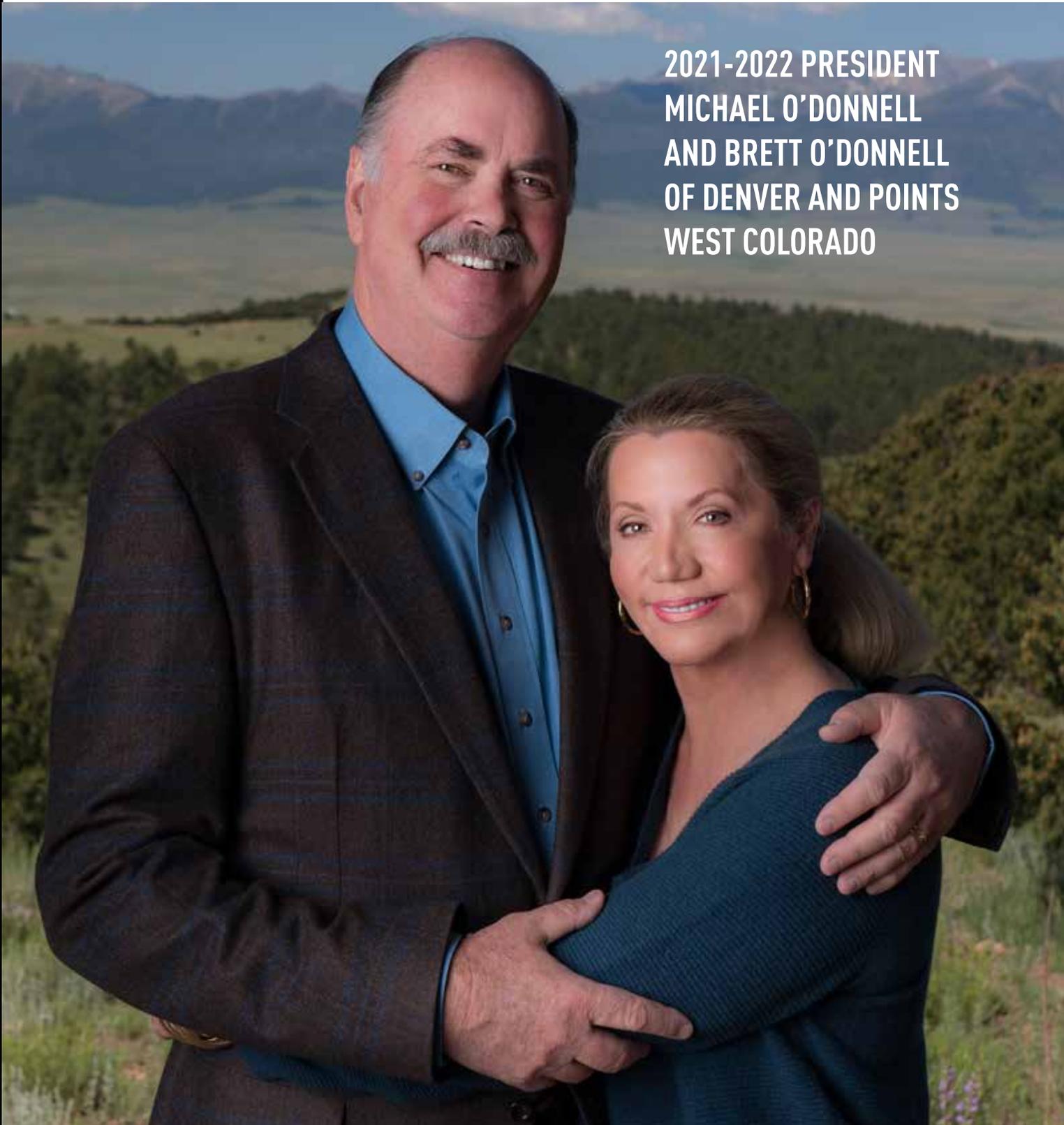


JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

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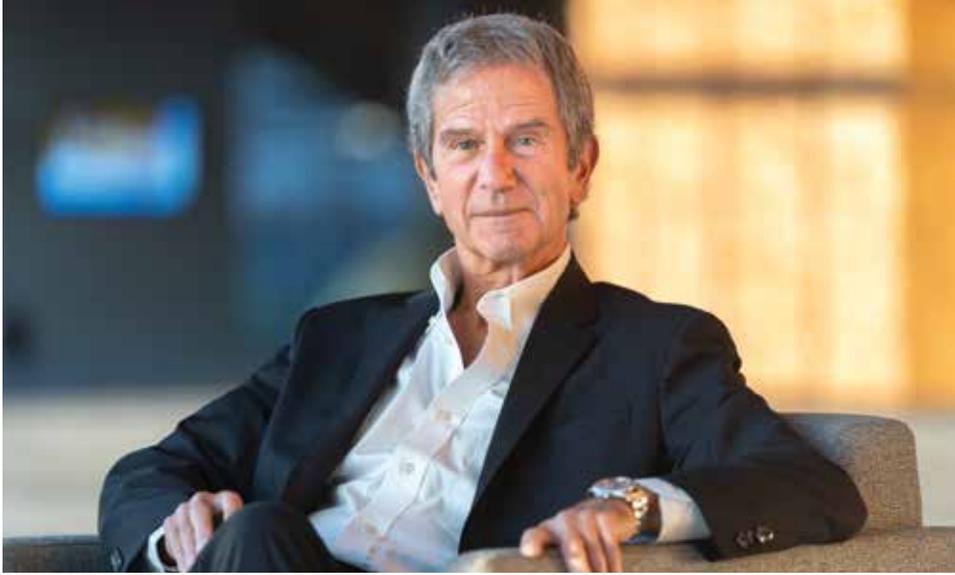
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LETTER FROM THE EDITOR

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DARROW ARGUED THAT THE LAW WAS OBTUSE, IMPENETRABLE, IMPOSSIBLE TO UNDERSTAND. “ARE YOU SUGGESTING, MR. DARROW,” QUERIED THE JUDGE, “THAT IGNORANCE OF THE LAW IS A DEFENSE?” “WHY NO,” DARROW REPLIED, “ALL MEN ARE PRESUMED TO KNOW THE LAW. THE TINKER, THE TAILOR, THE CANDLESTICK MAKER – ALL MEN ARE PRESUMED TO KNOW THE LAW. EXCEPT, OF COURSE, TRIAL JUDGES LIKE YOURSELF – FOR WHOM WE HAVE WISELY PROVIDED COURTS OF APPEAL.”

We are lawyers. We are presumed to know the law. To get our licenses to practice law, we are required to demonstrate character and fitness.

The College does not take political positions. The *Journal*, as the official publication of the College, does not take political positions. So I have, but will not express, my own opinions on political issues. *Pshaw*. You didn't roll off a radish truck. You will be easily able to infer my political point of view, expressed or not. But I'm really trying here not to be political, so give me a break. The College doesn't take political positions, but it *does* advocate in furtherance of its mission: “The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice . . .” So I want to take a stance – a purely personal stance – not on a political issue but on an issue of professionalism, ethics and the administration of justice.

The recently released book, *I Alone Can Fix It*, recounts that on November 3, 2020, as election returns began to roll in, President Trump's personal lawyer, Rudolph Giuliani, announced that he had come up with a strategy he needed to relate to the President. A group of Trump advisors, including White House Chief of Staff Mark Meadows, heard him out. “What's happening in Michigan?” Giuliani asked. Someone responded that it was too early to tell, votes were still being counted. “Just say we won,” Giuliani told them. Same thing in Pennsylvania. “Just say we won Pennsylvania,” Giuliani said.

“We can't do that,” Meadows reportedly said, raising his voice. “We can't.”

Of course they can't. How could any lawyer suggest such a thing? But Meadows' initial reaction notwithstanding, “Just say we won” is exactly what happened. President Trump, and people allied with him, simply declared, without actual evidence, that he won the election. In a December 2020 interview with Fox News, Trump said “We keep going, and we're going to continue to go forward. . . . We're, you know, in some of the states that got rigged and robbed from us. We won every one of them. We won Pennsylvania. We won Michigan. We won Georgia by a lot.”

So, here's my point. It's okay that Trump said that. Right or wrong, he has the right to say it. But Rudy Giuliani, as Trump's lawyer, does not have the right to say it – unless he can back it up. And given the chance, he could not. On June 24, 2021, a New York court took the extraordinary step of issuing an interim suspension of Rudy Giuliani's right to practice law, finding that “The seriousness of [his] uncontroverted misconduct cannot be overstated.”

In the weeks and months following the election, Giuliani claimed that more than 600,000 mail-in ballots were returned in Pennsylvania than were mailed out; he claimed that as many as 30,000 dead people, including former heavyweight champ Joe Frazier, voted in Philadelphia; he claimed that Dominion voting machines were manipulated to mis-count Georgia votes (see article at p. 23, *infra*); he claimed that as many as 165,000 underage persons, as many as 10,000 dead persons, and as many as 2,500 disenfranchised felons voted in Georgia; and he claimed that as many as 250,000 illegal aliens



voted in Arizona. The court found that not one of these claims was true. Not remotely true. Joe Frazier did not vote from the grave nor did anyone else. Hand counts in each state verified the official results. Giuliani was given ample opportunity to offer evidence to support his claims, and he could not.

Politicians can and more often than not lie to us. Car salesmen can and do puff. And that's okay. The First Amendment has limits – you can't yell "Fire!" in a crowded theater, you can't defame someone – but within those limits, most people can say pretty much whatever they want, true or not. But not us. We are lawyers. We are, we should be, held to a higher standard. Justice cannot be fairly administered if its stewards are allowed to ignore, misstate or mangle the truth.

It is long recognized that "speech by an attorney is subject to greater regulation than speech by others." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051, 111 S.Ct. 2720 (1991). Lawyers have professional and ethical responsibilities to speak the truth.

Okay, as defense lawyers, we are not required, we are not allowed, to blurt out that our client is guilty of the crime charged even if we know that to be the truth; we are allowed, we are obliged, to sit silent and put the prosecution to its burden. But we can't allow our client – if we know she committed the crime – to take the stand and deny the truth. We don't always have to tell the whole truth – but we can never stand up and lie.

Whether you believe the election was stolen or that the claim of a steal is a big lie, Trump has the right, without consequence, to claim "I won." His lawyer does not. He can't ethically make that claim without a good-faith basis in fact.

Trump can be excused. Trump expects to win; he doesn't plan for and doesn't accept anything else. During the 2016 Repub-

lican Presidential debates, candidate Trump said "If I become President, we will win on everything we do." Winning is hard-wired in him; so him saying he won, whether or not he did, is all but expected. But Giuliani – if he wants to regain his law license – has to meet a higher standard.

On June 5, 1944, General Dwight Eisenhower composed this speech:

"Our landings in the Cherbourg-Havre area have failed to gain a satisfactory foothold and I have withdrawn the troops. My decision to attack at this time and place was based on the best information available. The troops, the air and the Navy did all that Bravery and devotion to duty could do. If any blame or fault attaches to the attempt it is mine alone."

He did not, of course, have to deliver that speech. The D-Day landing was successful. But Eisenhower saw that failure was possible; he planned for the possibility; and he was fully prepared to shoulder the consequence. A lawyer has to demonstrate character and fitness. And if you want to understand the very essence of character, simply compare "Just say we won" with "If any blame or fault attaches it is mine alone."

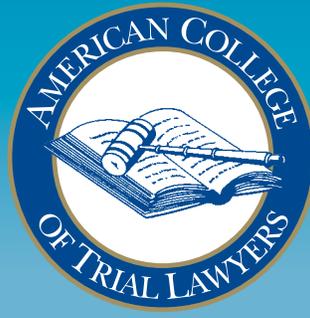
We have a great issue for you. **Former Regents Steve Schwarz** and **Ritchie Berger** discuss the status and import of the Dominion and Smartmatic defamation cases. We get a Canadian homage to an American President, in Guy Pratte's article on Lincoln. We spotlight, as part of our continuing record on the Heritage of the College, a Fellow who started his career representing Lt. William Calley in the My Lai massacre prosecution; we honor another Fellow who served with honor and heroism in that same war. And more. I hope you enjoy.

Bob Byman ■



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JAY KUO, J.D.

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FEB 24-FEB 27

2022 SPRING MEETING

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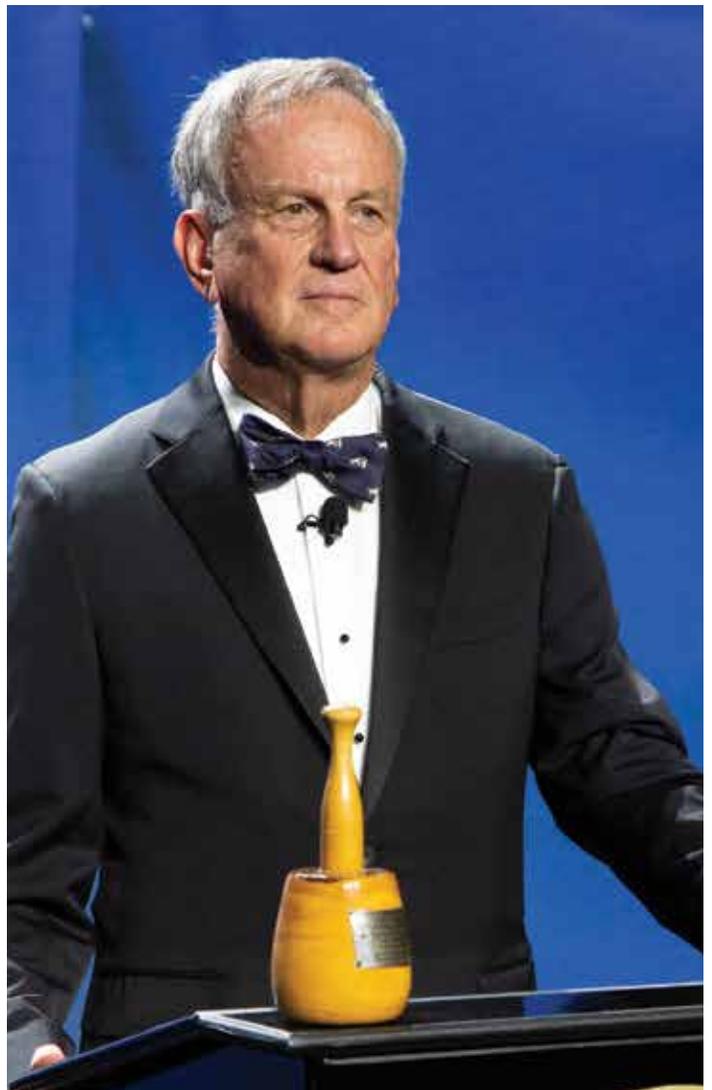
Save The Date

PRESIDENT'S REPORT — RODNEY ACKER, PRESIDENT 2020–2021

THE COLLEGE IS IN GREAT SHAPE. THE COLLEGE'S COMMITTEES AND TASK FORCES HAVE ADJUSTED TO THE LIMITATIONS CREATED BY THE PANDEMIC AND ARE FULLY ENGAGED IN FULFILLING THE COLLEGE'S MISSION AND THEIR COMMITTEE MANDATES. REDUCED TRAVEL AND OTHER EXPENSES COUPLED WITH A GOOD STOCK MARKET HAVE PUT US IN AN EXCELLENT FINANCIAL POSITION. NONE OF THIS WAS BY ACCIDENT, AND IT HAS NOT BEEN WITHOUT ITS CHALLENGES. THE COLLEGE CONSISTS OF SOME VERY REMARKABLE PEOPLE, BOTH FELLOWS AND OUR STAFF. OVER THE LAST YEAR, THOSE PEOPLE HAVE COME TOGETHER TO FURTHER THE MISSIONS OF THE COLLEGE. IT HAS BEEN A PRIVILEGE TO WORK WITH EACH OF THEM, AND I AM GRATEFUL TO ALL OF THEM.

Of course, my gratitude starts with my wife Judy. No one could have asked for a better partner and a more calming influence. A very funny former First Lady was once asked, what was the hardest thing about being First Lady? Without hesitation she quipped — spending 200 nights in a hotel room with my husband. Well, Judy went her one better — 365 days (almost) at home with me with (almost) no complaints. Shortly before this *Journal* is published, we will have celebrated our 49th Wedding Anniversary. Who'd have thunk it in 1972.

I was also truly blessed to have a remarkable Executive Committee. One of the most rewarding aspects of being on the Executive Committee for the last four years has been to spend in-person time with four talented and interesting people and their significant others. While we had no in-person gatherings for almost fifteen months, regular Zoom calls





created the opportunity to develop strong bonds. Finally, we had in-person meetings in May and then again in June. I felt as though we had not missed a beat through the months of physical separation. For my four years on the Executive Committee, I can't recall a single instance where the Executive Committee took any action (or declined to take any action) without unanimous consent. That tradition continued this year. The College could not be in better hands for the coming year than it will be with **President-Elect Mike O'Donnell**.

The broader leadership of the College is housed in the Board of Regents, the Past Presidents, and the Committees. While you might expect Board Meetings lasting six hours on Zoom with 30+ lawyers would be challenging, the Board maintained both focus and collegiality in continuing the College's work. Zoom calls also allowed for more and closer work with the Committees. Although anxious to be back to in-person meetings, the technology allowed the Committees to meet more effectively and more often, and we will see that continue.

THE RETURN TO IN-PERSON GATHERINGS (HOPE FOR WHAT'S COMING)

Missing from the last fourteen months has been the in-person Fellowship that is the essence of the College. Like the Presidents and their spouses before us, Judy and I were excited about carrying the College flag on our visits to the states and provinces in both countries. The pandemic restricted all trips from the Spring 2020 Meeting until the Kentucky Fellows held the first in-person gathering in May 2021. While Judy and I were disappointed not to travel and see old friends and make new

ones, the silver lining was spending additional time with my wife. Travel is beginning to resume. There are approximately five in-person events scheduled between the last week in June and the Annual Meeting in Chicago, including one regional meeting. From my conversations with Fellows across both countries and the results of a survey about attending in-person meetings, it is obvious Fellows are looking forward to gathering both locally and nationally. We remain confident that the Annual Meeting in Chicago will be in-person (with a virtual component for those who don't yet feel safe traveling). President-Elect Mike O'Donnell has recruited some great speakers, and we expect a big crowd.

The fact that there were few in-person meetings did not stop the Fellows from gathering virtually. The first two virtual national meetings of the College drew the highest Fellow registrations in College history. The success of those virtual meetings has resulted in the decision to include a virtual component in future national meetings even when we are back to unrestricted, in-person attendance. State and province committees were also adept at making the most of a bad situation by holding virtual cocktail, lunch and dinner calls in addition to state and province committee meetings. Some events were very creative such as the Alberta Fellows virtual bar crawl. Even the College sponsored competitions adjusted and were all held virtually for the first time ever and went off without a hitch. Judging the law students in these competitions is always a highlight for every president of the College. The students are talented, well prepared, well coached, and the future of trial practice. Typically, there is an opportunity to visit with the competitors after the

competition, but even when that is missing, the competitions are still fun for both the competitors and the Fellows who judge.

College sponsored competitions:

COMPETITION	WINNER
Gale Cup	Univesité Laval
Sopinka Cup	Univesité d'Ottawa
National Moot Court Competition	Loyola Law School, Los Angeles
National Trial Competition	Loyola Law School, Los Angeles

JUDICIAL INDEPENDENCE AND PUBLIC STATEMENTS:

As our politics have become more rancorous, attacks on politicians and the judiciary are more prevalent. Over the last few years, the College made statements when these attacks were a threat to our mission to protect the rule of law and the independence of the judiciary. In the months leading up to the presidential election and continuing until the inauguration, these attacks increased exponentially and the College could have released statements almost daily. Indeed, Fellows contacted the National Office frequently requesting that the College condemn politicians on both sides of the aisle for their actions, statements and attacks on judges.

The College did speak, including an op-ed in Bloomberg Law condemning the numerous attacks and threats against the justices on the Wisconsin Supreme Court. For many, these statements were not enough. As I explained to many of the Fellows with whom I spoke individually, the College includes many passionate Fellows in each party who have conflicting views on when and what should be said. The College, however, attempts to remain non-political. Although it is important for our voice to be heard on issues involving our mission, the College's policy on public statements cautions restraint when making any statement that could affect the collegiality of the College.

“Although not included among our core missions, collegiality is as important as any of those missions, and no statements should be made which unduly threaten our collegiality by taking a position on one side of a matter of genuine and divisive controversy.” *ACTL Guidelines for Public Statements*

Defending judicial independence has long been a core mission of the College. Historically, a number of committees worked on judicial independence issues. However, the College stepped up its efforts to defend judicial independence with the creation of the Judicial Independence Committee in 2019. Headed by **Chair John Wester**, the committee focuses on two separate but equally important functions. First, the committee is vigilant to identify attacks on the judiciary and prepared, through its

rapid response team, to respond on either a local or national level. These statements are well documented and can be seen on the website. Although we expected that the assaults would have subsided following the inauguration, we were wrong. In June, the College again spoke out on personal attacks against a Southern California federal judge after his ruling on an assault weapons statute. The nature of both verbal and physical attacks against judges was the subject of a *60 Minutes* article. According to *60 Minutes*, there were 4000 verbal or physical attacks threatened against federal judges last year, up more than 400% from five years ago. The Federal Judges Association asked the College to participate in a forum hosted by Duke Law School and address how the organized bar can assist in curbing this trend. I was honored to participate and explain what the College is doing through its Judicial Independence Committee. John Wester has participated in similar presentations.

Second, to advance the College's commitment to supporting the Judiciary, the College authorized the Judicial Independence Committee to engage with the National Association of Women Judges in a two-year pilot project to educate the adult public about the meaning and importance of judicial independence. In collaboration with the NAWJ, the committee, under the leadership of **Virginia (Ginny) Nelson, Kathleen Trafford** and **Natalie Tarantino**, produced a PowerPoint presentation and supporting materials to be used by Fellows and NAWJ member judges to speak to civic groups and other adult audiences about the judiciary and the rule of law.

Despite the logistic challenges due to pandemic restrictions, six presentations were given in multiple states last Fall or this past Spring. Another five presentations were confirmed for late Summer and Fall 2021, and several more are in the planning stages at the time of this writing for Fall 2021. Many thanks to the Fellows who participated in the pilot project and gave a presentation to an audience in their local area. You performed a valuable service to the College in its effort to support the Judiciary and educate the public.

At the end of the year, the committee will prepare a report for the Board of Regents in which it will evaluate the project and the Fellows' receptiveness to this important work. It will make recommendations as to whether the project should be continued and in what manner or format. It is unlikely that the need for the College to actively support judicial independence and the protection it affords the rule of law will diminish in the short-term.

FELLOW ENGAGEMENT:

In 2020, the College contracted with McKinley Advisors to assist with a new Fellow Engagement project. The goal is to have more involvement by Fellows generally and particularly newly inducted Fellows. McKinley Advisors conducted surveys of the

College to identify any barriers to participation and modify our existing structure in a way that would allow more Fellows to participate. McKinley's report was delivered to the Executive Committee in June of 2020. The Executive Committee created a Task Force to work with McKinley to implement its findings and recommendations. To date, the Task Force has completed the first two recommendations (rethinking expectations of volunteers and documenting their responsibilities) and has moved considerably through the third recommendation (centralizing resources into a volunteer portal). In the near future, the Task Force will move into the fourth recommendation (increasing communication effectiveness). For this portion of the effort, the Task Force will design and implement a mentorship program for new Fellows to actively and engage them in College activities from the beginning of their Fellowship.

