



JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

ISSUE 98 | WINTER | 2022



THE CHICAGO SKYLINE FROM NAVY PIER
THE 2021 ANNUAL MEETING

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LETTER FROM THE EDITOR

PLEASE SEND CONTRIBUTIONS OR SUGGESTIONS TO ACTLJOURNAL@GMAIL.COM

“When I use a word,” Humpty Dumpty said in rather a scornful tone, “it means just what I choose it to mean — neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master — that’s all.”

Lawyers are word warriors; we wield not swords but words. We must master them to ply our craft. The proper meaning of words is critical to us.

Here’s a word for you – well, actually, three words – Critical Race Theory. Okay, let me see a show of hands. How many of you know – really know – what it means? And those of you with your hands up, who can tell me what all the fuss is about? Anyone? Anyone? Bueller?

Here’s the thing. The only thing worse in polite society than using four-letter words is using them incorrectly. So let’s make sure that when we use Critical Race Theory it means what it means, not what someone has chosen it to mean.

Don’t be embarrassed if you aren’t entirely certain. The *Washington Post* reports (11/4/21) that Fox News host Tucker Carlson has used the term on the air more than 120 times in the past year. But after repeatedly invoking the term, Carlson conceded “I’ve never figured out what ‘Critical Race Theory’ is, to be totally honest, after a year of talking about it.” But that didn’t stop him from assuming that the term describes something evil: “They’re teaching that some races are morally superior to others,” summarizing what he assumes Critical Race Theory to be. “That some are inherently sinful and some are inherently saintly. And that’s immoral to teach that because it’s wrong.”

Well, right on, Tucker! If someone is teaching that some races are morally superior to others, that *is* wrong! Shame!

Uh, but, well, it’s not clear that anyone is doing that.

I am neither a proponent nor an opponent of Critical Race Theory. My dog in this race is simply to use the term properly. Critical Race Theory doesn’t teach, as Tucker surmises, that any race is better than another. It doesn’t, as many of its detractors believe, blame or shame one race for oppressing another. It simply postulates that history has baked racism into present society, and we should recognize that to make our future better.

So opponents of Critical Race Theory assign meaning to the term it does not have. At the same time, proponents disingenuously claim that alarm over its teaching is a bogus issue because it is not actually taught in elementary or high schools. True, it isn’t often taught as a stand-alone unit of curriculum, but that’s because it is more a lens, a method of looking at things, than a distinct subject. And there are numerous examples of that lens being used in K-12 education.

So what exactly is Critical Race Theory? Encyclopedia Britannica defines it as an “intellectual and social movement and loosely organized framework of legal analysis based on the premise that race is not a natural, biologically grounded feature of physically distinct subgroups of human beings but a socially constructed (culturally invented) category that is used to oppress and exploit people of color. Critical race theorists hold that racism is inherent in the law and legal institutions of the United States insofar as they function to create and maintain social, economic, and political inequalities between whites and nonwhites, especially African Americans.”

Whew! That’s a mouthful, isn’t it? But now it’s clear, right? Well, no, wait. I’m still confused. What does it mean that race is not a biological feature? What does it mean that racism is inherent? I don’t get it. ▶



Critical Race Theory doesn't teach that some races are better or worse than others; just the opposite – it teaches that race is an artificial construct. Oh, c'mon. *Of course* there are biological nuances between different races – but they are nuances. No race is smarter, prettier or more moral than any other. In the things that matter, we are all simply human. And I don't accept that our society is inherently racist. Sure, there remain bad laws, and vestiges of Jim Crow; racism still exists; and sure, it's probably good to look critically to find and eradicate racism. But I reject the part of Critical Race Theory that says racism is inherent in everything. So this is just me, but I am against those parts of Critical Race Theory; but I am for the part that says we should take a critical look at our past to help improve our future.

Our history *is* baked into our present. Otto von Bismarck observed that “those who do not learn from history are doomed to repeat it.” The institution of slavery shaped what our country is today. That's not doctrine, it isn't shaming, it's just history. We who are alive today are not responsible for it, but it is our history and we should try to learn from it.

At least eight states have passed laws heralded as barring the teaching of Critical Race Theory and another twenty have similar bills in the works. Most of these statutes are remarkably similar; they all ban a bunch of things they think Critical Race Theory includes. The other side to this debate decries these laws as impingements on free speech.

Both sides are wrong, I think. The “Say No to Critical Race Theory” people are wrong because they purport to ban things Critical Race Theorists don't seek to do. And since the bans don't ban actual Critical Race Theory tenets, the Theorists are wrong to decry the laws; some of these laws, while perhaps superfluous, are actually salutary.

Take Idaho. Its law prohibits schools from teaching “That any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior” or that any “individuals, by virtue of [race], are inherently responsible for actions committed in the past by other members of the same [race].” What's wrong

with that? That part of the Idaho law is actually pretty good, isn't it? Albeit probably unnecessary. Idaho's bans produce exactly what Critical Race Theory would, if taught, teach: that no race is better than any other; we are not to *blame* for the racism that exists today, but we should *understand* that it exists.

The Texas bill includes great detail about what *should* be taught, including “the history of white supremacy, including but not limited to the institution of slavery, the eugenics movement, and the Ku Klux Klan, and the ways in which it is morally wrong; the history and importance of the civil rights movement, including the following documents: Martin Luther King Jr.'s “Letter from a Birmingham Jail” and “I Have a Dream” speech.” What's wrong with that? Teaching those things is a good thing, isn't it?

Here's what's wrong. Both sides, failing to grasp the actual meaning, have usurped the term as a battle pennant. But they are standing on mirrors fighting smoke. No one is trying to rewrite or cancel history. Well, maybe a little. The Texas bill bans teaching anything to do with the 1619 Project, the New York Times' series with the premise that the Nation's founding began with the arrival of those first slaves. Screw history, says Texas; ignore 1619. Okay, so some of these laws, in my opinion, may go a bit whackadoodo. But all in all, history ought to win.

And as lawyers, when we use a word, let's let them mean what they mean.

* * * * *

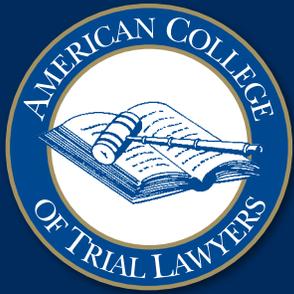
We have another great issue for you. We recap the Annual Meeting in Chicago, whose keynote speaker was former U.S. Secretary of State Jim Baker. We welcome forty-seven new Fellows, and say last farewells to fifty-three departed Fellows and to our friend, Morgan Varner, **Past President Chilton Varner's** husband of fifty-seven years. We honor one of our own, a hero among us. We feature the first woman to become a lawyer in Paduka, KY. And more.

Bob Byman ■

SEPT 15 - 18

2022 ANNUAL MEETING ♦ ITALY

Rome Cavalieri Hotel, A Waldorf Astoria Resort



SAVE
THE
DATE



PRESIDENT'S PERSPECTIVE



AS I WRITE THIS ARTICLE, BRETT AND I HAVE COMPLETED A NUMBER OF TRIPS. WE HAVE ENJOYED THE HOSPITALITY AND FELLOWSHIP OF OUR FELLOWS AND THEIR SPOUSES/GUESTS IN THE UNITED STATES AND CANADA. THE COLLEGE IS IN GOOD HANDS AT THE STATE AND PROVINCE LEVEL AS OUR FELLOWS CONTRIBUTE TO UPHOLDING THE RULE OF LAW, AN INDEPENDENT JUDICIARY, AND THE RIGHT OF ALL AMERICANS AND CANADIANS TO ACCESS TO JUSTICE.

Thank you to our Executive Committee consisting of **President-Elect Susan Harriman, Treasurer Bill Murphy, Secretary Rick Deane** and **Immediate Past President Rodney Acker** for their dedication and commitment. Thanks also to the Board of Regents and our state and province committee chairs, vice chairs, and members, and to the chairs, vice chairs, and members of our thirty-five general committees. Finally, thanks to our Executive Director Dennis Maggi, Senior Strategic Initiatives Manager Amy Mrugalski, Senior Meetings and Conference Manager Suzanne Alsnauer, Senior Membership Manager Geri Frankenstein, Senior Communications Manager Sarah Stokes, Meetings Project Coordinator Kim Klingaman, and Office Administrator Cheryl Castillo. Our staff is knowledgeable and passionate about the mission of the College.

Our Mission Statement provides:

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

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

We continue with our Statement on Diversity:

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

The following are some of the projects the College is currently implementing in furtherance of the above Mission.

MENTORING

Various College committees address the importance of mentoring and helping younger and/or disadvantaged lawyers find satisfaction and excellence in their professional lives. The Mentoring Committee has initiated a program with *Just The Beginning: A Pipeline Organization* (JTB) to financially support paid judicial internships for disadvantaged students who otherwise may not have the means to accept an unpaid internship. We have asked our approximately 200 Judicial Fellows to support this initiative by offering summer internships to these law students which will be funded by the United States Foundation and the College.

Additionally, our Legal Ethics and Professionalism, Teaching of Trial and Appellate Advocacy, and Boot Camp Training Committees are sponsoring various programs, including the first ACTL trial boot camp in England and Wales. Also advancing our mentoring efforts are the moot courts (the National Moot Court and National Trial Competitions in the United States, and the Gale and Sopinka Cups in Canada), along with many CLE programs sponsored by state and province committees.

JUDICIAL INDEPENDENCE

The Judicial Independence Committee was formed to help state and province committees respond to unfair attacks on judges including those based on personal characteristics of the judge. 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 to them on either a local or national level. Second, recognizing that public statements in support of judicial independence are important but not sufficient, the committee has also facilitated the College's joint effort with the National Association of Women Judges (NAWJ) to develop a public education pilot project through which College Fellows will make public presentations using NAWJ's Informed Voter Project (IVP), appropriately modified to highlight the importance of judicial independence. This project represents an important opportunity to engage in public education that will lead to greater confidence in our judiciaries and the Rule of Law. Generally, the College has issued statements in support of particular judges who have been unfairly attacked in the past several years, where appropriate.

ACCESS TO JUSTICE

The Access to Justice Distinguished Pro Bono Fellows Program is off to a great start with a number of Fellows currently devoting their skills and gifts to supporting important pro bono efforts.

DIVERSITY

The College is committed to increasing diversity without in any way modifying the standards by which fellowship is earned. Membership in the College is founded upon a singular standard of excellence. We have inspired identification of eligible diverse candidates and are encouraging new inductees to become involved in the state, province, and general committees of the College.

FELLOW ENGAGEMENT PROJECT

In 2019, the College embarked on a project to examine the way Fellows interact with the College as volunteers, how they prefer to engage with the College, and changes we needed to implement to improve the Fellows' experience. In 2020, our consulting partners at McKinley Advisors provided the Executive Committee with a report of their findings, including six recommended actions to take. Those recommendations are now being implemented. For more details, please visit the Task Force on Fellow Engagement page on the ACTL website.

ADVOCACY IN THE 21ST CENTURY COMMITTEE ("A21C COMMITTEE")

This recently formed committee originally focused on a response to the pandemic's impact on the administration of justice. It has created a series of white papers on the use of remote video in depositions, examinations for discovery, hearings, non-jury trials, and appellate arguments.

The committee is now exploring additional issues concerning advocacy in the 21st Century that will benefit from the experience and expertise of the Fellows of the College. We will then work with other College committees and outside groups to lend the College's voice to discussion of these issues.

SAN DIEGO

The 2022 Spring Meeting will be held February 24-27, at the newly renovated Hotel del Coronado in Coronado, California, outside of San Diego. President-Elect Susan Harriman has developed an outstanding program.

ROME

The 2022 Annual Meeting will be held September 15-18, at the Rome Cavalieri Hotel, A Waldorf Astoria Resort, in Rome, Italy.

Brett and I look forward to seeing you at these national meetings and spending time with old friends and meeting new ones at state, province, and regional meetings.

Michael O'Donnell ■



CHICAGO



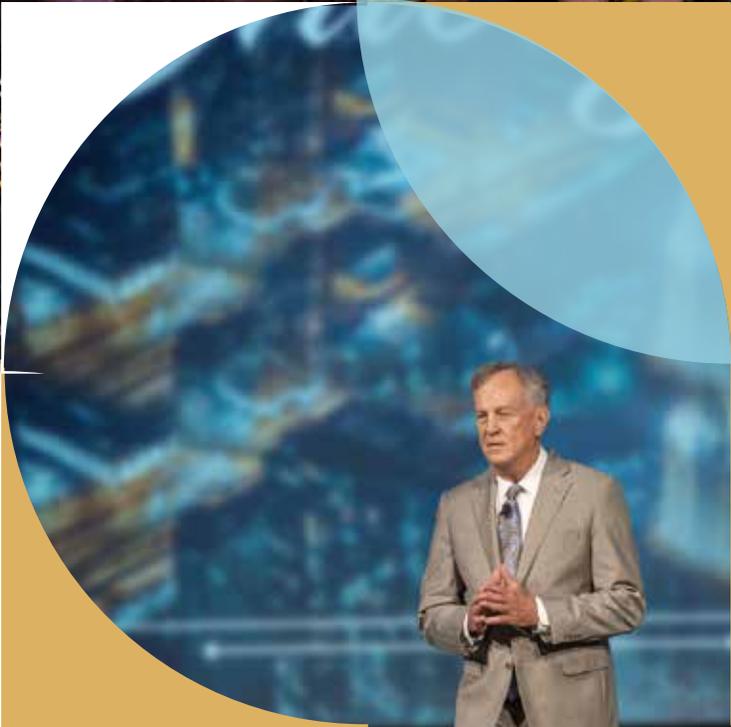
IT SEEMS LIKE FOREVER SINCE WE LAST GOT TOGETHER IN PERSON — IT WASN'T FOREVER, OF COURSE; JUST 18 MONTHS SINCE OUR 2020 SPRING MEETING IN TUCSON. BUT,

BOY,

IT WAS GOOD TO SEE PEOPLE; IT WAS GOOD TO BE SEEN.



annual meeting



**20
21**





annual meeting



**20
21**





CHICAGO



NEW OFFICERS AND REGENTS

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

Regents **Susan Brewer**, **John Day**, **Rick Deane**, **Mona Duckett**, and **Marty Murphy** completed their terms of office. They were all outstanding Regents and we will miss them, but the College will not miss a beat, because each is succeeded by an exceptional individual. We welcome our new Regents and Officers.



Carey E. Matovich

Regent for Region 3
Matovich, Keller & Huso, P.C.
Billings, MT

Carey was raised on a cattle ranch in eastern Montana. She received her undergraduate degree and law degrees from the University of Montana, where she was a member of the 1981 championship Moot Court Team and recipient of the national award for Best Oral Advocate. Carey is the founder of Matovich, Keller & Huso, P.C. and has a broad-based civil and appellate practice with an emphasis on insurance law and complex commercial litigation. She has served as lead counsel in numerous complex disputes in both state and federal court, including class action litigation,

insurance disputes, unfair insurance trade practices, RICO, employment discrimination, wrongful termination, professional negligence, business torts, and contractual disputes. In addition, she is frequently asked to serve as a mediator. A former Montana State Chair, Carey has also served on the College's Admission to Fellowship Committee, the International Committee, the Legal Ethics and Professionalism Committee, the Federal Rules of Evidence Committee and on the Board of Editors of the *Journal*. She was inducted into the College in 2004. Carey is currently on the Board of Directors of the Montana Justice Foundation; She served as faculty for the Advanced Trial Advocacy Program at the University of Montana from 2000 to 2013. Outside of work, Carey enjoys fly fishing and camping in Montana's wilderness areas and national parks, and international travel.



Robert P. MacKenzie III

Regent for Region 7
Starnes Davis Florie LLP
Birmingham, AL

Bob MacKenzie is a partner at Starnes Davis Florie, LLP, having joined the firm in 1984 after completing law school at the Cumberland School of Law. Bob is Past President of the Judge James E. Horton American Inn of Court, and Past President of the Birmingham Bar Association. Bob's practice is devoted to handling a broad scope of litigation including medical and legal malpractice actions, product liability, and commercial litigation. He has tried in excess of 100 jury trials to a verdict. Bob was inducted in 2010. In addition to his service as Alabama State Chair, Bob has served on the Emil Gumpert Award Committee, the Griffin Bell Award Committee, the Outreach Committee, and the Retreat Task Force on Governance Committee.

service as Alabama State Chair, Bob has served on the Emil Gumpert Award Committee, the Griffin Bell Award Committee, the Outreach Committee, and the Retreat Task Force on Governance Committee.



Cheryl A. Bush

Regent for Region 9
Bush Seyferth PLLC
Troy, MI

Cheryl A. Bush Cheryl is a *cum laude* graduate of the University of Michigan Law School and received her Bachelor of Arts at Wayne State University *magna cum laude* while working as a waitress and working midnights at the United States Postal Service. Before co-founding her own firm in 2003, Cheryl was an equity partner at Dykema Gossett and then Feeny Kellett Wiener & Bush. Cheryl serves as National Counsel for a major automotive manufacturer, handling catastrophic air bag trials and coordinating discovery throughout the country. Her cases, which have spanned

30 states, often involve high-level nationwide media exposure. Cheryl teaches regularly on trial advocacy, particularly in the area of automotive product liability. Cheryl was inducted in 2008. She is a Trustee of the ACTL Foundation and served as Michigan State Chair.



G. Mark Phillips

Regent for Region 10
Nelson Mullins Riley & Scarborough, L.L.P.
Charleston, SC

Mark (Moose) Phillips is a first-chair trial lawyer who has tried personal injury product liability cases to verdict in eleven states and has participated in trials in nine other states. A 1983 graduate of the University of the South (Sewanee) and a 1986 graduate of the University of South Carolina School of Law, Moose, among many other civic activities, is a member of the Clemson University Foundation Board of Trustees, Past Chairman and President of the Coastal Carolina Council of the Boy Scouts of America, and past Vestryman and Senior Warden of St. Philip’s Episcopal Church.

Mark was inducted as a Fellow in 2009, was South Carolina State Chair and served on the College’s Adjunct Fellowship Committee.



Karen Frink Wolf

Regent for Region 12
Verrill Dana
Portland, ME

The about to be Honorable Karen Frink Wolf had a record-setting brief tenure as Regent between her election on October 2, 2021 and the announcement of her expected appointment as a U.S. Magistrate Judge on October 20, 2021; Karen expects to actually take the bench in April 2022. Inducted into the College in 2012, Karen was the Maine State Chair in 2017. In her practice, Karen was the go-to litigation counsel for physicians, hospitals, and health care professionals; accountants, attorneys, and business professionals; and pharmaceutical companies. Karen

also maintained a high-stakes domestic relations practice. Karen tried more than 100 cases to jury and represented thousands of professionals in administrative proceedings and before licensing boards. Karen tried two of only a handful of cases to proceed to trial nationally on behalf of the Dalkon Shield Claimants Trust following bankruptcy of the product’s manufacturer, defeating claims of fraud. Karen is committed to the ideal of equal access to the justice system for all citizens, including the right to strong advocacy by legal counsel. She is a five-time recipient of the Pro Bono Publico Award for her representation of low-income family law litigants through the Volunteer Lawyers Project. Karen is a frequent lecturer on trial advocacy and professional liability topics throughout New England and was an adjunct professor of pretrial practice at the University of Maine School of Law.



Michelle Awad, Q.C.

Regent for Region 12
McInnes Cooper
Halifax, Nova Scotia

Inducted in 2018, Michelle Awad wasted no time making her mark in service to the College, acting as Province Chair for The Atlantic Provinces and serving on four different College General Committees in her first three years as a Fellow. Now she is our newest Regent. Michelle is a senior partner in McInnes Cooper’s Litigation and Insurance Groups. Michelle practices throughout Atlantic Canada, doing commercial litigation and arbitration, securities, risk management, shareholder disputes, products liability, defamation, commercial insurance and bonding, and disability

and life insurance underwriting and claims. Michelle is an honors graduate of Dalhousie University and earned her JD from the University of Toronto. In her spare time, Michelle enjoys tennis, running, skiing and cooking (although, hopefully, at different times).



Richard H. Deane, Jr.

Secretary
Jones Day
Atlanta, GA

Rick Deane represents clients in all types of criminal or civil investigations by the Department of Justice and other investigative agencies. He has extensive experience in federal grand jury investigations, trying cases in state and federal courts, and appearing before the Fifth and Eleventh Circuit Courts of Appeal. Rick earned his undergraduate and law degrees at the University of Georgia, followed by an LL.M. from the University of Michigan. In 1980, Rick became an Assistant U.S. Attorney for the Northern District of Georgia and later became Chief of the General Crimes Section

and Chief of the Criminal Division. In 1994, Rick was appointed as a Magistrate Judge for the U.S. District Court, Northern District of Georgia. He served until 1998, when he was made U.S. Attorney for the Northern District of Georgia, serving until 2001. In 2001, Rick was named by *Time* Magazine to the “Time 100 List of Innovators.” Rick was chosen by the State Bar of Georgia’s bench and bar committee as the attorney recipient of the 12th Annual Chief Justice Thomas O. Marshall Professionalism Award, honoring “one lawyer and one judge who have demonstrated the highest professional conduct and paramount reputation for professionals.” Rick is a past president of the National Association of Former United States Attorneys (NAFUSA).

Rick was inducted as a Fellow in 2008. He is a former State Chair and served four years as a Regent. The most interesting thing about Rick is that he attended a public all-male military high school, where he gave up football for the precision drill team. ■

CLE

The Lizzy Borden Trial & Jury



“Lizzy Borden took an axe and gave her mother forty whacks. When she saw what she had done, she gave her father forty-one.”

It was one of the most sensational crimes and trials of the nineteenth century, immortalized by the glib but catchy poetic stanza that went the nineteenth century version of viral. How was Lizzie Borden acquitted of this cold-blooded murder?

Supreme Court Historical Society resident historian, Clare Cushman, moderated a CLE Program at the Annual Meeting in Chicago, divided into two parts.



First, the audience learned about the 1893 Lizzie Borden trial from guest presenter, Cara Robertson, the author of *The Trial of Lizzie Borden*, which examined how the defense foiled the prosecution, largely by getting a sympathetic jury. *Second*, Clair turned to criminal defense lawyer and **FACTL Michael D. Monico** to discuss 21st century best practices in jury selection to see what, if anything, has changed in the past 130 years. ▶





Cara Robertson holds a PhD from Oxford University and a JD from Stanford Law School. She clerked for Justices Byron White and John Paul Stevens. She served as a legal advisor to the International Criminal Tribunal for the former Yugoslavia at the Hague.

Cara described the murders. The Bordens lived in Fall River, Massachusetts, then the third largest city in the commonwealth. Andrew Borden was a wealthy local businessman who had married Abby Borden after his first wife died. Andrew had two daughters from the first marriage: Emma and her younger sister, Lizzie. Both daughters were unmarried and lived at home.

On August 4, 1892, at about 9:30 in the morning, Abby Borden was struck dead in an upstairs guest bedroom by nineteen (not forty as the poem goes) blows from what was probably a hatchet or an axe. And sometime between 10:45 and 11:45, Andrew Borden suffered the same fate as he lay napping on the sofa in his living room.

What was puzzling was that the two other people in the house at the time – Lizzie Borden and the Irish maid, Bridget Sullivan – each claimed they had not heard or seen anything.

The front and rear doors were locked. So the police pretty quickly began to suspect those people who would have had knowledge of and access to the house. Emma was away visiting friends in Fairhaven. Andrew's brother-in-law John Morse had arrived the night before as a house guest and seemed like a perfect suspect, but he had an alibi straight out of an Agatha Christie novel. He claimed he had been riding on a streetcar with six priests and he remembered the number on the conductor's hat. And although the conductor didn't remember Morse, he did remember six priests, so the alibi was good. Lizzie quickly became the prime suspect.

At the coroner's inquest, the main problem for Lizzie was that she couldn't give a consistent account of her whereabouts at the time of the murders that made any sense. She was upstairs. She was downstairs. She wasn't sure where she was at this particular time. She was ironing napkins in the dining room but left the task undone and then went to go do something else.

At trial, the prosecution team was comprised of Attorney General Alfred Halsbury and District Attorneys Hosea Knowlton and William Moody. Moody went on to be Attorney General of the United States and then a Supreme Court Justice, serving from 1906 to 1910. Halsbury was actually quite ill, so Knowlton and Moody split the trial duties. Moody made the opening arguments and handled arguments on admission of evidence; Knowlton made the closing argument; they split the witnesses.

The defense team was Andrew Jennings, the family lawyer, joined by Boston attorney Melvin O. Adams and George Robinson, who was the former governor of Massachusetts. Adams was something of a dandy, and the press frequently commented on his appearance. But the real star of the team was Robinson. He insisted on meeting Lizzie before he actually took on representation and he was completely convinced of her innocence. ▶



There were 150 prospective jurors. There was no one from Fall River, by design, the assumption being that people would have too strong of a connection or pre-formed opinion. There was at least one African American called to the venire – African Americans could and had served on juries in Massachusetts since the 1860's. There were no women; women didn't serve on juries in Massachusetts until 1951.

The judge actually asked all of the questions of the prospective jurors. The questions were, "Are you related to the accused or the victim?" "Have you stated any opinion on the case and is it, you know, is it susceptible to change based on the evidence?" And the third: "Do you have any objection to the death penalty?"

The defense wanted to avoid Catholic jurors of Irish descent. There was some resentment that the Irish Catholic maid, Bridget, had come under suspicion and that Lizzie Borden's lawyer, Andrew Jennings, had publicly said, "Look, there were two people in the house at the time of the murders. Who's the more likely killer? You know, the daughter or the stranger?" When he said the "stranger," he might as well have said "the Catholic immigrant."

Jury selection took nine hours to winnow 101 men to the twelve selected. There were six farmers, three mechanics and two manufacturers. The foreman was a real estate owner.

Jurors earned \$3 a day. They were put up in the Parker House Hotel under the custody of a deputy sheriff. The jurors were lodged on the third floor; the attorneys were on opposite sides of the second floor and the judges (there were three) were in between on the second floor.



The evidence against Lizzie was entirely circumstantial. The victims' skulls were brought into the courtroom as the medical experts testified that with sufficient leverage a woman could have inflicted the damage; this was important because hatchet or axe murders, or indeed, using a hatchet or an axe, was considered to be a male activity.

One of the big points in Lizzie Borden's favor was that no one ever saw any blood on her. Two people were brutally murdered in the house and yet there was nothing in her hair, nothing on her face. Every witness who saw her after the murders was asked to catalog her clean appearance and the absence of blood.

But Lizzy changed dresses shortly after the murders. She was wearing a blue dress in the morning and she received people later that day in a pink dress. And Lizzy burned a dress a few days after the murders. But the prosecution never estab- ▶



lished that the burned dress was blue. Lizzy openly burned the dress while police were present, so it was not a surreptitious act, and Emma testified that the dress had been stained with paint and Lizzy simply chose that occasion to burn it.

In the defense summation, Robertson's main point was that a wealthy, prim and proper woman could not be an axe murdering fiend.

The prosecution had its most powerful evidence ruled inadmissible: Lizzie Borden's own statements, which were contradictory; her frankly expressed enmity to her stepmother; and her alleged attempt to buy prussic acid before the murders. The prosecution was left to arguing the timeline and the fact that she was the only one with opportunity.

The jury deliberated for only ninety minutes. They were unanimous on the first ballot and only stayed in the room to talk over the case out of respect for the prosecutors and also so that they would appear to be reasonably deliberative, as one of them put it. For them, it was quite a clear case. On her way out of the courtroom, Lizzie shook the hands of each juror and later wrote each of them a thank you note. The jurors left the court to pose for a picture as a souvenir, a copy of which one of them sent one to Lizzie. The defense had picked what was, for the defendant, a remarkably good jury.



FACTL Michael Monico earned his BA at Georgetown University and his JD from Northwestern University before becoming an Assistant United States Attorney for the Northern District of Illinois from 1973 to 1977. Since then, Mike has represented clients in white-collar healthcare fraud, anti-trust, public corrup-

tion, mail wire securities fraud, and foreign corrupt practices investigations throughout the United States and the globe. Mike is a past president of the American Board of Criminal Defense Lawyers and the Seventh Circuit Bar Association. He co-authors the only treatise on federal criminal law in the Seventh Circuit, "Federal Criminal Practice; A Seventh Circuit Handbook," now in its 13th edition. Clare Cushman asked Mike, as a 21st century defense lawyer, for his thoughts on the 1893 Borden trial. Mike quipped that in 1893, as well as today, it helps to have a former governor on the defense team. Clare then asked whether Mike prefers jurors with previous jury experience. Mike doesn't want them to have recent jury experience because he doesn't want some other lawyer's explanation of reasonable doubt to be used in his case.

The prosecution in the Borden case asked potential jurors if they believed in capital punishment. Illinois, of course, no longer has capital punishment. But if it did, prosecutors have to be allowed to ask a potential juror if he or she would be able to enforce the death penalty. The Borden trial lasted two weeks. Mike likes long trials because you have a chance to get to know the juror and have the juror get to know you. "For example," he said, "when I'm talking to my client, whoever he or she is, I whisper in his or her ear, while the jury's watching, and then I say, okay, I tell them to smile and nod because I want the jury to think that we have a very good relationship, my client and I. Because there is a lot of theater involved in this."

The judge did the voir dire questioning in the Borden case, and that's typical in today's federal trials. But when Mike gets to pose questions, he likes to ask jurors if they would promise each other, and promise him, that they would be the same fair and impartial juror that they would want if a family, friend or loved one of theirs was sitting in the defendant's chair. Mike wants the jury to think that any one of their family members could be sitting in this trial.

To Mike, the real question is "Do I want to keep this juror or do I want to expel him?" If Mike is trying to create reasons for the judge to declare that the juror is excused for cause, then he may, with an African American defendant, ask "Have you ever had an African American person to your house for dinner?" But as soon as Mike decides he wants a juror, he stops asking questions to avoid raising any issues.

The availability of social media has impacted the nature of the jury selection process. Mike related a case he tried representing a former NBA player. It was a civil case but the plaintiff had accused the defendant and two of his friends of drugging and raping her, so it was a strong accusation. Mike's jury consultants counseled "No young women on the jury." But Mike wasn't so sure. By looking at social media posts, Mike's team learned that one young woman who was a prospective juror had worked at a gentleman's club. From her posts, Mike concluded she might be sympathetic to his clients. Ultimately, he selected a jury of mostly women – and won.

In 1986, the Supreme Court held, in *Batson v. Kentucky*, that preemptory challenges may not be used to eliminate potential jurors on the basis of sex, ethnicity, race or religion. Mike uses *Batson* in every trial. For example, in the NBA player case, he had three African American defendants – but there were only two African Americans in the fifty-person venire pool. Mike moved to

strike the entire panel and bring in fifty new people. The judge denied the motion; but the motion put him on notice that the race of the jurors was an issue, making him less likely to allow a prosecutor to strike a minority juror.

Under *Batson*, you must object when the prosecutor tries to strike a minority juror. You must put on the record that the prospective juror is a minority. The prosecutor typically will offer race neutral reasons for striking the juror from a pre-prepared list, such as “I’m going to strike that prospective juror because of his demeanor.” Your response might be “Judge, I’ve watched this witness. You have watched this prospective juror. There’s no difference in the way this prospective juror presents than any of the others.” In most cases, the judge will give the prosecutor the benefit of doubt and overrule the *Batson* objection. But even if he overrules the first objection, he will be more inclined to sustain subsequent objections.

It is not uncommon for a prosecutor to hope to become a judge some day; and in Illinois, one of the questions judicial candidates are asked is, “When you were a prosecutor, were you ever accused of a *Batson* violation?” So they don’t want that; they don’t want to have that on their record. So a prosecutor who knows you will keep making *Batson* objections is more likely to self-moderate racial strikes.

Mike uses jury consultants to get a group of people together who will be similar to the people who are being called for jury duty, usually a month or six weeks ahead of trial. He recounted a case where he represented a woman who was a lawyer in her sixties who had never been accused of anything improper before. Mike thought he had a sympathetic case; but he got murdered in the mock trial – the mock jurors just didn’t like his case. The mock jury convinced Mike and his client not to try to defend; instead, they pled guilty and shifted focus to get the lightest possible sentence.

Clare asked Mike to describe the qualities that make for a great criminal defense lawyer. Mike responded, “Well, you have to be very good looking; that’s number one. I like the dandy referred to in the Borden case. So here’s what it is: You have to be what you are. The jury will understand who you are. You can’t fake that, okay? You may be able to fake talking to your client and having him smile and nod when you’re talking to him but you cannot fake what your real abilities are as a lawyer, nor can you fake – say something that’s true that isn’t true.”

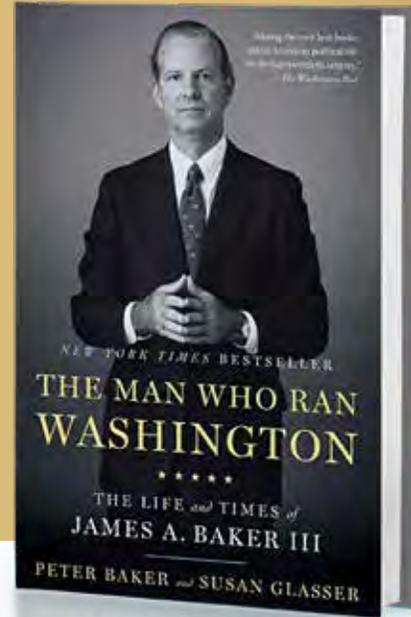
In the end, the lesson was that jury selection was important then and important now – a lesson that did not need to be taught because the audience already knew it. But they got CLE credit anyway. ■





LEWIS F. POWELL, JR. LECTURE

SECRETARY JAMES A. BAKER, III



THE LEWIS F. POWELL LECTURE SERIES WAS CREATED TO HONOR LEWIS POWELL, THE 26TH PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS AND A JUSTICE OF THE UNITED STATES SUPREME COURT. FORMER SECRETARY OF STATE JAMES A. BAKER, III GAVE THIS YEAR'S LECTURE AT THE ANNUAL MEETING IN CHICAGO. SECRETARY BAKER'S PUBLIC SERVICE ALMOST DEFIES THE IMAGINATION. HE IS THE ONLY PERSON TO SERVE AS SECRETARY OF STATE, SECRETARY OF THE TREASURY AND WHITE HOUSE CHIEF OF STAFF. IN THE RECENT BEST-SELLING BOOK, *THE MAN WHO RAN WASHINGTON; THE LIFE AND TIMES OF JAMES A. BAKER, III*, THE AUTHORS CONCLUDED THAT SECRETARY BAKER IS "THE MOST CONSEQUENTIAL SECRETARY OF STATE SINCE HENRY KISSINGER."

Secretary Baker began by commenting on recent events: "Like many Americans, I was really dismayed by the sheer chaos of our departure from Afghanistan." In his view, the manner of our departure was hurried, ill prepared, and reflected badly on us.

On the other hand, Secretary Baker acknowledged that "There's plenty of blame to go around; it is bi-partisan blame. I don't want to relitigate the policies undertaken by the four American administrations involved there; I will leave that argument where it belongs, with the historians. However, I do believe President Biden made the absolutely correct decision to leave Afghanistan, as difficult as it was. We cannot be the peacekeeper of the world even though a lot of countries would like us to be and twenty-plus years is a long time. What started as a mission to capture Osama Bin Laden and stem the flow of terror from that country was transformed when Bin Laden and most of his Al Qaeda people escaped into Pakistan. And in its place was a new American mission; a difficult one intended to provide stability in a country where similar efforts to do so led to humiliating defeats for both the British and the Soviet Empire."

Secretary Baker offered four recommendations for how the United States could avoid similar costly ventures in the future. "First of all, we need to establish a clear objective and we need to stick to it. The initial U.S. goal in Afghanistan was a necessary one in my opinion: The destruction of Al Qaeda's safe haven. But over the years, our involvement gradually shifted to an exercise in nation building; a very clear example of mission creep."

Second, he firmly believes that "we must define victory; define victory in terms that people understand. Devise a clear strategy to achieve it and then have an exit strategy once we have won. Otherwise, we risk drifting into an endless conflict driven by inertia among our policymakers."

Third, "We must know our limits. While the United States may be the most powerful country in the world, our power is not boundless. We simply cannot transform countries like Afghanistan in our own image."

And fourth, he urged that "we should be very, very wary of setting public deadlines when we're talking about military operations. Such deadlines encour-



age our adversaries to bide their time, gather their strength, and strike when we withdraw and this is precisely what unfolded in Afghanistan.”

To those who suggest that our defeat in Afghanistan marks the end of America’s preminent role in world events, Secretary Baker says “nothing could be more wrongheaded. I’ve learned that betting against Uncle Sam is a fool’s wager. We remain in economic, diplomatic, political, and military terms, by far the greatest nation on earth. And that power is multiplied by our long-term alliances in Europe and East Asia. As China continues to emerge on the world stage, it is going to be critical for the United States to remain fully engaged in global affairs.”

He accepted that “[l]eaving Afghanistan, of course, was never going to be pretty. Losing a war is never pretty. But the manner of our departure - which was hurried, ill prepared, and marked by dangerous, wishful thinking - reflected badly, I think, on the Biden Administration and, indeed, on the United States of America. Admittedly, the speed of the final Taliban advance was shocking, but we should have known it would be swift and the Biden Administration’s lack of urgency surely contributed to the fiasco. The July evacuation of Bagram airbase, our largest in Afghanistan, was an early sign, I think, of the mistakes that would follow. We slipped away in the middle of the night without even informing the new Afghan commander or our allies.”

Even so, “[t]he United States airlift of Americans and some of our allies, Afghan allies, was really a remarkable logistical feat. But when you think about it, ladies and gentlemen, it was weeks too late. And with respect to those Afghans who had helped us, it was far too limited.” More important, in his view “the Administration, I think, needs to move quite quickly to mend the damage to U.S. credibility caused by the

manner of our withdrawal. Our partners around the world are clearly rattled by the shocking way in which our involvement ended. They doubt our commitment and they doubt our competence. That withdrawal will embolden our adversaries, the way it was conducted.”

Secretary Baker also addressed the Chinese threat to Taiwan: “We, I think, must spend the upcoming weeks and months assuring our partners about our reliability and we should back up those assurances with measures including enhanced deployments in places like the South China Sea to signal that we really mean business.”

After discussing foreign affairs, Secretary Baker turned to our national debt, saying “we have been spending money for the past few decades like drunken sailors and that’s true, ladies and gentlemen, about both Democrats and Republicans. Everybody seems to want a free ride paid for by their grandchildren. The numbers today are staggering. In March of this year, our total national debt stood at \$28 trillion. That represents about 108 percent of our gross national product and it’s almost double what it was just two decades ago when the debt to GDP ratio was 55 percent. Ladies and gentlemen, that is just unsustainable.”

He acknowledged that some economists argue that “the size of our national debt doesn’t really matter because interest rates needed to borrow the money to pay service to the debt are near historic lows and they see no indication that they will dramatically rise any time soon, if ever again. But ladies and gentlemen, as a former treasury secretary, I have to tell you, I don’t believe that’s a good bet because inflation is starting to rise, although it’s not clear yet if this is merely a short-term jump caused by kickstarting our economy after more than fifteen



months of pandemic-related sluggishness. Inevitably, however, I would submit to you that the chickens will come home to roost and interest rates will spike. And when that happens – not if but when – repaying the debt will require more and more of our tax dollars that I think would be better spent on things that keep our nation strong than paying debt service.”

Moreover, in his view inflating our way out of debt is a terrible option, especially for the poorest Americans who are most hurt by inflation.

Turning to global climate change, he agreed “it is a very serious problem and one that’s going to continue to get worse unless there is a global commitment to the reduction of carbon emissions.” Approximately four years ago, Secretary Baker and former Secretary of State, George Shultz, made a proposal to address climate change. “Our plan called for a fee on all carbon emissions in the United States; an approach that most economists and most Democrats believe is the most efficient and effective way to reduce such emissions. But rather than giving that money to the federal government, all of the revenues from that fee would be returned to Americans in the form of a quarterly dividend that would provide the vast majority of households with more money than they would pay in higher energy costs because of the carbon fee. As a result, this fee would not grow the government, and therefore, in my view at least, should not be considered a tax; something that is opposed, as you all know, by most all Republicans.”

The Schultz-Baker Plan called for “a cross-border adjustment or tariff. The plan would rebate to U.S. manufacturers any fees applicable to products exported to any nation that doesn’t

have a similar carbon program. And importantly, it would apply the fee to imports from any non-complying nations.”

“If any country refused to go along, it would have to pay a tariff to send its goods into the United States; the world’s largest market. This would obviously put pressure on China and others to reduce their own emissions or pay a surcharge to sell their goods in the United States.”

Finally, Secretary Baker addressed the unfortunate lack of civility in today’s discourse. “During my ninety-one-plus years, I have seen few issues that are as vexing and potentially damaging as the one now posed by the incivility that poisons our society. The crassness of our national debate and the political dysfunction that accompanies it too often brings our government to a standstill. People are always saying, ‘You know, politics aren’t beanbag.’ That’s right; politics ain’t beanbag. I know that firsthand and I have the bruises to show for it. But as our national anger has grown, so too, ladies and gentlemen, has our distrust. Distrust of our politicians, distrust to our institutions, and distrust of each other.”

In his view, our country “has survived and it has thrived in large part because we have worked together in the past on important issues. And a democracy, absent the art of compromise, chaos can ensue.” He urged that we “start listening to one another; not just yelling at one another,” and fears that as a result the things that bound us together as Americans “are getting lost in the noise” today.

Secretary Baker received a well-deserved standing ovation.

David Beck
Houston, TX



AN INTERVIEW WITH GENERAL DAVID PETRAEUS



GENERAL DAVID PETRAEUS GRADUATED FROM WEST POINT IN THE TOP FIVE PERCENT OF HIS CLASS IN 1974. HE LATER EARNED AN MPA AND A PHD IN INTERNATIONAL RELATIONS FROM THE WOODROW WILSON SCHOOL IN PRINCETON. HE SERVED IN THE UNITED STATES ARMY FOR THIRTY-SEVEN YEARS, MOST SIGNIFICANTLY IN KEY COMMAND POSITIONS IN BOTH IRAQ AND AFGHANISTAN.

In 2003, General Petraeus commanded the 101st Airborne Division in fierce fighting to capture Baghdad. He then led a nation building effort to create stability and security in Iraq, creating a program of public works and reinvigorating the political process.

In January 2007, President George Bush appointed General Petraeus as the commanding officer of all forces in Iraq. In September 2008, when he turned over that command, Defense Secretary Robert Gates told Petraeus that “History will regard you as one of our nation’s greatest battle captains.” In his memoirs, President Bush likened his selection of Petraeus to the elevation of other great generals of American history, writing “Lincoln discovered generals Grant and Sherman, Roosevelt had Eisenhower and Bradley; I found David Petraeus and Ray Odierno.”

In June 2010 President Obama nominated Petraeus to succeed General Stanley McCrystal as the commander of the U.S. Forces in Afghanistan. During his tenure, General Petraeus stressed improving security, supporting government expansion, promoting economic development, reducing corruption, and “supporting our troops carrying out a difficult mission.”

General Petraeus retired from the army in August 2011. In April of that year, President Obama had nominated him to become director of the CIA. His nomination was confirmed by the Senate 94 to 0. His tenure, which received high marks, was notable for his being a demanding boss who did not hesitate to order substandard work redone or details of plans adjusted.

In an article in *Newsweek*, General Petraeus described his philosophy of leadership in ten points. One, lead by example, from the front of the formation. Two, a leader must provide a vision. ▶



Three, we all make mistakes. The key is to recognize and admit them, learn from them, and avoid making them again. Four, be humble. Listen and learn. Five, be a team player. Take ownership of both triumphs and failures.

Six, don't rely on rank rather than on persuasiveness and logic. Seven, leaders should be thoughtful but decisive. Listen to subordinates' input, evaluate courses of action, but be okay with an 80 percent solution. Eight, stay fit to fight. Your body is your ultimate weapon system; physical fitness for your body is essential for mental fitness. Nine, the only thing better than a little competition is a lot of competition. Set challenges. And finally, number ten, everyone on the team is mission critical. Instill in your team members a sense of great self-worth.

