

# JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

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**NORMAN ROCKWELL'S "THE PROBLEM WE ALL LIVE WITH" DEPICTING RUBY BRIDGES ON HER WAY TO INTEGRATING NEW ORLEANS' SCHOOLS IN 1960. SEE P. 39.**

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# LETTER FROM THE EDITOR

**“WHAT WAS YOUR BEST BOSS LIKE?”** MY DAUGHTER-IN-LAW KYLIE GAVE ME HOMEWORK FOR CHRISTMAS LAST YEAR – A SUBSCRIPTION TO STORYWORTH, IN WHICH I GET A QUESTION EACH WEEK THAT I AM SUPPOSED TO ANSWER. THIS WEEK’S QUESTION WAS TO DESCRIBE MY “BEST BOSS.”

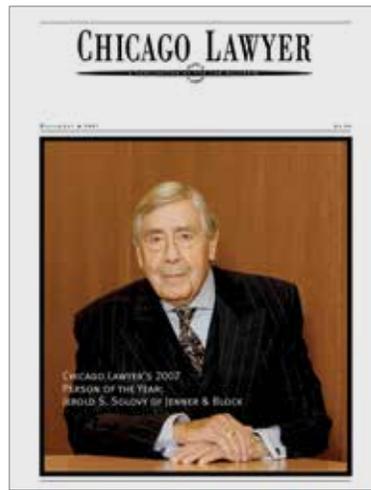
So, having practiced law – and at that, trial work – the concept of “boss” really doesn’t fit all that well. I have spent fifty years on teams assembled for specific matters. Sometimes teams of two or three; sometimes teams of hundreds; most often, half a dozen to a dozen. There was never a “boss” – rather, there was a senior who was ultimately in charge, but he or she usually made decisions by consensus with the other team members.

Don’t get me wrong. As a young lawyer, and even as an experienced lawyer, I was definitely working for others who had more say than I did; but with rare exceptions, I felt part of a team. And even when I became the senior, I was never in the position of “boss” – I simply led the team.

But if I had a boss, it was definitely Jerry Solovy.

Jerry was the official Chairman of my firm for seventeen years and the unofficial life-force of the firm for another twenty.

Jerry and I tried the *Con Foods* case together. We – well me and fifty other lawyers with Jerry in the lead – slogged the *UV* case to a settlement. We tried the *Hitachi v. Motorola* patent case in Austin in a three-day trial that had thirty-eight actual hours of trial, nearly thirteen hours a day. The *Morgan Stanley* case. Lots of cases. He gave me



When I was a first-year associate, we were in New York and went to dinner with his first wife, Dolores Kohl – at *Le Grenouille*, a pretty ritzy place. Dolores ordered in flawless French. I pointed to something on the menu. Jerry told the Maitre to bring him the biggest piece of meat they had and a bottle of ketchup. “Monsieur,” the Maitre bristled, “at *Le Grenouille* we do not have le katsoop.” Jerry handed him a \$50 bill and said “Buy some.” They brought him ketchup. In a boat.

Jerry preferred hot dogs to, well, to almost anything. He wouldn’t touch sushi, and told our Japanese clients – to their stony faces – that their food was unfathomable.

Jerry was the most anal person I have ever encountered. But he taught me that attention to detail is important. No stone was ever left unturned. ▶

the opportunity to lead in other cases while he stayed backstage. The *DirectTV* case, the *Charlie Finley* case, lots of cases.

And here’s the thing. When I was an associate, whenever we bumped into another lawyer, Jerry would introduce me as his partner. Not his associate. Not his underling. His partner. His teammate. It was not lost on me that he was my boss but made me feel so much better about myself.

No brief was ever filed without going through a dozen drafts. No witness was ever called without a dozen run-throughs.

I worked with, for, Jerry a lot in my early years. My office was next to his. And to ease 12-16 hour work days, Jerry would often drop by for a few games of backgammon. On weekends when he didn't go to the office, he would drop by my house to play. We played a lot. For money, toted on a tab. By mid 1977, he owed me \$3,600 (about \$17K in today's dollars). It never occurred to me that he would ever pay up – the tab had become too big, it was like monopoly money. Jane and I had a three-week vacation to Europe scheduled – not easy in those days to take three weeks off, and Jerry was none too happy about it. But he basically told me that if I worked eighteen-hour days in the two weeks before, I could go. On the night before our flight, at about 2 am, Jerry finally declared I could go home and pack. And he handed me a check for the \$3,600. Hotels instead of hostels.

Jerry and I never gambled again. He paid his debt. But he wasn't willing to incur another.

When I was made an actual partner a few months later, Jerry gave me a gift – a Baume & Mercier gold watch. It had a purple dial and screamed Las Vegas. It was the tackiest thing I had ever seen. But a friend told me I should go to the jewelry store it had come from to get an idea of its worth. \$8,000. (\$37K today) I changed the dial and it's a keepsake now.

That was Jerry. Tacky. Generous. Anal. Childish. Impressive.

One Saturday in the early 70s, Jerry took me to lunch. It was a rare Saturday that I came to the office and Jerry had noticed. "Bob," he said, "you have to make a choice between family and career." I had Jane then, but we hadn't started our family; we hadn't even decided whether we would have a family. But I answered without hesitation "I choose family." "Well," Jerry proclaimed, "then your career will never amount to much."

Thirty years later, on a rare Saturday when I came into the office, Jerry took me out again. "Do you remember a few years ago when I told you that you had to choose between family and career?" "Yes, Jerry, I've never forgotten." "Well," Jerry said, "You were right. I was wrong."

That was Jerry.

I have one regret. In 2010, I introduced Tony Valukas, who had become Chairman of our firm after Jerry sort-of stepped down in 2007, when Tony spoke at a College meeting. And I introduced Tony as the best Chairman my firm had ever had. Jerry and his second wife, Kathleen, were in the audience. Oops. Now, I meant what I said. Tony was our best Chairman because he was our first and only Chairman who did what Chairmen are supposed to do – plan for an orderly transition to the next one. Jerry and other past Chairmen had to be taken out in what amounted to coups; they had no intention of being succeeded, so no plan. Tony did. But I didn't have the time as I was making my introduction to explain that very well, and Jerry seemed a bit cool after that.

Jerry died the next year. At age eighty, he died peacefully in his sleep after putting in a ten billable hour day. Exactly as he would have wanted it, albeit of course too soon. I wish I had made the time to explain my introduction of Tony, but, frankly, I'm not sure I would have been able to.

Jerry was my friend. He was my mentor. He was my Rabbi. He was my boss.

I have met a lot of successful people in my lifetime, but never once have I met anyone who achieved success without help. If you haven't mentored someone, there is still time. There is always time until there isn't. Mentors are important. Important to have them, important to be them. Important to remember them. So thank you, Kylie, for jogging my memory.

He was my best boss. Well, except of course for Jane, who has always been the boss of me.

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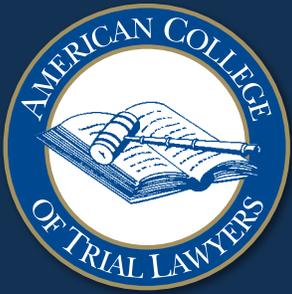
We have another great issue for you. We recap the Spring Meeting in Coronado, whose speakers included a range of genuine heroes – including Ruby Bridges, whose walk into the integration of the New Orleans school system was memorialized in Norman Rockwell's iconic painting, a cropping of which graces our cover with the generous permission of the Rockwell Estate. We welcome sixty-one new Fellows, and say last farewells to seventy-three departed Fellows. We have an interview with the Chief Justice of Canada. And more.

**Bob Byman**

SEPT 15 - 18

# 2022 ANNUAL MEETING ♦ ITALY

Rome Cavalieri, A Waldorf Astoria Hotel



DON'T  
MISS THIS  
ONCE-IN-  
A-LIFETIME  
EVENT



# PRESIDENT'S PERSPECTIVE



BRETT AND I ARE LOOKING FORWARD TO THE COLLEGE'S ANNUAL MEETING IN ROME THIS SEPTEMBER. PRESIDENT-ELECT **SUSAN HARRIMAN** HAS ASSEMBLED ANOTHER GREAT COLLECTION OF SPEAKERS AND EXECUTIVE DIRECTOR DENNIS MAGGI AND THE NATIONAL OFFICE HAS PLANNED WONDERFUL SOCIAL EVENTS FOR THE MEETING. IT PROMISES TO BE A MEMORABLE EVENT NOT TO BE MISSED.

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The College has sixty-two state and province committees and forty general committees. We appreciate the Fellows who chair, vice chair, and participate in these committees that are the lifeblood of the College. I take this opportunity to recognize the important work of a few of the general committees:

## **ADVOCACY IN THE 21ST CENTURY**

The **Advocacy in the 21st Century Committee** has released two additional papers, "Statement on Virtual Proceedings in the Civil Justice System" and "Remote Proceeding Advocacy." This committee has worked extraordinarily hard to guide trial lawyers and the judiciary through the challenges presented by the pandemic.

## **COMMUNICATIONS**

The National Office has launched the new Learning and Resource Center. This is an excellent new resource for Fellows and we encourage you to use it. The **Online Advisory Committee** will also be consulted regarding the preparation of a new College website.



The **Communications Committee** and **Outreach Committee** continue to publish six bi-monthly issues of the eBulletin annually. The first two seasons of the College's new podcast "Trial Tested" are now available on your favorite podcast listening app or by visiting [actl.podbean.com](http://actl.podbean.com). Episodes include interviews with **Past President Joan Lukey**, **Fellow Rusty Hardin**, **Judge Roger Gregory**, **Past President Bob Fiske**, **Fellow Chris Arguedas**, **Past President Chilton Varner**, **Linda Dunikoski**, **Fellow Alan Levine**, **Fellow Cyrus Vance**, and **Ken Feinberg**.

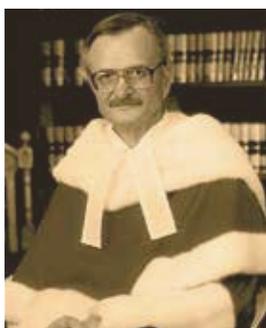
## COMPETITIONS

The **National Trial Competition** is the only one of our four annual trial/appellate competitions to proceed in-person this year. Brett and I attended the competition in Ft. Worth, Texas. This year the top two teams were from the same school – UCLA. The quality of the students' advocacy was impressive, as was the enthusiasm and dedication of the College's committee members who served as judges throughout the weekend.

A team from Texas Tech won this year's **National Moot Court Competition** in a field of 152 teams from 104 law schools. Due to a trial conflict, President-Elect Susan Harriman ably fulfilled my obligations as a judge and presenter of awards.

The **Gale Cup Moot Court Competition**, Canada's premier law school moot competition, was held virtually on March 3 and 4, 2022. I had the honor of presenting the awards to some of the winners. It is a Canadian bilingual (English and French) moot competition that involves criminal and constitutional law issues. I presented in English only. My high school French teacher would be disappointed but not surprised. The Honorable Richard Wagner, Chief Justice of Canada, along with Justices Michael Moldaver and Mahmud Jamal, presided over the final round.

The **Sopinka Cup** was held virtually on March 19, 2022. I excused myself from the North Carolina Fellows reception and dinner to provide remarks to the students, barristers, and judges who participated in the Sopinka Cup, which is named after Canadian Supreme Court Justice **John Sopinka**, a Fellow in the College who was beloved by Canadian and US Fellows. Justices Melanie Sopinka and Mahmud Jamal also participated.



## COMPLEX LITIGATION

The **Complex Litigation Committee** released its treatise on use of electronic evidence. It was published by Bloomberg Law. We are interfacing with the Federal Judicial Center to make the treatise widely known and distributed.

## HONORARY AWARDS

The **Honorable Barbara M. G. Lynn**, Chief Judge of the United States District Court for the Northern District of Texas, accepted the **Samuel E. Gates Award** from **Immediate Past President Rodney Acker** at the Spring Meeting in Coronado. Judge Lynn, a Fellow, was a national leader in devising protocols permitting trials to go forward during the pandemic. Her work in this regard became a model for other courts throughout the country.

The Honorable Barry Glenn Williams, Baltimore City Circuit Court, accepted the **Sandra Day O'Connor Jurist Award** from Judicial Fellow the **Honorable Michael J. McAuliffe** at the Spring Meeting in Coronado. Judge Williams displayed great fortitude and courage in presiding over the trials of police officers charged with the death of Freddie Gray.

Patricia Herbert, Q.C., accepted the **Beverly McLachlin Access to Justice** ▶

**Award** from **Past President Jeff Leon** at the Spring Meeting in Coronado. Ms. Hebert practices family law with a focus on children. She is a leader in Canada on reforming and improving best practices in family law cases.

## JUDICIAL INDEPENDENCE

At the beginning of 2020, the College, through its **Judicial Independence Committee**, entered into a collaboration with the National Association of Women Judges (NAWJ) for an adult public education pilot project. The purpose of the ACTL/NAWJ collaboration was to create a revised presentation intended for adult, lay audiences that would be delivered by ACTL Fellows, sometimes partnering with NAWJ members.

The target audience for this new program are civic groups (for example, League of Women Voters, Rotary Club, Lions Club, Chamber of Commerce or Metropolitan Club), or an adult education forum (for example, university/college/community college, library alumnae group, or lifelong learning institution).

The pandemic has created obvious challenges for the program. However, the Judicial Independence Committee worked with NAWJ leadership to revise the presentations and make it adaptable to virtual as well as live audience delivery.

The PowerPoint and related materials remain on the College's website and are available for use by College Fellows, subject to NAWJ's agreement. Please reach out to **Committee Chair John Wester** or Fellows **Virginia Nelson**, **Natalie Tarantino** or former **Regent Kathleen Trafford** if you are interested in using the materials to make a local presentation.

The Judicial Independence Committee also analyzed the December 2021 Brennan Center Report which highlights legislation of bills that sound an alarm for judicial independence.

## MENTORING

The **Mentoring Committee** launched a program in April in coordination with *Just The Beginning: a Pipeline Organization*, to support paid judicial internships for disadvantaged students unable to afford an unpaid clerkship. The students have been matched with many of our Judicial Fellows who have volunteered to participate in this program. The College donated \$25,000 and the US Foundation donated \$75,000 toward this effort.

## FEDERAL CRIMINAL PROCEDURE

Last fall, the **Federal Criminal Procedure Committee** issued its Brady-Giglio Guide for Prosecutors, which provides suggested practices to help all prosecutors meet their disclosure obligations. The guide was written with input from current and former federal and state prosecutors, with the goal of encouraging prosecutors to adapt practices that will assist them in meeting their disclosure obligations with integrity, thereby enhancing the administration of justice.

In September 2021, the committee co-authored a white paper with the **Public Defenders Committee** proposing a national expansion of federal pretrial diversion in criminal cases.

## TRAINING

The Subcommittee on Teaching Abroad of the **International Committee** is exploring programs in Africa and Poland in 2022 or 2023. On December 4, 2021, the **International Committee** in conjunction with the **Boot Camp Committee**, hosted a boot camp for young barristers from England, Scotland, and Wales. Over 200 barristers participated in the program which was very well received. We have been invited to host another boot camp in England in 2023. Hopefully, it will be in person. Finally, the Committee will conduct a teaching program in Palau later this year.

The **Boot Camp Trial Training Programs Committee** has or will present programs in Maryland, Chicago, Houston, Miami, Denver, Orlando, Washington DC, Phoenix, Los Angeles, Philadelphia, Atlanta, Seattle, New York, New Orleans, Michigan, and Kansas City.

## PERSONAL PERSPECTIVE

There has been a concerning trend in our country's law schools, law firms, and Congress that any lawyers who deviate from certain beliefs and behaviors are silenced or attacked. This is particularly true with respect to issues of free speech and representation of unpopular clients. There are a number of recent examples of this disturbing trend. These examples demonstrate poor conduct by conservatives and liberals, Democrats and Republicans.

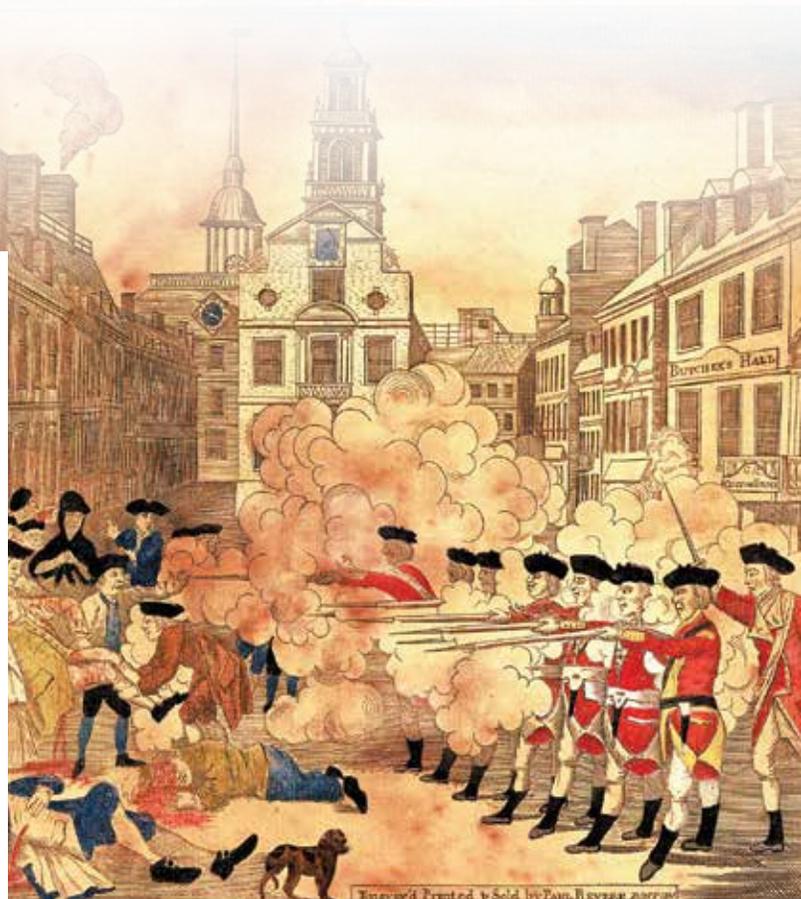
At a number of law schools, students are protesting the presence of conservative speakers and ideas with which they disagree through both obstruction and physical threats. The First Amendment guarantees the rights of individuals to speak, assemble, and peacefully protest when and where appropriate. However, it is troubling when a room full of our best and brightest future lawyers share a misunderstanding of free speech by interfering with others' rights to expression. Everyone, regardless of their viewpoint, should be allowed to participate in free speech and expression. Our society's increasing inability to engage constructively with those who hold a different point of view is a serious problem that infects public debate.

Hallmarks of great lawyers include critical analysis, curiosity, respectful persuasion and civility. The system does not work when one side refuses to permit legitimate debate to occur. It also reflects the failure to develop important listening skills.

During her confirmation hearing, Judge Ketanji Brown Jackson was questioned as "soft on terrorism" because of her role as a public defender and later as a private attorney representing a few Guantanamo detainees who were never convicted of any offense. Her representations were fully consistent with the traditional role of defense counsel in our American system of justice. It was unfair and inappropriate for Senators to question her fitness to serve on the Supreme Court of the United States because of these representations, just as it was unfair and inappropriate for Senators to question Justice Amy Comey Barrett about her faith and religious beliefs during her confirmation hearing.

John Adams, who became the second President of our country, defended at trial Captain Thomas Preston, who was charged with murder for his role as the commanding officer of the British troops who fired on civilians during the Boston Massacre. President Adams later reflected that undertaking this defense was the finest act he ever performed in service of his country.

In keeping with the spirit of John Adams, ACTL sent out a call for volunteers to represent detainees held at Guantanamo in habeas corpus proceedings challenging their continued confinement without charges being filed. More than 60 Fellows answered this call and admirably and honorably



represented their clients. The College can continue to play an important role in educating our students, lawyers, politicians, and the public to embrace, not attack or undermine, some of our cherished ideals such as the right to free speech and the right of an accused to an attorney. If we fail to remain vigilant, these rights can and will be lost.

Our Executive Committee has asked the College's **Judiciary Committee** and **Judicial Independence Committee** to review some of these issues, including whether the Senate should consider improving its processes for vetting candidates for federal judgeships, especially nominees for the Supreme Court of the United States. The Mission Statement of our Judiciary Committee includes efforts to "analyze and seek to ameliorate barriers to the attraction and retention of highly qualified judges." Many highly qualified lawyers who would otherwise want to be considered for a federal judgeship would view the unprofessional and unproductive behavior of both political parties during confirmation hearings, which have been progressively worse over the last 30 years, as a significant barrier to their judicial intentions. We hope to reaffirm the importance of civility to these forums. We will keep you advised of developments in this regard.

Brett and I look forward to our future trips this year to various states and provinces. Our best wishes to you and your families.

*Mike O'Donnell*



2022

THE 2022 SPRING MEETING AT THE HOTEL DEL CORONADO WAS A HUGE SUCCESS. 512 FELLOWS AND SPOUSES ATTENDED IN PERSON WITH ANOTHER EIGHTY-FOUR JOINING VIRTUALLY. WE WELCOMED SIXTY NEW FELLOWS TO OUR RANKS. A FEW OF US PLAYED GOLF OR TENNIS OR JOGGED OR JUST VEGGED OUT. WE SAW OLD FRIENDS AND MADE NEW FRIENDS.

# SPRING MEETING

We always have great programs at these meetings, but this one was really special, thanks to **President-Elect Susan Harriman**. We had a panel of distinguished judges who spoke – firsthand – on the troubling issue of violence against judges. We heard from the lawyers who handled two of the most racially charged cases in our recent history – the Charlottesville White Supremacists and Ahmaud Arbery cases – who explained how they dealt with race in those two very different but equally high-charged matters. And speaking of race, we heard from Ruby Bridges, who in 1960, at age six, found the courage to cross picket lines of angry protesters to be the first child to integrate the New Orleans school system.

And speaking of heroes, we heard from a former fighter pilot in the Air National Guard who disclaimed that she was a hero. Yet on 9/11, she jumped into her F-16 – which was unarmed – with the mission of stopping United flight 93 from crashing into the US Capitol. The only way she could do that would be to fly her plane into the other. And she was fully prepared to do that. Luckily (her nickname is “Lucky”) she didn’t have to do it. But she is a hero.

We heard about everyday heroes. The entire town of Gander, Newfoundland, who mobilized to attend to thousands of travelers who were diverted on 9/11 when the US closed its airspace.

We heard from a two-time Tony-winning producer who started his professional life as a California lawyer but found his way to Broadway.

If you registered for the Spring Meeting and missed parts of the program, or if you want to watch something again, you can watch videos of all of the speakers on the College’s website, <https://learn.actl.com/products/2022-spring-meeting>.

If you missed this meeting, you really missed something. Don’t miss Rome.

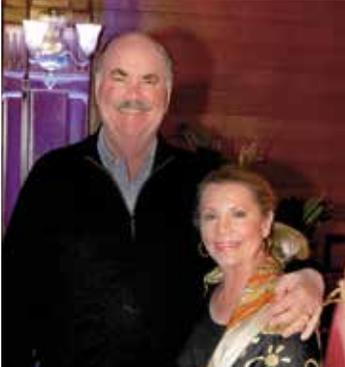




JUST A FEW OF OUR MANY



# Meeting Memories









TO THOSE THAT  
 ATTENDED, IT WAS  
 GREAT TO SEE YOU.  
 AND TO ALL, SEE  
 YOU IN ROME!

# THE GREAT DISSENTER – JUSTICE WILLIAM O. DOUGLAS

## With Judge Margaret M. McKeown

IT WAS GIRL SCOUT COOKIE SEASON WHEN FELLOWS AND SPOUSES GATHERED IN CORONADO FOR AN IMPRESSIVE CONTINUING EDUCATION PRESENTATION BY NINTH CIRCUIT JUDGE MARGARET M. MCKEOWN. JUDGE MCKEOWN SPOKE ABOUT HER SOON-TO-BE-PUBLISHED BOOK ON THE LIFE OF JUSTICE WILLIAM O. DOUGLAS—THE LONGEST TENURED JUSTICE ON THE SUPREME COURT AND A LEADER IN THE MOVEMENT TO CONSERVE AMERICA'S SCENIC AND NATURAL TREASURES.

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Girl Scout Cookies provided a fitting backdrop for a presentation by Judge McKeown, who has a life-long affection for Girl Scouting. As a young woman, it was scouting that first took her to Washington, DC, where she was introduced to her Wyoming Senator, treated to an ice cream sundae in the Senate Dining Room, and marked forever by the Rule of Law. To this day, Judge McKeown has been known to welcome girls delivering Girl Scout Cookies by inviting them into her home, sitting at her piano, and singing campfire songs.

Judge McKeown's interest in Justice Douglas began by happenstance when she was snow-shoeing in Grand Teton National Park and came upon the cabin that once was the ranch home of Olaus and Mardy Murie—early leaders in the Wilderness Society and colleagues of Justice Douglas in the cause of conservation advocacy. How in the world did the Muries become connected to a famous Supreme Court Justice? Judge McKeown began researching Justice Douglas on a lark and quickly found herself consumed. This led to her upcoming book: “Citizen Justice: The Environmental Legacy of William O. Douglas.”

In some ways, Judge McKeown's interest in William Douglas was an outgrowth of her own background as a Westerner and her life-long interest in the outdoors. What else would prompt a prominent jurist to embark upon the summit of Mount Shishapangma—the 14th highest mountain on earth? And why else would a busy person—a former White House Fellow who had worked as a Special Assistant to Secretary of the Interior Cecil Andrus – spend her precious free time in the Library of Congress researching a controversial Supreme Court Justice?

Justice Douglas was a Westerner at heart, and Judge McKeown explained that for the Justice, a western-style hat was a genuine symbol of his roots, not just a glamorous chapeau. Raised in Yakima, Washington, Douglas was a small and sickly boy with youthful bouts of illness, and his early life often cast him as an underdog. To strengthen himself, he took up hiking, and in the wilderness found a spiritual connection to nature.

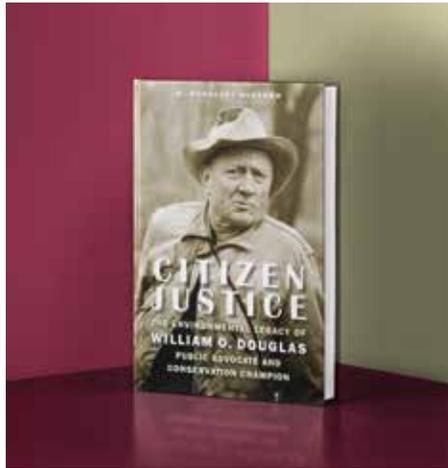


After studies at Whitman College in Walla Walla, Washington, Douglas went to Columbia for law school, which eventually led to an elite associateship on Wall Street. Silk stockings were not his nature, and soon he left private law practice for academic life at both Columbia and Yale. Later drawn to Washington, DC, under the mentorship of Joe Kennedy, he worked at the Securities Exchange Commission. Within a short period he found himself appointed by President Roosevelt to the SEC itself, and he became the Commission Chair in 1937. Needing a “westerner” on the Supreme Court, Roosevelt nominated Douglas to replace Justice Brandeis, and thus the “great dissenter” became the second youngest person ever appointed to the Court. Interestingly, a five minute Senate hearing was held two days after his nomination, and he was confirmed with apparent ease.

Judge McKewon acknowledged that in his heart, Douglas was a political animal who thrived in the Washington, DC, environment. He was a bona fide insider during the Roosevelt years, playing poker at the White House and hobnobbing with ambassadors and politicians, even after he joined the Supreme Court. And his political star continued to rise after ascending to the Court. He remained a potential presidential nominee

into the 1950s, and there was reason to believe Douglas would be the vice-presidential candidate in 1944 when Harry Truman was chosen instead. Truman himself asked whether Douglas would be the vice-presidential nominee in 1948, and Justice Douglas was rumored to say “Why be number two to a number two?” The Justice had observed that politicians were perishable, so he opted to remain on the high court.

Douglas was a prolific writer, and after convalescing from very serious injuries when his horse slipped and slid down a mountainside in the Cascade Mountains, landing atop the Justice, Douglas wrote the first of an autobiographical trilogy, “Of Men and Mountains.” Two abiding thoughts consumed him as he moved through his second decade on the Court: wilderness spaces provided a sanctuary and the Constitution was created to get government off the backs of common people. These two ideas permeated his remaining years as a jurist.



opposition. The Justice then took the editors of the Post with him on a famous 1954 hike along the canal, and he successfully persuaded the newspaper to change its editorial position. Today, a bust of Justice Douglas stands at the canal’s trailhead in Georgetown as a tribute to his role convincing the Secretary of the Interior and the Park Service to preserve the space as a special place of nature.

In the wake of his leadership on behalf of the C&O Canal, the Muries saw the celebrity value of enlisting Justice Douglas’ support for preserving arctic spaces. They invited Douglas and a scientific research team from the New York Zoological Society to join them on an expedition in the Sheenjek River territory of Alaska. Douglas worked the political halls of Washington and helped persuade President Eisenhower to extend protection to vast space in the Alaskan arctic, which now is the subject of the Alaska Lands Conservation Act.

The Justice was nothing if not determined, and historian Douglas Brinkley said dealing with Justice Douglas was like dealing with somebody who shaved with a chainsaw. Dedicated to the preservation of natural spaces, Douglas’ name itself became sterling. Though some saw him as “a goofy ▶

bird from Washington,” he knew the corridors of power and worked magic on behalf of the nature conservation movement. He joined the Board of Directors for the Sierra Club and remained a major force: his record is exemplified by multiple instances of finding a wilderness locale at risk and then marshaling citizens to join the cause. Judge McKeown called him a “one man lobby shop,” all the while discharging his responsibilities as a Supreme Court Justice. He was a black-robed ombudsman for the environment, constantly working the back channel to the White House on behalf of environmental issues.

Never shy about his view of natural spaces, Douglas was blunt-spoken and kept his own list of “public enemies,” chief of which was the Army Corps of Engineers. From his vantage point, all the Corps wanted to do was build dams, disrupt fisheries, and interrupt the natural flow of streams. The Forest Service also made his enemies list, and Douglas was incensed that all the Service seemed interested in doing was cutting timber.

In Kentucky, the Corps of Engineers proposed a high dam project to provide flood control through the Red River Gorge. The Sierra Club invited Douglas to join a protest, which was covered by Diane Sawyer on national television. On the flight home, Douglas wrote a note to President Johnson suggesting the Secretary of the Interior be directed to conduct “a study,” which in Washington parlance was a sure-fired way of slowing down the project. Once again, Douglas turned the system to nature’s advantage.

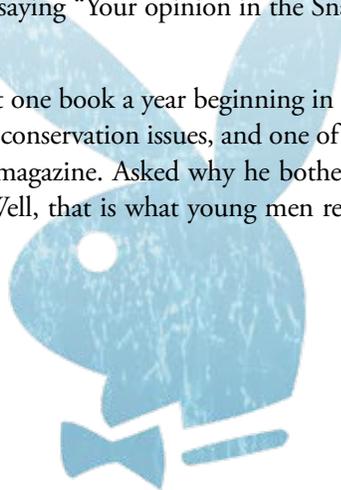
In another Corps of Engineers project, a dam was proposed for the Snake River. Litigation ensued, and the case worked its way to the Supreme Court. Douglas managed to get assigned the majority opinion in a case that actually presented a narrow legal issue: was there substantial evidence to support what the Corps of Engineers wished to do? However, the Justice shifted the issue to ask whether the Corps had taken full measure of the dam’s environmental impact. The majority opinion effectively denied the permit and sent the project back for further examination by the agency, which was the first time the Supreme Court ruled on the merits of an environmental issue rather than remanding for further proceedings by a lower court. The Sierra Club won, the Secretary of Interior won, and a high dam on the Gorge lost. Interior Secretary Udall wrote Douglas saying “Your opinion in the Snake River case is a conservation landmark.”

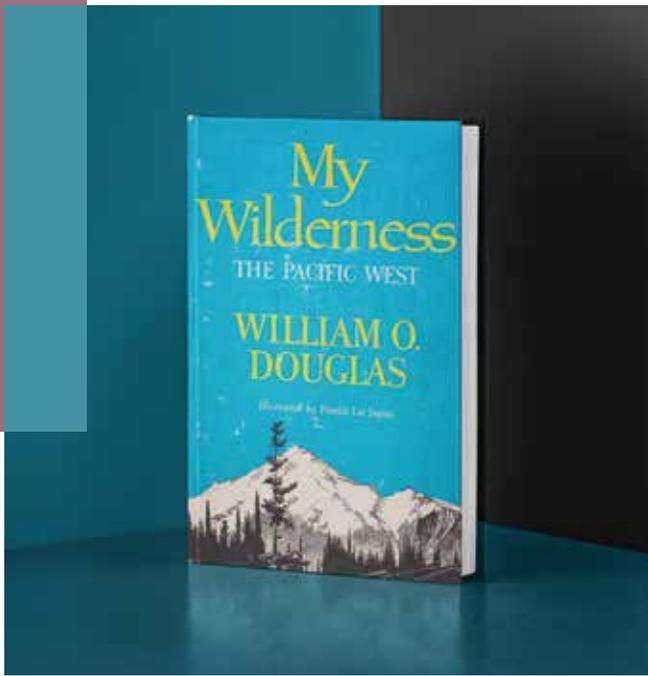
Douglas wrote over fifty books – almost one book a year beginning in the 1940s. He became America’s teacher on conservation issues, and one of his magazine articles appeared in Playboy magazine. Asked why he bothered publishing in Playboy, Douglas said “Well, that is what young men read.”

On the Supreme Court, Justice Douglas exhibited the confidence he lacked as a sickly young man, when he had craved approbation. He became the Court’s champion dissenter, and in 40% of those dissents, he was a lone voice in opposition. He dissented in eighty cases during the 1975 term alone, which is more cases than the Supreme Court now takes in a year. Yet, his prodigious work ethic caused him to write and participate in 4,000 opinions over the years.

Judge McKeown, who herself has exhibited a legendary work ethic on the Ninth Circuit while simultaneously taking a leading role in a multitude of extracurricular activities surrounding Rule of Law matters, commented about Justice Douglas’ habit at the end of the Supreme Court’s term. He finished writing his opinions and jumped on a plane for the solitude of the Cascade Mountains while others on the Court waited to deliver final opinions. This, along with his penchant for dissent, obviously did not sit well with others on the Court.

In one notable anecdote, Judge McKeown told the story of a lawyer who showed up at Justice Douglas’ Washington wilderness retreat – Goose Prairie – with a petition for special relief. This was a permissible practice at the time, but the Justice chastised the lawyer for appearing in the wilderness dressed in suit and tie, saying “You’ve got to dress better than that.” Douglas said he would have an answer the following morning, and it would be left outside on a rock. The next morning the lawyer came to the cabin, picked up the paper, and observed spare language saying “Petition Denied.”





Douglas saw hiking in the wilderness as a chance to be alone with nature, and that is where he was on the Supreme Court – a lonely outlier. The Justice would stake out a position and rather than jawboning his colleagues into a compromise, he issued his own decision. As Douglas said, “I’m not much of a proselytizer. I had the theory that the only soul I had to save was my own.”

Judge McKeown, who is known as a collaborator and whose dissents are rare, commented about Justice Douglas’ most famous dissent in *Sierra Club v. Morton*, which dealt with Walt Disney’s plans to construct a ski resort in a pristine area of California known as Mineral King. The Sierra Club sued, and the Ninth Circuit overturned an injunction issued by the district court. The next stop? Supreme Court review seemed inevitable.

The Sierra Club had made Justice Douglas a Life Member, and he had been a Board Member of the organization since the 1960s. Yet out of the blue, Douglas resigned from the Sierra Club in 1970 – while the Mineral King litigation was pending – with a letter stating “Well, I don’t want to be disqualified in any cases that might come before the court. . . . I am not thinking of anything in particular, and I haven’t even seen one or even heard one which is on its way.” Gossip surrounded the Supreme Court and media inquired whether Douglas would recuse himself, but taking a technical view of the conflict rules, Justice Douglas said “If I’m not a member of the Sierra Club, then no problem; no need to recuse.”

When *Sierra Club v. Morton* did reach the Supreme Court, the Club acknowledged it had not been damaged by the

proposed Disney development. Instead, the petition argued the novel theory that the injury was to Mineral King’s environment. Justice Potter Stewart wrote the majority opinion ruling the Sierra Club did not have standing to maintain the suit. In dissent, Justice Douglas said the case rightly should have been recaptioned *Mineral King v. Morton*, because inanimate objects should not be silenced; for the public’s benefit, a voice should belong to natural wonders. That legal theory stemmed from a law review article written in 1970, a synopsis of which mysteriously was given to the Justice by a former student who recalled a law school professor having posed a query to his students: “Hey, Nature can have legal standing. Corporations are inanimate, but they have standing. Why not Nature?”

Douglas drafted his dissent in *Mineral King v. Morton* in two hours right after oral argument. He waxed eloquent about nature and saw an opening for a novel theory of standing. The Sierra Club was more conventional. On remand, the Club amended its complaint, named an individual who was a member of the Club, and alleged a threat of harm because Disney’s plans would impair that person’s hiking and appreciation of nature. After so much delay, Disney gave up on the planned resort, and Mineral King remains wilderness today.

When he retired from the Supreme Court, Justice Douglas counseled his law clerks to “keep faith in the rule of law,” and when asked what he wanted his legacy to be, Douglas said he wanted to be known as somebody who made the earth more beautiful than we came upon it. Douglas certainly helped do that.

Widely known for her intellect and eclectic interests, Judge McKeown remains an outdoors adventurer at heart. And she is not known for flaunting her considerable accomplishments. Her comments about being elected to the American Academy of Arts & Sciences in 2020, and her service as Chair of the Federal Judicial Code of Conduct Commission were no more than modest remarks in passing. The Judge, known in her chambers as M3, has devoted her career to “sprinkling compassion around the world,” and as she prepares to take Senior Status, we can wonder what her next intellectual passion will be. Thankfully, she honored the College by her presence and shared a thoughtful presentation about an interesting chapter of American legal history.

**Charles H. Dick, Jr**  
**San Diego, CA**

# JUDICIAL INDEPENDENCE: WHAT DOES IT REALLY MEAN?

— Justice Martin Jenkins



THE COLLEGE MISSION STATEMENT IS ONE OF THE MOST PROMINENT DESCRIPTIONS THAT SOMEONE SEEKING TO LEARN ABOUT THE COLLEGE WILL FIND ON ITS WEBSITE. THE MISSION STATEMENT CONCLUDES WITH THE UNAMBIGUOUS DECLARATION THAT

“THE COLLEGE STRONGLY SUPPORTS THE INDEPENDENCE OF THE JUDICIARY . . . .”

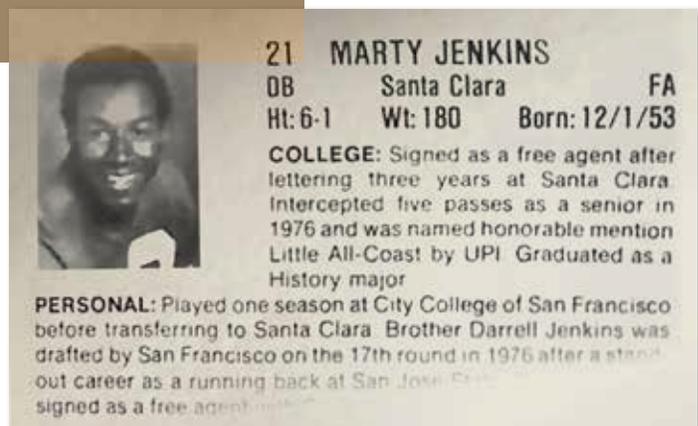
Over the years, the College has issued numerous statements, always politically bipartisan, in support of judges who have been unfairly criticized. Recent examples include two in 2020: a statement in support of federal district judge Amy Berman Jackson and a juror who were publicly criticized by the then President (a Republican) regarding the verdict in the case against Roger Stone, and a statement in support of Supreme Court Justices Kavanaugh and Gorsuch, who were publicly called out by the then Senate Minority Leader (a Democrat) in connection with a pending matter before the Court.