The Task Force consists of **Cal Mayo** (Oxford, MS) (chair), **Michelle Awad** (Halifax, NS), **Renee Rothauge** (Portland, OR), **Felix Luna** (Seattle, WA), and **Khaldoun Baghdadi** (San Francisco, CA). We expect the Task Force to have substantially completed its work and present the results to the Board at the Annual Meeting.

MENTORING:

Mentoring young lawyers has long been a focus of the College and has been viewed as essential to developing the next generations of trial lawyers. In 2019, the Mentoring Task Force issued its report titled: *"Mentoring the Next Generation of trial Lawyers—Developing Excellent Trial Lawyers in an era of Diminishing Trials."* That report provided a blueprint for mentoring through Law Firm/In-House Trial Training Programs, Bar Associations, the Judiciary, Corporate Counsel and the College itself. When the pandemic hit, **Past President Jeff Leon**

noted: "Indeed, the need for young trial lawyers to be able to learn trial skills and the importance of civility in trial practice has become even more acute with the lack of face to face contact necessitated by the social distancing of the Pandemic."

I asked Past President Leon and **former Regent Christy Jones** to consider the next steps in the College's mentoring efforts. After meeting virtually with the Chairs of several committees and considering many suggestions and options, Jeff and Christy submitted their report and six recommendations on February 10, 2021. Their recommendations included (1) organizing a library and making accessible teaching materials already in existence at the College to help younger lawyers in need of mentoring; (2) developing a program for contacting corporate counsel for assistance in providing in-court opportunities for junior trial lawyers; (3) organizing and making accessible to the judiciary a catalogue of initiatives undertaken by various courts that offer increased opportunities for young lawyers to appear in court; (4) promoting wide circulation of the papers produced by the College's Task Force on Advocacy in the 21st Century, particularly to provide direction on effective advocacy in virtual hearings; (5) encouraging pro bono work as a means to obtain trial experience; and (6) issuing a "Mentoring Challenge" to state and province committees. The Mentoring Task Force has now become a permanent Mentoring Committee. On June 3, I wrote the state and province chairs asking them to appoint a mentoring liaison to begin working with and as part of the Mentoring Committee. The Mentoring Committee is chaired by **former Regent John Siffert** and, like the Fellows serving as Diversity Liaisons, the Committee and the Mentoring Liaisons will have periodic calls with the President. Mentoring is particularly localized by its nature and we are hopeful that the new initiative will develop robust mentoring programs in each state and province. The committee is off to a good start, partnering



with Just the Beginning — A Pipeline Organization to create an ACTL Summer Judicial Internship program. Funded by a grant from the Foundation, the program will provide stipends to law students who could not otherwise avail themselves of the opportunity to work in the chambers of state and federal judges. The new ACTL SJI program is national in scope. We hope that Judicial Fellows around the country will volunteer to participate by hiring these interns, and that Fellows throughout the country will organize mentoring events for the ACTL SJIs. We believe this new program has the potential to become a recurring opportunity to mentor aspiring lawyers, to involve Judicial Fellows in College activities and to increase the visibility of the College among the interns and judges who participate.

MARSHALL SCHOLARS FORUM ON THE RULE OF LAW: LEGAL ISSUES IN A POST PANDEMIC SOCIETY FROM A CULTURAL AND SOCIAL VIEWPOINT

The Marshall Scholarship program was created in 1953 shortly after World War II by the British government at the proposal of Sir Roger Mellor Makins, Deputy Undersecretary of State. The program is named after General George C. Marshall (“the Marshall Plan”). The scholarships provide for post graduate study in England by US students in a wide range of fields. The number of scholarships has increased over the years, and forty-eight scholarships were awarded in 2019. The list of the 2000+ alumni of the Marshall Scholars program is truly impressive, and includes a Nobel Prize winner in chemistry, holders of more than fifty patents, financiers with more than \$44 Billion in assets, ten university presidents, thirty-eight members of the American Academy of Arts & Sciences, and six Pulitzer Prize winners.

Earlier this year, the College was approached by Nell Breyer, Justice Stephen Breyer’s daughter and Executive Director of the Association of Marshall Scholars, about creating a program in connection with the Association of Marshall Scholars. The Executive Committee quickly approved the project and **Past President Doug Young** is leading this effort by the College. The program, which was originally planned for September, will be presented next Spring over three days in Washington D.C. Anticipated participants include Justices Gorsuch, Breyer, Alito, and Sotomayor and possibly several other justices who are still considering their participation. It is anticipated that Chief Justice Roberts will welcome the delegates at the opening dinner. The UK delegation tentatively includes: The Right

Honorable Lord Hodge (Deputy President of the Supreme Court of the UK); The Right Honorable Lady Arden (Justice of the Supreme Court of the UK); The Right Honorable Lord Mance (Deputy President (ret) of the Supreme Court of the UK); The Right Honorable Lady Dorian; The Right Honorable Sir Declan Morgan (Lord Chief Justice of Northern Ireland); The Right Honorable Sir Geoffrey Vos (Master of the Rolls); The Right Honorable Lord Justice Flaux (Chancellor of the High Court); Dame Karen Steyn DBE (Judge of the High Court of England and Wales, Queen’s Bench Division); The Honorable Dame Justine Thornton DBE (Judge of the High Court of England and Wales, Queen’s Bench Division), and two Barristers: Sir James Eadie QC and Helen Davies QC. In addition to Doug Young, the US Delegates include **Regents John Day, Rick Deane, Susan Brewer**, Fellows **Andrea La’Verne Edney, Ashok Ramani, Adam K. Peck** and Judicial Fellows USCA (1st Circuit) **The Honorable William J. Kayatta** and USDJ (NDTX) **The Honorable Barbara M. G. Lynn**, as well as The Honorable Martin Jenkens (Associate Justice of the California Supreme Court), and USDJ (DAZ) The Honorable Diane Humetewa. Topics for the program will include Covid and the Courts, Free Speech and the Internet, The Rule of Law and an Independent Judiciary, Copyright and Technologies of the Future, Separation of Powers and National/International Security and the Law. The program will be held at the Supreme Court building. There will be dinners at the USSC and the British Embassy. It appears that the Marshall Scholars Program is the start of a project that will benefit the College much the same as our Legal Exchanges with the UK and Canada.

BOOT CAMP:

One of the successful programs undertaken in recent years includes the one-day Boot Camp Trial Training Program for Young Lawyers, headed by **Paul Mark Sandler** and a team of enthusiastic Committee members. These one day, in-person programs use an historic case for the day tailored to the programs’ lectures, demonstrations, and panel discussions. While more than six programs were conducted in person before the pandemic, the committee successfully transitioned to a Zoom format presenting a program in Salt Lake City under the leadership of **Andrew Morse** (over 250 young lawyers attended), and in Cincinnati under the leadership of **John Gilligan**. With the return of in-person meetings, the committee will be scheduling fourteen boot camps for this fall and 2022, beginning with Oklahoma on August 6. The key to successful programs is the enthusiasm

of Fellows in jurisdictions around the country forming “local teams” to help organize and join the boot camp faculty of twenty-three judges and lawyers.

ADVOCACY IN THE 21ST CENTURY:

The Advocacy in the 21st Century Committee (“A21C Committee”) arose from a task force of the same name launched by Past President Doug Young in the Spring of 2020. As Covid-19 began to wreak havoc on the court systems of Canada and the United States, it was obvious that the response to the pandemic was going to impact the administration of justice long after society was able to medically manage the Covid-19 threat. Doug and the Executive Committee determined that the College needed to lend its experience and voice on the use of technology and other administration of justice issues brought quickly to the forefront by the pandemic.

Regent John Day of Nashville was appointed to lead the task force, comprised of judges and lawyers from across the US and Canada. The group quickly sprang into action, meeting frequently via Zoom. In just over two months, it created a series of white papers on the use of remote video in depositions, examinations for discovery, hearings, non-jury trials, and appellate arguments, as well an extensive paper titled “Issues to be Considered When Preparing for and Conducting a Civil Jury Trial During the Pandemic.” Shortly thereafter, the task force released a thorough examination of the constitutional issues that arose in US courts in their efforts to manage a criminal docket in an era of mask-wearing and social distancing. Then, in September, the Board approved the Committee’s “Overarching Principles Applicable to Civil Trials,” a major policy statement setting forth the College’s position on the preference for in-person court proceedings, while also recognizing how technology can play a role in the delivery of justice.

In September, the Board of Regents converted the task force into a general committee, retaining John Day as Chair, selecting Fellow **Roslyn Levine** of Toronto as Vice-Chair, and expanding the group. The A21C Committee immediately went to work on reviewing and updating its earlier papers, presenting them to Executive Committee and Board for approval at the Spring Meeting. The committee then undertook an effort to reach out to several other organizations, offering to assist them in their efforts to take what was learned during the pandemic and see what changes can be made to the court systems in both countries to make justice more

accessible and affordable while actively promoting the traditions of in-person advocacy in a public courtroom.

The committee is now poised to explore additional issues concerning advocacy in the 21st century. It is expected the committee will identify issues that would benefit from the experience and expertise of the Fellows of the College, and then work with other College committees and outside groups to lend the College’s voice to the discussion of those issues.

The A21C Committee and its predecessor are shining examples of how the College can use the leadership and experience of its Fellows to assist the Bench and Bar in our two nations.

AWARDS

The Board of Regents approved three awards this year:

The 2021 **Emil Gumpert Award** was given to The Arizona Justice Project to support and fund its program to address inequities resulting from conflicting interpretations of The Arizona 1993 Truth in Sentencing Act. The AJP, and several Fellows who work closely with the AJP, were involved in appealing *Chaparro v. Shinn* in which the Arizona Supreme Court unanimously permitted parole eligibility for convicts in cases where judges imposed sentences that specifically stated that parole was a possibility.

The **Griffin Bell Award** will be presented to John Rosenberg, founder of the Appalachian Citizens Law Center, a nonprofit law firm in Whitesburg Kentucky, that has helped thousands of former coal miners and their widows seeking black lung benefits.

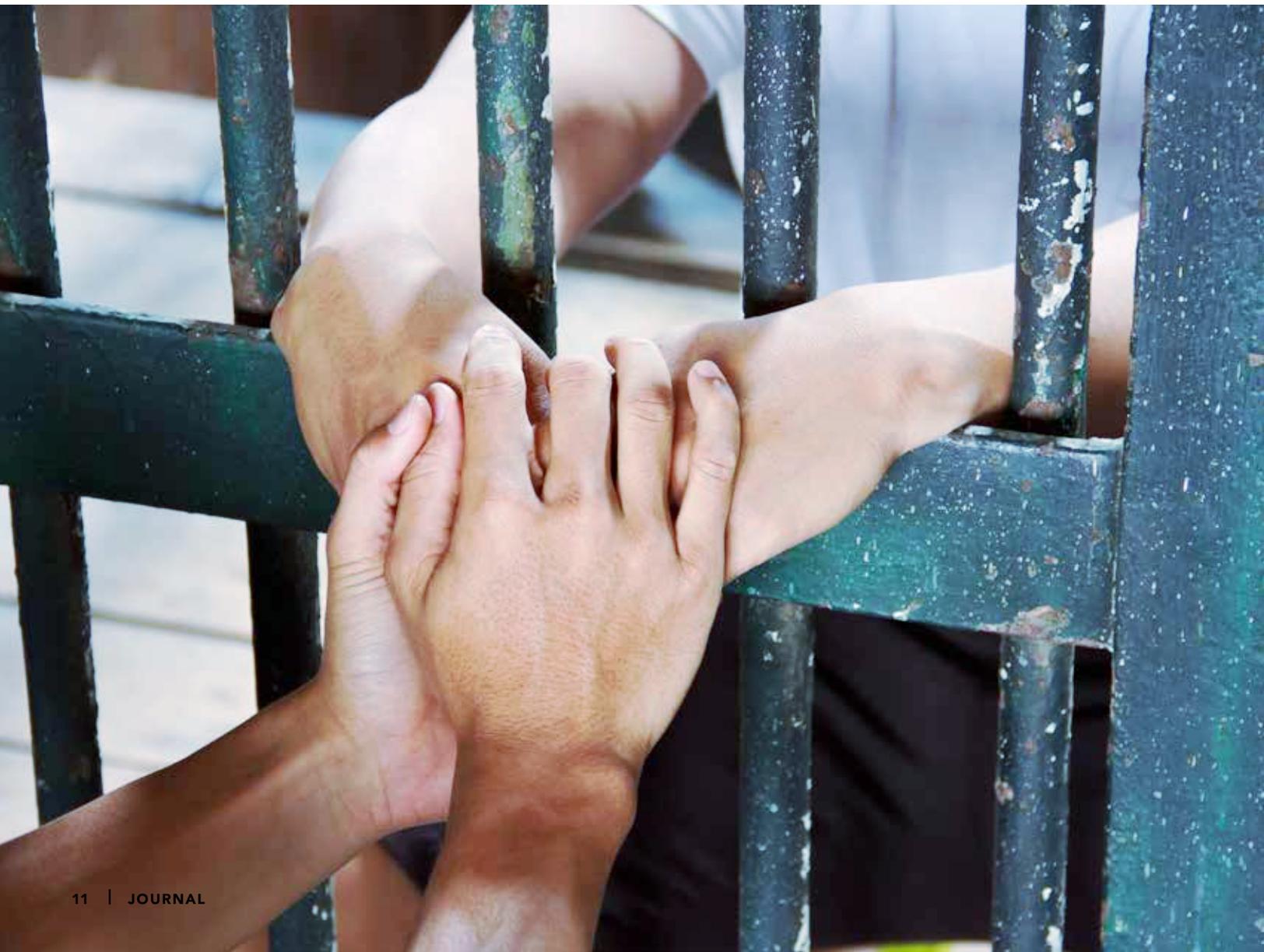
The first **Thurgood Marshall Award for Equality and Justice** will be presented posthumously to the family of Congressman John Lewis and will be accepted by his son, John Miles Lewis. Congressman Lewis led the charge for civil rights dating back to before his participation in the march at Selma Alabama.

CONCLUSION:

To finish where I started, the College is well positioned to move forward. It has been a challenging year for both the legal profession and the College. The College has remained focused on its mission to further the administration of justice despite those challenges.

Rodney Acker

ARIZONA JUSTICE PROJECT TO RECEIVE 2021 EMIL GUMPERT AWARD





THE GENEROSITY OF THE AMERICAN COLLEGE OF TRIAL LAWYERS WILL GIVE THE ARIZONA JUSTICE PROJECT THE ABILITY TO MAKE A MEANINGFUL DIFFERENCE IN THE LIVES OF A GROUP OF PRISONERS IN ARIZONA, WHO HAVE ALL SERVED SIGNIFICANT TIME AND ARE ENTITLED TO BE CONSIDERED FOR PAROLE, BUT DO NOT KNOW THEIR RIGHTS OR HAVE THE RESOURCES TO PURSUE THEM.

— LEE STEIN, CHAIR OF THE BOARD OF THE ARIZONA JUSTICE PROJECT

The Emil Gumpert Award is the highest honor conferred annually by the College. The \$100,000 Award, funded by the ACTL Foundation, is granted to an organization whose principal purpose is to maintain and improve the administration of justice – an organization to which the monetary award will make a real difference to the organization and its goals. The Award “is the crown jewel of our beloved College,” says **Joan Lukey**, President of the ACTL Foundation.

The recipient of the 2021 Award is the Arizona Justice Project (“AJP”) and, in particular, its *Sentencing Fairness Program: A Legal Right to a Second Chance*. “This Award, which we are thrilled to receive, will allow us to expand our reach in creating a meaningful opportunity at release for hundreds of individuals who would otherwise languish in prison, help people prepare for a parole hearing, and plan for re-entry into society. We want to be able to aid more worthy individuals and, under this grant Program, we will create materials that could be used all over the country for lawyers, community volunteers, and prisoners themselves with guidance on how to prepare for a parole hearing and how to plan for re-entry,” said Lindsay Herf, AJP’s Executive Director.

The late **Larry Hammond**, one of the ACTL’s Access to Justice Distinguished Pro Bono Fellows, founded the AJP in 1998. The AJP’s mission is to “represent indigent Arizona inmates whose claims of innocence or manifest injustice have gone unheeded.” Over the years, in addition to Lar- ▶



ry Hammond, many Fellows have been actively involved in the work of the AJP: Distinguished Pro Bono Fellow **Howard Cabot**, **Regent Peter Akmajian** (who will present the Emil Gumpert Award to the AJP at the College's Annual Meeting), **Randy Papetti**, **Michael Piccarreta**, **Jordan Green**, and **Jeffrey Willis**. Since 2018, the AJP has been one of the College's recognized Access to Justice Distinguished Partners.

In 1993, the Arizona legislature enacted a "Truth in Sentencing" law that abolished parole for any convictions occurring on or after January 1, 1994. But, because the statute did not expressly refer to the state's Criminal Code and criminal court proceedings, lawyers continued to recommend to their clients and courts continued to enter sentences of "life without possibility of parole for 25 years," mistakenly believing that parole remained a real possibility. One such person was Abelardo Chaparro, who had served more than twenty years by 2017 when the Arizona Department of Corrections ("ADOC") informed him that he would not be parole eligible after serving twenty-five years or, for that matter, *ever*. Based upon the 1993 statute, the ADOC belatedly determined to write out of Chaparro's sentence the words "for 25 years," thereby converting the sentence to "life without possibility of parole." Hundreds of similarly situated prisoners faced an identical fate.

The AJP, in conjunction with a *pro bono* legal team led by ACTL Distinguished Pro Bono Fellow Howard Cabot, successfully challenged the ADOC's decision before the Arizona Supreme Court in *Chaparro v. Shinn*, holding that Chaparro was eligible for parole after serving 25 years pursuant to his original sentence. That landmark decision became the driving force behind the AJP's development of its *Sentencing Fairness Program: A Legal Right to a Second Chance*.

The Emil Gumpert Award grant will allow the AJP to hire much needed additional staff to help initiate and coordinate parole hearings to which several hundred eligible prisoners in Arizona are now entitled because of the *Chaparro* decision. The AJP's work in this area will be supported by the *pro bono* service of many dedicated ACTL Fellows and other lawyers throughout Arizona. "The Emil Gumpert Award allows the Arizona Justice Project to help many individuals who have rehabilitated themselves to emerge from the penal system and realize their potential as productive citizens. This Award gives much needed hope to those who have paid their debt to society and earned the right to a second chance," says Howard Cabot.

Lee Stein, current Chair of the Board of the AJP, emphasizes: "Following the Justice Project's successful challenge in the Arizona Supreme Court in 2020, we have been inundated with requests for assistance by individuals with compelling cases. The Emil Gumpert Award gives us the



opportunity to meet that need. Without this funding, nobody would do this work. We are extremely grateful to the College for recognizing the importance of this project.”

Because of the AJP, many individuals will receive their legally entitled right to a second chance to lead a productive and fulfilling life. “Without a doubt, the Arizona Justice Project has changed my life. In prison, you just exist. You are not living. I can finally start living again, and I couldn’t be happier,” stresses Nevada Freeman. For Carlos Ybarra, the AJP has allowed his dreams of a new life to become a reality: “You know for a long time I was invisible because I was in prison. We weren’t treated as humans, just laborers or trash. After a long time of being treated like that, you begin to believe it is true. The Arizona Justice Project saw me as a man and treated me like a person. I feel like I owe a lot to them because they helped me when I needed it the most. Lindsay Herf [AJP’s Executive Director] is a great attorney, really smart and kind. Tansha Harrell [AJP’s Social Work Director] is not just a social worker, but a woman who cares and always reminds me that I have something to offer the world. The Arizona Justice Project has given me a chance to reconnect with my family and friends. They have given me a new outlook on life. They have helped me see where I want to better myself and made me want to help others in need. Tansha taught me that it is ok to have dreams and to follow them. When I was in prison, not knowing if I would ever get out, I was scared to admit I had dreams of a new life. The Arizona Justice Project has helped that secret dream become a reality, I wish I knew how to tell them how thankful I am for all of their help. I just want to thank them for everything they do for everyone, not just me.”

On May 13, 2021, ACTL **President Rodney Acker** presented the AJP with the \$100,000 Emil Gumpert Award grant before a large, enthusiastic audience in Phoenix, stating “I am honored to present our Emil Gumpert Award grant to a program that has touched so many lives. By providing access to justice for incarcerated individuals through integrity and sentencing fairness, the AJP is actively upholding the mission of the Emil Gumpert Award. The \$100,000 grant provided by our Foundation will help the AJP expand its capacity to provide important services and access to counsel for individuals denied parole hearings due to contradictory ‘Truth in Sentencing’ legislation in Arizona’s criminal justice system. The College is proud to support such a worthy project.” Following the event, President Acker added, “Meeting the AJP team in person and seeing first-hand their emotional response to receiving the Award and the good that it is doing was truly heartwarming and was one of the highlights of my term as President.”

Mark Surprenant
New Orleans, LA

EDITOR’S NOTE



The Gumpert Committee is one of the hardest working groups in the College. In any given year, it reviews dozens of applications in weekly meetings over many months, winnowing the candidates to three finalists, for which teams of Committee members are dispatched to make site visits and detailed reports. I know first-hand how dedicated and hard working the Committee Chair, Mark Surprenant, has been. And typical of Mark, he insisted, as the price of authoring this article, that this note be added:

“As Chair of the Gumpert Committee, I thank all Committee members for their hard work, dedication, and conscientiousness: Kathryn Snapka (Vice Chair), Judy Barrasso, Eugene Brown, Jr., Robert Byman (Foundation representative), Howard Cabot, Nancy Gellman, John Houlihan, Jr., David Indiano, Michael Kinney, Gerald Kowalski, Mark Lavoie, Charles Moody, Jr., James Murray, Jr., Christine O’Hearn, Jennifer Parent, Rebecca Ringer, Nancy Rubin, Saul Simmonds, Paula Sweeney, Frank Walwyn, Donald Wolfe, Jr., Martin Murphy (Board of Regents representative), and Amy Mrugalski (ACTL staff liaison).”

LINCOLN AND THE MODERN PRACTICE OF LAW

GIVEN THAT ABRAHAM LINCOLN WAS BORN MORE THAN 200 YEARS AGO IN THE BACKWOODS OF KENTUCKY, IT MAY SEEM FANCIFUL TO BELIEVE THAT HE COULD HAVE ANY RELEVANCE TO LAWYERS IN THE 21ST-CENTURY.

What can Lincoln – who carried his mail in his ubiquitous top hat instead of a smartphone, who used a horse instead of virtual reality software to ride the judicial circuit, and whose extraordinarily succinct 278-word Gettysburg Address would be ten times too long to tweet – teach us today?

Well, true wisdom is neither fleeting nor ephemeral, and the voices of great men and women speaking to what is right and just in their time can and should have echoes in our own. Lincoln's voice deserves to be heard and heeded not just by politicians, but especially by lawyers.

LINCOLN THE MAN

Abraham Lincoln was born on February 12, 1809, near the hamlet of Hodgenville in rural Kentucky, in a tiny log cabin with a dirt floor. His father – an illiterate farmer – moved frequently, taking the family to Indiana and later to Illinois, each time looking for more fertile land or to escape creditors and land title disputes. As a result, Lincoln had very little formal education, attending some form of school for a total of only one year!

By all accounts, Lincoln intensely disliked farm work. He had a natural penchant for the few books he could get his hands on, and he learned the Bible by heart as well as many excerpts from Shakespeare.

His law partner William Herndon would tire of listening to Lincoln read aloud in the office, but Lincoln explained “When I read aloud, two senses catch the idea: First, I see what I read; second, I hear it, and therefore I remember it better.”