Since 2013, General Petraeus has been a partner at KKR and a chairman of its Global Institute.

An abridged version of the interview of General Petraeus conducted by **Past President Robert B. Fiske, Jr.**, follows.

Fiske: I think our audience is most interested in hearing about Afghanistan. Should we have withdrawn our troops, and if not, how long should we have kept them there?

General Petraeus: Thanks very much, Bob. It's a privilege to be with you and with the American College of Trial Lawyers.

I have long advocated publicly for a continued presence in Afghanistan. I've said that it should be as long as is required. Ideally, military men always want to have decisions based on conditions on the ground and, frankly, I didn't feel that the conditions warranted the withdrawal of our very modest component. At most, 3,500 troops, a lot of drones, some substantial intelligence officers, diplomats, but 3,500 troops, which actually enabled the support of 8,500 coalition personnel and very, very

importantly, 18,000 contractors who maintained the very sophisticated, U.S. provided helicopters and planes for their air force.

We had not had a casualty, a battle loss, in some eighteen months. So it seemed to me that this is quite sustainable, especially given the continued importance of keeping an eye on Al-Qaeda in the country where they planned the 9/11 attacks under the rule of the Taliban at the time and where they have repeatedly tried to reestablish a sanctuary.

Beyond that, there has been the emergence of an Islamic State threat in the Afghanistan/Pakistan region in recent years.

If there's one lesson that we should have learned from the past twenty years of war with these Islamic extremists, it is that you cannot take your eye off them, even after you have destroyed them, as we did with Al-Qaeda and Iraq during the surge when I was privileged to command that operation. You have to keep pressure on them, you have to continue to disrupt and to degrade them, when they begin to threaten again.

And to be fair, this Administration – everywhere else around the world; in Iraq and Syria, throughout Africa, Southeast Asia – they are doing a commendable job in doing just that. The exception was in Afghanistan where there was a sense of need to end an endless war – and I should note that nobody wants endless wars ended more than those who have actually fought in them and know the sacrifice and cost of them – but I didn't feel that this was the way to do that, noting that we've had troops in Korea for seventy years in a war that is still not officially ended, albeit certainly, no more losses in American lives in many years. But a continued threat and, therefore, a continued presence.

We should have stayed until we were very confident that we could withdraw. Keep in mind that Afghanistan was a country that we were going to have to provide continued assistance to in a variety of different ways. We, together with Japan, the U.K. and a handful of other major donor nations, for example, funded seventy-five percent of the budget of Afghanistan.

Nation building was necessary. All those that said it went wrong when we started nation building

really don't understand what is required because if you don't do nation building, you don't have institutions that can take over the responsibilities.

And so, it seemed to me that's very sustainable. We had proclaimed that we are back, we support democracy, we support human rights, we support women's rights; all of that obviously is somewhat called into question by this action and the fact that we did not fully consult with our allies. You saw the consequential criticism in the British Parliament by the British Minister of Defense, as well as very uncharacteristically public criticism.

The Afghan plate was a modest plate – modest in cost – it could have been sustained. And I don't think you can characterize the replacement of a government in Afghanistan, however flawed, corrupt, and imperfect, with the Taliban as anything but heartbreaking, disastrous, and very, very unfortunate.

Fiske: Were you surprised at how quickly the Afghan resistance fell to the Taliban once we announced our withdrawal?

General Petraeus: Not entirely. The agreement under President Trump has to rank with one of the worst diplomatic agreements ever; we basically gave them what they wanted, which is an agreement for us to withdraw, forced an Afghan government, which we did not allow to participate in the negotiations about the future of their country, to release 5,000 Taliban fighters, which helped them prepare for the offensive that they launched a few months ago. That was a big blow.

Then the U.S. Administration decided that it would not reverse the previous administration's decision; having reversed many other decisions – WOT, Climate Accord, Iran Nuclear Deal, and a variety of others. But in this case, we did withdraw our forces, saw the coalition forces withdraw, and then saw the 18,000 contractors withdraw; and I feared a psychological collapse of Afghan security forces, who had fought very hard. This idea that they wouldn't fight is really quite reprehensible to those of us who know that 66,000 Afghan security force members had been killed fighting for their country; twenty-seven times the number of U.S. losses. ▶

The Afghan air force ferries reinforcements out to these defensive positions manned by the Afghanistan army and provides the emergency resupply, air medivac, and also close air support. Once those forces know that no one is coming to the rescue, because the Afghan air force flew itself into the ground without the maintenance personnel to keep it flying, they then knew there was no alternative. And the Taliban, very expertly, had been messaging the local political leaders, who conferred with the local military leaders, and decided we have no alternative, we are heavily outnumbered in these different locations where they mass the forces and they surrendered. And then that became an epidemic of surrender.

Washington was adjusting its scenarios for collapse. They thought it would last longer and you ended up with that paradox that we had literally withdrawn all of our military, closed out our major bases with the exception of a small force around the embassy, so it's as if the Titanic hit the ice-

berg and all the men got on the lifeboats first, they're all gone, and the women and children are left.

The evacuation, while logistically hugely impressive, was chaotic and highly costly. The loss of thirteen of our men and women in uniform in a single suicide bombing was the greatest loss we sustained since late 2011 in Afghanistan and it also took the lives of nearly 200 innocent civilian Afghans. And then a tragic mistake in a drone strike that was based on a context of a ticking time bomb scenario with lots of intelligence feeds that then were misinterpreted with this soda straw eye view of the world as you're trying to understand what is going on with a vehicle that seems to be doing what a vehicle would be doing to assemble the pieces of a car bomb and, again, a tragic mistake there, as well.

And we have now left behind, of course, not just some U.S. citizens, although I think most of them had the opportunity to get out, some green card holders, but a very substantial



number – we’re talking in tens or maybe even more thousands of Special Immigrant Visa applicants and holders and family members – and then we expanded the category of those we said we would support anybody who was basically in jeopardy, in security jeopardy, because of their work with us or with Afghan forces or the Afghan government.

So there is a very, very substantial obligation we still have. That has to be the immediate need, even as we certainly look to what it is we’re going to do to try to identify any imminent threat of Islamic extremist activity that could go beyond Afghanistan, perhaps not just into the region, but into Europe and, unlikely, in the near term, but to the United States, as well.

Fiske: What do you think is the level of risk of a rise in Al-Qaeda and another terrorist attack from Afghanistan on the United States?

General Petraeus: Well, clearly the threat has risen; there’s no question about it. The Islamic State is a very worrisome group in particular because of its facility and the internet. It is a real threat in Afghanistan and Pakistan, but it’s an enemy of the Taliban and the Taliban will be fighting it. It is actually an opposition force to the Taliban right now and I think the focus, initially, will be in that local area and that could be for quite some time. Al-Qaeda is an ally of the Taliban; it was allowed to have a sanctuary in which the 9/11 attacks were planned under Taliban rule. The Taliban refused to eliminate that sanctuary, which is why we went in and toppled the Taliban and eliminated that sanctuary and why we stayed. We have always been in Afghanistan, predominantly to prevent that from being reestablished or recently, to keep the Islamic State from doing the same. And also, we forget that Afghanistan was a spectacular platform for the conduct of the so-called regional counterterrorism campaign that included periodic actions in places like western Pakistan, not the least of which was the raid that was launched that brought Osama Bin Laden to justice in Ahmadabad, Pakistan.

So this is a threat. We have no bases anymore in the central Asian states and the south Asian states. Pakistan made us move our base some years ago.

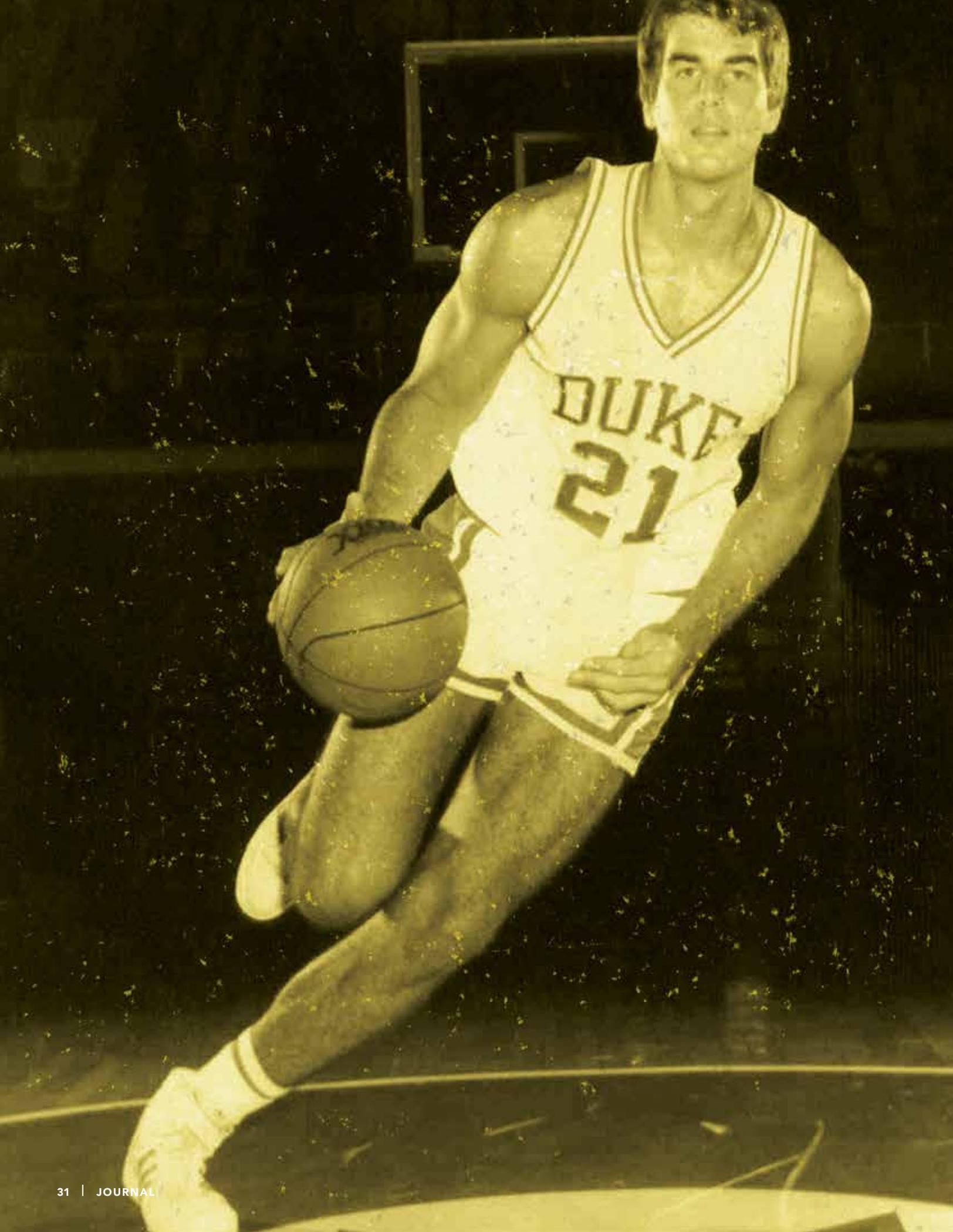
It’s going to be a very, very big challenge, especially with the Taliban now not wanting us in their airspace. And the kind of issue that developed in that mistaken tragic drone strike in Kabul city is what can happen when you get a lot of intelligence indications, you’re under pressure, but you don’t have absolute confirmation and the facts start to seem to conform to what it is you’re looking for and you can end up with mistakes.

So this is going to be a huge challenge, but the bigger issue is that there is a looming humanitarian catastrophe of enormous consequences starting in Afghanistan. The Taliban are quickly finding themselves financially broke, with their assets frozen in the U.S. and around the world, unlikely to be unfrozen, given the draconian nature of the regime that is already emerging and a very ultra – extremist interpretation of Sharia law that appears to be being implemented. Women can no longer go to the university, seventh grade may be as far as they’re allowed to go; they’re not welcome in the government positions they used to hold in Kabul, etc., etc.

And so that is going to be a challenge for them. The lights could literally go out in Kabul. Electricity is imported from the central Asian states to the north and generated through refined products that come from Iran into generators inside Afghanistan.

There was already a drought situation this summer so the harvest had been horrible. You’ve had Taliban takeover of the government that was functioning after a fashion that largely has fled. The technocratic kind of knowledge has fled with that and you’re going to see over a million refugees flooding just into Pakistan alone, and also into other neighboring countries. Pakistan is a very fragile country with its own extremist threat, its own societal religious and economic challenges of very considerable nature. And this is, by the way, the kind of condition that does give rise to extremism and so that will further amplify, I fear, the threat that may emanate from Afghanistan as a result of the decision to withdraw in such a hasty manner.

Robert B. Fiske, Jr.
New York, NY ■



JAY BILAS DON'T TAKE SPECIAL FOR GRANTED

JAY BILAS WAS STARTING CENTER FOR THE DUKE UNIVERSITY BLUE DEVILS FOR FOUR YEARS, LEADING THE TEAM HIS SENIOR YEAR TO THE NCAA FINALS. JAY IS A TRIAL LAWYER AND NOW A HIGHLY REGARDED ANALYST AND COMMENTATOR FOR ESPN AND A REAL SCHOLAR OF THE GAME OF BASKETBALL. JAY IS ALSO THE AUTHOR OF *TOUGHNESS*, A BOOK I WOULD RECOMMEND TO ANY ASPIRING TRIAL LAWYER. JAY DISCUSSES THE IMPORTANCE, TO ATHLETES, TO TRIAL LAWYERS, AND TO ANYONE TRYING TO SUCCEED, OF QUALITIES INCLUDING PREPARATION, COURAGE, COMMITMENT, COMMUNICATION, AND RESILIENCE, ALL QUALITIES THAT WE KNOW A GREAT TRIAL LAWYER MUST DEVELOP.

HERE ARE JAY'S ABRIDGED REMARKS FROM THE CHICAGO MEETING:



I flew up this morning from Charlotte, North Carolina, with a couple of friends of mine; one is Harlan Prater from Birmingham, Alabama, also a graduate of Duke. The other was Christian Laettner, also a Duke graduate. And a gentleman across the aisle was wearing all light blue and leans over to me and says, “Wanna hear a Duke joke?” And I said, “Well, Sir, I graduated from Duke, my friend Harlan graduated from Duke, and that guy behind me, Christian Laettner, graduated from Duke. You still want to tell your Duke joke?” And he said, “Nah, I don’t want to have to explain it three times.” So, it wasn’t a real stellar start to the day. But traveling up here with my friend Harlan, that satisfies the community service portion of my sentence.

I’m sure all of you have heard by now that the guy that I played for in college a million years ago, Mike Krzyzewski, Coach K, is retiring at the end of this year. He is going to spend this year coaching his last team at Duke and he’s got a very good one so it should be a fun year. But it’ll be an interesting ride to watch, in my judgment, one of the greatest coaches in any sport, if not the greatest coach in any sport, go through his last year. We don’t often get this opportunity. This farewell tour will be really interesting. ▶

I've thought a lot about the leadership and mentorship that he has exhibited over his forty-one years at Duke, and his time with the United States Military Academy. But in order to put this in context, I'd like to tell you a little story about me, my favorite subject.

I grew up near Los Angeles, a little town near the water called Rolling Hills. When I was a kid, it was a real neighborhood. All of my high school teammates had been my teammates in little league basketball and little league baseball; we played together, we went to the same schools, and then wound up at the same high school. And so my high school basketball team had all played together for eleven straight years by the time we graduated. I played with them longer than any teammates I ever had in just about anything.

We maintained contact throughout the years. About five years ago, my wife and I were in Los Angeles vacationing and a bunch of my former teammates called and said, "Hey, let's get together and have kind of a reunion." We all brought our wives and had a really nice evening. And when my wife and I were driving back, I was profoundly and profusely thanking her for putting up with listening to a bunch of old men talk about how great they were when they were seventeen years old. And she said "No, I really had a good time." And I couldn't help myself. "All right, what did you think of all the stuff that you heard?" And she said something that really hit me hard. "I'm really impressed by how close you guys still are and how great your relationships are, but you all need deep, extensive therapy. All you talked about was how scarred you are from what your high school coach did to you." We did not have a good high school experience with our coach. We had a great experience with one another but not a good experience with our coach. He was still alive at the time; nobody thought to call him. None of us had talked to him since we had graduated high school.

And I started thinking that I and a few other players on the team were very fortunate. We got to move on and I got to experience Coach K and have that profoundly positive relationship with him. My teammates that didn't play beyond high school, that was their last experience in organized sports and that's what they were left with as a leader and a mentor – what we had with our high school coach. And it was a really difficult thing to confront when my wife pointed out that we were scarred by that. It was a huge, missed opportunity for all of us. When I played in college and played professionally, I wasn't one of those players that invited his high school coach to the Final Four; we didn't have that kind of relationship. And I was always envious of my teammates that did. And what a missed opportunity for him to be in the lives of all of his different players; he wasn't in any of our lives once we graduated from high school. It made me even more grateful for what I had when I met Coach K and he started recruiting me and I played for him. It's been a forty-plus year relationship of mentor, friend, coach, teacher; you name it. It's covered every base.

I ask all the coaches I speak to, ask yourself "How do you want to be regarded by

those in your charge thirty years from now? Forty years from now? What sort of impact would you like to have left on them, and what training have you given them to help other people and pay it forward from what you've done to help them?"

I listed some things that Coach K has done as a leader that made such a big impact on me. It's less about X's and O's and how he did a practice plan, all the preparation we did, and it's more about the way he invested in each one of us and how he made us feel. I can tell you this for a fact: I would not have gone to law school were it not for Coach K. When I was playing professional basketball overseas, Coach K offered me a spot on his staff as an assistant coach and he greased the skids for me to get admitted to Duke Law School and be an assistant at the same time, which did not make him a popular person around the law school admissions office. But he pushed it and I did both and it was a tremendous experience for me and one that I benefitted from greatly.

Coach K is a leader. First and foremost, he will teach, lead, serve. And he puts his players first in that service. As Tony Dungy said, "You can be demanding without being demeaning." Coach K has an extraordinary ability to get you to reach for excellence every day but he will also catch you doing something right and praise the action that he wants repeated. He encourages more than he corrects. That was a huge thing. He made us want to please him and not disappoint him.

He had standards, not rules. We never had a curfew. Our standard was do what it took to put yourself in the best position to be successful. If your priority is basketball and school, you'll be in before any curfew that we could set because you'll prioritize getting your rest and prioritize what that means. It's not what you say; it's what you accept. Coach K didn't always say a lot but there were things that we knew that he would not accept. And we always wanted to clear that bar.

Coach K is an amazing speaker. But first and foremost, he's an amazing listener. He understands what makes each of his players tick and he works with that to lead to the best possible result. He lets the players decide. What are the ten standards that we're going to have this year? He lets the players come up them.

He also leads without authority. There's a difference between being a leader and being in charge. He can bark out orders being in charge but by leading without that authority, he was even more effective. Coach K came at us with a tremendous level of respect, and that was inspiring. He made an investment in us and expected us to return it. He's always had a great way of doing that because he understood that what we did as players was really hard. This is something I learned later on, especially when I became a law-

yer. Basketball players had opponents. I never had an opponent when I was a lawyer. I might have had someone on the other side but I didn't have an opponent. And by that I mean, there was no 6'9" 260 pound opponent trying to stop me from getting to the lectern to make my argument. When I played basketball, I had those guys trying to do that. It is a lot different. Sometimes you'll hear coaches say they feel like they're more competitive than their players. No, you're not. Your players are out there physically getting beaten up. Don't act like because you sat there and yelled at a referee during the game and told people what to do that you're more competitive than your players and you want to win more. There's no physical component to coaching; there's no physical component to being a lawyer. That doesn't mean we don't work hard, that doesn't mean we don't prepare, that doesn't mean we don't have tremendous drive and competitiveness. But Coach K had a tremendous respect for what the players did and it always came through. He demanded things of you but respected what you were doing and how hard it was and that really made you want to do even more. That was, to me, always one of the most impressive things.

He always wanted us not just to win but to be worthy of winning. Worthy of winning. It's not winning the trophy; it's being worthy of winning. He wanted the quality of our effort, the quality of our preparation to be at championship level all the time. Every game was equally important. How can you expect to perform at a high level in a championship game if you don't prepare that way all the time? And if you prepare for a championship game, every game you play, once you reach a championship game, you'll know how to behave.

How did we compete? Was our competitive level at championship level? Would our performance and execution in this game have beaten any team out there? That was the standard. It wasn't, "Did we just win this game?" Often, he was more difficult to deal with after a win where we didn't play well than after a loss where we did.

How you conducted yourself on and off the court and how you responded to winning and losing was the standard. One small story about that. Everybody who follows basketball remembers the 1992 Elite 8 game, Duke vs. Kentucky, in Philadelphia where Christian Laettner hit that game winning shot in overtime. Duke people were jumping up and down, it was a euphoric feeling. But Coach K knew it was Cawood Ledford's last game. Ledford, the legendary voice of the Kentucky Wildcats, was retiring. Before Ledford signed off in his last broadcast, Coach K went over to where he was courtside and put a headset on and complimented Kentucky to honor Ledford in his last game. I still look back on that thinking, you know, I'm fifty-seven now; I'm not sure I'd have the wherewithal to do that.

Coach K's been a great mentor, but he's not been the only great mentor I've had. In my law firm and my legal life, I've had the great honor of working for a man named Ben Hawfield. His mentorship in my life as

a lawyer has been equally as profound as Coach K's mentorship in the basketball world. And that's why I would challenge all of you and challenge myself to be the best mentors we can be. As Secretary Baker said, if we want things to change, we're going to have to be the change agents in doing it in that way, in my view. To continue to mentor young people – not just take them to lunch but to be invested in their development and let them know how important they are to you and how important their development in this business is to you. It's been a big part, especially recently in my life as a broadcaster, to do the best I can to help the young people navigate the business and help them learn how I think things should be done. It doesn't mean what I'm doing is the right thing, but it gives them another chance to see what right looks like. And if they decide to follow the way we think is right, then great.

Several years ago, I happened to be with Coach K in Las Vegas for USA Basketball. And he had all the best players in the world in the room – LeBron James, Russell Westbrook, Chris Paul, Paul George, Carmelo Anthony, Kevin Durant, you name it. I happened to be sitting in the back of the meeting. At the end of the team meeting, Coach K told them "When you get back to your rooms, there's going to be something waiting in there for you; it's going to be your USA Basketball uniform. And I want you to do something. I want you to take that jersey and I want you to lay it out on the bed and I want you to look at it and think about how cool this is." He talked about the times that we had in all of our lives when we got our first little league jersey, your first high school varsity jersey. You played in college, the first time you put on your college jersey. For those that played in the NBA, the first time they put on their NBA jersey, their All-Star jersey; whatever it was.

And he said, "We all get to do a lot of really, really cool things in our lives, in our business." And he said, "If you're not careful, you can start to think it's routine." He said, "It's not routine." And then he said, "Don't take special for granted." Don't take special for granted.

I would have run people over to do the games that I'm allowed to do now; it's an extraordinary privilege. But when I walk into Cameron Indoor Stadium or Assembly Hall or Pauley Pavilion, am I taking it for granted? Am I enjoying and appreciating what I have? Am I helping those around me? Am I doing that? Because it's special.

I think the same is true in all of your existences; that what you do is special because you treat it that way. And I would encourage all of us not to take special for granted. And it's been very special being with you here again today. Thank you for having me. This has been truly special.

Terri Mascherin
Chicago, IL

**JODIE
FOSTER**

**TAHAR
RAHIM**

WITH
**SHAILENE
WOODLEY**

AND
**BENEDICT
CUMBERBATCH**

THE MAURITANIAN

FROM ACADEMY AWARD™ WINNER
KEVIN MACDONALD



DEFENDING A TERROR SUSPECT AND THE RULE OF LAW:

An Interview with Nancy Hollander



WILLIAM J. MURPHY, SECRETARY OF THE COLLEGE, INTRODUCED AND INTERVIEWED FACTL **NANCY HOLLANDER** ABOUT HER DEFENSE OF THE 9/11 TERRORISM SUSPECT MOHAMEDOU OULD SLAHI, NOW BETTER KNOWN AS “THE MAURITANIAN,” THE TITLE OF THE CRITICALLY ACCLAIMED FILM THAT CHRONICLES NANCY’S DECADE-LONG REPRESENTATION OF THIS RECENTLY RELEASED GUANTANAMO DETAINEE.

Bill began with a clip from the film’s dramatic trailer, including a scene in which Nancy responds to a press inquiry about her comfort level defending a man accused of a significant role in the September 11, 2001 attacks and her feelings about being called a “terrorist lawyer.” Nancy chafed that no one has ever called her a proponent of rape because she defended a man accused of rape or looked for victims in her backyard when she represented an accused murderer. But rather than dispute the terrorist label, Nancy embraced it: “I am a terrorist lawyer if that means I am willing to defend those who are accused of terrorism, because in my defense of any client I am defending the Constitution of the United States, and the laws and treaties to which it is bound, and I am defending the rule of law.”

Nancy graduated from the University of New Mexico’s School of Law in 1978. Her practice is criminal defense and human rights litigation. She has been approved as qualified civilian defense counsel for the Military Commissions established by the Department of Defense, as well as for the International Criminal Court. Her past clients have included Irish terrorism suspects charged in the United Kingdom, and Chelsea Manning, for whom she was successful in achieving a commutation of sentence from President Obama.

Nancy is among many Fellows of the College who have represented Guantanamo detainees, including recently deceased **Past Presidents Michael Cooper** and **Michael Mone**, and Chicago **Fellow Tom Sullivan**.

Academy Award winning actress Jodie Foster played Nancy in the film, winning her third Golden Globe Award for the role. Ms. Foster helped introduce Nancy in a pre-recorded video clip. It was an honor, Ms. Foster said, to portray Nancy in the film, “complete with her power suits, red lipstick and nails, confronting the military justice system during the height of Islamophobia in the aftermath of the 9/11 attacks.” Ms. Foster described Nancy as one of the superheroes of the legal profession, confirming and living her own commitment to the ideals of the American justice system. ▶

Ms. Foster also described her relationship with Mohamedou, “whose story has a lot to teach us about the power of faith, forgiveness, humanity, in the face of systemic injustice.” Describing Mohamedou as “brilliant, funny, genuine and loving,” despite having been kidnapped from his homeland, imprisoned, interrogated, assaulted and tortured, Ms. Foster said that she had been blessed to know him. And she noted that Nancy’s human connection with the detainee – as depicted in “The Mauritanian” – generated their combined “superpower,” as they confronted the system together in a struggle for justice and their common humanity.

An abridged and condensed account of Bill and Nancy’s conversation follows.

Murphy: Can you describe for us, as a trial lawyer, how you went about establishing a relationship of trust and confidence with Mohamedou, whom you first met in a tiny cell at GTMO, with his feet shackled to the floor, and after he had been imprisoned and interrogated – including through enhanced methods, otherwise known as torture – for several years?

Hollander: I knew nothing about him, other than he had been accused of somehow being involved in the 9/11 attacks. I didn’t know if he spoke English, and my colleague who made that first trip to GTMO with me spoke French, and we hoped he did too. He surprised me with his ability to speak English, and just as it was depicted in the film, he hugged us and said: “My lawyers.” I think it took me a lot longer to trust him than it took him to trust me. If he were sitting here today, he would say, “I had no choice . . . I had to trust her because I had nothing else.”

Murphy: The film depicts in dramatic fashion Mohamedou’s testimony during his habeas hearing that was piped from Guantanamo to a courtroom in Washington, D.C., where the late **Judicial Fellow James Robertson** was presiding. How did you manage witness preparation and the presentation of testimony from thousands of miles away?

Hollander: We had another member of our team, Linda Moreno, sitting with Mohamedou in GTMO during his testimony. And he had read in advance all of the papers we had prepared for his defense, other than those that we were prevented from sharing with him because they were classified. Although the movie summarizes his testimony as if

it were given as a single presentation, in fact we proceeded through a typical direct and he was subject to cross-examination. But all the words the actor Tahar Rahim speaks during the film were taken directly from the hearing transcript.

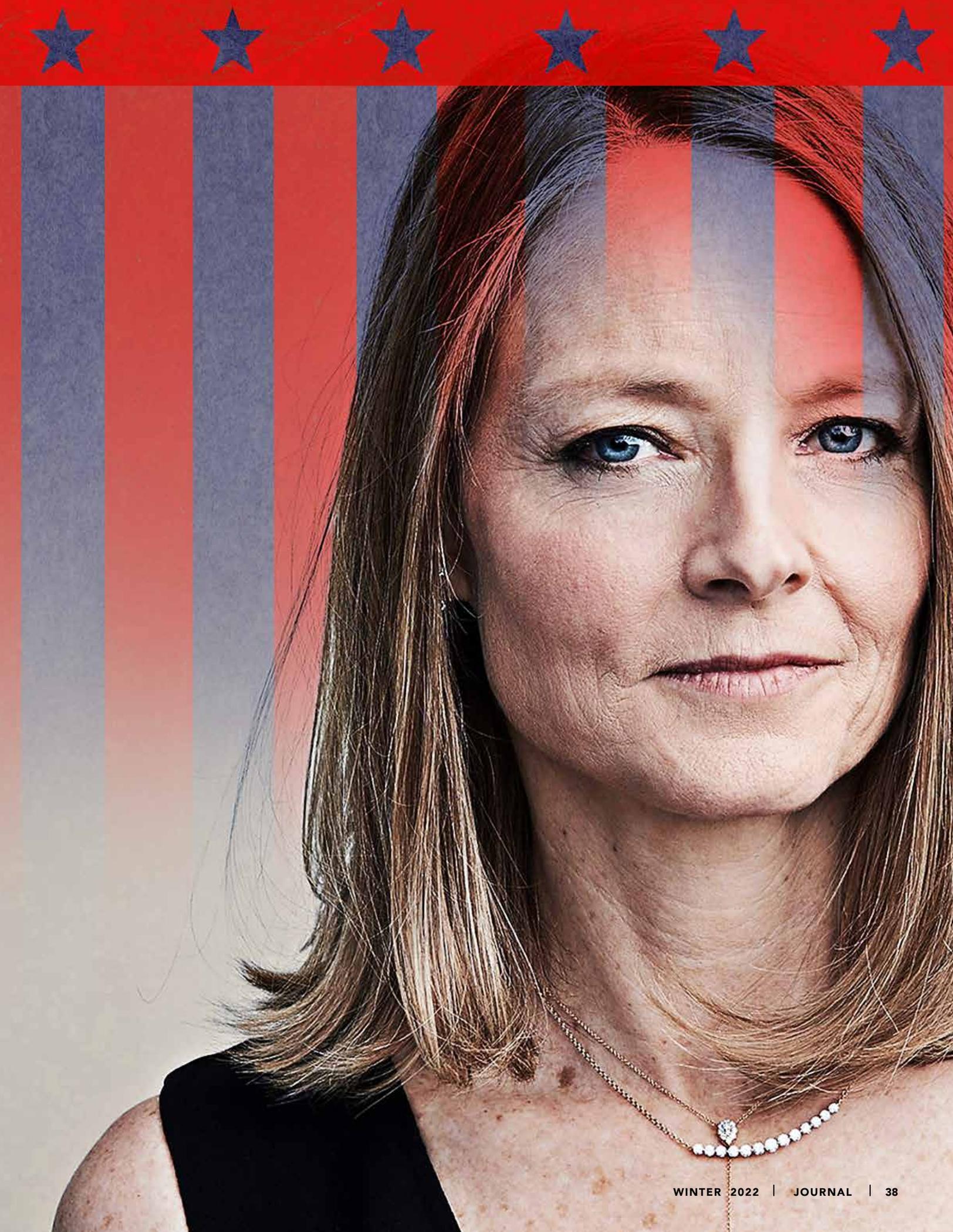
Murphy: Was Mohamedou anxious to testify, or was he petrified about the proceedings?

Hollander: I think both of those are true. He was scared, but he said: “I have to trust the Court.” He had nothing else. And although he was very nervous about giving his testimony, he insisted that he would testify and tell his story.

Murphy: How effective were the government’s lawyers in cross-examining Mohamedou?

Hollander: They weren’t effective at all. Mohamedou had incriminated himself in several statements he had made while being subjected to torture. They asked over and over: “But you said this during interrogation?” And he would respond: “Yes I said that.” Finally, the judge stopped them, saying “We all know what he said on those occasions.” It turned out that most of what the government had by way of support for Mohamedou’s alleged role in 9/11 came from their interrogations of another detainee, Ramzi bin Al-Shibh, who is one of the defendants in the Military Commission proceedings, and he too had been tortured when he described the recruiter’s role ascribed to Mohamedou. We tried to present evidence concerning the circumstances under which Al-Shibh had made incriminating statements about Mohamedou, and the government refused for fear the evidence would then be available to Al-Shibh’s attorneys. They decided not to rely on Al-Shibh’s statements to corroborate the case against Mohamedou; as a result, they had nothing.

Murphy: Mohamedou was alleged to have been a recruiter who enlisted the terrorists who hijacked the planes and flew them into their U.S. targets on 9/11. As I understand it, he admitted to having been a member of Al-Qaeda during the period when the Mujahadeen were attempting to overthrow the Communist regime in Afghanistan during the early 1990s but left the organization shortly thereafter. How were you able to develop evidence that he was not a member of Al-Qaeda in September, 2001? 





Hollander: Well it was the government's burden to show that he was a member of Al-Qaeda at the time of the attacks. He testified that he had left the organization after the Communist regime collapsed, and the government could not prove otherwise. At one point, I told Judge Robertson, "You know, the U.S. government joined with Al-Qaeda in attempting to defeat the Russians and overthrow the Communist regime. We supplied the Stinger missiles, and we have evidence concerning the funding we sent to Afghan rebels through Pakistan." Judge Robertson, who was a wonderful judge, responded: "Ms. Hollander, we have all seen 'Charlie Wilson's War'." He ultimately determined that the Al-Qaeda organization that Mohamedou joined and left in the early 1990s was not the same organization that carried out the 9/11 attacks a decade later. The government really presented no evidence to the contrary.

Murphy: The habeas hearing took place in the Fall of 2009, eight years after Mohamedou was taken into U.S. custody and four years after you began representing him. Then the government appealed, and the D.C. Circuit reversed Judge Robertson late in 2010 and remanded for a new hearing. Tell us about the appeal and your efforts to convince the Obama Administration not to appeal.

Hollander: This was the only habeas petition that Judge Robertson had granted. And despite the Obama Administration's stated desire to close Guantanamo, they appealed a good number of the cases in which habeas had been granted. And I blame the Obama Justice Department for the fact that for the next six years nothing happened.

Murphy: Were you unable to obtain a hearing on remand?

Hollander: Judge Robertson retired and was replaced for a time by Judge Emmett Sullivan, which was great because he required the government to produce more discovery. But then the case was reassigned again, and we filed many motions requesting a hearing. The government wanted to hold an abbreviated hearing and present just enough evidence that they thought would satisfy their burden of continued detention. Only if the trial court disagreed, would they be required to make a fuller presentation. We opposed that effort for the government to get two bites at the apple. We litigated all of this, but the assigned judge – Judge Royce Lamberth – never ruled on the government's proposal.

Murphy: So eventually, as I understand it, Mohamedou received a hearing before a Periodic Review Board (PRB), established by the Defense Department to determine whether uncharged detainees posed a continuing threat to the United States or had continuing value as an intelligence source. Can you describe that process?

Hollander: Yes, Mohamedou waited and waited for a PRB hearing. The process was created in 2011, was up and run-

ning by 2013, but Mohamedou's hearing did not occur until 2016. Six intelligence agencies were represented during the hearings. Mohamedou testified in Guantanamo, accompanied by one of my colleagues, Teri Duncan. He also had a personal representative from the military, who really took an interest in Mohamedou's case and was a terrific resource. Following the hearing, the PRB determined unanimously that Mohamedou posed no continuing threat to the United States. It then took the State Department several months to determine where he could be sent. Eventually they decided he could go home to Mauritania and I was able to arrive and be with him within 24 hours of his return home.

Murphy: What a wonderful experience that must have been for him to be returned to his native country.

Hollander: It was wonderful, but I have to tell you he has a great sense of humor. I arrived in the Islamic Republic of Mauritania dressed in a long dress and a scarf covering my face like a hijab. His first words to me as I got off the plane were: "Nancy, there is no dress code here." And I responded to him: "How about 'Hello. Thank you. I'm free'." He just smiled at me, which was classic Mohamedou.

Murphy: Another fascinating aspect of the film is your interaction with Colonel Stu Couch, portrayed by the British actor Benedict Cumberbatch, who had been assigned to prosecute Mohamedou as a terrorist and eventually resigned from the case, and the interaction of Mohamedou with a young Guantanamo camp guard Steven Wood, who eventually befriended your client and actually converted to Islam. Can you talk a bit about those relationships?

Hollander: The movie does not accurately depict how I became acquainted with Stu Couch. I first read about him after he had resigned and his story, "The Conscience of the Colonel," appeared in the New York Times. I didn't know they were considering seeking the death penalty against Mohamedou until I read that article. I called him and at first Stu was very guarded in his conversations with me. But later, after Judge Robertson's ruling, we had another conversation and he said that we had convinced the Court that the government had no case, and he agreed. And now, he has come around to believing that Mohamedou really was innocent and that all of the evidence against him was tainted by statements made under torture. For a Marine Colonel to resign from the prosecution took so much guts. I think he was motivated by his religion. There is a scene in the movie where his minister is preaching that every human being has dignity. And that really did it for Stu. He believed, and he stated, "We don't treat prisoners this way." And he understood that all of the statements Mohamedou had made during enhanced interrogation were inconsistent with his prior statements, and he actual-

ly had confessed under torture to involvement in Al-Qaeda plots that he had no way of knowing about. While the movie depicts Colonel Couch discovering in the classified files that Mohamedou had earlier passed polygraph examinations denying his involvement with 9/11, in fact, we had obtained discovery about the polygraph results a bit earlier. They were inadmissible of course, but Mohamedou knew he had been tested and passed. Ultimately, the government had to concede that all of Mohamedou's confessions were false.

Steven Wood arrived at Guantanamo during 2005, after the period when Mohamedou had succumbed to torture and confessed to things he had not done. They became friends rather quickly over cups of coffee and games of cards. This was a period during which Mohamedou was isolated from the other detainees at GTMO. Steven became interested in Islam and learned about it from Mohamedou. There is a documentary that was produced by The Guardian called "My Brother's Keeper" about the relationship between Steven and Mohamedou. It is an uplifting story.

Murphy: Just for some added context. In the film it is clear that Mohamedou consistently denied being a recruiter for the 9/11 attacks until he was subjected to repeated torture and degradation. He eventually confessed when the interrogators threatened to arrest his mother and bring her to GTMO. And all of this was inconsistent with the polygraph exams Mohamedou had previously passed, but was still accepted by the government as true and a basis to prosecute him as a mastermind of 9/11.

Hollander: After being subjected to prolonged torture, Mohamedou admitted to everything they asked him about. But when they started to really look at it, they realized that he had confessed to doing things he could not possibly have done. The torture scenes come toward the end of the film through flashbacks; the director, Kevin MacDonald, gives a flavor of it, and it all happened exactly as the film depicts, but there was much more of course. The chief interrogator who directed the torture was a flawed Chicago cop and military reservist. He faked a letter indicating that Mohamedou's mother had been arrested in Mauritania and would be sent to GTMO. This was another violation of the Geneva Convention, which forbids threats against a prisoner's family; it was a horrible event.

Murphy: Nancy, "The Mauritanian" is a fabulous film. And your role as a defender of the rule of law for over a decade before Mohamedou's eventual release is a fabulous tribute to our profession.

William J. Murphy
Baltimore, MD ■



A LESSON IN CIVICS –

MARCUS COLE, THE JOSEPH A. MATSON PROFESSOR OF LAW AND THE FIRST AFRICAN-AMERICAN DEAN OF THE NOTRE DAME SCHOOL OF LAW, CHALLENGED THE AUDIENCE AT THE ANNUAL MEETING IN CHICAGO TO RE-THINK THEIR NOTIONS OF CIVICS IN OUR CURRENT POLARIZED AMERICA.

At Notre Dame, Dean Cole became the founder of the world's largest law school clinic devoted to religious liberty. He believes that religious liberty – so integral to our country from its beginnings – may offer an unexpected key to unlock the paralysis in which our country finds itself. He believes that the civics taught in religious schools were a big part of that key; but that we need a new way of teaching in our new polarized society.

Dean Cole began by drawing a bull's eye around the startling ignorance of today's population about our country's most basic institutions, our supposedly shared values as a nation, our founding documents, and our political system and governance. "I'm talking about civics and our collective loss of any understanding of it," Cole remarked.

He offered specific proof:

"A 2016 study by the Annenberg Policy Center showed that one in three Americans could not name any one of the three branches of our government, and only a paltry one in four, twenty-six percent, could name all three. The same study showed that forty percent of Americans believed that the pres-

ident had the power to declare war and ten percent of Americans believed that Congress had the power to outlaw atheism."

Dean Cole attacked the question of "What, then, should civics be today?"

"The common understandings are no longer common. Indeed, our basic civic duties, civil rights, and institutions are widely misunderstood. We frequently blame these misunderstandings on the misinformation made possible by social media. It may be true that the conspiracy theories born in the echo chambers of the internet are amplified by social media but the truth is that they could never take root if they flew in the face of basic truths, so long as those basic truths were widely shared.

"The problem is they aren't. There was a time when they were."

Dean Cole explored the effect of the 1957 Soviet Union launch of the Sputnik, the first space satellite, and the rush of the United States to shift the greatest importance of education to "STEM" – science, technology, engineering and mathematics – topics:

"With the emphasis on STEM, there was little room left for civics, and now it shows. A 2018 Brown Center report on American education examines the status of civic education and found that while reading and math scores have improved in recent years, there's not been a commensurate increase in eighth grade civics knowledge. The study also found that high school social studies teachers are some of the least supported teachers in schools. These teachers re

port having to teach larger numbers of students and take on more non-teaching responsibilities like coaching and school sports, than other teachers. Seventy percent of 12th grade students say they have never written a letter and thirty percent say that they have never taken part in a debate.”

Dean Cole proposed a perhaps-counterintuitive answer to the problem: a committed team of supportive lawyers and religious schools.

“So what can we do to restore civic virtue and civic engagement? I think the answer is religion and lawyers in schools. What we can do to restore civic engagement and common understandings of our institutions is to reintroduce the values that we want in our schools.”

As an example, Dean Cole offered:

“As a kid, I learned basic civics in my Catholic schools, even in my poor black neighborhood in Pittsburgh, Pennsylvania. I also learned black history. I learned about Malcolm X. I learned about the tenets of the Black Panther party; about slavery and Jim Crow. I also learned things that most other kids aren’t taught about those subjects like the fact that there were slaves in New York and Massachusetts before the founding era. I learned that police officers were there to help and protect me, not violent armed men and women whom I should fear. And I learned that serving others was a noble purpose for one’s life and that all work was honorable. I learned those things because the nuns who taught me cared about whether I learned and they wanted me to care, too. They wanted me to learn the truth about this country and about myself and they were not afraid of the truth. Learning that truth didn’t make me hate America; it made me want to take responsibility for improving America.

DEAN MARCUS COLE

“About twenty years ago, the Archdiocese of Chicago decided, for budgetary reasons, to close down a number of schools. The decision was made to close schools with low Catholic enrollments or schools with no parish church to support them. This meant that a large number of schools that were to close were in predominantly African-American neighborhoods on the south and west sides of Chicago. When this happened, two of my colleagues at Notre Dame – Professor Margaret Brinig and Professor Nicole Garnett – decided to study the effects of the closures of these Catholic schools. They decided to analyze not just what happened to the kids who were now forced to go to public schools but also to their families and to their neighborhoods where the school closures occurred. While some of the effects were to be expected; others were very surprising. Of course, the kids who left the closed Catholic schools and were forced to attend Chicago public schools saw a decline in their academic achievement. Many, many studies have shown this effect on students who were pulled from Catholic schools and placed into public schools without regard to whether they were Catholic. The more surprising effects were those on the families and their neighborhoods. The loss of diocese in schools in African-American neighborhoods had a devastating effect on the economy, the families, and the safety of those neighborhoods. Crime escalated, the economy suffered, jobs were lost, and families fell apart. The presence of Catholic schools in the neighborhood served as an anchor of stability; that stability was undermined when the archdiocese closed them.



