEGIALITY

Our Fellows, by definition, know and conduct themselves according to high standards of **civility**. So within the College, promoting civility is preaching to the converted. However, as part of our obligation “to improve the standards of trial practice, professionalism, ethics and the administration of justice through education...” we need to recognize that many trial lawyers, and particularly young trial lawyers who haven’t had the proper mentoring and guidance, don’t really “get it” when it comes to civility. We should do something about this. Our Legal Ethics and Professionalism Committee is considering what more we can do as Fellows of the College to promote and teach civility within the trial bar and, in conjunction with our Teaching of Trial and Appellate Advocacy Committee, will facilitate the preparation and dissemination of teaching aids, video vignettes, and other material to assist in educating trial lawyers on the practice of our craft with civility.

Recently through our International Committee, five Fellows travelled at their own expense to Tortola, in the British Virgin Islands, to take a leadership role in presenting a program for approximately 100 members of the bar and the judiciary on civility in trial practice. We not only practice what we preach. We preach what we practice. We have been advised that our efforts already have had a significant impact on trial practice in the BVI, as described in the article on page 103.

TAKING PRIDE AS FELLOWS OF THE COLLEGE

The question is often asked both by those who are Fellows of the College, as well as those who are not Fellows but aware of the College, “what does the College do?” Our communication ve-

hicles, the *eBulletin* and the *Journal* have flourished and enable us to take pride in the very important work being done at the local level, at the State/Province level, at the national level, and at the international level.

The *eBulletin* provides timely reports on what the College is doing and the *Journal* provides more detailed reports on our College meetings and other undertakings, as well as interesting and timely articles on a variety of topics.

I particularly want to acknowledge and thank the Editor of our *Journal*, Stephen Grant. For the past six years, Stephen has expanded on the dedicated work of Past President Ozzie Ayscue as Editor, to make the *Journal* an informative, enjoyable, and award-winning publication. Stephen has decided to retire from the position of Editor at the end of this year and we all owe him a huge debt of gratitude for his dedication, hard work, inspiration, and creativity. I am pleased to report that Past President Bob Byman has agreed to assume the role of Editor on Stephen’s retirement and I know we will be able to continue to enjoy and learn from the *Journal* under his stewardship.

FUN

Let us not forget how the College provides us with so much opportunity to have fun and to meet fellow trial lawyers and their guests and to develop wonderful friendships. In hockey, they say “if you don’t shoot, you don’t score.” Well let me say that if you don’t attend College events, you’re going to miss the opportunity to develop those friendships and to have that fun. Registration is now open for our 2019 Spring Meeting in La Quinta, California. Register today. President-Elect Doug Young has put together an outstanding program of speakers for our General Sessions and our Executive Director Dennis Maggi and our Senior Meetings and Conference Manager Suzanne Alsnauer have planned events that will make this a Spring Meeting that you will not want to miss. Carol and I look forward to seeing you there and I am hereby issuing an ironclad guarantee: Come and you will have a fantastic time. We look forward to seeing you there. ■



SEPT | 2019 ANNUAL MEETING

26-29

The Westin Bayshore, Vancouver, British Columbia



Save the Date



Louisiana State Committee Chair Adrienne Baumgarten shares a few words during the Women Fellows Luncheon at Restaurant August.



Gini and Fellow Jim Curphey of Columbus, Ohio during the Thursday President's Welcome Reception



NEW

Fellow George Sinkfield, Judy Beck, Georganna Sinkfield, and Barbara Marod



Chris and Nevada State Committee Chair Tammy Peterson; Inductee Nick and Juanita Santoro; Inductee Marc DiGiacomo and Carrie Farber of Las Vegas, Nevada



Regent John Day of Brentwood, Tennessee with Inductee Jeff and Christie Ward of Greenville, Tennessee



ORLEANS

ANNUAL MEETING 2018



Andrea and Past President Tom Tongue in the Mardi Gras mood.

Past Federal Civil Procedure Chair Hank Fellows snaps a photo of his wife, Pam, during the Friday night event at Mardi Gras World.



Dr. Michael White and the Original Liberty Jazz Band offers a musical conversation with swinging rhythms during their performance at the Friday event at Mardi Gras World.



A view of the Mississippi River and Interstate 90 from Mardis Gras World



Patty and Regent Steve Schwarz of Rochester, New York; Regent Susan Harriman of San Francisco, California



Inductee Regina Hollins Lewis of Columbia, South Carolina; Jennifer Gardner and Inductee Ronnie A. Sabb of Kingtree, South Carolina during the Saturday Inductee Luncheon



Judicial Fellow C.J. and Gail Seitz of Wilmington, Delaware and President Sam Franklin of Birmingham, Alabama



President Jeff Leon, the second College President from Canada, closes the formal program of the Annual Banquet

The Past Presidents walk forward to congratulate the newly inducted Fellows.



NEW ORLEANS

ANNUAL MEETING 2018

Inductee Randy Bishop of Missoula, Montana, Cheryl Lamb, Kathy and Immediate Past Chair Michael Cok of Bozeman, Montana break into an impromptu dance the Sing-Along.



The Leon/Best Family – front row: Jenny Leon with Miles Hirsch; First Lady Carol Best; Amy Leon; back row: Josh Hirsch, President Jeff Leon, Ben Leon



Photos from
the College's
social media
pages.

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NEW ORLEANS CITY COUNCIL PRESIDENT WELCOMES COLLEGE: VISITING THE CARIBBEAN INSTEAD OF THE DEEP SOUTH

ASON ROGERS WILLIAMS, FELLOW AND PRESIDENT OF THE NEW ORLEANS CITY COUNCIL OPENED THE GENERAL SESSION OF THE 2018 ANNUAL MEETING BY WELCOMING THE COLLEGE TO CITY HE LOVES AND WORKS HARD FOR EVERY DAY. HIS REMARKS FOLLOW:

On behalf of this entire city, I am honored to welcome you all to this wonderful magical place. New Orleans is truly very special, it's known as the city that care forgot, the gateway to the Americas, the birthplace of jazz, and The Big Easy. As our local geographer and author Richard Campanella points out in his book *Bienville's Dilemma*, "The more nicknames a place has, the more interesting it tends to be." That sums up New Orleans. But you are here now, you can see it for yourselves, and I'll let you be the judge. But what I will tell you is that this town, as you probably have experienced, has so much humidity it will take the wrinkles out of a suit on just a short morning walk to court. It's also the city that was strong enough to bend the mighty Mississippi River. You actually have to go a few ticks north to keep going south when you get in New Orleans.

It's a town that has had to fight back hard from the utter destruction of Hurricane Katrina, but as any good trial lawyer will tell you, in every problem or conundrum there is real opportunity for new solutions. That being said, New Orleans has become ground zero for disaster

recovery and resilience. The lessons learned in the wake of Katrina have allowed engineers and environmentalists and planners and elected leaders and builders and educators to help other cities get back on their feet, to get back in their homes, and to rebuild their communities. You saw it on the East Coast after Hurricane Sandy or Superstorm Sandy, you saw it in Joplin [Missouri] after they were hit by tornadoes.

It is so very exciting that you chose this year to be in New Orleans because we're celebrating our tricentennial, and you are joining us on our birthday. We have hosted heads of state and royalty from all over the world that have influenced our being, and it is only right that we host the College for our tricentennial as well. When you walk out of the Roosevelt, however, whether you go left or right you can easily see the years of reign under a Spanish Queen and the years of reign under a French King. You can see the years of toil and resilience of black craftsmen, you can see the years of wisdom of First Nation Native Americans, and the years after Thomas Jefferson made that wonderful purchase.

If you go left, you can't help but notice the Spanish and French architecture complete with cast iron galleries, balconies, and cobblestone pathways, previously called *calles* and *rues*. If you go to your left, however, you will go through what was known as the Old American Sector and will be struck by the grandeur of our Garden District. When you experience the food, and I told Sam this earlier, anybody visiting New Orleans for a few days should gain at least ten pounds. It is almost a requirement, it is inevitable. But when you experience the food and the music and the customs, all heavily influenced by the amalgamation of Native Americans, Africans, Frenchmen, and Spaniards, you may just realize that you are visiting the northernmost part of the Caribbean rather than the Deep South. Because you see, borders might control governments, but they do not control the hearts, minds, and souls of women and men.



Our first 300 years have been pretty astonishing, but they have been far from perfect. Although there was a time when free people of color flourished in this city long before the Civil Rights movement, it is also the place that Homer Plessy and a group of young lawyers and thought leaders saw fit to challenge the separation of the races by boarding a whites-only passenger train just a few miles away from here. We all know that that fateful ruling in *Plessy v. Ferguson* led to years of oppressive Jim Crow restrictions. But today, I'm proud to say that Keith Plessy and Phoebe Ferguson, descendants of both sides of that landmark case, work together in New Orleans to run the Plessy and Ferguson Foundation which seeks to showcase places and reflect on the full tapestry of New Orleans' history and culture

This year the City Council renamed that street Plessy Way. Also, this November Louisiana has a measure on the ballot to take on, and hopefully relegate to the history books, a Jim Crow-era law that lets divided juries decide criminal cases. Our State Senate approved the constitutional amendment that would bring Louisiana in line with nearly the rest of the United States and require a unanimous verdict to convict a person. This proposal, once seen as a long shot in this state, is now heading to a public vote and I believe that this is a historic moment for our state. I believe the people of Louisiana understand that they have a major role to play in now writing the next chapter of Louisiana.

I am so proud to report that our collective social justice conscious is alive and well in the city of New Orleans and alive and well in the state of Louisiana. It is focused on making sure that the next 300 years are more just and more equitable than our first. I'm also proud to be a Fellow in this College of trial lawyers because, you see, I believe that lawyers are the protectors and defenders of human rights, as well as the challengers and creators of the rule of law.

Ladies and gentlemen. I welcome you to a city I love so much and work hard for every day. I welcome you to our tricentennial and as much as I know you will love your time here, eating your way through this marvelous city, I'm sure that the people of New Orleans are going to say the same thing that my wife Liz said about this group when she got to know the College in Hawaii, "This is absolutely the largest collection of the warmest, sharpest, most sincere men and women that I have ever seen." That's what she said in Hawaii and that's what the people of New Orleans are going to say as they see you waving through these *calles* and *rues*.

Ladies and gentlemen, welcome to the city of New Orleans. Let me present on behalf of the entire City Council, the Key to the city to our President. It can unlock lots of doors and get you into a lot of places that I'm sure you'll enjoy. ■

AWARDS & HONORS



Jeffrey Willis of Tucson, Arizona began his term as 2018-2019 president of the State Bar of Arizona. He was admitted to the Arizona Bar in 1977. He has been a Fellow since 2018.

FELLOWS TO THE BENCH

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

Daniel M. Boone, Q.C.
St. John's, Newfoundland
Effective November 2, 2018
Judge
Supreme Court of
Newfoundland and Labrador

Jessica Kimmel
Toronto, Ontario
Effective October 1, 2018
Judge
Ontario Superior Court of Justice

Peter A. McShane
Derby, Connecticut
Effective October 2018
Judge
Ansonia-Milford Judicial District

Craig A. Karsnitz
Georgetown, Delaware
Effective November 30, 2018
Judge
Superior Court of Delaware

William Jung
Tampa, Florida
Effective September 10, 2018
District Judge
U.S. District Court Middle
District of Florida

Benjamin Zarnett
Toronto, Ontario
Effective November 2018
Justice
Court of Appeal for Ontario

The College extends congratulations to these Judicial Fellows.

COLLEGE CREATES AWARD TO HONOR THE LEGACY OF CHIEF JUSTICE BEVERLEY MCLACHLIN



URING THE 2018 ANNUAL MEETING IN NEW ORLEANS, LOUISIANA, THE COLLEGE ANNOUNCED THE CREATION OF THE BEVERLEY MCLACHLIN ACCESS TO JUSTICE AWARD.



The award, named in honor of **The Right Honourable Beverley McLachlin, P.C.**, was created upon her retirement from the Supreme Court of Canada in 2017 and is to be presented to a judge or a member of the bar in the United States or Canada, whether or not a Fellow of the College, who has played an exceptional role in creating and promoting access to justice. The award will recognize innovative measures or extraordinary personal commitment and professional dedication which have enhanced access to justice in the United States or Canada. The award also serves to deliver a powerful message on behalf of the College, both in relation to the role of women in the legal profession and in relation to the importance of access to justice, which ties to the core mission of the College.

Past President of the College **David W. Scott, O.C., Q.C.** said in his introduction of Chief Justice McLachlin: “Chief Justice McLachlin was the first woman Chief Justice and the longest serving occupant of such a high office in the history of the court. No one would question her enormous success on the court. Indeed, Canadians would have no hesitation in saying that she was the single most important jurist in its history. The love and respect the bar and the community at large have for Beverley McLachlin goes without saying and is a principal feature in her legacy. Chief Justice McLachlin enjoyed all the qualities necessary for a superb judge and more as a person. She was thoroughly impartial, independent, a delight to appear before, extraordinarily democratic in her management of the court, and notoriously collegial with her colleagues.

“Throughout her career, the Chief Justice has displayed an inspiring interest and commitment to the development of access to justice initiatives. Her most important achievement in access activities is her establishment, while sitting as a member of the Court, of the Action Committee on Ac-



cess to Justice in Civil and Family Matters. The Committee was established with representation from the Bar, the government, the judiciary, and an impressive array of officials involved in the administration of justice,” said Scott.

Chief Justice McLachlin’s remarks follow:

Bonjour, tout le monde. Thank you so much. I stand before you very moved, so you will forgive me if it takes a moment for me to recover some degree of equilibrium. This is truly a touching moment for me, but I want to begin by saying how wonderful it is to look out over this audience and see so many friends, colleagues, faces I have come to love over the last decades. You, the Fellows of the American College of Trial Lawyers and your spouses, have become an important part of the life of me and my husband, Frank, and I can say beyond that of the Justices of the Supreme Court of Canada, as attested by their presence here in such numbers today. It is truly a matter of deep-felt emotion for me to be here today, to receive this award, to find myself honored by this wonderful gesture of a bust which will be, I believe, housed in the Supreme Court of British Columbia where I began my judicial career.

I want to begin by thanking my dear friend David for his much too kind introduction. David

“ QUIPS & QUOTES ”

In 2000, she was appointed to the Chief Justice of the Court by The Right Honorable Jean Chretien who is rumored to have said that her suitability for such high office was painlessly obvious. She served on the court for a period of twenty-seven years, retiring in 2017 in keeping with the Court’s compulsory retirement at age seventy-five. If I might say, in her case, a very youthful seventy-five.

Past President David Scott in his introduction of Chief Justice McLachlin

has been a pillar of the bar in Canada, a staunch advocate for access to justice for every woman, man, and child in Canada, and a deep and longstanding friend. He, of course, was much too generous, but when he spoke of the reassurance or pleasure of looking up when he presented his plaidoirie, or his submission to the Supreme Court of Canada and seeing my face there. I could only think, reflect on the fact that I think my smile and my welcome had a lot to do with seeing David there and anticipating his eloquent, and always honest and integral, presentation, so thank you, David.

David also alluded to the rapidity of my ascension through the ranks of the judiciary in British Columbia in Canada. He left out graciously the line that the Treasurer of the Law Society of



British Columbia described this ascent with when I was sworn in at the Supreme Court of Canada. He said that I had arisen through the justice system. I had passed through the justice system faster than most cases, a comment which doubtless had something to do, one of the sparks that ignited what was to become my passion for making our justice system more effective and more accessible, so thank you, David. Thank you so much.

UNITED BY DEDICATION TO IMPROVING JUSTICE SYSTEM

My comments this morning will be comments of thanks on three main fronts, thanks to the College because this may be the only or the last occasion in which I am able to convey the esteem and gratitude with which I hold this body. I first want to thank you for your inclusive approach to Canada, and the United States, and the lawyers who practice in these countries. In the invocation, we eloquently heard that in the American College of Trial Lawyers, Canadian lawyers and American lawyers, lawyers from different countries and in some ways different traditions are reunited by a common law tradition and the same values. Lawyers from these two countries come together as one, and that is very important. It is very important for me as a Canadian because we don't often see or hear those words that we come together as one, and I'm not referring to the current NAFTA negotiations.

Canada is a great country, a wonderful country, and a liberal country, and confident in its own unique identity, but it is subject to an ongoing neurosis, if not neuroses, state of anxiety with respect to the United States. One of our former prime Ministers, Pierre Elliott Trudeau, remarked that, "Being a Canadian is like sleeping with an elephant." Every time it twitches, you go into a panic

because it's so much more populous. That being the case, the American College of Trial Lawyers stands as a great solace to such anxiety as we Canadian lawyers may have because of your inclusive approach, because here we are at your meetings in Canada and across the country, we unite as one. We share ideas as one. We talk about justice as one. We are united by our dedication to a better system of justice for everyone in both our countries.

That approach, this inclusive approach, was first experienced by me in 1987. I was a judge on the Court of Appeal in British Columbia. Brian Dickson, then the Chief Justice of Canada, was putting together a delegation of Canadian judges from across the country to participate in the 1987 U.S.- Canada Legal Exchange sponsored by the College. I had never met Chief Justice Dickson although I admired his work greatly. I had never ever heard except obliquely here and there about the American College of Trial Lawyers. Suddenly, I was invited to come to participate in this joint endeavor with a week in Washington, D.C. and a week in Canadian cities. It was absolutely an amazing experience for me. We visited the Supreme Court of the United States. I was able to meet some of the Justices of the time. I met many leading lawyers in Canada and in the United States. We attended enormously useful sessions. For me, it was an opening up.

As I say, this vision that borders do not divide us, that we are in this College one, that was repeated ten years later in 1997. Justice John Sopinka of the Supreme Court was organizing [an Exchange] from Canada's end, and it occurred again in 2007. In each of these occasions, my husband and I re-experienced this feeling of being part of something that extended beyond our own borders and enriched us by doing that, so thank you for your vision,

a vision that unites both Canada and United States, lawyers of these countries as one.

The second thanks I want to give is for your leadership in difficult times. There have been many examples when the American College of Trial Lawyers has stood up for justice or an institution that is being unfairly attacked. There have been many occasions when the American College of Trial Lawyers has intervened to reaffirm and remind governments and individuals of the fundamental importance of the rule of law and independent, impartial judiciary. I had always assumed this was just what one did, and perhaps underestimated the importance of this until it happened to me. I found myself a few years ago as Chief Justice, publicly criticized by the Prime Minister of our country, something that, I think, had never happened before. Of course, it was an unsettling thing, but I knew that the accusation was groundless. I issued a very brief rejoinder saying I had done nothing wrong and setting out the facts, allowing the public to decide for themselves.

In the end, it came out very well for me. One of the important interventions, I think, that led to that result was a powerful letter promptly written by this College and made public, setting out the fundamental principle of rule of law, which requires an independent and impartial justice system, and underlining how dangerous and risky it is to undermine, for one branch of government to seek to undermine another branch of democratic governance. It was an eloquent letter. It gave me great comfort, but beyond that, it set out the principles in such a clear way that everyone could understand them. I want to thank you for that personally. Reflecting on that, I thought what does leadership mean? Leadership means confidence and certain-

ty in your values. It means wisdom to know when intervention to protect those values is necessary, and it means the courage to follow through. In that respect, I think this College has continually over the decades exercised superb leadership. I want to publicly thank the College for that.

ACCESS TO JUSTICE

Finally, I'd like to thank you for this wonderful sculpture and for this award, which has been established in my name. I could never have asked for a more meaningful tribute. A number of years ago, ten years or twelve years, I guess, I was looking at the justice system and was unhappy with the fact that so many people, so many ordinary Canadians felt it was not there for them. It was somebody else's justice system. They couldn't access it. It was too expensive. It took too long. I thought about this, and I said, "This cannot be right." I went out to Toronto to give a speech, which I didn't think would garner much attention. Most of my speeches didn't garner much attention in those days. I talked about access to justice, and I said, "Why don't we provide justice for everyone? Isn't that a basic right?" The response was incredible. People wrote letters. People emailed in. People chatted, and I realized that this was a much greater need than most people had been imagining.

People, I believe, are hardwired for justice. No matter how humble, they feel they should be treated fairly by governments, by institutions, by other fellow citizens. When the state denies that right to get vindication, we lose something. We lose something very important to what it is to be a citizen and what it is to be joined together as a nation.

Access to justice grew from there in my imagination, in my heart. I, sometimes to the tedium and boredom of others, talk about it rather too much, perhaps, but I do believe it remains essential. Many see justice as a fringe, access to justice as something you can get if you can afford it, if you are willing to pay for it, if you are willing to put up with delays, but that I believe is not how it should be. Justice is not a frill. It is not a luxury. It is a fundamental right of every woman, man, and child.

The other point is that without access, the finest justice systems of the world are deeply imperfect. A justice system can be wonderful in terms of the results it produces, the wisdom of its decisions, but if the only people who can access those decisions, who can have the benefit of that are the wealthy or the corporately endowed, then that system is not doing what it should do. The ordinary people will say, "The system is broken," and they will lose faith in it. Ultimately, they will lose faith in the rule of law, which is fundamental to our democratic governance, and which in this era of unraveling, in which we are now living, is more and more undermined and attacked. I see access to justice, the right to effective adjudication and remedies, as linked to public confidence in the justice system, which in turn is linked to maintaining the rule of law in our societies, which in turn is essential to our very ways of democratic governance in our two great countries.

A SIMPLE IDEA

Perhaps it's an elevated idea, but I think it's very simple. We need to provide access to justice to ensure that our democratic governance survives the tests of the difficult times in which we are

living. We as lawyers are the protectors and defenders of rights. The mark of a great nation, the mark of the rule of law and essential element of the rule of law, Lord Bingham said in his learned book in 2010, is "the effective protection of fundamental rights by an impartial and independent judiciary." Without that, we do not have the rule of law. Access to justice is essential to the effective protection of fundamental rights and hints to the rule of law. That is why I am so deeply touched and deeply honored by the creation of this award for access, people who labor and achieve much in enhancing access to justice.

Each year, a person, Canadian or American, who has worked and achieved, and through their imagination, their efforts, their willingness to think outside the box, have accomplished something remarkable to improve access to justice. Each year, that person will receive this recognition and award. That will do two things. It will spur other lawyers, academics, government people, individuals to work for access to justice and to think of new ways to improve access to justice. The other thing it will do is keep access to justice at the forefront of people's minds because the job is never done. There is no silver bullet that will once and for all ensure to access to justice for everyone. There is simply constant work to improve the wonderful systems of justice we already possess. Thank you, College. Thank you, friends. It is a deeply moving moment for me to stand here and realize, understand that this has happened, that you have taken this step to honor me, however undeserved that may be, and to advance the cause of access to justice, a cause which is of fundamental importance to all us, and which touches me in particularly very deeply. Merci. Thank you very much. ■

EMINENT NEW ORLEANS CLARINETIST DISCUSSES JAZZ AS ESCAPE MUSIC, FORM OF PROTEST

A

FTER AN ELEGANT INTRODUCTION BY REGENT SUSAN S. BREWER OF MORGANTOWN, WEST VIRGINIA, WHERE SHE DESCRIBED CLARINETIST, COMPOSER, AND EDUCATOR DR. MICHAEL WHITE AS "A LEADING FIGURE IN TRADITIONAL NEW ORLEANS JAZZ AND ONE OF ONLY A FEW TO CREATIVELY CARRY ON THE RICH CLARINET SOUND AND STYLE OF THIS FINE CITY," DR. WHITE OFFERED THESE REMARKS DURING THE FIRST DAY OF GENERAL SESSION AT THE 2018 ANNUAL MEETING IN NEW ORLEANS.



Thank you for that wonderful introduction, Susan, you make me feel like I'm famous or something. I thought so when I came in today, the incoming President had four of my CDs, and he asked for an autograph, I was like, "Wow." And a couple of other people said, "I saw you on television. Aren't you wanted?" I hope they don't turn me in, but welcome to New Orleans. I'm going to briefly tell you about a curious case of a man named Charles Buddy Bolden, a popular cornet player and band leader in New Orleans during the early 1900s. Bolden was accused by many learned musicians, composers, ministers, and refined society people of being a criminal of sorts. They said that he ruined and even destroyed music. Bolden was said to have violated many standard musical laws and principles. Bolden upended convention by improvising and not reading the music that he played. He employed a personal and non-conventional cornet tone and a type of expression more related to black church and blues singing than to the European classical sound for which the instrument was made.

To the horror of his accusers, detractors, and others, Bolden and his musicians also bent tones, used heavy vibratos, growled, altered melodies, added new rhythms, and even improvised or restated an entire chorus on the spot. For example, a melody to the song like the old Carolina folk tune, *Careless Love*, would sound like this if it were being played from a standard written musical score. (Musical interlude) But Bolden may have interpreted that melody in his own personal improvised way, something like this (Musical interlude). But that might be at eight something in the morning when he was sleepy. At night, he might play the song in a whole different way. But it wasn't just folk songs that Buddy Bolden and his co-conspirators attacked with his new improvised approach. They played everything that way and turned

ragtime songs, blues, marches, religious hymns, ballads, and folk songs into this new style. Those offended by Bolden's musical crimes thought that he should be banned or even convicted and indeed within a few short years, he was removed from the New Orleans area and remained confined for the last decades of his life.

But Buddy Bolden was not sentenced in court for any musical violations. One day, he simply lost his mind and hit his mother-in-law in the head with a water pitcher. I see some of you have mothers-in-law ... Kind of devilish laughs out there. He was diagnosed as suffering from alcoholic psychosis and sent to the state insane asylum in Jackson, Louisiana. Nonetheless, Buddy Bolden's musical indiscretions were firmly planted, and the music continued to grow as a popular black dance music that soon spread into white New Orleans and the surrounding areas, seen and heard day and night at every type of event and place imaginable. This was not a music that you had to go and see, it sought you out. Jazz was present at picnics, boat rides, parties, weddings, parades, advertising wagons, lakefront resorts, bars, and even funerals. Were Buddy Bolden and those who popularized and espoused his improvising ways musical criminals?

Some thought so and declared in print that this new music eventually called jazz was savage, primitive, and posed a serious threat to the moral fabric of respectable society. As jazz spread and was recorded, it was widely embraced by a rebellious young generation throughout America, whose expression of freedom and non-conformity led the era to become known as The Jazz Age, the era of the 1920s. Despite the main function of jazz as

" QUIPS & QUOTES "

This was not a music that
you had to go and see,
it sought you out

Dr. White



dance music and its eventual evolution into more modern forms, like swing, bebop, cool jazz, and free jazz, the original jazz style of New Orleans had a deep-rooted social significance that is often overlooked. Early jazz in New Orleans resulted from a combination of social and musical factors that affected the highly spirited and diverse African-American populations, which fought against increased late-nineteenth-century post-Reconstruction Jim Crow laws, further losses of rights and racial violence through a series of protests, boycotts, voting rights rallies, and legal action.

It is no coincidence that one of the most famous civil rights cases in the history of this nation, *Plessy v. Ferguson*, and jazz both emerged in the same decade, the 1890s.

In addition to its role as universal dance concert and escape music, jazz was another form of protest. But this musical revolution served as a metaphor or a living model for the democratic existence being sought by African-Americans throughout the south and the nation. No, Buddy Bolden and those

who continued to develop, define, and refine early jazz like Jelly Roll Morton, Sidney Bechet, Joseph King Oliver, and Louis Armstrong were not guilty of the crime of destroying music or the morals of American youth. Well, not most of them anyway. With a hint at what a desired America could be, the objective of jazz in that sense was not to destroy the laws of music but to reinterpret the rules in a way that freed up and relaxed the music by use of freedom of expression, equal participation, unity, allowance for individual and culturally diverse ideas. It also left open the concept of possibility. As you all know, jazz of all styles is still played today throughout the world, and the music is universally considered to be this country's greatest original artistic contribution.

But it was right here in New Orleans and in the early jazz style, that the social significance and democratic ideal was most prominently

displayed. From a musical standpoint, the democratic model is seen with the improvised interpretations of the strict multi-led European march form. Those of you who may have played in high school or college marching bands know that the most difficult song type that you dealt with is the march. The march style comes from Europe and marches are very tough. Because they have several sections—introductions, interludes, they change keys, they change the volume or dynamics, they change the mood, they change the harmonic structures. But marchers can be involved and tough, but in New Orleans they found a way to relax those marches, make them free, loose, personal, and fun. In terms of community, these important social concepts were seen in the tradition of large black social and benevolent club parades which had hundreds and sometimes thousands of followers dancing alongside, doing a freeform dance known as the Second Line that paralleled and inspired the improvised creativity and sense of unified freedom in the hot music of brass bands.

In my experience, as mentioned, I started out playing with Doc Paulin's brass band and in a way that was like going to college in New Orleans culture. We played mostly social club parades and in the now-extinct tradition of church parades, we also played many funerals with music and we also played many funerals with music, better known as jazz funerals. That was quite a training for a young musician in the early days, getting knowledge firsthand from guys who were fifty, sixty years older still playing in those parades. Also, getting to contact the community in an entirely different way. But in conclusion, I'd say in the case of one Charles Buddy Bolden and the jazz tradition that he ignited, a resounding not guilty. I hope to see you all this evening when my Original Liberty Jazz Band performs at this evening's function and I will maybe see you all a little bit later afterward.

Stephen M. Grant, LSM
Toronto, Ontario



COLLEGE UPDATES

2019 SPRING POLLING REMINDER

For all State and Province Committee Chairs who poll during the spring cycle, the deadline for candidate proposals is March 15, 2019. The following states and provinces are part of the spring poll:

Arkansas	Kentucky	Tennessee
Atlantic Provinces	Maine	Texas
British Columbia	Maryland	Utah
California-Northern	Missouri	Vermont
California-Southern	Nebraska	Virginia
Colorado	New Hampshire,	Washington
Connecticut	New Jersey	West Virginia
Delaware	Ontario	Wisconsin
Florida	Québec	Wyoming
Indiana	Rhode Island	

NATIONAL OFFICE UPDATES

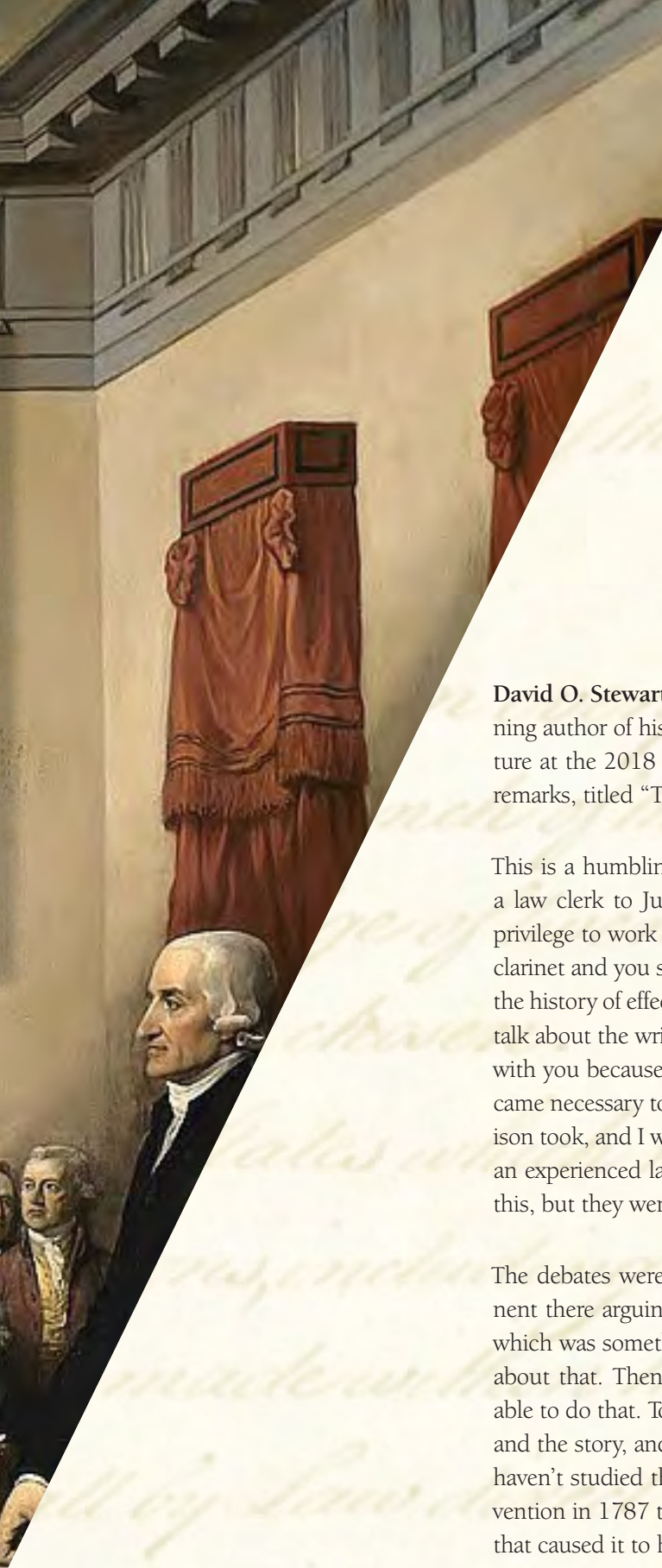
The *Journal* of the American College of Trial Lawyers was recognized with a National Association of Bar Executives 2018 Luminary Award in the category of Authored Articles for an article entitled “Roy M. Cohn: My Personal Experiences and Reflections On His Connection to the Forty-Fifth President of the United States” authored by Former Regent Stephen G. Schwarz.



AUTHOR DAVID O. STEWART, ESQ. PRESENTS THE LEWIS F. POWELL, JR. LECTURE

THE LEWIS F. POWELL, JR., LECTURE SERIES WAS ESTABLISHED IN RECOGNITION OF THE HONORABLE LEWIS F. POWELL, JR., WHO SERVED AS THE TWENTIETH PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS. IN 1972, POWELL, A DISTINGUISHED AND SKILLED LAWYER OF NATIONAL DISTINCTION, BECAME THE NINETY-NINTH JUSTICE TO SIT ON THE SUPREME COURT OF THE UNITED STATES, WHERE HE SERVED WITH HONOR AND EMINENCE UNTIL HIS RETIREMENT IN 1987.





David O. Stewart, Esq., former trial and appellate lawyer, currently an award-winning author of history and historical fiction, presented the Lewis F. Powell, Jr. Lecture at the 2018 Annual Meeting of the College in New Orleans, Louisiana. His remarks, titled “The Summer of 1787: Writing the Constitution,” follow:

This is a humbling experience in many ways, in part because I started in law as a law clerk to Justice Lewis Powell, which was a remarkable experience and a privilege to work with him for a year. It’s humbling to be on this stage. I have no clarinet and you should be very glad of that. I have no bust. I certainly don’t have the history of effective activism of Mr. Gray, but I do have a PowerPoint. I’m here to talk about the writing of the American Constitution. I hope this resonates slightly with you because I was working on a case, a constitutional law case, where it became necessary to read the debates of the Constitution, the notes that James Madison took, and I was humiliated by that as well because I had never read them. I’m an experienced lawyer in my 40s doing constitutional law. I should have known this, but they were remarkable.

The debates were remarkable. You had the best political horseflesh of the continent there arguing hard questions, taking them seriously, struggling with slavery, which was something I didn’t know. I thought I would really like to write a book about that. Then several years later when my children got out of college I was able to do that. Today I have a chance to talk about a very small sliver of the book and the story, and maybe give you a picture and an appetite to know more if you haven’t studied that the way I hadn’t. First, why was there a Constitutional Convention in 1787 that wrote the Constitution in a four-month period? What was it that caused it to happen? The other is to talk about a few of the people who were there. It’s always an argument what’s more important in history, the great tectonic movements of the world or the people who are in the room, or as we’ve learned from the musical *Hamilton*, the room where it happens. I think both are important, but the people in the room are a lot more interesting and I think it mattered then. ►

The setting in the 1780s is that times were actually pretty bad. We were operating under the Articles of Confederation; we only lived under them for seven years, but it did not establish a real national government. We had a Congress, we had no Executive Branch, we had no courts. That's disturbing to this audience. Congress often did not have a quorum, so it couldn't do anything for months on end. It also had no power to impose taxes. That might sound good initially, but it's not good if you want to have a Navy or Army, or if you want to have courts. They had to beg states for funds. They would just pass the hat. Ask for them. Most states sent something. I think Pennsylvania was at the top, sending 60%. Georgia never sent anything. If you're from Georgia, you can't complain about federal taxes, you still owe us.

There was a reason it was such a weak national government. The colonists who formed the country knew strong central government. That was the British Empire and they didn't like it, so they created the least possible government they could imagine, and that's what they got, and the result was unhappy. They ended up with a currency that was valueless. We had continental dollars that had been issued during the Revolutionary War that had inflated away to almost nothing right away. They used foreign money mostly. Most embarrassingly, they ended up using British pound sterling most often. That didn't feel exactly like independence. They also used Portuguese *moidores*, Spanish *dólares*, and Portuguese *johannes*.

When I wrote my Madison book, I discovered that Madison was paid by the State of Virginia when he was in Congress and they paid him in Portuguese *johannes*. That's an odd sort of sovereignty that we were enjoying. Many states issued their own currency, also of dubious value. You read accounts of people traveling at the time and every stop at an inn was a currency negotiation: I have Pennsylvania pound sterling; We don't take those. I have Portuguese *moidores*; We'll give you a one-third discount on those. It made trade and economic activity dry up. The economy became extremely weak. The states, also with no actual federal government, fought each other. The states with good ports taxed goods going to states without good ports. My

favorite example of this was that Massachusetts imposed taxes on goods that it was receiving from Connecticut. Import taxes that were higher than the taxes on goods coming from Britain, with which we just fought a war.

New York and New Hampshire fought over who owned Vermont. Vermont was sure nobody did, but it got a little nasty. Connecticut and Pennsylvania fought over who owned the Wyoming Valley. This is a part of northeastern Pennsylvania that had been settled by a group of people from Connecticut who were sentimental about Connecticut so they kept paying Connecticut taxes, and they actually elected someone to the Connecticut legislature. Pennsylvania was not amused and they sent in the troops, and this was another triumph for early American law. There was an arbitration which resolved that the Wyoming Valley in Pennsylvania belonged to Pennsylvania, but to compensate Connecticut they gave to Connecticut a strip of land below Lake Erie, which was called the Western Reserve. If you know Case Western Reserve University, it's named for that area. That strip of land in northern Ohio was part of Connecticut until 1801.

Seven states claimed parts of the lands over the Appalachian Mountains. That was called the West then. This was awkward; they usually did this out of their colonial charters. This was awkward for Massachusetts and Connecticut because they claimed that the charter gave them land all the way to the west except there was New York State in between so they said their claim jumped over. This was good lawyering. New York did not have that provision in their charter so what they claimed was that since they control the Iroquois, and the Iroquois claimed to control the Ohio River Indians, therefore, by some transitive principle they owned the Ohio River. Virginia was very straightforward as the largest state in the union. They just claimed it. Foreign nations took little notice of the United States. This was very difficult for western interests. Farmers, anybody trying to get products to market, wanted to send them down the Mississippi to the city.

Spain closed ports to all American goods. The British did not allow American ships to call in

their West Indies ports or in Britain. The Barbary pirates who cruised in the Mediterranean and Atlantic always looked for American ships. If they took a British ship, they would have the Royal Navy on their case and nobody wanted that. If you took an American ship, there was no penalty, no consequence. This came to a head in an event we remember as Shays' Rebellion, named for a man nobody actually has an image of or can tell you much about: Daniel Shays. It was a tax revolt. It turns out that's mostly what Americans get upset about, and a lot of the poor people in the western part of the state were feeling crushed by taxes. After a bunch of different political activism events they ended up, and we don't know enough about it, but 3,000 of them were gathering in Springfield, Massachusetts, where there was an arsenal of weapons from the war and they wanted to take the weapons. Then they were going to march on Boston and attack the rich people or something like that.