From youth, Lincoln was melancholy; he suffered from depression. Yet there was also a very jovial side to Lincoln's personality. A master storyteller, he was, while on the judicial circuit, known to regale fellow lawyers (and judges) with a variety of stories he had picked up along the way. William Herndon wrote:

In the role of storyteller I regard Mr. Lincoln as without equal. His power of mimicry and his manner of recital were unique. His countenance and all his features seemed to take part in the performance. As he neared the pith or point of the story every vestige of seriousness disappeared from his face. His gray eyes sparkled; a smile seemed to gather up, curtain-like, the corners of his mouth; his frame quivered with suppressed excitement; and when the nub of the story – as he called it – came, no one's laugh was heartier than his.

While Lincoln clearly used humour to entertain and, as he admitted, to stave off his depression, he also used it as a key part of his advocacy. One of his colleagues observed: ▶



Nothing could be more absurd than to picture Lincoln as a combination of buffoon and drummer. He was frequently the life of our little company, keeping us good-natured, making us see the funny side of things and generally entertaining us; but to create the impression that the circuit was a circus of which Lincoln was the clown is ridiculous. . . . In all my experience I never heard Lincoln tell a story for its own sake or simply to raise a laugh. He used stories to illustrate a point.

Lincoln's utilitarian use of humour was demonstrated when an adversary tried to convince a jury that precedent was superior to law, and that custom made things legal in all cases. Lincoln dismissed the argument by showing its absurdity:

Old Squire Bagley . . . came into my office and said, "Lincoln, I want your advice as a lawyer. Has a man what's been elected Justice of the Peace the right to issue a marriage license?" I told him he had not. Then the old squire . . . said very indignantly: "Lincoln, I thought you was a lawyer . . . but if this is your opinion I don't want it, for I know . . . better. I been squire now eight years and have done it all the time."

On the other hand, Lincoln demonstrated repeatedly that he could curb his humorous instinct and deliver uncannily somber and elegant speeches, like his famous Gettysburg Address. In that very short speech, we see the culmination of the art of public speaking that Lincoln had honed as a lawyer. Lincoln had been preceded to the podium by Edward Everett, former president of Harvard University and probably the most famous orator of his time, at the dedication of the cemetery where thousands of soldiers had lost their lives at the famous battle. Everett later wrote to Lincoln: "I should be glad, if I could flatter myself, that I came as near the central idea of the occasion in two hours as you did in two minutes."

Not surprising then that, after listening to a long speech on another occasion, Lincoln is said to have remarked: "I never saw so many words compressed into so small an idea."

It is not at all clear what prompted Lincoln to become a lawyer, but we may reasonably speculate that, as an ambitious young politician – he first ran for the state legislature of Illinois at the age of 23 – he concluded that the law was the best path to elected office. Lincoln studied the few law books he could get his hands on, including *Blackstone's Commentaries on the Laws of England*, which – legend has it – he had found at the bottom of a barrel full of junk. Lincoln advised the young men who frequently solicited his opinion on advancing their career prospects to "get the books, and read and study them till you understand them in their principal features; and that is the main thing. It is of no consequence to be in a large town while you are reading. I read at New Salem, which never had three hundred people living in it. The books, and your capacity for understanding them, are just the same in all places."

Lincoln was certified as a person of "good moral character" and became a lawyer on March 1, 1837, at the age of 28. Lincoln practised for a few years with two prominent and more senior Springfield lawyers before striking out on his own with the younger William Herndon in 1844. That partnership was dissolved only by Lincoln's death in April 1865. The arrangement between Lincoln and Herndon was, financially at least, simple: all fees earned by the partnership were split 50/50. For those involved in the compensation process common in modern law firms, such simplicity might evoke yearning for an earlier time.

Lincoln was a trial lawyer, literally trying thousands of cases (including a claim for three dollars for conversion of a pig!) and arguing hundreds of appeals. His practice covered every subject the law touched, from criminal to patent law, and from bankruptcy to matrimonial disputes. Twice a year, Lincoln would go on the circuit for two or three months at a time, trying dozens if not hundreds of cases in neighbouring counties. He would travel on horseback and, occasionally, in a carriage with fellow lawyers and often the presiding judge. Some speculate that he enjoyed the circuit so much because it offered relief from a challenging matrimonial life. Lincoln traveled with only a few necessities, filling his saddlebags with spare clothing, paperwork, and a book or two. Lincoln practised law this way until his election as President of the United States in the fall of 1860.

LINCOLN AS LAWYER

In his *Notes on the Practice of Law*, Lincoln writes: “The leading rule for the lawyer . . . is diligence. Leave nothing for tomorrow, which can be done today. Never let your correspondence fall behind.” Lincoln did not always follow his own advice. He once had to apologize to a client for not responding earlier to a letter, explaining that he had misplaced the correspondence as a result of purchasing a new top hat and forgetting that he had stored the client’s letter in the old one.

Lincoln also stressed the importance of public speaking and hard work:

Extemporaneous speaking should be practiced and cultivated. It is the lawyer’s avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech, and yet there is no more fatal error to young lawyers than relying too much on speech-making. If anyone, upon his rare powers of speaking, shall claim exception from the drudgery of law, his case is a failure in advance.

Lincoln was nothing if not consistent about what was required to succeed in the legal profession. To another young man who asked how to obtain a thorough knowledge of the law, Lincoln responded: “The mode is very simple, though laborious, and tedious. It is only to get the books, and read, and study them carefully. . . . Work, work, work, is the main thing.”

This last injunction may not sound very different from what you are used to hearing from your managing partner. But, for Lincoln, hard work was not justified by financial considerations. In a case where Lincoln was retained to protect the estate of a feeble-minded girl against the designs of a would-be suitor, Lincoln decided to return half the agreed-upon fee even though he was successful. His colleagues at the bar dragged him before a moot tribunal they called the Organamathorical Court, where the presiding officer is said to have remonstrated:

Lincoln ... you are impoverishing this bar by your picayune charges of fees, and the lawyers have reason to complain of you. You are now almost as poor as Lazarus, and if you don’t make people pay you more for your services you will die as poor as Job’s turkey!

Lincoln is reported to have responded:

That money comes out of the pocket of a poor demented girl and I would rather starve than swindle her in this manner.

But Lincoln was not above aggressive marketing. In 1852, Lincoln learned that McLean County – which he had represented in the past – intended to assess land owned by the Illinois Central Railroad, which had approached Lincoln to represent it. So he wrote the county: “Feeling that you have the prior right to my services, if you choose to secure me a fee something near as much as I can from the other side [I will act for you].” Receiving no reply from the county, he confirmed his availability to the railroad.” Now that is behaviour a managing partner would applaud!

Lincoln was successful in having the county’s taxation ordinance declared unconstitutional, saving the railroad hundreds of thousands of dollars. He charged it \$5,000 – his largest fee ever. But when the railroad refused to pay, he had to sue for payment. He was successful. About now, the managing partner is ready to have a statue of Lincoln erected in the firm’s lavish lobby . . .



He once had to apologize to a client for not responding earlier to a letter, explaining that he had misplaced the correspondence as a result of purchasing a new top hat and forgetting that he had stored the client’s letter in the old one.

Anyone who knows anything about Lincoln knows that he did not practise law to make money, nor was his insatiable political ambition fueled by the prospect of monetizing any fame he might achieve. Lincoln's commitment to work was a matter of professional ethics, of unremitting devotion to the cases he was called upon to argue, especially when these engaged his passion for "Justice," writ large. Lincoln was partly driven by ambition but was mainly driven by the creed that human beings are perfectible. He worked hard to improve himself as a lawyer, as a politician and as a person.

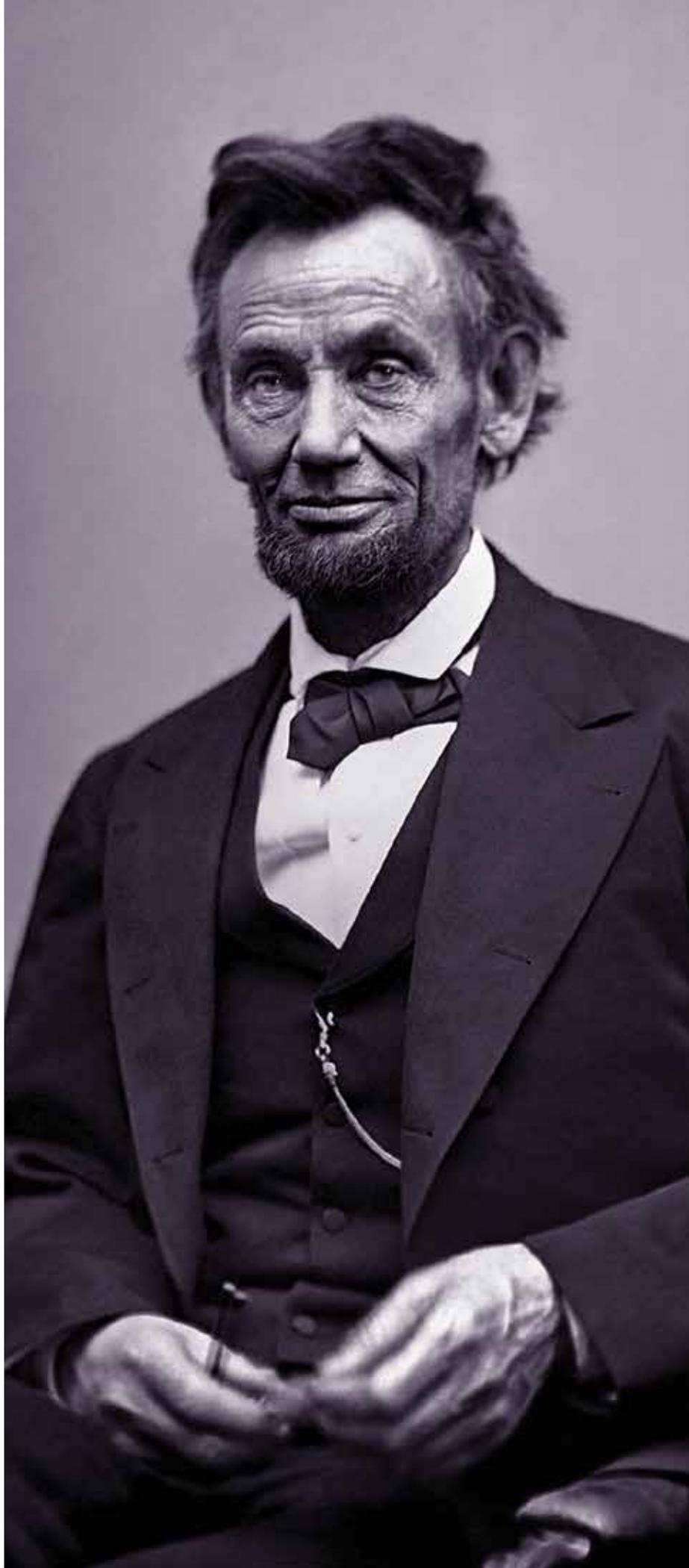
We advocates carry our clients' dreams of justice upon the sound of our voice and the meaning of the words marshalled on their behalf as we represent them in court. Such a trust is deserved only if it is earned by a corresponding commitment to excellence. Whether we practise in the 19th or the 21st century, such excellence only comes – if ever – at the cost of unremitting toil. That is what Lincoln believed.

LINCOLN AS AN ADVOCATE

Lincoln was legendary for focusing on the real issue. Leonard Swett, a lawyer who had many cases against Lincoln, described a standard Lincoln technique:

As he entered trial, where most lawyers would object, he would say he "reckoned" it would be fair to let this in or that; and sometimes when his adversary could not prove what Lincoln knew to be the truth, he would say he "reckoned" it would be fair to admit the truth to be so & so. When he did object to the court, after he heard his objection answered he would often say, "Well I reckon I must be wrong." Now about the time he had practiced this $\frac{3}{4}$ through the case, if his adversary didn't understand him, he would wake up in a few minutes finding that he feared the Greeks too late (an allusion to the Greek assault on Troy using the Trojan Horse) and woke up to find himself beat.

This is a lesson still worth teaching and learning, but it takes some courage to apply. It requires daring to discard the marginal and the trivial, and to concentrate instead on the essential, for it is not always clear which is which. Yet such an



approach to advocacy not only assists a court that wants to get to the nub of a question, but also enhances the advocate's credibility.

Another colleague had this to say about Lincoln's advocacy:

On the whole, Lincoln was the strongest jury lawyer we ever had in Illinois . . . He excelled all in the statement of his case. However complicated, he would disentangle it and present the turning-point in a way so simple and clear that all could understand . . . He had to the highest possible degree the art of persuasion and the power of conviction.

Lincoln represented the widow of a Revolutionary War veteran who had been entitled to a \$500 pension and had retained a claim agent to collect it. The agent did collect, but took half as his fee. Lincoln sued the claim agent, charging that the fee was excessive. Lincoln's handwritten notes for argument:

No contract. Not professional services.

Unreasonable charge. Money retained by defendant - not given to plaintiff

Revolutionary War. Describe Valley Forge privation. Ice. Soldiers' bleeding feet.

Plaintiff's husband. Soldier leaving home for army.

SKIN DEFENDANT.

Close.

Lincoln began with the technical point that there was "no contract." But Lincoln did not stop with what the jury had to decide. He went on to stir basic impulses of fairness, morality, and justice. This uncanny marriage of succinctness, logic and equity are found in Lincoln's political pronouncements, where the skills he had honed as a lawyer were harnessed in his political quest for the preservation of the Union.

Lincoln delivered a speech in 1860 at Cooper Union in New York City, when he was vying for the nomination of the recently formed Republican Party for the presidency of the United States. The speech had a clear political purpose:

to establish Lincoln as a viable presidential candidate in the eastern United States, where he was not nearly as well-known as his great rival William Seward. The overarching object of Lincoln's "lecture," as he called it, was to show that the federal government had the legal authority to ban the expansion of slavery into the new territories, a doctrine opposed by the main presidential candidate of the Democratic Party, Stephen Douglas. Douglas insisted that it was up to the residents of each territory to decide whether they wanted slavery or not.

Cleverly, Lincoln began by agreeing with the key premise of Douglas' argument – he agreed that the Founding Fathers well understood the issue of slavery. The question, Lincoln continued, was the future of slavery in the new territories, and by extension, in the United States generally. On that point, Douglas subscribed to what we would now refer to as the "original intent" school of constitutional interpretation and, based on that view, he contended that the Founding Fathers never considered that blacks were equal to whites, nor that there was any power in the federal Constitution allowing the national government to constrain the expansion of slavery anywhere.

But Lincoln went back to the original founding documents and painstakingly examined the voting records of the 39 delegates who had signed the Constitution. He showed that a clear majority of them had consistently voted to preclude any expansion of slavery in any new territory. From this, Lincoln argued that the Fathers, while rec-



ognizing that the federal government could not ban the institution of slavery where it existed, could prohibit its expansion, in the hope and belief that it would ultimately wither and die.

Lincoln, not content to rest his argument on mere legal exegesis, argued that no contemporaneous commentator had ever claimed that the federal government was limited in its powers to ban the expansion of slavery. Finally, he dealt with the possible counterargument that the Constitution should be differently interpreted in the then-present day:

Now, and here, let me guard a little against being misunderstood. I do not mean to say we are bound to follow implicitly in whatever our Fathers did. To do so, would be to discard all the lights of current experience – to reject all progress, all improvement. What I do say is, that if we would supplant the opinions and policy of our Fathers in any case, we should do so upon evidence so conclusive, and argument so clear, that even their great authority, fairly considered and weighed, cannot stand; and most surely not in a case whereof we ourselves declare they understood the question better than we.

In these few passages, you have the essence of Abraham Lincoln, the supreme advocate – albeit on a political stage, not in a courtroom. Compelling logic, articulated in pellucid prose mustered for a great cause: the relentless pursuit of fundamental justice, which only a Union devoted to equality for all could ensure.

LINCOLN THE ROLE MODEL

Every generation and every profession needs role models to enlighten the path ahead. Often, we need to glance backward in time to find them, even if they are to guide our future.

Obviously, Lincoln will not help you much in deciding whether you should merge with another firm, adopt another billing system than the dreaded hourly rate or embrace Facebook to keep in touch with your clients.

But any lawyer can learn from Lincoln's skills as an advocate. The economical use of language; the uncanny ability to focus on key issues; the legendary credibility he acquired by conceding

the points he could not win; and the use of humor. Beyond the technical skills the great advocates like Lincoln can still impart, we should not discount the past as a potential source of inspiration and guidance.

First, start with integrity. In his *Notes on the Practice of Law*, Lincoln felt the need to address the poor reputation of the legal profession:

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence, and honours are reposed in, and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression of dishonesty is common – almost universal.

Lincoln admonished:

Let no young man, choosing the law for a calling, for a moment yield to this popular belief. Resolve to be honest at all events, and if, in your own judgment, you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than the one in the choosing of which you do, in advance agree to be a knave.

“Honest Abe” was right to underscore the need for probity and forthrightness among lawyers, and in this respect at least, his professional life stands as a model to be emulated still.

Lawyers hold a special trust. Yet we, by and large, live by the honour system. Our ethical obligations to the court, to our clients and to our colleagues are mostly discharged in the backrooms of our conscience. Often, only we know if we have complied with our professional obligations fully, for example, to disclose all relevant documents in connection with a lawsuit. There is no hedge against any ethical lapse except the moral code that must be passed on from one generation of lawyers to another.

Second, consider access to justice. In Lincoln's day, it was undoubtedly easier to take all types of cases to court. Still, Lincoln always ensured that his fees were not exorbitant and did not interfere

That is why we must, like Lincoln, be obsessed by a passionate dedication to our craft. The people we are committed to assist must hear our most persuasive voice calling upon the courts, the legislatures and society to transform the ideal of justice into a living, breathing, liberating reality.



with the achievement of justice. Conversely, he advised his clients to settle disputes whenever they could and counselled fellow lawyers to avoid resorting to the courts where possible:

Discourage litigation. Persuade your neighbours to compromise when you can. Point out to them how the nominal winner is often a real loser – in fees, and expenses, and waste of time. As a peace maker, the lawyer has a superior opportunity of being a good man . . . Never stir up litigation . . . A moral tone ought to be infused into the profession, which should drive such men out of it.

As custodians of the legal system, lawyers are obligated to confront the systemic lack of access to justice that still exists. For if our voices were heard only in courtrooms exclusively reserved for the rich, how could we claim to be in the service of justice for all?

Our democratic institutions depend on the rule of law. We, as citizens, must in turn resort to the courts to resolve the disputes we cannot otherwise deal with. Alternative dispute resolution mechanisms are useful, but they have the disadvantage of hiding the legal process from public view. Society needs to see

the legal system breathe justice. Citizens need to have the courts as viable options.

Third, Lincoln's career serves as an important reminder to modern lawyers that the practice of law is, or at least should be, more than commercial pursuit. We should all, on occasion, take cases that are unpopular and uneconomic, as Lincoln did, and resist, if need be, the pressures of our firms, our clients or the community to bow to public opinion. But that can happen only if the leaders of the profession show the way and teach the younger members of the bar that obsequiousness is not the hallmark of great advocates: courage is.

However small our contribution to the attainment of justice, it can and should be meaningful. It cannot be limited to believing that any representation of a client is necessarily contributing to the public good. Beyond our mere participation in the legal process, the types of cases we undertake and the causes we choose to support for the betterment of our community are the real handmaidens of a "just society."

The legal profession cannot be, or at least should not be, devoid of moral content. The mercantile imperative may not necessarily be incompatible with doing what is right. But it is not a sufficient condition.

If we define our obligation to society as being limited only to that which is consistent with our own reputational and financial interests, where will we find the advocates we need to promote the rights of the downtrodden, to secure the liberty of the subject when the state abuses its powers, to wield their oratorical skills against unfair laws? Where will we find in our time and for our time the Lincolns that justice demands and deserves?

That is why we must, like Lincoln, be obsessed by a passionate dedication to our craft. The people we are committed to assist must hear our most persuasive voice calling upon the courts, the legislatures and society to transform the ideal of justice into a living, breathing, liberating reality.

Lincoln stands as tall today as he did in his own time. We should never forget Lincoln's peroration as he concluded his famous Cooper Union address:

Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it.

Guy J. Pratte
Ottawa / Toronto, ON

DEFAMA

Case No. _____



PLAINT AND DEMAND FOR JURY TRIAL

... Court heard testimony concerning the results of the 2020 election in Pennsylvania. Rudy Giuliani alleges that the Trump campaign "doesn't plead fraud" and that "this is not a fraud case." Also, ... was unwilling to make false election fraud claims about Dominion ...

TION

END THE FRAUD



... Election Results ... Claim He Was Not ... By ...



THE BATTLE FOR THE WHITE HOUSE
POWELL: DOMINION, SMARTMATIC SOFTWARE CHANGED ELECTION

FREE SPEECH OR DEFAMATION?

ON SATURDAY NOVEMBER 7, 2020, EVERY MAJOR NEWS OUTLET CALLED THE 2020 PRESIDENTIAL ELECTION FOR JOE BIDEN. THE OUTCOME BY THE END OF THAT WEEK WAS INEVITABLE AS BIDEN'S POPULAR VOTE LEAD INCREASED, EVENTUALLY REACHING OVER SEVEN MILLION VOTES, AND HIS HOLD ON AN ELECTORAL COLLEGE MAJORITY SOLIDIFIED WITH THE FINAL COUNTING OF MAIL-IN BALLOTS IN PENNSYLVANIA, MICHIGAN, ARIZONA, NEVADA AND, SURPRISINGLY, GEORGIA. ALTHOUGH THESE ELECTION RESULTS HAVE BEEN VERIFIED BY NUMEROUS RECOUNTS, A SIGNIFICANT NUMBER OF AMERICANS REMAIN – TO THIS DAY – SKEPTICAL.

Our nation was founded on the principle of free speech, and our citizens have for as long this country has existed spoken out, not infrequently in inflammatory terms, about all sorts of things. But amid the millions of voices expressing opinions about the integrity of the 2020 election results, two stood out as markedly different. Rudy Giuliani and Sidney Powell not only raised questions, but purported to provide answers.

Most polls prior to the election had predicted not only a convincing victory for Biden but a so-called “blue wave” that would sweep Republicans out of power in the Senate and increase the Democratic majority in the House. But Biden’s win was not as overwhelming as those polls had predicted, with Trump getting seventy-four million votes. It was a convincing popular vote victory and a significant Electoral College margin (identical to what President Trump described as a “landslide” in 2016). But the blue wave never arrived. Democrats failed to take the Senate, as supposedly vulnerable Republicans Susan Collins and Tom Tillis easily defeated their challengers. In the House, all twenty-five seats the Cook Political Report had designated “toss ups” went for the Republican candidate, and although the Democrats retained their majority, it became razor thin. So those skeptical about the election outcome and suspicious that something untoward had occurred to tip the scales for Biden were faced with something of a conundrum – how could a nefarious conspiracy have catapulted Biden to a seven million vote victory while the same election cycle delivered significant Republican victories in close Congressional and state legislative races? This was a circle tough to square. 



EDITOR'S NOTE

Yogi Berra said “it’s hard to predict things, especially the future.” When the authors wrote this article in July, they predicted that the motions to dismiss these lawsuits would be denied. Good prediction. On August 11, 2021, United States District Judge Carl J. Nichols denied the motions to dismiss filed by Powell, Giuliani and Lindell in the Dominion action, in their entirety.