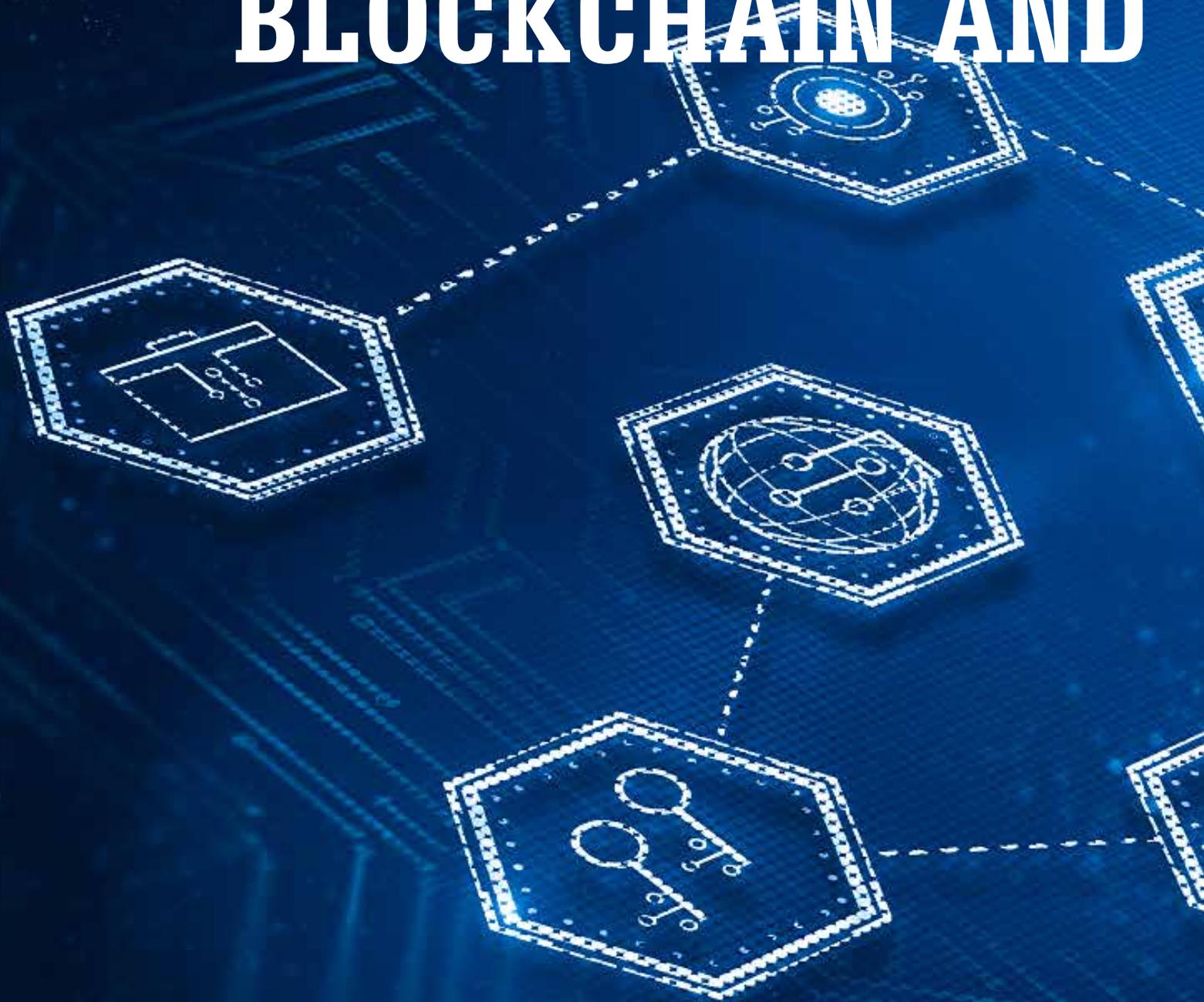
“We need Americans to learn enough truth that they must begin to question lies. That begins with basic civics but it can’t just be the civics that was traditionally taught in American schools in the 1950s and ‘60s. No, it has to be a new civics; one aligned with the truth. It must teach the truth of our history, as well as the truth of our institutions. This education cannot merely be entrusted to our public schools. We need all of our educational institutions, both public and private, to commit themselves to authentic, genuine civics. One that tells the truth about where we’ve been, but also the strength and resilience of our institutions. . . .

“I’m asking each of us to address the tide of misinformation, lies, and conspiracy theories by using our knowledge and experience to teach the next generation about our institutions, their rights, and their duties as citizens.

“Please, for our own sakes, for our country’s sake, go out, find a school or community organization, and share some of what you know. Thank you.”

*Chilton Varner,
Atlanta, GA*

BLOCKCHAIN AND



CRYPTOCURRENCIES

CAITLIN LONG, RAISED AND NOW LIVING IN WYOMING, A GRADUATE OF THE UNIVERSITY OF WYOMING, HARVARD LAW SCHOOL AND THE KENNEDY SCHOOL OF GOVERNMENT, UNDERTOOK TO EXPLAIN BLOCKCHAIN TECHNOLOGY AND CRYPTOCURRENCIES. AFTER DECADES ON WALL STREET AND BECOMING A BLOCKCHAIN AND BITCOIN EXPERT, CAITLIN RETURNED TO WYOMING TO ADVOCATE FOR BLOCKCHAIN AND CRYPTOCURRENCY LEGISLATION THAT HAS MADE WYOMING AN ENABLING REGULATORY ENVIRONMENT FOR THE CRYPTO INDUSTRY. FEATURED IN ARTICLES IN FORTUNE MAGAZINE AND THE WALL STREET JOURNAL, CAITLIN IS IN FAVOR OF, AND SUPPORTS, CRYPTO REGULATION. SHE IS THE CEO OF AVANTI BANK, WHOSE GOAL IS TO PROVIDE CUSTODY SERVICES FOR CRYPTO INVESTORS. THE BANK IS REGULATED BY THE WYOMING DIVISION OF BANKING, BUT IT APPLIED LAST YEAR FOR DIRECT ACCESS TO THE FEDERAL RESERVE BANK'S PAYMENT SYSTEM BY BECOMING A FEDERAL RESERVE MEMBER BANK.



Caitlin defined “Blockchain” as: “a new type of database technology; it’s just a database. And speaking at a high level, a blockchain allows multiple parties to see the same data at the same time and trust that it is valid. A blockchain is a so-called golden copy of information upon which all users can rely and share and, in that sense, it is shared IT infrastructure; again, just a shared database.

“Blockchain solves the duplication and reconciliation problem. When parties don’t trust each other, they keep their own copies of the very same data and then reconcile them. But expressed in philosophical terms, . . . blockchain solves the trust problem. To establish trust today we use an army of auditors, accountants, trustees, lawyers, transfer agents, registrars, county clerks, asset custodians and myriad other forms of third-party validators. And sometimes, we throw in a central counterparty to stand in between them as the trust provider and then we duplicate and reconcile the same data across each of these parties.

“Until blockchain came along, there was no avoiding all this; it was simply the cost of establishing trust. But it’s a tremendously inefficient and resource intensive way to create that trust. Blockchain will streamline these processes massively. It is a cheaper way to create trust.

“All true blockchain systems are decentralized. Most would say there really are only one or two of them; bitcoin being the best known. This means there’s no system administrator, there’s no gatekeeper, there’s no central target for hackers to attack, and this lack of a single point of failure makes blockchains inherently more secure than centralized systems.

“To put that into context, most IT systems today are centralized and sit behind very strong firewalls and if an attacker gets inside, then the attacker is able to get access to pretty much all the data that’s behind those firewalls. But blockchains have a very different architecture. They’re decentralized, they don’t have firewalls, there is no single point of failure to attack, and all the data that sits inside those systems is encrypted, which is why it doesn’t need firewalls.

“Don’t worry though if you’re still fuzzy on what a blockchain is. I found that it takes repetition and time to grasp it and I’m still learning about it, too; nearly a decade into studying it. Some of you may find analogies to be helpful. Many of us remember interoffice envelopes; a way to send confidential packages of information to the addressee where the sender writes the address under the last entry, either on the front or back of the envelope, and then signs it and drops it off at the mailroom. ▶

“A blockchain is analogous to a natively digital interoffice envelope because the signature can’t be erased, there’s a complete record of all the previous senders and recipients of that envelope, and inside it is a confidential packet of data. Except the differences are that the identity of all the senders and recipients of the digital envelope is expressed in numbers and letters, rather than actual persons’ names. The signature on the digital envelope is not in cursive but is instead an encryption key that is unique to the sender and the digital envelope is available for anyone in the world to examine, not just those inside the company mailroom. Again, everyone seeing the same data at the same time.

“Another analogy is Google Docs. When you use Google Docs, you can share the same document with multiple parties at the same time; multiple people drafting it at the same time and you and your colleagues can see each other’s edits in real time. But there’s a problem and that is that Google controls your data and you have no way of knowing whether Google tampered with it. So, another way to think about a blockchain is it’s like Google Docs but without Google because there’s no party that has a controlling role in a true blockchain; no one owns the network because every single participant in the network owns it collectively.”

Caitlin related that she had always been somewhat interested in Blockchain technology but that her “ah-ha moment” about the applicability of this technology came while working on a transaction between General Motors and Prudential as head of Morgan Stanley’s pension solutions group in New York. “We had to figure out how to move \$29 billion of cash, securities and private equity LP interests on the same day. If even one dollar of assets didn’t move that same day, the whole transaction would have been illegal either under pension law or insurance law or both. And back then, securities settled on the trade date plus three days. Securities now settle two days after the trade date but certainly not same day. And private equity interests could take months to settle and even with cash, it’s not so easy to move \$3.5 billion between two non-banks on an intraday basis; that has a surprisingly high chance of not settling, as well.

“In working through months and months of details as to how we were going to pull off that feat of moving \$29 billion same day, despite the settlement systems having very different and much longer settlement times, I discovered how horrible, actually, the settlement system is in traditional financial markets. It’s inefficient in terms of time and cost, as well as inaccuracy in keeping track of who really owns what.

“A famous Delaware Chancery court case came out in 2017 relating to Dole Food, where it was discovered that



there were one-third more claims, valid claims, to Dole Food shares than there were actual Dole Food shares. All those one-third more claims had valid brokerage statements, so people thought they owned real Dole Food shares. But of course, when they added up the number of brokerage statements evidencing claims to Dole Food shares, it equaled one-third more than there were actual Dole Food shares. That's how off Wall Street's bookkeeping system had been. And in these situations where Wall Street's bookkeeping systems are so inaccurate, people have their pockets picked. It's unfair and it's wrong because real demand for the securities is being satisfied with artificial supply that is just created in the bookkeeping systems; it doesn't actually exist.

"But that system no longer makes sense; we don't need to delay and net settle transactions; we have the technology to be able to do so very quickly and on a gross basis without having to go through these netting processes to reduce the amount of overall computer processing. Those problems were long ago solved and yet, we still have the old system design. If we were to start over, we would not design the system this way. I would highly recommend that each of you read a speech by Delaware Chancery Court, Vice Chancellor Travis Laster where he refers to blockchain as the plunger that's going to clean up capital markets. And he walked through why Wall Street's bookkeeping systems are so inaccurate that when a corporate proxy contest falls within a range of fifty-five to forty-five, no one really knows who won the proxy contest; that's how inaccurate they are."

Caitlin described Bitcoin as "the first Blockchain," created by Satoshi Nakamoto. "Satoshi Nakamoto actually didn't invent anything new in 2008. Rather, Satoshi combined several existing advances in a way that no one had combined them before . . . [solving] a computer science problem that was long considered unsolvable by the world's most brilliant computer scientists and mathematicians. He did so by applying a deep understanding of multiple disciplines to the problem, solving it by mixing economic and behavioral science with computer science and the advances across disciplines, spanning math, cryptography, computer science, peer-to-peer networking, economics, and game theory.

"The use of game theory was Satoshi's real genius. Satoshi reinforced the technology with asymmetric incentives. So, for example, it's expensive to add transactions to a bitcoin's ledger but very cheap to verify them; almost free once they've been added. So, it's very, very easy to enforce property rights within this system.

"Another example is that it's prohibitively expensive to attack the bitcoin network. It would cost billions just to rewrite this morning's transaction history but cheap for

individuals to participate in the network by simply downloading the software to become a network node; really beautiful asymmetries.

"But most importantly, unlike every other form of money used in human history, growth in the value of bitcoin doesn't cause more bitcoin to be produced, so it's very different than a traditional commodity. Growth in the value of gold causes more gold to be mined or growth in the value of the dollar enables the Federal Reserve to print more of them. But rather, growth in bitcoin's price only does one thing: It makes the network more secure. There will never be more than 21 million bitcoins. They are divisible, by the way, into hundreds of millions, but there will never be more than 21 million of them, regardless of how high bitcoin's price goes. And as more and more people join the bitcoin network, it just simply becomes more and more immune to attack.

"Wait, you might be thinking: What about all the hacks you've read about? Those hacks happened within insecure applications built on top of the bitcoin blockchain but the underlying bitcoin blockchain itself, the base ledger layer, has never been successfully hacked and it's worth more than \$800 billion so that's quite a hacker's bounty. Bitcoin's success, from a cybersecurity standpoint, is even more notable when you learn that bitcoin is not protected by a firewall. Again, it lives in the wilds of the internet and hackers constantly try but fail to penetrate it. Why? Because bitcoin works as a beautiful balance of technology and economic incentives. Hackers would have to spend a lot more money to hack it than they would gain by doing so. This is one of the things that gives me a lot of confidence that it is not likely to be hacked but no one can say that for sure about any system, of course.

"It took a systemic thinker with topnotch skills in cryptography and computer science and a keen understanding of game theory, monetary history, and human behavior to build such a beautifully balanced system. And in doing so, Satoshi solved a problem that computer scientists, for decades, had tried to solve. It was called the Byzantine General's Problem. Put simply, how would generals fighting on a Byzantine battlefield know that the messages they would receive from other generals during the battle weren't tampered with during the journey across the battlefield? This was considered by many to be an unsolvable problem in the computer science subspecialty of distributed systems but Satoshi solved it. Perhaps if the computer scientists had spent more time talking to economists and behavioral scientists all along, it might have been solved a lot sooner.

"Satoshi's invention triggered the drafting of a whole new proposed article of the Uniform Commercial Code, Article 12, but it is also challenging the dominance of indus- ▶

trial age organizational structure, such as the corporation, with entirely new decentralized forms of organization that do not have human beings at the helm, do not fit well within existing law, and do not respect national or state borders. The governing documents of such organizations are not written by lawyers using words on paper but instead are written by software developers using computer code. And while there was very little litigation in the early days of this industry, as most users of cryptocurrency took the caveat emptor approach realizing its speculative nature and simply moving on from losses, that is of course no longer true today. There is approximately \$2 trillion in asset value in this industry now and annualized transaction value is approaching \$100 trillion and growing fast. I've been watching as litigation involving cryptocurrency has increased in volume and noticing that both the plaintiffs and the judges are struggling with the reality that the law is murky.

“Are cryptocurrencies securities, as the FCC would believe? Or commodities, as the CFTC would hold? Or property as the IRS and state commercial laws imply? Or is it even money? Regarding the latter, bitcoin became legal tender in El Salvador on September 7. So ponder this: UCC Article 1 defines money as, “a medium of exchange currently authorized or adopted by a domestic or foreign government.” Well, El Salvador adopted bitcoin as its medium of exchange so there's now a very good argument to be made that bitcoin meets the definition of money in the UCC. It's no wonder why many of the intermediaries that provide services around bitcoin globally have scrambled to gain access to El Salvador for their bitcoin operations, probably bolstering their argument that bitcoin is money under U.S. commercial law, as well as potentially under accounting and tax rules, too. This is all happening so fast that the knock-on effects are only just now being able to be considered by policymakers and practitioners.”

Caitlin hopes that the “regulation that is coming is enabling, rather than restrictive. It should aim to make this powerful technology so-called backwards compatible with the legal system using the parlance of software.”

Her recommendation is that each state “enact UCC Article 12 when it becomes finalized or maybe even before. We're facing a litigation mess in this industry until we have clear commercial laws governing what cryptocurrencies actually are. So parties to transactions need to know their rights and obligations and so the judges have a roadmap to adjudicate disputes. Five states have already jumped out ahead, including three that actually decided this was so important that they needed to early adopt the draft of UCC Article 12. This is smart because they're going to try and keep their courts from being clogged with litigation over this very murky area of the law by stepping out and clarifying it.”

She noted that “Wyoming was the first state to grant women the right to vote and it took fifty years for the rest of the United States to do the same back in 1869. Wyoming is also the state where LLC's were invented in 1977 and it took about a decade for the rest of the U.S. to follow suit and other states to implement LLC laws. So you probably see where I'm going. Wyoming has a history of leading the U.S. in these important legal innovations. Many states have already copied some of Wyoming's blockchain laws and it won't take a full decade for them to spread nationwide this time. Nor should it, because this is powerful technology that solves many real problems in many applications and it's important that the legal profession not be slow to adapt to it.”

In Caitlin's opinion, “computer code will become the language of legal agreements faster than we all think it will. I would encourage your law schools that you're involved with to start teaching this and your law firms to start looking for attorneys who have skills in this area.” Wyoming has enacted twenty-four separate blockchain laws, one of which authorizes a DAO, LLC – a Distributed Autonomous Organization that is a hybrid entity. “But here's the key: The operating agreements of the Wyoming DAO, LLC's are in computer code. There are fifty-five such entities that have registered in Wyoming since July 1 and many more are coming and there will be litigation surrounding these and judges will need to have experts who can decipher what the operating agreements that are written in computer code actually mean.”

In summary, Caitlin Long forecasts that Blockchain and cryptocurrencies will impact existing laws, require new ones and fundamentally change our financial system.

*Tom Tongue
Portland, OR*



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DR. TEMPLE GRANDIN – A DIFFERENT WAY OF THINKING





Bonjour, everyone!

In my practice as a Family Law litigator in Quebec, I have had ample opportunity to rub shoulders with television and movie stars, important business people and politicians. It is not that I cannot be star-struck, but my job is to look past the power and fame and to speak to the individual. Temple Grandin is a person who is unlike anyone I have met and it was a breath of fresh air to have the opportunity to spend a weekend with her.

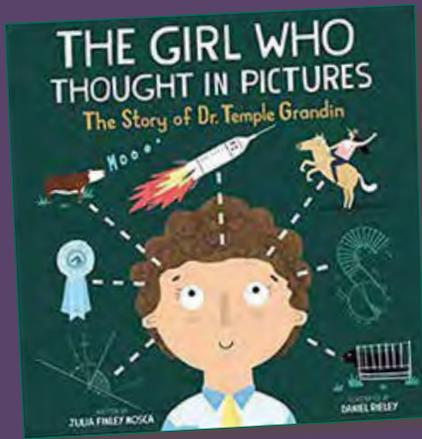
Dr. Temple Grandin is a professor of animal science at Colorado State University. She is arguably the most famous person living with Autism Spectrum Disorder (ASD), an autistic activist, a bestselling author, and a consultant to the livestock industry. In 2010, she was listed in Time Magazine as one of the world's most influential people. But she is more than her accomplishments. She is funny and kind, generous with her time and one of the brilliant minds of our generation.

I was asked to introduce Dr. Grandin at the Annual Meeting in Chicago and I wanted to use a clip from the award-winning HBO film inspired by her life to do so. I called Dr. Grandin's office, expecting to be patched through to her assistant, and to my surprise she answered the phone herself.

She informed me directly – which is her only way – that she thought the excerpt of the film that I had chosen was great. I asked if she had permission to use it. She said: *“Let me show you how it is done with this bureaucracy. Here is the way you will do it! Don't ask, don't tell. They never were able to tell me how many people bought the film outside the country. Can you imagine? So, use it for the introduction but don't put it online.”*

This goes against every fiber of my being. We in Quebec are governed by a Civil Code which has over 3000 articles. I live by the rule of law and commercial standards, which is to say tangled in red-tape. Temple Grandin has no time for that. She finds the most efficient path and plows through to the solution.

To loosely quote from her biopic, her way is different, not less. While we were together in Chicago, many people, including titans of the legal field, came up to introduce themselves to let Dr. Grandin know how much she meant to them and or their friend or family member living with autism. On the pier in Chicago there was a young man in his twenties walking with his gorgeous date. This man had eyes only for Dr. Grandin and was beside himself with excitement to be in her presence. She gave each person who approached her 100% of her attention and would even offer, in her drawl, “you want a picture?” ▶



Dr. Grandin's story inspires countless children from the pages of *The Girl Who Thought in Pictures: The Story of Dr. Temple Grandin* Written by Julia Finley Mosca Illustrated by Daniel Rieley.

NSTA Best STEM Books for K-12 Selection

NSTA Outstanding Science Trade Books Selection

Dolly Gray Children's Literature Award Recipient

A Mighty Girl Book of the Year

USBBY Outstanding Books for Young People with Disabilities Award List Selection 2018

Black-Eyed Susan Picture Book Award Nominee 2018-2019

Many of the Fellows attending the Annual Meeting came to show me the selfies they took of themselves wearing black tie with Dr. Grandin. I clearly understood their excitement. I have my own set of pictures.

Being approachable and friendly is not natural for Doctor Grandin. She famously does not appreciate being touched, but you wouldn't know it if you met her.

Dr. Grandin has lived with ASD since birth. In 1947, when she was born, little was known about how to diagnose or treat ASD; she was considered to have brain damage. Every doctor suggested to her parents that she be institutionalized. Seeking any possible alternative, Dr. Grandin's mother enlisted the help of professionals, and with early intervention therapy, as well as accommodations provided by the school, Dr. Grandin mainstreamed into a neurotypical kindergarten by age five.

But the story of Temple Grandin is not about overcoming adversity to adapt to an average life. Her story is testimony that what many consider to be a disability can be channeled into a unique strength.

As a person living with autism, Dr. Grandin has a natural understanding of the environmental impact of sensory information that would be unperceptible by most. She combined her visual memory and sensory sensitivity to design the curved corrals for livestock handling for which she's so famous. Using her photographic memory and her sensory perceptivity, Dr. Grandin reviewed what caused stress to animals in handling facilities and then designed a system, which has famously reduced the anxiety, panic, and injury of animals. Today, half the cattle in North America are handled by systems she engineered.

One of Dr. Grandin's greatest assets is her memory, which she explained as being totally in pictures and similar to a movie that she can play, pause, or rewind in her mind. She can search each image, rearrange it or perceive small details within it, that can be manipulated. Using this visual processing, Dr. Grandin can conceptualize a design down to its minute details.

What elevates Dr. Grandin's genius is her unique ability, although a visual thinker, to communicate her consciousness. Through her capacity to show us how she views the world she gives us a deeper understanding of the minds of both human beings and animals. She believes the world needs all kinds of minds that can work together and complement each other.

We rarely reflect on how different people think, yet it affects every aspect of our lives. Dr. Grandin explained that different kinds of thinking really do exist. A brain can be more thoughtful or cognitive, or more social/emotional. As a person living with autism, Dr. Grandin's mind is coined an "object visualizer." Visual thinkers are more pulled by arts and mechanics; they are the ones that love motors. There also exist "spatial visualizers," people who gravitate towards mathematics, programming or engineering. The typical lawyer's mind, of course, is seldom visual; it is normally "verbal."

Verbal thinkers are top-down. They form a plan and an implementation strategy. Visual thinkers and people with autism are bottom-up thinkers. They take specific examples of things, find the trouble and solve the issue. In this regard Temple and I dove deep into my own practice. She asked me about abusive relationships and specifics such as: "In what percentage of abusive relationships are there also problems related to alcohol abuse or substance abuse?" "Do you remove the victims from these toxic relationships?" "What is the rate of success?" "What percentage of them do not fall back in the same type of relationship?" "How does this success rate affect your profession?" I had never asked myself these questions. As a top-down thinker, I simply had a way of practicing that solves the individual problem of my current clients but does nothing to correct the things

that make the same problem recur for others. For Temple Grandin, as a bottom-up thinker, it is about fixing the universal problem by categorizing the information.

Dr. Grandin believes we do not value different types of thinking in primary and high school. Many education and public policy officials are verbal thinkers. Because they are in charge of setting the curriculum, they focus on topics that benefit other verbal thinkers. Schools have thus become institutions that churn out verbal thinkers: teachers, doctors, lawyers and the like.

Pulling from experience, Dr. Grandin cautioned us not to reject different minds. Like her, many intelligent children that do not fit the verbal model are shuttled into special education, or are labelled as slow. Doctors wanted to institutionalize Temple, and if not but for her mother's intervention she would not have had the opportunities to invent and create.

Dr. Grandin explained that there are brilliant people who cannot spell, draft or speak a second language, but these same people may be perfect at fixing an air conditioning unit or other mechanics. Without encouraging visual thinkers to develop their hobbies into professions, the world would be void of computer engineers and air conditioning repair men. We need to hold in better esteem the value of skilled trades. She denounced the closing of many professional and skills programs in the United States. We have a shortage of tradesman and of people who fix things such as mechanics, computer programmers, plumbers or electricians. "This country needs more people who can fix things!"

The world needs visual thinkers to avoid group-think. For example, if a visual thinker had been employed in the Fukushima nuclear plant which went into catastrophic meltdown, she is confident that the disaster there could have been avoided. The issue at Fukushima was that the emergency cooling pump and its electric motor drowned. A visual person might have seen that risk and solved it with watertight doors. Dr. Grandin is convinced that had she seen the design, she would have noticed this problem! We need to nurture our visual thinkers in order for them to be there to solve problems.

Temple Grandin urges us to reform the education system to value a bottom-up perspective. Our ultimate goal for education should be to foster critical thinking and not only top-down thinking. We have to ensure that in the years following high school, young adults understand how their minds work and how to harness their unique perspective to better society. Dr. Grandin

campaigns for shop class and home economics to be reintroduced in primary and secondary education. She praised my home province of Quebec for ensuring arts, dance, music, sewing and welding are still included in the curriculum. From a young age, children should be encouraged to explore different subjects and hobbies by exposing them to a breadth of materials across the spectrum (no pun intended): arts, sciences, mathematics, languages, robotics, engineering. "How can a child find out he's musical if he never had exposure or the opportunity to play music?" What children get exposed to is what directs them into different careers. Dr. Grandin was exposed to cattle ranching through visits to her aunt's ranch, and is now the most famous woman in the livestock industry.

This type of education is equally important with young lawyers. Some will be better at storytelling and litigating, others with negotiating and others more comfortable researching and drafting. Following Dr. Grandin's guidance, we must encourage young lawyers to cast a wide net in their first few years of practice, learn how their minds work and where they will be most successful. We will then be able to mentor and coach them positively according to their strengths and work on the other skills. The more options exposed to children or to young attorneys, the more options they will invent for themselves and for their futures.

Many Fellows came by to visit with Temple after her remarks, some of them vowing to treat witness preparation differently. We lawyers sometimes label people who think and express themselves differently from us as "bad witnesses" or witnesses impossible to coach. But maybe we are looking at this the wrong way. "*Understanding How Different Kinds of Minds Approach Problem Solving*" should be a new priority. Temple Grandin teaches us that we must harness everyone's individual strengths. If a witness is visual, prepare a chart or a model. Help them and they will help you. Start by being really conscious of who is in front of you: your partners, your clients, expert witnesses, judges, opposing counsels and all witnesses. There is no identical witness preparation mold for two different witnesses. We should take a close look at whom we are dealing with and approach them accordingly.

This lesson is precious in all areas of our lives. Different kinds of minds can complement one another and work in harmony to propel us to a brighter future.

Suzanne H. Pringle, Ad. E.
Montreal, Quebec



A CONVERSATION WITH

FACTL CHARLES ("CHIP") BABCOCK INTRODUCED AND INTERVIEWED JOURNALIST **DAVID GREGORY** AT THE 2021 ANNUAL MEETING. CHIP NOTED THAT DAVID IS "OVER-MARRIED," REFERRING TO HIS WIFE, **BETH WILKINSON**, A FELLOW OF THE COLLEGE AND ONE OF THE OKLAHOMA BOMBING CASE PROSECUTORS. DAVID WENT TO AMERICAN UNIVERSITY. HE WAS WITH NBC FOR OVER TWENTY YEARS AS A GENERAL CORRESPONDENT, A WHITE HOUSE CORRESPONDENT, AND AS HOST OF MEET THE PRESS. NOW WITH CNN, CHIP DESCRIBED DAVID AS A JOURNALIST WHO IS MEASURED AND BALANCED, WHO PERFORMS HIS JOB WITH DIGNITY AND WITH CIVILITY – NOT SOMETHING THAT WE SEE OFTEN TODAY.

DAVID GREGORY

An abridged account of their conversation follows.

Chip: What is the news today? What is a journalist today? Are we at the depths of the media landscape or are there some good things about the media today?

David: There's a lot to that. When I covered George W. Bush, President Bush, he'd say, "Gregory, you and I have what I call a symbiotic relationship. I need you and you need me." But he also met my father one time and he said, "You claim him? This your boy?" Bush said, "He's a good man; he's kind of a pain in the ass but he's a good man."

I flew to Afghanistan with Vice President Cheney for Hamid Karzai's inauguration. And Cheney was not a big fan of the news media and I don't know that that's changed. I thought we had established something of a rapport. And we arrive at Bagram airbase and they load us on to these Blackhawk helicopters because we're going to fly into Kabul, into downtown to the presidential palace, and I said, well, you know, that's fine, I guess we're all just kind of going together. And he said, "No, no, the Vice President's sending you all ahead."

Who is a journalist today is a difficult question because the answer is that it is whoever we say. There are no defined roles. Secretary Baker was talking about a kind of institutional strength of media that doesn't exist anymore; it's a lot more disparate. And everyone in this audience here has an opportunity to be a journalist. Whoever you say is a journalist, is a journalist.

Now, you may say I have experience and I have credentials and I've seen things and done things, but the truth is there are other people who would say they don't want to hear from me; that I'm just part of the establishment. That I'm not calling out the truths that need to be uttered. And so, what you've seen is an explosion of media outlets and a lot of new voices and that's been a really good thing. For decades we had a media that seemed very reputable and authoritative and centered but was basically middle-aged white men who were controlling what you saw and what was determined to be news. There were a lot of people – women, people of color and others – whose stories were not being told, whose perspectives were not being heard. So that's part of the good thing about what has changed – how bigger the media landscape has become. And along with that has emerged a lot of noise and a kind of breaking down of what we consider to be media.

Chip: For four or five years now, the phrase that everybody heard was "Fake news." What impact, if any, has that had on the public's perception of what you do and what your industry does?

David: Well, first of all, people have been going after the media for a long time. Political figures used to say "Well, the media is biased," and of course it's biased media; it's not as simple as left and right, it's more complicated than that. But you know, I think what is important to remember about President Trump is that that was all a game; the whole fake news business was a put-on. There was nobody who liked – frankly, loved and adored the media – more than Donald Trump. Donald Trump doesn't exist without the media and, in fact, there were a lot of enablers in the media because of how he stormed onto the political scene.

Maggie Haberman, who covered him very ably for the New York Times, could call the President on his cell phone. That's pretty unusual. He wanted so much to be thought of as legitimate by the New York Times, which is why he was so critical of them. So he understood that part of his political persona, in a way that no other politician before him – they may have liked to have done it – but he was brash enough to say I am actually going to villainize the media to such degree that people will just completely tune them out. And other enablers were willing to say the same thing: "Oh, well you can't trust this particular outlet." And we live in this kind of isolated world. We don't really want to hear from other people who think differently than us. And the media has adapted to that and given you what you want so you don't have to cross over to what you're uncomfortable with.

Chip: So two questions come to mind from that. Number one, hasn't the trust in the media, you know, Uncle Walter or John Chancellor – people who delivered the straight, unvarnished truth – hasn't confidence in that been completely undermined? And hasn't the media just become some kind of entertainment?

David: It's just a different world. You read about the history of the 1950's, for example, and you think that America was this kind of very tame, very happy place but underneath that was so much ferment that started to come out in the 1960's. The institutions were different because they were big and powerful and didn't have much competition.



I actually think there's a lot of great journalism out there. There's good investigative journalism. And actually, Trump was responsible for a resurgence in that because there was incredible demand for it. So there are credible outlets for news.

I think the real challenge is that we have to act differently as citizens; we have to work harder. We have to understand that there's no information that we're getting that doesn't have to be stress-tested by us. You're not sitting in front of a television at 6:30 and watching the news anymore; the news is coming to you in lots of different ways. It may be on your Twitter feed, it may be on Instagram or on Facebook. A decade ago, you might have been watching Jon Stewart, and if you were of a certain age you considered him much more credible than me.

I think people make a mistake suggesting or believing that news is news when it's not news. Like there's a view that somehow cable news is on the level and that I'm going to be edified by watching. But that's not going to happen. It is a place of argument and advocacy. And yes, there's new coverage and there can be some good coverage but you have to know how to find it and where to find it. I understand that when I read the Wall Street Journal, which I think is a great newspaper, I understand their point of view on their editorial page. I understand where the New York Times is coming from, not just on their editorial page, but also the choices they're making about what to cover, how much to cover it, what emphasis to put on it; that's where the bias is. And I think people were a lot more aware of that and in that other era that we talk about, people just didn't think about it as much.

Chip: At CNN, there is a split between news programs throughout the day that *report* the news in a straightforward way, and then from 7 to 10 Central they *discuss and interpret* the news. Do you think the audience understands that boundary?

David: I don't think the audience understands it and I don't necessarily think they care. I think there's a vast center. People say, "Where do you get your news?" and there are people who don't see it as entertainment, who want to be educated, and are frustrated by the fact that they can't seem to get more information that can help them make up their mind or see things clearly. But again, I blame us, right? We're getting the media that we want, that we demand. If we pick up our phones and if we're looking at a feed, a social media feed, and we're filtering it in a certain way, then we're getting what we demand. The question is are we challenging ourselves to listen to somebody with whom we disagree?

The issue with the Trump era – and for the first time in my adult lifetime – is that it was never harder to talk about politics or media because people looked at one another and said, "Well, you know, this isn't about what you believe; it's about who you are." We get into a cultural debate.

But there are distinctions. There is terrific coverage all day long on CNN by journalists who are covering stories. There's still a question of what gets covered, how it gets covered, and what the emphasis is. And then usually at night, it's much more commentary, advocacy. It is a movement of journalists and Jon Stewart is really the biggest progenitor. He introduced the idea that what you're seeing is not the real story. Every night, he deconstructed the news to point out the folly of what you were seeing and how it was missing the story. And he drove the notion of an opening monologue, an argument; Keith Olbermann did that on MSNBC. Fox News started to do that, as well, with Bill O'Reilly. And it essentially became argument. We have lots of different voices now. One of the business propositions of this is that it isn't just impact in the moment; it wasn't how many views Jon Stewart would get on the Comedy Channel website. It was how many views he got later on YouTube. And how many views his segments would get after the fact, that's how you started to judge impact. When Tim Russert was doing Meet the Press, you judged impact by how many times Meet the Press showed up in the Monday morning papers. By the time I was on Meet the Press, that was a bygone era, a big change that had already happened.

Chip: But doesn't the Jon Stewart model undermine public confidence in the media?

David: No question. We live in a time when people don't trust their politicians, they don't trust institutions, they don't trust the media, they don't trust banks. They don't trust the criminal justice



system. Lawyers and journalists have always been old saws here in terms of people who lack trust.

Think about how disruptive the '60s were and the reaction to the Vietnam War. There was violence in the streets. If we had had social media back then too, the connective tissue would have brought some of that animus together even more. It could have been even more detrimental to the country. We're actually in a place now where fake news and real information is so hard to distinguish. We often have difficulties establishing what the truth is; that's a real problem in a democracy, as we've seen, just in certifying our election in 2020.

Chip: I did a survey with a jury consultant of roughly 600 people. We asked them if they had confidence that they could spot fake news. And 90 percent, with varying degrees of strength, said yes, we can spot fake news. Then we asked whether other people can spot fake news? Only forty percent said yes.

David: That's interesting, because people are making decisions about what is reliable information and what's not. And you know, some things are provably true and provably false. And we just can't forget that good journalists are still out there working and doing their jobs and it's because of good journalism that we have learned things that we might not have otherwise known. And the way I approach my job covering the White House would not change today. I think any leader of our country ought to be able to take tough questions from the likes of me and my colleagues and they ought to be held accountable and they ought to be able to justify what they've done, what they haven't done, and be able to explain what their thinking is. And journalists matter in that regard.

But you also should be, you know, committed to fairness. I covered the President day in and day out and I thought I had a sense of his mind and what he cared about. And I would keep pushing. But it was also not my job, in my view – which a lot of people wanted me to do – to stand up and call him a liar. I didn't consider that my job. We had other institutions of government, like the Congress, that failed to do its job. They deliberated issues of the Iraq War; they decided to support the Iraq War. And they can say there was misinformation and all the rest; they knew what the information was. And even now, Congress doesn't have the guts to relitigate the President's authority, use and authority, in the war on terror. He still has the same authority that President Bush got after 9/11.

So journalists have a job to ask these tough questions, to bring up things that we may not otherwise know, but I think we ought to calibrate that with fairness and not being so judgmental.

Chip: We have a First Amendment that protects freedom of the press. Do you think about that much as a journalist or take it for granted?

David: I think about it and I think, you know, what's difficult is what Hannah Arendt talked about in totalitarian societies. If we get away from established truths, truth that we can agree on, then we've got real problems because then you can have authoritarianism in the country; you can have democracy undermined. But I'm still very hopeful. There's a lot of good journalism; there's a lot of noise. And I think our institutions, for the battering they've taken, have responded well. We've had some horrific episodes of violence, like January 6th, and yet, the institutions held. Those things are important to remember and therefore, it's important to stand up for the notion that we've got good journalism alongside, you know, a lot of changes, problems in media, that we just have to do a good job of navigating. It all comes back to me that we have an obligation, all of us, to be as well-informed as we can, to be as open as we can, and to listen. Because the politicians that Secretary Baker talked about and all the noise and all that, if we don't create the demand structure, they are not going to respond. They will respond to a media environment that only rewards the loudest people in the room and the most extreme people in the room and that will govern our politics.

Chip: Section 129 of the Soviet Union's constitution had a freedom of press and freedom of speech clause in it that was pretty similar to ours. The difference is that we have people who stand up for free speech, protect it, litigate it, and we have judges who are willing to enforce the First Amendment and give vitality to free speech and free press in this country. That distinguishes us from virtually every other society that has ever existed.

David: I agree with that and I think, at the same time, what's important is to have humility as journalists, right? And one story I like to tell about that is I remember I was at the height of the Iraq War and debate about interrogations and torture and whatnot. And I'm in the Rose Garden of the White House and I'm asking the President; I'm trying to really push him on this issue of interrogations. And I kept saying, "But Mr. President, hold on one second, I want to follow-up; this is really important." And he finally put his hands down and he said, "Gregory, I'm the President of the United States. I will tell you what's important." A little humility goes a long way, too.

Chip Babcock
Dallas, Houston, TX



CHINA'S RISE AS A GLOBAL
ECONOMIC POWER:
WHAT THE PAST SUGGESTS
ABOUT THE FUTURE

宋

CHINA'S INCREASING INFLUENCE – CULTURAL, POLITICAL, MILITARY, AND ECONOMIC – IS FRONT-AND-CENTER ON ALMOST EVERY DAILY NEWS BROADCAST. ITS MILITARY POWER IS OFTEN ON DISPLAY IN THE SOUTH CHINA SEA; IN MID-OCTOBER 2021 CHINESE ASTRONAUTS ENTERED THE COUNTRY'S TIANHE MODULE, THE CORE OF THE TIANGONG SPACE STATION, TO BEGIN A SIX-MONTH EXPEDITION; AND WHATEVER THE COUNTRY MAY DO TO DEAL WITH CLIMATE CHANGE IS OF INTENSE INTEREST WORLDWIDE. AND THESE ARE ONLY EXAMPLES. TO SOME, THIS EVOLUTION REPRESENTS A CHALLENGE TO THE YEARS OF INFLUENCE, POWER AND CONTROL EXERCISED BY WESTERN COUNTRIES. BUT IN CHINA, MANY SEE THE DEVELOPMENT AS EVIDENCE OF A RETURN TO A PROPER NATURAL ORDER IN WHICH CHINA POSSESSES (AS IT DID BEFORE THE INDUSTRIAL REVOLUTION AND THE RISE OF WESTERN GLOBAL INFLUENCE) A MAJOR INTERNATIONAL ECONOMY AND IS REGARDED AS AN IMPORTANT CONTRIBUTOR TO WORLD AFFAIRS. CHINA'S EVOLVING INFLUENCE IS ALL THE MORE SIGNIFICANT DURING THIS TIME IN HISTORY, WHEN THE IMPACTS OF THE COVID-19 PANDEMIC ARE REVEALING THAT THE WORLD IN WHICH WE LIVE HAS MULTIPLE AND DIVERSE CENTERS OF INFLUENCE.



Valerie Hansen, the Stanley Woodward Professor at Yale University and the author of the widely acclaimed new book *The Year 1000: When Explorers Connected the World – and Globalization Began*, addressed the College regarding a select period in Chinese history and its parallels to China's current moment. Her comments demonstrated why an understanding of China's past offers a window into its future and why, on a larger scale, the period in which we live today may not be the first in the history of humankind.

Professor Hansen opened with a reference to Xi Jinping, the General Secretary of the Chinese Communist Party, Chair of the Chinese Central Military Commission, and since 2013 the President of the People's Republic of China. Xi will seek an unprecedented third presidential term next fall. President Xi has often spoken both about his belief that China needs to regain what he considers its "rightful place" in the world and about what Professor Hansen describes as its "economic miracle:" an economy that has grown at about 10 percent per year since 1976 after the death of Mao Tse Tung. This astonishing growth has catapulted China from the eighth poorest country in the world in 1979 (calculated by dollars) to a point where its government announced in 2020 that the entire country has been lifted out of poverty.

Professor Hansen describes the growth of the Chinese economy as the product of several factors, including the decision by American and other companies to shift production offshore, China's admission to the World Trade Organization in 2001, pent-up demand for goods in China as the cultural revolution came to an end and Chinese citizens had savings available to spend, and the fact that China has developed a highly qualified and literate workforce. She also highlighted the traditional spirit of entrepreneurship that has characterized the Chinese workforce since the Song Dynasty (960-1279).

In Professor Hansen's view, President Xi's call for China to return to its "rightful place" in the world can be linked to the Song Dynasty. During that Dynasty, China's economy was the most prosperous in the world and China's population was about 40 percent of the world's population: of the 250 million people then living, 100 million were living in China. The Song Dynasty was located in what are now called "the 18 Provinces," where most of the ethnically Han Chinese currently live. Most of the population, approximately 80 percent, lived in a core area along the coast.

The Song Dynasty was ahead of the rest of the world in several respects. One example of its advanced state was its development of the woodblock printing technique at a time when people in Europe were still creating manuscripts by hand. Woodblock prints permitted the creation of multiple copies of books with relative ease and thus made possible the wide dissemination of information such as innovations that led to increases in agricultural output, the harvesting of new strains of rice, and



other developments that allowed people to live in non-agricultural settings. A related development, dating back to about 900, was the Dynasty's use of moveable type – a prodigious feat given that Chinese writing uses so many characters. Although woodblock prints were a more efficient means by which to create books in the pre-industrial world, the Chinese invention of moveable type pre-dates Gutenberg's invention by some 500 years.