The state troops were recruited from the rebels' neighbors and they faced off in front of the arsenal. They fired a volley over the rebels and then the rebels didn't leave. They fired a volley directly into the rebels, killing four, wounding many others. The rebels ran. They hadn't expected actually to fight. These were Americans. Americans were killing each other because they couldn't run their own country. This is just three years after we signed the treaty with Britain, and this alarmed people. There were open expectations spoken of in Congress in 1786 and 1787 that the United States would become three countries: New England, the Middle Atlantic States, and the South, maybe even a fourth country in the West on the other side of the Appalachians. George Washington said, 'Weak at home, and disregarded abroad is our present condition, and contemptible enough it is.' The convention was called by means I don't have time to talk about. We had seventy-four delegates who were appointed. Rhode Island never sent any. I like to call out the states that didn't really pull their weight.

Of the seventy-four, only fifty-five actually made it. It was a big deal to go to Philadelphia for a couple of months. Leave your business, leave your family. Of those fifty-five, only about thirty were really there the whole summer. They met

at Independence Hall and there were about a dozen, I would say, who had significant impact. I want to just talk about six of them who left an indelible mark on the constitution. I'm going to start where everything starts, which is with George Washington. He was famously called by one historian, James Flexner, the indispensable man and there is no better description. He had led the army through the war. He was not a spectacular general. I'm working on a book on Washington now. He had bad days, but he was a remarkable man. He had a gift of inspiring trust, which is a gift. It helped that he was the biggest guy in the room, but he also had a way of listening to people, of affability yet aloofness, of obvious intelligence, but not showy intelligence, and he was the man.

Everybody in that room knew that he would be the first president. They also knew that if he hadn't come, there probably wouldn't have been a convention. There certainly wouldn't have been a final constitution. He's always sort of a sober guy, and one thing I'm struggling with is how do you humanize him? There is a story about him at the convention I'm going to tell, even though it's probably not true, but I've been doing this for years and if you say it's probably not true, then it's okay, right? There was an actual proposal on the floor of the convention by Elbridge Gerry of Massachusetts to put a cap on the size of the Army at 3,000 men. There was a doctrine at the time that said standing armies were a terrible thing, that they invited adventures abroad and oppression at home, and that was what was wrong with Europe and we didn't want standing armies.

Washington, of course, would think this was ridiculous. That's certainly true, but he is supposed to have said this not during the formal debates but in conversation. 'That would be fine as long as we have a parallel provision that no invading army can be more than 3,000 men.' He wasn't a real jokester, so I tend to doubt that he said. The remarkable thing Washington did at the convention, in addition to being there, was to be quiet. He presided, he ruled



on motions, but he did not engage in debates. He didn't like to mostly, but given his influence, given his stature, he could have gotten the constitution any way he wanted. In fact, I looked for that in the casual remarks of the other delegates that 'the General really wanted this so we did it.' I never found anything like that.

" QUIPS & QUOTES "

My final character is Gouverneur Morris. He's a lot of fun. He was a rake and a raconteur. He had a wooden leg. It was from a carriage accident, and a lot of people wanted to say that it was while in flight from a jealous husband, although that doesn't appear to be the case. A Frenchman described Morris once as, 'Possessing the most spirit and nerve amongst those I met at Philadelphia.' But then added, 'His superiority, which he takes no pains to conceal, will prevent his ever occupying an important place.' Mostly that turned out to be true. He spoke more than anybody else at the convention.

David Stewart

As an illustration of what he could have done, on the next to last day of the convention, he finally steps down from where he was presiding and said, 'There was something that came up the other day about shrinking the size of congressional districts.' This was a proposal Madison and Hamilton had made to make them smaller and more responsive to the people. It had lost. They voted by state at the time and lost something like two to seven. Washington said, 'I think that's a good idea. I think we ought to do that.' Everyone said great and they all adopted it by acclamation. They didn't even take a vote. Whatever Washington said, they were going to do. I think that's because until then he had done a remarkable thing, which is he had remained silent through the summer and he had basically said to all of those people in the room, whatever you do, I will make the best of it. I trust you. I know I will have to run this government and I will do the best I can with the tools you give me. Please do your best job. It is an incredibly powerful force and example to say that to people.

The second person I wanted to talk about is Ben Franklin. He was the oldest man in the room. He was eighty-one at the time, which I think

was older then than it is now. He was not entirely well. He was old enough to be Washington's father, old enough to be Madison's grandfather, and he was often a wonderful force for conciliation. He cracked jokes. All the delegates tended to write home, 'Oh, Dr. Franklin told the funniest joke the other day.' He was a central glue, but he wasn't just sort of the lounge entertainment. There's a key moment in the convention when it almost fell apart over representation. Would voting in Congress be by states, which is what it had always been under the Articles of Confederation, or would there be representation? Madison and some others were desperate for it only to be by representation and the small states were desperate that that would be terrible. They would be submerged by the big states and this is resolved by something that's often called the Connecticut Compromise. I don't understand why it's called that.

When I looked and actually read the records, the first person to propose this was John Dickinson, a delegate from Delaware. It was ignored and a committee was appointed to try to resolve this terrible confrontation on this issue. They debated all day, and at the end of the day Ben Franklin, with his timing being perfect, said, 'What about this idea that we heard the other day? That we have one house be chosen by the states and one house chosen by the people?' Everybody was hot, sweaty, exhausted, and angry. They all said, 'Fine, good enough,' and that's what we got. We now have the Senate and the House. I'm not here to argue whether it's good or bad, but they needed to get past it.

The third man is the one often called the Father of the Constitution, James Madison. He outlined the initial Virginia Plan, which began the event. He certainly was the key to forming the convention, to having it called. I don't consider him the Father of the Constitution. I get in trouble for this. The final Constitution was not much like what he wanted. He was terribly upset about per state voting. He also thought there should be a veto that Congress would have over state laws because state legislatures were the instruments of the devil. They were doing terrible things and somebody had to stop them. He also didn't sit on the key committees during the course of the summer. Many times, as with what

I just described with Franklin, the key events happened in the committees and Madison was not on the important ones.

When he spoke and he spoke wonderfully, he was taking the notes of his own speeches so he got those down very well. His remarks didn't seem to change the argument. Although he's a terribly important figure, I think it's not good to elevate him above the others, although his notes are in fact indispensable to people like me who want to know what happened in that room.

My candidate for arguably the Father of the Constitution is equally controversial. He is a fellow I suspect few will identify, named John Rutledge from South Carolina. He had been governor of this state, and you'll get a sense of his personality that he was known as the dictator. Someone called him the most imperious man in America. He drove hard and successfully to protect southern interests, including slavery, and that's very unattractive.

But he was a powerful force. When he spoke, and it's striking in the debates, when he speaks, he speaks in modern cadences. They spoke in very flowery, highly rhetorical ways. Rutledge spoke the way we do today. Madison had an ear for catching how people spoke. Rutledge spoke for a short time. Something I need to emulate. When he sat down, he changed the debate. He didn't always win. Nobody always won. But people responded to what he said. They answered him, or they agreed with him, or they modified something he said.

I think you then see his influence, in that he was appointed to more committees than any other delegate. He served on five committees. He chaired more committees than any other delegate. He chaired three committees. Madison chaired none. He chaired the most important committee, which is the committee that produced the first draft of the constitution. As we all know, whoever produces the first draft controls a lot. Let's work from my draft. It's a good way to start the meeting. I think it's important not to forget John Rutledge.

Then there's an equally prickly character, James Wilson of Pennsylvania. He was an immigrant

from Scotland. Came over in his twenties, was a prominent lawyer. He was a strong force for a more democratic government. Debating with Wilson, one said, was like being occupied by a foreign army. He and Rutledge worked together to build an alliance between the large states and the small states, trying to preserve representative government in Congress. Wilson was a very creative thinker, and he came up with some very creative compromises. They have become controversial in history.

One is the three fifths compromise, which allowed southern states to claim that their slave population counted towards representation in Congress and in our electoral system for three fifths of their number. Three fifths of a human being was the phrase I used as the head of that chapter. There's something disgusting about that, which Madison acknowledged. But they found it necessary in order to get agreement, to have everybody in the room agree.

He's also the guy who came up with the electoral system. It doesn't work at all the way they had in mind. But they had a terrible time figuring out how to choose the president. Nobody really thought popular vote was a very sensible thing to do. George Mason of Virginia said, 'That makes as much sense as asking a blind man to choose colors.' But they did expect to have Congress choose the president, but they kept worrying that Congress could be bribed, and that bothered them.

They tried to create this electoral system, which was such a terrible idea it had to be rescued by the 12th amendment in 1803, and it still produces minority presidents. Something not great for the country. But again, it was a compromise that got them through. My final character is Gouverneur Morris. He's a lot of fun. He was a rake and a raconteur. He had a wooden leg. It was from a carriage accident, and a lot of people wanted to say that it was while in flight from a jealous husband, although that doesn't appear to be the case.

A Frenchman described Morris once as 'possessing the most spirit and nerve amongst those I met at Philadelphia.' But then added, 'His superiority, which he takes no pains to conceal,

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[Gouverneur] Morris was the only who stood up and said, in what has been called the first abolitionist speech in American history, that 'slavery is the curse of God that will curse this nation forever.'

Morris' reaction to a provision which would control slavery and the slave trade, without a two-thirds vote of Congress



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The greatest legacy of the convention was not the document itself, but the political culture that created it, and that they left to us to do with it as best we can. We can only form a nation and be a nation by a compromise of vital interests. Nobody gets everything.

David Stewart

will prevent his ever occupying an important place.' Mostly that turned out to be true. He spoke more than anybody else at the convention. If he was there, he was talking. He actually achieved that distinction although he wasn't even there for two weeks. He had to go away on business.

He did two remarkable things that we ought to remember about him. One was when that first draft of the Constitution came back from the committee that Rutledge chaired, it had a variety of additional pro-slavery, pro-southern provisions. It guaranteed the slave trade forever. It would not allow the revision of navigation laws, which would control slavery and the slave trade, without a two-thirds vote of Congress. Morris was the only who stood up and said, in what has been called the first abolitionist speech in American history, that 'Slavery is the curse of God that will curse this nation forever.'

He called for a vote on it. There was one other vote supporting him, the youngest delegate, Jonathan Dayton of New Jersey. But then in the next few days, the other northern delegates found their courage and started standing up and objecting to some of these provisions. They were changed. Morris, I think, made a testament of conscience we should honor. The other thing he did was he wrote the Constitution. They got to the end of the summer and they had this mess. They had the first draft. They had a lot of amendments and resolutions, and somebody had to put it together.

They appointed a committee, and the committee appointed Morris. He spent two days on it. He shrank it by two thirds, for which we're all very grateful. He produced something that makes sense mostly. It was hard intellectual work. You had to be sure that the different

parts of the Constitution were integrated with each other, that they didn't contradict each other, and that they followed what these different resolutions had tried to achieve. I think it's so sad we don't recognize this.

We exalt Thomas Jefferson for the Declaration of Independence, and it's a good piece of work, but it's a rant. It's basically saying we're angry and we're not going to take it anymore. What Morris did was hard. I'm still agitating for a statue to Gouverneur Morris. The Constitution was completed with all its faults, in Franklin's memorable phrase, and was finally ratified, although North Carolina took two years to do it, and Rhode Island took three. There is a point I want to stress, which is none of the signers really liked it very much.

Madison continued to sputter over the lack of a veto of state laws for Congress. James Wilson hated having states cast a single vote, or equal vote, in the legislature. He thought that was far too aristocratic. Alexander Hamilton thought the Constitution was nowhere near aristocratic enough. He thought senators and presidents should serve for life, rather like kings and nobles. Franklin thought there should be a one-house legislature, that public officials should not be paid, it only encourages them, and that there should be a three-person executive. That way none of them would have any power.

Rutledge and the other southerners dreaded having to give up to Congress the power to make trade laws by a simple majority, and not a two-thirds rule. Gouverneur Morris was outraged that the slave trade was allowed to proceed unabated for twenty years. It was not a perfect document. There was no Bill of Rights. There are other things that weren't perfect.

But the greatest legacy of the convention was not the document itself, but the political culture that created it, and that they left to us to do with it as best we can. We can only form a nation and be a nation by a compromise of vital interests. Nobody gets everything. Even ugly compromises, like those that were made over slavery, sometimes need to be made for a nation to be forged. We forget that at our peril. Thank you very much. ■



TEXAS BAIL REFORM CONTINUES, THE VOTERS WEIGH IN

Fellow **Neal S. Manne** of Houston, Texas, who is managing partner of Susman Godfrey LLP, is continuing the fight for bail reform in Harris County, Texas. As previously reported in *Journal* issues 83 and 87, Neal filed this suit in 2016 and handled a nine-day evidentiary hearing, challenging the constitutionality of the County's bail process for misdemeanor arrestees.

Under that process, most indigent arrestees remained incarcerated until their case was resolved. In 2017, the Honorable Lee Rosenthal, Chief Judge of the U.S. District Court for the Southern District of Texas, issued a 193-page opinion concluding that the plaintiffs were likely to succeed on their claims that Harris County's bail policy, as applied to misdemeanor arrestees, violated both the Fourteenth Amendment right against wealth-based detention and procedural due process. Having found that Harris County was likely committing more than 20,000 constitutional violations each year, the judge entered broad injunctive relief.

Early in 2018, the Fifth Circuit affirmed the district court's order but held the preliminary injunction was "overbroad" in certain respects. O'Donnell, 892 F.3d at 163. The Court "re-mand[ed] to allow the [district] court

to craft a remedy more finely tuned to address the harm." *Id.* at 164.

The Fifth Circuit stayed vacatur of the preliminary injunction "pending implementation of the revised injunction." *Id.* at 167. In the first year that injunctive relief was in place, more than 12,000 indigent arrestees were released on personal (e.g., non-cash) bonds.

On remand, the district court issued a revised preliminary injunction. It took account of changes that Harris County had made to its misdemeanor-bail policy following the preliminary-injunction hearing. The County had revised its policy to create twenty categories. For arrestees falling into thirteen of those categories, no initial bail amount is set: i.e., all arrestees are detained until an initial hearing, which must occur within forty-eight hours of arrest. At the hearing, no presumption of pretrial release on unsecured bail applies.

In the other seven categories - the least serious cases but which accounted for the vast majority of misdemeanor arrests - the County had adopted a presumption of pretrial release on unsecured bail. Given that presumption, the district court's revised injunction required that all such arrestees be released on unsecured bail, even in advance of the first hearing.

Some defendants appealed from the revised injunction, and a motions panel issued an administrative stay order (by a split decision), pending resolution of the appeal by a merits panel of the Fifth Circuit. But as the complicated legal process was unfolding, the political process was dramatically changing the legal landscape. In October, the *Houston Chronicle* editorialized that the fourteen judges who were defendants in the case and had appealed from the revised injunction should be thrown out of office for having violated the constitutional rights of thousands of arrestees and for resisting efforts at reform.

The voters agreed. All the defendant judges were defeated, overwhelmingly.

The new judges and commissioners take office in January. When they do, Manne is optimistic that the ground-breaking lawsuit will end in a negotiated settlement that brings permanent bail reforms to the third largest county in the country. "This will be a new era for criminal justice in Harris County," he said. "And we expect that the progress we made here through this pro bono lawsuit will lead to changes all across the state."

Sylvia H. Walbolt
Tampa, Florida



CIVIL RIGHTS ACTIVIST URGES COURAGE, COMMITMENT FROM FELLOWS



OW! HE IS ONE OF MY HEROES.” THAT WAS THE ALL-CAPS TEXT RESPONSE TO IMMEDIATE PAST PRESIDENT BARTHOLOMEW J. DALTON’S TEXT ANNOUNCEMENT TO A RELATIVE, A TENURED PROFESSOR WITH A SPECIAL INTEREST IN THE CIVIL RIGHTS MOVEMENT, THAT DALTON WOULD BE INTRODUCING FRED GRAY AT THE 2018 ANNUAL MEETING IN NEW ORLEANS.



Dalton agreed with her in his opening remarks, noting that “in a culture where that term may be too freely used, it is not too freely used when it comes to Fred Gray. He is a hero to many of us, including this Fellow.”

“He was born in Montgomery, Alabama. Took his B.A degree from Alabama State College. His law degree from Case Western. And he went to law school with a goal that was probably a little different than many of our goals. His goal, and I’ll quote him, was ‘To destroy everything segregated I could find.’ And the next sixty years of his career he did just that. He started early. He became a member of the Alabama Bar in 1954. By 1955, he was the lawyer and chief strategist for the Montgomery Bus Protest. Notice I didn’t say the Montgomery Bus Boycott, because at that time in Alabama it was illegal to have a boycott. But the Civil Rights Movement had a smart lawyer. He called it a protest. And during that protest, he represented many different people, the movement itself, and the strategies,” Dalton said.

Among the people represented by Gray was Rosa Parks and “a young African-American preacher who just moved from Atlanta to Montgomery by the name of Martin Luther King, Jr.,” Dalton said. Gray began representing Dr. King at the time of the protest and continued up until Dr. King’s death. “He was one of the first African-American state legislators in Alabama since the time of reconstruction. And later became the 126th, but first African-American president of the Alabama State Bar. He was also a great trial lawyer.” Two of Gray’s landmark U.S. Supreme Court cases are *Browder v. Gayle* and *Gomillion v. Lightfoot*.



In *Browder*, the U.S. Supreme Court affirmed the district court's finding that the Alabama statutes and Montgomery Municipal Ordinances requiring segregation in busing were unconstitutional.

"In the *Gomillion v. Lightfoot*, Mr. Gray established, and the court agreed with, the idea that gerrymandering based on race was unconstitutional," Dalton said. Mr. Gray's cases "along with the *Brown v. Board of Education* case, formed the foundation for all the civil rights victories that would follow. They were the foundation for all the victories in the Civil Rights Movement in public accommodations, voting, and education."

Congressman John Lewis, who had been beaten senseless on the Edmund Pettus Bridge during Bloody Sunday, described Gray as "Cold Mr. Gray. A pioneer in the Civil Rights Movement. I consider him one of the founding Im-

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He is a hero. A hero of the rule of law, of Civil Rights, and of simple human dignity. And what we are very proud of is, as a great trial lawyer leading this great movement, we can also call him a Fellow of the American College of Trial Lawyers. It's my honor to introduce Fred Gray.

Immediate Past President Bart Dalton, in his introduction of Fred Gray

fathers of the Civil Rights Movement, and a champion of justice." John Lewis proclaimed that Gray was "no stranger to courage" and that "[w]e can learn much from this courageous man. Oh yes we can."

Gray's edited remarks follow:

"On December the first of this year we will celebrate the sixty-third anniversary of the arrest of Mrs. Parks. Her arrest ignited the beginning of the Montgomery Bus Boycott, and many historians

say that the Montgomery Bus Boycott was the beginning of a modern Civil Rights Movement. It is appropriate then for the Fellows of the American College of Trial Lawyers to take a ... retrospective view of the Montgomery Bus Boycott, see what it has accomplished, see where we are today, and see where we need to go if we're going to have equality.

"The Montgomery Bus Boycott of 1955 and '56 is rightfully recorded and celebrated as the first sustained mass cam-

paign in the United States twentieth century Civil Rights Movement,” Gray said. What started that movement were three architects. “If there were a lead person, it was Jo Ann Robinson.” Ms. Robinson, a teacher at Alabama State, had a “bad experience on a Montgomery bus in 1948, and had been instrumental in starting the Women’s Political Council, an organization of black women who was helping to solve problems. And in the back of her mind, she not only wanted segregation to be ended by court order, but she wanted to get the community involved.”

E.D. Nixon was a Pullman car porter, a personal friend to Gray, Past President of the NAACP, and President-Elect of the state conference and branches of NAACP. “And any person at all who had any racial problems in Alabama or in Montgomery, they would see E.D. Nixon. He was the other person who was not the planner, but one who was willing to help implement it. And then, believe it or not, a young lawyer just out of law school named Fred Gray had a little something to do with it too.” While the bus boycott was “ignited” by the arrest of Mrs. Rosa Parks on December 1, “you have to understand what happened before December 1, 1955. And let me just tell you a few events,” Gray said.

“On September 8, 1954, Fred Gray was admitted to practice law in Alabama.” That fall, E.D. Nixon, “invited Congressman Adam Clayton Powell, then the only African-American in the U.S. House of Representatives, to speak at the Alabama State College for Negroes....and he encouraged African-Americans to register to vote. And while Powell was there, it created a big ruckus.”

On March 2, 1955, nine months before Rosa Parks was arrested, a fifteen-year-old girl named Claudette Colvin was asked “to get up and give her seat to the white people. And she says, ‘I won’t. I paid my fare. I’m not in the reserved seats for whites, and I’m not going to get up.’” She was arrested and “I lost the case, but it gave us the courage to get prepared so that whenever the next opportunity presented itself, we would be ready to do it”

“ QUIPS & QUOTES ”

There are those people who would have you to believe that Mrs. Parks was just tired. It wasn’t that she was just tired that particular day, but she was tired of discrimination.

Fred Gray

On December 1 Rosa Parks was arrested and “there are those people who would have you to believe that Mrs. Parks was just tired. It wasn’t that she was just tired that particular day, but that she was tired of discrimination.” And on December 9, the Bus Boycott began. “On February 2 we filed the case of *Browder v. Gayle* that finally ended it.”

Jo Ann Robinson “was very much concerned, particularly after Claudette’s case, that we be prepared. Whoever it was, the next time we get an opportunity, we want to be able to not only desegregate the buses so that this won’t happen again, but we need to get the community involved. I had these meetings with Mrs. Parks. She worked at the department store right down the street from me. She would come, and we would have our lunches every day.” December 1, 1955 was no different and Mrs. Parks “knew I was going to be out of town that afternoon, and the opportunity presented itself. When I got back in town Mrs. Parks had been arrested.” Meeting at her house, “I said, ‘Don’t worry about your case. I’m going to take care of that. But we’re going to try to solve this problem so that it won’t happen again.’”

It was only a few blocks walk from Mrs. Parks’ house to Mr. Nixon’s home. Nixon knew about Mrs. Parks’s arrest and had bonded her out. “I also told him that we think if we’re going to ever do anything about the buses we need to do it, and we need to get the community involved.” Mr. Nixon agreed to support the effort in any way he could. “I left his house and went to Jo Ann Robinson’s house. She’s on the other side of town.” While talking together, “Jo Ann said, ‘What we need to do for it, let’s try to keep the people off of the bus, and tell them for one day.’” She added, “‘What we need to do now is make plans.’” But long-term plans take time “and we have to do it tonight and we don’t have any more time.” Staying off the buses more than a day meant a spokesperson was needed. The choice lay clearly between E.D. Nixon and another black leader Rufus Lewis. “But the two of us were afraid that if we selected either one of those leaders we might lose somebody’s support, and we needed everybody’s support. Why don’t we find somebody else and then give these men two good supporting roles?”

“And what happened? Jo Ann said, ‘I can tell you who. My pastor, Martin Luther King, Junior. Hasn’t been in town long. Hasn’t been involved in any civil rights activities... but he can speak and can move people with words.’ I said, ‘Fine.’ I said, ‘Well, I can tell you a good position for those other two persons. E. D. Nixon is a Pullman car porter. Make him Treasurer. His president, A. Philip Randolph is the black labor leader in New York. He’ll help his members raise some money to finance the bus boycott. Well, what we going to do with Rufus Lewis?’ I say, ‘He has a wife. His wife is co-owner of the largest funeral home in town. We need cars to take folks, and they don’t use those big Cadillacs except when it gets ready for funerals. Let’s make him the chairman of the transportation committee and he’ll get his wife and all the funeral directors around to do it.’ And they did it.” As for Dr. King as spokesman, he “was selected before he got to the meeting.”

“The bus boycott was an immediate success. It united the Montgomery African-American community as nothing else had done. It revealed the unique leadership of Dr. Martin Luther King and elevated him. It showed the courage that he had. It also meant other great black leaders came into being. It served notice on the white leaders as to the extent that the black community would no longer continue to accept segregation. Most importantly, it focused the nation’s attention on the particular evils of Jim Crow practices and the resulting injustices that African-Americans were suffered. However, the bus boycott did not change the hearts of the white power structure in Montgomery. We still had to go ahead and file *Browder v. Gayle*” and ultimately, the United States Supreme Court ruled favorably.

“The struggle for equal justice continues, the question being before us here in New Orleans: where do we go from here?” One thing the country needs to do is “to recognize that racism is still alive in this country, and that it’s wrong. The declaration of that needs to

come from the top. It needs to come from the White House, a loud, clear, unequivocal voice saying that racism in this country is wrong. It needs to come from the Congress. It needs to come from the United States Supreme Court.” Saying racism is wrong, “that’s the first step because as long as there are people out there who think that racism is all right then we are going to have problems in this country, and this country has never completely faced up to the race problem.” The second thing to be done is to “come up with a plan to do away with it. Racism has been here ever since slavery, since our forefathers were brought to this country against their will. It’s not going to go away by itself. The bus boycott didn’t start by itself. If Jo Ann and I had not done what we did in her living room on the evening of December 1 and December 2, there would have been no bus boycott in Montgomery on December 5. Now, one may have occurred some other time, but it would not have occurred there. The third thing you have to do is, you’ve got to have a plan. You have to have a plan. If we had not had a plan, we couldn’t just tell people to stay off of the buses. We had to make a way so that they would be able to go where they needed to go and still exist. The last part about it, and this is the most important part is, every one of us individually, every one of us individually needs to be a part of trying to eradicate racism, and eradicate unequal justice under the law. And that’s the power of what this organization is all about.

“You are the cream of the crop. Don’t expect somebody else to do it. Start immediately. And if you start, then it may encourage somebody else to start. Many of you in your law firm can sit down when an opportunity presents itself, and just present an opinion on an issue. And that opinion can go a long way toward doing away with racism. But it takes courage and order to do it, and it takes work based on it.”

“You need to take time to pass the torch on, or the mantle, to younger

generations so that these young men and women will be able to face the challenges before them. And let me tell you what some of those challenges are. The challenges include racism, economic and political disenfranchisement, and human indignities. In public schools, the corporate and business world, and individual neighborhoods you must seek to instill in these young people that they have lives worth living and that their dreams too can become true, that all lives matter, including the lives of African-Americans and minorities. I challenge you to examine what we did in the Montgomery bus boycott, and what we did in the civil rights movement in the fifties and the sixties and the seventies. Transform it and use it to solve the problems facing us. The challenge is yours. I leave to you a challenge and a commitment that I hope when you leave here today you will be determined to go back to your homes and back to your law firms and take some of the things we’ve learned in the civil rights movement and help to change the nation.

“I want to say what Governor Wilder, the first African-American Governor of the Commonwealth of Virginia said when he was installed as Governor of Virginia several years ago, now. He was talking to young people, but I think it’s good for all of us. This is the way he closed his address. ‘I want them to know that oppression can be lifted, that discrimination can be eliminated, that poverty need not be binding, that disability can be overcome, and that the offer of opportunities in a free society carries with it the requirements of hard work, the rejection of drugs and other false highs, and a willingness to work with other people, whatever their race or national origin may be.’ Thank you very much.”

Lorna S. McClusky
Memphis, Tennessee

LAW PROFESSOR DISCUSSES HOUSE OF TRUTH AND PROMISE OF THE PROGRESSIVE MOVEMENT

PAST PRESIDENT **GREGORY P. JOSEPH** OF NEW YORK, NEW YORK HAD THE PLEASURE OF INTRODUCING CONSTITUTIONAL SCHOLAR AND LEGAL HISTORIAN PROFESSOR **BRAD SNYDER**, ONE OF HIS "FAVORITE LECTURERS ON THE SUPREME COURT," DURING THE 2018 ANNUAL MEETING IN NEW ORLEANS.





“Most law professors deal with boring subjects. Brad talks about and writes about very interesting subjects. He’s talked about Sacco and Vanzetti and their roles in the background of Justice Brandeis, future Justice Frankfurter. He chaired a panel of scholars talking about Justice Holmes and the Civil War.”

Snyder’s wide range of interests can be seen in the books he has published. His first book was about the Homestead Grays, the leading team in the Negro leagues for many years, who shared Griffith Stadium with the Washington Senators in the 1940s. They were in the forefront of the fight to integrate major league baseball.

His second book, *A Well-Paid Slave*, was about Curt Flood, a baseball player who in 1969 refused, even though he wasn’t allowed to refuse, to be traded to Philadelphia. “He lost his career. He lost his case, but he set in force, the various forces, that led to free agency and now the untold wealth that athletes from Aaron Rodgers to LeBron James can enjoy and the freedom of movement,” Joseph said.

Snyder spoke to the College about his most recent book, *The House of Truth*. The subject of the book is a home in Washington, D.C., that was occupied by Felix Frankfurter and Walter Lippmann, which had a parade of dignitaries in the 1920s. The book reviews the history from the progressivism of Teddy Roosevelt to the liberalism of FDR. Snyder focused his presentation on the 1920s when liberalism was a minority view.

The House of Truth is “a typical Washington story. It was about a group of young people who were just new to the city, moved in together to live in the same house. They all worked in the Taft administration and they all agreed on one thing: Taft was a terrible president. They were disaffected members of the Taft Administration and they thought that Taft was bad on the two issues that they cared about most. One was the power of organized labor and the other was antitrust prosecutions and



busting trusts,” Snyder said. “They thought if only we can reelect Taft’s predecessor, Theodore Roosevelt, all of our goals and all of the promise of the progressive movement will be realized. Roosevelt, of course, handpicked Taft to be his successor and then ran against him.

“The owner was a man named Robert Valentine, who was Taft’s head of the Bureau of Indian Affairs; he turned the house into a political salon and started inviting a who’s who of people over to the house. Justice Oliver Wendell Holmes, Jr. was a regular guest at the house. Then lawyer Louis Brandeis was a regular. Gutzon Borglum, who was most famous for building Mount Rushmore, was a regular and, in fact, my book opens with Borglum pulling back the dining room table cloth and sketching out his precursor to Mount Rushmore, his Stone Mountain Confederate Memorial, on the dining room tablecloth for Justice Holmes and Felix Frankfurter.

“Most of the people in the house agreed that Roosevelt should be the next president and the house should become the de facto campaign headquarters for Roosevelt’s Bull Moose political party. Valentine quit the Taft Administration to work on Roosevelt’s reelection campaign. That was front page news in the *New York Times* at the time.

“The interesting thing about Roosevelt’s presidential campaign that not many people know about is that he campaigned against the conservative Supreme Court of the United States. He railed against a few Supreme Court decisions and went around the country talking about them. One of them was *Lochner v. New York* from 1905, which was the infamous case about the maximum hour law for New York bake shops. Another one was *United States v. E.C. Knight*, which was an antitrust case about a sugar trust, which distinguished manufacturing from commerce.

“Roosevelt’s argument about the Supreme Court was, given its restrictive view of Congress’s power and restrictive view of state power, that the court had left a regulatory “no man’s land” that prevented the American people from regulating the economy and promoting the rights of workers and small businesses.

“Roosevelt lost his reelection bid in 1912. It was a three-candidate race between Roosevelt, Taft,

and Woodrow Wilson. Wilson won the presidency. It was a four-person race if you include the Socialist candidate Eugene Debs, who received 900,000 votes that year.”

MOVING AWAY FROM ROOSEVELT

“Most of the people associated with the house left after the Taft administration was over. They began a magazine called *The New Republic*. When they started the *New Republic*, they thought that it would be an outlet for their ideas and an outlet for Roosevelt’s ideas. There was only one problem. They quickly had a falling out with Roosevelt. He described the editors of the magazine as “three Victorian geese and three international Jews.”

“When they moved away from Roosevelt, they took up the Supreme Court as a cause. The first big cause from *The New Republic* was the confirmation of Louis Brandeis. I don’t know how many of you know about Brandeis’s confirmation hearing, but he waited longer for a Senate Judiciary Committee hearing than any other judicial nominee until, and I had to add this right before the publication of my book, before Merick Garland who never had a Senate Judiciary Committee hearing. Brandeis’s confirmation hearing was held up largely by members of the Boston business community who signed a petition and seven of the past eight presidents of the American Bar Association.

“In those days, nominees did not testify in their own defense. The defense was made in the pages of *The New Republic*. Felix Frankfurter and the young journalist, Walter Lippmann, were writing editorials and articles defending, one by one, all of the charges against Brandeis. Their defense boiled down to one thing; they didn’t even mention the anti-Semitism that was fueling a lot of the opposition. They characterized the Boston opposition to Brandeis’s nomination as the insularity of the business community who all had belonged to the same private clubs and the same State Street banks. They were opposed to Brandeis as much on class grounds as anything else.

“Wilson, who of course nominated Brandeis, was able to push his nomination through by twisting the arms of southern Democrats to vote for Brandeis. Brandeis gets confirmed and he be-

comes the hero of the house, but the real hero of the house was Justice Holmes. What happens during World War I is all the people who moved out of the house move back in and join the Wilson Administration during World War I. Frankfurter leaves Harvard Law School and comes back to live in the house. He invites Lippmann to live with him in the house and they're all working in the War Department and in various departments to help the United States.

"Justice Holmes was largely a cult of personality thing. Brandeis was a bit of a cold fish, and Holmes was the one who was invigorated by the young people like Lippmann and like Frankfurter. In 1911, Holmes was counting the days until he was going to retire from the Supreme Court after ten years so he could collect his pension. He hated his colleagues. He was the outsider on the court. He didn't have a lot of recognition. Most people only knew who he was because his father was a famous physician poet, so he was counting down the days.

"Then in 1912, the house gets established. Holmes starts having dinner at the house and they have a rapport. *The New Republic* starts writing articles about how great Holmes' dissents are and he becomes the hero of this nascent liberal movement.

"The real theme I want to get across is that liberalism thrives as an opposition movement. When it started to thrive as an opposition movement was late in the Wilson administration where they become disenchanted with Wilson's negotiation of the Versailles treaty, his censorship of media outlets abroad about news on the Versailles treaty, and also the suppression of civil liberties at home with the notorious Palmer raids, which was a massive round-up of radical immigrants led by the Attorney General A. Mitchell Palmer and his chief lieutenant, a young FBI agent named J. Edgar Hoover. Both Frankfurter and his Harvard Law colleague, Zechariah Chafee, defended radical immigrants in Boston in a trial as friends of the court and saved sixteen of those twenty immigrants from deportation and openly challenged the constitutionality of the Attorney General's conduct.

"It was at that point that Liberalism started to figure out what it stood for. The first thing it stood for was free speech. Holmes's famous decision in

a case called *Abrams v. United States* was the first real dissent, it was the first opinion that started to carve out our modern First Amendment jurisprudence which attempted to protect people's rights to political speech. This was an important case and put Holmes on the vanguard, along with Brandeis, of free speech protections.

"There was a war of words going on. Attorney General Palmer wanted a retraction from Frankfurter and Chafee for the allegations, and Frankfurter and Chafee said we're not retracting them, we want to go before Congress and testify about them. Not surprisingly, Palmer did not take them up on that offer.

"The opposition movement took flight in 1920 when Warren Harding becomes president. He has the reputation as being one of the worst presidents in our history because of the scandals that were part of his administration, but one thing that people overlook was that Harding remade the Supreme Court. He was only in office for three years until he died, but he nominated four Supreme Court Justices. The most important of those Justices that he nominated was the former president who the people of the House of Truth couldn't stand: William Howard Taft. President Harding didn't care who was on the Supreme Court, but Chief Justice Taft did and he was like a one man federal society, choosing the other Justices very conservative to go on the Supreme Court.

"The seeds of a very conservative court in the mid 1930s were planted by Chief Justice Taft when he handpicks all of Harding's nominees. Liberals are in the wilderness. They don't have the presidency, they don't have the Congress, and they don't have the Supreme Court and they're fighting for the things that are important to them. The first being free speech, the other being fair criminal trials.

"I argue in my book that one of the most important and most overlooked Supreme Court cases in our history was a majority opinion by Justice Holmes that said the mob-dominated criminal trials of these Arkansas sharecroppers violated the due process clause. That does not seem like a big deal to us today, but this was the first time that the Supreme Court had invoked the Fourteenth Amendment's due process clause to invalidate a state criminal conviction. It was a huge



deal. It began the Supreme Court's review in a hard way of the constitutionality of state crimes and state criminal convictions. It was the beginning of cases like the Scottsboro cases later on where the court was able to intervene, particularly with black criminal defendants in the South. This was part of this liberal movement.

"The other thing Liberals focused on was elections. They invested all their energy in elections and in part in presidential elections. In 1924 liberals refused to back the Democratic Party candidate, many of them, because John W. Davis was on retainer for JP Morgan and there was no way they were going to vote for Harding's successor, Calvin Coolidge. They backed a third-party candidate, Robert La Follette. I know this is a little bit of a rough analogy but think of Bernie Sanders. La Follette is the populist Progressive candidate who's running for office and Frankfurter and Lippmann disagreed. Lippmann backed Davis, Frankfurter backed La Follette. They're writing these dueling articles in the *New Republic*. But through all these, they saw what mattered were these elections and Frankfurter didn't care if, by backing La Follette, they were going to lose. Developing the ideas of Liberalism were more important to the LaFollette supporters than actually winning.

"One more big event for the people associated with the House of Truth was the Sacco and Vanzetti case. These were two Italian anarchists who were accused of robbery and murder in south Braintree, Massachusetts. They were tried and convicted and there were about six years of appeals before their sentencing in 1927. Frankfurter wrote a book and an *Atlantic Monthly* article about the case that turned it into a national cause célèbre and a worldwide cause célèbre. He called on his friends from the House of Truth to help him. He had Lippmann writing editorials about the case in the *New York World* because most of the Boston papers wanted nothing to do with it.

"They appealed. After they went through the state appeals court process, they appealed to the Supreme Court Justices. They thought the Court might grant them a stay of execution in the eleventh hour of the case. They went that summer to the home of Louis Brandeis, who refused to get involved. They went to the home of Oliver Wendell Holmes, who denied stays of execution and said there were far worse cases of injustice

in the American South for black criminal defendants than Sacco and Vanzetti who had six years of criminal appeals. He even wrote "the world cares more for red than for black."

"To make a long story short, Sacco and Vanzetti were executed and then Frankfurter's friend Gutzon Borglum made a memorial to Sacco and Vanzetti, which for about fifty years the city of Boston refused to put up in public. It is now in the Boston Public Library for those of you Massachusetts lawyers out there who want to go see it. It's on the second floor."

ISSUES IMPORTANT TO THE HOUSE OF TRUTH

"The House of Truth had their issues, which were to protect organized labor, fight for free speech, and fair criminal trials. All these issues coalesced around the 1928 presidential election when Al Smith ran against Herbert Hoover in 1928. He lost largely for three reasons. He lost because he was Catholic. He lost because they tied him to the Tammany Hall political machine in New York City. And he lost because he came out against Prohibition and that wasn't a popular stance throughout the South. Smith was trounced.

"After that 1928 loss, Lippmann predicted it was the end of the Democratic party and that Liberalism had no hope. Frankfurter thought quite the opposite. He had been advising a young politician he knew during World War I, Franklin Roosevelt, on his gubernatorial race for New York. He saw Franklin Roosevelt as the future of the Democratic Party and the Democratic Party as the future of American Liberalism. Just to remind you, at those times there were both conservative and liberal wings of both political parties, so predicting the Democratic Party would be the liberal party was not obvious.