Not that this poser stopped the skeptics from challenging the results. The Trump campaign and its allies filed more than sixty lawsuits, all but one of which was dismissed and none of which developed *any* tangible evidence sufficient to support a judicial finding that significant voter fraud had occurred anywhere. The lawyers who brought these suits were, for the most part, professionally circumspect in the claims they made in court. Rudy Giuliani conceded to a federal judge in Pennsylvania that he was not claiming “actual fraud,” and he readily conceded that “this was not a fraud case.” Although allegations of rampant voter fraud were made repeatedly in the media and on the internet, the allegations made in the courtroom, and particularly in federal courts where Rule 11 could be enforced, were far more nuanced and deliberately avoided broad claims of voter fraud.

But as many of the lawyers withdrew as the court defeats continued to pile up, Giuliani and Powell refused to give up the fight. To fight on, they had to overcome the dichotomy between the Biden victory and the down-ticket Democrat losses in the same election. Seven million voters choosing Biden, but also voting for down-ticket Republicans, cannot be explained by illegal aliens casting ballots. So Giuliani and Powell provided an explanation: manipulated technology had pulled off this seemingly impossible result; voting machines and software had been rigged, they claimed, to systematically switch Trump votes to Biden, but left the votes cast for Republicans down ballot intact. Giuliani and Powell claimed that two companies, Smartmatic and Dominion, had engaged in a massive conspiracy to switch presidential votes. And once they threw out these claims, conservative media outlets, including Fox News, put Giuliani and Powell on the air multiple times to broadcast what they assured was backed up by irrefutable evidence that would soon be made public.

Giuliani and Powell, of course, have a First Amendment right to free speech. They have a right to make claims, even baseless claims. But when allegations of conspiracy and fraud are lodged against private companies whose revenues depend on public trust in the accuracy and integrity of their products and services, those entities also have rights. And those rights may have changed the equation in a way that Giuliani and Powell, and even Fox News, failed to anticipate. Giuliani and Powell’s claims have resulted in civil defamation causes of action, and specifically libel *per se*, which presumes that defamatory statements harming business interests result in damages. These current defamation lawsuits may establish a new line between permissible political discourse and actionable defamation.

SMARTMATIC v. FOX

The Smartmatic lawsuit was filed in New York State Supreme Court, New York County, in early February 2021. The Complaint sets out that Smartmatic was founded in Florida in 2000 by two entrepreneurs inspired by the hanging chad controversy after the 2000 Presidential Election. Their vision was

to design secure, accurate and transparent voting equipment and software. For the next twenty years, the company grew and successfully sold its products in over twenty-five countries across five continents. Ironically, prior to 2020, Smartmatic's products were never used in any local, state or federal election in the United States.

Giuliani and Powell publicly claimed they had uncovered evidence that Smartmatic played a major role in stealing the election from Donald Trump. Fox News hosts Lou Dobbs, Maria Bartiromo and Jeanine Pirro invited Giuliani and Powell onto network talk shows multiple times to repeat their claims that Smartmatic used an algorithm to modify the Trump votes in favor of Biden as part of a criminal conspiracy, that Giuliani and Powell claimed had ties to the late Venezuelan dictator Hugo Chavez.

No evidence supporting Giuliani and Powell's claims has yet materialized. Interestingly, the *only* jurisdiction in the United States that actually used Smartmatic's election machines and software in the 2020 Presidential Election was Los Angeles County. The election results in both Los Angeles County and in the State of California were so lopsided for Biden (margins of 30% or more) that it is difficult to conceive of a plausible theory in which Smartmatic could have influenced the election outcome, even if the facts alleged by Giuliani and Powell are correct.

Giuliani and Powell also claimed that Smartmatic software was used in Dominion voting machines to influence the election outcome for Biden. Dominion voting machines were widely used throughout the country, so the claim that Smartmatic's software had been rigged through a "secret back door" in its software that allowed Trump votes to be switched to Biden votes in the Dominion machines is at least theoretically possible. But Smartmatic's Complaint alleges that there is no business or other relationship between the two companies; Smartmatic software is not used in or even compatible with Dominion's equipment. Nevertheless, Giuliani and Powell and the Fox hosts repeated their secret back door claims on the air at least twelve times between November 12 and December 10, 2020, posted nine videos and transcripts on



Fox's website, and posted comments and videos repeating these claims on social media over twenty additional times.

Everyone is entitled to their opinions. But the claims made by Giuliani and Powell against Smartmatic were asserted as facts, facts which are either true or not. Either Smartmatic's voting equipment and software was used exclusively in Los Angeles County, or it can be proven that it was used in multiple places around the country. Either Smartmatic software was used in Dominion voting machines, or it was not. If the facts alleged in Smartmatic's Complaint about the extremely limited role the company played in the election are borne out by the evidence, Giuliani and Powell will have some serious questions to answer, as will the Fox news organization and its hosts who provided Giuliani and Powell with an audience of millions. Indeed, after receiving a retraction demand by lawyers for Smartmatic, the conservative cable network Newsmax issued a public statement "clarify[ing] its news coverage," declaring it had seen no evidence that either Smartmatic or Dominion had "used software or reprogrammed software that manipulated votes in the 2020 election." While the mere threat of a defamation action brought Newsmax to heel, Fox chose to defend the defamation suits, while still offering something of backtrack by airing a two-minute pre-taped segment that exonerated Smartmatic *during* Lou Dobbs' and Maria Bartiromo's programs. ▶



A motion to dismiss the Smartmatic Complaint has been filed by Fox and its hosts, claiming various privileges and First Amendment rights protecting them from liability. Smartmatic has responded to the motion with a 137-page Memorandum of Law in Opposition. A review of the law cited in the motion and in opposition to the motion suggests this effort to dismiss the claims against the Fox defendants is likely to fail, at least at the motion to dismiss stage. Fox cites to various privileges that, according to Smartmatic's brief and the cases it cites, have either never been recognized under New York law or have been explicitly rejected by New York's highest court. Even if the privileges applied, Smartmatic points out that demonstrably false statements are excluded from protection by these privileges. If the facts alleged by Smartmatic in its Complaint are true, any claim that the company fraudulently impacted the outcome of the election would be, by definition, demonstrably false.

Under *Sullivan v. New York Times*, if Smartmatic is considered a *public figure*, it would be required to prove actual malice or reckless disregard and not simply negligence by Fox in reporting Powell and Giuliani's claims. Smartmatic's brief makes a reasonably strong argument that none of the elements required for public figure status apply to it. But even if Smartmatic is deemed a public figure, the allegations made

by Smartmatic likely meet the reckless disregard standard.

Giuliani and Powell have also filed motions to dismiss on both procedural and substantive grounds. They argue that Smartmatic cannot establish actual malice and have not sufficiently pleaded actual malice or reckless disregard for the truth such that New York's Anti-Slapp law (Civil Rights Law 76-a) applies barring a recovery. Powell argues that her statements were "opinions" and could not be interpreted to be actual "facts." Giuliani also asserts that his statements are covered by the litigation privilege, which immunizes statements made in the context of litigation. Given that Smartmatic's allegations as to its extremely limited role in the 2020 election must be accepted as true, it would seem the reckless indifference standard would be met to deny Giuliani's motion on this ground, even if Smartmatic is determined by the court to be a public figure. As to the litigation privilege defense, it would seem difficult to link the specific accusations made publicly by Giuliani against Smartmatic with any lawsuit he filed challenging the election on different grounds and alleging different facts in order to successfully invoke that privilege. This is especially true at the motion to dismiss stage.

Assuming the motions to dismiss fail, which seems the most likely outcome,

discovery will certainly be interesting. Giuliani and Powell will be forced to divulge the still-secret trove of evidence they claim backs up their allegations. If they cannot, it will be extremely difficult for them to argue they had a good faith belief in the truth of their assertions against Smartmatic. Fox and its hosts will also be subjected to questioning on any efforts they made to corroborate these claims if they are found to be demonstrably false. Simply put, it is one thing to generally allege that the election was rigged, but it is quite another to name specific companies as conspirators in the alleged fraud. Smartmatic's lawyers should have quite a time questioning Fox executives about their ethical reporting guidelines and supervision of programing content. If the motion to dismiss is denied, it would not be surprising to learn of a "confidential settlement" with Fox. But whatever happens as to Fox, Smartmatic may well choose to go for the jugular against Giuliani and Powell and it is difficult to see what defense the two lawyers will be able to raise if Smartmatic truly had the infinitesimal role in the presidential election it alleges in its Complaint.

DOMINION v. GIULIANI and DOMINION v. POWELL

In January 2021, Dominion Voting Systems filed defamation lawsuits separately against Giuliani and Powell in the United States District Court for



the District of Columbia. In those Complaints, Dominion alleges that the two lawyers falsely accused the company of rigging the 2020 presidential election in favor of Joe Biden. Dominion's 124-page Complaint against Powell sets forth in great detail statements she made about Dominion in print and in person as to its alleged role in the 2020 U.S. presidential election conspiracy that supposedly deprived Donald Trump of reelection. For example, the Complaint states that in November and December 2020 Powell repeatedly told reporters and television journalists that Dominion was created in Venezuela to rig elections for Hugo Chavez, and had in fact rigged the presidential election by using "algorithms" in its machines to change the balance and to "flip" votes to Biden and "shave" votes from Trump. On November 19, 2020, Powell spoke during a televised press conference from the Republican National Committee headquarters in Washington, D.C., standing alongside Giuliani, at which she introduced their group as "an elite strike force team that is working on behalf of the President and the campaign." Powell declared "President Trump won by a landslide. We are going to prove it." However, Powell's conspiracy assertions went too far even for the Trump campaign. Three days later, its "legal team" of Giuliani and Jenna Ellis announced: "Sidney Powell is practicing law on her own. She is not a member of the Trump legal team. She is also not a lawyer for the President in his personal capacity."

Being dropped from the "elite strike force" did not cause Powell to cease her attacks on Dominion. Instead, according to the Complaint, she doubled down on her allegations that Domin-

ion was a creation of Hugo Chavez and that its "algorithm" was being manipulated by Democrats, George Soros, and unnamed foreign intelligence agencies to deprive Trump of re-election. Dominion's suit, however, points out it "has never serviced a Venezuelan election at all, let alone to support Hugo Chavez."

Powell's lawyers elected to challenge the suit by motion, attacking venue, personal jurisdiction, and even whether her statements were actionable. Powell argues that Dominion is a public figure, and that she did not have "actual malice." In what might be an unprecedented approach to defending a claim of defamation, Powell's attorneys also argued that "no reasonable person would conclude that the statements [Powell made about Dominion] were truly statements of fact." Dominion in its opposition memorandum does not contest that it is a "public figure" under *Sullivan v. New York Times*. It does, however, argue forcefully that Powell's statements are indeed actionable because they are susceptible to being proven true or false and there is ample direct and circumstantial evidence of malice on her part. Although one should always be reluctant to predict how a judge will rule, it seems reasonably clear that much if not all of Dominion's suit against Powell will survive this motion and discovery will proceed.

Dominion's 107-page lawsuit against Giuliani provides a detailed timeline of Giuliani's statements attacking Dominion and its alleged role in stealing the election from Trump as made by Giuliani on television, in print, and even on his podcast. The suit asserts that Giuliani carried out "a viral disinformation campaign about





Dominion” based on “demonstrably false” claims in order to garner legal fees and otherwise enrich himself. Although Giuliani promptly declared he welcomed the suit saying, “We’ll have a nice fight,” an objective reading of the Complaint suggests he faces serious legal and financial jeopardy.

CAN THESE SUITS MAKE A DIFFERENCE?

Smartmatic seeks damages of \$2.7 billion dollars in its suit against Giuliani, Powell, Fox and the Fox anchors. Dominion’s separate lawsuits against Giuliani and Powell each seek damages of over \$650 million dollars in compensatory damages and another \$650 million dollars in punitive damages. Numerous commentators have opined that it is unlikely compensatory damages of this magnitude could ever be established by these companies at trial. Moreover, neither Giuliani nor Powell is likely able to pay even a small percentage of those dollar amounts if awarded in verdicts. Fox, on the other hand, is a much deeper pocket. Smartmatic’s claims seem easier to prove since the claims made against Smartmatic’s ability to affect the election outcome appear to be demonstrably capable of being shown to be true or false. A large verdict against Fox, et al., could have a major impact on the company and its profits. Whether such a verdict would change Fox’s approach with regard to its star prime time personalities and make it more discriminating in how it presents content

from highly questionable sources is, of course, hard to predict. Clearly, Giuliani and Powell are unique characters, so it is difficult to imagine this scenario being repeated anytime soon. Yet Lou Dobbs’s show was cancelled by Fox a few days after the Smartmatic suit was filed. Although Fox claimed there was no connection, it seems likely the suit played some role in that decision. This is just one of many areas that Fox must want to avoid subjecting to discovery.

As Yogi Berra said, “It’s tough to make predictions, especially about the future.” Nonetheless, if Smartmatic survives the pending motion to dismiss in New York Supreme Court, we believe a confidential settlement with Fox is very likely.

Polls show that almost 70 percent of registered Republicans continue to believe that the election was rigged. It is difficult to know what percentage of that group reached this conclusion based upon the claims made by Giuliani and Powell on Fox News shows regarding voting machine conspiracies involving Smartmatic and Dominion. But those discriminating enough to search for some narrative after all of the legal challenges to the election results failed may have been persuaded by Giuliani and Powell’s claims that these two companies, in conspiracy with Democrats and others, used technology to switch Trump votes to Biden. As was noted in a recent Washington Post article:



The idea that the election was stolen took root and remains persuasive to millions of Americans. Although Trump's own Department of Homeland Security called the election the "most secure in American history," polls have consistently shown that about one-third of Americans, including a majority of Republicans, believe that Trump lost because of fraud. An internal poll by the National Republican Senatorial Committee in March found that among Republicans who believed the election was stolen, nearly half said hacked machines were partly to blame and additional 8 percent said they were the main source of fraud.¹

As trial lawyers we fervently believe in Wigmore's observation that "Cross-examination is the greatest legal engine ever invented for the discovery of truth." We have little doubt that should these suits survive motion practice and make it to trial, the truth will prevail, especially on the basic facts that if proven would establish that Giuliani and Powell's claims could never possibly have been accurate or fact-based.

That process could take many months or even years. Will the public pay attention to the developing body of evidence established by documents and sworn testimony? It is difficult to believe that verdicts in any or all of these suits will have much impact on the firmly held beliefs of millions who question the election outcome, any more than the dismissal of all of the lawsuits seeking to overturn the election did. But we can and do hope that this litigation may help establish a bright line between political discourse and reckless indifference to the truth, which in turn might begin to lower the temperature in our national divide.

Ritchie Berger
Burlington, VT

Steve Schwarz
Rochester, NY ■

¹ Emma Brown et al., *The Making of a Myth*, Washington Post (May 9, 2021), <http://www.washingtonpost.com/investigations/interactive/2021/trump-election-fraud-texas-businessman-ramsland-asog/>.

On June 23, 2021, the Michigan Senate Oversight Committee issued a comprehensive report on the 2020 Presidential Election in that State, which included the claims against Dominion. The Michigan Senate currently has twenty Republican members, sixteen Democrats, and two vacancies. The Oversight Committee has four members, three Republicans and one Democrat. The Committee gave special focus to one Michigan County, Antrim, where Mike Liddell and others claimed the election was stolen in significant part by the use of Dominion voting machines. The Committee found

"Events in Antrim County sparked a significant amount of concern about the technology used to count ballots. This concern led to much speculation, assumptions, misinformation, and in some cases, outright lies meant to create doubt and confusion. The many hours of testimony before the Committee showed these claims are unjustified and unfair . . ."

The Republican Committee Chairman concluded "I feel confident to assert the results of the Michigan election are accurately represented by the certified and audited results. . . . The strongest conclusion comes in regard to Antrim County. All compelling theories that sprang forth from the rumors surrounding Antrim County are diminished so significantly as for it to be a complete waste of time to consider them further."

Four days after the Michigan Report was released, on June 27, the Atlantic ran an article featuring former US Attorney General William Barr. Barr told the Atlantic that the Justice Department had "looked into allegations that voting machines across the country were rigged to switch Trump votes to Biden votes." Barr concluded "We realized from the beginning it was just bullshit." He continued: "It's a counting machine, and they save everything that was counted. So you just reconcile the two. There had been no discrepancy reported anywhere, and I'm still not aware of any discrepancy."



MICHAEL L. O'DONNELL – OUR 72ND PRESIDENT

MIKE O'DONNELL, THE INCOMING 72ND PRESIDENT OF THE COLLEGE, WAS A BIG MAN ON CAMPUS. LITERALLY. THAT IS, HE WAS, OCCASIONALLY, ON CAMPUS. AND HE WAS BIG. SIX FOOT SIX. HE WAS A BIG MAN THROUGHOUT HIGH SCHOOL, AS THE ANCHOR OF THE LOYOLA ACADEMY RAMBLER'S TENNIS TEAM, LEADING THEM TO FOUR STRAIGHT CHICAGO CATHOLIC LEAGUE CHAMPIONSHIPS. AT NOTRE DAME, HE CAPTAINED THE TENNIS TEAM. HE WAS REALLY SOMETHING BACK THEN. BUT WHEN HE GRADUATED IN 1976 AND BEGAN LAW SCHOOL AT THE UNIVERSITY OF DENVER, HE WAS STARTING OVER; HE DIDN'T KNOW ANYONE, AND WITHOUT HIS RACQUET, HE WASN'T QUITE SO BIG. HE COULDN'T GET A DATE, NOT IN THE ENTIRE STATE OF COLORADO. MIKE HAD A BUDDY IN WYOMING, A TEAMMATE FROM NOTRE DAME, PAT MURPHY, WHO HAD JUST STARTED LAW SCHOOL AT THE UNIVERSITY OF WYOMING. PAT HAD CHARM. AND MORE DATES THAN HE COULD HANDLE. HE OFFERED TO SET MIKE UP. AND WITH NO OTHER REAL OPTIONS, MIKE DROVE ONE HUNDRED AND THIRTY MILES TO TAKE AN UNDERGRADUATE COED TO A TENNIS MATCH FEATURING BJORN BORG. OCTOBER 2, 1976. MIKE HIT THE BLIND DATE JACKPOT. BRETT LONG. SPECTACULAR.

Thanks, Pat. Their next date wasn't until 1977 (130 miles is a long drive, even for spectacular), but Mike somehow talked Brett into marriage right after his law school graduation in 1979. Forty-two years, three kids and one grandkid later, Mike and Brett are going strong.

Mike O'Donnell has taken more than seventy-five cases to verdict and has appeared as lead defense counsel in over forty different states in class and mass actions, product liability, professional liability, and complex commercial matters for highly visible compa- ▶





nies, such as General Electric, Michelin, Boston Scientific, and Pfizer. If you're curious about the details of Mike's career, visit his website and spend a few hours with his twelve-page resume (it takes every bit of those twelve pages to list his many achievements). But we don't write these pieces on incoming presidents to echo their marketing department write-ups. We want you to get to know something about the person and their family, as opposed to his or her legal credentials.

Mike was raised on the West side of Chicago – St. Mel's Parish – and later in the North suburb of Deerfield. Mike's dad, Larry, was an architect who, after a successful career with the internationally renowned Perkins & Will, formed his own firm, O'Donnell Wicklund, & Pigozzi, growing it into the largest architecture firm in Chicago. Mike's mom, Alice, was an inner-city schoolteacher who was selected Illinois teacher of the year. Alice's mother, also Alice, was also an inner-city Chicago schoolteacher and a huge influence on Mike. The family moved into Grams' apartment when Mike was born and stayed there until Mike was eight – when the family, Grams included, moved to the

suburbs. When Mike moved to Denver for law school, Grams rode in the car with him – at age ninety – so that they could spend some quality time together. Grams lived another ten years, each of them cherished by Mike.

Mike has a brother, Kevin, and two sisters, Maureen and Kerry. And when you look at the family picture and see Mike tower over his siblings and parents, there is the temptation to ask Mike if he ever sought to find his birth parents – how could he possibly be related to these normal sized people? Ah, but then you look at the family photo of Mike and Brett's family – at the baptism of their first and certainly not last grandchild – and you see that Mike towers there too. He really is a big guy.

Growing up, Mike worked as an Andy Frain usher at Cubs games. I'm pretty sure he's the guy my friends and I would yell at to, "Sit down, we can't see the game over you!"

When Mike graduated from law school, Brett herself started law school at DU – so there was no thought of leaving Colorado to return to Illinois. Brett was

and is a Wyoming girl, and while Colorado isn't quite Wyoming, close enough. Brett is as comfortable in a dusty old Stetson as she is in an evening gown and Mike was just starting to get the cowboy thing himself, so they settled on settling in Denver. Brett earned her JD degree in 1982; she took the bar exam while nursing their first child Conor. Mike hung out in the parking lot so Brett could give Conor sustenance during her breaks.

Mike joined White and Steele, P.C. then moved to Parcel, Mauro, Hultin & Spaanstra, P.C. as head of litigation. In 1998, Mike, **Mal Wheeler** and **Jack Trigg** (all Fellows of the College) formed Wheeler Trigg O'Donnell LLP. From its inception with five founding partners and a handful of associates, WTO has now grown into a firm of over 100, eight of them FACTLs, doing nothing but litigation. As Chair, Mike describes the guiding principle of the firm's growth: "Do the right thing in the smartest way." Ah, yes, but that's a lot to put on a promotional coffee cup or ball point pen; so it boils down to "No jerks."

Mike's father, Larry, instilled in Mike a strong commitment to charitable work.



It was important to Mike to establish the WTO Foundation in 2005. Since its creation, the Foundation has donated more than \$2.3 million to over 100 nonprofit organizations. But it isn't just about the dollars. Mike all but requires everyone in his firm not simply to write a check but to actually *do* something, such as going to a homeless center to serve meals. Firm personnel volunteer both money and time, giving countless hours to Foundation causes.

From its inception, WTO has honored the old ways of treating the practice of law as a profession, not a business. Mike teaches his lawyers that their loyalties must always be to “Client, firm, self – in that order.” No wonder that WTO has been recognized as the best firm to work at in Denver.

We mentioned the family. Brett and Mike have three children, Conor, Devon and Danny. Conor Lyons O'Donnell (the “Lyons” may simply be an extended family name or an actual homage to Mike's cousin, **FACTL Jim Lyons** – I didn't ask . . .) is an artist, with a BFA degree from the Rhode Island School of Design and an MA

from The University of the Arts in London. While in London, Conor met Jenna Quinn, of County Donegal, Ireland. They were married in Ireland; Jenna, who has an MS from National University of Ireland, Galway, works for Accenture.

Devon earned her MBA from the University of Denver. Her husband, Brad Stevenson, also has an MBA (from Harvard), plus a medical degree. And they too were married at a castle in Ireland. Their daughter Remy is the first O'Donnell grandchild.

Daniel graduated from the University of Michigan and did post-grad work at the University of Virginia; he is Director of Business Development at Avanti Financial Group. Getting Mike to stay in Denver in 1979 was one thing. But somehow Brett has managed to convince all three of her children and their families to live within a ten-minute drive of Mike and Brett's home. Told you she was spectacular. Daniel is under strict orders to limit dating to Zip Codes in the low 80000s, although another wedding in Ireland would be OK.

Mike says, “I'm hoping not to be thinking of cases on my deathbed.” When you talk to Mike, as proud as he is – as justified as he is to be proud – of his career, family is clearly more important. But as to the cases, as Mike looks back at a career that remains in its prime, he views his most important cases as the ones where he represented individuals, where he made a tangible difference to a person's life or career. He has had more than his share of billion-dollar cases, but the small cases, the cases that mean everything to a single person, are the ones that stand out. Sounds like another lesson he learned from Larry.