When freed from working the land, the citizens of the Song Dynasty were able to work in industries other than agriculture. This led, for example, to an increase in the production of iron and steel which in turn permitted the development of new tools such as household goods, including cooking pots (woks), scissors, and armaments to be used for battle. The Song Dynasty's annual production of iron and steel was matched only by England during the later industrial revolution. Professor Hansen illustrated her remarks with art from the Song period, including the famous painting of the Qingming scroll, that depicted a bustling economy where commerce was evident. Other developments during the Song Dynasty included the use of kilns (some still in use today) powered by wood and the introduction of paper money. Professor Hansen traces the evolution of paper money and credit in China to current economic issues facing the country and presenting issues such as to what extent the central government can and should intervene to correct for economic problems caused by the private sector.

The ability to use paper money instead of coins made of copper had several salutary effects. One was that the use of paper, rather than heavy metal coins, was a more efficient way to conduct commerce. For example, at one time there was not enough copper to make bronze coins so heavier iron coins had to be substituted. And when coins were used, exchange rates changed from time-to-time and place-to-place, which made citizens angry and led to significant civil unrest. Local merchants started issuing private letters of credit in multiple denominations to meet this crisis; and somewhat later, merchants switched to the use of paper money that retained its face value wherever it was employed and could be redeemed at the issuing merchant house for the amount of its face value.

But – and this is where Professor Hansen connects the history of the Song Dynasty to certain challenges China faces today – when merchant houses started taking in large amounts of paper money and investing in real estate, some miscalculated and were not able to redeem the value of their investments in the long run. As a result, the central government was required to step in to support some of the investments and did so by taking

back the privately issued notes and issuing its own paper money, a practice that continued for some 300 years.

To Professor Hansen, the uncertainty that characterized the need for the central government to step in to back investments during the Song Dynasty is similar to the situation in China today. The Evergrande Real Estate Group, the second largest property developer in China by sales, with significant influence across China's financial system and economy, recently defaulted on interest payments on some of its bonds. Just as it did during the Song

Dynasty in 1023, the Chinese central government has faced the challenge of whether and how to influence the private sector to address the financial pitfalls of private businesses. Can it, for example, encourage merchants to behave in fiscally conservative ways or will the central government be required to cover for losses and inequities caused by private sector actors? At the time Professor Hansen gave her speech, it was evident that if Evergrande was not able to survive the situation that then existed, the company would not be able honor its commitments to those whom it had sold yet-to-be completed apartments, the contractors employed to build the units, or the real estate agents charged



with selling the units. It may also have commitments to foreign investors whose willingness to invest in China's economy may be influenced by how China handles the current developments at Evergrande. Recently, the chair of China's securities regulator has been quoted as saying that central government authorities will have to deal with Evergrande's default risks and find ways to curb debt more broadly. Meanwhile, in the weeks following Professor Hansen's presentation, Evergrande has indicated in public social-media posts that it was resuming work at more than ten projects and that work on other projects was being carried out in a "steady, safe, and orderly" manner.

The story of Evergrande is one of borrowing and building and a scramble to raise funds to pay lenders and suppliers even amid concerns that it may default on one of its international bonds. And it is a story that, following Professor Hanson's research, is not without parallel in Chinese history. China has demonstrated the ability to innovate on myriad issues in creative ways. Its history may offer insight to how it will handle the current issues facing some of its private actors on the financial stage and in other contexts. Professor Hansen provided the College Fellows intriguing and important insights into an important nation on the world stage in a period where civilization faces a multitude of scientific, cultural, and political challenges.

Doug Young
San Francisco, CA



Original hermit and horse design created by Former Regent John S. Siffert




"We know that your attainment of the front ranks of the bar has not been without its costs, and we recognize that our specialty exacts much of those who win its favor. Truly, we are, in Lord Eldon's words, the hermit and the horse."

— from the College Induction Charge

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THURGOOD MARSHALL EQUALITY AND JUSTICE AWARD

HON. JOHN R. LEWIS

IN 2020, THE COLLEGE ESTABLISHED THE THURGOOD MARSHALL EQUALITY AND JUSTICE AWARD, TO RECOGNIZE THOSE WHO HAVE STOOD STEADFAST IN THE FIGHT FOR EQUALITY AND JUSTICE. THE AWARD, TO BE PRESENTED FROM TIME TO TIME WHENEVER WORTHY RECIPIENTS ARE IDENTIFIED, RECOGNIZES THOSE WHO HAVE BEEN CHAMPIONS OF JUSTICE AND EQUALITY IN ALL FORMS, INCLUDING, BUT NOT LIMITED TO, RACE, ETHNICITY, GENDER, AND SEXUAL ORIENTATION. **PAST PRESIDENT DOUG YOUNG** ANNOUNCED "THIS AWARD IS MORE THAN JUST A PUBLIC STATEMENT. IT REPRESENTS A SIGNIFICANT AND LASTING COMMITMENT TO EQUALITY AND JUSTICE. EACH TIME THE AWARD IS CONSIDERED AND EACH TIME IT IS PRESENTED WILL BE A REMINDER THAT ALL PERSONS ARE WORTHY OF RESPECT AND EQUAL ACCESS TO JUSTICE IN OUR SOCIETIES."





It was critically important to the Thurgood Marshall Equality and Justice Award Committee that the inaugural awardee exemplify significant and longstanding commitment to equality and eliminating injustice, and set the standard for future consideration for this Award. Virtually without discussion, the committee unanimously concluded that the initial awardee would be the late Honorable John R. Lewis.

Congressman Lewis was described in one magazine as “one of the most courageous persons the Civil Rights Movement ever produced. John Lewis has dedicated his life to protecting human rights, securing civil liberties, and building what he called the ‘beloved community’ in America. His dedication to the highest ethical standards and moral principles won him the admiration of many of his colleagues on both sides of the aisle in the United States Congress.”

John Lewis was one of the thirteen original Freedom Riders in 1961; one of the Big Six leaders who organized a 1963 march on Washington; and notably, led the first march across the Edmund Pettus Bridge in Selma, Alabama, on what is known in American history as “Bloody Sunday.” Before his passing, Congressman Lewis was vigorously involved in the pursuit of justice in response to the murder of George Floyd.

John Lewis’ entire life work was dedicated to justice and equality, for which he earned many honors, including the Presidential Medal of Freedom and the John F. Kennedy Library Foundation Profile in Courage Award “For his extraordinary courage, leadership and commitment to civil rights.”

John Lewis left us with this comment on the George Floyd Justice in Policing Act: “A democracy cannot thrive where power remains unchecked and justice is reserved for a select few. Ignoring these cries and failing to respond to this movement is simply not an option, for peace cannot exist where justice is not served.”

The College sincerely appreciates the Lewis family’s acceptance of the College’s Thurgood Marshall Equality and Justice Award. John-Miles Lewis, the late Congressman’s son, accepted the award, greeted by a raucous standing ovation.

Mr. Lewis recounted “I remember being little – and I do mean little – when I was first learning to walk little, and walking and falling over and over again, until I reached this glass table, probably about yay high. And on this table, as you looked, the photographs are black and white, and the first one that I was able to see, struggling to understand what I’m looking at, is of my father in a standoff with Alabama State Troopers. And the next photo, the state troopers were closer. And the next one, closer. And then the next one, my father was on the ground. The rest of the photographs were of him be- ▶

ing beaten with billy clubs. These photographs showed the end result of the march across the Edmund Pettus Bridge on Sunday, March 7th, in 1965, what the world has come to know as Bloody Sunday.”

John Miles Lewis modestly omitted that his father led 600 marchers across the Edmund Pettus Bridge, where he and his fellow marchers were brutally attacked by Alabama State Troopers. Television footage of the brutality shocked and galvanized the nation in the fight against racial injustice.

Six months after “Bloody Sunday,” almost to the day, President Lyndon Johnson signed the Voting Rights Act into law. Two years later, on August 30th, 1967, Thurgood Marshall became the first African American U.S. Supreme Court Justice.

Mr. Lewis talked about his father’s run for Congress after the Hon. Andrew Young resigned from his seat to accept the appointment by President Jimmy Carter as U.S. Ambassador to the United Nations. “In 1976, my father ran against his long-time friend, Julian Bond, and lost to take Ambassador Young’s congressional seat, only to win the seat in a remarkable political race, again against his longtime friend, Julian Bond, just ten years later to the day. And he held the Fifth District U.S. Congressional seat for seventeen terms, until his passing on July 17th, 2020.”

Reflecting on his father’s fight for voting rights, Lewis spoke to the legacy of his father’s courage and bravery:

“Imagine not having the right to vote. . . . Nonviolent, yet succumbing to violence on this path to reach equality being able to see the inauguration of the first African American president of the United States in your lifetime. I never imagined it in my father’s lifetime; for my mother and my father to see what they’ve worked so hard for and to see that happen. And when it comes to the term, relatively speaking, it was a very short term in the scheme of things. And I don’t know that it’s considered to be a blessing or just putting in the work. Either way, it’s amazing to me that he was able to see one of those end results that he and Dr. King and Jesse and Andy, Hosea, C.T. Vivian, just put in so much work for it to actually see before [their] passing.”

John Miles Lewis spoke of his father’s great admiration for the late Justice Thurgood Marshall, sharing one of Marshall’s quotes that Congressman Lewis truly loved and John Miles believed was “so befitting of my father:” “When you see wrong or inequality or injustice, speak out, because this is your country. This is your democracy. Make it, protect it, pass it on.”

Expressing his admiration of his father’s life story, John Miles Lewis reminded us that Congressman Lewis, born on February 21, 1940 in Troy, Alabama, came from humble beginnings – as the son of a share-cropper – to become an icon of the Civil Rights Movement. “A phenomenal feat within itself. . . . And it’s funny to see the little boy who wanted to go to school so bad, that his brother decided to take on his chores so he could go to school because all of his brothers and sisters saw



something special in him. And they chose, just his older brothers chose, for that to happen.”

John Miles Lewis shared some of the light-hearted and humorous parts of his father’s life story. For example, he noted that “a lot of people here probably heard the story of when my father was little, he used to preach to the chickens. And I mean this literally; he would put on a robe and go out and preach to the chickens. Every day he would do this.”

Another: “I remember this bridge and he would talk about the bridge and I remember being younger and with my cousins and him going to this bridge and I remember he walked to school and he was on his way back and he stopped on the other side of the bridge and he just sat there and waited because he was looking at the bridge and he thinks he sees a snake on the middle of the bridge. And my father was terrified of snakes. He literally stood still; he was not crossing that bridge.

“My father [stood] on the side of that bridge until the moon came out. No one knew where he was. They had to come down there and get him. He’s throwing rocks at this – what he thinks – was a snake. It turns out it’s a stick that’s just oddly shaped that it ends up turning out to be a stick. And just seeing from there, it is amazing cause, oh yeah, he got that whooping when he got back to the house . . .” From that story John Miles Lewis noted that “to look at that and thinking of that story, to how brave of a young adult he became to be, that he was so terrified of a stick that he mentally thought that it was a snake, to being one of the bravest people that I’ve ever known and surely one of the bravest in the Civil Rights Movement, as well as everyone else, because a lot of people would not have the wherewithal to not retaliate or defend yourself when being attacked.”

Even with all of his endeavors and achievements, to John Miles “he was just Pops. But he belonged to the world. And he was humble; he spoke to everyone. We’d go into the grocery store, trying to just get some milk and eggs, we’re in there for an hour, simply because he talked to everybody. That was who he was. He took pictures, asked the kids, ‘Okay, how you doing in school? What’s your favorite subject?’ That was him. If he needed to be somewhere and people rushing him like, ‘We have to go,’ he would say, ‘I’ll just have to be late,’ because that was him.”



John Miles described his father as “a humble man [who] changed the landscape of how people viewed the past, as well as merging it with the present. He was known by children all around the world; knew this man’s name from just super humble beginnings. And he never became egotistical about it; it was just the path that he walked, that he was given.”

Mr. Lewis concluded his remarks with another of his father’s favorite Thurgood Marshall quotes: “I wish I could say that racism and prejudice were only distant memories. We must dissent from the indifference. We must dissent from apathy. We must dissent from the fear, the hatred, and the mistrust. We must dissent because America can do better; because America has no choice but to do better.” “And my father was living proof of this and he was living proof that this can be possible.”

Gregory K. Wells
Rockville, MD

THE GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY JOHN M. ROSENBERG

IN 1964, THE COLLEGE ESTABLISHED ITS COURAGEOUS ADVOCACY AWARD TO RECOGNIZE A LAWYER, WHETHER OR NOT A FELLOW, WHO HAS PERSEVERED IN THE PURSUIT OF AN IMPORTANT CAUSE, DESPITE SUBSTANTIAL PERSONAL DANGER, FEAR, UNPOPULARITY, OPPOSITION, OR OTHER EXTREME DIFFICULTIES. IT IS THE HIGHEST HONOR GRANTED TO A SINGLE INDIVIDUAL BY THE COLLEGE. SHORTLY BEFORE HIS DEATH IN 2009, THE AWARD WAS RENAMED THE GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY, IN HONOR OF **GRIFFIN B. BELL**, FORMER U.S. ATTORNEY GENERAL, FORMER FIFTH CIRCUIT JUDGE, AND THE THIRTY-FIFTH PRESIDENT OF THE COLLEGE.





The Award's newest recipient is John Rosenberg, who has led a remarkable, and remarkably American, life.

John grew up in Germany, about sixty miles outside of Berlin. When he was seven, on *Kristallnacht*, the night of the broken glass, he watched Nazis burn the holy books in his neighborhood synagogue and dynamite the building. The next morning, John stood face-to-face with Nazi stormtroopers, and they took his father, along with another 125 Jewish men, to the Buchenwald concentration camp.

Twenty-five of those men were killed. The rest, including John's father, were released seventeen days later, after enduring tremendous torture and suffering. They were given thirty days to leave the country. John and his family fled to Holland and then to the United States.

The Rosenbergs eventually settled in Gastonia, North Carolina, where John's father found work in a textile mill. John embraced his new country, earning a scholarship to Duke and then serving as a navigator in the Air Force. He saw firsthand how his black colleagues faced discrimination and hostility in the south. His experience led him to law school and then to the Department of Justice's Civil Rights Division, where he fought against restrictive voting rules and Klan violence in the deep south.

In Selma, Alabama, he tried the first case under the Voting Rights Act of 1965. Local democratic leaders sought to disqualify ballots cast in black neighborhoods and persuaded the sheriff to seize six ballot boxes and prevent them from being counted. DOJ filed suit the next day and John, in a two-day hearing, persuaded a skeptical judge to order that those votes be counted, which led to the defeat of the segregationist sheriff.

In Mississippi, when a sheriff and other Klan affiliates murdered three civil rights workers –James Cheney, Andrew Goodman, and Michael Schwerner – John supported the trial team that obtained convictions before an all-white jury. The movie *Mississippi Burning* tells part of that story.

At the Civil Rights Division, John met his wife, Jean, and they began a lifelong partnership focused on improving our shared world. After DOJ, they moved to Eastern Kentucky and started a legal aid office. Coal mining drove the economy. The industry had moved toward strip-mining, where companies accessed the coal below the surface by removing the surface, even if it had homes or farms above. Kentucky law allowed mineral rights owners to mine that coal without the permission of the landowners.

John led the uphill fight against the coal companies that led to an amendment to the Kentucky constitution barring the practice. John then successfully defended the amendment, arguing before the Kentucky Supreme Court. John's advocacy preserved Eastern Kentucky as a place to call home, saving communities, the environment, and a way of life.

The upstart legal aid office that John founded called the Appalachian Research and Defense Fund, now known as AppalReD, has become essential to eastern Kentucky and a national model for providing legal services to low-income Americans, serving thirty-seven rural counties and over 240,000 Kentuckians living in poverty.

But what makes John's career remarkable is not just that he did these amazing things but that he did so with respect, grace, and empathy for all those around him. One of the most telling facts about John is that



in the middle of this bitter fight over the future of coal mining in Kentucky his local community, Floyd County, elected him to the Floyd County Hall of Fame, alongside the local Chevrolet dealer. John and his wife Jean have earned the respect and thanks of people throughout eastern Kentucky.

John turned ninety in October. He and Jean continue to maintain the same active lives and commitment to social justice that has defined their partnership and our country is much better because of them and their work.

John Rosenberg's condensed remarks follow:

The Award is even more special because of my association with two prior awardees: Steve Bright and Julius Chambers. Steve, the most recent awardee, came to AppalReD out of law school and worked with me for two years before going on to his remarkable career. Julius Chambers, whom you honored in 1994, and I were classmates in law school at the University of North Carolina. We communicated throughout his distinguished career and we were lifelong friends until he passed away a few years ago.

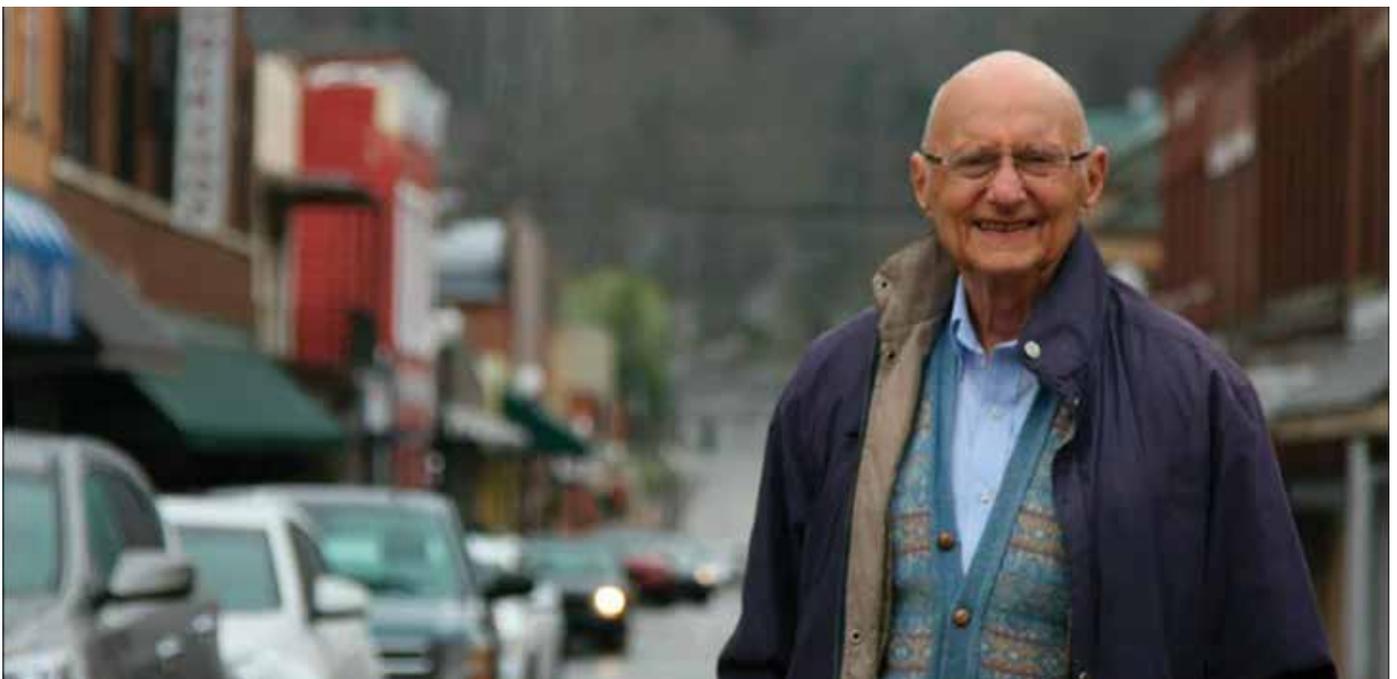
I've been taught by great lawyers; I've practiced with lawyers who are totally committed to representing their clients, often in unpopular causes - what I call uphill lawyering. More than that, I've been privileged to represent and meet the most courageous persons who braved difficult circumstances and spoke truth to power at great personal sacrifices and even great danger.

I've been motivated with the knowledge that this country is founded under the rule of law, as the first direction in the preamble to the constitu-

tion of the United States is to establish justice. And I was glad to see that commitment to access to justice in your mission as an organization.

I've lived the American dream. Whatever achievements I've been able to accomplish are to the credit of my parents. Their personal sacrifices made possible for me, and my brother and sister, to become successful citizens in this country; all of us with advanced degrees. My parents, like many other immigrants, were very patriotic and always reminded us how grateful we should be to be in this country. They studied hard to pass their citizenship test. I will always remember the day my parents become United States citizens in the federal court in Charlotte, North Carolina in 1945. After the ceremony, they took us across the street to the Piedmont Diner for a celebratory meal. It was the first time we had eaten out as a family because my parents had been unable to afford it.

In the Air Force, I was stationed in England in an air resupply group during the Cold War. We flew low-level missions with the special forces



during exercises near the Russian border. I was always impressed with the professionalism and expertise of my colleagues; officers and enlisted men singularly committed to the work to be done, much not without risk, even during peacetime.

One time, we ferried a plane back to America. The radar operator was a good friend who was black, Abe Jenkins. After we delivered the plane to New York, we boarded a train to go to our respective homes in Gastonia and Charleston, South Carolina. We were in full uniform when we reached Washington, D.C. Abe said he would see me back in England. I asked him where he was going. He said, "To the back of the train where the blacks sit." That incident was a wakeup call to me. I hoped I would have an opportunity, even in a small way, to help the south undo this caste system.

Thanks to the GI Bill, I went to law school at the University of North Carolina. When I graduated in 1962, I had the privilege of working in the Civil Rights Division of the Department of Justice. The division only had about ten attorneys because it was just established in 1957. Its only civil jurisdiction was in voting rights. John Doar, a plaintiff's lawyer from Wisconsin, was our boss and role model.

John realized right away that he needed to personally go south and see firsthand the facts surrounding the civil rights complaints coming into the division. That approach was novel because, traditionally, the FBI handled all investigations. And since most southern FBI agents at the time had grown up in the south, they did not prioritize civil rights complaints. John very quickly filed civil rights cases against local residents who interfered with registration efforts by blacks in Louisiana and Tennessee.

John taught us always to focus on the facts. In the voting cases, this meant that we needed to prove the rank discrimination by the local registrars against the black applicants who were courageous enough to apply to register. In most southern counties, all whites were registered but virtually no blacks. After reconstruction through the imposition of literacy tests and poll taxes, blacks had been deprived of the right to vote.

Civil rights division attorneys would go into the black communities and identify these courageous applicants who applied, often at the risk of losing their jobs, their property, or even their lives. Some had been rejected multiple times. We would then supervise agents of the FBI, who would photograph the registrar's application

forms and voting records. Back in Washington, we would spend countless hours examining these forms and records under a microfilm machine. John called this the "romance of the records."

Our examinations invariably determined that white applicants were accepted, no matter what they wrote, even signing forms with X's, while black applicants were rejected. So this was the crux of our cases. In one case in Forrest County, Mississippi, Registrar Theron Lynd was held in contempt twice by the United States Court of Appeals for the Fifth Circuit for refusing to carry out the court's orders to register qualified black applicants. I will always remember the continuous parade of qualified black teachers and professors who testified in one of our Forrest County hearings about their failed efforts to register.

Indeed, in the United States Supreme Court's opinion upholding the Voting Rights Act of 1965, it cited testimony from the Forrest County hearing, noting that five applicants with bachelor's degrees and three with masters had been rejected. We were careful to make strong trial records, since we knew that with rare exceptions, the decisions at the trial level would not be favorable. Federal judges, like the FBI agents, came from a segregated system and with rare exceptions, like Judge Johnson in Montgomery, Alabama, would not change unless ordered to do so. We knew we would appeal virtually every decision.

In time, we won appeals from the courageous Fifth Circuit judges. Finally, we challenged these practices on a statewide basis in Mississippi and Louisiana, and the United States Supreme Court eventually affirmed our victory. But it was slow going. Fortunately, activism grew, including the Selma March in 1965, leading to the passage of the Voting Rights Act of 1965, perhaps the most significant civil rights legislation of the century. It led to thousands of registered black voters and the election of black legislators and local officials throughout the south.

In 1969, as the Nixon administration took over, we expected the focus on civil rights work to diminish. In school desegregation cases, we saw a major retreat in the effort to obtain broad desegregation decrees. By 1970, my wife Jean and I decided it was time to leave the division. My former division colleague, Terry Lenzner, was then the head of the legal services office in the Office of Economic Opportunity. Terry contacted me shortly after we left. He wanted to fund a small group of lawyers in West Virginia and Eastern Kentucky addressing the widespread pover-

ty issues there, traceable to the coal economy. They needed a new director in Kentucky. Terry asked us to visit with them and consider the opportunity.

We did. And we visited with others in the community, including Harry Caudill, a local lawyer who wrote *Night Comes to the Cumberlands*, a seminal history of our region describing the dominance of the coal industry. In the little town of Blackey, we met with Joe Begley, the owner of a country store, who told us about the devastation of strip-mining carried out under the legality of the broad form deed. These mineral deeds, written in the late 1800s gave the owners of the coal broad rights to extract the coal. Under Kentucky law, coal could be extracted by surface mining, even over the objection of the surface owners.

We met other activists, like Eula Hall. Eula grew up in poverty, had a limited education, and survived an abusive marriage. Eula described the need for healthcare for low-income people. She would have to overcome opposition from local doctors and their allies and would need legal help to get it done.

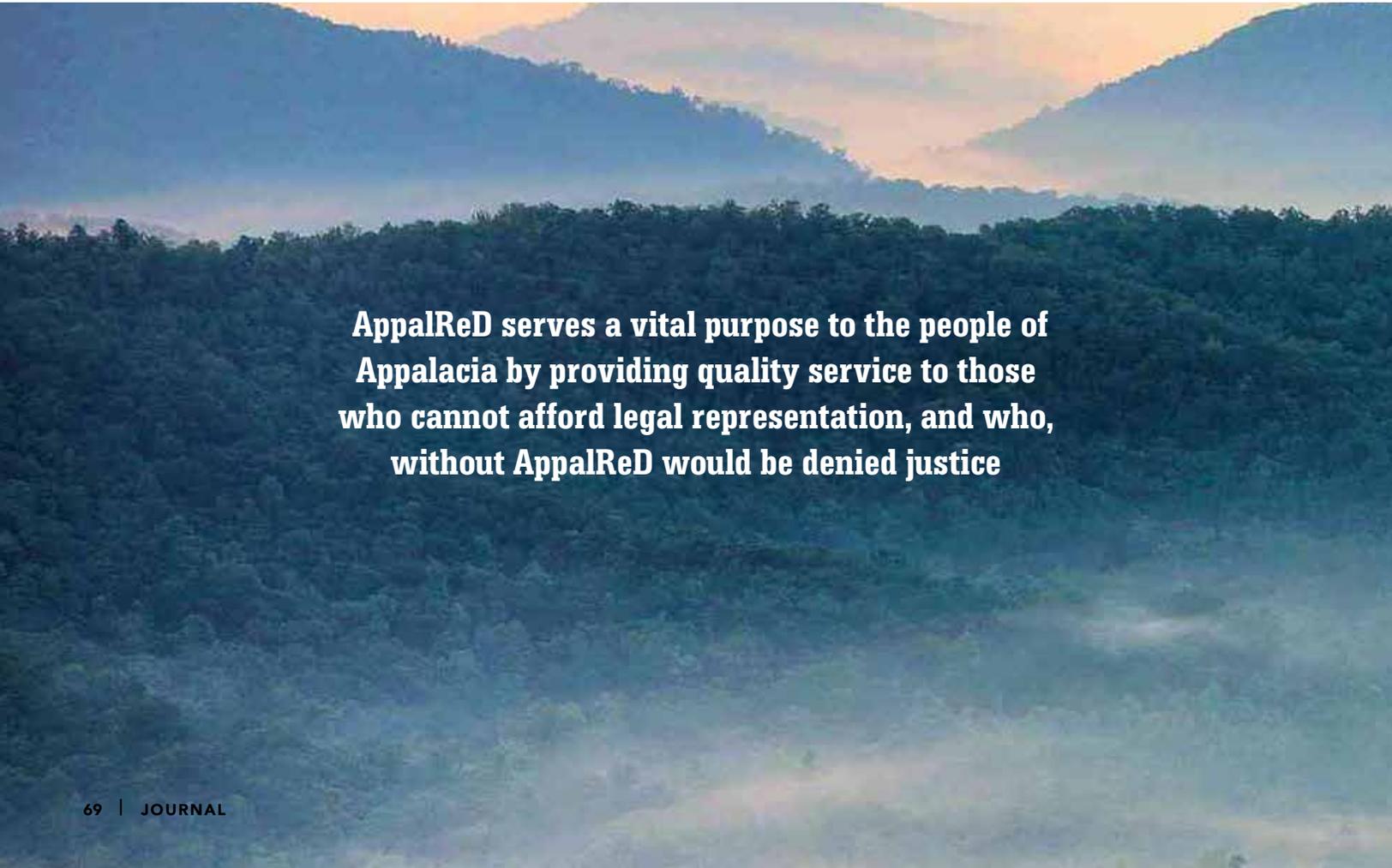
I hoped that my experience in the civil rights division could be put to good use in establishing a first-class law firm for folks like Joe Begley, Eula Hall, and other poor people. It was a rocky start. Especially in rural areas, members of the bar were not always welcoming, seeing us as government funded competition.

My own county's bar association, now a staunch supporter of legal services, passed a resolution prohibiting AppalReD from practicing in the county without their permission.

As legal services agencies like ours began to litigate against entrenched interests like the coal industry, strong political efforts tried to eliminate legal services funding entirely. For a time, our lawyers were on half-salary. My former civil rights division boss, Steve Pollak, threatened to sue to keep our funding coming. Thankfully, the case settled and AppalRed was here to stay.

With the passage of the Legal Services Corporation Act in 1974, our funding jumped. We wanted to have an office within a forty-five-minute drive of every low-income citizen. By 1980, we expanded from three to eleven offices and from a handful of lawyers to forty-eight. We handled larger environmental and mine safety cases and important cases involving the daily issues low-income clients faced: consumer protection, housing, disability rights, and family law. We had created an effective first-class law firm for poor people.

In 1981, President Reagan tried to eliminate the LSC budget. As governor of California, he had received complaints against California rural legal assistance, funded by LSC, for their representation of migrant farm workers. The efforts of the American Bar Association and private attorneys, like yourselves, came to our rescue.



**AppalReD serves a vital purpose to the people of
Appalacia by providing quality service to those
who cannot afford legal representation, and who,
without AppalReD would be denied justice**

The ABA noted that legal services programs needed to develop stronger relationships with the private bar. As a result of these efforts, legal services agencies now devote a percentage of their funding to ensure private bar involvement and particularly, to recruit lawyers to provide pro bono and low-cost assistance. Today, nearly all legal services programs have a position called a “Pro Bono Coordinator,” who recruits pro bono attorneys and refers cases to them.

Unfortunately, legal services funding has remained flat over the years. Even with recent minimal increases, the effect has been to cut staffing and access. AppalReD has reduced its eleven offices to six and our forty-eight lawyers now number twenty-three. Only about twenty percent of applicants can receive representation so the need for pro bono services remains greater than ever.

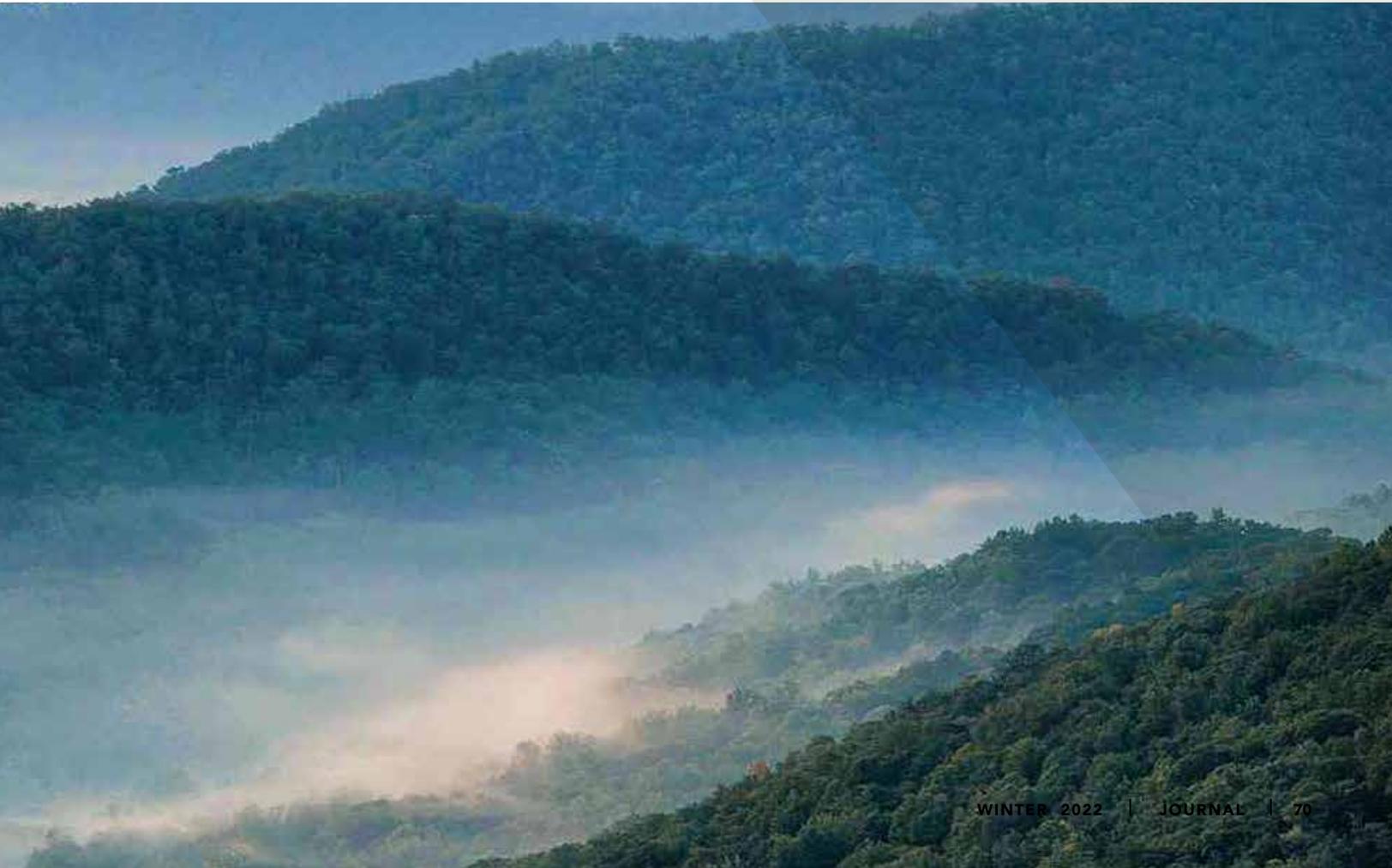
I’m so appreciative of the pro bono work done by the private bar. What better example than the work of Nancy Hollander, who is on this program? Another example of pro bono assistance that AppalReD still needs help with is a massive fight with the Social Security Administration. In 2015, about 1,700 Social Security recipients in eastern Kentucky received notice that their benefits had been obtained fraudulently and were subject to being terminated. The notice shocked

our clients, most of whom relied on these benefits as their only source of income. Indeed, four suicides followed right after the notices were received.

There’s no evidence that these clients were involved in any fraud. We recruited 140 pro bono lawyers from around the country to handle the hearings, which determined whether they could keep their benefits. Wilmer Hale provided successful pro bono representation in the courts of appeals. Today, more than half the clients can keep their benefits and the others are in various stages of litigation. SSA has been ordered to develop new, fairer hearing procedures. Still, now we face another 1,600 such hearings in the future. I would appreciate any of you contacting me if you’re willing to be a part of this next effort. We have trainers, online materials, and a listserv to help.

I want to thank the many attorneys in Kentucky and across the country with whom I’ve served on committees and boards. Your commitment to providing access to justice to those who need it is exemplary and continues to inspire me. Thank you, again, for this wonderful award.

Eric R. Olson
Denver, CO



THE EMIL GUMPERT AWARD

ARIZONA JUSTICE PROJECT / SENTENCING INTEGRITY PROGRAM

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. AS REPORTED IN THE PREVIOUS ISSUE OF THE JOURNAL, THIS YEAR'S AWARD WAS MADE TO THE AJP'S ARIZONA JUSTICE PROJECT/SENTENCING INTEGRITY PROGRAM. EXECUTIVE DIRECTOR, LINDSAY HERF, ACCEPTED THE AWARD ON VIDEO AT THE ANNUAL MEETING IN CHICAGO.





The Arizona Justice Project assists those who have been wrongfully convicted, but also those who are wrongfully incarcerated – people who are victims of manifest injustice relating to sentencing. The AJP was founded in 1998 by late Fellow, Larry Hammond of Phoenix, and numerous other Fellows still serve on the board of directors.

The AJP's Sentencing Integrity Program has helped thousands of inmates in Arizona's prisons who were promised the possibility of parole when they were sentenced, but who were denied that right when, in 1994, the Arizona legislature eliminated parole with "truth in sentencing laws," leaving these inmates rarely granted clemency or pardon as their only chance of release.

AJP (with assistance from Fellow **Howard Cabot**) brought a case to the Arizona Supreme Court, *Chaparro v. Shinn*, which granted rights to prisoners who had been promised the possibility of parole. As Ms. Herf informed us in Chicago, Mr. Chaparro himself has now been granted parole and is doing very well.

The Project is assisting hundreds of other affected individuals to prepare for parole hearings and to plan for re-entry into society. The \$100,000 grant from the Foundation will assist AJP in developing materials that can be used by attorneys, volunteers, and prisoners on how to prepare for a parole hearing and to plan for a successful re-entry back into society. In Arizona, as well as in other states across the country, prisoners are not entitled to counsel before a parole hearing. The AJP program may offer these individuals their only opportunity to receive legal representation. This grant will directly impact hundreds of people in Arizona in helping them with a chance at release and for life after incarceration.

Lindsay Herf has been the Executive Director of AJP since 2016. She is a 2008 graduate of Cal Western College of Law and started work then for AJP, leading its DNA Grant Project. She left AJP for a few years to work for the National Association of Criminal Defense Lawyers on the FBI Hair Microscopy Review and at the Wrongful Convictions Clinic at the James E. Rogers College of Law at the University of Arizona in Tucson. She returned to Phoenix and to AJP in 2016.

Lindsay works tirelessly for the mission of the Project. In her acceptance speech, Ms. Herf spoke passionately about AJP and expressed her profound gratitude to ACTL and the Foundation. But it is Lindsay and her Program that have earned the gratitude. The Arizona Justice Project is a fitting recipient of the College's most prestigious award.

Peter Akmajian
Tucson, AZ



NEW INDUCTEE LUNCHEON

WELCOME



AT EVERY MEETING, AT THE NEW INDUCTEE LUNCHEON, A PAST PRESIDENT TELLS THE INDUCTEES HOW THEY CAME TO BE ADMITTED TO OUR FELLOWSHIP. THIS YEAR'S REMARKS, SLIGHTLY ABRIDGED BELOW, WERE DELIVERED BY **BOB BYMAN**, PRESIDENT IN 2013-14.

I don't like using notes. I had a friend who gave a eulogy a couple of years ago. Eddie got up and said "We were all shocked when Charlie passed away; it was so sudden. Oh, he had had that health scare, he had to have a breathing tube put in, but he was alert, his vitals were strong, and they were going to take the breathing tube out later that day. I came to visit him just before. And when I got into the doorway, he beamed! He was radiant. He waved me over, but as I got to his bed, everything changed. He was in obvious distress. He was gesturing wildly. He grabbed a notepad and scribbled something on it and thrust it into my hand just as the monitors exploded with noise. His eyes rolled into the back of his head and the nurses pushed me aside as I put the note in my pocket and watched as they tried to revive him. But they couldn't; Charlie passed. And as I was walking up here today, I realized I'm wearing that same jacket. I have that note that I never read, and here's what I think we ought to do. I think we ought to read Charlie's last words together and see if we can make sense of them." So Eddie pulled out the note and read, "You're standing on my air hose."

So no, I don't like to use notes. Let me see if I can, without notes, tell you something about why you're here. The road you traveled to be here is a long and arduous one.

You are either a successful trial lawyer or you're with a successful trial lawyer. In my experience, successful trial lawyers do not suffer from a lack of self-esteem. We have egos. We've earned egos. We deserve egos. But most of us are smart enough to know that we shouldn't show them off. As George Burns said "The most important thing is humility. If you can fake that, you've got it made." So on Monday, you can go back to feigned humility. On Monday, you can go back to "Aw, shucks, Ma'am, I'm just a country lawyer from Chicago."



But today, tonight, let your egos out. Let them roar. Strut a little. Wallow in it. Tonight, be proud of yourself. You have navigated a road to get here that is filled with obstacles and hurdles and you are entitled to a measure of pride. Let me tell you about that road.

Your first hurdle is that somebody had to notice you. Couldn't be your partner, couldn't be your cousin or brother or some other blood relative. It had to be some Fellow not related to you who thought that you might be a worthy person; somebody that met our requirements. It might have been a judge. It might have been opposing counsel. It might have been co-counsel. But somebody had to notice you.

And then you had to meet our high requirements. We are only open to lawyers who are unquestionably and eminently qualified as trial lawyers. Your skills had to be exceptional. No litigators, no good lawyers, no above average lawyers, not even very good lawyers. Only *great* lawyers. *Exceptional* lawyers. And you couldn't be exceptional once or twice; you had to do it over and over again for a minimum of fifteen years. No occasionally great lawyers.

In 1979, there was a fella from Georgia who got noticed – of course he was noticed, he had just come off of two and a half years as Attorney General of the United States. Before that, he had served fifteen years on the Fifth Circuit Court of Appeals. But when we tallied everything up, we realized that **Griffin Bell** had only practiced law and had only tried

cases for thirteen years, so he had to try cases for two more years before he could become a Fellow and, later, a President of the College. Fifteen years, and we mean it.

But that's only one of our requirements. There are three requirements. Excellence is a given. But on top of that, impeccable integrity and ethics are required. And then there's the third requirement, what we call the **John Famularo Test**: "Would I want to spend an afternoon in a fishing boat with you?" Unless you are collegial, unless your elbows have soft edges, we don't want you in the College. We want somebody that we would like to have a beer with after a trial.

If you meet all of our requirements, you go onto the third hurdle. Somebody's got to prove you meet our requirements. Somebody has to go to the trouble of putting together a list of all of your trials with the phone numbers of every judge, every opposing counsel, every co-counsel. The road to Fellowship is littered with the wrecks of candidacies who could not pass this hurdle.

For the last twenty years, I've been an adjunct at Notre Dame Law School teaching trial advocacy and I've seen maybe fifty guest faculty and other adjuncts come through and they're all good lawyers; but only two or three of them were people that I think ought to be Fellows of the College. I made some discreet inquiries about two of them. In one case, I'm *sure* he's tried cases, but I can't find anybody who can tell me what they are. See, here's the problem; I can't ask him. The process is confidential. ▶

Candidates aren't supposed to know that they are under consideration. So I'm still looking for a caselist.

Another one had a partner who was a Fellow of the College. So I was able to call and ask for help. But he said "Casey has only tried five cases and only one as first chair." Not enough. I don't know what the exact number is but it's like what Justice Stewart said about pornography. You know it when you see it. You know when there's a substantial body of work and five trials doesn't cut it.

If we do get the trial list, then you go onto the fourth hurdle. Your trial list is assigned to a member of the state committee who will call everyone on that list. He will call the judges. He will call opposing counsel. He will verify that they were real trials; that you were in them, that you were first chair. And then he will ask were there any ethics issues? Any collegiality issues? The investigator will make a recommendation to the state committee. The fifth hurdle; the state committee.

Somebody on the committee may know or have heard of you. The committee takes a vote based upon the recommendation and their own information and, usually, the vote is unanimous. But where it's not, even if the candidate gets the majority and gets forwarded onto the next step, a split vote by a state committee can be the kiss of death because we want people, remember, who are imminently and unquestionably qualified. If three or four people on a state committee say, "No, I don't think so," then that's a knock on that requirement.

