

JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

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TERRY AND DOUG YOUNG AND
RODNEY AND JUDY ACKER
TOAST THE NEW INDUCTEES

Spring 2021

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Hon. Emil Gumpert
(1895-1982)

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For comments, inquiries, and submissions,
please email the National Office at editor@actl.com

Liz Doten Design Director
Ben Majors Photographer, EventWorks

Dennis J. Maggi, CAE, Executive Director
American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660
949.752.1801
www.actl.com

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contents

FEATURES

| | | | |
|--|---|--|--|
| 2 Letter from the Editor | 5 President's Perspective | 9 Annual Meeting Recap | 11 The College Welcomes New Officers & Regents |
| 13 Chief Justice Roberts Welcomes the Annual Meeting | 15 CLE: <i>Plessy v. Ferguson</i> | 21 Special Event - The Suspect | 25 Supreme Panel - Justices For All |
| 31 2020 Gumpert Award - Tulane Law School Women's Prison | 35 Dr. Robert C. Gallo - Observations on the Pandemic | 39 Lewis F. Powell, Jr. Lecture - Hon. William Cohen | 43 Dr. Robert J. Brown - Right Will Always Win |
| 49 Playing Ball - The Impact of Covid-19 On Sports | 55 Honorary Fellowship - Justice Nicholas Kasirer | 61 A Conversation with Scott Turow | 65 Humor in the Age of COVID |
| 69 Dean G. Marcus Cole - A Call To Action | 75 Welcome To The College - Warren Lightfoot | 79 Inductee Responder - Joan Illuzzi-Orbon | 81 Meet our New Fellows |
| 99 Remembering Justice Ginsberg | 103 The Thurgood Marshall Award | 107 Task Force on Advocacy in the 21st Century | 113 Judicial Independence Update |
| 127 Answering The Call To Help During Covid - 19 | 137 Remembering Mike Cooper | | |

ANNOUNCEMENTS

4
2021 Spring Meeting

IN (ALMOST) EVERY ISSUE

| | | | |
|---|--|---|---------------------------------|
| 117 Heroes Among Us - Jim Coleman | 119 All In The Family - Forbes & Grant | 123 Heritage Profiles - Mike Cody | 131 Foundation Update |
| 133 Book Review | 135 War Stories From Fellows | 141 In Memoriam | |



LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO EDITOR@ACTL.COM

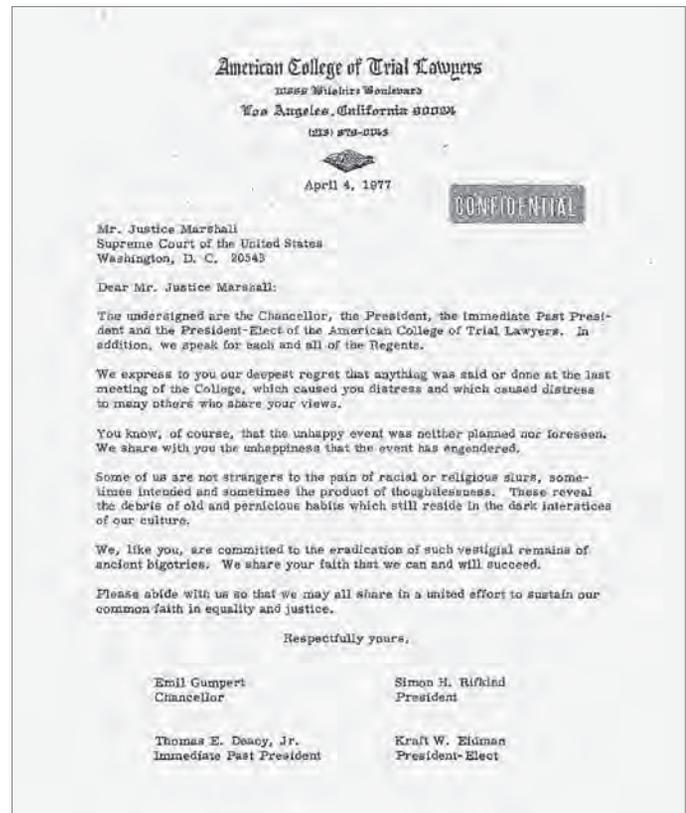
The College is now in its seventy-first year, and like anything that has lived more than seventy years (an apt description of myself), mistakes will have been made. Case in point: the College's revered Chancellor, Emil Gumpert, openly insisted that College meetings be limited as men-only affairs. It was inconceivable in 1950 that a woman might become a Fellow, and, as for wives, Gumpert believed that the presence of women would inhibit the collegiality of meetings. Others disagreed, and the question was debated over the years. In one of those clashes, Cody Fowler, the only person to serve two years, two separate terms as President of the College, justified his successful opposition to having women at meetings by arguing that "Women do not mix as well as men." Not until 26 years into its existence, not until 1976, did the College finally adopt a formal resolution permitting women to be invited to the annual banquet.

Good grief. Gumpert and Fowler may have been great men, great lawyers. But they were, where women were concerned, cavemen. The College was wrong, flat wrong to have listened to their misogyny. Better late than never. We are better now.

But a year after we corrected that mistake, we encountered another, far more troubling deficiency in our collective character. At page 105 of this edition, you will find an article by Regents Joe Caldwell and Rick Deane describing the College's new Thurgood Marshall Equality and Justice Award. You will learn that when the Award was envisioned, it was no sure thing that Justice Marshall's family would consent to have his name linked with the College, because the Justice had himself severed the connection in 1977. That year, then Honorary Fellow Marshall attended an Annual Meeting as a guest speaker. He went to the sing-along after the banquet, and to his horror a song was sung which included the term "darkies." Learning that Justice Marshall had taken offense, College Leadership made honest and abject apologies, but the Justice nevertheless resigned from the College.

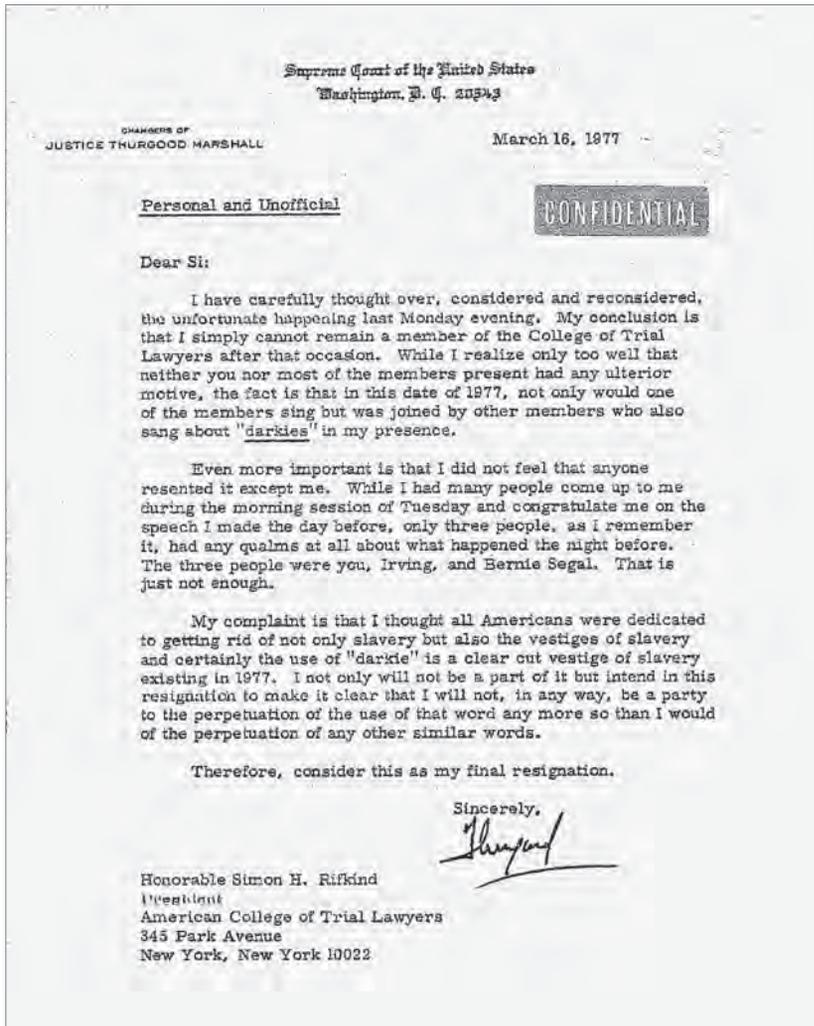
Now, in the context of our 26-year war on women, the Marshall incident might somehow seem less egregious. After all, the College repeatedly and formally debated and adopted the men only policy, while the unfortunate event with Justice Marshall was not planned, not voted on. It was, one might say, just an insensitive lapse by a few isolated Fellows who, on their own, made a poor musical

selection. And the College's leadership immediately and sincerely apologized to the Justice:



So no big deal, right? Oh no, not right, not even close. Justice Marshall accepted that leadership's apology was sincere; but that was not enough. Of course it was not enough. It ▶

wasn't simply that a few Fellows sang an offensive song. It was that no other Fellow found the song offensive until Justice Marshall voiced his own offense. He should not have had to; some other Fellow, multiple other Fellows should have shut it down at once. They did not. The group stood by. And Justice Marshall did the only thing a person of his character could do; he could not remain a member of an organization that stood silently by.



I am not naïve enough to think that there is not a single racist among our 5000 or so Fellows. Undoubtedly, there might be some. But I do know this. If we had *known* that someone was a racist, that person would not have survived our vetting process; that person would not have become a Fellow. And if someone has slipped by, they should at least have the good sense and manners to be quiet about it.

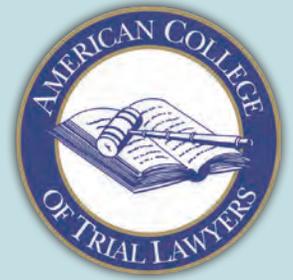
But the rest of us should not, can not remain quiet. That's what was most offensive to Justice Marshall – that we remained quiet in the obvious face of racism. Rick Deane puts it best: "It's not enough just not to be racist. Instead, you would hope that Fellows in particular would choose to be *anti-racist*." That is what I choose. That is what I believe that the overwhelming majority of Fellows choose.

We, the College, have made mistakes. We undoubtedly will make mistakes in the future. But the only unforgivable mistake is not owning and correcting our mistakes. We are indebted to the character of the Marshall family, for offering us forgiveness and for allowing the College's new Award to be made in Justice Marshall's name, once again tying the College to a man of his stature. The Marshall family wasn't simply forgiving; they were magnanimous, telling Joe Caldwell that Justice Marshall's name has been associated with a number of undertakings over the years, but "association with an organization with the stature and expressed ideals of the College is one that they delightfully welcome." Let's all work to live up to that.

We have a great issue for you. There are write-ups of the speakers and special events that occurred at the virtual Annual Meeting last Fall, allowing those who could not participate see what they missed and those who did participate to reprise. Lady Arden, a Justice of the UK Supreme Court, offers an homage to the Notorious RBG. Judge Barbara Lynn adds an homage of a different sort, finally telling the story behind the award of a Silver Star to deceased Fellow Jim Coleman. We say hello to 96 new Fellows, and goodbye to 55 departed Fellows, including Past President Mike Cooper.

2020. What a year; good riddance. Let's make this year a great one!

Bob Byman



MARCH 03-05 2021 SPRING MEETING

A Virtual Event

WEDNESDAY, MARCH 3

3:00 – 5:00 p.m. EST 2:00 – 4:00 p.m. CST 1:00 – 3:00 p.m. MST 12:00 – 2:00 p.m. PST

CLE Program

25th Anniversary of the VMI Case: Remembering Ruth Bader Ginsburg and the *United States v. Virginia*

President's Welcome Reception

5:00 p.m. in most time zones

Join President Acker and Judy Acker to kick off the College's first-ever Virtual President's Welcome Reception.

THURSDAY & FRIDAY, MARCH 4 & 5 – GENERAL SESSIONS

Start Times — 3:00 p.m. EST 2:00 p.m. CST 1:00 p.m. MST 12:00 p.m. PST

General Session Topics include:

Access to Justice in the Time of COVID

A Tour Through the NFL: A Team Physician's Perspective

A Conversation with a Former President of the United States

Quarantine: The Reach and Limits of Government Action

Building Resilience: How to Unleash your Mindset and Overcome Any Challenge

FRIDAY, MARCH 5 – INDUCTION OF NEW FELLOWS

Start Times — 5:30 p.m. EST 4:30 p.m. CST 3:30 p.m. MST 2:30 p.m. PST

The portals of the American College of Trial Lawyers will once again open to receive new Fellows. We hope you will join us to celebrate their accomplishments and welcome them to the College.

REGISTER NOW AT [ACTL.COM](https://actl.com)

PRESIDENT'S REPORT — RODNEY ACKER

In each issue of the Journal, the President provides his perspective on where the College is, and what it is doing to fulfill its mission statement. You will see my report on that below. First, however, I will address the extraordinary events of this year. It has been a year like no other. First, the pandemic had a profound effect on our personal and professional lives. As I write this in early January, several vaccines have been developed and approved, but we struggle to get them distributed to most of our populations. Our judicial system is not back to normal, and no one knows what the new normal will look like, but we are making adjustments. Like most, I am confident that we will overcome the virus and end the pandemic and all the personal, economic, and social issues that it created.

Our countries, however, and particularly the United States, have faced an even greater long term danger in the social and political turmoil we have witnessed in the last year. We have seen attacks, threats, and attempted intimidation of judges by politicians on both sides of the aisle. The College has publically condemned those attacks without regard to who made them. We have seen a Presidential election where more Americans have cast votes than any prior election, and where many on the losing side have refused to accept the result. We have seen lawsuits filed in state and federal courts to set aside the vote, including one filed in the Supreme Court, and we have witnessed the dismissal of those cases by judges appointed or elected by both parties. Most recently, we have suffered and endured a Constitutional crisis where Congress was invaded by a mob seeking to stop the vote of the Electoral College as provided in the Constitution. And we watched in horror as people lost their lives in those riots. We survived that crisis and Congress voted on the election results in accordance with the Constitution. As I write this, President Trump has been impeached for a second time. Given that the Journal will not be published for another month, all of this may seem like old news by then. Despite the divide that splits our country, I remain equally confident that the United States will survive and the Rule of Law will prevail.

PERSPECTIVE

This year the College celebrates its 70th Anniversary. We all take pride in being Fellows in the College. I remember like yesterday the thrill of being inducted 24 years ago in Boca Raton. That Fellowship only comes on invitation following a thorough investigation on each's nominees skill as a trial lawyer and demonstrated ethical conduct, integrity, professionalism, and collegiality. Section One of our Bylaws describes the College as bringing "...together qualified members of the profession who, by reason of probity and ability, will contribute to the accomplishments and good fellowship of the College." This past year,

the College engaged McKinley Advisors to conduct a Fellow Engagement Project which would allow more Fellows to engage and contribute to the College's missions. The initial study has been presented to the Board of Regents and to the Chairs and Vice-Chairs at our Fall Leadership Workshop. In the coming months, we will strive to put processes in place to simplify the ways to identify opportunities for Fellows to contribute and to provide structure to their efforts.

Fellow Engagement: Participation by Fellows is vital to the efforts to carry out the College's missions, and we need more participation by the Fellows. I want to encourage everyone, but



particularly new Fellows to become involved in College work. The Fellow Engagement Project will involve input from the Executive Committee, Regents, the chairs and the committees. The Task Force on Fellow Engagement, chaired by **Cal Mayo** of Mississippi, will work with McKinley Advisors to consider a process to better engage new Inductees during their first year as Fellows. As part of this effort, the Task Force will explore deliberate steps to connect with and involve new Fellows on the local, regional, and national level at a time when they have high interest in active College participation. In addition to the positive impact of such efforts on new Inductees, the College expects to benefit from increased Fellow participation, an enhanced leadership profile, and identification of a larger pool of potential Fellows actively engaged in the College's missions. You will hear more about this, as we hope to complete the work with McKinley Advisors by late Spring. Even as further work by McKinley Advisors is ongoing, the Admission to Fellowship Committee has already undertaken a project to standardize and simplify the nominee investigation process at the state and province level.

Our Mission Statement provides the backdrop for Fellow engagement. "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." The College is actively addressing all these issues.

Improving the Standards of Trial Practice: When the pandemic hit in March, our courts were quickly shut down, no trials and few depositions were happening, and trial by jury was endangered—at least temporarily. As Michigan Chief Justice Bridget McCormack (<https://thehill.com/opinion/technology/503919-leveraging-technology-for-long-term-change-in-the-face-of-covid-19>), quickly asked, "Why is our system of justice held together with the threads of 20th century technology and 19th century processes?" In April 2020, just a month after the pandemic began, the College created the Task Force on Advocacy in the 21st Century to address that question and the crises facing our courts and the administration of justice. The Task Force, consisting of Past President Young, 13 Fellows, and 3 Judicial Fellows from the US and Canada, was led by Regent **John Day** and Fellow **Roslyn Levine**. The Task Force worked tirelessly, accumulating information and experience of courts in both countries to create a set of 8 interim guidelines to help courts and lawyers safely try cases—including jury trials. The Task Force has now become a permanent committee in recognition of the reality that we are facing this pandemic for a while to come and the certainty that there will be future pandemics. The Committee is now hard at work updating the guidelines. You can learn more about the work of the Advocacy in the 21st Century Committee in the article on page 107 of this edition of the *Journal*.

Professionalism and Ethics: A major component of professionalism is civility. Judges demand professionalism and civility in their courtrooms. When being considered for Fellowship, ▶

nominees are judged on civility and collegiality. The College addresses civility in a number of ways, such as through our Legal Ethics and Professionalism Committee. That committee has produced a number of training videos dealing with ethical dilemmas faced by lawyers in their day to day practice, and made those available to bar associations and others to promote ethical and professional behavior. The Civility Initiative Project has produced a video in which Judicial Fellows and Fellows discuss their views on civility, their encounters with lawyers acting less than civilly and how they deal with those issues. The College has also addressed civility in its White papers on mentoring, and you can find that White Paper on our website.

Fair and Just Administration of Justice: It is impossible to achieve the fair and just administration of justice without talented lawyers prepared to advance their clients interest. To better prepare lawyers, the College has a number of training and mentoring programs. For example:

Boot Camp training Program: For several years the College, in conjunction with the ABA Litigation Section and local bar associations, has conducted a Boot Camp Trial Training Program. This one day event focuses on young lawyers, public service lawyers, public defenders, prosecutors and other trial advocates and involves a faculty of 21 lawyers and judges. The Boot Camp has been presented in Federal courts around the country including San Francisco, Memphis, Columbus, New York, and Maryland, and most recently it was presented virtually in Salt lake City. Programs planned for Atlanta, Orlando and DC have been postponed because of the pandemic, while others in Cincinnati, Houston and Oklahoma are now scheduled for virtual programs. Spearheaded by **Paul Mark Sandler**, this program's format consists of lectures, demonstrations and panel discussions on all phases of the trial, and centered around a "case for the day." Interestingly, the case for the day in New York was the Rosenberg Spy Case and the trial was conducted in the same courtroom as the actual trial. The Boot Camp Committee has 2 auxiliary training projects for young lawyers. To insure the young lawyers have follow-up from the program, the attendees have access to a free library to writ-

ings from Fellows, and a second project entitled "Trial Talks" for designated moderators forming small groups for virtual meetings which include vignettes of valuable, and sometimes embarrassing mistakes Fellows learned in past trials, and the ability to socialize with and mentor these young lawyers.

Trial Competitions: The College co-sponsors trial and moot-court competitions in both the US and Canada. The National Trial Competition in the US and the Sopinka Cup in Canada provide Fellows with the opportunity to teach and mentor law students in trial advocacy competitions, while the National Moot Court and Gale Cup Moot allows Fellows to judge the oral advocacy skills of students.

Teaching of Trial and Appellate Advocacy/ Legal Ethics: The College website contains a number of training videos and programs. As mentioned earlier, the teaching of trial and Appellate Advocacy Committee and the Legal Ethics Committee combined to create an hour video featuring vignettes of 12 Judicial Fellows and regular Fellows discussing civility. The Committee has also created a video on appellate advocacy. The Legal Ethics Committee has produced a number of videos for use in teaching ethics in real life situations in depositions and trials. These videos offer a resource for Fellows to use in CLE programs in their firms and externally.

Mentoring: The College has long focused on the need to mentor young lawyers. There is an aspect of mentoring in the training programs and trial competitions mentioned above, but the College does much more. You will find the Mentoring White Paper on the College website. There you will find a discussion of how law firms, bar associations, and judges can help mentor young lawyers. The College's Task Force on Mentoring focuses on developing two different aspects of mentoring. Led by co-chairs Past President **Jeff Leon** and former Regent **Christy Jones**, the Task Force will consider efforts to improve and enhance the College's role in the traditional approach to mentoring young non-Fellow lawyers in the development of trial skills. You can expect to hear more about this mentoring effort as the College finds

additional ways for Fellows to engage in specific projects related to mentoring.

Judicial Independence: As our mission statement says, the College “strongly” supports the independence of the judiciary. Never has that strong support been more needed than in recent years. While the College has long been vocal when judges were wrongly attacked for their decisions, the College’s response had traditionally been ad hoc from the President and Executive Committee. The attacks, both locally and nationally, have become more frequent and personal in recent years and there seems little hope that it is subsiding in the present political environment. In response, the College created a new Judicial Independence Committee to provide a mechanism for a rapid response to these attacks on judges. There are numerous examples where the College or State or Province Committees, in response to attacks on judges from both the left and right, have spoken out for judges who are restrained from defending themselves. As the judiciary may face issues such as “packing the Court” and term limits for Supreme Court justices, the College may again be faced with the challenge of if, when, and how to appropriately respond. The Judicial Independence Committee is leading the way in crafting appropriate responses.

The Judicial Independence Committee also has addressed the need for public education on fair and impartial courts through an innovative presentation the College created in collaboration with the National Association of Women Judges. Fellows **Ginny Nelson** and former Regent **Kathleen Trafford** are leading this public education project which is directed at educating adult citizens on the unique and essential role judges play in our Constitutional democracy. With the public education project launched this Fall with the completion of an

interactive Power Point presentation and related materials, Fellows can give a one-hour presentation to a local audience using a virtual platform or in-person presentation when prudent. If you are asked to participate in this program, or want to volunteer, I encourage you to do so. It is an essential College initiative that furthers our core mission.

Diversity: In its Statement on Diversity, the College states: “Consistent with its Mission Statement, the College seeks to promote the 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.” The College has made progress in its attempt to diversify the Fellowship. At the September Board of Regents’ Meeting, 35% of the nominees approved for Fellowship were diverse across these and other measures. For the combined Spring and Annual meetings of the Board, that percentage was 27%. However, the percentage of diverse Fellows for the College as a whole is only 12%. To become a “...Fellowship of exceptional trial lawyers of diverse backgrounds...” as described in our Mission Statement, we need to do more, and we are doing more. On the website, the College has posted its “Action and Implementation of The College Diversity Statement” identifying seven ways the State and Province Committees should broaden their searches for diverse candidates, and eight Implementation Recommendations to identify and implement our diversity efforts. Led by Regents **Rick Deane** and **Joe Caldwell**, the Diversity Subcommittee of the

Admission to Fellowship Committee and the diversity liaisons in our State and Province committees, we have made strides in identifying eligible diverse candidates. For at least the last 5 years, prior Presidents have focused on improving diversity among our ranks. I will continue those efforts including speaking with the Diversity Liaisons of the State and Province Committees as a group to share what works and what doesn’t in our continuing efforts. Fortunately, the College has a tremendous resource in Regents Deane and Caldwell to lead our efforts. I have been both pleased and encouraged by the way Fellows have embraced the ideals of equity and inclusion that underlie our diversity efforts. We will continue to vigorously pursue these goals.

Thurgood Marshall Award: Following the unrest following the tragic death of George Floyd, the College created a new task force on racial injustice and equality. That Task Force has now become a permanent committee with the mandate to identify and recognize individuals who have championed justice and equality in all forms.

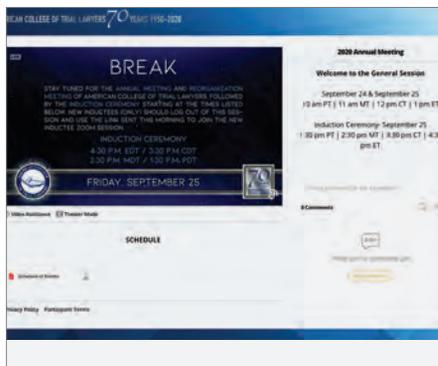
Maui In March: The Spring Meeting was scheduled for March 4-7, 2021 at the Grand Wailea Hotel in Maui. As we recently announced, the limited availability and distribution of the vaccine, and capacity limitations in Maui, the Executive has implemented a contingency plan to hold our second virtual annual Meeting.

In conclusion, the work of the College goes forward despite the pandemic. As described above, there are many opportunities for Fellow engagement. I encourage each of you to participate in the College’s efforts to further its mission. I am sure that you will find it rewarding.

Rodney Acker



The Fall 2020 Meeting of the American College of Trial Lawyers was historic. It was our 70th Annual Meeting. It was our first meeting held virtually.



We have always capped a typical Annual Meeting with a black tie banquet attended by 7-800 Fellows, spouses and guests. We fill a ballroom to fill our bellies and follow with dancing, singing, and simply hanging out with friends, new and old. We enjoy friendship and Fellowship and make plans for the next meeting. But we were forced into a new normal this year. The cap to this year's meeting was remarkably less populated and lubricated. The dance floor was significantly less crowded. But ironically, while we could not assemble in person, the virtual format apparently made it easier (and more affordable both in time and expense) to attend. A typical Annual Meeting draws 550 Fellows. We smashed that average at this meeting, with 673 Fellows registered. A typical meeting features a dais with half a dozen speakers and their presenters; the dais this year was a bit lonely. But we carried on. Our wonderful staff, led by Dennis Maggi, masked up and dragged us into the 21st century to make the production value of the meeting outstanding.

A FITTING INVOCATION

President Young asked Quebec Province Chair **Bernard Amyot** to deliver an invocation. We have always begun our meetings with an invocation and, frankly, I had never thought much about it. It was just something that we do. But Bernard delivered such meaningful and inciteful remarks that now I cannot stop thinking.

Bernard began:

We are a people of many beliefs and practices.

We come from various communities and faiths.

Ah, see, that's the rub. We expect an invocation to be a prayer. Merriam Webster informs that the primary definition of "invocation" is "the act or process of petitioning for help or support, *specifically*, a prayer of entreaty (as at the beginning of a service of worship)." But we are, as Bernard so eloquently put it, a group of many beliefs and practices. Some of us don't pray at all, and those who do may pray to different deities. So our Invocation Speaker is expected to offer a prayer, but out of respect for our diverse Fellows,

not a prayer rooted in a particular set of beliefs. It is a delicate balance, and Bernard balanced it beautifully:

Today, in a world profoundly upended, we congregate as one:

- When we stand united in the pursuit of justice and defence of democracy and the Rule of Law.
- When we advocate to protect the inherent dignity of every human being and address systemic injustice.
- When we build bridges and strive to protect minorities and nurture diversity.
- When we resolve to uphold our revered values of civility and collegiality and access to justice.

As we meet here virtually, for the first time in our 70-year history:

- May we remember the fortitude of those facing hardships who suffer in silence, and may we open our hearts and minds to them and show empathy.
- May we be reminded of the sacrifices of our healthcare workers, essential workers and first responders who care for and protect us daily.
- May we show solicitude to our leaders for their unfailing dedication to make a difference and pursue the mission of the College.
- And let us wish the very best to our new cohort of inductees and give them a warm College welcome.

Que notre rencontre annuelle soit couronnée de succès et nous donne l'occasion de renouer l'amitié qui nous unit et les valeurs qui nous rassemblent.

Long live the American College of Trial Lawyers.

Amen.

Amen, indeed Bernard. Merci beaucoup. ■

NEWLY INSTALLED OFFICERS & REGENTS

At the Annual Fall Meeting last September, President **Douglas R. Young** – now Immediate Past President – passed the Maul to **Rodney Acker**, our new President. **Michael L. O'Donnell** was elected President-Elect, and **Susan J. Harriman** became Treasurer. **William J. Murphy** was installed as Secretary of the College.



Throughout his career, our new Secretary, **William J. Murphy**, has represented witnesses and targets of grand jury investigations, defended clients investigated by the SEC and other federal enforcement agencies, and represented individuals in congressional investigations. Bill recently was part of the trial team that successfully defended Gregory Craig in a high profile federal false statements case. After a three-week trial, the jury deliberated for only three hours before returning a not guilty verdict. One of Bill's clients remarked on Bill's "calmness that exudes confidence and works exceptionally well in the courtroom." Another client observed that Bill's "ability to navigate the courtroom was well worth the price of admission." Bill was inducted as a Fellow in 2002. He served as Chair of the Maryland State Committee and, from 2014-2018 as Regent of Region 6.

Bill is a 1975 *summa cum laude* graduate of St. Joseph's University, where he was a classmate of both (Past President) Bart and Eileen Dalton. Bart and Eileen often say, when they meet someone impressive, "Smart. But not Bill Murphy smart." Bill went to the University of Pennsylvania Law School, graduating in 1978 *magna cum laude*, Order of the Coif, and Articles Editor of the Law Review. Bill clerked for Judge Collins J. Seitz on the Third Circuit Court Of Appeals and for Justice Harry Blackmun on the United States Supreme Court.

Regents **Paul Hickey**, **Dan Reidy**, and **Bob Welsh** retired after finishing their terms of office. Paul, Dan and Bob were all outstanding Regents and we will miss them, but the College will not miss a beat, because each is succeeded by an exceptional individual.



Dan S. Folluo, our new Region 4 Regent (Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming), is a partner in Rhodes Hieronymus in Oklahoma and is also licensed to practice in Arkansas and Missouri. He concentrates in civil defense cases, emphasizing products liability, transportation law, extra-contractual defense and professional liability. He also serves as an Adjunct Settlement Judge for the Tulsa County Court System. Dan grew up in Keokuk, Iowa, where he was an award winning drummer. Dan earned his Bachelors degree from Southwest Missouri State University in 1982 and a Juris Doctor from University of Tulsa College of Law in 1985. Dan is a Past President of the Oklahoma Association of Defense Counsel, Past President of the Oklahoma Chapter of the American Board of Trial Advocates, a current member of the Trucking Industry Defense Association, the Defense Research Institute, the Federation of Defense and Corporate Counsel and the Claims and Litigation Management Alliance. Inducted in 2012, Dan served as Oklahoma State Committee Vice Chair before being selected as a Regent.



Catherine M. Recker, who will represent Region 13, has nearly thirty years of experience representing individuals and corporations in criminal investigations, trials, appeals and in other government enforcement and regulatory matters. Her practice reflects a wide range of law enforcement, focusing on business crimes such as securities fraud, tax violations, political corruption, trade and embargo violations, antitrust violations, financial fraud, Food Drug and Cosmetic Act and False Claims Act violations. Katie has been named white collar criminal defense Philadelphia Lawyer of the Year by *U.S. News*. In 2018, Chief Justice John Roberts appointed Katie to serve on the Judicial Conference Advisory Committee on Criminal Rules. Inducted in 2013 (and tapped to be the Inductee Responder), Katie jumped into College activities. She chaired the College's Federal Criminal Procedure Committee and the Pennsylvania State Committee and has participated in various College activities including training programs for public interest lawyers and historical symposia on notable trials. Katie was a delegate to the College's United Kingdom - United States Legal Exchange in London in 2015 and in Philadelphia and Washington D.C. in 2016. Katie is also a Fellow of the International Academy of Trial Lawyers.



Jeffrey E. Stone, the new Regent for Region 8, concentrates his practice on white-collar criminal defense, complex commercial litigation, internal investigations and counseling to boards of directors and senior business executives. He represents corporations, boards of directors, senior executives and other individuals in a variety of complex civil litigation and criminal prosecutions involving a broad range of industries, including healthcare, manufacturing and financial services. During his 28-year tenure at McDermott, Will & Emery, Jeff served as chairman of the Firm's Management Committee, global head of McDermott's Trial Department and head of the White-Collar Criminal Defense Practice Group. Jeff has tried more than 40 cases to verdict before juries in federal and state court. He has been ranked for many years in Best Lawyers in America for complex litigation, and is consistently named as one of the Top 10 Lawyers in Chicago. He has taught trial advocacy at Harvard Law School, as an adjunct professor at Northwestern University School of Law, and at the US Attorney General's Advocacy Institute in Washington, DC. He currently serves as an Adjunct Professor at the Kellogg School of Management at Northwestern University. Jeff serves on the advisory board for the Center for Wrongful Convictions at the Pritzker School of Law; he has served as a board member of the Jewish Federation of Chicago, and as president of the Jewish Family & Community Services, a social welfare agency in Chicago. Jeff graduated from Stanford with honors and distinction in 1978 and from Harvard Law School, JD, *cum laude*, in 1983; after clerking for Chief Judge Robert F. Peckham of the US District Court in San Francisco, Jeff served as an Assistant US Attorney in Chicago for five years, concluding his tenure as deputy chief of the Criminal Receiving and Appellate Division. Jeff was inducted in 2002. He chaired the Access to Justice and Legal Services Committee and has served on half a dozen other General Committees and the Illinois State Committee. ■

CHIEF JUSTICE ROBERTS WELCOMES THE ANNUAL MEETING

Fellows were welcomed to begin the College's 70th anniversary and our first virtual Annual Meeting by **Hon. John G. Roberts, Jr.**, Chief Justice of the United States:



John Marshall by Henry Inman,
1832 - Virginia Memory, Public Domain

I am delighted to join the American College of Trial Lawyers in celebrating its seventieth anniversary of service to the bench and bar. My colleagues at the Supreme Court all recognize the crucial roles that trial attorneys play in advancing the cause of justice. It is an old saw that two lawyers can prosper in a town where one would starve. But in truth, the Nation prospers when lawyers across the country band together to promote professionalism and high standards of practice.

You have certainly picked an appropriate date to celebrate your anniversary. Two hundred and thirty-one years ago today, September 24, the Judiciary Act of 1789 brought Article III of the constitution to life by creating our federal court system. As you probably know, President Washington nominated John Jay to become our first chief justice on that same date. But you may not know that George Washington also nominated John Marshall to federal office that same day – not to serve on the Supreme Court but to be United States Attorney for the District of Virginia. The confidence George Washington expressed through the nomination must have meant a lot to John Marshall, who served under Washington in the Revolutionary War. The nomination must have been especially meaningful because that day, September 24, was Marshall's thirty-fourth birthday. But the young Marshall,

facing the difficult professional decision many of you have encountered on whether or when to enter public service, declined this commission from his former commanding officer. He chose to devote himself to private practice before the trial courts of Virginia instead. Eleven years later, when President John Adams nominated Marshall to be our fourth Chief Justice, Marshall accepted. He served 34 years in the job, and through his decisions, defined the kind of country the young United States would become.

Although September 24 is an auspicious date, this is also a challenging season for a celebration. As a consequence of the COVID pandemic, the College is conducting its first-ever virtual annual meeting. The pandemic has touched the Supreme Court, as well. We heard teleconference arguments for the first time in May and we will need to continue to adapt when our new Term begins in less than two weeks.

The trial courts have a whole different set of challenges. As my predecessor, Chief Justice William H. Rehnquist, said, "The cornerstone of the American judicial system is the trial courts... in which witnesses testify, juries deliberate, and justice is done." Conducting court proceedings in a way that protects public health while preserving vital trial functions is no easy task, and



doing so effectively depends on collaboration between bench and bar. It depends on the tradition of collegiality in our profession; a tradition the College now enters its eighth decade of fostering. The good news is that we are rising to the challenge. Judges and lawyers throughout the United States – and throughout the world – are adapting to remote work. The College celebrates the best of the trial bars in the United States and Canada. This year, we are all adding resilience to the qualities essential to excellence in our profession. And, of course, greater skill in hitting the mute button than any of us thought would be needed in our chosen field.

The missions of the College – to maintain and improve the standards of the trial practice, the administration of justice, and the ethics of the profession – have never been more important. My

colleagues and I appreciate your leadership, including in promoting the rule of law and public understanding of judicial independence. I send my well wishes to every participant in the annual meeting. And I send my thanks to the College and its members for your work and support of the administration of justice in the United States and beyond.

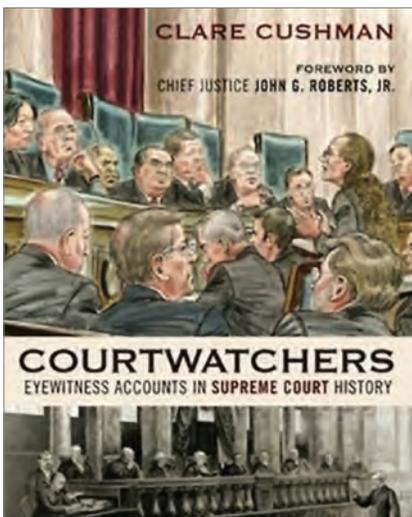
After these remarks, **President Douglas R. Young** thanked the Chief Justice and echoed his encouragement of cooperation between the bench and bar to “seek to find the right balance between protecting public health and, at the same time, ensuring that the rule of law is protected for all persons and causes.”

Stephen G. Schwarz
Rochester, NY



PLESSY v. FERGUSON AND THE EVOLUTION OF TEST CASES

The virtual *Plessy v. Ferguson* CLE program presented at the 2020 Annual Meeting was notable for several reasons. *First*, the college partnered with the Supreme Court Historical Society. The two organizations have long been allies, but this was the first time they collaborated on a joint program. *Second*, the program attracted the largest audience *ever* for a College CLE. Approximately 400 registrants - including spouses, whom we value - wanted to hear this program. *Third*, the content and presenters - one a journalist and associate editor of the *Washington Post*, two exemplary Fellows of the College, each with more than 80 arguments before the Supreme Court, and one who is the Resident Historian of the U.S. Supreme Court - were of the highest caliber.¹



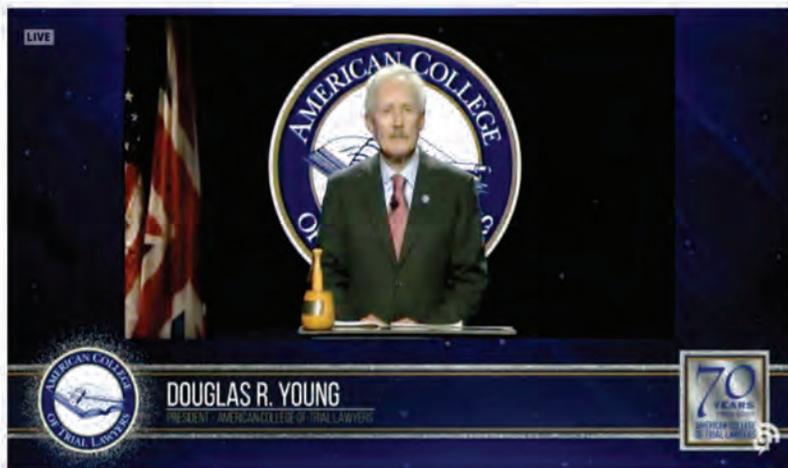
Plessy v. Ferguson and the Evolution of Test Cases placed one of the country's most famous Supreme Court decisions in the spotlight. The written materials for the program included copies of the original decisions in *Plessy* issued in 1896 and excerpts from a recent brilliant and best-selling book, "Separate: The Story of *Plessy v. Ferguson* and America's Journey from Slavery to Segregation." The author, **Steve Luxenberg**, is a well-known journalist and editor, and he was our lead-off speaker. Luxenberg's

lecture was followed by a panel on test cases that featured ACTL Fellows **Seth P. Waxman** and **Carter Phillips** and Supreme Court Resident Historian **Clare Cushman**.

STEVE LUXENBERG:

One of the important themes of Luxenberg's book is that *Plessy* was one of the first - perhaps *the* first - "test case." The case was carefully planned and orchestrated, even though he found no evidence that the justices had any idea

¹ EDITORS NOTE: "Highest caliber" probably should not be in the author's trilogy of "notables." Some are better than, or perhaps more enjoyable than others. But almost without exception, the speakers and topics at College meetings are routinely of the highest caliber.



Video Assistance Theater Mode

Steve Luxenberg Seth Waxman Carter G. Phillips Clare Cushman Order A Signet



Steve Luxenberg

Steve Luxenberg
Award Winning Author and Associate
Editor at Washington Post

STEVE LUXENBERG is an associate editor at The Washington Post and an award-winning author. During his forty years as a newspaper editor and reporter, Steve has

2020 Annual Meeting: CLE Professional Program

Plessy v. Ferguson and the Evolution of Test Cases

The American College of Trial Lawyers and the Supreme Court Historical Society are pleased to partner in presenting a program about *Plessy v. Ferguson*, the notorious 1896 Supreme Court ruling that sanctioned the idea that separate could be equal, creating a legal principle that lasted for decades. The presentation will be followed by a live panel discussion.

September 23rd

12 pm PT | 1 pm MT | 2 pm CT | 3 pm ET

Fellows from: NJ, LA, KS, IN are required to complete the quiz below for credit to be issued. In addition, the following states require that you complete the below evaluation: AR, IL, KS, KY, LA, ME, MO, OH, OR, PA, WA, WY

Post a comment or ask a question

0 Comments

that Homer Plessy’s arrest for attempting to ride in a railroad car reserved for white passengers had been deliberately planned from the beginning.

The following excerpts from Luxenberg’s remarks reveal why the College’s survey of the audience resulted in a virtually unanimous endorsement of the program:²

I’m often asked why I chose to write a book about a case that is often called one of the worst rulings in Supreme Court history. The answer comes from my background. In 2012, after 40 years of writing and editing many stories that involved race in some way as part of my journalism, I felt strongly that I did not understand the racial divide in our country. The more I read, the more I found myself going back to the nineteenth century and the historical roots of racial separation and discrimination.

Notice that I said “separation” and not “segregation.” That’s intentional. If you picked up a newspaper in the nineteenth century or if you listened to a political debate about public accommodations, separation was the word you heard. Segregation is a twentieth-century term and I’m trying to help us imagine the nineteenth century. One more point about the nineteenth century: the Supreme Court of the 1890s was a very different one from today’s court. Today, when you hear or read that the Supreme Court is about to rule in a major case, what do you immediately think? Here’s what I think: Five-four. Then I think who’s the swing vote? Will the conservative side hold sway this time or will the liberals win someone over? Not in the 1890s. How many five-four decisions did the Court have during an average term in the 1890s? The answer? In some years, zero. That’s right; no five-four rulings at all. In the 1890s, ▶

2 In the interest of the space/time continuum, the excerpts have been lightly abridged or paraphrased, without altering substance.

ninety percent – that’s right, ninety percent – of the Court’s rulings were unanimous. There were many reasons for this; the cases weren’t as diverse, and neither were the justices. There were nine white men, all from the same class. If you were a lawyer in that era asking the justices to reverse their direction in the new legal arena of civil rights, you had a very steep hill to climb.

Almost all lawyers are familiar with *Plessy* as the ‘separate but equal’ case, but I’ve met quite a few lawyers who know nothing about the circumstances that gave rise to the case. That’s because the typical law school curriculum teaches the ruling but not the fascinating story behind it. Reading a Supreme Court decision is rarely a good way to learn about the case or the people who brought it; that’s just the nature of the beast. As far as I can learn though, the justices in *Plessy* had no idea that Homer Plessy’s arrest was arranged. They didn’t know that the railroad, which wanted to determine its potential liability for segregated passenger cars, was a silent partner in the plan. They didn’t know that the *Plessy* legal team had concocted a meticulous legal strategy to create the best conditions for the arguments that the lawyers wanted to make. Neither the majority in the seven-to-one ruling, nor the long dissent from Justice John Marshall Harlan of Kentucky make any mention of an arranged arrest. In fact, there’s no mention of Homer Plessy’s name at all in the opinions, except in the title of the case. I doubt it would have made any difference if the justices had known, but I think it’s one reason why the case is so misunderstood by so many people today. Homer Plessy was not a lone actor manhandled on a train; he was part of a resistance with an entire committee behind him. His role was more or less over as soon as his bail was posted.

There were plenty of people of color in the nineteenth century who did their level best to fight the injustices of their time. They were resisters to discrimination and separation. It wasn’t easy; their resistance often took place in the face of intimidation and violence. That

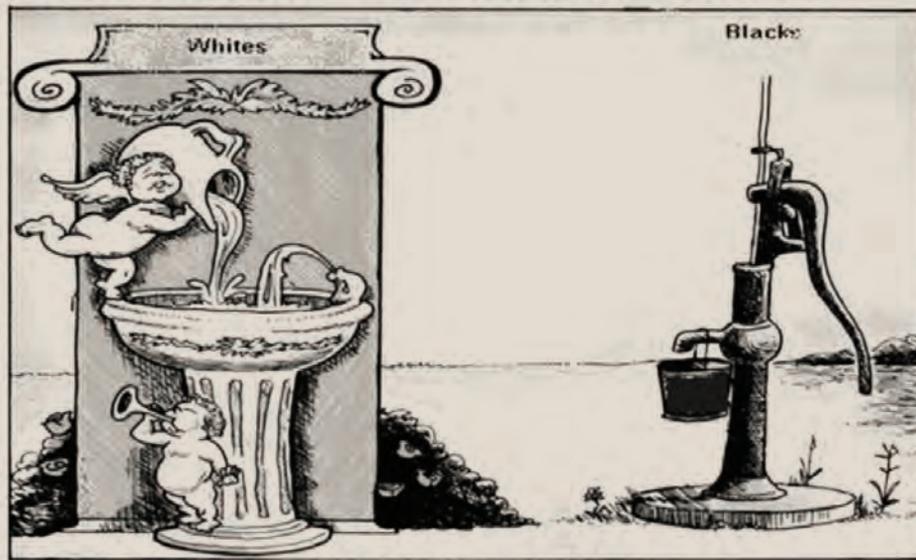
is the message underscoring this talk. Their resistance began not in the south, as is commonly thought, but in the north where there were free Blacks. Some of the Black passengers resisted. Frederick Douglass was one of them. In 1841, he was in his early twenties. He had recently escaped from slavery in Maryland and he was the newest agent of the Massachusetts Anti-Slavery Society, better known to us as the Abolitionists.

There was another Abolitionist riding the trains; a New Yorker named David Ruggles. He was visiting Massachusetts and in 1841, he was ejected from a train. He was slightly built and, at the age of 33, he was going blind from early cataracts. His resistance took a different form; he did something that Frederick Douglass had not. Ruggles marched into the New Bedford courthouse and swore out an assault complaint against the conductor and crew of the New Bedford and Taunton Railroad. Ruggles lost at trial. The judge in New Bedford’s police court dismissed the charges, ruling that the railroad had the power to make reasonable rules about how it treated its passengers. But sometimes, history is made in losing. Ruggles established a different sort of precedent: He was the first Black passenger to choose the law as his weapon. Others followed, both before and after the Civil War. Those resisters stood on Ruggles’ shoulders. Some won, most lost, but each generation produced new resisters who kept trying to push back against discrimination.

For most of the nineteenth century, separation was a matter of policy or custom, not law. That changed in the 1880s when several southern states adopted various laws that mandated separation by race on passenger railroads. Louisiana joined this parade in 1890, setting the stage for the *Plessy* case. Louisiana had done something unprecedented. It had criminalized the simple fact of riding in the wrong car on a railroad train.

The white newspapers applauded the law, but one newspaper, *The Crusader*, did not. The

PLESSY VS. FERGUSON



**SEPARATE
BUT NOT EQUAL**

editor made a promise. He wrote: “We will make a case, a test case, and bring it before the federal courts. No such case has ever been fairly made or presented.” His choice of words was striking. ‘A test case,’ as if everyone knew what that was.

The lawyers for Homer Plessy set out to fulfill *The Crusader’s* promise. They lined up the East Louisiana Railroad, which operated only within the state of Louisiana, as the host for the arrest. The lawyers hired a private detective to ride the train and wait for the conductor’s signal. Plessy, who was light-skinned enough to pass for white, became the volunteer. Plessy bought a ticket for a Louisiana destination and on June 7th, 1892, he was arrested for sitting in the wrong car.

Plessy’s lawyers threw a kitchen sink of arguments at the justices, primarily based on the Thirteenth and Fourteenth Amendments. The Thirteenth Amendment abolished slavery but it also prohibited “involuntary servitude.” Plessy’s lawyers argued that sending Black passengers to a separate railroad car was a form

of servitude since separation marked the Black passenger as inferior. The Louisiana Separate Car Act thus was a clear violation of the Constitution. The amendment said the states could not deprive its citizens of equal protection and due process, but the Separate Car Act gave the conductor extraordinary powers to separate passengers and to determine their race without taking any testimony, and without gathering any evidence. Since the Louisiana law offered no definition for white or Black, how was the conductor to make such a snap judgment, consistent with due process?

The majority opinion was written by Justice Henry Billings Brown, one of seven northerners on the court. He rejected all of Plessy’s arguments and based his ruling entirely on states’ rights. According to Brown and the six justices who joined him, Louisiana had the authority under its police powers to separate its passengers to keep peace and order at all times. The Act, said Brown, applied equally to both races; equal but separate.



Plessy was a notable test case for several reasons. Resistance had led to arrests before; that wasn't new. Previous resisters had taken aim at policies that required separation; that wasn't new either. But *Plessy* was one of the first cases, perhaps the first case, in which the legal strategy was developed long before the arrest, rather than after the confrontation. "*Plessy* was a terrible ruling, in my opinion, but it's worth our attention as a pioneering case in civil rights law."

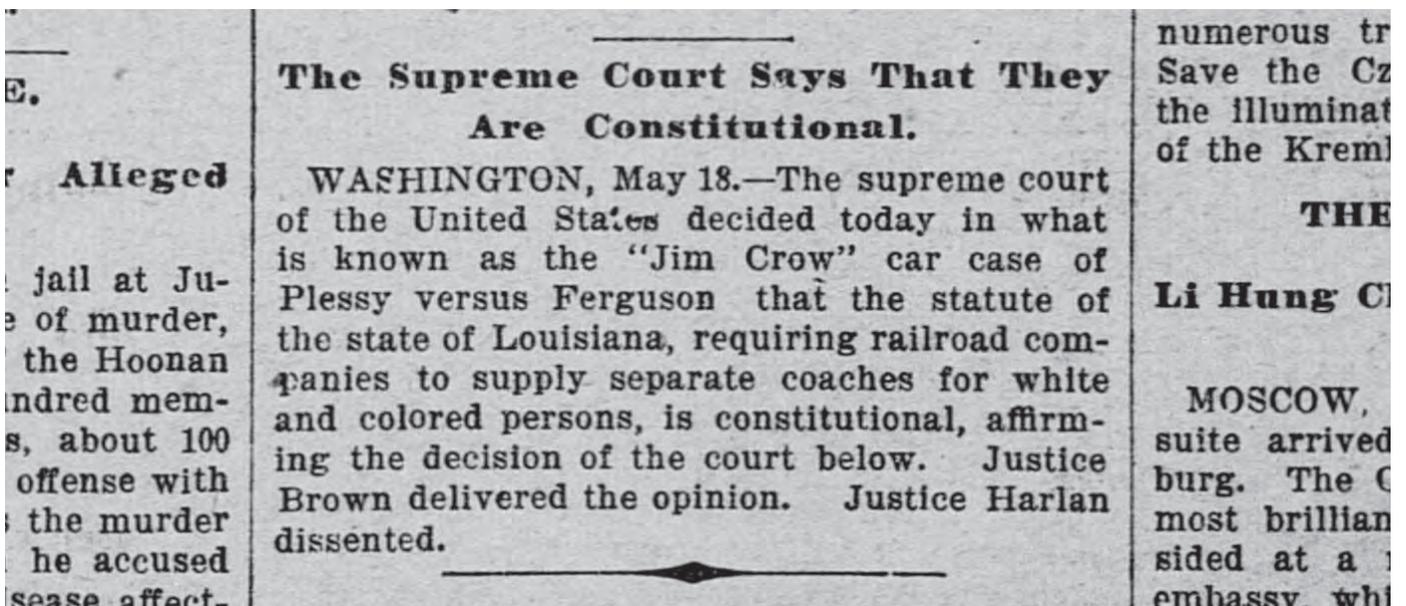
THE PANEL DISCUSSION

The discussion then fast-forwarded from the 1890s to the twenty-first century. Clare Cushman, the Resident Historian of the Supreme Court, moderated a panel of Luxenberg and Fellows Carter Phillips and former Solicitor-General of the United States, Seth Waxman,¹ in a lively discourse about test cases in the modern era.