The College’s Judicial Independence Committee was recently created “to monitor developments related to the importance of an independent judiciary; to coordinate, publicize and track the College’s timely response to threats to the judiciary or attacks on judges; . . . and to recommend initiatives, as appropriate, to engage the College and Fellows in educating the public regarding the judiciary’s role in protecting the law.”

That the College and other organizations find it necessary to devote significant resources to identify and challenge improper threats to judicial officers reflects, in part, the reality that the concept of “judicial independence” has always been subject to discussion and debate, even at the founding of the United States. Recall the debates among the Founders – especially Alexander Hamilton and Thomas Jefferson – concerning which branch of government would have the ultimate authority to determine both what limits are provided by the Constitution and when a branch of government has exceeded them. The role of the courts continues to be the topic of vigorous dialogue today, often raised in the context of a particular issue, judicial decision, or when the President has made a nomination to a significant judicial position.

Martin Jenkins, Associate Justice of the Supreme Court of California (the highest appellate court in the largest state court system in the United States), spoke to the concept of “judicial independence” from his unique perspective, having served in multiple judicial positions in the course of a career that has spanned more than three decades. Following a brief stint in professional football (for the Seattle Seahawks) and graduation with honors from law school, Justice Jenkins worked as a deputy district attorney in Alameda County, California; in the U.S. Department of Justice Civil Rights Division; in-house for a public utility; and in 1989 accepted his first judicial appointment.

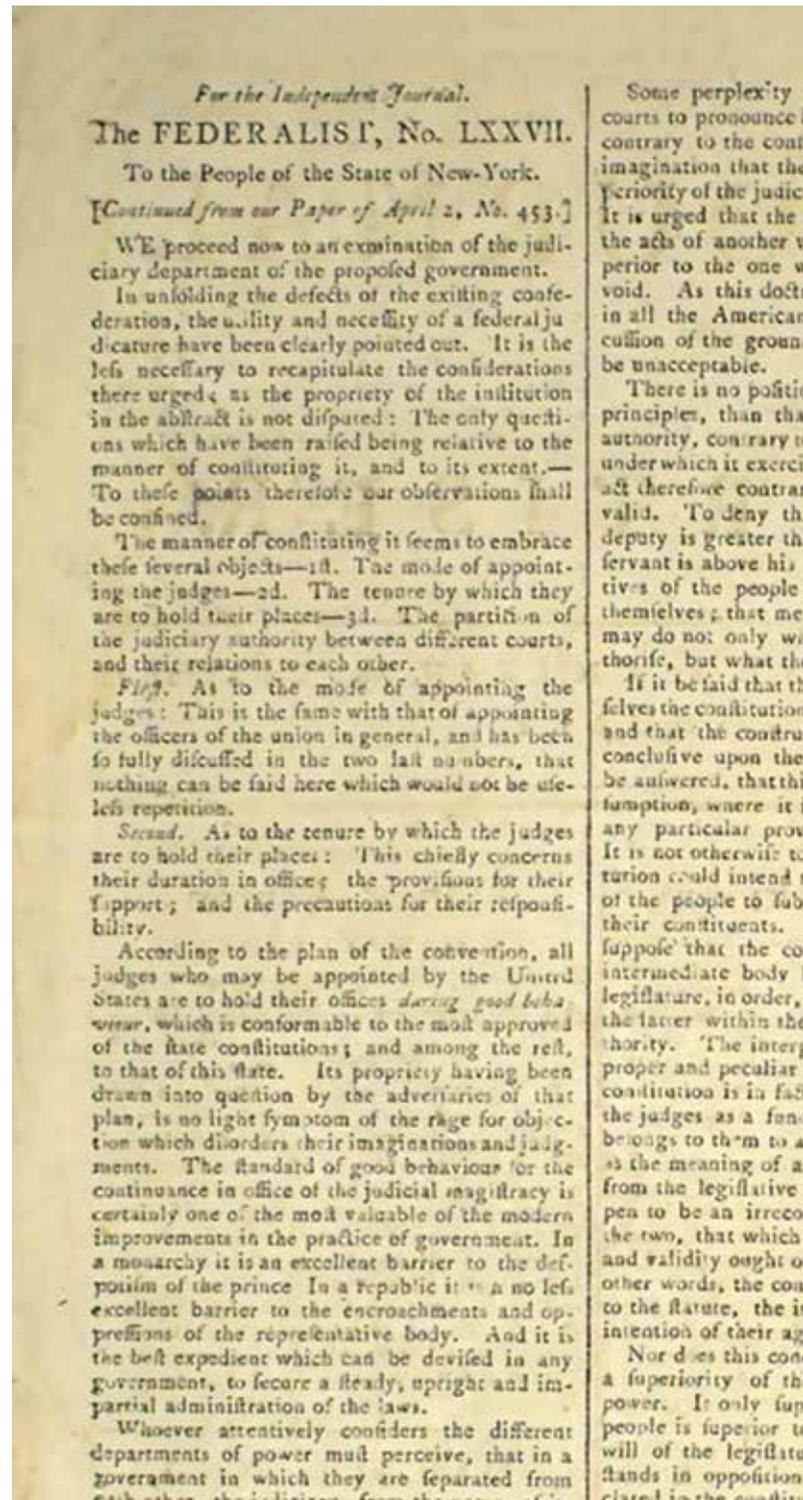
Justice Jenkins served on the municipal court, the superior court, the federal district court for the Northern District of California; the California court of appeals; and then as the Judicial Appointments Secretary for the Governor of California, where he was charged with vetting all judicial nominees before their appointments by the governor. Justice Jenkins is the first openly Gay member of the California Supreme Court, and the court’s third African-American Justice. He is widely regarded as extremely hard-working (personally recognizing that his determinations affect the lives of real people); intellectual and practical (with experience encompassing almost every subject matter in the law, civil and criminal); and as a person of depth and seriousness of purpose (who once even gave a homeless person the shoes literally off of his own feet). At his swearing-in ceremony, a now-retired federal judge remarked “no one will ever don the robes of the Supreme Court with greater humility, greater purpose, or greater commitment to justice, and the independence of the judiciary.” The College was fortunate to hear from a jurist with such a commitment to his community and one who has had the opportunity to ponder the question of judicial independence from virtually every angle.



Justice Jenkins’ observations were both personal and professional. He reflected, for example, on the importance of *pro bono* work in our profession, and on Justice Ginsburg’s repeated reminders that in addition to an “income gap” in our country there exists a “justice gap,” and that attorneys cannot claim a monopoly over the profession if they are not willing to assist those who do not have ready access to legal assistance. Justice Jenkins recalled an African-American trial judge and friend in a racially fractured section of southern Louisiana who was beloved in his community in part because he had given the people who lived there a political voice of their own as he struck down as unconstitutional

several laws that adversely affected African-Americans. The citizens in that judge's community affectionately referred to the judge as "their judge." While considering the influence of that friend, Justice Jenkins pondered the concept of judicial independence and what it may mean in any given circumstance, observing: "As I listened to the testimonies about 'their judge' I began to wonder what implications views like theirs may have for someone who sits as a judge. What were the implications for the concept of judicial independence? Had my friend felt compelled to rule in a certain way because he was 'their judge'? And the more the questions that came to mind, the less it became important to be able to answer them, and the more important it became to investigate them, to query them."

In conducting this inquiry Justice Jenkins identified the "searing observation that in this democracy every important political debate finds its way into the courts as a legal dispute." An independent judiciary is thus one of the most important safeguards of society, even though we do not have a static or exacting definition of how the concept should be defined or how it should operate. Justice Jenkins highlighted several historical statements and outcomes reflecting how the notion of judicial independence can be both aspirational and uncertain. Alexander Hamilton proclaimed that the judiciary is the "least dangerous" branch of government (meaning, to some, the branch that is the "least important" or "has the least influence"); during Thomas Jefferson's presidency, Congress began to assert the principle that the legislature (as the body best situated to express the will of the people) should have the last word on issues of importance; during his time in office President Roosevelt sought to add additional justices—sympathetic to his legislative goals—to the Supreme Court; in 1986 three members of the California Supreme Court were removed from office ostensibly because of their voting records in death penalty cases; in recent years esteemed federal judges have been publicly criticized because of their rulings in certain cases and even because of their ethnicities; and a superior court judge in California was removed from the bench because of a sentence he imposed in a high-profile criminal case even though the sentence followed the recommendations of the probation department. Although he did not mention the publication, Justice Jenkins' observations were proof of the wisdom of Justice Breyer's words, in his book *The Authority of the Court and the Peril of Politics*: "Put abstractly, the Court's power, like that of any tribunal, must depend upon the public's willingness to respect its decisions—even those with which they disagree, and even when they believe the decision seriously mistaken. . . . After all, the Court is without its own means to enforce its views directly, being reliant for this on the executive." That is, courts exercising their independent responsibilities do so not by exercising political preferences but by honoring the differences between the legislative function and the judicial function, requiring both power and restraint.



The current docket of the United States Supreme Court features, in Justice Jenkins' view, several "potentially momentous" cases, including those involving abortion laws and the continued viability of *Roe v. Wade*, the right to carry firearms outside of the home, climate change, and affirmative action policies at universities. These and other cases, pending in a post-9/11 society where the lines between security and individual liberties are being continually redrawn, frame in stark terms the importance of supporting the role of the judicial branch. The level of discourse in our societies, where competing views are often demonized rather than raised up for genuine discussion and debate, was identified by Justice Jenkins as one of the sources of uncertainty about what "judicial independence" really means. In his view, the conflict over what judicial independence represents and how it should be exercised has never been resolved, even after Justice Marshall's decision in *Marbury v. Madison*.

Justice Jenkins identified several factors which contribute to the continuing debates about what judicial independence should entail. While the Framers created a constitutional framework that was reasonably precise with regard to certain matters (e.g., the minimum age required to serve as President, the exact date for assembling Congress, and a detailed scheme for passing legislation), they were largely silent about the precise role the judicial branch should play, including whether judges have the power to interpret and overrule policies enacted by elected policymakers. As a consequence, and in a system in which "the People" are identified as sovereign, the notion that the judicial branch might override decisions by elected officials or by the voting public will always be a fair question of debate. And, by its very nature, the process of judicial decision making requires that judges make every effort to be unaffected by outside influences. As a result, Justice Jenkins concludes, "To outsiders, the manner and process we use to decide cases as judges is opaque and may seem to them to be undemocratic."



While judges are stewards of an important power and responsibility – to adjudicate the most significant issues of the day – that power and its sources are not well understood by the public or by many members of the other co-equal branches of government. Even after decades of debate and scholarly analysis, there remains no fixed or final determination that will satisfy all of those with justifiable views on how the question of judicial independence should be resolved. Justice Jenkins put it this way: "So in the final analysis, it seems to me, given the cases we have looming in the high court, given the history of challenges from other co-equal branches of government to the judiciary, the debate on what constitutes judicial independence, what its limits and boundaries are, is with us here to stay."

With that observation, Justice Jenkins took the audience back to a fundamental point that resonates with the College's Mission Statement and ongoing efforts in support of judges in both the United States and Canada:

I think those of you in this room are the best ambassadors the judiciary has. Our canons of ethics preclude us from commenting on pending cases. We need you; we need the partnership with you that we form. We need you to explain that judges don't have a dog in the fight with respect to constitutional interpretation . . . . The animating principle is fidelity to the law . . . . We exist in a government constitution of self-rule, and the judiciary is an important bulwark to provide checks and balances to the other two branches of government.

Justice Jenkins called upon the Fellows of the College to remember that whenever judicial determinations are subject to evaluation and debate by reasonable people with differing views about the outcomes, that discussion reflects a *strength* in our processes, not a limitation, and a feature of our three-branch democratic form of government that must be embraced and protected.

**Douglas R. Young**  
**San Francisco, CA**

# SANDRA DAY O'CONNOR JURIST AWARD – JUDGE BARRY WILLIAMS

THE COLLEGE ESTABLISHED THE SANDRA DAY O'CONNOR JURIST AWARD IN 2007 TO BE GIVEN TO A JUDGE IN THE UNITED STATES OR CANADA, WHETHER OR NOT A FELLOW OF THE COLLEGE, WHO HAS DEMONSTRATED EXEMPLARY JUDICIAL INDEPENDENCE IN THE PERFORMANCE OF HIS OR HER DUTIES, SOMETIMES IN ESPECIALLY DIFFICULT OR EVEN DANGEROUS CIRCUMSTANCES. THE AWARD IS NOT ANNUAL – IT IS AWARDED ONLY IN RARE CIRCUMSTANCES, AND IT HAS BEEN BESTOWED JUST FOUR TIMES IN THE FIFTEEN YEARS SINCE IT WAS CREATED.



Judge Barry Williams has served the City of Baltimore as a judge of the circuit court for sixteen years, presiding over civil, criminal, family, juvenile dockets – every type of case that a big city court faces.

Before he was a judge, Judge Williams was a special litigation counsel in the Civil Rights Division of the U.S. Department of Justice, where he prosecuted, among other things, law enforcement misconduct. Some of the awards he has received include the Robert C. Heeney Award from the Maryland State Bar Association for Outstanding Service in the Practice of Criminal Law, and the Mary Ellen Barbera Judicial Excellence Award from the University of Maryland School of Law. He is a role model for lawyers and judges alike.

On April 12, 2015, Freddie Carlos Gray, Jr., a twenty-five-year-old African American man, was arrested by the Baltimore City Police Department. After being transported in a police van, he was found to have suffered serious spinal cord injuries. Mr. Gray died on April 19. On April 18, hundreds of people participated in a protest outside the police department headquarters. The protests grew each day. They were essentially peaceful until April 25, the first day of widespread violence. The mayor of Baltimore imposed a curfew; almost everything in the City was closed. Still, the rioting continued every night. The mood behind these riots far transcended Mr. Gray's individual tragedy. The City's rage reflected decades of frustration felt by Baltimore's African-American community.

On May 1, only eleven days after Mr. Gray died, State's Attorney Marilyn Mosby obtained an indictment charging the six police officers involved. The officer driving the van was charged with murder. The others were charged with various crimes, including manslaughter and assault. All six of those cases were assigned to Judge Williams. The public scrutiny was intense.

On May 23, 2016, Judge Williams found Officer Edward Nero not guilty of assault. On June 23, 2016, Judge Williams found Officer Caesar Goodson, Jr., the van driver, not guilty of murder. On July 18, 2016, Judge Williams found Lieutenant Brian Rice not guilty of manslaughter. At that point, the charges against the other officers were dropped.

These verdicts were very controversial. The Court of Public Opinion might have reached a different outcome. The point is the government did not prove these defendants guilty beyond a reasonable doubt. With a city seething with rage over decades of injustice, with threats of more violence and with protestors all around the courthouse, Judge Williams did not back down.

It is important to note that the riots did not restart. That can be attributed to the respect for Judge Williams in Baltimore. People who did not agree with his decisions accepted them, in part because they were from Judge Williams. Even the Gray family's attorney commented that Judge Williams' excellent reputation helped relieve concerns that many had about the verdicts. He added, "At this critical time and for good and sound and decent reasons, we have to respect Judge Williams' opinion, because it was the result of an obviously fair process."

This judge, who had prosecuted police brutality cases as a prosecutor, had the courage to stand up for the principles of our Constitution and our courts, even when those principles were being attacked. A defendant is presumed innocent unless proven guilty beyond a reasonable doubt. Judge Williams stood for that principle. And the audience stood for Judge Williams as he accepted the Sandra Day O'Connor Award for Judicial Independence.

*Hon. Michael J. McAuliffe*  
Rockville, MD

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# Judicial Panel on VIOLENCE AGAINST JUDGES

JUDGES ARE ROUTINELY ASKED TO DEAL WITH THE VIOLENCE OUR CITIZENS DO TO ONE ANOTHER. BUT SADLY, JUDGES SOMETIMES ARE THEMSELVES THE VICTIMS OF VIOLENCE. AT THE FRIDAY SESSION OF THE SPRING MEETING A PANEL OF EXPERTS DISCUSSED THE PUBLIC'S PERCEPTION OF JUDGES AND SOME RATHER ASTONISHING STATEMENTS THAT PUBLIC FIGURES MAKE ABOUT JUDGES. THE PANELISTS WERE:

## **THE HONORABLE SUSAN ILLSTON, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.**

Judge Illston is a Fellow of the College. She has presided over numerous notable cases, including the BALCO steroids cases and the trial of Barry Bonds.

## **THE HONORABLE JON TIGAR, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.**

Judge Tigar has served for many years as a state court judge as well as a Federal Judge. When he struck down an executive order regarding immigration, he was publicly criticized by then-President Trump for being "an Obama judge." He received multiple anonymous threats thereafter. Judge Tigar was also the law clerk to Judge Robert Vance of the United States Court of Appeals for the Eleventh Circuit when Judge Vance was assassinated on December 16, 1989.

## **THE HONORABLE JOAN LEFKOW, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.**

Judge Lefkow served as United States Magistrate Judge and a United States Bankruptcy Judge before serving on the United States District Court. Judge Lefkow's family was killed by an assassin waiting for her on February 28, 2005. She has since faced numerous threats from various groups targeting public figures.

## **THE HONORABLE BARRY G. WILLIAMS, CIRCUIT COURT OF BALTIMORE CITY.**

Judge Williams presided over the trials of all six police officers accused in the death of Freddie Gray in Baltimore, Maryland. Despite intense public pressure to convict the officers, Judge Williams acquitted the first three officers because the State did not prove the defendants guilty. Charges against the remaining officers were dropped. Subsequently, Judge Williams was the victim of numerous threats against himself and his family.



Judge Tigar began the session by describing his experience as a law clerk for Judge Robert Vance of the Eleventh Circuit in 1989. Judge Vance was a leader in the cause of civil rights. The Federal Courthouse in Atlanta is named for him. Judge Tigar recalled that he learned that Judge Vance had been assassinated in a phone call from the FBI. Judge Vance received a pipe bomb in the mail at his house. Judge Vance was killed instantly, and his wife was severely injured.

At first, the authorities suspected white supremacist groups. The killer sent a second bomb that killed civil rights attorney Robert E. Robertson in Savannah. The killer's name was Walter Moody, and it turned out that his motivations had nothing to do with white supremacy. Mr. Moody wanted revenge on the entire Eleventh Circuit for the way it handled his criminal case in 1972. (Ironically, that case involved possession of a bomb which accidentally blew up in Mr. Moody's home, injuring his wife.) Judge Vance was not involved in Mr. Moody's earlier case. Mr. Moody was convicted of both Federal and State charges and became the oldest inmate ever executed in the United States.

In 2018, Judge Tigar struck down an executive order denying illegal migrants the right to request asylum. President Trump ridiculed the ruling, calling him "an Obama Judge." Chief Justice Roberts took the extraordinary step of contradicting the President, saying

"We do not have Obama judges or Trump judges or Bush judges or Clinton judges . . . What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them."

Speaking on the eve of Thanksgiving, an "independent judiciary is something we should all be thankful for." President Trump responded by tweeting that the Chief Justice was wrong, and by calling the entire Ninth Circuit Court of Appeals "a disgrace." Judge Tigar began receiving anonymous threats of violence to him and his family.



Judge Lefkow told the emotional story of her family's loss. In 2005, she and her husband were living in Chicago. Judge Lefkow's mother came to live with them. She was eighty-nine years old and suffering from physical disabilities that restricted her movement. Because of an injury, Judge Lefkow's husband was also on crutches.



On February 28, 2005, Judge Lefkow went to work and left her husband and mother at home. She called home during the day, but no one answered. In gripping detail, she told of how she returned home and found her husband and mother shot dead in the basement. At first, the police suspected a white supremacist who had appeared before Judge Lefkow and had publicly attacked her and the attorney opposing him.

The killer (Bar Allen Ross) was actually a *pro se* plaintiff in a medical malpractice case before Judge Lefkow. Ross suffered from a disfiguring and painful cancerous condition in his mouth and face and blamed his physicians. His state court lawsuit had failed, and he refiled the case in Federal Court. While Judge Lefkow was empathetic, there was no federal jurisdiction and she had dismissed his case.

Ross broke into Judge Lefkow's home in the middle of the night and laid in wait in the basement, hoping to kill her. Instead, he killed her family. (As Judge Lefkow spoke, the entire room fell totally silent. One could hear a pin drop.) Ross had a list of people he wanted to punish for his cancer, including his surgeon and the judges involved in his lawsuit.

After the killing of her family, a white supremacist organization put Judge Lefkow's photo on their website. Written across the photo was the phrase "GOTCHA".

Shortly after this tragedy, John Cornyn, then the Junior U.S. Senator from Texas, was asked about it. He said, "I wonder whether there may be some connection between the perception in some quarters, on some occasions, where

judges are making political decisions yet are unaccountable to the public, that it builds up and builds up and builds up to the point where some people engage in violence." Judge Lefkow sent Senator Cornyn a letter asking why the Senator would say something like that, but she never heard back from him.

Judge Williams recalled that all six officers' cases arising from the Freddie Gray death were assigned to him. Initially, he had to decide if the officers would receive separate trials. The State wanted to try all these officers together. Judge Williams decided that this would not be fair to the individual defendants, and he ordered separate trials. The first trial was before a jury, and he was delighted to say that the citizens of Baltimore could at least form a panel for the case. Because of the notoriety of the case, there was great concern that an impartial jury might not be possible. When the first jury hung, Judge Williams declared a mistrial. After that, the defendants waived jury trials and elected to be tried by him.

Judge Williams described the process:

“I had to make a decision based solely on the evidence . . . I was a federal prosecutor at one point; I was also a state prosecutor. So, I did have an understanding of how things should go, but as a judge it’s not our job to figure out how the case should be presented but make a decision solely based on the evidence presented and that’s exactly what I did. I made a decision, based not on what people wanted, but what was presented to me. And based on that, the state did not prove its case beyond a reasonable doubt. And then the first trial that I had, I made the decision to say ‘not guilty’ on all counts.”

Within five minutes of his decision, Judge Williams started receiving threats of violence. Some callers and emailers told him he would burn in Hell. Some told him “There’s not enough cancer in the world” for people like him. He received direct threats on his life, and threats that people would march on his house and harm him and his family. Thankfully, no one followed through on these threats.

### **THE DANIEL ANDERL JUDICIAL PRIVACY AND SECURITY ACT OF 2020.**

Judge Illston noted that the terrible violence that Judge Lefkow and others experienced has prompted the introduction of a bill in Congress named for Daniel Anderl, the twenty-year-old man who was shot dead while trying to protect his parents from a gunman who came to their house to kill his mother, Federal Judge Esther Salas. Judge Illston noted that the bill does contain some privacy protections for members of the judiciary, but not nearly enough.

Judge Tigar commented that during his White House interview, he was asked whether what had happened to Judge Vance made him want to be a judge less. He said it actually made him want to be a judge more. “Somebody has to be the grown-up in the room. So, I think I speak for almost all my judicial colleagues across the country when I say there’s . . . a certain amount of fortitude that you need to do the job. But we need to be adequately protected.”

When President Trump attacked him by calling him an Obama judge, Judge Tigar received numerous threats of harm. Although he is not an expert in protection, the United States Marshall Service certainly is. A recent audit performed by the Department of Justice recommended that funding for the judicial security arm of the Marshall service be increased by at least 31%. The Daniel Anderl Judicial Privacy and Security Act would make modest upgrades to judicial security and would make judges’ personal information online a little harder to get.

Judge Tigar suggested that there are at least two things we can do to improve the safety of judges. The first is to pass laws like the Anderl Act to fund the experts in judicial security.

The second thing we can do is to speak up when we hear inappropriate language about violence. We live in a time when the discussion of violence as a response to disagreement with judicial decisions or differences in political beliefs is becoming normalized. When we hear that type of language, we need to speak up and say why it is inappropriate. Lawyers should not tolerate casual discussion of violence, as if that’s a normal reaction to a judicial decision.

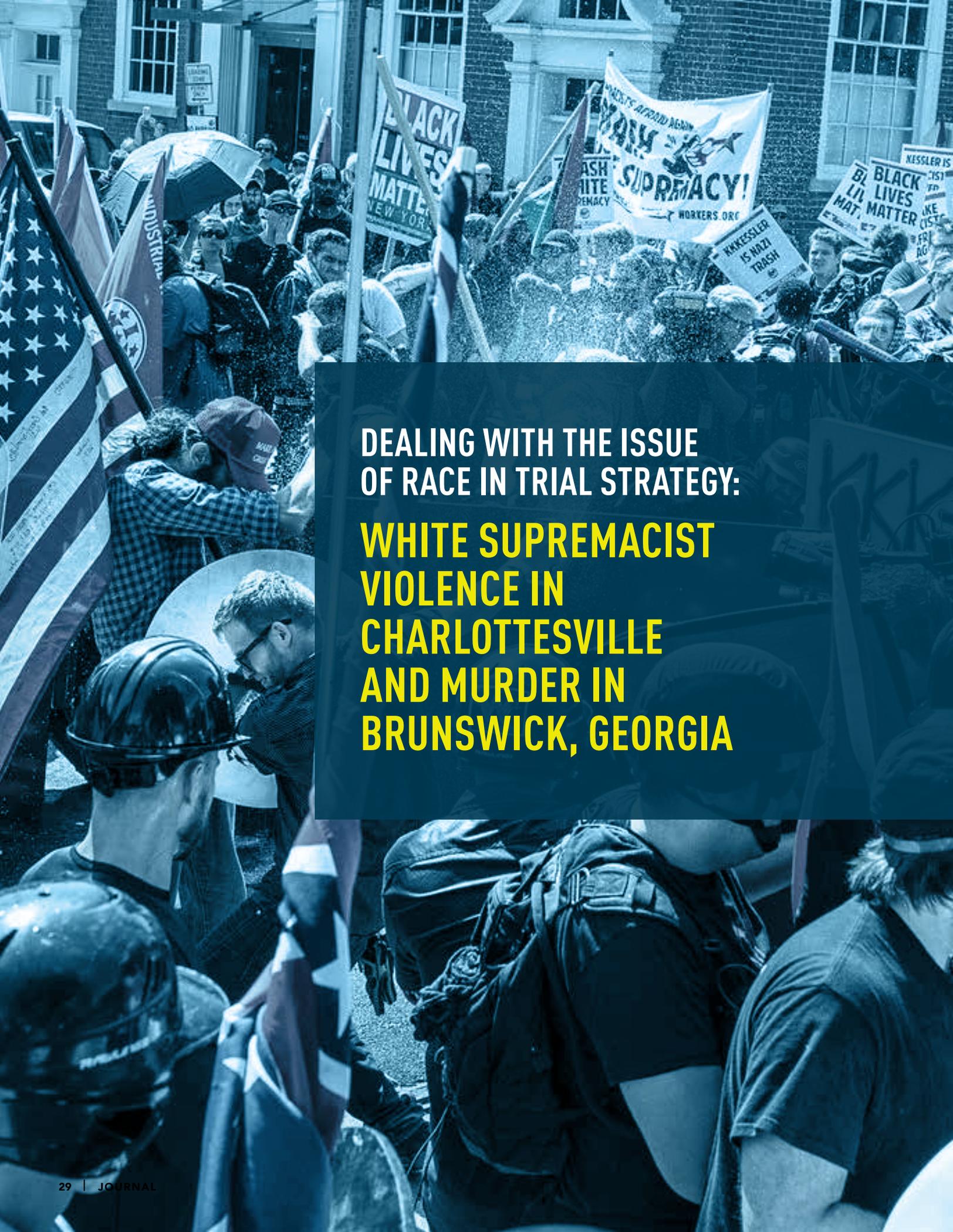
Judge Williams agreed, pointing out that judges are making the best decisions they can. Lawyers generally understand that judges are simply people who are doing their best. Having people threaten judges simply does not help anyone. But one might be surprised by where that kind of talk comes from. People who make these threats can be your friends or your family. You often hear someone say “I didn’t expect it from him,” or “I didn’t expect it from her.” The people saying these things have friends and families. Lawyers can be advocates for getting rid of this type of dangerous talk and threats. If we can keep reminding people that judges make decisions based on the law, and that threatening language is totally inappropriate, perhaps that would help calm some of these threats.

Judge Lefkow added that she testified in support of the Judicial Security Improvements Act of 2005. That Act funded, for the first time, the U.S. Marshals Service to really upgrade judicial protection. While she struggles to say that something so devastating could have a silver lining, this is at least one positive reaction to the tragedy. She noted that she has been put under protection several times since then because of threats.

Judge Illston concluded the session by noting that threats against judges have existed for a long time. In the 1860s, Justice David Terry (formerly of the California Supreme Court) wanted to kill Justice Field of the same Court. Instead, Justice Terry was shot dead by Justice Field’s bodyguard. The bodyguard was later prosecuted for killing Justice Terry.

*Hon. Michael J. McAuliffe*  
*Rockville, MD*





DEALING WITH THE ISSUE  
OF RACE IN TRIAL STRATEGY:

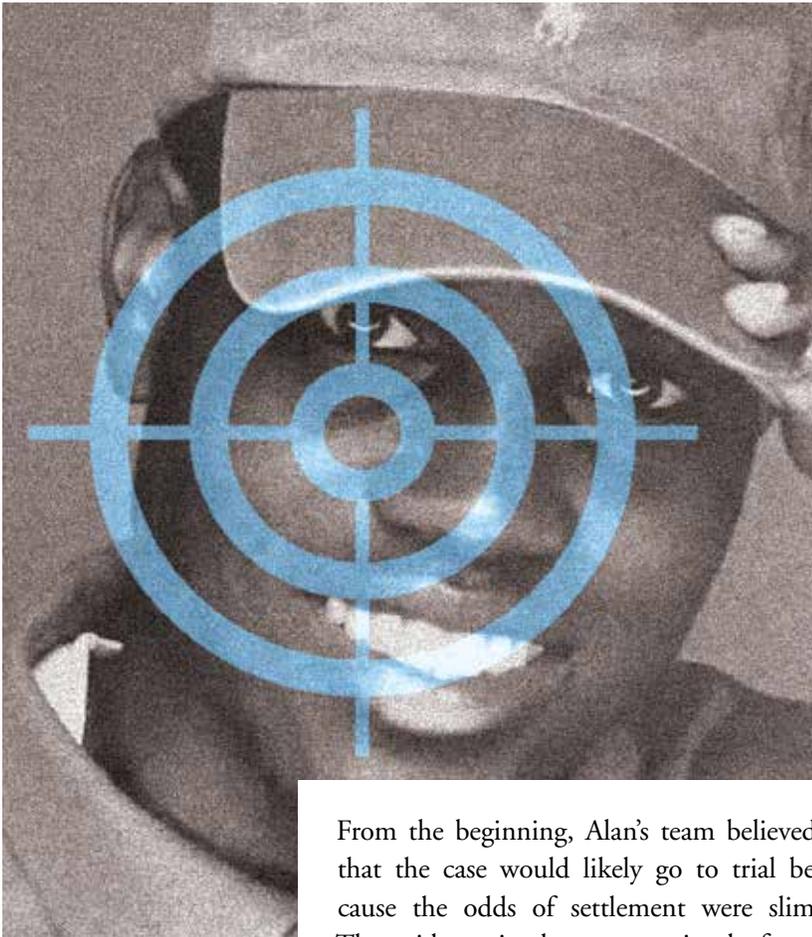
**WHITE SUPREMACIST  
VIOLENCE IN  
CHARLOTTESVILLE  
AND MURDER IN  
BRUNSWICK, GEORGIA**



**FACT!** ALAN LEVINE GRADUATED FROM THE UNIVERSITY OF PENNSYLVANIA WITH A BACHELOR OF SCIENCE DEGREE IN 1970, AND FROM THE NEW YORK UNIVERSITY SCHOOL OF LAW IN 1973. ALAN HAS HAD A DISTINGUISHED CAREER AS A TRIAL LAWYER, INCLUDING HIS TIME AS AN ASSISTANT U.S. ATTORNEY IN THE SOUTHERN DISTRICT OF NEW YORK. ALAN WAS INDUCTED INTO THE COLLEGE IN 1991. AS A TESTAMENT TO THE ESTEEM IN WHICH ALAN IS HELD BY THE PROFESSION, HE WAS ELECTED AS THE BOARD PRESIDENT OF THE NEW YORK LEGAL AID SOCIETY, A HIGH HONOR FOR ANY ATTORNEY.



Alan served as counsel for the plaintiffs in a civil lawsuit brought against the organizers of the 2017 white supremacists “Unite the Right” march and rally that took place in Charlottesville, Virginia, which resulted in the vehicular death of counter-protester, Heather Heyer. The legal theory was that the defendant organizers conspired to commit violence that injured Alan’s nine clients. In addition to various state law claims, the case charged violations of the Ku Klux Klan Act of 1871 (the “Act”), which was enacted to enforce the 14th Amendment to the Constitution. The Act provides a civil remedy for those injured by a conspiracy to commit racially motivated violence, where the conspirators intend to interfere with the exercise of the constitutional rights of the injured individuals. Thus, the statute required that Alan and his team prove the racial animus of every defendant and show that the violence that ensued was racially motivated – a high burden to clear.



From the beginning, Alan's team believed that the case would likely go to trial because the odds of settlement were slim. The evidence in the case consisted of psychologically jarring material, including the repeated use of racial slurs, the depiction of violent images, and arguments by the defendants in support of the creation of a "white ethnostate." Ultimately, Alan and his team secured a \$26 million verdict against the defendants.

Linda Dunikoski is a Senior Assistant District Attorney in the Appellate Section of the Cobb County District Attorney's Office in Georgia. Linda graduated from Indiana University with a Bachelor of Arts degree in political science in 1988, and from the Georgia State University College of Law in 1993. Prior to joining the Cobb County DA's office, Linda worked for seventeen years as an Assistant District Attorney in the Fulton County District Attorney's Office, which encompasses the metropolitan Atlanta area. In her time at the Fulton County DA's office, Linda tried many homicide cases to verdict, and she was recognized on multiple occasions as the District Attorney of the year.

Linda served as the lead prosecutor in the trial of the three white men who were charged with the murder of Ahmaud Arbery, a young African American man who was shotgunned to death while jogging in the Satilla Shores neighborhood of Brunswick, Georgia, in February of 2020. The stakes could not have been higher. The shocking homicide, all of which was captured on video, had been declined by two district attorneys who concluded that no crime had occurred. One of those district attorneys is now under indictment herself for failing to properly discharge her duties in the matter.

A failure to convict in such a high profile case of racial violence would have reverberated well outside of south Georgia. The New York Times reported that despite clear evidence of racial animus in the case, Linda and her team surprised many legal observers by largely avoiding the issue of race during the trial, choosing instead to stick closely to the details of how the three men chased Mr. Arbery through their neighborhood and, in the end, killed him. In fact, during the course of the entire three-week trial, all of which was broadly televised, Linda mentioned a racial motive just one time: in her closing argument, when she stated that the men had attacked and killed Mr. Arbery "because he was a black man running down the street."

Ultimately, Linda and her team secured a murder conviction of all three men. And in February of 2022, each of those same three defendants was convicted in federal court of federal hate crimes.

At the College's Spring Meeting in Coronado, Alan and Linda described their respective strategies for dealing with race, an obvious issue which permeated both cases.

Considering the extensive amount of pre-trial publicity that these two cases received, both courts employed the use of jury pool questionnaires to gauge the interest and bias of potential jurors to the case. In the Arbery case, the defense proposed a fifteen-page questionnaire, while Linda and her team fought against having a questionnaire at all, ultimately compromising on a five-page questionnaire. The final questionnaire primarily focused on what the potential jurors thought they knew about the case – *e.g.*, how many times they had seen the video of the killing, where they had seen the video, where they typically got their news, and what their social media handles were. In contrast, Alan and his team used a sixteen-page questionnaire specifically designed to elicit attitudes on race (in particular, individual views on racism against black, Jewish, and white people) and attitudes on statues (in particular, Confederate monuments).

In both cases, however, potential jurors effectively took themselves off the jury by saying that they already had a viewpoint on the issues posed by the cases. In the Charlottesville case, those potential jurors were more often individuals inclined to support the plaintiffs' position, and in the Arbery case several white and black potential jurors wrote down in their questionnaires that they viewed the incident as a "modern day lynching."

Linda and her team developed a five-question strategy to mitigate the defense's preference to have those potential jurors struck from the jury, asking potential jurors:

1. Can you put your opinion aside (because you got it from the news media and you haven't even heard the evidence in this case)?
2. Can you decide this case on the evidence that the State is going to present within these four walls?
3. Are you willing to hold the State to its burden to prove its case to you beyond a reasonable doubt?
4. Are you willing to follow the law that the judge gives you?
5. Are you willing to give meaningful consideration to the defenses of self-defense and citizen's arrest?

Most potential jurors who favored the State's case in the Arbery trial were able to answer the first four questions in the affirmative, but many were disqualified from the jury on the fifth question because they stated that they could not meaningfully and truthfully consider the issue of self-defense under the circumstances of Mr. Arbery's death.

Normally, under Georgia law, both the State and the defense each receive nine strikes, but in the Arbery case, the defense requested additional strikes considering the high profile nature of the case and the extent of the pre-trial publicity. Accordingly, for a panel of forty-eight jurors, the defense received twenty-four peremptory strikes, while the State received twelve.

Linda had some jurors who affirmatively requested to be on the jury, a red flag for her. The questionnaire included that question "because we wanted to know and we got rid of them." In addition to the questionnaire, the trial team did social media research. The State struck one juror even though she stated she could be fair and impartial, because a search of the potential juror's Facebook page found a photograph showing that her husband had proposed to her while wearing a Confederate flag t-shirt. Ultimately, of the twelve black members of the forty-eight member jury panel in the Arbery case, only one black juror made it onto the jury; the defense struck the other eleven.

Both Linda and Alan addressed the *Batson* challenges made in their respective cases. In Georgia, the party challenging the opposing party's alleged

use of race in striking jurors must first proffer evidence to support a *prima facie* case that the opposing party struck jurors on the basis of race. Linda met that burden in the Arbery case by pointing out that the defense had used eleven of its twenty-four strikes (almost 50%) to strike black jurors who made up only 25% of the jury pool. The defense then had to provide a race-neutral reason for striking each individual juror, which the defense did. Linda concludes that in her view a judge would have to effectively call a defense lawyer a racist in order to reject the lawyer's race-neutral reason for striking the juror – a conclusion that judges are reluctant to reach.

In the Charlottesville case, the defense made a peremptory challenge to a black man who, in Alan's view, had no objectionable answers in his questionnaire. Alan and his team made a *Batson* challenge at sidebar, which required one of the two *pro se* defendants to give a race-neutral explanation for why he struck the juror. Alan recalled that the defendant replied with something along the lines of, "I didn't like the way the juror looked at me," a comment that, in Alan's view, made it clear that it was a racially motivated peremptory challenge. Rather than ruling on the *Batson* challenge at the time the challenge was made, as some judges do, the trial judge reserved the decision for later in the case and proceeded to empanel the balance of the jury. Then, aware that the trial judge had yet to rule on the peremptory challenge to the first black juror, the defense allowed four additional black jurors to



be empaneled. Ultimately, the judge ended up dismissing the *Batson* challenge, and the jury consisted of eight white jurors and four black jurors.

The Charlottesville and Arbery cases presented a stark contrast to one another in the role of race in trial strategy. Race had to be front and center in Charlottesville because the plaintiffs were *required* to prove not only racial animus but also that the racial animus was connected to the violence that was precipitated. In fact, Alan was concerned that the sheer volume of evidence of racial animus in the case might desensitize jurors from siding with the plaintiffs and also leave the judge impatient with the amount of racially motivated evidence put forth in the case. Alan and his team also had the added concern of distinguishing between evidence of racial animus and evidence of antisemitism. On the advice of a local rabbi in Charlottesville, Alan decided to lead with presenting evidence of racism prior to educat-



ing the jury about antisemitism. Some of the jury education on antisemitism required expert testimony in order to explain and give context to the abhorrent Nazi imagery and hate speech of white nationalist and white supremacist organizations.