If you get through that hurdle, you face the sixth hurdle. Your file is sent to the National Office which polls every Fellow in your state or province to rate you on a scale from unfavorable, to favorable, to very favorable, either by personal knowledge or by reputation. And the Fellows are asked to comment on you.

And this is where it gets really interesting. In a state committee, it's not uncommon to see a fifteen to nothing vote. But they vote in the semi-public setting of a committee meeting. In the poll, it's like going into a confessional. The Board of Regents will see the comments and the ratings, but they won't see them with attribution; they won't know who said what about whom. And you'd be amazed at the candor that that elicits from our Fellows. Suddenly somebody will say "Yes, I nominated him but I was pressured by his partner. I really think he's a jerk and he shouldn't be a member of the College." The confidential poll comments reveal the truth.

Armed with those comments, we get to your seventh hurdle; the Regent's investigation. The Regent repeats the investigation, calls every judge, calls every lawyer. But this time, with the poll, the Regent may ask "We've heard that the candidate might have sharp elbows. Should we be concerned?" And you'd be amazed how much can be pried with that sort of lever.

The Regent will study the candidate's website. When I was a Regent, I had a candidate who looked great. Every judge I talked to said, "Tremendous trial skills." Every counsel said, "Great trial skills. Great guy. Love to go out and drink with him after a trial." And then I looked at his website and learned he was very proud of having argued in the United States Supreme Court. So I pulled the decision and I was surprised to see that he wasn't on the briefs. The guy who *was* on the brief in the case was a Fellow, so I called him and I learned that the candidate had indeed been trial counsel but was not asked to participate in the appeal. So maybe he got into an argument *at* the Supreme Court but he did not argue *before* the Court and he did not become a Fellow.

On to the eighth hurdle: the Board of Regents. There are fifteen regents and five officers, so there are twenty



voting members. And then there are anywhere from ten to twenty screaming members, the Past Presidents who don't have a vote but who do have a voice and exercise it.

A presentation is made by the Regent, much like a doctoral oral exam; the Regent has to defend his or her recommendation. In about eighty percent of the cases, the Regent's recommendation is accepted. But one out of five times, in general, a substitute motion is made. At our last meeting just a few days ago, seventy-three candidates were presented. Fifty-six were approved. About seventy-five percent of the people who make it to the eighth hurdle get over it.

There's a ninth, final, hurdle. The Board of Regents vote is merely to ask you to become a Fellow. But before that can happen, we ask you to fill out a questionnaire. The important question is "Have you ever been the subject of any disciplinary action?" We don't admit people we know have had actual ethical problems. If it's something understandable, if the ethics committee did something wrong, your Regent will investigate. But if it's a real ethical violation, you're not going to pass that ninth hurdle.

All of you got here. All of you passed. But I lied. There's a tenth hurdle. Even after tonight when you are inducted, your tenth hurdle to maintain your Fellowship is to maintain your integrity. You can, once you're a Fellow, change your career. You can go on the bench and stop trying cases. You can go into academia and stop trying cases. You can become managing partner and start supervising instead of trying cases. You will still be a Fellow.

But you can't fall from grace. The plaque you will get will state on its back "Property of the American College of Trial Lawyers." We don't give you the plaque; we loan it to you. And if you do something like a former U.S. Senator and presidential candidate who was indicted on multiple federal charges, we'll ask for the plaque back. If you, as a Fellow in Canada once did, kill your wife, we'll ask for your plaque back – after the conviction.

There are other circumstances, but thank God they are rare. We assume we have assessed your character, and your character isn't going to change – but in those rare instances where it does, we're going to ask for the plaque back.

Ten hurdles. The Olympic long hurdle race has ten hurdles, but you only have to run 400 meters. You've all been running for fifteen years or more. You are all gold medalists. You are all entitled to have big egos – today. Tomorrow, get over yourselves.

You are entitled to your egos; but so are the spouses here. You spouses are entitled to more than half of the credit in almost every case. When I became a Fellow, I turned to my wife and said "Jane, in your wildest dreams, did you ever think I would be a fellow of the American College of Trial Lawyers?" And she said, "Oh Bob, I'm sorry, but you're not in my wildest dreams." I may not have been in her dreams but in order for my dreams to be fulfilled, I needed Jane. I needed her support, her strength, and her love.

Look, I know some of you may have done this entirely on your own; some of you may be totally self-made. But most of us, in order to ply this very demanding craft, needed the love and support and the stability of someone at home. So to the spouses, I say pat yourselves on the back. Let *your* egos roar. Be proud of yourselves. And you don't have to get over it.

The great thing about the College is that there's never a bad seat. You can sit down in any empty chair at a College function and you will either be sitting next to an accomplished trial lawyer with whom you will have something in common or, better yet, you'll be sitting next to somebody that an accomplished trial lawyer was able to advocate and win over to live with. And that person is almost always more interesting and more fun than the trial lawyer.

Ten hurdles. It's been a long race. I have a somewhat unique perspective on this. For the past couple of years I have been the Editor of the College's Journal and it was my job to write short obituaries, memorials, to passing Fellows; I've written more than 300 of them. It's also my job to write small blurbs about each of you; each of our new inductees, 100 or 200 words about who you are. So in the course of 600 or 700 of these things, I've gotten to *know* who our Fellows are. I know what this group is. I'm proud that I am a member of this group.

Here's what I know about you. I know you are someone who is a tremendous trial lawyer. I know you are someone I can trust. I can play poker with you over the phone. But I know that I would rather do it in person because I would welcome an opportunity to spend an afternoon on a fishing boat with you.

Groucho Marx once said, "I would not belong to a club that would have me as a member." Well, Groucho couldn't have gotten into the College; not enough trials. But tonight, you will all become Fellows of the American College. And I could not be more proud than to be a member of a club that would have all of you as members. Welcome! ■

VIRTUAL INDUCTEE



2021 INDUCTEE WELCOME

LUNCHEON

COVID-19 FORCED THE COLLEGE TO INDUCT TWO CLASSES OF FELLOWS VIRTUALLY, SO PRESIDENT ACKER DETERMINED TO HAVE AN EVENT FOR VIRTUALLY INDUCTED FELLOWS PRESENT AT THE ANNUAL MEETING IN CHICAGO. PAST PRESIDENT FRAN WIKSTROM (2014-15) ADDRESSED THEM:



One thing we've heard a lot during this pandemic is that people say they've missed out on experiences that they normally would have had. I'm happy to tell you, our virtual inductees from the last two meetings, that that's not true for you. You, essentially, get the best of both worlds. You were able, because of your virtual induction, to have your families observe, which is something that none of us had the opportunity to do. And now you get to experience the ceremonial and collegial induction, as well. So it's one of the few silver linings in this pandemic that I've been able to find.

Tomorrow, there's going to be a luncheon just like this for the new inductees and at that luncheon, one of the past presidents will explain in detail the process by which you all became fellows and you've already heard that speech, so President Acker asked me to try and come up with something that was interesting and not repetitious of what you already heard.

And so, for the next few minutes, I'd like to talk a little bit about my thoughts about what it is that makes the College special; what is the essence of the American College of Trial Lawyers. And for me, there are five things I'd like to talk about.

You've heard how you cannot apply to become a Fellow; you have to be invited to join this organization. And that only comes after the very long and laborious process that you heard about when you were inducted. Suffice it to say that very few lawyers are actually nominated by their states or provinces and even a smaller number are actually approved by the Board of Regents. In any given year, we might get 150 or 200 nominations after investigations by the state and province committees; and of those, the Board approves maybe seventy, eighty percent. We want you to know how special we think you are. ▶

The second thing I want to mention is the confidential poll. You've heard about that and the Regent's investigation. It's the key, in my mind, to the character of the College. The state and province committees do their investigation as best they can, but it's the poll and the Regent follow-up that assures that we get the real scoop on all of you.

You might think it's a blackball situation. One blackball and you're out like a sorority or fraternity situation; but that's not the case. The Regents will get to the bottom of all of those because we want to make sure, as we have with all of you, that you are, indeed, qualified to become Fellows of this College.

Sometimes, there will be a unanimous nomination from a state committee and then, at the time of the poll, someone will say, "Have the Regent call me," and the Regent will find out that the member of the state or province committee felt some pressure because of a partner or a friend or somebody on the state committee. Because that vote is public. But then the person will tell the Regent about some concerns. Because we all love this College, we all recognize that our reputation is only as good as the Fellows that we have and we're very jealous and protective of that.

Third thing. **Past President Joan Lukey** often talks about the three-legged stool. To become a Fellow in this College, you have to have the trial skills, but your professionalism and ethics have to be above reproach and you also have to be collegial. That's very important to us and I hope you've felt that in the days that you've been with us or the day that you've been with us and during this meeting; that how much we enjoy seeing each other and being with each other.

The concept of collegiality is probably best summed up by our late Regent, the beloved **John Famularo** from Kentucky. The test for him was "is this a person that you would like to spend the day with in a small fishing boat?" The fact that you're all sitting here today means that you are, indeed, people that we'd like to go fishing with. And if you are actually a fisherman, see Tom Tongue or me; we've been known to spend many days doing that.

It's an interesting process because the vote of the Board of Regents is based entirely on hearsay. And it's unattributed hearsay; something we would never get away with in the courts in which we practice. The Regent stands up and tells us all about you. **Andy Coats** was the Regent when I was inducted some twenty-six years ago. He told me, "I know more about you than your mother." I didn't tell him at the time that I seldom told my mother anything.

But that brings me to my fourth point; that is the concept of validation by people who really, really know you. I'm sure that all of you, like me, when you first started practicing law, you kept your eyes open, you kept your ears open, you hung out with other lawyers, you observed lawyers in trial, and it wasn't very long before you knew who the very best trial lawyers were in your state or province.

And I'm sure, like me, you probably had never heard of the American College of Trial Lawyers. All you knew was those people were the best trial lawyers in the state, their trial skills were fabulous, you could take their word to the bank, and they were really fun to go have a drink with or to socialize with. And if you were like me, you said, "I want to be like those people."

And so for me, the highlight of my professional career was when I got the letter from the College that was immediately followed by phone calls from these people that I admired. Every Past President will tell you that it was an honor to serve as an officer of this College and, indeed, it was; second only to our induction. Every one of us remembers like it was yesterday our feelings of pride and accomplishment when we became Fellows.

Face it: What we do is pretty hard and it's not amenable to any kind of objective measurement. We heard Jay Bilas today. With a basketball team, it's easy to tell who won and who's the best. At the end of the game, one team wins and the other team loses. There might be some players on the losing team that did a great job. There are fabulous trial lawyers who win most of their cases but they also lose some cases, too. That's because we all have to play the hand we're dealt

and we're measured by how well we play it, not necessarily what the result is. You can show me a lawyer, a trial lawyer, who claims that he or she has never lost a case and I'll show you a trial lawyer who's afraid to try the close cases. That's where the rubber hits the road in this profession.

So to have people who we respect as the best in our profession in our state or province recognize us as being one of them was the highest form of professional validation. And you now have that mark of distinction. Everybody in your community now will know that you are Fellows of the American College of Trial Lawyers. They'll be watching you. They'll be emulating you. They'll be wanting to be just like you.

My fifth point – what is your future in the American College of Trial Lawyers? You'll notice that we don't have a concept of apprentice Fellows or new Fellows or probationary Fellows. You are Fellows of this College, and we're going to ride on your reputation just as you have ridden on the reputation of those who came before you. And we are counting on you to help us find other young people out there who are deserving of being in this College. We hope you'll become active in your state or province committees because it's kind of an interesting thing. We're a national organization but we absolutely depend on the Fellows in each state or province to identify and send us the people that should become Fellows.

We want you to be involved in your state and local committees and help us find new Fellows, but we also want you to get involved nationally. One of the things I noticed as I got older is that I found it more and more difficult to make the kind of close friends that I made as a younger person with one notable exception and that's in this College. And it might be because we do the prescreen for all of you; there are no duds here.

Fellows are so friendly and over time, as you get to know more and more Fellows from other states and provinces, you look forward to seeing them at these meetings. If you're interested in any of the committees, any of the

national committees, we want you to serve on them. And it's really simple: All you have to do is tell your Regent or me or one of the other Past Presidents, "I'd like to be on that committee" and we'll see that it happens. And I can promise you that the dividend will be tenfold the energy that you put in.

Before I close, I want to just say a word to the spouses and partners and significant others who are with us today. As you can tell, we think your Fellow is pretty special. And we also know that your Fellow is not so foolish to think that she or he accomplished all of this on his or her own. Without your love and your support, they wouldn't be here today. Even more importantly, please know that your presence at these meetings is as important to us - perhaps more important to us - than the Fellows themselves. As **Past President Warren Lightfoot** has often said, "Spouses and partners are usually more interesting than the Fellows."

The College, I think you'll find, is a big family and you are an essential part of that family. Without you, we'd be just a bunch of boring old trial lawyers sitting around telling tall tales about our past exploits. You keep us honest and grounded and focused and we want you here always.

So celebrate with your Fellow during these couple of days, but when you get home on Monday, you can remind them, as the slave reminded Caesar upon his triumphal entry into Rome, "Remember, you're mortal." The dishes still need to get done, the garbage still needs to go out, so get to work.

Speaking of Rome, I hope you've enjoyed being here at this meeting and felt the energy that we all feel when we come to these meetings and the fabulous program that we had today and that we will have tomorrow. The College goes to Europe about every eight years and those meetings are not to be missed. So mark your calendar, come to Rome, and you'll have an experience unlike anything you've ever had before.

Thank you, congratulations once again, and welcome to the College. ■



FALL 2021 INDUCTION

FORTY-SIX NEW FELLOWS WERE INDUCTED AT OUR 2021 ANNUAL FALL MEETING. OUR NEW FELLOWS LIVE AND WORK IN TWENTY-TWO DIFFERENT STATES AND PROVINCES. SEVENTEEN ARE WOMEN; THREE IDENTIFY AS MINORITIES; AT LEAST TWO ARE VETERANS; FOUR WERE COLLEGE ATHLETES, BUT MOST REMAIN ATHLETIC; MANY HAVE SERVED BUT FIVE REMAIN IN PUBLIC SERVICE.

PAST PRESIDENT MIKE SMITH GAVE THE INDUCTION CHARGE – THE SAME CHARGE THAT HAS BEEN GIVEN TO EVERY FELLOW SINCE THE COLLEGE WAS FOUNDED OVER SEVENTY YEARS AGO.

LYNN KANE NEUNER GAVE THE INDUCTEE RESPONSE ON BEHALF OF HER CLASS OF NEW FELLOWS. LYNN GRADUATED FROM YALE LAW SCHOOL IN 1992, WHERE SHE SERVED AS CO-EDITOR-IN-CHIEF OF THE YALE JOURNAL ON REGULATION. SHE CLERKED FOR THE HON. H. LEE SAROKIN OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AND THE HON. JOHN M. WALKER, JR., OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. LYNN RECEIVED HER B.A. IN 1989, SUMMA CUM LAUDE, FROM WILLIAMS COLLEGE, WHERE SHE MET HER HUSBAND, ROB, AN ENTREPRENEUR WHO ONCE APPEARED ON *SHARK TANK*.

LYNN SPECIALIZES IN LITIGATION INVOLVING SECURITIES, MERGERS, INSURANCE COVERAGE AND FALSE ADVERTISING DISPUTES. SHE IS A TRUSTEE OF THE BOARD OF PRACTICING LAW INSTITUTE (PLI), A PAST VICE PRESIDENT AND EXECUTIVE COMMITTEE CHAIR OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND A FORMER CHAIR OF THE BOARD FOR THE YALE LAW SCHOOL ALUMNI FUND. SHE IS A MEMBER OF HER FIRM'S EXECUTIVE COMMITTEE AND SERVED AS THE FIRM'S CO-ADMINISTRATIVE PARTNER.

LYNN IS COMMITTED TO SERVING VETERANS THROUGH PRO BONO REPRESENTATION. IN 2018, SHE WON A LANDMARK CASE IN THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS THAT WILL ALLOW VETERANS TO CHALLENGE SYSTEMIC ISSUES IN THE VA SYSTEM USING CLASS ACTIONS TOGETHER WITH THE YALE LAW SCHOOL VETERANS CLINIC. SHE HAS ALSO REPRESENTED INDIVIDUAL VETERANS IN DIRECT APPEALS TO THE FEDERAL CIRCUIT AND WITH BENEFITS APPLICATIONS TO THE VA.

LYNN'S SLIGHTLY ABRIDGED REMARKS FOLLOW.



I am honored to give the Inductees' response at this 2021 Annual Meeting here in the great city of Chicago. My goal is to bring our class of Inductees closer to you by sharing some of their messages about their lives and careers and what inspires them.

Being in Chicago, I call to mind jazz and blues and Nat King Cole, Earth, Wind and Fire, Jennifer Hudson, Cheap Trick, Fall Out Boy and Kanye West. All these musical artists have called Chicago home. It calls me to think how music must have inspired the American College of Trial Lawyers Inductees through their trials, through their late nights of preparing, through the years of serving their clients, through the decades of their lives with their family and friends.

I'll share a word about my family. I was raised in Rhode Island and am the youngest of nine children. Yes, we are a large Irish Catholic family. Many are in the medical field. When it came time for me to choose a career, they said I could either be a lawyer or a nun. It turns out they wanted to be saved one way or the other. With my own family in Connecticut, I have the great fortune to be married to my college sweetheart, Rob. He is a serial entrepreneur and if you ask him, he'll tell you about being on Shark Tank. We have three versatile children. My family has inspired me with their incredibly hard work, their selfless commitment to their respective missions, and their somewhat hilarious sense of humor. ▶

I turn now to the inductees and my imaginings of their musical inspiration. Several of you must have been inspired by Bruce Springsteen, AKA “The Boss.” One of you started your own firm fifteen years ago with another Fellow of the College. One of you opened her own firm with a partner just before September 11th. Another became the managing partner of his 100-year-old Louisiana firm. Yet another is a cofounder of one of the largest women and minority-owned civil litigation firms in North Carolina. Another started a firm with two partners and has been named one of the top 50 women in New Jersey. Clearly, you all know how to lead a band over the years.

Others seem to have been influenced by The Supremes. One of you clerked for Sandra Day O’Connor. Another argued before the highest court in the United States, while another was counsel for the attorney general of Canada in more than two dozen appeals in the Supreme Court of Canada. Yet another worked for two justices on the Louisiana Supreme Court.

I have to believe that Marvin Gaye and Tammi Terrell inspired others of you with “Ain’t No Mountain High Enough.” One of you has hiked more than twenty-five of the 14,000-foot mountains in Colorado. Another spent years climbing in Yosemite, the High Sierras, and the desert. Yet another is working on becoming an Adirondack 46er.

Many inductees have achieved outstanding heights in our profession. One is the chief of the criminal division in the U.S. Attorney’s Office here in Chicago, so no funny business tonight, okay? One was the first female attorney from a particular circuit to be elected to the Florida Bar Board of Governors. One received the Defense Verdict of the Year in Arizona. One was the President of the South Carolina Bar. For all of you and your multitude of legal accomplishments, I think the Script’s, “Hall of Fame” is a fitting song.

Now I understand the path to tonight’s honor was not always easy; there have been some hard knocks along the way. One of you has a daughter with an extremely rare connective tissue disorder and, in seeing her through it, has also organized a patient advocacy group.

One of our inductees was hit in the face with a puck at an NHL game and cracked her skull in a biking accident but still made it to Harvard Law School. To all of you who overcame challenges, I think your song must be from Chumbawamba, “Tubthumping,” also known as, “I get knocked down, but I get up again.”

For those athletes among us, what better song is there than “Eye of the Tiger?” One of us played baseball at Stanford with John Elway. One of you mountain-biked more than 13,000 miles in the last seven years. Another is an avid pickleball player and the mom of three exceptional athletes. We also have inductees who have captained bareboat sailing expeditions in the British Virgin Islands and another who completed 14 half-marathons. We have college All-Americans, one a javelin thrower. And one a cheerleader, who broke the gender barrier and went on to become one of the only male cheerleaders in the NFL. We have an inductee who is into adventure motorcycling, for which he was also inducted into the Iron Butt Association.

Unsurprisingly, we have inductees who have achieved some great successes but ones that, perhaps, did not seem possible at the time. One of you prosecuted two quadruple murder death penalty cases in the same year. On the flip side, one of you obtained an acquittal of a twenty-eight-year-old who was facing thirty-two years in prison for armed bank robbery. Another tried four capital cases to verdict, ultimately resulting in no death penalty for any. Another of you had their very first court appearance as a young prosecutor against F. Lee Bailey and won. For those times where victory seemed slim, remember those words by Journey, “Don’t Stop Believing.”

Johnny Cash’s, “I’ve Been Everywhere,” is appropriate. One of you celebrated your daughter’s wedding in Lebanon. One of you toured Bali on a motorcycle. One of you was on a plane diverted to Newfoundland after September 11th, inspiring a Broadway play. One of you conducted compliance training in Russia, India, Chile, Argentina, Croatia, and Japan. One of you interned for six months in a small village in Ghana as an apprentice to two traditional healers studying JuJu.

One inductee first chaired a trial while nine months pregnant. The same inductee also tried a two-week trial while pregnant with one baby and nursing another. One inductee was a member of UC Davis’ Sheep National Championship Judging Team. Yes, you heard that right. Another inductee shucked oysters at Harrod’s Oyster Bar in London and another served on one of the

nation’s first independent citizen oversight boards for a correctional facility. Yet another is the head of Chicago’s Convictions Integrity Unit. I think, “On Top of the World,” by Imagine Dragons must be your number.



I was touched by the many odes to your spouses, significant others, and loved ones. One of our fellow inductees wrote about his journey with his wife who was diagnosed with MS at age twenty-two. He has been a trial lawyer and her care partner for more than three decades. He said, “Having a great wife makes both possible.” For you, I see inspiration from the Beatles, “When I’m Sixty-Four.”

Still other inductees are an inspiration to all of us those of you who have served in the military. Our inductee class boasts a JAG officer in the Air Force who then served 21 years as a lawyer for the Iowa International Guard. To all of our veterans, we offer our gratitude and a tribute to the “Star Spangled Banner,” which after all, was written by a thirty-five-year-old lawyer, Francis Scott Key.

Many of you were inspired by other Fellows. One inductee’s father and uncle were both Fellows. One of you worked for two federal judges who were Fellows. Another said a Fellow taught him pretty much everything he knows about trying a case. To those inductees, this song’s for you: “Thank You For Being a Friend.”

Several of you have engaged in stunning service to those in need. One of you founded Fresno’s first accredited drug and alcohol treatment program. One of you supervised hurricane relief crews for Hurricanes Rita, Laura, and Delta in Louisiana. Yet another worked as a speech pathologist with children dealing with autism and stuttering. One Fellow has traveled to Haiti, Honduras, Turkey and the Ukraine for global religious missions. Another serves on the board of the Georgia Innocence Project. For you folks, I see the song, “Save the World,” by Swedish House Mafia.

Others have saluted the generations that came before them. One inductee said his role model is his father, a solo practitioner who met with clients at the dining room table in their home on weekends. One proud Fellow noted that he is the third-generation attorney in his family, starting with his grandmother, who was one of the few women in her law school class. To those who came before us, we’ll take inspiration from Maroon 5’s recent hit, “Memories.”

In many of your highlights, I sensed an overwhelming sense of gratitude. To your family that supported you, to your colleagues who collaborated with you, to our profession that brought out the best in you, for this one, we’ll go to one of Chicago’s favorites, known to friends as Pops, Louis Armstrong and, “What a Wonderful World.”

Personally, one of my family’s favorite albums growing up was the soundtrack to Rocky; that lush collection of music really motivated you to go the extra mile. Growing up in my big family was competitive but also great training for being a trial lawyer. Every now and then, my father would set up wrestling matches among the kids, two at a time, on the living room rug to teach us how to handle an adversarial situation, including how to get out of a headlock. Afterward, we would have milkshakes and discuss our moves. Sounds like trial lawyers, right?

It is this duality of mindset that characterizes the trial lawyer. We can fight hard in court with all our might and yet lay down our arms afterwards and be collegial with one another. When outsiders see this fraternizing with the enemy, they may wonder whether our advocacy is posturing. It’s not. There is a greater truth. We have the capacity to be warriors and friends; to admire true skills even in our foe.

To me, the College represents the embodiment of this duality. It celebrates the highest standards of trial advocacy and, simultaneously, champions professionalism and collegiality. I have witnessed this already in two experiences among the Fellows. First, I’ve had the great fortune to be co-counsel in a long running case in Texas with President Acker. Time and again, I have seen him reach out to other Fellows on both sides of the V to ask for intel on a host of issues. Whether it’s about potential mediators or expected trial calendars, the responses come swiftly, even at night and on weekends, from Fellows across the area eager to be of help to their respected comrade.

Second, I myself, received invaluable assistance from one of our group, who is actually my adversary in a matter. Last fall, I was preparing for a Zoom trial in a case. I knew she had just finished a Zoom trial in a different matter. She spent an hour on the phone with me one Friday explaining how she set up her Zoom courtroom, the tech pitfalls to avoid, and the preferred method for dealing with witness exhibits; a great example of how adversaries can also be good colleagues and friends.

My wish for each of you is that you continue to be inspired in your work and personal life, both by our Fellows, and by your own life anthem. As a parting gift, I have posted a playlist to Spotify with the songs highlighted tonight. Look for it under, “ACTL Fall 2021 Inductees Playlist.” ■

FALL 2021 INDUCTEES

NOT MUCH NEEDED AFTER LYNN'S REMARKS, BUT HERE ARE A FEW WORDS ABOUT EACH OF OUR NEW INDUCTEES.

ALABAMA



When **Charles Andrew Stuart III** graduated from college, his father (a trial lawyer) told him that he was way too immature to go to graduate school, so he had to work two years before his father would help him with law school. Chuck's hobbies are fly-fishing and adventure motorcycling. He is now on his seventh bike and was inducted into the Iron Butt Association after he rode from Metropolis, Illinois to Black Hawk, Colorado in seventeen straight hours, a distance of 1066 miles. Chuck is married to a lawyer; they have two daughters, one an art director and the other a trial lawyer.

A. Edwin Stuardi III played baseball for a small Jesuit college in the 1980's, where he learned how to deal with failure – you get a hit three out of ten times and you are considered an all-star, even though you fail seventy percent of the time. Ed's wife Sue was diagnosed with multiple sclerosis when they were both twenty-two. Thirty-one years later, Sue is in a wheelchair but has always been a great partner and wife. Ed and Sue and their family have raised over \$150,000 for the MS Society by hosting a yearly lemonade stand where they serve "adult lemonade," a *lot* of lemonade.

ARIZONA

During college at Berkley, **John Ager** was held hostage with a group of other students in a restaurant; tragically, several were shot, and one killed. A local TV station broadcast the SWAT team activity, which the hostage-taker watched live, making rescue more difficult. After that, John advocated for reforms in the way hostage situations were covered by the media. John is an avid helicopter skier, having logged over 2 million vertical feet skiing the Monashee Mountains in western Canada. He's learning to play the ukulele. John calls himself a third generation Fellow, not because of any relatives but as an homage to the mentorship of two other Fellows, **Phil Robbins** and former Regent **Bill Sandweg**. John says that Bill taught him pretty much everything he knows about trying a case, most of which Bill in turn learned from Phil.

Donald L. Myles, Jr. played football and was an All-American Javelin thrower in 1977 and 1979 for Cal Lutheran University. He got his law degree from Southwestern University Law School in 1982 and moved to Arizona. Don's wife Doreen runs a trial technology company and is frequently in the courtroom. Don and Doreen hike, bike and spend their summers in Telluride, Colorado. Don and Doreen are wine connoisseurs and have tasted all over the world. Don participated in the Arizona Diamondbacks baseball fantasy camp for twelve years, where he threw less pointed objects than javelins.

CALIFORNIA

Karen Goodman is a native of rural Sacramento where she had a pet cow named Freckles and showed sheep all over northern California. She was part of UC Davis' 1979 sheep national champion judging team. Karen met her husband John at her first law firm thirty-six years ago, when he was hired as a runner for the firm (before faxes and emails). They have one son who works in the California Attorney General's Office. Karen has given up sheep for a chocolate lab, Choco.



Richard S. Linkert took three years after graduating from Berkeley before enrolling in law school to run a lodge in Mammoth Lakes, taking groups skiing in the winter and conducting back country and climbing trips in the Eastern Sierras and Yosemite in the summer. His climbing resume includes first ascents in Yosemite and the desert, big wall climbs such as the NW Face of Half Dome and Leaning Tower, and numerous difficult free climbs in California and Colorado.

Miranda Kane is a former Assistant U.S. Attorney who was Chief of the Criminal Division for the Northern District of California. Miranda began her legal career as a Deputy District Attorney in Los Angeles County. Miranda has tried more than seventy-five criminal cases in both federal and state courts. Miranda's practice includes her appointment to the Northern District of California's Criminal Justice Act panel, where she represents indigent criminal defendants.



Rene Sample, together with her son and husband, founded Fresno's first Joint Commission accredited drug and alcohol treatment program in 2018. Her son had spent twelve years battling addiction, and when he became sober it soon became clear he had a gift for helping others. They formed My Time Recovery which in just three years has helped more than 1,200 families, with programs in Fresno and two other underserved communities.

COLORADO

Sean Grimsley clerked for Justice Sandra Day O'Connor. He spent two years at the Federal Public Defender's Office in Washington, DC, working for FACTL **A.J. Kramer**, and was Deputy Chief Counsel to President Obama's Commission investigating the BP Deepwater Horizon disaster, serving under long-time mentor and FACTL **Fred Bartlit**. Sean also served as a Special Assistant Attorney General, helping FACTL **Eric Olson** with an investigation of the Aurora Police Department.

CONNECTICUT

James D. Horowitz's father was a solo general civil practice lawyer, whose dining room table doubled as his office on weekends when he met with clients while his mother marched and worked in civil rights organizations in the 1960s. Like others, Jim could boast large verdicts, but he is most proud that he has practiced as his parents lived. Jim says he chased his wife, Sandy, for nine years after they met on their first day of college in 1975 before she agreed to marry him. They now have three children, two public defenders and an actor.

DISTRICT OF COLUMBIA

Daniel T. Donovan learned to deal with people working as a Cleveland Plain Dealer paper boy for over seven years. Dan coached elementary school basketball while attending Villanova University, and worked at DOJ, the U.S. Attorney's Office and a private firm during law school. Dan is an instrument-rated private pilot. He and his wife, Ana, have four children and two dogs.

Adam L. Perlman is the son of a solo practitioner personal injury plaintiff's lawyer. Not a mass torts, private plane plaintiff's lawyer, but a \$20,000 slip and fall kind of plaintiff's lawyer. So Adam grew up with a somewhat negative view of big firms and big companies, which, luckily, his experience has proved not to be correct; he now knows that great trial lawyers come from many different backgrounds. Adam was privileged to work for two federal judges who are Fellows of the College.

Jonathan S. Zucker has tried approximately two hundred jury trials, the bulk of them criminal defense, mostly homicides and conspiracy drug cases. In college, Jonathan spent six months in a small village in Ghana working as an apprentice to two traditional healers (often referred to by the offensive term "witch doctors") studying "juju," known in the Caribbean as "voodoo." Prior to Law School, Jonathan worked four years as a teacher in a high school for emotionally disturbed students; that experience, Jonathan says, has proved invaluable in dealing with judges, though we bet he doesn't actually say that to the judges.

FLORIDA



Kimberly A. Bald was the first female attorney from the Twelfth Judicial Circuit to be elected to serve on The Board of Governors of the Florida Bar. Kimberly revels in a visit to Lebanon four years ago to celebrate the second round of parties celebrating her daughter's wedding. The family visited and stayed with her son-in-law's family, who live outside Beirut, ending their trip as guests at a home overlooking the Mediterranean Sea owned by the President of the University of Balamand, Dr. Elie Salem, who is Kimberly's son-in-law's grandfather, and who was Lebanon's Minister of Foreign Affairs.

Mary Jaye Hall is a graduate of the University of Kentucky, where she was a member of the Swimming & Diving team. We're guessing, but a Facebook post suggests she has made at least one dive into air, not water. Mary Jaye received her law degree in 1992 from Stetson University College of Law.





Robert C.L. Vaughan lived for a year in Nairobi, Kenya as a teenager. He is an instrument-rated private pilot with both land and seaplane ratings. Robert is the immediate past president of the Broward County Bar Association and is a past president of the Caribbean Bar Association.

GEORGIA

Jeffrey H. Brickman has served as an Assistant District Attorney, an Assistant United States Attorney, the District Attorney of DeKalb County, Georgia, and now is a defense attorney. Jeff once prosecuted an armed robbery case against a defendant who had two previous armed robbery convictions and realized that the victims in one of them had been Jeff’s grandparents. While the District Attorney of DeKalb County, Jeff met a man who had served seventeen years in prison for a rape he did not commit, and who became the Georgia Innocence Project’s first exoneree. They remain friends to this day, and Jeff now serves on the Board of the Georgia Innocence Project.

Charles E. Cox, Jr. comes from a family of ministers, not attorneys, but feels that his criminal defense practice is a ministry of justice. Charlie plays the guitar and favors bow ties. He promotes his love of the musical heritage of Macon by supporting others with The Charles E. Cox, Jr. Family Trust. Charlie is active in civil rights issues through the non-partisan organization, Georgia Women and Those Who Stand With Us, which supports family leave protection, protected class for gender identity in city government, voting issues and voter participation.

ILLINOIS

Nancy Galassini Adduci is the Executive Director of the Cook County State’s Attorney’s Office Conviction Integrity Unit. In that role, Nancy oversees hundreds of investigations into claims of innocence and wrongful conviction within the second largest prosecutor’s office in the United States. Nancy has served in the State’s Attorney’s Office her entire career; she has prosecuted thousands of cases and has had well over 500 trials. Nancy is a mother of three, an avid cook, a fan of landscape design and gardening, and is a motorcycle devotee, happily spending weekends exploring the back roads of the Midwest with her motorcycle group.

Giving new meaning to “trial lawyer tough,” **Bethany K. Biesenthal** had a jury trial as an Assistant U.S. Attorney while nine months pregnant, and another two-week jury trial while nursing one child and pregnant with another. To prove that she is not done tackling new challenges, Bethany is now learning to snow ski and wake board with her children. She is the first woman in her family to attend college, and the first person in her family to become a lawyer.

J. Gregory Deis is a numbers guy – and proud of it. He notes that he is one of six children and the father of five. But he loses the numbers game to his wife – who is one of thirteen children. At last count, he has over fifty nieces and nephews (he seems to have lost exact count). His affinity for numbers carries over into his professional life too. Now in private practice in Chicago, Greg is proud of the fact that he once tried three federal criminal cases as an Assistant U.S. Attorney in a span of three weeks.

Lindsay Jenkins, a native of Ohio, migrated to Chicago after law school and a stint at a big firm in Cleveland – and landed at the U.S. Attorney’s Office where she now serves as the Chief of the Criminal Division, supervising over 150 Assistant U.S. Attorneys. In addition to her day job, Lindsay teaches at both Northwestern and Loyola Law Schools.

Daniel M. Kotin comes from a long line of distinguished Chicago lawyers – his grandfather, father and uncle were all attorneys in Chicago, and both his father and his uncle were long-standing Fellows of the College. Following in the family footsteps, Dan has served as President of the Society of Trial Lawyers of Illinois (as did his father) and as president of the Chicago Bar Association (as did his uncle). Dan is very relieved to (finally) become a Fellow, joining the two other name partners in his plaintiffs’ personal injury firm.



Andrew W. Vail has tried a wide variety of pro bono cases ranging from wrongful conviction matters to murder trials. But some would say he peaked at a very early age: he is known for (he thinks) and very proud of his (small) role in the movie *Rookie of the Year*, in which he appeared as a twelve-year-old. Andrew serves as General Counsel to United Way of Metro Chicago and on the Boards of numerous public service organizations, including the Legal Aid Society and the Northwestern Center on Wrongful Convictions. He also served as Commissioner of the Chicago Lawyers Softball Association.

IOWA

Thomas Joensen was a licensed Speech Language Pathologist who worked with children with speech and language difficulties such as autism and stuttering. Tom was an extra in the motion picture *Twister* and was actually paid for the gig. During a work abroad program in college, he shucked oysters at Harrod's Department Store's Oyster Bar. And he was invited to play professional basketball after a coach saw him playing at a playground in London. (Tom declined.)



Michael C. Walker has travelled to Haiti, Honduras, the Navajo reservation in Winslow, Arizona, Ukraine, and Turkey for global and national church missions. Mike served twelve years as a director of Quad City Arts, a non-profit organization serving a six-county area in eastern Iowa and northwestern Illinois. Mike is a longtime member of the Davenport Noon Optimist Club, whose members, as the name suggests, apparently are less upbeat at dinner.

LOUISIANA

Craig J. Robichaux has attended three Boy Scout National Jamborees with his three sons, one as a subcamp commissioner and two as a scoutmaster. Craig was awarded the Silver Beaver Award, which he assures us is a high honor. The three sons did well after scouting. One is a Ph.D. Virologist and Anesthesiologist, another is a Neurosurgeon, and the third is a lawyer who works with Craig.

MICHIGAN

Britt M. Cobb is a third-generation lawyer, but unlike her grandfather and father (both prosecutors) she represents defendants. Britt did not take the typical defense lawyer route of starting out as a prosecutor and has always worked for the defense. Britt went to the University of Virginia and the University of Denver for law school. She practiced in Denver until moving to Michigan to accommodate her husband's job change. Britt sees herself as a wife, mother and friend first, and as a lawyer in far distant second place. Britt loves to cook, see live music, watch football and be in the great outdoors with friends and family.

Debra A. Fried came to the profession through the influence of her father, a worker's compensation lawyer who frequently brought her to the office and court before "Take Your Daughter to Work Day" formally existed. Temporarily diverted by a potential career in ballet in New York City, she came home to Michigan to attend law school and joined her father's firm after graduation. She later started her own firm, building a practice as a plaintiff's personal injury and employment lawyer. A mother to four adult children, Debra frequently volunteers at *pro bono* clinics and as a judge at local college moot court competitions.

John K. Neal has spent his entire legal career with the Department of Justice, joining the Department in 2002. A native of northern Virginia, he accepted a position as an AUSA with the Detroit U.S. Attorney's Office in 2011, figuring it would be a good way to get some trial experience and work in a collegial office for a few years. Ten years later, he is still there. John's wife is an elementary school teacher specializing in English as a Second Language. They have two boys, who are fans of the Detroit Lions. John believes that will teach them many lessons about the cruelty of the world and the utter indifference of Providence. John enjoys cooking, reading, hiking, and travel. He also plays chess online but is confident that if there were an American College of Chess Players he would not be invited to fellowship.

NEVADA

James E. Whitmire III, a second-generation lawyer, was born and raised in Moline, Illinois. Following graduation from the University of Iowa with a finance degree, Jim graduated from the University of Illinois School of Law in 1993 and began practice in his hometown. Jim later moved to Nevada, where he met his wife, while she was a summer law clerk. Jim has a work hard/play hard philosophy, which includes coaching youth sports, frequent traveling with his family, golfing and making recent renewed efforts to fish. ▶

NEW HAMPSHIRE

David Betancourt is a career Public Defender in New Hampshire who lives in rural Maine with his wife and two children. For the first ten years of his career as a public defender, David's wife ran a small artisanal cheesemaking business. They lived above a dairy barn, and at night David would typically head into the creamery to help with the cheese making. In 2013, David's non-legal work shifted when his youngest daughter was diagnosed with an extremely rare connective tissue disorder called Arterial Tortuosity Syndrome, which essentially causes her arteries to kink and twist, complicating the ability of her heart to ensure adequate blood flow to her organs. There are less than forty known cases in the US. David has joined and is active in a support network with other parents of ATS kids.

NEW JERSEY



Lauren O'Neill has had a busy litigation practice with little time for much else other than raising her three kids. Her oldest graduated from the Wharton school of Business at Penn and was drafted by the New York Mets, after captaining the Penn team and leading the Ivy league with a .405 batting average. The middle son is in his senior year at Georgetown, where he is a member of the golf team and is currently trying to break into the professional circuit. The youngest is at Carnegie Mellon where she plays basketball. Lauren is an avid pickle ball player and fitness enthusiast, participating in activities such as running, biking and cross training.

Rubin M. Sinins is certified both as a criminal trial attorney and civil trial attorney, on a diverse practice that ranges from complex, white-collar investigations to the representation of students in disciplinary matters. Ruben is Past President of the Essex County Bar Association. He earned BA and MA degrees from the University of Pennsylvania and his J.D. from the George Washington University, after which he clerked for Judge A. Leon Higginbotham, Chief Judge of the Third Circuit Court of Appeals.

NEW YORK

Lynn K. Neuner, the Inductee Responder, is featured at p. 82.

David Stern has devoted his career to criminal defense. He has tried over one hundred criminal cases in state and federal courts, including three federal capital murder cases to verdict. After law school, David joined the Legal Aid Society's Manhattan Criminal Defense Office, where he progressed from Staff Attorney to supervisor, and then to one of the managers of the Senior Trial Attorney Bureau. After a dozen years with Legal Aid, David entered private practice, focusing on serious federal felony cases.

Jamie Wine was knocked in the head by a poorly thrown wooden sandal, was hit in the face at an NHL game by an errant slap shot, and suffered a cracked skull in a bicycle accident, yet she went on to Harvard Law School and a successful career as a big law trial lawyer. A former Global Chair of her firm's 600+ attorney litigation department, one of Jamie's more interesting cases has cemented her role as a real soccer mom – she represents the U.S. Soccer Federation in the discrimination case brought by the women's team.

NORTH CAROLINA

Tricia M. Derr specializes in med mal defense, product liability and business litigation. Although she spent valuable time in her early career at a large firm, she soon pivoted to join one of the largest women and minority-owned civil litigation firms in North Carolina. Eighty percent of her team is diverse, so when clients ask for an assurance of diverse representation, she says "there's no other choice at this firm."

OHIO

John Mitchell is the first attorney in his family. A lifelong resident of Cleveland, Ohio (other than college and law school in Columbus, Ohio) (Wow! An entire 142 miles away!), John is a dedicated fan of the Cleveland Browns, Cleveland Baseball team (soon to be Guardians), Cleveland Cavaliers and the Ohio State Buckeyes. John's first formal court appearance was against F. Lee Bailey, as a young Assistant Prosecuting Attorney. He was the junior member of a team that prosecuted a Cleveland-area doctor for insurance fraud and theft. Mr. Bailey's client was convicted.

OKLAHOMA

Nathan A. Clark concentrates his practice in med mal defense, commercial litigation and (according to his website) Mold Litigation. Nathan earned his B.A. *magna cum laude* from Baylor University in 1994, where he was a member of Phi Beta Kappa. He graduated from Baylor University School of Law in 1997. One evening after a seventeen-hour day of farm work when he was sixteen years old, he was cited for speeding, and the ticket was for three dollars more than he earned working that long day. That was the day he decided to go to law school. Nathan is an avid Liverpool FC fan and has served for more than ten years on the board of a Tulsa, Oklahoma not-for-profit soccer club.

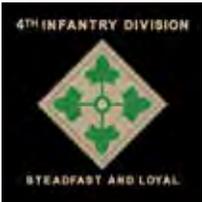
OTTAWA



Anne M. Turley is senior counsel at Canada's Department of Justice and is one of the Federal Government's chosen counsel for its most complicated and sensitive cases. She has represented the Attorney General of Canada in dozens of appeals before the Supreme Court of Canada, and recently travelled across the country through her representation of the Government of Canada before the National Inquiry into Missing and Murdered Indigenous Women and Girls. She is the proud mother of two grown children, an avid athlete and killer board game player.

PENNSYLVANIA

Ann Campbell Flannery has had her share of acquittals in federal criminal jury trials, but her most challenging and thus the most satisfying was an appointed case for a twenty-eight-year-old facing thirty-two mandatory years in prison on charges of armed bank robbery – with the government unwittingly presenting planted DNA evidence and the testimony of four cooperators who had coordinated their stories. Ann and her husband have two children, one of whom was a COVID health care hero as a social worker in an NYC COVID ICU during the worst of the pandemic.