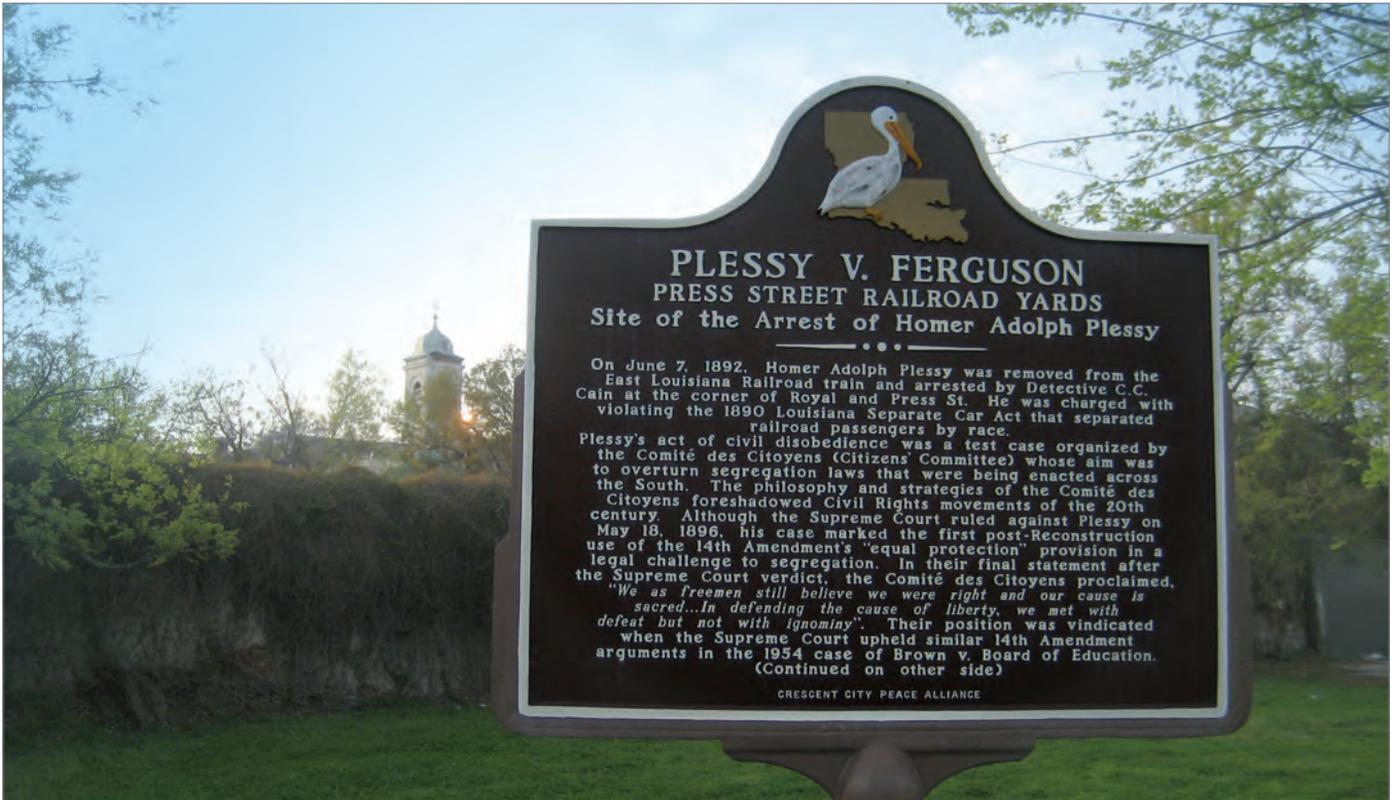
Carter Phillips described a test case he himself had searched for: a case that would determine whether there is a fundamental right of access to literacy as a core element of the Due Process Clause of the Fourteenth Amendment. The applicable Supreme Court precedents were murky and even conflicting on the point. Culprit found: Detroit, where the shortcomings of public schools included deplorable physical facilities (next to no heating and cooling); no

requirement of teacher certification; and classes taught – sometimes by fellow students – with too few and almost always outdated books.

Two elements of the case made it an interesting litigation choice. First, the Michigan Supreme Court had already held that the right to education in the Michigan Constitution was not enforceable by private actions. Second, the state of Michigan had taken over the Detroit school system some 10 years before and had done so purely for budgetary reasons, *i.e.*, to reduce expenditures. The slashed budgets prevented any improvement in the system's inadequacies and, indeed, things got worse. The lawyers filed a 125-page complaint in the Eastern District of Michigan, naming the Governor of Michigan, the school board in Michigan, and a variety of other state administrators who were responsible for the serious deficiencies in Detroit. First, they argued that a fundamental right to access to literacy is embedded in the Due Process Clause; literacy is part of the fundamental roots of liberty, as shown by the fact that in 1867, when the Fourteenth Amendment was adopted, a supermajority of the states had included a fundamental right to education in the state's constitutions. Second, the advocates argued that if you cannot read, you cannot exercise your First Amendment rights of freedom of speech and religion. Even the right to vote becomes meaningless.



³ Both Phillips and Waxman are, fittingly, members of the Supreme Court Historical Society as well.



Carter described the ultimate success of his test case in the Sixth Circuit, which ruled two to one that there is a fundamental right of access to literacy. The case was then settled with the governor of Michigan before it could reach the Supreme Court.

Seth Waxman, the forty-first U.S. Solicitor General, appointed by President Clinton in 1997, outlined the role of the Solicitor General in carefully positioning test cases before the Supreme Court to advance the progress of law. He pointed out that the Solicitor General plays several roles in test case litigation:

First, the Solicitor General is a superintendent. As the officer responsible not only for the country's interest in the Supreme Court, but for all courts, the Solicitor General "is essentially the indispensable test case litigant." Given that at any point of time, the United States is a party in over 100,000 cases, there is an ability to preserve or to change the law, both by pursuing a well-thought-out strategy in the lower courts and also in the Supreme Court.

Second, the Solicitor General is the defender against test cases brought by others against the United States or its agencies.

Third, the Solicitor General advises the Supreme Court as to which of the many cases that request review are best suited to test an important legal principle.

Fourth, the Solicitor General is the only person who can file amicus briefs as of right in the Supreme Court, including amicus briefs in private cases at the petition stage.

If this necessarily short summary makes you wish you had registered for the CLE, you have two alternatives:

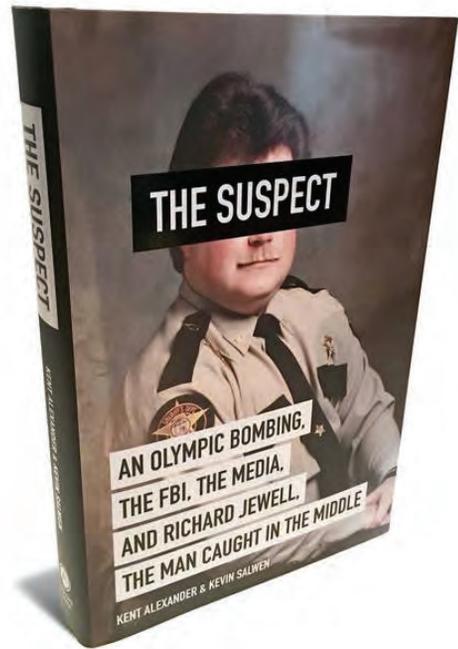
- a) You can still register for the entire College program, which includes the CLE program. That way you can watch the all of the presentations, including our CLE. The links for ordering Luxenberg's book are right there as part of the package.
- b) You can order Steve Luxenberg's book "Separation," from the Supreme Court Historical Society Giftshop, at <https://supremecourtgifts.org/>.

We encourage you to do both.

Chilton Davis Varner
Atlanta, GA



THE SUSPECT



In the summer of 1996, at the dawn of the age of terror, when the 24-hour news cycle and the race to deliver immediate news were spooling up, the world gathered to celebrate Olympic values in Atlanta. In the middle of the celebration, in Centennial Park, a crowded music and gathering venue central to the games, a 40-pound bomb, laced with nails and hidden in a backpack, exploded. Two people were killed and more than one hundred grievously wounded. Many more people would have been killed but for the prompt action of an alert security guard who sounded the alarm when he noticed the suspicious backpack. His name was Richard Jewell.

Jewell was an unassuming hero, immediately feted by the media, even appearing on the *Today* show with Katie Couric. However, three days after the blast, based on a leak from a law enforcement source, a dogged crime reporter for the *Atlanta Journal-Constitution* authored a story identifying him as the FBI's chief suspect. Jewell went from hero to “hero bomber,” changing the narrative into a telegenic but twisted one about an unprepossessing “wannabe” cop seeking recognition and status. Hundreds of reporters staked out Jewell’s home for three months, making his life a nightmare. Meanwhile, the actual bomber went on to plant additional explosive devices, killing three more people, and was not brought to justice until his arrest seven years later. It added up to a double injustice—a good man vilified and a terror bomber on the loose.

This tragedy was the topic of the virtual Special Event convened on September 10, 2020 (on the eve of the College’s remote 2020 Annual Meeting) during which **Kent Alexander**, the author of *The Suspect: An Olympic Bombing, the FBI, the Media and Richard Jewell, the Man Caught in the Middle*, participated in a Q&A with **Fellow Sally Q. Yates**. As federal prosecutors in Atlanta, Kent and Sally had each acted in different ways to bring justice to a double injustice.

The principal players in the story could have played themselves in the movie and indeed, there was a movie produced by Clint Eastwood, *Richard Jewell*. The reporter, Kathy Scruggs, was a driven, profane, hard drinking and, when needed, flirtatious crime reporter who broke the story that Jewell was the prime suspect. Richard Jewell had held and lost law enforcement jobs but built his life around cop culture and paraphernalia. That summer he was a hyper-alert security guard at the site hoping to find a job as a police officer after having lost several others. FBI agent Don Johnson was an equally driven law enforcement officer with his own somewhat checkered past. And then there was Eric Rudolf, a fanatical anti-government, anti-abortion and anti-gay terrorist, the actual bomber, and as it turned out, a serial bomber. ▶



Alexander said his book was “about law enforcement misconduct caught on videotape, about profiling, about how some in the media, at the dawn of the internet age, began to value speed over accuracy and about the human toll of a rush to judgment.”

Alexander first criticized the FBI’s handling of a video-taped interview of Jewell, during the middle of which FBI director Louis Freeh decided that the agents had to give him Miranda warnings. As a result, Jewell asked to speak to his lawyer, terminating the interview, and likely adding to the FBI’s suspicions.

Alexander said the profile developed by the FBI’s Behavioral Science Unit, known colloquially as the “Silence of the Lambs Unit,” so-called after the movie of same name, drove the entire investigation. The profile seemed to map perfectly to Jewell. It described a man “suffering an inadequate personality” and someone who “required the trappings of a law enforcement officer to command respect.” Investigative tunnel vision and confirmation bias were at work.

But it was the context, the dawn of electronic media that galvanized the case. It was the same year that Fox News went on the air. The same year *The New York Times*, the *Wall Street Journal*, the *Chicago Tribune* and other newspapers went online for the first time. There were 15,000 accredited journalists covering the games and the *Atlanta Journal-Constitution* assigned 300 reporters, drawn from its affiliates across the country. Alexander called it “a setting for a story to ricochet around the world, to go viral before there was such a thing as a viral news story. It was effectively social media before social media.”

Alexander described his experience writing the book and his sources of inspiration. He said he aimed for what he called “narrative fiction” in the manner of Truman Capote’s *In Cold Blood* or Erik Larson’s *The Devil in the White City*, which he characterized as “basically telling a story like it’s a novel, have it character-driven, all true.” Like Capote and Larsen, Alexander relied on original interviews, contemporaneous written narratives, videotapes and his own notes and memos. Accordingly, his narrative

unfolded through the lenses of the participants’ points of view.

Alexander described working with Clint Eastwood, who hired him as a consultant on the movie, a movie Alexander described as “the good, the bad and the ugly.” Alexander was invited to the first lead cast meeting, where he met the lead actors and Eastwood. Admittedly starstruck, Alexander socialized with the cast and was invited to walk the red carpet with the stars at the movie’s premier. He said the experience “turned into not just good stuff but pinch me stuff and it kept going!”

The movie, titled “Richard Jewell,” is terrific, he said, except for taking the license to depict Kathy Scruggs sleeping with an FBI agent in order to get her story. Alexander said there was no evidence to support that narrative.

There is a coda to the story—Jewell pressed legal claims and reached financial settlements with various media outlets. He went on the marry and accomplish his life goal of serving as a police officer, only to die young of natural causes. Kathy Scruggs continued to

work in her chosen profession only to die young. Eric Rudolf went underground but not before two more bombings, killing three more people, including a police officer.

Alexander and Yates each played parts in rectifying the injustice suffered by Jewell. As United States Attorney in Atlanta at the time of the bombing, Alexander took an extraordinary step to determine Jewell's status when it became clear that the investigation was going in the wrong direction. Working with Jewell's defense team, and after further investigation and interviews of Jewell, Alexander issued a "non-target letter" not long after the bombing, removing Jewell from the "suspect" category and so removing the cloud over his life.

For her part, Sally Yates remained in the United States Attorney's Office in Atlanta and coordinated the investigation of the actual bomber. Rudolf moved about in the mountains in the years following the Atlanta bombing, living by stealing food and raiding trash bins and remaining completely off the grid. He was identified as a suspect in 1998 but was only captured in 2004. Ironically, he was apprehended by a conscientious and attentive local police officer in North Carolina who was much like Richard Jewell in that regard and who observed Rudolf lingering near a dumpster behind several stores in the middle of the night. For her part, Yates and the team of lawyers and agents assigned to prosecute Rudolf agreed to take the death penalty off the table in return for guilty pleas and Rudolf's participation in locating the substantial quantities of dangerously unstable explosives that he stored in various locations. He is presently serving multiple life sentences in the federal "super max" prison in Colorado.

Alexander ended his comments with an excerpt from the epilogue of his book:

Today, more than two decades have passed since the Centennial Park bombing. Perhaps revisiting the tale of Richard Jewell will encourage the current media to pause longer and presume innocence before rushing to suggest guilt. Perhaps law enforcement will use the Jewell case as a rallying cry to treat leaks of individual names as criminal acts....And perhaps all of us in the news-consuming public will reconsider our expectation of immediacy and ponder the benefits of returning to an era when accuracy is prized over speed. In the end, of course, the presumed innocent could be guilty. The named suspect might even turn out to be a hero.

Robert E. Welsh
Philadelphia, PA

The image is a composite graphic with a dark blue background. On the left, there is a video call window showing a man in a suit and tie, identified as Kent Alexander. To the right of the video window is a newspaper clipping from 'The Atlanta Journal' dated August 11, 1996. The headline of the clipping reads 'The 1996 Olympics It's Atlanta! City explodes in thrill of victory'. Below the headline, there is a photograph of a large crowd and a quote: 'We finally won something!' followed by a signature. At the bottom left of the graphic is the logo for the American College of Trial Lawyers, which includes the text 'AMERICAN COLLEGE OF TRIAL LAWYERS' and '70 YEARS 1950-2020'. At the bottom center, the name 'KENT ALEXANDER' is displayed in large white letters, with 'AUTHOR AND FORMER U.S. ATTORNEY' in smaller text below it. At the bottom right, there is a small logo for the American College of Trial Lawyers celebrating 70 years.

PANEL OF SUPREME COURT JUSTICES





Regent **Joe R. Caldwell Jr.** had the opportunity to spend the better part of two weeks with **The Rt. Hon Lady Arden** of Heswall DBE, a member of the Supreme Court of the United Kingdom, and **Hon. Stephen Breyer**, a member of the Supreme Court of the United States, when he was a participant in the College's United Kingdom-United States Legal Exchange in 2015-16. At the 2020 Annual Meeting, Joe, Lady Arden and Justice Breyer were joined by Chief Justice of Canada, **The Rt. Hon. Richard Wagner PC**, to share views on topics ranging from judicial independence and the rule of law to the effects of COVID-19 on the judiciary.

The three Justices are, of course, all Honorary Fellows of the College. Lady Arden is the author of the homage to Justice Ruth Bader Ginsberg that appears at page 99 of this Issue, and there is a longer recount of her remarkable resume there, but her judicial career began in 1993 when she was appointed to the High Court of Justice of England and Wales as the first woman judge assigned to the Chancery Division. She served on the Court of Appeal of England and Wales from 2000 to 2018 and became a Justice of the Supreme Court in 2018.

Chief Justice Wagner was born in Montreal and earned a bachelor's and a law degree from the University of Ottawa. He was called to the Quebec Bar in 1980 and practiced law until being appointed to the Quebec Superior Court in 2004. He was appointed to the Quebec Court of Appeal in 2011. In 2012, he was named to the Supreme Court of Canada and became its Chief Justice in 2017.

Justice Breyer was born in San Francisco, and graduated from Stanford University, Oxford University, and Harvard Law School. He clerked for Justice Arthur Goldberg, spent two years at the Department of Justice, and taught at Harvard Law School. He returned to Washington as an Assistant Special Prosecutor in the Watergate investigation and served as Chief Counsel of the Senate Judiciary Committee. In 1980, he was appointed to the U.S. Court of Appeals for the First Circuit. In 1994, President Bill Clinton appointed Justice Breyer to the Supreme Court of the United States. ▶

COVID-19

As his first question to the panel, Joe asked how COVID-19 has affected the operations of the courts in their respective countries. Chief Justice Wagner recounted that Canadian courts were closed, all hearings were cancelled, and judges and staff were directed to work from home on laptops. The Chief Justice appointed an action committee with the Attorney General of Canada and Minister of Justice to work together to solve emergency problems for citizens and the legal system. The Supreme Court cancelled hearings through June, when the Court began hearings via Zoom with judges and lawyers largely at home. Judgments were issued rapidly and efficiently.

Justice Breyer agreed with Chief Justice Wagner that the biggest judicial problems are in the trial courts, particularly in how to handle jury trials. The U.S. Supreme Court now conducts oral proceedings by telephone. The lawyers present arguments and each of the Justices asks questions in turn, perhaps in one or two rounds, as necessary. Following oral arguments, the Justices all join a conference call by telephone where each Justice speaks in order of seniority. After the conference, each Justice meets with his or her respective law clerks by telephone, online or Zoom to discuss and to advance the drafting of opinions. Justice Breyer noted that telephone and video conferences tend to permit less interchange amongst the Justices, which constrains the enjoyment,

but they do require that the Justices listen even more carefully than usual.

Lady Arden noted that collegiality is very important to their operations, but indicated that the UK Supreme Court had had a somewhat happier experience by moving directly into WebEx hearings. There each Justice and each lawyer was at home during arguments. It permitted more interchange amongst Justices and counsel with very little difference from the usual oral hearings, apart from the fact that lawyers could not exchange notes with each other as they typically might. She explained that the UK Supreme Court Justices are also the permanent members of the Judicial Committee of the Privy Council, which spends about 40 percent of its time hearing appeals from commonwealth countries. Many of those, she noted, were on video, as litigants were not brought from, for example, Trinidad and Tobago or St. Helena in order to have a hearing. So her Court was accustomed to it as it already provided this electronic service, making it one of the leading Supreme Courts within Europe to do that. While there may be some in-person hearings, those will certainly comply with social distancing requirements.

JUDICIAL INDEPENDENCE

Joe turned to the topic of judicial independence. Lady Arden responded that it is key. It is essential to the operation of the rule of law; the rule of law is essential to the operation of





a democratic society; and it is essential to the ordering of our society. In the UK, judicial independence was originally secured by the Act of Union of 1707. She noted: “I don’t think judicial independence is eroding. . . I don’t detect any such public lack of confidence in the judges.” She explained that direct efforts have been made to increase respect through more outreach by the Court at all levels, through schools, universities, and the public by inviting people into the building, getting them to attend hearings, and by trying to use simpler language for judgments, explaining judgments in five-minute summaries when they’re handed down and in other ways to maintain trust, including television in the courtroom.

Chief Justice Wagner echoed Lady Arden. Judicial independence is fundamental to Canadian democracy, a part of Canadian DNA. It’s a concept that must be worked on, protected and supported every day. He offered: “We should never forget that the first sign of tyranny or dictatorship is when the politics of elected officials attack lawyers, judges, and the media. This is the first sign of a dictatorship so we have to be very careful, we have to protect judicial independence, but we have to work on that every day.”

Joe asked Justice Breyer about a story Justice Breyer the Justice wrote about President Teddy Roosevelt, when the President disagreed with an opinion written by Justice Oliver Wendell Holmes. Whom Roosevelt had appointed. President Roosevelt said, “Out of a banana I could have carved a firmer backbone.” Joe asked Justice Breyer how he reacted to the

notion that federal judges in the United States are sometimes referred to as “Obama judges” or “Trump judges.”

Justice Breyer said that his experience is that politics plays a major role in the *appointment* of judges; but once appointed, they do not act like politicians. Political parties might want someone whose true judicial philosophy is closer to what they think will be a philosophy that favors them; but as Justice Breyer describes, judges are “deciding it because they think it’s right and if it doesn’t favor the political party that appointed them, as it didn’t in the case of Holmes, as it doesn’t in instance after instance, that’s just too bad because if you want to be a politician, go into politics; don’t be a judge.” Judicial independence, he said, is an important but complicated treasure that has to be explained to the public and the media so that they will not simply conclude that the judge at issue has an interest in the outcome. Thus far, judicial independence has not eroded, but it is a delicate issue.

UNANIMOUS OR DIVIDED OPINIONS

Asked the value of unanimous versus divided decisions, Justice Breyer described it as a very debatable question with virtues and vices on both sides. In Europe, he noted, decisions are often unanimous, as the courts may insist on unanimity. Unanimous decisions are viewed there as the whole court speaking, which prompts people to view the decision as definitive law. The opposite view is that it is better to have dissenting and concurring decisions because people are unlikely to believe that judges agree generally on every controversial issue any way, so disagreements should be expressed. ▶

Even getting five Justices to agree takes considerable compromise, but the public needs to know what the Court says more so than a single Justice. He added: “And then as far as the other four . . . , I don’t think it hurts for people to know that not everybody agrees about every issue. We are unanimous close to half the time. The five-four [decisions], by the way, are about 15 percent, 20 percent, sometimes 25 percent, and not always the same five and the same four. Last year, I think there were about 20, or the year before, and about 12 of them were not the, quote, “normal suspects” and about eight were. Every time one of the 12 decisions comes out and they say [it’s] an unusual pattern, the press. Well, how can it be unusual? It’s the majority. But regardless, do you see the point? There’s a problem. Your questions are getting at a problem, it’s a big problem in a country where people lose faith in politics and in government and in courts, and so given its importance, let’s help.”

Chief Justice Wagner agreed. “I don’t believe [unanimity] is something to be pursued at all costs. . . . [W]e are nine people . . . coming from nine sometimes different provinces, different languages, different backgrounds, a difference in training, and different legal traditions, civil law in the province of Quebec and common law in the rest of the country. We should not expect nine people to be in agreement on all legal issues every time; it’s not possible. And I would be very suspicious if nine people would always agree on everything of the court.” Regarding dissenting opinions, he added, “I think dissents, well drafted, well-reasoned, have a place in Canada, in our traditions. And it could help to show to the people that their arguments were at least considered, well considered even though they will not succeed, so I think that it’s a good thing that we have dissenting opinions.”

Lady Arden cited an additional benefit of dissenting opinions. Once they are drafted and circulated internally before publishing, they often influence the drafter of the majority opinion to adjust their draft to take into account the dissent, either favorably or unfavorably. That refinement is a benefit to the drafting process.

When asked what advice the Justices might offer to litigants appearing before them, Chief Justice Wagner cautioned litigants not to read their arguments to the Court, but rather to have a conversation with the Justices, with an ability to answer questions. Lady Arden urged litigants not to focus on detail or minutia, while Justice Breyer stressed that advocates must be able to defend their weakest point to avoid otherwise converting a winning case into a disappointing loss.

THE DECISION-MAKING PROCESS

Justice Breyer explained that, in the U.S. Supreme Court, the Justices read the briefs, discuss them usually with their clerks, perhaps make a visit to another Justice, followed by oral argument and a conference among the Justices. At that conference, each Justice has black notebooks for each case. The Chief Justice indicates the case to be discussed, the issue presented in that case, and his preliminary thoughts about the case. He invites comment from the most senior Associate Justice, and then to the next most senior, and so on. All Justices write down the views of each speaker. No one speaks twice until all have spoken once. Then comes a back-and-forth discussion that often builds on what a prior speaker has said, perhaps leading to greater agreement. The Justices then reach a tentative conclusion about the case. If the Chief Justice is in the majority, he assigns the opinion to a Justice to write. That assignment is in accordance with the tradition that every Justice writes one opinion before anyone writes two, and everyone writes two before anyone writes three, generally speaking. If assigned to Justice Breyer, he has his law clerks prepare a lengthy memo or draft. Justice Breyer then gives his law clerk his own draft, which will be revised in chambers until it is circulated to other chambers. Other Justices may send a note saying they join in the draft or have suggestions which may prompt the drafter to revise the original draft, or they draft a concurrence or a dissent. Once five Justices agree in a majority opinion, the opinion is issued.

The process at the UK Supreme Court is very similar. UK Justices have a conference imme-

diately after hearing oral arguments, where Justices express their views. They differ from the U.S. in that the most junior Justice offers comments first.

Chief Justice Wagner noted some differences in Canada. Their Justices meet before the oral argument to exchange thoughts and ideas, followed by a meeting immediately after the hearing, where every issue is discussed under the direction of the Chief Justice until a consensus or majority is reached. At the end of their two-week argument session, the Chief Justice assigns the majority author who drafts and circulates an opinion; and after majority reasons are circulated, dissenting opinions, if any, are circulated. Canadian Justices prefer to avoid concurring opinions, when possible, and the resulting confusion the multiple opinions may generate.

THE FUTURE

Joe asked the panel to look to the future of their respective Courts and to express any hopes or fears.

Chief Justice Wagner hoped that the pandemic would end soon, but also hoped that the judiciary could draw lessons from it about how to use technology to deliver justice in more efficient ways in the future. Further, the Supreme Court of Canada “will continue to deliver justice as best as we can and in so far as I’m concerned, the Supreme Court of Canada will try to continue communicating with the citizens of this country, which I think is very important to keep and maintain the faith and the trust of the citizens in this institution, which is the judiciary, and more particularly, the Supreme Court of Canada.”

Lady Arden had no fears, but two points. First, she said she believes that the UK Supreme Court now has a greater profile among the public than its predecessor, the Appellate Committee of the House of Lords. “And my main wish is that there should be respect from the public [that

is] earned [through] transparency of procedures and access to the court [and] accessibility of language.” She encouraged the Court to engage in outreach, like the booklet that she and a colleague produced last year describing the work of the Court in its ten-year existence, which has become a virtual best-seller. Second, recognizing that law is a global matter these days, she encouraged judges to continue dialogue with other judges to keep up with issues and occurrences in their courts. On that note, she thanked the College for this panel discussion and its general support for judicial dialogue.

Justice Breyer offered that it has been beneficial to a country of 330 million people of every race, religion and point of view that people have stayed together and turned to the rule of law and the courts for resolution of disagreements. He hopes that practice will continue, but fears that it may not, as distrust of institutions rises. “And the only thing to do it is to teach them when they’re in high school, when they’re in college that this is their government and they have to participate in it and this is what it’s like. Absolutely corny; absolutely true. But if it’s so obviously true, why aren’t we doing it? . . . I hope that we do teach my grandchildren and the other grandchildren these obvious things in the hope that they take it in. And then we have what I’m hoping for, which is a continuation of trust in the rule of law.”

CONCLUSION

With this distinguished panel, we could have gone on forever. But Joe announced that the proverbial podium red light had come on indicating that time had expired. Thanking the panel, Joe recounted the words of Justice Jackson: “We are not final because we’re infallible. We are infallible because we are final.” To the panel, and to the College, we are now final.

Joe R. Caldwell, Jr.
Washington, D.C.



2020 GUMPERT AWARD - TULANE LAW SCHOOL WOMEN'S PRISON PROJECT

Becki Kondkar and Katherine Mattes, Co-Founders of the Women's Prison Project, accepted the 2020 Emil Gumpert Award at the Fall Annual Meeting.





The Emil Gumpert award is the highest honor the College confers. Funded by the Foundation, the annual \$100,000 award is made to a single organization whose principal purpose is to maintain and improve the administration of justice. Starting with a group of forty-two applicants, the Gumpert Committee winnowed the field and made site visits to three finalists before making the final recommendation. The 2020 applicants were strong and impressive in many respects, consisting of legal service organizations and law schools providing legal representation to individuals and families with diverse needs. Each of the eventual three finalists for this year's award would have been a very deserving recipient, but the Tulane Law School Women's Prison Project rose to the top to become the 2020 Emil Gumpert Award recipient.

Tulane's innovative Project is the first of its kind across the United States and Canada. The Project is a collaboration between Tulane's Domestic Violence Clinic and its Criminal Justice Clinic. Its focus is on providing legal representation and assistance to women imprisoned either for killing an abuser or for committing crimes under an abuser's coercion or duress. In Louisiana alone, there are over one hundred and forty women who have been imprisoned for life because of crimes committed by them against their human trafficking or domestic violence abusers.

The College's \$100,000 grant will be used by the Women's Prison Project to establish an inaugural Access to Justice Fellow. The Fellow will spend eighteen months dedicated to enhancing meaningful access to justice for these imprisoned women, expanding the current reach of the Women's Prison Project in several important ways. The Fellow will create a model how-to program, a practice manual, a training module, and a social science resource of materials and forms that are being used by these women who either represent themselves, are represented by pro bono counsel, or by inmate-counsel substitutes otherwise known as jailhouse lawyers. It is crucial that these women have access to these most important legal materials and forms. All of the Fellow's work will be organized and assembled in a way that it can be easily replicated for use in other jurisdictions.

The Women's Prison Project Fellow is working in conjunction with the American Bar Association's Commission on Domestic and Sexual Violence in the following ways: disseminating and encouraging replication on a state-by-state basis of the Project's materials; creating a national publication ▶

and a webinar pertaining to these issues; and presenting at national conferences where much needed pro bono representation of these incarcerated women is being promoted. Although there are various published materials currently centered on assisting male prisoners, their outside counsel, and their jailhouse lawyers in regard to post-conviction defenses and remedies, there are no publications and materials focusing on issues particularly applicable to these women prisoners who are being helped significantly by Tulane's Project. Through the Emil Gumpert Award, the College has become an important partner with the Women's Prison Project as it works daily to provide meaningful access to justice for those often-forgotten imprisoned women serving long or life sentences for acts committed many years before the battered women syndrome was legally recognized as a viable defense. As the Project's website very appropriately says: "Telling untold stories."

Tulane Law School's Domestic Violence Clinic Director, Professor Becki Kondkar, and its Criminal Justice Clinic Director, Professor Katherine Mattes, jointly accepted the Award on behalf of the Project, which they co-founded. Professors Kondkar and Mattes have impressive individual resumes and are locally and nationally regarded as leaders in enhancing access to justice rights for imprisoned women and others.

Professor Kondkar joined the Tulane Law School faculty in 2006. Before that, she worked with a private firm litigating cases on behalf of victims of domestic violence and child abuse in a nation-wide practice. Professor Mattes joined the Tulane Law School faculty in 2002. She previously worked as a deputy public defender in San Diego, a staff attorney at the Innocence Project New Orleans, and assistant special counsel for the Judiciary Commission of Louisiana.

Professor Kondkar delivered the acceptance remarks: "On behalf of Tulane Law School and the Women's Prison Project, Professor Mattes and I would like to express our enormous gratitude to the American College of Trial Lawyers, its Foundation, and the Emil Gumpert Award Committee members who took time out of their busy schedules to come and learn about what we do. Thank you for believing in the mission of our Women's Prison Project and for the generous funding that accompanies it. This funding will help us dramatically expand the reach and vision of our Project."

The circumstances of the Project's clients, related by Professor Kondkar, are compelling: "Sandra, forty-nine years old, had spent twenty-five years in prison for killing her abusive ex-boyfriend when he kicked down the door to her home and strangled her. She, like most of our clients, was

represented by an attorney with no expertise in domestic violence. Sandra was convicted and sentenced to life without the possibility of parole by one of Louisiana's infamous non-unanimous juries. When Sandra went to prison twenty-five years ago, she left behind two young children. In July 2020, those two children, now grown and with families of their own, plus fifteen other family members, greeted Sandra outside of the prison gates where she had spent a majority of her life. Louisiana Governor Edwards granted the Project's request to commute Sandra's sentence. Sandra thus became a free woman who believed she would die in prison at the end.

"Beatrice is seventy-two years old and had also spent more than twenty-five years in prison for killing an abusive, estranged boyfriend who forcibly entered her home. We already know that more cases, like Sandra's and Beatrice's, exist than we could ever handle in our lifetimes. And that is why we started the Project that will provide expertise, resources, and training to the jailhouse lawyers who will have to navigate so many of these cases."

Professor Kondkar stressed: "Many of these women were convicted during a time when the legal system – police, judges, juries – knew very little about the dynamics and dangers of abuse. Many of these women had sought protection repeatedly to no avail. Many, like Sandra and Beatrice, were defending themselves in their own homes and most were convicted by non-unanimous juries. Many have spent decades in prison, are elderly, and suffer chronic health conditions and many have fallen ill with Covid-19."

Professor Kondkar related that "Before Sandra left prison, she served as an inmate counsel substitute, a jailhouse lawyer. There are only eight women at the prison who are charged with providing legal assistance to all of the incarcerated women in Louisiana's state prisons. Most of these jailhouse lawyers, like Sandra, entered prison without even having completed high school. The tasks they are charged with would be daunting for the best, most skilled lawyers. There are hundreds of women with pressing legal issues and deadlines at any given time and these jailhouse lawyers have a few outdated books to help them figure it all out. It's worth clarifying here that after a person's conviction is final, he or she has no legal right to representation on post-conviction claims and that's why these jailhouse lawyers exist. A post-conviction claim is one where the district attorney failed to disclose exculpatory evidence or where the woman's attorney was ineffective. So what that means for a domestic violence survivor is that if she is represented by a lawyer who knows nothing about abuse and its effects, who does not bother to consult an expert, and altogether fails to present



evidence of the history of abuse, that survivor will not have a lawyer who can help her make the claim that her first lawyer was ineffective, resulting in her wrongful conviction. Those claims are left to jailhouse lawyers like Sandra. These inmate counsel are resourceful, they're capable, and they are deeply dedicated in spite of having so little by way of resources and training. This Project will provide them with the tools they need to meet the challenges they face.”

Professor Kondkar stressed how important and impressive it was for ACTL Fellows Kathy Snapka and David Indiano to meet in person with a number of the Project's clients: “This award matters for reasons that would not be obvious to many people. When the award committee conducted a site visit, we took them to the women's prison where they could hear for themselves how the jailhouse lawyers, assigned to represent their fellow incarcerated women, struggled to access even basic legal information and resources. As Sandra, Jill, and Deidre answered questions and shared their experiences and their frustrations as inmate counsel, what they did not reveal is that each of them had suffered a history of abuse that had led to their incarceration. Two of the three had killed their abusers. Each of these women later expressed, either to myself or to Professor Mattes, their disbelief that the meeting had ever even happened. They were shocked that a room full of lawyers had gathered together and traveled from out of state for the purpose of meeting and discussing their needs. These women were deeply affected by the experience of having been listened to. In the end, that's what this Project is about: It's about telling untold stories, revealing the hidden injustices that remain invisible, even in the face of a steady drumbeat of public conversation about criminal justice reform. Their stories are rarely featured in articles about either criminal justice reform or the wrongfully convicted. Today, we do have new challenges implementing this Project. Because of the pandemic, we cannot visit our clients and we cannot visit and meet counsel. Though there has been little talk of it in the media, the Louisiana's women's prison has become a hotbed of Covid-19 and a significant percentage of the women there have tested positive. It is an incredible honor to have our program held in such high regard by the members of this organization in particular, given its leadership in our profession. We will do our very best to be worthy of this tremendous honor.”

Professor Kondkar concluded: “Thank you from Tulane Law School and the Women's Prison Project, and from Sandra, Beatrice, Bobbi Jean, Laura, and the countless other women who have stories that need to be told, voices that need to be heard, and lives that need to be seen. Thank you for helping lift them up into the public consciousness and for giving them hope.”

Mark C. Surprenant
Chair, Emil Gumpert Award Committee



DR. ROBERT C. GALLO — OBSERVATIONS ON THE COVID 19 PANDEMIC

Where things stand today and prospects for the future





Dr. Robert Gallo was introduced by Former Regent and Secretary Designate **William J. Murphy** to Fellows attending the virtual 2020 Annual Meeting. Bill observed that Dr. Gallo is perhaps best known as the co-discoverer of the HIV virus as the cause of AIDS when he headed the laboratory for tumor cell biology at the National Institutes of Health. Dr. Gallo is currently the Homer and Martha Gudelsky Distinguished Professor of Medicine at the University of Maryland. After a 30-year career at NIH, Dr. Gallo co-founded the Institute of Human Virology at Maryland in 1996, where he remains its Director. In 2011 he helped found the Global Virus Network, consisting of 60 research centers worldwide, whose members collaborate in efforts to help the medical community respond to and find treatments for new and emerging viruses that threaten human life and health. Among his numerous awards and recognitions, Dr. Gallo was elected as a member of the National Academy of Science in 1987 and he is one of only two scientists to have twice received the Albert Lasker Award for Medical Research. Bill remarked that “Few people are better qualified to offer insights into the current state of the COVID-19 pandemic – and our prospects for the future.”

Dr. Gallo began with an introduction of the history of epidemics and pandemics, noting that they have occurred throughout human history, and even prior to the evolution of man. Many pandemics, such as the Bubonic Plague of the Middle Ages, were caused by bacteria. But many of the more recent pandemics have been caused by RNA viruses, sometimes referred to as retroviruses. These viruses are very simple microparticles, consisting of genetic material (RNA) surrounded by protective proteins and a few extra genes carried for their replication. Dr. Gallo noted that over the last century or more we have experienced major viral pandemics about every 25 to 30 years. These pandemics have included a major influenza epidemic in 1889, followed by the Great Flu pandemic of 1918. The polio epidemic followed in the 1940s and 1950s. The HIV/AIDS epidemic began in the 1970s but was not fully understood and its cause identified

until the 1980s. Today we are dealing with the COVID -19 pandemic, caused by the retrovirus known as SARS Coronavirus – 2.

In a theme to which he would return at the conclusion of his remarks, Dr. Gallo observed that the medical and scientific communities have tended to forget the lessons learned from prior pandemics. He also noted the unique challenges associated with controlling viral pandemics – because retroviruses are very unstable and tend to mutate over time and in some cases replicate quite readily. He also noted that these viruses, and the SARS-2 virus in particular, are harbored in animal reservoirs, often in bats. Sometimes they can infect human beings directly – through contamination of food supplies by bat urine, and sometimes they are transmitted to humans indirectly through contamination of other animals with which humans come into contact such as

livestock or horses. Dr. Gallo noted that SARS-2 is readily spread through airborne transmission (making it much more prone to become widespread in human populations). But fortunately, the COVID-19 disease has thus far had a very low fatality rate of 1% or less, except for elderly populations. In a cautionary note for the future, Dr. Gallo mentioned two similar RNA viruses (also harbored in bats) called Nipah and Hendra which have extremely high fatality rates of 30 to 100% but thus far have not been widespread in human populations (being limited to small outbreaks in Australia and Southern Asia).



The root cause of the current pandemic, and the spread of retroviruses generally, is attributable to a single factor – change. Dr. Gallo referred both to changes in the genetic makeup of the viruses themselves, making the development of treatments and prevention more difficult, but also to environmental changes that can contribute to the spread of infectious diseases. For example, the virus that caused the polio epidemic began as a virus infecting the gastrointestinal system but mutated into a form that impacted the human nervous system. The exploration of the “New World” by Columbus and others led to new outbreaks of disease in Europe, as well as diseases

infecting the indigenous peoples of the Caribbean. Changes in technology, such as the advent of air conditioning systems and refrigeration, led to Legionnaires’ disease. The shrinking of forests in the United States led to deer populations coming into closer proximity to the suburbs and resulted in the greater prevalence of Lyme disease.

The HIV/AIDS pandemic is a classic example of both forms of change. The virus, which had infected gorillas and chimpanzees in Africa, mutated into a form that infected humans and then was transmitted by sexual intercourse and the exchange of bodily fluids. The disease spread from the rainforests to the population centers of West Africa after those countries became independent of the colonial powers, and people migrated to larger cities. From those cities AIDS spread throughout the world through air travel both for business and tourism. The free movement of people throughout the world certainly has contributed to the COVID-19 pandemic, coupled with the ability of the SARS-2 virus to change its genetic information and evade our immune systems.

Dr. Gallo asserted that despite the views popularized by some commentators, there is no evidence that SARS-2 was “man-made” by scientists in China. It is a naturally-occurring virus found, like many other retroviruses, in bats. It is possible that the virus, which was being studied by Chinese scientists in Wuhan, “escaped” through a laboratory accident, but Dr. Gallo believes it was much more likely to have infected humans through contamination of food, or perhaps through contamination of other animals, including the Chinese pangolin, a mammal that is hunted in China for its meat.

Dr. Gallo next turned to the prospects for therapeutic treatment of COVID-19 and the development of an effective vaccine. He noted that he was disappointed by the failure of the pharmaceutical industry thus far to develop effective therapies that can be readily administered. Neither the human plasma of those previously infected with COVID-19 nor Remdesivir (both of which have been found somewhat effective in late-stage treatments) are readily available for treatment in the early stages of the disease, and the treatments

are expensive. Dr. Gallo contrasted the efforts of the National Cancer Institute and Burroughs Wellcome, which during the 1980s developed AZT as an effective treatment for AIDS, marking the first successful treatment of a systemic viral disease. As the HIV virus mutated, making the development of a vaccine so difficult, the pharmaceutical industry continued to develop alternative effective treatments, greatly increasing the life expectancy and health of persons infected by what had begun as an always fatal disease. He noted that the rapid progress in identifying the HIV virus as the cause of AIDS, followed by the development of effective treatments, was one of the great triumphs of modern medicine and research. Because the current treatments developed for COVID-19 are not readily available, we should be engaged in vigorous testing and contact tracing. And until an effective treatment or vaccine is readily available, strict quarantine measures may be needed, particularly as we confront a second wave of the virus.

In the most provocative aspect of his presentation, Dr. Gallo turned to his belief that both the government and the pharmaceutical industry have missed an opportunity to learn from the lessons of the past with respect to the prospect for using existing vaccines to slow the progress of SARS-2. He noted that all of the well-publicized efforts at developing a vaccine – and there are some 170 vaccines currently in development and testing – are focused on specific vaccines principally designed to interfere with the mechanisms by which the virus attaches to human cells. But even if such a vaccine can be developed, and proven safe and effective, Dr. Gallo fears that it will not have lasting effects because of the ability of this virus to mutate. As a result, Dr. Gallo and some of his colleagues with the Global Virus Network have advocated for exploration of the use of existing vaccines that will trigger the innate immune system and are likely to ward off

infections from any foreign substance invading the body – including the SARS-2 virus. He questioned why a vaccine targeted at a specific disease should be considered preferable to a vaccine that might provide protection against multiple viruses. And Dr. Gallo noted a variety of studies, dating back many decades, which have shown that widespread use of the oral polio vaccine not only had the effect of eliminating polio in some countries, but at the same time substantially reduced the onset of influenza in those same populations. Similar studies have shown that populations receiving the MMR vaccine to prevent the spread of measles, mumps and rubella also have experienced reductions in influenza. These vaccines are cheap (a mere 15 cents per dose in the case of oral polio vaccine), in ample supply, and have been proven to be safe and relatively easy to administer.

Dr. Gallo and his colleagues continue to urge the use of these common vaccines to ward off the spread of COVID-19, as at least a “Plan B” to be implemented while the pharmaceutical industry explores the development and testing of specific vaccines targeted at SARS-2. He noted that while the polio and MMR vaccines may only be fifty percent effective against SARS 2, and may not last for more than several months, the same could be true of new vaccines designed specifically to target SARS-2. In a final thought concerning the fear that a polio vaccine might infect a patient with polio, Dr. Gallo noted that in a population like the United States, where polio vaccines have been widely administered in the past, there is no chance that the vaccine would cause the onset of disease. The proof of his assertion is the fact that of the billions of doses of live oral polio vaccine administered in this country between 1962 and 2000, and throughout the world thereafter, no one contracted polio as a result of receiving the vaccine.

Dr. Gallo explained how the use of oral polio, MMR or other vaccines might work to stop the spread of COVID-19. These vaccines stimulate the innate immune system – common to all living creatures including the invertebrates. They stimulate a kind of terror response and trigger the innate immune system to fight off an RNA molecule identified as foreign. By contrast, the specific vaccines that are currently being tested will work through the adaptive immune system – stimulating the B cells and T cells that develop lymphocytes. Following vaccination, the adaptive immune system may take as long as two months to develop the proper level of immune response. By contrast, “if I received a few drops of oral polio vaccine on my tongue today, I would be protected within a few hours against another virus infection.” While it is true that the innate immune system may only be activated for several weeks, or perhaps two months, additional boosts of oral polio vaccine can be administered, providing protection for six months or more. “In my view,” said Dr. Gallo, the widespread use of oral polio vaccine, if administered at the start of this public health crisis in February, “could have broken the back of the pandemic.” It could still be of great help today. Dr. Gallo closed with these words: “We are not taking advantage” of our ability to stimulate a response to SARS-2 through existing vaccines which activate the innate immune system, “and we should.”

William J. Murphy
Baltimore, MD

EDITOR’S NOTE: We could not have known, of course, where vaccine development would be by December when we submitted manuscripts or by February when actual publication occurs. Things look hopeful. But things might have looked even better if Dr. Gallo’s advice had been heeded. ■



LEWIS F. POWELL JR. LECTURE – SECRETARY WILLIAM COHEN

The Lewis F. Powell lecture series was established in 1991 in honor of the former Supreme Court Justice and ACTL President. Speakers over the years have been persons who have made major contributions to the public good, including Griffin Bell, William Webster, Robert Mueller, Admiral Bobby Inman, Admiral William McRaven, and General Michael Hayden. This year's speaker, Hon. William Cohen, was a worthy successor in that tradition.

William Cohen grew up in Maine, graduated from Bangor High School and Bowdoin College (starring in basketball at both), went on to become Mayor of Bangor, a Republican Congressman, a Republican Senator, and Secretary of Defense under the Clinton administration (confirmed by unanimous 100-0 vote). Building on his degree in Latin from Bowdoin College, he became a Latin and Greek scholar and wrote 13 pieces of work – fiction and nonfiction as well as poetry. The Christian Science Monitor called him “a true Renaissance Man.”

The first subject we discussed, in a question-and-answer format, was bipartisanship in Congress.





In his early years in the Senate, Senators of both parties worked together to compromise, to meet in the middle, and to get things done for the benefit of the people. Indeed, in one of his campaigns for re-election, Senator Cohen stressed the several pieces of important legislation he had co-sponsored with a number of different Democratic Senators. But in 1996 he was one of 13 Senators from both parties who, despite their expected ease of re-election, chose to leave the Senate. A common theme among this group, which included such luminaries as Bradley, Hatfield, Heflin, Kassebaum, Nunn, Pell, Simon, and Simpson, was the decline of bipartisanship. As Secretary Cohen put it in an essay he wrote upon leaving the Senate:

“There is a dynamic force at work today that is producing a gravitational pull away from center-based politics on both the left and right. Those who seek compromise and consensus are depicted with scorn as a ‘mushy middle’ that is weak and unprincipled. By contrast, those who plant their feet in the concrete of ideological absolutism are heralded as heroic defenders of truth, justice, and the American way.”

The two questions to him were – did he think we would ever get bipartisanship back; and what were the first steps he thought we might take towards that objective? Secretary Cohen responded he thought it would be very difficult because the extremes have become more fixed than ever in that cement. He made two basic points: First, that bipartisanship has to come from leadership at the top. He cited the example of President Clinton appointing him as Defense Secretary, the only time in history an elected official from one party had been appointed to the cabinet of the other party. He said Clinton told him “I trust you and I know we can work together well,” noting that Clinton, who had started out pretty far to the left, moved to the center in order to build a consensus that would get things accomplished. Secretary Cohen noted how he and other Republican Senators had worked effectively with Democrats and cited the books he had co-written with Senators Hart and Mitchell. And he stressed again that it is up to the leadership in the Presidency, the Senate, and the House to set the path for bipartisanship.

The other factor is what Secretary Cohen called “the money chase.” In his early days in the Senate, there was time for Senators to cultivate friendships across party lines, to have dinner together and lay the foundation for constructive legislation. But with the increased importance of television advertising and social media outlets, and the increased cost of campaigns, Senators have to spend an inordinate amount of time away from their office raising money. He said it is important that Senators of opposite parties view each other as competitors – not enemies. There is a need to compromise on the big issues and not, in his words, “plant their flags in the end zone.” If there is a good idea, unite around it regardless of whether it came from a Democrat or a Republican. Finally, he noted that the collapse of bipartisanship and the resulting stagnation in Congress leads to an increase in executive power. If nothing is happening in the legislative branch the President is always ready to move in and exert more power.

Asked what was the biggest foreign policy issue facing the next administration, Secretary Cohen said, without hesitation, China. How can we best reconcile our important interests with theirs? What are your problems – how can we deal with them? Here are our problems – how can we deal with them? We have to recognize that China is a big country, an economic powerhouse and military power. It would be a huge mistake to treat them as an enemy when a single miscalculation can lead to a disastrous military conflict. We know they are going to be a vigorous competitor at the highest level economically and militarily. We can't contain China – we just have to run faster, invest more in research, services, technology and also bring back direct manufacturing to the U.S. And we have to develop an international trading system that will allow all countries to prosper.

Asked about Afghanistan, he said it is still living in a previous century. What is needed is a massive investment to educate its population, create an agriculture industry not dependent on poppy; and infrastructure development so that vegetables don't rot before they get to the market. It is going to take time – 30 or 40 years – we have to be patient. It would be a mistake to withdraw troops beyond what is needed for a counter-terrorism capability. And we need assistance from other countries to invest in this effort.