Mike and Brett are looking forward to their year in the Presidency of the College. Brett is looking forward to meeting new and old friends around the country, as is Mike – and Mike hopes to put special emphasis on outreach and getting us all back together as we emerge from the pandemic strangeness. We're all looking forward to a great year with Mike and Brett.

Bob Byman
Chicago, IL



ARTISTS

among us

“I HAVE REALIZED THAT MY WORST DAY AS AN ARTIST IS STILL BETTER THAN MY BEST DAY AS A LAWYER.” SO SAYS NATHAN SAWAYA, ONCE A NEW YORK CITY CORPORATE LAWYER AND NOW AN ACCLAIMED ARTIST WHO SCULPTS HIS PIECES ENTIRELY OUT OF LEGO BLOCKS. NATHAN APPARENTLY MADE A CHOICE BETWEEN LAW AND ART. BUT A FEW RARE PERSONS ARE TALENTED ENOUGH NOT TO HAVE TO CHOOSE – AND TO BE SUCCESSFUL AT BOTH.

Paul Gauguin observed that “art is either plagiarism or revolution.” So it is not all that revolutionary for us to plagiarize ourselves. We have two Fellows who sculpt in bronze rather than in Legos, who do it quite well. We have written about **Warren Lightfoot** and **Don Davis** before, in separate articles. But their extraordinary talent deserves reprise.

Don Davis was inducted as a Fellow of the College in 1995. Don was Vice Chair and then Chair of the Texas State Committee in 2008-2012 and served many years – and hours – on the National Trial Competition Committee. Don recently retired from the firm of Byrd, Davis, Alden & Henrichson, LLP after a storied career spanning fifty-one years of practice. Throughout his years of practice, Don was a well-respected adversary whose word was his bond, and the interests of his client were paramount. ▶





Don attended Abilene Christian College on a football scholarship. But he began as an art major – most probably the only one on the team. Don modestly recalls that he was the worst artist in his class and eventually switched to accounting, followed by law school at the University of Texas. After graduation, Don served as Briefing Attorney for Justice Mead Griffin on the Texas Supreme Court before settling in Austin for a long and successful career.

But Don never lost his passion for art. He continued to paint as a hobby – oil, watercolor and acrylics. In 1987, when he was given a sculpture as a gift, Don was immediately attracted to three-dimensional art. He must have been thinking of Michelangelo’s famous response when asked why his favorite art form was sculpture: “Every block of stone has a statue inside it; and it is the task of the artist to discover it.” Don put down his brushes and started sculpting.

Most Texas Fellows, and Past Presidents of the College who served after 2010, are familiar with, and treasure, Don’s hand and quill pen sculpture with the College logo. When Don served as Vice Chair and then Chair of the Texas State Committee, he wanted to give a thank-you gift to the College President when he or she visited the Texas Fellows during their annual lunch. Don decided to make something unique with his own hands. **Joan Lukey**, who served as President in 2009-10, was the first lucky recipient. And in honor of our first woman President, Don created two separate molds, for female and male hands.

The next year, when **Greg Joseph** was President, **Tom Cunningham** emceed the meeting; Tom held up the sculpture and said, with a sly grin, “We are conferring this coveted award for outstanding advocacy on . . .” as he randomly pointed at a Fellow, an older gentleman who had apparently not heard Tom’s introductory comment that it was a joke. The Fellow bounded up, grabbed the statue and said “I don’t know what I did to deserve this, but what an honor,” as he continued to speak for

several minutes before going back to his seat, clutching the statue with a death grip. Tom was too embarrassed to retrieve it, and Greg returned to New York statue-less. He eventually received another. But since then, it is always made clear that the hand is meant for the visiting President.

Don’s work is not limited to hands – he has done entire bodies – life-sized bodies. In 1995, he created a sculpture of professional golfer Tom Kite and legendary golf pro Harvey Penick, which is on display at the Austin Country Club. He also has works on display at several public locations, including life-size sculptures of children and animals dancing in a circle for a “healing garden” at Dell Children’s Hospital in Austin, and sculptures at the Butler School of Music at the University of Texas and the Lyndon Baines Johnson Presidential Library at the University of Texas at Austin. Golf has provided other opportunities for Don to display his talents. He has created sculptures of Jack Nicklaus and the late Payne Stewart, and trophies for the LPGA and PGA. In 1997, at the request of Ryder Cup captain Tom Kite, Davis created an American eagle as Kite’s gift to the team members (this was the first Ryder Cup for Tiger Woods). In order to make the sculpture, Don obtained schematic blueprints of the American eagle from the Audubon Society. He then sculpted a half-scale eagle (37-inches wing tip to wing tip) swooping down with talons outstretched to grasp the Ryder Cup that was coming out of the Rock of Gibraltar (the matches were held at Soto Grande in Spain).

When Past President **Sam Franklin** (2017-18) first met Warren Lightfoot in 1970, Warren was a 32-year-old aspiring trial lawyer not yet eligible for College Fellowship. Sam recalls that during a trial, even during critical witness examinations or intense oral arguments, Warren was doodling images on his legal pad. Warren captured the fashions of the day or mannerisms of a nervous young lawyer. And Warren presented his sketches after the trial to a most grateful client following the victory.

Warren's doodling didn't affect his success as a trial lawyer. And as he grew as a lawyer, he evolved as an artist, eventually turning more and more to bronze sculptures. To date, Warren has produced 53 unique pieces, about half of which are portrait busts. This body of work includes portrait busts of two former Chief Justices of the Alabama Supreme Court, which reside in the rotunda of the Supreme Court building in Montgomery named in their honor. It also includes what Warren refers to as a "trifecta" at the Comprehensive Cancer Center at the University of Alabama in Birmingham, comprised of busts of three physicians who played a major role in the development of that outstanding medical facility.

Warren attended The Citadel in Charleston, South Carolina, from 1956-58 and graduated in 1960 from the University of Alabama, where he was elected to Phi Beta Kappa. He served two years as an infantry officer, company commander and paratrooper, and graduated in 1964 from the University of Alabama School of Law, where he was a member of the managing board of *The Alabama Law Review*.

Warren served as President of the Birmingham Bar Association in 1990-91, President of the Alabama State Bar in 1996-97, and as the 54th President of the American College of Trial Lawyers in 2002-03.

In 2008, Warren was commissioned to create a portrait bust of former Justice Sandra Day O'Connor. He had never sculpted a woman before, and he was presented with the challenge of how best to represent her hair, which Justice O'Connor later told him was difficult "because thin hair is hard to do in bronze." Today that bust resides on the main floor of the U.S. Supreme Court building, and is often visited by officers of the College, and spouses, when attending the Annual Black-Tie Dinner of the U.S. Supreme Court Historical Society.

In 2017, Warren was commissioned to create a portrait bust of retired Chief Justice **Beverly McLachlin** of Canada, which now resides in the Court of Appeals of British Columbia.

Warren has created abstract pieces at the request of Past Presidents **Lively Wilson** and Greg Joseph as gifts for their wives on anniversaries. He created life-size sculptures of beloved dogs for gifts by their Executive Committees to Past Presidents **Mike Cooper** and **Mike Smith**.

In his memoir, Warren says that he learned over his 17 years plus of sculpting that he has the ability to make sculpture portraits that look exactly like the subjects. He tried painting, but in his words, he "... learned that I am no painter; I can draw and I can sculpt, but I lack the ability to use colors effectively." A friend who is a talented artist once took a long look at one of Warren's paintings and said "Warren, you need to stick to sculpture."

The work required to make works of art in bronze is demanding, and often involves study of hundreds of photographs or a number of in-person settings. Appreciating that art, particularly abstract art, is very hard, Warren wonders whether every artist ultimately is indebted to some other artist for inspiration.

Artists in the Courtroom, artists inside and out. ■



EDITOR'S NOTE



Warren was our President too early to receive the Texas Committee's gift of the Hand and Quill; we're sure he would have appreciated the artistry and would have, as has every President since Joan Lukey, cherished the piece. But it isn't too late for Warren, if he's interested in owning this unique bit of College memorabilia – nor is it too late for you. Don has graciously agreed to allow the piece to be sold at cost plus \$50 – the \$50 going to the Foundation – to any Fellow who wants one (or two). The cost is not insubstantial – the piece is substantial. The cost of the male hand is \$762; the female hand is \$712; shipping and handling is roughly \$25. If you are interested in owning a real work of art owned up to now only by Past Presidents and the occasional hard of hearing Fellow, send an email to ACTLJournal@gmail.com.

Thanks to Robby Alden, Sam Franklin and David Kitner for their contributions to this article.



HEROES AMONG US – RANDY KINNARD



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 . . .

“Not today, Randy.”

Captain Randall L. Kinnard, serving his second tour of duty in Vietnam in the summer of 1969, had seen much worse. He had survived much worse. Kinnard served in the 173rd Airborne Brigade in 1968, a unit that saw some of the fiercest fighting of any American soldiers during the Vietnam War. And a fortuitous transfer just days before a Vietnamese ambush spared Kinnard’s life during his first tour.

But this night – one year later – seemed to pose no such danger. Kinnard had the mundane task of riding ten miles to his province commander to provide a report on the base he commanded. Ten miles to the commander, a simple report, and ten miles back before calling it a night. But nothing in Vietnam in 1969 was simple. Nothing in Vietnam in 1969 was safe.

Just before the ten-mile journey began, a torrential downpour arrived. But a summer downpour in Vietnam was nothing unusual, and the visit to the province commander was not optional. So Kinnard and his driver started on their way. The rain got harder and harder. A few miles into the journey, the driver and Kinnard arrived in their jeep at a small concrete bridge traversing a narrow river. Under the bridge were three large pipes pushing water downstream. But the three pipes were not enough to keep the rainwater from flowing over the top of the bridge. This bridge had nothing on its sides – no rails, no curbs, nothing to stop the jeep’s tires from going over the edge.

Captain Kinnard got out of the jeep to try to identify the side of the bridge. He wasn’t too fond of the idea of the jeep going over the edge and into the river. In the darkness and the deep water, Kinnard’s only choice was to use his foot to feel for the bridge underneath him. His foot found a hole. In an instant, Kinnard was inside one of the large pipes. Kinnard grabbed the edges of the pipe in a vain effort to escape. He was in a whirlpool, the water rising ever faster. His fate seemed sure.

“I saw my whole family. This is it; this is my time. I’m gonna die,” Kinnard recalled. “I saw a newspaper article that said, ‘Local Soldier Drowns In Vietnam.’ And I thought after all I’ve been through, . . . this is so embarrassing.”

But Kinnard had not come this far to go down without a fight. Still clear-minded despite his predicament, Kinnard managed to turn himself upside down in the pipe and make his tall, lanky frame as small as possible. Maybe, just maybe, he could slide out the pipe. Suddenly, the current catapulted Kinnard from the pipe. Kinnard now felt the rain on his face and could see the night sky. But now he thought, am I just going to drown in the river instead of the pipe?



“We would get in a firefight, and he was so cool and collected. He’d stand up in the middle of a firefight with bullets flying all through the air . . . the bravest guy I ever met,” he said.

“Not today, Randy.” The voice was audible. The voice was clear. The voice seems just as real to Randy today.

Randy relaxed, and the current tossed him toward the river bank. He managed to untangle his gear and equipment from the overgrowth near the bank and climb out, soaking wet and cold, to safety. Randy Kinnard had survived another day in Vietnam.

Randy’s conclusion about the river experience: “There is a God. If I ever doubted – in the times when I do – I’ll refresh my memory.”

A year earlier, fresh from the West Point class of 1967, Randy joined the 173rd Airborne Brigade – a unit full of young men from broken homes who were trying to prove themselves. The 173rd was “tough and mean,” he recalled. The 173rd’s responsibility was in “II Corps” (one of four corps tactical zones) – the jungle highlands of Vietnam, from the coast to Cambodia (and occasionally beyond). Unlike prior wars, battles were not scheduled, and soldiers never knew if or when they would confront the enemy. The first tour was “pure survival,” Randy recalled.

A few months into that hellish experience in 1968, then Second Lieutenant Randy Kinnard came under the command of David Brown, a 1966 West Point grad – only one year before Randy. Following a full year in the infantry in the 173rd in country in Vietnam, David Brown was promoted to captain. But Brown had earned more than a promotion. David Brown had the respect of every man who served under him, including Randy.

“I loved David Brown. He was a soldier’s soldier,” Randy recalled.

After multiple firefights under the capable leadership of Captain Brown, Randy received a promotion and was transferred to another unit only 10,000 meters away. Mere days after that transfer, Captain Brown’s hill was ambushed early one morning at 3 a.m. Randy and his men watched helplessly as his old unit fell under attack. With no ability to communicate with Captain Brown’s unit, Randy’s unit could only fire artillery blindly into the night sky. The fighting lit up the night sky where David Brown and his men fought valiantly for three long hours.

But Captain Brown and his men could not withstand the overwhelming assault. When the fight ended, 200 of the 250 men in Randy Kinnard’s former unit had lost their lives. Every single officer was killed. Captain David Brown had lost his life. Randy Kinnard would certainly have been the 30th member of the class of 1967 to lose his life in Vietnam, but for the timely promotion and transfer.

“Why didn’t they attack us?”

“Why did I get transferred?”

“Why did David Brown have to die?”



The night of the ambush on Captain David Brown's hill left Randy with these and so many more questions – questions which were never ultimately answered.

While Randy speaks freely about his service in Vietnam, he deflects any discussion about his many combat awards. "For alleged valor," Randy quips. For wounds received in combat, Randy was awarded the Purple Heart. Randy also received a Bronze Star for Valor for meritorious service in combat – the fourth highest award for military combat - and the Combat Air Medal - for twenty-eight combat assaults.

The final award – the Vietnamese Cross of Gallantry – was more than an award. It was an event. During his second tour of duty, Randy and his men had protected a friendly South Vietnamese village from the enemy. In gratitude for protecting the village, South Vietnamese troops made an unexpected visit to Randy and his unit to give him the award. Here were Randy and his men in a place highly susceptible to attack at any time – a very hot combat zone. Yet the South Vietnamese troops brought a very loud band to announce the award. The experience was "surreal" and "embarrassing." "I felt like I was endangering everyone around me," Kinnard recalled. The South Vietnamese troops also brought an interpreter who explained that the Vietnamese Cross would be waiting at Randy's home in the United States when he got home from the war. . . "if you get home," the interpreter added.

In late 1969, Randy made it home – sent home alone without any of his fellow soldiers just like so many other Americans who had served their country in Vietnam. When he finally made it home, Randy hugged his mother. And he recalls that moment distinctly, "I felt absolutely nothing." Anger, survivor's guilt, and the unspeakable trauma of everything he had endured and witnessed had come home with Randy Kinnard. But fortunately, years of counseling helped Randy break the grip of anger, trauma, and the overwhelming burden of guilt for doing nothing more than surviving.

Today the Vietnamese Cross hangs on the wall in Randy's office – seemingly a world and a lifetime away from the events of 1968 and 1969. For those who have known Randy Kinnard the lawyer, it is hard to imagine that he endured all of this and much, much more. Randy has gone on to establish himself as one of the most successful lawyers in the history of the Nashville Bar. Inducted as a Fellow in Spring 2021, Randy and his law firm have been the standard of excellence in personal injury litigation in Nashville for over three decades. Always a fierce advocate for his clients, Randy has also set a standard of professionalism and courtesy in the way he deals with his opponents. Certainly all of us who have had the pleasure of knowing Randy, working with or against him, and seeing his contributions to the Nashville legal community are grateful that he heard "Not today, Randy" in the summer of 1969.

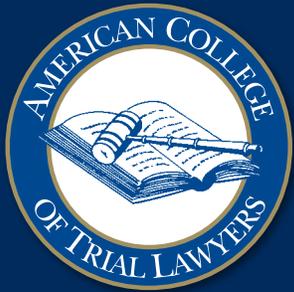
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Nashville, TN



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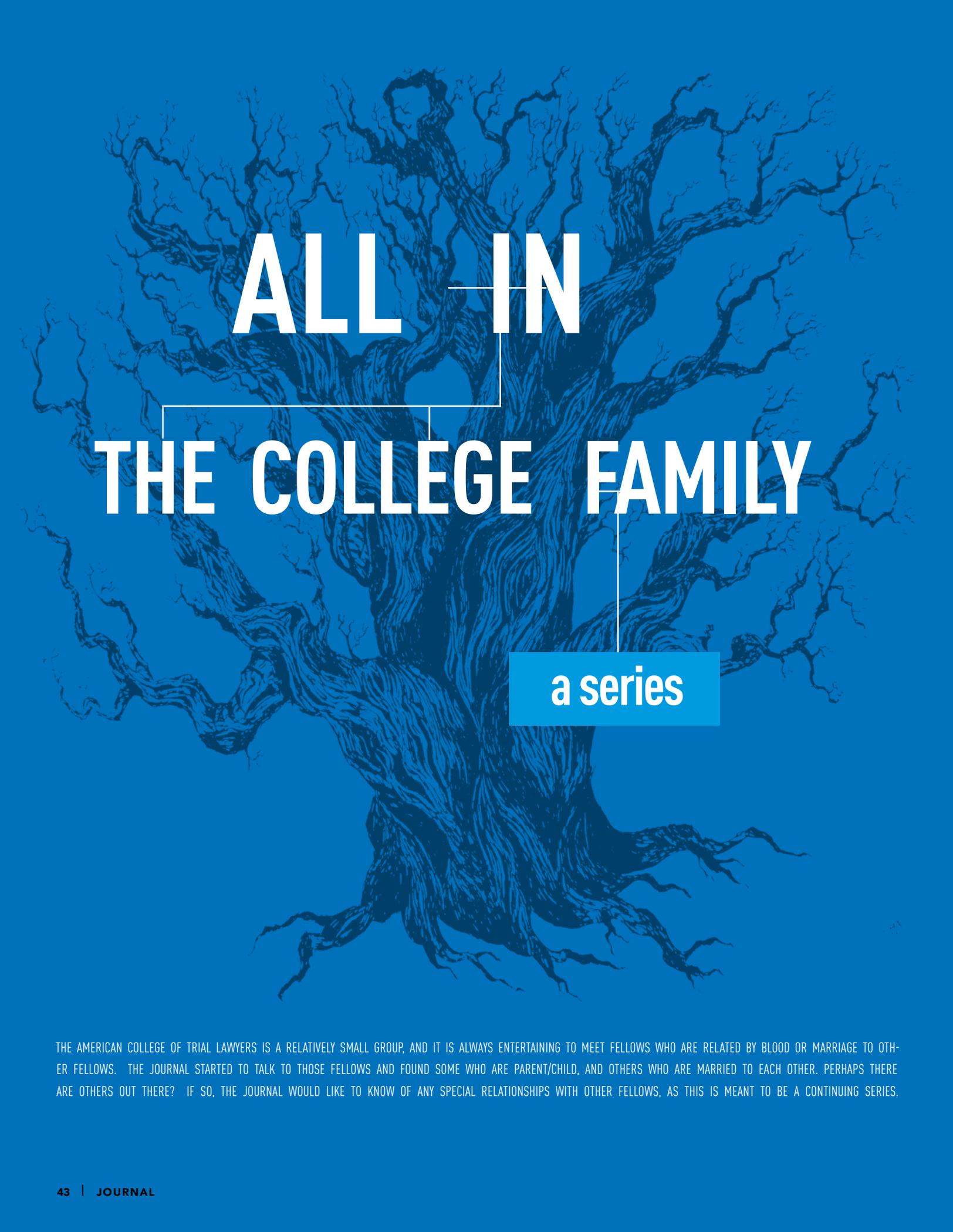
2022 ANNUAL MEETING ♦ ITALY

Rome Cavalieri Hotel, A Waldorf Astoria Resort



SAVE
THE
DATE





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.

LAUREN E. HANDLER – DAVID R. KOTT

Lauren Handler ('98) and David Kott ('01) each count induction into the American College of Trial Lawyers as the proudest moment of their legal careers. They consider Fellowship in the College as the crowning glories to illustrative trial careers and describe sitting down at College meetings with what seem to be perfectly normal people, only to discover that the attorney standing in line for the bus with you has had only one client for the past year, the President of the United States. Or to be seated next to Ralph Lancaster, whose experience is jaw-dropping, and says Lauren in awe, "we're in the same organization." Until the recent pandemic, they rarely missed a meeting – either regional or national.

Lauren and David were introduced on a blind date set up by a mutual friend in September 1978, and they married just two years later, in August 1980. Despite both practicing in New Jersey (Lauren in Morristown and David in Newark), and despite Lauren's practice primarily representing plaintiffs and David's practice focused entirely on product liability defense, they had no real conflicts as trial attorneys.

Not that they are entirely similar – one is a Democrat, and one is a Republican. They do have some differing viewpoints, but they have agreed from time to time simply NOT to discuss a given topic, such as the Senate hearings on Justice Kavanaugh's nomination to the United States Supreme Court.

David graduated from Rutgers Law School in Camden, N.J. in 1977, and served as a law clerk to New Jersey Supreme Court Justice Robert Clifford. That may have been his first

brush with the College, as Justice Clifford was also a Fellow. After his clerkship, David began working at McCarter & English in its Newark office, when the entire firm consisted of about 50 lawyers; it has now grown to 400 attorneys with multiple offices.

Lauren attended George Washington University Law School in Washington D.C., graduating in 1978. She joined Porzio, Bromberg & Newman, P.C., where she remained



until her 2010 retirement. She defended a number of high profile pharmaceutical and medical device malfunction claims before she began handling plaintiff's medical malpractice claims. The timing of her entry into this line of defense work was propitious, as many of the devices at issue were "women's" devices, such as IUD's and breast implants. Savvy in-house counsel recognized the value of having a woman serve as lead counsel in the defense of the claims; Lauren was wisely selected and as a result, gained experience and a reputation as an able and knowledgeable advocate in an age when many women were still working as second chair in other types of cases. She credits those experiences with her nomination (and invitation) to Fellowship. She was the first woman Fellow from New Jersey and found that only a few inductees at each meeting were women; there is still a long way to go, but Lauren happily notes that the ratio has improved over the years.

I asked Lauren why David is a great lawyer. She said he is very focused, with common sense. He figures out his defense early in the case and focuses on that. He is not one bit bombastic or loud, no showmanship, just unbelievably competent. She also describes his amazing memory and said he never takes any notes to the podium for any facet of a trial or appellate argument.

David calls his lack of notes a bar trick, because although it looks extemporaneous, it is not so in any fashion. It is just the result of practice, practice, practice. He said he often will be practicing an examination as he drives and will completely miss his exit. Once he was practicing his opening statement

Lauren E. Handler, Lawyer, Is Fiancée

Dr. and Mrs. Archie Handler of Passaic, N.J., have announced the engagement of their daughter, Lauren Eve Handler, to David Russell Kott, son of Dr. Maurice G. Kott of Trenton and the late Ruth Shulman Kott. An August wedding is planned.

Miss Handler is an associate with the Morristown, N.J., law firm of Porzio & Bromberg. She was graduated from Tufts University and the National Law Center of George Washington University. The bride-to-be spent her junior year studying in France under the Sweet Briar College Program Abroad.

Mr. Kott is an associate with the Newark law firm of McCarter & English. He was graduated from American University and the Rutgers University Law School. He served as law clerk to Associate Justice Robert L. Clifford of the Supreme Court of New Jersey.