In contrast to the Charlottesville case, racial animus was not an element in any of the charges in the Arbery case. At the time of Mr. Arbery's murder in 2020, Georgia was one of only a few states in the nation that did not have a hate crimes law on its books, so no hate crime was or could have been charged. Largely in response to Mr. Arbery's murder, the State of Georgia went on to pass a hate crimes bill in the summer of 2020.

So while Alan had no choice whether to raise race, Linda did. Linda and her team debated whether to put on evidence of racial motive, despite the fact that they were not required to prove it. In Linda's judgment, the risks of putting on evidence of racial animus ultimately outweighed the potential benefit, and the trial team decided that they would allow the jurors to draw inferences of the defendants' undoubtedly racist motives from the evidence of the murder itself.

Linda gave an example of how she more subtly put on evidence of racial animus, recounting the 911 call to the police dispatcher made by one of the defendants. The dispatcher asked, "What is your emergency" and the defendant responded "I'm out here in Satilla Shores." The dispatcher asked, "What is going on" and the defendant responded "There's a black man running down the street." That was it; that was the emergency that he reported on his 911 call. Immediately after he said "There's a black man running down the street," the defendant yelled at and threatened Mr. Arbery and then another defendant shot him.

In closing argument, Linda simply quoted the defendant's response to the question "What is your emergency?" Linda emphasized the brazenness of the defendant's response in her closing argument: "I'm out here in Satilla Shores, and my emergency is that there's a black man running down the street."

Linda offered insight on a strategic decision that her team made regarding a voluntary statement that one of the defendants gave to the police immediately after the murder. He told the police: "You know what? I'm sure he must have committed a crime out there somewhere. Why don't you police officers go back out there and figure out what crime he must have committed because he was running down the street." Linda explained her reasoning:

Now, why would he assume that? Did I need to point that out to the jury? Do I need to bludgeon them? Because here's the problem: I'm afraid of what? Sleeper cells, right? I'm afraid of alienating a female juror on that jury panel that might have a nephew who might occasionally use some bad language and who might have the stars and bars on the front of his truck and might occasionally wear the confederate flag t-shirt. But she doesn't think he's a racist; she doesn't think that behavior translates into violence against black people. And the minute I claim her favorite nephew is a racist because of these things, what's she going to do in that jury room? She's going to hang my jury.

Alan related that the defense in the Charlottesville case intentionally and repeatedly made a conscious effort to use racist language throughout the trial. One of the *pro se* defendants conceded in a post-trial interview that using the offensive language was a deliberate effort to desensitize the jury to their racist and antisemitic points of view. Alan emphasized that the defendants intentionally made the courtroom a room of hate for the five weeks of the trial, and one of the consequences of that decision was that the plaintiffs had to offer expert testimony on some of the offensive racist and antisemitic language and explain it to the jury.

Linda and Alan's presentation was one of the most engaging program segments of the Spring Meeting. They even made themselves available for an additional question and answer session after their presentation. As many as fifty or more Fellows and attendees joined the additional session. This obvious interest was a testament to the audience's fascination with a compelling presentation by two outstanding trial lawyers.

**Richard H. Deane, Jr.**  
**Atlanta, GA**

# BEVERLEY McLACHLIN ACCESS TO JUSTICE AWARD – PATRICIA HEBERT, QC





THE BEVERLEY McLACHLIN AWARD, NAMED FOR THE HONOURABLE BEVERLEY McLACHLIN, FORMER CHIEF JUSTICE OF CANADA, IS AWARDED FROM TIME TO TIME TO A JUDGE OR A MEMBER OF THE BAR IN THE UNITED STATES OR CANADA, WHETHER OR NOT A FELLOW OF THE COLLEGE, WHO HAS PLAYED AN EXCEPTIONAL ROLE IN CREATING AND PROMOTING ACCESS TO JUSTICE. THE AWARD RECOGNIZES INNOVATIVE MEASURES OR EXTRAORDINARY PERSONAL COMMITMENT AND PROFESSIONAL DEDICATION WHICH HAVE ENHANCED ACCESS TO JUSTICE IN THE UNITED STATES OR CANADA.



Established in 2018, the award has only been bestowed twice, first in 2019 to Justice Jonathan Lippman of New York, and now to Patricia M. Hebert, QC. Ms. Hebert represents children and parents in unique, complex and high-conflict custody cases, including extensive child protection and international abduction cases. She collaborates with psychologists and other professionals, works on legal reform, and is committed to educating lawyers, judges and parents on positive ways to support children in the course of a transition.

Hebert is selfless, dedicated, and deeply committed to the cause of improving and enhancing access to justice. She served and played a critical role on the Steering Committee of the Action Committee on Access to Justice in Civil and Family Matters, chaired by Chief Justice McLachlin. She was also a key member of the Law Society of Alberta's Negotiation Team for the Task Force on Legal Aid, which resulted in a landmark new arrangement with the Government for funding legal aid. She played a prominent role in the Canadian Bar Association's Access to Justice Committee. She's a founding member of the Alberta chapter of the American Association of Family and Conciliation Courts, which facilitates legal and family support services. Perhaps most importantly, she serves as a role model and a mentor to younger lawyers to encourage them to improve access to justice, not only in Canada, but around the world.

Ms. Hebert has the rare sensibility to look beyond the day-to-day practice issues and see where systemic change is required to achieve better outcomes. She's the kind of person who can see things from a 10,000-foot perspective and has the extraordinary combination of skill, experience, and personal commitment to consistently focus on how ideas can and must turn into practical, meaningful, and concrete improvements to the lives of people who need access to justice. She is a champion of access to justice. She never seeks awards or recognitions. She's modest and quiet about her achievements, showing an utter lack of egotism or self-aggrandizement.

So, without ego or aggrandizement, Ms. Hebert began her acceptance remarks by asking "What do I have to offer you? Why am I here?" Her abridged remarks continue:

And it occurred to me, perhaps, because it does take all of us to tackle the access to justice challenge. That certainly fits with my own experience and perspective on access work. I was part of writing "Reaching Equal Justice," in 2013, which was a multi-year project of the Canadian Bar Association. We often used the expression, "How do you eat an elephant?" This is a Desmond Tutu expression and I have no doubt he did not condone the eating of elephants either. But it's a powerful visual and immediately gives you the idea: how do you tackle a really tremendous task? I prefer to think of it as a monster, the access to justice gap. How do you tackle that? Well, one bite at a time.



I feel so strongly that the answer is, in fact, to invite many people to the table and call it a feast, each of us taking our bites. One bite at a time moves us so much more quickly to tackling that access to justice beast. And to think of it this way gives me hope. Every time the problem feels too big, I think about that expression: One bite at a time. I'm taking my bites today.

So I thought I had to come to you with this great epiphany, the silver bullet, a great formula for success. Instead, I think my conclusion to share with you is there is no epiphany; there is no shortcut. Just do the things. Get up and decide each day what you can do today or plan for what you can do next week, next year, next month. And also, how do you inspire others to come to the table? What helps? What's next? Where can I lend my time and my own strengths best and what inspires and brings others to the feast? Some change needs to be big and bold and multilateral. Changes we are seeing in some areas in large scale, for example, to divert people from family courtrooms to counselors and mediators. But changes can be small and incremental, too, if they are all moving us forward.

In taking our seat at the table, a couple of things inspire me and maybe they will inspire you, as well. I keep front and center the ideas of both privilege and purpose. For me, so much inspiration has come from just understanding our privilege as educated professionals. For myself and my own perspective, that's not because I come from a legal family; nor from a highly educated family even or a family with significant financial resources. But simply, for me, just by being born in Canada, I recognized that I had been conferred with a privilege and opportunities. Add later, an appreciation for just the random things like physical health and two parents who were both good people, loved each other, and loved us. They're small things but they're tremendous things.

As I worked in child protection, I knew I was a worker bee and I would do a good job; I was really devoted to the task. But I couldn't make anything better up the stream not addressing why people came to need child protection intervention. The expression you may know, that we need to build a fence at the top where people fall into the river, not just park an ambulance at the bottom, at the far end of the rapids, right?

So I began volunteering with the Alberta Kids Kottage Foundation, an organization that provides emergency respite care in the community for children at risk; supporting their caregivers to build back strength and resilience to keep their kids at home. What could be more important? And at the same time, another life-long partner entered my world as a young lawyer: the Canadian Bar Association. I just can't credit that organization enough with my growth as an individual and a lawyer. Beginning with local work and ending with me today as the representative of the Bar Association to the National Action Committee on Access to Justice. The CBA has been an amazing place to find ways to advance my purpose with so many likeminded lawyers from across the country in my passion areas of family law, legal aid, and access to justice. And I could say the same things proportionately for teaching at the University of Alberta, for developing the Association of Family and Conciliation Courts chapter in Alberta; and for recognizing the value of interdisciplinary practice.

In the last chapter of my work, in private practice, I now would add my dispute resolution community: the mediators and collaborative family lawyers who are trying to find a new path forward for families. I have found my people.

I firmly believe that there is a place for all of us to volunteer our time and energy and commitment to further the interests and the needs of others. But I just as firmly believe that we cannot solve the access to justice crisis on the backs of volunteers alone.





It requires consideration of a few things, including the needs of underserved communities with family and criminal law legal problems, as well as the needs of other equity seeking groups. Those needs are being met, in large part, by lawyers who are already stretched, overworked and often undercompensated. So I appreciate very much those of you who, and I expect there are many in the room, service more affluent client groups by day but then find opportunities to provide assistance to organizations that provide legal access and legal services in other sectors and not continue to ask those working in these areas to simply do more. It's not equitable across us as a profession. We need to see that big picture and find individual ways to serve. This is something I often repeat in my circles, as well: think systemically but act locally.

Secondly, we need to get our knowledge into building good policy. My own provincial bar association just commissioned great work on the downstream costs of unmet legal needs. How much does it cost for someone to not have their legal needs met and their problems solved? Tremendous work that considers the return on investment of legal services and gives us a financial case to make. We continue to be in an access to justice crisis in our countries, both yours and mine. Just look at the World Justice Report and indicators on the rule of law. An important aspect of rule of law is access to civil justice. We fared quite well in other areas but quite poorly on many of the access to justice indicator, relative to other developed nations.

And lastly, I suggest there are so many interesting things happening. Just over the span of my career, I thought we had learned a lot, we knew how to do a lot of the work that we

needed to do. But really, the growth and understanding of so many areas of human interaction have exploded. So I think about the intersection of law and medicine: from paving children's neuropathways with good parenting to how we support that in post-separation parenting and to knowing that there are clear social determinants of health, including legal wellness, as part of that picture. What are your legal risks and how do those things impact your overall wellbeing?

So I invite you to the feast! If, like me, you're inspired about the need to solve family problems and avoid harm to children, find an organization to support that does not necessarily offer legal process but offers problem solving because that's what people-centered access to justice is. If your experience and your contacts in your community draw you to tackle another aspect of the monster, then pull up a chair and find a way to solve problems ideally, that does not involve lawyers or courts any more than absolutely needed but always when it is necessary. Being an inspiration to others brings everyone to the table.

Rest assured, I will use this lovely award as it was intended. But, occasionally, I will point to it as proof of my efforts and my schedule and therefore the reason why I cannot be the treasurer of my kid's soccer team. Thank you so much for having me and for the wonderful work you do through the College. And for acknowledging it takes all of us to do our best in our own ways to continue to bring about positive change in these important areas. I am hopeful and I am grateful. Thank you.

*Jeffrey S. Leon*  
*Toronto, ON*



# AN INTERVIEW

RUBY BRIDGES WAS BORN IN SEPTEMBER 1954, JUST FOUR MONTHS AFTER THE SUPREME COURT HELD IN *BROWN V. BOARD OF EDUCATION* THAT IT WAS UNCONSTITUTIONAL TO SEGREGATE PUBLIC SCHOOLS ON THE BASIS OF RACE. SIX YEARS LATER, SHE BECAME THE FIRST BLACK CHILD TO ATTEND WHAT WAS THEN THE ALL-WHITE WILLIAM FRANTZ ELEMENTARY SCHOOL IN NEW ORLEANS, LOUISIANA. BUT SHE DIDN'T ATTEND ALONE; SHE HAD FOUR FEDERAL MARSHALS ESCORTING HER TO SCHOOL THAT DAY AND MANY DAYS THEREAFTER, TO KEEP HER SAFE FROM THE MOBS PROTESTING HER ATTENDANCE. RUBY'S FIRST DAY OF SCHOOL WOULD LATER BE IMMORTALIZED IN A PAINTING BY NORMAN ROCKWELL CALLED "THE PROBLEM WE ALL LIVE WITH."

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# WITH RUBY BRIDGES

Over the course of the next decades, Ruby has made it her life's work to focus on equality and racial justice. She established a foundation in 1999 to promote the values of tolerance, respect and appreciation for all differences. She has written two books about her early experiences, one of which won the Carter Woodson Book Award. President Clinton bestowed on her the Presidential Citizens Medal, and she also was made an honorary deputy marshal in Washington D.C. There are two elementary schools named in her honor and today, in the courtyard of the William Frantz Elementary School, stands a statue of Ruby Bridges.

An abridged version of Ruby's interview by Fellow **Carolyn Fairless** follows.

**Fairless:** Could you tell us how it is that you came to be that little girl attending that school on that first day?

**Ruby Bridges:** Well, as you just stated, *Brown v. Board* had happened in 1954 but we all know that it definitely was not implemented the very next day. So that didn't happen in New Orleans until November 14, 1960. I was already attending an all-black school for kindergarten. My parents, who were actually sharecroppers who recently left Mississippi and had come to New Orleans in hopes of planning a better life for myself and the rest of their children. The NAACP at the time was spearheading this movement; making sure that the law was implemented. They came into New Orleans and into black communities – did a door-to-door search asking parents if they had six year old children because they were actually starting the process with first grade – would they be willing to send their first graders to one of these newly integrated schools?

Neither one of my parents had a formal education. You know, it's important for me to point out that they were not activists; they were actually ordinary people just wanting a better life for themselves and for their children. So when that knock came at the door that said, you know, if you are willing to sign your child up, possibly your child will have an opportunity to go to college and definitely to get a better education, they jumped at that chance.

**Fairless:** What was going through your head when you were walking to school that day?



**Ruby Bridges:** I remember that day very clearly. There was a knock at the door; they opened the door and there were four very tall white men. I remember they had badges and they had these yellow bands on their arms and I remember thinking to myself who were they? And who told them I needed a ride to school? But they said, “We’re U.S. Marshals and we’ve been sent by the president of the United States. We’re here to escort you and your daughter to school today.” And I remember getting into the car with them and two of them sat in the front seat, two in the back, and they started the conversation on the way to school about how we were to walk and get out of the car. And I remember them saying, “Ms. Bridges, you know, we marshals in the front will get out first and then the marshals in the back will get out and we’ll surround you and your daughter. We want you to walk straight ahead and don’t look back.”

And living in New Orleans and being accustomed to Mardi Gras, it was something that we looked forward to every year. I remember the minute we turned that corner, I saw mobs of people standing out in front of the school and there were police officers everywhere; they were on motorcycles and horseback. And people were shouting and throwing things, waving their hands, and I immediately thought, “Wow! It’s Mardi Gras today! We stumbled into a parade.”

And that speaks to the innocence of a child; that is really what protected me through that. I didn’t feel any need to be afraid; I was accustomed to Mardi Gras. That’s what it looked like. No one told me any different.

**Fairless:** Can you tell us about the rest of your first year in school and how is it different than a normal six year old’s first year?

**Ruby Bridges:** It was very different. We got home and my mom turned the television set on and she noticed that the whole country was watching and she said to herself, “Oh, my God, what have I done?” I don’t think that they honestly expected to see what happened; they were not aware of what could happen. So I think they were surprised and she said that she would send me to school and that she would pray all day long in the hopes that I would walk back through the door every day.

On the second day, by the time they took me back, the crowds had almost doubled in size. At that point, everybody in the whole country knew which school was integrated. I remember them chanting, “Two, four, six, eight,

we don’t want to integrate.” It was something that rhymed and I would get home and jump rope to it with my sister; not knowing what the word “integrate” meant. Again, the mind of a six year old. And on that second day when we got back to school and the marshals rushed us inside of the building, it was very different. It was so quiet you could hear a pin drop. You know, we were told that schools were separate but they were equal. I can tell you, even as a six year old, thinking that I was going to college when I got inside of the building, it was so beautiful; so much nicer than the all-black school that I had come from. I remember seeing my face and shadow in the floors; they were so shiny, so clean. I could see myself and the federal marshals as we walked up the stairs. And by the time I got to the principal’s office on the second day, they greeted me and they said, “Your class is down the hall.” And the marshals turned me around and walked me down the hall and by the time we got to the door, the door opened and a woman stepped out and she said, “Hi, my name is Mrs. Henry, and I’m your teacher.” And my first thought was, “She’s white.” I had never seen a white teacher before; definitely not interacted with someone of that race. I was a little bit apprehensive because I didn’t really know what to expect from her. But she smiled and said, “Come in and take a seat.” And I remember looking around her and seeing just an empty classroom and my first thought, standing at the door and looking into the classroom, was my mom brought me to school too early. And indeed, we were too early; we were years too early.

But I went in and I took a seat and Mrs. Henry began to teach me. And it did not take me long to realize that even though she looked exactly like the people outside, she wasn’t like them at all. And I often say that Mrs. Henry showed me her heart and I knew she was different.

And so the lesson, the very important lesson that I took away, is the lesson that Dr. King died trying to teach all of us. You cannot look at a person and judge them; you cannot judge a person by the color of their skin. We have to judge each other by the content of our character and that was the lesson that I learned through Mrs. Henry at six years old; just by her being herself and showing me her heart. We became friends. We never missed a day that whole year. I think we knew we needed to be there for one another. She is still alive and she’s still my very best friend.

**Fairless:** I know you’ve been doing a lot of work with your foundation and I would love to give you an opportunity to tell us a little bit about it. And also, are there any things that you think we need to know in terms of lessons from that day back in 1960 that we should take away with us today?

**Ruby Bridges:** As far as my foundation, I feel like my path was already chosen for me and laid out for me. You spoke about the Norman Rockwell painting; I didn't actually see that painting until I was about 16 or 17 years old. And seeing it, it made me realize that this incident wasn't something that just happened on my street.

And so not until I actually saw the Norman Rockwell painting did I understand my role in history; that this was a very important event. It wasn't something that just happened on my street and in my neighborhood; that it was a part of a much bigger movement and that I was a part of a much bigger movement.

It felt like it was something that I needed to step into and to grow into. It sort of felt like life took off and left me and I had to catch up with it. And whenever I see the Norman Rockwell painting, I definitely think about that. And so, yes, I do feel like my path was already laid out and that it was just waiting for me to step into it; to my divine destiny, as I say.

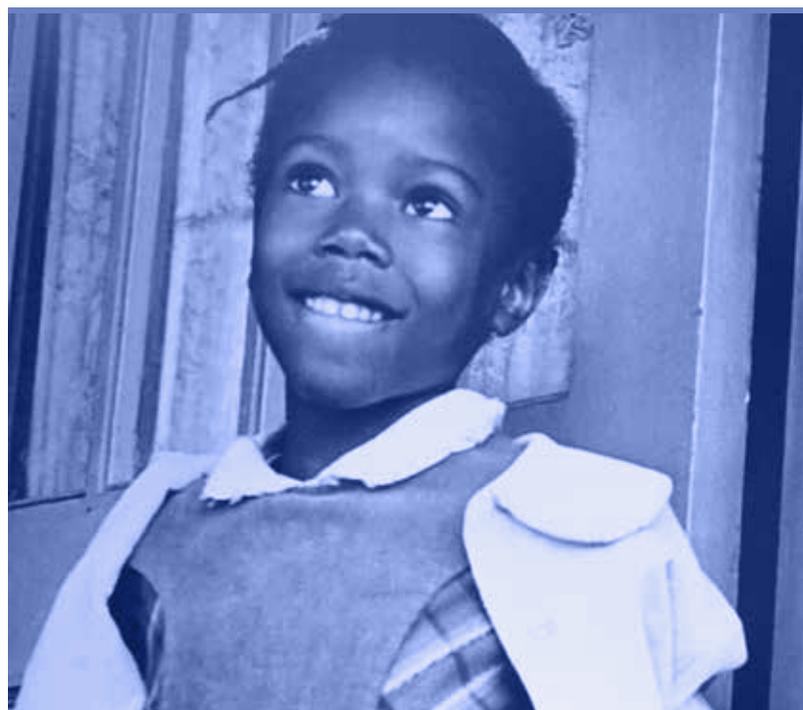
I know that each and every one of our babies come into the world knowing absolutely nothing about disliking one another because of the color of their skin. All of our babies come into the world with a very special gift and that is a clean heart, a fresh start in life. It is us, we as adults, we are responsible for what we see playing out before us today. We have kept racism alive, each and every generation, because we have passed it on.

Being here with you all today, and you ask about your role, you are the gatekeepers. You make the laws. You know when they are not as just as they should be. You are responsible; you have a role to play. We are looking to you to make things fair and just and equal. This country will never live up to its name, the United States of America, unless we the people are united. My role is with babies, the kids, because of my experience. But you stepped into a field where you are the gatekeepers and you have a huge responsibility on your shoulders to make sure that this country lives up to its name: The United States of America. And the only way that's going to happen is if you do your job to make sure that we, the people, are united and that we do live in a society that is fair and just.

And so, for my foundation, I will continue to work with the kids because I do believe that if we are to ever get past our racial differences, it's going to come from our babies. And this little six year old inside of me is holding me accountable still. She keeps saying, "If you just explain it to them like a six year old, they'll get it," and that's what I'm doing.

So I thank you so much for the opportunity to speak to you all. I hold all of you in the highest regard. I would not have been who I am or able to walk up those stairs if it wasn't for your profession. And the people that chose that profession and did exactly what I am saying that you need to do today – and it was both black and white – they knew that this was not just and they dedicated their lives to making sure that I was able to walk through those doors. And again, I say it's your role to make sure that the laws are fair and just because you will never know when those laws have to work for you or someone in your family.

**Carolyn Fairless**  
**Denver, CO**



# EVERYDAY HERO – HEATHER PENNEY

HEATHER “LUCKY” PENNEY IS A SENIOR RESIDENT FELLOW FROM THE MITCHELL INSTITUTE FOR AEROSPACE STUDIES IN ARLINGTON, VIRGINIA, WHERE SHE RESEARCHES AND ADVISES ON DEFENSE POLICY ISSUES RELATED TO AIR POWER.

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Penney’s father had been a fighter pilot in Vietnam, and growing up, Heather had long wanted to follow his path to do the same. But she learned that women couldn’t serve in combat aviation roles. While she was earning her master of arts in literature at Purdue University, she learned that Congress had opened the doors to women in combat aviation roles. She immediately applied to the Air National Guard and became part of the first wave of women who went directly from pilot training into fighter jets. She was the only woman in her pilot training class. She was the only woman in her fighter pilot class. And she was the only woman in the 121st Fighter Squadron. Penney served in the Air National Guard and the Air Force Reserves from August of 1997 until she retired as a major in 2020. She did two tours in Iraq as a nighttime scud hunter in the Iraqi desert.





On September 11, 2001, Heather Penney was a rookie, a first lieutenant stationed at Andrews Air Force Base near D.C. She had just earned her combat mission ready certification in the F-16 fighter jet. And while Heather may deny that she was a hero, in a moment of crisis for our country, Heather Penney came through.

We all remember where we were that morning. While Beverley Bass, the pilot in the song, “Me and the Sky” from the musical *Come From Away* was landing her commercial airliner in Newfoundland, Heather Penney and another pilot, Marc Sasseville, were scrambling into the cockpits of their F-16 fighter jets, preparing to defend the skies above D.C. Their mission was to stop the anticipated attack on the capitol from United Airlines flight 93.

An abridged and (slightly) condensed account of Heather’s conversation with Regent **Carey E. Matovich** follows:

**Matovich:** Heather, take us to Andrews Air Force Base that bright blue September morning and tell us what you were doing.

**Penney:** It was a perfect autumn day. The sky was cloudless, bright blue, with a light breeze out of the southwest. It was a perfect flying day. But I wasn’t going to be flying that day because I had to sit in a scheduling meeting to determine who was going to fly, what sorties, what instructor pilots were needed, what training operations we were going to do for the next week. I was going to be stuck on the ground. I remember as I was sitting there, looking out the windows, gazing across our flight line, thinking how jealous I was of the guys that were going to go flying because I wanted to be out there. Instead, I was going to be stuck on the ground in a scheduling meeting.

We’re going through what the next week, the next month, is going to look like when there is a knock on the door and Chunks, one of our enlisted troops, walks in and says, “An airplane just flew into the World Trade Center.” We looked at each other, and we looked outside at that gorgeous blue sky. We thought, “Well, did someone just pooch their instrument approach into LaGuardia?” But that couldn’t have been the case because it was so spectacularly blue. We decided “It must have been just some little bug smash or a little Cessna going down the Hudson maybe turned the wrong direction and bounced off the side of a building.”

So we got back to business. It wasn’t until Chunks came back the second time and didn’t even knock. He just barges in and he says, “A second aircraft hit the second World Trade Center. It was on purpose.” Without a word, we got up and walked out of the scheduling room and to the squadron bar where our television was. And that’s where we saw the images that everyone else saw that morning. And we knew we had to get airborne; we had to protect.

**Matovich:** Were you able to immediately run to your planes and go?

**Penney:** I wish. Unfortunately, we were not an alert unit. After the end of the Cold War, the nation had cut the Air Force in half. We used to have alert units that were basically the ring defense around the United States, looking for Soviet bombers coming in over the poles. With the Soviet Union no longer there, we had shut down all of those alert units, which included D.C. Our nation’s defenses were only left with a total of five alert units, including Portland, Fresno, Jacksonville, Langley, and Otis up in Massachusetts.

We had two major problems: we had to get authorization to launch and we had to get weapons on our jets. We don’t fly around with real weapons during normal training sorties. We fly around with training weapons. Our bombs, our little 33-pound bombs with the little white phosphorous charge, really can’t hurt much. And our missiles are completely inert. They have electronics so that we can train with them, but there’s no explosive, there’s no fuse, there’s no rocket motor. No weapons are loaded on the jets and none are even built in the bomb shelter because we also treat all of our weapons like they’re building blocks. The weaponeers have to fit them together; build them up. And this normally comes down in an order three days before the bombs are needed. The military is the world’s largest bureaucracy; we don’t do anything without paperwork. So we don’t have weapons and we also can’t get the authorization. Not only are we not an alert unit, we’re outside the normal Air Force chain of command. We’re the Air National Guard of the District of Columbia and NORAD doesn’t even know we exist. As a national guard unit, our civilian chain of command doesn’t go up to a governor who can order us to get airborne. Our civilian chain of command goes all the way to the President, and he was pretty busy at the time. So we’ve got to solve those two problems: build weapons and get authorization to launch.



**Matovich:** How long did it take to get authorization?

**Penney:** Too long. We were trying desperately to do everything we possibly could. Our wing commander, David Wherley, is now in the operations room. He's calling up the chain of command to see if he can find someone to give us authorization. Marc Sasseville, who's our director of operations, is trying to reach the Secret Service to see if maybe it can get the President to give us authorization to launch.

But it wasn't until the Pentagon was hit that finally, Vice President Cheney said, "Aren't there fighter jets at Andrews? Somebody get them airborne." And the Secret Service then called us to give us that authorization to launch.

**Matovich:** Did you have missiles by then?

**Penney:** No. Sass and I were completely unarmed. We had tried to get missiles built for us. As I mentioned, they were all at the bomb dump. And our weapons officer, Dan (Razin') Caine, had called down while we were trying to get authorization, trying to circumvent that. Razin' calls the guys down in the bomb dump, enlisted troops, good kids down there, who didn't even have a TV or radio. And Razin' calls and says "I need you to build me up some A9's. Yep, missiles, real missiles. Explosives, fuses, everything, and get them here as soon as we can." I can't even imagine what it would have been like to be that kid in the bomb dump, minding your own business, going through the daily tasks, building those tiny little 33-pound practice bombs, when this major calls up and says, "Build me some real missiles." You don't have a TV down there; you don't know what's going on. And we're at home; we're in good guy land. It was really a testament to Razin's leadership and his relationship with those troops that they didn't question him. They immediately started building those missiles, but we wouldn't get them in time.

**Matovich:** So this was a suicide mission; you had to take down that airliner with your own jet.

**Penney:** Yes.

**Matovich:** How would you do that?

**Penney:** When we got the authorization to launch, Sass looks at me and says, "Lucky, you're with me. Razin', you and Igor wait until you get mis-

siles. Lucky, let's go." I'm running down the hallway and down the stairs to where our flight gear is. We knew we did have 105 rounds of training bullets in the noses of the jets. Lead bullets, not the high explosive incendiary rounds that we typically carry in combat. But we knew that even with two of us, that wouldn't be sufficient to take down an airliner. That was when we realized this could turn into a suicide mission.

**Matovich:** What would you do with your jet in that kind of a mission?

**Penney:** Sass would take out the cockpit. He would aim his jet at the cockpit to take out the terrorists and all the flight controls. I would ram my jet into the tail structure of the aircraft, because without the tail, the airplane would just tip over and then go straight into the ground, minimizing collateral damage to anyone else.

**Matovich:** So, you're on the suicide mission. You finally have authorization to fly. You don't have live missiles. Tell us your thoughts as you ran to your jet that morning? ▶



**Penney:** I remember, I'm zipping up my g-suit and I'm trying to make sure I don't forget anything. I've got my helmet, I've got my g-suit, I've got my harness, I've got my line up card, I've got my data transfer cartridge. Don't mess up anything. Because if at any point what I did mattered, now was that moment. I'm running after Sass, down the hallway, out the door, over the sidewalk, down the creek, and I distinctly recall the sunlight dappling through the leaves of the trees as Sass ran to the first jet on the line and I take the one right next to him.

Remember, I'm a brand new fighter pilot. I'm young; I'm a baby fighter pilot. I'm not going to mess anything up, right? And every pilot knows that when you began to deviate from your checklists, from your habit patterns, that's when things start to go wrong, that's the beginning of the accident chain. So I'm telling myself, "I'm going to do everything right, I'm going to do it by the checklist. I'm just going to do it as fast as I possibly can." I run up to my jet, I grab the forms from my crew chief, I shake his hand and I'm looking through the papers and Sass is already in his jet and he looks at me and says, "Lucky, what the hell are you doing? Get in the Goddamn jet." This is not going to be normal but fast.

It normally took twenty minutes to start an F-16, ten minutes if it was a very simple air to air mission. This was before we had GPS. We had this ring laser gyro inertial navigation system that only took eight minutes to spin up. And you started the jet the same every time. There was a challenge and response with your crew chief. He'd have his Mickey Mouse phones on and he'd be talking to you, he'd be plugged into the jet, and it was almost like a dance, a mantra. It got you into the groove as you went through your systems checks and you spun up your navigation system and you loaded up all your weapons and you put in your navigation points and you put in your mission planning.

But we didn't have twenty minutes. We didn't have eight minutes. I needed to go now. And I would have to do something for which I had never been trained. I would have to make up my own procedures for scrambling. I'm looking at the RPM and the temperature, 40 percent, less than 750, all right, good start. Pull the chocks; pull the chocks. And I'm getting ready to jump over the chocks with afterburner because Sass is already beginning to taxi off the ramp, when I feel myself lurch forward and I'm taxiing behind him. And I look down and the crew are still underneath my jet; they're pulling the pins out of my tanks, they're pulling the pins out of my chaff and flare. And my crew chief is still plugged in and the last thing I hear from him is, "Godspeed." And he pulls his wire and I'm by myself, taxiing after Sass. We do a rolling takeoff on runway one right and I follow him and we head to the northwest; low over the burning Pentagon and out to the Pennsylvania countryside. We're spread wide looking low with our radars; looking for what we can see.

And we never found anything.

**Matovich:** Did you ever consider, "I'm going to eject before I hit this airliner?"

**Penney:** The thought of ejection briefly came and went because, sure, I've got that ultimate ability to jump out of the aircraft and save my own skin. But I quickly dismissed it because what if I missed? What if the vector that I had pointed my jet on changed, maybe the jet might have rolled off as a result of the aerodynamics of the ejection. What if the airliner maneuvered? And I'm sitting in my parachute floating down safely with my pink skin still intact as the airliner continues towards D.C.? No, ejection was never an option.

**Matovich:** Low over the countryside, you see the smoke; what were your thoughts?

**Penney:** We never saw the smoke from Flight 93.

**Matovich:** Why not?

**Penney:** We flew out, maybe 100 miles or so into the Pennsylvania countryside; Shanksville was further. But Sass realized that if we continued to go in that direction, we would be leaving D.C. unprotected. If we had chosen the wrong vector, maybe we could get flanked. We believed that there were potentially up to three unaccounted for airliners so while we were being vectored after one that we knew was coming in low over the river, there might be more. So after we had sanitized the airspace out to about 100 miles, Sass said, “let’s go back.” We turned and set up a combat air control over Washington Reagan Airport.

**Matovich:** Did you say any prayers while you were in the sky?

**Penney:** Dear God, don’t let me fuck up.

**Matovich:** Do you consider yourself a hero?

**Penney:** No. No. Sass and I were in mission failure. We were too late. We were too late to protect the Pentagon. We were too late to protect New York. We were too late to protect 93. The true heroes that day are the passengers on 93, and the first responders in New York and at the Pentagon. And the neighbors and strangers who helped each other in the moments before the towers fell. And even the workers who did the dangerous and difficult task of cleaning up Ground Zero, knowing that that work would slowly and surely kill them but doing it anyway so that we as a nation could come together and rise up out of those ashes.

When I think of the passengers on Flight 93, when they got up that morning, they weren’t thinking, “Today, I’m going to be a hero.” No, they were just checking in for the flight to go on a business trip, to go on vacation, to come home from seeing grandma. They were ordinary, everyday Americans. They hadn’t raised their right hand and sworn an oath of service to protect and defend like Sass and I did. Although as a military we don’t send people out on suicide missions, as an airman, as a service member, I know that I have pledged to give my life for something that is greater than myself. I know that every day when I go to work. But as ordinary, everyday Americans, they made

the decision; they chose, despite their fears, despite knowing that they would never see their loved ones again, they chose to attack the terrorists, to fight their way into the cockpit, and to deliberately crash that airliner into the Pennsylvania countryside before it could hurt anybody else.

They did it for us. For our nation. For what we mean as America. They had no second thoughts. They didn’t argue about politics. There was nothing about religion or gender or sexuality or color or any of that. All that mattered to them was protecting our nation and each other. That, to me, is the true legacy of 9/11. We say never forget, but let us always remember that there are things in this world that are more important than ourselves; that our community, our nation, what it means to be American, all the ideals, as imperfect as our nation is, as imperfect and chaotic and friction-filled as it sometimes can be, that the ideals that we hold up are what bind us together and bring us together and these are precious and more important than any single one of us. They truly are the heroes. And not only let us never forget but let us always remember so that their sacrifice may not be in vain.

**Matovich:** Heather, I think I speak for all of us when I thank you for sharing your story today and I truly, truly, want to thank you for your service.

**Carey E. Matovich**  
*Billings, MT*



**EDITOR’S NOTE:** Heather Penney told us that she does not consider herself a hero. Funny thing, real heroes come in all shapes and sizes yet they have one thing in common: they tell us they don’t consider themselves heroes. But we do. Heather Penney strapped herself into a metal box filled with 12,000 pounds of jet fuel and went out looking for a target to crash into. She flew two four-hour sorties that day; eight hours to think about what she had to, was prepared to do. She was fully prepared to die to save the lives of people she had never met. Her act of intentional, premeditated, conscious courage is unquestionably heroic. Thank you, Heather, for your service.

# COME FROM AWAY



THE HARDEST THING WAS SEEING THEM LEAVE. ON DAY ONE WE HAD 7000 STRANGERS, ON DAY THREE WE HAD 7000 FRIENDS AND ON DAY FIVE WE LOST 7000 FAMILY MEMBERS.

— CLAUDE ELLIOTT, MAYOR OF GANDER, 9-11

## THE PLANE PEOPLE

The attack on the United States on 9-11 was horrific. We all remember where we were when we first saw the images of the planes crashing into the World Trade Center.

At approximately 9:45 a.m. Eastern Time – 11:15 a.m. Newfoundland Time – the United States closed its airspace to all flights bound for the continental US. There were scores of planes in the air over the North Atlantic. Seventy-five of those, carrying more than 13,000 passengers and crew, were

diverted to Newfoundland and Labrador. The first flights landed in Goose Bay, Labrador. Flights began arriving in St. John's, Gander, Stephenville and Deer Lake.

St. John's is the capital city of Newfoundland and Labrador. But it has a relatively small airport and quickly filled up. Twenty-one flights – over 4,300 people – landed in St. John's.

Gander has much larger runways and ramp areas, a vestige from its days ferrying bombers to England during World War II and as the principal refueling stop for transatlantic flights in the 1950's and 1960's. So planes kept coming to Gander. By afternoon, thirty-eight aircraft had landed, with more than 6,700 passengers and crew anxiously wondering what was happening.

Gander has a population of about 9,000 people. For the next five days the residents of Gander and the surrounding communities of Glenwood/Appleton, Gambo, Lewisporte, and Norris Arm cared for the “plane people” as they came to be known. The heartwarming response eventually inspired a Broadway hit musical – *Come From Away*.

The passengers and crews were kept on the planes for 10-15 hours after landing while security concerns were addressed, since no one knew whether any of the planes carried terrorists or bombs. The RCMP vetted the passengers; one person was taken away for questioning. The planes were parked nose to tail. It was not possible to unload baggage from the holds. When people were finally allowed off, all they had were items from their hand luggage. Most people had no idea where they were: Gander, Newfoundland – where is that? They needed food, clothing, shelter and, of course, emotional support. Everyone wondered: “Oh my God, what has happened in New York?”

Claude Elliott, as the mayor of Gander, was instrumental in orchestrating the massive effort to care for the plane people. He was at Tim Horton's when he heard that planes were landing at the airport. He immediately swung into action. He mobilized the residents of Gander and the surrounding communities to support the plane people. Phone, internet and TV facilities were made available so that people could connect with their anxious family members and learn what had happened in the United States. Food lines were established. Schools, auditoriums and church halls were set up for sleeping accommodations. Residents opened up their homes to take in passengers and to provide that most sought after thing – a hot shower! The school bus drivers had been on strike; they put down their picket signs and went to work driving people to where they were being accommodated. Pharmacies and stores opened their doors to provide everything from baby formula and diapers to socks and underwear. ▶



The people of Gander and the surrounding communities cared for the plane people for five days. Mayor Elliott described it this way:

*Newfoundland is known for its rugged weather and the only way people survived was by helping each other. When I was a young boy growing up I remember my dad saying to me many times if you have a slice of bread and your neighbour's hungry give him a half of it. I like to think it is something that is bred in us and something that we've done all our lives so it wasn't a challenge. It's only what we're used to doing – just on a bigger scale.*

Both the Town of Gander and the Town of Glenwood/Appleton now have 9-11 memorials made with steel from the World Trade Center to recognize and commemorate their contribution to the 9-11 response.