Finally, asked to read one of his poems, Secretary Cohen told us the story about how he wrote his first sonnet. He was at Bowdoin where, as he put it, he was a very large fish in a very small pond. Co-Captain of the basketball team, he said, "my self-image was I was a basketball player." When his English teacher told the class they had to write a sonnet, he complained – "I'm Co-Captain of the basketball team, I will be traveling all around New England the next two weeks – I can't do that." The reply was "Mr. Cohen, if you don't write the sonnet, you will fail this class." Totally

depressed, he floundered until one night in the library he came upon a science magazine that described how the change of seasons affected the lovemaking of animals. That led to this sonnet, which he recited from memory.

Winter freezes summer blood to ice

And it chills the passions
that await the Spring.

The lover suffers seasons sacrifice

That alters bleak with crystal covering.

Now, what heart can hold the
love in Winter's time,

When even nature slacks for passion pace?

When minor creatures flee the upper climb

For warmer realms of borrowed
or burrowed space.

But Spring has courage to oppose the cold,

And it passes on to those in love the same.

The sound of life and laughter take hold

Of human ears that closed
at Winter's name.

Ah, but is it fair to unimpassioned reason,

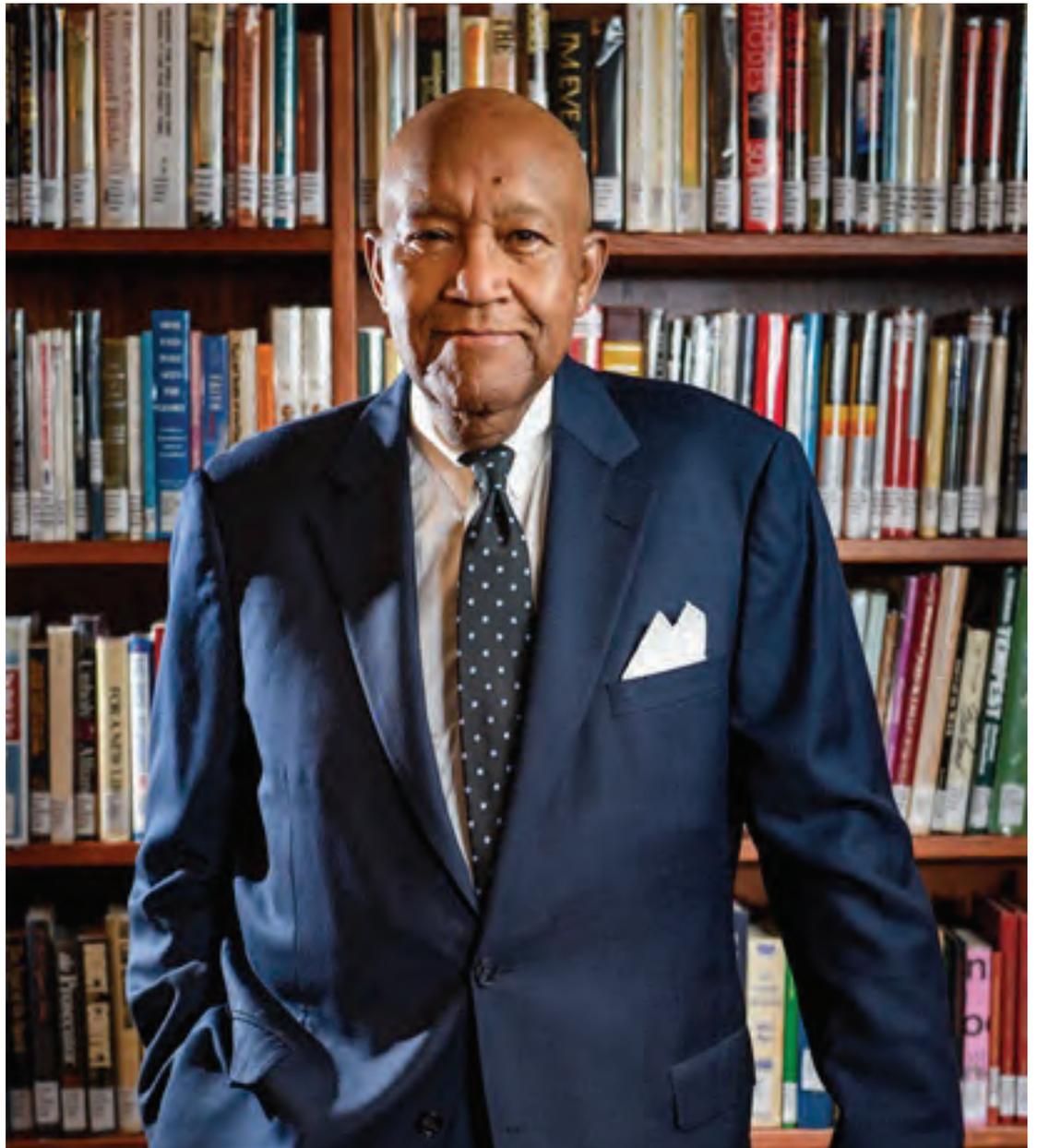
To say that love depends upon a season?

Secretary Cohen went on to describe that this incident demonstrates how one person can have an impact that will change your life for the better. It opened his mind – he learned that he was much more than a basketball player. What he learned from that English professor inspired an interest in Greek and Latin classics as well as the importance of literature, leading to him being an editor of the law review at Boston University, and helping immensely with his work in Congress.

Robert B. Fiske, Jr.
New York, NY



YOU CAN'T GO WRONG DOING RIGHT – BOB BROWN





Dr. Robert J. Brown was born in 1935 in High Point, North Carolina. Raised by his grandmother, Miss Nellie Brown, Bob Brown became a High Point police officer after achieving the highest score ever recorded on the entrance exam. He later became an Agent with the U.S. Department of the Treasury working narcotics cases in New York City. In 1960, Dr. Brown returned to High Point and started his own public relations firm. He had no money for marketing, but through pure hard work and determination, Brown successfully pitched himself to major corporate clients such as F.W. Woolworth, Sara Lee, General Motors, USAA, Lowe's, Coca Cola, and A&P Supermarkets, to assist their efforts to integrate stores, and to hire, train and elevate black employees.

In the '60s, Dr. Brown was intimately involved in the civil rights movement. He met and worked closely with Dr. Martin Luther King Jr. and the Southern Christian Leadership Conference. He worked across racial, political and business lines for economic empowerment of black entrepreneurs, consumers, employees and leaders. In 1969, Dr. Brown became a Special Assistant to President Richard Nixon. He had total access to Nixon and his total support for many programs he established. During his tenure with Nixon he created massive reforms and civil rights programs devoting millions to these efforts which included: starting the Minority Business Enterprise Program; securing transformational funding via executive order for the Historical Black Colleges and Universities Program; overhauling the military system of advancement to remove bias from the promotion process; and, increasing federal contracting with minority-owned businesses from \$13 million to \$142 million in four years. After his White House service, Dr. Brown took his consulting firm to the global stage, still operating out of High Point. His contacts led to escorting Coretta Scott King to South Africa to meet Winnie Mandela. He made many other trips to South Africa to work against apartheid. Ultimately, he met with Nelson Mandela at Pollsmoor Prison and met with South African President Botha to deliver a message from Mandela. He became the guardian of the Mandela children in the United States. He also began work establishing libraries and providing books throughout Africa, an effort that continues today via his BookSmart Foundation.

Dr. Brown writes about his full and amazing career in his 2019 book, *You Can't Go Wrong Doing Right, How a Child of Poverty Rose to the White House and Helped Change the World*. The book's Forward is written by Brown's good friend, Stedman Graham, who describes Bob as "one of the



most influential men most people have never heard of.” Graham praises Dr. Brown as a person who has led an extraordinary life by building lasting relationships across all economic, social, racial and political lines to promote positive change.

Regent Susan Brewer interviewed Dr. Brown at the College’s 2020 Annual Meeting. The abridged highlights follow.

Brewer: Your approach your whole life has been to help others through difficult, challenging problems but always staying out of the limelight. Can you talk about that approach a little bit and how, in particular, you helped these large companies like Woolworth and A&P while also helping the Civil Rights Movement and the work you did in that area?

Brown: Well, first of all, staying out of the limelight gives you some major credibility; it did for me because it sent a message to a lot of people that I was dealing with that I was not in this to draw attention to myself or to make people think that I was a big man or that I was powerful or that I was doing this. I was doing it from the bottom of my heart and it became an obsession and a part of my life to do this. And it still is and it permeated every part of my life. And I put my own self into this and how I grew up in a very segregated society with everything working against you but with a proudful grandma who took me to the mountaintop all the time, who was always telling me that you can do anything that you want to do, that you

can go to the mountaintop, you just have to work hard and take the good Lord with you and try to help everybody. She said “you can’t go wrong doing right, Robert.” She said just do the right thing all the time. Wherever you see wrong, you do right and keep pressing on.

Brewer: Tell us just a little about the A&P and Sealtest controversy, which you worked – again – out of the limelight.

Brown: Well, one of the persons that I worked with very closely was Martin Luther King, Jr. Dr. King called me one day and he said, “Bob, I’m in Cleveland and I need some help.” He said, “We have been trying to get in touch with the top management of Sealtest and they will not speak to us; they will not interface with us at all.” And he said, “They don’t hire any blacks at any levels; no black milk truck drivers, no blacks doing other kinds of meaningful jobs and we need this to happen.” And I told him that I would see what I could do to make things right.

One of my clients was A&P. I called the CEO at A&P and I told him that there’s going to be trouble in different parts of the country, particularly in Ohio, in Cleveland, and told him what was happening. And he said, “Well Bob, why don’t you fly to New York immediately and let’s discuss and see what to do.” So I got on a plane, flew to New York, went to the office. We discussed it and I told him what was happening and he asked me, “What would you recommend?” And I said, “I would recommend in order to put everything in perspective, would be for you to have A&P to call the people at Sealtest and tell them what a problem this is and it’s going to be a mega-problem for A&P because if they go and have demonstrations, they have to go where the milk is being sold.” A&P had more supermarkets than anybody else so it was going to cause trouble. And he says, “Okay,” and he had one of his top men and he said – he used some language that I won’t use here – he said, “Call the fellow at Sealtest, the CEO, and tell him that if they don’t get this thing worked out with Dr. King, we’re going to take all Sealtest products

out of every store in the state of Ohio.” I recommended that they take it out of the stores in Cleveland; they had a lot of stores in Cleveland. He said, no, we want to take it out of all the stores in Ohio and then we’ll see what he says. And I told him I thought it would work out.

So by the time I could get back in North Carolina on a plane – I went straight to the airport to go back – got back, call the office, they said, Dr. King has been calling. So I told him what happened and he said, “Lord, have mercy.” “We’ve been praying on this thing but I didn’t know we were going to get this kind of reaction.” We got black truck drivers, milk truck drivers, we got blacks involved in everything with Sealtest and settled that. And Dr. King made a speech about it, which is in the Smithsonian Institution down in Washington.

Brewer: So after years of doing the wrong thing, in a couple days, with your help, they did the right thing.

Brown: They did the right thing. Many times, I think in the world, people want to do the right thing but they’ve been doing the wrong thing so long until it’s just hard for them to understand the dynamics of right. And right always is going to win. Sometimes it will look like right’s never going to win but as long as the good Lord is in charge of this universe, right will always win and I believe that. I was – my grandmother would tell me that all the time. She said, “Bob, right’s going to always win.” I structured my life around right.



Brewer: You often talk about specific situations where you were working between polar opposite views and your job was to bring people together and it often put you into danger, whether it was in South Africa or in the parts of the United States, particularly in the South during the Civil Rights Movement. One particular situation happened in South Africa, where it was an extremely dangerous situation for you. Can you tell us about that?

Brown: Well, I was getting prepared to come back to the United States from a trip, I was in Cape Town, and I got a call in my hotel room; it was about 10:00 at night and I was packing my bag. And it was one of President Botha’s assistants. He said “President Botha is granting you permission to go inside Pollsmoor Prison to visit with Nelson Mandela if you would still like to do that.” And I was shocked out of my wits because nobody had seen him. Mandela had been in prison, at that point, 23 years and nobody but his immediate family had seen him, and then only for 15 minutes every six months or so. I flew down to Cape Town, went to the prison. Mrs. Mandela had somebody meet me because I called her and told her what had happened and she hollered so loud over the phone, it just blew me away. And then I called other people in the U.S., I called some of my friends at the White House, I called my late wife, I called others, to tell them where I was going because I thought maybe it was to kill me. And so, anyway, I went the next morning, went to the prison. They accepted me, first reluctantly, and then looked at my passport and they said, “Oh yeah, Mr. Brown, go.” And they had their guns drawn and everything. Then he opened the gate and he says, “You go right on up there to that little room and we’re having Mr. Mandela brought down from his cell right now.” But when I got up there, the door slammed open and this big, tall, white guy with a braided cap came out and he put his hand out. “Mr. Brown,” he said, “I’m the chief warden here.” He said, “I want to thank you for all you’re doing for Mr. Mandela and his family.” And he said, “You’ve made an impact here in South Africa. Thank you very much.” ▶

I spent probably an hour and a half, at least, with Mr. Mandela. And he told me all kinds of things that he was having on his mind about peace, about the things that were happening in South Africa that he knew about because he had a little radio and so forth.

And he says, “You know, Bob, the only thing necessary for peace in this country is for the good white people and the good black people to get together.” This was a man who had been tortured and everything had happened to him. And that had a profound effect.

Brewer: Dr. Brown, you also had a frightening experience when someone came to your motel to ask you to meet with President Botha, didn't you? Can you tell us about that?

Brown: Yes, it was two of his security people and they knocked on my hotel door, I peeked out, and they said, “Mr. Brown, we're from President Botha's office.” They said “Mr. Brown, we know you're busy and we know you're headed back to America, but President Botha wants you to know you're in his country and he wants to meet with you tomorrow.” I couldn't believe it. I mean, I was stunned. And he told me that if you can do it today, he'll do it this evening. So I went over to the State House to meet with him. But before that, I called Mrs. Mandela, I called other people in the room, and I called back here to the White House and other people that I knew, my family, so that if I disappeared, they would know where I went. And so I went and it was an unbelievable meeting. I was taken into the meeting by Pik Botha, who was the number two man in the country. And Pik asked the president, “Mr. President, do you want me to stay for this meeting with you and Bob Brown?” He said, “Oh no, Pik, you go on back to your office.” So we went back into the meeting, it was the two of us, and he asked me all kinds of questions about what I thought about his country and he had researched me and he had told me about my life and so forth. And I

just told him, I said, “First of all, you need to release Mr. Mandela. If we want peace in this country or on this continent, if you don't release Mandela, it's going to be a bad time for whites, blacks and everybody because there will never be peace.”

Brewer: Was he feeling the pressure worldwide at that point?

Brown: He was then but I think he wanted to know from somebody who had been to his country and knew people there and who was interfacing. And so, he talked to me about a little bit of everything and I told him what he needed to do in South Africa, about releasing job opportunities and just low-level things. Like, blacks could not even shine shoes in South Africa before and a lot of other things.

Brewer: Did he listen to you?

Brown: Two weeks later, they had – blacks were able to shine shoes all over South Africa. But up until that time, blacks couldn't even shine shoes. And I told him he needed to release Mr. Mandela and he needed to release – there was another, I think his name was Eric Wallace, something like that – a black man who had been in prison who was ill, who had been in a prison hospital, and had for two or three years and he wouldn't let him out. Two or three weeks later after I left, he let him out of prison and he lived for several years after that. He was still ill but he lived for several years after they let him out of prison, so a number of things had happened. And then I just kept moving on with my clients – Sara Lee Corporation; they had a big operation there. We were moving blacks into that plant to make sure they had jobs all over; not just sweeping the floors, cleaning the toilets, but other kind of jobs; blacks in the offices and all that. So we went across the board and many people were afraid that they were going to react negatively to South African government. They never did; they never said anything.

Brewer: Dr. Brown, . . . can you tell us about a party that was had for you where your colleagues and friends told you how much they appreciated you, knowing all the stress you were under? Will you tell us about that party?

Brown: Well, I think it was a party of a lifetime. I had been there – I went to the White House – when I first went there for the President, I said I would stay for six months or a year to help get things organized and then I'd have to go back to my business. And well, end of story is that I stayed there for four years and when I got ready to leave, some friends of mine felt that they should organize a party for me; a farewell party. And they had it at the Washington Hilton Hotel ballroom, which was the largest ballroom in Washington at the time; I'm not sure it is now. But when they came to me and told me what they were doing, I said, "Where are all the people going to be coming from? That's a huge ballroom." And they said, "Don't you worry about any of that; we'll handle this."

Brewer: Put on a tuxedo and show up?

Brown: Show up. And they put it together and my grandmother was there; they had my grandmother come up from North Carolina and my friends from different parts of the country were there. Top businessmen in the country that I'd worked with from Woolworth, from Johnson Wax Company, and other companies, and I was flabbergasted when I saw the number of people who were at that gathering. And the President had told them that he probably couldn't come because he had a conflict and so none of us were really expecting that. I didn't expect any of the Supreme Court, the leaders in the congress, the Republicans and the Democrats to be there, all the top-brass leaders in the country, and the Black Caucus, at that time. It was a revelation for me in terms of the many people that I had touched in my life, had done things with me and they talked about it. Sammy Davis, Jr., was the emcee and he sang and then the President walks in, unannounced, he just walks in on the stage and the place went into – it was pandemonium and he talked.



Brewer: But he didn't come to you first.

Brown: He went to my grandmother; he went to my grandmother and he stood there with grandmother and talked about what I had done and so forth. Then she kissed him on the jaw and the place went bonkers. And it was just an unbelievable night for me and for a lot of other people. People are still talking about it; people still talk about it and I still have many pictures and remnants from that night. . . . It was a night in your life, the kind of night you never forget. That you have many of the most important people – the chairmen of board of the biggest banks in the country and other companies and so forth, the President of the United States. It's the kind of night you never forget. I don't care if you live 1,000 years, you're never going to forget that night. It was unbelievable.

President **Doug Young** summed up the interview. "I am struck by your definition, Dr. Brown, of true success, being the notion that the best way to influence others is to be helpful; that's a quote from you as recorded in the book. Truly, it's a narrative that could be employed by all of us in important matters throughout the world and in our societies."

Susan S. Brewer
Morgantown, West Virginia ■

PLAYING BALL – THE IMPACT OF COVID-19 ON SPORTS





Jason Reed, the senior NFL writer for ESPN's website The Undefeated, introduced the executive directors of the four major sports players associations to discuss the impact of Covid-19 and racial relations in today's world. Tony Clark is the executive director of the Major League Baseball Players Association. Tony is the first player to become the executive director of the Major League Baseball Players Association; in a fifteen-year career with six different teams, Tony hit more than 250 home runs. He was unanimously elected as executive director in 2013.

Don Fehr is the executive director of the National Hockey League Players Association, having previously served as the executive director of the Major League Baseball Players Association from 1983 to 2009. As a young lawyer, he was instrumental in a groundbreaking decision that nullified the reserve clause, which eventually ushered in free agency in Major League Baseball.

Michele A. Roberts is the executive director of the National Basketball Players Association. She is an accomplished litigator who got her start as a public defender and she is a Fellow of the College.

DeMaurice Smith, also a Fellow of the College, is executive director of the National Football League Players Association, elected in 2009 after being a long-time member of the U.S. Attorney's Office and a trial lawyer in the District of Columbia. DeMaurice posed the first question to Michele: What has been your biggest challenge in getting the season back on track and your players back to work in the middle of a pandemic?

Michele Roberts: I suspect it is the same challenge all of us have had and that is balancing what is an undeniable revenue reality; potential loss of revenue with, more importantly, the health and safety of our players. This is a business; our players make a ton of money and when the business of playing basketball stops, that money stops. Some would say the players make enough and can afford to have a couple of months without pay. That may be true for some but not for most of our players. Part of what I had to do was figure out a way to salvage the business in a way that did not threaten or compromise the health and safety of the players. Frankly, it ended up being easy because if we could not do it safely, we just would not do it. So the biggest challenge was figuring out if the league was going to have our same priorities and then realistically, if it was something that could be done. If it could not be done, then we had to just take our loss and lick our wounds. I had to satisfy myself and then the players that we were actually going to create a protocol that while we could not eliminate all risks, we could substantially reduce the risks. That took untold hours of time but I think we – knock on wood – figured it out.



DeMaurice posed the same follow-up question to all four panelists: How did each of you spend time with the players, not only educating them but also building up a comfort level about what the endeavor was going to be like. Can you describe what that process was for you?

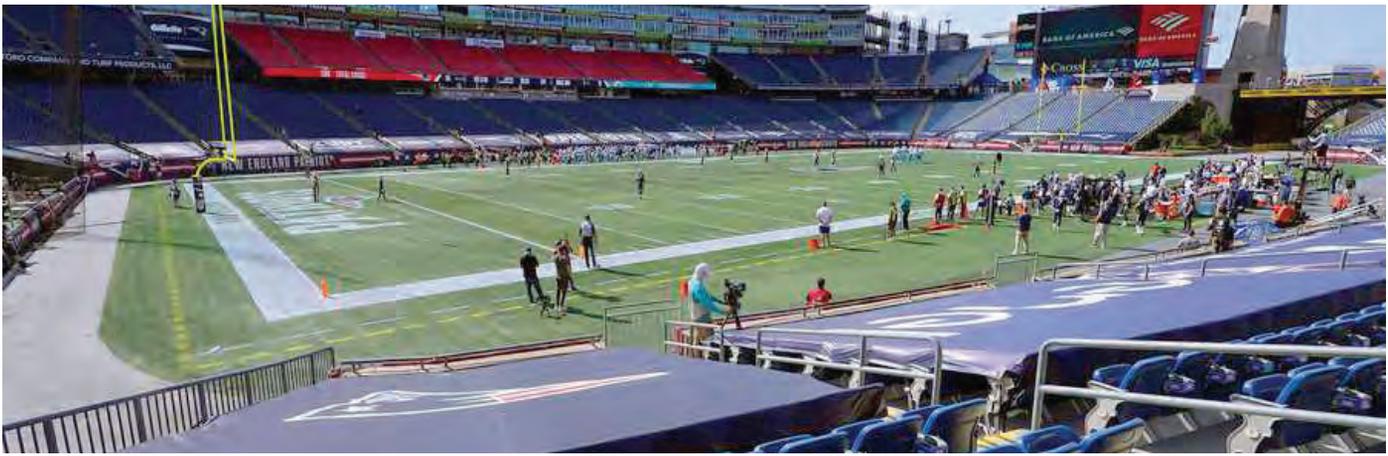
Michele Roberts: Tons and tons and tons and tons of phone calls; individually with the players and with the teams. Because you have to let both sides know, make them understand, you are not driven by anything other than health and safety. The minute you raise the issue of money, then you are understandably suspect. There are players that said, “Look, I actually can’t lose any money,” and I said, “I get you, but what we’ve got to do is make sure it’s going to be healthy and safe.” So you get your own experts, not just relying on the league’s experts, and you get educated by those experts, you double-check and do due diligence on those experts and then you ask tons and tons of questions. Then you bring those experts to the players and have the players vet them, hear from them, ask them questions. I cannot even begin to count the number of Zoom calls we ended up doing. Sometimes four, five, six a day, at all hours of the day and night, because we have people all over the country and the world. It took a tremendous amount of time. We could not have done it any other way. It was not something just presented to the players as a done deal on who were our experts – we included players in the process of evaluating the experts. These experts were involved in all meetings we had with the league or our players.

Don Febr: As the senior man here, I suppose, I have reflections over a very long period of time. Obviously, in this context, health and safety were paramount but we were also in the middle of collective bargaining negotiations and it was difficult, if not close to impossible, to negotiate a return to play agreement without finishing the CBA extension negotiations. Combining the health and safety with the CBA negotiations required constant interaction with the league, our own staff, and far more importantly, with the players. For example, there was a negotiating committee and a separate return-to-play committee that were both intimately involved in all of the decisions regarding what we were going to do, when and how, how the bubbles were going to be constituted, and all of the rest of it.

There was one other factor which is really important and has weighed on me for my entire career; it’s something that I’ve never really been able to get past. If I as a lawyer, for example, lose a year of my career to a pandemic or an illness or I just go on sabbatical, whatever the reason, that is roughly 1/40 of my career. If a professional athlete loses that same year, he may lose 1/3 or 1/4 or 1/5 of his entire career because on average his career is so short. He may lose the opportunity to demonstrate his athletic skill to negotiate a new contract. He may lose his only opportunity to be on a championship team. This matters a lot to players and it is one of the things which makes professional sports negotiations more difficult in certain respects than other labor negotiations.

DeMaurice Smith: Tony, you had the luxury – I say that in jest – of actually going through this process first. We all learned a lot from what baseball was doing and the challenges you faced. Similar to Don, you have large groups of people coming from other countries. What were your biggest challenges in getting your sport and your players back to work?

Tony Clark: I could just say “ditto” on the heels of Michele’s and Don’s experiences because I think each of our experiences, in some respects, was the same. A major difference for us, however, was our season had not started. We were a week and a half away from our season starting when everything shut down. From our standpoint, we dealt with much of what Michele, Don and De offered, while trying to appreciate how best to navigate a year of unknowns and uncertainty. What I mean by that is even the experts who were a part of the conversation initially were not sure what they did not know. A lot of the early discussions started against the backdrop of no baseball being played in 2020 and then working backwards from there. Our singular focus was on health and safety. The league’s focus, unsurprisingly, particularly on the heels of an initial negotiation, was on the economics. As a result we learned more about the virus each day over the course of the first few months that our season was down, engaging our players daily, while continuing to have discussions with the league against the backdrop of the league’s interest being economic and our interest largely being health and safety. Those differences did not get resolved for many months.



The other significant difference is our players are playing every day, which means daily opportunities to contract the virus, and additional opportunities to become sick as they spend time away from the ballpark with their families. All of those things manifested themselves with our guys' day-to-day existence that was completely different than anything they had experienced.

In sum, a lot of moving pieces as each of us is aware; a lot of dialogue with our players; and a lot of dialogue with the league. Each day offered new information that was helpful to what we could do as a union on behalf of our players and as an industry to protect the integrity of the game, yes, but our players always came first and foremost.

DeMaurice Smith: All of the things that we have discussed we also went through on the football side. I started this conversation by saying it is a pleasure to have everybody here. We are all friends. I doubt if people outside of our sport really know how close we all are. But we all became even closer because we were dealing in a new and unknown world. On our calls, I was always fond of saying, "I did not sign up for this." None of us signed up for this but, dovetailing into what you guys should answer next, sort of collectively, what was your big takeaway from all of us working together? As a preface one interesting thing for our ACTL friends is a lot of businesses had to deal with getting their workers

back to work. In this area of sports, however, it is one of the rare exceptions where a union had a powerful voice on the manner and mode of how workers were going to come back to work in the middle of a pandemic. That was great to learn, what everybody else was doing and reassuring to do things collectively. But first, Michele, going back to just our calls and the things that we were all going through together, is there a takeaway of us suffering through a novel and emerging pandemic together that you can share?

Michele Roberts: . . . I was managing calls with players who wanted to know things like "how long is the virus going to last?" The calls that we had, being able to at least have others understand my view of the significance and the critical importance of health and safety; damn the revenue; and having you guys agree with me was critical. Because there was not always a consensus among my staff or my membership as to the protocol. We represent for the most part very young people and they view their mortality as a given. They do not see the significance of something like a health issue. Remember, early on, it was supposed to be an old person's disease, so having it confirmed that I was right, that we had to focus on health, and getting that confirmation from you all was critical. Agents have a view of things, family members have a view of things, marquee players have a view of things, and rookies have

a view. I have to herd those cats into the health and safety protocol. That was huge and I do not think I would have had the backbone to do it without you guys. So life's not being alone.

DeMaurice Smith: Don, . . . no one has been through a novel and emerging virus before. What were your touchstones for navigating this, either as a person who has been involved in labor for so long or someone who has been head of a union for so long? Were there guiding principles, touchstones that you continued to reach back to as you navigated this for your membership?

Don Febr: I would say three things. First, this is a circumstance in which the players, as well as we, of course, are facing a challenge that was unprecedented. Decisions had to be made; they had to be made in real time. They had to be accepted pretty much at face value by the players. That means that the respect you need to carry that off has to be earned ahead of time. . . .

Second, you have to have somebody you can talk to who knows what you are going through. There are not very many of us. With all due respect to people who run other unions, those unions are different and their memberships are different enough that their experiences are not really on par with ours.

Third, you had to go back to basics. You cannot really get anywhere unless play- ▶

ers not only support you by large majorities but also do so on an informed and knowledgeable basis. It is not just “do this because I say so”; they have to come to understand it. That meant that you had to take the time to explain why this is not a normal collective bargaining. The pandemic was causing a shut down. It was not the owners trying to get us to lower the salary cap as in previous negotiations. That took an enormous amount of effort and communication with our members in different ways. . . .

DeMaurice Smith: Tony, you’re the one person who has been both a player and the leader of your union. Going through this as a former player, what do you think helped you get through this . . . ?

Tony Clark: As everyone has highlighted, the ability to communicate with one another was extraordinarily beneficial because each day was always a bit of an unknown. Being able to understand and appreciate what the owners’ experts were saying, versus what our experts might be saying, versus what it is you are hearing from your players, was hugely beneficial in laying the groundwork, as Don had mentioned, in filling a void that our guys are looking to be filled. . . .

DeMaurice Smith: The information issue was something that all of us spent a lot of time dealing with. Now, setting aside the Coronavirus, a couple days ago, Jacob Blake, an African American man, was shot by the police. As we sit here today, August 26th, there is rioting in Wisconsin. Yesterday, the Lions cancelled their practice after the shooting of Jacob Blake. We are on the cusp of the NBA players taking up the issue. Again, going around the horn, we have not only been in a novel and emerging virus, we have also been in a novel and constantly emerging situation in which professional athletes have stepped into this fray with an increasing use of their voice, time and power.

Tony, from where you sit, what are your thoughts about how athletes have responded, reacted, and engaged with their community in the last five months given what we have seen going on in America and across the world?

Tony Clark: Amid the challenges that we are seeing, I have actually been encouraged by our players and our membership by their response to what they are seeing in their communities and what we are seeing nationwide and worldwide in regard to social and racial inequalities and injustices. One thing that is often lost is that we as players have a day job that has us in a uniform and has us on TV and playing a game. But when we leave the ballpark, we are dads, we are fathers, husbands, brothers, just like everyone else. I recall over the course of the last five months having conversations with my kids about what it is they are seeing and trying to answer questions for them about why what they are seeing is happening, working through with them to find their place in this conversation, what it is that they can do to lend their voice so to see progress is made. That is manifesting itself with our players. Players from all over the world are having conversations in their own locker rooms about what is going on, in ways that I have never seen during the course of my professional career. It is encouraging that those conversations occur. There is an opportunity to understand and appreciate and respect the individual sitting next to you. It improves the dynamic in a clubhouse and makes comments in those conversations beneficial to the larger conversation. Our membership is invested as never before and ready to be a positive influence on the conversations that affects all of us.

Don Fehr: I am going to go back a little more than 40 years. The first news show I remember seeing was when my grandmother made me watch on a little black-and-white television the federal troops that President Eisenhower sent to desegregate the schools in Little Rock. I don’t remember the exact year; I think it was ’57 or ’58; I would have been nine or ten. I then lived through the ’60s, the Civil Rights Movement, the Anti-War Movement, sex, drugs and rock’n roll, the protests and unrest, both as a teenager and then as a college student. Back then, those of us who were young, thought maybe we had changed the world completely and there was nothing left to do. It was a lot different by the

time that decade was over. But it pointed out everything else that remained to be done.

In terms of the athletes, the NHL is in a different situation than I had in baseball because seventy-five percent of the NHL players are not Americans and there is some reticence on their part to become involved in American political or social issues. That said, hundreds of NHL players of all colors, nationalities and backgrounds have issued statements recognizing the significance of what is going on was. I don't know the right word – comforting? heartwarming? gratifying? Something like that. The players were thoughtful, responsible, and emphatic in expressing their views. Professional athletes can sometimes personalize views for a lot of people that might be difficult otherwise. This could be me or this happened to me or this happened to somebody in my family.

I can close with this. Like Tony, I have had many discussions with my kids about this, particularly my youngest one, and it comes down to what is happening. This is far from over but at the same time, maybe, just maybe, we are on the cusp of finishing the two or three generational change that Lyndon Johnson prophesied in 1964 when he signed the Civil Rights Act. Perhaps we are on the cusp of something special because this generation appears to be, at least much more so than prior ones, largely free of the kind of prejudice, conscious or unconscious, than of prior generations.

Last, the advent of social media can make things change rapidly. We saw that with gay marriage. We went from “we can't have it” to “this is absolutely normal” at lightspeed. My hope is that we are on the cusp of doing that with the issues that are out there now.

DeMaurice Smith: Michele, there is probably no group of players who have been more responsive, more on the front lines, about using their voice for social change, than basketball players. I encourage my players to use your players as role models. Are you hopeful, given what you have seen from your membership, the way in which they have moved the needle not only for other fans but also the way other professional and now college athletes are starting to weigh in on social justice issues?

Michele Roberts: Our membership is seventy-seven percent African American. Unlike some of the other sports – football numbers are probably close to that – the issues that affect the African American community in the states necessarily impact our players. It was not surprising to me that, just like most African Americans, our players would be horrified by some of the conduct that we have been experiencing, forever it seems, but certainly, in the last six months it has been particularly concerning. I am not surprised that they had the reaction. What is encouraging is that rather than just dribble, they did just the opposite and showed they were willing to stand up and damn the consequences.

Players have the advantage of an ever-growing platform. I am, of course, talking about social media. It is not fair to compare athletes, from ten, fifteen, twenty years ago and their presumed ability, or better said, inability, to influence with current-day players and the enormous amount of power occasioned by the social media platform. The good news is our athletes are prepared to exercise the power that those platforms provide. They pushed the league into places that the league would not, frankly, have been willing to go if the players

did not have to but they are a force that has to be reckoned with. In many ways, by pushing our league, we are pushing other leagues to say the same things. It is not something I want to rein in because as an African American woman, I want them as issues. But what I am always mindful of is that there is a certain urgency that our players have. My players, as I sit here, are furious that despite the fact that they have been using their voices vehemently over the last few months, two days ago another African American man was killed by the police. They cannot believe that given what they said and are prepared to commit to that people are still killed. My challenge is in advising them that we cannot fix this overnight; we have to continue to fight for it. But it is a problem that I do not mind having. I would be a lot more concerned, and frankly, not nearly as proud of them, if their reaction had been anything less.

DeMaurice Smith: I agree with all of that. I can say, from where I sit, people in the National Football League have been moved to say and do things that I thought I would never see. I know all of us hope that this continues.

To the ACTL, thanks for spending time with my friends. Thank you very much for joining us and I pray and hope the best for you and all of our respective sports and for the fans out there. We look forward to all of us getting through our seasons.

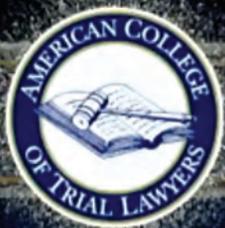
The panel ended on a positive note, as it should. Let's hope that all of us get through all seasons on and off the playing field.

David N. Kitner
Dallas, TX

JUSTICE KASIRER ACCEPTS HONORARY FELLOWSHIP

At the College's virtual 2020 Annual Meeting, The Honorable Madam Justice **Suzanne Côté** began her introduction of Justice Nicholas Kasirer, welcoming him as an Honorary Fellow in the College, by noting that it was "an amazing opportunity for me to take my revenge for all of the times I had to argue before him when I was a lawyer and when he was a judge of the Quebec Court of Appeals. Indeed, it was not unusual for Justice Kasirer to tell me at the end of my argument, "Madam Côté, you presented a brilliant argument and in such a brilliant fashion, but you have no case."





HON. MR. JUSTICE NICHOLAS KASIRER

SUPREME COURT OF CANADA



During 20 years as a professor of law, Justice Kasirer taught property law, family law, and estate law. He served as dean of the law faculty of McGill University from 2003 to 2009. Justice Kasirer was appointed to the Quebec Court of Appeal in 2009 and to the Supreme Court of Canada in 2019.

Justice Côté described Justice Kasirer's many accomplishments, noting that during his 10 years on the Court of Appeal, he rendered over 2,000 judgments. Out of those, approximately 140 were the subject of leave applications to the Supreme Court of Canada; the Supreme Court granted leave in only 15 of the cases and overturned only four.

In Canada, as in the United States, there is some disagreement about the role a judge should play in a constitutional democracy. Some think that judges should refrain from making law, sticking to application of the rules set by the legislature. Justice Côté said there was "no better way to express Justice Kasirer's philosophy on this issue than to quote his own words: 'None of this lawmaking is incompatible with the judge's role in a constitutional democracy.'" He opines that the proper balance of power between and among the three branches of government turns in part on the notion that judges, as guardians of the rule of law, have an obligation to check the legislative branch in a manner that fully respects the primary retention of discourse in legislatures.

In his acceptance, Justice Kasirer acknowledged that he was a bit awed by the honor. His condensed remarks follow:



I'm delighted and most grateful to the American College and to President Young for the kind invitation to your ranks as an Honorary Judicial Fellow. As pleased as I am, I am also a little shy about your generous recognition. You see, unlike Fellows who come to this College as the very best trial lawyers in the United States and Canada, I have little honest claim to your attention. While I've spent a good number of years in court as a judge, I've never pleaded a full trial in my career, much less at the very high level of achievement required for induction as a Fellow of this great College. Many of your Judicial Fellows have earned their spurs pleading cases prior to becoming judges.

My colleague, Justice Côté, for example, was an especially accomplished advocate in Quebec before her appointment to this court and, I am told, a gifted and savvy trial strategist. In my own case, however, silks and gowns played little or no part. After a brief and rather undistinguished career as a practicing lawyer, I joined the faculty of law at McGill University in Montreal as an Assistant Professor when I was 28 years old, directly after clerking for a judge, and remained there until I was appointed to an appellate court in 2009. I did not venture out of the classroom and into the courtroom, and most certainly did not have a reputation as a pleader of high-profile cases that might have paved a plainer and more deserved path into the College.

I earnestly hope this small confession will not mean that the honor you've extended to me today will be rescinded. I hasten, therefore, to accept the kind offer lest someone changes their mind.

As a Canadian judge, I'm especially aware of the superb place that the College has reserved over the last seventy years for Canada's best trial lawyers and honored to be counted among their numbers. I observed with delight the College's recently created Beverley McLachlin Access to Justice Award in hon-

or of the former Chief Justice of Canada. I know that Canadians have risen to the highest ranks in the governance of the College and that in the spirit of unity that binds the United States and Canada, a Canadian Foundation for the College has been established to offer grants like the American Foundation for worthwhile projects to improve the administration of justice.

I would like to speak about the two places where I have spent the best part of my professional life, the University and the Judiciary. Talking about one's self normally is bad form, but one of the things judges and professors share – begging your indulgence – is a dash of self-importance, so please chalk up my indiscretion to the double sin of pride that comes from being both a judge and a professor. Historically, there has no doubt been a standoff between these two callings. Perhaps the most celebrated advocate in the history of the Canadian bar, Eugene Lafleur, is said to have declined important teaching responsibilities at a Canadian university because he preferred what he called the “smoke of the battle” to hiding in the ivory tower.

The idea that the academy and the judiciary represent distinct locations in law is often said to reflect a further standoff between theory and practice, with lawyers and judges on the side of the law in action and law teachers and law deans on the side of the law in books. Today, I want to highlight some of the overstatement that I see in the theory-practice divide and to celebrate some of the connections between the university and the judiciary. There are many supreme examples of American judges who came to the bench directly or indirectly from academic life. Holmes, Frankfurter, Scalia come to mind, and of course on today's court, Ruth Bader Ginsburg, Stephen Breyer, and Elena Kagan. On the U.S. Court of Appeals, professorial names such as Frank, Calabrese, Wood and Posner remind us that connections between the bench and the academy may be more natural than we think.

One place that highlights the relationship between the university and the courts is on the second floor of the Ottawa building that houses the Supreme Court of Canada. It contains a gallery of life-sized portraits of the chief justices from the late nineteenth century to the present. In this grouping, all done by Canadian artists, are a surprising number of law professors turned judges, which cheers me into thinking that the divide between theory and practice may be much exaggerated.

I'll start with Sir Henri Elzear Taschereau, who was chief justice between 1902 and 1906; his cousin, Jean-Thomas Taschereau, would replace him on the Supreme Court. Sir Henri was a law professor at the University of Ottawa while on the bench, as well as a prolific author in Canadian criminal law and civil procedure. His published work as a legal scholar vastly outpaced, at least in pages, his judgments written over twenty-seven years at the court. His portrait is by Ernest Fosbery, a Canadian artist active in World War One, best known for his etchings of battlefields and the splendid portrait of the Unknown Soldier in Canada's War Museum in Ottawa.

I turn to Chief Justice Gerard Fauteux, the chief justice in 1970. An expert in criminal and constitutional law, Justice Fauteux had the distinction of being dean of two Canadian law faculties, and his tenure at the University of Ottawa coincided with his time as a judge. His portrait was painted by semi-professional artist Eva Prager.

Chief Justice Beverley McLachlin recently retired as one of the longest-serving judges in Canadian history and the first woman chief justice of the Court. She was a professor of law at the University of British Columbia for seven years before being named as a county court judge in British Columbia in 1981. The artist who portrays her is Joseph Plaskett, a Vancouver painter who has ably captured Chief Justice McLachlin's scholarly gaze on the law.

Chief Justice Antonio Lamer was a professor of criminal law and criminology at the University of Montreal prior to his appointment to the bench in 1969. His portrait was painted by New Brunswick artist Bruno Bobak. It's against a supremely judicial red background, stark and arresting, suggestive of the authority of the man in his office; he holds a book and glasses, which hint at his studied approach to the criminal law.

Perhaps the best-known professor turned judge is Chief Justice Bora Laskin, who taught administrative, constitutional and labor law for 25 years, mostly at the University of Toronto, from where he was appointed first to the Court of Appeal for Ontario, and then to the Supreme Court of Canada in 1970. His judgments and his scholarship continue to mark the development of public law in Canada. His image is presented twice in the court, not only a painting but also a sculpture by an artist who was himself a lawyer, Kenneth Jarvis, with the Law Society of Upper Canada.

Alongside the portrait of Justice Laskin is that of Chief Justice Brian Dickson, who lectured for many years at the University of Manitoba, where he had studied law. His term as chief justice was dominated by the development of the early jurisprudence under the Canadian Charter of Rights and Freedoms. Chief Justice Dickson showed a special sensitivity for the dialogue between the law faculties and the courts that flourished following the repatriation of the Canadian constitution in 1982. The portrait is by Cleeve Horn, a well-known society painter, whose work is found in many parliaments and legislatures across Canada.

Some of the other professors turned judges are also worth a look. Chief Justice Thibault Rinfret, who sat twenty-nine years on the Court, taught commercial law at McGill before becoming a judge. The Toronto artist who painted him, Kenneth Forbes, is perhaps best remembered for having re-



signed from the Royal Canadian Academy of Art in protest over the rise of abstract painting in Canada.

Perhaps the most unusual portrait in the hall is that of Chief Justice Robert Taschereau, part of that same Taschereau family I mentioned earlier. Chief Justice Taschereau taught criminal law for many years at the University Laval before coming to the Supreme Court in 1940. His picture is painted by Montreal artist Eric Goldberg, known as much for his politics as his painting.

Among the other justices who have long academic careers were Jean Beetz, who was a professor and later dean at the University de Montreal before serving 14 years on the Court; Eve Pott, who was dean at the Université Laval in the 1960s but also a well-known practitioner and business executive; Gerard La Forest, who taught international law with distinction at the University of New Brunswick; Gerald Le Dain, who was a professor of administrative law at McGill and later dean at Osgoode Hall Law School before he was named, first to the federal court, and then to the Supreme Court in the 1980s. Others include Frank Iacobucci, dean and professor of law at the University of Toronto and Michelle Bastarache, who was dean at the University of Moncton in New Brunswick and a pillar of an academic tradition promoting the common law in French before he pursued that same endeavor in his work as a judge.

There are many others. Louise Charron taught for many years at the University of Ottawa. Louise Arbour was a professor at Osgoode Hall. Sheilah Martin was dean at the University of Calgary in the 1990's, and Russell Brown taught at the University of Alberta Law School before his judicial appointment.

None of this anecdotal evidence of professorial judges proves much except, I suppose, that while law teaching is not a prerequisite

for judging, life in the ivory tower has not disqualified candidates to the Supreme Court. These jurists have had something of a double identity and their successes invite us to examine more closely the supposed gulf that separates theory and practice between the academic lawyer and the practitioner or judge.

The idea of a professor turning judge seemed for many years to be a rare, unlikely, or perhaps even an unhappy circumstance. Wisdom dictated that first-hand experience of courtroom advocacy is the best preparation for judicial appointment and one can well understand why. Professors and barristers have very different lives and many thought that the quiet still air of the library should be contrasted with life in the courts, law's trenches, which is a different way of knowing the law. And while they're not at odds with one another, they are sometimes disconnected. Judge Richard Posner, a former law teacher and prolific scholar, worries about what he describes as the increasing distance between the academy and the judiciary, prompted in part by the abstract and specialized character of legal research and writing. He calls for legal courses that are oriented towards practice and judging as a means of bridging what he sees as a regrettable gap.

Over the last 40 years, the place of casebooks as the principle, if not sole source of learning of the law, has diminished. It's fair to say that the law taught today in university no longer always coincides with knowledge developed by courts and legislatures. Professors have Ph.D.s in nearly all settings and pursue research and attendance of careers, often at arms lengths from the case reports.

I remember a visit from a very prominent Canadian judge to McGill when I was dean there who, rather ungraciously, I thought at the time, commented to me that, "Much of what you do here is a waste of time," suggesting that the courts alone set the agenda for

law. Perhaps the better view is that the professor and the judge often work on similar things differently. Judges on one side, professors on the other. I've worried for years about the fabled separation of the world of theory and that of practice. We've all heard the old joke, "The solution to a legal problem is perfect in practice but does it work in theory?"

In preparation for today's opportunity to reflect on the common stake in the law shared by the law professor and the judge, I turn to two writers: the late Peter Birks, Regius Professor of Civil Law at the University of Oxford, gave a lecture in 1998 at Lincoln's Inn in which he denounced some of the perceived dissidence between the two callings in the United Kingdom, where judges would not even cite a law professor if he or she were still alive, lest that person have a change of mind.

I also turn to the work of Justice Beetz, for whom I clerked some thirty-three years ago. Justice Beetz, who taught constitutional and private law before his deanship at the University of Montreal, gave an important lecture on the relationship between the universities and the courts to the Royal Society of Canada while he was a judge. Professor Birks and Justice Beetz, notwithstanding their different teaching experiences – common law at Oxford, the civil law at Quebec – shared a profound respect for the works of the court and, interestingly, a deep interest in Romanov principles as the intellectual foundation of western law.

Justice Beetz wrote that the role of the law teacher and that of the judge are divergent, almost antithetical. He described the law professor's fundamental mission as imparting a discipline of the mind to inculcating a way of thinking for lawyers, a method peculiar to their profession and to the task of problem solving. Judges made laws, said Beetz,

whereas professors did not. For Justice Beetz, the professorial task was, in his words, "more Socratic than juridical." He observed that the professor's first task is not to develop the law or even actively to chart its path but rather to educate others, to encourage an uncluttered way of thinking about the law, and to inspire lawyers to promote the acquisition of lawyering habits as professional virtues.

I read Professor Birks as making a case for a more pedagogical role for judgment writing and a more intense place for scholars in lawmaking. This Oxford professor echoed Lord Denning and Lord Goff in saying that for modern common law, scholarship should be a primary source.

In my case, the transition from one life to another was profoundly exhilarating. It seems to me that in leaving the academic freedom given to university professors, one senses a new freedom as a judge that comes from judicial independence devoted to a related ideal of public service.

Canadian law professor David Sandomierski writes that the mission of legal education is the concern for cultivating the lawyer as citizen and argues that this ideal grows out of an intellectual tradition in which theory and practice are mutually reinforcing concepts, integrated in a public-spirited vision of legal education.

I hear these same values at work in the initiatives that bind together Fellows of this College. It strikes me that viewed from this perspective, the theory-practice divide fades away, the professor and the practitioner share some of the same identity, and on that optimistic note, I offer thanks for the honor that you extend to me today at the American College.

Carey Matovich
Billings, MT





A CONVERSATION WITH SCOTT TUROW

Regent Daniel E. Reidy of Chicago introduced and interviewed best-selling author – and trial lawyer – **Scott Turow**. Dan met Scott when they were both federal prosecutors in Chicago back in the late '70s; they have been friends ever since.

Scott's first book was *One L*, his account of his first year at Harvard Law School. But he exploded onto the literary scene with his first novel, *Presumed Innocent*, the bestseller that became the blockbuster movie starring Harrison Ford and Brian Dennehy. Since then, Scott has authored, among other works, *Pleading Guilty*, *The Laws of our Father*, *Personal Injuries*, *Ordinary Heroes*, *Innocent*, *Identical*, *Testimony*, and most recently the book Dan focused the interview on, *The Last Trial*.

Dan addressed Scott's skill as a trial lawyer. People will ask him, he said, "Oh, you know Scott Turow. What kind of lawyer is he?" Dan wishes he could answer "Yeah, you know, he's a fine lawyer but mostly, he writes books." But Dan can't say that, because the truth is that Scott is a fantastic trial lawyer who also happens to write fantastic books. *The Last Trial* is a return to Kindle County, the land of presumed innocence, bringing us back to Sandy Stern, now a very senior lawyer entering on to what will certainly be his last trial.

An abridged version of the interview follows:



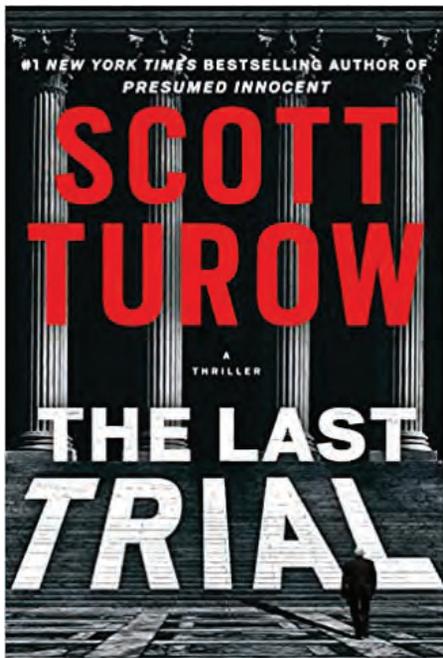
Dan: In *The Last Trial*, you talk a great deal about trial itself. About sixty percent of the book is actually in trial; that's more than any of your other books. Tell me what you were thinking when you set it up that way. You even organized the book around the trial; it starts with the opening and the closing.

Scott: I suppose it's a return to what I know. You know, my last book [before *The Last Trial*] was set at the International Criminal Court in The Hague, where I had to do a lot of research, whereas, as you and I both know, anybody who's tried cases in federal court, really has it sort of burned onto his or her brain. I would get up every morning and after writing for a couple of hours, I'd come out to Adriane, my wife, and I'd say, "I don't know who's going to like this book, but if trial lawyers don't like it, I've really done something wrong."

Dan: If we were all in one room, I would ask for a show of hands among the lawyers as to how many of them have thought about or begun to write a novel. So talk to me – first an author or first a trial lawyer?