Dr. Handler is an internist in Passaic. Dr. Kott is director of the division of mental retardation of the New Jersey Department of Human Services.

as he drove to the courthouse when he looked up to see some school children laughing and pointing fingers at the guy who was talking to himself.

David describes Lauren's greatest asset as her absolute compassion. She is smart, always prepared, and always uses her common sense. Lauren describes herself as a "very nervous" trial lawyer. Despite her experience and history, she sweats out the details. She recalls one early plaintiff's case, a very difficult trial, when she found herself in a panic during a break while waiting to cross examine the defense infectious disease expert. She started to hyperventilate. Opposing counsel saw that she was having issues and came over to see how she was doing. He then asked the defense expert to examine her. The expert did and found her pulse racing, but told her it was just nerves and that she needed to take a few deep breaths. Lauren says she doesn't know whether one's adversaries are always so kind. She's happy to report her nerves never (visibly) got the best of her in court again. She attributes her nerves in that trial (and the kindness of defense counsel) to the fact that two of the three opposing attorneys were Fellows in the College.

Both David and Lauren have been active in the College. David currently serves as a Trustee of the ACTL Foundation; he chaired the Adjunct Fellowship Committee for a number of years and was on the National Moot Court Competition Committee (often judging the final competition rounds in New York City). Lauren has served on the Admission to Fellowship Committee, the Griffin Bell Award for Courageous Advocacy Committee, and chaired the Legal Ethics and Professionalism Committee. She was one of the lawyer Fellows appointed to the Canada/U.S. Legal Exchange in 2007, which she describes as a "wonderful opportunity to have intimate conversations with fascinating legal scholars."

She has also served as the New Jersey State Chair.

Neither has had time for a lot of hobbies, although they loved going to movies pre-Covid, and Lauren reads voraciously. She is also an expert at solving crossword puzzles. Both are/were news junkies until, they say, politics became too pervasive and too disruptive to a normal thought pattern. Lauren became very active in the Covid-vaccination process, getting up at midnight and then at 4 a.m. to log onto pharmacy sites in order to make appointments for friends and family. She eventually also made appointments for over 40 strangers who were seeking help through a local N.J. COVID-19 Vaccination Information Facebook page.

David gained much of his legal experience in product liability defense, when, as a young lawyer, he would be tasked with travel to faraway states to help defend product cases with gray-haired local counsel. He describes it as a fantastic opportunity, because he could watch local counsel handle the bulk of the case while his task was to examine and cross examine all of the product experts. David thus adding to each case in a meaningful way, while still being able to learn the nuts and bolts of trial work by watching great lawyers at work.

The two talk about law incessantly and have always read and commented upon each other's briefs. Lauren says David's knowledge of product liability law is scary (she called him a human encyclopedia, as he might, in mid-conversation, suggest she look at footnote 4 of some opinion). They describe the 41,000 active member New Jersey bar as "small" because everyone knows everybody, or at least their uncle, cousin or niece who is working at some friend's firm.

Lauren and David have two children - Emily and Adam. Neither child wanted to be a lawyer after seeing how much time their parents spent on what the children thought of as "homework."

Lauren recalls one weekend during trial when she was working on a closing statement. Emily came in and wanted to talk. Lauren said, "I can't do this now." Emily responded, "is HE more important than I?" The attempted guilt trip didn't take, as Lauren responded that, "right this second, what I am doing for him is more important than anything." But despite the attempted inflictions of guilt, their parents' work ethic apparently rubbed off. Emily became a pediatrician and Adam is a consultant for Goldman Sachs.

Lauren's most memorable - and gratifying cases - were the ones where she was able to obtain a sizable verdict or settlement for her injured clients. (In contrast, David deadpans that his practice focuses on keeping money away from widows and children). Lauren recalls the trial of one bad baby case, when the evidentiary portion ended on a Friday afternoon, with closings and instructions scheduled for Monday. Late Friday night, she was able to settle the case with opposing counsel. When they advised the judge about the settlement on Monday morning, he demanded to know why they hadn't called him since he had spent the entire weekend finalizing the jury charge. Lauren asked if she could just be honest with him: "Judge, I just settled a case for \$3 million. I truly didn't give a single thought to you all weekend." Luckily, the judge laughed.

Lauren also recalls the first three to five years of practice when she would head to depositions with her litigation bag in tow. Without fail, when she arrived, she would be asked if she was the court reporter and directed to a room to do her set up. But by the end of her career, she would be on trial teams, meeting with clients and then going to court, where all members of the trial teams, all clients, and all judges, were women. A sea change. She treasures being part of that change in society.

*Carey Matovich
Billings, MT*

AWARDS & HONORS



John R. Wester, Chair of the Judicial Independence Committee, was recently honored as the 13th recipient of The Advocate’s Award by the North Carolina Bar Association’s Litigation Section. The award is presented as merited, and not annually, to attorneys deemed as “superstars” of the section and the legal profession.

The Advocate’s Award honors litigators who demonstrate high ethical standards, great courtroom skill and a commitment to exemplary service to their clients. Recipients are also chosen for their pro bono and community service while maintaining a balance in their professional and personal life.

Wester grew up in Rockingham, North Carolina and graduated from the University of North Carolina at Chapel Hill, where he was a Morehead Scholar, and Duke University School of Law. Wester has spent his entire career with Robinson, Bradshaw & Hinson and served as president of the North Carolina Bar Association and North Carolina Bar Foundation in 2009-10.



Past President Douglas R. Young was presented with the Judge Learned Hand Award by the American Jewish Committee (AJC), San Francisco virtually this past May. Established in 1964, The Judge Learned Hand Award honors members of the legal profession who have contributed meaningfully to the advancement of equality and who are dedicated to civic, philanthropic and humanitarian efforts.

AJC exists to advocate for democratic values throughout the world by promoting tolerance, diplomacy and civil rights. The Judge Learned Hand Award is presented in memory of Judge Billings Learned Hand, a senior judge of the U.S. Court of Appeals, Second Circuit, from 1924 to 1951. The award is given to individuals who embody the principles of integrity, justice and fairness for which Judge Hand was known.

A *cum laude* graduate of Yale University and Berkeley Law School, where he was Executive Editor of the Law Review, Young specializes in White Collar defense and business litigation at Farella, Braun & Martel in San Francisco.





HERITAGE OF THE COLLEGE

Houston Gordon

HOUSTON GORDON WAS A TENNESSEE COUNTRY BOY THROWN INTO THE DEEP END OF THE POOL IN 1971 WHEN, AS A CAPTAIN IN THE U.S. ARMY JUDGE ADVOCATE GENERAL'S CORPS, HE WAS ASSIGNED TO REPRESENT LT. WILLIAM CALLEY IN THE INFAMOUS 1969 MY LAI MASSACRE CASE. HOUSTON WAS AWARE THAT THE REPRESENTATION WOULD FOREVER CHANGE HIS LIFE.

Houston has practiced law for nearly fifty years from his office in Covington. He describes his career by saying that, while he may not have always been right, he was always trying to do the right thing. That was true whether he was representing a prized Texas bull or defending multiple individuals charged with murder.

Houston and his wife Deborah, whom he describes as the answer to his many prayers, have raised three sons, the “Yankee” (Graduate of Dartmouth), the “Rebel” (Graduate of Mississippi State), and the “Granola” (Graduate of the University of Colorado).

Houston was born in 1946. His father was an agricultural extension agent for the State of Tennessee and his family moved often. When he graduated from Covington High School in 1964, his primary interest was basketball. He enrolled at the University of Tennessee in Knoxville with the hope of a college basketball career. Unfortunately, that was not to be. Houston recalls that he was the first person cut from the worst freshman basketball team in the history of the University.

Houston transferred to the University of Tennessee in Martin where he earned his undergraduate degree in 1968. He has been a generous and active alumnus, active enough that a campus museum has been named after him.

Following graduation, Houston enrolled at the University of Tennessee College of Law, graduating in 1971 with a law degree and an ROTC Commission. ROTC assigned him his MOS (Military Occupational Specialty) – Military Police. But an ROTC advisor told him he didn't look like he would be much of a policeman, so he ultimately applied for the JAG Corps.

THE MY LAI MASSACRE

On March 16, 1968, three platoons from Charlie Company, 1st Battalion, 20th Infantry Regiment, 11th Brigade descended upon Son My Village and its subdivision My Lai in the province of Quang Ngai in Vietnam. Expecting to find the 48th Battalion of the Viet Cong, the troops were ready to shoot to kill. But instead of Viet Cong, the U.S. soldiers found – and killed – civilians. The estimates of unarmed South Vietnamese killed ranged from 347 to 504. Children as young as twelve were killed, women were gang raped, and bodies were mutilated. Twenty-six soldiers were charged, twenty-five of whom were acquitted. The sole conviction was of 2nd Lt. William Laws Calley, Jr., who led the 1st Platoon. Calley was charged with killing 109 South Vietnamese civilians.

The trial started on November 17, 1970. Calley testified that, on the day before the killings, Charlie Company's commander, Capt. Ernest Medina, had made it clear that everyone in the village was Viet Cong and should be shot. Calley was convicted of murdering 22 civilians by a jury of six Army officers. He was sentenced to a life sentence at hard labor at Ft. Leavenworth, but in April 1971, after a groundswell of public reaction that the conviction was unfair, President Nixon ordered Calley be removed from prison and placed under house arrest at Fort Benning pending his appeal.

Houston was a freshly minted JAG officer assigned to oversee military appeals. Initially outraged at what had happened in My Lai, Houston soon learned Calley was 5'3" tall and weighed all of 109 pounds. He graduated from high school 667 out of a class of 732. It appeared to Houston that the government had singled Calley out, when in fact there was substantial responsibility in the ranks above Calley. Houston would later learn, when former White House Chief of Staff H.R. Haldeman's papers were released in 2006, that the Nixon administration's goal was to find a fall guy like Calley to take the blame.

Houston began work on the appeal. There was a 5,000-page transcript to review and 1,500 pages of exhibits to be examined. Houston argued that the defense of command responsibility, which had been used in the Nuremberg and Tokyo

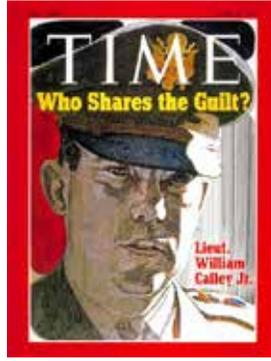
War Crimes tribunals, should have been available to Calley.

Not surprisingly, Houston was the subject of vicious press for his representation of Calley, especially from the Washington Post, which hurt him to the bone. He recalls one night, sitting at the Jefferson Memorial, thinking about what to do after a recent Washington Post editorial. He reflected that Jefferson had been accused of treason, debauchery, and cowardness – to which Jefferson reacted like a sphinx, showing no visible reaction. Houston determined to follow Jefferson's example and not respond.

The first appeal was to the United States Court of Military Review, which confirmed the conviction. The second appeal was to the United States Court of Military Appeals, where the decision was 2 to 1 to affirm.

Houston was due to be released from his Army duty in April 1974. Before his discharge, on weekends he worked with Calley's civilian lawyer, George Lattimer, on a writ of habeas corpus to the Federal Court in Georgia. On February 27, 1974, Federal Judge J. Robert Elliot granted a writ of habeas corpus and set Calley free on bail. Judge Elliot determined that Calley had been improperly convicted due to extensive pre-trial publicity, the military trial court's refusal to permit certain defense witnesses, and the refusal of the United States House of Representatives to release certain testimony about the massacre. As the government appealed the matter to the Fifth Circuit Court of Appeals, the Secretary of





the Army reviewed Calley's conviction and reduced his sentence to ten years. Under military regulations a prisoner is eligible for parole after serving one-third of their sentence.

By the summer of 1974, Houston was no longer in the Army, but he continued to assist Calley. On June 13, 1974, the United States Court of Appeals for the Fifth Circuit reversed the District Court's ruling and returned Calley to military custody. Calley's team of lawyers once again appealed to Judge Elliot. Judge Elliot again found that pretrial publicity, denial of defense witnesses and improperly drawn charges had denied Calley a fair trial and ordered him released. On September 25, 1974, the Fifth Circuit, sitting *en banc*, overturned the district court 8 to 5 and ordered Calley's conviction and sentence be reinstated. Because Calley had less than ten days to serve before his likely parole, the Army ultimately declined to incarcerate him for those remaining ten days.

Summarizing his years representing Calley, Houston says, "If I had not had this front row seat to history, I would have found it inconceivable that Calley alone would be held accountable for the massacre."

PRACTICING LAW IN COVINGTON TENNESSEE

In 1974, with his Army commitment satisfied, Houston considered practicing law in Washington, D.C., New York City, Chicago, or perhaps Atlanta. But before making a final decision he

returned to Covington. One morning he was at the Post Office to pick up a package for his mother and was greeted by Charles Smith, President of the Tipton County Farmers' Bank. Smith asked what his intentions were. Houston described the big city opportunities he was considering. Smith countered that Houston should instead hang out a shingle to practice law in Covington. Houston said he had no funds. Smith quickly responded he would loan him \$10,000 on a signature note. That negotiation successfully concluded, Houston began his law practice in Covington, thirty-eight miles North of Memphis.

Houston describes his career as "quite a ride." He describes his clientele as the "left out" and "left behind." He has never done any advertising. He has no website. He is not involved with social media, which he describes as "clutter." Not surprisingly, he rarely deals with email.

Houston believes that if you are a trial lawyer, you can handle any matter. He has always maintained a busy criminal practice, both white and blue collar; he has defended countless individuals charged with murder. He has always had a busy civil practice. He had a three and one-half-month civil trial; he has regularly represented children who have been the subject of catastrophic injuries, sometimes on a contingency fee basis and sometimes pro bono. He has not been afraid to take on major defendants from his small office in Covington. Throughout his entire life

he has been involved in the advocacy of civil rights claims.

A tragic event occurred in Mississippi, when a young black man driving a tractor was killed when a bridge gave out under the weight of the tractor. Not surprisingly, Houston claimed negligence, but additionally argued a civil rights violation because the Mississippi governmental representatives had determined that repairing the bridge was unnecessary because it was only used by non-white people.

In 2004, Cyntoia Brown was a sixteen-year-old living in Nashville. Her biological mother had consumed alcohol during her pregnancy, leaving Cyntoia with fetal alcohol spectrum disorder. She ran away from her adoptive home and moved in with a man who trafficked her in involuntary prostitution, in addition to beating and raping her on multiple occasions.

On the night of August 6, 2004, the man handed Cyntoia off to a 43-year-old man named John Michael Allen, who drove Cyntoia to his house. She was not allowed to leave. Allen showed off the many guns that he had. Cyntoia came to believe that she was going to be murdered, and somehow managed to fatally shoot Allen in the back of the head. Cyntoia was arrested and tried in adult court, where she was found guilty of murder and given a life sentence with no eligibility of parole for fifty years.

While incarcerated at the Tennessee State Women's Prison, she did all that



she could to improve her situation. By 2019, she secured a bachelor's degree with a 4.0 grade average from Lipscomb University.

Houston became aware of Cyntoia's case and vigorously, but unsuccessfully, sought post-trial relief. He appeared before the Tennessee Pardon Board with substantial evidence, but parole was denied. Finally, Houston and others were able to secure commutation from Governor Bill Hasslum on January 7, 2019. Cyntoia was released in August 2019. Cyntoia's story and Houston's involvement are documented in the 2020 movie *Murder to Mercy: The Cyntoia Brown Story*, available on Netflix.

MENTORING AND THE AMERICAN COLLEGE OF TRIAL LAWYERS

Mentoring has always played a major role in Houston's professional life. Houston gives credit to his former law partner, Thomas D. Forrester, for always being available for helpful advice. Houston also gives credit to the opposing counsel he faced in the courtroom. He studied those skilled in the craft of trial presentation. After a trial, he would always approach his opponent. "Tell me what I did wrong." Over the years Houston has had a number of young lawyers associated with him. He

humbly says they went on to bigger and better places. Another partner, Ashley Shaw, talks about the importance of being mentored by Houston:

I was . . . employed as an associate attorney in a rural solo practice firm owned by J. Houston Gordon and had only been graduated from law school for about two years. Mr. Gordon was a trial lawyer. I thought that meant litigator. What it actually meant was, Mr. Gordon always in a dark suit and a red tie, his grey hair freshly cut and shoes shined, advocated for his clients in a professional, courteous, but straight forward way, both in and out of the courtroom. With lawyers, courts, mediators, clients, witnesses, receptionists, waitresses, and parking attendants – he looked them in the eye when he spoke to them, took time to ask how their day was going, and meant what he said. He didn't speak in unnecessary words, ask unnecessary questions, or make unnecessary objections. He prepared his cases with intention and a Laser focus that was intimidating

Houston was inducted into the American College of Trial Lawyers at the 1993 Annual Meeting in Washington, D.C. At the event, he shared an elevator with Judge (and Past President) **Griffin Bell**.

Judge Bell had been one of the dissenting judges in the Fifth Circuit Opinion regarding the Calley case. After a casual conversation, Judge Bell announced to Houston, "You belong in the College with us." A conversation never forgotten by Houston.

Houston has always practiced in perfect accord with the College's Code of Pretrial and Trial Conduct. Over the years, he has lived by three rules: (1) Don't fudge anything, ever. (2) It's not your case; empathy with your clients' situation is required. (3) Stay humble – don't strut.

BEYOND THE PRACTICE OF LAW

Houston's life has not been limited to the law. He is the author of a 2011 thriller – *The Plains of Abraham* – which was received with positive reviews, including an Amazon review exclaiming, "Move over John Grisham." Houston has just finished a long-awaited historical narrative about the Vietnam War and the My Lai Massacre entitled *Deception, Arrogancy, And Blind Obedience*.

Houston continues to practice law, but he has decided he is not going to let judges control his schedule anymore.

Ronald H. McLean
Fargo, ND1 ■

1 This article is based, in large part, on interviews of Houston by his friend, Charles Bone, and by **Regent John Day**. John said it best when he said it made him proud to be a lawyer just knowing Houston Gordon.

WAR STORIES FROM FELLOWS: SHOULD I BUY THE PLAQUE?

A BIT AGO, I RECEIVED A LETTER FROM AN ASSOCIATION OF FAMILY LAW ATTORNEYS ADVISING THAT I HAD BEEN SELECTED AS ONE OF THE “10 BEST FAMILY LAW ATTORNEYS IN PENNSYLVANIA.” THE LETTER CAME AS SOMETHING OF A SURPRISE, SINCE I HAVE HANDLED ONLY ONE DIVORCE CASE IN MY ENTIRE CAREER. AT FIRST, I THOUGHT IT WAS A MISTAKE. BUT THEN I SAW THAT “THE CLIENT’S SATISFACTION [WAS] OF PARAMOUNT IMPORTANCE” TO MY SELECTION, WHICH PROMPTED SECOND THOUGHTS.

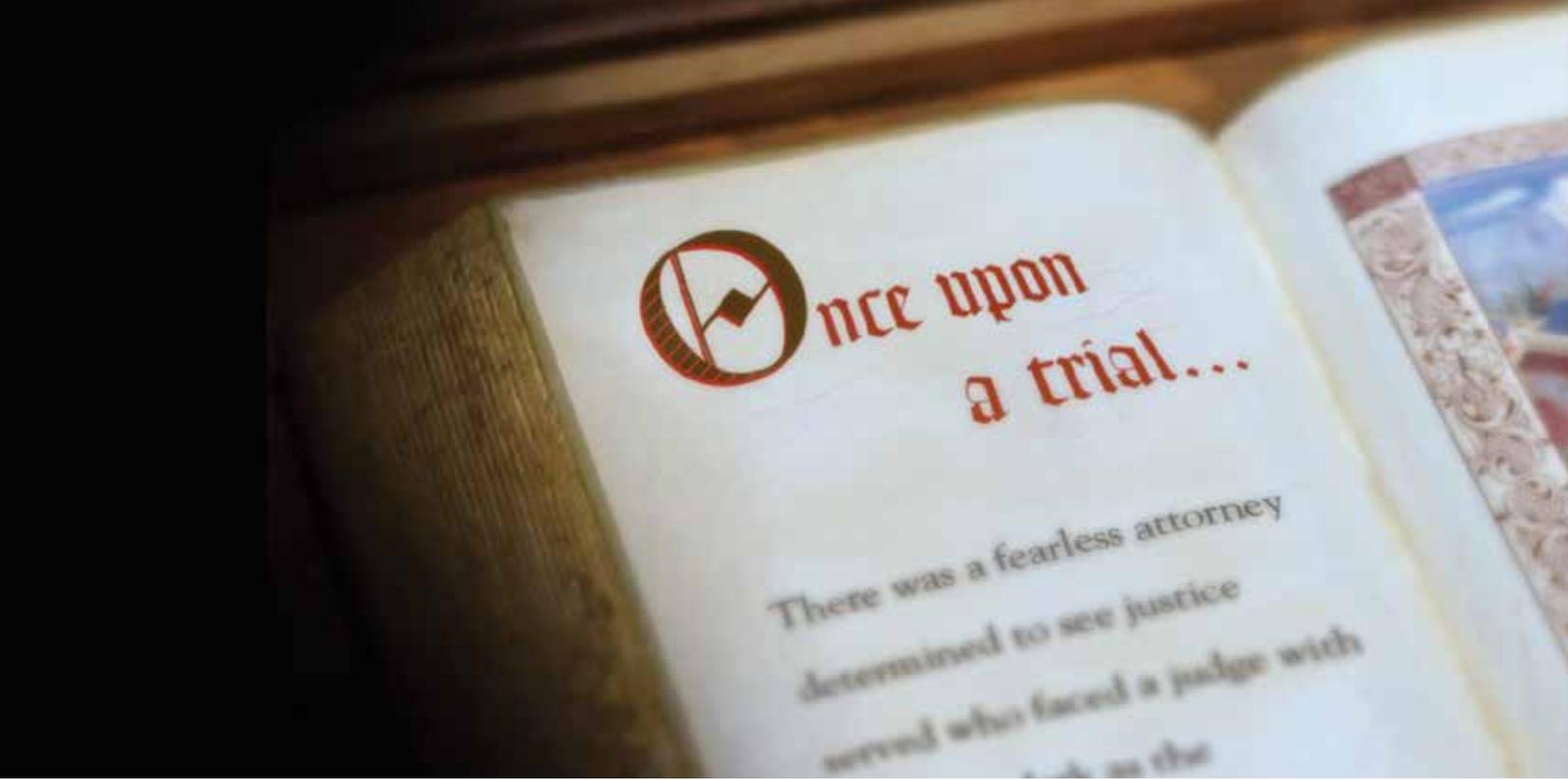
My one and only family law case was an uncontested divorce case circa 1970 for a fellow named, well, let’s call him Charles Krump. It appears that this association had tracked down Mr. Krump and confirmed that he was completely satisfied, thereby leading to my selection. Indeed, the letter from the association in question assures that I “have an impeccable Client Satisfaction rating.” Meaning, I guess, that I am 1 for 1.

More about Krump’s case. Sometime around 1965, Krump connected with a woman over the course of a dissolute weekend in Virginia Beach. They hit it off. On Monday, they got married. Seemed like a good idea at the time. Three weeks later, Krump and his new wife jointly decided that this had been a mistake, so they went their separate ways. About five years later, Krump became engaged to another woman and wanted to get married for real. But he had never divorced his weekend wife. So, I filed a petition for divorce on his behalf.