### ANNA'S STORY

**Anna Fretwell**, from Atlanta, Georgia, was inducted as a Fellow of the College in Coronado on February 26, 2022, a few hours after relating her part of this story. On 9-11, 2001, she was on a Continental flight over the North Atlantic, returning from Ireland where she had taken a deposition. In Anna's own words:

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*The deposition was on Monday, September 10th, and I was flying home to Atlanta alone on the morning of the 11th.*

*We were in the air relatively close to Newfoundland and the pilot came on the intercom and said: "I want you to know there's nothing wrong with our airplane; our airplane is fine. But there has been an emergency in the United States. The airspace has been closed. There is no possibility for us to land in the United States. We are going to have to make an emergency landing and we're landing in Gander." No one had ever heard of Gander!*

*The pilot gave us a very brief sketch of what he knew at that point; that planes had hit the World Trade Center and another plane had crashed into a building in Washington. He said they were going to spend the next bit of time planning the approach to Gander; he had never landed in Gander before and needed time to figure it out. He said, sit tight and we'll let you know more when we're on the ground.*

*We were on the first flight that landed in Gander and we had no idea how many planes were coming. At first we were optimistic that we were going to get hotel rooms. The flight attendants had us pairing up to share hotel rooms since there were so few. Everyone was doing their part to volunteer to share a room with a stranger. But that's not the way it turned out. They ended up needing all of the hotel rooms for the flight crews.*

*We sat there for a really long time after we landed. Initially, we thought we would get off quickly. But the plans continued to evolve. They decided to deplane the non-American airliners first for security reasons. They felt the American planes were potentially the bigger risk. I was on a Continental flight, so we were about the 18th or 20th plane to be unloaded. We had been on the plane for about four hours by the time we landed - and we were on the plane for 16 more hours after we got on the ground.*

*When we got off the plane, we were only allowed to bring off what we had carried on. We went through a very makeshift but extremely amazing, well-organized process where we were checked through Customs and then went to a set*



*of folding tables where ordinary citizens had volunteered to perform security checks. You unloaded all of your items onto a folding table and someone in civilian clothes dug through your stuff and took any knives. Then you packed back up and went into the lobby area of the airport. There was food set up everywhere and someone handed you a bag and said, "Take whatever you want. Get something to drink. Take whatever food you want." And then they escorted you to school buses, which were organized to shuttle us to the various places they had arranged for us.*

*We were taken to the school in a smaller town called Glenwood, which is about 10 miles west of Gander. They shut down the school and cancelled classes. They set up cots in the gym and classrooms. People had brought clothes, toiletries, blankets and food. We got to the school at three or four in the morning. The breakfast the first morning was a little bit disorganized; there was lots of food in the cafeteria but there wasn't really a system. But by lunch the first day, there were signs up, line up here, this is what time lunch will be served, and people were there to serve everything. Everyone you met offered to help, asked you what you needed. The computer teacher for the school had the computer lab open and was teaching everybody how to set up email accounts and showing people how to log on so they could communicate with their families.*

*The first night I slept in the school. Sometime the next day, I met a woman named Susan Gillingham, who was the town manager for Glenwood. She took me and a couple of others to Walmart in Gander so that we could stock up. Walmart was decimated by the time we got there. But I got some clothes and toiletries and a duffle bag to keep it in. Then she took me to her house for a shower! When I got back to the school, I met another local named Joe Fancy. Joe offered me and another young woman in her twenties who was also traveling alone to come stay at*

*his house. He showed us where his house was; it was probably 1,000 yards from the school. He showed us the bedroom, the bathroom, and told us to make ourselves at home and he went back out. It was open door; nobody locks their doors there. It was just come and go as you please; eat whatever you want.*

*I had one night at Joe's house. I wish I had two nights at Joe's house because he was so nice and accommodating and the bed was very comfortable. But the next day, they thought our plane was going to get out so they drove us back to Gander. Then the airspace was closed again. We hung out at the airport for a little while. When it looked like our plane was not getting out that night, they took us to a hotel in Gander. We slept in the hallways and in the ballroom on cots that evening.*

*The experience in Gander and Glenwood on 9-11 was one of the defining experiences of my life. It was so inspiring. I was amazed that this small community, not a wealthy community, very salt of the earth people, in twelve hours, mobilized this kind of an operation to support, feed, house, clothe, provide medicine for, provide communications for, and provide emotional support for 7,000 people that they had no idea were coming. It was unbelievably well organized. When we got on the buses to go back to Gander from the Academy, the people who had already been feeding us for two and a half days brought sack lunches because they didn't know when we would have an opportunity to have another meal.*

*I was in tears. I did not want to leave because I felt we didn't know what was coming next. I felt so safe and taken care of there. It was incredible. And such a good balance from the horror that we were all seeing on TV. It really was amazing to witness that kind of humanity and selflessness firsthand.*

## THE BROADWAY MUSICAL

The musical *Come From Away* was written and composed by Irene Sankoff and David Hein. The characters in the play are real people and the play portrays events that actually occurred in the aftermath of the 9-11 attacks. The play is an amalgam of stories from multiple flights told as if they occurred among one group of passengers. *Come From Away* became a smash hit, performed in theatres throughout the world.

*Claude Elliott*, the mayor of Gander and the driving force in organizing the incredible response, is of course one of the principal characters. *Oz Fudge* was the senior officer in Gander's municipal police force – half of the two person force! He went everywhere rounding up supplies and helping people. He didn't stop for five days.

*Beverley Bass* was the pilot of the 36th plane to come to Gander. Her passengers were put up at the Knights of Columbus Lodge in Gander while she and her crew were lodged at the Comfort Inn. *Pat Woodford*, an air traffic controller, gave her the keys to his brand new pick up truck and told her to use it as long as she was in town.

*Bonnie Harris* was the head of the Gander SPCA. She was very concerned about the animals that were on the planes. Bonnie and her helpers, Vi Tucker and Linda Hurley, crawled into the bellies of the aircraft and got the 19 animals out. Some of the conditions were quite unsanitary. One of the cats was epileptic. There were two bonobo chimps on one of the flights.

*Beulah Cooper* was the Treasurer of the Ladies Auxiliary for the Royal Canadian Legion. She organized a party at the Legion for the plane people with a screech-in ceremony making them honorary Newfoundlanders.

*Diane Gray and Nick Marson* were passengers on Continental Flight 5 from London to Houston, Texas. Those passengers were bussed to Gambo and stayed at the United Fisherman's Hall. Nick asked if he could share the cot next to Diane. They visited the Dover Fault together. At the screech-in, the Master of Ceremonies offered to marry them when he found out they weren't married. Then Diane, who had a couple of beers, said "well why not." By the time they were coming back on the bus from Gambo, Diane was quite emotional about leaving. Nick, being the British gentleman, tried to comfort her with a kiss. Diane recalls it this way: "The school bus was maybe jumping around, and I thought he missed kissing me so I grabbed him and kissed him on the mouth, and that sort of set the scene." So the famous kiss really happened on the school bus, not on the airplane. Nick and Diane married and came back to Gander and Gambo for their honeymoon.

*Shirley Brook-Jones* was on Delta Airlines Flight 15, heading from Germany to Atlanta. The people on that flight were bussed to the Town of Lewisporte. On the flight back to Atlanta, Shirley proposed that they should start a scholarship to help the local students. The Lewisporte Area Flight 15 Scholarship Fund raised several million dollars and has given out more than 340 scholarships since it was launched. Shirley has been back to Newfoundland multiple times. One of the first recipients of a scholarship, Raie Lene Kirby, had served on the food line in Lewisporte as a high school student. She is now a family doctor in the Town of Botwood in central Newfoundland.

*Kevin Tuerff* was the CEO and co-founder of Enviromedia, an environmentally and socially conscious marketing firm. He and his partner were on an Air France 747 heading to New York City when they were diverted to Gander. They slept on the floor with other passengers at the Gander community college. Kevin was so moved by everyone's kindness and compassion that he wrote a book about his time in Gander – Channel of Peace. He also founded the Pay It Forward 9/11 Foundation to spread acts of kindness on the anniversary of 9/11.

Claude Elliott, reflecting on the success of *Come From Away*, commented: *Who would have thought you could make a musical out of sandwiches, a bowl of soup and a blanket? But that kindness is extraordinary to some people.*

***Ian Francis Kelly, Q.C.***  
***St. John's, Newfoundland/Labrador***



## ME AND THE SKY

The Saturday session of the Spring Meeting began with a performance by Olivia Kuper Harris of the song “Me and the Sky” from the musical *Come From Away*. The song tells the true story of Beverly Bass, hired in 1976 by American Airlines as their third female pilot who, in 1986, became the first female captain of an all-female crew in the history of commercial jet aviation. On September 11, 2001, Bass was piloting a flight from Paris to Dallas when she was ordered to land in Gander, the thirty-sixth of thirty-eight. While the Beverley Bass character in the musical is a composite, combining the experiences of several pilots in Gander at the time, “Me and the Sky” is entirely Bass’s own life story.

We can’t do that life story or the song credit – listen to it yourself. But the highly abridged version, told by Bass herself, is:

My parents must have thought they had a crazy kid  
I was eight when I told them that I’d be a pilot  
But I was too young and too short

And there were no female captains

But I took my first lesson

And told my father I’d fly for the rest of my life

Then suddenly the wheels lift off

Suddenly I’m in the cockpit

Suddenly there’s nothing in between me and the sky

They said, “girls shouldn’t be in the cockpit”  
But I kept getting hired

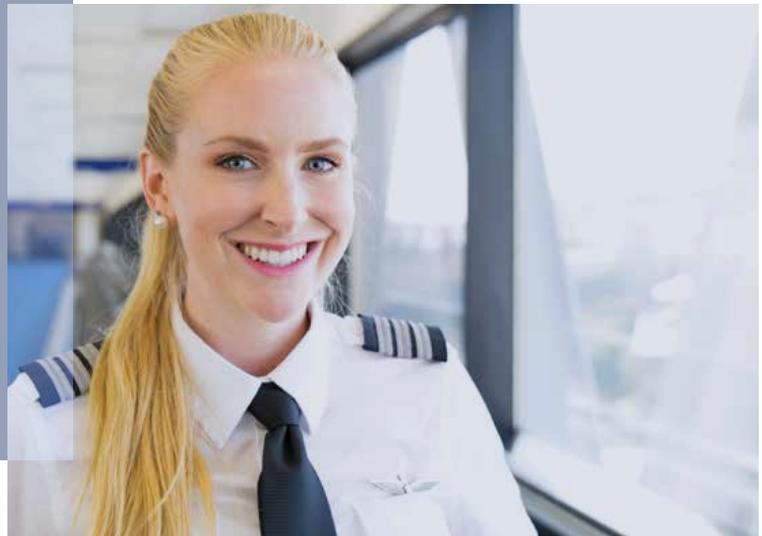
Suddenly I’m in the cockpit

Suddenly I’ve got my wings

Suddenly I’ve got an all-female crew  
No one saying “you can’t” or “you won’t”

Suddenly I’m flying Paris to Dallas  
And the one thing I loved more than anything  
was used as a bomb

Suddenly there’s something in between me  
and the sky



Beverly Bass’s daughter, Paige, is now a pilot herself.

# FROM THE BAR TO BROADWAY — JAY KUO

GEORGE BURNS SAID IT'S BETTER TO BE A FAILURE AT SOMETHING YOU LOVE THAN TO BE A SUCCESS AT SOMETHING YOU HATE. JAY KUO STARTED HIS ADULT LIFE AS A TRIAL LAWYER AND HE WAS SUCCESSFUL AT IT. HE PROBABLY WOULD HAVE BECOME A FELLOW IF HE HAD STAYED WITH IT. BUT HE QUICKLY REALIZED THAT NO MATTER HOW GOOD A JOB YOU DO AS A TRIAL LAWYER, NOBODY STANDS UP AND CLAPS. SO WHILE HE DIDN'T REALLY HATE BEING A LAWYER, HE TURNED TO SOMETHING THAT HE LOVED MORE, A CAREER MEASURED NOT BY VERDICTS BUT BY APPLAUSE AND AWARDS. NOW, TWO TONYS LATER, HE IS AN UNQUALIFIED SUCCESS AT SOMETHING HE LOVES.

While an undergraduate at Stanford, Jay wrote his first full-length musical production. In law school at UC Berkeley, Jay was student body president, associate editor of the Law Review, and the founder and man-

aging editor of the Asian Law Journal. Jay spent a couple of years practicing law and being a general litigator. In 2000 he joined **Susan Harriman's** firm as an associate. He was seconded to the San Francisco District Attorney's Office, trying cases, and he spent six years successfully trying cases. He also found the time to write another full-length musical.

In 2006, Jay decided it was time for him to go do what he loved. Jay's fourth full-length musical, *Allegiance*, starred George Takei and told George's real life story of his time in the Nisei internment camps during World War II.

Jay likes to say that musical storytelling is no different than trying a case and I suppose that's true. Art imitates life. But come on, when was the last time you sang to a jury? When was the last time your audience, the jury, stood up and clapped? The fact is that Jay is doing what anyone would love to do if they just had the nerve and the talent.

Jay's abridged remarks follow.

Hello, my name is Jay Kuo, and I am a recovering attorney.

The art of storytelling *is* pretty much the same whether you are in the courtroom or the theater. You have an audience, you have a tale to tell, you need to tell it in a way that's accessible, and you need to keep their attention, keep them wanting to hear more. And



you've got to lift them up somehow and transport them into another place in their heads, whether it's the world of your client or, as my first Broadway show *Allegiance* required, the inside of a Japanese American internment camp during World War II.

As Maria von Trapp sang in the *Sound of Music*, let's start at the very beginning. I was working as a commercial litigator in the summer of 2005, with two priorities. The first was a case I was handling down in Los Angeles and the second was a musical that I'd written that was rehearsing in San Francisco; both were full-time jobs. I would fly down in the morning to appear in court on the latest motion and fly back in the afternoon for the 7:00 p.m. rehearsal of my show. I did this for months until I gave myself walking pneumonia.

Only one of these two jobs paid anything. That made the prospect of quitting my day job to become a starving artist waiting tables in New York City a rather dismal one. I also had a new mortgage on my house in

Corona Heights, five figures of student debt, and a nagging voice in my head that said I wasn't good enough at nearly age forty to make it on Broadway. But sometimes, the universe just comes and kicks you in the rubber pants.

I faced a crisis of professional identity, known in musical theater land as the end of Act I. Did I really want to be a lawyer the rest of my life? Why did I get up each morning? What did I look forward to each day? It wasn't a close call; it was the musical, this low budget, passion project that I was workshopping in a fifty-seat theater, paying my actors with pizza and dreams. That's what I wanted to do with the rest of my life.

So I quit doing the law full-time; working instead as a part-time contract attorney for a few hours a day and devoting most of my time to that show and my future as a composer and producer. But to avoid having to wait tables, I made a business plan. I thought, "I'm a lawyer and I've done intellectual property cases. I have intellectual property; it just happens to be for shows that I haven't written yet." So I decided to monetize the future value of my intellectual property by turning myself into an LLC and selling membership interests. My company would own all the IP for any show that I wrote or even started to write for the next 10 years; and I sold 30 percent of that company to a close group of investors. They were suckers; it was easy; some of them were my former bosses.

This is a long way to say I never had to be a starving artist. In fact, when I arrived in New York with my new producing partner, Lorenzo Thione, we had the funds to produce professional workshops for our shows, to hire accountants, general managers, lawyers, and even casting directors. “Who are these guys,” people wondered? It turns out money can buy credibility.

In the very first week we were in New York, Lorenzo and I booked tickets to shows pretty much every night. This was research, of course, but it was also the best work you can imagine. We went to see a tiny show called *Forbidden Broadway*, a spoof on musicals that only true theater aficionados can appreciate. We were seated near the front of a mostly empty house; the ticket sales were not good. Then I heard a familiar sounding voice behind us talking about *Title of Show*, a show that we had seen and they were seeing later that week.

So I turned around to chat. “Oh, you’re going to love that . . .” but then I stopped mid-sentence. The man whose voice I recognized was none other than George Takei. Now for those who don’t remember or don’t know, George Takei played Lieutenant Sulu on the original Star Trek series. My brothers and I grew up completely obsessed with that show and, of course, we knew Sulu because he was the only Asian American face on television those days. Even the guy in Kung Fu back then was a white dude named David Carradine.

And I thought how amazing is New York City that you can just go into a theater and run into your childhood hero? So you can imagine my surprise when the very next day at the evening performance of Lin Manuel’s *In the Heights*, who should be seated in our row again but George and his husband Brad? We waved at them; Brad later said that he told George, “I think they’re stalking us.”

During Act I, there’s this moment when the father sings a ballad called *Inutil*, which means “useless” in Spanish. He felt useless to help his daughter succeed at her expensive college. And I looked over to the Takei’s and there’s George weeping copiously. And it surprised me, because it was a good song but not that good. So at intermission, I asked him, “Why were you so moved by that song?” “It reminded me of my own father who felt useless at preventing what happened to me and my father during the terrible years of the Japanese American internment.”

And then he told a tale that mesmerized me about growing up in the camps and what that was like. I knew about the internment from what little I read in history books and from law school cases but I never heard a personal account before. And certainly, not from anyone who had survived the camps. The hair on my arms was on end listening to George talk about that. Lorenzo kept shooting me these looks - really, really excited - because he was shining with possibility too. We knew we were hearing a story that the rest of the world ought to hear as well. So I rather audaciously said so.

“Mr. Takei, the story you just told is so incredible. I didn’t mention this but I’m a composer and a writer and Lorenzo’s my producing partner and I think the story that you just told would make a great musical. Well, I’ve always dreamed about having a story of the Japanese American internment told in the great white way. Well, this is going to sound crazy, but could I have your email address? Because I want to send you a proposal; a storyboard. Maybe a sample song so you could hear my work?”

He agreed. So after recording a sample with my friend Jason in my bedroom with a keyboard, I sent it off to George. And with that, *Allegiance* the musical was born. He loved it. It would take us seven years from the day of that first email exchange to the day of first rehearsals on Broadway, not to mention the \$13.5 million in funding raised from individual investors from Hawaii to New York City, \$25,000 at a time, to turn into reality.



Along the way, we needed to find a way to promote *Allegiance* and build an audience for it long before it debuted. We launched the George Takei social media empire, which I still manage today, but with a dozen and a half employees and twenty-three million fans worldwide across Twitter, Facebook and Instagram. For most times in the last decade, George has had the number one Facebook page, back when Facebook was still cool, and we still have the number one video creator page on Twitter.

I want to talk a little bit about musical storytelling itself, which holds a special power in my view. It's well-established in neuroscience that music lives in a different part of our brain than language and words do. It's why even people with advanced Alzheimer's can often remember tunes and lyrics. To tap that part of the brain as a composer, you need to take a different approach than you would as a book author or a wordsmith. And that's the thing that makes musical theater so wonderful but also very, very hard.

It takes a suspension of disbelief to accept that the characters on stage are suddenly going to break into song. That means, I believe, that the right to sing actually has to be earned. The emotions of the moment have to be sufficiently heightened that simple spoken words would fail to capture the importance or the depth of it. And you don't just have to get the song placement right. Each song should also contain some critical internal arc; a way for the characters to grow and change from point A to point B so that the audience is similarly moved. Their flaws, their humanities, their vulnerabilities should be exposed. Add to that the song ought to be catchy, it ought to be pleasing; it ought to have a structure that feels familiar but also breaks the mold in some way. It's a very tall ask.

So I'm going to play a clip from *Allegiance*, a song called "Higher," sung by the incredible Lea Salonga, Tony winning actress who was the original *Miss Saigon*. But before I play the clip, I have to relate a bit of background on how that song came to be. When *Allegiance* held its world premiere - right here in San Diego, actually at the Old Globe Theater in 2012 - we were deep in rehearsals when the director called a special meeting on Friday afternoon. "We have a problem," he said with appropriate dramatic flair. "We have a leading lady; we don't have a leading lady song." I felt all eyes on me at that moment because I knew what that meant. "You want a new song, a solo, for Lea Salonga?" "I'm going to need it by Monday," our music director said.

Now, to put this in context, this was the equivalent of being a clothing designer and getting a call from Nicole Kidman saying she would like to wear a new dress of yours on the red carpet at the Oscars in three days.



“Okay, okay, you got this,” I thought to myself. “Just go back home and work on it; it will come to you.” It most assuredly did not come to me. But I did send a draft out Friday afternoon and our music director was kind but to the point about it. She said, “I think you have much better in you.”

I decided I needed to shake off my doubt and composer’s block so when my friends called and asked me if I wanted to go out dancing with them that night, I foolishly agreed. I thought, you know, break that composer’s block. Well, that night turned into an ill-advised afterhours party and I wound up getting home well after sunrise. But rather than go to sleep, which any sane person would do, I tried composing the song again. Everything I came up with over the next few hours was terrible. I brewed coffee, I ripped up drafts, and then the same good friends came over that night, Saturday night, and said, “Let’s go out again!” I agreed.

I fell asleep at my piano sometime Sunday afternoon. I woke with a jolt Monday morning with exactly nothing to show for the past sixty hours. I was near tears and feeling like a total failure for having let everybody down. Then, as I was driving up to the Old Globe, I heard the hook. Now, in musical jargon, the hook is the tune that sticks, often in the chorus, which then gets repeated until it worms its way into the ear. I had no idea where the hook was coming from. I pulled over the side of the road and I closed my eyes, let it wash over me, and I heard it again. Really clearly. And with my heart racing, I sped to the rehearsal room and in twenty-four minutes, I wrote it all out, start to finish, and very little about that song has ever changed since. It’s about Lea’s character, Keiko, a prisoner in the Heart Mountain Internment Camp, wanting to reach for something greater than what she had gotten in life. She wanted to reach higher; it was that simple.

I was still playing the song, confidently, when our director swept into the room and said, “Oh, that’s very pretty! What is that?”

## MS. LEA SALONGA - HIGHER

There once was a little girl playing on a swing set

That her grandpa built by the sycamore tree  
near the rusty farmyard gate

While her mama pinned the laundry the little girl would cry out loud

“Push me higher, push me higher, push me I can’t wait”

Her mama would push a couple times but there was laundry still to do

So she learned to use her own strength, pull her own weight, push on through

To swing higher, higher than before

Higher, but scared to reach for something more

Higher, higher towards the sky

Until the day she bent to kiss her mama a last goodbye

There once was a little boy who rode that swing set

He had a licorice twist from the store in town and two knobby skinned-up knees

While his sister pinned the laundry, the little boy would cry out loud,

“Push me higher, push me higher, push me, pretty please!”

The girl would push a couple times but there was laundry still to do

Then she watched, amazed, as suddenly he pulled his own weight through

To swing higher, higher than she dared

Higher, he flew so high but wasn’t scared

Higher, he could touch the sky

Right then she knew that he would also one day tell her goodbye

That little boy, he seemed so sure, was it something never taught to her?

How the years passed quickly by that girl’s a woman still afraid to try.

Is it too late to start again, get back that feeling I had then?

But now my life is upside down

There’s no more farm, there’s no more town, and no use asking why

But I won’t let it pass me by

Life won’t pass me by

I’ll fly

Get back on that swing

Higher, soaring higher up than anything

Higher, I want something more

I dreamed I’d reach for greater things

My eyes upon those golden rings

I’ll take what chance the future brings

And soar



There's something that happens when you've managed to get a show on Broadway and stick around long enough and persistently enough in New York City. Co-producers who work with you on your show go on to lead produce other shows and they sometimes invite you to be a co-producer with them. And that's exactly what happened with the musical called *Hadestown*.

I told my mother that *Hadestown* was the odds on favorite to win for best musical and that she should look for me on stage at the awards. She missed the moment. She doesn't really understand what a Tony Award is but she still manages to sneak it into conversations with her friends, which I take as implicit validation of my big life choice to switch from being a lawyer.

I often think about what it actually took to get to and make it on Broadway as a composer and producer. And it might be summarized as, "Pluck, muck, and luck." Pluck for courage and spirit, muck to wade through for years, and luck of being in the right place with the right goods at the right time. Now, the other word that rhymes with all of that is sometimes appropriate too, especially when a pandemic shuts down your live theater for 18 months. But pluck, muck, and luck are actually not far from what you also need to succeed as a lawyer. The same skills and good fortune would serve you well if you're thinking about making the switch. And who knows, maybe in ten years you could make it. It's never too late to reach for something greater than what life has given you. You can always reach just a little bit higher.

**Bob Byman**  
Chicago, IL

# SAMUEL E. GATES LITIGATION AWARD: CHIEF JUDGE BARBARA M. G. LYNN

THE SAMUEL E. GATES LITIGATION AWARD WAS CREATED IN 1980 TO HONOR A LAWYER OR A JUDGE, WHETHER OR NOT A FELLOW OF THE COLLEGE, WHO HAS MADE A SIGNIFICANT AND LASTING CONTRIBUTION TO THE IMPROVEMENT OF THE LITIGATION PROCESS. WHILE NOT AWARDED EVERY YEAR, THE BOARD OF REGENTS UNANIMOUSLY VOTED THIS YEAR TO BESTOW THE AWARD TO JUDICIAL FELLOW **CHIEF JUDGE BARBARA M. G. LYNN** OF DALLAS, TEXAS FOR HER WORK IN DEVELOPING PROCEDURES AND PROCESSES TO RETURN TO IN-PERSON TRIALS WITHIN SIX WEEKS OF THE ON-SET OF THE PANDEMIC. NOT ONLY DID JUDGE LYNN QUICKLY RETURN TO JURY TRIALS IN HER COURTROOM, SHE DOCUMENTED AND SHARED HER KNOWLEDGE AND EXPERIENCE BY CREATING A SEVENTY PAGE HANDBOOK AS A ROAD-MAP FOR OTHER JUDGES TO FOLLOW IN SAFELY RETURNING TO IN-PERSON TRIALS. THE COLLEGE QUICKLY RECOGNIZED THE IMPORTANCE OF JUDGE LYNN'S WORK AND SHE WAS RECRUITED TO BECOME AN ACTIVE MEMBER OF THE ADVOCACY IN THE 21ST CENTURY COMMITTEE.

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Judge Lynn took the bench in 2000 following an illustrious career as a trial lawyer, following her graduation as first in her law school class at SMU in 1976. Judge Lynn was inducted as a Fellow in 1998. She received the Gates Litigation Award twenty years after her mentor, **Jim Coleman**, received the same award.

Accepting the Award, Judge Lynn spoke to us:

I come before you today to discuss an issue whose time has come and one that ostensibly is contrary to my own personal interests—I speak as an advocate for term limits for Article III Federal judges. In doing so, I am in very good company. Justice Breyer and John Roberts, before he became a judge, have both spoken positively on this subject.

As you know, Article III of the United States Constitution vests the judicial power of the United States in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. Judges of the Supreme and inferior courts shall hold their offices “during good behavior.” In May of 1788, in *Federalist Paper 78*, Hamilton wrote:



“According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior*, which is conformable to the most approved of the State constitutions . . . . The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best of the expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws . . . .

“If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution, against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.”

Some antifederalists, including Robert Yates, opposed life-time tenure, stating about federal judges, “there is no power above them to control any of their decisions. There is no authority that can remove them, and they cannot be controlled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself.” Nevertheless, there was insignificant opposition at the Constitutional Convention to judicial tenure being defined by good behavior.

The subject was mentioned briefly only on three days. It became clear that the Founders meant by good behavior lifetime tenure, and that they regarded it as essential to ▶

judicial independence. The lack of discussion about lifetime tenure at the Convention likely resulted from the Founders not foreseeing the power that the federal judiciary would ultimately exercise. After *Marbury v. Madison*, some of the Founders, including most notably Thomas Jefferson, became opponents of lifetime tenure. In 1822, he wrote “That there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency.”

Since our nation’s founding, judges have enjoyed the very real benefits of lifetime tenure. The question is do we still need it to preserve judicial independence? I say no. At the time our Constitution was adopted, the life expectancy of Americans was roughly 35. In 2021, it was 77. Although several of them far outlived the life expectancy of the time, our original Justices served one year, six years, twenty-one years, eight years and six years. All but one of them were in their 40s, 50s or early 60s when their tenure on the Court ended. In the most recent history of the Supreme Court, starting with Thurgood Marshall, justices who resigned or died in office served respectively twenty-four years, twenty-four years, fifteen years, thirty-three years, thirty-four years, twenty-four years, twenty-nine years, thirty years, nineteen years and twenty-seven years, and of the current Justices, Justice Thomas has already served thirty years and the soon-to-retire Justice Breyer, twenty-seven years. That is a median average of twenty-six and 1/3 years, but seven of the twelve served twenty-seven years or more. Two Justices suffered strokes during their time on the Court, one of whom reportedly resigned only after the other Justices discussed his no longer being assigned writing responsibilities and his vote not being counted when he was in a 5/4 majority. The other Justice retired after discovering, soon after he stumbled over his reading of a dissent, that he had suffered a stroke. As President Biden’s Supreme Court Commission recently observed, the United States “is the only major constitutional democracy in the world that has neither a retirement age nor a fixed term for its high court Justices.” Thirty-one states and the District of Columbia have mandatory retirement for their judges at ages between 70 and 75.

The tenure of all federal judges has increased over time. It is not unusual for judges to serve well over twenty years. The highest average tenure is for Court of Appeals judges—just over twenty-three years, and as the average age of appointees declines, this number will go up. Dealing with a mental disability of a lifetime tenured judge is exceedingly difficult, embarrassing to the court and the judge, and runs the risk of creating injustice due to lack of due process in real cases. Chief Judges are ill equipped to deal with such a circumstance, which sometimes arises when litigants submit transcripts of judges making confused or even incoherent remarks. And the decline can be gradual, not precipitous, highlighting the difficulty in determining when it is time to notify the Circuit and then the Administrative Office Committee on Judicial Conduct and Disability. Admittedly, these problems can arise even without term limits, but it is obviously more likely that such problems are most often age related. Most of the public focus on issues related to term limits has been on the Supreme Court of the United States. Recent polling shows that 63% of Americans favor term limits for Supreme Court appointments, and only 22% oppose them. One popular proposal is an eighteen-year term, with retiring Justices remaining available to serve on the Court in the event of a conflict, death or serious illness, or an early resignation of another Justice, and the ability to serve as a visiting judge on other federal benches. When phased in, it would guarantee an appointment to the President every two years. But my advocacy for term limits extends beyond the Supreme Court and other federal appellate courts.

The danger to the public of a mentally impaired judge is perhaps most critical at the trial stage, when the judge is acting alone, without colleagues who might observe and attempt to compensate for another judge’s perceived inadequacies. Physical ailments might also rise to a level that cannot reasonably be accommodated – think of lack of stamina for a long trial. These concerns may be minimized, though not eliminated, by term limits of 15-18 years with appropriate retirement arrangements thereafter.



The rule of 80, which now allows Article III judges to retire at full pay when their age, at a minimum of 65, and their years of service totals 80, would have to be adjusted to accommodate the desire to encourage lawyers at the top of the profession, who very frequently take the bench at the height of their legal careers and earning capacity, to accept an appointment for a fixed term. After service of the determined term, full retirement would be available, which would be an extension of the benefit only to people appointed below the age of 47. I believe a limited term of service would eliminate the incentive for an appointing President to go below the sweet spot of experience, which I believe is 45 to 55, to appoint attorneys who had practiced law fewer than twenty years. I note that our bankruptcy judge colleagues have had fourteen-year terms since 1978, and I believe their careers have demonstrated the logic and benefits of a long but fixed term. Many seek reappointment, but the safety valve of that process protects against the most significant of my concerns.

Most scholars believe that a constitutional amendment is necessary to establish term limits. If so, the only tenable process is that under Article V of the Constitution. It would require a 2/3 majority in the House and Senate, with ratification by 3/4 of the states, or by a constitutional convention called for by 2/3 of the states, and that has never been done. So exploration of a statutory fix, which some scholars believe will work, should proceed. But a constitutional amendment is the safest and most secure way of accomplishing the task. Given how long we live, judicial independence need not be accompanied by lifetime tenure to be assured. A long term of office with secure retirement will do that. There are many people who are exceeding-

ly qualified to serve in our Article III courts, including the United States Supreme Court, and we should make room for many of them to do so. We can institutionalize what the Supreme Court Commission noted as an argument in favor of term limits: “new voices, new interpersonal dynamics... (and) more generational diversity which may bring valuable perspectives.” This change will not be easy to accomplish, but the task is critical to public confidence in our Article III system. As Henry Ford put it, “the most difficult job is the one you never get started on.” So let’s get going!

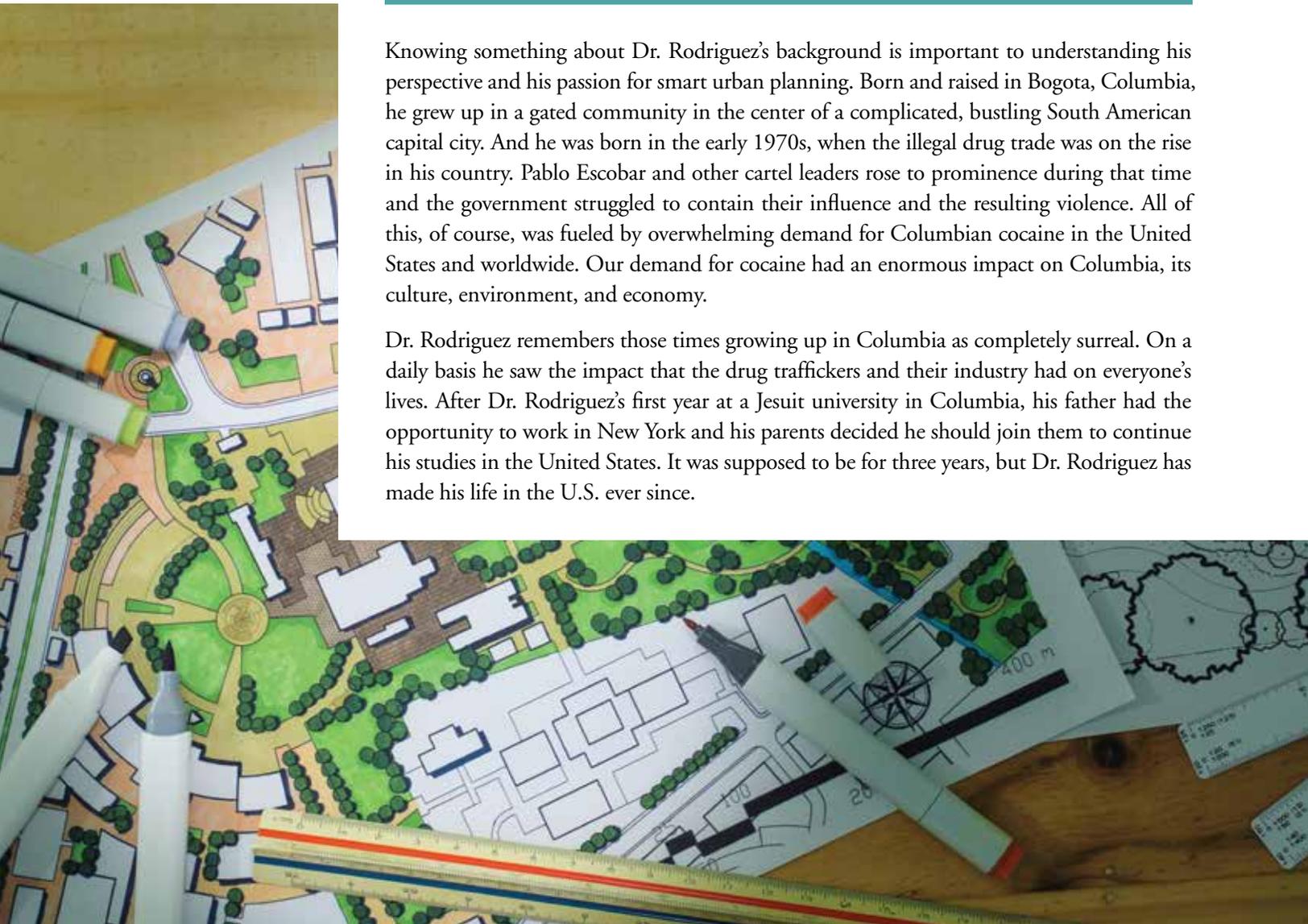
**Rodney Acker**  
**Dallas, TX**

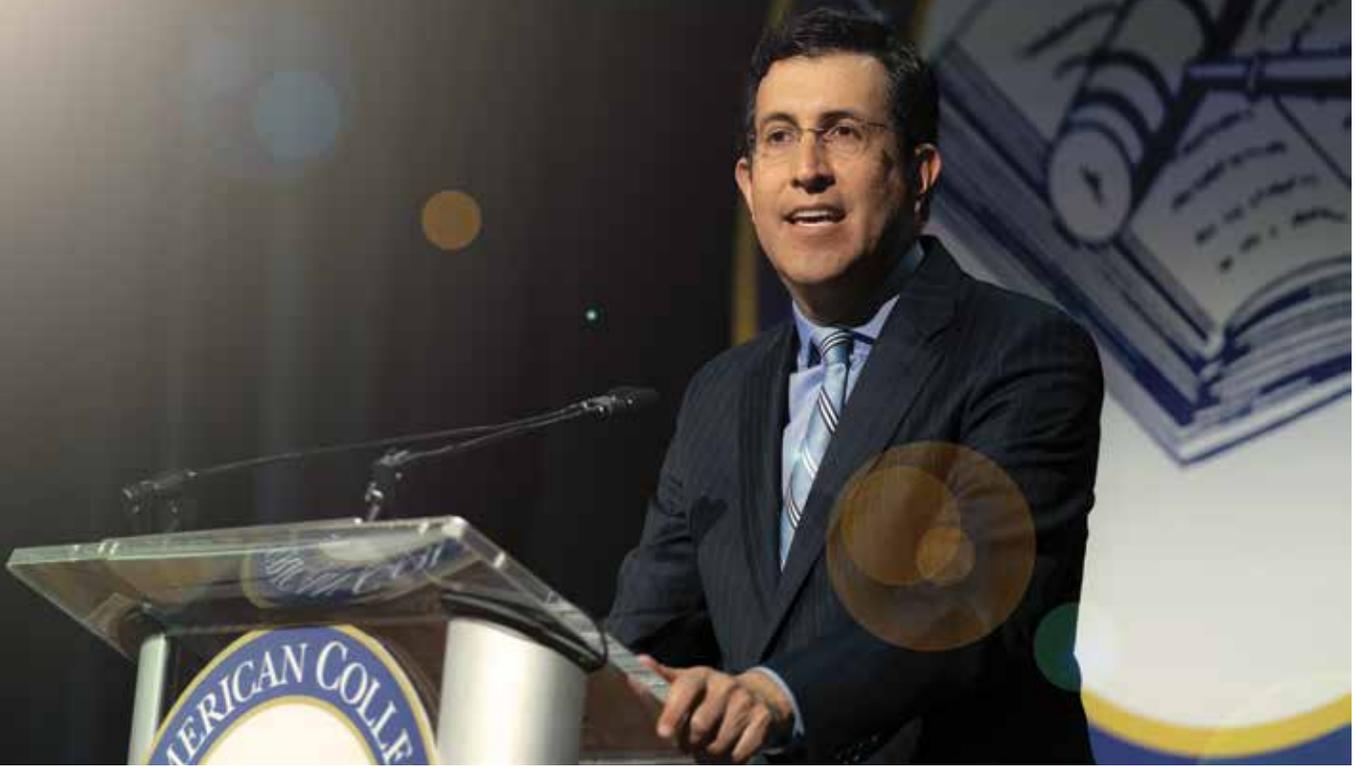
# DR. DANIEL RODRIGUEZ – PLANNING FOR A BETTER FUTURE

DR. DANIEL RODRIGUEZ, CHANCELLOR'S PROFESSOR OF CITY AND REGIONAL PLANNING AND THE ASSOCIATE DIRECTOR OF THE INSTITUTE OF TRANSPORTATION STUDIES AT UC BERKELEY, SHARED HIS INSIGHTS ON HOW WE CAN DESIGN OUR CITIES AND COMMUNITIES IN WAYS TO HELP US ALL LEAD HAPPY AND HEALTHIER LIVES.

Knowing something about Dr. Rodriguez's background is important to understanding his perspective and his passion for smart urban planning. Born and raised in Bogota, Columbia, he grew up in a gated community in the center of a complicated, bustling South American capital city. And he was born in the early 1970s, when the illegal drug trade was on the rise in his country. Pablo Escobar and other cartel leaders rose to prominence during that time and the government struggled to contain their influence and the resulting violence. All of this, of course, was fueled by overwhelming demand for Columbian cocaine in the United States and worldwide. Our demand for cocaine had an enormous impact on Columbia, its culture, environment, and economy.

Dr. Rodriguez remembers those times growing up in Columbia as completely surreal. On a daily basis he saw the impact that the drug traffickers and their industry had on everyone's lives. After Dr. Rodriguez's first year at a Jesuit university in Columbia, his father had the opportunity to work in New York and his parents decided he should join them to continue his studies in the United States. It was supposed to be for three years, but Dr. Rodriguez has made his life in the U.S. ever since.