Scott: Well, if we're being really honest, I'm sure that half of the people who raised their

hands have sent me pieces of their manuscript and asked me to discreetly comment, including, of course, many of my partners. I started out to be a novelist, and that was my dream and I was lucky enough to get a certain way with it. I was a writing fellow at Stanford and taught there a little bit, and I wasn't all that well-established as a writer but I was well on my way to an academic career when I decided this really wasn't what I wanted to do. The law was more than a second thought; it was actually an adult discovery because as I like to say, my father, who was a doctor, was a prophet in his own time in the sense that he was a doc who hated lawyers long before it was common for physicians to do that, so I really didn't know what lawyers did because my father wouldn't let them in the house. And when my friends from college sort of moved off in a phalanx to law school and then began practicing, I was really surprised by how interesting I found what they were doing. There was a guy I became friendly with who is now, unfortunately, a blessed memory named Jim Hunt. Jim would tell me that every morning when he was on trial he would wake up and realize that he was headed for court and he would run to the bathroom and be sick. And I was so enamored of the whole thing that even that part sounded good to me. ▶



Dan: Well, I know for personal fact that you've managed to straddle both very well. But what was your thinking? I mean, I don't want to get crass, but you've authored a number of best-sellers, there have been film deals and TV deals and I'm pretty sure that you didn't need whatever shekels are involved in the practice of the law for a long time. What's kept you in it?

Scott: Part of why I wanted to continue to practice was just if it ain't broke, don't fix it. Roger Straus, my publisher, early on told me "Look, let me say something to you. Don't be one of these people who throws over everything in your life. You know, what got you here is not, you know, the stars that are starting to fall from the sky. What got you here is everything else." And I thought that was just great advice. And you know, the other piece of it is that I like lawyers and I like what lawyers do and certainly, after the success of *Presumed Innocent* I was able to say to my partners, I need some time to write and I need to work part-time, which has proved to be more manageable than people might think. And the other thing I said is how about if I do more of that stuff that the young man who went to law school thought he was go-

ing to do, especially the *pro bono* work? The people at Dentons were wonderful partners and they said yes to all of that. There were times in certain cases when I had 11 associates working in the middle of the night, that there were some questions raised, and my response was, "Do you really think that they would be as willingly working in the middle of the night on an insurance defense case as they are trying to get an innocent man out of prison?" Generally, it's gone very well and it's been worthwhile for me and I think for the firm.

Dan: Talk to me about *The Last Trial*, which takes on the aging professional and the point at which maybe others would claim skills are diminishing. Tell me what you think about when you're picking your plots, around which I think you try and tell us a lot about what you think about perhaps more lasting themes?

Scott: Well, I don't hide the ball. Sometimes I hide it from myself, but in this book, when I first presented it to my editor, I said I really think at the end of the day the question is how do you measure the value of a life? Because Sandy Stern, certainly a far better lawyer than I've ever been, a celebrated trial lawyer and pretty uniformly revered, is coming to the end of the trail. And he's measuring his life, implicitly, against that of his friend and the client whom he's representing, the criminal defendant, Kiril Pafko, who at least as the world understands it, has made a pathbreaking discovery in curing cancer. Stern is old enough to realize that the great things lawyers do, generally speaking, are being part of the parade and a process, and that very few of your days in the office are going to be remembered by anyone, even including yourself. Even your best cases may not have an impact that will last. Pafko, on the other hand, as Stern confesses near the end of the book, his name may be remembered 500 years from now. How does that stack up when you're trying

to come to terms with the end of your professional life, as Stern is, and life itself? So that's really central to the book, more than curing cancer or clinical trials or even the rigmarole of trial, which of course, is at the heart of the action.

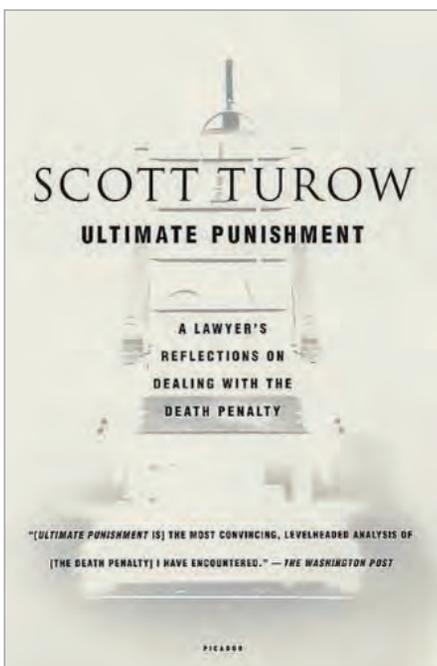
Dan: Well, you can't help but think about family when you read this book. And I was thinking about your own family and now, of course, that your daughter Eve is now an author and your daughter Rachel is an accomplished FDA lawyer, which comes up quite a bit in your book. And so I was wondering, did you lean on Rachel for this book?

Scott: Rachel was a lot of help to me when I asked, but she didn't suggest any of the topics, and I'm at pains to say that any of the criticisms of the FDA are mine, not hers. But I told her what I was going to do, and I was glad to find in a world that was much more complicated at base than I realized it was so that, you know, everybody talks about the greedy drug companies and very few people are aware of how much money they routinely lose on medications that just don't prove out. So there are things to criticize, but there are also things at least to understand and, Rachel read the manuscript, she gave me a number of fairly pointed suggestions. You know, nobody loves it more when you mess up than your children, so that they can tell you didn't read far enough in whatever cliff notes version of the drug laws that you were relying on. But Rachel was a lot of help.

Dan: *The Last Trial* has been very well reviewed in the *New York Times* and many other places. Do you think there was any comparisons in reaching the end of an active courtroom career in your own life and Sandy Stern?

Scott: Well, I haven't completely given up the idea of returning to the courtroom on *pro bono* matters, but I tried a

case about eight years ago and we were lucky enough that the judge flushed the case at the end of the prosecution and I did walk out of the courtroom thinking to myself – I was, at that point, about 63 – and I thought to myself, “I’m not sure I really have to do this again.” I’ve been back in court and have had hearings since then, but it’s been a great career. It’s also hard on you physically and emotionally but particularly, as you get older, physically. I remember our friend, Jim Zagel, a very fine federal judge, who told me a story about meeting a guy on a beach who clearly was a lawyer because he’s on the beach and has transcripts and files, he’s trying to hold it all down in the wind, and Zagel basically said to him, “You know, you look a little long in the tooth to be doing this,” and he says, “Yeah, I am,” he says, “but you know, I still haven’t lost the ability to stay up all night and still be good in the morning.” I can’t say that so, you know, it’s always bitter-sweet to turn a page in your life but I was definitely ready.



Dan: So in addition to being an active lawyer and working on a lot of *pro bono* cases, you took up an interest in the death penalty and served on the governor’s commission here in Illinois to look at the death penalty, which was ruled out in Illinois during that governor’s term and beyond. And you wrote a book about it, *The Ultimate Punishment*, that got the Robert F. Kennedy Center Award for justice and human rights in 2003. Was it different from how you create a fiction book?

Scott: Well, I actually tried to write a novel first; I published a novel called *Reversible Errors* which centers on a man on death row and a lawyer who’s appointed and not very happy about being tasked with representing him on a habeas petition. But I felt at the end of the novel I just hadn’t said, even concisely, what I wanted to say about the death penalty and my own experience with it. I wasn’t sure as a prosecutor I could stand up and ask for the death penalty, but I kind of thought I could, even if I wouldn’t have written the laws that way myself. But I realized over time, especially working on the commission where I made it my business to try to read every first-degree murder case reported in the State of Illinois, hundreds of cases and you sit down and do it, you just can’t make any sense of this. There are cases where a mother pours lye down the throat of her infant. A guy straps his best friend to the railroad tracks and watches the train run him over. They don’t get the death penalty. They didn’t get the death penalty but one of my clients who shot some guy in a parking lot in a moment of panic, he was death sentenced. At the end of the day, my argument against the death penalty, which sort of came to me

from the experience of the commission, was a lawyer’s argument, which is it just doesn’t work. If you say that we have the right as a society to say that for ultimate evil there has to be ultimate punishment, then you are saying that that system has to work well enough to send that message, which is to say it’s imposing that penalty systematically enough and regularly enough that it really is acting as a moral clarion. It’s choosing the right people for execution; the right cases and it’s being imposed fairly. It just flunks; it flunks on all of those criteria and so you can argue about individual cases; and say it was right that Timothy McVey got the death penalty after killing 160-some people at the Murrah Center. A dear friend of both of ours prosecuted him, but even Joe’s feelings about the death penalty have changed over the years. If you want to talk about exceptions and rules, there will always be an exception. But as a rule, it doesn’t work and it’s just that simple; it doesn’t do what it’s supposed to do.

Dan: Thanks.

Scott: Thank you for having me; I’m flattered to be addressing, even virtually, such an august group.

Doug Young: Scott, I seriously hope that *The Last Trial* is not your last novel because we need more from you, both as an artist and as an inspiration for those of us who are trial lawyers. I’ve heard you talk about trials and novels as being about the ambiguities that lie beneath the sharp edges of the law. Think about that: Ambiguities that lie beneath the sharp edges of the law. That’s what we do as trial lawyers and your work, your fiction, your experience inspires us to do better.

COMEDY IN THE AGE OF COVID POLITICS AND CORRECTNESS

The College assembled an all-star panel to discuss the role of comedy in our society during this time of pandemic, a sharply fractured political climate and the political correctness movement. I was honored to moderate the program which started with an introduction of the panelists who shared connections with Michigan and Texas.





Adam Szykiel is an accomplished television and movie screen writer from Michigan who created and was the show runner for the NBC comedy *Undateable* which is set in a Detroit bar. His screen credits include *Rampage* starring Dwayne (The Rock) Johnson, *Due Date* with Robert Downey, Jr. and Jamie Foxx, *Alvin and the Chipmunks 4 (Road Chip)*, *The Rocker*, featuring Jason Sudeikis, Rainn Wilson, Emma Stone and Bradley Cooper, and *Made of Honor* with Michelle Monaghan and Patrick Dempsey. His wife, my daughter, was born and raised in Texas.

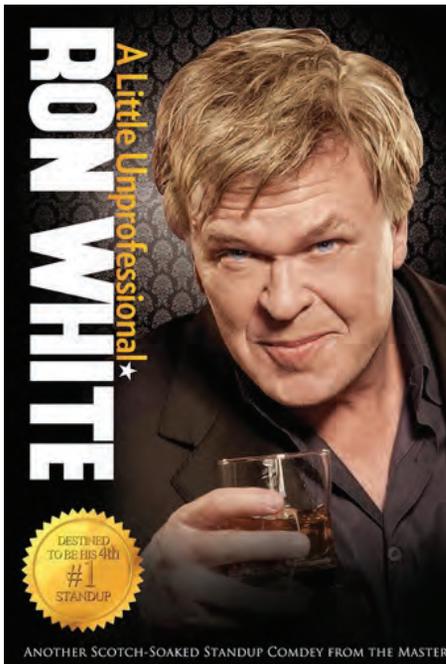
Wallace Jefferson is the former Chief Justice of the Texas Supreme Court and authored the unanimous opinion of the Court in *New Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004) a widely cited decision upholding the First Amendment's protection of satire. Just days before our September 25, 2020 program the Chief was married by Michigan governor Gretchen Whitmer at the governor's mansion on Mackinac Island. It was noted at the ceremony that, in many states, before the United States Supreme Court decision in *Loving v. Virginia*, 388 U.S. 1 (1967) Justice Jefferson, the great grandson of a slave, could not have legally married his bride.

We were joined by Ron White who, it was said, once flew over Michigan but grew up in Texas and had a Day (April 27, 2009) named after him by the Texas Legislature. Ron is a Grammy Award Nominated Comedian who, for his stand up routines, created a fictitious "wife" woven from his many amorous adventures. He explained that this character was used against him in court by a woman he was dating who claimed to be his common law wife.

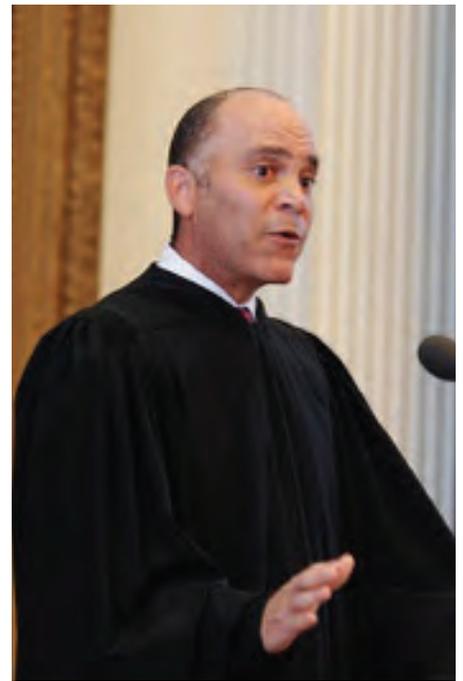
We started the program with predictions of what more could happen in the nine days between our taping (September 16) and the presentation at the Annual Meeting. No one predicted that two days after we finished Ruth Bader Ginsburg would die and our nation would still be mourning her death when this program was shown. ▶



Adam Szykiel



Ron White



Wallace Jefferson

But not knowing what was to come, we started on a lighter note describing how politics and political correctness influenced the comedic approach. Although Ron had told me in a pre-program meeting he was scared to say the wrong thing, he clarified that he tries to leave politics out of his shows for fear of alienating half of his audience. “I want to make them laugh as hard as I can,” he said, noting that his comedy has to come from within, not by trading on the politicians, which is the stuff of late night comedians.

Adam agreed that he tries to keep politics out of his comedy and made the important point that the biggest regulator of modern comedy (indeed all speech) today is not the government but social media, which he said “has empowered society to regulate speech in its own way.” Ron added that the media itself can regulate speech by criticizing a comedian’s program as did the Wall Street Journal in a recent editorial.

But, he added, “Comedy is born from tragedy if it’s any good. You can’t enter into it with any fear,” a theme that President Doug Young remarked upon after the program.

Sometimes the government does attempt to censor comedic speech; the First Amendment must step in. Justice Jefferson described the New Times case, which involved a satirical article published by the Dallas Observer, an alternative newsweekly, based upon a real event. What actually happened was that a thirteen year old seventh grader was arrested and detained for five days in a juvenile detention facility for writing and submitting a Halloween story as a school assignment.

Although his teacher graded the story a 100 and gave extra credit for reading it aloud to the class, the school’s principal deemed it a terrorist threat and called the authorities, who locked up the student. The Observer saw the potential for comedy.

It published an article entitled “Stop The Madness” which described the arrest and detention of “diminutive 6 year-old” Cindy Bradley who was purportedly jailed for writing a book report about cannibalism, fanaticism and disorderly conduct in the classic children’s book “Where the Wild

Things Are.” It was, of course, complete fiction, with made up quotes from the trial judge and district attorney from the actual case.

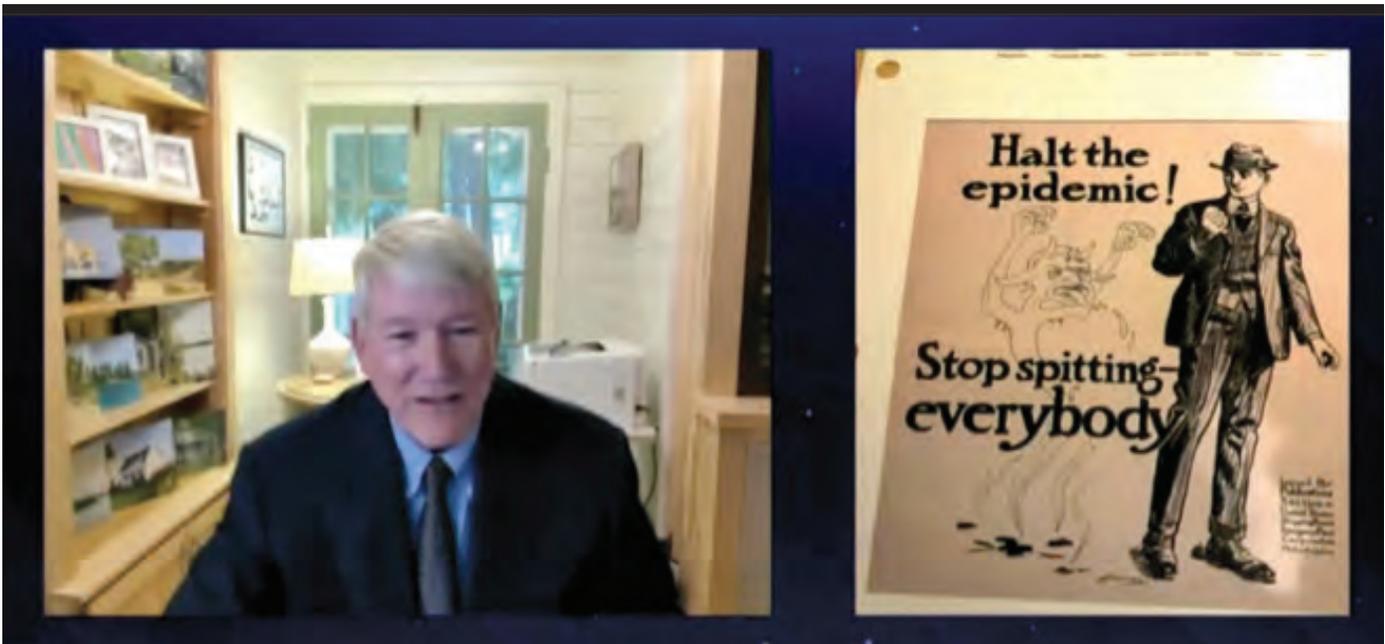
The judge was quoted as telling the six year old “It’s time for you to grow up, young lady, and it’s time for us to stop treating kids like children.” The judge and DA sued for defamation and, after the newspaper’s summary judgment motion was denied and affirmed on appeal (Texas allows the media to file an interlocutory appeal of the denial) the Supreme Court stepped in, holding that a satirical article must be judged by the standard of a reasonable reader. Chief Justice Jefferson wrote that “In a case of parody or satire courts must analyze the words at issue with detachment and dispassion considering them in context and as a whole, as the reasonable reader would consider them.” The Court reversed the lower court and rendered judgment for the defendant.

Justice Jefferson told our group that this is one of the few instances where deliberately false statements about a real person are not actionable and are protected by the First Amendment. This is not new, he said, pointing out the 1729 publication by Jonathan Swift, *A Modest Proposal*, which advocated selling impoverished Irish children to the aristocracy for food. But in protecting intentionally false statements that the reasonable reader would not view as stating true facts the First Amendment “protects what our country is all about.”

The panelists all agreed that comedy today is robust and “a powerful medium.” Ron said that he “has seen comedy change people’s lives” and indeed Justice Jefferson speculated that President Obama’s roast of Donald Trump at the Washington Correspondents Dinner might have spurred his successor into running for office. That we will never know, but as I said in conclusion “if the First Amendment means anything it protects the right to laugh and make fun of ourselves and others.” As for COVID we researched the 1918 pandemic and learned that we could halt this virus if we just “STOP SPITTING”. You had to be there to get the joke.

I second President Young’s closing remark that this panel was “fun, informative and substantive.”

Chip Babcock
Houston, TX







DEAN MARCUS COLE – DO THREE THINGS

Treasurer (now President-Elect) **Michael L. O'Donnell** introduced Dean **Marcus Cole**, the 11th Dean in the 151-year history of the University of Notre Dame Law School.

Dean Cole did his undergraduate work at Cornell, where he met his wife, Angie. After securing a degree in applied economics, Dean Cole attended Northwestern Law School, where he was editor in chief of Northwestern's *Journal of International Law and Business*. He clerked for Judge Morris Arnold on the Eighth Circuit, became an associate at Mayer Brown, then joined the faculty at Stanford in 1997. Dean Cole is a leading scholar on the empirical law and economics of commerce and finance, and teaches bankruptcy, contracts, banking and venture capital. He was an associate dean for curriculum and academic affairs at Stanford. He was a national fellow of the Hoover Institution and a fellow at the University of Amsterdam Center for Law and Economics. He has been a visiting professor at universities throughout the United States, Asia and Europe. He has served on the boards of multiple civic and charitable organizations, including the Anti-Defamation League, and he ran a national nonprofit charter school network for low-income children.

Dean Cole is a passionate advocate for freedom of speech, expression and religion. He has said that a law student who is afraid of words or ideas is like a medical student who is afraid of the sight of blood. His goal is to train ethically and morally guided lawyers and leaders. He believes lawyers can create value and do good for others, whether the practice is mergers and acquisitions, civil rights, ▶



social justice, or litigation. His stated goal is to create excellence with purpose.

Dean Cole is the son of a black, West African father, and a white mother from the Netherlands. Over the years, he has received a lot of hate mail in response to his candid views. He says he likes getting hate mail because it makes him feel as though he's having an impact on the world. He insists on his students hearing ideas from all angles and points of view. He believes we all have the right to be offended by what someone says but we do not have the right to *not* be offended.

Dean Cole wrote an article on racial justice and equality after the recent murder of George Floyd in Minneapolis. The article, *I am George Floyd Except I Can Breathe and I Can Do Something*, quotes the Reverend Dr. Martin Luther King, Jr., speaking at King Chapel at Cornell College in Mount Vernon, Illinois on October 15, 1962: "I am concerned that men hate each other because they fear each other. They fear each other because they don't know each other. They don't know each other because they don't communicate with each other. They don't communicate with each other because they are separated from each other."

Dean Cole's abridged remarks to the College follow:

I am George Floyd Except I Can Breathe and I Can Do Something makes no comment on what happened in Minneapolis. It makes no judgments about the existence or causes of police brutality or systemic racism. Instead, I recount

how as a young boy my father took me and my younger sister and baby brother to a different neighborhood to get strawberries, only to be followed home from that neighborhood by a car with three young white men who stopped our car, dragged my father out of the car, and beat him with a baseball bat and tire irons right in front of us. If it were not for our neighbors rushing out to help, my father would have died on the hood of our blood-soaked car that night right before our very eyes.

I concluded my essay by committing myself to doing *three things* within my power to make the world a better place. I committed to starting an exoneration clinic to free those who've been wrongfully convicted and victimized by our criminal justice system. I also committed to reinvigorating the LLM in Civil Rights Law, which was at the center of Father Theodore Hesburgh's original vision for Notre Dame Law School. Finally, I committed Notre Dame Law School to train lawyers interested in pursuing justice through civil rights practice, whether as a full-time vocation or as an avocation.

But I did not accept this invitation to speak to you to ask you to do three things in your individual capacities. This group is far too powerful and influential to leave it there. To me, the American College of Trial Lawyers consists precisely of those people who can change the world for the better. So in the words of Broadway's Alexander Hamilton, I'm not throwing away my shot. In addition to the three things that each of us can do as individuals, I want to take

aim at three things that I think will go a long way to making this country a better, more just, more humane, and more prosperous society. The three things that I think would make this country a more just society are, *first*, to promote a system of genuine accountability, both for citizens standing their ground, as well as for police, including the elimination of police unions. *Second*, to engage in better psychological and background screenings of police recruits. And *third*, to take profiteering incentives out of both the civil and criminal justice systems by eliminating asset forfeiture, for-profit prisons, and military equipment salvage programs.

First, there must be genuine accountability. There's a famous quote from the award-winning actor, Will Smith. When asked whether he thought racism in America was getting worse, he responded, "Racism isn't getting worse; it's getting filmed." I think that Will Smith is wrong; demonstrably wrong. While it's true that racial violence, especially when perpetrated by police is getting filmed, I think it's also getting worse.

What makes this rise in racism even more confounding is that crime rates have actually been falling over the last three decades, dramatically. According to the FBI, the crime rate has fallen by 51 percent since the early 1990s. And the Bureau statistics report a 74 percent drop in serious crime since then. When it comes to crimes committed by African Americans, the numbers are equally dramatic. Even if we assume that each and every conviction of an African American defendant is rightful, those convictions have fallen by 34 percent since 2008, while the rate for other segments of the population have remained almost exactly the same for nearly the last half century.

Have African Americans suddenly become law-abiding? Or is there another variable in the calculus? I think that there is and it's an obvious one. Our criminal justice system is starting to become wise to what was happening before; namely, that African Americans, especially African American men, were stuffed into the criminal justice system. The people marching in the streets today are not doing so because they don't

believe in the rule of law. Quite the contrary. They're marching in the streets because their innate sense of justice, the one that is written on their hearts, has been deeply offended by what they are witnessing. They see that the rule of law has descended into a rule of men. It is the arbitrary exercise of discretion over life and death that accounts in the minds of many for the wild swings in incarceration rates for African Americans when the rates for other groups holds steady. And it is the arbitrary exercise of discretion over life and death by the police that has led many to realize that, for many of us, we are not living in a society of laws. This is especially true when we see how hard it is to convict a police officer of murder. Just five police officers in the last 15 years have been convicted of murder.

Today, for some, a badge is a license to kill. But it is more than that. Police officers have a very difficult job. They deal with people in the most difficult situations that life has to offer and they often have to make life and death decisions in a fraction of a moment's notice. Because their job is so incredibly difficult, we as a society have extended them great latitude in the discharge of their duties. We rightfully grant them qualified immunity for the exercise of their judgment, even when those judgments turn out to have been wrong or flawed. Their immunity is qualified, not absolute, because we expressly forbid them from violating what the Supreme Court has labeled "clearly established rights." Nevertheless, we have failed as a society to hold police accountable, even when they have violated a clearly established right. Why do we as jurors, prosecutors, judges, or the public at large fail to hold police accountable for exceeding the clearly established rights limit that we have placed upon their authority?

One answer is the role the police unions have played in protecting their members from accountability. But aren't police entitled to union representation like any other workers? I'm not so sure. Think about all of the people who keep us safe who are not entitled to union representation. Think about members of the armed forces who put their lives at risk to protect us from those who are committed to harming us; our



soldiers, sailors, and marines are not unionized and yet they, like police, place themselves between us and the harm that might befall us.

Does anyone remember PATCO? The Professional Air Traffic Controllers Organization? PATCO was the union and collective bargaining unit of the nation's air traffic controllers. Air traffic controllers keep us safe, not just when we fly, but also ensuring that those of us on the ground are not harmed by those in the air. They have a hard job. It's a stressful job. Nevertheless, when the air traffic controllers went on strike in 1981, President Ronald Regan gave each of them an ultimatum: Return to work in 48 hours or you will be fired. When scores of air traffic controllers remained out on strike, President Reagan fired them and disbanded their union. Air traffic controllers still have a tough, stressful job keeping us all safe. What they do not have is a union protecting them from accountability.

But even if we finally start to hold police and civilians accountable for wrongful behavior, we will still have a problem with racial violence like what we saw in Minneapolis or in Kenosha. That is because, believe it or not, while most police officers are good people who have dedicated their lives to serving the public, the hard truth is that the lack of accountability for bad policing has been a magnet for some people; people who see a badge and a gun as a license to hate and to kill those they hate.

So the second thing we must do is effectively screen police recruits for hate. Over the last several years, a cottage industry of experts has arisen who tell us that if we want to stop these extrajudicial executions, we need better training for our police. In particular, they insist that all of us, and the police in particular, need to be made aware of our implicit bias. Even with my untrained eye, I can tell you that it was not implicit bias that I and other Americans saw on the face of the police officer who knelt with his full weight on the neck of George Floyd until he was dead. It was not implicit bias and it was not fear that I or we saw on his face; it was hate. Sure, implicit bias may be a problem but I can live with implicit bias. I can quite literally live with implicit bias. What we cannot live with is

hate. We are particularly endangered when hate wears a badge and a gun.

As a society and as individuals, we have to stop turning a blind eye towards hate. If we want to change things, we need to stop tolerating it. As individuals, we do not need experts to tell us when we encounter hate. We know it when we see it or hear it. But if we do not have the courage to confront when we see it or hear it, then we cannot be surprised when it turns up on the evening news. We deserve the society that we have let happen; not others – us. Each one of us.

So the third thing that we ought to consider is to take profiteering out of our civil and criminal justice systems. Our civil and criminal justice systems are currently set up to incentivize criminalization of ordinary activities and to reward overaggressive policing with military equipment and tactics. The town of Ferguson, Missouri, the birthplace of the Black Lives Matter movement, used exorbitant civil fines to balance its budget. When indigent people found themselves unable to pay these fines, they found themselves subject to contempt citations and warrants for arrest. Ferguson, not unlike other municipalities throughout the United States, operated a type of debtor's prison for those who could not afford to pay their special system of taxation. In a society where the poor are disproportionately people of color, we should not be surprised by whom this type of civil "criminal justice system" sweeps into its snares.

So what do police departments buy with the proceeds of their kleptomania? Better, more powerful stuff; stuff like armored transport vehicles, explosives deploying robots and other high-tech gadgets. Where do they get such militarized equipment? From the United States Department of Defense, of course. The U.S. military is looking out for us at every turn; they fight for us every day all around the world. And in that fight, they use the most sophisticated armaments money can buy. But after they've used this equipment, what do they do with it? They could melt it down and throw it out but that seems like a waste. In an effort to save the American taxpayer dollars, the Department of Defense does what any of us would do with our used but still useful household items: It sells them to the highest bidder. And

who's the highest bidder? In many cases, military salvage winds up on the streets of American cities, purchased by police departments. If our police forces look like military units now, it's because they are armed to the teeth like military units with real military-grade weapons; stuff that was meant to protect us from bad actors overseas is now being turned on us, the very people who paid for it. Twice.

When our newly militarized police force starts rounding us up, where do they put us? Today, the United States has the highest rate of incarceration in the world with 668 per every 100,000 in our prison systems. Our prisons currently hold over 2.5 million prisoners, with as many as one in 10 prisoners being held in private, for-profit prisons. When the Trump administration began detentions at the southern border with Mexico, it was operators of private prisons who stepped up to meet the need for jail space. In return for a fee, of course.

The problem with profiteering in the prison system isn't that the private prisons are taking all of the business; it's that

they're lobbying for more incarceration. Even if we eliminate private prisons, we will still have a system of profiteering because public prison systems have offloaded services like food, healthcare, and telecommunications to private vendors. This privatization of services has shifted the cost of incarceration from the taxpayers to those families of the incarcerated, exacerbating the problems of poverty and removing the hard choices surrounding mass incarceration from the shoulders of taxpayers.

So those are the three things that I think we need to do in order to restore justice and the rule of law in our society. They are three big things, admittedly; hard things, I know. But just because something is hard doesn't mean it shouldn't be done. And while my George Floyd essay focused upon the three things that each one of us could do within our own spheres of influence to make the world a better place, the members of this organization have the power to effect significant change in our society.

As I said earlier, I'm not an expert on race, but the truth is we can no longer afford to look to experts. They have failed us. We must take it upon ourselves to take decisive action to create the kind of caring and just society that we want to live in. I've articulated the three things that I'm committed to doing and even if we don't agree on the three big changes that I've outlined here, I'm hoping that each one of us will also make the commitment to do three things to make the world a better place. Although I'm just a lawyer, a law professor, and a law school dean, I will do whatever is within my power to help you.

Thank you again for this tremendous opportunity to address you and I pray that we can work together as lawyers to be a force for good in the world. God bless you.

Michael L. O'Donnell
Denver, CO





WELCOME TO THE COLLEGE — WARREN LIGHTFOOT

Our 53rd President (2002-03), **Warren B. Lightfoot**, welcomed the class of new Fellows at the virtual 2020 Annual Meeting. Warren's slightly abridged remarks follow:

I'm Warren Lightfoot, and I've been asked to speak to you about the College. But before I start, I want to comment on something else, and that's Facebook. My generation is mystified by the fascination that your generation and younger ones have with Facebook, so I decided to try my own version of it. Every day, on my daily walks, I stop passersby and I tell them what I've eaten, how I feel at the moment, what I did the night before and with whom. I show them pictures of myself and my family and their dogs, of me working in the yard, having lunch, playing bridge. I listen to them and when they finish, I give them thumbs up and tell them I like them. And it works just like Facebook! I have three people following me now; a psychiatrist and two police officers.

This is a great day for the College and because you're being inducted, it's a great day for you. I want to take the next ten minutes to tell you how you came to be here.

This College was conceived in 1950 by Judge Emil Gumpert of Los Angeles. It was his idea to create an organization composed of the best trial lawyers in the country. The top courtroom lawyers in California were invited to join, and from that beginning, it expanded to include all of the finest courtroom lawyers in North America, together with the top levels of the judiciary



in the United States and Canada. For 70 years now, the College has inducted into its ranks the preeminent courtroom lawyers in North America and it's assured that it has picked only the best of the very best by an extraordinary selection process.

Here's how that process worked for you:

Some Fellow of the College learned how good you are and decided to propose you for fellowship. If that Fellow was on the state or province committee, then the committee itself may have nominated you. If not, that Fellow wrote a letter about you and got together a list of the cases you've tried. Two other Fellows wrote seconding letters. The chair of the committee then assigned a committee member to make a detailed investigation of you and your cases; talking to judges before whom you've appeared, lawyers you've opposed, lawyers you've worked with. That investigation was reported and the local committee voted. Many, many candidacies go no further than this point. In your case, the committee voted favorably and your file was sent to the national headquarters in California. Within six to eight weeks, a secret poll was taken by our national office of every Fellow in your state or province. Every Fellow was asked to be totally candid and to give their rating of you as either very favorable, favorable, or unfavorable, and to say whether that was based on personal knowledge or reputation. After that poll was completed, its results were sent to the Regent for your area. That poll is unique in this way: It's completely confidential and it's anonymous; that is, no vote, no comment, is ever attributed to the Fellow who made it except to the Regent.

Speaking of anonymity, I'm reminded of a recent story from Joe Biden's campaign. Joe came out for photo-op at an upscale assisted living facility there in Delaware. He took his mask off for the benefit of the photographer and he was working the crowd of staff and residents. As he was about to wind up his visit, he was visiting with a small silver-haired lady and he ended his conversation with her like this: "You don't know who I am, do you?" And she smiled at him and she said, "No, I don't, sweetie. But if you ask at the nurse's desk, they'll tell you." ▶

Back to the College's anonymous poll about you: All those votes and comments about you were reviewed by your Regent and that Regent then began a painstaking second investigation of you; talking to many, many sources. Especially to your adversaries over the years, especially to judges, especially to any Fellow who expressed even the slightest reservation about you or your work. Those one-on-one conversations were completely confidential and, as a result, are breathtakingly candid.

Then at the next board meeting, your Regent presented your candidacy and you were discussed by name, individually, by the entire Board of Regents and past presidents. Significantly, 25 to 30 percent of candidacies fail at this point. A candidate can be extraordinarily talented, can have the most impressive case list, can be universally regarded as collegial, but if there's the slightest hint of character deficiency, the board will reject that candidacy. The board voted affirmatively, of course, with respect to you. And thereafter, you received for the first time, a communication from the College; a Statement of Qualifications for you to fill out and send in. Your Regent reviewed that Statement of Qualifications and you were, thereafter, elected to fellowship.

Our selection process is unique, it's remarkable, and it works to the very great benefit of you and the College. It's been said we're known as much by those who are not in the College as by those who are. One cannot purchase fellowship. One cannot politic one's way into the College. One cannot seek it. One must simply earn it and then wait to be asked. What an inestimable honor you've been given. It's truly a benediction pronounced on a life well lived, a profession well served, a truly accomplished career.

Now, I had the privilege of serving as president of the College eighteen years ago. But by far, the biggest honor I've ever had was my election as a fellow thirty-six years ago. A word about you spouses and significant others: What we do as courtroom lawyers is one of the most arduous vocations ever undertaken. The hours are long, the work is demanding, the pressure can be-

come almost intolerable. Virtually none of us in the College could have made it without the greatest support and understanding from those closest to us. So while Fellows must earn their induction into the College, we all recognize that much of the credit belongs to the spouses and significant others.

And now, I want to address you spouses and significant others directly. I want to describe the lawyer with whom you watch this video. I want you to know about the four criteria for fellowship: ability, experience, character, and collegiality, and how they apply to the lawyer you accompany. You sit beside a lawyer whose ability has been scrutinized over an entire career; one whose talent has been measured against the finest courtroom lawyers on this continent and who has been found to be at the absolute pinnacle of our profession. One whose courtroom skills have been judged preeminent, over and over by friend and foe alike. One whose courtroom accomplishments have truly been distinguished. You accompany a lawyer whose experience has been exhaustively evaluated, one who is welcomed in case after case with the most significant courtroom responsibility, and one who has demonstrated that no challenge is too great, no test is too severe. One whose dedication to excellence has never wavered and one who's deeply committed to our adversary system. You watch this video with a lawyer whose character has been investigated over a lifetime and whose ethics and morals have been looked at intensely and with the utmost attention. One whose integrity has been found to be impeccable. You accompany one today who has been a shining example of rectitude for others; a lawyer who is known by the bench and the bar for just that quality. No higher accolade can be earned by any person, in any profession, than to have been tested and found beyond reproach by one's peers and under the most adverse circumstances.

Finally, the lawyer who sits beside you today has been the subject of countless inquiries regarding collegiality. The local committees have asked, the regents have inquired, the Board has wanted to know: Is this as person who will

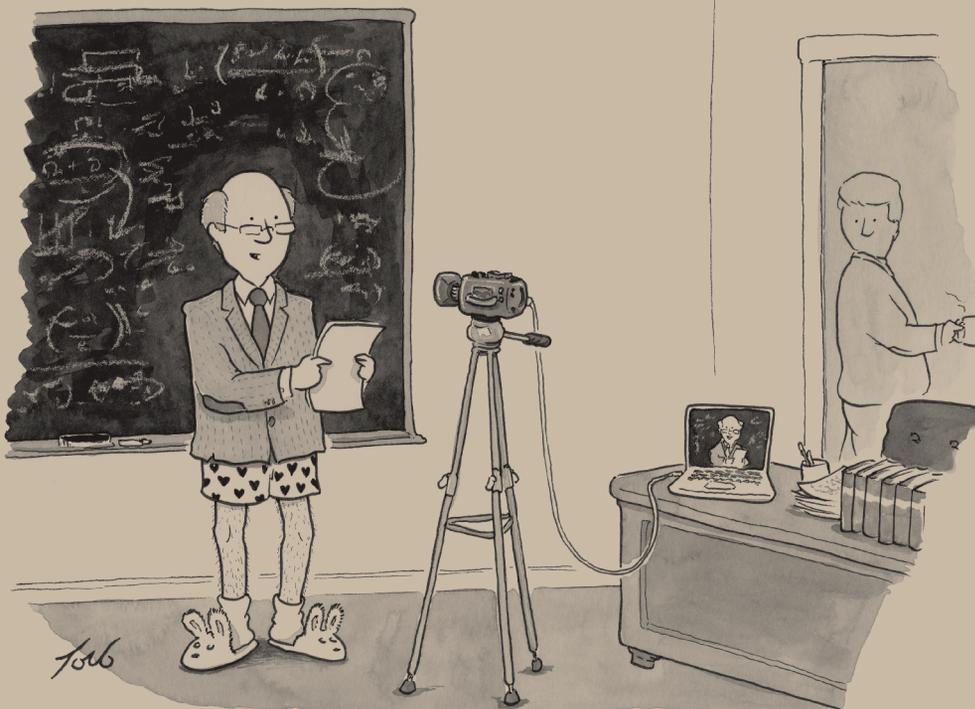
reflect credit on our great College? Is this a person of whom the Fellows will be deeply proud? Is this a person whose presence enhances any gathering? When Jack Welch announced his retirement from General Electric, the board of GE conducted the most rigorous search in modern corporate history to choose his successor. When they chose Jeffrey Immelt, two years later, this is what they said about him: "He makes those around him better persons."

And so it is with the lawyer who sits beside you now. Judges, competitors, and adversaries have told us this lawyer stands above all the rest. That our very profession has been elevated by the work and the presence of this lawyer. We read in the book of Proverbs that a good name is worth more than great riches and, indeed, it's our most precious asset. It's one we hope to pass down for generations. The lawyer beside you has spent a

lifetime building a good name and that is the single most important reason you're here. Justice Oliver Wendell Holmes said this about our profession: "We cannot live our dreams. We're lucky enough if we can get a sample of our best and if in our hearts we can feel that it's been nobly done." You inductees over and over have given your best and we are told by judges and adversaries that it's been nobly done.

Finally, to you inductees, I say this: We know so much about you and every dimension of your life and so, we can say with the profound sense of pride and respect, welcome to our great College! Welcome to our revered fellowship. We're honored that you're here and when you're inducted, our institution will become a stronger one because of the luster you bring. Congratulations and Godspeed. ■

VIRTUAL REALITY



"I'm honored to share my research at your virtual academic conference."

INDUCTEE RESPONDER — JOAN ILLUZZI-ORBON

Our Inductee Responder, Joan Illuzzi-Orbon, was asked to speak on behalf of her class of 96 new Inductees.

I digress. We have always designated an “Inductee Responder” to speak for his or her group. **Responder?** Were our new Fellows summoned to appear? Charged? Accused? Indicted? Ordinarily, when we are honored, we accept with grace; we aren’t required to, it isn’t appropriate to *respond*. My vote (I don’t get a vote on this but I cast it nonetheless) is that we re-title the person we ask to speak on behalf of the class to, oh, I don’t know, how about “Inductee Representative” or “Inductee Acceptor” or “Class Salutationist”?

Whatever we label her, Joan Illuzzi-Orbon of New York was a class act for her class.

Joan has worked in the Manhattan DA’s office since graduating from St. John’s University School of Law in 1988. Joan is no stranger to high-stakes trials. She was lead prosecutor in the recent Harvey Weinstein trial. She won a murder conviction nearly 40 years after the sensational 1979 kidnapping and murder of 6-year-old Etan Patz. She led the 2011 sexual assault case against Dominique Strauss-Kahn, a French politician and former managing director of the International Monetary Fund. In 2007, she prosecuted Dwayne “Lil Wayne” Carter Jr. and Jeffrey “Ja Rule” Atkins on weapons charges.

Joan and her husband, John Orbon (also a lawyer), have two adult children. When she’s not in the courtroom, Joan is an adjunct professor at her alma mater, St. John’s. Says Dean Michael Simons, “Someone as talented as Joan Illuzzi could be

making much more money in the private sector, but she’s chosen to devote herself to vindicating the victims of crime — whether it’s the family of Etan Patz or women who have been sexually assaulted or countless other victims of less high-profile crimes.”

Joan focused her remarks not on what the members of her class were, but rather on what they are **not**. The abridged version:

“So here is what they are not. It will be up to the collective minds of the esteemed institution to decide whether or not their list of shortcomings may foreshadow their contributions into the College. **Not.**

“**Not** afraid of jumping into the deep end, both metaphorically and literally, one of our inductees is a master scuba diver. This inductee’s contributions and accomplishments outside the courtroom include impressive work in wildlife preservation. In reading his bio, I was awestruck as my own contribution to wildlife preservation has always been trying to keep my kids from killing each other before I got home from work.

“**Not** stepping aside, but stepping in to preserve our country’s freedom. Several inductees bravely serve in the military. One inductee was employed in Bosnia in 1996.

“**Not** silent on the abuse of the innocent and vulnerable, one inductee took on the system that failed to protect a young girl who was tortured and murdered by her own parents.



“Not worried about a few bugs and bears? Two of our inductees are Eagle Scouts; training that I’m sure we all wish we had when we had to repurpose a completely failed argument into the centerpiece of our case using nothing but a few sticks and a bit of twine.

“Not afraid of hard work, one inductee who went on to be an extraordinary trial lawyer and the president of his Defense Trial Attorney Association, wouldn’t have even been able to go to college if it weren’t for an ROTC scholarship. He went on to serve his country again in the United States Army Jag Corps.

“Not the only member of their families to be inducted, three inductees are carrying on their fathers’ legacy of being a member of the College.

“Not mild but spicy, one inductee worked his way through college playing drums in his band, Red Hot Chicken. Now he sizzles as a lawyer in and out of the courtroom, always finding time for those who need his help most in underserved communities.

“Not on a TV show, but one inductee was a real-life Navy SEAL.

“Not giving a dung, one inductee owns 300 cows and completed three Iron Man competitions.

“Not barring any holds, two inductees are wrestlers.

“Not holding back any punches, one inductee is a boxer, parring in and out of the courtroom.

“Not stopping before the peak, one inductee summited Kilimanjaro.

“Not traditional, one inductee was the first woman to be awarded a varsity letter in a man’s sport, specifically, men’s crew.

“Not short on words, one inductee is fluent in seven languages.

“I’m struck with the thought of how fortunate we are. Perhaps, it’s odd to say that we’re fortunate when the world has gone through such turmoil and heartache and our future, at times, seems so uncertain. But I maintain that we are very fortunate, indeed. I work in a world where many people touched by the criminal justice system never had their face in light. There are people who have been put upon by others and lose control over their destiny or those who have been lost in actions that should not define them, but they have a very difficult road ahead. We have a voice; a voice that can be used to raise up those around us. Whether by getting justice, getting closure, or getting made whole, we have the honor and the privilege to speak for those who cannot speak for themselves. We are the guardians of the way to peace and justice for others. So feel lucky tonight and keep fighting the good fight. Thank you for accepting us all to this amazing institution.” ■



FALL 2020 INDUCTEES





Ninety-six new Fellows were virtually but actually inducted at our 2020 Annual Meeting. Remarkably, this was the first time ever that the reading of the names of the new Fellows could actually be heard. In every other meeting in modern history, 800 to a thousand or so people, lightly lubricated from an hour of cocktails, looked for their seats in a vast ballroom as the President called the new inductees forward. 90-120 prospective Fellows scramble their way to the risers at the front of the ballroom as the President began to read off their names. It takes the new inductees about a minute to assemble, but it takes about five minutes to read off 100 names, and it takes the rest of the crowd about a nano-second to attain cacophony. So, in every other meeting, the hapless President, who can't be seen because 100 new inductees are standing in front, and who can't be heard, because the room is in uproar, continues the futile reading of names.





This was different. Maybe better. No cocktail hour. Oh, Doug, Terry, Rodney and Judy toasted the new inductees, and individuals could do pretty much what they wanted to do during the Zoom meeting with the body parts not on camera. But there undoubtedly was less than usual alcohol flowing. No crowd noise. So, we actually heard their names. Later, we looked at their bios. And we were impressed.

Our ninety-six new Fellows live and work in 33 different States and Provinces. 26 are women; 8 identify as minorities; 1 is Native American. Many have served, but 11 remain in public service.

We have a Navy SEAL and 8 other vets, including several who served in combat zones. We have 2 mountain climbers (although some mountains are higher than others). A body builder. A cattle rancher. A couple of Eagle Scouts. A former Federal Judge. 9 Collegiate athletes, one of whom lettered in Men's Crew, albeit a woman.

It is a group with real practices and real lives outside of the law. We are happy to call them Fellows.

We could write a book about each of them; but we have room for just a few words about each member of this impressive class:

ALABAMA

Toby D. Brown does Med Mal and Products litigation in Mobile, Alabama; he is a proud graduate of the University of Alabama School of Law. An Alabama Fellow often tells others of his first experience with Toby: "Toby was a fairly young lawyer at the time, and on the day that my client was being deposed I was pleasantly surprised to see Toby walk in the door to take the deposition in lieu of the senior partner that had signed the Complaint. Two hours into the deposition, I was wishing that the senior partner had appeared, as Toby was doing a masterful job of carving my client up with a firm and disciplined approach."

Douglass Taylor Flowers graduated from the University of the South (Sewanee) and the University of Alabama School of Law and has practiced law in his hometown of Dothan his entire 38-year career. After a successful verdict in one of his cases, Taylor's co-counsel, who is currently a federal judge, called and asked for a transcript of the closing argument (which was particularly patriotic) so she could require her law clerks to read it during the July 4th week because of its effectiveness and themes of civic and national pride.

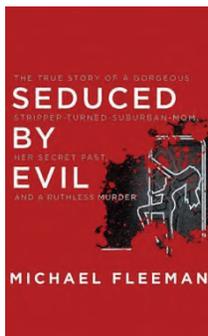
G. Rick Hall is a graduate of the University of North Alabama and Vanderbilt University School of Law. As a teenager, Rick raised a small herd of cows on his family's farm; today he owns 300 Angus brood cows. Rick is especially proud of his father, Grammy Lifetime Achievement Award winner Rick Hall, who is known as the father of the Muscle Shoals Sound. Rick says his father worked with renowned artists Aretha Franklin, Otis Redding, and Little Richard and was "a classic perfectionist who did everything he did to the best of his ability. Looking back at his work and comparing it to mine, I suppose producing an album over several weeks takes some of the same attributes as trying a tough case for several weeks."



Paul A. Young, Jr. is a graduate of the University of Alabama School of Law, practicing criminal defense in Enterprise, Alabama. He is known in the legal community for his mentoring of young lawyers in the practice of law and courtroom skills. Paul is a recipient of the Clarence Darrow Award (1994) presented by the Alabama State Bar and the Roderick Beddow Award (2009) presented by the Alabama Criminal Defense Lawyers Association. One young lawyer said, "the reason why I am the lawyer I am is because of Paul." "He is simply an amazing lawyer - a lawyer's lawyer."

ALASKA

Kevin Fitzgerald, based in Anchorage, was described in the book "Seduced by Evil: The True Story of a Gorgeous Stripper-Turned-Suburban-Mom" as the "favorite uncle, bald and bespectacled, polite during even the most contentious moment, operating a one-stop law firm not far from the courthouse on Third Avenue, who specialized in



everything from environmental law to homicide." And 10 years later he was awarded the "Champion of Liberty" by the Alaska Criminal Defense Lawyers Association. What more need be said?

ARIZONA

John Masterson graduated from the University of Arizona College of Law in 1981. He represents governmental entities and police officers in civils rights and prison matters such as personal injury and wrongful death; he represented Sherriff Joe Arpaio in civil contempt proceedings. During his undergraduate years at Arizona State, ran the 400 meter hurdles, placing 5th during the PAC-10 championships. He was also a member of a 4x400 relay team that included Olympians Maurice Peoples and Herman Frazier. According to John, "all I had to do was not drop the baton and one of them would take over."

BRITISH COLUMBIA

Simon R. Coval, QC, engages in business and commercial litigation as well as white collar crime (defending it, to be clear). He was been honoured for his "Prolific Volunteerism" which includes sitting on the BC Rugby Union Discipline Committee and the Access Pro Bono Society of BC. Simon played college rugby and basketball but now is a struggling golfer (is there any other kind?). His recent Queen's Counsel award recognized him as one of BC's leading commercial Barristers.

CALIFORNIA

Khaldoun Baghdadi practices on the plaintiff's side, with specialties including wrongful death, defective products, insurance disputes, and public transit injuries. In addition to being a "superb advocate," Khaldoun is universally admired for being professional, collegial and ethical. He says he is driven to help people, in part because of his family history; his mother began her life in a Palestinian refugee camp. A man of great creativity, Khaldoun once wrote an erudite law review article in which he managed to get "Apples and Oranges" into the title. ▶

Shawn Halbert has a solo criminal defense practice in San Francisco, which ranges from indigent Criminal Justice Act work to white collar work. Prior to setting up her own practice, Shawn did some teaching and worked as a big firm associate, but mostly she was a star in the Federal Public Defender's Office. As an Assistant Federal Public Defender, Shawn quickly earned a reputation for prevailing in cases she had no business winning. Prosecutors, judges and other defense lawyers uniformly rave about her trial skills, and especially about the passion she brings on behalf of her clients. One of her colleagues at the Federal Public Defender's Office reported that whenever Shawn was doing an opening or closing argument, everyone in the office would drop everything in order to watch and learn.