"While Hoover was president, liberals didn't just twiddle their thumbs waiting for the next election. They fought Supreme Court nominees. The first major nominee to be defeated in the twentieth century was a man named John J. Parker. He was a Federal Court of Appeals judge. Both organized labor and the NAACP testified against Parker's nomination, and Parker was voted down in the United States Senate. Working behind the scenes, both on behalf of organized labor and the NAACP, was Frankfurter. Opponents saw

Parker as anti-labor and anti-race. We could have a long debate about whether those things were true, but Parker's nomination was voted down and Owen Roberts was nominated in his place.

"The next nomination that Liberals fought over in Hoover's administration was when Justice Holmes finally retired in his nineties. Remember, he wanted to stay on the court for only ten years; he ended up serving for more than thirty. When Holmes retired, Frankfurter and others say we have to nominate someone to the Court of Holmes' stature and Hoover wanted to nominate a Southerner or a Midwesterner to help his reelection chances. Frankfurter and others lobbied people in the Hoover Administration and said there's only one person for this job. The best judge in the country is Benjamin Cardozo. Everyone knows that and Cardozo should be the nominee.

"Members of Hoover's cabinet persuaded him to nominate Cardozo and he went on the Supreme Court even though he was in his late fifties, early sixties, which was by today's standard ancient to go on the Supreme Court. He only served on the Supreme Court for about six years, but for Frankfurter and his friends this exemplified everything that was right with the world—that the best people should be in our government and that the best people should be on the Supreme Court of the United States.

"Frankfurter arranges, at the end of my book, a visit to Holmes of new President Franklin Roosevelt in 1933, three days after Roosevelt takes office. After that meeting, Roosevelt called Holmes the wisest of all American liberals. Holmes dies in 1935. On the morning before Holmes's funeral, one person is allowed to enter Holmes's residence. It's the sculptor Gutzon Borglum whom he'd met in 1911. Borglum makes a death mask of Holmes's face, which is on display at Harvard Law School.

"I want to give a few take-homes that come from Liberalism as an opposition movement. One is they wanted a limited role for the Supreme Court of the United States. They wanted to protect free speech and fair criminal trials, and then they wanted the Supreme Court to stay out of most of our socio-economic fights. The second thing that they wanted were the best people in government service and the best people on the Supreme Court, regardless of age, regardless of background. The third thing that they focused on were elections. I think that people of both parties can take something from that. Focusing on getting the best people in government, focusing on elections, having a more limited role for the Supreme Court to make it less polarized are things that both parties can take away from this.

"The last thing the House of Truth did was create a network of American liberals. What's funny about today is that

conservatives have been better at creating networks through The Federalist Society and focusing on issues. Liberals have taken it for granted that social networks and professional networks can possibly lead to political change. That's what the House of Truth did, to create a political network, and that's what I would urge liberals to do today, which is to not take their legal and political networks for granted.

"My last point is that on the Supreme Court and on the current nomination [of Brett Kavanaugh], it would be incredibly refreshing for a President to say, 'I don't care how old a person is, I don't care what political party the person's in. I think so and so is the best lawyer in America and we should nominate him.' I could give recent examples, but people like Judge Richard Posner would have made a great Supreme Court Justice. A generation before him, Judge Henry Friendly would have made a great Supreme Court Justice. And a generation before him, Judge Leonard Hand would have made a great Supreme Court Justice. If you would have nominated any of those and said "this person's the best lawyer in America for the job" you would get no one to dispute that. I wonder if the way to a *detente* in this charged political climate is to try to get the best people on the court regardless of how young or old they are, not necessarily what their background is."

" QUIPS & QUOTES "

...they wanted a limited role for the Supreme Court of the United States. They wanted to protect free speech and fair criminal trials, and then they wanted the Supreme Court to stay out of most of our socioeconomic fights. The second thing that they wanted were the best people in government service and the best people on the Supreme Court, regardless of age, regardless of background. The third thing that they focused on were elections. I think that people of both parties can take something from that. Focusing on getting the best people in government, focusing on elections, having a more limited role for the Supreme Court to make it less polarized are things that both parties can take away from this.

Brad Snyder



This Certificate of
Honorary Fellowship
in the
American College of Trial Lawyers
is hereby awarded to
The Honourable Madam Justice
Sheilah E. Martin
Judge of the
Supreme Court of Canada
BY THE REGENTS OF THE COLLEGE IN
RECOGNITION OF HER ACCOMPLISHMENTS
AND EMINENCE IN THE FIELD OF LAW

20th day of September, 2018

CANADIAN JUSTICE MARTIN RECEIVES HONORARY FELLOWSHIP



UPREME COURT OF CANADA JUDGE SHEILAH L. MARTIN WAS ELOQUENTLY INTRODUCED BY FELLOW GUY PRATTE, CHAIR OF THE NEWLY CREATED BEVERLEY MCLACHLIN ACCESS TO JUSTICE AWARD COMMITTEE, AT THE 2018 ANNUAL MEETING IN NEW ORLEANS, LOUISIANA, WHERE SHE WAS INDUCTED AS AN HONORARY FELLOW OF THE COLLEGE.

Justice Martin hails from Montreal, Québec where she obtained her first two law degrees from McGill University. After obtaining a Master of Laws from the University of Calgary, Alberta, she taught at that University and ultimately became the Dean of the Faculty of Law. After being called to the Bar of Alberta in 1989 and obtaining a fourth degree in 1991, a Doctor of Juridical Science from the University of Toronto, Justice Martin went on to practice criminal and constitutional law in Calgary until her appointment in 2005 as a Judge of the Alberta Court of Queen's Bench, eventually ascending in 2016 to the Alberta Court of Appeal as well as the Court of Appeal for the Northwest Territories and Nunavut. In December 2017, Justice Sheilah Martin was appointed as the eighty-eighth Justice of the Supreme Court of Canada, the tenth woman to sit on that Court. Justice Martin demonstrated why she has been described by her colleagues as warm, smart, funny, generous, compassionate, pragmatic and idealistic in the following speech on the compelling topic of advocating for equality:

Thank you so much for the absolute joy of being inducted as an Honorary Fellow of the American College of Trial Lawyers. It's a privilege to be part of such a lustrous company. I have attended other College events because my late husband, Hersh Wolch, was a Fellow. We attended as frequently as his busy trial schedule would allow. I loved

that as a spouse I was invited to the sessions, which were always rich, rewarding, and relevant.

" QUIPS & QUOTES "

In 1991, she was granted a Doctor in Juridical Science degree by University of Toronto. In that same year, she became acting Dean, and then the following year, 1992, the Dean of the University of Calgary Faculty of Law, a position that she held until 1996. Her teaching could not have been more varied. It included advanced constitutional law, business associations, contracts, bankings and bills of exchange, feminist legal theory, gender equality on the charter, legal ethics, personal property security law, torts, and loss compensation, and trial evidence and procedure. Either Justice Martin was the only professor at her law school, or the others were on sabbatical almost all the time. This attests, nevertheless, to her extraordinary range of legal expertise.

Guy Pratte, in his introduction of Justice Martin

Today, I'm very pleased to be joined at this conference by a judicial colleague of mine from the Alberta Court of Appeal, Justice Sheila Greckol. Her late husband, Alex Pringle, was also a Fellow. The last time the four of us had a fabulous joint venture at this meeting was the New York meeting in 2012. Interestingly, both our husbands were so busy that they could not commit to family trips. But when they got the College



brochures, they'd phone each other, giggle, plan ahead, and even clear their schedules to attend.

Now I dearly wish that that beloved man was here with me today. We were very supportive of each other, but we could not resist that ridiculous banter that occurs when two lawyers are in love. That pillow talk over topics like "does anyone understand the co-conspirator exception to the hearsay rule?" Even in domestic discourse, on those rare occasions where we had differing views, one of us would reach to the old chestnut of relying on a credential to prove that we were right. Hersh had two words that he believed won every such argument: "Fellow" and "College," usually accompanied with a hand gesture pointing towards himself.

Our end debates went like this:

Me: But Hersh, I have four law degrees.

Hersh: Fellow.

Me: Hersh, I taught evidence law.

Hersh: College.

Me: I wrote an article and a judgment on this very point.

And Hersh would just go: Fellow.

You get the picture. Now that I have been inducted, and I know he would have been thrilled with my induction, I think it would have played out like this:

I would have said: Hersh, I'm also a Fellow of the College now.

Hersh: Honorary.

As an Honorary Fellow, I would like to speak to you about an important topic, and that is advocating for equality. I have two basic points to make. First, the skill that lawyers, especially trial lawyers, possess are so necessary in modern times. Second, these skills allow lawyers to advocate for advanced equality and to advance equality, which is one of the most pressing issues of our times. Let me start with some of the challenges of our times, and why the skills possessed by trial lawyers are so in demand today.

LAWYERS OFFER WISDOM, A WAY FORWARD

I taught thousands of law students and, in my view, the lawyering skills are not just transferrable to different positions or professions. They are indeed at the core of contributing citizens in a vibrant democracy. They are the type of skills that operate as a check on authority and can be used to help effect positive social change. It's said that we live in an age of information, of computers and cell phones, and the Internet, which all have created the opportunity to have access to extensive data quickly. There are ramifications large and small from these world-changing technologies.

Socially, we all know we don't debate facts anymore; we just call our friend Siri. The old adage that the teacher was the only person in the village with a book is of reduced relevance, but the other adage, fear the person who has only read one book, has its Internet equivalent.

The practice of medicine has changed forever now that patients can consult Dr. Google. There is a similar shift in the practice of law, now that laws, regulations, jurisprudence, and cases are

" QUIPS & QUOTES "

Hersh repeatedly explained to me over the years what an exclusive club this was, and how there was a strict selection procedure, and only demonstrably good ones made it in. That at his induction, he was told the College only admitted the best of the best, and there was no need to brag or boast at any meeting because your excellence was assumed by your mere presence. So basically, Hersh was so clever he found a way to brag about no longer needing to brag. If you heard Hersh in his fifty-odd years, he never lost a case. That is because he defined loss as costs awarded against him personally.

Justice Martin

readily available online. For lawyers, it has never been more true that professionalism and value added is not based on access to those same sources, but on lawyers who employ their various skills to resolve disputes and provide a public service.

Simply stated, what lawyers supply is wisdom and a way forward. They are trained to give considered conclusions based on a full assessment of facts, a thorough review of the law, and an objective assessment of the pros and cons of each position. Lawyers have expertise and experience and are able to assess likely outcomes. They're trained in mediation and negotiation, skilled at getting people to say yes before the court room steps. In today's world there's also a great emphasis on speed and rapid response. At a time when immediate gratification takes too long, lawyers are expected to answer quickly and at all hours of the day and night.

The sense of urgency imposed created by instantaneous modes of communication makes some of us long for the postal rule and contracts. Professional ethics and best practices protect against the business of law becoming like a television game show with lawyers sitting with hands on the buzzer who are measured and rewarded based on the speed of their response. Lawyers' ethical responsibilities also mean the game can never become one of Jeopardy, where the client provides the answer. I give you a fanciful example:

The host of Jeopardy gives the following answer: "The client declares he will not tell the truth under oath."

Junior Partner: What is perjury?

Senior Partner: What's his only chance?

Managing Partner: What is the retainer?

I'm poking fun here because sometimes a bad joke can make a good point, and that is the expectation of immediate re-

sponse and simply accepting the client's demands places exceptional strains on lawyers' professionalism. Lawyers have rules about integrity and competence. Hersh loved telling me the story of being fired by a client on the sole ground not of what Hersh could do, but that he was bound by a code of ethics that would restrict the way in which something could unfold in a court of law.

We also live in an age of misinformation. Things can be posted online without checks of accuracy, or even their origins. Things are not always what they appear on the Internet. There are fictitious accounts created to flood the marketplace of ideas, to create the illusion that a point of view is either widely held or more widely held than it really is. But whether information or misinformation, and whatever the technological innovation, we still live in a time where the chief currency is not dollars or debentures, not bonds or even Bitcoins, it is ideas and the power of these ideas to change the world and control the way people think of problems. The stakes could not be higher.

We look upon a trial as a search for the truth. Our legal system rests on the idea the truth exists and it can be found in fair and fundamental ways. In service of the truth, lawyers investigate. They find out. They gather information. They dig. They consult multiple sources and verify, and lawyers understand the importance of expertise, reliability, and credibility. Witnesses take oaths to tell the truth, and there is an accountability in a courtroom, and the purpose and power of cross examination is apparent.

It makes people answer, and it can uncover falsehood. Litigators are attuned to not only what is said, but what remains unsaid. They measure tone and can tell when a witness is trying to distract the court with the equivalent of a shiny, bright objection. Asking the right questions is the necessary first step because only then can one obtain correct

answers, and then move from answers to action. Lawyers understand that how the issue is framed is crucial. The best example I ever heard is the interaction between a young man and a priest. The young man smokes. It's the difference between asking, "Father, may I smoke while I pray?" Or, "Father, may I pray while I smoke?"

Lawyers and litigators, in particular, also value history, precedent, and what went before; even for those who do not accept that past, from this prologue we gain strength and knowledge from understanding how law is developed and attempt to tease out complex cause and effect. It is important to know where the real story began, and the historic and systemic influences that shape present reality. By looking back to the actions and decisions which led to certain results, we can, it is to be hoped, become better informed about how to advocate, exercise good judgment, and reach sound decisions.

A lawyering skill of paramount importance today is captured by the Latin phrase of *audi alteram partem*, hear the other side, and of course, respond respectfully. Old broadcast licenses used to require balance in broadcasting, and the news cycle used to be at six and eleven, and follow that old Dragnet kind of notion of, "Just the facts, ma'am." Now, there is a lot of opinion and talking over each other. Rather than people sifting through available sources to reach their own conclusions, we know that there is the feeling that if I wanted your opinion, I would give it to you.

Some of our modern means of contact also allow people to choose not to talk across differences or engage with competing views. The Internet now permits people to spend time, sometimes all their time, in polarized communities of like-minded people, a phenomenon likened to an echo chamber. Lawyers, however, appreciate that the purpose of research is to test a thesis, and challenge



preconceptions rather than confirm a bias. The trial process is evidence based and grounded in principle. Lawyers are not only trained in, but are excellent at, critical thinking to objectively assess the strengths and weaknesses of a proposition and dispassionately examine the pros and cons of a proposed course of action.

Lawyers also know the great personal and professional satisfaction of using our skills to help others. Lawyers literally speak and act on behalf of others. Trial lawyers understand that you can talk something into existence, and you can speak truth to power. The legal profession has a rich tradition of challenging existing norms to create better ones, to create more space and place for all types of people. Yes, lawyers have been complicit in history over time in brutal regimes but, in our countries, they are also the custodians of legal rights who have been instrumental in the protection and advancement of human rights.

THE LAWYER'S ROLE IN REMOVING BARRIERS, CREATING CLEAR EQUALITY THEORY

This is where I'd like to link my second point of using these lawyerly skills in the service of the age-old dream of equality and equal justice for all. In my view, lawyers have a special responsibility to build equality in our profession, in our professional organization, and in our society more generally. Now, the American and Canadian Bar Associations have been leaders and are committed to greater equality in the legal profession, and they have many, many initiatives. They have committed themselves greater inclusion, and don't only argue that equality is the ethical thing, the right thing, the legal thing, but also that it's the smart thing because modern research shows us that diversified perspectives in decision making make for better performance and support a better business model.

People in the profession aren't working hard so that the profession is equally unwelcoming to men, women, and minorities. It is a way to keep the intellectual capital of a necessary profession, to get the best, to keep the best, and to get the best out of the best. Lawyers in many jurisdictions are committed to advancing equality. In Ontario, a province in Canada, lawyers are required to submit a Statement of Principle with their annual

report to The Law Society, which acknowledges that our obligation to promote equality, diversity, and inclusion both generally and in relation to employees, clients, colleagues, and the public.

In New York, lawyers and law firms are prohibited from unlawfully discriminating employment on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation. Many, many other jurisdictions provide that lawyers must not discriminate against any person. The College has also been engaged with equality issues in a broader sense. A few years ago, Lord Neuberger discussed the relative absence of diversity in the United Kingdom in terms of the judiciary. The current President, Samuel Franklin, has emphasized the need to be keenly aware of diversity and inclusion.

On this core, I was very pleased to learn, after a little bit of research, that the term "fellow" is, in fact, gender neutral when used to denote membership in a professional organization. Many regulatory bodies have enacted a quality protections and anti-discrimination norms. Lawyer skills are also needed to find solutions to the persistent challenges of legal and social inequality. Aristotle was, in my view, correct when he warned that inequality brings instability. But the Aristotelian notion that equality simply requires treating likes alike, at least in Canadian jurisprudence, has been shown to be too restrictive, too anemic a formula to address the richness of the discrimination we see.

It was used to support the Separate but Equal Doctrine, which allowed segregation because blacks and whites weren't similarly situated, so they didn't need to receive identical fair treatment, or allowed the type of logic that said women denied maternity benefits were not being discriminated against on the basis that they were women but were being discriminated against on the basis that they were pregnant. Canada has recognized that the focus needs to be on substantive equality, an equality of opportunity and result that takes into account the real-life consequences of stated action on people acknowledged to be differentially situated.

Sometimes identical treatment will be sufficient to address the inequality. Think one person, one vote. But it's also been recognized that since

there has been historic as well as systemic discrimination, truer equality may sometimes require a difference in treatment. Lawyers thus need to participate not just in the removal of discriminatory barriers, but to help create a clear and coherent equality theory, one that translates into practice direct improvements to the life conditions of the disadvantaged: the underlying and the overarching concept which helped remedy inequality which exists and persists.

The realization that we are all equally different from one another means that we need to question the unstated norm and remove the hierarchy from difference. Lawyers have often been visionaries analyzing the problems in the present, making plans, and taking action to yield the better future. Lawyers understand how you can take aspirational rights and change them into live reality. Lawyers have also shown great courage engaging in the kind of “what if” thinking that brought many rights into existence, and we saw one yesterday in Civil Rights Activist Fred Gray.

The interpretation of equality rights is also of crucial significance. In Canada, we re-patriated our constitution and brought it home from Britain in 1982. As part of that constitutional process, we introduced the Charter of Rights and Freedoms. In addition to group-based rights such as language rights and Aboriginal rights, equality guarantees existed in a substantive sense; we have an Equal Rights Amendment that guarantees all rights equally to men and women under the Constitution, and we have protections for multiculturalism.

Canada has not adopted the originalism school of constitutional interpretation, one that is sometimes argued, which says that the U.S. Constitution be interpreted based on the intent of its authors and based on an understanding of the wording and its historical context. Basically, asking a current question about what a

right protects by asking what it meant to those who originally wrote and ratified it. I listened with great interest yesterday to the thought-provoking comments of lawyer and historian, David Stewart.

It is often difficult to discern a legislative intention, and the legislative process is open and transparent in public. His excellent talk showed us that it's even more difficult to go back to that summer of 1787 and attempt to find or discern a singular, intelligible intention, or make us ask what part of the framers of the Constitution do we look to? Do we focus on the whole group? The 12? The six Mr. Stewart says were the people who mattered in the room? Or, do we just go straight to the top because they did what George Washington wanted?

What is the relevance for the twenty-first century of the intent of some founding fathers we learned who counted African-Americans as three-fifths of a person and who may have employed a slave owner's definition of freedom and equality? How does that original intent square with the numerous and varied subsequent amendments to the Constitution? We see that Canada has instead opted for an interpretive model based on the notion that the Constitution is a living tree. A living tree that will grow organically as society changes and develops, and that rights are to receive a wide liberal and purposive interpretation.

Even if Canada used the originalist model of interpretation, we would go back to 1982 and see that our founding mothers and our founding fathers, those framers, wanted equality rights that were rich in scope and wide in effect. The purpose was so that each individual would be created, not only created but treated, with equal dignity, concern, and respect. We know that the framing of any Constitution is not describing what currently existed, but what's necessary into the future in a

free and democratic society. Of course, I can do no better than repeat the challenges made to you by Fred Gray in respect of racism. These are important issues which deserve our attention.

But there's also many other types of discrimination and inequality that would benefit from the great gifts of planning and legal skills contained in this College. In summary, I'd just like to say the assumption that the trajectory of all nations is towards democracy, freedom, and equality, is more hope than history. The past is replete with instances of great civilizations falling. Recent events demonstrate that democracies fail, that freedoms are fragile, and equality is frail. Equality can be undermined when specific groups are seen as less worthy or vilified, or scapegoated, or even ignored.

Tyranny can triumph. In the last ten years, we've seen attacks on the independence of the judiciary and the independence of the bar. We need to be vigilant to see what the threat is, and it is clear that your lawyering skills are needed in service of your civic responsibilities. Complex problems rarely have simple solutions. Einstein has told us no problem can be solved at the same level of consciousness that created it. A new level of consciousness will need to be created to challenge and the brain trusts in this College are, I am sure, up to that challenge. I thank you and I look forward to being an active honorary member, and I would like to end with a quote from Mark Twain, because we're right beside the Mississippi.

He said, 'The secret of getting ahead is getting started.' You have already started on an increased equality, and I encourage you to keep going in your efforts. You are an exemplary group and a strong example of lawyers who do well and good at the same time.

Lynn D. Kassie, Ad. E.
Montréal, Québec





AUTHOR DISCUSSES HARPER LEE, ATTICUS FINCH, AND THE MAKING OF A LITERARY ICON



PAST PRESIDENT **CHILTON DAVIS VARNER**, OF ATLANTA, GEORGIA, INTRODUCED SPEAKER **DR. JOSEPH CRESPINO** AS “SOMEONE WHO BRINGS TOGETHER SEVERAL THINGS THAT ARE DEAR TO MY HEART. IN PARTICULAR, HARPER LEE’S NOVEL, *TO KILL A MOCKINGBIRD*, STARRING, OF COURSE, ATTICUS FINCH.”

Crespino, a native of Mississippi and a professor of American History at Emory College of Arts and Sciences, released in May 2018 the book entitled *Atticus Finch: The Biography*, “which has received strikingly consistent praise from strange bedfellows, such as the *Atlanta Journal Constitution* and the *New York Times*,” Varner said in her introduction during the 2018 Annual Meeting in New Orleans.

Crespino conducted research into the life and letters of A.C. Lee, Harper Lee’s father, a Monroeville, Alabama lawyer and a member of the state legislature, who is widely recognized as the model and the inspiration for Atticus Finch. He also took on the disparity between two depictions of Atticus Finch. One, in the recently discovered and recently published, *Go Set a Watchman*, published in 2015. The second depiction was Atticus, the moral icon in *To Kill a Mockingbird*.

“Joe has managed the not insignificant task of bridging the gap between those two depictions, while remaining faithful to both,” Varner said. “Former executive editor of the *New York Times*, Alabamian Howell Raines published this admiring view of Joe’s book in the *New York Times* book review. ‘The belated publication of *Watchman* has opened the door to serious scholarship like *Atticus Finch: The Biography*, Joe Crespino’s crisp illumi-

nating examination of Harper Lee’s dueling doppelgängers and their real-life model, Lee’s father A.C. Lee.’

As one of the first serious books that young people read, “It is a book that we assign because we want children at that age, who are growing up in a multi-racial, democratic society, to think about and reflect on these vital issues of tolerance and empathy and understanding,” Crespino said.

AN INTRODUCTION TO RACE

“It is a racial primer, the way it functions in our culture, because it is also one of the first times that children learn the history of racial injustice in the American South. For all those reasons, it is a book that I have, for a long time, been very interested in and thinking about and making sense of it, and the role that it plays in our culture. As recently as January 2017, President Barack Obama, the nation’s first African-American President, reflected in his farewell address on his eight years in office, and reflected on the unfinished business of his presidency. One of the things that he laments is despite his personal historic achievement race continues to play such a divisive role in American society. He called on Americans to be more empathetic, to be more understanding and tolerant of those who are different from them.



“Who did he invoke as a model of empathy but Atticus Finch. He talked about how each one of us needs to heed the advice of a great character in American fiction, Atticus Finch. In Atticus’s advice, to his daughter, “Scout, you never really understand a person until you consider things from his point of view, until you climb into his skin and walk around in it.” Now, we might have asked President Obama, which Atticus are you talking about? Because, it seems like we have two Atticuses now. We have the beloved figure of Atticus Finch portrayed by Gregory Peck in his Oscar winning role in the 1962 movie, the noble defender of the downtrodden, but we also have this other Atticus that we learn about in Harper Lee’s other novel, *Go Set a Watchman*, a novel that was tucked away in a safety deposit box in Monroeville, Alabama for many, many years. A book that was actually written before *To Kill a Mockingbird*.”



Lee began writing *Watchman* in late December 1956, before she writes *To Kill a Mockingbird*. *Watchman* is set in the 1950s. In the novel, the adult Scout, Jean Louise, comes home from New York to visit her family and discovers that her beloved father, Atticus Finch, a man so kind that he wouldn’t harm a ground squirrel, has fallen in with the small-minded reactionaries in the Citizens’ Council. “Some of you will remember the Citizens’ Council as a real organization that existed in states like Louisiana and Mississippi

and Alabama in the 1950s, and that originated in opposition to the Supreme Court’s decision in *Brown versus Board of Education*.

“The novel is really a series of staged conversations that Jean Louise has with the men in her life, her suitor, Henry Clinton, her uncle Jack, and then finally with her beloved father Atticus. One of the things I have discovered in my research is that publishing houses in New York passed on that book because of the lack of story, the lack of flow, and the way the characters become stand-ins for certain political positions. But this is her first novel. It is not surprising that her first attempt might not be fully successful. Whatever you think about it as a work of fiction, it is fascinating as a historical document that gives us insight into what Harper Lee was struggling to get on the page, in 1957 to write for the first time an extended piece of fiction.

“That set me on a search. Historians, what do we do? We track change over time. We have a character who starts out one way, as this kind of reactionary figure; the Atticus Finch in *Go Set a Watchman* is exactly what you think that a seventy-year-old arthritic man living in small town Alabama in the mid-1950s would be. He’s racist, he’s reactionary, he’s condescending toward his daughter, but he becomes something else. He becomes this model of the civic ideal. How does that happen? How do you write the biography of a fictional character? That is what I tried to do in this book. The good thing about trying to write a biography of a fictional character is there is no right way to do it, so that means there is no wrong way to do it either. That is the principle I followed in this book.”

Crespino went back to find out more about A.C. Lee, Amasa Coleman Lee. The last time Harper Lee spoke on the record about her father was in March of 1964. Back then, when she was still talking about her work, she said that her father wasn’t exactly Atticus Finch, but he had the same disposition, that he inspired the character. “We knew that A.C. Lee was like Atticus Finch, a small-town lawyer and state legislator, but he was also the owner and the editor, the co-owner of the *Monroe Journal*, which was published in Monroeville, Alabama. He edited that newspaper from 1929 to 1947. I just wanted to go back

and dip into those newspapers and see what was there, because nobody had looked at them.

“What I found was a gold mine, because not only did A.C. Lee have an editorial page but he had an active and ambitious editorial page. He was writing about not just state politics but about the evolution of the New Deal. He was writing about the rise of fascism in Europe by the late 1930s. One of the things I found out about A.C. Lee is the highest grade of education he had was eighth grade. He read for the bar in early twentieth century Alabama. He was Lincolnesque in his reading habits and habits of self-education, and he really brought the world to his readers there in small-town Alabama in the 1930s and 40s.

“From those editorials, A.C. Lee was not only the inspiration for Harper Lee for the noble figure of Atticus Finch in *To Kill a Mockingbird*, but also for the reactionary figure in *Go Set a Watchman*. You see both of those things in those editorials, when you read all eighteen years’ worth of them. You see in the 1930s how A.C. Lee is speaking out against the political demagoguery that is rampant in the South in the 1930s. He could not stand Louisiana’s Huey Long. He is constantly writing about Huey Long. He would write about Huey Long five, six weeks in a row, and in the seventh week he would begin his editorial by saying, “I know some of my readers might be getting a little tired of hearing about Huey Long,” but then he would charge right in and talk more about Huey Long. Even years after Long was assassinated in Baton Rouge in 1935, Lee was still talking about the baleful influence that Long had on Southern and American politics.

“He was also writing against Georgians like Eugene Talmadge. He speaks out against mob violence and the lynching that was still common in Southern politics and life in the 1930s. That is the evidence for A.C. Lee for Atticus Finch as the noble figure that we see in *To Kill a Mockingbird*. But, by the late 1930s, he is beginning to turn. His conservatism becomes more ideological and more hardened. He is really opposed to labor unions that are coming into the South and they are playing such an important role in National Democratic Party politics.

“By the World War II years, which were such a time of tumult and change in southern society, he begins to write for the first time defending the position of the south. He is very concerned about the role that national civil rights organizations are playing in the National Democratic Party. All the defenses that you hear in the voice of Atticus Finch in *Go Set a Watchman*, the defense of states’ rights and those old positions that Harper Lee puts on the page in *Go Set a Watchman*. They could be taken right from the A.C. Lee editorial page by the 1940s and into the mid-1940s. In fact, what is fascinating, by the mid-1940s, I am able to put alongside A.C. Lee’s writing the writings of the young Harper Lee.

“You can actually put alongside one another her writings in college with some of his writings and you can begin to reconstruct the dinner table conversations that might have been had around the table in Monroeville in the mid-1940s. You can begin to see the arguments that play out fictionally on the page in *Go Set a Watchman*.”

UNDERSTANDING HISTORICAL AND POLITICAL CONTEXT

Another important set of sources in this book come from the late 1950s. These include letters that Harper Lee wrote from Monroeville to friends back in New York while she was at home caring for her father in 1956. This is when he has his first serious health crisis. Crespino gained access to letters in the files of Harper Collins, Lee’s longtime publisher. They make clear the relationship between *Go Set a Watchman* and *To Kill a Mockingbird*, which has often been misreported. “It has often been said *To Kill a Mockingbird* is a highly revised version of *Go Set a Watchman* but that is not true. Those letters in the Harper Collins file make clear that Harper Lee herself always imagined them as two separate novels. Importantly, for my purposes, the character of Atticus Finch in *Go Set a Watchman* is the same character in *To Kill a Mockingbird*. It is the same person seen from different perspectives.

“To understand that, in the book I go into some literary discussions about the change in perspective from the two novels. One of the things I want to emphasize here in my remarks is it is also important to understand the change be-



tween those two characters in the historical and political context of the Deep South in the late 1950s, in this period roughly 1957 to 1960. I used to refer to this period in Harper Lee's literary career as the most productive period in her literary career, when she writes these two novels, but that is not accurate. It is the only productive period in her literary career. It is the only time she is writing. What a productive period it was, but still, it is the only time she is writing. It is fascinating to think about the fact that she is writing these two novels amid the Deep South's massive resistance to desegregation.

"We think about that period of massive resistance, starting with the *Brown* decision and moving into the '60s, but this is the late 1950s, particularly in Alabama, that were truly the crazy days in southern politics. This was when politicians, who just a few years earlier, had been dismissed as jokes or nobodies, are winning the highest offices in the land. It happened in my home state of Mississippi with Ross Barnett in 1959. Ross Barnett had run twice for governor and had not even gotten close. He was considered a joke. It happened in Harper Lee's home state of Alabama in 1958 when John Patterson won. John Patterson had been a nobody. His daddy had been somebody. His daddy had cracked down on mob interest in Phenix City, Alabama and had gotten assassinated because of it. Young John runs in his stead, is elected to Attorney General and then runs in 1958 for governor with the explicit backing of the Citizens' Councils and the Ku Klux Klan.

"In fact, his racially moderate opponent, a man who we do not remember today as a racial moderate, because of the way he became the face of reactionary politics in the South and the nation in the 1960s, was George Wallace. George Wallace lost that race to John Patterson. It is a marker of how strong the militant segregationist vote was in a state like Alabama in 1958, that John Patterson beat George Wallace, and of course infamously in the aftermath of that election is when George Wallace allegedly makes his Faustian bargain, that he would never be out-segregated again.

"It is important to think about how Harper Lee is writing this novel and changing this character in this way, because there is a reflection that goes on in *Go Set a Watchman*. It reflects, in many

ways, the conventional wisdom of southern politics at that time. If the South is going to change, it would be the decent, conservative, sober minded leaders in these organizations like the Citizens' Councils that would keep down the Klan and the hotheads and allow the region to change. But that is not happening in Alabama, Mississippi, and Georgia in the late 1950s.

"What is happening is exactly the opposite. It was not the Councils who were moderating the Klan but rather it is the militant segregationists who are radicalizing the Councils. The normally decent white leaders were either falling in line with the reactionaries or slinking into a cowering silence. This is the essential political, historical context for understanding the change in the character of Atticus Finch. I argue, instead of writing

" QUIPS & QUOTES "

There is a delicious irony in history that in April 1963, the same month that Gregory Peck wins his Oscar for Best Actor portraying Atticus Finch, Martin Luther King gets arrested in Birmingham, Alabama and is sent to the Birmingham jail.

Joseph Crespino

a book that is pitched as she does in *Go Set a Watchman*, to "the North," explaining that there are some decent people like Atticus Finch still down Alabama way, she instead writes a book I argue that is pitched to her own people, to the white south, to her own tribe, to those otherwise decent white southerners who are being caught up in the madness of massive resistance and who need to be reminded of their own best impulses and of their own better angels.

"I have some problems with Atticus Finch. Atticus Finch is too good to be true. Atticus Finch is, in *To Kill a Mockingbird*, oftentimes an example of what the literary scholars would call a white savior narrative, where the square jawed white guy plays the hero and the African-American characters, the characters of colors are just these

stock figures. But it does not match up with the history of the South in some ways. There is a delicious irony in history that in April 1963, the same month that Gregory Peck wins his Oscar for Best Actor portraying Atticus Finch, Martin Luther King gets arrested in Birmingham, Alabama and is sent to the Birmingham jail. King writes *Letter From Birmingham Jail*. One of the indelible passages of that letter is his critique of the white moderate, folks like Atticus Finch, folks who prefer order over justice. Remember, *Letter from Birmingham City Jail* is a letter to eight white ministers who signed a letter saying that now was not the time, Birmingham was changing, King should not be there.

“King has a withering critique of the white moderate. He has the famous line where he says, ‘I’ve almost come to the conclusion that it’s not the Klansmen or the Citizens’ Councilor, but it’s the white moderate who’s the biggest stumbling block to progress for African-Americans in the south.’ He was writing that to those ministers and he was trying to galvanize his fellow members of the cloth to get off the sidelines and to take a stand. It was too easy just to sit on the sidelines and be moderate. What is fascinating about *Letter from Birmingham City Jail* is, he revises that letter and includes it in a book that he publishes in 1964 called *Why We Can’t Wait*. *Letter from Birmingham City Jail* is the middle chapter, chapter three, but earlier in chapter two, King makes a defense for why non-violence is still relevant and still important. He is having to make it at a time when a vanguard within the African American community says, ‘We’ve had enough with non-violence. This isn’t working. We need another strategy.’”

“King has this amazing passage where he uses this line. There’s something in the American ethos that responds to the strength of moral force.” Now, I don’t know that I believe that, but Martin Luther King believed that. He wrote that in his book, *Why We Can’t Wait*. And, who did he use as an example of someone responding to the strength of moral force but Atticus Finch. He talked about the scene. “Just look at the success

and the popularity of the film and the movie,” and he talked about Atticus there defending Tom Robinson at the foot of the Macomb jail, and he gets it wrong, to be honest, because it’s not Atticus that defends Tom Robinson, but it’s Scout, when she comes along and says, “Hey, Mr. Cunningham,” and thereby shames the mob.

“Whether it was Scout or Atticus is not really important. What was important was King’s enduring faith in the strength of moral force. This was always the counterbalance to any skepticism that he had about white moderates that he voiced in his letter. In his nod to Atticus Finch, King signaled his belief that within the oppressor race were people with the modicum of decency and empathy without which non-violent democratic change is impossible. This was before civil rights leaders in congress broke a southern filibuster for the first time in American history, and it is before Lyndon Johnson signs the 1964 Civil Rights Act. He did not know whether there were enough moral, decent white people in America to join with Americans of other races, to defeat the legalized subjugation of black southerners through peaceful, non-violent legislative means. But he believed that there were. He believed that hearts could be changed, and minds could be convinced, and through his belief and the belief in millions of others inspired by him, it became true.

“We would do well today to remember Martin Luther King’s faith in the power of moral force, and the essential role that it plays in democratic society. We should remember, too, the strange way that Harper Lee’s novel and the character that she created, Atticus Finch, emerged as a token of that faith. All the dispiriting things that we face today in our own politics, impulses that seek to drive people back into narrow, tribal identities, extreme partisanship that turns political opponents into mortal enemies. These are things that Martin Luther King and Harper Lee faced in their own day, yet they never lost their faith in the power of moral force. I hope we do not lose ours today.”

David N. Kitner
Dallas, Texas



**2018 EMIL GUMPERT AWARD WINNER
— FORDHAM LAW SCHOOL
FEERICK CENTER FOR SOCIAL JUSTICE**





EXECUTIVE DIRECTOR OF THE FORDHAM LAW SCHOOL CENTER FOR SOCIAL JUSTICE DORA GALACATOS ACCEPTED THE EMIL GUMPERT AWARD ON BEHALF OF THE ATTORNEYS WHO VOLUNTEER FOR THE DILLEY PRO BONO PROJECT AS WELL AS THE MIGRANT WOMEN AND CHILDREN HOUSED AT THE SOUTH TEXAS FAMILY RESIDENTIAL CENTER, THE LARGEST DETENTION CENTER IN THE U.S., WHO ARE SEEKING ASYLUM IN THE U.S.

Former Emil Gumpert Award Committee Chair **Joe R. Caldwell, Jr.** said in his introductory remarks, “due process of law is at the foundation of American culture. Indeed, it guides the principles that make the American College of Trial Lawyers exceptional. In the immigration context, some people ask the question, “Should the principle of due process of law apply to someone who may have come across the borders of the United States illegally?” One answer to that question is how does one know that person’s legality or illegality without a due process determination? That issue has crystallized poignantly in the last year with unaccompanied and small children approaching our southern border from El Salvador, Guatemala, and Honduras, some seeking asylum from drug-inspired violence, some perhaps seeking solely to game the system to enter the United States freely.

“That’s where the lawyers come in, and that is where the recipient of the 2018 Emil Gumpert Award also comes in. The Gumpert Award, named after the founder of the College and funded by the Foundation, is a \$100,000 award that is given annually to an organization that maintains or significantly enhances the administration of justice in the United States and Canada. The Feerick Center for Social Justice at Fordham Law School does just that,” Caldwell said. “It has sent some eighty lawyers and law students over the last two years to the South Texas Family Residential Center in Dilly, Texas, operated by the U.S. Department of Homeland Security. There, they assist and represent the 2,200 women and children family units in immigration interviews and hearings. But thousands more women and children remain unattended.

“Whether you support or oppose the appearance of asylum-seeking women and young children before American judges in deportation hearings, I suspect that most of us want lawyers to be involved in the process somewhere. The Fordham Law School Center has found a way to do that in a new project. They will use volunteer lawyers across the country, whom they will train to do pro bono work from the



comfort of their own offices in their own state or province, and perhaps thousands of miles away from the deportation hearings that they would be involved in. In the process, they have arranged for lawyers to appear telephonically at the Immigrations and Customs Enforcement interviews and asylum hearings, doing what lawyers like yourselves do best. By doing so, they have injected into an intractable problem two fundamental American concepts, due process of law and pro bono service, at no expense to the American taxpayer.”