He arrived at the family's new suburban home in Englewood, New Jersey, a fish out of water, having made no arrangements to continue his education in the United States - a typical teenage boy. He had no idea what the possibilities were, so he went to a library and did some research. The school had to be close by, and he wanted to continue studying engineering and philosophy. He found all of what he needed at Fordham University in the Bronx, New York, where he received his bachelor's degree.

After living in urban Bogota, suburban New Jersey, and then the Bronx, it's no wonder that Dr. Rodriguez's professional and academic interests gravitated toward cities, urban planning, transportation, and equality. He wanted to improve the lives of others, having witnessed firsthand the negative impacts that urban life can have. He knew that with thoughtful planning, cities could actually improve and enhance the lives of its citizens.

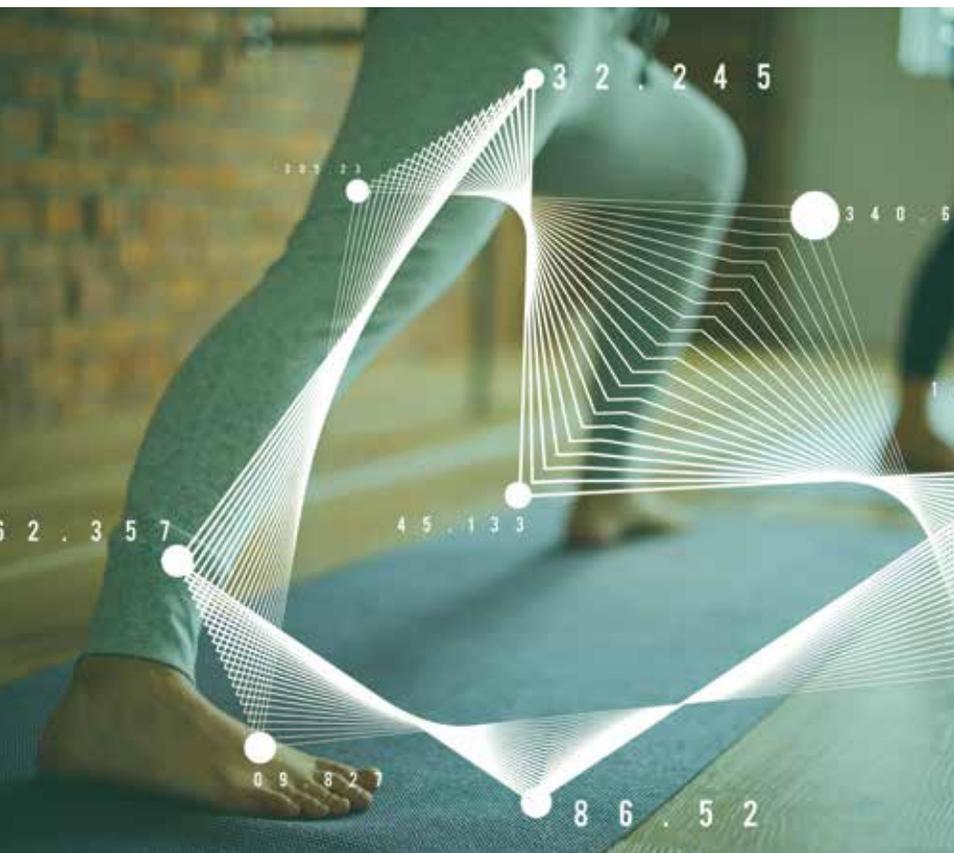
Dr. Rodriguez went on to MIT and received his master's degree in engineering with a focus on transportation. He then went to the University of Michigan where he received his PhD in urban planning. And then this kid from Bogota made his life in the United States. He met his future wife, Dr. Pia MacDonald, when they were both graduate students at the University of Michigan. Dr. MacDonald, who joined us at the Spring Meeting in Coronado, is an infectious disease epidemiologist who spoke at our 2020 meeting in Tucson at the very beginning of the pandemic, sharing her predictions about what would happen to all of us over the following two years.

Dr. Rodriguez shared with us his thoughts about the making and remaking of cities for health.

He asked for a show of hands – how many in the audience believed they engaged in 150 minutes or more a week of moderate or vigorous physical activity – that is, walking, hiking, cycling, dancing, vacuuming, mopping, gardening – virtually anything active. About half of the audience raised their hands.

Dr. Rodriguez noted that when the U.S. population is asked this question, 60% of respondents say that they meet that physical activity guideline, and he noted that those are the guidelines suggested by not only the Surgeon General of the U.S. but also the World Health Organization. But he then shared that when people are given activity monitors to measure their physical activity, only 8.2% of them reach that threshold. Perhaps out of optimism, or perhaps through a lack of self-awareness, we systematically overreport how much activity we're getting.





Dr. Rodriguez emphasized why physical activity is so important. There is an association between the risk of dying from any cause - crashes, falls from treadmills, heart attacks on Pelotons (a sly reference to the recent *Sex and the City* movie), heart disease, cancer, diabetes; you name it - and the amount of physical activity in which we engage. His conclusions - those of us who engage in 90 minutes of physical activity each week have a 20% lower risk of dying from any cause than sedentary people, including the risks that go along with the activity itself. If we increase to five and a half hours of physical activity per week, we have a 36% lower risk of dying from any cause. Exercise, even in relatively small amounts, significantly improves our quality of life, and greatly extends our life expectancy. Dr. Rodriguez added an even more positive note - many of the benefits of exercise accrue at the very beginning of that process - meaning that any exercise is good.

Weekend warriors can feel good about their health, even if they don't exercise every day. Former CDC director Tom Frieden calls exercise a wonder drug, wishing it could be bottled and provided as an easy-to-swallow daily pill.

So what's the problem? The earth is a planet of cities. Right now, more than 55% of the global population lives in cities. By some accounts, with more accurate measurements using satellite imagery, that number may actually be as high as 75%. And focusing on North America, Europe, and Latin America, the number of city dwellers grows to 85-90% of the population. Africa and Asia are projected to catch up in the next fifteen years.

Overall, cities are a great thing. City life enhances productivity, eases trade, leads to gains in knowledge and innovation, and has other enormous benefits. But our contemporary urban lifestyle also dramatically impacts the amount of exercise we get. We wake up, prepare breakfast, go to work, work, break for lunch, keep working, go home, make dinner, watch television, and go to bed. We have designed physical activity out of our daily lives. It is no surprise that cardiovascular disease has become the leading cause of death globally. About eighteen million people die from cardiovascular diseases every year, which translates into about one-third of all global deaths.

So urban patterns have affected our activity levels and our health, and there are other impacts as well. Dr. Rodriguez showed us a graphic illustrating obesity rates in different countries. In the U.S., the prevalence of obesity is about 66%; about two-thirds of us are overweight or obese. Worldwide, the number is much lower, about 40%. Perhaps the surprising data, though, is that in three regions - Latin America, Europe, and North Africa - the prevalence of obesity is not much different from the U.S., only ten percentage points behind. Precisely the areas of the world that are highly urbanized. Dr. Rodriguez does not believe this is a coincidence.

Next, Dr. Rodriguez focused on urban air quality. A recent study of 3,000 cities in 103 countries found that 80% of the population in those cities is exposed to very high pollution, leading to three million premature deaths per year. And according to a study that came out just a few weeks before the Spring Meeting, half of the U.S. population live in areas that exceed the most recent World Health Organization air quality guidelines.

Road safety issues in cities also affect our health. In the U.S. over the past ten years, 350,000 people have died in road crashes. In 2020, there were more than 38,500 deaths and 2021 is not looking much better. Despite all the improvements in safety around vehicles and driving, the numbers are actually getting worse. And during the pandemic, even though we're driving less, fatalities increased sharply. Urban life is dangerous.

Finally, Dr. Rodriguez shared with us that the so-called urban heat island effect also has negative health impacts. The data shows that certain neighborhoods in Washington D.C., New York City, Phoenix, New Orleans, Minneapolis, and El Paso are significantly warmer than other parts of the city - in some cases up to seventeen degrees Fahrenheit warmer during the height of summer. Dr. Rodriguez explained that this is because the materials we use to build our cities tend to trap and absorb heat during the day and release that heat at a much slower rate during the night. Vehicle engines, both electric or nonelectric, also contribute to this urban heat island effect.

Dr. Rodriguez offered four solutions for the challenges exacerbated by urbanization – grow closer, grow mixed, grow active, and grow green.

First, grow closer. What matters most is where development happens, not the characteristics of that development itself. If we build closer, we are more likely to drive less and use mass transportation instead, decreasing greenhouse gas emissions and improving air quality.

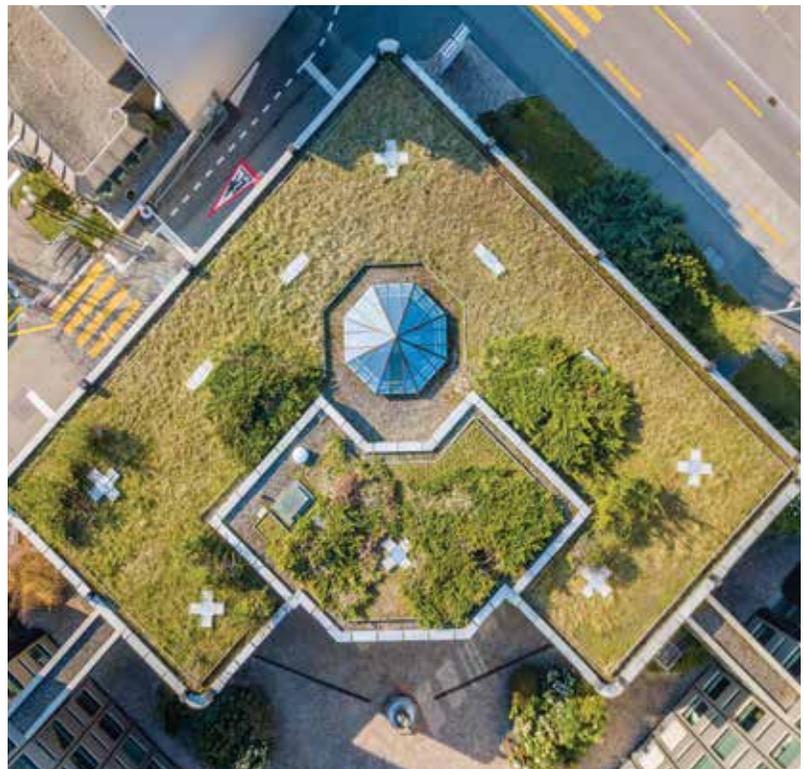
Second, grow mixed. Most of the U.S. is still dominated by zoning focused on separate land uses. This was originally a good thing and was aimed in part at addressing the fact that during the Industrial Revolution people were living in dirty quarters next to factories, with toxic fumes and poor ventilation. More recently, however, separate uses have been primarily motivated by a desire to protect vested interests and to benefit the wealthy. Today, urban planners understand that mixing uses has significant health and environmental benefits and should be considered as well.

Third, grow active. Dr. Rodriguez explained that for very short trips - a mile or less - only 30% are made by walking or bicycling. And for trips between one and three miles, 90% are taken by car. When people are surveyed about the reason for this dynamic, most people say it's due to a lack of infrastructure as well as safety concerns, citing a lack of sidewalks, paths and trails, and too much traffic.

Finally, grow green. Growing green means incorporating things into our city planning like adding green roofs, lining streets and public spaces with trees, constructing living walls on building facades, and creating more parks and open space. Growing green leads to many benefits – it addresses urban heat islands, helps with stormwater management, leads to more active and healthy lifestyles, improves the environment and benefits overall mental health. Simple steps with radical results.

Dr. Rodriguez's talk was interesting and thought-provoking, and we appreciated that he shared these important insights with us.

**Melinda Haag**  
**San Francisco, CA**

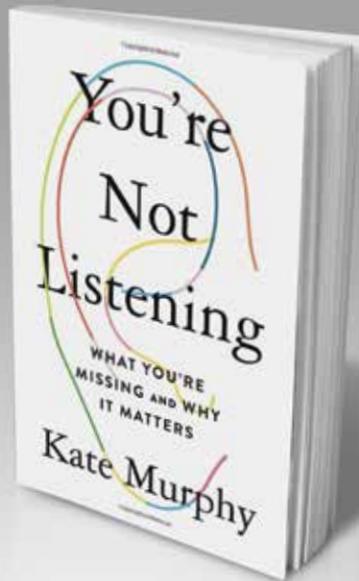


# WHY WE SHOULD ALL BE LISTENING: AN INTERVIEW WITH JOURNALIST KATE MURPHY



MOST TRIAL ATTORNEYS BELIEVE THEMSELVES TO BE GOOD LISTENERS. I CERTAINLY DID AS I BEGAN TO READ KATE MURPHY'S BOOK *YOU'RE NOT LISTENING: WHAT YOU'RE MISSING AND WHY IT MATTERS*, WHICH PRESENTS A WELL-RESEARCHED AND THOUGHT-PROVOKING ACCOUNT OF THE PHYSICAL AND SOCIAL SCIENCE BEHIND GOOD AND BAD LISTENING AS WELL AS WHY, MORE THAN EVER, WE SHOULD ALL STRIVE TO BE BETTER AT IT.

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Kate Murphy, a Texas native, accidentally started her journalism career by writing a few articles for a small local newspaper when the *New York Times* called. Since then, she has written on a variety of topics including travel, fashion, business, finance and science. She has conducted thousands of interviews and written not only for the *New York Times* but also the *Wall Street Journal*, *The Economist*, *Agence France-Press*, and *Texas Monthly*.

Kate understands the “hot irony” of talking about being a better listener, but believes the more we talk about it, the better we will be.

An abridged version of Kate’s interview at the Spring Meeting follows:

**Gunn:** I want to talk today about how your book can help us, as trial attorneys, to be better at what we do for our clients and for our communities. What brought you to writing this book?

**Murphy:** As a journalist, I listen for a living so I have always been very interested in listening. But I live in the same world as everybody else and I’ve noticed that listening is becoming something of a lost art. When you’re talking in social situations, you’ve probably been at dinners where people are looking at the phone during dinner while you’re talking. Regarding politics, if you watch the Sunday news programs, no one’s talking to each other; they’re yelling over each other.

With the people that I’ve interviewed for work, I noticed it was almost a rare event for them to have somebody sit there and really listen to them. At the end of the conversations, they would say, “Thank you so much for listening.” It seems listening is seen as a burden these days in our society.

How it relates to lawyers is we do think that speaking is more important; that you need to make your case. You need to control the conversation. You need to advance yourself and that only happens through speaking. But actually, to be a clear, convincing, compelling speaker, that needs to be front-loaded with listening because you have to know your audience and the only way you know your audience is by listening to know their level of understanding, to know the issues that might set them off, things you might want to stay away from, and also how to craft a message that really appeals, resonates, affects the other person; that’s what lawyering is all about; whether you’re talking to a jury, to a client or to a partner. To really figure out where they’re coming from and understand what their issues are so you can respond accordingly because the mark of a good listener is how you respond.

**Gunn:** In trial, we have different roles and one is to pick a jury where you have to be a very good listener in a really formal situation; you’re trying to listen, take notes and think of the next question. Can you give us some ways to be better listeners during *voir dire*?

**Murphy:** One of the first things I would recommend is something I talk about in the book – shift versus support response. This actually comes from Charles Derber, who is a sociologist at Boston College. The shift response is when someone says something and then you respond in a way that totally shifts the conversation generally back to you. The support response is something that advances your understanding, that keeps on topic, and asks for more.

For example, “My dog got out last week and it took us three days to find him.” Now, a shift response would be, “Oh, we have a rescue dog and it gets out all the time so we can only take it out with a leash.” A support response would be, “Wow, three days? You must have been in agony. How did you finally find the dog?” You will find out things about that other person just through that support that you never would have found otherwise. ▶

I've covered juries in my course of my journalism career – and I've noticed during *voir dire* that a lot of times the lawyers will try and connect with the various jurors and so when they ask a question like “Where did you go to high school?” and the juror says “Central High,” the response is “Oh, I know somebody who went to Central High!” So they have turned it back to them instead of asking another question about their experiences at Central High, such as, “Were you on the football team?” or “How many years did you go there?” Look for something that gives you more information about that juror instead of bringing it back to you.

**Gunn:** Can you do a hybrid? Can you say, with respect to the dog situation, “Oh my gosh, I have a rescue dog!” so you have a little bit of shift response because you are saying a little bit about yourself but then you follow up with, “I have a rescue dog; you must be very upset about yours!” With jury selection, we all are working to be likable. We're trying to be responsive but also listening. Is there any utility in a hybrid like this?

**Murphy:** You have to earn that first. Get more from them and then you've earned the right to tell them a little bit about yourself and also you've gotten much more information to be able to see how well you relate to the other person. Intimacy is earned.

What makes you likable is really listening. That is a sense of hospitality and openness that really draws people in more than saying, “Let me tell you more about how I'm like you” – because you're not.

**Gunn:** As trial attorneys, we are trying to be very good listeners but we also want our audience, the jury, to be good listeners. How can we act in a way where we're inviting people to be better listeners?

**Murphy:** That's a great question because listening is not something you should only be doing when the other person is talking; it's something you should be doing while you are talking – picking up the little cues from the jurors. Looking at them, seeing where the eyes go, looking for that little change in expression, looking for the body language.

**Gunn:** In your book, I recall you discussing Paul Grice's Conversational Expectations, his four maxims. Can you talk about that?

**Murphy:** Yes. He's just an amazing British linguist who came up with four maxims of what we all expect in conversation. They apply whether you're in front of a jury or just you and I talking: quality, quantity, relation, and manner. If you don't meet those expectations, people are just going to shut down.

Quality: We expect the truth.

Quantity: We expect information that we don't already know but not too much that we're overwhelmed.

Relation: We expect relevance and logical flow.

Manner: We expect you to be reasonably brief, unambiguous and orderly.

If you violate any of these during a conversation, the other person's just going to shut down. There are some scholars who argue to add more or less but those are pretty much the ones that everybody agrees with.

**Gunn:** Your book advocates that we all need to be better listeners, which can make us better, happier people, but you also talk about how sometimes it's okay to stop listening. Can you tell us when it's okay to stop listening?

**Murphy:** Well, I'm really glad you brought that up because I have a whole chapter about when to stop listening. I'm not advocating you listen to everyone until they run out of breath. No. I'm advocating that by becoming a better listener, you get much better at spotting bull\*\*\*\* earlier. Intuition is nothing more than recognition. The more people you listen to, the more aspects of humanity you will recognize and the better your gut instinct will be.

But there's not enough hours in the day, and listening is tiring. Doing it well is tiring. If you're using all your senses and doing it in the way that I describe in the book, it's tiring. You have to realize that you can't do it all day. Air traffic controllers? There are federal laws; you cannot listen more than an hour and a half before you need to take a break and do something else. In my life with interviewing people, I can't do more than a certain amount in a day because I know I'm no good; I'm going to miss information.



Part of being a good listener is knowing when you've heard enough and being able to tell people, let's revisit this later. I'm really interested in what you have to say but I don't have the bandwidth right now or I need to take care of something else and then come back later.

**Gunn:** At least at the beginning of the pandemic, a universal thought was that Zoom was wonderful and allowed us to continue to take depositions, to see each other and to wave at our loved ones from across the country. Do you think this is a good shift? How do you feel about Zoom?

**Murphy:** The kitty cat lawyer from Texas; that's my favorite. So if there's more of that I think it's good. I still laugh about that. If I'm having a bad day, just watch the lawyer in Texas, kitty cat man.

I did write an article for the *New York Times* about Zoom - the problem with Zoom - it does have its place. I don't write the headlines but it is entitled "Why Zoom is Terrible." Zoom is not universally terrible; it's great for looking at your grandkids, for saying this is what I'm making for dinner, but in terms of having meaningful exchanges with other people, it's terrible because the majority of communication is nonverbal - the vast majority. Zoom gives you a lot of nonverbal communication but it's faulty because of the way these video services are set up. It actually smooths over some of the movements to save bandwidth. So you're missing things and your brain is subconsciously saying, "What is going on?" You're looking for the same things, the same little things around your eyes and around your mouth, which are so expressive.

The other thing I talk about in the book, which I think is fascinating, is when we have different emotions, we actually have different coloration; they're emotional signatures, color signatures. We have all of these little capillaries, blood vessels in our faces, it doesn't matter your ethnicity, your color tone; you will have these shifts in coloration according to whether you're happy, you're

sad, you're anxious. We're picking this up all the time when you're talking to somebody. It's informing your understanding of the other person. So when you're on Zoom, it depends on your monitor and the pixilation, but the color's never quite right on. Also, the position of the camera can be down, up, to the side, and it will have the effect of making you look shifty or haughty, depending on where your eyes are. And let's be honest, people are looking at themselves. You know, like, "Oh my God, do I really look like that? Please, don't let me look like that."

**Gunn:** It's so distracting.

**Murphy:** It is. I've just laid out a few things that are bad about Zoom but that's why people talk about Zoom fatigue. If you just talk on the phone, go back to teleconferencing because at least

that way you're getting the tonality, you're getting the pauses, you're getting a lot richer of a conversation because it's better to have less information that's good information, than a whole lot more information that's faulty, which is what you get from Zoom.

**Gunn:** Now the problem, of course, is that it has become so efficient to do Zoom depositions rather than to go back to the old way of flying across the country for a three-hour depo and coming back. What I've learned from your book and what you're advocating is you really need to think about if that's the right idea to get the information and to accomplish the goal, which is to have a really effective, good deposition; to listen to what the deponent is saying.

**Murphy:** And there's also just the energy in the room, but I do think in certain cases, depending on the deposition, it has its place in certain applications.

**Gunn:** I hope everyone learned a little bit about being a better listener and how that can make us happier, better, more efficient lawyers and people. Kate, thank you so much for coming.

**Amy Collignon Gunn**  
**St. Louis, MO**



# NEW INDUCTEE LUNCHEON

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 SAM FRANKLIN, PRESIDENT OF THE COLLEGE IN 2017-18.



On behalf of the Officers, Regents, State and Province Chairs, and Past Presidents, welcome to this gathering and congratulations to each of you as our most recent class of new inductees. This gathering, like all before it, is always an important part of our national meetings and is a special time for those of us in the College.

Let me say that this is the first time I've had the honor to give these remarks and I am privileged but nervous; there are a lot of hard graders out there. But I have followed what one Fellow once described as the Five P's: Proper preparation prevents poor performance. And as they say, very few souls get saved in church after 15 minutes. So thinking about the four maxims of speaking we learned about this morning - quality, quantity, relativity, and logical flow - I hope I hit three of those.

Now, there's a structure that's typically followed and to my knowledge, only one past president has ever deviated from that form. Those remarks were not well received; that past president was never invited again. So I'm going to rely heavily today on what is now about thirty occasions that Betty and I have attended these luncheons since I was inducted in 1992. I'll spend most of my time highlighting how you came to be here today and then a little bit about our special Fellowship and the opportunities it has to offer to each of you.

Fellowship in the College is by invitation only; one does not apply, one does not politic for it, and if one actively seeks Fellowship, it's likely to never be achieved. In fact, our goal is that you will never even know that you're under consideration for admission. And let me briefly state what

our qualification standards are. To be eligible for Fellowship, a candidate must have a minimum of fifteen years of active trial practice. Only those trial lawyers who are unquestionably and eminently qualified are eligible. And it is those lawyers who are outstanding and considered the best in the state or province who are invited to Fellowship. In addition to these qualifications, the candidate must have high ethical and moral standards. Professionalism and excellent character are indispensable attributes. For over seventy years, the College has inducted into its ranks the preeminent courtroom lawyers in North America. We are assured that we pick and invite only the best by way of an extraordinary selection process, which I'll now briefly describe to you.

First, a word on process. An established process is a key to excellence. I'll give you an example. I think it's best illustrated by what Coach Nick Saban at the University of Alabama has done, even though it's hard for an Auburn fan like me to acknowledge it. Coach Saban always refers to the process; the process followed in the recruiting, training, practicing, discipline and game performance. And in the case of University of Alabama football team, time and time again it produces excellent results. It doesn't hurt consistently to have a bunch of five-star recruits enter the program each year, I might add. And once I describe our process, you hopefully will see how and why we know each of you meet the qualifications I stated earlier.

First, since you can neither apply, politic, nor seek an invitation, you were noticed by someone; either a Fellow, one of our judicial Fellows (meaning a judge who was a Fellow before taking the bench), or through an intense search on the part of one of our state or province committees. Now, let me give you just a brief example of what I mean by "noticed."

Long before I was nearing the fifteen-year mark, I tried an almost three-week long case in federal court with a senior partner who was then forty-four years old. The case was vigorously contested and on the other side were two Fellows in the College. Our side won, the two Fellows on the other side lost, and were very disappointed. However, they made a point to support the nomination of my senior partner and about fifteen months thereafter, he was invited to Fellowship. That was my first knowledge of the American College of Trial Lawyers but it taught and inspired me to endeavor to become the best courtroom lawyer I could become.

Once your name was raised, your State or Province Committee commenced an intensive investigation and learned as much about you and your trial record as they could. ▶

Someone developed a detailed case list of your cases, the nature of them, the length, the attorneys involved, the judge. A member of the committee then reached out and spoke directly with other Fellows, opposing counsel, and judges to see if you were indeed an outstanding trial lawyer. The committee then discussed, debated, and voted on your nomination. And if favorable, passed it along to our National Office. A number of candidates never make it beyond that step.

Once received at the National Office, a confidential poll was then distributed to each Fellow in your state or province and this is where it really gets interesting. Each Fellow, with total anonymity, is given an opportunity to rate the candidate; ranging from very favorable to favorable, either by knowledge or reputation, or on the other end of the spectrum, unfavorable. Fellows are encouraged in total confidence to include any comments or other information they may have supporting or opposing that nomination. My favorite of this week when the Board met was: "Darrell is smart but is better described as a smart ass. He once tried to sneak evidence, inadmissible evidence, into the jury room." Darrell was declined.

Now once that confidential poll is completed the results are provided to your Regent and only your Regent will thereafter know the identity of the persons responding to the poll and putting forward the views reflected therein. The Regent then conducts his or her own investigation. The Regent's job is to verify all information. After all, a correct decision can never result from incorrect knowledge. Using all information developed during that stage, the Regent will communicate with Fellows, other lawyers, judges, arbitrators, or whoever may have significant information regarding the candidate. It is particularly important that the Regent explore in detail any unfavorable votes or other negative information which may have surfaced during the poll. And let me add, however, this is not a black ball system where an unfavorable vote in and of itself is disqualifying, as the Regent and ultimately the board, are interested only in matters of substance.

But once the Regent has done that work and completed the investigation, at each of our na-

tional meetings the Regents then present the candidates, one by one, to the Board. And the Board includes not only our Regents but all of the Past Presidents who do not have a vote but can be vocal. And the Regent makes a recommendation; either they recommend to approve this candidate or recommend decline. And each candidate is then reviewed and discussed and, obviously, some require a more detailed extended discussion if any questions have been raised. And following that presentation, which for the Regent has been described as in the nature of an intense cross-examination of his or her recommendation, there is a vote. You went through that process. And having witnessed this process for over a dozen years now, I can tell you that not all of the candidates who get through that process are approved. Historically, only about 75 to 80 percent of candidates are approved by the Board.

But if approved, there's one more step. Each person approved by the Board receives a statement of qualifications, which is completed by the candidate. Questions are asked directly of the candidate at that stage to see if there might somehow be some important and significant information that we missed. Once that statement of qualifications is submitted, reviewed once more by the Regent, an invitation to Fellowship is then sent to the lawyer. And each of you met successfully and passed each of those steps.

As I said, an invitation to Fellowship cannot be purchased, it cannot be the results of politics, and it is something that one does not seek. Rather, one must simply earn the invitation and wait to be asked.

So what does that tell you or say about the lawyer who sits beside you today? It says a number of things in my mind and I think in the mind of others. The lawyer is smart, talented, and innovative. The lawyer is hardworking, competitive, and a high achiever all of his or her life. The lawyer has, by taking tough cases to trial, shown courage and as stated by Winston Churchill, courage is rightly esteemed the first of human qualities because it is the quality which guarantees all others. And as we say it down south, a lawyer was raised right and enjoys an impeccable character and can be totally trusted. The lawyer is committed to the law as a profession and recognizes the license to practice is a privilege.

In addition, the lawyer is empathetic and in all likelihood not unduly biased or partisan in his or her views. In fact, the lawyer is collegial and values relationships with everyone he or she encounters in the trial practice. This includes parties, witnesses, opposing counsel, jurors, judges. The lawyer believes in reasoned debate and not assertion of unyielding positions or opinions.

There's one other thing almost all inductees and Fellows share and that is confidence. There was a trial lawyer that was asked at the end of his career to reflect back and comment and she stated, "You know, there may have been a few times I failed to convince a judge I was right, a few times I failed to convince a jury, but by gosh, I never failed to convince myself I was right."

We believe that lawyers invited to this Fellowship at least share a lot of the characteristics that were used to describe the great lawyer, John W. Davis, in a 1973 book entitled, "Lawyers' Lawyer," by William Harbough.

Those words were: “In my heart, what makes him live was his gentle kindness and unfailing sympathy. His gift of humor and his flashing wit. The ability to laugh with and not at his fellow man. His invariable simplicity, his human understanding, his patience to listen to those less gifted and less wise, his readiness to help those who had no justifiable claim upon his time. His unaffected modesty.” Well, I’m not so sure about that modest part, at least today.

Let me just pause here and say a word about your spouse or significant other, or I know for at least one inductee, maybe your daughter or significant other who’s here with you today. Trial lawyers work long, hard hours and in almost all cases under lots of pressure. None of us could do it and do it well by ourselves. As David Brooks, author and columnist wrote in his book, *The Road to Character*, “No person can achieve self-mastery on his or her own. Individual will, reason, compassion, and character are not strong enough to consistently defeat selfishness, pride, greed, and self-deception. Everybody needs redemptive assistance from outside.”

We all need people to tell us when we are wrong, to advise us on how to do right, and to encourage support, cooperate, and inspire us along the way. Virtually, none of us could have made it here and where we are without the greatest support and understanding from those closest to us. And while Fellows must earn their induction, the College recognizes much of the credit belongs to the spouses and significant others who have been there for us. And the College values those persons as much as it does our Fellows. We invite and welcome them to our gatherings and our lives are enriched by those persons and their talents and accomplishments.

Tonight you will be inducted as Fellows. You will have an immediate bond with outstanding trial lawyers all over North America. I encourage you to review the blue book directory you’ll receive of the Fellows in your state or province and hopefully, even the history of the Fellows from years past who are no longer with us. When others in your community learn of your induction, they too will know that you are eminently and unquestionably an outstanding trial lawyer who practices at the highest levels.

You will have many opportunities going forward for unique experiences and opportunities to develop friendships all over North America. **President Mike O’Donnell** and Brett sent me a book back in 2019, when I was recovering from hip surgery, *Aristotle’s Way* by Edith Hall. Here’s what Aristotle wrote about the importance of friendship. “Friendship is one of the most indispensable requirements of life for no one would choose to live without friends but in possession of everything else that is good. Friends are of help to the young by protecting them from mistakes, to the elderly by looking after them and making up for their failing powers

of action, to those in the prime of life to help them in doing good things.” Without question, it’s the friendships that Betty and I have developed with Fellows and spouses over this last, almost thirty years, renewed again this week that has been so rewarding to us.

But we’re not just an honorary association; we’re an active organization and there are many ways in which you can participate and we need you to help in achieving our mission. It has been said about Justice Louis Brandeis that as a young man, he did well; then he did good. There are many opportunities for you to do good. As our speaker said this morning, you can always reach a little higher. You can assist our State and Province Committees in identifying others who might qualify. You can help us in our efforts to be more diverse and inclusive. There are important programs such as our ongoing mentoring and teaching trial advocacy programs in which you can participate. And then there are a number of our general committees with specific missions in which you can immediately join and participate. Please, do not be a person who gets inducted and hangs the plaque on your wall and we never see you again.

I’m very near the end. And as **Past President David Beck** says, the two words which are guaranteed to bring an audience to its feet are, “In conclusion.” Betty Franklin, on the other hand, says that her definition of an optimist is the person who slips her shoes back on her feet under the table when I say, “In conclusion.”

I wanted to think how to end what message I might leave with you. This is a weekend of joy. I reference again the book by David Brooks, and he ends the book with this: “Joy is not produced because others praise you. Joy emanates unbidden and unforced. Joy comes as a gift when you least expect it. In those fleeting moments, you know why you were put here and what truth you serve. You may not feel giddy at those moments, you may not hear the orchestra’s delirious swell or see flashes of crimson and gold, but you will feel a satisfaction, a silence, a peace, a hush. Those moments are the blessing and the signs of a beautiful life.”

We in this room are indeed blessed. What I will and can say with the most profound pride, respect, and confidence, is welcome to our revered Fellowship. In the words of our founder, “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.”



# SPRING 2022 INDUCTEES

SIXTY NEW FELLOWS WERE INDUCTED AT OUR 2022 SPRING MEETING; A SIXTY-FIRST WAS INDUCTED IN A SPECIAL CEREMONY SO THAT WE COULD WELCOME HER BEFORE HER ELEVATION TO THE BENCH WOULD HAVE MADE HER INELIGIBLE. OUR NEW FELLOWS LIVE AND WORK IN THIRTY-TWO DIFFERENT STATES AND PROVINCES. TWENTY-ONE ARE WOMEN; NINE IDENTIFY AS MINORITIES; AT LEAST FIVE ARE VETERANS; FOUR WERE COLLEGE ATHLETES, BUT MOST REMAIN AMBULATORY; MANY HAVE SERVED BUT SOME REMAIN IN PUBLIC SERVICE.

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On a chilly January 12, 2022, evening more than twenty Fellows from DC and Maryland gathered in Silver Spring, Maryland on the patio of Judicial Fellow **Mike McAuliffe** and his wife Heidi to enjoy wine and beer, along with Cincinnati Chili prepared by Heidi, for the induction of **Rachel McGuckian** to Fellowship in the College. Rachel was a longtime partner in the Rockville office of Miles & Stockbridge and was known as a “go to” trial lawyer in Montgomery County. Rachel, who is active in a wide range of civic and community



affairs, has served in a variety of leadership positions in the Maryland Bar, DC Bar, and Montgomery County Bar. During the same week in September 2021 when Rachel was approved for Fellowship by the Board of Regents, she was also tapped by Maryland's Governor Larry Hogan to become a Judge of the Circuit Court for Montgomery County. Rachel's father, Paul A. McGuckian, who passed away in 2021, was also a Judge on that Court, and surely would have been proud of Rachel. Our special induction ceremony preceded Rachel's investiture on the Circuit Court by only a day. The event was a complete surprise for Rachel; she had been told that a few Fellows and the Treasurer of the College would gather to swear her in. The large turnout, on a cold evening during the reign of the Omicron variant, was quite impressive and a tribute to Rachel's standing among the suburban DC Fellows.

The guests included Regent **Joe Caldwell**; the Maryland State Chair and Vice Chair – **Mary Beth Kaslick** and **John Bourgeois**; former Regent **Al Brault**; former DC Chair **Patrick Regan**; and former Maryland Chairs **Jack Quinn** and **Greg Wells**. Treasurer **Bill Murphy** was pleased to summarize for Rachel's benefit (in somewhat abbreviated form) the selection process that led to her induction, and to deliver the Emil Gumpert Charge to New Inductees. ▶

Rachel was able to attend the Coronado Spring Meeting in person, where she replicated her induction in slightly warmer conditions, and was able to watch **J. Ashwin Madia** of Minneapolis, Minnesota respond on behalf of his class of inductees.



Ashwin earned his B.A. from the University of Minnesota in 1999 and his law degree from the New York University School of Law in 2002, after which he joined the U.S. Marine Corps and served as a judge advocate. As a Marine lawyer, Ashwin tried over one-hundred felony and misdemeanor cases, mostly defending young Marines who had made bad mistakes and were facing many years in prison. In 2005, Ashwin deployed to Iraq and worked with the State Department, Justice Department, United Nations, European Union, and Iraqi judges and attorneys to help establish the rule of law in Iraq. He served as a prosecutor when he got back from deployment in 2006. After his discharge and an unsuccessful run for Congress in 2008, Ashwin founded his own firm, which specializes in the representation of victims of sexual harassment and age, disability, racial, and sexual orientation discrimination.

Ashwin and his wife have five children under the age of six, including twins who were four months old when he spoke to us, which more than explains why his wife was not with him to share his induction. Ashwin's abridged remarks:

Being here and having the opportunity to meet so many distinguished Fellows over the past couple of days, I'm reminded of what newly elected congressman Abraham Lincoln said shortly after arriving in Washington. Overtaken by the grandeur of the capitol and the gravity of his office, he thought to himself, "How in the world did I ever get here?" Then upon meeting many of his soon to be colleagues, he revised the sentiment, "How in the world did all these other people ever get here?" Just kidding.

It is a great honor and a privilege to be here with you today. On behalf of the inductees, we are so grateful for the kindness and the courtesy shown to us and for the opportunity to contribute to this distinguished organization. Thank you for inviting us to this College; we are honored to accept the privilege and responsibilities of fellowship and we will uphold the high standards of trial advocacy and professionalism that this College is known for.

I'd like to speak briefly this evening about some of the values the College stands for and how members of this inductee class exemplify those values in their lives, not just in the courtroom, but outside the courtroom as well. The College recognizes excellence in trial advocacy; and excellence, ultimately, is a pursuit, a never-ending pursuit, to get better every single day, to keep learning and never quit. This inductee class has demonstrated that commitment time and again.

We have a prosecutor who refused to give up on a case, or its victims, and successfully prosecuted the oldest cold case in her state, dormant for thirty-three years before she picked up the file and brought it to resolution.

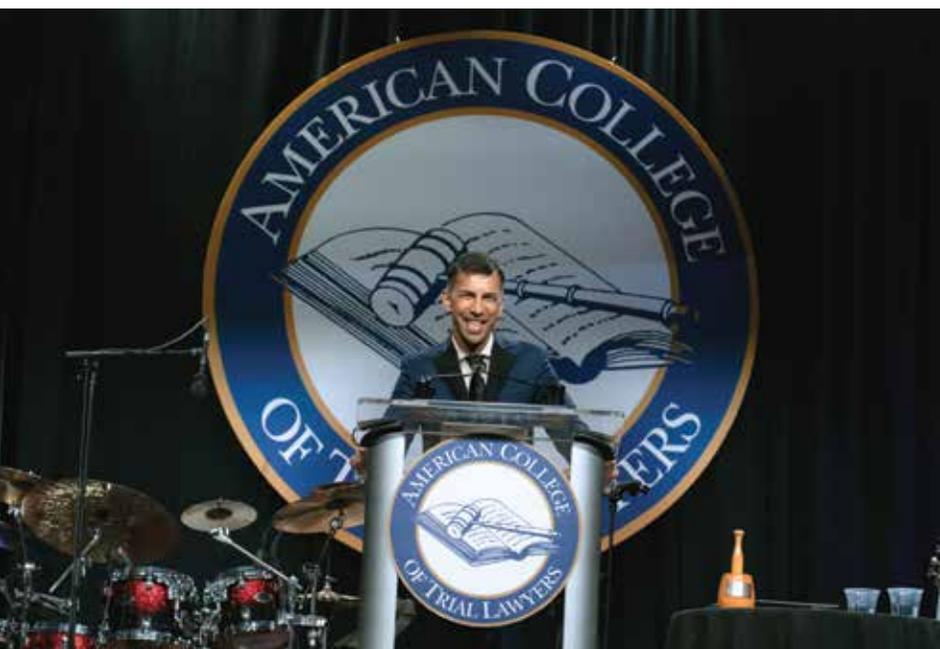
We have someone who spent her career as a nurse before deciding she had even more to contribute and went to law school at age forty to learn how to defend her colleagues against medical malpractice suits.

We have an old school trial lawyer from New Orleans who tries any and every kind of case, from any practice area. He lives to get better and for those moments at trial where there's nowhere else he'd rather be.