Knut Johnson is a 1986 graduate (cum laude) of the University of San Diego school of law. Knut received his undergraduate degree from Tulane University in Earth Science and spent three years as a geologist with Gulf Oil before attending law school. Since graduation from law school, Knut has been a criminal defense lawyer, first with the Federal Defenders office in San Diego and then in private practice, where he focuses on complex criminal law. Knut devotes much volunteer time, including teaching a popular course on Criminal Procedure at USD and serving on the board of directors of Na Koa Kai, a youth organization dedicated to teaching youth Hawaiian culture and heihehi wa'a (Hawaiian outrigger canoe racing).

Niall McCarthy, a college rugby player, practices in Burlingame, California, focusing on consumer class actions, qui tam litigation, and elder abuse. Niall is a member of the Irish 100 (the top 100 Irish lawyers in the United States) and has won the California Supreme Court Chief Justice's Award for Exemplary Service and Leadership. Niall is devoted to community service. He has co-chaired a group of attorneys working to restore court funding, and he works closely with a non-profit organization that helps children and adults with special needs and developmental disabilities.

CONNECTICUT

Eric Stockman has spent most of his career defending doctors and hospitals in med mal cases. He had a case against a fellow inductee that they both won: the plaintiff prevailed against a co-defendant for \$30+ million, while Eric defeated the claims against his client. Outside of the law, Eric has been playing guitar since he was 5 years old. At one point during his legal career he had a band that toured the Northeast on weekends. They nearly got signed but he gave it up and returned to the law in earnest when his twin daughters were born. Eric is an avid golfer, fisherman, and hunter and he refers to himself as an oenophile.

Angelo Ziotis focuses on plaintiff's medical malpractice trials, but has litigated all manner of tort and business disputes (his favorite one of these involved 20,000 defective hot tubs!). Angelo and his wife have been together since they were teenagers; he was smart enough to latch on to the woman who was at the top of his college class. They've been to Italy dozens of times and if he ever follows through on his desire to become fluent in Italian, he plans to start a college section there.

WASHINGTON, D.C.

Aitan Goelman has primarily a white-collar criminal trials and investigations practice. He began his career as an Assistant U.S. Attorney, where he tried cases against defendants Nichols and McVeigh as a part of the Oklahoma City Bombing Trial Task Force. A Fellow said "He is extremely prepared, quick on his feet, wonderful manner with juries, devastating cross-examiner, truly a nice guy." Aitan also served as Director of Enforcement at the Commodities Futures Trading Commission. Aitan has always fought above his weight class. When he started wrestling at age 6, the lightest weight class was 45 pounds and he had to wrestle up, since he weighed only 39 pounds. Aitan has wrestled up ever since.

Maximillian Grant tries patent infringement cases. In the last four years alone, he has tried eleven cases to verdict. He has been named

D.C. Litigator of the Year by Financial Times. The American Lawyer said about his six-week jury trial concerning prosthetic vascular grafts years ago: “Grant, a ramrod-straight former Navy SEAL with the instincts of a stage actor, questioned the most important witnesses, demolishing the credibility of [defendant’s] story in a series of textbook-worthy cross-examinations.” A Past President of the College added, “and outside the courtroom, Max is damn good company.” Max has also served as Deputy Assistant Secretary of Defense.

Sara Kropf has a complex commercial litigation and white-collar criminal law practice. Following four degrees from Georgetown University, including a Ph.D., and a clerkship in the 4th Circuit, Sara had the good fortune of trying five cases to verdict with five different Fellows of the College, and learned her craft well. With one Fellow, she tried a three-week jury trial in Alabama defending a coal company against Alien Tort Statute claims that it collaborated with Colombian paramilitaries in the murder of union leaders. In another, she achieved an acquittal in a Medicare kickback scheme after a four-week jury trial in Oklahoma. As Sara has always sought to reach the highest heights, it is not surprising that she once summited Mount Kilimanjaro.



John Majoras is a civil litigator whose practice includes product liability, consumer class actions, hostile corporate takeovers, copyright, tax, contract, energy and entertainment cases. One federal judge said, “He is clearly a master of complex litigation.” Opposing counsel in another complex matter said, “The jury is clearly understanding this, and if they believe it, we are going to lose, and we did.”

Jennifer Saulino is a civil and white-collar trial attorney who defends corporations and individuals in investigations and trials. She previously served as Assistant Chief of the Criminal Division, Fraud Section, in the U.S Department of Justice, where she tried Deepwater Horizon Oil Spill cases, along with antitrust, patent infringement, product liability and Medicare fraud cases. One federal judge said she was “phenomenal” and “an ideal candidate for the College.” Jennifer was the first woman ever to be awarded a Letter in a men’s sport at Yale when she was the coxswain in Men’s Lightweight Crew. She also runs eight miles every morning—rain, snow or shine—and is an avid wine collector, though her consumption never interrupts the morning run.

Alexandra Walsh has a white-collar criminal and complex civil litigation practice, and has often represented pharmaceutical companies against inadequate warning and birth defects claims. Alex began her career with clerkships in the D.C. Circuit and the Supreme Court of the U.S. Last year she tried a multi-state class action alleging misleading claims to market vitamins. *Litigation Daily* featured the successful case and said, “If cross-exam is an art form, Alex Walsh [and her partner] are masters.” On a personal note, Alex and her husband and four children took a year-long sabbatical in 2016, visiting fourteen countries and setting foot on every continent save Antarctica.

FLORIDA

David Oscar Markus is a graduate of Harvard Law School and practices criminal law in Miami, Florida. He is a frequent opinion contributor to several news outlets and the author of the Southern District of Florida blog. David is known for his pro bono work; one judge said, “When cases have a conflict at the public defender’s office, he is on the list to handle the cases. Usually the lawyers you see on that list are lawyers that are struggling looking for work. Every once in a while you’ll see a superstar on that list and that is David.”

Karen E. Terry handles Med Mal and Personal Injury litigation in West Palm Beach; she is a ▶

graduate of the University of Florida College of Law. Karen became a Supreme Court Certified Circuit Mediator in Florida in 2018 and is board certified in civil trial law and in healthcare and medical malpractice. Karen received the first verdict in the U.S. against a medical concierge company for the negligence of its doctor. Even during the most contentious trials, Karen's adversaries have described her as a "fighter, but someone who fights fair," noting that "the Bar could use more people like Karen Terry."

ILLINOIS

Maria C. McCarthy practices in Mount Prospect, Illinois after a long career with the Cook County State's Attorney Office, where she served as Supervisor of the Domestic Violence Division and the Homicide-Sex Unit. Maria is an Adjunct Professor at Northwestern University School Of Law, John Marshall School Of Law and Kaplan University, and she has coached the Northwestern University Trial Team in the College's National Competition. She has also taught constitutional policing principles to law enforcement officers.

Renee Monfort focuses her practice on the defense of healthcare providers and other professionals in professional liability litigation. She also provides counsel to individual health care professionals, multi-specialty clinics and hospitals on a wide range of administrative, policy and risk management matters. Renee was an Adjunct Professor at the University of Illinois College of Law where she taught Basic and Advanced Trial Advocacy. Renee received a BS in Accounting from Murray State and her law degree from Stetson University. In addition to the usual challenges of maintaining a trial practice, Renee has had to evacuate and relocate her office due to fire.

Andrew C. Porter is a former federal prosecutor who focuses his practice on white collar criminal defense, internal investigations, and complex commercial litigation matters involving high-stakes disputes about trade secrets, fraud, breach of contract, and director and officer liability. As an Assistant U.S. Attorney in Chicago, Andrew served as the office's gang coordinator, overseeing gang investigations and collaborating

with state and federal law enforcement partners to tackle gang-related crime. Andrew's clients now range from indigent criminal defendants to senior executives, public institutions, and businesses. Andrew was Editor-in-Chief of the Northwestern University Law Review. He is the lucky spouse of "fellow Fellow," Julie Porter.

Daniel R. Price represents both plaintiffs and defendants throughout Southern Illinois in Personal Injury, Wrongful Death, Medical Malpractice, Wrongful Termination and Products Liability litigation. In addition to his trial work, Dan has successfully represented clients in appeals in state and federal court. Dan is a *cum laude* graduate of the University of Illinois and Southern Illinois University School of Law.

Kurt E. Reitz is a personal injury and property damage litigation defense lawyer, specializing in FELA, trucking, product liability, class action and mass tort litigation. Kurt represents many different national railroad and trucking companies both at trial and in appellate work in the state and federal courts. Kurt has also served as a hearing panel member for the attorney disciplinary process in Illinois. He is a Phi Beta Kappa graduate of the University of Illinois.

Daniel D. Rubenstein is former Assistant U.S. Attorney in Chicago who now represents corporations and individuals in sensitive internal and government investigations, enforcement actions, and high-profile litigation. As a prosecutor, Dan led an internal investigation for a sophisticated hedge fund that resulted in the federal indictment and subsequent conviction of two former employees for theft of trade secrets and obstruction of justice. He also recently concluded an internal investigation into the suspected theft of trade secrets by the former head of research and development at a publicly traded medical device manufacturer that resulted in the indictment and subsequent conviction of the former employee. Dan taught Federal Criminal Practice at the University of Chicago Law School from 2007-2014 and has been recognized by the Northern District of Illinois trial court for excellence in pro bono service.

James J. Stamos practices primarily in commercial, financial and employment litigation

and professional liability defense as well as the defense of insurance bad faith claims. Earlier in his career Jim practiced medical malpractice defense and construction litigation and coverage issues, as well as handling litigation on behalf of both defendants and plaintiffs in cases involving employment, securities, commodities and options, real estate and partnership disputes, financial litigation and medical malpractice defense. Jim's family has been involved in the law for some time as his father served as a Justice of the Illinois Supreme Court.

Jane E. Unsell represents insurance companies, defends individuals and prosecutes claims for injured parties in and around Wood River, IL. She obtained a jury verdict for an injured plaintiff which was recorded as the largest plaintiff's verdict at the time in Macoupin County, Illinois. She graduated from Oklahoma City University Law School at the top of her class. Following her admission to the Illinois and Oklahoma bars, Jane began her private practice with a Madison County law firm in Granite City, Illinois. She remained there until she opened her own law practice in East Alton, Illinois. Jane enjoys running, skiing and other outdoor activities.

Helen E. Witt concentrates her practice in mass torts, class actions and business practices litigation. Helen is currently national counsel for a major pharmaceutical company in cases brought by the Department of Justice, State Attorneys General and various classes related to pharmaceutical reimbursement. Helen has tried numerous cases to successful verdicts before judges, juries and arbitration panels, including recently winning a six month jury trial in state court in California. Helen attended Yale undergrad and the University of Chicago Law School, where she has taught Trial Practice as an Adjunct.

INDIANA

Lee C. Christie is a lifelong Indiana resident who is a frequent lecturer on trial, mediation, personal injury, medical malpractice, trucking accidents, and settlement issues. Lee has represented thousands of clients who have been injured and has obtained settlements and verdicts as high as \$30.5M. Lee is highly civil-

ly engaged with several Indiana organizations, including the Walker Foundation (founding board member and officer) and Indianapolis Bar Foundation (board member and officer), and is a patron of the YMCA. Lee had a lead role in reviving Lawyers League Basketball in Indianapolis. He is past president of the Lawrence Township Girls Basketball League and continues to work with youth in the inner city of Indianapolis.

IOWA

Kevin Caster thinks that his relationship with the law began with debate class and then debate competition in high school, but it took him a little longer than usual to get to his law license. After college, Kevin taught high school in the social studies department in Iowa City and coached the debate team. When he and his wife learned that their fourth child was on the way, they decided that they could not manage on a teacher's salary. Kevin's wife took over his teaching and coaching jobs and continued to parent their children, three of whom were still of pre-school age, while Kevin attended law school as quickly as possible. Kevin became a lawyer in 1995 and has specialized in commercial litigation ever since. Away from his practice, Kevin and his wife enjoy their 8 grandchildren, so the kids apparently survived the adjustment. Kevin is an avid bicyclist and is trying to become a woodworker.

Loree Nelson came to the profession in a circuitous fashion. After obtaining a two-year degree, she worked as a respiratory therapist, usually in the ICU. After she obtained a four-year degree in health care administration, she moved into an administrative position that involved working with physicians and lawyers in the peer-review system and the physician-credentialing process. That work inspired her to become a lawyer. She and her understanding husband and three young children moved to Iowa so that she could attend law school, where she excelled. After six years as an in-house lawyer for a medical-malpractice insurer, Loree entered private practice, primarily trying health care cases. Her husband, to whom she has been "married



forever” (in a good way, she laughs), is retired, and they enjoy their family and in particular their children and grandchildren.

Kevin Reynolds focuses on the defense of product liability actions in the automotive and agricultural equipment industries. Kevin is an Iowa native and credits his high school speech classes and debate activities in college with directing him toward both law school and litigation. He is a single parent of an adult daughter with special needs, so he spends most weekends with her. Away from work, Kevin enjoys golf and flying. He has held a pilot’s license and an instrument rating for some time, but more recently he has grounded himself and limited his flying to radio controlled model planes.

KENTUCKY

Tracy Prewitt focuses her practice on the defense of clients in professional negligence and tort claims, professional licensure board actions, product liability, general personal injury, and insurance coverage, trying cases in both Kentucky and Indiana. She strives for efficiency in her law practice so she has the time to travel with her husband of thirty-three years (they have been on many multi-week cruises around the world) and her three (now adult) children. She proudly wears the title of “Grammy” to her two grandchildren and is hoping for more.

LOUISIANA

Lee H. Ayres practices in Shreveport, Louisiana, in commercial and business litigation, oil and gas litigation, professional liability claims, products liability cases and personal injury litigation. For over a dozen years, he was a faculty member of the LADC Trial Academy. He served as a faculty member of LSU Law School Trial Advocacy Program. When not practicing law, you can find Lee spending time with his wife and four children (the latter having given him extensive hours of training as a potential mediator!), or you might find him just about anywhere underwater as Lee is a master scuba diver.

Francis H. Brown III knew from a young age that he wanted to become a lawyer. Rasch debated competitively in high school, college and

then in moot court in law school. He spent his formative years in Alabama, obtaining both his B.S and J.D. degrees from the University of Alabama. New Orleans has been Rasch’s home since 1985. His practice has focused on product liability defense work, but he has also tried cases in the commercial and employment arenas. Although New Orleans-based, Rasch has tried dozens of cases throughout the southeastern United States. He is an avid and enthusiastic traveler, a history buff, a mediocre tennis player and a Crimson Tide fan living in hostile territory.

Darrel J. Papillion is a Past-President of the Louisiana State Bar Association. After clerking on the Louisiana Supreme Court, he practiced in New Orleans, where he defended products liability cases under the supervision of ACTL Fellow C. G. “Woody” Norwood. In 1999, Darrel moved to Baton Rouge and began representing plaintiffs in complex injury and death cases with ACTL Fellow Edward J. Walters, Jr. with whom he has been partners for nearly 20 years. Darrel loves being a lawyer and loves trying cases. Darrel, who lost Shirley, his wife of 27 years to cancer in 2018, enjoys reading, cooking and spending time with his college and high school age son and daughter, Jude and Anna.

Michael S. Walsh joined the Army in high school so he could be a Military Policeman and wound up living in Germany with an MP Jeep, an M16 and flying in helicopters. He knew he wanted to work in law enforcement. Mike never really wanted to be lawyer; he went to law school to be an FBI agent. But during his 2L year he flunked the FBI eye test. Total game changer – so he became the reluctant lawyer. No mentor to guide him, so he took every case that came in the door - capital murder cases to first offense DWI’s. It has been a great ride.

MANITOBA

Bernice Bowley grew up on a small farm four hours north of Winnipeg. Because she enjoyed the work more than her siblings did, she had the opportunity to learn all aspects of farming, even the most basic family-planning aspects of animal husbandry. Bernice also enjoyed an athletic childhood and was recruited to play volleyball

in college. Her team won three back-to-back national championships, and Bernice earned Second Team All-Canadian honors. She eventually earned a roster spot on the Canadian national team, which exposed her to the benefits of travel. After her athletic career concluded and before her law career began, Bernice lived in Greece for a year, studied Greek, and used Greece as a jumping off point for travel around Europe and Africa. After obtaining her law degree, Bernice began practicing in Winnipeg, focusing on professional liability and commercial insurance litigation. A lawyer who started out as her mentor in the firm eventually became her husband. She credits him with teaching her that practicing law was not just a job but was a life-long professional and ethical commitment. She lost him in 2019, but his advice and support sustain her.

MASSACHUSETTS

Kristen Buxton is a career prosecutor in the District Attorney's office in Salem (yes, that Salem), where she began working even before attending law school. If there's a news report of a serious crime in Essex County, you'll usually see Kristen's name; she's regularly asked to prosecute the toughest cases in the county, including murders and sexual assaults. Kristen is an alumnus of Colgate and Tulane University Law School. She also serves on the board of Manchester Summer Chamber Music.

Anthony E. Fuller is a former federal prosecutor whose work in the US Attorney's Office included the successful prosecution of the (now, thanks to Tony) former speaker of the Massachusetts House of Representatives. Before law school, Tony served as an infantry officer in the United States Marine Corps, leading a Marine Rifle Platoon in the Persian Gulf War and earning a Combat Action Ribbon. A Williams College and Georgetown Law alumnus, Tony also coaches youth lacrosse in Winchester, Massachusetts. Tony is a second-generation Fellow. Tony's induction comes 39 years after the admission to fellowship of his late father, Vince Fuller, whose clients included Mike Tyson, John Hinckley, Jimmy Hoffa, and Don King.

Patrick T. Jones is one of the best-known plaintiffs' trial lawyers in Massachusetts and Rhode Island. His significant cases include the representation of the family of a young woman killed by Boston Police at Fenway Park during the celebration of the Red Sox victory over the Yankees in the 2004 ALCS, and acting as counsel for plaintiffs in the 2003 Rhode Island nightclub fire that claimed the lives of 100 concertgoers and injured more than 200 others. Pat has served as the President of both the Massachusetts Academy of Trial Attorneys and the Rhode Island Association for Justice. Pat plays a leading role in many community organizations in Boston, including the Pine Street Inn, New England's leading homeless shelter, where he's been a volunteer for more than twenty years and served as Board Chair for the past three. Pat is a graduate of Holy Cross College and Boston College Law School.

Robert J. Rivers is a graduate of Boston College and Suffolk University Law School. His induction into the College makes him a triple Fellow: he is also a Fellow (and past President of the Massachusetts chapter) of the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. Bob and his wife, Kris, have two children: Nicole (age 21 and entering her senior year at the University of Maine-Orono) and Joseph (age 18 and entering his freshman year at the College of the Holy Cross as scholarship student-athlete and defensive back on the Crusaders' Division 1 football team).

Benjamin E. Zimmerman is a plaintiffs' personal injury lawyer. Ben has obtained some of the biggest verdicts in Massachusetts, including a \$30 million verdict in 2019 in a medical malpractice case for the family of a child injured at birth and a \$20M verdict for the family of young woman who died after being injured on a pool slide. Ben went to college at Washington University in St. Louis and law school at Fordham.

MICHIGAN

Richard Suhrhenrich focuses his practice on medical malpractice defense litigation through- ▶

out the State of Michigan. He serves as a Hearing Panelist on Michigan's Attorney Discipline Board and has served as an adjunct law professor at the Detroit College of Law and the Thomas M. Cooley Law School. He has also served as on the Developmental Disabilities Counsel as an appointee of former Michigan Governor Snyder. Richard and his wife Amy have two children.

Mike Turco specializes in litigating and arbitrating high risk, complex business, employment, construction, and information technology disputes. He recently tried a two-week complex business dispute where the jury delivered a defense verdict in favor of his client. Following trial, a juror who had recently obtained his U.S. citizenship thanked him for his integrity during the trial and said that he had restored his faith in American lawyers. Mike's family has fostered several children over the past decade, most recently a medically fragile infant abandoned at a local hospital.

MINNESOTA

Manvir Kaur Atwal is a career public defender who currently serves as the First Defender Assistant in the Federal Defender Office for the District of Minnesota. Manny was born in England; her parents are both natives of India whose marriage was arranged; the first time Manny's mother met her father was when she flew to London to marry him. Fifty-four years later, they are the still-working parents of five adult children. Manny came to the United States with her parents when she was 12, and she grew up in Portland. She attended law school in Minnesota and went to work as an assistant state public defender, what she calls her dream job. As first assistant, she doubles as an active trial lawyer and an administrator/supervisor/trainer. Much of Manny's "free time" involves professional activities complimenting her work. She has spent close to 20 years with Open Doors, which provides mentoring and career counseling for high school students throughout the Twin Cities. She co-founded and has worked for the last five years a specialty or re-entry court which administers a one-on-one mentoring and general assistance program for persons emerging from

incarceration but who are identified as at risk for returning to crime. She is involved in charity drives at the Native American reservations that lie within the jurisdiction of the District of Minnesota. With whatever free time all of this leaves her, Manny enjoys knitting, reading, and periodic trips to the spa.



John Marti's first ride in a taxi took him from the Boston airport to the campus of MIT. Unfortunately, he misread the address of his assigned dormitory, and he was dropped off with all of his worldly belongings at Building 20E instead of E20, which were not proximate to each other, and only one was a dormitory. John survived this inauspicious beginning, graduated with honors, entered the Marines Corps courtesy of his ROTC scholarship, and attended and graduated from law school in Oregon. John may be the only graduate of MIT who has served as a Marine Infantry Officer and has completed the Army Ranger School and U.S. Army Airborne Course. As a Marine lawyer assigned initially to Hawaii, he had the opportunity to try cases. He found that he "loved it and seemed to have a knack for it." Upon retirement from active duty in 1997, he served in the Criminal Division of the U.S. Department of Justice and later an Assistant U.S. Attorney in Minneapolis, where he worked as a prosecutor for the next 15 years. As a Marine Reserve Officer, John spent many hours inside Cheyenne Mountain and in an underground bunker at Strategic Air Command post 9/11 in various roles, advising on legal issues surrounding homeland defense and national security. John moved to private practice in 2015, specializing in white collar criminal defense and corporate investigations.

Timothy C. Rank is the youngest of 9 children; his oldest sibling was 16 when he was born. Although he is the first person in his extended

family to become a lawyer, none of his older siblings were surprised; the family personality was loud and verbally combative. Tim is a *magna cum laude* graduate of both the University of Minnesota and the University of Minnesota Law School, where he served as an Editor on the Law Review. Tim began practice working on a high profile insider-trading case that placed Tim at counsel table before the U.S. Supreme Court just three years out of law school. Tim's interest in his pro bono work actually led him to become a prosecutor, first with the state Attorney General and then with the Office of the U.S. Attorney in Minneapolis. Tim is now the Deputy Criminal Chief and oversees the National Security and Cybercrime Section. In December 2020 (when this was composed), Tim was prosecuting three defendants on charges of bombing a mosque in an in-person jury trial. The trial suffered a two-week intermission because of a COVID outbreak among several members of the jury. Away from his work, Tim and his wife are the parents of two active young adult daughters, one finishing college and one finishing high school. Tim is an outdoors enthusiast who spends time canoeing in the Boundary Waters and bicycling with two other Minnesota friends who happen to be Fellows.

Robert Richman is a graduate of Brown University and Yale Law School. He served for 13 years as an Assistant Federal Public Defender, first in the District of Massachusetts and then in the District of Minnesota, after which he entered private practice as a criminal defense lawyer. He is currently the district representative for the Criminal Justice Act (CJA) panel of lawyers in the District of Minnesota and, as such, represents the concerns of the CJA panel nationally. In the middle of his professional career, Robert and his spouse and their nine-year-old son moved from Minnesota to the jungles of Costa Rica. They lived there for four years on a 63-acre property perched high above the Pacific Ocean on the tip of the Nicoya Peninsula. They learned to speak Spanish, identify the abundant wildlife, and enjoy the abundant supply of native fruits growing naturally on their property. With no regrets, but a desire to re-engage with the intellectual challenge of trial work, Robert

returned to the United States and rebuilt his practice from scratch. Robert is a sole practitioner and likes the freedom that this gives him to balance his practice with his personal life.

MISSOURI

Nikki Cannezzaro credits her life-long competitive relationship with her older brother for her decision to go to law school. They competed in sports and academics as children. When he announced his decision to go to medical school, she knew she had to match that somehow. She had no interest in a medical career, so law school it was. That same competitive spirit pushed her toward trial practice, and today she enjoys being in the courtroom more than any other aspect of practice. Nikki served for one year as a judicial law clerk for the Missouri Court of Appeals and then joined the Kansas City firm where she tries cases in Missouri and Kansas. Several local awards evidence her peers' recognition of Nikki's dedication to professionalism and collegiality. Away from the office, she and her husband (who was her childhood sweetheart and that older brother's best friend) enjoy their three children's athletic careers and precious time at a family lake house once owned by Nikki's parents.

MONTANA

Henry "Hank" Branom, Jr. has been an Assistant Federal Defender in Great Falls since 2006. He joined that office after 15 years of private practice in Missouri. The son of a state court judge, Hank lectures often on issues of professionalism and ethics. Hank was a member of a State Championship High School football team and is an Eagle Scout. It's no wonder that US Attorneys who have tried cases against him say that "everyone loves him." "There are very few attorneys I have no problems with. He is one of them."

Guy W. Rogers of Billings has a trial practice that includes serious personal injury and wrongful death cases, products liability, and insurance law. He also acts as a mediator and has been accepted into the National Academy of Distinguished Neutrals (NADN). He not only contributes to bar and community activities but has been repeatedly described as "the consummate professional."



NEW JERSEY

Renee Sherman credits her good fortune to have had five Fellows of the College as mentors and friends. Before graduating from T.C. Williams School of Law at the University of Richmond, clerked for Tim Barnes, and immediately after graduating, entered the world of medical malpractice defense as an associate and later partner to Louis Ruprecht, David Weeks, Judy Wahrenberger, and Mike Ricciardulli. Renee defends health care providers and institutions, trying in the range of three to six cases a year to verdict. When not prepping for trial, Renee spends time with her husband Doug (also a lawyer, but opted out of the courtroom and therefore keeping sanity in the house) and her two children.

Willard C. Shih grew up in Columbus, Ohio, where he was indoctrinated in all things Buckeye. So one of his greatest pleasures occurred when his oldest daughter hung a wall-sized poster of the Horseshoe (Ohio State's stadium) in her bedroom. Although she is now in her teen years and has turned her focus to school, church, band, and boys (not necessarily in that order), his younger two daughters remain Buckeyes. Will now lives and practices in New Jersey. While a far cry from the Midwest when it comes to collegiate sports, the state's pride and joy is its pharmaceutical and high tech industry. It is an industry he is pleased to represent as a commercial litigator.

Lisa Van Houck didn't always think she would be a lawyer. As an undergraduate, she attended the Cornell University School of Hotel Administration and realized she would rather stay in hotels than manage them. After law school, Lisa clerked for two U.S. magistrate judges in Camden, New Jersey, when she found time to attend a criminal trial, which her current boss, the Federal Defender for the District of New Jersey, tried to an acquittal. In 1994, she started working in the Defender's office and never left. When not in court, Lisa spends time with family. They are avid sports fans, from Steelers football to her son's travel basketball team. They also travel extensively, visiting hotels that Lisa might have managed had her life taken a different turn.

NEW YORK

Allan Arffa is a general commercial litigator, and when we say general, we mean really general. He has tried court cases and arbitrations all over the country for the past 35-plus years, including securities fraud cases, trademark license cases, credit default swap cases, all sorts of disputed investment matters, contract cases, fraud cases, insurance cases, employment cases, real estate cases, contested hearings in bankruptcy proceedings – you name it. He even once handled an arbitration in which the adverse party was the now infamous Jeffrey Epstein.

Jennifer Brown is a lifelong public defender, currently working as a Federal Defender in the Southern District of New York. Her devotion to her clients is legendary: she even tried four federal cases (two acquittals) during the nine months when she was pregnant! One involved two aging mafiosos accused of conspiracy to murder. Her successful defense: that her client's incriminating statements in recorded conversations were just a lot of "blah blah blah," and that the client had simply watched too many episodes of the Sopranos. She is also an avid Yankees fan, and has run three New York City marathons.

Charles Falgiatano became a personal injury trial lawyer in East Syracuse after playing on the varsity basketball team at his College and acting as a legislative aid to a State Senator. Charles has not completely escaped his past as he spends his spare time coaching basketball.

Alan Fumuso has been a trial lawyer for over 40 years, usually defending med mal cases. When not in the courtroom he loves golf, tennis, swimming and travel. Just before the Tucson meeting (and the start of the pandemic), he had just returned from a trip with his wife to New Zealand and Australia, marking the 6th continent they have visited. They hope to visit the 7th before too long, pandemic permitting! In 2018, he was named by the National Insurance Company for Oral Surgeons as Attorney of the Year, an honor for which is duly proud.

Daniel Gitner is an active trial lawyer who specializes in white-collar criminal defense and

government investigations. He was an AUSA in the SDNY for 8 years, leaving in 2005. As a defense lawyer, he scored a rare acquittal in a celebrated insider trading case. When not in the courtroom he loves swimming and jazz. He has even spent time during the pandemic's quarantine learning to play saxophone. The rest of his free time is spent enjoying his 13 year old son and 11 year old daughter.

John Gleeson served for 22 years as a Federal District Court Judge in the Eastern District of New York. Appointed to the bench in 1994, just 14 years out of law school, John was not eligible for College Fellowship until he retired from the bench, re-entered private practice, and resumed his life as a trial lawyer. John handles a full case-load, including a wealth of pro bono matters on behalf of indigent prisoners who are serving bone-crushing sentences under the harsh federal drug laws. John grew up in an Irish immigrant household, the youngest of seven; his parents had a single high school degree between them. He spent his high school years as a caddie at a golf course in Westchester County New York, where he learned a lifelong love of the game. Between college and law school he had a house painting business in Virginia, which had the added benefit of making him a Virginia resident, and allowed him to go to UVA law school for the resident tuition of just \$900 per year.

Eugene Napierski is a founding partner of his firm in Albany, NY, formed with his father and namesake who is also a Fellow of the College. Eugene was a semi-finalist in the National Trial Competition – clearly a good sign for his eventual induction into the College. His practice focuses on medical malpractice, personal injury and other civil matters. When not in the courtroom, Eugene can be found on the baseball diamond, coaching Little League.

John G. Powers graduated from West Point and served as an Army Infantry Officer before he clerked for a federal judge and became a trial lawyer specializing in complex civil litigation in Syracuse. John acts in a broad range of cases involving corporate, construction, IP and

contractual disputes. In his spare time, John provides pro bono services to veterans and has been recognized with a number of awards for his service.

Deirdre Von Dornum has been a Federal Defender in New York for over 15 years. She currently heads the office in the Eastern District of New York, where the prosecutors' nickname for her is "Dr. Von Doom." She defended the first piracy case brought in the United States since the 1800s, but got no role in the Tom Hanks movie about the case: "Captain Phillips." She is fluent in seven languages and clerked for a district court judge and a Supreme Court Justice (the notorious RBG), both of whom attended the same high school in Brooklyn. She has served as a law professor and an Assistant Dean at NYU law school.



Abdiwali Abdiqadir Muse, Somali pirate

NORTH CAROLINA

Brian Beverly has practiced in a 40-lawyer firm his entire career. He handles high stakes litigation involving bus/truck accidents, serious medical malpractice and other complex injury cases in both state and federal court. In one particular case, he opposed an attorney with the North Carolina Attorney General's office who was defending the NC Highway Patrol. They did not know each other. After the trial, being so impressed with Brian, the attorney asked Brian to speak to and teach all civil lawyers in the NC Attorney General's office. Brian is very active in professional organizations often assuming leadership roles. He is also extremely active in Big Brothers/Big Sisters mentoring African-American college students.



David Freedman practices in a small Winston-Salem firm, where he specializes in high profile criminal defense, white-collar defense, political corruption defense and the toughest attorney disciplinary matters where disbarment is at stake. He successfully defended an attempt by the State to make impaired driving fatalities capable of being prosecuted for first degree murder. He represented Mike Nifong, the Duke Lacrosse prosecutor, in proceedings before the North Carolina State Bar. David has been heavily involved in legal education his entire career. He taught Criminal Procedure and Trial Practice at Wake Forest University for 15 years and regularly speaks on legal ethics topics.

NORTH DAKOTA

Robert Hoy grew up on a “hobby farm” in rural Michigan, where he “milked cows and shoveled manure.” There were no lawyers in his family, but he noticed at a young age that his father respected lawyers, so that influenced him when it came time to make career decisions. Bob became a trial lawyer mostly because it had always been his impression that trying cases was what lawyers did. After gaining some experience as a prosecutor, he entered private practice in West Fargo, where he practices on both sides of the “v.” Away from the office, Bob enjoys hunting and fishing, woodworking, making furniture and cabinetry, and restoring one 1950 Chevy. He regards the successful and happy lives of his three adult children as his greatest accomplishments.

Jennifer Puhl grew up in Devils Lake, North Dakota. She attended college and law school at the University of North Dakota, clerked at the North Dakota Supreme Court, and started private practice in Minneapolis, where she wanted to do trial work. 9/11 happened, and Jennifer became an Assistant United States Attorney for the District of North Dakota. As the newbie, she found herself assigned to child exploitation investigations and prosecutions. The oil boom in North Dakota led to a surge in incidents of sex trafficking. By 2011, this problem had evolved to include adult victims. Jennifer developed and then participated in a task force to deal with this expanding problem. The first trials started three years ago, and they continue. Jennifer became

the Criminal Chief in 2019, but she maintains an active first-chair prosecution docket.

OHIO

Jim King focuses on complex business and corporate litigation involving commercial disputes, securities claims, class actions, antitrust and regulatory enforcement actions. Jim also serves as Co-Chair of his firm’s Corporate & Internal Investigations Practice. He began his career fulfilling an Army ROTC scholarship by serving as an Assistant to the General Counsel of the Army (the lawyer for the Secretary of the Army) in the Pentagon. He is an avid cyclist, regularly making the 32-mile round trip from home to work on his bicycle.

Diane Menashe has tried more than 100 cases to jury verdict. She has extensive experience in criminal defense, having represented well over thirty clients faced with the death penalty. Diane recently made the rare transition from solo law practice to a partnership at a large firm, where in addition to her trial work she serves as Director of Litigation Training & Pro Bono Activities. She is a member of Columbus CEO’s Future 50 Leaders—a diverse group of accomplished individuals who have shown a sustained commitment to making Columbus a city marked by achievement, altruism, boldness, creativity and inclusivity.

Michael Ungar focuses his practice on complex civil litigation with an emphasis on commercial and financial services matters. He represents clients in a broad range of matters, including commercial, banking, professional liability, securities, broker-dealer, class action, consumer, product liability, pharmaceutical, and medical device cases. Mike has served as President of the Cleveland Bar Association and currently serves as President of The Legal Aid Society of Cleveland (as he says, “it’s one of those things that feeds the soul”) and Councilman at Large in Cleveland Heights, OH.

OKLAHOMA

Sean H. McKee is a trial attorney in Tulsa, Oklahoma. He has over twenty-five (25) years litigation experience and primarily handles

professional negligence, products liability, personal injury, trucking accidents and insurance bad faith cases. Sean has been happily married for twenty-seven years and has four adult children. He is involved in medical mission trips to Central America and is an Elder in his Church. Sean was awarded the “Golden Rule Award” by the Tulsa County Bar Association in 1999.

ONTARIO

Sandra Barton has a broad commercial trial practice and is recognized as one of Canada’s leading teachers of trial advocacy (she also teaches in the US), and devotes her time to support organizations devoted to finding housing for the homeless and to support families in Africa struggling to cope with HIV/AIDS.

Rodney Sellar is one of Canada’s leading criminal defence counsel. He represents clients charged with criminal offences and related litigation, including in high profile cases involving diplomatic immunity and alleged assault.

OREGON

David Angeli represents individuals and entities in complex criminal, regulatory and civil matters. He served in the first Gulf War as a U.S. Navy Officer and pilot. The son of a cop, David had some exposure to the legal system growing up, but decided to become a lawyer watching TV as FACTL Brendon Sullivan represented Oliver North in Iran-Contra. David’s skills were recognized right from graduation at Georgetown in 1997, when he was elected the Georgetown Criminal Justice Clinic’s outstanding trial advocate. He is an Adjunct Professor at Lewis & Clark Law School. His list of speaking engagements and publications rivals those of many of our expert witnesses.

Robert S. Wagner of Portland practiced medical defense and police misconduct defense for more than 15 years before switching sides. Since 2000, he has intentionally continued in a very small firm environment working for patients. He is consistently commended for handling difficult matters with sensitivity and exuding civility.

PENNSYLVANIA



William A. Fetterhoff began his career in 1976 in the Dauphin County Public Defender’s Office in Harrisburg, Pennsylvania, where he served for five years and met and married Marilyn Zilli, who also served in that office. Bill’s current private practice focuses on complex public corruption and white collar crimes, as well as controlled substance, firearms, bank robbery, and other offenses. Bill’s principal non-law-related activity, other than family, has been hiking and climbing in the Adirondack Mountains of New York and the Teton Mountains of Wyoming. He is chairman of the Grand Teton Climbers’ Ranch Committee.

George Kachulis is proud of his Spartan heritage, a natural fit for his career in Med Mal defense, but more proud of his Greek American wife of 33 years, Anthea, two medical professional daughters (and non-Greek son-in-laws) and grandson, all of whom live in close proximity to each other. George is a former collegiate basketball player and coach, and has spent a number of years working with disadvantaged children in the distressed areas of Pittsburgh. Probably unique among Fellows, George is a long time professional boxing judge.

George Knoell, fresh out of Villanova Law School in 1976, joined Ed Kane and Bill Pugh as the fourth lawyer in their firm; Ed and Bill, and now George, all became Fellows of the College, and the firm now has thirty plus lawyers. For George, time away from the firm means time on the water with family or fishing buddies. He has pursued saltwater sport fishing with a fly rod in many remote, beautiful places from Maine to Costa Rica. He has also



taken great satisfaction in renovating his family's homes along Philadelphia's Main Line, blending the Pennsylvania farmhouse style with French antique building materials.

Kathleen M. Kramer graduated from Dickinson School of Law in 1984. For the last thirty five years, Kate has focused her practice on medical malpractice defense, representing physicians, hospitals, nurses, nursing homes and other health care facilities. She has tried more than 125 cases to verdict. Outside the office Kate spends her free time with her husband and two daughters, enjoying summers and weekends at the beach swimming, biking, and playing tennis. They try to fit in a yearly ski trip during the winter.

David Snyder's practice includes traditional valuation cases such as eminent domain and real estate tax appeals, as well as litigation in other contexts such as bankruptcy, deficiency judgment and estate matters. In addition to Philadelphia, David and his wife spend considerable time in their Woodstock, NY home. They started going there for its great music venues and to watch their daughter compete in horse shows. They are now on their second home and love it there year round.

SOUTH CAROLINA



Dennis Cannon has practiced in small town South Carolina his entire career, fulfilling his Grandmother's dream when he became a lawyer. One of his most significant mentors was

the late Honorable Ernest Finney, Jr., the first African-American to serve as the Chief Justice of the South Carolina Supreme Court. When Dennis decided to go into private practice, he called Judge Finney for some advice. Judge Finney invited Dennis to have lunch with him and his mentor, the Honorable Matthew E. Perry, Jr., the first African American to serve as a United States District Court Judge for the State of South Carolina. Dennis credits these formidable Judges with teaching him how to practice law. They gave of their time to help him, so he has tried to pay it forward to other young attorneys who cross his path.

Gray Culbreath is a first generation lawyer who specializes in defending catastrophic injury, product liability and other commercial cases including class actions. Two of his trials were the longest in state history. He began his career as an Army JAG officer where he tried a significant number of cases involving serious criminal charges. Gray has a passion for history and museums. For 21 years he served as the Chair of the SC State Museum Commission. During that time, he managed a \$25 million fundraising campaign and the construction of a planetarium, theater and observatory. As Chair, he also participated in the ceremony which removed the confederate battle flag from the SC state house dome.

Woodrow Gooding is the first in his family to obtain a college degree. He worked his way through school by working in a men's clothing store and playing drums in a band called "Red Hot Chicken." Woody has obtained some of the largest civil verdicts and settlements in the state. He began his career journey by trying small cases in magistrate courts in one of the smallest counties in SC, recognized by Smithsonian magazine as one of the ten poorest counties in the United States. Shocked by injustices in both the criminal and civil systems operating against the poorest and most vulnerable, Woody has spent his career aggressively fighting for justice and fairness, challenging law enforcement and the courts, becoming a champion for the underserved. He continues to be the first person at the office every morning, never refuses to see a walk-in client and takes great pride in remembering the names of clients, past and present.

Rebecca Lafitte has been described as “beloved by the bench and bar.” Becky is well known for helping “baby lawyers” even when they oppose her in a case. Early in her career she had a seven-year stretch of trying 20-25 cases per year. In her more recent years, she has focused on complex personal injury cases, dram shop and product liability defense. She is also active in her community. Becky is a past president of the Columbia Junior League and a former Trustee of her alma mater, Columbia College.

Charles Norris is an experienced insurance bad faith defense attorney. Charles graduated from UCLA during the John Wooden era, where he would watch team practices in Pauley Pavilion. After graduation, his first job was delivering beer in east LA. The experience of delivering 600 cases a day taught him that he was more well suited for an office job, so he returned to his native SC to attend law school. Charles is most proud of and best known for his summary – which he has done for 40 years – of every appellate court decision of the South Carolina state appellate courts (not including criminal, tax and family cases unless there was a significant evidentiary or procedural finding).

Matthew Richardson handles complex and high profile cases, including a case stemming from abandonment of a nuclear power plant in SC, a dispute over the ownership of Kiawah, disputes over privately held companies, fraud and breach of contract. Matthew loves the law but always wanted to be an architect. But the law is the family business. His father, Terry Richardson, is a Fellow practicing in Barnwell SC. Matthew and Terry were each Editors in Chief of the South Carolina Law Review. Matthew’s wife, Beth, was Editor in Chief of the Washington University Law Quarterly. Matthew’s younger brother, Julius Ness Richardson, was on the Chicago Law Review and now serves on the Fourth Circuit Court of Appeals (Matthew was his “Sherpa,” gathering letters and information in support of his confirmation in 2018). Matthew’s grandfather, Julius “Bubba” Ness, was Chief Justice of the South Carolina Supreme Court. Matthew is a certified SC Barbecue Association Judge and has also earned a WSET Level 2 Wine Certification with Distinction.

SOUTH DAKOTA

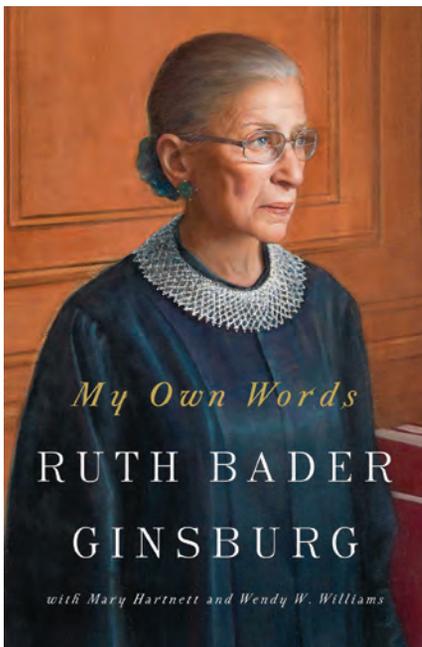
Jack Heib is a native of South Dakota who “grew up in a sandpit” near Delmont, population 200. He spent his childhood working – long before the law said he was old enough – with his family on all manner of industrial equipment and vehicles. He had no thought of becoming a lawyer until inspired by a college professor and mentor to seek a professional career. His practice as a defense lawyer in Aberdeen, South Dakota, has focused on personal injury, products liability, and bad faith cases. Away from the office, Jack and his wife enjoy their dogs, hiking, and travel. As a result of his sons’ involvement in wrestling, Jack has become a fan and supporter of the sport. He reports that his golfing career has left him frustrated and is forcing a transition to gardening.

WEST VIRGINIA

Michael Delguidice practices in a small Charleston West Virginia firm, specializing in plaintiff personal injury, criminal defense and medical malpractice cases. Mike is described by both sides of the bar as someone whose “word is gold.” He successfully tried one of the first negligent credentialing cases in WV. On the criminal side, he successfully appealed a burglary conviction on the basis of juror bias. He also regularly defends law enforcement officers in grievance hearings, administrative proceedings and civil trials.

WYOMING

Billie L. M. Addleman is a commercial litigator, focusing on professional liability and professional licensing cases. He has been very active in State and local civic organizations. Billie has been recognized for his leadership by all of these groups. He serves on the Board of Visitors of the College of Law at the University of Wyoming. He is the current President of the Wyoming State Bar Association. He and his wife, Brandi, strongly believe in giving back to their community. They generously support numerous educational, musical and social causes. They are also avid sports fans and international travelers. Billie served ten years in the U.S. Army Reserves, including a deployment to Bosnia in 1996. ■



Justice Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States, passed away on September 18, 2020. She was one of the finest judges of her generation and a towering legal figure, in both national and international terms.

I had the privilege of meeting Justice Ginsburg on a number of occasions. I am particularly grateful to the American College of Trial Lawyers which made several of these occasions possible through its support for meetings between the US and UK judiciaries, members of the College and UK lawyers. She was a great supporter of these events and contributed to and enriched the valuable dialogue we had there.

On the last occasion that I saw Justice Ginsburg, she gave me a copy of her autobiography, *My Own Words*, with a moving personal message handwritten inside. It is a selfless work, giving little hint of the considerable, now well-known, discrimination that she personally experienced in her legal career.

But that discrimination had an influence on her approach. She once told *USA Today* that “Anybody who has been discriminated against, who comes

REMEMBERING JUSTICE GINSBURG

by The Rt Hon Lady Arden, Justice of the Supreme Court of the United Kingdom

from a group that has been discriminated against, knows what it's like." She is often remembered as the Justice who "did more to advance women's rights than any other figure in modern US history" (Edward Luce, *Financial Times*, 17 October 2020). She certainly delivered opinions which strongly supported women's rights, though it would be wrong to suggest that they alone were the reason for her outstanding reputation.

I would liken the experience of reading this now much-treasured book to an imagined visit to the home of Justice Ginsburg, where she opens the door and warmly invites you inside. The autobiography begins with the story of

her early life and modest upbringing. She gives a touching account of her relationship with her parents, particularly her mother, who died of cancer just as Ruth Bader, as she then was, was graduating from high school. Despite her struggle to get into law school, which admitted very few women students in those days, in the end she was awarded a place and achieved very high marks.

In *My Own Words*, Justice Ginsburg paid tribute to the lives of other lawyers, mostly women. For example, Belva Lockwood, the first woman member of the Supreme Court Bar, was an advocate for the first and last time in 1906, when, at the astonishing age of 75, she won

a claim for compensation for the East Cherokee Indians.

After her university career, and some unsuccessful attempts to gain employment in a law firm, Justice Ginsburg became a professor of law. After that she headed the Women's Rights Project, which was set up by the American Civil Liberties Union (ACLU) to generate rulings that statutes which discriminated against women were unconstitutional. One of the cases in which the ACLU took part was *Frontiero v. Richardson*, 411 U.S. 677 (1973), where families of a woman member of the armed forces received a smaller package of employment benefits than families where the member was ▶

a man. The book includes the reply brief submitted to the Supreme Court, which was inspired by the future Justice's thinking. While unsuccessful in this respect in the *Frontiero* case, we read that the Women's Project, with the future Justice at the helm, ultimately persuaded the Supreme Court to adopt a more rigorous approach in sex discrimination cases than previously existed.

Pursuing the simile of being a guest in Justice Ginsburg's home, we are next invited into the kitchen. There is a very special reason for choosing this room. An important event occurred in Justice Ginsburg's life when she was at law school. She met another able student whom she ultimately married. He was Marty Ginsburg, later a distinguished tax lawyer. He was the person who inspired and encouraged her until his untimely death in 2010. He was indeed a famed cook among family and friends. The kitchen was his domain – a manifestation of the rejection of the stereotypical image about women that they are always the ones to be in charge of the family kitchen and meals. Marty Ginsburg was also witty. There is even one of his speeches about Justice Ginsburg in the book.

Next, pursuing the simile, we move into the study where we can sit in an easy chair. Justice Ginsburg here gave some insight into the work of a Justice of the Supreme Court of the United States. I will give just a few examples. From the other side of the Atlantic we wonder at how the Supreme Court gets to the bottom of cases with a hearing in which oral argument is only about thirty minutes each side. The secret, she explained, was that the hearing is like a conversation:

Oral argument is not an occasion for grand speech making, but a conversation about the case, a dialogue or discussion between knowledgeable counsel and judges who have done their homework... (Part 5, Chapter 1, *Workways of the Supreme Court*)

Justice Ginsburg was not diverted by the pressure of media publicity that may

surround a particular case. She explained how judges deal with current issues or political preoccupations:

Judges do read newspapers and are affected not by the weather of day, as distinguished constitutional law Professor Paul Freund once said, but by the climate of the era." (Part 3, Chapter 6, *Advocating the Elimination of Gender-Based Discrimination*)

She did not just reject the opinions of those who disagreed with her views but used other Justices' views to test and improve her own. Thus, in relation to dissenting opinions, she wrote:

My experience confirms that there is nothing better than an impressive dissent to lead the author of the majority opinion to define and clarify her initial circulation (Part 5, Chapter 7, *The Role of Dissenting Opinions*).

There are many times when an appellate court finds that a person ought to have a remedy, but the legislature has done nothing to change the law to enable this to happen. Sometimes judges have to take some step or speak out in that situation. But the essence of the common law is that change is brought about little by little. Sometimes, rather than make an immediate change, judges will signal the need for change at some undetermined time in the future. I think that is what Justice Ginsburg meant when she wrote of the Supreme Court occasionally stepping out in front of the political process but in other contexts placing path markers before finally confronting a major issue (Part 5, Chapter 4, *The Madison lecture: Speaking in Judicial Voice*, pages 244 to 247).

Justice Ginsburg wrote about progression in the law through a series of cases. Perhaps her approach had something to do with her famed love of opera. Complex cases absorb our attention utterly, we learn from them, but we know that with a loud rumbling they are decided and then gone, and the scene

is changed. We move on to meet the challenge of another day, when we shall surely have to grapple with new cases. Maybe this is why Justice Ginsburg was such a fan of opera. Indeed, she even appeared in performances of operas.



Sitting in the study (as it were), we can hear the lectures that have been reprinted in the second half of the book. One example is *A Decent Respect to the Opinions of [Human]Kind*, which discusses the benefit of the study of constitutional law on a comparative basis, that is, by considering the experience of other countries that have had to deal with similar constitutional issues.

Justice Ginsburg was very quietly spoken. That made all her listeners concentrate very hard on what she was saying. I vividly recall her concise, considered and penetrating comments and questions. She had one of the sharpest legal minds. She respected precedent and used rational argument to reach her conclusions. She did not display any arrogance but remained considerate and humble. James Zirin wrote in the *New York Post*: "She gave us faith in the Court, which so often seeks to resolve our nation's deepest controversies. She recognized the wisdom of Justice Robert Jackson who said of the Court, 'we are not final because we are infallible, we are infallible only because we are final'."