Galacatos, accepted the award during the 2018 Annual Meeting in New Orleans on behalf of the organization. Her remarks follow:

Thank you for that very kind introduction. I am truly humbled and deeply honored to accept the Emil Gumpert Award on behalf of Fordham Law School, the Feerick Center for Social Justice, and our partners on the ground: Texas Rio Grande Legal Aid and the Dilley Pro Bono Project. I am honored to be here with the Regents, the other leaders of the College, the Fellows who are in attendance, all of today’s speakers and presenters, and the meeting’s inductees. A special congratulations to the inductees. I want to thank the Emil Gumpert Award Committee for bestowing on us this extraordinary honor, and to Fellow James Tolan of New York City for nominating us.

Sages of their Craft, A History of the First 50 Years of the College recounts a notable fact about the history of this institution. It is striking, and I think no accident, that it was Emil Gumpert’s first involvement with the organized bar, following his retirement from the practice of law, that sparked his interest and imagination, and led to the creation of the American College of Trial Lawyers. The College’s mission statement says that the College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings, all foundational democratic principles of our nation, as have been repeated throughout the proceedings of this meeting.

This morning, permit me to make three points in the time allotted to me. They will echo some of the themes of Judge Martin and others, and I promise you that I have met them for the first time this morning, uncoordinated. First, the critical role of the organized bar, including renowned institutions like the College, in promoting, protecting, and ensuring the foundational principles at the core of our democracy. Second, the central importance of litigation and trial by jury to

our democracy. Third, the need for both the organized bar, but especially the litigation bar, to ensure access to justice and the fair administration of the courts’ goals at the very heart of the Emil Gumpert Award.

First, to the role of the organized bar. Whitney North Seymour, a New Yorker and President of the College in 1962 and 1963, noted that lawyers have a duty to the profession, which includes, of course, the duty to render competent service to clients, but also the duty to contribute at least some of their talents to public good through the organized bar and other ways. That duty and goal was repeated thirty years later by College President Frank Jones in 1993, when he offered that the College should use its standing and reputation for the public good. That, perhaps, is one of the most noble purposes and accomplishments of the College, and indeed, of the organized bar.

The history of this College reflects that we are a pluralistic society. The United States, from its very founding, has reflected divergent views. Madison, Hamilton, Jefferson, and other Founding Fathers competed in the court of public opinion and championed strikingly different visions for our nation. Parenthetically, though, I have to add that they all were strong advocates for the adoption of the United States Constitution, and united in that effort. However, in the same way that the Founding Fathers had divergent views, the organized bar, then and now, has had pluralistic perspectives. Chief Justice Berger stated in 1977 that lawyers are not people who march to a single tune, and that lawyers would not be worth having if they did so.

Perhaps that is where one of the greatest strengths of the organized bar lies: an ability, potentially unique in our history and in our nation, to take divergent views and perspectives on issues that implicate core democratic functions, and submit them to a process. Through the liberation, through dialogue, through reasoned analysis, the organized bar arrives at principled positions for the greater good, often through compromise, on issues that reasonable minds can differ, but that are passionately debated, strongly held, and then strategically promoted. Throughout modern history, we have seen the role of the organized bar, particularly with national organizations like the College, do just that on the most contentious and momentous issues of our profession, and sometimes, the most contentious and momentous issues of our times.

It is impossible to imagine our profession without the organized bar and institutions like the American College of Trial

Lawyers, and I would go further and say it is impossible to imagine many of our cities, our states, and even our nation without the efforts and many contributions of the organized bar and institutions like the College. I salute the College and all of the Fellows for their dedicated efforts in carrying out the mission to improve our legal system and promote the rule of law.

This brings me to my second point regarding the central importance of litigation and of trial by jury to our democracy. Our profession has become extraordinarily subspecialized, but the role and importance of trial lawyers is unquestioned and continues to be unprecedented.

Historians have said that the right to a trial by jury was probably the most valuable of all civil rights in American history. It was the only right universally secured by the first American state constitutions. The only one. And yet, for many decades, litigation in the United States has undergone sustained criticism as a method of problem solving. It's been criticized for being costly, time-consuming, exceedingly inefficient, and ineffective in resolving disputes. Indeed, there are many problems with our civil legal system. I believe, however, that Alexandra Lahav, who published *In Praise of Litigation* in 2017 got it just right when she argues that litigation is a social good in that it enables people to promote the rule of law and affirms our citizen-centered political system.

In this portion of my remarks, I borrow heavily from her books. Miss Lahav argues that litigation helps democracy function in key ways. First, litigation helps democracy function by helping to enforce the law. Two, litigation helps democracy function by fostering

transparency and revealing information that is crucial to individual and public decision-making. Three, litigation helps democracy function by promoting participation in self-government, demonstrated, perhaps, most strongly through jury trials. Fourth, and perhaps most importantly, litigation helps democracy function by offering a form of social equality. When litigants have competent and evenly matched counsel, and perhaps there is no other group anywhere who knows more what it means when they are not even competent and evenly matched, they have an equal opportunity to speak and be heard regardless of their power or social standing, which is why access to justice is so critically important.

"At its best, litigation provides a unique form of reasoned analysis of difficult issues," writes Miss Lahav. While we have other democratic means for examining issues, at the end of the day, the lawsuit remains a central mechanism for enforcing and protecting rights. She writes, "It is truly an example of our democracy in action. A way in which citizens participate in government as litigants, as jurors, and disputes are adjudicated." In 1960, Justice Brennan was inducted into the College, and he said, "In the trial lawyer is epitomized for society the sacred aspects of our profession. He," and I will add "she", "daily gives physical evidence of the lawyers ministry to work for the protection and assertion of inherent rights of life, liberty, and the pursuit of happiness of human beings."

I salute all of you, all of the Fellows, for their roles of litigators who pursue these inherent rights, and by so doing, promote democracy, and ensure that we are a nation of laws, and not of men and women. This brings me to my final points. The critical importance of

the organized bar, and in particular of litigators, in ensuring the just administration of the law and access to justice. Leon Jaworski, a giant in his time, and a College leader, wrote, "The law is always in transition, walking a tightrope between precedent and social change. What remains the same is the greatest of all obligations borne by the lawyer. That of unswerving loyalty to the ends of justice. Not justice for the affluent and the powerful alone. Not justice for the admired and favored alone. Not justice for those whose views and beliefs are shared, but justice for the weak, for the poor, and even for the hated."

I thank the American College of Trial Lawyers, and in particular, the Emil Gumpert Award Committee, for giving me and my colleagues the opportunity to support the rule of law as it applies to an extraordinarily vulnerable group: asylum-seeking women in expedited removal proceedings, who are being detained in the nation's largest immigration detention center with their children. Whatever our views of border politics may be, we have a special responsibility as lawyers in our nation, in our civil society, and in our democracy. This award will enable us to carry out that special responsibility as we enlist even more pro bono lawyers across our country to emulate the spirit and values of Emil Gumpert in, and I quote again from the College's mission statement, "ensuring respect for the rule of law, access to justice, and the fair and just representation of all parties to legal proceedings."

I want to close by saying that in my life, I have felt most privileged to bear witness to the tremendous courage, dignity, and humanity of the clients we serve in Dilley, and the deep commitment of the staff who are there working year round. I thank you very much. ■

FAMILIES IN DETENTION: PRO BONO PROJECT FIGHTS FOR FREEDOM

AN INSIDE LOOK AT THE WORK BEING DONE
BY ORGANIZATIONS SUCH AS THE 2018 EMIL
GUMPERT AWARD RECIPIENT



DILLEY, TEXAS IS A SMALL, SLEEPY TOWN IN SOUTH TEXAS THAT IS HOME TO THE SOUTH TEXAS FAMILY RESIDENTIAL CENTER, THE LARGEST DETENTION CENTER IN THE UNITED STATES. LOCATED ONE HOUR SOUTHWEST OF SAN ANTONIO ON INTERSTATE 35 – AND ABOUT ONE HOUR NORTH OF THE U.S.-MEXICO BORDER – THE FACILITY HOUSES APPROXIMATELY 1,800 MIGRANT WOMEN AND CHILDREN WHO ARE SEEKING ASYLUM IN THE UNITED STATES.

The women and children detained in Dilley have usually traveled from the “Northern Triangle” in Central America, which includes Honduras, El Salvador, and Guatemala. The majority are fleeing domestic violence and persecution from powerful gangs that wield tremendous influence throughout that region.

Family detention has been in place, in various forms, for some time, but controversy erupted in the summer of 2018 when the administration began separating families from children. This practice is no longer occurring on a mass scale, but the government continues to struggle to reunite all families who were separated.

Numerous families remain in detention. Since 2015, many of those families have sought legal assistance from the Dilley Pro Bono Project (DPBP), previously known as the CARA Pro Bono Project. The goal of the project is to end detention of mothers and children fleeing violence.

Pete Thompson, an attorney with the Dallas office of Clark Hill Strasburger, was at the facility in September 2018 along with fifteen other lawyers participating in the project. The following is a recap of his experience while working in the facility. It is an overview of the detention process and how pro bono legal assistance from DPBP has changed the fate for many women and children seeking to remain in the United States and apply for asylum.

INITIAL DETENTION: THE ICEBOX AND THE DOG POUND

Women seeking to enter the U.S. usually cross over the Rio Grande River or through Ports of Entry. When they first arrive with their children, authorities place them in Customs and Border Protection (CBP) facilities, referred to by detainees as “La Hielera” or “the icebox” for up to three days. This is an intake facility where, according to detainees, air conditioning runs at low temperatures and bright lights are on twenty-four hours a day. Women report having to turn over to the authorities outer garments of clothing (such as coats) and are instead provided with Mylar (aluminum) blankets. Human rights advocates and observers perceive the icebox to be a low-level deterrent. It has been the subject of several lawsuits. In 2016, a federal district court in Arizona ruled in *Doe v. Johnson* that conditions of holding cells known as “hieleras” must be improved, but migrants continue to assert that the facilities remain cold.



The women are moved from the icebox to what is referred to by detainees as the “dog pound.” This is a larger detention area with chain link fencing. Clients often spend up to a total of seven days in the icebox and dog pound. Older children are sometimes separated from their mothers during this phase. The mothers often do not fully understand why their children are being separated or when they will be reunited. The women are usually reunited with these older children before leaving the CBP facility. Younger children are generally not separated during this phase. The women and children have access to legal services in the detention center. The South Texas Family Residential Center is a large building located in Dilley with a series of interlocking trailers. These trailers house the asylum office, daycare facilities, and legal assistance, among other services.

PREPARATION FOR CREDIBLE FEAR INTERVIEWS

The legal services trailer is a large room with small consultation rooms. In this trailer, volunteer lawyers with the Dilley Pro Bono Project prepare clients for a credible fear interview – the first step in a long process to potentially earning legal status in the United States. At the credible fear interview, the asylum officer determines whether there is a credible fear of returning to the home country, and whether that fear is based on one of the five grounds for asylum: political opinion, race, religion, nationality, or membership in a particular social group.

Attorneys and interpreters meet for up to three hours with each client and prepare them for the interview with the asylum officer. It is challenging work – principally because the attorney must earn the client’s trust in a short period of time. Clients are often accompanied by their children during these interviews. Clients and their children are generally not allowed to make any physical contact with the attorneys such as hugging.

The attorney is tasked with determining why the client came to the U.S. which often leads to a detailed discussion of highly traumatic

events suffered by the client. Many discussions involve the recounting of violent attacks, sexual assault, death threats, and the killing of family members. The attorney and interpreter face the challenge of developing these issues without re-traumatizing the client yet eliciting enough details to properly prepare the client for her interview with the asylum officer. Nevertheless, after suffering horrific persecution in their home country and a long, arduous journey to the U.S., they are forced to recount these events in graphic detail to attorneys (and eventually asylum officers) while being held in detention.

Once the consultation rooms fill up, many attorneys meet with clients on the floor of the trailer. It is not uncommon to witness numerous clients and children crying together in the large room. Advocates, psychologists, and observers have commented on the raw emotional trauma that is often present here.

Attorneys usually work thirteen hours a day in the trailer, which does not include additional preparation that occurs at night. There is considerable pressure to make the best possible legal case for each client – a negative credible fear finding by the asylum officer often constitutes the first step towards deportation for the client. Obviously, the stakes are high at this early stage.

WHY ARE THEY FLEEING?

Women are primarily fleeing domestic violence and gang persecution. Many report suffering from life-long sexual abuse, forced labor, and numerous deprivations of liberty. Many were forced to quit school as early as nine years old so they could cook and clean for their families over long, onerous days. In addition, sexual assault from family members is a common occurrence. Even after becoming adults they are subjected to similar treatment from their husbands. In numerous cases, women report that their husbands do not allow them to socialize outside the home or leave the home and limit their ability to visit other family members. Sexual abuse is rampant, and children often suffer physical abuse.

Unfortunately, domestic violence is not the only threat. Many of the women are also fleeing persecution from powerful gangs in Central America. These gangs have often infiltrated police departments or are connected to drug traffickers and maintain a wide sphere of influence over neighborhoods across the Northern Triangle. Many women are targeted either for sexual abuse or as small business owners. Once a gang determines that a woman is operating a viable business, they will frequently request a weekly payment from her. These requests are accompanied with a death threat directed towards her and her children if she does not make the payment. But they are often unable to continue to make the payments while also meeting the needs of their children. This is a common reason why women from the Northern Triangle flee their home countries. The gangs generally have a “no mercy” policy – there are many stories where people do not pay the gangs, and the gangs either kill them or their children.

The asylum officer will ask the women to provide examples as to why they cannot go to the police in their home country or why they cannot relocate to another part of the country safely. These questions elicit a variety of responses, including that gangs have infiltrated the police departments. Specific incidents are recounted where gangs tracked down people who defied them in other parts of the country.

THE ASYLUM OFFICER INTERVIEW

At the client’s interview with the asylum officer, the officer asks similar questions that the attorney asked during the interview preparation. The officer wants to know why the client came to the U.S. and why the client fears persecution in their home country. The well-prepared client will be able to discuss their fear of persecution and tie it to one of the grounds for asylum. If the client is successful at the credible fear interview, the client will almost certainly be released and will receive the opportunity to apply for affirmative asylum in the U.S.



CONCLUSION

The Dilley Pro Bono Project has been extraordinarily successful. Prior to its involvement, there was a less than 50% success rate at the credible fear interview level. With legal assistance through the Project, the success rate is now over 99%. But substantial challenges remain. The Attorney General recently issued a finding (that has been appealed) that gang persecution and domestic violence are not grounds for asylum under the asylum statute. Unfortunately, this has the negative effect of potentially foreclosing asylum claims for an extremely vulnerable group of people – women from Central America. This will continue to be a heavily debated issue for years to come. In the face of this challenge and the endless day-to-day struggle to assist clients, the Dilley Pro Bono Project continues to make steady progress on a staggering uphill climb to end family detention.

David N. Kitner
Dallas, Texas

FELLOW ANDREW J. SAVAGE, III RECEIVES GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY

THE GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY HONORS A TRIAL LAWYER WHO HAS PERSEVERED IN THE PURSUIT OF AN IMPORTANT CAUSE DESPITE SUBSTANTIAL PERSONAL DANGER, FEAR, UNPOPULARITY, OPPOSITION OR OTHER EXTREME DIFFICULTIES. IN ITS FIFTY-FOUR YEARS OF EXISTENCE, THE AWARD HAS BEEN EXTENDED PREVIOUSLY ONLY FOURTEEN TIMES.





Past President of the College **Mikel L. Stout** of Wichita, Kansas, presented the award to **Andrew J. Savage III** during General Session at the Annual Meeting in New Orleans on Saturday, September 29, 2018. Past President Stout said, “Andy Savage is readily identified by his peers in South Carolina and elsewhere as an exceptionally talented, hardworking attorney who will accept the representation of any client, no matter how horrific the allegations or the evidence. Many of these cases are pro bono, or the effort is far beyond any compensation received. Emotions are high around these cases. Sometimes, Andy and Cheryl, his wife who works with him on these cases, stay in a hotel with security during the trial. They’re escorted to and from the courthouse from their hotel until the case is concluded. They have had occasions when they have remained in the jail cell with their client while they were waiting for security to clear the courtroom and to clear the area around the courthouse for safe passage.... Nothing deters him or distracts him. In short, our honoree clearly and completely meets the criteria for one of our highest individual honors.”

Savage’s acceptance remarks follow:

Exaggerated or not, I’m humbled to hear those words, and I thank you for them.

John Irving, in speaking of courage, has been quoted as saying, “If you are lucky enough to find a way of life you love, then you have to find the courage to live it.” I found the way of life that I love, and throughout my career, I have sought to find that courage.

How so very nice it is to be here with you today, the Fellows and friends of our College. But before I talk to you about finding inspiration and finding courage, let me first express my gratitude to my fellow South Carolinians, who understandably so, have chosen to maintain their anonymity, although they once had the courage, or perhaps just a simple lack of due diligence, when they naive- ▶

ly recommended my induction into this profoundly authentic, accomplished, and ever-relevant organization.

Today is a very special day for me. It is the highlight of my career, for there is no more meaningful compliment than one delivered by your colleagues, and I'm truly honored to be the most recent recipient of the Griffin Bell Award, the last in a formidable line of distinguished advocates who have been recognized for their advancement of the principles that this esteemed organization holds dear. They were fearless. They were courageous. They were attorneys. They were educators. They were leaders of social change. But mostly, they were just unwavering advocates who promoted fair and equitable justice in our courts, in our educational institutions, and in our political processes, as well as our society at whole.

This incredible honor, while unique and very special to me, is in many ways a confirmation of what you, my fellow South Carolinians, did some eleven years ago when you invited me to join into this wonderful College of advocates. Their invitation provided a cherished opportunity for me and for Cheryl to enjoy the collegiality, the friendship, and support that this College offers. Indeed, I'm privileged to the core just to walk among you.

Now, fellow South Carolinians, I have no knowledge how you made that choice so long ago. I am told that you conducted an exten-

sive background investigation. I'm told that it takes years, sort of like vetting for a seat on our highest court. You know the type, where they look through your high school yearbook, where they interview your high school friends and your college colleagues. Well, clearly, you missed out on checking out my employment history.

Now, I realize that becoming a Fellow is not without responsibility or obligation. As Fred Gray reminded us yesterday, "To whom much is given, much is expected in return." Take a look at our mission. The statement of our College says this in a different way. "We seek to improve the standards of trial practice, professionalism, ethics, and the administration of justice." My fellow South Carolinians, Regina, Ronnie, Frances, and Kurt, when you and your fellow inductees are charged this evening, you will be reminded of your obligation to further advance the lofty objects and purposes of this organization. And all of us are reminded in our Code of Conduct of our privilege to practice law, and our special responsibility as trial lawyers.

Each and every one of us, in accepting the designation of Fellow, has been admonished to engage in and to promote a respect for the rule of law, to ensure that all parties to litigation receive fair, just, and competent representation; that our professional decisions and commitments be unaffected by personal or community prejudice; and that we undertake these



"If you are lucky enough to find a way of life you love, you have to find the courage to live it."

- John Irving



admonishments without regard to self-interest or our clients' financial means.

So, Mike, your compelling introduction merely related examples of what we as Fellows are expected to do. With a just a change in name and places, I'm sure that each one of you could substitute your own history of promoting the ideals of this organization. It's what we as Fellows have committed to do. It's in our DNA. It's who we are. We should be promoting our College principles, whether it's in the bright glare of the media spotlight, or simply while maintaining those ideals in our everyday practice. Just to wake up every morning having knowingly chosen our profession, a profession that brings exhilarating highs, but also batters us with depressing disappointments. We must have courage, for this is what we chose to do.

While I do not make light of this incredible award, nor do I diminish its personal value, I do recognize that courage is expected from each one of us. It is the critical catalyst in upholding the ideals of this organization.

With that background, I've found that in my practice, the most compelling ingredient to maintain a focus on in advancing the principles of our College, is the courage of my clients. In my practice, as I'm sure of yours, the list is endless.

Years ago, I represented a young woman who had two small children who, without the assistance of a lawyer, exhausted every legal effort in the family courts of South Carolina to protect her children from a predatory father. Her complaints of conflicts and corruption in the guardian ad litem appointment system fell on deaf ears. The court eventually ordered that the father have unsupervised visitation, so she chose the only alternative that she thought she had and left everything behind.

She moved to Central America with her children, and when years later the federal government discovered her whereabouts and issued an indictment for her arrest, and eventually extradited her back to the States on a federal parental kidnapping charge, she refused to bring back her children, and she was held without bond.

She then received the benefit of a trial lawyer, and through due diligence, that law firm discovered absolute proof of corruption in the South Carolina family court's guardian ad litem system. The conspiracy between the court, the guardians, and the petitioners, was documented by the FBI and the FBI had the charges dismissed by the U.S. Attorney.

To my chagrin and disappointment, she didn't stay in the States. What she saw, violated by our criminal justice system, that she returned to Costa Rica, and here she is with her son, who needed medical care for cancer, but yet she stayed in Costa Rica.

Those of you who have the same type of practice that I do, and I hope there are not too many of you, know the link in the United States criminal justice system with poverty. It's a bond that we have to break.

This is Sametta Heyward. Sametta Heyward is a client who I wrapped my arms around to hug. She was a single mother of two beautiful children, aged two and four years of age. She was sustaining her family. Think about this, even in South Carolina, sustaining her family as a government employee, as a caretaker for disabled adults who were living in a group home. She was making \$8.50 an hour. Naturally, she had transportation problems. But she was in such fear of losing her job by being late or missing work, that she had a Sophie's Choice. She could leave her two- and four-year-old at home, or she could take them to work with her. She had no family support and no community support.

Like many working poor who have to survive every day, she took her children to work expecting that her coworker wouldn't be there that evening. It was the end of the summer, Charleston, South Carolina, hot, humid afternoon. She got to work, and she was surprised that her coworker was there, so she left her children in the car, lowered the windows, parked under a shady tree, and found them dead some four hours later.

Chuck Long is an interesting case. Chuck was the Teacher of the Year in South Carolina.



He had a family of four, thirty-year teaching career, thirty years in a theater company that he directed. Students who went on to New York and on Broadway. Then one day, he was charged by a former student with being a sexual predator some twenty-five years before.

He had a defense. He had a genetic aberration. His male genitalia, that was so vividly described by the now-adult male, were not external. His endocrinologist called me and told me that his skin tag the size of a lima bean was good only for passing water. We took those documents, his medical documents that went back to his birth, but a prosecutor who was blinded by their desire to win in this high-profile case of the Teacher of the Year, a teacher who had not one other complaint from the hundreds of students that he had taught, or the hundreds of young people he had guided in the theater.

To give you a flavor of the humiliation this client had to suffer, here's a small excerpt from his testimony, by that prosecutor:

Question: Have you attempted to have a sexual relationship with your wife?

Now, this prosecutor for six months had his medical records.

Answer: I cannot have the same kind of what you would call, "sexual relationship."

Question: And I don't mean that it has to be. I don't mean that it has to be a fully-erect, full-grown, adult male penis intercourse. But you have attempted in a sexual way, some type of intimacy with your wife?

You think the questions at the Senate

last week were bad, can you imagine a career prosecutor asking these type of questions?

His response: Yes, but not necessarily using my penis. Does that answer your question?

Of course, the doctor had testified, and held up the pen like this, and said that his skin tag was about this big. As bad as that was in the courtroom, the public, he had two adult children, thirty years of age, in that vicinity, who thought he was their biological father, and as a result of these charges, you can imagine the family issues that arise from that and having to explain, "This is the charge I've been charged with. This is why it's an impossibility."

Ali al-Marri was a Qatari citizen who I met in 2004. He was declared an enemy combatant by the President and was located right outside Charleston, South Carolina, in a naval brig. Whereas you've heard the other stories of enemy combatants and the treatment they've had, but this one was housed on American soil in the state of South Carolina. He was held incommunicado. Not in solitary confinement. He was held in incommunicado status. Nobody talked to him for a full year.

I was asked by some friends in New York to join in representing him, which I was glad to do. We filed the typical habeas corpus. We filed the conditions of confinement. We got on the doorstep of the United States Supreme Court, and we patted ourselves so much on the back because we thought we were improving his conditions of confinement.

But where was the unexpected courage in that case? This is the same military that have been blasted in Abu

Ghraib and Kandahar, and the military that was mistreating so many of these prisoners. We found out in that case, that it was the United States military members, not the lawyers, who had the courage and the gumption to stand up to Secretary Rumsfeld and lobby for decency, lobby for the American way.



That was an interesting case, but perhaps the most difficult era of my life. Not only did they lobby for his improved conditions of confinement, but they testified for him. An O-5, United States Navy, who had already transferred to the Naval War College, and an E-6, they went into court on the sentencing aspect of the civilian conviction and told what horrible conditions he had lived under.

The next case I want to talk about is a joint case. It was a real crisis in my life. It started in the spring of 2015, when on April 4, a five-year veteran of the North Charleston Police Force, stopped a car for a broken tail light. As a result of that stop, there was a 200-yard chase, at the end of which an African-American, long-term resident of Charleston, was shot eight times.

It was during the time when all these issues of race and police violence around America were a perfect funnel into this case. But a young lawyer in our community took on the case. He gave a press conference about how this was all a misunderstanding, and there was more to it and whatnot. Until three days later, when a video came out of the shooting. The young lawyer announced on television that he had watched a video and he was quitting the case.

That's how I was introduced to that case, in April of 2015. Not soon thereafter, the piling on started. The state prosecutors, they all wanted to be the toughest prosecutors in the land. The federal government indicted him, not subsequent to the state prosecution, but at the same time there were collateral, dual prosecutions in both state and federal court.

Then June came along. On June 17, a Wednesday evening, at Mother Emanuel. "Mother" Emanuel is a term of endearment, because this church has history going back to the Civil War, the release of slaves, and it was the "mother" church. At Mother Emanuel, there were twelve parishioners, as they usually gathered on a Wednesday evening to undertake Bible study.

This Wednesday evening, they invited a guest who had come through the back door of the church and wanted to learn more about the apostle Mark. So he sat down. Where did he sit down? He sat at the head table, right next to the Pastor.

And as the thirteen of them rose at the end of the study, the invited guest took out his automatic pistol and fired the first of seventy-seven shots, killing all but three who attended

that service. One, he intended not to kill, and he instructed her, "Go now, and tell everybody what happened. Because I'm tired of your ilk raping our women." Just the most insidious, awful, racial statements.

Felicia Sanders, who is a very close friend of mine before this incident, called me the next morning. I wasn't aware of what happened that night. We live out of town. She told me to please come to her house, and I couldn't understand what she was saying, that the press was there, she couldn't handle it, and, "I can't change my clothes," which was a strange remark even from somebody you're close to.

I got to her house, and she still was drenched in the blood and bodily fluids of her son, Tywanza, who was sitting across from her, next to his 87-year-old auntie, who stood up after six had already been slain and said, "We mean you no harm. Why are you doing this?" The response was eleven shots to his body.

Underneath Felicia, at that table where they were studying, was Ka-Mya, an eleven-year-old girl.

If you could see the body cameras that the police who responded wore, you would see this innocent child walking among the dead and dying, stepping in bodily fluids, brain matter, looking for a glass of water for her uncle, Tywanza.

Now, these people were not clients. These people were my friends. Two of the deceased who I was very close to, and all three of the survivors. I actually didn't know Ka-Mya that well, but I knew her grandmother well. I knew her mother well.

Meantime, I'm representing this police officer, who had shot an African-American gentleman in his back eight times.

So you wonder, how do you handle that stress? But again, it was the strength of my clients, especially Felicia and Polly, who at the bond hearing, when I sat next to them, stood up and said, "Mr. Roof, we forgive you for what you have done to us." I, like most white folks, was shocked at those words. But when you let them sit in, and you think, "Twelve people attending Bible study on a Wednesday night, that's who they are. That's their life." You can imagine, even in the 2000s, in Charleston, South Carolina, that being an African-American is still challenging in so many ways.

It was the courage of Felicia and Polly that gave me this opportunity to be here today. For that, I will ever, ever, ever be grateful to them.

Mike told you my secret recipe. It's Cheryl. She's a loving mother of four, who come back to see her all the time as if they were toddlers. They bring their ten children. She's never one to shy away from a cause she believes in. We're often found, as you can see, side by side. Gifted with exceptional intelligence and a creative mind, she often encouraged decisive facts that others overlook, such as Teresa Weber's case, who had left her children.

Or maybe she just is a better listener than I am. Cheryl, I'm always glad to be with you, especially today, as I receive this award that every judge in South Carolina insists that you deserve much more than me.

Thank you for joining me, and having the courage to live the life we love. Thank you for allowing me to be with you. ■



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PHOTOGRAPHER FOCUSES ON LOUISIANA'S WETLANDS, WILDLIFE, AND WILD SIDE



WILDLIFE PHOTOGRAPHER **C.C. LOCKWOOD** HAS LIVED AND WORKED IN FRAGILE ECOSYSTEMS WHOSE PRESERVATION SHAPES HIS ARTISTRY. THROUGH WORDS AND IMAGES, HE HAS CAPTURED THE UNIQUE SENSE OF SPACE IN WILD PLACES AS DIVERSE AS LOUISIANA SWAMPLAND AND THE RUGGED BACKCOUNTRY OF THE AMERICAN WEST.

His work has been published in *Smithsonian Magazine* and *National Geographic* and has earned him international acclaim as an environmental artist, including the Sierra Club's Ansel Adams Award for conservation photography. Lockwood's work continues to reflect changes and perils in the natural world. His eleventh book, *Marsh Mission*, is part of a years-long effort by Lockwood to bring attention to the crisis of vanishing Gulf Coast wetlands.

His newest book is *Louisiana Wild, The Lands Protected and Restored by The Nature Conservancy*. He is currently cataloguing his images of the last forty-seven years and working on a proj-

ect for sustainable agriculture. A resident of Louisiana since 1967, he abandoned plans for a career in business and his finance degree as soon as he graduated to pursue photography, determined to make a living capturing images of nature while living in the Louisiana wetlands.

Lockwood's presentation during the 2018 Annual Meeting in New Orleans was on the Louisiana wetlands, Louisiana wildlife and Louisiana's wild side, such as Mardi Gras.

"I came down here to go to LSU in architecture, and I switched my major five times. Graduated in four years with a degree in ▶

finance, with sixty-four extra hours, mostly in the natural sciences. You know you had to stay in school back in those days, with the Vietnam war going on. I took the LSAT, along with about half of my fraternity brothers, but I decided to work outdoors. Instead of applying for any regular jobs I headed to the Rocky Mountains to join high school buddy Marty Stouffer of *Wild America* fame in making a film on bighorn sheep.

“It took two years out there to finally make it back to Louisiana. My first successful project on my own as a freelance nature photographer was on our wonderful swamp, the Atchafalaya Basin. It’s a huge swamp, 1.4 million acres of wetland habitats. Hardwood bottomlands, Cypress-Tupelo swamp, freshwater marsh, then the saltwater marsh, the bays, and the barrier islands. They all blend together to make a fantastically diverse ecosystem, which brings you all the seafood you’ll be eating while you’re here.

“As a distributary of the Mississippi River, it flows 130 miles through those habitats in to Atchafalaya Bay. The waters flow through miles of vegetation to feed the creatures of this habitat. Then it turns to the bay and finally to the barrier islands. The Atchafalaya is big. Flowing north to south, you can see why and how I spent so many days out there to make my exhibit. Three films, a portfolio, two books, and many magazine articles, including a *National Geographic* spread. Over the last forty-five years, I got to spend 800 nights in a tent, four years in a houseboat, and many more on day trips out from living nearby.

“Nobody had taught me how to do those things back then. I just paddled into the swamp, started clicking pictures, cooking on my campfire, and sleeping in my \$19.95 pup tent. But, fascinated and motivated, I explored while learning about cameras and wetland natural history. Wildlife became my primary interest. After my first exhibit I asked Marty Stouffer to come down and help me make a film. The Atchafalaya Basin then was threatened by a major dredging project.

LOUISIANA'S WILDLIFE

“In 1975, we made our award-winning film that helped save the Atchafalaya Basin from channelization. I photographed the wildlife large and small. We’ve got a lot of wild stuff, from insects to mammals, in Louisiana. Did you know that

there are 300 pounds of insects for every one pound of humans on this planet? The fall webworms of one female’s offspring, if they all live for a year, could stretch end to end, about one inch long, from here to the moon and back. But most get eaten by birds.

“The ghost crab, it lives near the surf on the beach, our Cajun friends call them Toodaloos. It makes neat little holes in the sand. I was skiing in Aspen with a south Louisiana friend once. His first time out there, and as we stood in the lift line he said, ‘I didn’t know Toodaloos could live up here in the cold’ as he noticed the holes in the snow made by ski poles.

“We got lots and lots of frogs and toads and snakes. Non-poisonous, the Louisiana pine snake is the rarest snake in North America, less than 100 exist in the wild. A cool school of fish in the Gulf of Mexico. I photographed these silver sided lookdowns, but we all know speckled trout, red snapper, and grouper, are much tastier. In our lakes and swamps anglers go for the large-mouth bass. And Louisiana is a birders paradise.

“What about mammals? It was said the McIlhenry family, of Tabasco fame, that brought the nutria into our state to raise it for fur. It escaped in a hurricane and is now a nuisance all over south Louisiana Majestic.

“The Louisiana black bear is a wildlife’s management success story. In the ’60s there were almost none in Louisiana, now we have a healthy population. Another success story is the bald eagle. In 1977 we filmed one of the seven known nests in Louisiana. Today we have over 500 nests, thanks to the banning of DDT, the pesticide, and good wildlife management. I hope some of you lawyers had a role of getting that taken off the market. Healthy bald eagle adults bring catfish and big old swamp rabbits to their rapidly growing chicks in the nest.

“Another success story, the whooping crane. They were reduced to twenty-one birds in 1941, today over 800 exist in North America. We now have a resident flock in Louisiana of about sixty birds. Sadly, one of my favorites, probably extinct is the ivory-billed woodpecker. It was last officially seen and photographed in the 1940s in north eastern Louisiana. There have been rumors lately of sightings in Arkansas, Mississippi, Florida, and Louisi-

ana. But nothing for sure, it's most likely, sadly, extinct.

"We've got a state everything. State bird, state song, state gem, it's unbelievable how much time the legislature spends on making state things. The brown pelican is a cool bird and it was extirpated from the state in the 1960s. It was the DDT again that did them in, but it was brought back to a healthy population by the Louisiana wildlife and fisheries biologists.

"A big scare in 2010 was the BP oil flow, which injured and killed a number of pelicans. Louisiana has 483 different species of birds, but I prefer photographing the bigger birds, such as a pair of great egrets in their fancy breeding plumage. Working with biologists gave me unique opportunities, such as seeing Jake Valentine counting sandwiched heron nests. He counted 30,000 nests on Timbalier Island that year. Everyone knew not to visit Jake at his office at lunchtime. He had a hot plate in his office with a pot of roadkill stew continuously boiling, and he would offer you some. Never visit Jake at lunch.

"Louisiana is famous for its crawfish. Everybody loves a crawfish. Egrets, ibis, owls, otters, raccoons, and people enjoy a crawfish boil. Under the live oaks, or by the pond, with some raw oysters, or cook up a Redfish Courtbouillon. Add some crab cakes and a bottle of wine, that's what I call a Louisiana good time. Home-grown vegetables, along with tasty heirloom tomatoes add to Cajun cuisine that super charges us Mardi Gras partyers getting ready to hit the streets. The streets are especially wild during Mardi Gras. My favorite is the walking parade crew called the Red Beans and Rice. It's said they're the largest users of glue guns in the country making their costumes."

CAJUN CULTURE

"All kinds of Mardi Gras costumes. It's hard to think of something that hasn't been done before. A feast for the eyes and for the camera. The big parades are historic, they've been around for years with their flambeaux and artsy floats. People screaming for beads as the Bacchus parade goes by.

"If Mardi Gras doesn't float your boat, how about trying Tigers stadium where 102,000 fans cheer on our fifth-ranked team, Ole Miss, this season. Next month is the Angola Prison Rodeo, where prisoners get a break from their mundane prison life, to chase this bull for a \$100 chip on its head.

"We have architecture to view and politics to study. We have the tallest capitol in the country, it's 450 feet tall and the third-lowest high point. Louisiana is the third-lowest high point in the country. Mount Driskill is 535 feet tall, not much taller than the capitol. You could visit plantations with oxalis or enjoy the Christmas lights on the Cane River in Natchitoches all through December. Or come down south for the bonfires on the levy, the Cajuns use that to guide Santa Claus in to south Louisiana. For the brave at heart, try scuba diving under the oil rigs.

"Along with Cajun food, our Cajun music gets high billing for things to do around here. The famous jazz festival has more than jazz with Jimmy Buffet and Margarita-ville. There's also an alligator festival, and a festival of some kind every weekend somewhere in Louisiana. I think there are four in New Orleans next month.

"Gators are the subjects of one of my books. Are they dangerous? Most

of the time they're pretty docile and it's hard to see them doing anything but laying or swimming around. I spent two years traveling between here and Florida to find them doing some different stuff. They're good mothers for a couple of years, protecting their hatchlings, and their nest.

"I interviewed one man, happy to be alive after a big gator grabbed his arm while he was swimming. That gator was killed later that day, stuffed, and now sits in a museum in Gaston, Alabama. Local Annie Miller became the first person to do alligator tours, and that's when the World's Fair came to New Orleans in 1984. Alligator farmers are part of the reason that the population went from 750,000 to three million between the 1960s and today. Kids play with alligators. Alligators travel through people's front yards. Rufus Stratton, a licensed state trapper in Florida, saved the heads of 800 nuisance alligators he caught and plans to sell them on his retirement. The symphony in Lake Charles used alligator art to raise money, fifty statues were scattered across the city and painted different ways. Most of the time in the swamp I'm lucky to get close when I approach in my boat. The gator's usually under water and gone in two seconds. But occasionally one gator will stand his ground and hiss at me, giving me time for as many pictures as I want.

I really like sunsets, sunrises, from above with different colors. My favorite, most published image, Flat Lake sunset. It even made a U.S. postage stamp, the bicentennial stamp for Louisiana in 2012. I really like them all, birds, flowers, sunsets, landscapes. And the best advice I give to novice photographers is to throw away your bad ones and don't bore people with them. ■



INDUCTEE LUNCHEON REMARKS: PAST PRESIDENT JOAN A. LUKEY

TWICE EACH YEAR, UPON THE OCCASION OF OUR NATIONAL MEETINGS, ONE AMONG THE RANKS OF OUR PAST PRESIDENTS HAS THE PRIVILEGE OF DESCRIBING TO OUR INDUCTEES AND THEIR SPOUSES OR GUESTS THE LONG AND WINDING ROAD THAT BROUGHT US TO THIS MOMENT. THE PAST PRESIDENTS ARE HONORED TO BE ASKED TO FULFILL THIS FUNCTION BY THE CURRENT PRESIDENT; AND MY THANKS TO SAM FOR TAPPING ME FOR THIS FUNCTION TODAY.

The truth is, this is not just a congratulatory moment, but also a self-congratulatory moment for those of you who will be joining our ranks this evening, and for the College for the diligence that led us to selecting you. It is reminiscent of a memorable quote from the legendary, if not quite famous, twentieth-century singer Dee Dee Ramone of the Ramones. I'm not sure how many of you remember the Ramones, all of whom were using the surname Ramone as a pseudonym, by the way, but they are the band credited with initiating the punk rock song, and they're in the Rock 'n Roll Hall of Fame. Dee Dee was a particularly interesting character, and he said this upon receiving one of the Ramones' many awards: "I'd like to congratulate myself, and thank myself, and give myself a big pat on the back."

And this Inductee luncheon is intended to allow you to do just that: Revel in this moment, bask in the glory. But, only for a moment, because this is not the end of the journey; it is only the beginning. As the iconic Fred Gray suggested yesterday, and as was referenced again by one of the speakers this morning, "for of those to whom much is given, much is required."