James W. Kraus served as a JAG criminal prosecutor with the U.S. Army's 4th Infantry Division and as environmental litigation counsel for the Department of the Army in Washington. For the past twenty years, his private practice has focused on white collar criminal defense, government enforcement, internal investigations, health care litigation and commercial litigation. Jim is an active member of his local community where he serves as President of the Board of Directors of the Alliance for Non-Profit Resources and previously served as an elected city council member for the City of Butler where he was the Director of Public Safety.

Michael A. Schwartz decided he wanted to be a trial lawyer when, as a high school senior, he had an externship with a Court of Common Pleas judge. In college, Mike served as the Judge of Elections in a disputed contest for President of the Undergraduate Student Government; the winner of that election later became the Philadelphia District Attorney, who was subsequently removed from office after he was indicted and convicted of corruption charges. As a federal prosecutor, Mike obtained a warrant to put a bug in the Mayor's Office, but its existence was leaked and the Philadelphia Police publicly removed the device. As a defense lawyer, Mike has traveled to about twenty countries, including Russia, Ukraine, India, Chile, Argentina, Croatia, and Japan, conducting compliance training and investigations – and has tried to taste wines from each country.

SOUTH CAROLINA

William E. Lawson is originally from Spartanburg, South Carolina, the home of the Marshall Tucker Band. Ed practices in Myrtle Beach, South Carolina in a small office of a larger regional firm. He was the first lawyer in his family and is proud to say that his son and daughter have followed in his footsteps. Ed was always told he was funny and should be in entertainment. His wife Alys (former mayor of their community) was always concerned that Ed would give up the law and head out to Second City or the west coast but that never happened. Instead, Ed chose to entertain in the courtroom. Ed has completed fourteen half marathons and wears the title of "Clydesdale" with pride.

Alice F. Paylor began her career as a city attorney then moved into an extremely busy private practice at a fourteen-lawyer firm in Charleston. One of her areas of specialty is school law. In 2013, she became the fourth woman to be named President of the South Carolina Bar. She has also received the South Carolina Chief Justice's Commission on the Profession Mentor of the Year Award. While she loves the courtroom, she is most proud of, and grateful for, her mentoring relationships with numerous young lawyers. ■

THAT'S JUST THE WAY IT WAS IN THOSE DAYS



IN AUGUST 2021, NOW-RETIRED FELLOW DAVID BOSWELL, PADUCAH, KENTUCKY, WHILE RECUPERATING FROM FOOT SURGERY, RE-READ THE FALL 2020 ISSUE OF THE JOURNAL WHICH INCLUDED AN ARTICLE ON THE FIRST THREE WOMEN INDUCTEES OF THE COLLEGE. IT INSPIRED HIM TO CALL THE JOURNAL'S ATTENTION TO GEORGIA MAE NELSON DUNN, THE FIRST AND ONLY FEMALE ATTORNEY IN PADUCAH, KENTUCKY FOR SOME FORTY-TWO YEARS BETWEEN 1933 TO 1975 AND ONE OF HIS LAW FIRM COLLEAGUES FOR MANY YEARS. BOSWELL, FELLOW (AND NOW U.S. DISTRICT JUDGE) THOMAS B. RUSSELL, AND FELLOW DAVID SPARKS, ALL OF PADUCAH, HAD JOINED WITH OTHERS TO HONOR HER IN 1994, THE YEAR BEFORE HER DEATH AT AGE EIGHTY-SEVEN.

David Boswell says Mrs. Dunn “was so humble and reserved that she did not tell her own story as well as some of the rest of us who had to cross examine her to discover the nitty gritty of her life.” One story he drew out from Georgia Mae Nelson Dunn, who went by G.M. in her practice, was that for potential clients who called for G.M., it was often the end of the conversation when the caller realized G.M. was a woman. “Lots of these stories would surface if you talked to her long enough.”

Her legal career was truly amazing. Around 1923, after graduating from high school, Georgia Mae Nelson, born in 1908, went to work as a secretary in the Paducah law firm of Turner and Myre. Boswell recalls Georgia Mae telling him about that early experi-

ence: “To check her skills out, Mr. Turner dictated a lengthy contract and Georgia Mae was sitting there, and she was writing it all out and she said she was getting about half of it but she wasn’t letting on. He got through with the contract and said, ‘Now can you read that back?’ She said, ‘Yes, sir.’ He didn’t ask her to, fortunately. She said, ‘That was my first successful bluff.’ Turner said, ‘You report for work at 1:00 p.m.,’ and that was her first job with a law firm.”

Later, she went to work with Judge Emmet Bagby, a referee in bankruptcy. She began to think about going to law school, but her family “just didn’t think that was the thing to do, believing she was ‘too young and innocent to go to the big city to study law.’” Instead, she went to work for a bank for several years. But then, in 1928, she began studying at Jefferson Law School in Louisville six nights a week. During the day, she worked at a busy law office.

In law school, there were four or five other women. It was “all serious business,” and her practical experience at work stood her in good stead. She graduated and passed the Kentucky Bar in 1931, not the best of economic times, especially for a brand-new woman lawyer. After working in California in a non-legal job for several years, she returned to Paducah in 1933, where she did court reporting and bookkeeping and “opened an office where I just gradually began to pick up things.”

Paducah, with an approximate population of 30,000 today, is the county seat of McCracken County. Situated on the Ohio River near the confluence of the Tennessee and Cumberland rivers, Paducah is only 50 miles upstream from the Mississippi River. Because of its location, Paducah became an important port and market town after it was settled in 1827. The city functions as a service and supply center for the relatively isolated areas of Western Kentucky, Northwestern Tennessee, and parts of Southern Illinois and Southeast Missouri. McCracken County is a rural county whose development has been heavily influenced by Paducah.

Georgia Mae’s first client in Paducah was a “little old lady on a real estate matter.” Georgia Mae won the case and her fee was a topaz ring.



In 1934, she won the first and only appeal for which we could find a published decision with her as counsel. Representing the Revenue Agent for the Commonwealth of Kentucky, she and her co-counsel obtained a reversal of a decision that had held gasoline purchased by an interstate bus line outside of Kentucky, but stored and used in part in Kentucky, was not subject to Kentucky’s state gasoline tax. The Court concluded the gasoline lost its interstate character when it came to rest within the state.

Georgia Mae took the civil service exam during World War II and “was asked to go to Washington,” but stayed in Kentucky, keeping another lawyer’s office open while he was at war. In 1950, she was appointed by the judge as the deputy clerk of the federal court in Paducah. As Georgia Mae recalled, “It helped me financially because people didn’t flock to my door for legal work – I think, because I was a woman. It was disheartening and people just weren’t used to women lawyers.”

Despite the challenges she faced, David Boswell, who practiced with Georgia Mae from 1971 until her death in 1995, said she never spoke ill of anyone. “If she had a bad day, I never knew it. When asked, she would recall her slights in a factual and humorous manner, saying ‘That’s just the way it was in those days.’” ▶

GEORGIA MAE NELSON
for
COUNTY ATTORNEY



To the people of McCracken County:

Since making my formal announcement on May 6th, as a candidate for the office of County Attorney, I have been trying to see as many voters as possible and will continue to do so until election day on August 4th.

My opponent is the present County Attorney who was elected in 1932 to fill an unexpired term of more than a year. Thereafter, in 1933, he was elected for a full four-year term, in 1937 he was re-elected for a full term, and in 1941 he was given a full term. You have elected him four times, giving him more than THIRTEEN years in this office, and he is asking for another four year term.

This is a county office which ought to serve as a proving ground for attorneys who are grateful for one or two terms and aspire to higher office. From 1862 to 1932 (a period of 70 years) thirteen attorneys have served as County Attorney for this county, but no one of them has served more than two consecutive terms.

I am making this race solely on my own qualifications and ability to perform any of the duties required of the County Attorney. If you are not acquainted with me and my qualifications, it is my earnest desire that you ask ANY attorney in this county about the duties of the office and my ability to perform them.

If elected, I promise you capable, courteous, and constant attention to official duties, and I further promise you that I will not ask to stay in this office for SEVENTEEN years.

Your vote and influence are earnestly solicited.

Sincerely yours,

GEORGIA MAE NELSON
(Political Advertisement)

In 1945, despite the local consensus that a woman could not win, Georgia Mae ran for County Attorney for McCracken County, against a well-known and veteran candidate. She was told this job was not “a place for a lady.” Regarding this remarkable race, David Boswell observes that “Georgia Mae was a very humble and quiet lady, but she had steely resolve and was constantly willing to take on the system in her quiet way. She lost this race, but she had the moxie to run, and that was the important thing.”

She married a retired druggist in 1953 and stopped working, but her husband died six years later. She then became “associated” with a law firm, but really was the lawyer’s secretary. He let her do title work, however, and ultimately, she was appointed to serve an attorney for the Farmers Home Administration, doing its title work.

By this time, Georgia Mae “had no trouble keeping clients.” But she also was asked not to attend Bar meetings with male attorneys because there “would be language” she shouldn’t hear. Nonetheless, she started to go to them and eventually was elected secretary and treasurer of the McCracken County Bar for about six years, becoming its president in 1977.

“I never did have any great problem with any judges,” she remembers, but she learned later that one judge had told others that she was “so unflappable that I made him nervous.” In her words:

When men do something, it’s called aggressive and when women do the same thing, it’s abrasive. I just never did feel like you had to act like a man to be in that kind of work. I felt like that was the sort of thing women could do, too. . . . I have always said, “Well, I’ve opened the door for people always, even little old men.”

Boswell joined the same law firm in 1971 and practiced with Georgia Mae Nelson Dunn until she became ill about a year before her death in 1995. Boswell says she came into the office until she was unable to do so. He has fond memories of her and recollects that, although she did not like to talk about herself, in fact she was a real pioneer, paving the way for female lawyers in this area. “She was pretty remarkable, because title work is really risky work, and a lot of malpractice claims arise out of title work. She never had a claim or a suit over the course of her sixty-two year career.”

When Boswell retired after fifty years in the McCracken County Bar, he took her portrait off the wall where it had hung since her death and discovered the transcript of the 1994 Mary Lou Day presentation to her. With the help of Fellow David Sparks and others, including Boswell’s wife Katherine and local attorney Diana Douglas, Boswell proceeded to research Georgia Mae’s career. He presented her portrait to the McCracken County Courthouse in a February 2021 Zoom meeting, allowing younger female lawyers especially to learn of her trailblazing efforts in the law. It now hangs outside Courtroom A, “right where she needs to be.” Boswell explained, “we just did not want her to be forgotten because she was a lot more important to our legal community than she ever realized.”

Boswell’s foot surgery was the gain of *Journal* readers. G.M. truly was a remarkable force in our profession.

Sylvia Walbolt
Tampa, FL

Quotes in this article are taken from a narrative about Georgia Mae’s career, “In Her Own Words,” published in *Kentucky Lawyers Speak*, the transcript of Boswell’s presentation at the 1994 May Law Day Luncheon of the McCracken County Bar, and an article by Amy Sullivan, “She Would Not Be Deterred,” published in *Paducah Life* in June/July 2021.

JUSTICE DELAYED – AN INJUSTICE TO OUR VETERANS

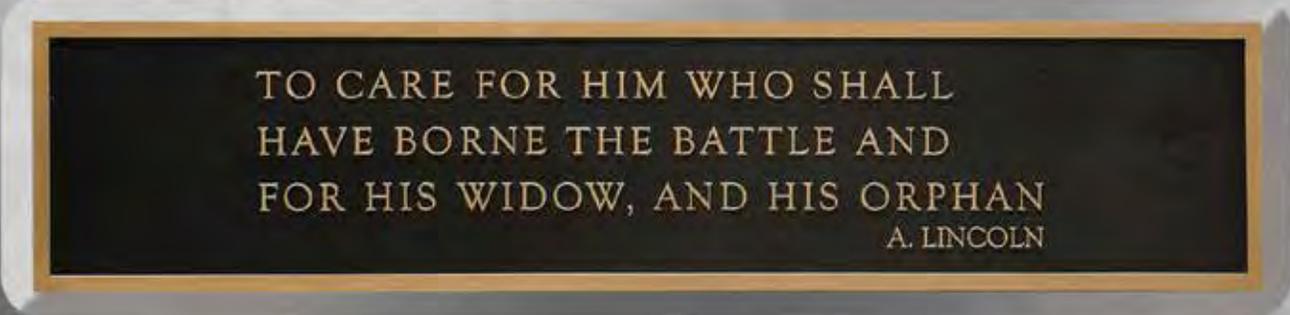


IN 2007, **FACTL DICK ROSENBLEETH** ASKED THEN PRESIDENT **DAVID BECK** TO HAVE THE COLLEGE ADDRESS THE INJUSTICE DONE TO VETERANS BY THE INORDINATE DELAYS THEY FACE WHEN APPEALING A VETERANS ADMINISTRATION DENIAL OF DISABILITY CLAIMS. OVER THE LAST FIFTEEN YEARS, THE COLLEGE HAS WORKED TO DO SOMETHING ABOUT THOSE DELAYS, AND THROUGH THE EFFORTS OF MANY BUT IN PARTICULAR THE DEDICATION OF FIVE PARTICULAR FELLOWS, A DIFFERENCE HAS BEEN MADE.

At the Annual Meeting in Chicago, **President Acker** presented special commendation awards to these five Fellows who have worked tirelessly for years to aid veterans:

John A. Chandler – Atlanta, GA
Stephen D. Raber – Washington, D.C.
Richard M. Rosenbleeth – Philadelphia, PA
Denny Shupe - Philadelphia, PA
Elizabeth V. Tanis – Atlanta, GA

Steve Raber, Chair of the Special Problems in the Administration of Justice Committee, accepted the awards on behalf of his colleagues and explained, in the abridged remarks which follow, why the awards were so richly deserved. ▶



TO CARE FOR HIM WHO SHALL
HAVE BORNE THE BATTLE AND
FOR HIS WIDOW, AND HIS ORPHAN
A. LINCOLN

If you go to the entrance of the VA headquarters in Washington D.C., you will see this plaque, which has the words of the official mission of the VA from President Lincoln's second inauguration in 1865: "To care for him who shall have borne the battle and for his widow, and his orphan."

A nice message. Unfortunately, in reality, the disability system is a little bit more complicated than blockchain and bitcoin. When veterans file an appeal because they lost their claim for benefits, they wait on average *six and a half years* just to have their appeal decided. To make matters worse, the statistics show that when claims are denied, those denials are reversed in about sixty percent of the cases. And if the veteran dies while waiting, if they don't have a spouse or a minor child, the benefits die, too; nobody ever gets them.

A recent argument in the United States Court of Appeals for Veterans Claims shows just how far the VA has strayed from its mission. Judge Alan was trying to pin down the lawyer for the VA about just how much time would he agree was unreasonable, as a matter of law. He started with twenty-five years. Then fifty years. The VA lawyer still was throwing in weasel words and finally the judge said, "One hundred years – can the Secretary of Veterans Affairs take the position in public now that a one-hundred-year delay is unreasonable? I cannot believe you are fighting on this question." To which the VA lawyer replied, "No, your Honor, we stand by our answer."

At the spring meeting in Maui in 2016, I was approached by [then-President] **Mike Smith**. Mike took me for a walk on the beach in kind of like, think of a South Carolina version of Tony Soprano. And he described for me the problem and he put his hand on my shoulder and as only Mike can say, he said, "Steve, we need to start suing some folks."

So I got to join this incredible team along with one of my law partners, Liam Montgomery, who flew F-14s in the Gulf War, and we had some immediate challenges. The first was that we couldn't sue in federal district court because there was this authority that said that the Veterans Court had exclusive jurisdiction. That meant we also couldn't get any discovery to learn the facts of what was causing all these delays. So we settled on filing petitions for mandamus in the United States Court of Appeals for Veterans Claims and we argued that the delays were so long and so unreasonable that they violated the veterans' statutory rights and their due process rights under the constitution.

We signed up seventeen veterans who fell into the category of people stuck in the appeal system and they had some real cases and the facts were pretty raw. They included a World War II frogman, a Vietnam pilot who was exposed to agent orange, and a sailor who was gangraped by her fellow sailors on a ship. She had to appeal the denial of her claim because she refused a pelvic examination by a male doctor and the board rejected the examination she provided from a private doctor.

All the petitions were summarily denied based on a legal standard that the Veterans' Court had been applying for many, many years. No veteran had ever won under that standard because all the VA had to do was tell the court, "We're working on it." Once they said those magic words, the court said, "Nothing for us to do here."

So we appealed that to the U.S. Court of Appeals for the Federal Circuit in Washington, D.C. and we won. We argued that a different standard should apply. The Federal Circuit dumped the old test and replaced it with a new test that considered the interests of the veterans. Now would it surprise you that when the case went back to the Veterans' Court, it refused to apply the standard it had just been ordered to use? They did. We had to appeal again and we won again.

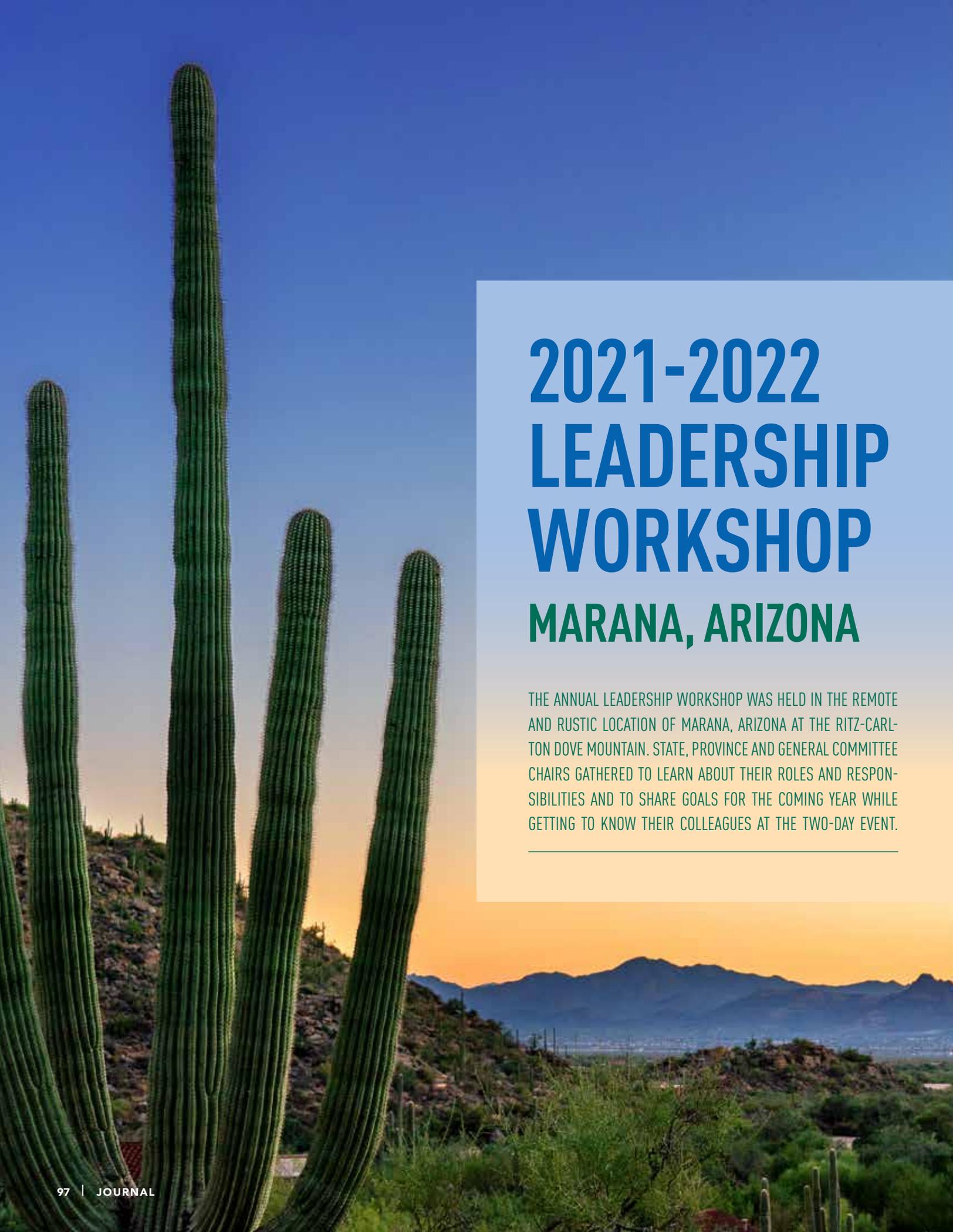
Ultimately, fifteen of our seventeen veterans won some relief. Sadly, two of them died during the process and, as I mentioned, the benefits they should have received died too.

A lot of work remains to fix this broken system. And looking ahead, our committee hopes to explore new ways to help not only veterans but also children in foster care because both of these groups face unique problems in the administration of justice and we hope that our work will make things a little easier for veterans in the future.

I want to leave you with the words of Judge Moore from the concurring opinion in our first win in the Federal Circuit. She just about had it with what the VA was doing and she wrote this in her concurring opinion:

"The men and women in these cases protected this country and the freedoms we hold dear. They were disabled in the service of their country. The least we can do is properly resolve their disability claims so that they have the food and shelter necessary for survival. It takes, on average, six and a half years to challenge a VBA determination and get a decision on remand. God help this nation if it took that long for these brave men and women to answer the call to serve and protect. We owe them more." ■





2021-2022 LEADERSHIP WORKSHOP

MARANA, ARIZONA

THE ANNUAL LEADERSHIP WORKSHOP WAS HELD IN THE REMOTE AND RUSTIC LOCATION OF MARANA, ARIZONA AT THE RITZ-CARLTON DOVE MOUNTAIN. STATE, PROVINCE AND GENERAL COMMITTEE CHAIRS GATHERED TO LEARN ABOUT THEIR ROLES AND RESPONSIBILITIES AND TO SHARE GOALS FOR THE COMING YEAR WHILE GETTING TO KNOW THEIR COLLEAGUES AT THE TWO-DAY EVENT.



The Annual Leadership Workshop was held in the remote and rustic location of Marana, Arizona at The Ritz-Carlton Dove Mountain. State, Province and General Committee Chairs gathered to learn about their roles and responsibilities and to share goals for the coming year while getting to know their colleagues at the two-day event.

Also in attendance were Judicial Fellow **The Honorable Barbara M. G. Lynn**, The Honorable Bridget McCormack and The Honorable Darla Wilson, who participated in a panel regarding COVID and the courts moderated by **Former Regent and Advocacy in the 21st Century Committee Chair John A. Day**. The lively discussion featured several ideas for best practices in the courtroom and how to move forward with both ingenuity and grace in the face of continuing challenges due to the pandemic.

During the General Session, several important initiatives for the College were discussed, including a presentation on Diversity in the College by **Regent Joe Caldwell** and the Fellow Engagement Project presented by **Regent Greg Lederer**. **President Mike O'Donnell** also discussed the College's continued emphasis on Judicial Independence.

An important focus for the College in the coming year was presented by **John S. Siffert**, Chair of the Mentoring Committee. John presented information on a new initiative in partnership with *Just The Beginning-A Pipeline Organization*, which will provide paid internships for under-represented law students with judges. Funded largely by the Foundation, with additional financial support from the College, this program is designed to grant first-generation students the invaluable experience of working in judges' chambers when they otherwise might be financially compelled to take less rewarding but paid summer employment.

After a full day of speakers and break-out sessions specific to their roles, Fellows and their guests spent Halloween evening enjoying the holiday with creativity, while gathering at an outside event that included music, food and surprise appearances from the native javelinas roaming the hotel grounds.

The two days were productive and informative, and committee chairs left eager to share their goals for the coming year with committee members.

Sarah Stokes ■





August 26 to 29, 2021
The Ritz-Carlton, Bachelor Gulch, Avon
Avon, Colorado

REGION 4: REGIONAL MEETING



FELLOWS FROM REGION IV (THE TENTH CIRCUIT) HELD THEIR REGIONAL MEETING FROM AUGUST 26 TO 29, 2021, AT THE RITZ-CARLTON, BACHELOR GULCH, AVON, IN THE BEAUTIFUL MOUNTAINS OF BLUE-SKY COLORADO. OVER ONE HUNDRED FELLOWS AND SIGNIFICANT OTHERS ATTENDED. THERE WAS A TERRIFIC LINE-UP OF SPEAKERS ON SEVERAL DIVERSE TOPICS, THE HIGHLIGHT OF WHICH WAS AN INTERVIEW BY 10TH CIRCUIT CHIEF JUDGE TIMOTHY TYMKOVICH OF U.S. SUPREME COURT JUSTICE NEIL GORSUCH, WITH A CANDID AND INFORMATIVE OVERVIEW OF THE CHALLENGES AND CHANGES AT THE SUPREME COURT IN THE WAKE OF COVID-19 AND THE LOSS OF JUSTICE RUTH BADER GINSBURG.

Regent **Joe Caldwell** presented on the College's Diversity and Inclusion efforts. Colorado Justice Monica Márquez and Fellow **Kenzo Kawanabe** discussed the legacy of former Colorado Governor Ralph Carr, who opposed the Japanese internment camps during World War II, and Colorado Attorney General Phil Weiser offered solutions on how attorneys can help renew trust in our democracy and institutions. Local stars included Fire Chief Karl Bauer with a fascinating talk on wildfires and management and Dr. Michelle Barron, Senior Medical Director at the University of Colorado on Infection Prevention and Control, who provided an in-depth look at the epidemiology of COVID.

The conference kicked off with a warm welcome by Chris Romer, Vail Valley Partnership President, and was capped off at the Saturday night banquet dinner with a photographic essay by conservation photographer, Dave Showalter, on a journey through the Colorado River watershed.

Much thanks to Colorado State Committee Chair, **Kevin Shea**, and Conference Planning Committee Chair **Mark Fogg** and committee members **Kenzo Kawanabe**, **Lorraine Parker**, **Maureen Witt** and **Kevin Kuhn**. The next Region IV Conference will be held in New Mexico in 2022.

Kevin Shea
Denver, CO



FELLOWS TO THE BENCH

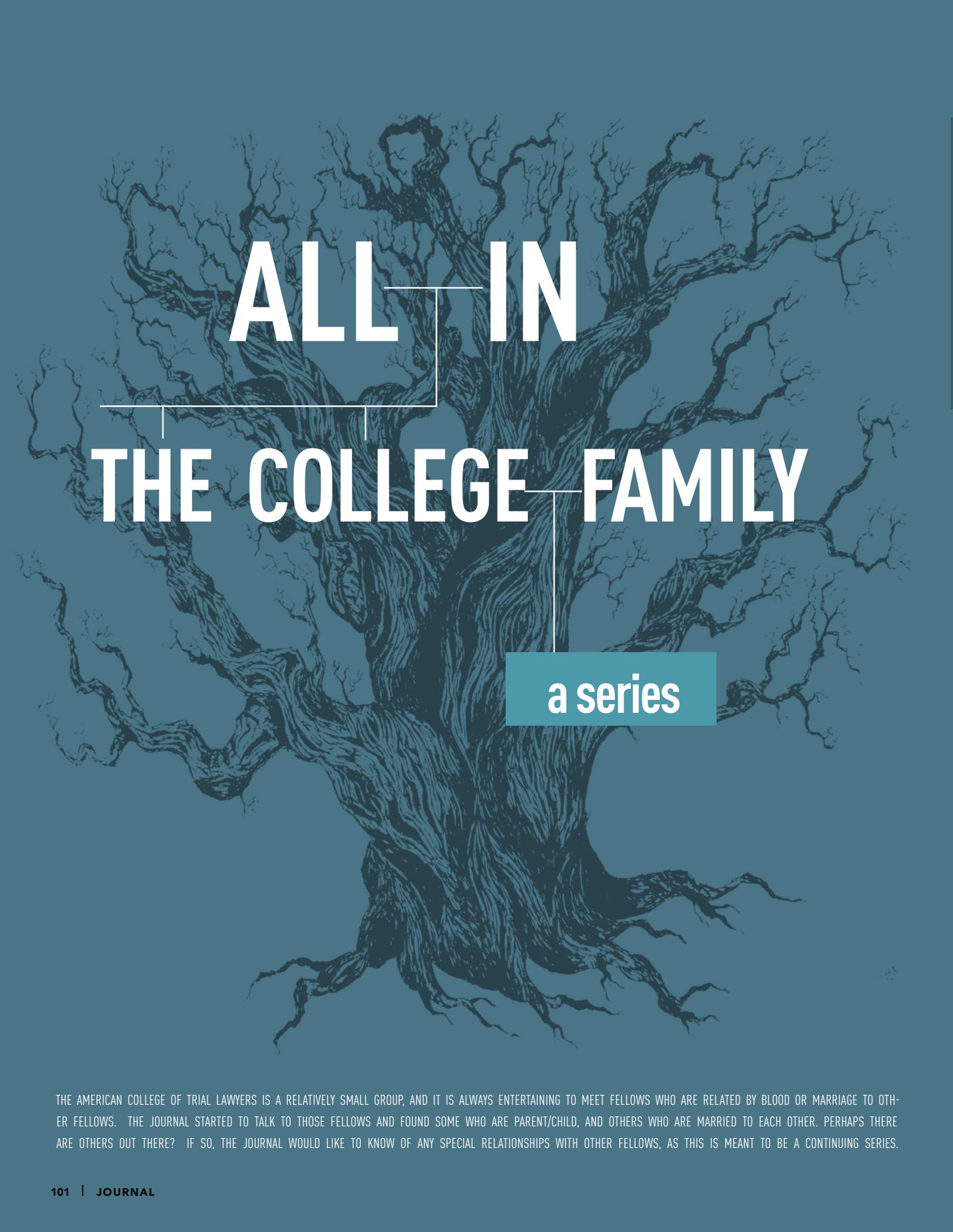
THE HONOURABLE CLÉMENT GASCON, former Justice of the Supreme Court of Canada, has been recently appointed a Judge of the Administrative Tribunal of the International Labour Organization. Justice Gascon has nearly forty years of experience as a trial and appellate judge, culminating at the highest court in Canada, and as a litigator in commercial law and labor and employment law. Justice Gascon has been an honorary Judicial Fellow of the College since 2015.

THE HONOURABLE ANNE KIRKER was appointed to the Alberta Court of Appeal on August 6, 2021. Prior to her elevation to the Court of Appeal, Justice Kirker sat as a Justice with The Court of Queen's Bench, a position she held since May 4, 2018. Before her elevation to the bench, she spent twenty-six years as a civil litigator, handling complex commercial and professional liability matters. Justice Kirker has been a Fellow of the College since 2016.

CHRISTINE P. O'HEARN was confirmed by the Senate on October 19, 2021 as a Judge for the U.S. District Court, District of New Jersey. Judge O'Hearn, who received her JD from Temple University Beasley School of Law, was formerly a partner at Brown & Connery LLP and is currently a member of the Emil Gumpert Award Committee. Judge O'Hearn resides in New Jersey and was inducted into the College in 2013.

GARRET P. GLENNON served as the Chief of the Circuit Court Division for the Baltimore State Attorney's Office for the past twelve years, where he oversaw the prosecution of Baltimore homicide cases. He was appointed to the Baltimore County Circuit Court in September 2021. Judge Glennon currently resides in Towson and became a Fellow in 2019.

THERESA M. CHERNOSKY was a public defender in Montgomery County, Maryland for twenty years before being appointed to the Circuit Court in Montgomery County on November 2, 2021. Before moving to Maryland, Judge Chernosky was a public defender in Kentucky after receiving her JD from Albany Law School. Judge Chernosky currently resides in Rockville and was inducted into the College in 2019.



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.

HUGH CHAPIN AND SARAH CHAPIN COLUMBIA

TWO PATENT LITIGATORS, TWO HARVARD LAW GRADUATES, TWO FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS; AND A FATHER-DAUGHTER COMBINATION TO BOOT.

After serving in the United States Navy in World War II, **Hugh Arthur Chapin** earned a civil engineering degree at Cornell University, and then an LLB at Harvard Law, in an accelerated program available to WWII veterans. Hugh practiced in New York City as a pre-eminent leader in the intellectual property bar at the prominent patent law firm of Kenyon & Kenyon LLP until the early '90s, when he convinced the firm to open an office in Boston for him to continue his practice. And what a practice; Westlaw credits Hugh with more than fifty reported decisions. Hugh was inducted into the College in 1982.

Hugh moved to New London, New Hampshire after retirement, where he served for many years as a Trustee of the New Hampshire Land Trust as well as serving on the Board and as Chairman of New London's Kearsarge Council on Aging, which has been renamed the Chapin Senior Center in his honor.

Hugh died at age ninety-two in 2017.

Sarah Chapin Columbia, '16, is the youngest of four children and the only daughter. Sarah went to Wesleyan University in Middletown, Connecticut, where she earned dual degrees in economics and government, graduating in 1982. After working for a year, she moved to Boston, where she chose a second dual-degree program in Harvard Law and the John F. Kennedy School of Government. She earned her Harvard JD, *magna cum laude*, in 1987, as well as finishing the Kennedy MPP program that same year.

After law school, Sarah joined Choate, Hall & Stewart LLP in Boston, initially working in the land use planning department. When a recession hit soon thereafter, she found herself spending most of her time in bankruptcy court. While she liked the courtroom, she could tell that bankruptcy was not really her calling. So, she asked the firm if she could be in the litigation group, since she was in court most days anyway.



Her wish was granted, and within the first year, she had her first trial – solo – representing a firm client who had sold a house with a wet basement. No one else wanted the file, so Sarah grabbed it and ended up with a five-day jury trial. Then, she says, she got really lucky to work on some big commercial litigations, including a high-profile case representing the NFL through trial in Boston. She didn't get on her feet in that trial but got to watch some amazing trial lawyers at work.

About ten years into her law career, at about the same time that Hugh Chapin was retiring from practice, Sarah was asked to undertake patent litigation. In the early years of that adjustment in her specialty, Sarah spent a lot of time on the phone with Hugh, as he taught her the intricacies of intellectual property work.

In 2007, Sarah moved to McDermott, Will & Emery, where she continues to work in intellectual property litigation, including patent, trademark, copyright and trade secret matters. Her bread and butter is patent litigation.

Sarah never got to watch her dad in trial, but some of the better memories with him (other than playing catch and frisbee) have been from his older years, after he retired and she was getting pretty active in patent litigation. Her secretary knew to send daily transcripts to Hugh each night by FedEx. Hugh would carefully review each transcript, and when Sarah returned to the office after a day in court, she would treat herself to a ten-minute phone call with Hugh. It was a great decompressor, and those ten-minute conversations will live with her forever. Although he was a day behind the trial, Hugh still had great insights and helped her collect tidbits for closing arguments. It was connective tissue for the two of them.

Once when she was in trial out-of-state, Hugh was with Sarah's husband, Steve, at a South Carolina beach. Steve: "Hugh, it's time for lunch." Hugh: "I can't go to lunch." Steve: "No, we are going to meet some friends." Hugh: "I can't go." Steve: "Why not?" Hugh: "(Isn't it obvious?) the jury is out."

Very few women practiced patent litigation when Sarah started – and only a handful are in the field now. She thinks being a woman can be an edge in the courtroom, because she is often the only woman there. Early in her career, she experienced times

when, in depositions, opposing counsel would question whether she could do math. The first secretary assigned to her flatly told her she would not work for a woman and walked out. Sarah obviously has turned this perceived disadvantage into an edge.

As a woman, Sarah is often mistaken for being nice. But, she says, she is NOT particularly nice (we are sure this is courtroom personality only), but fine with her if people think so and let their guard down. She once took depositions in Japan, where she had to go through an interpreter to navigate various cultural challenges such as senior executives who were unglued by having a woman taking their deposition. She took advantage of that. "In my view," she says, "my ultimate job is to get the best result for my client."

In a trial in Dallas federal court in 2013, Sarah was about to start opening statements when the trial was continued. Her "fabulous" local counsel pulled her aside on the walk back to the office and said: "I'm not sure about pantsuits. Here in Dallas, it's kind of like church. Pants may be okay on day two or three, but not for openings."

Initially, she was irritated, but she decided to follow local counsel's advice, as she didn't even want one juror to question her attire. When the case started a few weeks later Sarah was in a skirt suit. All she wanted to do was win.

And win she does. She describes patent law as "very geeky" and feels for those who have the "misfortune" to be called for jury duty on a patent case. Lawyers in a patent trial often talk to the jurors in highly technical terms, and the jurors simply have no idea what is going on.

In a jury trial in Boston, her cross of the opposing expert was a classic demonstration of a good trial lawyer having fun. The case involved complex issues about the appropriate way to measure the half-life of a medical product after it is injected into the body. The perceptual problem is that, technically, things with a half-life never completely go away. As a practical matter, the amount of product left in the body will become infinitesimal, but some amount will always be present. And an expert who insists on being technically correct is unable to admit what any common person – any juror – could see (or not see).

So Sarah kept it simple. Sarah put a glass container of ping pong balls on a table between the expert and the jurors and said: “Mr. Expert, I will represent to you there are twenty ping pong balls in here. Do you want to count them (placing it on the jury box)?” The expert said he would trust her that there were twenty ping pong balls.

Sarah: “Mr. Expert, if I take ten ping pong balls out, is that half?”

The expert saw where this was going. If Sarah could take out ten balls with his agreement, she could with repetition keep taking out balls until there were none. But the expert could not concede that “none” could ever be the answer, so could not concede that it was OK to remove “half” of the balls:

Expert: “I don’t know that I can agree with you on that.”

Sarah: “OK, let’s make it simple. If we have twenty, and I take one away is that nineteen?”

Expert: “I can’t really agree with that.”

Sarah: “Well, if we have twenty, and I take two away, is that eighteen?”

Expert: “That really depends, I cannot say.”

To Sarah’s delight, the expert continued to fight her on this basic mathematical concept. The jurors may not have understood anything else, but they knew at the end that the expert couldn’t agree that twenty minus ten is ten.

Patent cases are often a classic battle of the experts, and the ping pong ball cross helped the jury decide which expert they could trust.

In another trial, dealing with Blackberry phones, Sarah again chose a simple demonstration to make

her point with the jury. She placed one phone on the witness box right next to the other and asked: “Mr. Expert, I have one phone here and one right next to it. Are they in the same location?”

Expert: “Well not necessarily.”

Sarah: “OK, let’s stack them one on top of the other. Are they in the same location now?”

Expert: “Well, not necessarily, it’s really complicated.”

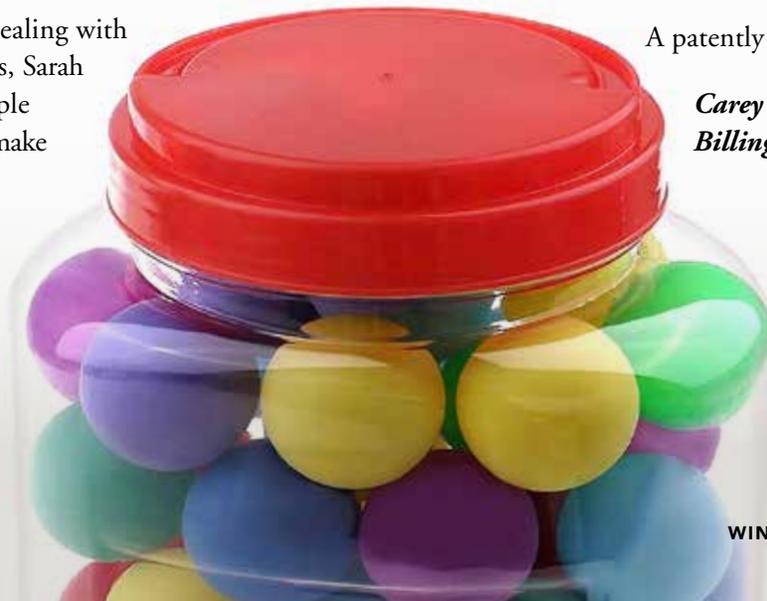
Even though the expert could not climb out of the trap she had laid, the jury understood the concept without any hesitation.

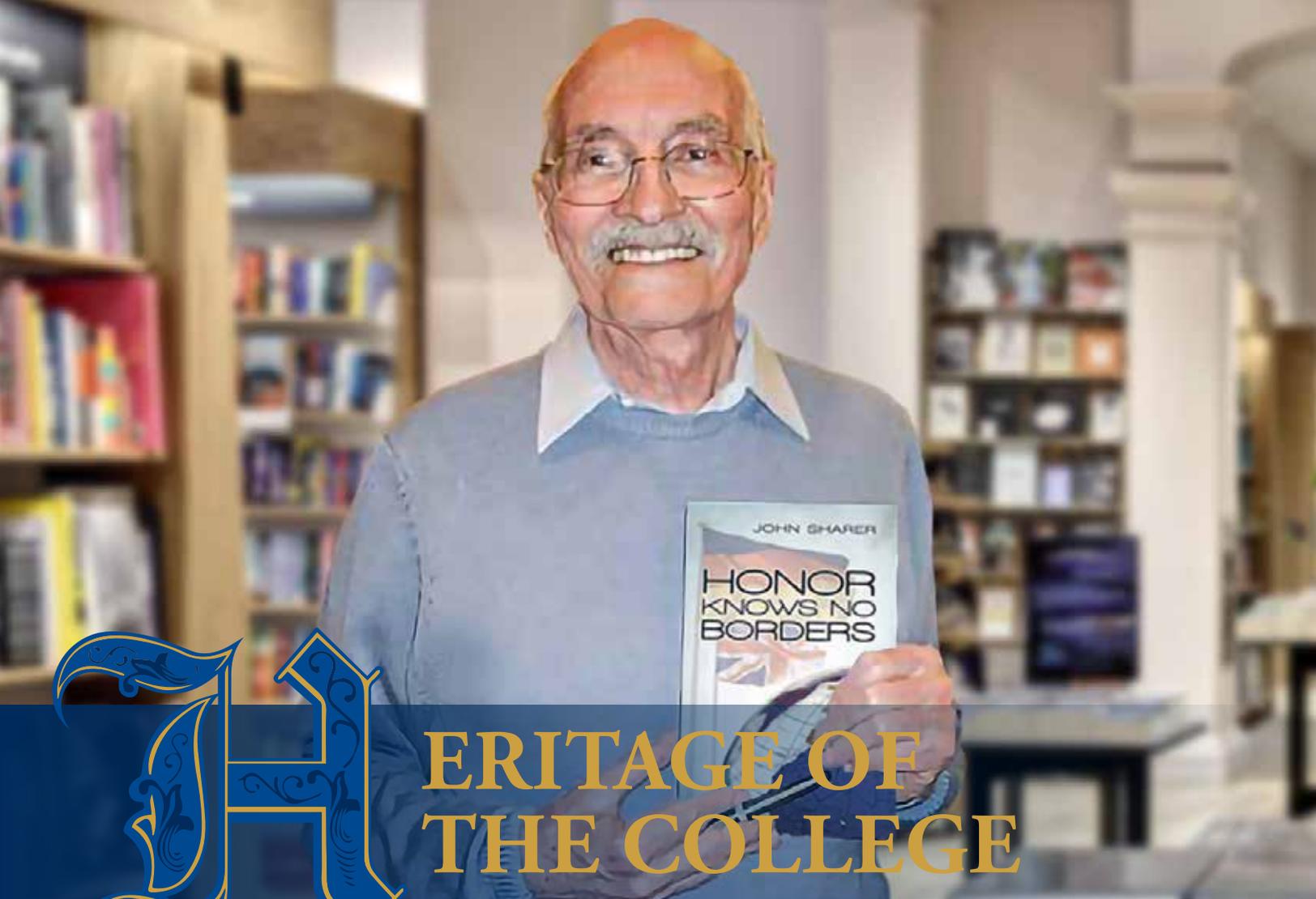
Sarah enjoys being a mentor for those on her trial teams. A lot of her work is bet-the-company litigation, with exposure in the double or triple digit millions, making it hard to secure “speaking parts” for younger lawyers. Sarah firmly believes the way to get younger lawyers on their feet is to tell the client the truth – that the younger lawyer will be better than she will, e.g., because of the technical nature of the testimony. Then, after giving the young lawyer a shot, Sarah makes sure that the young lawyer does indeed do better than she would have done. Which of course takes more time than doing the exam herself would have.