We have an attorney who started what is now the longest standing African American law firm in Georgia. He was inducted into the National Bar Association Hall of Fame, though sometimes he oversells it and tells people that he's an NBA hall of famer.

At trial, I think most of us would agree that one of the most important skill sets is the ability to adapt and overcome. During times of uncertainty and unpredictability, the ability to roll with what comes at you and turn it to your advantage is essential. That's not just in law or at trial but in life. Our inductees personify this ability to adapt and overcome.

One of the members in our class immigrated from China as a toddler with her family into Canada where her parents opened a corner grocery store. Her parents were assaulted in that store and she and her parents faced discrimination growing up. She was robbed at gunpoint in that same corner store. She came through it to be a successful lawyer and now she helps other women in the profession find balance through physical fitness.



Another member grew up in the Philippines. She became the first female attorney at her firm's litigation group and now chairs that group. She returned to work after becoming a widow and she says that her parents taught her resilience through their survival and dignity after being held at the Santo Tomas Internment Camp during World War II in the Philippines.

One member was raised by a single mom and was the first college graduate in her family. She worked her way through high school, college, and law school as a waitress. She tried eight cases while pregnant with her two boys and that's impressive for her, but a bit unfortunate for her boys as I'm told their first words were "objection" and "calls for speculation."

One trait this College recognizes that at times can be rare is moral courage. The ability to stand up for people or for causes that are unpopular but, nonetheless, the right thing to do. And our class is filled top to bottom with members who've shown moral courage and done the right thing, even when it's hard. Especially, when it's hard.

We have one member who spent his career as a criminal defense lawyer; he currently works for legal aid in New York. Every day he gets up and he fights for the presumption of innocence, which is a bedrock of our legal system. He's also on the capital panel out there so he sticks up for people on death row.

One member showed a lot of guts by convicting two federal judges while serving as a DOA prosecutor, helping ensure that everyone remains equal before the law.

Another member, in his very first jury trial, sued a sitting state district court judge in his own courtroom.

And we have a member who prosecuted the most prolific serial killer in the country, convicted of murdering forty-nine women, but she ensured this person got a fair trial and the decision was based on the evidence, not on the will of the mob and pretrial publicity.



All the best legal skills, strategies and tactics mean less without a commitment to something more than our clients; a commitment to our legal system, to our country, and to our fellow man. This College recognizes the vital role of being a good citizen as even more important than being a good lawyer. Our inductee class lives this value.

We have three former Army judge advocates and one Air Force judge advocate, who served our great country with honor and distinction.

We have a member who started a nonprofit called Tools for Schools that provides funding for teacher's classrooms.

A member who has been a foster parent to twenty-eight kids.

Another established a foundation to educate families about the dangers of opioids, after suffering a family tragedy.

And yet another founded a charity to help young autistic men and women.

We have a minority leader of the South Carolina Senate.

We have a woman who just bought a new building for a law firm, and she's making the ground floor a marketplace to sell fresh produce to people in her community.

We have a medical malpractice defense lawyer who spends a lot of time defending victims of domestic violence.

And we have a member who started a charity in Garneau for children, one of Montreal's poorest neighborhoods.

At trial, as in life, we must maintain balance. Most of us would probably agree that it's a mistake to overstate your case before a jury. It's much better to understate it and then let the evidence or the jury pick up the slack. Because when you overstate something, you can lose balance very easily and be toppled very easily, just like expert witnesses sometimes do when they go too far. And in life, there's a variety of areas - like physical fitness, spirituality, and of course family - that are vital to healthy balance and a happy life. Our inductees recognize and live this value.

We have the president of a church usher board.

Someone who's taken three missionary trips to Myanmar with his church.

Someone who played baseball in college with John Elway and still works out every day and can keep up with his kids at age sixty-one.

Someone who led the Small College All-American League in touchdown passes as a quarterback.

A college football player from Canada who wakes up every day at 6:00 a.m. so he can take his boys to hockey.

Someone who climbed Mt. Kilimanjaro.

A Harvard-trained lawyer from Australia who competed in national figure skating events.

A Scouting advisor who helps teenagers and young adults with backpacking and adventure.

A triathlete who finished a full Ironman and then started a trial school to help young lawyers get trial skills.

We've got two members who performed in rock bands.

And another who helped her mom go through law school and says the best part of her practice is that she still gets to be an active mother for her two daughters.

The final value I wanted to talk to you about is arguably one of the most important in this College: professionalism, courtesy and decency. The idea that we don't have to hate anyone in order to disagree with them while winning comes with grace and charity. It's a foundation of classical liberalism; the notion that we attack ideas that we disagree with, not the people who have them or say them.

There's a med mal defense lawyer in this class who won the American Board of Trial Advocates Civility Award in 2020. The Michigan Trial Lawyers Association gave him the Respected Advocate Award, something that's awarded by opposing counsel; so it's plaintiff's counsel who selected him, who voted to award him this honor of professionalism, though he takes it as a mixed compliment and remarked that maybe his settlement offers were getting a little too generous.

One member wrote something that I thought was a good sentiment. He said, "Professionalism and one's reputation as being candid is more important than a litigator's win/loss record." And I thought that it's always people that say things like that have some of the best win/loss records out there.

A commitment to excellence, the determination to adapt and overcome, moral courage, shared commitment to citizenship in its truest form and balance in practice and in life, those are the values demonstrated and lived by the members of this distinguished inductee class. They are vital to our system of justice and the continued success of our great democracy. This class represents the College well. More important, they will continue to do our countries and our fellow citizens proud through their example and ensure that our legal system remains the envy of the world.

Thank you, Ashwin. Well done. Now, Ashwin put his remarks together by combing through the brief statements we asked each of the new inductees to give us – but Ashwin wasn't given a full deck. Only forty or so of the class sent anything in. When I had the chance to speak to the class at the New Inductee Breakfast, I told them "I have a colorful and vindictive imagination, and anyone who doesn't give me a response should not be surprised to be written up as a former toe-fungus model." That resulted in dislodging a few more responses, but I'm still short a dozen or so. So . . . the following bits of detail about each our new Fellows is either the God's truth (at least as perceived by the Fellow) or whole cloth. You get to guess.

## ARIZONA



**Robert Boatman** played baseball at Stanford; his teammates included John Elway, Mike Aldrete and Steve Buechele. After the bar exam, Bob bought a world pass and circled the globe while waiting for the results to start work. Highlights included touring Bali on a motorcycle while representing the United States in pub drinking challenges against crazy Australians, riding elephants through the jungles of Thailand, having a summer romance in the Greek Islands, and hiking in Switzerland. Bob coached Little League baseball for nineteen years and youth football for twelve; two of his teams won state championships.

**Kevin Keenan** only went to college to play football. He was a member of the first football team at Scottsdale Community College and is grateful to his coaches for forcing him to focus on getting an education. Kevin graduated from the University of Arizona College of Law in 1980 and had his first civil jury trial approximately two months after obtaining his law license. At about the same time, Kevin married his high school sweetheart (Anne) and forty-two years later, things are good.

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## BRITISH COLUMBIA

**Helen H. Low, Q.C.**, was minding her parents' corner grocery store on a weekend break from law school when a man walked in with a gun. Her brain immediately reverted to first year evidence; she thought "look carefully at his face, it is really difficult in times of stress to remember facial features with a gun pointed at your face." But sure enough, when the police arrived, she could not describe the robber other than "Caucasian guy." Perhaps that's why she's never had an interest in criminal law. For the past two decades, Helen has organized the schedules of a group of female lawyers to undertake personal training to maintain physical – and mental – fitness.

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## CALIFORNIA

**E. Martin Estrada** once gave a closing argument entirely in Spanish to an auditorium of government officials during a mock trial in Mexico. A former federal prosecutor, Martin has tried more than thirty federal and state trials and argued more than a dozen appeals.

**Yuk A. Law** learned in 6th grade while doing research on a career project that he could not get into the Air Force Academy to realize his dream of becoming a fighter pilot due to poor eyesight, so he chose to become a lawyer because most TV lawyers wore glasses with style. Chuck, a former college lacrosse player, was the first in his family to go to college. When he won his first jury trial, a senior partner told him that winning a jury trial was better than sex, to which Chuck replied "I hope not."

**Jan Nielsen Little** successfully prosecuted two federal judges while serving with the Department of Justice. As a criminal defense lawyer, she won an acquittal in a RICO trial when she was seven months pregnant. She later represented the CFO of Enron in his criminal prosecution. She has won six blue ribbons for her homemade cheesecake.

**Kimberly S. Oberrecht** was the first college graduate and first lawyer in her family. She worked all through high school, college, and law school as a waitress, which she credits for her people and memory skills. Kim has two boys, and tried eight cases while pregnant, terrified that the boys' first word would be "objection." When she is not in trial Kim enjoys cooking, traveling, spending time with her boys and dogs, and supporting Toys For Tots. ▶

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## COLORADO

**Scott Nixon** has played guitar and performed since high school. His college band, *The Meltdowns* gave way to his law school band, *Anthony Marino & the Rule Against Perpetuities*. Since school, his bands have included *Mulligan* and *The Hip Replacements*, and he still plays two dozen gigs per year. Scott and his wife Cathy raise funds for Colorado Children's Hospital riding in the Courage Classic bike tour fundraiser in the Colorado Mountains.

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## FLORIDA

**Lewis W. Murphy, Jr.** is a first-generation lawyer who currently serves as Chair of the Trial Lawyers Section of The Florida Bar, representing approximately 5,500 civil litigators whose mission includes promoting access to Courts and the independence of the judiciary. Wil has served on the Board of Trustees of his alma mater, the University of Florida College of Law, since 2013.

**C. Richard Newsome** is a former triathlete and Ironman. He loves sailing his family's catamaran, *Favorite Child* (his actual children may need counseling), and recently sailed from Grenada to the Virgin Islands, a four-day 450-mile open ocean passage. Rich has a remote office on the boat. Rich founded Trial School (TrialSchool.org), a not-for-profit organization that provides free trial advocacy training for lawyers who cannot afford other programs.

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## GEORGIA

**Anna Fretwell** was travelling back to the U.S. from a deposition in Ireland on September 11, 2001, on one of the thirty-six planes diverted that day to Gander, Newfoundland. The event has become part of the lore of Canadian hospitality and the story on which the Broadway play *Come from Away* was based. She regaled us with her experience at the Spring Meeting. Anna participated in the National High School Mock Trial program from 1990 – 1992, winning two state championships.



**Thomas G. Sampson, Sr.** is the senior partner and founder of the oldest African American law firm in the state of Georgia; one of his partners is his son. Tom was inducted into the National Bar Association Hall of Fame in 2006, joining his late father, Daniel George Sampson, Dean and Professor of Law at North Carolina Central University School of Law, who was inducted in 1996. Tom likes to tell people he is in the NBA Hall of Fame, though he doesn't often explain what NBA stands for. One of Tom's hobbies is hunting, and he started a deer hunting club in Georgia in 1990.

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## INDIANA

**Richard Harden** has devoted countless hours to being a Scout leader, which has enabled him to nourish his love of the outdoors. A certified Wilderness First Aid instructor, Richard leads Scout backpacking trips across the United States for folks who mostly have never backpacked or even slept outdoors before.

**Matthew Schad** grew up in a log cabin in rural Indiana where his family had a goat dairy and country farm. Matt's father was an attorney and a judge for many years. They practiced together from 1998 until his death in 2022. Matt's parents made him take private Latin lessons from middle school on, which seemed cruel and unusual, but he ended up majoring in Latin, Ancient Greek, and Classical Civilization in college. Without much call for Classics majors in the workforce, Matt turned to law. His best college jobs were whitewater rafting guide in Colorado, bicycle messenger, 7-11 night clerk, tutor, and a spectacularly unsuccessful stint as a nude model. Matt served in the Judge Advocate General's Corps in the Republic of Panama for three years.

**Alyssa Stamatakos** has four lawyers in her family, including her mother, who attended law school after Alyssa was already in the practice. Alyssa's proudest accomplishment is being able to have a rewarding practice while still being a wife and an involved (some might say too involved) mother to two daughters.

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## IOWA

**Mark W. Thomas** grew up in Omaha and attended Drake University on a track scholarship. Drake was a small school but D-1 in track; Mark ran in places from Oregon to Texas to Michigan, and everywhere in between, competing in the mile, the 5,000 and 10,000 meters. After graduation from Creighton University Law School, Matt joined the US Air Force as a JAG officer. He spent four years on active duty and then joined the Iowa Air National Guard, where he served the next twenty-one years. Mark's wife, Janice, who Mark describes as the toughest lawyer he has ever met, was inducted as a Fellow in 2019.

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## KENTUCKY

**Kimberly Baird** is an Assistant Commonwealth's Attorney who wanted to go to law school since she was nine years old, but she had no intention of becoming a prosecutor because they were often portrayed on TV and the news as bad actors. Her plan was to be a defense attorney and then a judge, but after an internship in 1996 she has been a prosecutor ever since. Kimberly has been the "interim/temporary" chair since 2005 of Lexington's Annual Roots and Heritage Festival, which began as a one-day street festival and is now a month-long celebration.

**David A. Latherow** describes his wife, Leigh, as his best friend and a more accomplished attorney than he; he boasts that she has argued over a dozen cases in the 6th Circuit and taken two cases to the US Supreme Court, but he quickly points out that they each have the same number of wins – 0 – there. Their oldest child, Luke, is in med school; the twins, Emma and Jack, are freshmen at Miami University and West Point. Not surprising that the twins would choose different schools, since these twins were born on two different days (poor Leigh!).

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## MANITOBA

**Sarah Inness** came to Winnipeg with her parents and younger sister from England when she was six years old. She is the first in her family to graduate from high school. She worked her way through school at fast food restaurants until she entered law school and cold-called Legal Aid Manitoba, convincing them to create a summer job for her. That summer student position exists to this day. Sarah and her spouse Jill have boy-girl twins and love to spend the summers at their cottage on the beach.

**Evan J. Roitenberg** was born and raised in Manitoba, and has been practicing criminal defense law there since 1992. Evan routinely defends clients charged with the most complex cases, be they white-collar frauds or conspiracies to murder.

**Josh Weinstein** is a former President of the Manitoba Bar Association. He practices almost exclusively in criminal defence on matters ranging from simple summary conviction offences to murder and has appeared at all levels of court in Manitoba and at the Supreme Court of Canada.

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## MARYLAND

**Rachel T. McGuckian** – that’s Judge McGuckian now (see beginning of the article) – is an avid polo player.

**Howard Soypher** is an avid baseball fan whose favorite all-time player is Tony Gwynn, so he made time at the Spring Meeting to visit Tony’s statue at Petco Park. Howard almost didn’t make it to law school even though accepted. He was one credit short because he went to the wrong section of a tennis class and was failed in the one he was signed up for. That’s why he follows baseball, not tennis. Howard modestly claims an encyclopedic knowledge of top 40 music of the 50s, 60s, 70s and 80s.



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## MASSACHUSETTS

**Joan O. Vorster** learned resilience from her parents, who survived as civilians in the Philippines during World War II, her mother held in the Santo Thomas internment camp. Joan lives in Connecticut, plays in Vermont, and works in Massachusetts where she leads her firm’s team defending medical providers in malpractice cases.

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## MICHIGAN

**William C. Hurley** is co-owner of Hearthside Golden Retrievers and is making an increasing effort to spend more time breeding and showing American Champion and American Grand Champion Golden Retrievers. Neither of Bill’s parents graduated high school because when they grew up in Arkansas in the 1920s and 1930s, free public education ended with the 8th grade. One of his best decisions was to join the debate team in high school and go on to debate at Wayne State.



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## MINNESOTA

**J. Ashwin Madia**, was our inductee responder.

**Russell S. Ponessa** has over thirty years of experience representing companies whose products or business practices are under attack. He has a wide ranging civil litigation practice with substantial experience in the areas of product and professional liability, medical devices, toxic torts, construction, business and other commercial disputes, insurance coverage, and consumer claims. His website reads like a novel without the interesting stuff.

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## MISSOURI

**Debbie S. Champion** has been honored by the St. Louis Small Business Magazine as a Wonder Woman and by the St. Louis Business Journal as one of the Top 25 Most Influential Business Women in St. Louis. Debbie devotes many hours to community and charitable causes, and she actively provides legal services to the indigent. Debbie serves on the Board of Lift for Life Academy, the first charter school in the City of St. Louis, and she is the founder and president of Tools for Schools, a not for profit corporation which provides stipends to public school teachers.

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## NEBRASKA

**Brenda D. Beadle** is the Chief Deputy County Attorney in Douglas County. I would make up something funny or scurrilous about her but I have family in Nebraska.

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## NEW HAMPSHIRE

**Brian J.S. Cullen** is the son of Irish immigrants. After four years and under the tutelage of FACTLs (and former Regent) **Marty Murphy** and **Jon Albano**, Brian left to join the Suffolk County District Attorneys Office in Boston seeking trial experience. In 2004 he literally sought out greener pastures in New Hampshire. An avid skier, hiker and climber, Brian has summited Mount Kilimanjaro and slept out over 18,000 feet en route to summiting 21,122 foot Mount Illimani in Bolivia.

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## NEW YORK

**Antonia Apps** grew up in Australia and came to the US to attend Harvard Law School (on a scholarship) in the 1990s. Growing up in Australia, Antonia competed at the national level in figure skating, and went on to compete in the US Masters National Figure Skating Competition. Her present-day interests include more sedentary hobbies, like wine tasting and dining with friends and reading good books on financial misdeeds. A former AUSA, Antonia best recalls an early case in which she hiked the Alps in Lichtenstein, deposed a Lebanese national in Casablanca and endured a seven-hour hearing on discovery motions.

**Harvey Fishbein** was undecided growing up whether to become an astronaut or a lawyer. His first-year college engineering courses helped him decide. Howard began his career at the Legal Aid Society Criminal Defense Division and soon turned to criminal defense, often appearing in high profile matters such as *People v. Hernandez*, which resulted in two five-month trials against FACTL **Joan Illuzzi-Orbon**. Now a solo attorney, Harvey has had various partnerships during his career, the most important of which was with his wife, Fran Hoffinger, also an attorney. They have two grown daughters who both claim their first words were “indictment” and “not guilty.”

**Kevin Orsini** has come a long way from his roots in Livingston, New Jersey. Well, okay, not that far, but by way of George Washington University *summa cum laude* and *Phi Beta Kappa* and a J.D. *cum laude* from New York University School of Law in 2003, he is now co-chair of litigation at one of Manhattan’s most storied firms.

**Jeremy Schneider** started his legal career with the Legal Aid Society, Criminal Defense Division and in 1987 became a member of the Senior Trial Attorney Bureau, where he represented people accused of the most serious felonies, including robbery, rape, murder and A-I narcotics cases. In 1993, he and several other notable defense lawyers formed their own firm. When the New York State death penalty was revived in 1995, Jeremy was selected as the first attorney in Manhattan to represent a defendant charged with capital murder. He is presently on the Capital Panels in the Southern and Eastern Districts of New York as one of a select group of attorneys qualified to handle federal death penalty cases.

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## NORTH CAROLINA

**Donald C. Prentis** has a web site that would be the envy of anyone who thinks people write too much about themselves.

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## NOVA SCOTIA

**William Mahody, QC** is a first-generation lawyer, the son of an American father and Canadian mother who met at university in Canada. Twenty-eight years later, Bill met his spouse at the same university. Tuition well spent.

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## OHIO

**Laura L. Mills** has appeared on Dr. Phil, Good Morning America, Fox News and 48 Hours in coverage of cases in which she was lead counsel. Laura leads her firm, a certified woman-owned business in office space designed identically to the dining room in the Titanic that was once a male social club in which women were not permitted until 1986.

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## OKLAHOMA

**Craig L. Box**, together with FACTL **Michael Burrage**, tried the largest divorce case in U.S. history, with over \$20 billion in assets in play. Craig played football at Northwestern Oklahoma State; his wife, Gail, played volleyball. Their youngest child, Austin, was a star player at Oklahoma State who tragically died of an accidental opioid overdose in 2011. Craig’s family has established The Austin Box “12” Foundation to educate families about the dangers of opioids and to help fund law enforcement agencies with the purchase of naloxone, and fund facilities that educate and treat adolescents suffering from addiction.



**Michael James King** professed to be too modest to write anything about himself, so his wife tells us that he has served twelve years on the local school board, fifteen years as a city judge and ten years on the Salvation Army board. She continues to note that Mike has taken three trips to Burma (Myanmar) on mission trips with his local church. Once a soloist at church, Mike does a great Marty Robbins and Neil Diamond on Karaoke.

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## ONTARIO

**Gordon McKee** successfully defended a heart valve manufacturer in the first medical products liability class action trial in Canada, despite the valve having been recalled from the market after a post market study showed an increased incidence of leaks, in a bench trial that spanned 19 months and 148 trial days. Gord, his wife and children danced with village leaders, teachers, children and parents in rural Zimbabwe to celebrate their collective success in establishing literacy education.

**Junior Sirivar** is the third of six kids born to immigrant parents. He had already lived in three countries before his family arrived in Canada a few months before his eighth birthday. A former collegiate football player with an unreasonable but very real fear of frogs, Junior's wife, Kim Muio, is apparently not a frog; she is a lawyer and Junior's private counsel. Junior was encouraged to go to law school by a former coach who told him that trial lawyers and athletes have much in common.

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## PENNSYLVANIA

**John K. Gisleson** is the oldest of eight children, separated by only eight years between them. John grew up accustomed to creating order out of chaos and disagreement. The son of a former federal prosecutor who ran the Organized Crime and Racketeering Strike Force in New Orleans, John maintains a second home in an 1850s Creole Cottage in New Orleans three blocks from the Mississippi River. During Mardi Gras, he marches in Krewe du Vieux, one of the few parades winding through the French Quarter, that warns parents in advance not to bring their children to watch. John tried the largest Hurricane Katrina insurance recovery case with his plaintiff's-lawyer brother as local counsel.



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## QUEBEC

**Sophie Perreault** is the co-founder of a charitable organization called Fondation La Recreation that has brought provisions and joy to children from Garneau, a school in one of Montreal's poorest neighborhoods. Sports have always been important to Sophie, though not, she says, at a high level. During her years at the Faculty of Law of M. G.II University she won awards for participation in intramural sports teams in soccer, flag football, hockey, basketball and broomball. She went on to play hockey on the M. G.II Law Alumni team until she became pregnant with her first child.

**Nadine Touma** is a criminal defense lawyer who has a truly amazing story, but it's in French, so I am unable to relate it to you.

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## SOUTH CAROLINA

**E. Mitchell Griffith** is an experienced trial lawyer and mediator who taught Moose Phillips everything he knows except nicknames.

**C. Bradley Hutto** was elected to the Senate of South Carolina in 1996 and reelected five times. Brad has been active with the Boy Scouts of America for five decades; he is an Eagle Scout, a Vigil Honor Member of the Order of the Arrow, a recipient of the Silver Beaver Award, the Founder's Award, and the Whitney M. Young, Jr. Service Award.



**Breon C.M. Walker** earned her degree in Business Administration with a double major in marketing and management from the University of South Carolina Honors College in 2000 and her law degree from Emory University School of Law in 2003. Following a clerkship with Circuit Court Judge Reginald I. Lloyd in Columbia, S.C. she practiced in both the civil and criminal divisions of the South Carolina Office of the Attorney General. Now in private practice, Breon's areas of practice include wrongful death, accidents and product cases.

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## TENNESSEE

**Daniel Clayton** and his wife have served as foster parents to twenty-eight children. Daniel enjoys spending time outdoors, running in a marathon, fishing, playing golf with his son and son-in-law, or competing in a game of tennis. ▶

**Joseph E. Costner** was elected President of his Junior High School Student Council and impeached less than a month later for leaving campus to have lunch with a classmate. Turns out there was an unwritten policy that you could not leave campus unless to your own residence. No notice, no hearing, no due process. In college, Joe wrote his Senior Thesis arguing against the Vietnam War. His professor, who had a different view, said that Joe had missed an earlier draft submission deadline so he had to start over – with a different topic. No notice, no hearing, no due process. So of course Joe became a lawyer. In 1973, Joe was named Small College All-American by the Associated Press as a quarterback, having led the nation in total yards per game and touchdown passes.

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## TEXAS

**Alistair Dawson** was born in Great Britain. His parents emigrated to the United States when he was a young boy, and Alistair returned to Scotland for school from age thirteen to eighteen. The school, Fettes College, was where Prime Minister Tony Blair attended and Sean Connery had his first job as a milk delivery boy. Alistair played rugby at Fettes and continued at Vanderbilt. Alistair retains Scottish/British citizenship and his son now attends Fettes. Alistair and Wendy have a child with autism, and twelve years ago, they founded a charity to provide social and life skills to autistic young men and women. Today, Social Motion Skills ([www.socialmotionskills.org](http://www.socialmotionskills.org)) provides much needed life and social skills and job training to hundreds of individuals with intellectual disabilities and learning differences.

**Gregg R. Brown** attended college and law school at Southern Illinois University, then opted for really Southern by choosing to practice in Austin.

**Mitzi S. Mayfield** grew up on a dairy farm and was a Houston Livestock Show Grand Champion. We bet she cows her opponents.



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## WASHINGTON

**Patty A. Eakes** is the first person in her family to graduate from college. As a prosecutor, Patty secured the conviction of the “Green River Killer,” Gary Ridgway, who at the time (2001) was considered the most prolific serial killer in the country, convicted of murdering forty-nine women between 1982 and 1998 but claiming responsibility for killing more than seventy-five.

**Alison L. Gregoire** spent seven years on active duty and ten years in the Army Reserve, serving as appellate counsel (both government and defense), senior defense counsel, adjunct professor of criminal law at The Judge Advocate General’s Legal Center and School, and as trial counsel. She is now the Criminal Chief in the U.S. Attorney’s Office for the Eastern District of Washington.

**Scott O’Halloran** served four years as a JAG officer and earned the Army Commendation Medal. He was on the Board of the Geneva Foundation, a non-profit organization that advances military medicine through innovative scientific research and a dedication to U.S. service members and veterans, their families, and the global community. Now in his own firm, Scott used to work in the same firm as his wife, Amanda.



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## WEST VIRGINIA

**Bryant Spann** was Editor-In-Chief of the Georgia Law Review, clerked on the Fourth Circuit and worked as an AUSA before private practice.

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## WYOMING

**Scott P. Klosterman** is bilingual but rarely finds anyone in Wyoming with whom to converse in Japanese. He can tell bad dad jokes in both languages. Scott is proud that his daughters told him he is real father figure; the girls didn’t have the heart to tell him that’s not exactly what they meant when they told him, in English, that he has a dad bod. ■



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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# A CONVERSATION WITH THE RT. HON. RICHARD WAGNER CHIEF JUSTICE OF CANADA



FELLOW AND JOURNAL EDITORIAL BOARD MEMBER **BRIAN GOVER** SAT DOWN RECENTLY WITH THE RIGHT HONOURABLE RICHARD WAGNER, THE EIGHTEENTH CHIEF JUSTICE OF CANADA. CHIEF JUSTICE WAGNER WAS BORN ON APRIL 2, 1957 IN MONTRÉAL. AFTER EARNING A BACHELOR OF SOCIAL SCIENCES AND LICENTIATE IN LAWS FROM THE UNIVERSITY OF OTTAWA, HE PRACTICED LAW IN MONTRÉAL FROM 1980 TO 2004, SPECIALIZING IN PROFESSIONAL LIABILITY, COMMERCIAL LITIGATION AND CLASS ACTION LAWSUITS. IN 2004, HE WAS APPOINTED TO THE SUPERIOR COURT OF QUÉBEC; IN 2011 HE WAS ELEVATED TO THE QUÉBEC COURT OF APPEAL; AND IN 2012, HE WAS APPOINTED A JUSTICE OF THE SUPREME COURT, BECOMING CHIEF JUSTICE IN 2017.

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**Brian Gover:** If you'll allow me to begin on a personal note I'd like to discuss the influence of your father, the late Claude Wagner, P.C., Q.C., who was a lawyer, a law professor, a member of the provincial legislature in Québec, the province's Justice Minister, a Member of Parliament and a Senator.

**Chief Justice Wagner:** You have summarized my father's career very well. Everyone is influenced by someone else, whether it be a parent, brother, sister, or friend. I must recognize that my father had a great influence on my life, on my career, because of his commitment to public service.

He was a lawyer by training and as you mentioned, he became a judge. He was a law professor, he became Minister of Justice. In all of his work he was committed to public service. He died at fifty-four years of age, which is quite young for having had such a career. There is no doubt that I looked up to him. He has remained an enormous influence on me, on the way I have pursued my career and led my life.



**Chief Justice Wagner:** In line with what I just said, after three years of practice I was given the opportunity to go to the Supreme Court. That did not happen very often, even in those days. At the time, applications for leave to appeal were argued orally. Now they are all heard in writing. So we had to come to Ottawa. I didn't sleep the night before the hearing. I contested the leave application before three judges of the Court. They were sitting in what we now call the Federal Court courtroom here at the Supreme Court. It was quite an experience.

**Brian Gover:** I was reminded recently that your father was a Crown prosecutor. For example, he prosecuted the *Marcotte* case, in which two police officers were shot and killed by a bank robber who was dressed in a Santa Claus costume in December 1962. Georges Marcotte was convicted and sentenced to death by hanging. His sentence was commuted when Canada abolished the death penalty in 1976.

**Chief Justice Wagner:** What's interesting is that in those days, in the late 1950s and early 1960s there were no Crown Attorneys' offices as such in Québec. Crown prosecutors were chosen from amongst lawyers in private practice. When he was chosen to prosecute the *Marcotte* case, my father was dividing his time between criminal law and commercial law. As Justice Minister in 1965, he set up the system of Crown Attorneys as we know it today – civil servants who practice criminal law exclusively on behalf of the state and governed by a code of ethics. I think that was a good thing.

**Brian Gover:** You practiced from 1980 to 2004 at Lavery de Billy in Montréal, focusing on professional liability, commercial litigation, oppression remedy cases and class actions?

**Chief Justice Wagner:** When I left law school in 1979 I wanted to do litigation. There was something about litigation that appealed to me – to defend the case for someone, to argue a case – it was something noble and at the same time very challenging. I must say, I liked to argue in those days and do even today. So I was looking to be hired by a firm that was known for its litigation practice. Lavery was one of the largest litigation firms in Montréal in those days. As a young lawyer, I was called upon to argue all kinds of cases, including family and criminal law matters. I was very happy with my choice because during my articling period I was able to conduct a trial before the provincial court, and to appear before the Superior Court and the Court of Appeal. They really gave me a chance to do what I wanted to do. I have to thank the firm for that. It was a privilege.

**Brian Gover:** At the age of twenty-six, you argued your first case in the court over which you now preside – the Supreme Court of Canada. Can you tell me about that?

**Brian Gover:** Am I correct during your time on the Québec Superior Court, you sought out opportunities to sit in the criminal chamber?

**Chief Justice Wagner:** I left in law school in 1979 very much impressed by criminal law. For me, criminal law helps to define a society. Our *Criminal Code* reflects our own society's moral values. That was before the *Charter of Rights and Freedoms*, but my interest was always drawn to the criminal law. As I became a more senior lawyer it became impossible to practice criminal law and commercial litigation; those two types of practice do not go along very well (unlike in my father's day). But I had always this idea about the significance of the criminal law in my mind. So, when I became a Superior Court judge I said to myself, "This is my chance." And the following day, I registered for courses being offered everywhere in Canada, in every province, programs presented by the National Judicial Institute, in order to be able to sit as a judge in criminal matters. And in criminal cases in Québec, Superior Court judges preside exclusively at jury trials. They do not preside over "judge alone" trials, except in narrow circumstances. Two years after my appointment, I started to preside over criminal jury trials. The work was quite interesting and I enjoyed it very much, right to the end of my time on the Superior Court. ▶

**Brian Gover:** Your term as Chief Justice has been marked by innovations. First, let's deal with the process followed at the Court. We members of the bar understand that the Court meets in post-hearing conference, with the junior-most judge being required to speak first (something that must have been daunting, even for you in 2012), but the pre-hearing conference is an innovation. Can you tell me about that?

**Chief Justice Wagner:** When I was appointed Chief Justice, I wanted to see how the process and collegiality in the court could be improved – in other words, to increase the opportunities for my colleagues to meet and discuss the cases before us. During my roughly twenty-two months on the Québec Court of Appeal, there was a practice of meeting for half an hour before the hearing to discuss the issues and decide what questions should be put to the parties, what would be essential to our consideration of the issues in the case before us. I found that exercise very useful, especially in promoting efficient use of time during the hearing. So I brought this idea to the Supreme Court. Previously we would go into the courtroom at 9:30 a.m. and hear the case, having never really discussed it amongst ourselves in an organized way. So now, half an hour before each hearing, we meet and do a *tour de table*. It is important for me that every judge speaks on what they think the issues are and the questions that should be put to the parties. We continue to convene post-hearing conferences in which every judge is called upon to provide their opinion on potential resolution of the issues and the outcome of the appeal. The former rule of requiring the newest judge to speak first is no longer in practice. Now, whoever is ready to speak will speak first.

**Brian Gover:** Well, I'm sure the next appointment to the Court will be relieved to know about that change. The Supreme Court of Canada was one of the first high courts in the world to have televised proceedings. But you have done a number of things to make the Court more accessible. Can you tell us about those please?

**Chief Justice Wagner:** I believe that we have a very good judiciary in Canada. I think people should know that, and that the Supreme Court of Canada should lead the way in informing the Canadian public about the justice system. So when I became Chief Justice, I sought ways to make our decisions better known by Canadians. It's fine to speak of public confidence in the administration of justice, but that requires familiarity with the courts and an understanding of their work. A complication is that for the last ten or fifteen years, many people have been getting their news from social media, which has its attributes but is not necessarily the best way to obtain accurate information; there are all kinds of things on social media. In the past the courts would rely on the traditional media to report on their decisions but nowadays the traditional media lack the resources necessary to report everything that the courts are doing. So I have sought to find ways to talk directly and write directly to the public. One way to do this was to set up the "Cases in Brief", which are one-page summaries of our decisions, drafted in accessible language so that people can understand what the decision means for them, their families and their neighbors.

Another way of promoting public understanding of our work was to take the Court to Canadians by sitting outside Ottawa, something I decided to do, with the enthusiastic agreement of my colleagues. It had never been done before. We went to Winnipeg for a full week in September 2019. It was a real success. We heard two appeals. People were lining at 6:30 a.m. to get into the courthouse. During that week, the nine of us met students in nine different schools. We met with Métis and Indigenous people. We met with law students. Six hundred people turned up at the Canadian Museum for Human Rights, where we answered attendees' questions. The Court's outreach will continue next September when we'll be going to Québec City. We will hear two appeals there and we will meet with high school students and others.

The goal is to promote better understanding of our decisions and the courts in general. I think it's very important that Canadians have faith in our judicial system. That's essential to maintaining the rule of law. Democracies depend on the rule of law, a key element of which is judicial independence. We must ensure that our judicial system is understood by the public and has its confidence.

**Brian Gover:** Dealing with judicial independence at an institutional level, you've taken steps to safeguard judicial independence for the court itself; is that right?

**Chief Justice Wagner:** We negotiated an agreement with the Minister of Justice two years ago. According to this "independence agreement" as I call it, the Court selects its senior most administrative staff, such as the Registrar. Now the Court's budget goes directly to Treasury Board and the Justice Department has no say about it. I think it's a good thing; it enhances the Court's independence. I think the Supreme Court has set a good example that will be followed by other courts in Canada.

**Brian Gover:** One of your predecessors said the dissents sometimes set the course for what the law is going to be ten or fifteen years later. Do you have a particular view on dissenting judgments or their purpose?

**Chief Justice Wagner:** In many common law countries – Canada, the United Kingdom, the United States – we have a tradition of one judge writ-

ing for the majority and if need be, there will be dissenting or concurring opinions. In civil law jurisdiction like France, Belgium, and Switzerland you only have one decision. It may have been a court comprised of thirteen judges who made a 7-6 decision, but you never know that because only the majority decision will be published.

It's a question of philosophy, but I think our philosophy in Canada is the right one. It's more transparent; it gives the parties, lawyers, legal academics, and the community the message that we heard the arguments, and we understood and considered them. There will always be a majority opinion; that will be the law regardless of whether it is a 5-4 or a 9-0 decision. It's a good system. It's normal to have principled disagreements in an open society like ours, reflected in a Supreme Court comprised of nine people coming from nine different backgrounds. I would be very concerned if those nine people were always unanimous on every legal issue. For some major issues the law is well served by having a strong majority, but it's normal to have dissenting opinions as long as they are helpful and useful.

**Brian Gover:** What are your views about interveners and the value they add in the Supreme Court of Canada?

**Chief Justice Wagner:** I must tell you we like interveners, we need interveners. They are a valuable aspect of our process at the Supreme Court of Canada, provided that they play their role. They must provide a perspective which is not already expressed by the parties and must not argue the merits of the case. We value having a variety of arguments and very often those arguments come from interveners. I find them quite useful.

**Brian Gover:** You have said that there's no turning back now and that the pandemic has forced the courts in Canada to modernize. The Supreme Court conducted its first fully virtual hearing on June 9, 2020. Litigants have had the ability to argue remotely since the 1980s, but few counsel ever did so. What are your views about the effectiveness of virtual advocacy such as we've seen today versus in-person advocacy?

**Chief Justice Wagner:** For those of you who have doubts, know this: virtual advocacy works. The last two years have established that. As is the case with the justice systems in so many democracies, the justice system in Canada has been historically underfunded. Because of government funding choices, there were not enough judges, courthouses, or judicial resources in general. This created all kinds of problems for the justice system. The *Jordan* decision [*R. v. Jordan*, (2016) 1 SCR 631 (finding that Jordan's right to be tried within a reasonable time had been violated, the Court established presumptive ceilings for delay in bringing criminal

cases to trial)] is the result of many years of underfunding the justice system. And that was before the pandemic. At the outset of the pandemic, we had no choice but to react immediately. I'm very proud of Canada's judges. They had to adapt quickly – within days – to make sure that justice was administered in family matters, in criminal matters (for instance, an urgent bail hearing). Through technology, they found a way to continue to render justice. And I hope that it will stay. I think that the biggest mistake that we could make is to return to the old ways of doing things. There can be no turning back.

To answer your question whether virtual hearing is the same as a hearing in person; of course it's not. In an in-person hearing you can perceive things that maybe you cannot sense or understand if it were done remotely, but the essential is done. I think that virtual advocacy works well. There may be ways to improve it, but there is no doubt in my mind that it's here to stay.

**Brian Gover:** Can you explain the Supreme Court of Canada's willingness to consider foreign law, something that some other courts, notably the Supreme Court of the United States, will not do?