So, why is it that I told you that this is only the beginning of the journey, not the end? My favorite response to that question came from Joe Morton, an African-American actor born in the middle of the last cen-



tury, honored for his work in such TV series as *Equal Justice* (1990) and *TriBeca* (1993). I should note that, in those days, he was not honored by the Academy, whose recognition of actors of color is more recent, but rather by the NAACP, which stepped into fill the gap when African-American actors did meaningful work important to the cause of equality. Joe Morton said this upon receipt of one of those awards:

“Accolades are there to congratulate you but also to make you understand that it’s not over. You now have to continue trying to improve the craft and keep going. It’s not something to rest on.”


Tonight, when you take the induction oath, you will be told that we welcome you as “sages of our craft.” While our craft and that of Joe Morton may differ, the message, and the lesson, are the same: The accolades that we bestow on you today are not just to congratulate you, but to make you understand that you need to keep going. It is incumbent upon you to strive, individually and together, in furtherance of the missions of the College: to maintain and seek to improve the standards of trial practice, professionalism, ethics, and the administration of justice, as we heard today from speakers Dora Galacatos and Andrew Savage. While we are not all in a position to dedicate as much of our lives to access to justice as Dora and Andy have, each of us can do something meaningful in that regard.

Together we can make a difference and reach our lofty goals. Welcome to the American College of Trial Lawyers. ■

INDUCTEE RESPONDER FELIX G. LUNA RESPONDS ON BEHALF OF NEWLY INDUCTED FELLOWS

TRIAL LAWYERS ARE SERVANTS WHO STAND IN, STAND UP, AND FIGHT FOR OTHERS





I am both honored and incredibly humbled to speak on behalf of the inductees. As we learned today at the lunch, the vetting process we went through was real. It was vigorous and complete. I think we should bottle it up and send it to our friends in Washington, D.C., because they could use that. I congratulate each and every one of my fellow inductees for surviving that vetting process.

I don't know about any of you, but I will never forget the day I received the invitation to join the College. It was September 22, 2017, and I know that because I was walking into a deposition in a medical negligence case I was handling, and the defense lawyer, Rebecca Ringer, is one of the best, nicest, and most successful defense lawyers in the state of Washington and in probably the country. She's a basic nightmare for a plaintiff lawyer like me. I really can't stand her very much.

Right before the deposition, she pulls me to the side and she says, "Felix, you're going to be inducted into the American College of Trial Lawyers," and I was completely shocked. I said, "Are you kidding?" At first, I thought, "Well, maybe she's trying to throw me off and get an advantage," and I said, "You know what, Rebecca, you don't need any advantages. You're really, really good." Then she fulfilled what many of the people in my life want and hope for secretly, and those of you who met me this weekend probably think, too, and I went quiet. I had nothing to say for minutes. And then I thought, "Wow, something must be going on with this group. They must have lost their mind to pick me to be in this group."

After the shock wore off and my request for a recount was denied, I ran into Mr. Franklin when he visited Seattle and I thought, "He's a really nice guy." I thought he was a very nice guy, even though he went to Auburn and Alabama, two schools that have beat up on my Huskies, frustratingly so. I thought all that until he asked me to address all of you tonight. Asked. What it really was was an offer I couldn't refuse. So, if you don't like anything I have to say tonight, you can send the complaints to Mr. Franklin's office. Mr. Franklin, you can tell them the address when we're done.



Later, as I was thinking about what I wanted to talk about, I thought about the role we all play as trial lawyers. I keep a folder in my cell phone of inspirational and funny sayings. One of them is from former U.S. Supreme Court Justice Benjamin Cardozo, who we heard about yesterday, who said, “The legal profession requires persons of character, persons of industry and fidelity, conscience and honor, persons who not only know the law, but who dare to make combat to lift it up and who resist all efforts to drag it down. A lawyer’s role is to uplift what is low, to erase what is false, to redeem what has been lost, so all the world shall see and in seeing shall understand that union of a scholar’s thought, the mystic’s yearning, the night’s utter and a hero’s passion, which is still in truest moments of self-expression the spirit of the bar.”

When I first read that years ago, and after I had to look up a bunch of the words in dictionary, I thought, “Wow, I wish I could speak like that.” But whatever the eloquence there are in the words, he was right. Our job as lawyers is to defend liberty, find the truth, no matter where it hides, how far it runs, how much it weighs, and carry it into the light. We must stand up to oppression, fight for what is right, and hold the door open for justice.

There’s this movie called *The Devil’s Advocate*, a movie I really liked that a lot of people think is terrible. It has Al Pacino in it. He played the devil, and he was using lawyers to promote his wishes, and he said, “Lawyers have a backstage pass to everything and a seat at all tables.” Now, even though that movie was great for me and terrible for most, his character was right. Our ability to influence is tremendous. We should use this power wisely, justly, and treat it well, because it is a gift that has been bestowed upon us.

In practice, my law partner and Fellow, Mike Wampold, explains our role as trial lawyers is to be a trusted advisor who guides our clients and the jury through difficult, often confusing, and always frustrating times.

As I thought of that, I thought about my own journey to get here, the people who helped me to do so. Like all of you I’m sure, the list is long. My journey starts with my mother, who is here, who raised me and eight of my fifteen siblings on her own. My journey was aided by my older brother, Jay, and my brother, Wuaca, who is, also, here, born thirteen months after me, and who is now a physician, and the many other younger siblings, including my brother Selim, who is in the back hiding.

It was aided by the neighborhood I grew up in in Cambridge, Massachusetts, where just about every adult male in my neighborhood went to court frequently, not as attorneys, not as judges, not members of the court staff, instead as criminal defendants.

To save me and my siblings from my father’s fate, my mother gave up everything she knew and moved us to Seattle, where her sister lived. Eventually we got our own place, but we had no furniture for over a year, and we slept together in the living room on the floor. Working essentially during high school and having escaped street violence and bullets fired at my rental house in Seattle by gang members, who mistook my house for that of a gang member, I was eventually accepted into the University of Washington, at a time when you didn’t have to be a Nobel Laureate to get into college. My goodness, I fear for young people. None of us would have made it into college now with the standards, right? Come on.

When I got to college, I learned a lot. The first thing I learned was there’s a

difference between math and math, a difference between science and science, and that my true destiny was to practice law, and not be a doctor like my brother, or an engineer like my friends.

As an attorney, I thank God every day for the incredible opportunities I’ve been given to serve others as a civil trial lawyer in private practice, first at a national firm, and now as part of a small plaintiffs’ firm. Like all of you sitting here today, throughout my career I’ve been surrounded by great friends and mentors who have supported and guided me. I’ve also been blessed with the opportunity to live out the aspirations of my law school essay.

I’ve had the privilege of working pro bono with the Innocence Project since 1998, and with my firm’s support, I helped in 2007 to overturn, based on DNA evidence, the conviction of Ted Bradford, who spent ten years in prison for a rape he did not commit. Then when the prosecutor chose to retry him based on his confession... he confessed, by the way. He gave a false confession after he was kept in the room for almost ten hours with no food until detectives wore him down. His conviction was riddled with error, but he was still convicted before the DNA evidence came out fifteen years later.

When they charged him again and he was facing prison, Mr. Bradford looked to me and said, “I want you to defend me,” and I said, “You know, Ted, I have never been a criminal lawyer. You’re facing a Class A felony. This is a mistake.” He said, “No, it isn’t. I trust you and I want you to do this.”

After my firm and Mr. Wampold and others failed to veto this decision, which they should have done, and I don’t think our malpractice carrier knew I was doing this, I tried the case in one of the most conservative coun-

ties in the state of Washington, and that's where I achieved my greatest victory as an attorney when the jurors came back with the not guilty verdict for Mr. Bradford.

My only regret was during closing argument. By the way, during the jury selection, of ninety jurors, sixty of them said, "I can't be fair." One of them said, "I don't like Latinos." I was like, "We got a battle here." What can I do with that?

My only regret though was during closing argument. I implored the jurors to take their time, work as a community, don't rush to judgment, examine the evidence. When I talked to the jurors after the acquittal, they said, "We went in the back, and in ten or fifteen minutes we were convinced of Mr. Bradford's innocence, but Mr. Luna said take your time. Go over the evidence. Don't rush to judgment. Work together," and I wanted to scream, "I only meant that if you were thinking about convicting him. Not if you were going to let him go. You could let him go in ten or fifteen minutes." We all learn from trials.

I was extremely satisfied with the achievement of helping Mr. Bradford. It's something I had dreamed of doing as a young person. But my colleague, Mr. Wampold was not. He said, "We got to find the real perpetrator here to really clear Mr. Bradford." He convinced us all to look for the perpetrator, and over the next several years, we tried with all kinds of ways to find him, and twenty-one years later, last year, we found the real rapist and fully exonerated Mr. Bradford using the same DNA evidence.

That's why we do what we do. That's the reason. That's the inspiration. It's

our clients for the courage they display, the fortitude they have, what they've suffered.

As you know, helping others is one of the skills very important to the practice of law, to society and to the College, and I've been privileged for the past twenty years of coaching a team for the National Trial Competition, a competition that this organization sponsors. My students have gone on to do amazing things. They're leaders in private practice, in public service, county councilman. One of them is a federal district court judge now, and the other one is a state court judge. I was telling this story to some friends of mine and they said, "You know what that means, right?" I said, "What?" "You're getting old." I had a very profound response, "Shut up."

At every stage of our day job representing people who have suffered catastrophic injuries, we are reminded of what makes our profession so unique, so special, and so necessary. We stand in, we stand up, and we fight for others. We are servants. Despite our accomplishments or the size of our egos, the most fundamental truth is that it's truly not about us, and that's what makes it so incredible to be an attorney.

My firm has four values. Part of the inspiration of them was Tri Hoang, a 30-year-old man who died of an untreated aortic dissection, and whose family we represented. I was prepping his sister for trial, and I asked her to tell me a story about him. He was a judo champion. She competed, and she said one day she lost, and she was really mad and upset, and he looked at her and he said, "Did you fight honorably?" She said, "Yes." "Did you use good technique?" She said, "Yes."

"Then you won."

As trial lawyers, our duty is to fight honorably and to use the best technique to obtain justice on behalf of our clients, to be the trusted guides who show them the way. That is what we do. That's all we're good for, because what we do for others, for the voiceless, the downtrodden, for those who may have lost hope, truly defines us as a profession, and as a people, and as lawyers.

Finally, my family, several of whom are here today, and many who could not, my law partners, my colleagues, and the staff of our firm, I love you all. You are the reason I'm here and why I get to do what I do. Thanks to you and my other friends from Seattle and in the Northwest, and my new friends I've met in the last couple of days, for being here tonight, and far more importantly, for sharing my life with me and guiding me on my own journey.

We've all traveled to this wonderful and historic city from across the continent. While most of us arrived by airplane, our real journey was not marked by hours in the air, but by those who helped us, supported us, pushed us, and guided us to this place in history. I want to take this moment and ask each of my fellow inductees to stand. Please stand up, inductees, and I want you to acknowledge with a standing ovation the guests who have joined you here today.

Thank you for that.

To the Fellows of the American College of Trial Lawyers, on behalf of myself and the other inductees who are here today, we will all strive to uphold the honor and the confidence you have placed in us by your invitation into the College. Thank you. ■



86 NEW FELLOWS INDUCTED AT THE 2018 ANNUAL MEETING IN NEW ORLEANS, LOUISIANA

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Montgomery
Dennis R. Bailey
Rushton, Stakely, Johnston & Garrett, P.A.

ARIZONA

Phoenix
Katherine M. Corcoran
Broening Oberg Woods & Wilson, P.C.

Dimitra Hotis Sampson
US Attorney's Office,
District of Arizona

Tucson
JoJene Mills
Law Offices of JoJene Mills

Jeffrey Willis
Snell & Wilmer L.L.P.

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Fresno
Michael F. Ball
McCormick Barstow LLP

CALIFORNIA - SOUTHERN

Los Angeles
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Yoka & Smith LLP

Pacific Palisades
Michael D. Schwartz
Los Angeles City Attorney's
Office

DELAWARE

Wilmington
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Northern District of Georgia

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Scarborough, L.L.P.

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The Steel Law Firm, PC

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Keith Adams & Associates,
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Hepworth, Janis &
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Law Office of the Cook
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Latham & Watkins LLP

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Garau Germano PC

IOWA

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Lane & Waterman, LLP

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Nyemaster Goode, P.C.

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Rose Chinitz & Rose

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Tucker, Dyer & O'Connell, LLP
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Gruel Mills Nims & Pylman
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Sullivan & Cromwell LLP

Harold K. Gordon
Jones Day

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US Attorney's Office,
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Armstrong Moldenhauer &
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LLC

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Peter N. Browne, Q.C.
Curtis, Dawe Law Firm

ONTARIO

Toronto
Alfred M. Kwinter
Singer Kwinter

QUÉBEC

Québec
Claudia P. Premont, Ad.E.
Brodeur Premont Lavoie
Avocats

COLLEGE ELECTS NEW OFFICERS



AT THE COLLEGE'S ANNUAL MEETING IN NEW ORLEANS, LOUISIANA THE FOLLOWING SLATE OF OFFICERS WAS ELECTED TO SERVE THE COLLEGE FOR THE 2018-2019 TERM.

2018-2019 EXECUTIVE COMMITTEE

President **Jeffrey S. Leon, LSM**
of Toronto, Ontario

President-Elect **Douglas R. Young**
of San Francisco, California

Treasurer **Rodney Acker**
of Dallas, Texas

Secretary **Michael L. O'Donnell**
of Denver, Colorado

Michael L. O'Donnell



Inducted in 1999 at the College's Spring Meeting in Naples, Florida, Mike has served as Chair of the Colorado State Committee, Chair of the Special Problems in the Administration of Justice (U.S.) Committee, and member of the Adjunct Fellowship and Complex Litigation Committees. From 2012-2016, he served as Regent to Colorado,

Kansas, New Mexico, Oklahoma, Utah, and Wyoming and Regent Liaison to the Federal Civil Procedure, Judiciary, and Sandra Day O'Connor Jurist Award Committees, and the Task Force on Discovery and Civil Justice.

He is a founder and chairman of the Denver-based 100-lawyer civil litigation defense firm Wheeler Trigg O'Donnell. In over thirty-five years of practice, Mike has defended clients in complex civil litigation involving product liability, professional liability, torts, class actions and mass actions, commercial litigation, and bet-the-company matters around the country. Mike has appeared as lead counsel in state and federal courts in twenty-five states and has served as national or regional counsel for a number of Fortune 500 companies including General Electric, Advanced Bionics, Boston Scientific, Michelin, Skyjack, and Denver International Airport. Mike also represents several large law firms inside and outside the state of Colorado. Consistent with his own contributions to various charitable and professional organizations, Mike established the WTO Foundation in 2005 to make it easy for firm personnel to give back to their community and to serve as an example of community involvement for other law firms. He is a founder and board member of the Walking for Kids Foundation. Mike, a Chicago native, met Brett, his wife of almost forty years, when he was in law school. They have three children, a son-in-law, and a daughter-in-law.



Joe R. Caldwell, Jr.



Sandra A. Forbes



Larry H. Krantz



Michael J. Shepard

2018-2022 REGENTS

Joe R. Caldwell, Jr. serves as Regent to the District of Columbia and Maryland, as well as Regent Liaison to the International, Samuel E. Gates Litigation Award, and Teaching of Trial and Appellate Advocacy Committees. He has served as Chair of the Emil Gumpert Award Committee and a member of the Retreat Task Force on Admission to Fellowship and the District of Columbia Committee. Joe was a member of the UK-U.S. Legal Exchange, in which the U.S. contingent consisted of three U.S. Supreme Court Justices, three federal judges, and four U.S. lawyers. The team traveled to London in 2015, and to the U.S. Supreme Court in 2016, to meet with their UK counterparts to review papers and discuss global legal topics such as federalism, terrorism, right to privacy, freedom of speech, and access to justice, under the chairmanship of Past President Chilton Davis Varner. He was inducted into the College during the 2002 Annual Meeting in New York, New York. He is a partner at Steptoe & Johnson in Washington, D.C., where his practice is complex civil litigation, white-collar criminal defense and investigations. He represents clients in federal and state courts, before Congressional Committees, administrative agencies, and arbitration tribunals. He has worked in state, local, and federal government, having served as a deputy attorney general for the state of New Jersey, as chief of

staff and legal counsel for D.C. Mayor Sharon Pratt, and for four years as legal counsel at the Supreme Court of the United States and as an assistant to Chief Justice Warren E. Burger. Joe serves as Diversity Committee Co-Chair at Steptoe (a position he also held at a prior national law firm for a decade, along with service as that firm's head of the litigation practice in D.C.). He has also served as chair of the Committee on Grievances (ethics committee) of the U.S. District Court for the District of Columbia; as general counsel and later chairman of the board of Big Brothers/Big Sisters of the National Capital Area, and as general counsel of President Obama's My Brother's Keeper Alliance, a non-profit established to help young boys of color overcome academic and societal obstacles to achievement, among other civic and non-profit roles. Joe also served early in his career as an officer in the U.S. Army JAG Corps in Stuttgart, Germany, and later in Washington, D.C. Joe and his wife, Sybil, like generations of Joe's family were married on December 31. They have a son, Joey, who is a senior in high school.

Sandra A. Forbes serves as Regent to New York-Upstate, Ontario, and Québec and is Regent Liaison to the Beverley McLachlin Access to Justice Award, Gale Cup, and Sopinka Cup Committees. A current Canadian Foundation Director, she has served on the



Emil Gumpert Award, Griffin Bell Award for Courageous Advocacy, Ontario, and Regents Nominating Committees as well as the Retreat Task Force on Admission to Fellowship. She became a Fellow during the 2011 Spring Meeting in San Antonio, Texas. Born and raised in Toronto, she has spent her entire career as a commercial litigator at Davies Ward and has a broad practice, with a focus on complex disputes, anti-trust, and class action defense. Sandra is married to Fellow and Editor of the *Journal* **Stephen M. Grant, LSM**. When not practicing law, they spend their waking hours chasing after their two-year-old grandson, Theo, enjoying Paris, and spoiling their rather large, but very friendly, Maine Coon cat, Edwin.

Larry H. Krantz serves as Regent to Connecticut, New York-Downstate, and Vermont, as well as Regent Liaison to the National Moot Court Competition and Public Defenders Committees. Larry was inducted at the 2006 Annual Meeting in London, England. He has served as Chair of the New York-Downstate Committee, as well as a member of the Federal Criminal Procedure, National Trial Competition, and Special Problems in the Administration of Justice (U.S.) Committees. He is a principal of Krantz & Berman LLP. He is a former federal prosecutor who regularly handles white-collar criminal matters, regulatory investigations (including SEC), and complex commercial litigation. He has been an active trial and appellate lawyer for over twenty-five years and has successfully tried criminal and civil cases

in federal courts, state courts, and in arbitration forums. He is a Member and former Director of the New York Council of Defense Lawyers, a Member of the Local Rules Committee for the Southern and Eastern Districts of New York, a Master in the Federal Bar Council Inn of Court, a Director of the Federal Bar Council, and the Chair of the Federal Bar Council Committee on Sentencing. He served as an Assistant United States Attorney in the Criminal Division of the Eastern District of New York from 1983-89, and as a Law Clerk to the Honorable I. Leo Glasser, U.S. District Judge, Eastern District of New York, from 1981-82. He was also an adjunct Instructor of Legal Writing at Brooklyn Law School and is a chapter author of the treatise: *Defending Federal Criminal Cases: Attacking the Government's Proof*. He is also the Vice-President of the National Fragile X Foundation. Fragile X is a genetic disorder often resulting in an intellectual disability, sometimes coupled with autism.

Michael J. Shepard serves as Regent to California-Northern and Nevada and is Regent Liaison to the Federal Criminal Procedure and Federal Rules of Evidence Committees. Mike became a Fellow at the 2009 Spring Meeting in Fajardo, Puerto Rico. He served as Chair of the Federal Rules of Evidence Committee as well a member of the Federal Legislation Committee. Mike works on trials of all kinds, internal investigations, and white collar and indigent criminal defense. Mike has completed about forty jury trials – mostly criminal but including a wide range of others such

as commercial disputes, civil anti-trust, and securities fraud. He served as a federal prosecutor in Chicago, where he focused on public corruption cases. His time as a prosecutor included stints as Chief of the Special Prosecutions Division of the United States Attorney's Office in Chicago, Interim United States Attorney in Chicago, and Chief of the Public Integrity Section of the Department of Justice in Washington, D.C. When not in trial or begging, groveling, and pleading with prosecutors to leave his clients alone, he is conducting internal investigations, a skill learned in the crucible of Washington, D.C. when working for the Department of Justice in an election year. He is a lifelong Chicago Cubs fan. He has written extensively on internal investigations and on the Foreign Corrupt Practices Act but is probably best known for his joke memos. A graduate of Princeton University and Stanford Law School, Mike and his wife Jennifer live in Tiburon, California.

The new Regents replaced the following retiring Regents:

Ritchie E. Berger
of Burlington, Vermont

Susan J. Harriman
of San Francisco, California

William J. Murphy
of Baltimore, Maryland

Stephen G. Schwarz
of Rochester, New York



COLLEGE PARTNERS WITH AMERICAN ACADEMY OF APPELLATE LAWYERS TO PRESENT SEMINAR FOR PUBLIC INTEREST LAWYERS

On Friday, September 14, 2018, the College joined with the American Academy of Appellate Lawyers to present a half-day seminar to public interest lawyers in Florida. The free CLE program—“May It Please the Court: Effective Oral Advocacy”—was held at the Barry Law School in Orlando and enthusiastically received by the audience.

The program was organized by **Sylvia H. Walbolt**, a member of the College’s Teaching of Trial and Appellate Advocacy Committee and its Access to Justice and Legal Services Committee (as well as a Fellow of the Academy), Florida Fellow **Charlie P. Pillans III**, and **Francis M. MacDonald, Jr.**, Florida State Committee Chair, who took the lead in advertising the seminar to public interest lawyers and handling the myriad logistical issues as they arose over the last six months. MacDonald gave a welcome on behalf of the College.

Parts of the video that previously had been made at a joint seminar at the University of Texas for use in future programs were used, including mock appellate arguments by Past President **Chilton Davis Varner** and

Former Regent **Dennis R. Suplee** and two Fellows of the Academy. Walbolt then gave a short talk about ethical issues in appellate matters, which was followed by a lively panel discussion of various strategic and ethical appellate advocacy issues by Walbolt, Suplee, and a Fellow of the Academy.

A transcript of the original video panel discussion, which was arranged by **William N. Poorten III** of Tucson, Arizona, a member of the College’s Teaching of Trial and Appellate Advocacy Committee, was included in the written materials as an additional resource. Thanks to the Florida State Committee for providing financial support for the program.

This program can easily be presented by any other State or Province Committee. Requests to receive the agenda that was used and the materials for the program can be sent to swalbolt@carltonfields.com.

Sylvia H. Walbolt
Tampa, Florida



PRESIDENT'S YEAR END REPORT — SAMUEL H. FRANKLIN

AMERICAN COLLEGE OF TRIAL LAWYERS 2017-2018



ETTY AND I HAVE JUST EXPERIENCED THE THRILL OF A LIFETIME AND THE HIGHLIGHT OF MY PROFESSIONAL CAREER, BY HAVING THE OPPORTUNITY TO SERVE THIS YEAR AS PRESIDENT AND FIRST LADY. NO MATTER HOW MUCH ONE MAY THINK THEY KNOW ABOUT THIS OFFICE, FROM SERVING FIRST AS A REGENT AND THEN THREE YEARS AS AN OFFICER, IT IS VERY DIFFICULT TO DESCRIBE JUST WHAT A PRIVILEGE AND HONOR IT IS TO HAVE SERVED.



Over the course of the year, we saw a number of old friends, but made many new ones during our travels. We extend a special thanks to those who were kind enough to invite us into their homes for a stay when we visited their cities. We will always remember the view from Regent Susan Harriman's house in Sausalito, and the winery we visited with Susan and Fellow Bill Keane and his wife, Cindy.



During the course of the year, we traveled from coast to coast, and from north to south including visits to Canada, the Oklahoma Fellows bi-annual meeting in Mexico, Alaska and Puerto Rico. I attended forty-seven events, and another five or so were covered by other officers when scheduling conflicts prevented my attendance. On a sad note, these travels included attending two memorial services for Past Presidents Charlie Renfrew and Jimmy Morris. In addition, we conducted two Chairs' Workshops, literally on each coast. We attended the U.S. Supreme Court Historical Society dinner; and I also attended, as an observer, a meeting of the American Civil Trial Roundtable in Washington, D.C.



In a first-time experience for me, I attended the final rounds of all the competitions the College supports, including the National Moot Court Competition in New York, the Gale Cup Moot in Toronto, the National Trial Competition in Austin and the Sopinka Cup Trial Competition in Ottawa. All of these competitions were well run and full of enthusiasm, and I was honored to sit as a member of the appellate panel in the final round in the National Moot Court Competition, and as the trial judge in the final round of the National Trial Competition.



The attendance at the various events ranged from small, such that Fellows could gather around one table for dinner, to quite large, including the Tri-State Regional Meeting in Savannah, the Third Circuit Regional Meeting in Wilmington, the Region Six Meeting in Oxford, the New England Fellows Meeting in Portland, and the Northwest Regional Meeting in Whitefish, Montana. Regional meetings take a great deal of thought and planning in order to be successful, and one regional meeting had to be delayed and rescheduled due to the small number of Fellows who registered, and the significant financial loss which would have been incurred had the meeting gone forward. Great care must be taken by the Regent and host State or Province Committee in conducting a regional meeting to evaluate and plan all aspects including scheduling, venue, program and budget to guard against a financial loss.

When I attended the Southern California Fellows Annual Dinner in May, I traveled to Newport Beach early enough so that I was able to spend the good part of a day in visiting our National Office. During that visit, I met individually with each member of our fine staff who was present that day, in order to learn more about what each does to make our organization the success it is, and to learn of any issues or concerns which our staff might have. Our staff does a large amount of work behind the scenes, on a daily basis, to support our mission and all of us, and we are fortunate to have them. During the year, we completed an upgrade to our database and continued to work on improvements to our website.

Since our *eBulletin* does an excellent job, every two months, of providing information about the various activities of the College, my report on the activities of our various committees will be somewhat condensed. As a general matter, in an attempt to make sure that our State and Province Committees are performing successfully and meeting all expectations, the Board approved a split into two Province Committees for Manitoba and Saskatchewan. We also performed due diligence to evaluate whether a split might be appropriate in Pennsylvania, and determined that there was no significant interest or support in doing so. The Executive Committee worked hard with our Regents to identify any problems or issues being experienced by State or Province Committees, and took steps to improve any issues which were identified.

Starting with the workshops and continuing throughout the year, we urged our State and Province Committees to be ever vigilant in the search for new nominees, with particular efforts toward identifying younger trial lawyers, and being more diverse and inclusive in our nominations. In particular, I conducted a series of conference calls on two occasions during the year with Fellows serving as diversity liaisons, and also conducted a series of conference calls with all Chairs facing a submission date of September 15 for new candidates. I am happy to report that at each event I attended, where I always tried to address the need for diversity and inclusion, as well as focus on younger trial lawyers who meet our standards, that message appeared to be well received.

In addition to our standing committees, we also had a number of special undertakings this year. We have a Task Force on Judicial Independence, chaired by Former Regent Kathleen Trafford with the assistance of Vice Chair Buddy Wester, updating our existing white paper on that topic, and evaluating other ways in which the College can engage in supporting this important part of the rule of law. We also have a subcommittee, under the Admission to Fellowship Committee, chaired by Walter Bundy,

reviewing our advertising guidelines. We have an Ad Hoc Committee, led by Regent Ritchie Berger, determining whether the existing white paper addressing fairness in campus sexual assault disciplinary proceedings can be supplemented to assist Canadian universities and colleges with these difficult issues. Finally, we have a subcommittee of the Special Problems in the Administration of Justice (Canada) Committee reviewing the Canadian Codes of Conduct for possible revisions.

Turning to our general committees, and to highlight just a few, we established the Beverley McLachlin Access to Justice Award Committee to investigate and nominate potential recipients for that award in the future. The Award is for persons who have made a significant contribution to improve access to justice. The Committee began its efforts after it was introduced during the program at the Annual Meeting in New Orleans. A portrait bust of Chief Justice McLachlin, created by Past President Warren Lightfoot, will be presented during the general session. We expect a number of members of the Canadian Supreme Court to be present for the presentation to former Chief Justice McLachlin, as well as the conferring of honorary Fellowship upon Justice Sheila Martin.

In January 2018, a group of Fellows from our International Committee, led by former Regent Brian O'Neill, conducted a very successful training program over a three-day trial practice workshop in Guam, similar to the program which was conducted in Palau in 2015. Ten Fellows flew at their own expense to conduct that workshop, at which over 100 people from Guam and the neighboring commonwealth and confederations attended. Talks are already underway for a possible return to Guam for another educational workshop in 2020.

A highlight for me was the opportunity to attend the event at the Fordham Law School in New York City, when Judy Wahrenberger, Chair of the Emil Gumpert Award Committee, presented the check for \$100,000 from the Foundation to the Feerick Center for Social Justice. That grant will be used to support the immigration assistance project being conducted at Dilley, Texas. This event was attended by approximately sixty persons, including a large number of students at Fordham who have participated in the Dilley Project, and the Fordham administration highlighted the College and the Foundation during this ceremony.

Our Fellows (and others from their respective firms) working under the auspices of the Special Problems in the Administration of Justice (U.S.) Committee, achieved a significant result for Veterans faced with appeals from denials of disability claims. The Federal Circuit Court of Appeals determined that the wrong standard of review was being employed by the Veterans Appeal Board, and mandated a new standard which will hopefully increase the prospects for successful appeals going forward.

Finally, under a subcommittee to our Access to Justice and Legal Services Committee, led by Fellow Mark Surprenant, we have launched a pilot



program (the Distinguished Pro Bono Fellows program) in which Fellows, interested in doing pro bono work, partner with certain host organizations in order to facilitate pro bono assistance. The subcommittee has identified eight Fellows who have agreed to participate in this pilot project, and if the program is as successful as we hope, we would then encourage other Fellows to participate and broaden the number of host organizations.

Turning to a couple of issues identified with respect to the competitions supported by the College, the number of mock competitions available to law students continues to proliferate, and law schools have choices as to which competition to send their top team. As Fellows, we all need to be ready and willing to help with Regional rounds and through our National Trial Competition Committee, continue to provide the excellent participation during the final round in Texas. A second issue relates to support for the Gale Cup Moot in Canada, as one of the long time co-sponsors (the Canadian firm Lenczner Slaght) has announced it will no longer be able to provide the same level of administrative and financial support previously provided. The Executive Committee is monitoring those developments, and we have now established a separate Canadian Committee dedicated to support for the Gale Cup Moot.

One final matter to call to your attention is the issue which arises, from time to time, of whether the College should make or approve a public statement on a particular topic. The Executive Committee attempts to be highly responsive to these issues, and closely adhere to our existing policy and process. The Board did approve a couple of statements as well as a submission by the Special Problems in the Administration of Justice (Canada) Committee to the

Canadian Judicial Council, but elected not to make any statement where the issue was emotional and Fellows might genuinely disagree. There is one issue we continue to evaluate, and that is whether the College should make any statement, or take any action, when there is a serious threat to judicial independence in a country other than the United States and Canada, such as currently exists in Poland.

As the year ends, four outstanding Regents will complete their terms. We are indebted to Regents Bill Murphy, Steve Schwarz, Ritchie Berger, and Susan Hariman for their service to the College, and while their successors are well-qualified, we will miss these good friends and their wisdom and judgment.

STATE OF THE COLLEGE

The College is in excellent shape, due in no small part to the proactive review and actions emanating from the Board Retreat in 2015, and the follow-up work done by the Long Range Financial Planning Committee under the leadership of Past President Tom Tongue. From a financial viewpoint, we are in excellent shape, having generated an operating surplus in fiscal year 2018, including successful investment results and two profitable national meetings in Montreal and Phoenix.

The Executive Committee found it very helpful to have the Secretary perform the additional role as Assistant Treasurer, working closely with the Treasurer in all budgeting, forecasting, and financial review tasks. Our annual budget approval process now includes a four-year pro forma forecast to assist the Board in its financial review. We do have concerns with our aging Fellowship, and the Executive Committee, working with the Regents, is monitoring and analyzing changes in our Fellowship (including emeritus status requests, resignations, and terminations) to determine if we are losing more Fellows than experienced on a historical basis.

As the year ends, I remember what an honor it was during my first year as a Regent to have the opportunity to meet and become friends with our Past Presidents, the Regents, and other former members of the Board. I was blessed to be a member of a great Regents class (Past Presidents Mike Smith and Bart Dalton, and the late John Famularo) and am so grateful, and honored, to have had this year as your President. I have every confidence in our next President, my dear friend, Jeff Leon and second Canadian President, and the other committed officers.

To close, Betty and I send a huge “thank you” and best regards. ■





HISTORIC MANSION WITH OUTLAW CONNECTION IS SITE FOR ANNUAL TEXAS FELLOWS TRIAL SKILLS SEMINAR

PROGRAM FOCUSES ON FIRST STEPS OF A JURY TRIAL

The Texas Fellows held their Annual Trial Skills Seminar on October 5, 2018 at the historic Belo Mansion in Dallas, Texas. The Belo Mansion was restored in the 1970s to be the headquarters of the Dallas Bar Association. Prior to the restoration it had most recently been a funeral home. One of the funeral home's better known "customers" was Clyde Barrow of Bonnie and Clyde fame.

The topic of the seminar was Jury Trial: First Steps – Voir Dire and Opening. The seminar was open only to Fellows of the College and lawyers in their firms. Approximately seventy lawyers attended the seminar, including lawyers from throughout the states of Texas and Oklahoma. CLE credit up to 5.5 hours was allowed for the attendees.

Texas State Committee Chair **Kathleen A. Gallagher** organized the seminar and was the moderator. The seminar began with a panel discussion on voir dire

techniques and strategy. Fellows on the panel were **Rickey J. Brantley**, **David N. Kitner**, **Mike McKool, Jr.**, **John H. Martin** and **T. John Ward**. In addition, jury consultant Lara Dolnik participated and provided insights that both supported and called into question many long held beliefs as to who can be good or bad jurors.

Voir dire was held at the conclusion of the panel discussion. Fellows **Marshall M. Searcy, Jr.** and **D. Patrick Long** conducted the voir dire. Thirty law students from the University of North Texas College of Law constituted the jury panel. All were in business attire which prompted several Fellows to say that it was the best dressed jury panel they had ever seen. The students were given information to show potential bias to see how such biases would be dealt with by the lawyers. At the conclusion of the voir dire the lawyers made preemptory strikes and for

cause challenges and stated why they made them. Panelist Ward, a retired federal judge, told how he would have ruled on the for cause challenges.

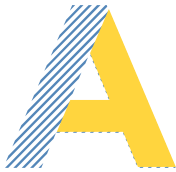
Fellows **Diana E. Marshall** (Plaintiff) and **Lamont A. Jefferson** (Defendant) then made opening statements. At the conclusion of the opening statements the jurors commented on how they would have decided based solely on the opening statements. The seminar concluded with a discussion on effective opening statement techniques and practices.

This program followed a similar very successful CLE program last year in Houston in which Fellows demonstrated openings, direct, cross, and closing.

David N. Kitner
Dallas, Texas



ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS PILOT PROJECT: ENHANCING WHAT WE DO TO HELP OTHERS



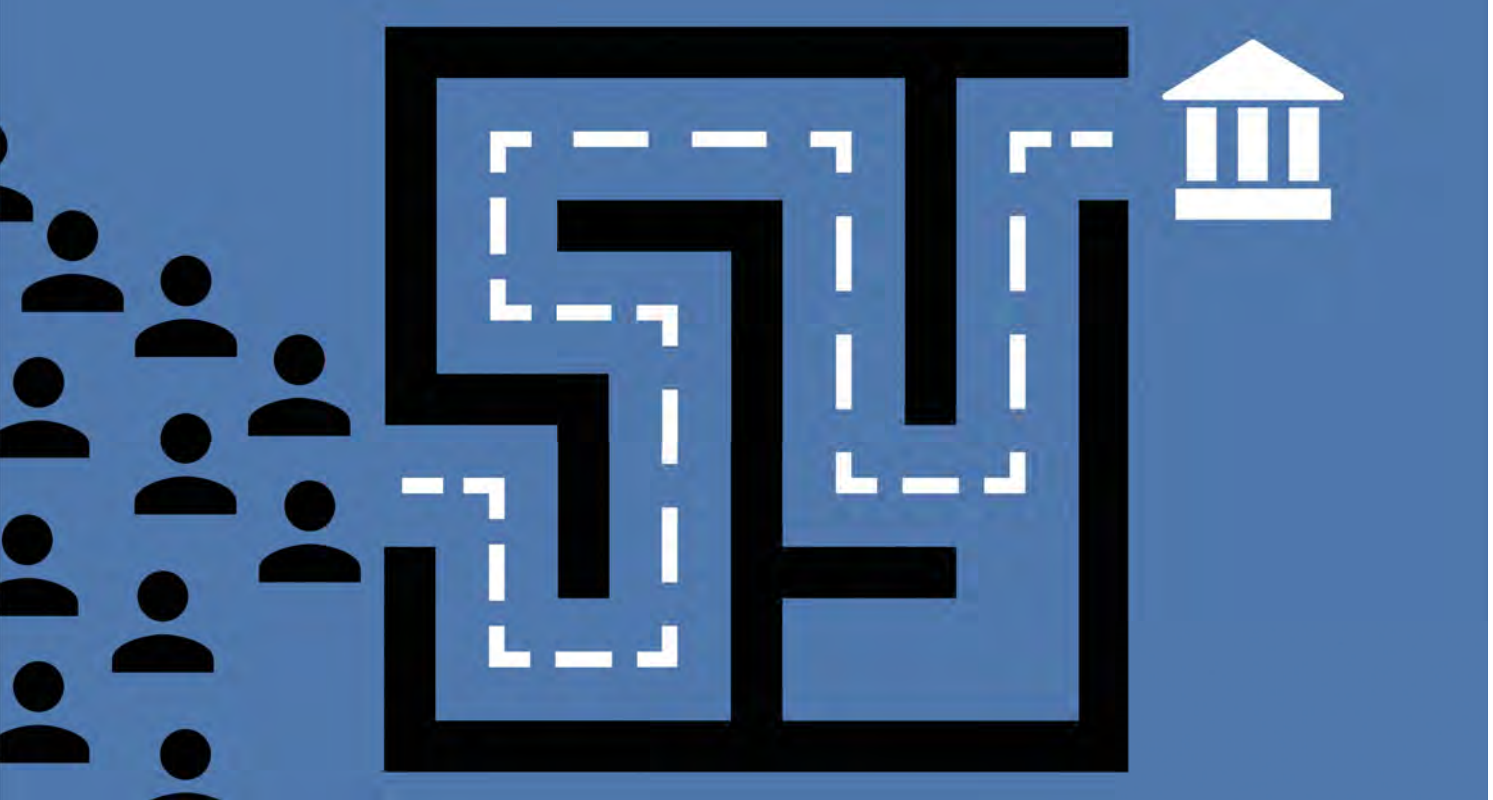
AT THE 2018 ANNUAL MEETING IN NEW ORLEANS, THE COLLEGE OFFICIALLY LAUNCHED ITS NEW ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS PILOT PROJECT AS THE BOARD OF REGENTS WELCOMED THE FIRST CLASS OF EIGHT ACCESS TO JUSTICE (ATJ) FELLOWS ALONG WITH THEIR PARTNER HOST ORGANIZATIONS.