Sarah likes to golf and describes herself as a voracious cook, primarily with fresh ingredients. She and husband Steve did like to travel (pre-COVID) and hope to resume their excursions one day soon. They have one son, Edward, who is a writer and film maker in New York City and who has followed and adopted Sarah’s love of cooking. Edward and Hugh were very close – so much so that Hugh – at age ninety-one – had his acting debut in a somewhat infamous cameo role in Edward’s first feature length film!

A patently touching family . . .

Carey Matovich
Billings, MT ■





HERITAGE OF THE COLLEGE

John Sharer

JOHN SHARER GREW UP IN EAST LONDON PRIOR TO AND DURING WWII. HIS FATHER, HAVING NO FORMAL EDUCATION BEYOND MIDDLE SCHOOL, NEVERTHELESS BECAME A MAJOR AND SERVED AS COMMANDANT OF A PRISONER OF WAR CAMP IN NORTH AFRICA AFTER THE BATTLE OF EL ALAMEIN. JOHN STILL RECALLS THE TOTAL DARKNESS OF LONDON DURING THE WAR AND THE GERMAN BOMBERS COMING TO DROP BOMBS ALONG THE THAMES RIVER. THERE WAS NOTHING STRATEGIC ABOUT BOMBING LONDON; THE GERMANS SIMPLY WANTED TO SHATTER THE CONFIDENCE OF THE BRITISH PEOPLE BY BOMBING THEIR CAPITAL. JOHN'S MOTHER HAD CLAUSTROPHOBIA AND COULD NOT HANDLE GOING TO THE UNDERGROUND DURING THE BOMBING RAIDS. INSTEAD, THE FAMILY HUDDLED IN THEIR SMALL FLAT, HOPING THAT THEIR APARTMENT HOUSE WOULD NOT BE BOMBED.

John's family had little contact with John's father during the War; indeed, he abandoned the family after the War ended. During those years, John's mother spent three or four hours a day trying to secure food to feed her children. There were no supermarkets. Rationing was severe. Store shelves were virtually empty. They had distant relatives in the United States who periodically sent food and John is forever thankful to them.

John has written three books. His first semi-biographical novel, *Honor Knows No Borders*, was published in 2010. It was loosely based on his and his father's experiences during WWII. Not all was dark during these years: John had a great love for soccer and for the Chelsea soccer team to which he still remains a dedicated follower.

TO THE UNITED STATES

After the War, John did not see much of a future for himself in East London. It was fairly easy for a Western European to secure a United States permanent Visa at the time, so John decided he would at least "come over and look around." His goal was to end up in Hollywood to see the stars. With little money, John took a steam ship across the Atlantic, landing in New York City in 1950 at age eighteen. John traveled down the eastern seaboard until he ran out of money in Jackson, Mississippi.

John's Cockney accent did him no harm in Mississippi. John found a job as an elevator operator at the Robert E. Lee Hotel, which was completely segregated. In fact, when President Johnson desegregated public accommodations with the Civil Rights Act of 1964, the owner of the Robert E. Lee closed the hotel in response.

John worked at a movie house for a short time and then at a wholesale grocery warehouse, hired as a foreman supervising the unloading of freight. He supervised a group of African American men who were much older than him – some old enough to be his grandfather. John began a relationship with one of the older men named Dave, who would occasionally drive him home from work. It was about a two-mile drive. During this time, Dave taught John how to drive, which was not much value to him then as he did not have a car.

John was not familiar with baseball, but he was aware that the major leagues had recently been integrated with Jackie Robinson of the Brooklyn Dodgers, and Larry Doby of the Cleveland Indians. One day, John asked Dave his thoughts on baseball's integration; Dave's response was "at that caliber of performance, it is probably OK, but as to the rest of us, it doesn't change anything."

John wrote his second semi-biography, *The Cockney Lad and Jim Crow*, published in 2015, based in part on his time in Jackson.

John registered for the draft in Mississippi. As he had a permanent Visa, John faced the possibility of being drafted into the United States Army; and if he didn't

accept the draft, he faced the possibility of having to return to England. The decision was easy, as being in the US Army gave him the GI Bill benefits. And besides, John didn't think the British military uniforms were very sharp looking.

Drafted, John was stationed in Germany, where he secured his US citizenship. To this day, John has difficulty with California voting registrars when they note he was born in England and became a US citizen in Germany.

ON TO CALIFORNIA

Upon his discharge from the Army, John enrolled at Santa Monica City College. Amazingly, the College granted him sixteen credits of advanced placement; eight credits for having a high school degree from England, and another eight credits for his military service. John notes that the ability to field strip a machine gun had little to do with any future success in college.

While at Santa Monica City College, John met his wife, Margaret. They have been married for over sixty years and have two grown daughters and three grandchildren.

John transferred to UCLA, where he secured his undergraduate degree in 1958. He had GI benefits left, so he decided to "give law school a try" and graduated in 1961.

After graduation, John began practice in Los Angeles at a huge firm (sixty lawyers). John has stayed there his entire career; as he recounts, he is either very loyal or very unimaginative. He has watched his firm grow from sixty to over fourteen hundred.

John's practice is wide ranging, primarily in California, but he has tried cases in New York, Arizona, Alaska, Nevada, and Alabama. He has done personal injury and wrongful death cases for plaintiffs. He has represented numerous professionals sued for malpractice. He has been involved in substantial anti-trust litigation, and a variety of commercial cases. John has been an adjunct professor at Loyola Law School in Los Angeles and is still actively involved at Pepperdine School of Law as an adjunct law professor coaching a trial advocacy team.

STEVE WYNN, DONALD TRUMP, AND DON KING

John has had a number of memorable representations over the years. On February 11, 1990, the boxing world was stunned when a 42-1 underdog, Buster Douglas, knocked out Mike Tyson in the tenth round in Tokyo. ▶



Out of that came litigation over the location of the next title defense, between Douglas and Evander Holyfield, the next ranking challenger. Douglas was aligned with Steve Wynn, the Las Vegas hotel magnate. Holyfield was aligned with boxing mogul Don King. Wynn, of course wanted the venue to be Las Vegas; King wanted the match in Donald Trump's casino, the Taj, in Atlantic City.

John had earlier been on the other side of a lawsuit with Wynn. Nevertheless, Wynn paid the ultimate compliment by asking John to represent him.

King was a "larger than life" figure. John concedes that his cross-examination of King did not go as well as he had hoped. King made no effort to respond to questions, but simply made a speech of his own. Donald Trump appeared as a witness for King. During the cross-examination, Trump announced that he needed a break. The judge said it was up to John, and John agreed, figuring you can always use more time to better prepare cross-examination. Upon Trump's return, he thanked John for the accommodation.

The fight was held in Nevada.

WHAT A BOW MEANS

John was retained by Sony to represent them in an anti-trust case by a plaintiff who claimed that multiple Japanese manufacturers conspired to freeze him out of the DVD manufacturing business.

The plaintiff proffered an expert witness on to the various meanings of Japanese bowing. The witness was not Japanese, didn't speak Japanese, and had never even been to Japan. Nevertheless, the witness was offered to opine that the bows the Japanese manufacturers exchanged were communications to each other during which they would conspire against the plaintiff. John brought a Daubert challenge but he surmises that the judge was fairly amused by the contention and wanted to hear the testimony. John's cross was effective enough that the jurors ended up snickering.

ODD MOMENTS

John's career has had its scary moments. Once, as John's client was being cross-examined by opposing counsel, a juror passed a note to the judge stating, "The lawyer is tipping off the witness how to answer." The judge immediately directed counsel to approach the bench. John was thinking "Oh my God, this juror has to be talking about me," even though he had not done anything but take notes. John was relieved when the judge said that he had been watching the lawyers and he did not see anything questionable.

John won the case. But he was still troubled and approached the juror about what this juror had seen. The juror surprised John by saying, "It wasn't you. It was the other guy."

Another instance was when John became involved in a ten-month trial in San Diego, involving Swiss bankers suing California accounting firms. John was lured into the case by the representation that there would be depositions taken in Europe. As John still had family in Europe, he was interested.

Swiss law did not allow depositions to be taken in Switzerland. A determination was made to take the deposition at the Basel International Airport that sits on the border of Switzerland and France. The problem was that each time someone needed to use the restroom, they needed to go through a border inspection by Swiss Officials within the airport. The lawyers finally learned of a path to the bathroom through a kitchen without having to cross a national border.

For the ten months of the trial, John flew home each weekend and returned early Monday morning. The jury was deliberating so John bought his tickets to go home and return on Monday. Somewhat surprisingly, the jury reached a verdict before John left; he didn't have to return that Monday. Fortunate – at least for John, since the plane he had booked tragically crashed in San Diego with all on board killed.

THE BIG DADDY OF CALIFORNIA POLITICS

Grant Cooper, President of the College in 1962 and 1963, was an acclaimed, successful criminal defense lawyer in Los Angeles who represented Sirhan Sirhan after his assassination of Robert F. Kennedy at the Ambassador Hotel.

It was a national tragedy, something everyone wished they could simply forget, but business marches on. Prior to the murder, the campaign had run up a huge bill at the Ambassador. In their understandable desire to forget Kennedy's death, they not so understandably tried to forget the debt. John was hired by the hotel to secure payment from the Kennedy Campaign. It was a substantial bill. Jesse Unruh, known as the "Big Daddy of California Politics," had been in charge of Kennedy's campaign in California.

John demanded payment from Unruh. Unruh said that he would have the money available and John should come down to Spring Street where Unruh told him that he would have the press and television stations all present so that they could see what a blood sucker John and his client were. John announced to Unruh that he

would pass on that opportunity. Instead, John reminded Unruh the bill needed to be paid and, ultimately, Unruh did send the payment.

ACTL

John has been a member of the College since 1989. He has been a longtime member of the Southern California State Committee and served a two-year term as Chair.

When John was a young associate, the College's founder **Emil Gumpert** was a State Court Judge, overseeing pre-trial matters. John describes Judge Gumpert as being a "tough, tough guy, though ultimately fair." But "if a lawyer was not prepared, the lawyer would be eaten alive."

John believes he was the victim of a "set up job" between members of his firm and Judge Gumpert. The senior lawyers arranged for John not to have proper time to prepare for a hearing. They told John he would do fine; he should just appear and the petition would be granted. Little did John know that Judge Gumpert was aware that young John was coming ill prepared. And Judge Gumpert pummeled him with vigorous questions to which John could not give adequate answers. Finally, Judge Gumpert announced that he would grant the petition because "Anybody who knows so little about the case, is clearly not hiding anything." John noticed the snicker of laughter from Judge Gumpert and his clerks. John knew he had been set up.

PRO BONO

John has been committed to pro bono work, such as his representation of George Martin, an Alabama State Trooper who was convicted of killing his wife for insurance proceeds. Through multiple appeals and multiple post-conviction relief motions, John's team was able to secure a determination that there had been exculpatory evidence not turned over by the government, warranting a new trial. Unfortunately, Martin was found guilty on retrial. John and his firm are seeking Habeas Corpus relief in the Alabama Federal Courts. John has been battling for Martin for fifteen years

John has also been involved in a pro bono class action against the State of California on claims that the State wrongfully refused medical treatment for a subgroup of autistic children. John has secured favorable opinions for the adoptive parents of severely disabled children. John has twice won Lawyer of the Year from the Public Counsel Group of California.

Ron McLean
Fargo, ND

NEW ACTL ACCESS TO JUSTICE DISTINGUISHED PRO BONO FELLOWS

AT THE 2018 ANNUAL MEETING IN NEW ORLEANS, THE COLLEGE LAUNCHED ITS ACCESS TO JUSTICE PRO BONO FELLOWS PILOT PROGRAM. THE BOARD OF REGENTS WELCOMED THE FIRST CLASS OF EIGHT DISTINGUISHED PRO BONO FELLOWS ALONG WITH THEIR PARTNER HOST ORGANIZATIONS. THROUGH THIS NEW PROJECT, THE COLLEGE ANNOUNCED ITS GOAL OF INTRODUCING AND ACKNOWLEDGING ON A YEARLY BASIS A SELECT GROUP OF FELLOWS WHO HAVE DISTINGUISHED THEMSELVES THROUGH THEIR DEDICATION TO IMPROVING ACCESS TO JUSTICE THROUGHOUT THE UNITED STATES AND CANADA. THESE DISTINGUISHED FELLOWS PARTNER WITH HOST ORGANIZATIONS TO SIGNIFICANTLY ADVANCE THE COLLEGE'S MISSION OF IMPROVING THE ADMINISTRATION OF JUSTICE.

BECAUSE OF THE SUCCESS OF THE PILOT PROGRAM, THE BOARD OF REGENTS FORMALLY CREATED A NEW PERMANENT COMMITTEE, THE DISTINGUISHED PRO BONO FELLOWS COMMITTEE, AT THE 2021 ANNUAL MEETING IN CHICAGO. THE COMMITTEE IS CHARGED WITH IDENTIFYING ADDITIONAL ACTL DISTINGUISHED PRO BONO FELLOWS, PROMOTING THEIR GOOD WORK, AND OTHERWISE ASSISTING THEM IN THEIR EFFORTS TO ENHANCE ACCESS TO JUSTICE.

ALSO AT THE 2021 ANNUAL MEETING, THE BOARD OF REGENTS APPROVED THREE NEW DISTINGUISHED PRO BONO FELLOWS:



MARK C. SURPRENANT

Partner Organization: Southeast Louisiana Legal Services

Mark currently serves as Of Counsel and Pro Bono Paladin at Adams and Reese LLP in New Orleans. He is the godfather of the Distinguished Pro Bono Fellows Committee, having launched the pilot program in 2018. A Fellow since 2000, Mark currently serves as Chair of the College's Access to Justice Committee. Mark's dedication to pro bono and community service stretches back many years. In 1988, he created H.U.G.S. (Hope Understanding Giving Support), which is his firm's philanthropy program. In 2000, he established Caring Adams & Reese Employees (CA&RE), the firm's official pro bono program. Mark also is the co-founder of SOLACE, Inc. (Support of Lawyers/Legal Personnel All Concern Encouraged), a statewide volunteer organization with approximately 17,000 members in Louisiana, plus chapters in more than twenty-nine states. SOLACE assists those in the legal community who have experienced some significant, potentially life-changing event in their lives.

In Mark's own words: "Building relationships is an important part of what I do. I am able to cross cultural divides and connect with people from many different backgrounds. Cases come and go, but it is the experience with the people you service that you remember the most." And people remember Mark. He has received countless awards for outstanding volunteerism, pro bono work, and philanthropy. Most recently, Mark received the New Orleans City Business ICON Award.

As an ACTL Distinguished Pro Bono Fellow, Mark partners with Southeast Louisiana Legal Services (SLLS). SLLS is a non-profit corporation providing free civil legal representation to low-income and other vulnerable people in twenty-two parishes in southeast Louisiana. Mark has served as President and Board Chair at SLLS, and as a volunteer pro bono attorney. Laura Tuggle, SLLS Executive Director, says "Mark's steady and capable leadership throughout the pandemic has enabled SLLS to adapt to the challenges of remote work and an explosion of need for vulnerable clients as our team rises to meet the moment." ▶



TERRI L. MASCHERIN

Partner Organization: Northwestern University Pritzker School of Law's Center on Wrongful Convictions

Terri is a partner with Jenner & Block LLP in Chicago. Her list of professional recognitions is long and includes Law 360's "Top Female Trial Attorney (2012); National Law Journal's "50 Most Influential Women Lawyers in America" (2007); Best Lawyers in America (2006-2022); Justice John Paul Stevens Award (2018), and President of the Chicago Bar Association (2010-11). Terri was inducted into the College in 2013, served as Chair of the Upstate Illinois Committee (2019-21), and currently serves as Vice Chair of the Complex Commercial Litigation Committee (2020-22).

Terri has demonstrated a deep commitment to representing the wrongfully convicted. For example, she has successfully represented prisoner Adam Gray who, as a juvenile, had been wrongfully convicted of a double murder and arson. She also represented the defendant in *People v. Rivera* (2d Dist. Ill. App), where she won exoneration for her client who had been wrongfully convicted of murder. Terri also has long been involved in challenging the death penalty in Illinois.

As an ACTL Distinguished Pro Bono Fellow, Terri partners with Northwestern University Pritzker School of Law's Center on Wrongful Convictions (Center). The Center is one of the oldest organizations in the country dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. To date, the Center has exonerated more than forty-five innocent men, women and children from states around the country, and it receives thousands of inquiries a year. As stated recently by the Co-Directors of the Center, "Terri has served with great distinction as a member of the Center's Advisory Board, where her wise counsel and steady leadership have guided generations of the Center's directors. She has worked with the Center *pro bono* on many wrongful conviction cases, including one of the most high-profile and impactful, exonerations in Illinois history." The Co-Directors of the Center also noted that Terri "has successfully challenged the sentence of two men on Illinois' death row and has defended challenges to clemency orders issued by former Governor George Ryan."



CHARLIE WEISS

Partner Organization: Midwest Innocence Project

Charlie Weiss is a nationally recognized trial lawyer in the St. Louis office of Bryan Cave Leighton Paisner LLP. He has over forty years of experience in business and complex litigation. From an access to justice/pro bono standpoint, Charlie has principally focused on successfully exonerating several individuals whose lives were forever changed because of his excellent work on their behalf. As Charlie says: “There is nothing more important to me as a lawyer than to do everything in my ability to see that truth and justice are served, and that innocent persons wrongfully convicted of serious crimes, who have no means to afford lawyers, are provided with competent legal assistance to correct the wrong.” Charlie has received numerous awards, including the St. Louis Bar Foundation Support of Justice Award and the Missouri Bar Pro Bono Publico Award. For more complete information about Charlie’s work, review the article *Discovering A Special Talent Through Pro Bono Service To Others*, in the Summer 2021 issue of the *Journal*.

The Midwest Innocence Project is Charlie’s partner organization. Founded in 2001, through the University of Missouri-Kansas City School of Law, the Project is part of the national innocence network. It serves clients in Arkansas, Iowa, Kansas, Missouri, and Nebraska. Its Director, Tricia Rojo Bushnell, speaks very highly of Charlie: “We have been so grateful to work with Charlie and grateful for all his pro bono efforts with us. Currently, he is both co-counseling on an innocence case in Missouri where our client has been sentenced to death and serving on our legal committee, providing guidance and insight on case strategy in a number of cases. He has also worked with us on various legislative issues. We would be honored to be listed by the ACTL as one of its pro bono partners.”

Please join me in congratulating Mark, Terri, and Charles as our newest ACTL Distinguished Pro Bono Fellows. They join our existing Distinguished Pro Bono Fellows:

KIMBALL R. ANDERSON

DAVID A. BARRY

HOWARD CABOT

MARIE DESCHAMPS

JOHN GILLIGAN

CHRISTY JONES

RICHARD HERSCHEL

JOSEPH TATE

MICHAEL JONES

BRYAN FINLAY

SYLVIA WALBOLT

SAMUEL SILVER

GUY PRATTE

DOUGLAS MITCHELL

JOSEPH ROPER

DINYAR MARZBAN

*Kimball R. Anderson
Chicago, Illinois
Chair, Distinguished Pro
Bono Fellows Committee*

HEROES AMONG US

JACK MCCONN



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 . . .



Jack McConn, like many other young men during World War II, began college knowing he almost certainly would go overseas to serve. For Jack, that occurred in the spring of 1944 during his second year at Rice University in Houston, Texas. Over the next year Jack saw as much or more combat than many who had been in the military since the early days of the War.

John L. “Jack” McConn, Jr. was born on June 14, 1923 – National Flag Day – so perhaps it was inevitable that one day he would become a decorated veteran. He enlisted in the Army in May 1944, when he was twenty-one.

Jack did basic and infantry training at Camp Maxie, near Paris, Texas, for three months. He was near-sighted, a condition that would have placed him in a limited service category – no combat – a category many would have coveted. But not Jack. Jack memorized the eye chart to pass the exam and qualify for combat.

In September 1944, Jack’s Division – the 103rd – left Camp Maxie for Camp Shanks in New York in preparation for being shipped overseas. He had entered the Army as a Private and was promoted to Private First Class (PFC) during basic.

Jack served in the 410th regiment of the 103rd Division. Two weeks after arriving at Camp Shanks, the regiment set sail for France on the SS Brooks, a troop transport designed to carry 1200 soldiers; but on this

voyage there were 5000 soldiers in very cramped quarters. After arriving in Marseille, the regiment set up a tent city just north of the city. Two weeks later, Jack began what turned out to be a several month journey north to Germany.

In Saint Die, France, the regiment camped on the west side of the Meurthe River. They replaced the Third Army, which had moved to another sector. The Germans occupied the east side of the river. For a week, the soldiers mainly lived in foxholes. One way to get out of the foxholes and sleep in a real bed was to volunteer for a patrol to go across the river and scout the area. Jack volunteered for a patrol which consisted of about twenty soldiers crossing the river in rubber boats – the bridges were all down. A fire fight erupted when they got across and the soldiers were forced to retreat. Fortunately, everyone returned safely. Jack decided that maybe he should not volunteer for any other patrols.

But on another patrol, Jack and two other soldiers were scouting an area near Saint Die. The regiment had already taken one hill and was moving on to the next when Jack and his buddies encountered a machine gun nest. One of them threw a grenade at the nest; but he threw it more like an infielder throwing out a runner at first base rather than lobbing it so the grenade would be ready to explode by the time it landed. The German soldier scooped up the fast-thrown grenade and threw it back. Luckily, no one was injured, but the German must have thought he had killed his enemy. He stepped out and was immediately gunned down by the three GIs.

By December 1944, Jack had been involved in many combat situations. As he would later say, “We went through a lot of battles. I got lucky in more ways than one.” Jack had been promoted to Sergeant and then to Staff Sergeant. And then he was selected for a battlefield commission to Second Lieutenant.

To receive his commission, Jack went to Epinal, France, about sixty kilometers from his unit, in late December 1944, just as the Battle of the Bulge was beginning. Jack’s company was on the perimeter of the battle and about half of his fellow soldiers became casualties of that battle. When Jack received his gold bars he had not changed clothes in a month. He had not bathed in weeks. He was dirty and looked terrible. But his actions spoke louder than his appearance and symbols of his new rank were pinned on his filthy uniform. Then he spent two weeks



EDITOR’S NOTE: A battlefield promotion is awarded to enlisted soldiers who are promoted to a higher enlisted rank during combat or combat conditions. A battlefield commission is awarded to enlisted soldiers who are promoted to the rank of commissioned officer for outstanding leadership on the field of battle. Battlefield commissions are the historical ancestors of the medieval practice of knighting or ennobling a plebeian combatant for demonstrating heroic qualities in an exceptional degree on the battleground. In the medieval context, this martial achievement was often one of the main restricted pathways into the sword-bearing feudal aristocracy. Battlefield commissions are awarded on the basis of merit and demonstration of leadership. The most notable recipient of a battlefield commission was Audie Murphy, who was awarded the Medal of Honor and was promoted from Staff Sergeant to Second Lieutenant during World War II.

in “officer training” after which he concluded that he did not learn anything that months of actual combat had not already taught him.

Jack did not return to his old unit. Instead, he was sent to the 45th Division of the Seventh Army, where he remained for the duration of the war. He was a platoon leader in Company C in charge of thirty men. Their first combat came in Webenheim, Germany, as part of the campaign that broke the Siegfried Line. The battle lasted three days, and when the Americans finally entered the town, they found that the Germans had retreated in such a hurry that virtually everything of a military nature was left behind.

In January 1945 the 45th Division crossed the Rhine. The division was down from 15,000 soldiers to only 7,500. By April they were approaching Nuremburg. Everyone thought the war was coming to a conclusion but the fighting was still fierce at times, particularly in the woods near Nuremburg. Casualties continued to be high.

In late April, Jack’s platoon was among the first American units to enter Nuremburg. They then proceeded on to Munich, which was already under American control. Jack’s platoon, now down to twelve men from its original thirty, was assigned to guard the Fuehrerbau, a five-story building on the Kongsplatz which had been Hitler’s headquarters in Munich. For a change the men had actual rooms to sleep in, albeit only offices that had been part of the German command.

There was not much left of the building as a result of Allied bombing. But the basement had paintings that had been stolen by the Nazis and were being stored there to be protected from the bombings. The paintings included many old masters. The platoon guarded the contents until they were removed a few weeks later.

All of the soldiers wanted souvenirs. Anything belonging to the enemy was fair game. Only national treasures such as paintings were off limits. Guns were popular souvenirs. Jack ended up with a brass desk writing set that was in Hitler’s office. McConn made a box and sent it home to his parents in Houston. In the box was a letter to his parents that he wrote on Hitler’s personal stationary.

Jack did not know the significance of the desk set until many years later. Many historians believe it is the desk set upon which, in 1938, Neville Chamberlain signed the Munich Pact whereupon France, England and Italy agreed to Germany annexing the Sudetenland. Chamberlain naively thought the pact would provide “peace for our time.” The desk set is still in the possession of the McConn family.

Jack McConn received two of the highest honors awarded by the Army for valor in combat – the Bronze Star (awarded for heroic or meritorious achievement or service, the fourth highest award that can be bestowed upon a soldier) and the Silver Star (the third highest military decoration for valor in combat). The Silver Star citation states that on March 16, 1945, in Vilesbruncken, Germany, Lieutenant McConn and three of his men took out a German machine gun nest in a building, killing or wounding part of the crew. The citation further reads “With these machine guns out of action Lieutenant McConn’s platoon was able to advance and take its objective, capturing a total of twenty-five prisoners. Lieutenant McConn’s aggressive and resourceful leadership reflects credit upon himself and his organization.”

Jack also received a Purple Heart for a wound as a result of a grenade fragment. Jack described the wound as “not much,” saying “I saw soldiers with much worse.” Interestingly, Jack did not receive a Purple Heart for another combat injury. While trying to take a German town, the soldiers were advancing in a very wet field. The Germans launched a massive





mortar attack. If the field had been dry, there almost certainly would have been many casualties. But because of the wet conditions the mortar rounds buried themselves as much as three feet before exploding, greatly limiting the damage from shrapnel. But Jack was still hit in the chest. He was knocked back but was well enough to continue to the town. Later, his Captain noticed a hole in his jacket and pulled out a piece of shrapnel. What saved McConnell was a small Bible with a steel cover that he kept in his left shirt pocket. The Bible had had been given to him before he left Houston by a girlfriend.

EDITOR'S NOTE: That incident, harrowing as it must have been, did not qualify for the Purple Heart, which is awarded for "being wounded or killed in any action against an enemy of the United States or as a result of an act of any such enemy or opposing armed forces." His Bible was wounded, but technically he was not.

The war in Europe ended while Jack was in Munich. He was sent to Paris, France (now having come full circle from basic training in Paris, Texas) and then on to Southampton, England for the journey home. Jack returned to Houston on a forty-five day leave. There was a real possibility he would be sent to the Pacific, but Japan surrendered before he could be deployed. After his discharge, Jack married in 1947; he and his wife Katie would have five children, seventeen grandchildren and thirteen great-grandchildren.

Jack entered the University of Texas Law School. He did not have an undergraduate degree but was able to enroll as a veteran because he had 60 hours of college credit. While in law school he received 125 dollars per month on the GI bill, a nice increase with considerably less danger from the fifty dollars per month he received while on active duty. He graduated from law school and was licensed in 1950.

Jack was an accomplished and successful trial lawyer. He was with Butler Binion in Houston for over thirty years, then formed his own firm in 1986 where he practiced until his retirement in 2008. He became a Fellow in the College in 1971. His many other accomplishments included a term as the President of the Houston Bar Association.

Luke McConnell, one of McConnell's sons, related that his father often spoke to small groups about his war experiences. The audiences were always captivated by his stories. Even as the years went by, he was still able to recall events and names with clarity. He would often say "when you get shot at you remember the names of friends who were wounded or killed in front of your very eyes."

Jack McConnell, a full-fledged member of the "Greatest Generation," died on January 6, 2019, at the age of ninety-five. He was a patriot and a hero.

David Kitner
Dallas, TX

Jack's close friend, **FACTL Don McFall**, recorded an oral history with Jack in 2013 as part of the Veterans History Project. Much of the information for this article comes from that oral history. ■

FOUNDATION UPDATE



“I WASN’T SURE THIS DAY WOULD COME ...”

RARE ARE THE OCCASIONS WHEN THOSE WHO DEVOTE THEIR LIVES TO JUSTICE FOR OTHERS GET TO UTTER THESE WORDS: “I’M HAVING A HARD TIME HOLDING BACK TEARS AS I WRITE THIS BECAUSE THE TRUTH IS, I WASN’T SURE THIS DAY WOULD COME.”

Those were the words of Jody Kent Lavy of the Campaign for the Fair Sentencing of Youth (“CFSY”) when she wrote to tell the friends of the CFSY that Henry Montgomery has finally been set free. The ACTL Foundation is proud to be one of those friends. You may recall the CFSY and Jody from prior ACTL Foundation articles in the *Journal*. CFSY, one of the few organizations to receive a Foundation grant twice (2019 and 2021), is dedicated to eliminating life without parole and other extreme sentences for children who have been convicted of serious crimes. CFSY’s mission is to preserve and protect the rulings by the United States Supreme Court in *Miller v. Alabama*, 567 U. S. 460 (2012), and other cases noting that “a child’s character is not as ‘well formed’ as an adult’s, his traits are ‘less fixed’ and his actions are less likely to be ‘evidence of irretrievabl[e] deprav[ity].” And, perhaps you remember Henry Montgomery, either as the seventeen-year-old boy who killed a deputy sheriff in East Baton Rouge, Louisiana in 1963, or more likely as the plaintiff in *Montgomery v. Louisiana*, the landmark United States

Supreme Court decision in 2016 that ended with these compelling words from Justice Anthony Kennedy, writing for the majority:

Henry Montgomery has spent each day of the past 46 years knowing he was condemned to die in prison. Perhaps it can be established that, due to exceptional circumstances, this fate was a just and proportionate punishment for the crime he committed as a 17-year-old boy. In light of what this Court has said in *Roper* [v. *Simmons*, 543 U. S. 551 (2005)], *Graham* [v. *Florida*, 560 U. S. 48 (2010)] and *Miller* about how children are constitutionally different from adults in their level of culpability, however, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.

That paragraph was followed with the familiar directive that “the case is remanded for further proceedings not inconsistent with this opinion.”

No doubt the State of Louisiana had great difficulty in determining what was and was not consistent with the Supreme Court’s opinion. The death of a law enforcement officer is a particularly difficult event, even if the perpetrator was at the time, in the words of the *Miller* court, in a category of “diminished culpability and heightened capacity for change.” The *Montgomery* remand order was entered on January 25, 2016. The release of the sev-



The **CAMPAIGN** for the **FAIR SENTENCING** of **YOUTH**

enteen-year-old-boy-turned-septuagenarian occurred in November of 2021, almost six years later. Six years is more than enough time for the public and the media to forget a directive of SCOTUS, even when contained in an opinion as touchingly, even beautifully, written as that of Justice Kennedy.

But the CFSY did not let us forget. A child will no longer be a child fifty-eight years after the seminal event, but the principle remains unchanged regardless of the intervening years, even when the years become intervening decades. The principle is that a child cannot be sentenced to life without parole because of his incapacity to grasp the terrible magnitude of his conduct. And, if any among you might be tempted to cite the proximity of seventeen to eighteen, the age of majority in most criminal justice settings, you may wish to take heed of the current science reflecting that the full maturation of the ability of the brain to comprehend and control conduct likely does not occur until one's twenties.

The work of the CFSY is not done. The grant that the Foundation awarded several months ago was for a project in response to the Supreme Court's decision in *Jones v. Mississippi*, decided in April of 2021, with a new cohort of justices and a different perspective on the Eighth Amendment. Where *Montgomery v. Louisiana* gave far clearer guidance for the treatment of inmates incarcerated for life for crimes that they committed as children, *Jones v. Mississippi* has given rise to uncertainty.

But, of this we must be certain: No category of persons within the criminal justice system should face different sentencing on the basis of their geographic location or the ideological differences among state supreme courts. That would not amount to justice, and we as lawyers must be the guardians of justice.

Because justice can't wait.

Joan Lukey
ACTL Foundation President



IN MEMORIAM

Since our last Issue, we have learned of the passing of fifty-three Fellows. One reportedly succumbed to COVID. Twenty-six of them served their country in uniform, five in World War II. And we lost the spouse of a Past President – Morgan Varner.



Our departed Fellows ranged in age from fifty-seven – way too young – to one hundred and one – still far too soon. They were all trial lawyers, of course, but some were also football players, campus politicians, medical officers, soldiers, cowboys, citrus growers, big game hunters, Sunday school teachers, and biblical scholars. No, wait, that wasn't "some" of them – that was just *one* of them, though it took him ninety-three years to do all of that. Another, still practicing law at age one hundred and one, flew fighter planes off a carrier in the Pacific in World War II. Another didn't simply serve; he served in three different branches of the U.S. Armed Forces. One passed suddenly and unexpectedly during the swimming portion of an Ironman competition over a weekend while he was on trial. Another collapsed while arguing a case in court – at the age of ninety. One was drafted by the Detroit Tigers. A bunch were on state championship sports teams. One was Captain of Indiana University's Tennis team in 1945 and lived to see a granddaughter named to the state's 2020 all-star tennis team. They all 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.



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 or 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.

Steven E. Achelpohl, '02, passed away on April 17, 2021 from complications of Alzheimer's at age seventy, survived by his wife, Sara, five children (a sixth child predeceased him), and six grandchildren. Steve was a scrappy shortstop, a wily point



guard and an above average cook. He was proud to be the State Democratic Party Chairman in a state that didn't often choose his candidates. Born in Wichita, Kansas, Steve and his sister Jan shuffled around the country while his father finished graduate school with stops in Minnesota, California, New Jersey, Topeka and, eventually, Omaha. Steve's grandfather, Virgil "Zeke" Barnes, and uncle, Jesse Barnes, pitched for the New York Giants in the 1920s, Zeke having pitched in both the 1923 and 1924 World Series. Steve earned a full scholarship to the University of Nebraska-Lincoln, where he was an Academic All-American shortstop and became a Detroit Tigers draft pick. But Steve chose to trade dirt for idealism, and his spikes for law books. After finishing near the top of his class and earning a spot on UNL's law review, Steve clerked for Judge Donald Ross on the Eighth Circuit before beginning a decades-long career as a defense attorney, handling matters ranging from civil to death penalty cases.

Robert Bailey Acomb, Jr., '72, passed away peacefully at home on June 12, 2021 at the age of ninety, preceded in death by his wife of sixty years, Greta LeBlanc Acomb, and survived by his five children, eight grandchildren and three great-grandchildren. A lifelong native of New Orleans, Bob graduated from Tulane University with a business degree in 1951 and Tulane University School of Law in 1953, where he was a member of the Board of Editors of the Tulane Law Review and Order of the Coif. Bob was a leading national authority on maritime law and litigation; he authored two case books on Admiralty law. Bob was active in the Navy League of the United States, serving on the Board and as State President. He was elected Commander of the Military Order of Foreign Wars of the United States, Louisiana Commandery. An avid supporter of Tulane University and Tulane School of Law, Bob was an Adjunct Associate Professor of Law for over three decades and developed the course on maritime personal injury and death litigation. A motivating force in

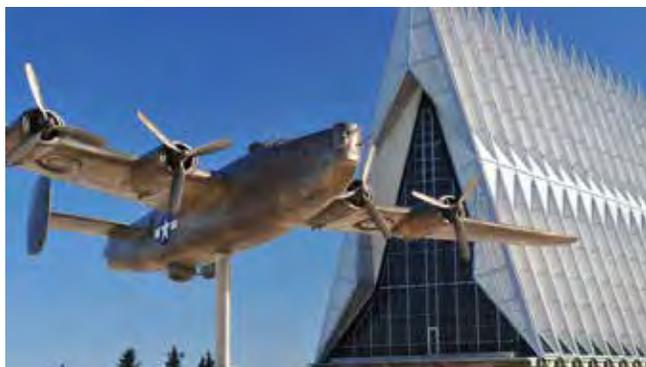
establishing the Tulane Maritime Law Journal, he was its original faculty advisor and was a member of the Tulane University Board of Administrators.

Edward N. Adourian, Jr., '82, died October 18, 2021 at the age of ninety-one. Ted was born and raised in the Philadelphia suburbs. He graduated from Dickinson College in 1953 as a history major. His love of travel began when he and his college roommate spent several months exploring Europe by bike and train. After attending The Fletcher School of Law and Diplomacy at Tufts University he returned to Europe on a Fulbright scholarship, where he attended the University of Berlin. He took full advantage of all the city had to offer, including opera, classical music, theater and movies. Ted joined the U.S. Army in 1955 as a qualified German linguist and worked in military intelligence. While taking a German language class he met his future wife, Ritva Luikko, from Finland. They were married June 16, 1957. Ted returned to Philadelphia for Law School at the University of Pennsylvania. The family moved to Moorestown, New Jersey, where Ted practiced law and served as an adjunct professor of trial advocacy at Rutgers law school. Ted was a lifelong student, studying mostly French and Central European politics, arts and literature along with classical music. Ted is survived by Ritva, their two children and six grandchildren.

Michael Joseph Barta, '09, died unexpectedly at his home in Franklin, North Carolina on March 31, 2021 at age fifty-eight. Michael was a 1985 *summa cum laude* graduate of Princeton University and a 1988 *cum laude* graduate of Harvard Law School. He clerked for The Honorable Jerome Farris of the United States Court of Appeals for the Ninth Circuit. Michael served as lead counsel in high profile litigation involving an array of clients, including the Estate of Richard Nixon, the Republic of Venezuela, Samsung Electronics, NASCAR, Tomas Berdych, and Halliburton. He also taught trial advocacy at the Georgetown University Law Center. Perhaps his proudest professional accomplishment was one of the first cases on which he worked out of law school: representing a man on death row for whom he won a new trial and overturned the client's death sentence. Michael was witty, generous, tenacious, determined, and an avid basketball fan, playing in a lawyers' league. Michael is survived by his two children.

William G. Baumgaertner, '08, passed away unexpectedly two weeks shy of his seventy-second birthday on July 24, 2021 while on a bicycle ride with friends. Bill grew up in Minnesota, where he learned to ski, became a certified instructor and competed on racing teams. Bill graduated from California State Polytechnic University and the University of San Diego School of Law, and decided to give up Minnesota for good, staying to practice in Los Angeles but continuing to ski on frequent family vacations. During the 2020 stay-at-home orders, he recorded his own parody commercials for a vodka-based hand sanitizer. ("Order now!" he hyped, spraying his palms, then his tongue.) Bill is survived by his wife of forty-three years, Sandy Minc Baumgaertner, his two sons and a grandson.

William R. Brandt, '72, passed away on October 11, 2021 at the age of ninety-six. William served in the Army in 1943-44 and the Navy in 1944-46. He attended the U.S. Naval Academy, the University of Illinois and the University of Chicago, where he received his law degree in 1950. A licensed private pilot, William loved flying. He was a voracious reader, played tennis into his nineties, and in his last years enjoyed baking pies for family and friends. William was a College State Chair, a past president of the McLean County Bar Association, Chair of the Illinois Supreme Court Committee on Jury Instructions, served on the Board of Trustees of Illinois Wesleyan University and was an adjunct professor at the University of Illinois College of Law. William was predeceased by two wives and a daughter, and survived by three children, five grandchildren and five great-grandchildren.



James LaVoy Branton, '82, passed away peacefully at home on July 19, 2021 at the age of eighty-three. Jim grew up in Cisco, Texas, where he played football and, thanks to a devoted teacher, earned an invitation to the Air Force

Academy on a swimming scholarship. Jim, the first in his family to go to college, ultimately earned a JD from the University of Texas. After graduating from law school, he served as a captain in the U.S. Air Force as a judge advocate before a career in private law practice. Jim focused on personal injury litigation, earning a reputation for integrity, meticulous preparation, and extraordinary skill. He served as president of the State Bar of Texas from 1994 to 1995. He helped draft the Texas Evidence Code and Texas Lawyer's Creed. Jim married Molly Denman in 1968, and together they raised three daughters and delighted in their five grandchildren. Jim fought forest fires during the summers as a young man. He was an unflappable pilot who once landed a failing plane on the edge of the Grand Canyon. He stood up for victims of injustice and bigotry when it was not safe or popular. Perhaps most remarkable, he endured adversity, tragedy, and failing health with relentless good cheer and optimism.

Neal R. Brendel, '13, was sixty-six when he lost his last battle to cancer on August 25, 2021, survived by his wife of thirty-three years, Pamela Rollings, and their son. Neal was recruited by Yale University as a wrestler. At Yale, Neal met Pamela during their senior year. They both attended the University of Virginia Law School, graduating in 1979. After law school, Neal and Pamela made their way to Pittsburgh, where they each became partners of their respective firms; they married in 1988. Neal had a decorated career as a collegiate wrestler, concluding his career as an All-American in the 190-pound weight class. After wrestling, Neal took up rugby, and he was selected to play for the national team, the United States Eagles, from 1983 to 1987. He competed in the inaugural Rugby World Cup in Australia in 1987, while maintaining a full-time law practice. He also led the Pittsburgh Rugby Football Club (now the Pittsburgh Forge) as captain and president during the Club's most successful years in the 1980s. He was the first national team player to serve as chairman of the USA Rugby Football Union, and he also served as the North American West Indies representative to the International Rugby Board (now World Rugby). Neal was an avid traveler, naturalist and sportsman. He cultivated native trees and plants at his home in Fox Chapel and enjoyed bird hunting trips around the US and abroad.



Samuel William Caverlee, '98, passed away peacefully at the age of seventy-six on September 29, 2021 from complications of Alzheimer's disease, with his wife and best friend, Ellen, and his two sons by his side. Born in Chicago, Sam's family moved to Monroe, Louisiana after his father passed when Sam was five. In high school, Sam was a key member of the 1963 State Championship basketball team. As Student Body President, Sam worked with the Monroe Zoo to have its live tiger, Shasta, attend school pep rallies. Sam went on to LSU, where he met and married Ellen. Sam practiced law until his retirement in 2015. Juries loved Sam. In one case, he defended a local CPA firm that was charged with malpractice. Sam admitted that an error had been made by the firm, but he argued there was no loss. The jury returned a defense verdict in seven minutes, a Caddo Parish record. Sam coached his sons' basketball teams, served on the Caddo Parish School Board and taught Sunday School classes for more than thirty years. Sam enjoyed running and walking with groups of friends over the years, reading and attending book reviews, visiting local museums each month, taking Ruston peaches to friends and family, and watching the Chicago Cubs and college basketball.

Jon Christian Cederberg, '11, passed on May 19, 2021 at the too young age of sixty-eight. A Detroit (actually Plymouth) native, Jon graduated from the University of Michigan for both undergrad and law school. He was a tailback on the 1973 football team that went 10-0-1 and was ranked 6th



in the nation, but was passed over for a Rose Bowl bid that went instead to #2 Ohio State. In his autobiography, Jon's coach, the legendary Bo Schembechler, recalled Jon as "Super Cede," who he described as "the slowest son of a gun that ever lived. Nice kid, tougher than hell, but couldn't run a lick." But Jon lettered. And Super Cede exceeded all expectations. Jon settled in Los Angeles, was an Assistant United States Attorney, and enjoyed a long, successful career handling civil trials and white collar matters. Jon was a dedicated and insightful teacher of trial advocacy with the National Institute of Trial Advocacy, the United States Attorney General's Trial Advocacy Institute, and his firm's in-house trial advocacy training programs. He was extremely proud of his extensive

collection of legal literary works, including a number of first editions, on historic trials and famous (and infamous!) American and British trial lawyers. Jon is survived by his wife of forty-five years, retired Los Angeles County Superior Court Judge Paula Mabrey.