Overall, *My Own Words* is a revealing read. When the time came to put the book down and leave that metaphorical

study, I felt that I had shared some time in the presence of Justice Ginsburg and learnt more about her distinguished career and driving ideas, and also about the way the U.S. Supreme Court works.

In 2015, Justice Ginsburg and Lady Hale wrote a joint Foreword for my own book, *Common Law and Modern Society – Keeping Pace With Change*. I was greatly honoured. The Foreword ends with this intriguing statement: that the book should encourage readers to play a useful part in shaping tomorrow's law. The Foreword gives no clue as to who those readers might be. Nor does the Foreword say, as I had indicated in my book, that it is the task of the judiciary to keep the common law up to date. But I have no doubt that Justice Ginsburg was sympathetic to that approach.

Justice Ginsburg loved the law. She gave advice to young women, which is often quoted, encouraging them to become lawyers and aim for the bench. Justice Ginsburg supported the cause of women in many fields of life and was sensitive to the gender dimensions of her judicial work. So, her autobiography is obviously a perfect volume for a young woman lawyer, whatever her aspirations. But it is also a wonderful read for anyone who wants to know more about the Supreme Court of the United States.



Less well-known are Justice Ginsburg's views about the professional obligations of legal practitioners. These may also be of interest to readers of the *Journal*. In a joint interview with Baroness

Hale, the immediate past President of the UK Supreme Court, arranged by Georgetown University in 2008 (which can be accessed on YouTube and is well worth watching in full), she explained her high expectations of legal practitioners. These followed her vision for the role of law and justice in society.

Her words were thoughtful and reflected her sense of purpose. They are worth remembering and quoting in our everyday lives, and so I end this appreciation of Justice Ginsburg by quoting them:

To me the highest obligation of someone in the legal profession is to recognise that you have training and talent ... that equip you to make things a little better in your local community, your nation and your world, that is, to devote your talent not just to being the counterpart of an artisan or bricklayer who does a day's work for a day's pay but with someone who sees himself or herself as a true citizen of the community.

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EDITOR'S NOTE: This is a wonderful tribute to our Honorary Fellow, Justice Ginsburg, but all the more so given the stature of the author. Our Honorary Fellow, Mary Arden, was born in Liverpool, the daughter and granddaughter of solicitors. She read law at Girton College, Cambridge, where she gained a starred first and an LLM; she earned an additional LLM degree at Harvard as a Kennedy Scholar. She was called to the bar at Gray's Inn in 1971. She was appointed to the High Court of Justice in 1993, becoming the first woman to be assigned to the Chancery Division. Her husband, Lord Mance, joined the Queen's Bench Division in October 1993, making them the first married couple to sit on the High Court bench. Lord Mance became a Lord Justice of Appeal in 1999. In 2000, Lady Arden was also appointed to the Court of

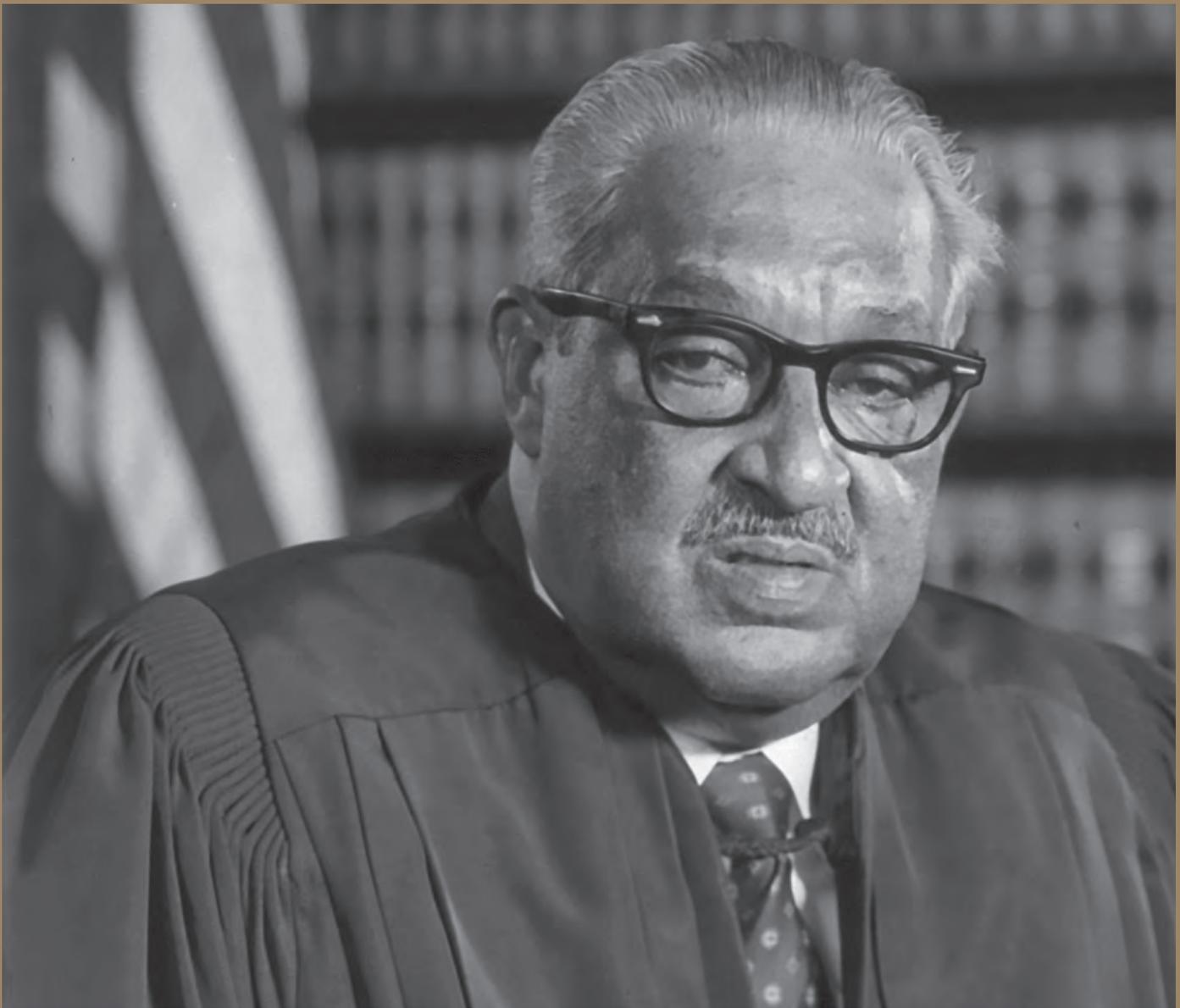
Appeal, making them the first married couple to both sit on the Court of Appeal. In 2009, when the Supreme Court of the United Kingdom was created, Lord Mance, having been appointed to the Appellate Committee of the House of Lords in 2005, was appointed as one of its inaugural twelve justices. And when Lord Mance retired from the Court in 2018, he was replaced by – you guessed it – Lady Arden. Lady Arden was Judge in charge of and later Head of International Judicial Relations for England and Wales for some thirteen years. She is a member of the Permanent Court of Arbitration in The Hague. Both Lady Arden and Lord Mance are, of course, Honorary Fellows of the College.

Lady Arden noted Justice Ginsburg's sharp legal mind, and I can't resist taking the opportunity to add a personal note of my own. A few years ago, I was honoured to learn that I would be seated next to Justice Ginsburg at a Supreme Court Historical Society Dinner. But I was warned that she likely would not speak to me; she typically, shyly, would stare down at her plate throughout dinner, I was told. When I approached the table, she was already there, and I introduced myself: "Madam Justice, you and I sort of met 30 years ago, in an argument I had before you when you were on the D.C. Circuit." She spoke. "Oh? What was the case?" "*Schor v. ContiCommodity*," I replied. "Oh," she said again, before turning her attention to rearranging items on her plate and remaining silent through dinner. But as the plates were being cleared and she was preparing to leave the table, she turned to me, smiled, and said "You got me reversed." A 30-year old case; one of how many? But she remembered. It wasn't simply a sharp *legal* mind. Justice Ginsburg's mind was a steel trap. ■

THURGOOD MARSHALL EQUALITY AND JUSTICE AWARD

Recurring issues of race and inequality are again at the forefront of our public discourse. Both the United States and Canada have long grappled with these issues through much of our history. The tragic deaths of George Floyd and too many others in the spring and summer of 2020 have once again put a spotlight on injustices and inequalities that continue to plague our pursuit of equality and justice for all. Against this backdrop, in June 2020 **Douglas R. Young**, then President of the College, challenged the Executive Committee “to evaluate what the College can do, consistent with its mission, to contribute to better relations among our races and those who enforce our laws.”

As a preliminary step, he suggested that the College consider recognizing champions who have fought for equality and justice and against racism in keeping with standards for such an award to be established by the College. He offered that the award, if presented from time to time, might signify the College’s commitment to the ideals of justice and equality, and prompt the awardee to attend the College’s national meetings to speak to Fellows, spouses and significant others about important events of the day or about our history.



To advance that cause, he appointed a Task Force, chaired by Regents **Richard H. Deane Jr.** and **Joe R. Caldwell Jr.** The Task Force included **Virgil L. Adams**, Hon. **Maria S. Aguilera**, **Pleasant S. Brodnax III**, **Louis Charette**, **Nanci L. Clarence**, **Andrea LaVerne Edney**, **Frederic P. Gilbert**, **Michael N. Herring**, **Lamont A. Jefferson** and **Ashok Ramani**, who served on three sub-committees led by **Isabelle A. Kirshner**, **Kenneth A. Murphy** and **Gregory K. Wells**. The sub-committees met virtually in July 2020 to (1) propose a name for the

award, (2) establish selection criteria, and (3) identify possible inaugural and future recipients. The full Task Force received the proposals and elected unanimously to recommend to the Executive Committee and to the Board of Regents three proposals. The proposals were approved by the Board of Regents on August 18, 2020.

First, the Task Force recommended that the Award be named the Thurgood Marshall Equality and Justice Award. The Task Force sought a name that is of sufficient stature and renown that the

name alone conjures images of incomparable dedication and commitment to the struggle for equality and justice. Thurgood Marshall, as the preeminent civil rights lawyer of the 1950s and 1960s, the founder of the NAACP Legal Defense and Education Fund, the lawyer who argued, among other Supreme Court cases, *Brown v. Board of Education* in 1954 to establish racial segregation in public education as a violation of the Equal Protection Clause, the first African-American Solicitor General of the United States, and the first African-American Justice of the

Supreme Court of the United States, commands such stature. All who hear the name Thurgood Marshall immediately think that only true champions should be considered for the Award.

While other names were considered, none credibly challenged the name of Justice Thurgood Marshall. That said, one event warranted serious consideration on the naming of this award in honor of Justice Marshall.

Shortly after his appointment to the Supreme Court of the United States in 1967, Justice Marshall was named an Honorary Fellow of the College, as is the College's tradition regarding all Justices of the Supreme Courts of Canada and the United States. In 1977, he returned to a College Annual Meeting as a guest speaker. That evening, he attended the post-induction gathering of Fellows, spouses and significant others at the piano outside the ballroom, as is customary at College meetings. A song was played and sung by attendees which included the term "darkies" in the lyrics. Justice Marshall was necessarily offended. He reported his offense to leadership of the College, from whom he received honest and abject apologies, but he understandably found them to be too little and too late; and the event impelled him within weeks to resign from the College. Leaders of the College wrote him a sincere letter of apology, but he remained firm in his decision.

The Task Force considered the incident, and concluded that it provides even more compelling reason to name the award in honor of Justice Marshall. It is a further example of his unfailing commitment to racial justice and equality, and noting the incident further evidences the College's determination to overcome vestiges of racial injustice by its members, its traditions or within its confines. It also highlighted the need to obtain permission from Justice Marshall's family to so name the Award. To the College's sincere delight, after fully disclosing this incident to the Marshall family, Mrs. Marshall and her two sons elected nevertheless to consent to naming the Award in his honor. They added that the family is proud to have Justice Marshall's name associated with an award to be presented by such a distinguished organization committed to the principles of equality and justice.

Second, the Task Force proposed the following criteria for the Award:

The Thurgood Marshall Equality and Justice Award, named for the revered lawyer, civil rights advocate and first Black Associate Justice of the Supreme Court of the United States, is to be given from time to time to an individual who has, with vision, courage and fortitude, stood steadfast in the passionate and effective pursuit of equal justice under the law. It demands that a recipient be a champion of justice and equality in all forms, including but not limited to race, ethnicity, gender, sexual orientation or other form.

Third, the Task Force considered a list of possible recipients. None garnered as much support as the famed Congressman John Lewis. *Roll Call* magazine said of him:

Often called "one of the most courageous persons the Civil Rights Movement ever produced," John Lewis has dedicated his life to protecting human rights, securing civil liberties, and building what he calls "The Beloved Community" in America. His dedication

to the highest ethical standards and moral principles has won him the admiration of many of his colleagues on both sides of the aisle in the United States Congress.

At its July 16, 2020 video conference, the Task Force unanimously selected Congressman John Lewis as the Inaugural recipient of the Thurgood Marshall Award. When Rick Deane reported from an informed source that day that Congressman Lewis was in failing health and unlikely to survive, the Task Force agreed that in the event the Congressman did not survive, he should nevertheless be named as the award recipient posthumously. Sadly, we learned the following day that Congressman Lewis had passed. His family issued a statement which read, among other things:

He was honored and respected as the conscience of the U.S. Congress and an icon of American history, but we knew him as a loving father and brother. He was a stalwart champion in the on-going struggle to demand respect for the dignity and worth of every human being. He dedicated his entire life to non-violent activism and was an outspoken advocate in the struggle for equal justice in America. He will be deeply missed.

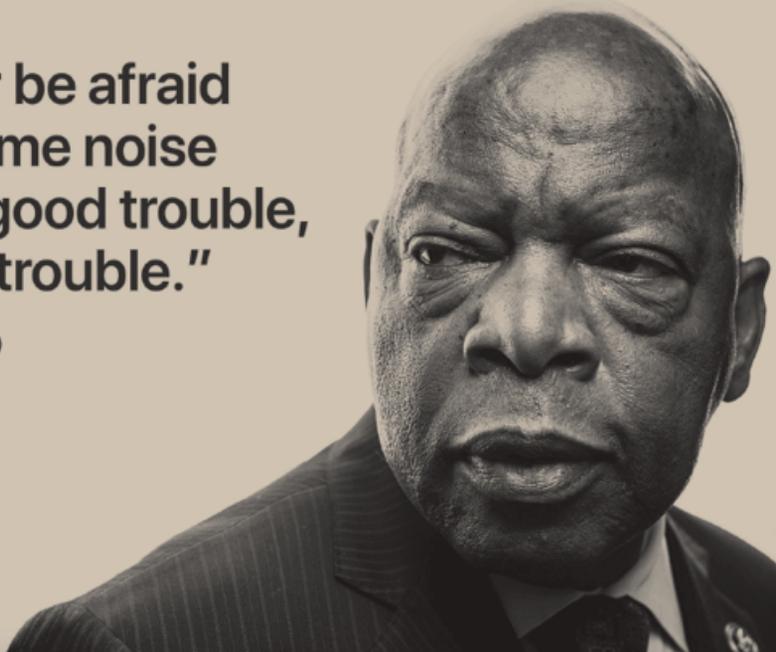
The Lewis family has agreed to accept in his honor the College's newly-created Thurgood Marshall Equality and Justice Award. As our first honoree, the Thurgood Marshall Award will stand in honor of equal justice under the law.

Joe R. Caldwell, Jr.
Washington, D.C.

Richard H. Deane, Jr.
Atlanta, GA

**"Never, ever be afraid
to make some noise
and get in good trouble,
necessary trouble."**

Rep. John Lewis (1940-2020)



DOES COVID-19 SHOW THE WAY TO THE FUTURE?

That the legal profession and the justice system are conservative and slow to adopt change is not news. Covid-19 is. The pandemic did not cut any slack for lawyers and judges to leisurely muse about the future of litigation. The profession has been compelled to rapidly embrace innovative processes to ensure the justice system's continued functioning. Understanding the pandemic's imperatives, the College asked how it might quickly support all the participants in the justice system; how it could take advantage of exigent circumstances to broaden the tolerance for rapid change; and how the pandemic might be a singular opportunity to help shape a future justice system — now. The Task Force on Advocacy in the 21st Century was the response.

THE TASK FORCE'S FORMATION

The pandemic caused judges and lawyers to immediately re-think the way we administer justice: How much person-to-person interaction do we really need in our justice system? What can we do via the telephone, video, and remote video that allows justice to be administered fairly and reduces the amount of direct human interaction, thus decreasing the risk of viral transmission? How do we maintain transparency while we change the way we administer justice? How do we protect the constitutional and human rights of victims and citizens accused of crimes in this new world? How do we conduct discovery, especially depositions, in a world where in-person interaction poses a risk to everyone involved? And to what extent should the system require other than in-person participation? What about trials in general and jury trials in particular? How do we protect the sacred values advanced by trials in open court while still protecting the health and safety of the participants? The same issues arise in appellate arguments — how do we protect those involved in these important proceedings? Above all, how do we make any changes deemed necessary to administer justice while ensuring the parties and the public continue to have the sense that justice has been done?

In early April 2020, Immediate Past President **Douglas Young** and the Executive Committee determined that it was important that the College address these issues. An impressive group of judges and lawyers from the College's membership in Canada and the United States, led by Regent **John Day**, were asked to develop and, pending further input from the Executive Committee, make available the College's expertise on the issues that will confront the administration of justice in a

post-Pandemic world, in particular those issues that impact the discovery component and trial of civil and criminal cases and oral arguments before appellate courts.¹

THE TASK FORCE'S GOALS

The Task Force immediately recognized that it had a dilemma. On one hand, judges and lawyers needed *urgent* guidance on how to address the preparation and trial of cases. On the other hand, there was little if any actual data to inform what that guidance ought to be. For example, the use of remote video to take depositions, while not unheard of, was rare before the pandemic. Should that be a best practice?

The Task Force was organized to meet the Executive's stated short-term goals: *first*, to source information from Canada and the United States that focuses on the need for technological and case management changes in both

¹ The initial members of the Task Force were President Douglas R. Young, Regent Joe R. Caldwell Jr., Regent John A. Day, Regent Mona T. Duckett Q.C., Regent Sandra A. Forbes, Hon. Nancy Gertner, Brian J. Gover, Melinda Haag, The Hon. Mr. Justice David Harris, Roslyn J. Levine Q.C., Hon. Barbara M. G. Lynn, Judge Frank Marrocco, Regent Catherine M. Recker, Lou Anna Red Corn, Paul Mark Sandler, and Sylvia J. Walbolt. The Task Force was later expanded to include James O. Broccolletti, Jefferson M. Gray, Nan M. Horvat, Sharon L. McCarthy, Kathryn N. Nester, Claire J. Rauscher, Leon F. Spies, Hon. Jack Zouhary, and President Rodney Acker.





nations' court systems, particularly as that information relates to discovery and trial aspects of criminal and civil cases, and oral appellate court arguments; *second*, to gather information on the courts' and interested groups' new rules and "best practices" for court administration developed in reaction to the pandemic; and *third*, to report to the Executive Committee and recommend what further role, if any, the College should play on these subjects in the future.

The short-term nature of the goals drove the Task Force to produce and distribute "interim guidelines" as its first order of work, as immediacy became the paramount consideration. The justice system had been thrown headfirst and virtually without notice into the pandemic world. Ongoing court processes were affected, with courtrooms closed and scheduled hearings postponed across both nations. Simultaneously, new court proceedings were amassing daily on the sidelines. A final set of guidelines would come later, after the urgent need was met.

To achieve the Task Force's goal to research and gather all available and developing information on changing trial practices, the Task Force developed a library on the Task Force's website page. The library materials served as excellent sources for discovering and selecting

the practices that appeared most helpful for conducting civil and criminal trials and hearings during the pandemic.

THE INTERIM GUIDELINES

The Task Force divided into two groups, but continued to meet as a whole through weekly Zoom calls. The civil lawyers in the group began gathering information and developing guidelines for civil jury trials, civil non-jury trials and appellate hearings. The criminal lawyers assembled information and began formulating guidance on the protection of constitutional rights in re-opening criminal courts. Several members of the Task Force took on specialized and practical issues, such as guidance on conducting hearings by remote video and mastering Zoom Advocacy. Soon, seven interim guideline papers started to take shape, each aimed at helping judges and lawyers recognize the myriad issues raised by the new reality, and giving guidance on appropriate responses to those concerns.

The two groups began delivering their draft papers in early May. The Task Force spent numerous meetings in thoughtful back-and-forth discussions of each paper – nearly line-by-line. Despite the obvious perils of "designing a horse

by committee,” the Task Force objectives and the interim reports truly benefitted from all members bringing their widely varied backgrounds and expertise to the process. That said, the aim of developing “universal” guidance for both and Canadian and American jurisdictions, in each subject area, still proved challenging.

Each of the interim guidance documents is available on the College’s website at actl.com/advocacy.²

THE CRIMINAL ISSUES PAPER

Although civil lawyers on both sides of the border shared almost all precepts that apply to civil pretrial and trial proceedings (with minor challenges to address the differences in the terms used), the lawyers practicing criminal law faced different challenges. First, criminal defendants in the United States have a right to confront the witnesses against them under the Sixth Amendment to the United States Constitution. Criminal defendants in Canada do not have a similar right. Second, various states have, by provisions in a state’s constitution or statutes, a right to actively participate in criminal proceedings involving injury, death or loss to a loved one. How do we balance those rights in a pandemic?

The Task Force decided that the legal community would be best served by a paper identifying the constitutional issues raised in criminal cases. Titled “Constitutional Protections Implicated by the Reopening of Criminal Courts in the Face of the COVID-19 Pandemic,” the 29-page paper discusses the *Speedy Trial Act*, statutes of limitations, grand jury, effective assistance of counsel, jury composition, social distancing, videoconferencing, victim’s rights, and other issues impacted by the pandemic.³

OVERARCHING PRINCIPLES

Once the ideas for the interim guidance papers were settled, the whole package of guidelines seemed to value remote hearings beyond their pandemic necessity or as a useful tool to improve access to justice in defined circumstances. To ensure that the College’s guidance was construed in its proper context, the Task Force decided to craft an accompanying set of overarching principles. When the guidance was set against these overarching principles, the College’s view of their purpose and place in the legal system became much more clear. The Task Force extensively debated the nature and scope of potential governing principles, but drafting them proved an unwieldy exercise for the full group. Quickly, the Task Force also determined that it was only feasible to craft overarching principles for civil trials, because the constitutional imperatives of a criminal trial would present an inordinate challenge to completing the principles in the given time.

The Task Force was able to distill a number of ideals that form the core of the current overarching principles. But the adoption of principles represents a very different action than the creation of guidance papers – in essence they would become College policy. So the Task Force sought – and received – Executive Committee and Board of Regents approval of the principles.⁴

The fundamental overarching principle confirms that the in-person trial remains the expected norm, apart from the exigencies of a pandemic or when other appropriate circumstances dictate:

In general, trials should be conducted in-person in a public forum that allows ▶

² <https://www.actl.com/home/news-publications/position-statements-white-papers>

³ https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/2020---constitutional-protections-in-reopening-of-criminal-courts-in-the-pandemic.pdf?sfvrsn=cfe61769_6

⁴ https://www.actl.com/docs/default-source/default-document-library/position-statements-and-white-papers/2020--overarching-principles-applicable-to-civil-trials.pdf?sfvrsn=69be869_2

real-time access to the public. Witnesses, litigants, their lawyers, the judge and in jury trials, the jury, should be in the same room for the entirety of the proceedings, except for those times during jury trials when the jury is deliberating or when an in-chambers conference is appropriate. Courts and courthouses should be designed and configured to safely conduct in-person trials, even in times of public health crises, and to use video communication platform(s) where appropriate.

This is a strong statement that some will believe runs counter to any rational vision of the future for litigation. Some may also assume that it simply reinforces the legal profession’s reluctance to change. The truth is more nuanced. Remote hearings, assisted by the guidelines, will continue to serve and enhance the desired judicial system of the future, while in-person trials will continue to serve the judicial system where they serve it best.

THE TASK FORCE CONTINUES

In early September 2020 then-President Young recommended to the Executive Committee and the Board that the Task Force become a General Committee of the College. At the Fall Meeting, the Board approved the creation of the “Advocacy in the 21st Century Committee,” giving it the mandate:

The Committee shall continue to develop the College’s expertise and suggested approaches to the significant issues that will affect the administration of justice and the Rule of Law in a post-pandemic world, including developments that will enhance the just, speedy and inexpensive resolution of disputes. These efforts will include (1) gathering information from sources in Canada and the United States, and identifying “best practices” and evolving court rules, such as those related to technological and case management modifications to the court systems of both nations, particularly those related to the discovery and trial aspects of criminal and civil cases, and oral arguments in the appellate courts; and (2) updating, as appropriate, the interim guidance documents prepared by the Task Force on Advocacy in the 21st Century.



The Committee is chaired by Regent **John Day**, who will also serve as Liaison to the Board of Regents. **Roslyn Levine** of Toronto serves as Vice Chair.

The Committee actively continues its work. Its current goal is to prepare, for Board approval at the Spring Meeting, a review of all the interim guidance documents released in the Summer of 2020 – correcting or adding, as necessary, to reflect what has actually occurred in the criminal and civil justice systems since the pandemic began. The Committee is gathering orders, protocols and procedures in place throughout both nations, and interviewing judges and lawyers to learn about their experiences with the expanded use of remote video and other practices to reduce the risk of viral transmission. The Committee will also explore ways to elicit the experience and expertise of other College Committees, avoid overlapping work, and ascertain the College’s position on the efforts of others to change the existing court system in both countries. Most important, the Committee will study and recommend the changes the College should seek to enhance the just, speedy and inexpensive resolution of disputes for all justice system participants.

In contrast to the conventional view of law, science is dedicated to change, with an ability to move relatively quickly in many instances. Covid-19 vaccines are apparently at hand, and we hope to conquer this pandemic in the next year or perhaps sooner. Nonetheless, the pandemic will leave its mark on countless aspects of our lives and psyches for an inestimable period. Americans and Canadians understood that the justice system had to continue to protect and serve their countries’ respective citizens, even in these most challenging times. Consequently, lawyers, judges, court administrators, and litigation parties found remarkable ways to sustain court proceedings despite the stringent conditions required to ensure all participants’ safety.

The Task Force was established to seize the opportunity presented and harness the pandemic for a measure of good, now and for the future – to accelerate positive change in the conduct of court and related proceedings. We know that aspects of the justice system will return to their former practices when the pandemic recedes, but that other practices adopted during the period will remain. Many of the new litigation practices documented in the Task Force’s guidelines can deliver speedier and less expensive dispute resolution, particularly for participants with poor access to legal counsel and courts. For example, in Canada, indigenous persons are often disadvantaged by a failure of timely access to courts in their remote communities; they will benefit from continued remote hearings. In the United States, more efficient procedures will reduce the costs, direct and indirect, of resolving small claims and traffic tickets. Both countries will benefit from the development of enhanced case management procedures in civil and criminal matters.

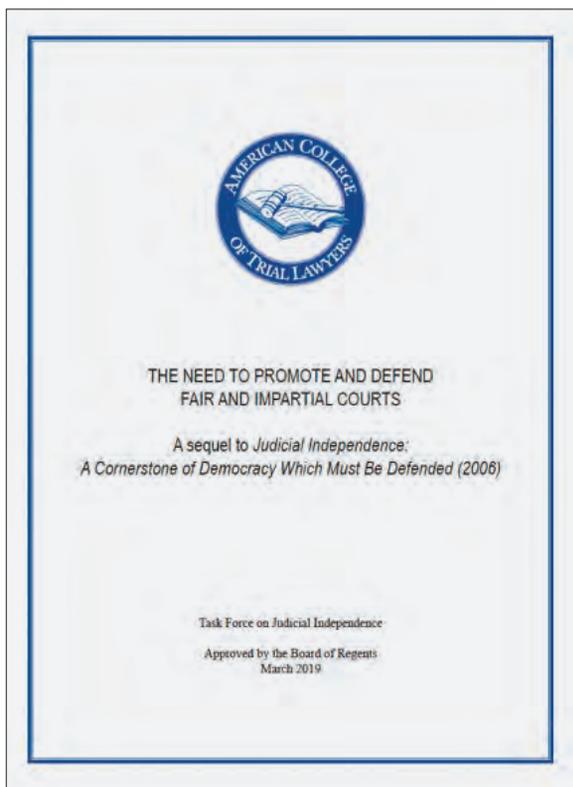
The real possibility of immediate and longer-term positive outcomes for legal advocacy motivated the Task Force to swiftly gather, organize and share information through the interim guidelines. We are confident that the library of materials, the interim guidelines, and the future updated guidelines will be valuable ongoing resources for many Fellows; we urge everyone to consider them.

John A. Day
Nashville, TN

Roslyn J. Levine, Q.C.
Toronto, ON

TAKING FAIR COURTS ADVOCACY TO THE PUBLIC — The ACTL/NAWJ Public Education Collaboration

In 2018, then-President **Samuel H. Franklin** appointed a Task Force on Judicial Independence, charging its members to update the College's 2006 White Paper, *Judicial Independence, A Cornerstone of Democracy*, and to recommend to the Board of Regents other initiatives the College might undertake to support fair and impartial courts. The Task Force's 2019 White Paper, *The Need to Promote and Defend Fair and Impartial Courts*, concluded that over the past decade threats to fair and impartial courts increased in volume – both number and pitch – at both the federal and state levels. This increase happened despite the fact that many prestigious organizations across the country had been writing and speaking out to support judicial independence. The Task Force concluded that the College must redouble and redirect its commitment to judicial independence by doing *more* than just “going on the record” within legal circles. The College must use its voice to educate the public on why and how the judiciary's independence from the legislative and executive branches is *essential* to safeguarding our democracy.

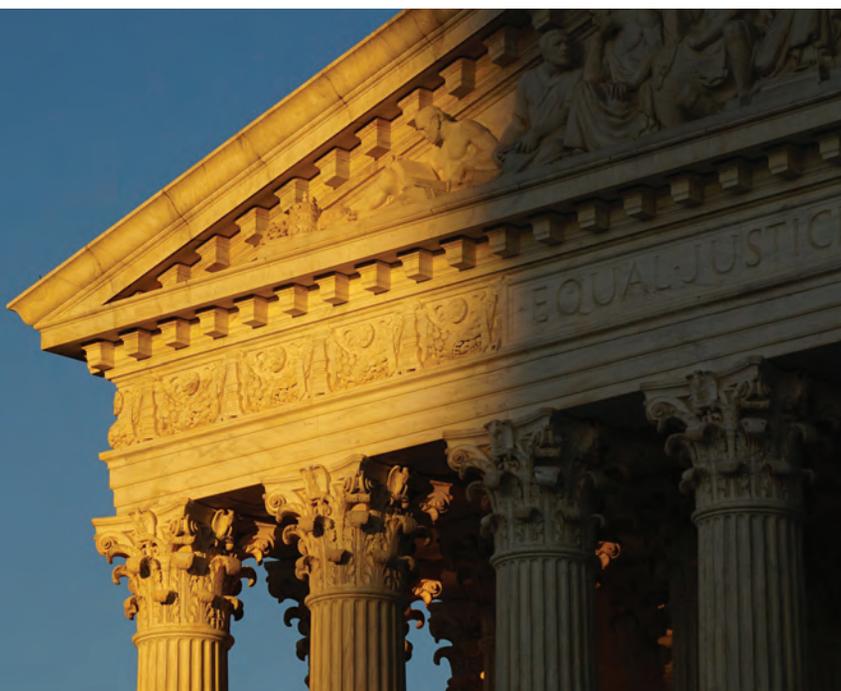


The Task Force made five recommendations:

- Maintain and strengthen the College's direct response to specific attacks on judges or the judicial system at the state/province and federal level.
- Encourage and support Fellow engagement in state and province advocacy and public education to promote fair and impartial courts.
- Encourage and support expanded engagement by Judges in responding to attacks on the judiciary.
- Institutionalize judicial independence as a College core mission by a specific assignment of ongoing responsibility to an existing committee or ongoing task force.
- Maintain and publicize the college's opposition to selection and retention of Judges.

The Board of Regents approved the recommendations and created a new General Committee on Judicial Independence to implement them. While the Committee is forging ahead on all fronts, this article is limited to one particular activity – the College's recently launched collabora-

*FAIR AND IMPARTIAL
COURTS SHOULD NOT
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PUBLIC OPINION,
POLITICAL PRESSURES,
OR SPECIAL INTERESTS.
DECISIONS SHOULD BE
BASED ON THE LAW.*



tion with the National Association of Women Judges (NAWJ) for adult public education programs on fair and impartial courts in the States.¹

THE LAUNCH OF THE PUBLIC EDUCATION PROGRAM

At the beginning of 2020, the College entered into a collaboration with the NAWJ for a two-year adult education pilot project. NAWJ already has excellent public education materials it uses in its Informed Voters/Fair Judges Project. Through this new collaboration, College Fellows would make presentations to adult audiences using a PowerPoint adapted, expanded and updated from the NAWJ's existing materials. The initial goal was to have Fellow presentations in five states during Law Week 2020, and another five presentations during Constitution Week in September 2020. Fellows in Southern California, Florida, Kansas, North Carolina, and Washington signed up to spearhead the effort of recruiting Fellows to give the presentations and finding appropriate adult audiences to host or receive the presentations in the spring. But then the Covid-19 pandemic swept the country, making live audience presentations unrealistic.

Over the summer Fellow **Virginia (Ginny) Nelson** and Former Regent **Kathleen Trafford** worked with NAWJ Judicial Independence Committee Co-Chair, Justice Robin Hudson of North Carolina, and Annette Boyd Pitts, NAWJ Education Chair, to revise the PowerPoint presentation to recognize that virtual presentations might be the norm for

some time to come and to expand the emphasis on the judicial branch and fair and impartial courts. The working group also developed additional materials to aid the Fellows who will make the presentations, including an audio annotation of the PowerPoint explaining the authors' intent for each slide, a written Presentation Overview, and a Key Planning Letter laying out the steps to be taken to identify an appropriate host or recipient audience and make the necessary logistical arrangements. All of the materials related to the public education program are posted on the Judicial Independence Committee page on the College's website at actl.com/publiceducation (Fellow log-in is required.) The program was ready for launch by the end of August.

The revised goal was to have Fellows in ten states give presentations in the Fall of 2020, adding Iowa, New York, Ohio, Pennsylvania and Texas to the mix. The continuing pandemic restrictions and the national election focus and furor frustrated Fellows' best efforts in some states, but three excellent presentations were given in the short time between Constitution Day, September 17, 2020, and election day, November 3, 2020. At the time this article was submitted, other presentations were planned.

THE NUTS AND BOLTS

The public education program is intended for an adult, lay audience. The Task Force's research revealed that many good programs covering the Constitution and the judiciary are available to K-12 civic classes, but there is a paucity of adult

¹ The Canadian provinces are not included in this initiative because, as described in the 2019 White Paper, Canada at present does not suffer the level of threat to judicial independence seen in the States. We can only hope that Canada does not see that fortunate status take a turn for the worse. But if it does, the structure and format of the ACTL/NAWJ collaboration could be the model for the development of a similar public education program by Canadian Fellows. ▶

education resources. The target audience for this new program is a civic group (for example, a Rotary Club, chamber of commerce, the League of Women Voters, or a metropolitan club), or an adult education forum (for example, a community college, library, alumnae group, or lifelong learning institute).

The vehicle for the public education program is a one-hour, animated PowerPoint Presentation which includes opportunities for audience engagement. The presentation is intended to be non-partisan and ideologically neutral. It is designed to provide the audience with information about the Constitution and the judicial branch without advocating for any outcome or agenda other than an informed electorate that has a better understanding of the unique role of the judicial branch and the importance of fair and impartial courts. For this reason, and the fact many NAWJ members are elected to the state bench, the presentation does not refer the College's opposition to the popular election of judges.

The presentation has four major segments:

- the purpose, structure and supremacy of the United States Constitution and the parallel federal and state court systems;
- the distinction between the Judicial Branch and the representative branches, emphasizing how judges make their decisions, the judicial qualities that support fair and impartial courts, and the methods by which judges are held accountable for their decisions;
- the considerations and characteristics most important in selecting judges, recognizing that judges often must make difficult and unpopular decisions that are necessary to protect fundamental minority rights, and acknowledging the alternative processes for selecting state court judges;
- recent state legislative assaults on the judiciary by attempts to limit the role or independence of the courts, often in retaliation for an unpopular decision.

Immediate Past President **Douglas R. Young** reviewed the inaugural presentation recording and declared it to be “an incredible project . . . forth-

right and truly outstanding,” as it is “positive, informative,” and will “move the needle” in terms of informing citizens’ understanding of the judiciary.

The presentation is intended to be given by Fellows or Fellows and Judicial Fellows, and may include a NAWJ member judge if available. The PowerPoint contains a Notes Section in which the authors suggest points that might be made in connection with a particular side and resources that will help convey the appropriate message. For example, the notes to the slide illustrating the Parallel Federal and State Court Systems suggest that the presenter may want to explain that federal judges are appointed for life, subject to good behavior, while most state court judges are appointed or elected to fixed terms. Another suggestion is to note for the audience that over 90% of all cases filed in the country are heard in state courts. The notes to the slide illustrating how disputes are resolved through the legal process suggest that a discussion of the respective roles of the jury and judge, and the importance of jury service, would be appropriate. The notes are a helpful aid in preparing for the presentation, but Fellows are encouraged to add local color about their particular state. Fellows also are free to selectively modify the PowerPoint presentation by emphasizing certain slides or passing over others, depending on the sophistication of the audience.

LESSONS LEARNED FROM THE INITIAL PRESENTATIONS

The inaugural presentation of the public education program took place in San Diego, California on September 30, 2020. **Ginny Nelson** partnered with California state appellate court Justice Judith McConnell, a long-time NAWJ leader for the Informed Voters/Fair Judges project, to give the presentation. The host organization was the San Diego League of Women Voters. The audience ranged from attendees with little civics knowledge to a school board member with a Ph.D. in political science. The audience evidenced its engagement with robust chat responses to questions posed during the presentation. The Zoom presentation was recorded, and then made available to the over 400-member network of the League of Women Voters as well as other persons visiting the League’s website. The recording of the San Diego presentation is available on the Judicial

Independence Committee webpage at actl.com/publiceducation (Fellow log-in is required).

Washington Fellow **Natalie A. Tarantino**, newly inducted in 2020, joined with NAWJ Judicial Independence Committee Co-Chair, Washington Supreme Court Chief Justice Debra Stephens, on October 26, 2020, to make a presentation to a Law and Justice undergraduate class at the University of Washington. The University hosted the presentation and handled all the logistics, freeing the presenters to focus on the content itself. The professor was impressed with the content and quality of the presentation and plans to make the Zoom recording available for use in other classes.

Both the Washington and San Diego presentations had the added benefit of making the participating justices, who were eager to support and join in the inaugural efforts, more aware of the College and its meaningful, hands-on commitment to strongly support judicial independence.

Kathleen Trafford and **Bill Porter**, the immediate past chair of the College's Outreach Committee, gave a presentation on October 30, 2020 to an audience drawn from the staff and administrators of the largest Central Ohio provider of curriculum for the Ohio High School Equivalence Program. There was very active audience participation, particularly when the audience was asked to give examples of labels they have heard ascribed to judges and to describe the characteristics they would look for in a judge. This presentation also used the Zoom platform, but with a twist. Bill's law firm hosted the presentation, and Bill and Kathleen were together as a panel, of course properly masked and spaced six feet apart. The presentation was recorded and made available to the organization to show to adults, 22 years or older, seeking to obtain an HSE diploma.

There are several take-aways from these initial presentations. The presentation

materials are very user-friendly. All presenters agreed that minimal independent preparation is required once the presenter reviews the PowerPoint and Notes. The presentation is well received by a wide range of audiences and can be easily adapted depending on the sophistication of the audience. Many of the most logical host organizations who would find the presentation appropriate for their membership plan their programming well in advance, so the lead time for planning purposes can be months, not just weeks. The option of doing virtual programs is a benefit, and most organizations are now comfortable with this option. If a Fellow does the presentation once, he or she will want to do it again. It is a personally rewarding experience and entails a disproportionately small investment of your time.

PLANS FOR 2021

Planning for the second year of the pilot project is now underway. Updated materials are already available. The goal is to have presentations in 10 states in early May, as part of the traditional Law Week celebration, and another 10 presentations in the Fall when Constitution Day is celebrated. The targeted states will include the 10 states which offered or deferred presentations in 2020, and 10 new states: Alabama, Colorado, Georgia, Idaho, Illinois, Massachusetts, Minnesota, New Mexico, Oregon and Virginia. Of course, Fellows in any state who want to give the presentation are encouraged to do so and will be fully supported by the Judicial Independence Committee. It is important to begin the outreach to possible audiences as soon as possible because many civic organizations and educational institutions plan and schedule their programming months in advance.

At the conclusion of the 2021 presentations, the College leadership will evaluate the adult education program in terms of its benefit to the public, its furtherance of the College's mission, and the Fellows' commitment to and support of the program.

WHY SHOULD WE CARE?

The College's stated mission is, among other things, to "strongly support" judicial independence. Writing position papers is important and engaging with other lawyers and judges is helpful. But taking the fair and impartial courts message directly to the public is necessary if we are to make meaningful progress in assuring that judges remain free to do their job without fear or favor. The greatest threat to judicial independence may well be the public's lack of understanding about the role of the judiciary, which emboldens politicians, special interest advocates, and disgruntled pundits to assault, denigrate and retaliate against judges who issue unpopular decisions.

This public education program should be important to us as individuals. All states have some form of the ethical obligation of lawyers to further the public's understanding and confidence in the rule of law and the justice system, and to defend the judiciary from unfair attack. This program offers us all an easy way to live up to that obligation.

Participating in these presentations also is good way for Fellows, particularly new Fellows, to get involved in the College and to engage with Fellows in their state and across the country. Fellowship and engagement are what makes the College experience unique. Something more than a plaque on the wall or a line in a bio. This program is a good start for a new Fellow and a satisfying recommitment for the rest of us.

So volunteer to be a presenter, or if asked to participate, say yes. The College needs you to step up, and you won't regret that you did.

Kathleen M. Trafford
Columbus, OH

Virginia C. Nelson
San Diego, CA

HEROES AMONG US

JAMES E. COLEMAN, JR.



It has become a regular *Journal* feature to tell the stories of the heroes among us, the stories of Fellows who wore the uniform, who fought and bled to keep us all safe. This is one of those stories. If you have one, please share it with us . . .

Jim Coleman was the senior partner of Carrington Coleman Sloman & Blumenthal from its founding in 1970 until his death on February 22, 2020. I practiced law with Jim for twenty four years, until I became a federal judge in 2000. Everybody knew Jim had done something heroic in World War II, and during the Korean War, but he never talked about either. My purpose is to lift the veil of secrecy on his heroism.

Jim enlisted in 1942. He wanted to join the Air Force and appeared to be well on his way, having received exceptional results on his physical and psychological tests. But at the very last stage, it was discovered that Jim was colorblind, which disqualified him from service in the Air Force, so instead he joined the Army. After training, he was assigned to Headquarters Company, Second Battalion, 347th Infantry Regiment, in General George Patton's Third Army, as a wireman and switchboard operator. On January 12, 1945, Jim, then a Second Lieutenant, arrived in France, and his battalion promptly moved from France to Belgium and then into Germany, arriving there on February 8, 1945. On March 25, 1945, on the West Bank of the Rhine River, near Rhens, Germa-

ny, telephone communication lines had been cut between an infantry battalion command post and an observation post. Lieutenant Coleman, then the battalion's Communications Officer, assigned himself, with a volunteer, to reestablish radio contact between the two points. Under fire from 20 millimeter automatic weapons and small arms, Lieutenant Coleman repaired the break; and then, within an hour, "without regard for personal safety" repeated the process to repair another break in the wire, while under fire. For actions in keeping with the highest standards of military service, on June 23, 1945, Lieutenant Jim Coleman was awarded the Silver Star for gallantry in action against an enemy of the United States.

From March 25 to VE Day, Jim's unit advanced 230 miles through Germany to the Czech border, capturing more than 31,000 prisoners of war in the process. After VE Day, another 35,000 Germans surrendered to the unit. One platoon of 2000 Germans surrendered directly to Jim, at the request of their commander, and gave up their weapons, including the daggers favored by many German officers.

On May 2, 1946, Jim, by then a First Lieutenant, reported to Fort McPherson, Georgia for discharge. There was a long line for pure discharge and a short line for those who agreed to be recalled if needed. Jim's daughter, Margaret Keliher, remarks that "in typical Dad fashion" he picked the shorter line. Sure enough, he was called back for the Korean War, but was deferred until he graduated from the University of Virginia Law School in June of 1951. At first, he was told to report to Fort Meade to prepare to deploy to Korea, but then he was given a new location in Washington, D.C. He arrived in Washington with his reporting address in hand. The cab pulled up to a building with a sign identifying it as a paper company. After having the cabbie verify he had taken Jim to the correct address, Jim got out and went inside, where he found that he was in an office of the Central Intelligence Agency. Jim was a CIA agent for two years immediately preceding his coming to Texas to practice law. In typical Jim fashion, as far as I know, he never told anyone what he did in the CIA, except to say, "I wasn't doing desk work, I can tell you that!"

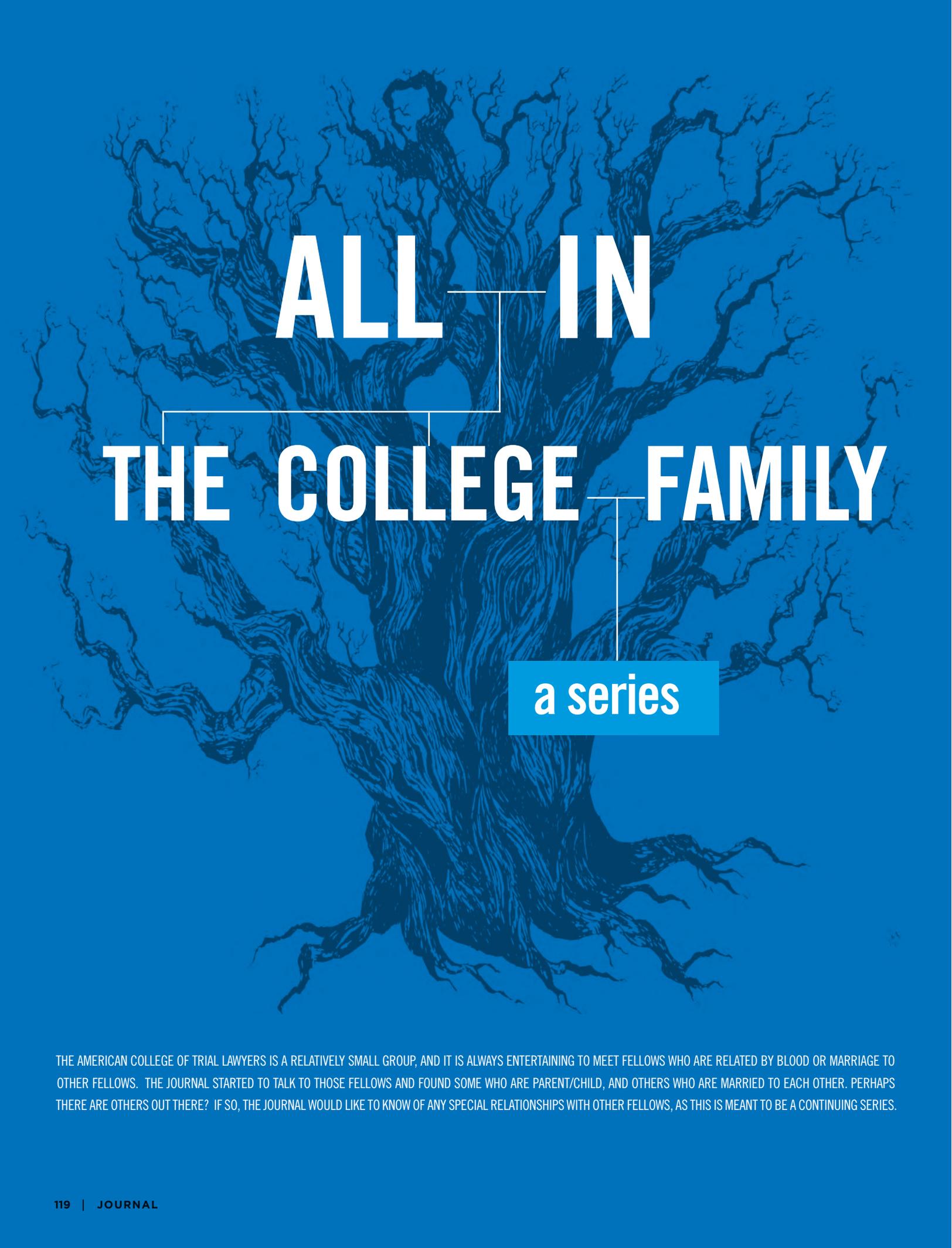
Jim Coleman was the whole package. He fought for his nation and for his clients. He believed in service as an essential obligation of citizenship. He was always ethical. He never cut corners. He never lied or even fudged the truth. He was a great storyteller and a man of great compassion. He abhorred discrimination and stood up for the underdog. He was a gentleman but he never got pushed around. His word was his bond. He kept himself in tip-top

shape in mind and body (in fact, I bumped into him several times at our mutual gym when he was 93). He was a hero, defined as a person who is admired for courage, achievements or noble qualities. Jim was rightly admired for all of those things. He was a hero to our nation, to his profession, to his family and to his many friends and colleagues, certainly including me. Jim, now that your service is done, rest easy my friend. The path you walked led the right way for so many of us left behind.

Chief Judge Barbara M. G. Lynn
Northern District of Texas

EDITOR'S NOTE: The silver star is the third highest military award, given to soldiers who display *gallantry* in action. The picture of Jim's Silver Star below includes the service ribbon that accompanied it when it was awarded (actual medals are generally not worn except on formal occasions; the service ribbons are more commonly worn with dress uniforms). To the left of Jim's silver star ribbon is a campaign ribbon that would have been awarded to every soldier who served in the European Theater in World War II. You didn't have to be gallant or brave to get it, you simply had to be there; so nothing exceptional about that ribbon – except that Jim's has two bronze stars affixed. Bronze stars are awarded for heroic or meritorious service in combat zones. So that *is* exceptional. Judge Lynn was able to unearth the story behind the silver star, but Jim's characteristic modesty leaves the bronze stars a mystery.





ALL IN THE COLLEGE FAMILY

a series

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

FORBES V. GRANT



At first glance – surface diversity. But at a second look – deep and significant compatibility. That’s at least one description of married Toronto, Ontario, Fellows **Sandra A. Forbes** (Sandy, ’11) and **Stephen Grant** (Stephen, ’03). The two met in October 1991. Sandy had just completed law school and was taking the mandatory bar admission course where Stephen was teaching family law. She clearly caught his attention because at one point, Stephen turned to Sandy and asked her a question. She blankly stared at him, but then casually responded: “Would you mind asking someone else?” Stephen moved on, but only for a while.