OVERVIEW AND PURPOSE FOR THE PROGRAM

A significant access to justice crisis exists in the United States and Canada. There are a growing number of individuals and families who need pro bono legal services, but the availability of services is not able to keep up with the needs. As one of the premier legal organizations in the two countries, the College looks to assume a leadership role in providing meaningful access to justice for all.

Through this new project, the long-term idea is for the College to welcome and introduce on a yearly basis a select group of ATJ Fellows, committed to devoting at least twenty hours per month on a very flexible basis to access to justice issues and concerns.

College President Jeffrey S. Leon, LSM said of the program: “The Access to Justice Distinguished Pro Bono Fellows Pilot Project takes the College’s efforts to facilitate its Fellows’ ability to provide access to justice for those in need to a whole new level. It has long been recognized by the pro bono community that a structured program such as this is more effective and has the potential to serve more people than the ad hoc provision of pro bono services. Our Access to Justice and Legal Services Committee worked hard and demonstrated great vision in getting this program off the ground. Their efforts and those of our Distinguished Pro Bono Fellows will significantly advance the College’s mission to improve the administration of justice in the United States and Canada. Our goal is to expand the program and I would encourage all Fellows to consider becoming involved.”



ATJ Fellows will partner with non-profit organizations, courts, and other public service entities under the umbrella of the College to increase access to justice for all. In so doing, ATJ Fellows will serve as role models in the access to justice arena and will inspire other Fellows to become involved to a greater extent in access to justice work. ATJ Fellows will use their specialized skills and experience to do engaging pro bono and access to justice work; make significant contributions to their communities; mentor and train younger lawyers; and generally help individuals and families, courts, and legal service organizations in need of assistance in numerous ways that are rewarding and meaningful to both ATJ Fellows and the organizations with which they partner.

The program enhances the College's opportunity to form more meaningful and lasting relationships with several access to justice related organizations and entities, individuals, and courts whose work for those in need has historically come to the attention of the College primarily through the work of the Emil Gumpert Award Committee, the U.S. and Canadian Foundations, and the Access to Justice and Legal Services Committee. The program will highlight what the Partner Host Organizations do and allow the College through its ATJ Fellows to have a significant liaison rela-

tionship with the Partner Host Organizations, thus, allowing Fellows to assist those entities in meaningful ways as their present and future needs arise. Overall, this program will be a win for those clients in need of meaningful access to justice, a win for participating ATJ Fellows and Partner Host Organizations, and a win for the College. Also, it will significantly enhance the collective work from an access to justice standpoint.

The following constitutes the pilot group of ATJ Fellows and their Partner Host Organizations:

2018 ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS AND PARTNER HOST ORGANIZATIONS

HOWARD R. CABOT

Florence (Arizona) Immigrant & Refugee Rights Project and Arizona Justice Project

Howard is a partner at the law firm of Perkins Coie LLP. He is a member of the Access to Justice and Legal Services Committee and the Emil Gumpert Award Committee.

Howard has excelled in terms of his community involvement and access to justice work for those in need. Among many other awards, Howard has received the Arizona State University Sandra Day O'Connor College of Law's



Howard Cabot



Justice For All Award. When Howard received that Award, the Interim Dean of the College of Law stated that Howard's "dedication to pro bono service and his courage in taking on politically sensitive representation make him a model for all attorneys."

As an ATJ Fellow, Howard is partnering both with the Florence (Arizona) Immigrant & Refugee Rights Project and with the Arizona Justice Project. As its website indicates: "The Florence Project is the only organization in Arizona that provides free legal and social services to detained men, women, and children under threat of deportation." The Florence Project was the winner of the 2012 Emil Gumpert Award.

The Arizona Justice Project has as its mission "to seek justice for the innocent and the wrongfully imprisoned-the marginalized and forgotten of Arizona's criminal justice system."

CHRISTY D. JONES

Asylum/Immigration

(Organization to be determined)

Christy is Of Counsel in the Jackson, Mississippi office of Butler Snow LLP. She enjoys a reputation as one of the finest product liability litigation lawyers not just in the United States, but world-wide.

Christy is well known and greatly respected throughout the ACTL. She served the College for four years as Regent and five years as a Foundation Trustee.

As an ATJ Fellow, Christy is focusing on assisting men, women, and children who are dealing with life-threatening and life-changing asylum and immigration issues and concerns. Christy will also serve in a leadership role within the College in determining how the College can best coordinate and maximize efforts insofar as asylum and immigration matters are concerned. Christy is presently exploring a potential long-term partnership with several organizations which specialize in the asylum/immigration area.

"The rule of law is the cornerstone of our democracy, but it is jeopardized every day when the underprivileged, accused and disadvantaged are deprived of the protections our judicial system affords. This is my small way of ensuring that these protections and access to justice remain available for all."

MICHAEL D. JONES

Lawyers' Committee for Civil Rights under Law

Mike is a partner in the Washington, D.C. office of Kirkland & Ellis LLP and is the Chair of the Board of Trustees at Dillard University, his alma mater. Mike has done substantial pro bono and access to justice work. More specifically, in partnership with the Lawyers' Committee for Civil Rights under Law, Mike has successfully handled a high-profile case in Maryland on behalf of historically black colleges and universities (HBCUs) to ensure that HBCUs are "comparable and competitive with other public universities in Maryland in terms of mission, academic program offerings, library services, information technology infrastructure and other facets of their operation."

As an ATJ Fellow, Mike continues his ongoing relationship with the Lawyers' Committee for Civil Rights under Law of which he is a Board member. Kristen Clarke, President and Executive Director of the Lawyers' Committee, said: "We are honored, and we see this as an important opportunity to enhance our service to clients and our effectiveness as an organization whose mission is to mobilize the private bar on issues of social justice.... Michael Jones would make an excellent ACTL Distinguished Access to Justice Fellow."

DINYAR MARZBAN, Q.C.

Access Pro Bono Society of British Columbia

Dinyar specializes in family law, civil litigation, and mediation. He is one of the named partners of the Vancouver, British Columbia-based law firm Jenkins Marzban Logan LLP.

Dinyar was a British Columbia Province Committee Chair and is a member of the Gale Cup Committee, was appointed Queen's Counsel, and was the Chair of the Vancouver Family Law Subsection of the Canadian Bar Association. He currently serves as one of the directors of the highly regarded British Columbia-based Legal Services Society (also known as Legal Aid BC) which provides pro bono legal services to people with low income.

As indicated on the Legal Services Society website, Dinyar is an "advocate for justice system reform, particularly in family law. He is the founder of the Supreme Court pro bono mediation service and regularly provides free legal advice through Access Pro Bono."

As an ATJ Fellow, Dinyar is partnering with the Access Pro Bono Society of British Columbia (APB), which was formed in 2010, when the Western Canada Society to Access Justice and Pro Bono Law of British Columbia merged. As its website indicates, Access Pro Bono "promotes access to justice in BC by providing and fostering quality pro bono legal services for people and nonprofit organizations of limited means."

DOUGLAS MITCHELL

Action Committee on Access to Justice in Civil and Family Matters

Doug is the co-founder of, and is presently a partner at, IMK LLP located in Montreal. He is recognized and highly regarded throughout both the Province of Québec and Canada as one of the top commercial litigators in the country.

Doug has provided services for both the Chief Justice of Québec and the Canadian Judicial Council. He has been a lecturer on the Faculty of Law at McGill University. Doug currently serves as the Vice President of the Canadian Foundation and is a member of the Access to Justice and Legal Services and Québec Province Committees.

As an ATJ Fellow, Doug is partnering with the nationally acclaimed Action Commit-

tee on Access to Justice in Civil and Family Matters. The Action Committee is chaired by former Canadian Supreme Court Justice Thomas Cromwell who served on the Supreme Court of Canada from 2008-2016.

The Action Committee is an independent coalition convened by former Chief Justice Beverley McLachlin of the Supreme Court of Canada in 2008. It is "focused on fostering engagement, pursuing a strategic approach to reforms and coordinating the efforts of participants concerned with civil and family justice." The Action Committee is comprised of representatives from all sectors of the Canadian civil and family justice arena, plus members of the public. Justice Cromwell personally recommended Doug to be one of our first ATJ Fellows.

HERSCHEL E. RICHARD, JR.

Innocence Project New Orleans

Herschel is an attorney with the Shreveport, Louisiana law firm of Cook, Yancey, King & Galloway, APLC. He was recognized by the Louisiana Bar Foundation when he received its very prestigious Distinguished Attorney Award in 2015.

Herschel has been involved at the highest levels of leadership in numerous community and access to justice organizations over the years. For example, he has served as President of the Shreveport Bar Association, the Louisiana Bar Foundation, and the Louisiana Association of Defense Counsel. He served for many years on the Louisiana Public Defender Board and on the Public Defender Board for Caddo Parish, Louisiana. He currently serves on the Board of Directors of both Innocence Project New Orleans and Louisiana Applesseed.

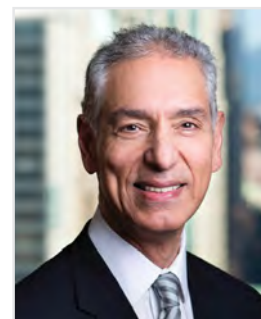
As an ATJ Fellow, Herschel is partnering with Innocence Project New Orleans (IPNO). As its website indicates, IPNO "frees innocent, life-sentenced prisoners... supports our clients living well and fully in the world after their release...advocates for sensible criminal justice policies that re-



Christy Jones



Michael Jones



Dinyar Marzban



Douglas Mitchell



Herschel Richard, Jr.

duce wrongful convictions.” Jee Park, Executive Director of IPNO, said that Herschel would be invaluable to IPNO in regard to “advocacy, events, re-entry support, and case screening.”

“I have been inspired by the work done by Emily Maw, Jee Park, and the others at IPNO,” Richard said. “I wanted to provide whatever help I could to assist their work.”

JOSEPH A. TATE

Community Legal Services of Philadelphia

Joe is a retired partner at Dechert LLP and works out of its Philadelphia office who continues to make a significant difference in the lives of others through his ongoing community and pro bono work.

Joe serves as a member of the Board of Directors of Community Legal Services of Philadelphia (CLS). He has been recognized and honored by many organizations for his volunteer service, including his receipt of the Excellence Award from the Pennsylvania Legal Aid Network and the Villanova Law School Alumni Award for Outstanding Leadership in Service to his law school.

As an ATJ Fellow, Joe is partnering with CLS, which received a \$50,000 grant from the Foundation in 2018. Community Legal Services is one of the preeminent legal services organizations in the United States. It was founded fifty years ago. It provides direct representation each year to more than 9,000 clients with a variety of urgent legal problems in the Philadelphia area. CLS, composed of just over fifty lawyers and forty paralegals/social workers, engages in community lawyering by conducting legal clinics in the neighborhoods where their clients live and work.

Debby Freedman, Executive Director of CLS, said: “Thank you for considering CLS and our wonderful Board member, Joseph Tate, for an ACTL Distinguished Pro Bono Fellowship.... We think that Joe’s work through this Fellowship will further our relationship with the ACTL and lead to other capacity-building opportunities in the future.”

SYLVIA H. WALBOLT

Office of the Federal Public Defender, Northern District of Florida, Capital Habeas Unit

Sylvia is a shareholder in the law firm of Carlton Fields. She was one of the driving forces behind the creation of the Access to Justice and Legal Services Committee of which she is a past chair and current member. She is the co-chair of her firm’s National Appellate Practice & Trial Support Group.

Sylvia is a leader in the access to justice world, especially in regard to representing capital defendants in high profile, post-conviction matters, which she has done regularly since 1998.

Sylvia has received rewards and recognitions over the years for her pro bono and access to justice work. Of most significance is her receipt of the 2016 John Paul Stevens Guiding Hand of Counsel Award from the ABA’s Death Penalty Representation Panel. This Award is given annually “to a lawyer who demonstrates exceptional commitment to providing pro bono counsel for individuals facing death sentences.” When being presented with this Award, Professor Tribe from the Harvard Law School best described Sylvia as “a legal angel.”

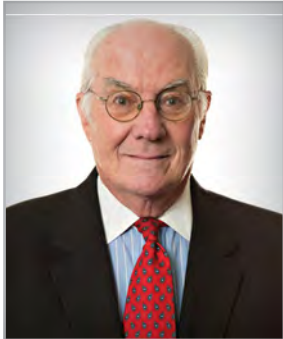
As an ATJ Fellow, Sylvia will continue her work in representing post-conviction death row clients. In connection therewith, she will partner with the Office of Federal Public Defender, Northern District of Florida, Capital Habeas Unit. As Sylvia indicated, she “will teach the young lawyers writing, help with triage, and help brainstorm themes, new arguments to advance and present.”

FUTURE ACCESS TO JUSTICE FELLOWS AND PARTNER HOST ORGANIZATIONS

If you or someone you know would be interested in this program, please contact Mark Surprenant at 504-585-0213 or mark.surprenant@arlaw.com, member of the Access to Justice and Legal Services Committee.

Mark C. Surprenant

New Orleans, Louisiana



Joseph Tate



Sylvia Walbolt



Original hermit and horse
design created by
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FELLOWS AS MINISTERS: CALLING AND PRACTICE NOT MUTUALLY EXCLUSIVE





PASTOR ORLANDO R. RICHMOND, SR., OF THE NORTHSIDE CHRISTIAN CHURCH, ENTERED THE MINISTRY AT AGE 19. BUT HE ALSO IS A FELLOW OF THE COLLEGE WITH NEARLY THIRTY YEARS OF TRIAL EXPERIENCE, INCLUDING MASS TORT LITIGATION INVOLVING PHARMACEUTICAL PRODUCTS. HE IS A PARTNER WITH BUTLER SNOW, IN JACKSON, MISSISSIPPI, AND A MEMBER OF ITS EXECUTIVE COMMITTEE ON TOP OF EVERYTHING ELSE HE DOES.

Richmond and his wife have been married since he was twenty-years-old, and she was nineteen. He was already in the ministry and so they have spent their entire adult life together in Christian ministry. Under Richmond's leadership, the church has grown tremendously—"Sunday services are high-energy and emphasize praise and worship," he said. He also has "focused on the teaching ministries and ushered in the concept of creative ministry."

The church's 8:00 a.m. Sunday radio broadcast is one of the highest-rated radio programs on Sunday mornings in north Mississippi. The membership is increasingly diverse, and the church describes itself as a "house for all people." Its philosophy is premised on Galatians 6:9, which instructs, "And let us not be weary in well-doing, for in due season we shall reap, if we faint not."

It was "pretty clear to me early on that I was interested in both the ministry and the practice of law," Richmond said. He was five or six when he was drawn to the ministry and knew by sixth grade he wanted to be a lawyer. No one in his family was a lawyer and "only a handful – and that is stretching it – had graduated from college at that time, so I had no readily available examples."

He was an avid reader, however, "My mother insisted on that." That wide reading "informed my decision to become a lawyer." His call to the ministry arose as he became immersed as a young man in the very small



church of which his stepfather was a pastor. The church only ever had a couple of deacons, and they were not always present. Richmond, who was "academically inclined," consulted commentaries and adult resource materials to help facilitate the Sunday School discussion and weekly devotion. That participation was helpful to his stepfather. But Richmond "felt a personal calling to the ministry even apart from that experience in my stepfather's church."

Although he has not yet secured a seminary degree, he has completed numerous seminary ▶

classes and taught a variety of seminary courses and presented lectures. He was licensed as a Baptist preacher at age nineteen by a local ministry. He attended college and then law school. At age twenty-eight, he was ordained as a Baptist minister.

As a Marine Corps JAG Officer, he was responsible for helping develop and conduct a multi-cultural worship service on a military base at a time when service members, including the chaplains, were being deployed to Somalia. “It had an African-American worship flavor but was attended by hundreds and was multi-cultural....It was enthusiastic worship with contemporary Gospel music and designed for a younger population – 40-ish and younger.”

The lessons learned from that experience carried over when he later entered his ministry in a very rural Mississippi community. He was asked by approximately twenty-seven regular attendees at a church in West Point to serve as Pastor. “I had a very busy law practice but thought I could handle twenty-seven people.” But the church grew to hundreds of people!

The question he is most often asked – and was asked for this article – is how he manages to both practice law and pastor a growing church. “I have developed a system that has me engaged in some aspect of preparation at virtually all times,” he said. Additionally, Richmond is a “habitual note taker of my observations – in an airport, a store, news stories.” He often relies on these observations as illustrations in his sermons. “I see and hear ministry in nearly everything.” He also does very specific and detailed preparation as well. “My weekends are filled with study and writing.”

Richmond and his wife try to organize their time together such that he will also have time to complete his preparation over the weekend for Sunday. “I don’t get a lot of sleep on Fridays and Saturdays.”

Trials are tough because his usually last three to five weeks or longer because of their complexity. Over the years, however, he has

only missed two Sundays in a row on three occasions. His large staff of associate ministers handles things in his absence. His wife – who he describes as “my glue not only for my ministry but my whole life” – is very active in the church and she helps as well, so “I have a good team around me.” And, because of e-mails and cell phones, he “is always in communication with the church.”

Richmond sees a “significant overlap with oral advocacy as a trial lawyer and advocacy as part of preaching....There is no gaping disconnect between these skill sets. Addressing a congregation is the most important advocacy I do and God has allowed me to borrow from that gift to address juries.”

Ministry is the “passion” of his life and about fifteen years ago he seriously considered leaving the practice of law to devote all his time to his ministry. “It is impossible to give enough to God, and I had a growing law practice.” But a trusted fellow pastor urged him to continue to do both as long as he felt he could do both effectively. He was counseled that in his rural community, being a respected African-American professional “can be particularly significant” because it provides access to places, people, and resources that he might not otherwise have.

Richmond ultimately realized that the practice of law provides “yet another avenue for ministry.” He said, “My calling and my practice are not mutually exclusive.” Accordingly, he will continue to try cases in addition to his ministry, to the benefit of our profession as well as community and congregation.

COMBINING LEGAL COUNSELING AND PASTORAL COUNSELING

Louis A. Ruprecht was admitted to the bar in 1963, and has an active trial practice in Westfield, New Jersey, heading his own law firm Ruprecht Hart Weeks & Ricciardulli, LLP. Three of his partners are Fellows, including his wife, **Judy Wahrenberger**. Over the years,

he has been an adjunct professor at Seton Hall Law School as well as frequent lecturer on trial practice.

Inducted as a Fellow of the College in 1987, Ruprecht is still trying lots of cases today at age eighty. And, up until about five years ago, he also was a part-time minister at First Baptist Church of Westfield. Today he still is active in the ministry of his church in Bound Brook, New Jersey.

He went to college at Colgate University thinking he would then go to seminary. Instead, he went to Rutgers School of Law and entered the practice of law as a trial lawyer. When he was around forty-five years old, he entered the New Brunswick Theological Seminary night school program of the Reformed Church of America in New Brunswick, New Jersey.

That church is the present iteration of the old Dutch Reformed Church, but the seminary, the oldest seminary in the United States, prepares ministers for many denominations. The seminary sits at the center of Rutgers University, which grew up around it, although there is no formal association between them. Ruprecht later served for many years as a Trustee of the New Brunswick Theological Seminary.

Practicing law full-time and going to seminary at night, while also teaching a law school course one night a week, was challenging, “I didn’t sleep for four years....I still wonder about those crazy years when I was trying cases, managing a law firm, teaching one night a week, and attending seminary classes the other nights.” In a classic understatement, he said, “It was a very busy time of my life.”

In addition to the regular class work at seminary, the school required participation in four “practical courses” in topics such as “pastoral administration” and “pastoral counseling,” which had to be taken in the summers. Each course required two full weeks of daytime classes. Given his schedule, he kept putting off the summer classes. But then, when he had finished his regular course work, he could not graduate until the “practical courses” were completed.



So Ruprecht bit the bullet, gave up a vacation that year, and took an entire summer off from the practice of law to take the “practical courses.” Thereafter, he was ordained and began to serve as a part-time pastor at the church in Westfield, all while still having a full-time trial practice. Luckily, the church had two full-time pastors and he had lawyers in his firm who stepped in when needed so the time conflicts always were resolved.

In his final years as a pastor at that church, when he was seventy-four years old, he agreed to serve as the senior pastor for the year or so it would take to hire a new senior pastor. Even as an associate pastor, he preached a lot and taught adult education on Sunday and one night each week, not to mention presiding over weddings and funerals. The “most satisfying part of all this was knowing I could have both a career in law and do something else that I loved to do.”

After retiring as a senior pastor of his church, he joined a new church. The “ethics of the profession is that a senior pastor, must leave a church when he is no longer its pastor so



as not to be a distraction.” He is now active in his new church, however, preaching a bit, handling the occasional wedding or funeral, and doing a lot of teaching. “I’m going to keep on doing this until the end of my time. I’d like to do my own funeral but guess I can’t do that!”

He has counseled a fair number of “middle-aged folks who come to me to discuss a possible change in the direction of their life, a different trajectory.” He finds that, “when you’re young you only see your life as doing one specific thing, then middle age comes and different possibilities emerge.” When he was in seminary, a majority of the students were a couple years out of college, although a substantial number were pursuing a second career. “Even more people are doing that today - it is very unusual now to go directly to seminary from college; almost all of the students now are ‘second-career’ and they bring great maturity to their studies and new vocation.”

Ruprecht said the practice of law and preaching to a congregation “feed off of each other....I love to make opening statements and closing arguments and there has been a real benefit in being a pastor that helps you learn how to handle yourself in front of a jury. And vice versa.” But he never uses biblical allusions in his trials. “You shouldn’t use the Bible to advance your own purposes or to manipulate others.”

It is clear Ruprecht is doing exactly what he always was meant to do, and it is clear he will be doing this for many years more.



MOVING CHAIRS

Randal H. Sellers practiced law in Birmingham, Alabama, with Starnes Davis Florie from 1981 until 2016. His practice was devoted to civil litigation including healthcare, professional medical liability, long-term care, intellectual property, and complex commercial lit-

igation. He tried more than 200 complex civil cases to a jury verdict. He was inducted as a Fellow in 2004 and is a past chair of both the Legal Ethics and Professionalism Committee and the Alabama State Committee.

Several years ago, a young lawyer in Randy Sellers’ law firm left the firm to join the ministry. Sellers, who “loves the practice of law,” thought the young lawyer was crazy. But some years later, he gradually began to feel that call to ordained ministry.

Accordingly, around 2000, Sellers started to investigate the possibility of ordination in the Episcopal Church. He and his wife, Darla, concluded that, for family reasons, it was not the right time to pursue ministry as a vocation.

Then, some five years ago, he began looking into the possibility of becoming an Episcopal Deacon. As a part of this discernment process, he interned in a “tiny parish” in Birmingham. During that internship, Sellers discerned a call to the priesthood. His plan was to train locally and work, part-time, as a priest on a “non-stipendiary” basis—that is, not get paid.

He then served an internship at a very impoverished, largely African-American, church and, in November 2015, realized he was called to become a priest as a vocation. Sellers said that he “still very much enjoyed the practice of law but realized that if I didn’t pursue this, I would never be truly joyful and happy.” Darla came to the same conclusion and, by August 2016, some three weeks after he tried his last case, Sellers was attending Virginia Theological Seminary. He says he is “working as hard at Seminary as I did in the practice of law.”

Sellers and Darla, who has been “100%” behind his career change and “ready to go on this adventure,” have “never once felt it was the wrong move.” The adventure continued during the first summer at Seminary when Sellers participated in a ministry program at a hospital in Washington, D.C. He worked in

the “very stressful ICU,” which “turned out to be a great blessing, as I found out I could relate well to those seriously ill patients and their families.”

It also provided him with many very moving experiences, which confirmed to him that validated the call to ordination. He spent much time praying with patients who were dying and with their families. He had one “unique experience” while praying in the early morning with a woman who was actively dying. In the course of his prayer he felt “something different” and later realized she had died during their prayer. “It was a very holy moment for me that I will never forget.”

And, this past summer the adventure continued, when he interned at Christ Church Cathedral in Oxford, England. Christ Church is the only Cathedral in the world that is attached to a college. Randy’s fascinating blog can be read at Seminaryat60.blogspotcom, which provides “some insight into the experience of being a Seminarian ‘late in life’” and about the wonderful experience he and Darla had in England.

He explains on his blog that when he asked for a description of what an “internship” at the Cathedral entails, he was told he could “expect some Liturgical responsibilities, moving chairs—and everything in between.” His Liturgical responsibilities began as soon as they arrived:

On our first Saturday in Oxford (June 30) there were two ordination ceremonies and I had the role of “Crucifier” at each ceremony. (I carried the crucifix at the head of the processions.) I am happy to report that my performance was flawless—I didn’t drop the crucifix even once.

It turns out they weren’t kidding about “moving chairs.” Here is his blog explanation of that part of his intern responsibilities:

Because of the many and varied services, moveable/stackable chairs constantly need to be set out, moved and re-stored. These transitions occur at least once a day, and often more than once. The Cathedral is quite proud of these chairs. They are relatively new and very “sturdy”—i.e., they are

heavy. Also, the chairs come in sets of one, two, three and four chairs. The sets of three and four are quite heavy. As it turns out, four years of college, three years of law school, a 35-year law practice, and two years of seminary have left me uniquely qualified to move these Cathedral chairs—and I am given the opportunity to do so quite often.

The experiences even the last several years have confirmed for the pair that Sellers truly is called to be a full-time priest in a parish setting, as he enjoys both preaching and teaching. Although his Bishop “has control” of him for two years, the Bishop has been supportive of Sellers and his plans for the future, and Sellers expects him to approve whatever decision they reach as his time at seminary draws to an end this May.

Randy and Darla are not certain where this adventure will take them next. They are absolutely certain, however, that this was the right move for them to make.

Sylvia H. Walbolt

Tampa, Florida





COMMITTEE UPDATES

INTERNATIONAL

The International Committee reports that the Friday, November 2, 2018 seminar in the British Virgin Islands titled, “Being a More Effective Advocate: In and Out of Court,” was a success. This seminar for all attorneys and judges in the BVI was postponed for almost a year because of Hurricane Irma and sponsored jointly by the International Committee of the College, Virgin Island General Legal Council and the BVI Bar Association.

The College was well represented in the BVI by the participation of President **Jeffrey S. Leon, LSM**, of Toronto, Ontario, **Richard Galperin** of Wilmington, Delaware, **J. Richard Kiefer** of Indianapolis, Indiana, **Frank E. Walwyn** of Toronto, Ontario and a member of the British Virgin Islands bar, and **Cynthia Day Grimes** of San Antonio, Texas. Paring with local attorneys and judges, the Fellows gave demonstrations of civility and uncivil conduct and led enthusiastic discussion groups.

Thanks were expressed to to Barry Leon, formerly a Commercial Court Judge of the Eastern Caribbean Supreme Court and brother of President Leon, who persevered and meticulously planned this conference despite Hurricane Irma’s destruction of the BVI in September 2017.

His Excellency Governor Augustus Jaspert of BVI set the tone at the beginning of the day with his perspective of the importance of the courts and lawyers in upholding the rule of law and demonstrating civility in that endeavor. Sir Dennis Byron, formerly President of the Caribbean Court of Justice, offered great insight and words of wisdom. Dancia Penn, OBE QC, former Deputy Governor and former Attorney General, and Jacqueline Daley-Aspinall, President of the Bar were great resources Fellows and the program.

On the part of the BVI lawyers and judges, their candor and willingness to openly discuss problems of civility, the judiciary, and the practice of law was impressive and an indication of the progress that can be made in the future. Fellows shared that many of the BVI issues are not unique and have been experienced in their respective jurisdictions as well.

The seminar was attended by nearly 100 judges, magistrates, and lawyers who practice in the civil, criminal, and commercial courts, and included young and senior lawyers and judges. Enthusiasm and participation were evident in the breakout sessions of the three groups where many ideas and solutions were shared. Each group was assigned a rapporteur who recorded and reported to the large group. The plan is to compile these notes for sharing with others.

At the wrap-up, President Leon was asked if the College would return again next year as the BVI wants to continue with a follow-up conference next year. President Leon enthusiastically agreed.

The devastating effects of Irma are still evident in the BVI. They included destruction of law offices, courts, and law libraries. There is no universal access to the BVI laws online. Despite this, the bar is thriving and moving forward with dedication and good spirits.

OHIO

Fellows in Cincinnati completed the presentation of three CLE programs in the three counties of southwest Ohio - Butler, Warren and Hamilton. Each CLE was a one-hour presentation, and each received credits from the Ohio Supreme Court for the state's mandatory CLE requirement. The course used the video vignettes from the College's *Code of Pretrial & Trial Conduct Teaching Aid* in the presentations. As result, the presentations were well received and the Fellows, **Thomas L. Eagen, Jr.**, **John D. Smith**, and **Louis F. Gilligan**, were invited to return next year.

MISSISSIPPI

On November 30, 2018, the Mississippi Fellows hosted a CLE program, "Presenting and Challenging Medical Experts: A Seminar on Discovery and Trial Skills." The seminar, held at The Westin in Jackson, Mississippi, began with presentations by Fellows **Mildred M. Morris** and **John A. Banahan** on identifying, preparing, qualifying, cross-examining, and disqualifying experts. Former Regent **Christy D. Jones** moderated a panel discussion, "Issues in Presentation of Experts: A View from the Bench", with United States District Judge Carlton Reeves from the Southern District of Mississippi and United States District Judge and Judicial Fellow **Brian A. Jackson** from the Middle District of Louisiana. The program concluded with Fellows **Walter C. Morrison IV** and Immediate Past Chair of the Mississippi State Committee **John G. Wheeler** conducting a direct and cross-examination of Dr. Mi-

chael Stodard, an emergency room physician, based on the facts of a case they tried in 2008. The sixty attendees included Dean Patricia Bennett from the Mississippi College School of Law and a group of law students from Mississippi College and the University of Mississippi School of Law. Following the CLE, the Mississippi Fellows enjoyed their Annual Dinner at the Mississippi Museum of Art with guests President **Jeffrey S. Leon, LSM**, and Carol Best and Regent **Thomas M. Hayes III** and United States Magistrate Judge Karen L. Hayes.

PENNSYLVANIA

The second annual trial skills CLE training program was presented at Temple University Beasley School of Law in Philadelphia on November 2, 2018 under the joint sponsorship of the Pennsylvania State Committee and Temple's Trial Advocacy Program. **Nancy Gellman**, outgoing Chair of the Pennsylvania State Committee, and Fellow **Joseph Crawford**, incoming Chair of the College's Teaching of Trial and Appellate Advocacy, participated in planning and recruitment of Fellows to participate as speakers. The central concept of the program is for the College and Temple to work together to present an annual trial skills program designed for practicing lawyers, participants in Temple's trial advocacy LL.M program, and law students.

The program began with an introduction by Regent **Robert E. Welsh, Jr.** about the College and the collaboration with Temple. College speakers included a former federal prosecutor, a federal public defender, and civil trial lawyers.

Fellows **Thomas J. Duffy**, **William J. Ricci**, and **John P. McShea III** gave a presentation about direct and cross-examination of expert witnesses. Fellows **Catherine Henry** and **Linda Dale Hoffa** gave a presentation about the effective use of technology in the courtroom. Temple Professor Jules Epstein gave a master class in evidence, and Temple Professor Marian Braccia spoke about advocacy lessons from Hollywood. Written materials prepared by the presenters were also distributed.

The audience included civil trial lawyers, criminal lawyers and law students. As part of the College's outreach efforts, the Foundation provided scholarships to public service lawyers from the Philadelphia District Attorney's Office, the city and federal Public Defender Offices, Community Legal Services and the Juvenile Law Center.



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WAR STORIES FROM FELLOWS



ELLOWS IS A CONTINUING SERIES IN THE *JOURNAL* FEATURING WAR STORIES FROM OUR VERY OWN FELLOWS. RANGING FROM ENTERTAINING TO INSTRUCTIVE, THESE STORIES WILL FEATURE SOMETHING A FELLOW DID OR SOMETHING THAT HAPPENED TO A FELLOW OR ANOTHER FELLOW DURING A TRIAL.

PLEASE SEND STORIES FOR CONSIDERATION TO EDITOR@ACTL.COM.

GO ASK THE JUDGE

I was trying a garden variety car accident personal injury case in a rural South Dakota county to a jury. The plaintiff was on the stand and I was defending. Toward the end of his testimony the plaintiff came up with the theory that my client had admitted fault for the accident during a drunken discussion at a local bar at about 1:00 am some months before the trial. I was cross examining him on that alleged statement, among other things, and the plaintiff ultimately turned around, pointed at the judge and said, “If you don’t believe me, ask that guy. He was there.”

Needless to say the judge was perplexed although he was known to frequent that particular bar on occasion. We recessed and went into chambers. The judge asked the plaintiff’s lawyer what this was all about. The plaintiff’s lawyer said that he had been told by his client and others that the judge had witnessed the conversation between the parties at the bar. Before going into chambers I had a chance to talk to my client about this revelation. He said that the judge was indeed at the bar and probably heard the conversation but that the conversation did not resemble what the plaintiff had testified to.

After quizzing the plaintiff’s lawyer, the judge asked me what my client would say. I told him that my client would say that the judge was indeed there and the conversation did not resemble what the plaintiff had testified to in any way. The judge then said: “That’s exactly how I remember it.”

I told the judge that since he was by far the most credible witness involved in the case, I would have to call him to testify. He declared a mistrial and about a week later we settled the case for very little.

The moral of the story is that no matter how bizarre someone's testimony might be, there is probably a grain of truth to it. If there is a grain of truth to it there may not be an entire ear of corn, however. Learning to think on your feet during trial is something that is invaluable and comes only through experience. However, with most cases today being subject to death by discovery, you aren't surprised in the courtroom to the extent you were twenty-five or thirty years ago.

Robert B. Anderson
Pierre, South Dakota

SHRINKING HORIZONS

Note: Names have been changed to protect the privacy of those mentioned in the story.

Michael James was a roustabout. I didn't know what a roustabout was until I met Michael. He had been born and raised in New Jersey, somewhere north of the Raritan River. His family included people involved in the entertainment business including a relative after whom a venue in Madison Square Garden was named. As a young man Michael had played football, been an amateur boxer, gotten into some trouble, joined the Merchant Marine and completed a tour of duty. After leaving the Merchant Marine, he had signed on to serve on private merchant ships sailing all over the world.

During the Merchant Marine discharge medical examination, the x-ray technician noticed a small metal curved object in his chest cavity. No one had noticed it before. James didn't know what it was but he saw it was there.

He soon found out what it was. It was a surgical needle.

James had been born with a congenital heart defect. He had a hole in his heart the size of

a half dollar. As a result, his physical capacity was limited and without repair, James would not likely survive into his teens. Because of his condition he was prevented from engaging in the activities of a typical young boy for fear he would die.

As young Michael James approached the age of 10, a doctor in Philadelphia was developing a new surgical technique which would change James's life.

Dr. Lincoln T. Waters was the head of thoracic surgery at X Hospital in Philadelphia. He developed a surgical technique which has become known as "open heart" surgery. By comparison with today's procedures, his methods were primitive. He used ice to pack the patient, lower the body's temperature and used the extra time to remove the heart, repair it and replace it without killing the patient.

As a result of his phenomenal innovation, Dr. Waters was on the cover of Time magazine in 1957.

James's parents took him to see Waters. Waters performed the surgery and repaired Michael's heart.

Because of Dr. Waters's successful surgery, James was able to live a normal childhood and ultimately become a roustabout.

However, after surgery James developed an infection in the sac around his heart and had to endure an additional surgical procedure. As a result of that subsequent surgery, his chest cavity had been reopened and during that subsequent surgery, a surgical needle, a small curved metal object, was left in his chest.

No one knew of it. And, it had no consequences at all.

Leaving a surgical needle in the chest of a patient is by no measure "good" medical practice. In fact, it is regarded as so clearly inexcusable that it is one of those occurrences the law describes as "res ipsa loquitur," or "the thing or matter speaks for itself." It is not reasonable for a surgeon to leave a surgical needle in the



body of his patient. There is no explanation which could exculpate or exonerate a doctor who caused or allowed a needle to be left. A surgical needle left behind is negligence. No doubt about it.

The classic example of “res ipsa” is a free-falling elevator. If a passenger is injured there’s no question the person responsible for the elevator is responsible for any injuries the passenger suffers. That’s just not the way an elevator is supposed to operate. Nothing anyone could say could excuse that. The manufacturer or operator of the elevator is negligent; it’s just a question of how much it should pay for the pain and suffering caused.

Likewise, injuries suffered as a result of a surgical needle left behind.

After the Merchant Marine discharge examination disclosed the presence of the needle, James consulted a local New Jersey lawyer and it was decided they wanted to sue Dr. Waters and X Hospital in Philadelphia. I was called just before the statute of limitations expired and so, nearly two years after the needle was found, I filed suit on his behalf.

Since liability was a sure thing, all I needed to do was to develop a damages case. What loss did James suffer?

Evidently, his life after the surgery was not adversely affected. In fact, quite the contrary. Before the surgery, he was confined to his house; after the surgery, he became a fun loving and active young man and ultimately a roustabout.

But, claimed James, after the discharge examination and the discovery of the presence of the needle, James began to experience anxiety; anxiety about the potential that the needle in his chest would move and kill or injure him, or require emergency medical attention. He had never felt that anxiety before since he hadn’t known of the needle’s presence. Now he did and now he was anxious.

As a consequence of the anxiety, James was reluctant to take merchant shipping jobs that required him to go out to sea quite as far as he used to go for fear that if the needle should

move he’d be too far away from medical attention to have his life saved. His unwillingness to go out as far as he used to, diminished his occupational horizon and reduced his compensation.

That was it. An occupational psychologist was found. He examined James and wrote a report which confirmed that, “to a reasonable degree of expert certainty” indeed, James did say what he said and by multiplying some numbers by some other numbers, a calculation could be performed which would measure the value of the shrinking horizons James experienced as a result of his anxiety.

And so, we were ready for trial.

It would be a very simple case. After the jury was selected, I would call James’s mother to try to cover in advance his “roustaboutness,” to try to smooth James’s hard edges. Then, the forensic occupational psychologist would attest to the measure of James’s anxiety loss. And finally, James himself.

Defendants expected to call Dr. Waters.

Three days to verdict. All expected a simple, uneventful case.

But it wasn’t.

On the first day of trial with the jury selected, Dr. Waters sat in the first row of benches behind counsel table. He was retired now, the surgery having been performed when James was a young boy and the curved needle having been discovered more than a decade later. James’s mother testified as expected.

On the second day, while the psychologist testified and James testified, Dr. Waters was absent, but no one noticed.

On the third day, Dr. Waters testified.

Waters reviewed his extraordinary career accomplishments as a surgeon. As a medical school professor, he had required all of his students in his class at medical school to take courses in “elocution” so as to train them in the art of communication – to train to have an effective “bedside” manner.

Waters also testified that since his retirement from medicine, he had gone to Fordham Law School and had become a lawyer.

Finally, Waters's lawyer asked him a question which surprised me.

"Where were you yesterday, Dr. Waters?"

I had no idea where Dr. Waters had been but I knew that the answer to that question would not be good for me. My adversary was the finest medical malpractice attorney in the city. He would never ask his own client a question the answer to which did not favor his client. Instinctively, and without any reason more than that, I objected.

I approached the bench and told the judge that the question sought information which could not possibly be relevant to any issue in this case.

The judge disagreed.

"I'll allow it," he said.

The answer was much worse than I could have imagined.

"Yesterday," said the doctor, "I checked myself into the nearby hospital. I arranged to have an incision made in my chest and had inserted a plastic flexible tube. Into the tube I had several surgical needles dropped."