James P. Chapman, '75, passed on August 18, 2021 at the age of ninety-one. Jim graduated from the University of Colorado in 1951 and Harvard Law School in 1954, after which he settled in Chicago. Jim served as President of the Uptown People's Law Center from 1975 to 1992 and founded the Illinois Institute of Community Law. In 1998, Jim founded the Illinois Institute of Community Law and Affairs to work with other organizations, prisoners, ex-prisoners and their families on research into the issue of recidivism. For many years, Jim taught public interest law and supervised student externs at Southern Illinois University, as well as teaching communication skills to prisoners at Stateville Correctional Center. For decades, Jim acted as a trainer and expert resource for members of the Northern District of Illinois Trial Bar who were recruited to represent prisoners in civil rights matters. Jim's impact on the administration of justice was profound. He authored handbooks, created videos, and regularly offered training and lectures in all of the Illinois federal district courts, assisting pro bono lawyers representing prisoners. Over the course of his long career, Jim took more than one hundred cases to verdict in both civil and criminal cases. He was also highly regarded in lawyer misconduct and law firm liability matters, often retained by large law firms to investigate internal lawyer misconduct issues. Active in the College, Jim served on many General Committees and as Upstate Illinois Chair.

Paul N. Daigle, '95, passed away peacefully on December 30, 2015 when he was seventy-seven; we weren't informed until just now, so we are late in paying respect. Paul was born in Indiana and attended Auburn University on a football scholarship before transferring to Stanford University. Upon his graduation in 1961, Paul was commissioned as a second lieutenant in the U.S. Marine Corps. He was trained as one of the first Marine paratroopers. As the Vietnam War escalated, he was the Executive Officer of Company B, 1st Bn, 9th Marines. In 1965, he was injured in a 40-foot fall during a training exercise that led to his medical retirement

from the Marines. Later that year, he entered the UC Hastings College of Law. Paul's practice in Seattle, until his retirement in 1999, focused on maritime law and insurance defense litigation. Paul was survived by six children and step-children, and by eight grandchildren.

Theodore Russ Dunn, '98, passed away September 1, 2021 while grouse hunting near the continental divide on land bordering Big Sheep Creek Montana. He was eighty-three. Russ was born in Colon Panama and attended high school in Alexandria, Virginia, where he was on the National High School Championship team for eight oared shells in 1956. After graduation, he followed his family tradition and became a cadet at West Point, graduating in 1960 with a degree in engineering. Russ chose the Marines and eventually became a tank commander serving at Guantanamo Bay. After his military service, Russ enrolled at Georgetown University Law School, graduating with highest honors and serving as an editor of the Law Review. Always looking for adventure, Russ chose Alaska to begin his law practice, distinguishing himself in aviation and product failure cases. Russ was an active and effective conservationist. He founded the Alaska chapter of Trout Unlimited, and his persistent advocacy led to many of Alaska's premier trout streams being placed under catch and release management. After sixteen years in Alaska, Russ moved to Bozeman. In 1997, Russ left Montana and returned to Virginia to recuperate from a bout of Lymphoma. Not about to waste all the sea water around him, Russ decided to introduce the students at his sons' school to the sport of rowing, but they had no boat or equipment. Russ called the Naval Academy and was gifted a used four seat shell which he towed back to Virginia. Russ' first year crew team did not fare well, but the second-year crew won first place in the Novice division in Norfolk. In 2003, Russ returned to Montana and resumed his practice. Russ fully retired in 2013 and spent his last years cherishing the outdoors. Russ is survived by his wife of thirty-eight years, Ruth, and their two sons; by his daughter and son from a previous marriage; and by two grandchildren.



John Eckel, '82, died on July 30, 2021 in San Miguel de Allende, Mexico. He was eighty-five. Born in Houston, John grew up in Oklahoma. After Princeton, University of Texas Law School and a stint in the Air Force, John started his law career in the new state of Alaska but moved to Galveston in 1962. John served as a director of the State Bar of Texas and as vice president of the Sealy & Smith Foundation, which provides private funding to the University of Texas Medical Branch. He was elected to the Port of Galveston Wharves Board of Trustees and served as its chairman in 2009. Known to his law partners and their children as the "Chief," John is remembered as a man who could always come up with a quote, a poem or a piece of great literature to alleviate the tension of the moment. John was predeceased by his first wife, Susan, and survived by his second wife, Eden, two sons and four grandchildren.

James Robert Fox, '06, died August 15, 2021 a month before his seventy-fifth birthday. Jim graduated from Duke University, both undergrad and law school, and practiced in Washington, D.C. and in Winston-Salem. Jim was President of the North Carolina State Bar and was involved in many other legal and civic organizations. In retirement, he had time to pursue his artistic side—painting, wood carving and building furniture. Jim and his wife, Debbie Lewis Fox, enjoyed travel, Broadway, and hiking in the mountains, as well as simple nights by the fire reading books together. Jim is survived by Debbie and their two daughters.

David Bruce Freedman, '20, died Friday, September 3, 2021 of complications from COVID-19. He was only sixty-four. David grew up in Asheville, and his love of the mountains continued throughout his life. He graduated from the University of North Carolina at Chapel Hill in 1979 and from its law school in 1982. He moved to Winston-Salem, and during his nearly forty-year career, David represented the powerful and the powerless in courtrooms across North Carolina and beyond. David was named the state's best criminal defense attorney in 2006. David believed deeply in the principle of "tikkun olam," the need to repair the world, and he gave his time and



talents freely to do his part. He was a past president of the Forsyth County Bar Association and taught criminal procedure and trial practice as an adjunct professor at Wake Forest University School of Law. David loved movies, music, riding his bike, and watching sports (particularly UNC and the Panthers), but most of all, his family. David is survived by his wife, Libby, and their four children.

Barry Herbert Garfinkel, '72, passed at the age of ninety-three on August 29, 2021. After CCNY and Yale Law, Barry clerked for U.S. District Judge Edward Weinfeld in Manhattan. In 1956, he was hired as the ninth lawyer in a firm that now numbers more than 1600. As head of the firm's litigation group for many of its formative years and a leader of its international arbitration practice, he was instrumental in that growth and continued to work there until his death. Barry was instrumental in establishing and shaping the Skadden Fellowship Foundation, launched in 1988, which has become the largest public interest law firm in the United States. Barry remained an active member of its board of trustees from the organization's founding through the selection of its most recent class of fellows. Barry was an active contributor and a dedicated supporter of continuing legal education and served as President of the Board of Trustees, Chairman of the Board and Chair Emeritus of the Practising Law Institute. Barry was also a Trustee of the Historical Society of the New York Courts. In 2007, he founded – and funded – the David A. Garfinkel Essay Scholarship, which sponsors an annual essay contest on topics of legal history relevant to many first generation and minority students. Active in the College, Barry was Downstate New York Chair and a member of several general committees. Barry is survived by his wife, Gloria and two sons.

William Robert Garmer, '92, passed away peacefully on July 30, 2021. He was seventy-five. Born in Baltimore, Bill's family moved to Pennsylvania and then to Kentucky, where Bill attended college and law school. After graduation from the University of Kentucky in 1968, Bill served in the United States Air Force from 1969-1973, achieving the rank of Staff Sergeant; Bill

enrolled in law school at St. Mary's University School of Law in San Antonio, Texas before transferring to the University of Kentucky College of Law, receiving his degree in 1975. He clerked for the Honorable Bernard T. Moynahan, Jr., Chief Judge United States District Court of the Eastern District of Kentucky, then began the practice of law in Lexington, establishing himself as a lawyer who changed the lives of his clients. Bill was a true southern gentleman of great intellect, and a kind soul. Bill served as an adjunct professor of at the University of Kentucky College of Law from 1981-2018. He was President of the Kentucky Bar Association in 2017. A lifelong Democrat, Bill was Chair of the Kentucky Democratic Party in 2004. Bill is survived by his wife, Kim, and their daughter.

Kevin J. Gleeson, '10, passed away on September 16, 2021 at age seventy, survived by his wife of forty-two years, Lisa, and their son. Kevin graduated from Oakland University in Rochester (1973) and received his Juris Doctor from Thomas M. Cooley Law School in Lansing (1979). Kevin specialized in engineering, architectural, and construction litigation. His high-profile construction cases included the Ford Field Stadium project, the Comerica Park Baseball Stadium and the Delta Airport Terminal. Kevin was a frequent mediator and arbitrator in complex commercial and construction litigation cases. Kevin was an avid runner and competed annually in the Chicago Marathon. He was also a proficient skier and worked closely with client ski resorts to assess the capability of rescue, first aid operations and Ski Patrol safety. A World War II buff, Kevin keenly studied the planning and execution of each battle. He was particularly adept at getting WWII veterans to tell him their personal stories, much to the gratitude of families whose loved ones would never talk about their horrendous experiences.

David Coburn Goodwin, '84, passed away without an obituary or an internet presence in March 2021 at the age of ninety-one. A graduate of Harvard College and Duke Law School, David practiced in Miami and specialized in railroad litigation and insurance and re-insurance matters. If you knew David, share some further details with us. ▶



Richard F. Griffin, '77, was eighty-eight when he passed on October 14, 2021 after a short illness. Dick was a graduate of Canisius College and the University at Buffalo Law School; he practiced in Buffalo for six decades, specializing in civil rights, railroads and personal injury. In 1962, he represented a group of Black Muslim prisoners fighting for the right to worship and eat foods prescribed by their religion in the Attica State Correctional Facility. That lawsuit, which resulted in a successful outcome, led to a friendship with Malcolm X, who once had dinner at Griffin's Buffalo home while two Nation of Islam bodyguards stood watch outside. In the 1970s, Dick represented plaintiffs who alleged that Buffalo's public schools were illegally segregated by race; the case resulted in a ruling that ordered a massive desegregation program that changed the makeup of every city school. "That was his biggest case, and it meant a lot to him," Jane Griffin, Dick's wife of sixty-six years, recalled. "But he still felt we all had a lot more to do in terms of race relations." A former editor of the Buffalo Law Review, Dick was a former president of the National Association of Railroad Trial Counsel and a former President of the Erie County Bar Association. In 1976, he received the Medgar Evers Award from the Buffalo branch of the NAACP. A devoted gardener, Dick volunteered with the Olmsted Parks Conservancy and the Buffalo and Erie County Botanical Gardens, receiving awards from both organizations. In addition to Jane, Dick is survived by four children, three of whom are lawyers, and five grandchildren.

George R. Hall, '16, died suddenly on September 26, 2021 while participating in the swimming portion of an Ironman Triathlon in Augusta, Georgia, a day shy of his sixtieth birthday. He had made time to train and participate in the triathlon while he was on a trial that

was going into its fourth week. George leaves behind his wife Margaret, two adult sons and a new grandchild. George tried more than 120 cases over his career and served as a mediator and arbitrator in more than 300 others. George graduated from Presbyterian College in 1983 and received his Juris Doctor from the University of South Carolina in 1986. A local Federal judge said of George "He enjoys the most credibility with a jury of anyone I have ever seen appear in my courtroom."

Leon Hunter Handley, '70, passed away in his sleep on June 9, 2021. During his ninety-three years Leon was a football player, a campus politician, a medical officer, a law student, a soldier, a cowboy, a trial lawyer, a citrus grower, a big game hunter, a skier, a Sunday school teacher, a world-traveler, a biblical scholar, a chairman of the board and so much more. Leon served in three separate branches of the service. He joined the United States Merchant Marine during World War II, ending his service as a Warrant Officer. He enrolled in the University of Florida for a summer, then volunteered for the Army. After a tour in Korea he left active duty as a Sergeant and resumed his schooling. He joined the Air Force ROTC and eventually was appointed Cadet Colonel, commissioned, and left military service as a Captain in the United States Air Force. Returning to the University of Florida, he ran track and cross country, graduating after just two academic years before moving on to law school. Leon settled down in Orlando. He married Mary Virginia Wolfe and they raised four children, who in turn gave them six grandchildren and nine great-grandchildren. Leon was a 33rd degree Mason, a Knight Templar, a past President of Rotary and a member of several charitable foundations. Google informs that there are 249 "countries" in the world, 195 of them independent entities. Leon proudly said that he visited over 240.

Alexis Merrill Hawkins, '75, died in 2021 at the age of ninety-six. Lex served in the Navy in World War II, after which he returned to Iowa to finish college and law school at Drake University. Lex did personal injury work for many years before becoming a full-time mediator. He was the Associate Editor of the American Trial Lawyers Law Journal and Editor of the Iowa Academy of Trial Lawyers Trial Handbook.

William Hesler, Q.C., '95, passed away at his home on October 2, 2021 at the age of seventy-eight. Bill is survived by his wife of fifty-three years, the Hon. Nicole Duval Hesler, their two sons and two grandchildren. Bill was a graduate of Queen's University and Université de Montréal and served as a Lieutenant in the Royal Canadian Hussars from 1964 to 1966. Bill was appointed Queen's Counsel in 1992 and, after his induction as a Fellow, served as the College's Quebec Province Chair from 1998 to 1999. Bill's passion for history led him to author two books: *Muleskinner: the European War of a Niagara Artilleryman* and *Sydney Bellingham's Canada*. Bill is remembered as much for his ethical sensitivity, strategic thinking, leadership and mentorship as for an immense legal acumen which was acknowledged by colleagues, clients and adversaries alike.

Gene Marneal Jones, '85, peacefully passed on August 14, 2021 just two days after his long-time partner Leon Kaminsky (see below). Gene was eighty-two and survived by his wife, three sons, stepson, and several grandchildren. After law school at the University of Indiana, Gene proudly served in the U.S. Air Force, where he was a member of the Judge Advocate General's Corp. Gene loved the land and the outdoors. He planted thousands of trees, gardened, and fashioned his own game preserve in La Porte county. Gene retired from practice in 2009.

Gregory C. Jones, '93, died in Bluffton, South Carolina on March 2, 2020 from the ravages of Alzheimer's disease at the age of seventy-seven. Greg received his B.A. degree in Economics from Cornell University in 1964, then graduated *magna cum laude* in 1967 from the University of Michigan Law School and received an LLM from Harvard in 1968. Greg joined the Criminal Division of the Department of Justice in Washington, DC. Returning home to Chicago as an Assistant United States Attorney, he was appointed First Assistant by FACTL **Tom Sullivan** in 1977 and continued in that position under succeeding United States attorneys Samuel Skinner, FACTL **Dan Webb** and FACTL **Tony Valukas**. Greg served as interim court-appointed U.S. Attorney in 1981 and again in 1985. In 1985, Greg entered private practice. In 1999, he assumed the chairmanship of the Illinois Gaming Board. He retired from the practice of law in 2006. Greg is survived by his wife of forty-five years, Harriet, two children and two grandchildren.

Leon R. Kaminski, '76, passed away at his home on Thursday, August 12, 2021 at the age of ninety-six, preceded in death by his wife of sixty-three years, Norma J. Lynn, and survived by his six children, thirteen grandchildren and twelve great-grandchildren. Leon was Captain of 1945 Indiana University Varsity Tennis Team, and was understandably proud when, in 2020, his granddaughter, Rachel, was named to the North Indiana All Star Tennis team. At Indiana University, Leon was also Manager of the Varsity Basketball Team. He graduated in 1950 from Indiana University School of Law. Leon was President of the Indiana State Bar in 1982-83. Throughout his long career, Leon served on countless bar, charitable and civic boards.



John Treutlen Marshall, '79, died peacefully in his sleep on July 22, 2021 in his Atlanta home after a long illness; he was eighty-six. John attended Vanderbilt University on an ROTC Scholarship. He served his country as a member of the United States Marine Corps from 1956-1958, where he attained the rank of Captain. But his real attainment in the Corps was, while stationed in Norfolk, meeting Kay, a public-school music teacher. After a short courtship, they married in May of 1959, had sixty-two years together, and raised four children and eleven grandchildren. After discharge, John enrolled at Yale Law School, graduated in 1962, and moved to Atlanta. John served as President of the Atlanta Bar Association. A former State Chair, John was active in the College and served on a number of General Committees. In 1996, the Supreme Court of Georgia appointed John as Chair of the Georgia State Bar's Standards of the Profession Committee. His committee created the first year long, supervised mentoring program in the country for beginning lawyers. In 2010, it received the American Bar Association's Gambrell Professionalism Award for Outstanding Achievement. One of John's great joys was teaching lawyers evidence, ethics and professional liability. Lawyers and judges would return each year to listen to John's annual lecture on Georgia evidence, which he peppered with jokes to enliven the instruction. In 1986, the American Bar Association presented him with the Harrison Tweed Special Merit Award for

“developing a unique participatory format for teaching trial evidence to hundreds of practicing lawyers and judges at one time.”

Thomas J. McDermott, Jr., '82, was ninety when he died at his home in La Quinta on June 30th, 2021. Tom served the U.S. Army during the Korean War, then earned his JD from UCLA Law School, where he was Order of the Coif. Tom served as chair of the Litigation Section of the State Bar of California, on the Ninth Circuit Judicial Conference, and on the Ninth Circuit Advisory Board. He wrote for California Litigation, a publication of the State Bar of California. He was one of the founders of the L.A. Opera Company, and he served on the board of the L.A. Music Center Performing Arts Council. Tom was active in the College and chaired the Outreach Committee. Tom is survived by his wife Yolanda, two children and two grandchildren.

Joseph Edward McGarry, '82, was born in Boston and died on October 9, 2021 in Cottonwood, Arizona. He was ninety-two. In 1951, Joe married Janet Elizabeth Ellis, who died in 1979. In 1981, Joe married Sarah Miller Bouquet, who predeceased Joe by several months in 2021. Joe is survived by three children and two step-children, and by eight grandchildren. After graduating from high school in 1946, Joe served in the U.S. Army with the 1st Airborne Division in the occupation of Japan. Joe graduated from the University of Arizona with a B.S. in Economics in 1952 and an L.L.B. in 1955. Joe specialized in commercial and construction litigation until his retirement in 2014. Joe was president of the Maricopa Bar Association in 1961. He was appointed to the Arizona State Hospital Board, serving as Chairman for three years, and served on several other medical services boards. His noteworthy pro bono mental health cases included *JK v. Arizona* (establishing rights for children improperly deprived of support for substance abuse and mental health services). Joe was a founding member of the Arizona Center for Law in the Public Interest in 1972. As Chairman of the Phoenix Economic Growth Commission, he represented the City of Phoenix in the 1989 formation of the Greater Phoenix Economic Growth Corporation. Joe spent twelve years on the Master-Apprentice Program Board, supporting young sculptors and he served on the Board of Trustees of the Arizona Sonora Desert Museum in Tucson.

Richard H. McGee II, '99, died June 30, 2021 at the age of seventy-one. Rick's grandfather, George A. McGee, came to Minot, North Dakota in 1901 fresh out of Notre Dame Law School. Rick's father and Rick himself likewise spent their careers in Minot. Rick earned a degree at Minot State College before enrolling in law school at the University of North Dakota in Grand Forks, graduating in 1977 and having his diploma presented to him by his father, who was then a member of the State Board of Higher Education. Rick married Susan Christianson of Upham on June 4, 1976; Rick is survived by Susan and their two sons. Rick and Susan traveled extensively in Europe, especially to Scotland, England, Iceland, and Norway, but mostly to Ireland, where Rick researched the McGee family's Irish roots. Rick was an avid golfer, as well as a collector of sports cards and other memorabilia. Active in the College, Rick was a former North Dakota State Chair.

Henry Hanna McVey III, '86, was eighty-five when he succumbed to a long illness and died peacefully in his sleep on July 28, 2021. Hal was born in Richmond and raised in the Fan District; he never lived west of the Boulevard. Hal attended Hampden Sydney College and the University of Virginia Law School, graduating in 1960. In 1964, Hal was introduced to a young singer from Baltimore named Reba Robinson, sparking a love and partnership that would endure for over fifty years. Together Hal and Reba raised three children, restored three homes in the Fan, sang in the church choir and traveled the world. Hal did tort defense work, and a lot of it; but he was also active in teaching, mentoring and pro bono work his entire career. Hal was a good sailor and a talented carpenter, building bookcases, radiator covers, a doll house and a deck with a trap door behind the house on Hanover. When he hit his thumb with a hammer, he might take the Lord's name in vain, and when he had something important to impart to his children, he would lower his voice and fix them with a steady gaze over the tops of his glasses.

Starling Thomas Morris, '73, still actively practicing law at age one hundred and one, died on October 5, 2021. Tom represented the John Deere Company in the patent infringement case *Graham v. Deere*, which he argued before the Supreme Court in 1965. The case, which has been cited more than 30,000 times and



reaffirmed by the Supreme Court three times, established the “obviousness doctrine.” During Tom’s final year of law school at the University of Texas, he enlisted in the U.S. Navy. Following the bombing of Pearl Harbor in 1941, he served four years, flying off of the aircraft carrier *Ticonderoga* in every type of fighter plane and dive bomber the Navy had. He returned to law school after the War, graduated in 1946, and stayed to serve two years on the faculty. When the University of Texas established a separate law school for African American students, he was assigned to teach the Torts class for the first class of three black students. Tom recalled “I was glad we were doing it, but I didn’t see why we just didn’t go ahead and admit them to the law school.” After seventy-five years of practicing law, Tom said, “My family is first, and I could not have done what I have done without the constant and loyal support of my wife, Estella. But the law is second, always has been.”

Joseph H. Mueller, '86, died peacefully surrounded by family on October 9, 2021 at the age of eighty-six, survived by his wife of sixty-one years, Nancy, their four children, and multiple grandchildren and great grandchildren. Joe was a “triple Billiken,” having graduated from St. Louis University High School, SLU, and SLU School of Law. A fierce advocate in the courtroom, Joe was a trial lawyer for sixty-two years. Joe volunteered for sixty-five years with the Society of St. Vincent de Paul.

William Stuart Parsons, '86, age eighty, passed peacefully at his home in Cedarburg, Wisconsin on January 10, 2021. Stuart graduated from Harvard College in 1962 and married Phoebe Keith of Louisville, Kentucky days after graduation. Stuart served in the

U.S. Navy from 1962-64, including the quarantine of Cuba during the Cuban Missile Crisis. He returned to Harvard for law school, graduating in 1967. Stuart specialized in securities and antitrust class actions and was president of the Seventh Circuit Bar Association from 1997-1999. Bill retired in 2008 but continued to practice law, representing the Episcopal Diocese of Milwaukee and pro-bono immigration clients, many of whom were seeking political asylum. Stuart lived his entire adult life at his historic home in Cedarburg, a 150-acre farm. Committed conservationists, Stuart and Phoebe donated the property to the Ozaukee County Land Trust in 2001, guaranteeing the land will be reserved in perpetuity as protected wetland and wildlife habitat. Phoebe passed in 2014; Stuart remarried and is survived by his second wife, two children, one stepchild and three grandchildren.



Charles Eugene Peery, '89, passed away in Renton, Washington on August 29, 2021. He was eighty-seven years old. Born in Minnesota, Chuck’s family moved to Seattle in 1939 when he was five years old. Chuck lived in the Seattle area for the rest of his life except for his service in the U.S. Air Force when he was stationed in Germany as a Communications Intelligence Specialist. Chuck practiced law in Seattle for over fifty years. Chuck was the College’s Washington State Chair in 1998 and 1999. He was an avid explorer of the great outdoors. He was a mountain climber, camper, hiker, runner, skier, sailor, cyclist, and he loved traveling around the world. He was a lifelong student of languages and cultures and loved books of all kinds, smooth jazz, the theatre, good food, fine wines, and great company. Chuck is survived by his three daughters, six grandsons and four great-grandchildren. ▶

Bettina B. Plevan, '91, wasn't simply the first female associate to play on her firm's softball team; she hit a grand slam, a metaphor for her life. Betsy was only seventy-six when she passed on October 29, 2021. Betsy was the first female partner in her department and the first woman to serve on her firm's Executive Committee. Betsy was an outstanding mentor to younger lawyers, setting an example of working hard, striving for excellence and balancing the demands of that hard work with devotion to, and care of, her family. Betsy served as the second female president of the New York City Bar Association from 2004-2006, President of the Federal Bar Council, a member of the ABA Board of Governors from 2006-2009, chair of the American Bar Association's Standing Committee on the Federal Judiciary from 2013-2014, co-chair of the Lawyers' Committee for Civil Rights, long time Chair of the SDNY Magistrate Selection Committee and a member of Senator Schumer's judicial selection committee. Active in the College, Betsy was Chair of the Moot Court Committee and the Downstate New York Committee; she served on half a dozen other General Committees. Betsy was predeceased by a son and is survived by another son, a grandson, and her husband, Ken.

Howard J. Privett, '79, was eighty-seven when he died at home in San Marino on July 21, 2017. After graduating first in his class from University of California Hastings College of the Law in 1957, Howard began private practice at a prominent Los Angeles firm where he spent his entire career. Among the most notable trials of his career, Howard defended Exxon in back-to-back antitrust cases filed by the federal and state governments alleging that Exxon had manipulated the oil market in Southern California. Howard secured a defense verdict and was named trial lawyer of the year in Los Angeles. Howard was lead trial counsel for United States Steel in a civil action arising from a failed pipe at a PG&E hydroelectric facility near Fresno, California. Following a lengthy federal court jury trial, Howard obtained a verdict that established PG&E's responsibility for the pipe failure. Citing his brilliance during trial, *The American Lawyer* selected the case as one of the nation's ten best jury verdicts in 1992. Howard was preceded in death by his wife of fifty years, Nell Kercheville Privett, and survived by his second wife, Aiping Lu Privett, two children and five grandchildren.

John David Proffitt, '86, passed away peacefully on June 30, 2021 at the age of eighty-eight, survived by his wife of forty-eight years, Judy, two daughters and five grandchildren. John came from humble beginnings, raised by his mother and older sister in Lebanon, Indiana after his father had left the family when John was five. John's mother passed when he was fifteen, and family friends and partial scholarships helped John attend Wabash College, from which he graduated in 1954. John joined the United States Army and served two years. Upon discharge, he went to the University of Chicago Law School, on an academic scholarship. He was Associate Editor of the Law Journal and received his law degree in 1959. John's first legal job was in Kansas City, but he and Judy were homesick for Indiana and he spent the rest of his fifty-plus-year legal career there. John was known for his kindness, acute legal acumen, and involvement in local Republican politics. He mentored countless young lawyers. He loved the courtroom. His word was his bond. John served as President of the Hamilton County Bar Association and the Indiana Bar Association. John believed in public service as a result of his humble roots and spent his entire career giving back to his community. He served as a board member of a great number of organizations, including Riverview Hospital and the Carmel-Clay Symphony Orchestra. John loved to travel, play golf, bike, hike and go to sporting events. He was a lifelong Cubs fan, so much so that he could not bring himself to watch the World Series until he found out that they had won. He loved driving his convertibles and sporting a series of cowboy hats.



Robert R. Redman, Sr., '85, died peacefully on September 6, 2021 at the age of ninety-three. Bob's early years were spent working in the family's fruit orchards, starting by delivering water to the field hands on his pony at the age of six. Bob graduated from the University of Washington 1951. He joined the U.S. Navy and served

as an officer aboard the USS Woodson (DE-359). While stationed in New Jersey, Bob was introduced to Harriet Johnson, who had graduated from Wellesley College and was living in New York City. Despite an unremarkable first date, he convinced her to go out with him again with two tickets to the musical *Paint Your Wagon*. They married in 1953. After moving to Navy reserve status in 1954, Bob and Harriet moved to Seattle, where he attended UW Law School, graduating in December 1956. In semi-retirement after 1993, Bob and Harriet travelled extensively to Europe, Africa, and throughout the southern United States to visit Civil War battlefields. In addition, they regularly attended plays at the Shakespeare Festival in Ashland and concerts and operas in Seattle and Yakima. An avid reader, Bob particularly enjoyed reading about the Civil War, naval history, biographies, and novels. Bob was predeceased – by one week – by Harriet after sixty-seven years of marriage and partnership; he is survived by their two sons and a grandchild.

Donnel O'Brien Sabey, '85, passed away peacefully on July 28, 2021 at age ninety-one, leaving behind Karleen, his wife of seventy years, his three sons, five grandchildren, and two great-grandchildren. Don grew up in Alberta and went to the University of Utah to study law, where he met Karleen Randall. They married in 1951 and, after law school, they moved to Calgary where Don stayed his entire career. Don was appointed Queen's Counsel; he was a Bencher of the Law Society of Alberta. But he declined an offer of appointment to the Bench from the Prime Minister's Office, citing the loss of freedom and more particularly his love of his profession. Don's love of the practice of law was rivalled only by his love of golf, as evidenced by his six handicap. Don was keenly interested in all things, from politics, to legal issues, to science, to religion, to just plain "how are you doing?"

Evan Lynn Schwab, '83, died peacefully at the age of eighty-three on July 25, 2021 from progressive supra nuclear palsy. Evan joined the U.S. Marine Corps a day after his high school graduation. Following his service, Evan attended the University of Washington, earning a business degree in 1960. Evan went on to the University of Washington Law School, where he graduated Order of the Coif with high honors in 1963. He clerked for Justice William O. Douglas at the U.S. Supreme Court,

then returned to Seattle for the practice of law. In 1967 Evan returned to the Supreme Court on behalf of the ACLU and won a case that secured the Constitutional right to counsel for felons during probation revocation proceedings (*Mempa v. Rhay*). In 1976 Evan married Carole Fuller. Evan was active in the College, serving as State Chair and on numerous general committees. Evan was an avid skier and boater and a longtime member of the Seattle Yacht Club. He sailed in such places and races as the Victoria Maui Race and the Americas Cup Jubilee in Cowes, England, but most often in Puget Sound in his boat Cadeux, a beautifully kept Sparkman and Stephens Swan 44. Evan is survived by Carole, four children and eight grandchildren.



Gene Hugh Sharp, '76, age ninety-two, died July 27, 2021 at his residence of sixty years in Liberal, Kansas. Gene, who was able to trace his roots to the Jamestown Colony, was born in East St. Louis, Illinois. When his father, a traveling salesman for the R.J. Reynolds Tobacco Co., lost his job, the family moved to Grandma Dorman's farm near Floris, Oklahoma, where Gene attended a one-room schoolhouse. In high school, Gene played baseball and was on a state championship basketball team. Gene attended Hutchinson Junior College and the University of Oklahoma for undergrad and the University of Oklahoma College of Law, where he was Editor in Chief of the Law Review 1953. During law school, Gene married Jo Ann King, of Liberal, Kansas. Gene served three years in the U.S. Air Force Judge Advocate General's Corps, after which Gene and Jo Ann returned to Liberal for Gene's legal career which spanned sixty-six years until his retirement in 2018 when he was nearing ninety. Gene is survived by JoAnn, four children and seven grandchildren.

Eugene P. Souther, '77, died peacefully at home on July 16, 2021 at age ninety, surrounded by his family which included six children, twenty grandchildren and nine great-grandchildren. The product of a Jesuit education (Fordham College '53 and Fordham Law School '59), Gene lived his life in the tradition of service to others. Throughout his career, he was a strong supporter of voluntary representation of clients on a pro bono basis. After earning an ROTC commission, Gene served as an Artillery Officer, Battery Commander and Battalion Staff Officer. Later, Gene became a proud member of the Sons of the American Revolution. Gene was a past President of the New York County Lawyers Association. He served for many years in the House of Delegates of the New York State Bar Association and the American Bar Association. Gene was appointed a Special Master by the United States District Court for the Southern District of New York to hear and report on multiple disputes. At the time of his death, Gene was serving as Village Justice of the Village of Lattingtown, having previously served as the Village Justice for the Villages of Muttontown and Bellerose. One of Gene's most meaningful forms of service was his time as Chairman and Member of the Board of Trustees of St. Francis Hospital in Roslyn. In addition, he served as a member of the Board of Trustees of Mercy Medical Center and as a member of the Compliance and Audit Committee of Catholic Health Services of Long Island. Gene was a lifelong avid sports fan. He regularly attended NY Giants and NY Rangers games with family and friends. The Rangers honored him in a special on-ice ceremony on the occasion of his 45th year as a season ticket holder.

O. E. Starnes, Jr., '73, passed away on October 25, 2021 at the age of ninety-seven, predeceased by two wives and a son, and survived by two other children, nine grandchildren and thirteen step-grandchildren. The Starnes family ancestors settled in Hominy, west of Asheville, North Carolina in 1814. O.E. attended Davidson College through his sophomore year but enlisted in the U.S. Army and was sent to Europe in 1943 at the age of nineteen as a private in the 103rd Infantry Division as a machine gunner. His unit marched and fought from Italy to Austria. The day before his twenty-first birthday, his platoon was ambushed and came under heavy fire from surrounding hills. He was shot across the head by a sniper and knocked unconscious, but it was a scalp wound



and he returned to service quickly, with a Purple Heart. After the War, O.E. returned and graduated from Davidson, then law school at UNC-Chapel Hill. O.E. practiced for sixty-six years, retiring in 2016, concentrating on insurance defense and municipal law. He served as President of the North Carolina Bar Association and as State Chair of the North Carolina Chapter of the College. O.E. was very involved in his church. He served on the Board of Directors of Montreat Anderson College, the Board of Directors for the American Red Cross and the UNC-Asheville Board of Directors. O.E. sang Barbershop for years in the Asheville Chapter of the S.P.E.B.S.Q.S.A. (Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America) and was a tenor in a quartet called the "Melodons." O.E. played the clarinet with a local band "Strings and Things." He often pulled out a harmonica to entertain himself and others. O.E. loved sailing his Sunfish boat, swimming, skiing and taking tours of the lake in his boat.

Wallace Gilmer Steidley, Jr., '96, died at the age of seventy-six on August 22, 2021 as the result of injuries from an automobile accident. Gil began his practice in 1969 in McAlester, Oklahoma after graduating from the University of Oklahoma College of Law. His practice focused primarily on criminal matters during the first ten years, trying dozens of major felony cases, including five murder cases. After those ten years, he refocused his practice to defense litigation, with an occasional plaintiff's case for friends. His practice concentrated on catastrophic injury litigation, oil field law, trucking and transportation law, products liability, bad faith litigation, insurance defense, railroad law and legal malpractice litigation. Gil was predeceased by his wife, Marilyn, and survived by three children and seven grandchildren.

Walter H. Sweek, '90, died unexpectedly on August 7, 2021 at the age of eighty-five, survived by his wife of sixty-two years, Gloria, three children, five grandchildren and one great-grandchild. Born in Klamath Falls, Oregon, Wally grew up hunting, fly fishing, and spending time with friends who stuck with him for life. He met Gloria in high school. He served in U.S. Marines before college, aided by the GI Bill, and the University of Oregon Law School, where he graduated with honors. After a clerkship with Judge John F. Kilkenny, Wally embarked on his fifty-six-year legal career, eventually retiring in 2019. Wally was an avid distance runner for most of his adult life, running the Boston and Seaside Marathons and many other distance

aces, but he mostly loved running with his Multnomah Athletic Club running group. He appreciated good food and wine. He was an avid reader and enjoyed talking about ideas with others. But Wally and Gloria were a real team, going on many travels and bicycle tours together.

Lee Davis Thames, '86, died on June 29, 2021 at his home in Vicksburg, Mississippi. He was eighty-four. As the son and grandson of attorneys, Lee knew early on that he wanted to practice law — and he did for 54 years. Lee spent much of his youth in Vicksburg courtrooms, attending trials with his father and grandfather. Lee graduated first in his class at the University of Mississippi, where he served as the editor of the University's annual for two years and used that position to express then-radical attitudes regarding race. After active duty in the U.S. Army, Lee returned Mississippi to earn his JD in 1966. While he prospered as a lawyer, he remained in the Army Reserve, and over the course of thirty-two years of service he earned the Distinguished Service Medal, the highest non-combat medal awarded by the Army, retiring as a Brigadier General. It was with the same faithfulness and integrity that General Thames lived his life that guided him as he fought illness during the last year and a half of his life. When he was diagnosed with pancreatic cancer in the fall of 2019, doctors told him that he had three to six months to live. "My main goal," Lee responded, "is to stay alive long enough to vote Trump out of office." The doctors laughed, but Lee exceeded their expectations and fulfilled his facetious last wish. Mainly, he fought to stay alive for the woman he called "sweetheart," Jane Andrews Thames, his wife of more than fifty years. General Thames is survived by Jane, their seven surviving children (an eighth child died in infancy), sixteen grandchildren, and one great-granddaughter.



Howard J. Trienens, '70, died July 26, 2021. He was ninety-seven years old. A double alumnus of Northwestern University, Howard received his bachelor's degree in 1945 after returning from service in the Army during World War II. At the Northwestern University School of Law, he was editor-in-chief of the Illinois Law Review (now known as the Northwestern University Law Review). Howard met his late wife, Paula, at Northwestern, and they were married in 1946. After graduating in 1949, Howard taught a course in criminal law at the law school before serving as a law clerk to Chief Justice Fred M. Vinson on the U.S. Supreme Court. Howard returned to private practice in Chicago and

was instrumental in building his law firm into one of the largest and most prestigious firms in the World. From 1980 to 1986, while maintaining his position at his firm, Howard served as senior vice president and general counsel of AT&T, playing a key role in resolving the antitrust litigation brought by the United States. The consent decree in that litigation introduced competition into the telecommunications industry, and he was deeply involved in the restructuring of the Bell System and AT&T following the settlement of the Department of Justice suit.



"Howard was clearly the smartest person in any room. But he wielded his incredible intellect in a humane and inspiring way," said Northwestern President Morton Schapiro. Howard led his firm's executive committee from 1977 to 1993. During that time, the Chicago-founded firm expanded into Los Angeles and New York, Singapore and Tokyo. Howard's partner, FACL **Carter Phillips**, describes Howard as "the single most important partner in Sidley's 155-year history." Howard was preceded in death by his wife, Paula, and his oldest son John. He is survived by his daughter, son, nine grandchildren, fourteen great-grandchildren, and his longtime friend and companion, Sally Dumas.

F. Alton Tybout, '76, literally died with his boots on, at age ninety, when he collapsed while arguing a case in court on January 8, 2020; he passed the following day. Alton graduated from Duke University in 1951 and Yale Law School in 1954. He served two years in the U.S. Army from 1954-56 and as Deputy Attorney General of Delaware in 1957-58, promoted to Chief Deputy in 1958, before entering into a private practice focusing on Med Mal, Insurance Coverage and Construction. In his seventies, after a legendary career in Delaware, Alton retired and moved to California; that last case was for a personal matter. Alton is survived by his wife, Julie P. Johnson Tybout.

Walker Y. Worth Jr., '95, ninety-three, died peacefully at home on August 30, 2021. Walker grew up in Raleigh, NC. He attended the University of North Carolina at Chapel Hill, where he met Sue, his wife of sixty-five years. He earned his undergraduate degree in Accounting from the School of Business Administration in 1950, where he was Phi Beta Kappa. He graduated with honors from the UNC School of Law in 1953, where he was Order of the Coif and President of the Senior Law Class. After law school, Walker served thirty-seven months in the Judge Advocate General's Corp. In 1957, ▶

Walker and Sue moved to Fayetteville, where he practiced law for the next fifty-two years, primarily in insurance defense. Walker was predeceased by Sue, and is survived by their two children, five grandchildren and three great-children.

Rodger D. Young, '00, passed away on September 30, 2021 at age seventy-five. Rodger was born and raised in Montana, graduating from the University of Montana with honors. He received his law degree from the University of Minnesota and settled in Detroit for practice where he handled complex and high-profile commercial cases. Rodger had an extraordinary record of public service to the State of Michigan and to his country. He was appointed by the Governor to serve on the Michigan Environmental Review Board and the Michigan Transportation Commission. In

2007, Rodger was appointed by President George W. Bush as the United States Representative to the United Nations General Assembly along with former Governor of New York, George Pataki. Rodger served on the Board of the Detroit Medical Center and was named a Global Ambassador to the Susan G Komen for the Cure breast cancer foundation. Rodger is survived by his wife Jinny and a daughter.



KINCH MORGAN VARNER III



Past President Chilton Davis Varner's husband of fifty-seven years, was, as usual, in a coat and tie in his office on October 20, 2021 when he passed at the age of eighty. Morgan was a "boy from Union Springs," a metropolis of about three thousand inhabitants that

is the County Seat of Bullock County Alabama. Other than Morgan, Union Springs' most notable native sons include Eddie Kendricks, co-founder of the Temptations, and Jimmy Hitchcock, Auburn University's first All-American in both football and baseball. Morgan graduated from Princeton with a degree in Economics in 1963 and from Duke Law School, with honors, in 1966. Always the Southern Gentleman, Morgan and Chilton met when Morgan offered a local Alabama girl (from Opelika, the County Seat of Lee County, about fifty miles from Union Springs) a ride back to college after a school break in his little sports car (we think it was an MG but it should have been a Morgan). Chilton was attending Smith, so it was only four hours out of Morgan's way to Princeton (well, eight hours there and back), but Morgan was smitten and didn't mind. He proposed four months later.

Chilton and Morgan married during Morgan's last year of law school. After graduation, Morgan commenced active duty as an Artillery Officer in Germany, in charge of tactical nuclear weapons in the 4th Armored Division's area of operations. Morgan and Chilton's daughter, Ashley, was born during their posting in Germany.

His service completed, Morgan, Chilton and Ashley moved to Atlanta, where Morgan took a job as an associate with Kilpatrick, Cody, Rogers, McCarthy & Harrison. Three years later, Morgan founded his own firm, Varner & Stephens, which he grew to twenty lawyers before merging in 1999 with Stites & Harbison. Morgan practiced real estate, construction and estate law, literally until the day of his death. He was known as the polite, mannerly, dapper gentleman who arrived early, stayed late and always answered "Better than I deserve" when asked how he was doing.

Morgan coached Ashley's soccer teams for sixteen years. Always active in sports, Morgan's later years were somewhat limited due to lack of cartilage in his knees, and he turned more often to cycling than his old favorites of basketball, tennis and running. But he remained an avid fan of all sports, particularly Duke basketball.



Morgan's civic and community involvement focused on the arts and charities, including the Atlanta Symphony Orchestra, where he was a member of the Appassionato Society; the High Museum (Roundtable member); and the United Way (member of The Alexis de Tocqueville Society). He also conducted Church School classes on aspects of the development and beliefs of religious thought. Morgan sat on several Boards of Directors and was a member of the Duke Law School Board of Visitors.

Chilton and Ashley will miss Morgan, but not alone. We will all miss him. ■

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 8-10, 2022	3RD CIRCUIT REGIONAL MEETING (DELAWARE, NEW JERSEY, PENNSYLVANIA)
APRIL 22 – 24, 2022	REGION 6 REGIONAL MEETING (ARKANSAS, LOUISIANA, MISSISSIPPI, TEXAS)
APRIL 29-MAY 1, 2022	REGION 9 REGIONAL MEETING (KENTUCKY, MICHIGAN, OHIO, TENNESSEE)
JULY 7-10, 2022	NORTHWEST REGIONAL MEETING (ALBERTA, ALASKA, BRITISH COLUMBIA, IDAHO, MONTANA, OREGON, WASHINGTON)

STATE/PROVINCE MEETINGS

MARCH 17-20, 2022	NORTH CAROLINA FELLOWS MEETING	JUNE 13, 2022	NEW BRUNSWICK FELLOWS MEETING
APRIL 28, 2022	NORTHERN CALIFORNIA FELLOWS DINNER	JUNE 14, 2022	NOVA SCOTIA FELLOWS MEETING
APRIL 29-MAY 1, 2022	MISSOURI FELLOWS MEETING	JUNE 15, 2022	NEWFOUNDLAND AND LABRADOR FELLOWS MEETING
MAY 6, 2022	SOUTHERN CALIFORNIA FELLOWS DINNER	JUNE 18, 2022	MARYLAND AND WASHINGTON, D.C. SUPREME COURT DINNER
JUNE 10, 2022	TEXAS FELLOWS LUNCHEON		

COMPETITIONS

FEBRUARY 3, 2022	NATIONAL MOOT COURT
MARCH 3-4, 2022	GALE CUP MOOT COURT
MARCH 18-19, 2022	SOPINKA CUP
MARCH 30-APRIL 3, 2022	NATIONAL TRIAL COMPETITION

SPECIAL EVENTS:

MAY 3-5, 2022	MARSHALL SCHOLARS/ACTL PROGRAM
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JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
Newport Beach, California 92660

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*