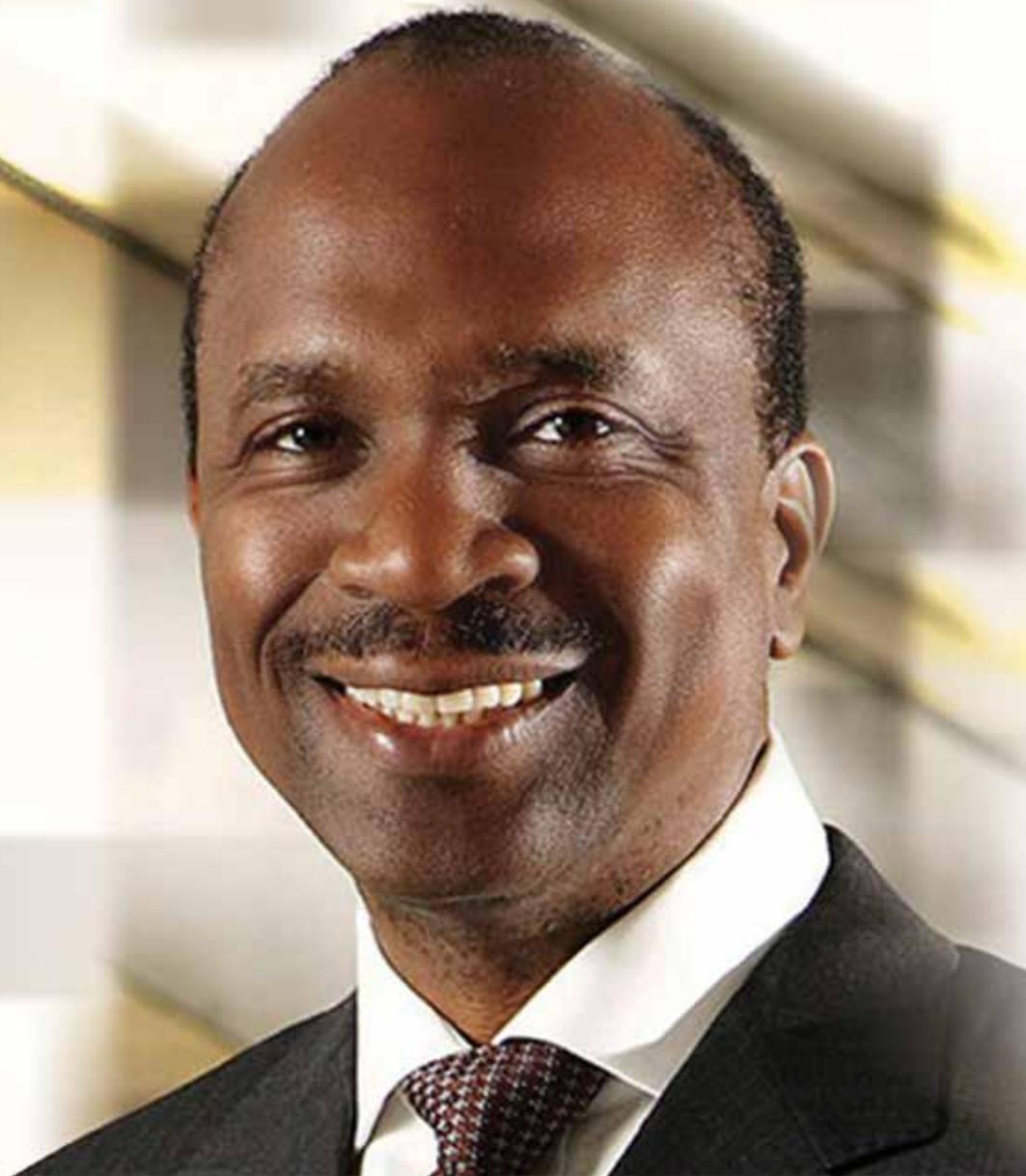
**Chief Justice Wagner:** I respect the view of others who would think that they don't need to look at what's going on elsewhere. But I say this very respectfully: I think that to close our eyes to what is done elsewhere is to be narrow-minded. We don't have all the solutions in Canada. Of course, when the law in Canada is clear, the Canadian law must be applied, there's no doubt about that. But where there is doubt, in cases involving interpretation or new legal issues, there's nothing wrong in considering foreign law provided that it could be helpful. That's my philosophy and it is shared by all my colleagues. At the end of the day we decide and if we are assisted by some arguments and law that were made elsewhere, some interpretations that were formulated elsewhere, well so be it. That is proof of an open mind.

**Brian Gover:** Finally Chief Justice, legacy. Six letters long, but a big word. What do you want to be remembered for?

**Chief Justice Wagner:** I hope that after my term, the justice system as a whole – and in particular, the work of the Supreme Court – will be better understood by Canadians. I think that understanding is fundamental to maintaining our democracy.

**Brian Gover**  
*Toronto, ON*

**SPOTLIGHT ON ACTL  
DISTINGUISHED  
PRO BONO FELLOW  
MICHAEL D. JONES**



**MIKE JONES' GREAT GRANDFATHER, FLOYD WASHINGTON, WAS BORN IN ABOUT 1845 AS AN ENSLAVED PERSON AND FOUGHT WITH THE 76TH INFANTRY, U.S. COLORED DIVISION. THE DIVISION COMMANDER, COLONEL CHARLES W. DREW, SAID "I CANNOT SPEAK IN TERMS OF TOO MUCH PRAISE OF THE OFFICERS AND MEN OF MY COMMAND." HIS WARTIME EXPERIENCE SHAPED FLOYD'S LIFE, AS HE BUILT A LIFE FOR HIMSELF AND HIS FAMILY IN LOUISIANA—A PLACE THAT DID NOT PROMOTE EQUALITY FOR ALL PEOPLE REGARDLESS OF THE COLOR OF THEIR SKIN. HIS MANTRA WAS "RETREAT IS NOT AN OPTION." AND THAT HAS BECOME MIKE'S MANTRA AS WELL. IT SEEMS FITTING TO MIKE THAT THE LONGEST, MOST DIFFICULT CASE OF HIS THIRTY-FIVE-YEAR CAREER INVOLVED FIGHTING AGAINST SEGREGATION SOME ONE HUNDRED FIFTY YEARS AFTER HIS GREAT GRANDFATHER FLOYD EXPERIENCED IT.**

Mike and a team of lawyers from his firm joined with the Lawyers' Committee for Civil Rights Under Law in the *pro bono* representation of a coalition of students and alumni from Maryland's historically Black Colleges and Universities ("HBCUs"). In 2009 they sued the state for failure to dismantle the remnants of its former segregated higher education system. The case became one of the longest *pro bono* cases ever, and involved two trials, each seven weeks long; five mediations, each multiple weeks long; a Fourth Circuit appeal; and three legislative hearings. Finally, the case settled for \$577 million.

## THE HIGHLIGHTS OF THIS ARDUOUS PATH TO EQUALITY WERE:

### 2013

Following a six-week bench trial, plaintiffs achieved a landmark victory when the court ruled that Maryland had violated the constitutional rights of students at Maryland's HBCUs by providing unequal resources to its four HBCUs.

### 2017

Following a six-week remedies trial, the court issued a groundbreaking remedial order. The court accepted the plaintiffs' argument that the proper remedy should focus on the creation of unique, high-demand academic programs at HBCUs, along with funding for not only the programs, but also scholarships, marketing, financial aid and, where appropriate, facilities.

### 2019

Following appellate proceedings, the case was ordered into mediation. The parties did not reach an agreement and the case was sent back to the Fourth Circuit.

### 2020

The Maryland State Senate passed a bill to appropriate \$577 million to settle the lawsuit, but the governor vetoed the bill.

### MARCH 2021

Maryland's state legislators voted to approve a measure to pay out the settlement and the governor signed the measure.

### MAY 2021

The U.S. District Court approved the settlement.

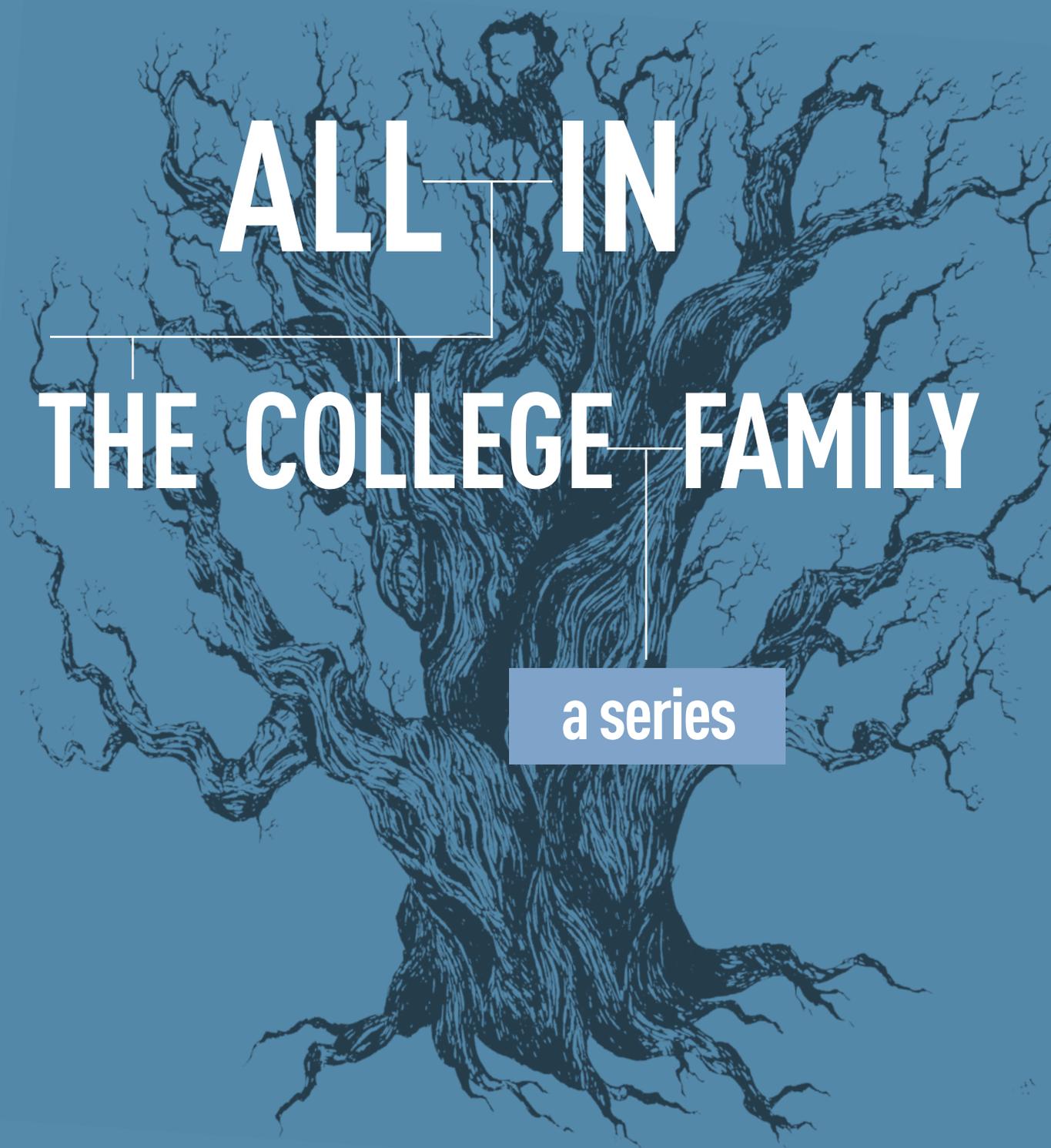
But the story gets better. Mike's law firm, Kirkland & Ellis, was awarded \$12.5 million in statutory legal fees as part of the settlement. The firm more than earned that fee for the thousands of hours it had donated to the twelve-year fight, a fight in which retreat was not an option. Yet Mike convinced his partners to donate the entire fee to continue the fight. Among the recipients are the Dillard University Center for Racial Justice in New Orleans, which will receive \$5 million, the Robert M. Bell Center for Civil Rights in Education, which is set to receive \$3 million, and the Lawyers' Committee for Civil Rights Under the Law, which Mike partners with through the ACTL's Access To Justice Distinguished Pro Bono Program, will get \$2 million.

ACTL President, **Michael O'Donnell**, commented that "Michael Jones' persistent pursuit of justice makes the College proud and sets a shining example for all Fellows of the College." Of course. Retreat is not an option.

**Kimball R. Anderson**

**Chicago, Illinois**

**Chair, ACTL Distinguished Pro Bono Fellows Committee**



# 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.

# VINCE & TONY FULLER

**ANTHONY (“TONY”) FULLER** WAS THE YOUNGEST OF FIVE SIBLINGS, BORN AND RAISED IN BETHESDA, MARYLAND. HIS OLDEST SISTER IS A TRIAL LAWYER AND HIS THIRD SISTER IS A MUTUAL FUNDS LAWYER. TONY’S FATHER, **VINCENT J. FULLER** (’81), PASSED AWAY IN 2006 AT AGE SEVENTY-FIVE, AFTER AN ILLUSTRATIVE CAREER AS A WHITE-COLLAR CRIMINAL DEFENSE ATTORNEY IN THE DISTRICT OF COLUMBIA.



Even though his father was a well-known trial attorney, Tony didn’t really plan on becoming a lawyer until the final year of his service with the U.S. Marine Corps as an infantry officer. Tony led a Marine Rifle Platoon in the Persian Gulf War in 1990-91 and went on a number of additional deployments from Okinawa to Norway. Tony enjoyed the camaraderie of the infantry and considered a career as a high school coach and teacher. Realizing he would need to attend graduate school, he ended up applying to law school with the idea that he might later land a job at a prep school.

Shortly after his last deployment with the Marines, Tony was accepted to Georgetown Law School, from which he graduated in 1996. While still considering a career in education, one of his law school professors convinced him that being a trial lawyer was very similar to being a teacher. Confronted with law school loans, a better paying law firm job that might allow him to get trial experience, became his goal. Tony purposefully decided to begin his career somewhere other than Washington to avoid the appearance of riding his dad’s coat tails, and following graduation he got a job at one of the larger firms in Boston.

Vince had a coat with pretty long tails. He graduated from Georgetown Law School in 1956, after serving two years as a Naval officer in the Korean War. During a storied career, Vince represented a number of notable clients. He successfully defended boxing promoter Don King, obtaining an acquittal on income tax evasion charges. He represented the junk-bond king, Michael Milken, who pleaded guilty to securities fraud in 1990.



One of Vince’s most notable defenses was John Hinckley, Jr., who in 1981 attempted to assassinate President Ronald Reagan. That defense is widely reported as one of the finest courtroom performances of modern time. Vince barely discussed the events of March 30, 1981, instead focusing on Hinckley’s fragile mental state and his obsession with actress Jodie Foster.

In his summation Vince argued that “in [Hinckley’s] own mind, the defendant had two compelling reasons to do what he did: to terminate his own existence, and to accomplish his ideal union with Jodie Foster, whether in this world or the next. I submit these are the acts of a totally irrational individual, driven and motivated by his own world, locked in his own mind.” That closing argument is one of 15 featured in *Classics of the Courtroom*, a set of transcripts of famous legal cases.

Following Hinckley’s acquittal on grounds of insanity, Vince commented “Another day, another dollar.”

In 1957, Vince won an acquittal for Teamsters boss Jimmy Hoffa on charges of bribery and obstruction of justice. In 1958, he successfully defended U.S. Rep. Adam Clayton Powell Jr (D – N.Y.), accused of income tax evasion. In 1992, Vince lost the Indiana rape trial of heavyweight boxing champion Mike Tyson. But the trial lawyer who prosecuted Tyson was quoted thereafter as saying that he was still in awe of Vince.

A news article published in the Washington Post after Vince’s 2006 death reported that Vince “combined a keen legal mind with tireless research, sharp psychological insights and a commanding courtroom manner to build a record as one of the nation’s leading legal advocates.”



Despite Vince's prominent career, he didn't push his children to the law. Tony's parents impressed upon their children the importance of education and a solid work ethic in all endeavors. The children were encouraged to do manual labor during summers growing up. Tony and his older brother had jobs as construction laborers and landscapers, while his sisters worked as cleaning maids at a convent in Maryland.

That emphasis on hard work paid off for Tony, both in the Marine Corps and in the law. His experience in the Gulf War has helped him put things in perspective later in life. His leading a Marine rifle platoon as a twenty-four-year-old established a baseline of real stress and pressure for him. Now, when things don't go as planned, as he says always seems to happen in the midst of trial, he is able to recognize the issue and think "OK, we can recover from this, it isn't that bad."

After eight years in private practice, Tony spent six years at the U.S. Attorney's office for the District of Massachusetts, handling a variety of white collar matters such as mail and wire fraud, false claims, public corruption and procurement fraud, including a high profile six-week bribery trial of the former Massachusetts Speaker of the House. Tony then switched to the defense table, moving to a twelve-partner boutique Boston firm that handled white collar criminal defense. One of his unforgettable trial moments as a defense lawyer was in fact losing his first white collar criminal case less than a year after he had left the U.S. Attorney's office. When the jury came back, his client was practically hyperventilating as the clerk read the guilty verdict. Having been on the other side as a prosecutor many times, that moment had always been an exhilarating culmination of hard work that inevitably resulted in a subsequent celebration. For the first time as a defense lawyer, it was a devastating moment wrought with human emotion. In 2017, Tony's boutique firm merged with a large global firm; Tony continues to handle white collar defense matters along with complex internal investigations, SEC enforcement defense and some civil litigation. He also serves on the Boston CJA panel, where he takes court-appointed criminal cases for indigent defendants.

Tony recently led a team, in conjunction with the Eastern District of North Carolina Federal Defender's Office, to secure the release of Kenneth Kubinski, a U.S. Army infantry veteran who fought with the 101st Airborne Division in Vietnam, earning three Purple Hearts, a Bronze Star, and an Army Commendation Medal. In 1994 Kubinski was sentenced to multiple life sentences after being convicted of first-time, non-violent drug trafficking offenses. Tony's team worked for more than two years to obtain his freedom. Kubinski had been an exemplary inmate with no disciplinary actions during his incarceration. A motion for compassionate release was filed in the fall of 2019 and was granted by U.S. Dist. Judge Malcolm Howard of the Eastern District of North Carolina on May 13, 2020, on the basis of Kubinski's failing health, chronic pain, age and time served. Judge Howard noted that Kubinski had been "a model prisoner," and had already served a sentence that reflected "just punishment."

Tony's wife, Jennifer, is a corporate attorney; they have three children, Clara, Will and Alexander. Tony doesn't know if any of their children will follow them into the law, but he would encourage them to do so if they are interested. At the present time, he is active following them in their various sports endeavors, particularly hockey and lacrosse. He still coaches youth lacrosse in Winchester, Massachusetts.

Tony knew that Vince had been in the College and that Vince was proud of his membership. Tony recognized it as an incredible honor to be inducted and hopefully reflective of his reputation in the legal community. But like most of us, Tony feels a little sheepish about his induction into the College, which happened virtually in 2020. At the time, he was at his son's hockey tournament in New Hampshire, but took a break and donned a sports coat and tie for the virtual induction ceremony.

Tony does follow Vince' advice when preparing for trial. Vince always told him: "facts, facts, facts – you have to master the facts." Tony does just that, preparing an extensive chronology from the first event to the end. "I need to understand the events as they happened," he says. That is his road map. He breaks it down into elements that need to be proven and then determines which evidence and which witnesses he will need for each element.

In his spare time, Tony is busy with his children. But he also takes time to walk his dog, a black Labradoodle named Blitz. Tony said one of the COVID blessings is that he had more time to walk with Blitz, who now views Tony as his favorite human, though Jennifer may disagree. Tony is also an avid home brewer, mostly creating ales and stouts. The microbrewing industry might have provided Tony with an alternate career had he had not been such a natural as a trial lawyer. Indeed, brewing might be his second career.

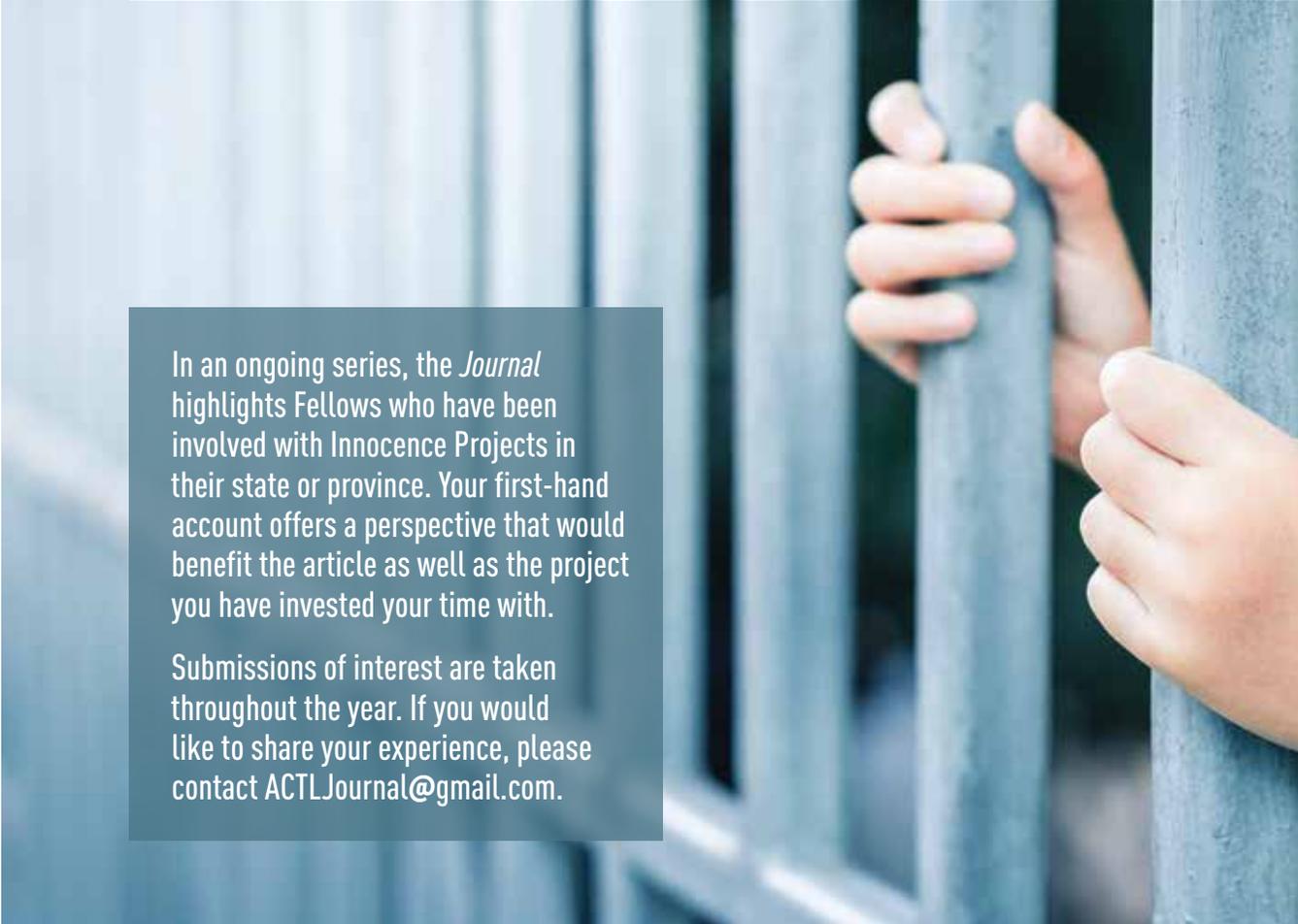
**Carey Matovich**  
**Billings, MT**

# FELLOWS TO THE BENCH

**LAURA M. JORDAN** was elected to the Supreme Court of New York, third judicial district in November 2021. Jordan, a *cum laude* graduate of Albany Law School, was previously a partner at Powers & Santola, LLP, where her practice was limited to the representation of serious and catastrophically injured individuals. Judge Jordan became a Fellow of the College in 2021.

**RACHEL T. McGuckian** became a Fellow of the College during a special induction ceremony held on January 12, 2022, preceding her appointment to the Montgomery County Circuit Court in Maryland on January 14 by two days. See page 80 to read more.

# CALL FOR SUBMISSIONS



In an ongoing series, the *Journal* highlights Fellows who have been involved with Innocence Projects in their state or province. Your first-hand account offers a perspective that would benefit the article as well as the project you have invested your time with.

Submissions of interest are taken throughout the year. If you would like to share your experience, please contact [ACTLJournal@gmail.com](mailto:ACTLJournal@gmail.com).

# HEROES AMONG US

## DENNY SCHOVILLE



*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 . . .*

GROWING UP IN A SMALL, MIDWESTERN FARM TOWN DURING THE 1950S, LIFE WAS CENTERED ON CERTAIN FUNDAMENTAL TRUTHS – THE IMPORTANCE OF FAMILY, COMMITMENT TO CHURCH, PLAIN-SPOKEN VALUES, THE APPRECIATION OF HARD WORK, AND PATRIOTISM. A TEENAGE BOY ALWAYS HAD A JOB MOWING YARDS, SHOVELING SNOW, OR TOILING ON A LOCAL FARM. AND ON NOVEMBER 11 EACH YEAR, PEOPLE PAUSED AT 11:00 AM TO REMEMBER ARMISTICE DAY AND THE SACRIFICE OF NEIGHBORS WHO HAD FOUGHT FOR FREEDOM. THIS BACKGROUND EXPLAINS A GREAT DEAL ABOUT COLLEGE FELLOW ('98) DENNIS SCHOVILLE AND HIS REMARKABLE MILITARY RECORD, WHICH INCLUDES 2 SILVER STARS, THE DISTINGUISHED FLYING CROSS, THE BRONZE STAR, AIR MEDALS FOR VALOR, AND 3 PURPLE HEARTS.

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Denny Schoville was enrolled in the Army ROTC program at the University of Wisconsin from 1963-67, and the Army helped him earn his private fixed-wing pilot's license. He saw military service as a responsibility, and he willingly followed the footsteps of his father Arnold, a Navy Veteran of WWII in the Pacific. On the day he graduated from college, he walked over to the ROTC headquarters, was commissioned, and received his permanent orders to Vietnam subject to completion of the Armor Officer Basic and Army Flight School training programs. In early 1969, he arrived in Vietnam and was promptly assigned to the 7/1st Air Cavalry Blackhawk Squadron, B Troop—the “Dutchmasters.”

So after taking the first extraction load to a nearby base camp, Schoville returned and lifted out the remaining soldiers and their leader, a Green Beret captain. Fifteen soldiers (dead and alive) were extracted that night; Schoville was awarded the Air Medal for Valor.



Vinh Long, on the middle branch of the Mekong River, was to be Schoville's new home. Denny initially was assigned to pilot his commanding officer in the command and control ship in addition to flying lift platoon duties in a UH-1H (the "Huey"). After only a few days flying in combat, he exceeded twenty-five hours of combat time and was awarded his first Air Medal. On one memorable evening, he was on night standby when a call came in for a life or death extraction of several Green Berets and their irregular forces who were encamped at a mountain lookout point near the Cambodian border on Nui Coto Mountain. Having been overrun by enemy forces, the American-led troops had serious casualties. As Schoville's Huey approached the mountain top, he received heavy automatic weapons fire, and he barely spotted friendly flashlight signals to the sole landing pad. Upon touchdown, dead and wounded were loaded on immediately, followed by those who could climb aboard. But the aircraft was overloaded and could not lift off, so some men had to jump off.

Approaching midpoint in his Vietnam tour, Schoville volunteered to serve as a flight section commander for the Aeroscout platoon, which flew the OH-6A (LOACH). The Scouts' primary mission was forward reconnaissance, often trying to expose enemy positions by drawing fire. In addition the Scouts would frequently locate and mark the best landing zones for air combat assaults, and if troops were wounded during an insertion, the Scouts would execute immediate medevacs from the hot LZs. Despite considerable attrition, morale in the unit was high. It was understood that no matter the mission, if one of their own went down, the entire unit would respond to extract the downed-crew with whatever resources were required.

On August 14, 1969, Schoville flew a scout mission in Kiên Long, searching for a suspected enemy munitions cache. He had already destroyed a suspicious cargo-loaded sampan on the river when he spotted a concrete bunker just as his aircraft took disabling machine gun fire. The helicopter suffered multiple hits and was going down. Fortunately Denny maneuvered several hundred yards away and landed in a waist-deep rice paddy. His observer – a young enlisted man – had a life-threatening wound in the groin, and Schoville had sustained shrapnel wounds to his right leg. Denny carried his observer in the deep water for over 100 yards to a Medevac helicopter. His scout report avoided the insertion of friendly troops into an enemy stronghold, and his autorotation of the helicopter saved the life of his observer. For this action, Denny received his first Purple Heart and the Distinguished Flying Cross.

Slightly more than a month later, Denny was acting as the Scout Platoon Leader on a Search and Destroy mission, again in Kiên Long. A Huey had been shot down, and ground troops had been inserted to secure the aircraft. The infantry grunt on point was severely wounded, and though a medevac soon was on the scene, heavy automatic fire aborted his evacuation. Schoville received permission to attempt an extraction of the wounded soldier, and as he approached, his aircraft also took several hits from heavy fire. The Commanding Officer, seeing tracer rounds hitting Schoville's LOACH, advised Denny to abort. But Denny directed suppressive minigun fire on the enemy position as he held a hover above the wounded soldier so that his observer could climb out on the skids to load the soldier into the helicopter. Because his LOACH had taken multiple hits, Schoville elected to fly tree-top level directly to the closest medical hospital in C  n Tho. As they approached the C  n Tho airfield, Denny requested a direct approach across the airstrip to a medevac pad. The entire airfield was shut down so he could make a straight approach and landing. Enroute, the wounded soldier's blood type had been called in, and as they unloaded him, blood was immediately transfused. The soldier survived. ▶

Reflecting on his own experience in Vietnam, Schoville knew his entire tour was justified that day in Kiên Long. He had saved a person's life; he had "made a difference." Later inspection of his LOACH found sixteen bullet holes, and for this gallantry, Denny was awarded his first Silver Star.

In early November 1969, Schoville volunteered to lead four scout ships on a Special Forces operation code-named "Operation Cobra Strike." The mission took him back to Nui Coto and two adjoining mountains collectively known as "The Three Sisters."

Green Beret teams with their irregular forces held observation posts atop the mountains, but North Vietnamese troops occupied caves and tunnels scattered across the mountain sides. From those hideouts, the enemy could launch attacks and retreat to a sanctuary.

Operation Cobra Strike called for the Aeroscouts to locate cave openings and, hovering approximately ten meters from the entrance, toss smoke grenades into the entrances so F-4 Air Force Phantoms and Army Cobra Gunships could fire missiles and rockets into the enemy "safe havens." The enemy soon realized what the Scouts were doing and confronted the helicopters with punishing automatic weapons fire. Several aircraft were severely damaged, but after three days all cave entrances had been closed with no pilot casualties. The mission commander – a Green Beret Colonel who witnessed Schoville's leadership – nominated Denny for what became his Second Silver Star. When asked about the mission, Denny admitted this may have been one of his dumbest "volunteer" efforts, but he helped secure the Green Beret outposts and their ongoing observation mission.

How fitting for a small-town patriot that Veterans Day 1969 proved to be Denny Schoville's last day of combat in Vietnam. While locating and marking bunkers in the enemy controlled U Minh Forest, his scout helicopter again came under punishing fire, taking multiple hits; one round blew out the fibula in Schoville's left leg. Thanks to the covering action of his wingman and the marksmanship of his observer, who placed suppressive fire on the bunkers, Denny maneuvered to a crash landing several hundred yards from the bunker position. Miraculously, another enemy round had entered his semi-ballistic helmet above his left ear, then following the curvature of the helmet, exited out the top of the helmet with only a minor surface wound to the scalp. Fortunately, Denny and his observer were immediately extracted to the Côn Thọ Field Hospital, where he underwent surgery to clean and stabilize the serious leg wound before eventually being transferred to Japan for further surgery. Denny ultimately was transferred back to Great Lakes Naval Hospital near Chicago, where he underwent a third surgery. Nerve rejuvenation was followed by almost six months' therapy so he could walk without a drop-foot brace. To this day, Denny repeatedly expresses gratitude to the many doctors and wonderful nurses who brought him back to health.



Schoville had taken the LSAT as a Wisconsin senior, hoping he might attend law school before going on active duty. His request for a deferment was denied due to the demand for pilots. So, while still a patient at Great Lakes, he applied to law school and began his legal studies at Chicago-Kent School of Law during his convalescent leave. Graduating with distinction in 1973, he entered Northwestern University's international law program, from which he received a LL.M. degree in June 1974. From Northwestern, Denny accepted a position with San Diego's largest law firm – Gray Cary Ames and Fry – which had a nationally-recognized defense aviation law practice group.

Three distinguished senior partners at Gray Cary were to become Schoville's mentors, and they left him with an abiding love for the courtroom. All three – Sterling Hutcheson, Reaves Elledge, and Rudi Brewster – were Fellows of the College, and they encouraged Denny's desire to serve others. Their guidance instilled a commitment to excellence in advocacy.

Besides developing a traditional defense practice, Denny earned a considerable reputation for representing catastrophically-injured persons by the 1990s. One of the firm's associates introduced him to another San Diego lawyer who was representing a woman victimized in what became known as "The Tailhook Case," the infamous practice of sexual harassment at U.S. Navy events. Denny represented Lt. Paula Coughlin, USN, and won a \$7.2 million recovery for her.

In 1996, Denny established his own, three-lawyer firm, Schoville & Arnell, LLP. During his forty-five years as a trial attorney, Denny has sustained a distinguished, multi-state trial and appellate record. He has successfully defended major aviation manufacturers in highly-publicized cases, and he has obtained multi-million dollar verdicts in diverse areas of civil litigation. His \$369 million verdict against Ford was the first big judgment involving the Ford Explorer. In 2009 he received the Cal-ABOTA Trial Lawyer of the Year Award, and in November 2021 he was inducted into the California Lawyers' Association statewide Trial Lawyers Hall of Fame.

*Charles H. Dick, Jr.*  
*San Diego, CA*

Now retired, Denny occasionally consults with fellow practitioners. He is generous with his time and serves as Chair of the Miramar National Cemetery Support Foundation and is a director of Alzheimer's San Diego. He remains devoted to helping others, and he readily speaks out on behalf of those who have served their country. We, who are beneficiaries of Denny Schoville's gallantry and professionalism, express our own gratitude for his selflessness. Truly a hero among us.





# HERITAGE OF THE COLLEGE

## Judge Karen Townsend

LAW IS **KAREN TOWNSEND'S** SECOND CAREER. GROWING UP NEAR AKRON, OHIO, KAREN GRADUATED FROM OHIO WESLEYAN UNIVERSITY IN 1964 AND, PLANNING TO BE A TEACHER, EARNED A MASTER'S DEGREE FROM THE UNIVERSITY OF CALIFORNIA, BERKELEY IN COUNSELING AND PSYCHOLOGY. AT BERKELEY, KAREN MET AND MARRIED BURKE TOWNSEND. BURKE FINISHED HIS DOCTORATE AT THE UNIVERSITY OF HAWAII, WHILE KAREN WORKED AS AN ELEMENTARY SCHOOL TEACHER.

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In 1973, the Townsends moved to Bozeman, Montana where Burke secured his first teaching position at Montana State University teaching Philosophy. Karen was employed as a teacher at Bozeman High School. In 1974, she applied to the University of Montana Law School in Missoula. At that time, there was an interview process with the Dean of the Law School before being accepted. She travelled 200 miles to Missoula for her interview. At the interview, the Dean's primary question to her was how she intended to fulfill her family responsibilities when they were living in Bozeman and she would be in Missoula? Her application was denied. The next year she reapplied to the law school and was accepted by the same Dean. Interestingly, the only change from her first application was her husband was now a Professor of Philosophy at the University of Montana in Missoula.

In the midst of a successful career as a prosecutor, Karen was offered Fellowship in the College in 2000. Given the choice of Philadelphia or Maui, she chose Maui for her induction, an easy choice for those living on the border with Canada enduring lengthy winters.

Upon graduation from law school, Karen began employment as a County Prosecutor in Missoula. She had a very busy practice. She was assigned to prosecute three murder cases where the victims were children and she was involved in many other serious felony cases. In addition to the County Attorney position, as there were no United States Attorneys in Missoula at the time, she held the position of Special Assistant to United States Attorney. Judge Townsend has also served as an Assistant Attorney General for the State of Montana.

Karen modestly points out that while she went on to prosecute some serious crimes, her first assignment as a County Attorney was reviewing the contract for a new roof at a local school.

FACTL **Carolyn Ostby** recalls a lunch conversation when Karen was a prosecutor. A legendary criminal defense attorney, well known for his ability to delay cases, had told the court that his father had suffered a heart attack and that, as a result, he needed a continuance. In response to Carolyn's concern for the attorney's father's condition, Karen observed that she was sure the father would recover in time to have additional serious health issues as the case proceeded.

Karen took time off as a Montana prosecutor in the 1990s to work for the National College of District Attorneys, helping to train and mentor prosecutors throughout the United States.

In 2010, Karen was the first woman to be elected as a Missoula County District Judge. Judge Townsend served until she retired in 2019. In an article labeled "A Tribute to the Honorable Karen Townsend," Volume 81 of the Montana Law Review, Issue 1, Professor Cynthia Ford wrote:

Judge Townsend began her professional life not as a law student but as an elementary school teacher in Hawaii. The remnants of that first career can be seen in two of Karen's strongest traits: Hard work and a genuine kindness to all she encounters . . . Later, Karen translated her love for, and knowledge of, young children to her work in prosecuting the crimes committed against them. Using stuffed animals, as well as her own warmth and compassion, she was able to provide some measure of comfort to them in the courtroom.

Judge Townsend was well known for her objection to wearing a black robe. She always wore a blue robe. At an annual meeting of the Montana Fellows in 2019, Judge Townsend explained her decision:

Wearing a black robe is an old tradition that dates back to 1714 when Queen Anne died and the king ordered mourning attire . . . That's when attorneys began wearing black robes and apparently, we never got out of mourning and I thought it was time the 4th District Court of Montana to get out of mourning.

Burke and Karen have a son, Alan, who is Dean of the College of Forestry and Conservation at the University of Montana and the father of their four grandchildren.

In 2019, Alan, wrote a tribute to his mother entitled "Angle of Repose" –

Yes, blue. For when she became the first woman judge in the history of Montana's second largest district, she decided to find out if a black robe was required. If she had to conform to a history that did not include her. The answer discovered, she announced her intention with typical lightness. "I look better in blue." But I sensed something more.

The Missoula Court was a busy place. Judge Townsend handled criminal matters, family law matters, and civil matters. Sometimes cases involving millions of dollars and sometimes *pro se* cases.

Judge Townsend was invited by now United States District **Judge Sam Haddon**, a Fellow of the College, to participate in the Advanced Trial Advocacy School at the University of Montana. In fact, when Judge Haddon was appointed to the Federal Bench, Townsend took over the leadership of the program. It is an intensive training for primarily young lawyers to develop their skills as trial lawyers. The Trial Advocacy Program has been the recipient of the College's Emil Gumpert Award, which then recognized premier trial advocacy programs in law schools.

In addition to her role in the University of Montana Trial Advocacy Program, Judge Townsend was very active with the University of Montana Trial Team, which participates in the College's National Trial Competition. Judge

Townsend coached the Trial Team for approximately ten years. Judge Townsend is proud to say that the Trial Team has produced some of the best trial lawyers in Montana.

In 2017, Judge Townsend was awarded the Karla Grey Equal Justice Award by the Montana State Bar Association, presented to a judge who has provided leadership in the equal access to justice.

Professor Ford wrote:

During her two terms on the bench, Judge Townsend exhibited a hallmark combination of knowledge, intelligence, hard work, compassion and courtesy to everyone in her courtroom. At the same time, there was no doubt who was in charge. Judge Townsend made tough calls, but made them because the law required them, not to vindicate her own ego. Whether the case was big (Mountain Water's condemnation case or Jordan Johnson's rape trial) or small (*pro se* family law), Judge Townsend gave the lawyers and parties her full consideration, and applied the law fairly. What better thing could you say about any judge?

Judge Townsend timed her departure so that she could help her replacement, Judge Jason Marks, ease into his new role. At the very end of the transition, concerned with correct use of taxpayer dollars, Judge Townsend chose to move out of her office on a weekend rather than using her official last paid day for that personal purpose. Then, only a few weeks into this second retirement, Karen sacrificed her new freedom to help a former colleague: when Judge Deschamps' law clerk left, Karen served as the substitute until he could hire a new clerk.

In 2013, Judge Townsend was assigned to the sentencing of Beau Donaldson, a University of Montana football player charged with sexual assault. In 2013, she also presided over the trial of Jordan Johnson, another University of Montana football player charged with sexual assault.

John Krakauer is a Pulitzer Prize winning author and a New York Times best-selling author. He wrote *Into the Wild*, *Into Thin Air*, *Under the Banner of Heaven*, and *Where Men Win Glory*, among many others. Krakauer began educating himself on the subject of sexual assault when a young woman, who was like a daughter to his wife, was treated for a sexual assault that happened when she was only fourteen years old. Krakauer knew nothing about the subject and started researching. At that time, he learned there were 182 separate college campus investigations across the country involving sexual assaults by college athletes.