The problem was that Pennsylvania had not yet switched to a no-fault system and there were

only a few grounds for divorce, stupidity not being among them. There was adultery. Though it seemed highly likely that Krump’s spouse had committed that offense within the intervening five years, Krump had to show that he was the “innocent and injured spouse” – that is, he had to be able to testify that he himself had not committed the same offense. A non-starter. Then there was desertion. But the two parties had gone their separate ways amicably; nobody had deserted anybody. Finally, there was the catchall: “indignities,” which was the ground upon which we proceeded. Usually, a case based upon indignities would involve proving countless small acts of unkindness occurring over many years. The kind of thing that any happily married man or woman could easily prove. Still, if you did not in fact make out a case, the Judge would deny the petition for divorce, even though uncontested.

Krump’s marriage had lasted only three weeks. How many acts of indignity can one honeymooner inflict upon the other in such a short period? Before the hearing, I did my best to prompt Krump



to recall events during that three-week blur. Our evidence was so skimpy that I went into the hearing with genuine concern that I was going to lose an uncontested case. Turned out that my best friend was the court reporter, who knew the law and who had sat through countless hearings of this kind. Whenever Krump said anything that sounded remotely like an indignity, the reporter would nod his head vigorously, thereby prompting Krump to embellish his tale of woe with facts that I had never heard while preparing him for the hearing. The reporter later became a lawyer and then a very sensible Common Pleas Court Judge.

The divorce was granted and the client completely satisfied, thus leading to my apparently well-deserved albeit belated award.

I'm still up in the air about whether to buy the plaque.

*Dennis R. Suplee
Philadelphia, PA*



FELLOWS TO THE BENCH

LOUIS CHARETTE was appointed as a Justice of the Superior Court of Quebec Palais de Justice on July 23, 2021. Justice Charette earned a B.C.L. and an LL.B. from McGill University in 1994, after obtaining a B.A. from Western University in 1990. He has been a member of the Barreau du Québec since 1995 and was inducted into the College in 2017. He has been actively involved in the legal community, including the Canadian Bar Association, and currently lives in Montréal with his spouse, Mario Lalancette.

CHRISTY COMSTOCK was appointed as a Magistrate Judge for the U.S. District Court, Western District of Arkansas, on May 1, 2021. Judge Comstock was formerly a partner at Wales & Comstock in Fayetteville, Arkansas, where her primary practice was in transportation related litigation. In 2014, she founded the Arkansas Trucking Seminar, which is now one of the largest and most highly regarded events in the world of transportation. Judge Comstock was inducted into the College in 2020.

MICHAEL J. GUSTAFSON served as an Assistant U.S. Attorney for the District of Columbia before his appointment as a Judge on the Connecticut Superior Court in June 2021. Judge Gustafson specialized in violent crime prosecutions and previously served as First Assistant U. S. Attorney and Chief of the Criminal Division. After graduating from Amherst College, he earned his JD from the University of Connecticut School of Law. Judge Gustafson currently resides in New Haven and was inducted into the College in March 2021.

PETER KALICHMAN, formerly a judge of the Superior Court of Quebec for the district of Montréal, was appointed to the Court of Appeal of Quebec on April 27, 2021. Justice Kalichman earned a B.A. from McGill University before attending the Université de Montréal, where he earned his law degree. Before his appointment to the Superior Court in 2017, Justice Kalichman was a partner at Irving Mitchell Kalichman LLP, a Montreal based firm specializing in litigation. Justice Kalichman has been a Fellow since 2013.

JAMES F. MARTEMUCCI, after thirty years of experience as a civil and criminal attorney, was appointed as a Judge of the Maine District Court in June 2021. Judge Martemucci graduated *magna cum laude* from King's College and received his JD from Seton Hall University. During his time at Germani Hill & Hayes, he specialized in medical malpractice defense and also successfully defended several high-profile criminal cases. Judge Martemucci was inducted into the College in 2014. He currently resides in Springvale with his wife, Maria.

JOHN G. PRATHER, after practicing law in Kentucky for 50 years, received the call to serve as a Judge on the Pulaski County Court of Justice in April 2021. After receiving his JD from the University of Kentucky, J. David Rosenberg College of Law, Judge Prather focused on civil litigation at his firm, The Law Offices of John G. Prather. Inducted as a Fellow in 1996, Judge Prather resides in Somerset, Kentucky with his wife, Hilma.

REGINA M. RODRIGUEZ was confirmed as Judge for the U.S. District Court, District of Colorado on June 8, 2021, becoming the second female, Hispanic judge of the court. Prior to her nomination, Judge Rodriguez was a partner with Wilmer Cutler Pickering Hale and Dorr LLP in Denver, Colorado, handling complex litigation and government investigations. Judge Rodriguez became a Fellow in 2018.

CHARLES F. WEBBER was appointed as a Judge of the First Judicial District of Minnesota on April 6, 2021. Prior to his appointment, Judge Webber was a partner at Faegre Drinker Biddle & Reath LLP, specializing in trial and appellate cases. He has represented clients in a wide range of litigation in state and federal courts. Judge Webber was inducted into the College in 2010. He currently resides in Shakopee, Minnesota with his wife, Denise.

FOUNDATION UPDATE — SOMETIMES THE TIME IS JUST RIGHT...

THIRTY-FIVE OR SO YEARS AGO, A TELEVISION ACTION SERIES CALLED *THE A-TEAM* SPAWNED THE POPULAR EXPRESSION, QUIPPED BY GEORGE PEPPARD IN EVERY EPISODE, "I LOVE IT WHEN A PLAN COMES TOGETHER."





That phrase came to mind when the ACTL Foundation received an extraordinary grant application from “Just the Beginning – A Pipeline Organization” (“JTB”). JTB, founded long ago by the Hon. Ann Claire Williams (Ret.) of the Seventh Circuit, is a nationwide paid summer judicial internship program targeted at underserved law students. It began providing free education programming with mentorship opportunities twenty-nine years ago. In 2010, JTB joined forces with the Judicial Resources Committee of the United States Judicial Conference to establish the Summer Judicial Internship Diversity (SJID) Project. The “ask” to the Foundation in the grant application was straight-forward: To fund stipends at the federal minimum wage level for first and second year law students from underrepresented groups, which would enable those students to work as Summer Judicial Interns in the SJID Project. Without the stipend, many worthy minority and underrepresented students simply would not be able to afford the travel, living, and technology costs associated with relocating to the venues of the judges with whom they would be matched. With the stipend, the opportunity to work with an experienced federal or state judge would become a viable and desirable option.

The goals of the SJID Project could not be more closely aligned with those of the ACTL. The College’s President, **Rodney Acker**, recently announced the ACTL’s

commitment to mentoring young lawyers, against the backdrop of the College’s long-standing commitment to diversity in a trial bar that embraces excellence, civility and ethical conduct. And, there we were, with a program presented to us on a silver platter that brought together all of the threads of the ACTL’s goals: Mentoring those entering trial practice, training them to excel in the courtroom, nurturing civility and ethical behavior, and striving to achieve a diverse trial bar that mirrored the communities that its lawyers served.

The proposal of a partnership between JTB and the ACTL truly constituted a plan coming together; and it was doing so at precisely the right time, not only in the evolving goals of the ACTL, but also in our belatedly awakening national conscience.

In the summer of 2021, JTB placed 112 interns with 104 judges across the country. But, JTB did not have a funding commitment for the SJID Program for 2022; and, we learned from the grant application, the ACTL Foundation grant would be critical to sustaining the program. In addition, the prestige of the ACTL was expected to offer leverage with other potential funding from law firm, corporate, and foundation prospects. It was abundantly apparent that the grant, which we made at the \$75,000 level with an invitation to re-apply in the next few years for greater

continuity, would go a long way toward ensuring the availability of this invaluable education for more than a hundred law students annually.

The upside from this partnership for the ACTL and for each of us as Fellows exceeds even the substantial benefit to JTB and its SJID Project. We receive the educational value of a judicial internship for young lawyers, to help mold them into the ethical, civil, and excellent trial lawyers whom we hope will one day join our ranks as Fellows, but also join us as colleagues in our law firms, agencies, and corporations. We as Fellows cannot provide that experience ourselves. We receive the gift of increased diversity, which benefits our own work environments while enhancing the essential bond between the trial bar and the communities that we serve. Left to our own devices, we have struggled in our efforts to reach the level of diversity in the trial bar that we desire and, indeed, need. When we provide the funding and the outstanding courtroom role models, and when JTB provides the judicial mentors and inside view of the judicial system, the College and the JTB achieve together what neither of us could alone.

Of course, the Foundation seized the moment! I hope that you agree that we chose wisely.

Joan A. Lukey
ACTL Foundation President

IN MEMORIAM

Since our last Issue, we have learned of the passing of thirty Fellows. Only one of those reportedly succumbed to COVID. Two were judges. More than half of them served their country in uniform, four in World War II.



They ranged in age from sixty-seven – way too young – to ninety-eight – still too soon. They were pilots, soccer and lacrosse players, musicians and martial arts masters. One was an FBI agent; another a Capitol Police officer. They had lives, interesting lives. Not one of them died alone; they were all surrounded by family at the end. They all died too young. We will miss them all. But remember them, as General George Patton said: do not grieve that these men died; rejoice that they lived!



You will note that some of these memoriams are embarrassingly 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.

Theodore W. Anderson, '77, passed away on August 1, 2016, fifteen days short of his ninetieth birthday. We are five years late in remembering him because no one told us at the time, and we are truly sorry about that. After graduating from high school, Ted enrolled in the U.S. Navy in 1944 at age 18. Following his active service, Ted remained a Naval Reservist for twenty-nine years. During those years, he spent a year at the University of Southern California and eventually earned an Electrical Engineering Degree from the University of Illinois. He found his initial job as an engineer boring, so he pursued a legal degree from DePaul University in Chicago. He then spent more than fifty years enjoying a career as an Intellectual Property Attorney. After several decades in Chicago, he moved his home and practice to Southern Wisconsin; he loved his work, and his life, filled with cameras, pets, and flying his Bellanca Viking. Mostly he loved his family – his wife of nearly forty years, Helen, and their children and grandchildren.



Kenneth G. Andres, Jr., '11, died at home in New Jersey on June 24, 2021, at age sixty-seven. A graduate of Swarthmore College and Capital Law School, Ken played baseball, basketball and soccer but mostly soccer. He was the fullback on the Swarthmore 1974 men's soccer team which advanced all the way to the NCAA Division III National Championship game and became the first program in Swarthmore history to compete for an NCAA title.



He then went on to referee soccer at the college level, served in many National Intercollegiate Soccer Official Association (NISOA) leadership roles and most recently as the NCAA Secretary Rules Editor. He made time to volunteer as a kickers coach for the Widener University football team. Ken was a successful personal injury attorney and an adjunct professor at Drexel Law University, where he taught trial advocacy. Ken enjoyed spending weekends on the Chesapeake sailing with his wife and high school sweetheart, Karen Andres.

Robert Perry Bartlett, Jr., '83, was eighty-three when he passed on April 16, 2021. When Bob was born, his father found religion. Literally. Bob's father had been a High School Principal, biology teacher, and a football and basketball coach; but when Bob was born, his father left all of that to enter Divinity School and become a Baptist minister. Bob attended Denison University, where his grandfather, father and uncle had studied. Bob was in the Air Force ROTC and on the Denison Lacrosse team. He started law school at the University of Virginia, where he met his future wife, Paige, who was attending nearby Mary Washington College in Fredericksburg. That settled, Bob and Paige moved to Columbus where he graduated from The Ohio State University School of Law in 1963. During his fifty years of practice, Bob specialized in First Amendment, libel and slander defense, right of privacy, access to news, Freedom of Information Act and commercial

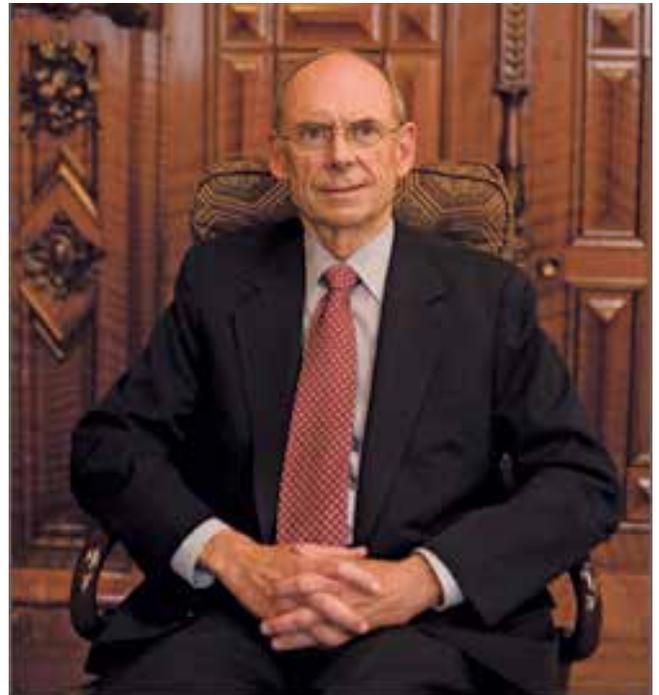
and product liability defense litigation. He was Chief Counsel for the Dayton Daily News, WHIO TV-7, Springfield News-Sun, Middletown Journal, Hamilton Journal News and other Cox Media Group Ohio papers and radio stations. His legal efforts helped the Dayton Daily News win the 1998 Pulitzer Prize for National Reporting. Bob is survived by his longtime best friend and companion, Barbara Sager. He is also survived by his ex-wife, Paige, four children and six grandchildren.

Christopher C. Fallon, Jr., '04, passed peacefully on May 13, 2021, at the age of seventy-two, survived by his wife, Fi Sarhangi Fallon, five children and numerous grandchildren. When Chris arrived at the Syracuse University College of Law in the fall of 1970, he didn't know what kind of law he wanted to practice. He graduated *cum laude* in just two and a half years. He was "number seventeen" upon his arrival at the law firm that, by the time of his death, had grown to more than 650 lawyers. Chris was a driving force in the Philadelphia Volunteers for the Indigent Program ("VIP"). The tiny 501(c)(3) began as a fledgling organization in its early years, doing what it could to serve the less fortunate in the Philadelphia community. Chris ultimately became its third president. While serving as President of VIP, he noticed something that needed more attention. "It became clear to me that the streets of Philadelphia were becoming overwhelmed with homeless people," he said. So, together with his fellow board members at VIP, he helped to create the Homeless Advocacy Project (HAP).



Chris, who became HAP's second president, worked with a team of attorneys to reduce the homeless population through helping them secure social security benefits, veterans benefits and affordable housing, all within the four corners of the law. Chris' advice for young lawyers was "Join a church or synagogue, a volunteer board, a sport, do pro bono work, stay in touch with your classmates. That's what makes you a better lawyer, a better member of the community."

Judge Raymond Corley Fisher, '96, died at age eighty on February 29, 2020. Judge Fisher graduated from UC Santa Barbara in 1961 with a bachelor's degree in political science. After Stanford Law School, where he was President of the Law Review, Judge Fisher clerked for Judge J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit and Justice William J. Brennan Jr. at the United States Supreme Court.



Judge Fisher was in private practice until 1997, when he was appointed as Associate Attorney General of the United States, the third-ranking official at the Department of Justice. Two years later, he was appointed

to the 9th Circuit U.S. Court of Appeals. During his twenty years on the Court of Appeals, Judge Fisher wrote nearly 400 judicial opinions that included his decisions holding that the Constitution prohibits the prolonged civil detention of immigrants seeking relief in the federal courts, as well as his ruling that the use of affirmative action to desegregate public schools does not violate the Equal Protection Clause of the 14th Amendment. He wrote opinions that helped protect the rights of undocumented immigrants, upheld affirmative action in public schools and protected the rights of the press and public to witness executions. Judge Fisher was “unafraid to empathize with the plight of people who were underrepresented in our society,” said his colleague, Judge Kim McLane Wardlaw. Judge Fisher is survived by his wife, Nancy, two children and four grandchildren.

Thomas Dale Forrester, '13, died December 29, 2019, at age sixty-nine. Tom graduated from Austin Peay in 1972 and Tennessee College of Law, Memphis State University in 1975. He spent his entire legal career in Covington, Tennessee, watching it grow from about 6,000 to 8,859. First appointed in 2005, Tom served as Covington's City Attorney until his retirement in July 2016. Tom is survived by his wife, Kathy Fortner Forrester, three children and seven grandchildren.

William T. Gamble, '81, died November 13, 2017, age ninety, survived by his wife of eighteen years, Anna Dishner Bacon Gamble, three children, two stepdaughters and eleven grandchildren and step-grandchildren. Bill earned a B.S. in economics at the University of Chattanooga (UT Chattanooga) where he met his future wife, Frances. His studies were interrupted by Navy service in WWII. After service, he and Frances married, and he completed his undergraduate degree and attended Vanderbilt University School of Law, graduating in 1950

in the top 5% of his class. Bill's practice was general litigation, health care law, medical malpractice, and commercial real estate transactions. Bill was a prominent musician. Before settling in Kingsport, TN, he played regularly in top bands in Chattanooga and Nashville. For nearly forty years, he was the leader of “After Six,” a popular dance band which featured Bill on saxophone and clarinet. Bill served as the principal clarinetist with the Kingsport Symphony Orchestra. In 1968, Bill initiated “Jazz at the Fine Arts Center,” which presented about 200 free concerts featuring regional performers and national acts such as the Duke Ellington Orchestra, the Billy Taylor Trio, and the Buddy Rich Orchestra. As a singer, Bill was active with the Kingsport Community Chorus, Kingsport Symphony Chorus, Greenville Choral Society, Voices of the Mountains Chorus and the choir at First Presbyterian Church of Kingsport where he served as President, Trustee, Elder and Sunday school teacher. Bill performed at Carnegie Hall with Voices of the Mountains in 2006.



Alan J. Goldberg, '83, age ninety, died suddenly and unexpectedly on the golf course on June 24, 2021. Alan received his B.A. and JD from Syracuse University in 1953 and practiced in Syracuse for more than fifty years. He was a man of integrity, both inside the courtroom and out. He lived by the code “keep your word and respect your colleagues.” A kind and generous man, Alan loved (and told) a good joke, cars, golf, and skiing. What he loved most of all was his family: his wife of nearly seventy

years, Barbara, their daughters and grandson. One of his many friends remembered “Every time I dealt with Alan, I felt proud to be a lawyer. Alan was tough, courteous and compassionate. He had a great sense of the absurd and tempered his formidable skills with a well calibrated moral compass. His passing is a loss to our noble profession, but his legacy elevates the importance of our work as lawyers.”

L. James Gordon, '79, died June 17, 2021, a week after celebrating his seventy-fifth wedding anniversary with his wife, Jane. Jim was a member of the greatest generation, serving with the U.S. Army Air Force in the Central Pacific Theater during World War II. Jim served as a page in the U.S. House of Representatives in 1940. He earned his pilot's license at age seventeen in 1944. After the War, Jim earned his undergraduate degree at Denison University, Phi Beta Kappa, and was a 1953 graduate of Yale Law School, Order of the Coif. Jim practiced law for fifty-nine years in Ohio before retirement. He was active in community affairs, having served as a member and president of the Granville School District, president of the United Way of Licking County, president of the Granville Foundation, president of the Mental Health Association of Licking County, president of the Newark Kiwanis Club, and president of the Granville Rotary Club. Jim is survived by his wife, Jane B. Gordon, three children, three grandchildren and three great-grandchildren.



Richard Evans Guster, '78, died just two weeks shy of his ninety-second birthday on December 4, 2020, survived by his wife, Sharlee Staten Guster, with whom he had celebrated their sixty-fifth wedding anniversary, their two children and four grandchildren. Dick was noted for his dry wit and intellect, grace on the dance floor, hole-in-one golf prowess, and stature as the tall man who walked two Airedales every day. Dick graduated from Denison University in 1950 with a B.S. as well as a commission as a Second Lieutenant in the U.S. Marine Corps Reserve. Upon the outbreak of the Korean War, Dick was called to active duty and served two years, leaving service as a Captain. Dick earned his law degree at Case Western Reserve Law School, serving as a member of the National Moot Court Team, editor of the Law Review, and being named Student of the Year. Dick practiced in Akron from 1955 until his retirement in 1994. He was a past president of the Akron Bar Association Foundation and served as a trustee and general counsel for St. Thomas Hospital until its merger with Akron City Hospital to become Summa Health System, where he continued to serve as a director until elected Emeritus Director in 2005. Dick was a past president of Portage Country Club, where he and his son played in the Father/Son Golf Tournament fifty times in fifty-one years.

Paul M. Hanrahan, Sr. '77, passed on April 30, 2019, at age eighty-eight, after a brief illness. As a resident of Skaneateles, New York, for over fifty years, Paul was an active leader in almost every aspect of the town and community, but his priority was his family and his wife of sixty-three years, Rose. Music was a passion for Paul. He was a widely requested clarinet player, sitting in with many local bands, Dixieland sessions, and special events, including his children's weddings. Paul graduated from Le Moyne College in 1952 and received his law

degree from Syracuse University College of Law in 1955. Following his graduation, Paul joined the United States Navy, where he served as trial counsel in General Courts Martial and as an Admiral's Aide, stationed in Portsmouth, New Hampshire. During his long and distinguished career as a trial lawyer, Paul was long-standing counsel for St. Joseph's Hospital, the Roman Catholic Diocese of Syracuse and personal counsel to the Bishop. Paul was survived by Rose, four children, twelve grandchildren and one great-grandchild.

John G. Harkins, Jr., '76, passed on March 12, 2021, at the age of eighty-nine. John began law practice in 1958 and served the firm sequentially as an associate, partner, co-chairman and chairman until leaving in 1992. That year, he and a partner inaugurated their ideal practice, a small firm built on the principles of professional excellence, trust among partners and staff and no internal competition. John was particularly distinguished in antitrust and securities matters, and also handled significant malpractice cases for major law firms. John graduated from the University of Pennsylvania, *cum laude*, in 1953, entered the U.S. Army and served until his discharge in 1955. He entered the Penn School of Law, was editor-in-chief of the Law Review from 1957 to 1958, and graduated *summa cum laude*, Order of the Coif, in 1958. John served as a political science instructor at Penn from 1956 to 1958, a lecturer at the Law School and on the board of overseers for Penn Law from 1981 to 1995, a member of the advisory committee at the Institute for Law and Economics from 1981 to 2014, and he was a Penn Trustee from 1987 to 1997 and an emeritus trustee from 2005 until his death. John was a demanding but patient mentor, leading by example more than words. He showed young lawyers how he could take their legal research and craft an oral argument so eloquent and persuasive that even

his adversaries complimented him on his skill. One of John's colleagues, Alexander Kerr, summed up John this way: "He was a superb teacher, great mentor, and had the unique ability to make complex economic and business principles easily understood by clients, juries, and courts. Warm and charming, he brought a keen analytical mind and sound judgment to every task. He was a highly respected advisor on a wide variety of corporate issues. He was sought after by independent committees of corporate boards investigating alleged corporate wrongdoing. He counseled corporate officers and directors on their fiduciary duties and disclosure obligations. When he spoke, others listened."

Herbert F. Kolsby, '82, age ninety-five, passed on May 1, 2021. A graduate of Temple Law School in 1951, forty years later Herb helped create their nationally ranked Masters Program in Trial Advocacy, and he was honored by a Distinguished Lectureship there in his name. In 1993, he was the recipient of the prestigious Michael A. Musmanno Award—given annually to "the person best exemplifying the same high integrity, courage, and concern for human rights as exhibited by the late Justice." Herb was for five decades a fierce advocate for the common man and woman, by holding entities like drug companies and auto manufacturers accountable for their errors. He is among the first attorneys responsible for bringing to light the dangers of Diethylstilbestrol (DES) and the Dalkon Shield. Herb was married for seventy-two years to the late Hermine Wilson Kolsby, his childhood sweetheart. Philadelphia Magazine called him "the best orator in the city." He was an incredibly charming and funny man with a repertoire of several thousand jokes. He was always a delightful conversationalist. He never lost his power to articulate and was as sharp just before his death as he had been in his prime. He is survived by his three children, five grandchildren and two great-grandsons.