Their names are likely familiar to Fellows, as both have been active and generous of their time in the College. A few years after his induction, Stephen was tapped to serve as the Editor of the *ACTL Journal*. Despite being a Canadian, a family law practitioner, and the College’s emphasis on civil litigation in the United States, Stephen served in that capacity from 2012 to 2019, describing it as a “very challenging but rewarding gig.” He stepped down in 2019,

feeling that another voice should be heard. He has also served as vice and Province Chair for Ontario. Sandy has also been active in the College, serving as chair of the Ontario Province Committee and the Canada-U.S. committee, as well as Vice Chair of the Griffin Bell Award Committee. Since October 2018, she has served as a Regent. Both say the College has been very important to them – they have made many wonderful, lifelong friends. While it is a big organization, it is inviting and inclusive, and the meetings are not to be missed.

Sandy completed her legal education at Osgoode Hall Law School in Toronto in 1990, and, after passing the bar in 1992, joined what is now known as Davies Ward Phillips & Vineberg, where she is a partner in Dispute Resolution, Competition Litigation and Investigations, and White-Collar Crime, specializing in anti-trust and class action defense. Sandy chose to join the firm because of partner John I. Laskin (’91), who was one of the top civil litigators in the country. About the same time as she started her active practice, she started working out at a gym where, as it happened, Stephen was also a member. He remembered her from the bar admission course and asked her to play squash. This time, Sandy answered Stephen’s question. She accepted (both admit neither was very good at squash), and their courtship began.

They were married in Toronto in January 1999. It was the week of the worst snowstorm in Toronto history, and Sandy’s attire included a long formal wedding dress that at least partially obscured her snow boots. They were married in the chambers of a judicial friend, with 20-25 people, and then trudged through the snowstorm to a restaurant for a reception with 200 friends.

The wedding day had been selected as Stephen was scheduled to be in a four-month long trial in Calgary shortly afterwards and they wanted to marry before he left. Of course, the matter



was resolved before trial, but by then, they were happily married.

Stephen was born and raised in rural Pennsylvania but moved to Toronto at age 16. He returned to the U.S.A. for one year of college in the mid-60's, but then returned to the University of Toronto where he completed his law degree in 1973. When called to the bar, he began as a general practitioner, but he soon found that all the other members of his firms disliked family law; Stephen found it interesting and took on those cases that his partners eschewed. He is now recognized as one of the leading family law practitioners in Canada.

In 2012, Stephen started his own firm (now called Grant Crawford LLP), a family law boutique particularly dealing with complex financial issues. Stephen is not only a Fellow in the American College of Trial Lawyers, but also a Fellow in the International Academy of Trial Lawyers (as is Sandy) and a Fellow in the International Academy of Family Lawyers of which he was the first Canadian chapter president. He plans to retire from the day-to-day practice at the end of 2020 to focus on mediation/arbitration, writing (including a book on *The Advocacy of Art*) and other pursuits.

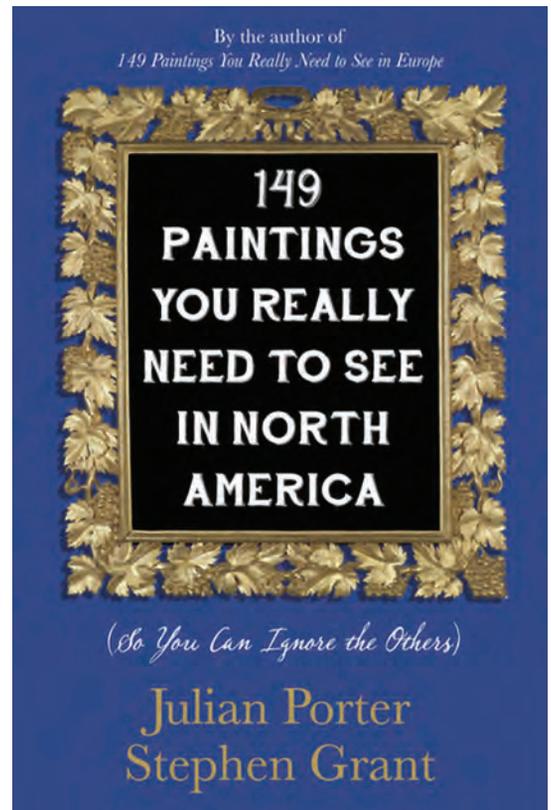
A hand-embroidered pillow, created by a former client, adorns the Grant Crawford reception area. The client describes her first visit to the firm, when Stephen asked, "What can I do for you?" She responded by bursting into tears. Stephen waited for her sobs to subside, handing her one tissue after another until she calmed down, repeating in his deadpan voice "You will be fine" throughout her breakdown. She later embroidered the cushion with "You will be fine" and presented it to Stephen in thanks.

Sandy is a lifelong Toronto resident. She is avid runner and fitness buff. They share custody of a 20-pound Maine Coon cat, Edwin, who travels with them between their Toronto home and a country place outside of the City. Stephen cooks, bakes and writes poetry while lazing about and watching baseball while Sandy en-

joys the gorgeous Haliburton countryside and indulges in her love of reading. (Although I asked insistently, Stephen declined my request for some verse, citing quality concerns. So much for my advocacy!)

The two practice in Toronto, also home to Stephen's daughter, Jessica, who is an insurance defense lawyer, and Jessica's husband, David Ziegler, who practices commercial litigation. Jessica and David have blessed them with a four-year-old grandson, Theo, and 11-month-old granddaughter, Olivia, who are the light of Sandy and Stephen's lives.

Both have been active in the arts. Stephen is the co-author (with FACTL Julian Porter) of a must-read book which provides an art-travel guide of North America's best art. He fronted as rhythm guitarist in a band for a dozen years which specialized in adapting legal lyrics to popular tunes. Stephen served on the Toronto Symphony Orchestra Board of Directors and on various committees at the Art Gallery of Ontario. Sandy currently chairs the Toronto Summer Music Festival. Sandy says she "tries" to play the cello, while Stephen plays piano and guitar.





The law seemed a natural vocation for each. Stephen's father, who died when Stephen was 7 years old, was a general practitioner with a Harvard law degree. On one Boston trip, Stephen and Sandy went to the Harvard Law School and a helpful librarian showed them his father's 1943 yearbook. It listed his home address, which was later Stephen's childhood home.

Sandy comes from a family of lawyers: both her father and one sister are lawyers. Her dad was a trial lawyer and handled medical malpractice defense, and her sister is counsel to a regional school board. She says she decided to go to law school without really knowing what her father did. But the law school experience kindled memories of her youth. She remembers getting up early in the morning to find her father sitting at the kitchen table writing his closing arguments. She still uses her father's robes for court appearances.

Stephen was attracted to the law by the ideas of equality and justice. For him, it is an instrument of social change. By serving as a family lawyer, he believes he has been able to make positive differences in people's lives.

Sandy initially thought the law would be something at which she could be good, in part because of her father. It turns out that she was good, very good. But once she got through the legal door, what kept her was the unbelievable experience. "When someone comes to me with a problem, I get to learn everything about their life and help them resolve the problem." She believes she is incredibly privileged to earn a living helping her clients.

I asked Stephen what makes Sandy a great lawyer. His answer was both admiring and prompt: "She is one of the smartest lawyers I've ever met. She has profound analytical skills. She is articulate and intellectual, cutting to the core of every problem with efficiency."

Sandy was equally quick to praise Stephen. She said she has watched some of his recent trials, and he knows the area in which he practices. "You have to distance yourself emotionally to handle family law." "Stephen is an unbelievable cross examiner. He has a casual, nonaggressive style, and the witness never knows what is happening until it is too late."

The two also share a love of travel, and in 2009, they took a three-month sabbatical to Paris, France. Sandy took French lessons, while Stephen learned painting. They rented an apartment in the Sixth Arrondissement during that journey and have returned frequently, now renting a place in the Fifth Arrondissement. Their routine when visiting the City is get their work done first thing in the morning, visit a gallery or art museum, then break for lunch, have a rest and deal with emails, then go out to dinner, starting all over again the next day. They have also ventured out of the City of Lights in their 20-25 trips to France and are planning their next venture, when travel is allowed, to the Luberon. As it happens, Stephen has written half a dozen travel articles on these sojourns for the *Globe and Mail*, Canada's most read national newspaper, and they are often asked to name their favorite places, especially Paris bistros.

Truly, a renaissance couple, and two Fellows with whom we would all like to travel, or to dine, or to discuss art or music or the law.

Carey Matovich
Billings, MT



Heritage of Our College =

W.J. Michael Cody

The mandate of the College's Heritage Committee is, in part, to create and maintain a permanent archival facility to preserve the history of the College by conducting videotaped interviews of Past Presidents and other senior Fellows. The full video interviews will be made available as they are finalized via links on the College's website. As a regular *Journal* feature, we highlight an abridged version of one such interview.

W. J. Michael Cody, of Memphis, Tennessee, has for nearly six decades been a champion of justice, fairness, and civility. Apart from his years of public service, Mike has practiced his entire career with one law firm, Burch, Porter & Johnson, PLLC.

Mike is an avid runner. He has run over 80,000 miles in his life, a figure that equates to running around the planet at the equator more than three times. He has run the Boston Marathon four times; his best single mile time is 4 minutes, 22 seconds, putting him in the Tennessee Sports Hall of Fame. At age 84, he still runs regularly, though he describes what he does as "shuffling about."

Between his second and third year of law school at the University of Virginia, Mike asked his father where he should seek a summer clerkship. His father told him the best lawyer in Memphis was Lucius Burch. Mike contacted Mr. Burch, who told him the firm would allow him to hang out in the library, but he would not be paid. At the end of the summer, the firm grudgingly paid him \$100.

Mike graduated in 1961. During his third year, Mike contemplated an offer to join a Philadelphia law firm. Mike told Burch that he had an \$800/month offer from the firm. Burch said he would top that by paying him \$400 per month plus half of whatever Mike was able to bill from Mike's own clients. After five years with the firm, the net receipts of funds from his clients were zero. Nevertheless, Lucius Burch and Mike became very close. Lucius was his lifetime mentor; no matter what happened in Mike's life, Lucius always had his back.

Lucius was a Fellow of the College, known for his pro bono work and his dedication to doing his best to integrate Memphis public facilities in the 1950s and 1960s.

In late March 1968, the Memphis Sanitation Workers Union, made up of 98% African Americans, went on strike. A march was planned for early April. Memphis responded to the planned march by seeking an injunction to stop the march. The ACLU offices in New York City and Atlanta reached out to Lucius and Mike to oppose the injunction in Federal Court.



On April 3, 1968, Dr. Martin Luther King, Jr. flew in from Atlanta to assist the sanitation workers. Lucius and Mike met with Dr. King, David Abernathy, Jesse Jackson, and Andrew Young in the afternoon in room 307 of the Lorraine Motel to prepare for the hearing. Also present was Dr. King's personal lawyer, John C. Eskridge of Chicago.

On the evening of April 3rd, there were storm warnings for Memphis. Tornados were spotted in the area. It was planned that David Abernathy would give a speech. Mr. Abernathy went down to the Masonic Temple where the speech was to be given and alerted Dr. King that the hall was full and the audience wanted to see Dr. King. Reluctantly, Dr. King went to the Masonic Temple with no note cards, where he gave the "I've been to the mountain" speech – one of the most famous speeches in history. Noteworthy was Dr. King's premonition of his passing.

Well, I don't know what will happen now; we've got some difficult days ahead. But it really doesn't matter with me now, because I've been to the mountaintop. And I don't mind. Like anybody, I would like to live a long life – longevity has its place. But I'm not concerned about that now. I just want to do God's will. And He's allowed me to go up to the mountain. And I've looked over, and I've seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the Promised Land. And so I'm happy tonight; I'm not worried about anything; I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord.

The next morning, April 4, Lucius, John Eskridge, and Mike appeared at the Federal Court in Memphis before Judge Bailey Brown. The City took all morning urging that the injunction was necessary as the City and Dr. King were in danger. Mike recalls, "The law was on our side and Judge Bailey was on our side." The City's injunction was denied. ▶



Walking into Court with Andrew Young. That's Lucius in the center and Mike (characteristically carrying the books) on the right.

April 4, 1968. Driving home that night, Mike heard that Dr. King had been shot. Mike immediately called Lucius, then the Memphis Police, to inquire of Dr. King's condition. The police asked Mike to help them find the union leader, Jim Austin. Mike was escorted by a Memphis police cruiser to downtown Memphis, where disturbances were taking place.

Mike's career continued another 52 years. Mike had a wide area of practice involving auto accidents, representing the Illinois Central Railroad, contested divorces, and estate disputes: The firm always encouraged pro bono work.

In 1976, when Jimmy Carter was elected President, Mike was appointed U.S. Attorney for the Western District of Tennessee. Mike recalls his predecessor, Tom Turley, describing the job to Mike: "This job has more power than a good man would want to have or a bad man ought to have."

The highlight of his U.S. Attorney years was the investigation, prosecution, and imprisonment of Governor Ray Blanton, who had been selling pardons to murderers and a variety of felons. Blanton had removed Marie Raghianti as parole board chairman when she refused to follow his directions. Her story is the subject of the movie "Marie" with Sissy Spacek.

Mike also indicted and convicted the man who had served as best man in Elvis Presley's wedding to Priscilla.

In the late 1970s Mike returned to his law firm, but only briefly before the Tennessee Supreme Court appointed him Attorney General of Tennessee. Tennessee is the only state that has a non-elected attorney general. Instead, the position is made by appointment by the Supreme Court. It is typically an eight-year term, but Mike retired after four years, as he had two children in college with \$40,000 of tuition a year and the job only paid \$60,000 per year. Mike describes his situation as having had all the fun he could afford.



As the Attorney General of Tennessee, Mike argued four times in the U.S. Supreme Court. Mike says the most memorable is the one he lost. Tennessee had a statute that provided that a police officer could shoot a fleeing felon. A police officer had shot and killed a 16-year old boy who was running from a burglary. It was Mike's job to defend the statute. Justice Blackmun was not much impressed with Mike's argument. At a point in the argument, Justice Blackmun secured Mike's agreement that anti-trust violations were a felony in Tennessee. Blackmun then moved on Mike and proposed "Suppose that policeman is going to a Memphis business office to make an arrest of the Chief Executive Officer for anti-trust violations. Assume that the Chief Executive Officer, now being aware that he is being arrested gets up and runs out the door. Would the policeman have the right to shoot the CEO?" Later when Mike was asked if he was prepared for the oral argument that day, Mike humbly said, "It turns out, not as well as I should've been, especially for that question."

In 1989, Mike was inducted into the American College of Trial Lawyers. As a prior U.S.

Attorney General for Tennessee, he was a friend of Griffin Bell. Mike was very pleased that Bell was the ACTL President at the time of his induction.

Mike was well aware of the College before his induction because his uncle was Cody Fowler, the only person to have served two separate terms as President of the ACTL. Mike recalls his uncle's advice when he heard Mike was going to be a trial lawyer as saying, "Make sure you are not a desk lawyer."

Regent **John A. Day** interviewed Mike in December 2019. Prior to the interview, John was tipped off by one of Mike's law partners that John should ask about Mike's representation of pornographers. Mike chuckled at the memory. Mike said he did represent the ACLU fighting the Memphis Censorship Board and efforts to overturn the Tennessee's obscenity laws. Mike points out that his law partner **Jeff Feibelman**, who is also a Fellow of the College, was his expert witness on obscenity, because he could find no one else.

Mike has wise advice to younger lawyers, "If you don't have ethics, don't enter the playing field." He advises lawyers to be courteous, friendly, and honest. Your reputation is the most important thing to you. Your practice will be a lot easier if you treat people fairly. This is a very stressful profession and practicing fairness to all, integrity, and honesty is most important. A good reputation, once lost, is very difficult to regain. Mike also urges lawyers to keep time for family, exercise, vacation, and reading books.

While he claims he is on his last lap, there is no evidence in support. Mike continues to handle mediations and arbitrations and teach at Rhodes College; he comes in to work every day.

Ronald H. McLean
Fargo, ND



ANSWERING THE CALL TO HELP DURING COVID-19

“A law license is a gift to do good, to help people, and to change our communities for the better.” Kimball Anderson





On March 31, 2020, Immediate Past President **Doug Young** challenged all Fellows: “Unfortunately, the poorest of the poor among us are usually those most adversely affected by a crisis such as this, whether it be in regard to their health, their economic situation, or their access to justice needs. The pandemic offers a particular opportunity, and responsibility, for each of us to do what we can to help those most in need of our care, support, and assistance.” Although many Fellows generously have and continue to do just that, Access to Justice Distinguished Pro Bono Fellow **Kimball Anderson** answered Doug’s call to action in a very significant way when he and his wife, Karen Gatsis Anderson, funded a first of its kind COVID-19 focused public interest internship program in collaboration with the University of Illinois College of Law, Kimball and Karen’s alma mater (both of them Order of the Coif).

The Anderson Internship Program was a win not just for the fifteen participating law school students, but also for the ten public interest organizations hosting the students and for the countless individuals and families whose lives had been turned upside down because of the various pandemic-generated legal problems they faced. Each of the law students received a \$6,000 stipend for the summer and, most importantly, a very rewarding opportunity to make a difference.

Anderson speaks to the origin for this innovative internship program: “Although access to justice historically has been a problem in Illinois, the COVID-19 pandemic exacerbated that problem many times over. To meet this emergency need, Karen and I repurposed our University of Illinois

College of Law internship program so that 15 students could work on COVID-19 related matters at legal clinics throughout Illinois.”

University of Illinois College of Law Executive Assistant Dean for Career Planning and Professional Development Greg Miarecki welcomed the students to the internship: “This summer, each of you will be working with various legal aid agencies around the state of Illinois, providing valuable services to your fellow residents. And you will be doing so at a critical time, when the state is dealing with the effects of the COVID-19 pandemic, and the need for pro bono legal services is increasing markedly.... Kimball and Karen, on behalf of the College of Law, THANK YOU for your support of our students. Your support will enable our





students to make a real difference in the lives of fellow Illinoisans at this critical time.”

Illinois Legal Aid Online intern Paige Rhodes describes her summer experience: “COVID-19 impacted so many different areas of the law. People are struggling. It feels really good to make a difference through this internship.”

Megan Osadzinski, an intern at the Legal Council for Health Justice, through a separate internship Anderson created many years ago, says: “As a first-generation Polish-American and first-generation law student at DePaul, the opportunity to work in the public interest field during my first summer of law school was truly transformative. This internship opportunity strengthened my desire to pursue a lifelong career as a public interest attorney and use the law to advocate

on behalf of very deserving communities.”

Tom Yates, the Executive Director of the Legal Council for Health Justice which Kimball co-founded more than 30 years ago, expressed his appreciation for the excellent work done by another one of the Anderson interns: “Nigia Cusic provided invaluable support to the Legal Council’s work during a uniquely challenging summer. Nigia assisted our staff in laying the groundwork for a new initiative to expand legal assistance to low-income individuals on Chicago’s south side and south suburbs, bolstered our ongoing special education advocacy on behalf of students with medical needs whose needs have been ignored during the pandemic, and furthered our impact advocacy for older adults who rely on Medicaid and Medicare for health care during the pandemic. Nigia provided valuable insights,

undertook her projects with diligence, and produced excellent work product.”

The other organizations benefitting from the Andersons’ internships were Prairie State, John Howard Association, Land of Lincoln, National Immigrant Justice Center, Equip for Equality, Chicago Legal Clinic, Cabrini Green Legal Aid, and the Chicago Bar Foundation. The breadth and scope of the Andersons’ generosity extended far and wide as it significantly impacted many organizations with differing clientele experiencing a variety of COVID-19 related problems such as employment and health care.

Kimball Anderson is a nationally recognized access to justice pioneer and role model. From 2003 to the present, through various fellowship and internship programs, Kimball and Karen have awarded grants and stipends to numer-



ous practicing public interest lawyers and law students: “The problem of crushing school debt plagues many public interest lawyers. We are still trying to chip away at the problem seventeen years later. Our effort has been extremely rewarding to us because we have watched almost all of our Anderson Fellows become outstanding leaders of their public interest agencies. We created an internship program several years ago with the hope and intent of cultivating a life-long commitment to public interest law. We thought that exposing second-year law students to the public interest community through summer internships at legal aid agencies would spark a commitment to and interest in public interest work which would stay with the students well into their legal careers.”

One Anderson Fellow who clearly fulfilled Kimball’s vision now serves as the Executive Director of Illinois Legal Aid On-

line. Teri Ross recounts: “I was selected as the 2009 Anderson Fellow. This Fellowship changed the trajectory of my professional career. I no longer had to worry about making a hefty repayment on my education loan each month on my modest legal aid salary, which enabled me to focus on being the best advocate I could be to people in need. I can’t say if I would have stayed in legal aid otherwise. I have now been with Illinois Legal Aid Online for over 12 years. Largely thanks to the Anderson Fellowship, I was able to pay off the entirety of my school loans in 2014. Karen and Kimball are such amazing advocates for justice, and they lead with heart. They have inspired so many law students and new lawyers.”

In speaking about Kimball, Doug Young simply exclaims: “How could one person have accomplished so much, and for so

many?” By placing the spotlight on Kimball Anderson’s COVID-19 initiatives, the College can hope that other Fellows will be inspired by what Kimball has done to consider programs in their own communities, whether the focus is on COVID-19, social injustice or any of the myriad other problems facing so many in need during these difficult times. Kimball sees these programs as serving “the dual purpose of increasing access to justice and instilling in young lawyers a life-long commitment to the public interest. Equally important, these programs are gratifying to Karen and me because we see the success of the fellows and interns. They stay in touch with us and make us proud and grateful that we had the opportunity to help them.”

*Mark C. Surprenant
New Orleans, LA*

ACTL FOUNDATION OPEN LETTER

The passing in November of **Michael A. Cooper**, Past President of both the American College of Trial Lawyers and the ACTL Foundation, has caused many of us to look wistfully through the retrospective scope of earlier, less fraught times. Mike was claimed by COVID-19, a vicious disease that has heartlessly taken hundreds of thousands of parents, grandparents, siblings, and children. Although we still have a long road to travel, it is a relief to have 2020 in the rearview mirror.

But there are aspects of the past that are worthy of celebration rather than sorrow. And, while looking backward, we should all be gratified by the good that has come from relatively modest grants made by the Foundation in the recent past in support of programs that are already bearing fruit. The following are a few that may bring a smile to your face, or at least solace to your pandemic-weary soul.

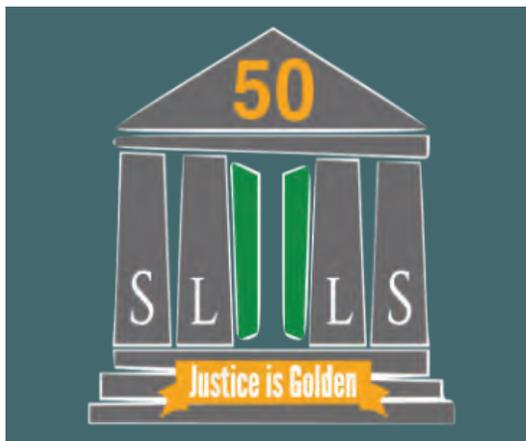
The **Campaign for the Fair Sentencing of Youth** (CFSY) has applied its grant toward re-buffing efforts to erode SCOTUS's iconic 2016 decision in *Montgomery v. Louisiana*, which offered hope to hundreds of individuals sentenced to life without parole when they were mere children. Funds from the Foundation have already been instrumental in the release from prison of more than six hundred and thirty men and



women, whose incarcerations began when they were not yet developmentally developed, but who were nonetheless judged by adult standards. In a report to the Trustees this past Fall, Executive Director Jody Kent Lavy wrote: “Thanks to this vital support, we have laid critical groundwork and maintained momentum in ensuring protections codified by a decade of juvenile justice jurisprudence are not undone while also applied as broadly and meaningfully as possible to hundreds of individuals nationwide who would otherwise go without representation.”



The **Cook County Public Defender Office** sought and received a grant from the Foundation to address a very specific gap in the legal system: Counsel defending indigent clients are as much in need of competency in forensic litigation as are all other defense counsel; but the agencies servicing indigent populations have insufficient funds to provide such training. The Cook County Public Defender came up with a novel project intended to benefit such agencies nationwide. They developed a program composed of fourteen modules to be taught in three-day intensive forensic litigation boot camps for entire indigent defense agencies at one time. In the Spring of 2020, just as the pandemic was unfolding, the Cook County Public Defender sent notices to the indigent defense community, received forty-five applications, and selected sites for the first three boot camps. The camps are intended to occur in person, pandemic permitting, from June through October 2021 in Louisiana, Pennsylvania, and Alaska. In a report to the Foundation this past Fall, Brendan Max, the Chief of the Forensic Science Division for the Office, said, “[w]e know that the criminal justice system works best when litigants receive competent and zealous advocacy, and we believe that the training provided for by this grant is a meaningful



The Clean Slate Project of **Southeast Louisiana Legal Services (SLLS)** received a grant to pursue expungements of criminal records because “[r]emoving barriers to employment for parents helps ensure their children have stable housing [and] perform better in school” and “make our area safer by getting more people back to work, thereby reducing recidivism through higher employment rates.” Beginning in 2019, and continuing through the pandemic, SLLS, with the enlisted assistance of pro bono lawyers and law students, has helped Louisiana residents with eligible infractions gain back their lives through expungement of criminal records. SLLS recently exhausted its Foundation grant, but is now receiving financial support from a local community development office. In the words of Executive Director Laura Tuggle, the ACTL Foundation’s grant “made it possible for SLLS to establish the necessary skills and expertise to provide long-lasting and meaningful change to people in our area whose economic future and opportunities have been limited by having a criminal record.”

As we turn the page on a new year, we are justified in celebrating that 100% of our Fellows’ current contributions are expended on projects like these. (Our minimal operating expenses are covered by interest on the Foundation’s investments.) House Speaker Tip O’Neill famously said, “all politics is local.” The same can be said about charitable works. Help us find the deserving nonprofits in your state or province. And, then, help us fund them.

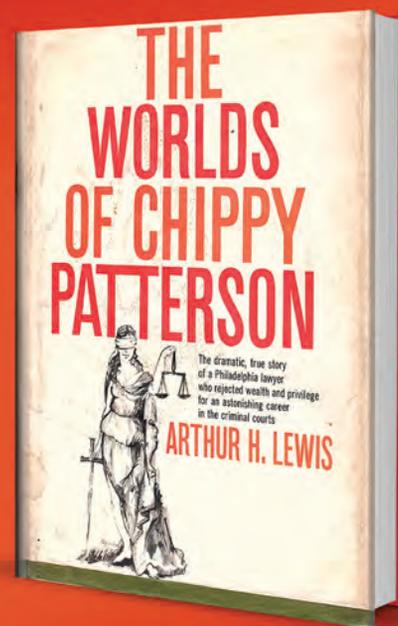
Joan A. Lukey
U.S. Foundation President



BOOK REVIEW —

The Worlds of Chippy Patterson

by Arthur H. Lewis
Harcourt, Brace and Company (1960) (311 pp.)



An explanation for the belated nature of this review, written 60+ years after the book's publication in 1960: In the Spring of 1970, when I was 3 years out of law school, my wife's Uncle Bob gave me this book with the assurance that I would like it. I thanked him and the next day put it on a bookshelf in my office with the thought that I would get to it when I was not so busy. A couple of months ago, 50+ years later, having never cracked it, I took the book off the shelf to make room for a recent acquisition. It occurred to me that, before chucking it, I owed it to Uncle Bob to read a few pages and so I did. And was completely hooked.

Chippy Patterson (Chiffy to those who, in the author's words, "wore the old school tie"), formally C. Stuart Patterson, Jr., was born into a prominent Philadelphia family in 1875 and died in 1933 at age 58. In spite of his patrician roots, he ended up as a criminal defense lawyer, usually working for no fee. When I first started practicing in 1967, older lawyers would sometimes tell stories about one case or another in which Chippy had achieved a remarkable result. Now I find that there are not many younger lawyers to whom his name means much.

So why write this review? Because there are some lawyers, there are some books, that ought not be forgotten.

Chippy's credentials as a blueblood are not open to question. His first ancestor in The New World, The Reverend Hendric Cuyler, arrived in New Amsterdam in about 1649. One of Chippy's ancestors served as aide-de-camp to George Washington during the Revolutionary War. By reason of intermarriage with other prominent families over several generations, the Patterson family's social standing was well assured. When Chippy's father, C. Stuart Patterson, Sr., married, his parents gave him and his bride a four-story house in the 2000 block of Delancey Street, one of the City's most elegant blocks, near Rittenhouse Square. Quite a starter house. It was there that Chippy was born. Patterson, Sr., went on to become a millionaire in his own right (when that meant something) and to serve as President of a Bank, Chief Counsel for the Pennsylvania Railroad, Dean of Penn Law School, and President of the Union League.

As children, Chippy and his brothers and sisters played tag and other games with the likes of George Wharton Pepper (if there were any such likes), who later became a U.S. Senator and then founder of the Pepper law firm. Pepper was one of scores of judges, lawyers and others whom the author, Arthur H. Lewis, interviewed to get the material for this book, published 27 years after Chippy's death. As a reporter for *The Philadelphia Inquirer*, Lewis came to know the City well.

Chippy's own education was Philadelphia-centered: Delancey Academy, Germantown Academy, Penn undergrad, Penn Law School. Curiously, his obituary in *The Inquirer* noted his attendance at the first two schools and Penn Law but made no mention of his undergraduate degree from Penn, perhaps revealing what was deemed important in Philadelphia in 1933. Before beginning his legal career, Chippy served as a second lieutenant in the Spanish-American War.

Chippy stumbled into trying criminal cases quite by accident. He happened to be in Courtroom 453 of City Hall one day when Judge Craig Biddle was looking to appoint a lawyer for the defendant in a murder case that was to start trial the next morning. The Judge, who likely knew Chippy's family socially, appointed him on the spot and thereby launched Chippy's career as a criminal defense lawyer. Chippy, and soon the rest of the legal world, discovered that he was, as they say, a Natural. He was not a spellbinding orator in the mold of Clarence Darrow. But he was well read in the classics, which provide plenty of ammunition for any first-rate trial lawyer, and he had an innate earnestness that persuaded judges and jurors. In one case, in response to an objection that the witness could not testify to something muttered by another witness on the ground that a mutter was an unintelligible sound, Chippy responded by reciting from memory the opening lines of *Riddle* by Catherine Maria Fanshawe: "Twas whispered in Heaven, twas muttered in Hell, and echo caught faintly the sound as it fell." Objection overruled.

Meanwhile Chippy's struggle with alcohol had also been launched. Damn near killed him before he was 30.

After getting himself clean and sober, Chippy resumed his career as a criminal defense lawyer, usually, as noted, work-

ing for no fee. He moved his office from place to place as one landlord after another evicted him. When he could not find new office space, he would work out of a phone booth in the Broad Street Train Station. Though he was a Beau Brummel dresser — does that term still have meaning? — in his youth, as time went on, his dress became increasingly eccentric as he took to wearing a tight-fitting, dirty, checkered cap, high fishing boots (even in court), and a tattered overcoat, the pockets of which contained the briefs to be submitted that day.

Chippy's record in 401 homicide cases was truly outstanding: 171 acquitted; 222 to prison for an average of 6 years; 8 to the electric chair. The average prison time was so low because Chippy did not abandon his clients after they were sentenced; he had an extraordinary record of success before the Parole Board. Many of his clients were denizens of the Tenderloin, Skid Row, Red Light and Chinatown districts of the City and could have been Damon Runyon creations. For those of us who love war stories, there is much here to savor.

Besides providing free legal services to those unable to pay, Chippy often gave away the fees he did earn. Thus, he formed the Patterson Athletic Association, the purpose of which was to pay for the burials of penniless gangsters.

Chippy's personal life was not untroubled. He and his father became estranged, although his father had tried to help him through difficult times. No way to untangle all of that now. Suffice it to say that when Chippy learned soon after his father's passing that he had been disinherited, he graciously remarked, "My father left me his good name. No son could ask for more."

He was married only once and then for only a short time. He was fond of women, and they of him. These liaisons were

never enduring, though his final one might have lasted had Chippy not succumbed to a heart ailment. It appears that for Chippy the law was, indeed, "a jealous mistress."

The three worlds of Chippy Patterson identified by the author are the world of privilege and wealth (where his life began), the world of criminal defense practice (where he spent most of his years), and the world of the inner man, which we are left to divine for ourselves. As to the third world, when I put the book down, I was reminded of the legendary last words of the promiscuous Dutch priest Andreas Wouters: "A fornicator I always was, but a heretic I never was." (Those words and a Calvinist noose earned Wouters sainthood.) Chippy could say exactly the same thing. Except that his faith was not in things religious, but in the American jury system.

I am glad to say that the book is still available at a number of local libraries. Or a hardback first printing (which is what Uncle Bob gave me), which sold for \$4.50 in 1960, is now available through Amazon for \$135 (30 times its original price). The book's substantive value, like its commercial value, has held up well.

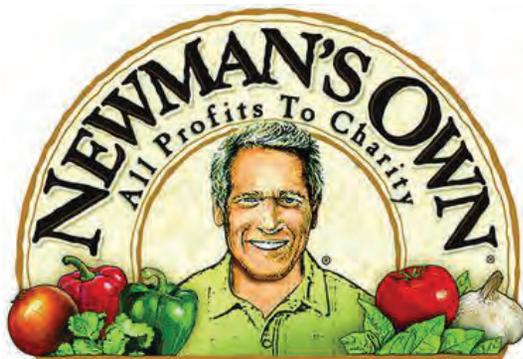
Dennis R. Suplee
Philadelphia, PA

EDITOR'S NOTE: The *Journal's* policy is that it does not review books written by Fellows. Many of us are authors. But let's be honest. While some of us are good writers, some of us should stick to our day jobs. And rather than have to pan some Fellow's work or, worse, have to dissemble with false praise, we simply hide behind the policy and decline to review anything. But we *do* review books written by others that might be of interest to Fellows, and Dennis' piece here is a perfect example, albeit half a century or so tardy. ■

WAR STORIES — NEWMAN'S OWN

Some years back my firm was called upon to be trial counsel for Paul Newman and his company, Newman's Own, to defend a case brought by a local businessman who claimed that he was entitled to an 8% interest in Newman's Own for some work he claimed to have done to get the company up and running. W. Patrick Ryan, my mentor and a Fellow of the College, was lead counsel, and I was to be the second chair.

The case generated a great deal of publicity and we were fielding calls from all the major networks, news outlets and various well-wishers. Recognizing a potential crowd problem, the Court allowed us to park in the garage reserved for court personnel and Judges. Due to the high interest and publicity expected in the case, Pat decided he would get a new car for the trial, so he purchased a slightly used Cadillac Deville.



On the first day of trial, we picked up Newman at his home in Westport and drove to the courthouse in the Cadillac. When we arrived, there was a gaggle of photographers and newspaper reporters who descended on the car, forcing us to creep through the crowd like the Popemobile going through St. Peter's Square.

When we picked up Newman the second day, he suggested that when we got off the Thruway, we should stop the car and he would get in the trunk so we could drive directly into the garage without creating another scene. So, after we exited I-95, we stopped at the light at the bottom at the exit. Pat and Newman got out of the car and Pat opened the trunk. Newman hopped in and off we went to court. Throughout the approximately one mile trip, we couldn't quite believe that we were travelling through the streets of Bridgeport with one of the world's most iconic film stars in the trunk of our car.

When we arrived at the courthouse, the media immediately ran up to the car, but not seeing Newman, they disbursed. We drove into the garage, and after parking the car, Pat went to open the trunk. But Pat had a large family and there were always many cars parked at his house. As a result, he carried a keychain the size of a night watchman's. As luck would have it (or



not), with so many keys on the keychain Pat was having some difficulty locating the right key to open the trunk. We could hear Newman banging on the trunk, yelling to let him out. After what seemed like forever, Pat finally located the correct key, opened the trunk and Newman popped out. You should have seen the faces on the people in the garage when the Cadillac trunk opened and Paul Newman emerged.

We scurried off to court, a few minutes late as a result of the delay. When we arrived in the courtroom, the Judge was on the bench and all counsel were seated at their tables. The Judge

asked “Why are you late, gentlemen?” I replied “Your Honor, it’s a long story; I will tell you at the break.”

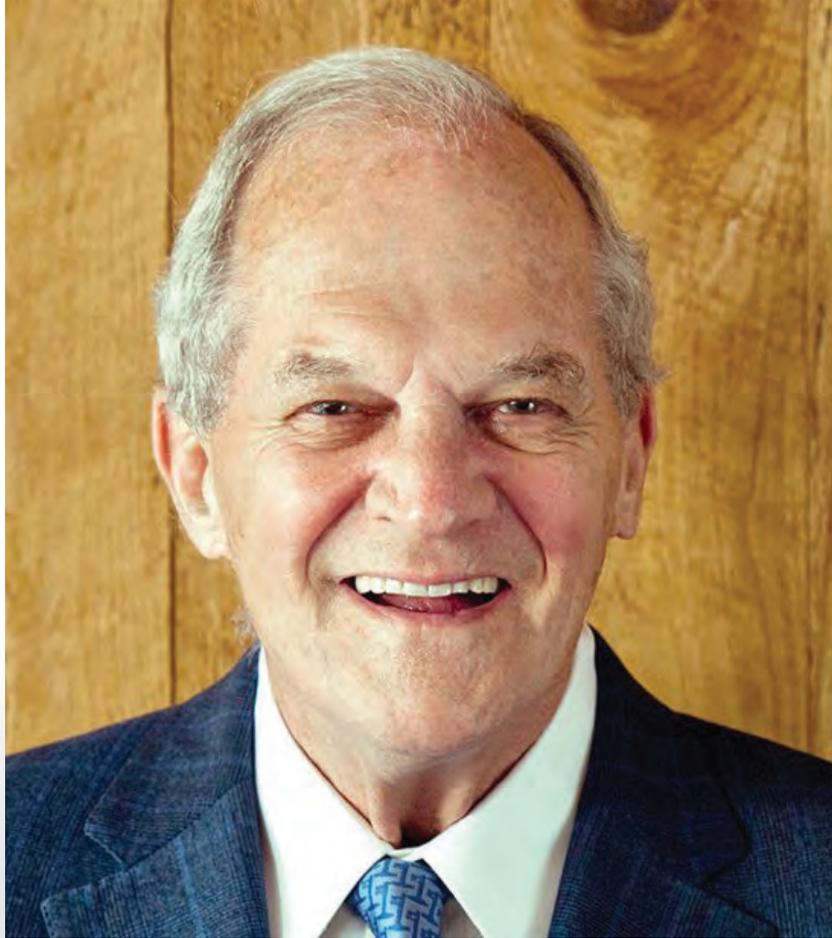
P.S. We won the case!

Charles A. Deluca
Stamford, CT

Do you have a war story to share? Of course you do. We all have them, so we publish only the ones that make a little fun of ourselves or, like this one, draw a genuine smile. If you have one of those, send it to me at bymanrobert@gmail.com. ■

1936-2020

REMEMBERING
MIKE COOPER



Michael A. Cooper, 56th President of the American College of Trial Lawyers, became a victim of the Covid pandemic on November 16, 2020, passing at the age of 84. We lost a great lawyer, a great Fellow, a great friend.

What's in a name? The family name in Russia had been Kupperman, but like many immigrants of the time, Mike Cooper's great-grandfather took a new name when he came to America, Harris Cooper. He likely did not choose it himself. It's only a guess, but a slightly educated one. I'm guessing that Mike's great grandfather presented himself to an overworked, uninspired clerk at Ellis Island who probably didn't even look up as he barked "Name?" And Mike's great-grandfather, with limited to no English, would have responded "Baa ris Koo par man." "OK, Welcome to America, Harris Cooper. Next!"

Harris didn't object. He settled in New York City and eventually brought his family to join him. Mike's grandparents, Jacob and Rebecca, settled across the Hudson river in Union City, where Mike's father was born in 1903. But the name thing continued to be a problem. Although his given name was Arthur, Mike's father was forever known as Otto – because when Rebecca took him to school and introduced him in her halting English as "Attah," he became Otto.

Jacob, Mike's grandfather, was a tailor. Otto had ambitions beyond the tailor shop and went directly from high school to Fordham Law School, graduating at the age of 19, at a time when the minimum age for the New York bar was 21. So Otto had to clerk for two years until he was old enough to be sworn in as a lawyer in 1924 and open his solo practice, mostly serving family-owned businesses in West New York and Union City. Otto married Beatrice Lentz, and Mike was born in Passaic, New Jersey on March 29, 1936. Mike grew up in their 14-foot wide row-house, an only child, living with Otto, Beatrice, and his grandmother, Rebecca.

Wanting to give him the best education possible, Mike's parents sent him to Horace Mann School ('53), where he was described in his yearbook as one of the outstanding members of his class. As an undergraduate at Harvard, Mike majored in American History and Literature, graduating *magna cum laude* in 1957. Mike loved Harvard, and did not seriously consider any other institution for Law School. He entered the Class of 1960, where his classmates included Antonin Scalia, Michael Dukakis, William Ruckelshaus and Earl Silbert, among many important others.

Mike was only 21 and in his first year at Harvard Law School when Otto died unexpectedly at the age of 55. Mike missed his father deeply, and recalled his father's generosity to the poor and downtrodden, both professional and personal, a generosity that formed a core of Mike's own person and practice. ▶



With Past President Ralph Lancaster, presenting Honorary Fellowship to Chief Justice Roberts

After graduation from Harvard Law in 1960, Mike had roughly six weeks of active duty in the Army at Fort Dix before receiving an Honorable Discharge as a result of his childhood asthma. Mike began his 50+ year career at Sullivan & Cromwell. When Mike joined the firm, it had one office housing 98 lawyers (38 of them partners); today, the firm has nearly 900 lawyers in 13 offices world-wide. Mike served as the Managing Partner of the Litigation Group from 1977 through 1985 and was instrumental in that growth.

If you had to sum up Mike in a single word, a likely candidate would be “involved.” Mike’s partner, FACTL Bob Giuffra, said it simply: “He was involved in everything.” Bob was talking about the law firm, but the description applies more universally. Mike was involved in everything he got involved in. Take the College. Mike was inducted as a Fellow in 1977, just two years more than the 15-years of trial

practice we require. He served on the Downstate New York Committee from 1979-87, and as its Chair in 1984-86. He served on half a dozen General Committees and as Chair of the Federal Rules of Evidence Committee from 1993-97. In 2000, Mike became Regent for Region 14. Regents serve for four years, after which a select few are asked to move into the officer ranks; but Mike did such a good job as a Regent that he was asked after only two years. He served as Secretary, Treasurer, President-Elect and, in 2005-06, as President. He was on the Investment Committee. He was a Trustee of the Foundation from 2008-13 and served as President of the Foundation in 2011-13. Mike did everything at and for the College except maybe plan the parties. But maybe he did that too.

Mike was involved. He served as President of the Association of the Bar of the City of New York. He was Chair of the Civil Rights Committee of the

American Bar Association, Co-chair of the Lawyers’ Committee for Civil Rights Under Law, and President of the Legal Aid Society. He initiated the Election Protection program of the Lawyers’ Committee in New York.

Mike was involved. As the managing partner of his firm’s Litigation Group, he mentored young lawyers. Mike coordinated his firm’s extensive pro bono activities; the firm still gives an annual award for pro bono law in his name. He oversaw the firm’s ethics issues. He officially retired at the mandated age in 2003, but remained Of Counsel as an active practitioner, going to the office even in the final weeks of his life.

Mike’s first memorable trial involved the condemnation of the land used to construct the World Trade Center. The condemning authority offered \$2M; the property owner believed the property was worth tens of millions. Mike started on the case as a young associate in 1962 and ended it as a senior associate in 1968, when his client was finally paid \$41M plus interest. With the case over, Mike was able to take his family on the first real vacation they had been able to take in six years. Mike got involved in that too, catching a 200-pound Marlin (and admitting later that he barely had the strength after landing the fish to stand without leaning on his fishing rod).

As a result of what he had shown his partners during the condemnation case, Mike was given responsibilities unusual for large New York law firms in the ’60s, such as being allowed to first-chair a commercial jury trial while still an associate. Mike developed into a premier

trial lawyer, while steadily increasing his involvement in advocating for civil rights, inclusion, and legal services for the poor. His strength of character and vision for a just society permeated all he did. In *South Carolina v. United States* (2012), Mike's team fought against the disenfranchisement of Black voters by a new voter ID law. Mike worked for nearly ten years to successfully secure the release from Guantánamo Bay of a Tunisian Muslim detainee who had been held without charges or evidence.

Mike was involved. He married Ann Eisenberg in 1962, and they raised their three children, Jeff, Sara and Paul, in Short Hills, New Jersey. That marriage ended in 1987. But a few years later, mutual friends set Mike up with Nan Rothschild, whose own first marriage had recently ended, and they were married in 1994. To say that Nan was Mike's intellectual equal is, well, let's be honest, it's way too kind to Mike. Nan, a professor of historical archeology and anthropology at Columbia University, earned her Ph.D. in anthropology from NYU in 1975. Actually, Mike and Nan had met before they were set up. They attended the same summer camp as pre-teens. Nothing came of that. But, as adults, they were perfect for one another. Mike's long-time partner, FACTL John Warden, says "Nan just brightened Mike's life."

Mike and Nan and their blended family travelled as far as Peru, China, Morocco, Alaska, Egypt and Botswana, but Mike equally loved quiet family time at his and Nan's homes in North Salem, NY and on Martha's Vineyard. Mike was often at his happiest



with his dog Charley at the Vineyard Sound beach or riding his horse Marcel on trails behind the North Salem home. Mike had other dogs and other horses, but Charley and Marcel were his hands-down favorites. Past President Warren Lightfoot did a full size bronze sculpture of Charley that Mike treasured, but given its size and the cost of bronze, Marcel was not similarly memorialized.

Mike was involved. A passionate supporter of the arts, Mike loved the ballet and served as a member of the Board of Directors of the New York City Ballet for 18 years. He was also an enthusiastic collector of antique maps as well as fine modern prints and sculpture.

Mike was involved. He enjoyed a good game of tennis. Involved, and competitive. Former Regent Marvin Schwartz learned that the best, and maybe the only way to beat him was to call an early serve out when it was not. The

indignity of the bad call would compete against Mike's innate civility and inability to argue the call. And hobbled with that raging torment within him, Mike would be off his game.

When Mike contracted Covid, Nan did as well. Her case was much less serious and she is, at least physically, fine now. Mike would be, of course, enormously grateful that he is survived by Nan and by his children of whom he was so proud, Jeffrey Cooper, Sarah Williams (Martin), Paul Cooper (Pang), Oliver Rothschild (Tara) and Emily Rothschild (Joshua Beauregard), as well as ten grandchildren: Emma, Joshua, Noah, Samantha, Pailin, Otto, Simon, William, Elinor and Cordelia. Mike hated during the pandemic that he could not see them, but he was grateful for family gatherings, even on Zoom.

As is fitting for a person of Mike's accomplishments and stature, a number of obituaries were published shortly after his death. Nan's son, Oliver, summed up his mild disappointment with the obits – "None of them tell you what fun he was after a glass of scotch."

Mike was fun. I'm not sure it took a glass of scotch, but whatever. He was many things. A brilliant lawyer. A patron of the arts. A fierce defender of civil rights. Involved. All of that. But let me tell you. I can't think of a better tribute than to have one of your kids say "what fun he was."

Bob Byman
Chicago, IL

IN MEMORIAM

Since our last Issue, we have learned of the passing of Fifty-five Fellows. Three succumbed to COVID, one of them at the far too young age of fifty-four. Two of them died just a few months after they were inducted as Fellows at our 2020 Tucson Meeting; a third died forty-three years after his induction, Past President Mike Cooper. Nine were judges. Twenty-five served their country in uniform, two in World War II. One had such stature that the Chief Justice of the Canadian Supreme Court took two minutes to offer a tribute to him in open Court before calling the first case, describing him as the “Court Whisperer.”



They ranged in age from 54 to 102. They all died too young. We will miss them all.



You will note that some of these memoriams are years overdue. We can only honor those we know have passed, when we know. So, when you learn that a Fellow has passed, we urge you to assure that the National Office is informed.



These pieces are necessarily brief. We don't have space to list all surviving family members, so we name only spouses; we count but do not name children and grandchildren. Yet every one of our departed Fellows left scores of family and friends who will miss and remember them. Through those memories, these Fellows live on.

Richard Leroy Ackman, '81, was ninety-three when he passed on July 29, 2020. Dick graduated from the University of Kansas in 1949 and Illinois Law School in 1954, where his law school attendance was interrupted for service in Korea. Dick served as the first Public Defender of Kankakee County. In 1958 he created a law firm in Kankakee that specialized in insurance defense and the defense of doctors in medical malpractice cases. Dick is survived by his wife Peggy and their three children.

John M. Adams, '76, died three weeks short of his ninetieth birthday on November 14, 2020. John was an Eagle Scout and an Assistant Scout Master. He graduated from The Ohio State University in 1952 *summa cum laude* and from the Ohio State College of Law in 1954, where he was Order of the Coif. John practiced law in Columbus as a civil litigator until his retirement in 1991. He was a President of the Columbus Bar Association and the Ohio State Bar Association. John enjoyed playing golf, duplicate bridge (he was a Silver Life Master), world travel and his family. He was predeceased by his wife of 68 years, Janet, and a daughter. He is survived by two other children, seven grandchildren and four great-grandchildren.

Joseph J. Arvay, OC, OBC, QC, '12, died suddenly of a heart attack on December 6, 2020, at the age of seventy-one. It is a tired cliché to call someone a giant, but Joe truly was. A bit of proof of that: the Chief Justice of the Canadian Supreme Court, opening the Court's session the day after Joe's death, delayed calling the first case to first make a tribute to Joe, describing him as the "Court Whisperer." Joe has been described as "arguably the most influential constitutional lawyer in Canada's history," "a robed warrior for Canada's oppressed and disenfranchised," and "the Clarence Darrow of Canada."



In 1969, Joe was in a car accident that left him a paraplegic. It would alter his perspective forever, and it was probably one of the biggest reasons he was drawn to litigating minority rights. He used a wheelchair ever after, and while it didn't restrict him from activities like cycling, it completely changed the way he saw the world. As he put it "I went from being a member of the majority and all of a sudden became a member of a minority. I became acutely aware of discrimination and prejudice against minority groups, including me. I believe in my clients' causes. That's how I feel about every case that I do. Once I take on a case, I fight very hard for my clients and believe in the rightness and the justness of their cause." Joe held law degrees from University of Western Ontario Law School and Harvard Law School and was called to the bar of B.C. and Yukon. He was granted honorary doctor of laws degrees by York University, Osgoode Hall Law School and the University of Victoria. Cases he fought to the Supreme Court of Canada included freedom of thought and expression, the rights of the LGBT community, same-sex marriage, addicts' health, sex workers' rights and those seeking the right to die. Among his many awards was the Governor General's Order of Canada; Joe's Order recites that "with keen legal acumen and dedication to social justice, he has played an unparalleled role in shaping the interpretation of the law on matters of civil rights and liberties." ▶

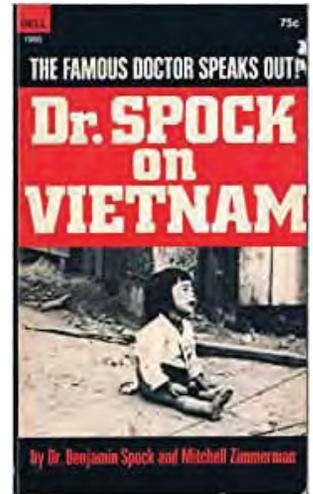
Joe is survived by his wife of 20 years, Connie Addario, and the five children and six grandchildren of their blended family.