"How do we know this, doctor," asked my adversary.

"I arranged to have x-rays taken of my chest before the needles were inserted and several times subsequently while the needles were migrating. If you view the series of x-rays, you can see the needles move in my chest cavity." The doctor explained.

"Why did you do this?"

"Because I wanted to relieve the young man, Mr. James, of his anxiety. I thought that were I to replicate, voluntarily, the condition he experienced, I could convince him that there was nothing to be anxious about."

"In fact," the good doctor/lawyer explained, calmly and convincingly, "the body has a natural mechanism to prevent foreign objects, like a surgical needle, from moving in the chest cavity. Scar tissue quickly forms around the foreign object and creates a sac which is virtually immovable. Nothing can dislodge it."

"It would be more dangerous to surgically remove the needle than to leave it there."

I've never really understood what the expression "my heart sunk" meant, until that moment. My heart sank.

I cross examined the doctor, defendants rested and we presented closing argument after the judge charged the jury.

During the charge the judge did something that was strange. When he described the law regarding damages, essentially the value of the shrunk horizons from the anxiety caused, the judge perceptibly moved his head back and forth indicating his disbelief in this theory.

What was I to do? If I objected, anyone on the jury who hadn't noticed the judge's head motion would know; if I didn't object, I was sunk, as anyone who did see his head motion would know what the judge thought of the theory. I did not object.

The jury went out to deliberate. Shortly thereafter, they returned with a unanimous and substantial verdict. James was awarded \$40,000, which, when added to delay interest and costs resulted in more than \$60,000 for the plaintiff. A good day's work for sure.

As I left the courtroom, one of the jurors was also leaving. Etiquette, and in some jurisdictions ethics, dictates that counsel initiate no conversation with jurors, but, unless instructed otherwise, jurors can speak to counsel.

The juror turned to me and said, "You were going to get nothing until that crazy doctor did that stunt with the needles. After that, we couldn't give you enough!!!"

Howard D. Scher
Philadelphia, Pennsylvania

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

August 23-26, 2018

The Lodge at Whitefish Lake

Whitefish, Montana

REGION 3: NORTHWEST REGIONAL MEETING



THE NORTHWEST REGIONAL MEETING WAS HOSTED BY THE MONTANA FELLOWS AND STATE COMMITTEE AND WAS HELD AT THE ICONIC LODGE AT WHITEFISH LAKE, IN WHITEFISH, MONTANA. THIS AAA FOUR DIAMOND AWARD HOTEL IS REMINISCENT OF THE GRAND LODGES OF THE PAST, WITH ALL THE CONVENIENCES OF THE PRESENT. LOCATED ON WHITEFISH LAKE, IT IS WITHIN WALKING DISTANCE OF DOWNTOWN WHITEFISH AND ONLY TEN MINUTES FROM THE SKI SLOPES, WHERE THEY HAD LOADS OF SUMMER ACTIVITIES, INCLUDING A TRAM RIDE TO THE TOP OF THE MOUNTAIN AND AN ALPINE SLIDE TO THE BOTTOM, ALL OF WHICH PROVIDED A MEMORABLE BACKDROP FOR THE MEETING.

President **Samuel H. Franklin** and his wife, Betty, attended, along with Regent **Mona T. Duckett, Q.C.**, and Past President **Thomas H. Tongue** and his wife, Andrea, and Former Regent **Paul Fortino** and his wife, Carol.

Thursday night's welcome reception was on the Lodge's lawn in a tent on the shore of Lake Whitefish, with a lovely view of the lake and excellent appetizers and networking.

The Friday morning program kicked off with a presentation by **Skip Horner** about his life and how he became the first guide to scale the "Seven Summits," being the (seven) highest peaks on each of the seven continents. Scaling all seven summits was something which not been contemplated until Dick Bass accomplished it in the 1800s and wrote a book called *The Seven Summits*, which was published in the late 1800s. Skip commented that when he heard about this accomplishment, he thought it would be "cool" if he could be the first to guide the Seven Summits, which was what he set out to do. He did, and he shared his story of how he did it and its trials and tribulations. Skip, who lives in Victor, Montana, just south of Missoula with his wife Elizabeth, is an avid whitewater guide, having guided people through Turkey, Nepal, Madagascar, and on the Colorado River through the Grand Canyon. Skip helps create unique outdoor adventures for people to cultural sites, mountain ranges, and wildlife sanctuaries all over the world. In his presentation Skip shared his observations of climate change, receding glaciers, and discussed the effect climate change will have on the wildlife all over the world. Skip's descriptions of his conquests made attendees happy to be sleeping in the Lodge that evening.



The next speaker was **Gretchen Minton**, a professor of English at Montana State University in Bozeman, Montana. Her specialty is Shakespeare and his contemporaries. Her research focuses on the relationship between how plays are printed on the page and how they are realized in performance. She has worked with theater companies including the Montana Shakespeare In The Parks Theater, the well-known Oregon Shakespeare Festival Theater, the American Players Theater, and the world acclaimed Globe Theatre in London. She is one of the premiere Shakespeare scholars in North America. She is currently in the process of writing a book called *The History of Shakespeare in Montana*, which was the resource from which she developed her presentation. She explained the creation of frontier theaters, often rough unpainted buildings with a small stage and rough unplanned log benches, and chilling winds blowing through the uninsulated log walls. These theaters featured a variety of shows, minstrels, musicals, and comedies, actors have performed scenes from Shakespeare since the mid-1800s, and with increased frequency as time went on. Many of the actors performing in these early western theaters were not American, but came from Europe, and would play both male and female roles, as the play demanded. Fortunately,

most of this was chronicled in the local newspapers of the time. As time progressed, in the late nineteenth century women started forming reading groups, as Montana did in the 1890s. One of the earliest being the Deer Lodge Women's Club built in Deer Lodge Montana in 1910. These clubs were formed to establish a manner of providing for the literary culture and civic activities of the communities. In the early days, these clubs often focused on Shakespeare. In closing, Minton referenced the influence of Shakespeare in Montana and the West by stating: "It's not possible to pin down what Shakespeare means in our long history and diverse landscapes to so many different people, but he's always been there. Sometimes, as the goal toward which the sojourners deliberately travel, sometimes as that unexpected destination, but always interwoven into the history floor and imagination of the Frontier."

The Saturday program started with the Ninth Circuit Chief Judge, **Sidney Thomas**. Judge Thomas chambers in Billings, Montana and he is well known to and a friend of many of the Fellows in attendance. He was born in Bozeman, received his Bachelor of Arts degree from Montana State University and his law degree from the University of Montana School of Law. He was appointed

as a judge to the Ninth Circuit Court of Appeals by President Bill Clinton in 1995. He was subsequently appointed the Chief Judge in 2014. Judge Thomas addressed the group about "justice" and discussed the provision of justice not as a spectator sport, but rather requiring proactive, focused, and creative action on behalf of the judiciary and the bar. He described the composition of the Ninth Circuit with its nine western states, 450 judges (including bankruptcy, magistrate, and district judges), and 5,500 employees in its fifteen district and sixty-four court units. He explained his observation that the Ninth Circuit is the best model among all of the circuits for administering justice in the federal system as it is structured today. Then he addressed several of "urban legends" about the Ninth Circuit, and debunked them.

One popular "urban legend," one often heard from politicians and even the current President, is that Ninth Circuit is the most reversed circuit. The fact is that in the last term of the circuits, the Ninth Circuit was the fourth most reversed, while in the 2016 term, it was the fifth most reversed. In fact, if one goes back through the last twenty years, the Ninth Circuit has never been the most reversed circuit. Putting this into perspective, the Supreme Court only



takes .001 percent of the cases applying for appeal, and in the words of Judge Thomas, they don't take certain cases just to say, "great opinion." He noted that the Supreme Court takes certain cases where the Justices see a problem they want to address; for example, possibly a conflict among the circuits. In those cases, the Justices anticipate a need for a potential correction. As a large geographical circuit, the Ninth Circuit has been progressive in that it has allowed cameras in the courtroom for appellate arguments for many years. In an attempt to bring the circuit closer to its communities, the Ninth Circuit has video recorded all of its oral arguments since 2010. In 2015 the Ninth Circuit launched a live video streaming of all oral arguments, making all of its arguments accessible to the public. This access is a function that has been used extensively by the public. And, as a large circuit, the Ninth Circuit can easily deploy a visiting judge to a state in need, as required. For example, Idaho has had over 200 visiting judges over the last ten years or so, due to Idaho's workload exceeding the capacity of its only two active district judges. This demonstrates what Judge Thomas means by saying justice is not a spectator sport. The Ninth Circuit is being proactive to address the timely delivery of its legal services, deploying its resources in the most effective manner possible. The circuit also has active committees addressing a variety of issues. The trial improvement committee is examining how to improve the delivery of services in a jury trial. The wellness committee focuses on judicial wellness. The fairness committee is engaging in groundbreaking work on implicit bias. Justice Thomas also reflected on the declining number of jury trials, a phenomenon which has been developing for many years. Since 1930 civil trials in the U.S. have declined from twenty percent to two percent of cases in federal court being tried to judgment. In state courts, less

than one percent of the matters are tried to judgment.

In 1962 there were an average of twenty-one civil trials per active federal judge; today the average is two. Judge Thomas concluded with a discussion of the importance of judicial independence. He commented on several recent threats to judicial independence. He reflected that he has never spent as much time as he does now meeting with the federal marshals, due to threats to our judges, which have become very real. He noted that the judiciary is not allowed to speak about these issues. Judge Thomas commented on additional threats to the court system, such as cyber security. The Russian government is undertaking targeting the judiciary with misinformation. He cited to a specific case in Twin Falls, Idaho which dealt with an episode involving a sexual assault of minors. It was broadcast that Syrian refugees were responsible. This description was completely false, but the broadcast was perpetrated with the intent to destroy the public's faith in the judicial system. The broadcast referenced judges as corrupt, to likely so as to further destroy the faith the American public has in the justice system. Justice Thomas finished by noting that the judiciary depends on attorneys, and especially Fellows of the College, to come to its aid in addressing misinformation and deprecating comments.

The final speaker was Doctor **Mehrdad Kia**, a professor of History and the Director of the Central and Southwest Asian Studies Center at the University of Montana. Dr. Kia presented on the new Muslim intelligentsia and political modernization, along with the relationship between Islam and the West. It proved to be a difficult subject to present, much less summarize in this report. He began by commenting that everybody appears to believe that they know something about Islam, while very few people actually know anything about it. He demonstrated this point

as he addressed Islam, Muslims, Arabs, the Middle East, and Africa. It was an amazing, educational, and entertaining demonstration of how people generally don't know about Muslims and Islam, and what each means, politically and practically. Dr. Kia noted that, as usual, he was asked to "talk about Islam" for an hour and a half. The topic deals with a religion with 1.5 billion adherents. He compared it to explaining Christianity in an hour and a half. Dr. Kia began by noting that the largest Islamic community in the world is not in the Middle East, as is often general believed, but rather in Indonesia. Furthermore, Indonesia has nothing to do with the Arab world. So, he asked the group: "What 'is' the Arab world?" He noted that it is not a race. Arabs are not all Muslims (there are 14 million Arab Christians). He concluded that the key to identifying an Arab is that he or she speaks Arabic, that is a linguistic issue. Otherwise stated, Arabs are those who speak Arabic. The simplicity he explored to explain this point to the audience was very informative and educational. He went on to note that of the 1.5 billion Muslims in the world, Arabs do not even constitute 250 million of them. While he continued with a very enticing presentation, to try to explain or synthesize Dr. Kia's presentation is a challenge beyond the ability of this editor. His comments have been preserved by the College, and Fellows are encouraged to obtain a copy and read them. They are very enlightening.

Saturday afternoon provided time for personal enjoyment, golf, hiking, and leisure time.

The meeting concluded in the traditional way, with cocktails, laughter, stories, and a great dinner. President Franklin spoke eloquently as usual, and with passion about the College.

J. Walt Sinclair
Boise, Idaho

HELP US HELP OTHERS

As a new year begins, I invite you to consider a contribution to the American College of Trial Lawyers Foundation. Our goal is to have every Fellow contribute something according to their means. If you are not sure of an appropriate amount, you may consider the dollar amount equal to the chargeable rate of your billable hour.

The Foundation's recent projects are varied, reflecting the diversity of our Fellowship. I mention just a few:

Campaign for the Fair Sentencing of Youth: \$50,000 to support a second phase in their project to implement *Montgomery v. Louisiana* through the training of parole boards, judges, and defense attorneys, as well as legislative advocacy, public education, and targeted outreach to victims of crime

Innocence Project: \$50,000 to strengthen the Innocence Project's litigation to free innocent people who have been wrongfully convicted

Institute for the Advancement of the American Legal System (IAALS): \$37,500 in a two-part grant to support the development of initial discovery protocols for natural disaster insurance cases.

Kansas City Metropolitan Bar Foundation Military Matters: \$50,000 to identify and address gaps in the availability of legal services to veterans and active-duty military personnel

Please join us in supporting these worthy programs by making a donation today. You may easily contribute online at the College's website, actl.com/donate. All donors will be recognized in the Foundation's 2019 Annual Report.

Thank you for supporting the important work of the Foundation.

Charles H. Dick, Jr.
ACTL Foundation President



HEROES AMONG US



n December 16, 1944, the greatest battle in American history—the Battle of the Bulge—was launched by a desperate German Army in an attempt to cut through the Allies’ lines and turn the tide of the war in Hitler’s favor. More than 200,000 German troops and over 1,000 Panzers struck the American sector of the Ardennes Forest. Four battle weary American Divisions had been sent there for much needed rest. Seizing upon bad weather and the lack of any air support for the U.S. forces, the German onslaught quickly drove a sixty-mile dent in the front, creating the “bulge” in the American line that gave the battle its name. By the time the fighting ended on January 25, 1945, 600,000 Germans, 500,000 Americans, and 55,000 British had waged unrelenting warfare under the harshest of winter conditions. Casualties were high: approximately 75,000 for the Americans and 80,000 to 100,000 for the Germans. Among the soldiers experiencing that horrendous test of courage and endurance were three young men who one day would stand on the risers at an Annual Meeting of the American College of Trial Lawyers to be welcomed into the fellowship: Uhel Overton Barrickman and James Anderson “Bubba” Dunlap were inducted at the same 1972 Annual Meeting in San Francisco, California while William G. Hundley was inducted at the 1981 Annual Meeting in New Orleans, Louisiana. They are no longer with us, but some highlights of their remarkable service must be told.



Major Uhel Overton Barrickman

Uhel Barrickman's legal education and military service were definitely not run-of-the-mill. He graduated from the University of Kentucky College of Law at the age of twenty-two. He was eligible to take the bar exam and seek admission after completing only two years of legal studies. He elected that option. In 1942, twenty-two-year-old Uhel Barrickman became a Kentucky lawyer. Five years later, he returned to the Law School and completed the third year. What he experienced between 1942 and 1947 is a remarkable case study in courage.

In 1942, Barrickman entered the United States Army as a Second Lieutenant. A product of his school's R.O.T.C. program, he requested an assignment with the Judge Advocate General's Corps. Because of the overwhelming need for combat soldiers, he ended up in the infantry. It was in that capacity that he found himself in the Belgium sector of the Ardennes Forest in early December 1944. He was in one of three regiments of the 106th Infantry Division, stretched out over an approximately twenty-six-mile front, not the two to five miles that were the standard deployment. On December 16, 1944 the Germans hit that thin line with overwhelming force. The two regiments on either side of Barrickman's unit were quickly captured. His regiment was surrounded; trapped with only the food, ammunition, and fuel they had. Day by agonizing day, what was left of the 106th withdrew until they finally made contact with American forces in the rear.

Because two of its regiments had been captured, what was left of the 106th was dissolved and became the 4th Brigade Combat Team, 82nd Airborne Division. Barrickman was with them as they fought to regain lost territory. He was there on January 25, 1945 when they crossed the Rhine River and the Battle of the Bulge ended.

At the end of the war, Barrickman remained in Germany to serve as a legal officer to the International Military Tribunal. His Army war crimes court tried lesser Nazi criminals, but one case stands out. A German policeman was accused of shooting a captured American airman. The only evidence pointed to a clear

case of self-defense. The courageous flier had managed to pull a gun on his captors. Barrickman's recommendation to dismiss the case was adopted by the court. An American General reprimanded him. However, the next day, a German newspaper commended the court's action for its fairness.

Uhel Overton Barrickman died on October 5, 2005 at eighty-five-years of age. Shortly before his death he was inducted into the Kentucky University College of Law's Hall of Fame.

Sergeant William G. Hundley

Bill Hundley, a boy from Brooklyn, was only seventeen years old when he answered the call to serve in World War II. Like so many young men at that time, including George H.W. Bush, he lied about his age. Bill had just graduated from Saint Augustine High School and, although he participated in the school's junior R.O.T.C. program, he went to war as a Private. Bill arrived in the European Theater on D-Day plus six. His unit was the 87th Infantry Division, 347th Infantry Regiment; the youngest division in the war. He was a machine gunner in K Company and soon was promoted to sergeant. During the Battle of the Bulge, the 87th fought with reduced strength against a much larger German force. Although it suffered many casualties, the division fought with great tenacity and succeeded in cutting the Nazi's vital supply line to Bastogne.

During the battle, Hundley's platoon was assigned to take out a German communications tower. After a brief firefight which included a bazooka round that completely missed the target, the Germans defending the installation surrendered. Hundley recalls that most were younger than him and just as scared. By the time the Battle of the Bulge concluded on January 25, 1945, Hundley was a war-weary, battle-hardened nineteen-year-old soldier who received a Bronze Star for his heroic efforts. He kept careful track of his time in the war: two years, two months, and one day. Many years later, he was quoted as saying, "During World War II I couldn't wait to get in the service, and then I couldn't wait to get out." Hundley was still nineteen when he entered Fordham University. He graduated from Fordham Law School in 1950.



Hundley began his career with the Department of Justice. After chasing and trying communists in the fifties, a task with which (for good reason) he was not thrilled, he became the chief of the Organized Crime and Racketeering Section under Attorney General William P. Rogers. It was in that capacity that Hundley butted heads with none other than Robert F. Kennedy. At the time, Kennedy was chief counsel to the McClellan Committee investigating organized crime. Kennedy kept sending weak cases against Jimmy Hoffa, and Hundley was the DOJ official turning them down. It was not surprising that when Kennedy became Attorney General, he replaced Hundley. However, he did appoint him as his special assistant. That gave Hundley an opportunity to personally try high-profile cases and Kennedy soon returned him to the chief of organized crime job. When Kennedy left the department, he sent Hundley a letter which in part said, "Proud to have served with you - - and I am grateful for your friendship."

When Hundley decided to enter private practice, he had to wait one year before he could try criminal cases in federal courts. Edward Bennett Williams, legendary trial lawyer and co-owner of the Washington Redskins football team, got Hundley a job as special assistant to Pete Rozelle, NFL commissioner. That job was fun, but Hundley's goal was to be a white-collar criminal defense attorney. He certainly succeeded. Former Attorney General and President Richard Nixon's former law partner John Mitchell was one of his first big cases. Many others followed. As for the transition from government lawyer to private defense counsel, Hundley commented, "The hardest thing to learn when I became a defense attorney was how to lose. At Justice we could select the cases we wanted to bring. I can't remember losing a case as a prosecutor. Well, you lose them as a defense attorney."

William Hundley passed away on June 11, 2006. He was eighty years old.

Captain James Anderson "Bubba" Dunlap

Jim Dunlap was a Phi Beta Kappa graduate of the University of Georgia School of Law, just in time to join the battle in Normandy. He was with the 6th Cavalry Regiment, a unit created by Abraham Lincoln less than a month after the bombardment of Fort Sumter. It earned the nickname, "The Fighting 6th." From Normandy to the Ardennes Forest and beyond, it lived up to that title. On December 24, 1944, the 6th Regiment was assigned to General George S. Patton's 3rd Army. It was with that unit that Dunlap fought in the Battle of the Bulge. It took Patton's 3rd Army only two days to travel 125 miles. Approximately 100,000 troops, thousands of tanks, trucks, and other equipment slogged through ice, snow, mud, and practically non-existent roads to get there. The German's encircling Bastogne, Belgium were demolished. On January 9 and 10, 1945, the 6th Cavalry fought valiantly to destroy a dangerous pocket of German troops in Poteau de Harlange, just



fourteen miles from Bastogne. The Battle of the Harlange Pocket earned the 6th Cavalry a Presidential Unit Citation, the highest award given to an army unit. For bravery somewhere along the way from Normandy to the Harlange Pocket, Jim Dunlap was awarded a Bronze Star.

In 1947, President Truman signed the National Defense Act. It created a major restructuring of the United States military and intelligence agencies. Among other things, it established the position of Secretary of the Army, reporting to the Secretary of Defense. After his return from the war, Dunlap continued serving the country as a civilian aide to the Secretary of the Army under both the Truman and Eisenhower administrations.

The *Gainesville Times* listed Dunlap among “the Titans” in his county, “the people who built Gainesville.” His list of accomplishments is impressive: As a member of the Board of Regents of the University System of

Georgia he was instrumental in establishing junior colleges throughout the state. He was also instrumental in the construction of Interstate 985 (I-985), connecting Gainesville to Atlanta. During the fifties and sixties, he was county attorney for Hall County in North Central Georgia. He is credited with obtaining Johnson & Johnson’s gift of the 3,000-acre Chicopee Woods. That gift is now home to public bike trails, the Chicopee Woods Golf Course, the Chicopee Woods Area Park, and the Chicopee Woods Elementary School. Meanwhile, he was counsel to the Northeast Georgia Medical Center for forty-five years. Dunlap practiced with the firm of Whelchel & Dunlap until his retirement. He died on September 29, 2005. He was eighty-five.

David G. Hanrahan
Boston, Massachusetts

Lorna S. McClusky
Memphis, Tennessee





FELLOWS AND FOUNDATION HELP WITH HURRICANE RECOVERY EFFORTS

WHEN THE RAINS CAME

Hurricane Harvey, August 17, 2017

From the time it made landfall on August 29, 2017, until it dissipated on September 3, Harvey whirled itself into the costliest natural disaster in American history. The damage estimate now exceeds \$125 billion. The rain pelted down an average of thirty-four inches of water. Incredibly, some areas of Southeast Texas experienced up to five feet of rain. The late August storm delivered the most rainfall in U.S. history with trillions of gallons of water falling in mere days as the storm stalled and drained itself over Texas. In Houston, difficult decisions had to be made. Should water be released into the bayous thereby flooding thousands of homes? Should they wait it out and hope the flood protection systems, i.e. bayous, dams, reservoirs, levees, etc., remain uncompromised barriers? When the decision to release water was made, a surge flowed back into the bayous. Neighborhood after neighborhood was caught in a growing tide of murky water. Unfortunately, the release didn't prevent a breach in the protection system. Two major dams were breached with uncontrolled water being released. Hundreds of thousands of homes were flooded. More than 30,000 were dislodged and, sadly, 106 people lost their lives. Over 17,000 people were rescued.

Hurricane Maria, September 20, 2017

Hurricane Maria impacted all 3.4 million residents of Puerto Rico. The death toll on this small island was 2,975. The largest storm to hit the island in eighty years, water supplies and power sources were knocked out across the island. Hurricane Irma had edged its way around the island weeks earlier. The initial on hand disaster relief resources such as power generators, food, and water had been seriously diminished after Irma's strike. There had not been enough time to restock for a new emergency. Damage to the island's ports, downed cell phone towers, and the meanderings of Maria across the Caribbean would further delay initial relief efforts. For months and months power outages and the lack of safe water sources remained all too common. The tremendous damage to the island's infrastructure increased the difficulties of recovery across the entire island. The magnitude of the damage coupled with the prediction of a painfully slow recovery period has resulted in over

100,000 American citizens previously residing there to leave their homes, family, friends, and jobs and move to the United States. In a territory with a damage estimate of \$90 billion, the economic outlook has been painted as rather bleak. With all this to contend with, it is estimated that more than a half a million residents will leave Puerto Rico by the end of 2019.

WHEN THE FELLOWS CAME

Fortunately, when the days of rain began, so did the efforts for recovery. We can all take considerable pride in both our Fellows in action and the U.S. Foundation in supporting the laborious relief efforts.

In preparing this update, relief efforts undertaken by Fellows were requested. Not one Fellow wanted to be quoted or wanted his or her personal story of relief work to be extolled. These members reflect admirably the creed so respected by this organization: Live like a hermit and work like a horse.

Fellows shared their homes, nailed up tarps, opened up their office space, bailed water, bundled up office supplies, mopped and mopped, manned volunteer clinics, cleared debris, helped with caseloads, and opened their wallets. At recovery sites they served as intake personnel. They utilized their legal skills to provide guidance on landlord-tenant issues. They unleashed their legal minds on FEMA rules and procedures to assist victims in filing applications. They offered advice on contracts, contractor

abuse, and fraud. They not only volunteered at legal clinics, they assisted in organizing the clinics, and staffing the clinics. Some recognized the special needs veterans would have and assisted with resource programs specifically for former armed services personnel. Service to the relief effort was made by working with gubernatorial committees to find out what happened, what went right, what went wrong, and how to prevent problems or respond better next time.

Financial stress and, unfortunately, bankruptcy were very much a result of these storms. Fellows stepped forward to assist victims in these very difficult situations by sharing financial considerations and options as well as offering bankruptcy advice. They were steadfast in their efforts and every bit as relentless as the storms in their determination to be part of the recovery. Long-term changes to disaster management and flood control in Texas as well as teaching disaster response methods across the country were a positive result of the many challenges of these natural events. And even in that, Fellows had a hand.

WHEN THE FOUNDATION CAME

The Foundation reached out to bar organizations in areas reeling from the storms. Applications were encouraged, made, reviewed, and granted. In 2018, the Foundation provided \$150,000 in grant funds to the recovery efforts underway in Texas, Florida, and Puerto Rico. Of that sum, \$50,000 was slated to continue the mammoth efforts it will take to move Puerto Rico forward in its

very long-term recovery process. The funds have been and will continue to be used in many different ways to best service needs. The focus will always be on the areas to which the Foundations of the College are dedicated: improvement in the quality of trial and appellate advocacy, the ethics of our profession and the administration of justice. Thus far, funds have financed seminars, CLEs, clinics, preparation materials, and handouts. The Houston Bar Association's Clinic-in-a-Box is an example of an innovative development that has been funded. Perfect for use in a recovery environment, the Clinic-in-a-Box is literally a box pre-filled with all the supplies for a clinic which allows attorneys to provide workshops and victim support clinics in a fast and efficient manner. During upheavals, the presence of a simple, familiar thing can calm and refresh spirits. With all the consideration to details, it would be no surprise to discover that hot coffee in a storm has been thought of and funded by the Foundation.

We applaud all the Fellows who have used their time, talents, and financial resources to restore order in the face of the chaos of a disaster. We commend the U.S. Foundation for its insight and wisdom in choosing to fund these worthy causes. We thank most sincerely all Fellows who have donated to the Foundations of the College so that relief efforts could be sponsored so generously.

Lorna S. McClusky
Memphis, Tennessee

IN MEMORIAM

Fourteen years ago, the College staff found a treasure that led to the creation of the *In Memoriam* section of each subsequent issue of the *Bulletin/Journal*. Buried in its files were a copy of a Statement of Qualifications submitted on request of the College by every person who became a Fellow. Further, the College maintained a Participation Report for every person who became a Fellow, recording data that included date of birth, date of induction, committee participation, meeting attendance, and membership status. This information and the report of the death of a Fellow, with supporting information such as an obituary, became the basis for relating the passage of each deceased Fellow and a description of his or her life.

In this issue, we honor another thirty-eight deceased Fellows of the College, bringing to 1,619 those we have so memorialized since we undertook this effort.

The quality of the enclosed entries varies greatly. We are dependent on those who knew each departed Fellow. In the early years, a number of Fellows retired to warmer climes, where those who had known them in their active careers had lost touch with them. Sadly, the College still occasionally receives notice of the death of a Fellow only when a family member notes the continuance of publications from the College to the Fellow's address and calls to report his or her passing. You will find in this issue some entries that contain a bare-bone obituary where your Editor's research locates nothing more. Happily, for one such notice in this issue, however, although a five-line obituary was all that we received, that departed Fellow and his friends were no strangers to the internet. We even found a multi-page published account of his ninetieth birthday! This, however, is the exception. In a number of entries, you will find warm, personal descriptions, some from the obituary itself, but many from the accounts of Fellows who cared enough to help to memorialize their departed comrades. A handful of State and Province Committees have facilitated this by communicating by email a notice of each loss to all their members, collecting the responses, including comments at memorial services, and sending them to the College.

We remind you again what we all owe to one another in this respect.

In the fourteenth year of our initiative to chronicle these lives, we are beginning to see the passage of time. For the first time, those who have served in the military in the Korean era overwhelmingly exceed those who

served in World War II, while others come from the Cold War hiatus between Korea and Vietnam and a few are beginning to appear from the Vietnam era.

The declining life expectancy in the United States (there are no Canadian Fellows in this issue) may be reflected in the average life of 83.3. Clearly, we are seeing more deaths from life-shortening new afflictions: Alzheimer's and Parkinson's Diseases, leukemia, lymphoma, and new forms of cancer.

On the other hand, those whose lives were not thus foreshortened still reflect engagement that served them well. Remarkably, twenty-three Fellows had wives who either predeceased or survived them and whose marriages lasted from fifty to sixty-six years. One Fellow went to visit his father in the hospital, met a nurse ten years his junior, married her, and they thereafter produced eleven children.

Understanding the quip that "the road to senility is paved with plaques," and knowing that every lawyer who becomes a Fellow presumptively has an impressive trial resume, earns a lifetime lists of "bests" and acquires large quantity of plaques, we choose to acknowledge in these memorials only a few landmark cases. Among the ones you will find in this issue are astronaut Mike Smith and the Challenger space shuttle explosion, the liberation after fifteen unindicted years at Guantanamo of Jabran al Qahtani, the Edmund Pettus Bridge, the Attica Prison Riot, thalidomide, asbestos and Whitewater. A Former Regent of the College of Lebanese extraction received among his many awards one commissioned by Pope Paul VI and one by Patriarch Maximos V. Hakim.

The lives recorded in this issue are as varied as ever. They range from a Mormon missionary to a Francophile who had visited France over sixty times. One, who was focused on a career in the National Football League, was persuaded instead by one of his professors to apply to law school. Another began his career in the Civil Rights Division of the Department of Justice, doing investigative work in Alabama and Mississippi, and another began his career in Harlem as a Legal Aid Society of New York housing lawyer. One became the mentor of both a governor and a state attorney general. One, the father of five lawyer-sons, arranged to have all five simultaneously admitted to the United States Supreme Court on Father's Day 2011. One was the only United States Attorney appointed by Republican President

George H. W. Bush to have been then reappointed by Democratic President Bill Clinton.

Their origins and their struggles to the top are inspiring. As a young boy, to pay for his preparatory education one carried newspapers, and he earned his law school tuition by working as an insurance investigator by day and attending law school by night. One law student held four separate jobs, from tutoring athletes to selling popcorn at ball games, and was so strapped for money that he could not afford law books and made his way through by taking detailed notes from law school lectures. One worked as a seaman on a tanker between terms. One entered college at age fifteen and was a year into law school when the World War II draft forced a detour. One, the son of tenant farmers who ran out of funds, dropped out and became a Green Beret, later returning returned to finish near the top of his law class.

Military life still loomed large in the lives of many. The family of one Fellow, whose father was a Marine Corps aviator, was living at Pearl Harbor on December 7, 1941. One Fellow, an infantry first lieutenant, led his troops in the Ardennes and the Battle of the Bulge. Encountering a stalemate while attempting to approach enemy pillboxes, he ran to a nearby American tank, climbed on it, ignoring his shrapnel wounds and, refusing to be evacuated, successfully directed its crew to train its weapons on the enemy resistance. That and a later combat wound resulted in the award of a Silver Star and a Purple Heart. Another, assigned to the United States Army 42nd Infantry "Rainbow" Division participated in Task Force Linden, repulsing the Nazi's final attempted offensive near Strasbourg, France and later hand-delivered a tactical message through enemy territory under fire at night, coming home with two Bronze Stars. Nearing Munich within the first hour of its liberation, his unit entered the Nazi concentration camp at Dachau and was among the world's first to witness the horrors that it disclosed.

Their interests were many and varied. A number were college athletes. At least two had been Eagle Scouts. In his last decade, one regularly shot his age on the golf course. Another, the son of a symphony conductor, was an accomplished cellist. The interests of one ranged from horseback riding to harvesting summer tomatoes in his own garden. One became a flier. Another operated his family's gillnet boat on the Columbia River. One was a published poet, while another wrote his own life's journey. Another gave up rugby at age seventy-one. Many were teachers. One created

a summer program of fictional mock trials, based on facts from famous cases, himself acting as the plaintiff's attorney.

In retirement, they were as engaged as they had been before. Some did not even officially retire. One did volunteer legal work in a native American Senior Center for thirteen years.

There were some classic quotations. "[H]e believed we are measured, not by the money we have made or the awards we have been given, but by the things we have done for others." A published obituary of a ninety-five year old Fellow who grew up in the Great Depression on a farm-ranch without running water or electricity and graduated from Harvard Law School concluded with the Cowboy's Prayer: "We do ask, Lord, that you will help us to live our lives here on earth as cowboys in such a manner that when we make that last inevitable ride to the country up there, where the grass grows lush, green and stirrup-high and the water runs clear, cool, and deep, that you'll will take us by the hand and say, 'Welcome to Heaven, cowboy, your fees are paid.'"

There was also humor. An obituary noting the death at age eighty-six from a combination of ailments associated with old age, related "He died as he had lived, slowly and meticulously." One Fellow, when the first daughter became engaged and wedding preparations began, commented with a twinkle in his eye that his wife "has been living all her life for this!" One learned to ski downhill wearing a cowboy hat. Another, not trained as an architect, had designed the house and garden where he and his wife lived most of their lives. When he retired from his firm, the College directory then showed his residence address, 1603 Happy Lane.

The Past Presidents of the College remain *ex officio* members of the Board of Regents for life, becoming a repository of the College's history and traditions. The spouses of Past Presidents retain a similar, less formal, but no less important role. It has thus become our custom to note the passing of the spouse of a Past President. We therefore note in this issue the passing of Virginia Mayberry (Ginny) Elam, the widow of Past President John C. Elam.

We hope that you will find from among the memorials in this issue models that both teach and inspire those who are still among us.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

Richard F. Adams, '90, a Fellow Emeritus, retired from Slagle, Bernard & Gorman, P.C., Kansas City, Missouri, died April 18, 2015 at age eighty-three. After graduating from the University of Missouri, he joined the United States Marine Corps as a rifleman and platoon leader in the Korean Conflict, stationed near the Demilitarized Zone on the South Korean side of the Imjin River. After then graduating from the University of Kansas Law School on the GI Bill, he joined Deacy & Deacy, LLP Kansas City, Missouri, where he practiced for nine years before joining Slagle, Bernard for the remainder of his career. He served as a member of the Board of Governors of the Missouri Bar and as Chair of the Missouri Commission on Retirement, Removal and Discipline of Judges. He also served the College as Missouri State Committee Chair. A joyful personality who spent summer vacations in Colorado and on camping trips around the country, a tennis player and runner, he was a pianist and classical music enthusiast who inspired a love of music in his children and grandchildren. His survivors include his wife of fifty-seven years, two daughters, and a son.

Emmet J. Agoglia, '95, Agoglia Holland Agoglia, P.C., Jericho, New York, died July 14, 2018 at age eighty-seven, of leukemia. Born and raised in South Brooklyn, he carried newspapers to pay his tuition at a Queens school, Francis Prep. After earning his undergraduate degree from St. Francis College, he served as a reporter for the European edition of *Stars and Stripes* during the Korean era. He then helped to earn his law school tuition at St. John's University School of Law by working for Hartford Insurance Company as an investigator and attending law school at night. After briefly working for Hartford after graduation, he practiced for seven years with Riley & Riley before establishing the Long Island law firm which bears his name, specializing in personal injury and malpractice. His obituary noted that he was an avid swimmer, tennis player and golfer, and a pas-

sionate reader, who presided over boisterous family gatherings (he had a wife and seven children) with fine food and wine, where the discussions, while loud and spirited, were always grounded in St. Francis' reminder to live life "with a full heart enriched by honest service, love, sacrifice, and courage." Described by his friend and contemporary, College Fellow Henry Miller, as always "more about giving than getting," Miller observed that Agoglia "believed we are measured, not by the money we have made or the awards we have been given, but by things we have done for others." A former trustee of St. Francis College, he had been Chair of the New York State Bar Association Special Committee on Volunteer Lawyers, which counseled and did pro bono work for drug and alcohol addicts. He served as President of his favorite charity, New Ground, one devoted to ending the cycle of poverty and family homelessness. His survivors include his wife of sixty-one years, five daughters, and two sons.

Gary Stephen Anderson, '96, a Fellow Emeritus from Provo, Utah, died May 24, 2017 at age seventy-nine from the effects of Lewy Body Disease. Growing up in Provo, he enrolled in Brigham Young University. After a year, he attended a United States Army Intelligence School and then spent two and a half years as a missionary in the Mormon Church in Brazil, then returning to complete his undergraduate education with honors. Earning his law degree at Boalt Hall, University of California at Berkeley, he then practiced law for thirty-two years as a member of Farella, Braun & Martel, San Francisco, before retiring to Provo. Devoted to church service as a bishop and stake president and to a large family, his survivors include his wife of fifty-seven years, a daughter, and two sons.

Myron James Bromberg, '76, a Fellow Emeritus, retired from Porzio, Bromberg & Newman, P.C., Morristown, New Jersey, died April 30, 2016 at age

eighty-one. A native of Passaic, New Jersey, he was a graduate of Phillips Andover, Yale University, and the Columbia University School of Law. He served as a legal assistant to a county district attorney and then as a legal assistant to a United States Attorney during his law school years. Graduating from Columbia, he helped to form the law firm at which he spent his entire career, serving as its managing principal for twenty-eight years. His practice evolved from defending medical malpractice cases to drug product liability cases to defense of asbestos litigation. In his early years, he had been attorney for the Morris County Board of Elections and then Municipal Attorney for the town of Morristown. A charter member of the Trial Attorneys of New Jersey, he served as its President and had received its Trial Bar Award. Elected to the American Law Institute, he served on its Consultative Group on *Restatement (Third) of Torts: Product Liability*. He also served as President of the International Society of Barristers. Involved in politics, he had been Municipal Chair of the Morristown Democratic Committee and the first Democrat elected to the Morris Township Committee in over fifty years. A traveler and Francophile, he had visited France over sixty times. He served the College as Chair of the Admission to Fellowship Committee. His survivors include his wife and three sons.

Thomas C. Burke, '93, a Fellow Emeritus, Rochester, New York, died November 21, 2017, at age seventy-eight, of cancer. A graduate of Canisius College who earned his law degree at Georgetown University, he served in the United States Army before practicing as a civil litigator for fifty years with Osborne, Reed & Burke, LLP in Rochester. He had served the College as Upstate New York State Committee Chair. His survivors include his wife and two sons.

Joe Calvin Cassady, '86, Cassady & Cassady, LLP, Enterprise, Alabama, died October 4, 2018 at age ninety-one. Beginning his education at North Geor-

gia College, he served in the United States Army in World War II and remained in the Alabama National Guard, retiring as a Lieutenant Colonel. After the war, he resumed his education at the University of Alabama, where he earned his law degree. Primarily representing defendants in civil litigation, he practiced for sixty-eight years. An avid golfer, he served numerous times as a deacon in his Baptist church. A widower whose wife of sixty-three years predeceased him, his survivors include a daughter. His son and law partner died five months before his own death.