Thomas A. Livingston, '84, was eighty-eight when he died on March 25, 2017. Tom was recognized as the go-to criminal defense attorney in Pittsburgh for decades, known for eloquent closing arguments. Judge Jeffrey A. Manning was a young federal prosecutor when he went up against Tom. Judge Manning recalls perfectly tailored suits, French cuffs, fancy cuff links, and spell-binding closings. "He could quote Karl Menninger and Yogi Berra in the same sentence," Judge Manning said. Tom represented mobsters, county detectives, local and state officials and magistrate judges. He also ran for mayor of the city of Pittsburgh in 1973. Tom was survived by five children and seven grandchildren.

Greer Edwin Lockhart, '75, passed away peacefully on January 29, 2021, just short of his ninety-second birthday. Greer's father, grandfather and great-grandfather Samuel were all firemen in the Minneapolis Fire Department. Greer was the first in his family to obtain a college degree, graduating from the University of Minnesota in 1951. He went on to get his law degree from the University of Minnesota Law School in 1953. After a short stint in the military, Greer began a practice in which he tried hundreds of cases, mostly defending claims of medical malpractice and products liability. In the 1970's, when the Rev. Dr. Jeanette Piccard became one of the first women ordained as an Episcopal priest, Greer successfully defended her in an Ecclesiastical Court against charges her ordination defied church law; the Rev. Piccard's ordination was later recognized by the church and the priesthood was opened to other women. None of Greer's success would have been possible without his "partner" of seventy years, Mary Lou. Greer's two favorite places on earth were Bay Lake, MN and Mazatlan, Mexico, where he happily entertained his grandchildren. In addition to being a golfer with multiple holes-in-one, Greer was an avid skier and tennis player. He was preceded

in death by his wife of seventy years, Mary Lou, and survived by four children and fourteen grandchildren.



Daryll Norman Love, '96, was seventy-eight when he died on January 24, 2020. Daryll graduated *cum laude* from the University of Minnesota in 1963, where he was a Judo champion. After graduation, he served as a United States Senate Police Officer for a year before enlisting in the United States Marine Corps. He attended OCS and was commissioned in 1964; he earned his Naval-Marine Corps Parachutist Wings and saw service in the conflict in the Dominican Republic. Transferred to Okinawa, he studied Shorin Karate under the direction of 10th degree Master Eizo Shimabuko and earned a 1st degree Black Belt. During his tour on Okinawa, he also earned his Jumpmaster rating with the 1st Special Forces Group. Daryll served in Vietnam and was awarded the Vietnamese Parachute Badge. Upon release from active duty, Daryll attended the George Washington University Law School, graduating in 1970 with honors. Daryll practiced in Atlanta, specializing in the defense of claims against physicians, hospitals, healthcare professionals and product manufacturers, including pharmaceuticals, medical devices, tires, firearms and many others. In 1978, Daryll served as the principal investigator for the United States House of Representatives Ethics Committee into the alleged corruption of two members of Congress. Daryll enjoyed his friends, Aston Martins, the shooting sports, scuba (Master ScubaRo and Divemaster ratings), dogs and especially the decades of companionship with his best friend and wife, Brenda Lilly Love. Daryll is survived by Brenda, their daughters and grandchildren.

Hugh Brown McNatt, '96, passed away on June 1, 2021, at the age of seventy-four. Hugh's career spanned five decades. He will be remembered as "a worthy adversary in the courtroom – always prepared but, most importantly, always courteous and professional." Hugh attended Mercer University and Mercer University School of Law, where he was an editor of the Law Review. Hugh was an old-time trial lawyer with a throw-back style, but beneath his rustic personality was a highly sophisticated lawyer and a formidable mind. His favorite saying was "Anything worth doing is worth over-doing." Hugh was a voracious reader and an avid student of history. He had an encyclopedic recollection of the events and the people who made history. Hugh started Kids' Chance, Inc. a charity which provides scholarships to children whose parents were killed or catastrophically injured in a workers compensation accident. Each year Hugh hosted the "Bird Supper" in Atlanta where he served fried quail, grits and gumbo to raise money for Kids' Chance. He attended in his bird hunting attire. Hugh is survived by his wife Lynn Morris McNatt, five children, five grandchildren and several great-grandchildren.

Earl Deane Mills, '77, passed on October 16, 2020, at the age of eighty-nine. Earl started his education in a two-room schoolhouse near Ringling, OK, where he was taught by his mother and father. Earl went on to college at Central State in Edmond where he graduated in 1951 with a degree in Business Administration. He met his first love, Beverly Burgess, while working at Oklahoma Farm Bureau Mutual Insurance Co., and they married in 1952. Earl and Beverly had four children. Earl began his law career in 1959 as an Assistant County Attorney. He entered private practice in 1963, practicing with two of his sons. In 1996, Earl married his second love, Sandy Waggoner. One of Earl's other loves was weekend cowboying.



Because he so looked the role, he was sometimes called "the Marlboro Man," as he would saddle up, count cows and check the fence line. He and his sons (much to their chagrin) built what felt like to the boys hundreds of miles of fence. He was heard more than once declaring "Ahh, God's country," as he looked out over the farm. Earl practiced with decency, civility, firmness when necessary, and his favorite word - preparation, preparation, preparation. Earl was preceded in death by Beverly and a son; he is survived by Sandy, five children, nine grandchildren and four great-grandchildren.

Honorable Robert V. Mulkern Sr., '78, a Judicial Fellow and member of the Greatest Generation, passed away peacefully on January 31, 2021, at age ninety-eight. Judge Mulkern had a long career as a trial lawyer and an Associate Justice of the Superior Court. After serving in the Army in Okinawa during World War II, Judge Mulkern used the GI Bill to attend Suffolk University. After only three months of undergraduate studies, he was admitted to Suffolk University law school and then to the Massachusetts Bar in 1951. ▶



After finishing law school, he joined the Federal Bureau of Investigation as a Special Agent. In 1954 he entered private practice. In 1978, shortly after his induction as a Fellow, he was appointed as an Associate Justice of the Superior Court. During his years on the bench, he presided over many high-profile cases. Judge Mulkern retired from the bench in 1992 and resumed private practice until his retirement in 2000. Judge Mulkern is survived by his wife of sixty-seven years, Simone Marie T. Mulkern, their five children and three grandchildren.

Hubert J. Santos, '86, died suddenly on June 21, 2021, after being hospitalized earlier in the day, at age seventy-seven. In addition to being one of Connecticut's most successful lawyers, Hubie was one of the most well-liked. He was the blue-collar son of factory workers who sounded like it when he spoke – in and out of court – and who never forgot his roots, even after reaching the professional stratosphere. "I think Hubert was the kind of guy who was bemused by his own success," retired state Supreme Court Justice Richard N. Palmer said. "He never shied away from a difficult case, but he wasn't full of himself either. He was a street smart guy who could size up a case, something some of the best lawyers can't do. And juries liked him." One of his many acquittals was the capital murder case against Karin Aparo, described by the prosecution as a sixteen-year-old vixen who manipulated her boyfriend into murdering her mother. Hubie turned to Aparo at the end of his closing argument and gently said "It's OK Karin. You can cry now." She burst into tears. He always insisted it was unrehearsed. Whatever, it was enough to acquit. "If anyone in law enforcement

had a problem, the kind of consensus was the first call would go to Hubie," said retired FBI agent Charles Urso, who was case agent on one of Santos' successful defenses. "Hubie was a problem solver. He would get resolutions." In 2018, Hubie pulled off a legal victory few could have predicted, persuading the state Supreme Court to reverse itself and overturn the conviction of Kennedy cousin Michael Skakel for the infamous murder of his friend Martha Moxley a half century earlier, when the two were 15-year-old neighbors in an exclusive Greenwich community. Hubie graduated from the University of Connecticut School of Law in 1969, serving as lead articles editor of the Connecticut Law Review. He served as a federal public defender from 1972 to 1974. In 1978, he was appointed corporation counsel for the city of Hartford. U.S. Senator Richard Blumenthal released a statement the day following Hubie's death: "Connecticut has lost a legal advocate of tremendous intellect, integrity and good humor. I was proud and grateful to be his friend. He will be missed by all of us - family, friends and colleagues - and I extend my sympathies to them."

James J. Restivo, Jr., '97, age seventy-three, died of complications of lung cancer on December 28, 2019, surrounded by his wife of forty-nine years, Gail Hackenburg Restivo, their four children and eight grandchildren. Jim graduated from the University of Pennsylvania and received his law degree from Georgetown University Law School, where he was editor of the Law Journal and graduated first in his class. Jim served as one of the chief negotiators and founders of the former Asbestos Claims Facility, designed in 1985 to provide an alternative to the courtroom by evaluating and settling a backlog of asbestos-related claims. Jim was a longtime volunteer, fundraising coordinator and board member at Rebuilding Together Pittsburgh, a nonprofit group that helps low-income homeowners make needed repairs and upgrades. In his spare time, Jim enjoyed traveling with Gail or spending time with

the greatest joys in his life, his grandkids, who loved the adventures “Bubba” took them on. Nothing would better sum up his life than Frank Sinatra’s “My Way.”

John B. Scofield, '91, died at the age of eighty-nine on September 29, 2020, surrounded by his family. Spike was born in Baltimore, MD and moved to Maplewood (Sulphur), Louisiana in 1946. He attended Tulane University on both football and scholastic scholarships. He graduated from Tulane undergraduate school in 1957 and law school in 1959. After service in the Judge Advocate General’s Corps, Spike settled in Lake Charles and practiced for more than fifty-five years, trying hundreds of cases. He was highly respected by his peers, by judges, and by adversaries. When his sons walked into courtrooms throughout the state, judges often fondly asked, “You’re Spike’s son?” Spike liked to tell the story that although he and his four sons all went to Sulphur High, Spike was instrumental in the naming of Alfred M. Barbe High School, after then retired Judge Alfred Barbe, who was Spike’s first major client and a very influential mentor. Spike, following Judge Barbe’s example, helped mentor and train many others. Spike inspired three of his sons and two of his grandchildren to become lawyers. Spike loved to travel with his wife, Pat, and they enjoyed their trips to many countries and exotic places on all seven continents. Spike remarked that Antarctica was cold. Spike treated his entire family to a trip to the French Alps. They stayed in an ancient castle, and he sang his favorite song, “It’s a Wonderful World” from the balcony overlooking the valley and mountains. He looked forward to cooking filet mignon, trout almondine and other great meals and opening a few bottles of good wine, when his sons, daughters and grandchildren came to visit. He enjoyed watching his children and grandchildren play sports and treating them to the great restaurants in Lake Charles and New Orleans. He was an avid tennis player, but was, he said, always too young to play golf. Spike is survived by Pat, four sons, two daughters,

seventeen grandchildren and two great-grandchildren.

Broadus Autry Spivey, '96, was eighty-five when he died at home on May 8, 2021, survived by his wife and sweetheart of sixty-four years, Ruth Ann (King) Spivey; two children and two grandchildren. Broadus was born near Lakeview (population 300), in the Texas panhandle. He worked on his family’s farm through high school, picking cotton and tending animals. He graduated from Clarendon Junior College, married Ruth Ann on August 1, 1956, and they moved to Austin and the University of Texas. Broadus earned his BA in Government in 1960 and his JD in 1962. Broadus had gone to law school planning to become an FBI Agent, but his father-in-law, Rufus Young King, who had served as County Attorney and later as the County Judge of Donley County, a county of about 3000 fifty miles East of Amarillo, helped Broadus see the value of working to right the wrongs done to individuals; Broadus determined to become a trial lawyer. Broadus began his legal career as an assistant county attorney in Lubbock, Texas.



After a stint as a “pup” with the premier plaintiff’s trial firm in the Texas Panhandle, Broadus set up his own practice. In 1971, the Spivey family moved back to Austin, where he practiced until his retirement in 2019. Among his many positions, Broadus served as President of the State Bar of Texas in 2001-02, and President of the International Academy of Trial Lawyers in 2002-03. During his fifty-seven years of practice, he tried more than 500 cases to a jury and handled 146 appellate cases. ▶

He never counted his wins, but rather the number of clients who were heard. He believed in—and counseled law clerks and students to adopt—four principles: honesty, humility, humor, and humanity. In 2007, U.T. Law School Professor Tracy Walters McCormack interviewed Broadus for their Advocacy Program’s Atticus Profile series. “If a superior being exists,” she asked, “what would you like to hear Her say to you when you arrive at the pearly gates?” Broadus grinned and said, “Come in!” We imagine he did just that.

Robert B. Steinberg, ’91, passed away on April 12, 2021, at the age of ninety-three, with his wife, Lenny, his three daughters, and his seven grandchildren by his side. Over the course of his sixty-year legal career, Bob practiced on behalf of those injured or made ill at work, by dangerous conditions or toxic substances, retiring at the age of ninety-two. Bob helped to draft – and advocate for – many important pieces of California legislation in the areas of worker safety, tort liability, and workers’ compensation. Bob was a gifted orator, whose persuasiveness stemmed from the genuine interest he took in people, and the respect he inspired in those around him, including clients, judges, and adversaries. As a pioneer and leader of asbestos litigation starting in the late 1970’s, Bob prevailed in the first asbestos exposure jury case west of the Mississippi, winning the largest personal injury award of that time with a \$1.2 million verdict. That victory was the opening salvo in a protracted legal conflict that went all the way to the halls of Congress, where Bob testified before the Senate Judiciary Committee subcommittee on Courts, headed by Senator Bob Dole, as it investigated whether the defendant company had properly declared bankruptcy to avoid paying that judgment and many others. Born in 1928 in Rochester, New York, Bob moved with his family to Los Angeles in 1945. After a year and a half at Los Angeles City College, Bob transferred to UCLA, where he claimed to

be the only student to major in accounting and minor in philosophy, a dichotomy that summed up his capacity to simultaneously consider and comprehend the big picture as well as the specifics of things. He went on to study at Loyola Law School and then transferred to the brand-new UCLA law school, earning his law degree in 1953, with UCLA’s second graduating class. Within a week of graduation, he was shipped off to Fort Ord for basic training. After two years as an intelligence officer during the Korean War, he began his legal career. Bob married Lenore Gerstle (“Lenny”) in 1958 after being set up on a blind date because they were both tall. Lenny, a music major at UCLA, designed furniture, interior architecture, and their home on Venice Beach. Bob remained an astute observer of politics and law into his nineties.

Thomas P. Sullivan, ’70, died May 18, 2021, at the age of ninety-one. I first met Tom in 1969, when I was a summer associate at Raymond, Mayer, Jenner & Block. Tom was thirty-nine and would be inducted into the College the following year at the age of forty, when the firm’s name had changed to Jenner & Block. I was terrified of Tom. He was intense, demanding, commanding. I remained terrified of him for the next fifty plus years, because he was the best lawyer I ever knew, and I knew I didn’t measure up; no one did. If you worked for Tom, you probably got a refresher on Mark Twain. You would be at his conference table, and you would begin to answer his question with: “I think . . .” Tom would stand and hold up his hand to bring you to a halt; he would go to his bookcases and pull out a weathered copy of the *Essays of Mark Twain*, and he would read aloud “there is one faculty which a [river] pilot must incessantly cultivate until he has brought it to absolute perfection. Nothing short of perfection will do. That faculty is memory. He cannot stop with merely thinking a thing is so and so; he must *know* it. With what scorn a pilot was looked upon, in the old times, if he ever ventured to deal in that feeble phrase ‘I think,’ instead of the vigorous one ‘I know!’”



Tom taught the lawyers lucky enough to work with him many things, but no lesson was more dear than civility. Tom had a rule. If an adversary recounted a conversation or an oral agreement at odds with Tom's own recollection, Tom would not argue for his version. Rather, he would simply say to his adversary "You are a member of the bar and I must accept that your recollection is true. But to avoid any further lapse in my own memory, you and I cannot have any further oral communications; from this point forward, we will make no representations to one another except in writing."

At age ninety-one, Tom was still a partner at the firm where he had worked since 1954, leaving only from 1977 to 1981 to serve as the U.S. Attorney for the Northern District of Illinois, where he made an indelible impact on the Cook County court system as the driving force behind the Operation Greylord corruption probe. Tom attended Loras College in Iowa from 1947 – 1949 and was accepted for Law School at Loyola University in Chicago, without yet having attained an undergraduate degree, graduating first in his class in 1952 (and earning his undergraduate degree in 1951). Tom served in the U.S. Army during the Korean War during the next two years. He didn't talk much about that, but I came to understand that he was a grunt, despite his advanced degree. Throughout his sixty-seven-year career, Tom handled multiple high-profile matters, such as his representation of the attorneys held in contempt during the Chicago Seven trial. A long-time advocate for death penalty

reform, Tom was co-chair of the Illinois Commission on Capital Punishment in 2000, which resulted in the 2011 abolition of the death penalty in Illinois. At age seventy-five, Tom saw an article about the need for lawyers to represent Guantanamo Bay detainees; he advocated for those prisoners from 2004 until his death – under Tom's leadership, Jenner & Block represented more than twenty Guantanamo Bay inmates, eventually securing releases for all of them. Tom is survived by his wife, Anne Landau, his four children and six grandchildren.

Philip R. Taylor, '96, passed away peacefully on August 16, 2020, following a brief illness, at the age of eighty-six. Phil was born in Dublin, GA. While in high school, Phil began working for a law firm at the age of fourteen as an office boy; he continued to work there through his college years at Mercer University and while attending Mercer's Walter F. George School of Law. He was recognized for passing the bar exam while still in law school and was invited to join the firm upon graduation. Phil joined the U.S. Naval Reserve in high school and, following law school, he enlisted in the Georgia National Guard. After a tour of duty at Fort Jackson, SC, Phil became a Judge Advocate General's Corps (JAG) Officer. In 1969, Phil was elected to the Georgia General Assembly, representing Bibb County for one term in the House of Representatives. Phil served as President of the Macon Bar Association in 1967, and was a past Chairman of the Board of Visitors at Mercer University Law School. Phil is survived by his two children, six grandchildren, and two great-grandchildren. Phil will be remembered for his love of travel, his appreciation for fine wine and excellent cognac, and his fierce commitment and unconditional love for his family and friends.

Herbert George Underwood, '78, age ninety, died July 7, 2020, survived by his wife, Kay Rice Underwood, daughter and two grandchildren. Herb was born in Steubenville, Ohio. He attended West Virginia University, ▶

where he obtained a B.A. in chemistry in 1951. He served in the U.S. Air Force from 1951 to 1953, entered West Virginia College of Law in 1954, where he was a member of Order of the Coif and associate editor of the Law Review. Herb practiced in Clarksburg, WV for forty years. He specialized in medical and hospital litigation, business and contract issues, anti-trust and First Amendment litigation, and natural resources litigation, including coal and gas. Herb tried more than 400 cases and argued over one hundred appeals in the West Virginia Supreme Court and the United States Courts of Appeals. One of his former partners summed him up: “Herb was the consummate ‘lawyer’s-lawyer’ the lawyer you would want to represent you if your future was at stake, if it was a bet your company case.” Active in his community, Herb was Chairman of the United Hospital Center and was active in the establishment of the Susan Dew Hoff Memorial Clinic, which was created “to render to those in need, with emphasis on females of any age, the working poor, their dependents and the elderly in and about West Milford, Harrison County, West Virginia.”

Roger Aloysius Vaughan, Jr., '89, was eighty-four when he passed away on July 3, 2019. Born in Washington, D.C., Roger attended the United States Merchant Marine Academy and earned his law degree from George Washington University. Roger practiced in Tampa, FL from 1967 until his retirement in 2014. A highly regarded maritime lawyer, Roger was appointed by the court as lead counsel for the claimants in the Sunshine Skyway Bridge case. Roger traveled the world and had a special attraction to Africa, its people, and its abundant wildlife. He especially loved safari game drives. Roger was survived by his wife of fifty-nine years, Jean, their four children, twelve grandchildren and three great-grandchildren.



Charles Weiss, '86, died May 23, 2013 – we weren't told, and we are eight years late in lamenting his passing at age

eighty-two. Charlie was valedictorian of Girard College, a K-12 school for fatherless boys in Philadelphia, in 1947. He graduated from Harvard College in 1951 and Harvard Law School in 1954. Charlie enlisted in the Army and was stationed in Orleans, France, for two years. While serving in the Army, Charlie married his first wife, Mary Augusta Plumer, who died in 1971. He married Robin McKinney in 1973. Charlie was survived by Robin, nine children, eighteen grandchildren and one great-grandchild.

Richard William Wood, '12, passed away at age seventy-four on May 13, 2021. Bill was born in Smackover, Arkansas and raised in Midland, Texas. In junior high school, Bill was the starting quarterback; his back-up was George W. Bush. In 2000, Bill was somewhat surprised to read in the New York Times that a group of his classmates claimed that if “any young man in Midland seemed destined for the White House” it was Bill Wood. But Bill never aspired to be a politician. He wanted to be a trial lawyer. And he was. Bill began his law career in Denton, Texas, and ultimately tried over 300 jury trials over nearly fifty years. Bill graduated from the University of North Carolina at Chapel Hill in 1968; he returned to Texas and graduated from Southern Methodist University Law School in 1971. Bill was president of the Denton County Bar Association, where he was honored with its “Bill Wood Most Valuable Player” award in 2016, the only recipient to date. Bill’s early years of singing in a barbershop quartet and church choir enabled him to think of a song for every occasion and typically to cheer others up. Bill would say, *“SMILE. You’ll feel better! Just let the corner of your mouth move upward ever so slightly and you have a start on it that won’t stop!”* Bill’s favorite nickname was “Coach,” due to the numerous sports teams of his children that he coached, and for all the lawyers he mentored over the years, encouraging them to “make your mistakes on your toes and not on your heels.” Bill is survived by his wife of forty-eight years, Theresa, three children and six grandchildren. ■

UPCOMING EVENTS



Mark your calendar now to attend one of the College's upcoming gatherings. Events can be viewed on the College website, www.actl.com, in the 'Events' section.

NATIONAL MEETINGS



2022 SPRING MEETING
HOTEL DEL CORONADO
CORONADO, CALIFORNIA
FEBRUARY 24-27, 2022



2022 ANNUAL MEETING
ROME CAVALIERI, A WALDORF ASTORIA RESORT
ROME, ITALY
SEPTEMBER 15 – 18, 2022

REGIONAL MEETINGS

April 22 – 24, 2022

REGION 6 REGIONAL MEETING (ARKANSAS, LOUISIANA, MISSISSIPPI, TEXAS)

July 7-10, 2022

NORTHWEST REGIONAL MEETING (ALBERTA, ALASKA, BRITISH COLUMBIA, IDAHO, MONTANA, OREGON, WASHINGTON)

STATE/PROVINCE MEETINGS

October 8, 2021

NEBRASKA FELLOWS MEETING

October 23-24, 2021

KANSAS FELLOWS MEETING

November 11, 2021

ALABAMA FELLOWS DINNER

December 2, 2021

ARKANSAS FELLOWS DINNER

December 3, 2021

MISSISSIPPI FELLOWS DINNER

December 4, 2021

LOUISIANA FELLOWS DINNER

December 8, 2021

OREGON FELLOWS DINNER

JOURNAL

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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*