Donn Frank Baker, '20, age 71, died November 12, 2020, a victim of COVID. Donn was born in Tahlequah, Oklahoma, and lived most of his life there except for a few years when his parents taught school in Shidler and Sapulpa, Oklahoma. He loved Tahlequah and it loved him back – the City put its flags at half-staff upon his passing. Donn received an education degree from Northeastern State University and, while intern teaching at Tahlequah High School, met the love of his life and best friend, Sharon Greenshaw. Donn and Sharon were married in 1971. Donn coached and taught at Hulbert High School before entering law school; he was admitted in 1980 and started his career as an Assistant District Attorney. In 1982 he became an Assistant United States Attorney for the Eastern District of Oklahoma; in 1985 he was appointed by President Reagan as the United States Attorney. Don left public service and practiced criminal defense for the past 35 years, while teaching law classes at Northeastern State University and serving as the part-time City of Tahlequah Municipal Judge. Donn was a proud member of the Cherokee Nation, of which his brother had served as Chief. Donn is survived by Sharon, two children, five grandchildren and two great grandchildren

Schuyler Allen Bradley Baker Jr., '12, passed away on October 28, 2020 after a courageous battle with cancer. Allen was born on September 1, 1947, in Tuscaloosa, Alabama and grew up in Birmingham. Allen graduated from the University of Alabama in 1969, and Cumberland School of Law in 1973. He married Patty Wilson in 1974 and raised their 4 children in Birmingham. He was a dedicated husband, father, and grandfather, spending his free time with his family at Lake Martin and in Cashiers, NC. He was widely known as “Big Al” and loved telling ghost stories and creating fun

adventures for his grandchildren. He served as coach, commissioner, and chairman of Mountain Brook Athletics and coached many of his children’s sports teams throughout the years. He enjoyed playing golf with his buddies in the Chiselers dogfight at the Country Club of Birmingham. Allen is survived by his wife, Patty, four children and 11 grandchildren.

Edward Joel Barshak, '74, passed away peacefully on August 12, 2020, at age ninety-six. Ed received his undergraduate degree from Tufts University (cum laude) in 1945, and his law degree from Columbia University in 1949. As a young lawyer, Ed courageously represented lawyers charged



with engaging in communist activities during the McCarthy investigations; he won the groundbreaking a ruling in *Brown v. Commonwealth*, 335 Mass. 476 (1957), recognizing a right to counsel for criminal defendants under the Massachusetts constitution – six years before the U.S. Supreme Court’s decision in *Gideon v. Wainwright*. He later represented Mitchell Goodman in the now-famous federal prosecution against Dr. Benjamin Spock and others for advocating resistance to the Vietnam War draft, culminating in the 1969 First Circuit decision vacating their convictions. In her book about the Spock trial, British writer Jessica Mitford aptly described Ed’s low-key, yet highly effective, courtroom style as “trim, soft-spoken, matter-of-fact.” Ed served as president of the Boston Bar Association from 1974 to 1976 and was honored with its Lifetime Achievement Award in 2014. During his bar presidency, the Association established the still active Legal Advocacy and Resource Center, which provides low-income residents of the Greater Boston area with free legal advice and referrals. Ed was a member of the Greatest Generation, serving in

the Navy aboard an LST in the Pacific when he was only 18. Ed never had difficulty facing hard facts and tackled every legal problem with the highest ethical standards in mind. He also knew how to accept defeat with grace and often said that “you’re not a real trial lawyer until you’ve lost a big one.” Ed was devoted to his family and happy to boast about his children and grandchildren, all of whom simply adored him.

Jerry Lynn Beane, ’01, was seventy-six when he died on July 31, 2020. Jerry received his undergraduate degree in 1965 from Baylor, and his law degree in 1967, also from Baylor. Jerry’s practice ranged from antitrust to trade regulation to white collar defense. During his career, Jerry tried more than 60 jury trials.

Leo Maurice Bearman, Jr., ’81, died on September 21, 2020, in Memphis, Tennessee at the age of eighty-five, preceded in death by his wife of 60 years, Joy Magdovitz Bearman. Leo is survived by his three children, seven grandchildren and one great-granddaughter. Leo graduated *magna cum laude* from Yale University and earned his law degree from Harvard University. Leo actively practiced law until his death. Leo had many passions. He had a love/frustration relationship with the game of golf. He loved wine and great food. He read and appreciated great literature: Shakespeare, Sherlock Holmes, and his favorite book, Moby Dick. Leo was an inspired teacher – serving as an adjunct professor at the University of Memphis Law School for more than 20 years, teaching Jewish short stories to a loyal group of followers at Temple Israel, and instilling the importance of reading and literature to high school and professional groups. Leo was also deeply devoted to his friends and colleagues – many of whom were considered to be family. Throughout his life Leo was invested in the Memphis community. He served in leadership roles at the Memphis Orchestral Society, he was a co-founder of the Leo Bearman Sr., American Inn of Court, named for his father, and was a founder and President of Goodwill Homes Community

Services. Shortly before his death, Leo was selected to receive the 2020 American Inns of Court Lewis F. Powell Jr. Award for Professionalism and Ethics.

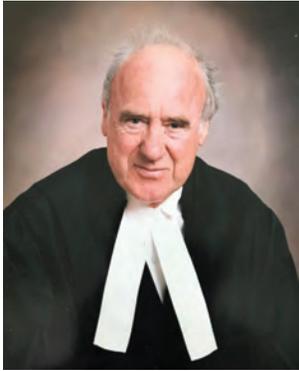
John M. Blume, ’85, died peacefully on September 20, 2020 at the age of eighty-eight with his wife of 44 years, Myrna, by his side. John graduated from Washington & Lee University and Rutgers Law School. He was admitted to the New Jersey Bar in 1956 and over the course of his sixty-year career John built a celebrated plaintiffs’ personal injury practice. He was known among the trial bar as a master in the courtroom, a constant source of new and bold ideas. He was willing to push boundaries to create new law in his field. He gave freely of his time, experience and expertise by mentoring and teaching trial skills to new lawyers. The National Law Journal described him as a “Jersey Giant.” John loved his retirement on Longboat Key. John is survived by Myrna, two children and a grandson.

Theodore Antonio Borrillo, ’90, passed away at age eighty-eight on August 27, 2019. Ted was born on July 4, 1931, the second son of an immigrant Italian family in the Bronx. Ted attended the City College of New York and received his law degree from St. John’s University School of Law. He served abroad as a Judge Advocate General in the U.S. Army and returned to earn an LLM from Harvard. Ted settled in Denver, where he met his wife of 44 years, Elfriede. They raised four children while Ted spent several years at the District Attorney’s Office and decades in private practice, specializing in criminal and family law. Ted was also a poet and author. He published four books of poetry, including *Beyond Loneliness* and *Love Is*, and, born



out of his lifelong love of the theater, authored a book on the history of Denver's historic Elitch Theater and a biography of Maude Fealy, an early twentieth century stage and film star. Ted is survived by his four children and seven grandchildren.

Thomas Reid Braidwood, QC, '82, passed away at



home on April 11, 2020. Tom's grandfather was given a piece of land in Burnaby after fighting in three wars for Canada, where he built houses for his children and where Tom's parents and the Branca family became

neighbours. Angelo Branca, Q.C., encouraged Tom to pursue a career in law, even though when Tom advised the principal of his high school that he planned to attend law school, he was told "don't waste your parents' money." It wasn't a waste. Tom received his Bachelor of Arts (UBC) in 1953, his LLB (UBC) in 1956 and was called to the bar in British Columbia in May 1957. He started as a junior to Angelo, and later took over the firm when Angelo went to the bench. Tom had twenty-six trials in his first year of practice. He became a one of British Columbia's top criminal lawyers, litigated in almost every area of the law, and appeared before the Supreme Court of Canada nine times. In 1990 he was appointed to the Supreme Court of British Columbia, and then in 1996 appointed to the Court of Appeal. Tom retired from the Bench in 2006, after which he was appointed to head many commissions, including the Dziekanski commission, which led to the creation of the Inter-agency Task Force. Tom lived life to the fullest. He was an adventurer and an expert mariner. Tom and his first wife Anne christened their boat the "Mutineer," as it was a "mutiny away from the office." Tom competed in the Victoria to Maui Sailboat race twice; in 1972 as crew, then in 1976 as captain. After

Anne passed in 2001 Tom married Phyllis, with whom he enjoyed many more years on the Mutineer. Tom loved to sing; he always said "I have three notes – and they are all the same and they are all flat." But he never stopped belting those notes out. Tom is survived by Phyllis, three children and seven grandchildren.

Eugene K. Buckley, '79, was ninety-one when he passed on October 20, 2020, forcing his retirement from the practice of law after sixty-eight years. At the time that Gene filled out his Statement of Qualifications in 1979, Gene had already tried more than 300 jury trials. Gene is survived by his five children and twenty grandchildren; Gene practiced law with two of those children. Gene served in the Air Force JAG Corps during the Korean War. He was a member of multiple Missouri Supreme Court Ad Hoc committees to study civil practice issues; he was Co-Chair of the Federal Practice Committee and Chair of the Civil Justice Reform Act Advisory Group for the Eastern District of Missouri. Gene lectured extensively on trial practice, appellate practice and civil procedure.

John M. Callahan, '84, died on February 18, 2020 surrounded by family. John, eighty-three at his death, is survived by his wife of fifty-seven years, Kathryn (Yager) Callahan, his four daughters and seven grandchildren. John was a graduate of the University of Notre Dame and Boston College School of Law. John proudly served in the United States Marines and in the Office of General Counsel for the Central Intelligence Agency; in that latter capacity his work involved the release of Cuban Americans captured during the Bay of Pigs Invasion. John was an Assistant U.S. Attorney in Boston from 1964-1968, where he served as the Chief of the Civil Division. During the same time, John worked to help establish the Massachusetts Chapter of the Lawyers Committee for Civil Rights. From 1971-1978, John served as District Attorney for Northwestern County, trying

many cases while working to expand victims' rights and to establish a Consumer Protection Unit. In 1982, John chaired the Massachusetts Bar Association Task Force on the Study of Indigent Defense Programs in Massachusetts. The recommendations of his committee led to the establishment of the Bar Advocate Program which has played a major role in increasing the involvement of private attorneys in the representation of indigent defendants. John was President of the Hampshire County Bar Association and the Massachusetts Bar Association.

William Bain Campbell, '82, died suddenly on October 9, 2020 after suffering a heart attack while riding his bike on the Stilson Path in Wilson, WY. He was eighty-three, and is survived by his wife of 44 years, Faye Campbell, six children and eleven grandchildren. Born in Sioux City, Iowa, Bill grew up on a farm, raising cattle and corn. In his youth he was dedicated to his rural farm life, was an active member of 4-H and raised grand champion Angus cows. He attended Iowa State University and Stanford Law School, served in the U.S. Navy ROTC, and became one of the most sought-after corporate trial litigators. Based in Southern California, Bill had a client list that included the Los Angeles Lakers and the Angels, combining his passions for law and sports. When he was not practicing law he was devoted to outdoor pursuits: camping, fly-fishing and skiing, which led him to Jackson Hole in 1976. After numerous family vacations there, he and Faye made Jackson their permanent home upon retirement. A devoted skier, Bill began ski racing at age 60, participated in the Town Downhill and was dedicated to his Margarita Cup race team, The Village Idiots. When he wasn't skiing, he was an enthusiastic cyclist, completing centuries until the very end, or fly-fishing in the Snake, South Fork, Madison, North Fork Blackfoot and Flaming Gorge rivers.

John Catlett Christian Jr., '77, passed away peacefully on June 30, 2020 just shy of his ninety-first birthday, survived by his wife of sixty-seven years, Peggy Jeanne Cain, their two children and three granddaughters. John attended Sewanee Military Academy and graduated from Drury College and Tulane University School of Law, where he served as a member of the Board of Editors of the Tulane Law Review. John served two years in the United States Marine Corps, and one year in the Missouri National Guard. He practiced law in Lake Charles, Shreveport, and New Orleans, representing oil and gas companies in well blowout cases and large landowners in condemnation and expropriation proceedings.

Paul Hiram Coffee, '84, a judicial Fellow, passed comfortably at home at the age of eighty-eight on November 19, 2020. Paul spent six years in the navy as a naval aviator. He earned a Juris Doctorate degree from Bolt Hall School of Law in 1962. After practicing insurance defense law for thirty years, he was appointed to the Superior Court of San Luis County in 1992, and was elevated to the California Court of Appeal in 1997. Paul was an avid sailor and loved living aboard his 42' sail boat in Ventura Harbor with his partner of 20 years, Elizabeth Kinney. Paul is survived by Elizabeth and their blended family of four children, nine grandchildren and one great-granddaughter.

Michael A. Cooper, '77, Past President of the College, passed at age eighty-four on November 16, 2020. See the tribute to him at page 137.

Walter Barry Cox, '84, passed at age seventy-nine on September 12, 2020, surrounded by his family in Rogers, Arkansas, survived by his wife, Judi, five children and sixteen grandchildren. Walter was the son of a sharecropper, and though he and his family were poor in money, they were rich in love. From the age of nine, Walter wanted to be an attorney, and he hitch-hiked to and from college

in Fayetteville, and worked full time throughout college and law school, to achieve his goal. Walter specialized in medical malpractice defense, and he considered it a great honor to defend those in the medical profession. Walter was appointed Special Justice to the Arkansas Supreme Court by Governor Asa Hutchinson and, over the course of his fifty-four-year career, he received most every award offered to exceptional attorneys. Walter was a man of great faith and a true southern gentleman.

Warren J. Daheim, '92, met his future wife, Betty Seaberg, in 1951 while he was attending the College of St. Thomas, where he received a BA in political science in 1952. Bud was so smitten by Betty that he proposed on their second date. Though their courtship was interrupted by Bud's stint in the U.S. Air Force, serving as a flight navigator, they eventually married in 1954. Betty gave birth to their first child while Bud was serving at McChord Air Force Base in Parkland Washington. The young family returned to Minneapolis so that Bud could attend University of Minnesota School of Law, from which he graduated *magna cum laude* in 1958. The family moved back to more temperate Tacoma in 1961. Bud's proudest professional achievement was his 1993 argument in front of the U.S. Supreme Court, referred to by his family as BUD v. HUD. Bud and Betty's life was filled with trips to the ocean, youth swimming, the Seattle Sonics, and Husky Football. Bud lost Betty in 2017, but is survived by nine children, twenty-six grandchildren, and what the family describes as a "flurry" of great grandchildren.

Warren "Bud" Daheim, '92 passed away suddenly at home, April 16, 2020, two weeks before his ninetieth birthday. Bud married Betty Daheim on in 1954, and began a family that would include ten children. Bud was still working at the time of his death. He was preceded in death by his wife, Betty, and a son; he is survived by nine other children and "many" grandchildren and great grandchildren.

John Joseph Darcy, '87, was eighty-nine when he passed on August 13, 2018. Jack was survived by Bernice Heberle Darcy, his wife of sixty-one years, and his four children and nine grandchildren. Jack graduated from Albany Law School in 1951 and had a long and distinguished law career. He served on the boards of the Monroe County Bar Association and Magistrates Association, as the Justice of the Peace in the town of Brighton, and was active in Republican politics for many years. Jack was a fifty-plus year member of Oak Hill Country Club where he served as legal counsel for the 1989 United States Open Golf Championship and 1995 Ryder Cup Competition.

Sheldon H. Elsen, '86, died peacefully in his sleep on March 27, 2020, a month shy of his ninety-second birthday. Sheldon attended Princeton University, earned a Master's in sociology from Harvard as a Woodrow Wilson Fellow, and then enlisted in the Army during the Korean War. He was assigned to Army Intelligence and stationed in Berlin, where he and his new wife, Gerri Sharfman Elsen, lived for three years. Sheldon enrolled at Harvard Law School on the GI bill, and then began a long and successful career as a lawyer in New York City. He was an assistant U.S. attorney in the Southern District of New York before entering private practice. He was an adjunct law professor at Columbia for 50 years, wrote many influential law review articles, and he successfully argued a precedent-setting perjury case before the U.S. Supreme Court. Sheldon was active in the College, serving many years as Chair of the National Moot Court Committee. Gerri died in 2009. Sheldon is survived by his two children and five grandchildren.

Sherman Gene Fendler, '04, perished when the small plane he was piloting crashed in Slidell, Louisiana on October 21, 2020, when he was seventy-three. Gene graduated Order of the Coif from LSU Law in 1973, where he was editor-in-chief of the *Louisiana Law Review*. Gene was appointed to serve on the

LSU Law School Alumni Board of Trustees in 2005 and served as board president since 2010. He was a frequent guest lecturer at the Law Center. Gene's law firm posted: "We lack words to adequately express the sorrow felt at the sudden loss of our partner and friend, Gene Fendler. He was the absolute best in all of the ways that truly matter: devoted to his family, loyal to his friends, and a natural born leader. His accomplishments in life and in law were extraordinary. Gene was a lawyer's lawyer, and our law firm will not be the same without him. Quite simply, Gene was the best of us."

H. Dustin Fillmore, Sr., '95, succumbed to pancreatic cancer just shy of his ninetieth birthday on November 11, 2020. Dusty was born in Sudan, a North Texas community of 1,014. Dusty's father H.W. moved the family to Wichita Falls, Texas where he practiced law and served as a Wichita County Judge. Dusty attended Northwestern University, but in 1949, when class was called off for Northwestern's first-ever appearance in the Rose Bowl, Dusty hitchhiked from Illinois to Wichita Falls to return to the relatively balmy Texas climate. As he would often remark "I've only recently thawed out from my time at Northwestern." Dusty served in the United States Air Force, graduated from Midwestern State University, and the University of Texas School of Law, where he met and fell in love with Nancy Chambers. Dusty and Nancy married in December of 1956. In 1957, Dusty served as an Assistant District Attorney in Dallas County. Dusty returned to Wichita Falls to join his father's law firm in 1960. In 1975, Dusty and Nancy moved their family to Fort Worth. From 1975 until his retirement in 2002, Dusty worked as one of the premier trial attorneys in Fort Worth. Dusty is survived by Nancy, their two sons and many grandchildren.

Edward Lane Foote, '76, ninety, peacefully passed away on May 18, 2019 surrounded by his family. Ed was a graduate of Harvard College and Harvard Law School. Ed is survived by his wife of 67 years, Helen, their three children and five

grandchildren. Ed joined Winston & Strawn in 1955 as its thirty-fifth lawyer and was central to its evolution to its current international stature. Ed was a true artist in the courtroom. David Boies, Layn Phillips, and Dan Webb all viewed him as a mentor. Scott Turow dubbed him "the best lawyer in America." Ed argued three cases before the United States Supreme Court. He was a faculty member of the National Institute for Trial advocacy, the Advanced Institute for Trial Advocacy, and the Illinois Institute for continuing Legal Education. Ed's life included being a factory worker, a farmer, a professional baseball player, a teacher, and a Marine.

Dewey Jude Gonsoulin, Sr., '85, age ninety, passed away peacefully in his home on November 3, 2020, surrounded by family. His wife of 56 years, Jean J. Gonsoulin, preceded him in 2015. Their love story began with a blind date and they were engaged three months later. Although his family roots were in Louisiana, Dewey grew up in Houston where he attended Rice Institute, now Rice University, graduating Phi Beta Kappa and with distinction in 1951. Dewey went on to the University of Texas Law School and joined the U.S. Army R.O.T.C. He graduated in 1954 with honors and as a Distinguished Military Graduate. Dewey served the next two years in the U.S. Army Medical Service Corps, stationed in Japan. Dewey returned to Houston to begin a practice that spanned nearly sixty years. Dewey served as president of the Texas Association of Defense Counsel and the Jefferson County Bar Association. He was chairman of the Beaumont Civil Service Commission for twenty-five years, chairman of the Local Governing Board for Christus St. Elizabeth Hospital for eight years, and a member of the Board of Directors for the Beaumont Chamber of Commerce for seven years. Dewey and Jean travelled the world extensively together. He particularly loved his many trips spent salmon fishing in Alaska. Dewey is survived by his three children, eight grandchildren and two great-grandchildren.



James Green Sr., '03, age seventy-three, passed away peacefully on October 12, 2020, at his home in Wilmington, Delaware, surrounded by his family. Jim graduated from Princeton University in 1969, where he played left guard on the football team and set a deadlift record as captain of the weightlifting team. Jim earned his law degree from Villanova University School of Law in 1972 and moved his wife and young family to Wilmington to start his legal career. He was a prosecutor in the Attorney General's office before entering private practice. He was an old-school trial lawyer, representing both individuals and large corporations in diverse, sophisticated matters. He gained the respect of his clients, the bench, and the bar for embodying the Delaware way of excellence, civility, and compassion. Jim's friends were his clients, and his clients became his friends. Jim loved sharing stories and lessons-learned; he was a willing and devoted mentor. Jim's friends report that he woke daily at 5:24 a.m. (Why not 5:30 or 5:25 was not explained.) On weekday mornings, he had his coffee, read the *News Journal* and drafted impassioned letters to the editor never to be sent, packed lunches, walked his beloved dogs, and wrote notes to each of his kids and wife, before catching the bus into town to get to work. He returned home nightly in time to take his kids to practices and sit down for dinner with his family. Jim is survived by his high school sweetheart and wife of fifty-one years, Carla, their four children, and five grandchildren.

David R. Grundy, '01, passed suddenly and unexpectedly at home with his wife, Ruthann, by his side on February 25, 2020. He was seventy. Before graduating with his bachelor's degree from the University of Nevada in 1971, David married his best friend, Ruthann Felten, in 1970. Dave served in the United States Navy, including two years in the South China Sea. He attended law school at the University of the Pacific, McGeorge School of Law. He was admitted to practice in Nevada in 1977 and in California in 1978. Dave practiced in Reno until he retired in 2015, celebrating with a month-long trip to the French countryside. Dave was passionate about working with the Nevada State High School Mock Trial program. He spent countless hours watching and enjoying his grandchildren play sports, rarely missing a game. He loved to read and met regularly with his book club of almost twenty years. He was a lover of fine food and wine; always seeking the next best recipe for a dinner party or holiday feast with family and friends. Dave is survived by his wife of nearly fifty years, Ruthann, his daughter, and three grandchildren.



David O'Connell Haughey, '77, of Grand Rapids, Michigan, died on October 19, 2020, at the age of 102. One of eight children, David became an Eagle Scout, along with all five of his brothers. David graduated from the University of Michigan in 1940 and volunteered for the Army in early 1941. After basic training in California at Camp Callan, and a stint at Fort Rosecrans Coastal Artillery Post near San Diego, he was sent to Officer Candidate School at Camp Davis in Wilmington, North Carolina. Upon completion of the program as a 2nd Lieutenant, he

was assigned to the school as an instructor in Anti-Aircraft Artillery for several years. While at Camp Davis he married Roberta Leete, and their first child was born in Wilmington. In 1944, David was promoted to Captain and sent overseas to train 90mm Gun Batteries in the field with new Anti-Aircraft equipment. He served in Belgium, France, Holland and Germany. His group participated in the air defense of Antwerp with the Antwerp X Command. He was discharged in December 1945 with the rank of Major. After the war David attended University of Michigan Law School, graduating in 1948. He immediately began his career in Grand Rapids with a two-man law firm. David retired from practice in 1987, took up golf, and spent many happy summers at his cottage on Lake Michigan. David was preceded in death by Roberta and survived by his three daughters, nine grandchildren and twelve great-grandchildren.

Kenneth Gregory Haynes, '00, died on November 1, 2020. Greg met the love of his life, Sallie, when they both attended Seneca High School. Greg graduated from Davidson College, and they married in 1969 before his last year at the University of Kentucky College of Law. They moved to Washington D.C., where Sallie obtained her own law degree at George Washington University Law School while Greg began his distinguished career as a trial attorney with the United States Department of Justice. Greg was on the team of lawyers defending President Nixon during Watergate. Greg and Sallie returned to Kentucky in 1975 for private practice. Greg devoted his time to many charitable and civic organizations. Greg taught the trial practice course at The University of Louisville Brandeis School of Law. He was a Fellow of the Kentucky Bar Foundation, President of the Louisville Bar Association, Chair of the Housing Authority of Louisville, and a member of the Kentucky Opera Board, the Louisville Zoo Society, and the Louisville Metro Parks Board. Greg is survived by Sallie, their three daughters, and six grandchildren.

Gary Mike Hilgers, '77, passed away this summer, just shy of ninety years old. His family advises that Mike did not want an obituary or memorial.

Lewis B. Hollabaugh, '84, died August 13, 2020, at the age of eighty-five. A life-long resident of Nashville and Franklin, TN, Lewis graduated from Vanderbilt University in 1956 and earned his law degree from Vanderbilt in 1961. His law school attendance was interrupted by his service in the U.S Army, stationed in Germany from 1957-1959. In 1961, Lewis began his 36-year career with emphasis on defense of all types of professional liability and construction surety law. Lewis and his wife, Andrea, enjoyed many years of traveling throughout the United States and Canada on their motorcycles. Lewis is survived by Andrea, three daughters and four grandchildren.

Harold A. Hollinrake, QC, '88, passed on March 17, 2019, at the age of eighty-nine. Though born in New York, Judge Hollinrake – “Bud” to his friends – was a Canadian citizen, one of its finest. Bud practiced Law in Vancouver after his graduation from the University of British Columbia in 1956, taking 1978-79 off to lecture in Law at Victoria University in Wellington, New Zealand. Bud was appointed to the Supreme Court of British Columbia in 1988 and was elevated to the Appeals Court of British Columbia in 1990. Bud retired when he reached mandatory retirement age in 2004. Bud was survived by his wife of fifty-eight years, Bryony, and their three children.

Hon. Jackson L. Kiser, '78, a Judicial Fellow, passed away on October 20, 2020, after a brief illness. Judge Kiser served on the United States District Court for the Western District of Virginia for nearly forty years. A native of Welch, West Virginia, Judge Kiser graduated from Concord



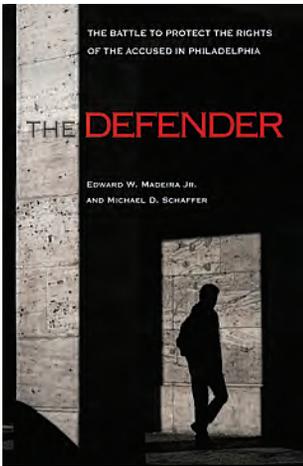
College in 1951 before attending Washington and Lee University School of Law; after receiving his law degree, he served in the United States Army JAG Corps. After his military service, Judge Kiser served as an Assistant United States Attorney in the Western District of Virginia, before entering private practice in Martinsville. Over the next twenty years, Judge Kiser practiced general civil and criminal litigation, trying cases throughout the Commonwealth and establishing a reputation as a skilled trial lawyer. In November 1981, President Ronald Reagan nominated Judge Kiser to the District Court. During his long tenure, Judge Kiser was the presiding judge in the Danville, Division, and he ably served as Chief Judge from 1993-1997. He assumed senior status in 1997, but continued to maintain an active docket in Danville for the next twenty-three years. Over the course of his career on the bench, Judge Kiser presided over thousands of civil and criminal cases, including *United States v. Virginia*, the landmark case involving the Virginia Military Institute's male-only admissions policy, and *United States v. Morrison*, a matter involving Congress' authority to enact the Violence Against Women Act. Both cases were eventually decided by the U.S. Supreme Court and are regularly taught in law schools across the country. Generations of lawyers who appeared before Judge Kiser, including several who later became his judicial colleagues, fondly recall his kind and gentlemanly demeanor, steel-trap legal mind, and genuine delight during an effective cross examination. He could be demanding, but he applied his rules fairly – in fact, he once fined himself for being late to court, doling out to himself the same justice he levied on tardy attorneys. Judge Kiser is survived by his wife, Carole, to whom he was married for sixty-six years, and by his three children, and four grandchildren.

Jack Newell Little, '75 died peacefully at age eighty-one, surrounded by his family, on September 2, 2015, in Austin after a brief illness. Jack grew up in Big Spring, Texas, where he was an Eagle Scout and

student body president. After graduating from high school at 16, he attended the University of Texas in Austin, where he was elected Vice-President of the Student Body, and UT Law School, serving on the Texas Law Review. Jack met Gayle Harlan, the love of his life, at UT and they remained sweethearts for sixty-one years until parted by his death. Although Gayle was from Houston, she cheerfully went to Big Spring with Jack when they married, so that Jack could practice law with his father. Jack was inducted into the American College of Trial Lawyers at the age of 41, about as young as one can be and still make the fifteen-year rule. By the time Jack retired in 1996, he had handled hundreds of cases in more than 30 Texas counties and in courts ranging from El Paso to Abilene to Amarillo to Del Rio. Upon retirement, Jack and Gayle returned to Austin where Jack audited courses in a variety of subjects at UT and earned a twin-engine pilot's license and a Master YMCA Scuba rating. Jack and Gayle traveled extensively around the world, but only after Jack became proficient enough in Spanish, Italian, German and French to communicate with locals who spoke no English. Jack was survived by Gayle, their four children, and multiple grandchildren and great-grandchildren.

William Francis Lynn, '81, was eighty-six when he was accidentally killed by a tractor trailer truck (which appeared to have a green light) on November 9, 2020, as he was walking from morning Mass to his law office, where he had continued his active practice of law. Bill was a longtime criminal defense lawyer before turning to personal injury law. He was a graduate of Syracuse University College of Law (J.D. 1960) and College of the Holy Cross (B.A. 1957). A horse breeder, in 2014 his horse, named Wicked Strong as a tribute to those injured and killed in the Boston Marathon bombing, finished fourth at the Kentucky Derby. Bill and his wife, Anne, celebrated their sixtieth wedding anniversary in December 2019. They have six children and twenty-one grandchildren.

Edward W. Madeira Jr., '83, was ninety-two when he



died on May 21, 2020, of natural causes. Ned was Chairman Emeritus of Pepper Hamilton, and was a highly accomplished antitrust litigator. Ned received his bachelor's degree in 1949 and his law degree in 1952, both from the University of Pennsylvania. Ned never

officially retired. As a young lawyer, Ned volunteered with the Defender Association of Philadelphia, devoting many hours to defending inmates. He was a longtime member of the Defender Association's board of directors and its president from 1973 to 1999.

"Ned Madeira is one of the most remarkable people I've known in my life," retired Philadelphia Common Pleas Court Judge Benjamin Lerner, who served as chief defender of the Defender Association from 1975 to 1990, said. "He lived his life in so many spheres, from the personal to the professional. He was both respected and loved." Ned's book about the work of the Defender Association, *The Defender: The Battle to Protect the Rights of the Accused in Philadelphia*, was published a few months after his death. His co-author, journalist Michael D. Schaffer, recalled "Ned and I got to be good friends in the nearly three years we worked on the book. He had a dry wit, and loved to tell stories that often ended up with him as the butt of the joke." Ned is survived by his wife of sixty-four years, Grace, three daughters, and two grandchildren.

James P. Martin, '08, passed away Aug. 1, 2020, not yet sixty-five. Born in Pennsylvania, Jim met his first wife, Carolyn DeSantis, at Duquesne University in Pittsburg, headed west for law school at Ohio Northern University, and then really headed west for practice in Portland, Oregon, where he and Carolyn raised their

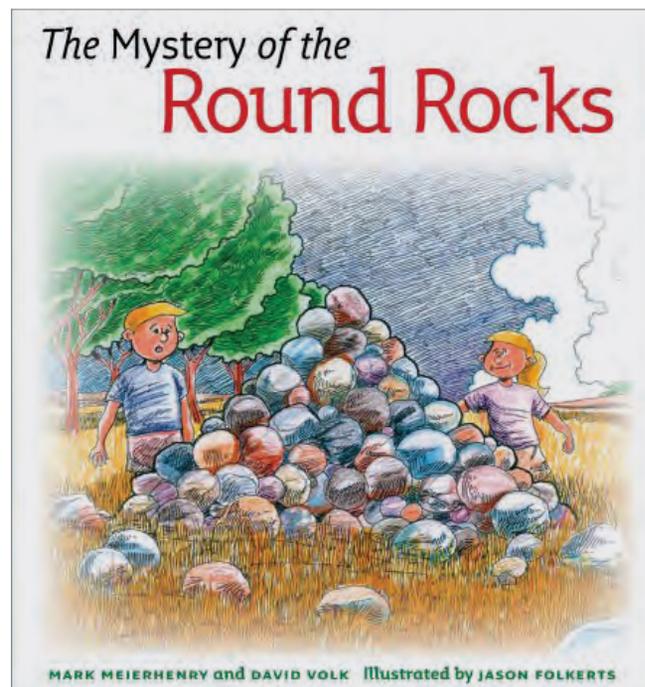
two children. Jim later married Joanne Sunnarborg. Jim established himself as a top medical malpractice defense attorney, defending his clients with the type of integrity and zealous advocacy that earned him respect and long-lasting friendships among clients, colleagues, and opponents alike. In the late 1990s, Jim helped Joanne launch a Pearl District-based fashion and lifestyle boutique, Desperado (now thriving in Bend), which made the couple a pioneering and long-term fixture in the neighborhood. More recently, Jim dedicated the last decade of his life—and his advocacy skills—to volunteer work. As a board member of the Alzheimer's Association Oregon & Southwest Washington Chapter, he helped organize the annual Walk to End Alzheimer's; Jim was active with Brain Injury Connections Northwest and Legacy Good Samaritan Medical Center.

Patrick F. McCartan Jr., '76, passed away on November 30, 2020, at the age of eighty-six. Pat was predeceased by a son but survived by his wife of sixty-two years, Lois Ann Buchman, another child, and two grandchildren. A proud graduate of the University of Notre Dame and Notre Dame Law School (the Law School's Courtroom bears his name), Pat served as a law clerk for Supreme Court Justice Charles Evans Whittaker. He then joined the law firm of Jones Day, where he gained renown as a trial lawyer and was managing partner of the firm from 1993 until 2002, overseeing significant expansion of the firm in the U.S. and globally. Pat served as chair of the University of Notre Dame Board of Trustees, president of the Bar Association of Greater Cleveland and chair of the Board of the Greater Cleveland Growth Association, and on the boards of the Cleveland Clinic, Ursuline College and Gilmour Academy. He was a member of the U.S. Council on Foreign Relations, the U.S. Japan Business Council, the Ohio Business Roundtable, the Ohio Board of Bar Examiners and the Standing Committee on Rules of Practice and Procedure for the United States Courts. ▶

James Alden McIntyre, '86, a Judicial Fellow, tried more than 100 cases over the course of thirty years before his appointment to fill a vacancy on the San Diego Superior Court in 1993; he was elected to that seat in 1994 and, in 1996, he was elevated to the California Court of Appeal, winning retention in three subsequent elections. In private practice, Justice McIntyre focused on medical liability, insurance bad faith, employment termination, and business litigation, and served as an Adjunct Professor of Law at the University of San Diego School of Law. Justice McIntyre graduated from Brown University in 1960 and received his J.D. from Stanford University Law School in 1963. When he retired from the bench in 2016, Presiding Justice Judith McConnell commented that "Justice McIntyre exemplifies the best qualities of the legal profession. He was an outstanding lawyer and a distinguished member of the trial and appellate courts. He will be deeply missed." Justice McIntyre survived by his wife, Vicki, and four children.

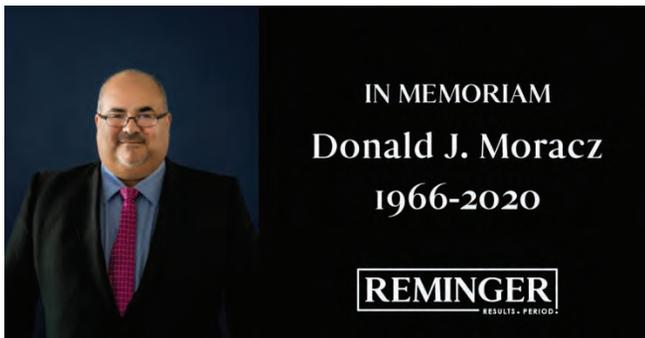
Virgil Bryan Medlock, Jr., '07, passed away on December 11, 2020, at the age of eighty-three. Bryan was educated in grades 1-4 by his mother, Alpha, and in grades 5-8 by his father, Virgil, in a one room schoolhouse in Lawrence, Oklahoma, a rural community near Ada. Bryan attended Oklahoma University, where he majored in Chemical Engineering, graduating third in his class in 1959. He went on to Oklahoma University Law School, where he studied law while teaching as an assistant instructor in the University's Mathematics Department. He served as the Managing Editor of the Oklahoma Law Review. Bryan moved to Dallas in 1966, where he specialized in Patent Litigation until his retirement at the age of 80. Bryan enjoyed hunting, and took four hunting trips in Africa, two of which were with his son. Bryan was a multi-engine instrument rated pilot. Bryan is survived by his wife of 59 years, Nancy, two children, and four grandchildren.

Mark Vernon Meierhenry, '04, succumbed to pulmonary fibrosis on July 29, 2020, five years after he was diagnosed with the progressive fatal disease. Mark was born October 29, 1944, in Gregory, South Dakota, two weeks after his father was killed serving in WWII. Mark graduated from the University of South Dakota with a B.A. in 1966 and a J.D. in 1970. Mark began his career as a legal aid attorney; he became Director of South Dakota Legal Services for the Crow Creek, Lower Brule and Rosebud Indian Reservations from 1970 - 1974. In 1974, Mark moved his family to Vermillion and entered private practice, while serving as an adjunct professor of Trial Practice and Indian Law at the University of South Dakota Law School. In 1978, encouraged by his friend Bill Janklow, he decided to run for public office. On January 1, 1979, both men took oaths – Janklow as Governor,



Mark as Attorney General. After two terms as Attorney General, Mark returned to private practice in 1987 – this time in Sioux Falls with his son Todd, who had just graduated from USD Law School. Mark was proud to see his granddaughter, Mae, join the firm this summer. Mark argued eight cases to the United States Supreme Court. He was active in the College and served as State Chair in 2009-11. Mark was a

storyteller. Every life experience became a story to be told and embellished and retold. He co-authored an acclaimed series of children's books with his good friend, Dave Volk – *The Mystery of Round Rocks*, *The Mystery of Tree Rings*, *The Mystery of the Maize*, and *The Mystery of the Pheasants*. Mark accepted his diagnosis and impending death philosophically. For many years, Mark kept a daily journal. In one of his last entries, he reflected on his journey and concluded: "A life well lived is enough." Mark is survived by his wife of fifty-nine years, Judith, with whom he coauthored the *South Dakota Trial Handbook*, and by their two children and seven grandchildren.



Donald J. Moracz, '20, died on September 25, 2020, at the too-young age of fifty-four, due to complications from Covid-19. He had only been inducted into the College last year, at the Spring Meeting in Tucson. Don graduated from John Carroll University with a bachelor's degree in Political Science. Don went on to study law at the Case Western Reserve University Law School in the class of 1991. He spent his career focused on trucking litigation and med mal defense. Don tried well over seventy-five jury trials. Don built a reputation as an advocate for his healthcare clients, but also as a professional who was respected by judges, opposing lawyers and all of his colleagues and peers. His law firm recalls "Most importantly, Don was simply a great man. He never said no and never had a cross word to say about anyone." Don spent much of his non-work time coaching youth sports. Don is survived by his loving wife, Molly, and his three children, Brian, Liza and Matthew.

George J. Moscarino, '84, died at the age of eighty-six, survived by his wife of sixty-three years, Barbara, and their four children and eight grandchildren. After serving as an accomplished Assistant Cuyahoga County Prosecutor, George became a nationally recognized trial lawyer who provided advice to clients all over the world and served as a mentor to many. He was very proud of his Italian heritage, enjoyed travel to Europe, loved a well-prepared meal and a glass of wine accompanied by great stories. Above all, family was his focus of devotion, unwavering love and generosity.

Nicholas J. Neiers, '87, passed away peacefully just two months before his ninety-first birthday on July 15, 2020, with his wife Carol at his side. Born in 1929 in Cascade, Iowa, Nick married Carol Warnement in 1957. Nick is survived by Carol and their seven children, thirteen grandchildren, four great-grandchildren and one great-great grandchild. Nick proudly served in the U.S. Army from 1951-54, and retired as a full Colonel in the U.S. Army Reserve. He was a double-domer, receiving his BA in 1958 and his JD in 1960 from the University of Notre Dame. He practiced law in Decatur, Illinois. Nick's passion for law was only surpassed by his faith and his love of Notre Dame football. Nick had a keen card sense, a dry sense of humor, and could do three crossword puzzles at a time—in pen.

Carl Roy Peterson, '81, passed peacefully at age eighty-nine at his home with family by his side. Carl was born in Northfield, Minnesota, and attended St. Olaf College (Phi Beta Kappa '52) and Harvard Law School (JD '55). Roy moved to Chicago where he practiced tort law for thirty-eight years and where he met his wife of fifty-five years, Janet. They settled in Glenview, Illinois, and later retired in Arizona. After Janet died in 2012, Roy moved back to Minnesota. He will be remembered for his quick wit, snappy sense of humor including jokes in a Norwegian accent, his love of reading, movies, traveling, and being a

dedicated football and hockey fan. He enjoyed live theater and shows, telling great stories, listening to a good sermon, and time with friends and family, including fishing trips with his grandsons. He was an amazing public speaker, debater, and really shined talking with people he didn't know or just met. He was a card shark and went to the Nationals in ping pong. He is survived by his three children, seven grandchildren, and five great grandchildren.

Richard William Renehan, '78, died peacefully on March 4, 2020, surrounded by family and survived by his wife of fifty-eight years, Mary (Brophy), four children and three grandchildren. Dick graduated from Boston College *magna cum laude* in 1955 and Harvard Law School in 1958. He served in the United States Coast Guard, rising to the rank of Lieutenant Commander. Known for his Irish wit and gentle demeanor, he was a talented trial attorney and widely regarded as a legend in the courtroom. Juries and judges were fascinated by his ability to articulate his argument, no matter how complicated, with three simple points. Dick was President of the Boston Bar Association and his peers recognized him as the "lawyers' lawyer" – he was often the first choice of major firms throughout New England and nationally when they needed representation. Dick coached youth hockey, and continued to play hockey with his sons until age 65.

Thomas H. Richards, '88, passed on October 30, 2020, at the age of seventy-eight. Tom was a *Phi Beta Kappa, cum laude* graduate of the University of New Hampshire and New York University School of Law. Tom served as President of the New Hampshire Bar Association. Though his practice was primarily commercial litigation, Tom represented the New Hampshire Bar Association *pro bono* in a disciplinary proceeding and subsequent appeal which remains important precedent in disciplinary matters.

Larry E. Riley, '94, died in on Oct. 24, 2020; he was seventy-nine. Larry attended the University of Montana and graduated from the Law School in 1966. He practiced law in Missoula, retiring in 2016 after fifty years of practice. He helped educate a generation of young lawyers as an adjunct professor, teaching trial skills at the University of Montana Law School. Following retirement, he directed the Elder Justice Program for Missoula Aging Services. Larry was predeceased by his beloved wife Dianna Reber Riley in 2015. He is survived by their five children and five grandchildren.

Donald E. Shely, '74, passed away on October 5, 2020. He was ninety-two years old. Don graduated from Wayne State University in 1952 and Wayne State University Law School in 1955, where he was Order of the Coif and a founding member of the Wayne State University Law Review. Don twice served as President of the Wayne State University Law School Alumni Association and initiated the first giving program in the Law School's history. By the late 1960s, Don was routinely engaged by General Motors to defend its product liability cases. Indeed, Don was held in such esteem that GM initially would not permit any other lawyer to first chair a GM jury trial and resisted allowing him to defend other vehicle manufacturers. Eventually they relented; Don was soon retained by Ford, Honda, Toyota, Nissan, Mitsubishi, Navistar, Freightliner, and others. Don went on to defend manufacturers of airplanes, pharmaceuticals, chemicals, helicopters, lawn mowers, and a host of consumer products. He also took on select cases for plaintiffs, and had victories in high dollar amounts for those clients. Don was a master not just at winning jury trials, but also in developing product liability law, by identifying cases that were candidates to make product liability law, and then positioning them for published appellate opinions. Perhaps surprisingly given all

of his accomplishments, Don Shely was a quiet, humble, delightful man, a mentor to flocks of young lawyers, and a great listener, who exuded sincerity. Don is survived by his wife of thirty-one years, Jean Shely, his three children, three step-children, ten grandchildren and three great grandchildren. He is predeceased by his first wife, Ann C. Shely.

William Erwin Spainhour, '91, a Judicial Fellow, died September 26, 2020, from complications of a traumatic brain injury, surrounded by his family. Judge Spainhour is survived by his devoted wife of more than fifty-four years, Jane, their three children – all of them lawyers – and four grandchildren. Erwin graduated in 1964 from Davidson College, where he studied Economics and was President of Pi Kappa Phi fraternity. Upon graduation, he was commissioned as an Army officer and completed his first year of law school at the University of North Carolina before he was called to active duty in 1965. In 1968, Erwin returned to Chapel Hill, graduating from the University of North Carolina School of Law in 1970. Erwin and Jane moved to Concord, North Carolina, where he practiced until 1997, when he was appointed to the Superior Court of North Carolina, serving until his retirement in 2014. Judge Spainhour continued to work as an Emergency Superior Court Judge and a mediator. Judge Spainhour was a former president of the North Carolina State Bar. As a judge, he was universally respected by the lawyers and litigants who appeared before him, described as patient, polite, clear and decisive.

John Wesley Vardaman, '91, died Sept. 23, 2020. He was eighty. Jack attended Washington and Lee, where he captained the golf team and to which he returned years later as a Trustee and then Trustee Emeritus. After Harvard Law School, Jack clerked for Hugo L. Black before settling into private practice focusing on environmental, products liability and toxic tort

litigation. Jack was inducted into Washington and Lee's Athletic Hall of Fame in 2011; as a freshman, Jack had played on the Virginia State Intercollegiate Championship team and, fifty years later, he won the Virginia State Golf Association's Super Senior Amateur tournament on the same course. Jack was ranked as one of the ten best senior amateur golfers in the U.S. in 2001 by Golf Digest and served as general counsel to the U.S. Golf Association. In 2000, Jack and his wife Marianne established the Vardaman Family Foundation Scholarship to provide financial assistance to students in Hot Springs, Virginia. To date, the scholarship has provided over \$400,000 to deserving students, seventeen of whom have gone on to earn their college degree. After forty-five years of marriage, Marianne predeceased Jack in 2014; Jack is survived by his four children and twelve grandchildren.

John F. Van De Poel Sr., '78, a judicial Fellow, passed away peacefully on July 30, 2020, at age eighty-eight. John was born in San Francisco in 1932, graduated from the University of San Francisco in 1954, and served two years in the Army, stationed in Germany. After returning home he attended Hastings College of Law, graduating in 1959. In 1992, after three decades as a defense lawyer, John was appointed to the Superior Court of Contra Costa County where he served until his retirement in 2002. John continued to enjoy reading, boating, travelling, and spending time with family and friends. John is survived by his wife of 65 years Dorothy, three children, five grandchildren, and three great-grandchildren.

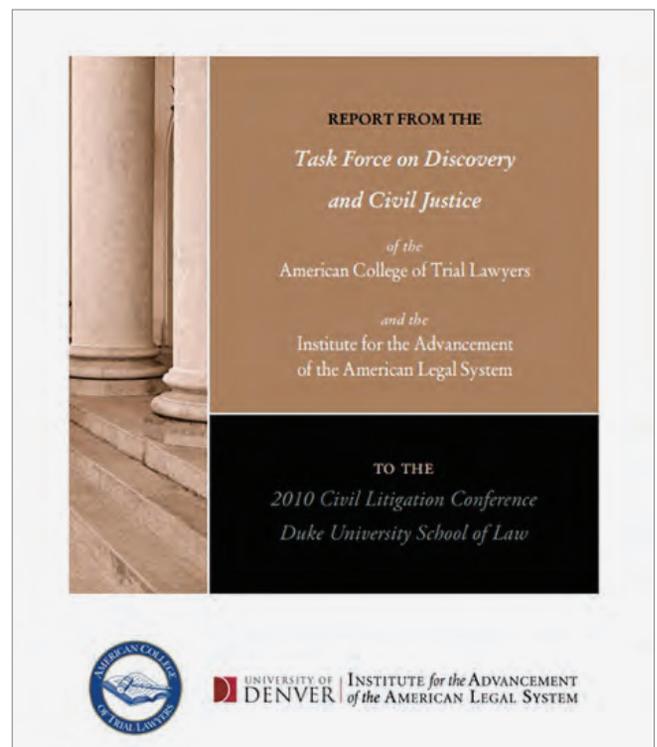
Arthur J. Vouté, '95, passed away peacefully at his home in Newport, R.I. at age eighty-five, surrounded by and survived by his three children, twelve grandchildren, and wife of fifty-five years, Rosanne (O'Neill) Vouté. After graduating from Villanova University and Fordham Law School, Art began a career as a trial lawyer which spanned more than fifty years. As a young man, Art enjoyed all sorts of sports; ▶

his life could have taken a different turn if his tryout as a pitcher for the New York Yankees had a different result! He also had a lifelong love of competitive handball. Art always had a camera on-hand for special occasions, a harmonica in his pocket for a singalong, and you would often see him accompanied by one of his many beloved dogs. Art's notorious sweet tooth drove him to ever more creative ways of sneaking cookies when Rosanne wasn't looking.

Robert Thomas White, '79, age ninety, died peacefully on December 8, 2020, predeceased by his wife Jo and an infant son, and before survived by nine children, twenty-two grandchildren, and sixteen great-grandchildren. Bob graduated from the College of St. Thomas in 1957, after interrupting college for two years to serve as a medic in the Air Force, and from William Mitchell College of Law in 1961. Bob and Jo were married in 1952 and raised their family in St Paul. After law school he began practicing law in St Paul, where he remained until his retirement in 1997. Throughout his career he evinced a unique style of competitive collegiality that ultimately became his character, reputation and legacy.

William Foster Wollen, '78, died unexpectedly at age eighty-three on August 28, 2020. Originally from Union City, New Jersey, Foster graduated with a degree in English from the College of the Holy Cross in Worcester, Massachusetts, where he served as both Captain and Coach of the Holy Cross Varsity Tennis team. Foster attended the University of Virginia School of Law, where he was the Notes Editor of the Law Review, as well as a member of the Order of the Coif, graduating at the top of his class in 1961. Foster was a lifelong supporter of all the schools he attended, but UVA held a special place for him. After law school, Foster enlisted in the U.S. Army, serving in the cold weather infantry at Fort Carson, Colorado. Foster

represented an impressive array of clients, including international financial institutions, multinational corporations, 80's corporate raiders, international industry groups and professional athletes. He had a deep respect for the people he worked with, and was known as a valued mentor. Foster served as a Trustee of the Supreme Court Historical Society. In 1964, Foster married Sheila Culkin, an IBM Systems Engineer. Despite his busy work schedule, Foster was a consistent presence at his children's athletic, artistic, and academic endeavors, including coaching many youth sports teams. In 1994, Foster joined Bechtel, the San Francisco construction firm. He became General Counsel and Senior Vice President, responsible for the Legal & Risk Management departments. Foster was named to Bechtel's Board of Directors in 1995 and retired in 2007. Foster was very active in the College; he was a former State Chair and served on five different General Committees, including service on the College's Task Force on Discovery and Civil Justice from 2007-15. Foster is survived by Sheila, his wife of fifty-five years, their four children, and three grandchildren.



JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660

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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*