Walter Cheifetz, '75, a Fellow Emeritus from Phoenix, Arizona, died March 10, 2014 at age eighty-six. Noting his death from a combination of ailments associated with old age, his obituary humorously related that he died as he had lived, slowly and meticulously. Born in Brooklyn, New York, he enlisted in the United States Navy in World War II. Beginning at the University of Miami, Florida, he transferred to Columbia University to complete his bachelor's degree under the GI Bill. Married, he and his wife moved to Tucson, Arizona so that he could attend law school. In order to do so, he held four separate jobs, including tutoring athletes, selling insurance, selling wholesale liquor, and selling popcorn at football games. So strapped for money that he could not afford law books, he instead took detailed notes of his law school lectures. Graduating in 1952, he went to work with Lewis and Roca, a firm established two years earlier. Ten years later he represented the plaintiff in a high-profile case in which she sought an abortion from having taken thalidomide, which was discovered to cause birth defects. The case became an international issue, and he and his client were mentioned in a *Life* magazine cover story. Along the way, his public involvement included acting as special counsel for the Maricopa County Board of Supervisors, serving on another county board of supervisors and on the State Board of Osteopathic Medical Examiners and serving two school districts. ▶

After practicing with Lewis and Roca for thirty-seven years, he began volunteer legal work for the next thirteen years at the Squaw Peak Senior Center. Inducted into the Maricopa County Bar Hall of Fame, among the many attorneys that he mentored in his career were former Arizona Governor Janet Napolitano and Arizona Attorney General Tom Horne. His survivors include his wife of sixty-five years, two daughters, and a son.

Stephen Teale Clifford, '85, Clifford & Brown, Bakersfield, California, died August 28, 2018 at age seventy-seven. A graduate of the University of California, Davis and of the University of California Hastings College of Law, during his law school years, he worked as a seaman for Chevron Shipping Company, aboard oil tankers calling at various Pacific ports, including Wake Island, Samoa, Tahiti, and Alaska. He served on the boards of two local hospitals for many years. Intellectually curious and well-read, with a quick wit and an engaging, dry sense of humor, he loved horseback riding, summer tomatoes from his garden, and snow skiing. His survivors include his wife of forty-six years, two daughters and two sons.

Thomas Vincent Dulcich, '03, Schwabe, Williamson & Wyatt, PC, Portland, Oregon, died July 12, 2018 at age sixty-five from a rare form of cancer. An honor graduate of the University of Oregon, where he was a member of Phi Beta Kappa and the honoree of a scholarship that denoted him as the outstanding junior man on campus, he was President of the University's Interfraternity Council and one of Oregon's two nominees as finalists in the Rhodes Scholarship competition. He worked for a year in the Oregon legislature before entering law school at the University of Chicago, where he earned his degree. He practiced with the Schwabe firm for thirty-eight years. One of his passions was operating the family gillnet boat in the Salmon River commercial salmon

fishery. A longtime member of the Columbia River Fishermen's Protective Union, he also volunteered in various ways to assist in the sustainable Columbia River salmon harvest. He was a Trustee and a former Chair of the Board of the Columbia River Marine Museum. His survivors include his wife of thirty-eight years and three daughters

Peter Craig Fieweger, '98, a Fellow Emeritus from Bettendorf, Iowa, died November 20, 2018 at age eighty-three. A graduate of Notre Dame University, after which he served in the United States Army during the Vietnam War era, he then earned his law degree at Northwestern University School of Law. At the time of his induction into the College, he was a partner in Katz, McHard, Balch, Lefstein & Fieweger, PC in Rock Island, Illinois. Also licensed in Iowa, he retired after fifty years of law practice. His survivors include his wife of fifty-seven years, a daughter, and two sons.

Hon. Samuel George Fredman, '84, Of Counsel, Wilson, Elser, Moskowitz, Fredman & Dicker, LLP, White Plains, New York, died March 14, 2018 at age ninety-four. Born in a small Pennsylvania coal mining town, he earned his undergraduate degree from Pennsylvania State University, which he entered at age fifteen. After a year at Columbia University Law School, he was drafted into World War II, serving as a Technical Sergeant in the United States Army Air Corps, transporting service personnel to and from the Pacific Theater and, after the war, to occupied Japan. Returning to complete his law degree, he first practiced with his own small firm before joining a forerunner of the firm for which he practiced for forty years, Fink, Weinberger, Fredman, Berman & Lowell, PC, White Plains, New York. He developed a specialty in matrimonial law. In 1989, he became a Justice of the Supreme Court of the State of New York, Ninth Judicial Circuit. He retired from the bench in 2000, becoming Of Counsel to Wilson,

Elser, where he practiced mediation and arbitration. Active in many professional, community, charitable, religious, and political organizations, he was President of Temple Israel Center in White Plains, Chair of Israel Bonds Drives in Westchester and Southern Connecticut, a member of the Anne Frank Center USA Advisory Board, co-founder and President of the Westchester Jewish Council, and Chair of the Westchester Democratic Committee. He was awarded Westchester's Prestigious Pace Setter Award in 2012. The overwhelming proceedings of his ninetieth birthday celebration, which had been twice moved to a larger venue to accommodate the expected crowd, and in which every notable invitee was mentioned, were then published at length by its master of ceremonies, a former president of the New York State Broadcasters. A widower who had remarried and later divorced, his survivors include two sons.

Thomas J. Groark, Jr., '87, a Fellow Emeritus, Day Pitney LLP, Hartford, Connecticut, died November 16, 2018 at age eighty-one, of Parkinson's Disease. A graduate of the College of Holy Cross, he then served as an air intelligence officer on the aircraft carrier *USS Coral Sea* before earning his law degree from the University of Connecticut Law School. First practicing in the United States Department of Justice, Civil Rights Division, he spent most of his time in that assignment in Alabama and Mississippi, deposing witnesses and victims of the civil rights marchers at the Edmund Pettus Bridge in Selma, Alabama and monitoring polling locations to ensure all races had their right to vote. He then joined Day, Berry & Howard (now Day Pitney). In his early years, he helped to start and became a mentor in a pro bono law clinic. He was President of the Board of Hartford Stage Company, an innovative community fixture, a Trustee of Hartford College for Women, Chair of the Board of Regents of the University of Hartford and of the Greater Hartford Chamber of Commerce, a trustee of the Cathedral of St. Joseph, and a director

of Holy Apostles College and Seminary. He chaired the Governor's Commission on Judicial Reform and had served the College as Chairs of both the Connecticut State Committee and the Emil Gumpert Award Committee. An outdoorsman, he was a biker, hiker, skier, and golfer and sailor. A widower whose wife of fifty-four years, one with her own political career, predeceased him, his survivors include three daughters.

Buster Clarence Hart, '74, Fellow Emeritus from North Oaks, Minnesota, died September 15, 2018 at age ninety-five. Growing up in a family that eked out a farm-ranch existence, lacking indoor electricity and plumbing, surviving drought and the Great Depression, he and his twin brother, who predeceased him, became top students, championship debaters, and baton-twirling drum majors. They both pursued their education from a one-room schoolhouse to Harvard Law School. Buster's undergraduate education at the University of Iowa was interrupted by World War II. Enlisting in the United States Army, he was assigned to the 42nd Infantry "Rainbow" Division, participating in Task Force Linden in repulsing Germany's final attempted offensive near Strasbourg, France. His regiment was awarded a Presidential Unit Citation for extraordinary heroism. He earned both a Bronze Star for courage and daring in hand-delivering a tactical message through enemy territory under fire at night, and a second Bronze Star-Oak Leaf Cluster for exemplary conduct in ground combat. Nearing Munich within an hour of liberation, his unit was the second to enter Dachau, thus being among the world's first outside witnesses to the horrors that Nazi concentration camp disclosed. Returning to the University of Iowa, he graduated with a Phi Beta Kappa key and then earned his law degree at Harvard Law School. His clerkship with a Minnesota Supreme Court Justice was cut short by the Korean Conflict, in which he served in the Judge Advocates General Corps. Remaining active in the Army

Reserves, he retired as a lieutenant colonel. First becoming a partner in a St. Paul, Minnesota law firm, in which he had once served as its President, he then founded his own law firm, Hart & Bruner. He completed his career as a senior partner in Fabyanske Westra Hart & Thomson PC, Minneapolis, where he focused on construction disputes, surety, and insurance law. He loved hunting, fishing, and dancing, learned to ski downhill wearing a cowboy hat, and was a great storyteller. His published obituary concluded with Clem McSpadden's Cowboy's Prayer: "We do ask, Lord, that you will help us to live our lives here on earth as cowboys in such a manner that when we make that last inevitable ride to the country up there, where the grass grows lush, green and stirrup high and the water runs cool, clear, and deep, that you'll take us by the hand and say, 'Welcome to Heaven cowboy, your entry fees are paid'." His survivors include his wife of sixty-three years, two daughters, and two sons.

Gregory Merrill Harvey, '96, a Fellow Emeritus, Montgomery, McCracken, Walker & Rhoads, LLP, Philadelphia, Pennsylvania, died August 7, 2018 at age eighty-one. A graduate of Harvard College and of Harvard Law School, at the time of his induction into the College, he was a member of Morgan, Lewis & Bokius LLP, moving several years later to Montgomery McCracken. Focusing on campaign finance, ethical issues, election litigation, and the First Amendment, he represented the campaigns of numerous public officials. Active in Democratic Party politics, he served as Democratic co-chair of the Philadelphia Center City's Eighth Ward. In the late 1970s, he led the Southeastern Chapter of Americans for Democratic Action. In 1976, he served as chair of a campaign to recall Mayor Frank Rizzo, a move that the Pennsylvania Supreme Court ultimately thwarted, finding the city's provision allowing elected officials to be recalled unconstitutional. In 1984, he was appointed Chair of the Philadelphia Board of

Ethics. He was also a recipient of the James Madison Award from the Society of Professionalism. A supporter of civic space and public art, he served on the Association for Public Art for thirty-eight years. He is survived by his wife.

Hon. Thomas Aquinas Higgins, '79, a Fellow Emeritus from Nashville, Tennessee, died September 11, 2018 at age eighty-six. An Eagle Scout, he earned his undergraduate degree from the University of Tennessee and his law degree from Vanderbilt University Law School, where he was a member of the law review. After graduating from Vanderbilt, he received a commission in the Judge Advocate General's Corps of the United States Army during the Korean era. He first formed a law firm, Willis and Higgins, and was later associated with and became a partner in Cornelius, Collins, Higgins and White. He served as President of the Nashville Bar Association. Nominated by President Ronald Reagan to the United States Court for the Middle District of Tennessee in 1984, he took Senior Status in 1999. He helped to incorporate and served on the Board of the Catholic Charities of Tennessee, handled the incorporation of Aquinas College and served on its Board. He also served on the Board of Christian Brothers University, where he had earned his Associate's Degree before entering the University of Tennessee. A widower, his survivors include a daughter and two sons.

Gerald Hagar Jacks, '93, Jacks Luciano, PA, Cleveland, Mississippi, died September 8, 2018 at age seventy-four after a brief illness. A graduate of Millsaps College and of the University of Mississippi Law School, he was a past member of the Board of Trustees of Millsaps College and of his city's Chamber of Commerce. A frequent continuing education speaker, he was an adjunct professor in an annual trial practice class at his alma mater. His proposed uniform rules relating to discovery and pretrial procedure were subsequently adopted by the United

States Courts for the Northern and Southern Districts of Mississippi. He was a member of the Board of Governors of the Fifth Circuit Bar Association. His survivors include his wife of fifty-two years, two daughters, and two sons.

Terry W. Mackey, '02, Cheyenne, Wyoming, died September 2, 2018 at age seventy-five as the result of a head injury suffered in a fall on the way home from his office four months earlier. Upon graduating from high school, he enlisted in the United States Navy, serving for three years as a radioman. Returning to Wyoming and earning his Associate's Degree at Casper College, he and his new bride both then entered the University of Wyoming, where he earned his law degree, serving as a law review editor and a member of the Defender Aid Clinic. He began his law career in Jackson, Wyoming, but two years later moved to Cheyenne to practice with Ubiquity, Moriarty, Halle & Mackey. For most of his career thereafter he practiced with Hickey, Mackey & Evans and finally had his own practice, Terry W. Mackey, PC, practicing plaintiff's personal injury and criminal defense law. Serving on the Boards of the Wyoming Trial Lawyers Association and the Wyoming Children's Society, for many years he was a gubernatorial appointee to the Wyoming Board of Outfitters and Guides. His second home was clearly the University of Wyoming's College of Law. The inaugural President of its Law Alumni Board, and a member of the Dean's Advisory Board, he was the driving force behind the creation of the school's moot courtroom. On his seventieth birthday, his family created the Terry W. Mackey Scholarship to assist students who show promise as practicing attorneys without regard to their academic standing. He was a member of the Western Trial Advocacy Institute and the Colorado Alternative Defense Counsel Trial Advocacy Program, also developing a Summer Trial Institute for the college's law students and devoting himself to its annual two-week program. He created the Spen-

ce Law Historic Trial, a fictional mock trial created from facts taken from a historic event, volunteering to serve as the plaintiff attorney in the case. He was honored with his law school's Distinguished Alumni Award and it made him an Honorary Order of the Coif recipient. At his death, a published tribute to his role in his law school reflected that "his service and dedication was the embodiment of what it means to be a good lawyer." His survivors include his wife of fifty-two years, two daughters, and a son.

Irving C. Maghran, Jr., '75, a Fellow Emeritus dividing his retirement between Naples, Florida and Western New York, died July 27, 2018 at age ninety-seven. He earned his undergraduate degree from the University of Pennsylvania Wharton School of Business. Then, in World War II, an infantry first lieutenant in the United States Army, he led his troops in the Ardennes and the Battle of the Bulge. When his position was unable to approach four enemy pillboxes in Germany because of automatic weapon fire, he ran to a nearby American tank, climbed on it and attracted the attention of the crew inside. Although the tank was subject to heavy mortar fire, he directed the crew to train its weapons on the enemy resistance. Wounded by shrapnel, he refused to be evacuated until the objective was achieved. Later again wounded in combat, he was awarded a Silver Star and a Purple Heart. Following the end of the war, he was called on by the American military government in Germany to administer the affairs of Mosbach, a city south of Frankfurt. Upon returning home, he earned his law degree at the University of Pennsylvania Law School, then returned to Buffalo, New York, where he had grown up. Visiting his father in a local hospital he met a nurse, ten years his junior, whom he married. They had eleven children. Initially practicing law with another young attorney, he then joined Sullivan & Weaver, which in time became Maghran, McCarthy & Flynn. Spending fifty years as a practicing attorney, principally

as a defense attorney, he defended the State of New York in the Attica Prison Riot, which finally came to trial twenty years after the event. He never formally retired, but according to a son, stopped working around 1996. A widower whose wife of sixty-two years and three of his daughters predeceased him, he is survived by two daughters and six sons.

Wallace Everett Maloney, '84, a Fellow Emeritus retired from Maloney, Bean, Horn & Hull, PC, Irving, Texas, died March 16, 2017 at age eighty-five. Growing up in Wellsburg, West Virginia, he earned his undergraduate degree at the West Virginia University. He then served as a pilot in the United States Air Force for three years. While there, he met a teacher working in Evreux, France, where he was based. Marrying at the end of his military engagement, he returned to West Virginia University, where he earned his law degree. Then he worked as a trial attorney in the United States Department of Justice Tax Division for two years and then as Chief of the Civil Division, Aviation Section, for the next three years. At the time of his induction into the College, he was a member of Lord, Bissell & Brook in Chicago, Illinois. Specializing in aviation litigation and product liability defense, he was able to travel around the world and to live and work in diverse cities. After three years with firms in Dallas, Texas, for the last twenty-six years, his College address became the Maloney, Bean firm in Irving, Texas. He always considered Wellsburg home, returning there each summer, purchasing a home, building a barn, renovating the house, and entertaining friends and family. A widower, his survivors include a daughter and two sons.

William Frank Maready, '82, a Fellow Emeritus from Winston-Salem, North Carolina, died August 9, 2018 at age eighty-five. Born of a tenant family in the depths of the Great Depression, he grew up on a small tobacco farm in eastern North Carolina. He

enrolled in North Carolina State University, but, running out of funds, enlisted in the United States Army. A Green Beret in the Tenth Special Forces Group, he was stationed overseas in Germany during the Cold War era. After his military service, he entered the University of North Carolina at Chapel Hill, where he graduated with a Phi Beta Kappa key. He then earned his law degree from UNC-Chapel Hill, where he was an Associate Editor of the law review, second in his class, and a member of the Order of the Coif. He spent two years in New York City as an associate at Mudge, Stern, Baldwin & Todd before returning to North Carolina. Beginning in a large Winston-Salem firm which later divided, he remained with one group of that firm until in his later years, when he had a solo practice. An avid flier, he began with a Beechcraft Bonanza, later progressing to a twin-engine Beechcraft Baron. In 1981, he helped to organize the first International Symposium on Air and Space Law and was then a founder and the first Chair of the American Bar Association's Forum Committee on Air and Space Law. That led him to know a number of personnel in the NASA headquarters in Houston, one of whom was fellow North Carolinian astronaut Mike Smith. When Smith, the pilot of the Challenger space shuttle, died when the shuttle exploded after launch from Cape Canaveral, Maready then represented his widow in a lawsuit against NASA and the manufacturer of the defective booster that caused the rocket to self-destruct. He was the founder and first Chair of the North Carolina Bar Association Litigation Section and a member of the Association's Board of Governors. He was also President of the UNC Law Alumni Association and a member of the UNC Alumni Board. In his community, he served as Chair of his city-county Board of Education during the era of desegregation of the local public schools and later served on the boards of a local community college and a local, essentially minority, state university. He also served on the Board of the North Caroli-



na Ports Authority, created to upgrade the state's largest port to accommodate increased foreign commerce. His survivors include his wife, two daughters, and three sons.

Glenn A. Mitchell, '84, a Fellow Emeritus, Stein Mitchell Cipollone Beato & Missner, LLP, Washington, District of Columbia, died December 3, 2018 at age eighty-two, of lymphoma. A graduate of the University of Virginia, where he played varsity basketball and golf, he was a starter on the basketball team and the runner-up, by one shot, in the 1958 Atlantic Coast Conference golf tournament. He earned his law degree at Georgetown University, graduating in two and a half years so that he could complete his active duty obligation before his scheduled wedding. After three years as a trial attorney in the Federal Trade Commission, he practiced in a small firm for two years before creating the two-lawyer District of Columbia firm in which he then practiced for over fifty years. The son of a former conductor of the National Symphony Orchestra, he was an accomplished cellist, and a lifelong concertgoer who served on the boards of the Young Concert Artists of Washington, the Washington Performing Arts Society and the Levine School of Music and for twenty-five years was general counsel of the Cathedral Choral Society. He was also active in a number of civic and religious organizations, and several times in his last decade shot his age on the golf course. His survivors include his wife of fifty-seven years, two daughters, and four lawyer sons, all four of whom, along with a fifth son, since deceased, were simultaneously admitted to the United States Supreme Court in a historic first on Father's Day 2011.

David Greenleaf Moore, '04, Reid & Hellyer, Riverside, California, died August 12, 2018 at age eighty after succumbing to a stroke while dealing with lung cancer. The son of a Marine fighter pilot, his entire family was at Pearl Harbor on December 7, 1941.

Graduating from high school, Moore went directly into the Marine Reserves, then entered the University of Colorado, transferring two years later to the University of California, Berkeley, where he earned his undergraduate degree. He acquired his law degree at the University of California Hastings College of Law and began practicing with the firm with which he practiced for fifty-two years, mentoring all the firm's present partners. He served as President of the Riverside County Bar Association and of his Inn of Court. His survivors include his wife of fifty-five years, a daughter, and a son.

Richard Canney Ninneman, '82, a Fellow Emeritus, Quarles & Brady, LLP, Milwaukee, Wisconsin, died April 21, 2018 at age eighty-one. A graduate of the University of Notre Dame and of the Marquette University School of Law, where he was Editor of the law review, after two years active duty in the United States Army he practiced law for twenty-six years in Milwaukee with Whyte & Hirschboeck before joining Quarles & Brady. He served on the Wisconsin Judicial Commission, was President of the Notre Dame Club of Milwaukee, and served as a member of the Marquette President's Executive Senate, as a member of the lay advisory boards of two religious institutions and of an endowment Board and was also a director of two business corporations. He served the College as its Wisconsin State Committee Chair. He retired in 2003 but remained active as a Wisconsin Supreme Court Referee in attorney disciplinary hearings, as a FINRA arbitrator and as a volunteer in a legal clinic for Spanish-speaking clients. His survivors include his wife of fifty-six years, three daughters, and a son.

John C. Noonan, '81, a Fellow Emeritus, retired from Stinson Leonard Street, LLP, Kansas City, Missouri, and living in retirement in Charleston, South Carolina, died July 22, 2017 at age eighty-six. A graduate of Cornell University, where he was captain

of the fencing team, he served as a Marine officer in the Korean Conflict and then earned his law degree from Washington University, St. Louis Missouri. Named his city's Dean of the Trial Bar, he enjoyed tennis, golf, and sailing and was an avid reader. He had served the College as its Missouri State Committee Chair. A widower whose wife of fifty-two years predeceased him, his survivors include a daughter.

J. Michael O'Hara, '75, a Fellow Emeritus retired from Barrett McNagny LLP, Ft. Wayne, Indiana, died December 2, 2018 at age ninety. A graduate of the University of Notre Dame and of the University of Michigan School of Law, he then served in the United States Army during the Korean Conflict. After forty-three years of law practice, he retired in 1998. A widower whose wife of sixty-two years predeceased him, his survivors include three daughters and two sons.

Charles E. Patterson, '90, Morrison & Foerster, LLP, Los Angeles, California, died July 24, 2018, of pancreatic cancer at age seventy-seven. Born in 1941, he earned his undergraduate degree from the University of Kansas and his law degree from the University of Michigan School of Law. He then spent three years as a highly decorated platoon leader in the United States Marine Corps 3rd Marine Division, seeing combat in the Korean Conflict just south of the DMZ. He began practice in Kansas City, Missouri with Watson Ess, Marshall & Enggas, practicing there from sixteen years before moving west. In Kansas, he served in the House of Delegates of the American Bar Association, as President of the Missouri Organization of Defense Lawyers, and then as President of the Missouri Bar. A past Chair of the ABA Lawyers Conference of the Judicial Division, he was a member of the Board of Visitors of the National Judicial College. Doing extensive pro bono work, especially for veterans, he was a co-founder of the Kansas City Vietnam Memorial. In 1985, he

moved to Los Angeles, joining Lillick & McHose, which five years later was merged into Pillsbury, Madison & Sutrow. After a decade with Pillsbury, he joined Morrison & Foerster, where he practiced until his death. Among his many high-profile cases, he served as lead outside counsel in the 1990s era saga known as Whitewater and in suits representing homeowners in major California rockslide cases, the largest of which resulted in a recovery of almost a hundred million dollars. His unsuccessful attempt to save a fellow Marine from execution at San Quentin on the ground of incompetent defense representation for not having brought before the court at his initial trial the defendant's mental illness, both before and after his service in Vietnam, won him the American Bar Association's 2000 Pro Bono Award. This experience prompted him to create a charity, Fund for the Unrepresented on Death Row. More successful was his representation of a Saudi, Jabran Al Qahtani, whom he helped to liberate from a fifteen-year detainment at Guantánamo, where he, like many other detainees after 9/11, had been judged "too innocent to be charged, but too dangerous to be released." He was a frequent lecturer of trial practice who also published an exhaustive list of related papers. Fluent in multiple languages, he was a guitar player and a poet. His acclaimed book of war-inspired poetry, entitled *The Petrified Heart*, grew from lines he had written years before, prompted by the death of a fellow Marine in Vietnam. In his last years of dealing with pancreatic cancer, he stopped playing rugby at age seventy-one. He served the College as Chair of the Sandra Day O'Connor Jurist Award Committee. His survivors include his wife and two daughters.

Peter Jerrold Peters, '78, a Fellow Emeritus retired from Peter J. Peters, PC, Council Bluffs, Iowa, died September 26, 2018 at age eighty-eight. A graduate of the University of Nebraska, he began his law school study there and completed it at Creighton University. He then served in the United States

Army Judge Advocate General's Corps. Entering the practice of law with his grandfather, who had started the law firm in 1896, and his two older brothers, he served as Assistant County Attorney and then as County Attorney of Pottawattamie County and as President of the Iowa Academy of Trial Lawyers. He served for many years on the vestry of his Episcopal church and sang in its choir. His survivors include his wife of sixty-six years and four sons.

John Wesley Raley, Jr., '95, a Fellow Emeritus retired from Northcutt, Clark, Gardner, Hron & Bruce, Ponca City, Oklahoma, died April 6, 2018 at age eighty-five. He earned his undergraduate degree from Oklahoma Baptist University, where he was elected President of the Student Government Association. Enrolled in the United States Naval Reserve Officers Training Program, upon graduation he was assigned as a gunnery officer on the *USS Macon (CA 132)*, a cruiser assigned to the Sixth Fleet. After his discharge from active duty, he remained in the Naval Reserve for thirty-three years, serving as commanding officer of three successive Naval Reserve units. After his active duty, he earned his law degree at the University of Oklahoma College of Law, where he was elected President of the Student Bar Association. In 1961, he was appointed Assistant United States Attorney for the Western District of Oklahoma, serving for eight years. He then joined the Northcutt law firm. In 1980, he was elected Mayor of Ponca City and was later appointed Associate Municipal Judge. He was awarded the George Washington Honor Medal by Freedoms Foundation at Valley Forge for patriotic service and the Order of the Silver Beaver by the Boy Scouts of America. He was also President of his local Bar and served a term on the Board of Governors of the Oklahoma Bar Association. In 1991 he was appointed United States Attorney for the Eastern District of Oklahoma and was reappointed in 1993, the only United States Attorney among the ninety-three in the nation to be appointed

by President George H. W. Bush and reappointed by his successor, President Bill Clinton. In his second tour, he was presented an award by Attorney General Janet Reno for outstanding service. After his term was over, he returned to the Northcutt firm. Awarded an Honorary Doctor of Humanities by his undergraduate college, he authored a book, *Beyond the Gate, The Journey of an Oklahoma Boy*. His survivors include his wife and two sons.

Richard Franklin Record, Jr., '83, a Fellow Emeritus retired from Craig and Craig, Mattoon, Illinois, died February 20, 2017 at age seventy-nine. After commencing his college education at Eastern Illinois University, he earned his undergraduate degree at Georgetown University and his law degree as George Washington University Law School. He then joined the law firm in which he practiced until his retirement in 2008, serving as President of the Illinois Appellate Lawyers Association and as legal counsel for two arms of local government. A lover of golf and music and a reader, he served on the vestry of his Episcopal Church and as Chancellor of the Episcopal Diocese of Springfield. He served the College as Chair of its Illinois-Downstate State Committee. His survivors include his wife of fifty-five years and two daughters

Camille Francis Sarrouf, Sr., '83, a Fellow Emeritus, Sarrouf Law LLP, Boston, Massachusetts, a former member of the Board of Regents of the College, died September 4, 2018 at age eighty-five, of cancer. A graduate of Bowdoin College, he served as an officer in the United States Army in the Cold War era before earning his law degree from the University of Texas Law School. He served as a Massachusetts Special Assistant Attorney General, as a Special Assistant District Attorney, and as Town Counsel of Weymouth, Massachusetts. He taught trial preparation and techniques for nineteen years as an adjunct professor at the New England School of Law, which

awarded him an Honorary Doctorate. President of the Massachusetts Academy of Trial Lawyers and President of the Massachusetts Bar Association, he also served as Chair of the Magistrate-Review Committee for the United States Court for the District of Massachusetts and as a member of both the Massachusetts Commission on Judicial Conduct and the Commonwealth's Judicial Nominating Commission. His philanthropic work included service as Chair of the Board of the American Lebanese Associated Charities (ALSAC), and of St. Jude's Children's Research Hospital and St. Jude Children's Research Hospital Graduate School of Biomedical Sciences, the latter of which had awarded him an Honorary Doctorate in Humane Letters. He also served on the Board of Khalil Gibran Foundation and was for years pro bono General Counsel of the Diocese of Newton for Melcite Catholics of the United States. He was a recipient of the Ellis Island Medal of Honor, the Papal Gold Medal from Pope Paul VI, and the Cross of Jerusalem from Melcite Greek Patriarch Maximos V. Hakim. In addition to his role as a Regent, he had earlier served the College as its Massachusetts Committee State Chair. His survivors include his wife of fifty-seven years, a daughter, and three sons.

Clarence Merilton Small, Jr., '96, a Fellow Emeritus, Christian & Small, LLP, Birmingham, Alabama, died October 31, 2018 at age eighty-four. A graduate of Auburn University and of the University of Alabama School of Law, between undergraduate and law schools he served for two years as an officer in the United States Army. A founding partner of his firm, he served as President of his local Bar and the Alabama State Bar Association and as a member of the American Bar Association House of Delegates. At the time of his death, he was living in Cary, North Carolina. A widower who had remarried, his survivors include his second wife, two daughters, a son, and three stepchildren.

Bruce Edwin Smith, '87, a Fellow Emeritus from Eugene, Oregon, died September 28, 2015 at age seventy-nine, of a hemorrhagic stroke. Raised in a small town in Kansas, he earned his undergraduate degree from the University of Kansas, served as an Intelligence Officer in the United States Air Force, and then graduated first in his class from the University of Oregon School of Law, where he was Editor-in-Chief of his law review. Beginning as an associate in a Medford, Oregon law firm, he moved to Eugene, where he practiced independently, and then in 1971 joined a firm that became Cass Woods Scott & Smith. In 1993, members of that firm merged and formed Gleaves Swearingen Larsen Potter Scott & Smith LLP, where he practiced until his retirement. He served as an arbitrator and a mediator and in his career served on the Board of Governors of the Oregon Bar, as the Presidents of the Oregon Law Foundation and the Oregon Professional Liability Fund. He worked as a Circuit Judge, Pro Tem, and volunteered for thirty years on his county's legal aid organization. A lover of jazz, travel, poetry, fly-fishing, downhill skiing, golfing, and gardening, he often prepared Sunday night dinner for family and friends. Though not trained as an architect, he designed the home and garden where he and his wife lived for most of their marriage. In the College's 2010 roster, his address changed from his law firm address to his retirement home address, Happy Lane. A widower who remarried, his survivors include a daughter, a son, and a stepson.

Ario Sommervold, '87, Sommervold Law Firm, Sioux Falls, North Dakota, died October 21, 2018 at age eighty-seven. After earning his undergraduate degree from the University of South Dakota, he served in the United States Air Force in the Korean Conflict era and then returned to the University of Oregon to gain his law degree. He joined Woods, Fuller, Shultz and Smith, Sioux Falls, practicing law, ultimately independently, for the next fifty-three years. He served the College as South Dakota State Committee Chair.

A widower whose wife of fifty-three years predeceased him, his survivors include two daughters, and two sons.

Evan E. Steger, III, '85, a Fellow Emeritus, Ice Miller LLP, Carmel, Indiana, died May 21, 2018 at age eighty. An Eagle Scout, he earned his undergraduate degree from Wabash College and his law degree from Indiana University School of Law, practicing law for forty years with Ice Miller, LLP. His survivors include his wife of fifty-three years and two daughters.

Michael J. Sullivan, '16, Ellenoff, Grossman & Schole, LLP, New York, New York, died February 21, 2018 at age fifty-nine. A graduate of Princeton and of the Columbia University School of Law, in a varied career he began as a housing lawyer in the Harlem office of the Legal Aid Society of New York and went on to be a law clerk and deputy federal court monitor in the United States District Court for the District of Puerto Rico. He then spent four years in the Office of the Federal Public Defender in the District of New Jersey. Then going into private practice, he spent eight years with Ice Miller LLP in Morristown, New Jersey, and eleven years with Coughlin Duffy, LLP in Morristown, before joining Ellenoff Grossman in New York City. He was a trustee of the Association of Criminal Defense Lawyers of New Jersey. His survivors include his wife, a daughter, and a son.

Arthur Ward Wagner, Jr., '74, a Fellow Emeritus, West Palm Beach, Florida, died February 21, 2018 at age eighty-seven. Born in Alabama, he entered the University of Florida, where his undergraduate studies were interrupted by service in the United States Coast Guard. Returning to complete his undergraduate degree, he then earned his law degree at the University's School of Law and moved to West Palm Beach, where he practiced for the rest of his career. Starting with a small firm that eventually grew into Wagner, Nugent John & Roth, he became its managing partner and president. He served as President of

the Board of Governors of the Association of Trial Lawyers of America and was a lifetime Trustee of the Roscoe Pound-ATLA Foundation. The author of portions of several national trial-oriented publications, he was a frequent lecturer at trial seminars. Committed to philanthropy towards his alma mater, the University of Florida, he was President of the Florida Boosters and of the Florida Foundation of the Gator Nation. He served the College as its Florida State Committee Chair. His survivors include his wife of sixty years and three daughters.

Ray Arnold Weed, '90, a Fellow Emeritus, Fredericksburg, Texas, died August 31, 2018 at age eighty-four. Commencing his undergraduate education at Hardin-Simmons University, he completed his degree at the University of Texas Tech, where he was a member of the baseball team. After working for several years for Travelers Insurance Company, he earned his law degree from the Texas Tech University and joined the San Antonio firm, Groce, Locke & Hebdon. Some twenty-six years later he was one of a group of twenty-seven lawyers who formed Ball & Weed, where he served as President for many years, practicing there until his retirement. He served the College as Chair of the Teaching of Trial and Appellate Advocacy Committee. His survivors include his wife of thirty-one years, two sons, and two stepchildren.

James Thomas (Butch) Williams, Jr., '89, Brooks, Pierce, McLendon, Humphreys & Leonard, LLP, Greensboro, North Carolina, died September 3, 2018 at age seventy-eight, of a stroke. Entering Wake Forest University as a first-generation college student on a football scholarship, he was a standout offensive lineman who had visions of a career in the National Football League until his history professor encouraged him to attend law school. Following that advice, he entered the Wake Forest Law School and graduated, with honors, an Associate Editor of his law review. He spent his entire career with Brooks,

Pierce, in whose management committee he sat for twenty-nine years, fourteen years of those at its chair. Open to new ideas, he was among the first to foresee how information technology would change the practice of law. He served in many aspects of his community, from its Community Foundation to its Chamber of Commerce. A champion of public education, he served on the local Board of Education, and his family had taken in high school foreign exchange students. In the world of law, he helped to create the local Inn of Court. He received the North Carolina State Bar's John B. McMillan Distinguished Service Award and the North Carolina Bar Association Litigation Section's Advocate's Award. His loyalty to Wake Forest led him to serve on its Alumni Council and the Board of Visitors of both the College and the Law School. He served for ten years on its Board of Trustees, three of those years as its Chair. Made a Life Trustee, he was honored with its Distinguished Alumni Award and the University's highest honor, its Medallion of Merit. He served the College as its North Carolina State Committee Chair. A gentle giant

whose friends and family looked on him as a kid at heart, he had a quick wit and a calm, contented smile on his face, even in the most trying courtroom situations. Two of his passions were travel and photography. He and his wife, Barbara, traveled throughout the world. Friends who traveled with them on a People to People trip to China have a vivid recollection of seeing the two of them, he, towering well beyond six feet in height and she, a very tall, slim woman with blonde hair, walking through the main square of 1987 Shanghai surrounded by hordes of awe-struck locals a foot shorter than either of them. When their first daughter became engaged and elaborate wedding preparations commenced, he noted with a twinkle in his eye, "Barbara has been living all her life for this!" His love for the North Carolina coast, a part of his life since his boyhood, made it his second home. He was resting there, afflicted with cancer, when the stroke that shortened his life brought him back home to Greensboro. His survivors include his wife of fifty-six years and two daughters, one of whom, a lawyer, is a Brooks, Pierce partner.

Virginia Mayberry (Ginny) Elam, Columbus, Ohio, the widow of Past President John C. Elam, died November



6, 2018 at age ninety-six of complications from a stroke. Born in North Carolina, she was a classic soft-spoken Southern lady. While she was a student at the UNC Women's College (now the University of North Carolina-Greensboro), John Elam, stationed in World War II at North Carolina's Ft. Bragg, is reputed to have met her and, entranced, followed her and a group of her friends to their beach party. Wed in 1945, they lived in married students' housing at the University of Michigan while John finished his undergraduate and law degrees and Ginny worked in a doctor's office.

Thereafter living in Columbus, she mentored young girls in Directions for Youth,

whose conference room is now named in her honor, as is a local Girl Scout building. A docent in the Columbus Museum of Art and active in the Columbus Symphony and in her church, she served as President of the Columbus Bar's Women's Auxiliary. She won the local League of Women Voters Democracy in Action Award. After her husband's death, she endowed the John and Ginny Elam Family Fund to support the local National Public Radio station and the John and Ginny Elam Pro Bono award, given each year by the Ohio State Bar Association for exceptional pro bono legal work in Ohio. Her survivors include three daughters and a son.

UPCOMING EVENTS



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

NATIONAL MEETINGS



2019 SPRING MEETING

La Quinta Resort & Club
La Quinta, California
February 28-March 3, 2019



2019 ANNUAL MEETING

The Westin Bayshore
Vancouver, British Columbia
September 26-29, 2018

REGIONAL MEETINGS

May 31-June 2, 2019 **WESTERN REGIONAL MEETING**
June 7-9, 2019 **6TH CIRCUIT REGIONAL MEETING**
June 14-16, 2019 **REGION 15 REGIONAL MEETING**

June 20-22, 2019 **10TH CIRCUIT REGIONAL MEETING**
September 12-14, 2019 **REGION 5 REGIONAL MEETING**

STATE/PROVINCE MEETINGS

March 11, 2019 **NEW BRUNSWICK FELLOWS DINNER**
March 12, 2019 **NOVA SCOTIA FELLOWS DINNER**
March 13, 2019 **NEWFOUNDLAND & LABRADOR FELLOWS DINNER**
March 21-24, 2019 **NORTH CAROLINA FELLOWS MEETING**
March 27, 2019 **QUEBEC FELLOWS DINNER**
April 5-7, 2019 **VIRGINIA FELLOWS MEETING**
April 8, 2019 **DOWNSTATE NEW YORK FELLOWS DINNER**
April 12, 2019 **KENTUCKY FELLOWS DINNER**
April 12-14, 2019 **MISSOURI FELLOWS MEETING**
April 23, 2019 **ONTARIO FELLOWS DINNER**
May 3, 2019 **SOUTHERN CALIFORNIA FELLOWS DINNER**

May 4, 2019 **HAWAII FELLOWS DINNER**
May 10, 2019 **PUERTO RICO FELLOWS DINNER**
May 11, 2019 **MARYLAND FELLOWS DINNER**
May 17-18, 2019 **WEST VIRGINIA FELLOWS MEETING**
May 18, 2019 **MICHIGAN SPRING BLACK TIE**
May 23, 2019 **ALBERTA FELLOWS DINNER**
June 12, 2019 **KENTUCKY FELLOWS DINNER**
June 14, 2019 **TEXAS FELLOWS LUNCHEON**
June 26, 2019 **MANITOBA FELLOWS MEETINGS**
June 27, 2019 **MINNESOTA FELLOWS MEETING**

COMPETITIONS

February 15-16, 2019 **GALE CUP**
March 15-16, 2019 **SOPINKA CUP**
March 28-31, 2019 **NATIONAL TRIAL COMPETITION**

JOURNAL

American College of Trial Lawyers
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Statement of Purpose

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

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

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