Judge Townsend was generally aware of Krakauer's interest in her two cases as he had requested copies of certain transcripts from her court reporter, but she had no idea that Krakauer was in the gallery at Donaldson's sentencing.

Donaldson had admitted guilt. The victim was a childhood friend home for the holidays from an out of state university. She agreed to go to a party at Donaldson's campus residence. She fell asleep on the living room couch and woke up to Donaldson assaulting her. The next day, Donaldson came to her house where the victim and her mother secretly taped Donaldson admitting the rape.

It was up to Judge Townsend to determine whether she should follow the prosecuting attorney's recommendation that Donaldson be confined at Deer Lodge, a maximum-security prison, or be confined to a less restrictive entity as urged by Donaldson's attorney. Numerous witnesses and experts testified. Judge Townsend determined to follow the State's recommendation.

In *Missoula, Rape and Justice in a College Town*, Krakauer wrote:

As Judge Townsend pronounced his fate, Beau Donaldson's body went slack and he began to weep. His girlfriend screamed hysterically from the gallery. A detention officer cuffed Donaldson's hands behind his back, then escorted him from the courtroom through a side door. Upon exiting the courthouse, he was taken to jail to await transport to Deer Lodge an 85-mile drive down the frozen interstate.

During the College's 2019 Annual Meeting in Vancouver, Judge Townsend conducted an interview with Krakauer and asked him why he decided to write about the case. Krakauer responded:

I was riveted from the moment that the hearing opened, where . . . the victim's father got up, and using profane language, not unlike my own just now, just lit into Beau Donaldson . . . and it was riveting. And I saw the young victim . . . and her dad and the whole thing . . . . By lunch break I was like, "I'm going to write about this."



In another notable case, the City of Missoula officials believed that the community's water system should be a public asset owned and operated by the public, rather than by a private company, the Mountain Water Company. Missoula was the only one of Montana's 129 municipalities that did not own its own water system. The City had been trying to buy the company since 2011. Finally the City brought an eminent domain action before Judge Townsend.

After a two-week bench trial in June 2015, Judge Townsend ruled that the City of Missoula had proven that its plan for the city water system was "more necessary" than the current use as a private for-profit enterprise. Thereafter, the case entered a bifurcated format to determine the amount the City had to pay. The value was not to be determined by Judge Townsend, though she did preside at the valuation portion of the trial. Instead, value was to be determined by three Montana Water Commissioners from the State of Montana, each party choosing one and the two Commissioners choosing the third.

Ultimately, the water commissioners determined that the City was required to pay \$80.6 Million. Despite the dizzying array of exhibits and testimony presented by a battery of lawyers, Judge Townsend was able to deliver ruling after ruling, keeping the multi-million-dollar dispute on track, with a proceeding that withstood the scrutiny of several Supreme Court appeals.

One of the lawyers in the case described Judge Townsend: "Judge Townsend is a role model for all professional women, and men would be well advised to emulate her skill and demeanor as well. She did all this in a light pink suit with kindness and grace."

When her son Alan asked about the College, Karen told him "Ah it's just my snooty lawyer's group." A group she has embraced. Judge Townsend has served many years on the Montana State Committee and as the Montana State Chair.

In 2018, eleven Fellows traveled to Guam to lead a 3-day workshop with judges and lawyers from Guam, Micronesia, Northern Mariana Islands, and the Philippines. The program involved more than 100 participants. **Former Regent Brian O'Neil** orchestrated the workshop. At the conclusion of the program, Brian pronounced that Judge Townsend was "unquestionably the star."

Judge Townsend has played a major role with the National Trial Competition Committee and is currently the Chair. In the past, she authored the problem presented to the law students and their coaches.

Judge Townsend has always been active in her community. She is on the Board of Directors that oversees the operation of St. Patrick's Hospital in Missoula and is involved with the local YWCA.

Judge Townsend is truly part of the College's Heritage, adding luster to our ranks.

**Ron McLean**  
*Fargo, ND*

# FOUNDATION UPDATE

## THROUGH THE RETROSPECTOSCOPE



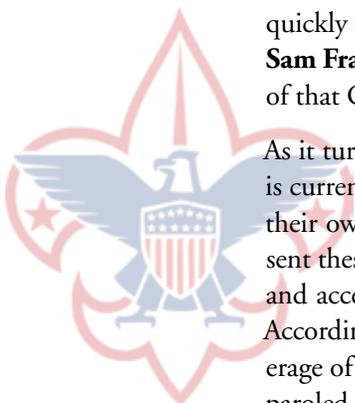
IN A TRIAL YEARS AGO, I WAS CROSS-EXAMINING A DISARMINGLY DELIGHTFUL DOCTOR ABOUT HIS HOSPITAL'S TERMINATION OF THE SERVICES OF A WRONG PHYSICIAN ON THE OCCASION OF A TRAGIC MEDICAL OVERDOSE. "IF ONLY," HE SAID WITH A SIGH, "WE HAD POSSESSED A RETROSPECTOSCOPE TO SEE WHAT HAD REALLY HAPPENED." ALTHOUGH I HAD NEVER HEARD THE TERM BEFORE, IT WAS NOT DIFFICULT TO INTUIT ITS MEANING, WHICH THE 2009 EDITION OF *MEDICAL DICTIONARY* (FARLEX AND PARTNERS) CONFIRMS TO BE, "IN HEALTH CARE SETTINGS, A COLLOQUIAL TERM FOR MEDICAL HINDSIGHT." WHILE THE MEDICAL COMMUNITY MAY HAVE DEVISED THE CLEVER LINGUISTIC AMALGAM, EVERY COMMUNITY WOULD BENEFIT FROM A FANTASTICAL DEVICE THAT ALLOWS US TO KNOW IN THE MOMENT WHAT WOULD BECOME APPARENT LATER IN HINDSIGHT.

The analogy is not perfect, but the ACTL Foundation Board of Trustees has something akin to a retrospectoscope that arises from our requirement that grant recipients report back how your charitable dollars have been put into use. Honestly, those reports

are some of the most gratifying moments of our service; so, I thought that you might enjoy reading about one such report that we received recently.

Late last year, we received and approved a grant application from an organization in Alabama called Redemption Earned, Inc. It didn't escape our attention that the Executive Director of the entity is the Honorable Sue Bell Cobb, Chief Justice of the Alabama Supreme Court (Ret.). We learned quickly from sponsors **Bob MacKenzie** and ACTL Past President and current Foundation Trustee **Sam Franklin** that Chief Justice Cobb is assisted in these efforts by two additional former members of that Court, Justices Champ Lyons and Tom Woodall.

As it turned out, the mission of Redemption Earned lived up to its impressive pedigree: "Alabama is currently one of the few states in the nation that does not permit a parole applicant to appear at their own hearing – either in person or virtually, nor are attorneys provided by the State to represent these individuals before the Board. Redemption Earned will fill a critical gap in representation and access for those seeking parole in a system that currently only paroles 20% of those eligible." According to news reports with which the Board was provided, this was a drastic drop from the average of 37% approval for the previous ten years. Even more appallingly, black inmates were being paroled at less than half the rate of white inmates.



It came as a surprise, perhaps even a shock, to most of the Foundation Trustees that any jurisdiction thought that a parole process could function fairly, no matter how well deserved parole might be, if an inmate cannot participate in pleading his or her case and cannot afford to hire an attorney to do so.

What did not come as a surprise was learning upon the occasion of the follow-up report that the \$75,000 grant is being well spent. According to the report just received, since March 1, Redemption Earned has already implemented its first two phases through the program that the organization has dubbed the “WIN Program.”

In Phase 1, the WIN Program has compiled a list of incarcerated individuals in the Alabama Department of Corrections system and narrowed it down in the first wave to fifty-one individuals who have the greatest potential to qualify for work-release. A particularly heartwarming aspect of this phase is that the Classifications Division of the Alabama Department of Corrections has provided invaluable assistance in identifying these individuals, as well as sharing the Classifications Manual with the Redemption Earned staff to help them make these determinations going forward. Far from being a bureaucratic impediment, as so often seems to be the case when non-profits work to help the disadvantaged, the Division has been a true ally to the Program.

Phase 2 involves the recruitment and integration of the first cohort of twenty-seven students from the University of Alabama School of Law as volunteers in the WIN Program. Through a secure centralized software platform called Basecamp, the students are able to coordinate tasks, communicate with the Program and each other, and share documents. By the time of the report to the Foundation, almost all of the students had already sent out their initial contact letters to the potential candidates for work-release through the WIN Program.

I hope to follow up in a few months’ time with a “through the retrospectroscope” addendum to let you know how many of these candidates have secured parole. While I hope that the candidates will be worthy and the number high, even one will represent a moral victory and a potential turning point in a system that is in need of a dash of humanity. And, after all, that is exactly what Redemption Earned and its WIN Program are offering.

The Foundation is grateful to play a small part, on your behalf. Because justice can’t wait.

*Joan Lukey*  
*ACTL Foundation President*



# IN MEMORIAM

Since our last Issue, we have learned of the passing of seventy-three Fellows. One reportedly succumbed to COVID. Thirty-six of them served their country in uniform, five in World War II. Eleven were college athletes.



Our departed Fellows ranged in age from sixty-five – way too young – to ninety-seven – still far too soon. They all died too young. We will miss them all. They were, on average, eighty-five when they passed; but none of them were average.



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.

**Joe Michael Alexander**, '02, passed away peacefully at home on March 14, 2022 after a year-long battle with cancer at the age of seventy-five. Mic was born in Texas and lived in various locations before moving to California for college, where he met his wife of fifty-three years, Anna, and discovered his love of Oregon during a rowing trip. After four years in the Air Force, Mic, Anna, and their two-year-old daughter, Dina, moved to Oregon where Mic attended Willamette University College of Law. In 2004, Mic was awarded the Owen M. Panner Professionalism Award by the Oregon State Bar Litigation Section, honoring a member of the bench or bar who exemplifies the highest personal and professional standards (**Past President Tom Tongue** won the award two years earlier). Mic is survived by Anna, two daughters and a granddaughter.

**Frederick Walton Allen**, '72, a member of the greatest generation, died at the age of ninety-seven at his home on January 24, 2021. Fred had a long and distinguished career as a plaintiff's attorney. Fred graduated from high school in 1941 and enrolled at Ripon College. He halted his studies to enlist in the U.S. Army Air Force on December 7, 1942, the first anniversary of Pearl Harbor. He learned to fly the B-29 bomber, earning his wings in 1944. Before the War, Fred had signed as a pitcher with a farm team of the New York Yankees. Following his military service, Fred signed with the Papermakers of Appleton, Wisconsin, a minor league affiliate of the Cleveland Indians. While he never realized his dream of becoming a Major League pitcher, Fred remained a devoted baseball fan. With the assistance of the GI Bill, Fred attended law school at Northwestern University. He was admitted to the Illinois State Bar in 1949 and settled in Peoria to practice. He was the first downstate Illinois lawyer to win a \$1 million award for a client, earning him membership in the Inner Circle of Advocates. But Fred regularly made time for pro bono work and was known to be humble and generous. He had a reputation for



taking cases to trial by jury instead of settling for less, always seeking the best result for his clients. Fred ran for Congress in 1956 against Bob Michel. Fred lost the election but gained a lifelong friendship with Michel, who years later would introduce Fred as, "The man who got me elected to Congress." Fred was elected for eight years as the 18th Congressional District State Central Committeeman for the Democratic party, and in that capacity rubbed elbows with John F. Kennedy, Lyndon Johnson, Robert Kennedy, Sam Rayburn, Dick Durbin, and many other key political leaders. Fred served as the College's Downstate Illinois State Chair in 1980-81. Fred was predeceased by his wife of sixty-six years, Tillie, and by a daughter. He is survived by two other daughters, seven grandchildren and fourteen great-grandchildren.

**Thomas William Alvey, Jr.**, '92, was eighty-one when he died at his home in Belleville, Illinois on March 24th, 2021. After graduation from the Virginia Military Institute, Tom served two years in the United States Army as an Infantry Training Officer at Fort Jackson, South Carolina. He then attended Washington University School of Law in St. Louis, Missouri, and graduated in 1966. He loved his chosen profession and was honored by the St. Louis Bar Association for his more than fifty years practicing law in the Metro East area. Tom specialized in the defense of personal injury lawsuits. He enjoyed traveling, golf trips, grilling, tennis, reading military books, walking and spending time with his family. Tom is survived by his wife of fifty-nine years, Mary Hite, their two children and four grandchildren. ▶

**C. William Bailey**, '96, died December 10, 2021 at age eighty-two. Bill studied theology and ethics, working as a pastor for several years. He then studied law and was admitted to the Washington State Bar in 1973, practicing in Seattle until his retirement. Bill was active in the College, serving as State Chair and on several General Committees. He was known for his sense of humor, commitment to justice, loyalty to friends, deep-rooted faith, dedication to family, heartfelt empathy, and eloquence at the pulpit and in courtroom. Bill is survived by his wife with whom he recently celebrated sixty years of marriage, and by a daughter and two sons. Bill's long-time friend, **FACTL Ralph Palumbo**, recalls an argument where Bill made a series of factual representations. The Judge interrupted, "Mr. Bailey, you've alleged a number of facts that I believe are not supported by declarations or affidavits. Have I missed something?" Bill responded "Of course not, your Honor. But I can assure your Honor that all the facts I have mentioned are absolutely accurate." The Judge paused for a few moments before saying "Mr. Bailey, normally I require supporting declarations to give credence to facts relevant to a motion. But I know you are a man of the cloth so I will take the facts you state as gospel." Not missing a beat, Bill responded, "I thank you, your Honor. And HE thanks you."

**Frank Burckhalter Bailey**, '77, died on November 18, 2021 at the age of eighty-seven. After two years at Westminster College, Burck volunteered to serve in the U.S. Army to qualify for the G.I. Bill to help finance his education. He served for two years, stationed near Stuttgart, Germany, and returned to complete his degree with honors in 1958. Burck went on to New York University School of Law, from which he graduated in 1961. He began practice in Kansas City and, a year and a half later, became an Assistant Attorney General of Oklahoma. He served in that office for three years before moving on to private practice in Oklahoma City. Burck was President of the Oklahoma Bar Association in 1988. When he received the Oklahoma Bar Association Professionalism Award in 1989, the citation read "His conduct, honesty, integrity, and courtesy best exemplify and represent the



highest standards of the legal profession." Burck was a busy trial and appellate lawyer, with three appearances before the United State Supreme Court. A former State Chair for the College, Burck was also a Fellow of the American Academy of Appellate Lawyers. After retiring from the practice of law, Burck and his wife Sandra moved to Santa Fe. They developed a close relationship with the University of New Mexico School of Law and endowed the Burck and Sandra Bailey Scholarship in Law for the benefit of Native American, African American, and Hispanic students. At age sixty, Burck climbed the 20,000-foot summit of Mount Kilimanjaro. On his seventy-fourth birthday, he parachuted from an airplane at 10,000 feet. Burck was a weekend cowboy and participated in team roping contests in Oklahoma and surrounding states. He hiked, biked, and rode horses in the mountains of New Mexico well into his eighties. Burck is survived by Sandra, three children and six grandchildren.

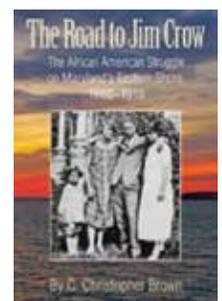
**Antonio M. Bird, Jr.**, '93, was seventy-seven when he passed on November 22, 2020. Tony and his father formed the law firm Bird & Bird in 1970. In 1972, Senior was inducted as one of the first three Fellows in the College from Puerto Rico. Junior was inducted in 1993, two years before Senior's death. The third member of the firm, **Eugene F. Hestres-Velez**, was inducted in 1997. Tony was a fine litigator, a dedicated and thorough adversary. He was a gentleman about whom nothing negative was ever said. Tony is survived by his wife, Dr. Susan Nelson, two children and several grandchildren.

**Clyde Maurice Blackmon**, '96, passed away at home in Sacramento on November 26, 2021 at the age of eighty-six, survived by his wife Karen Cornell, four children and three grandchildren; he was preceded in passing by his first wife Joan. Clyde served in the United States Marine Corps from 1953 to 1957. Through the GI Bill, Clyde graduated from the University of California in 1961 and Boalt Hall in 1964. With his law degree, he moved to Sacramento in 1964 as a Ford Foundation intern with the California Legislature. In 1969, he opened a private practice in criminal law, and continued practicing until 2019.

**Martin Luther Brackett, Jr.**, '98, age seventy-four, passed away on February 9, 2022 after a short illness. Martin was an Eagle Scout and Order of the Arrow; he attended Davidson College on a football scholarship and law school at the University of North Carolina-Chapel Hill. Martin served in the United States Army, on the Board of Trustees of UNC-Charlotte, the North Carolina Railroad Company's Board of Directors, the Board of the North Carolina Outward Bound School, and as a member and Chairman of the Charlotte Auditorium-Coliseum-Convention Center Authority. Martin was recognized throughout his career for his pro bono service. He is survived by his wife, Lisa Kay Brackett, four children and three grandsons.

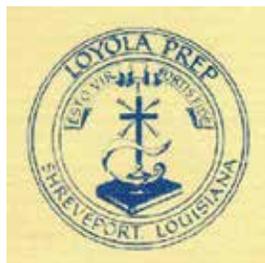
**Richard E. Brennan**, '96, passed away peacefully on March 18, 2022 at the age of eighty. Dick received his undergraduate degree from Seton Hall University in 1962. After college, Dick served two years as an officer in the Army, then returned to Seton Hall for Law School, where he graduated first in his class of 1966. He practiced law for over fifty-two years and was widely acknowledged by his peers as one of New Jersey's top trial lawyers and the 1997 recipient of the prestigious Trial Attorneys of New Jersey Award. Dick was active in the College and served as NJ State Chair. Dick was an Adjunct Professor of Civil Trial Practice at Seton Hall for more than twenty years. Nothing gave him greater satisfaction than to see all four of his daughters graduate from his alma mater, personally handing each one her diploma, one of the biggest honors of his lifetime. Dick loved jamming on the drums, classic car shows, working in the yard, and completing the NY Times Crossword Puzzle. But most of all, he cherished his wife, Pam, their four girls, and five grandchildren.

**Charles Christopher Brown**, '00, died just shy of his eighty-first birthday on December 17, 2021. After graduating from Swarthmore, Chris went to the University of Delaware for a master's degree in political science. There, he met an undergrad named Leslie Jane Davis. Leslie was drawn to his intellect, commitment to activism and quiet confidence, and thought that someday he would become a United States senator (as Chris' classmate, Joe Biden, did). Chris and Leslie were married in 1964. Chris enrolled at Georgetown University Law School in 1965. Chris was a quiet and sometimes shy student. When grades were released at the end of his first year, the other students were shocked to see that Chris had finished first in the class. He was named editor-in-chief of the Georgetown Law Review. After law school, Chris served as the motions clerk for the D.C. Circuit. Chris eschewed several offers to join big law firms and instead took a series of positions that helped advance the civil rights movement. In 1975, Chris joined the faculty of the University of Maryland School of Law, teaching civil procedure, evidence, constitutional law and various legal writing courses, while maintaining an active law practice. In 1975, the U.S. Supreme Court granted certiorari in one of his cases, *Norton v. Mathews*, which was docketed with a related case, *Mathews v. Lucas*, which together sought to win social security benefits for "illegitimate" children. At the last minute, the attorney for *Lucas* asked Chris to argue both cases. So, upon the calling of *Norton*, Chris surprised Chief Justice Burger by proposing – on the spot – that the two cases be consolidated for two hours of argument. The Chief Justice agreed, but, unfortunately, Chris lost both cases. Not deterred, Chris continued to take on high-profile cases and scored dozens of victories that advanced the rights of minorities in the areas of voting rights, disability rights, housing, free speech, sexual orientation, the right to die and other many other progressive causes. He chronicled many of the causes he fought for in his 2017 book, *The Road to Jim Crow*. Chris also managed to see much of the world as a willing partner in Leslie's ambitious – and sometimes grueling – travel plans. Leslie passed unexpectedly in 2019; Chris is survived by their two children and four grandchildren.



**Edmund Burke**, '85, died at age eighty-seven on February 22, 2022. Born in Montana, Ed graduated from the Naval Academy, did four years of active duty, then attended law school at UC Berkeley. After a few years of practice in Ventura, California, Ed relocated to Honolulu and did mostly med mal defense, with a little plaintiffs' work mixed in. Ed was a former Hawaii State Chair.

**Arthur Roderick Carmody, Jr.**, '78, ninety-three, passed away on April 4, 2021 of natural causes. Art received a B.S. degree from Fordham University in 1949 and a law degree from Louisiana State University Law School in 1952. He practiced in Shreveport, LA's oldest law firm, formed in 1895, and served as president of the Shreveport Bar Association. Art represented all of the railroads that served Shreveport, and tried more than six hundred railroad cases throughout Louisiana and the surrounding area. He also represented such clients as Sears, Roebuck & Co., Schumpert Medical Center, local movie theatres, schools, and even a professional wrestler. Art was actively involved in preserving Catholic secondary education in the Shreveport area. In 1969, the Jesuit Order that had owned and operated St. John's High School announced that it would be closed due to financial concerns. Art led a group that worked with the Order to turn the school over to a lay board of trustees which assumed the obligations of the existing school. The school, still going strong, is now named Loyola College Prep; and Art was inducted into its Hall of Honor. Art was an officer and director of the Shreveport Braves Baseball Club (Texas League) in the late 1950s, a general partner in the Shreveport Steamer organization in the World Football League in the 1970s and president of the Touchdown Club of Shreveport. Art was preceded in death by his wife, Mary Lansdale Carmody; he is survived by his eight children and twenty-three grandchildren.



**Hon. Gene Carter**, '78, a Judicial Fellow who served three years as a Justice of the Maine Supreme Court and as a United States District Court Judge for nearly forty years, passed on November 17, 2021 at the age of eighty-six. Judge Carter graduated with distinction in 1958 from the University of Maine and the New York University School of Law, also with distinction, in 1961. He served as a law clerk to the Honorable J. Spencer Bell, Judge of the United States Fourth Circuit Court of Appeals. He entered the U. S. Army at the time of the Cuban Missile Crisis. He was appointed to the Maine Supreme Judicial Court in 1980, then the youngest person to have ever served on that Court. Judge Carter spoke with a Down East accent and sometimes bluntly expressed his irritation with defendants from the bench. In one memorable case, Judge Carter threw out a recommended sentence and imposed the maximum punishment of forty-eight months upon a defendant who pleaded guilty to embezzling \$925,000 from the pension fund of a Bangor car dealership that was forced to close as a result. Carter harshly chastised the defendant pointing out that he hadn't accepted responsibility for his actions, hadn't expressed contrition or remorse, had stonewalled the court's probation officer and given her incorrect information about his finances, assets and employment status. "I can offer no leniency. He destroyed lives. He destroyed a company," the judge said. Judge Carter is survived by his wife of sixty years, Judith Ann, two children and two grandchildren.

**Jay A. Charon**, '95, died peacefully at age eighty-four at his Morgantown, Indiana home on January 21, 2022. Jay was a graduate of Notre Dame Law School and Indiana University. He was a lifelong fan of football and basketball at both schools. His law career spanned more than five decades; after retirement, he practiced pro bono law on a part-time basis. Jay was an avid and talented woodworker. He had a passion for rescue dogs, including his surviving companion, Maizy Mae. Jay is survived by his wife Wanda Jones, his daughter and a grandson; he was predeceased by his son.

**Monte Paul Clithero**, '06, passed away on January 16, 2022 in St. Louis at the age of sixty-eight. Monte attended Culver-Stockton College in Canton, Missouri on a baseball scholarship and graduated *cum laude* in 1975. He earned a law degree in 1978 from the University of Missouri School of Law in Columbia and settled in Springfield. Monte was an avid St. Louis Cardinals and Missouri Tigers fan. He particularly loved baseball and shared his passion for the game with his son. Monte coached his son's baseball teams from tee-ball through high school legion ball, while Monte played fast pitch softball into his forties. Monte thought he had defeated Acute Myeloid Leukemia in 2019, but a relapse took him during the second year of his term as the College's Missouri State Chair. Monte was preceded in death by his son and survived by his daughter and a grandson. *[If it seems off that both Monte and Jay, whose memoriam immediately precedes this one, each lost a son but left a daughter and grandson, well, it is off. No parent should survive a child. But this was not a typo.]*

**Mark Talbot Davenport**, '03, was seventy-six when he passed on March 22, 2022. In high school, Mark was a cheerleader and the Dallas City tennis champion in singles and doubles. In college he was an intramural champion in volleyball, badminton and ping pong. He was a talented musician who played piano, guitar and banjo by ear. Starting at the University of the South at Sewanee, Mark transferred to Southern Methodist University to complete his undergraduate degree and obtain his law degree. Mark tried over 150 cases to verdict in state and federal courts, acting as the lead trial lawyer in Texas and across the United States for almost every major life and disability insurance company and title insurance company, as well as handling select high-profile commercial litigation cases. Mark entertained generations of lawyers by holding court in the hallway outside his office and at his firm's Friday night "happy hour," giving as much as taking raucous abuse. He had a distinctive Texas drawl, profuse with profanity and a

repertoire of Davenportisms: "Pigs get fat and hogs get slaughtered," "I got you to the 3-yard line, just fall forward," "This ain't my first rodeo," and his all-time classic "Let Jesse rob this train." Mark had a lifelong love of sports cars, starting with his 1963 Corvette and ending with an Aston Martin. Even more, he loved "doing" houses. He renovated or built thirty houses in Dallas and beyond, ranging from Greek Revival to Victorian to modern. After fifty years of practicing trial law, Mark discovered a passion for outdoor sports, retiring in 2015 to Saranac Lake NY, Cave Creek AZ, and ultimately Townsend, TN to pursue his love of cycling, hiking, kayaking, fishing, boating and golf (at which he cheekily cheated). He died tragically following a cycling accident doing exactly what he loved to do - seizing the moment. Mark is survived by his wife of twenty-six years, Jill Bohannon Davenport, his ex-wife, Debra Poole Thomas, and by three children and eight grandchildren.

**Ed Reynolds Davies**, '85, passed away on November 22, 2021, two days after celebrating his ninetieth birthday. Ed was a first-generation native Nashvillian who received all of his formal education there. He graduated from Vanderbilt University in 1953 where he was in the NROTC program. Ed served on active duty in the United States Marine Corps as a Platoon Leader of an Anti-Tank Assault Platoon stationed in Paju-Ri, Korea from 1954-1955. He returned to Vanderbilt for his law degree, serving on the Vanderbilt Law Review from 1956-1958. And Ed continued to serve his country for another twenty-four years in the Active Reserves, retiring with the rank of Lieutenant Colonel. Ed was a third-generation lawyer; his grandfather, father, and brother were lawyers and judges. Ed himself had a brief stint on the bench when he was appointed to fill a six-month vacancy on the Davidson County Chancery Court. Ed also gave back to his community by service on numerous organizations and boards including the Nashville YMCA, the Sequoia Club, the Marine Corps League, and the WWII History Club. ▶

**Donald Lawrence Davis**, '95, passed away peacefully surrounded by his family on December 8th, 2021 in Austin, Texas at age eighty-two. Don attended Abilene Christian College on a football scholarship, where he met his future wife, Patricia, as a freshman. They married the following year and were inseparable until Pat's passing sixty years later. Don was the starting quarterback for Abilene from his sophomore to senior year, setting school records for passing yards and passing touchdowns and being nicknamed "The Walla Walla Winger," a reference to the time his family had moved there from Carrizo Springs, TX. Don graduated with a degree in accounting, although he had majored in art the majority of his time in college. He declined an offer to try out for the Baltimore Colts and enrolled in the University of Texas School of Law. At the age of twenty-eight, Don argued the landmark case of *Powell v. Texas* in the United States Supreme Court, the youngest attorney to have argued at the time. A true Renaissance man, Don was a painter, sculptor, athlete, attorney, builder, mechanic, carpenter, and chef. He designed and built both his houses and his office building. He restored classic Thunderbirds and won 'Best of Show' in national competitions. His sculptures can be seen at Austin Country Club and at the Dell Children's Hospital sculpture garden and have been chosen as gifts by organizations ranging from the American College of Trial Lawyers to the Professional Golfers Association. Don is survived by his two children and five grandchildren.



**Robert L. Davis**, '85, died peacefully at age ninety-three on November 26, 2021. After high school graduation in 1946, Robert enlisted in the Army and served in the Army of Occupation, Korea. In 1948 he started at the University of Cincinnati; in his freshman year he met Mary Lee Schulte. They were married in June 1952 and remained together for sixty-two years until her death in 2014. Robert was elected class president his Sophomore, Junior, and Senior Years. Soon after Robert and Mary Lee's wedding and Robert's graduation, he was recalled to duty, serving in the Korean War, where he commanded a field artillery battery, was awarded a Bronze Star and the Army Commendation Medal, and was discharged as a Captain. Upon his return, Robert worked for his father-in-law during the day in the building products business, while attending Salmon P. Chase College of Law in the evening, while also starting a family with Mary Lee. He graduated in 1958, first in his class. Robert served as the College's Ohio State Chair. He is survived by four children, four grandchildren, five great-grandchildren, four step-grandchildren and seven step-great-grandchildren.

**James R. DeGiacomo**, '87, was ninety-two when he passed peacefully on January 12, 2022 at his home in Lenox surrounded by his family. After graduating from Boston College in 1952, Jim joined the Marine Corps and served as a tank platoon commander in Korea. Before leaving for Korea, he promised his mother that he would go to Mass whenever he could. He attended a Mass while on leave in Tokyo and spotted a beautiful woman on the steps, Jeanne Marie Cook, a foreign service diplomat at the Department of State. He invited her to brunch and began a two-year courtship which led to a sixty-six-year marriage. Jeanne Marie predeceased Jim in 2020. Jim graduated from Georgetown Law Center in 1956 and started practicing law in Boston the following year. Jim was committed to social justice and believed deeply in equality and opportunity for all. During his long legal career, he was a mentor to many and served as an inspiring example of the standards to which all attorneys should strive.

Jim taught at the New England School of Law for over forty years. Jim was intellectually curious, a lifelong learner, an avid reader of history and a lover of nature. For decades he enjoyed sailing his small boat out of the Cohasset Sailing Club where he was one of the original members. Jim is survived by his four children, four grandchildren and his four great-grandchildren.

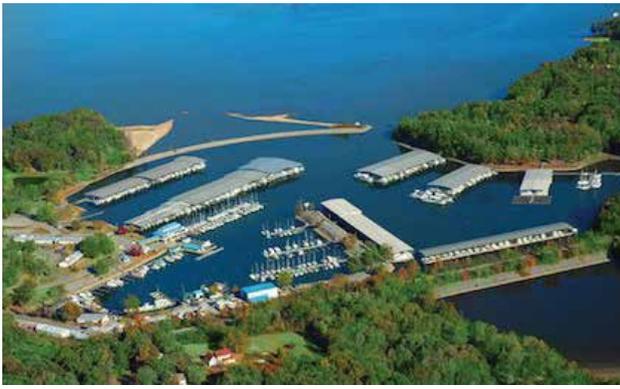
**Daniel William Donahue**, '86, died December 10, 2021 at his home in Bruges, Belgium at the age of seventy-nine. A graduate of the University of North Carolina at Chapel Hill and the University of North Carolina School of Law, Dan began his legal career in 1968 with a general litigation practice in Greensboro. He served as National Coordinating Counsel for the Ford Motor Company, RegO Valve, R.J. Reynolds Tobacco Company, and other national and international clients in products liability litigation. In 1990, Dan joined R.J. Reynolds Tobacco Company and remained there until his retirement in 2005 as Senior Vice President and Deputy General Counsel in charge of litigation. With a passion for gardening, Dan excelled at raising vegetables and loved sharing his produce with friends and family. Dan loved international travel. After years of visiting, he and his wife Kay made their home in Bruges and delighted in time spent with their Belgian friends. Dan is survived by Kay, two children and four grandchildren.

**David L. Foster**, '78, passed away peacefully in his sleep Christmas Eve Day, 2021 just days after celebrating his eighty-eighth birthday. Born and raised in Iowa, David was an Eagle Scout and a member of the University of Iowa nationally ranked Debate Team. At law school, David was Editor of the Iowa Law Review and Order of the Coif. After service in the U.S. Navy, David became an associate at a large New York firm. In 1963 he relocated to Cleveland, but returned to New York in 1972, where he spent the balance of his career specializing in antitrust law. David was an avid pilot. He obtained his license as a teenager and flew well into his sixties. He owned a



number of airplanes but was especially fond of his Pitts Special - an open cockpit, aerobatic, bi-plane. He took great pleasure in flying upside down, doing barrel rolls, and other stomach dropping aerobatic maneuvers in his spare time. His passengers did not enjoy it quite as much. David was predeceased by his first wife and a child, and survived by his wife of forty-three years, Kathleen (Walsh), three other children, and multiple grand and great grandchildren.

**Howard Irwin Friedman**, '81, died of complications from COVID-19 at the age of ninety-two on January 19, 2021. Born in Chicago and raised in Oklahoma City, Howard met the former Wilma Mann while earning his degree Phi Beta Kappa from the University of Oklahoma. Howard added an MA from the University of Chicago and a law degree from Yale Law School, where he was a Note Editor of the Law Journal. He served in the U.S. Air Force/JAG Corps during the Korean War. He and Wilma moved to California, where he taught at Stanford Law School before moving to private practice in Los Angeles. Howard is a former Chairman of the Board of the Skirball Cultural Center, a past national President of the American Jewish Committee, and an Emeritus Governor of the Board of Overseers of the Hebrew Union College. Howard was a fierce advocate for what he believed was right: in 1948, while a student at OU, he led on-campus protests in support of Ada Lois Sipuel Fisher, a black student denied admission to the law school on the basis of her race. Howard is survived by Wilma, three children and six grandchildren. ▶



**William Edward Gary III**, '80, died on February 16, 2021 at the age of eighty-seven. Bill was a trial lawyer, of course, but also a businessman who became Executive VP and lead Counsel of Pinkerton Tobacco, the proprietor of the Port KenBar on Lake Barkley in Western Kentucky which Bill renamed Green Turtle Bay Resort, and owner-operator of the Village Market & Café. Bill was preceded in death by his wife of twenty-four years, Bette H. Burruss, and is survived by two children, and numerous grand and great-grandchildren.

**Terry Michael Grimm**, '01, was seventy-nine when he passed on January 28, 2022. Terry grew up in Decatur, Illinois, where he met Susan Chastain Grimm; they were married in 1976 and remained by each other's side for more than forty years until her passing in 2018. Terry studied History at Indiana University, which included a stint at the University of Durham in England. In 1967, he earned his law degree from the Indiana University School of Law, where he was a member of the Order of the Coif. A former special prosecutor, Terry secured what was at the time the highest jury award ever collected in the Seventh Circuit – a \$181 million dollar verdict. Terry loved the Rolling Stones, classic Cadillac convertibles, and cream linen suits with brimmed straw hats and boutonnières. Terry was preceded in death by his wife Susan.

**Florentino Garza**, '74, passed on November 17, 2021 at age ninety-four. Among the many prominent cases Tino handled was the tug of war between the states of Nevada, Texas and California over domicile status of the Howard Hughes estate. Hired to represent the State of Texas by the Texas Attorney General, Tino eventually secured a fifty-million-dollar settlement. The

Attorney General gloated that “To get fifty million out of a case when the old boy hadn't been in the state here but for forty-eight hours in the last fifty years of his life, hell, that ain't a bad deal.” Tino earned undergraduate and Master's degrees in history and government at the University of New Mexico and a law degree at UCLA, graduating in 1956. He was drawn to UCLA by its merit and its \$42.50/semester tuition. Tino later sat on the UCLA Foundation Board of Trustees for several decades. Tino began his legal career in Los Angeles as an insurance defense attorney and eventually moved into plaintiffs' work. After fifty-five years of practice, Tino retired in 2011 or 2012 to spend time enjoying his family and playing golf. Tino is survived by his wife of seventy years, Regina (Sandy), three sons (one a judge, another married to a judge) and two granddaughters.

**Stephen Henry Grimes**, '71, a former Chief Justice of the Florida Supreme Court, died peacefully on September 10, 2021 at the age of ninety-three. Steve had planned to join the U.S. Navy to fight in World War II, but the day he went to enlist turned out to be VJ Day, and the recruiting office was closed. Instead, he joined the U.S. Merchant Marines and the Naval Reserve, then attended Florida Southern College before transferring to the University of Florida, where he stayed through law school. Steve was Order of the Coif and Editor in Chief of the University of Florida Law Review. With one semester left before graduation, he was called into the Navy during the Korean War. He proposed to Fay Fulghum, whom he met during college, and they were married while Steve was on leave in 1951. After his discharge from the Navy, he finished his degree with honors and began practicing law in 1954 in Bartow, FL, where he and Fay raised their family of four girls. In 1973, Steve was appointed to the Second District Court of Appeal in Lakeland and served as chief judge from 1978-1980. In 1987, he was appointed to the Florida Supreme Court (serving as Chief Justice from 1994-1996). He left the court in 1997 due to mandatory retirement and went back to private practice, doing mostly appellate work, until retirement in 2016. Steve is survived by his wife of sixty-nine years, Fay; their four daughters, nine grandchildren and three great-grandchildren.

**James J. Hagan**, '82, died peacefully on September 12, 2021 at the age of eighty-seven. James was a proud first generation American, born in Manhattan to immigrants from Scotland and Ireland. After an undergraduate degree from Fordham University, James served in the US Air Force before attending Columbia Law School. Despite his many professional accomplishments, including successfully arguing before the United States Supreme Court, James was most proud of his early civil rights pro bono work in the 1960s on behalf of the NAACP in Jackson, Mississippi. James is survived by his wife, Louise, with whom he recently celebrated their 61st wedding anniversary, his four daughters and six grandchildren. James was an avid traveler, a voracious reader, and a lover of film and theater.

**Dale R. Harris**, '04, age eighty-four, passed away on January 16, 2022 at Rose Hospital in Denver. Dale graduated from the University of Colorado at Boulder in 1959 and Harvard Law School in 1962. Dale served as president of both the Denver and Colorado Bar Associations. He had a national reputation in antitrust and trial practice. Following retirement, he served as an arbitrator. Notable among his many roles in the community were his involvement with the Mile High United Way, the Rocky Mountain Chapter of the Arthritis Foundation and the QuaLife Wellness Community, serving as chairman of the boards of directors at these organizations. Dale, an avid Denver Broncos fan, is survived by his wife of sixty-one years, Toni Harris, and their large family.

**William "Bill" J. Harte**, '76, passed away on November 17, 2021 at the age of ninety, survived by four children and seven grandchildren. The son of a Chicago police officer, Bill was one of the best known and best trial lawyers in Illinois. Bill graduated from Quincy College in 1954 with a degree in history. He went there on scholarship and became captain of the football team, having never played before college, playing both offensive and defensive end, winning induction into the QU Hall of Fame in 1985. He also played for Quincy's basketball team and boxed. After service in the Army, Bill earned his law degree from Notre Dame Law School. As a lawyer, Bill helped to establish new precedents in areas as diverse

as attorney discipline, aviation law, civil rights, class action, criminal and constitutional law, human rights, judicial discipline, probate, reapportionment, voting rights, workers compensation and zoning. As accomplished as Bill was in the profession, his greatest pride was his support for the many young people he encountered, employed, mentored, and championed. He employed or found jobs for easily hundreds of young people. He paid the tuition for private high school and college for many.

**John Tilghman Hazel, Jr.**, '72, died on March 15, 2022 at the age of ninety-one. Til grew up in Arlington, Virginia and graduated from Harvard College (1951) and Harvard Law School (1954). He served in the United States Army Infantry and Judge Advocate General Corps in the 1950s. In addition to practicing law and prevailing in a number of Virginia Supreme Court cases that ended the "no growth" policies of Fairfax County, Til formed a real estate development firm that developed a dozen or more affordable residential communities and associated community retail centers. Til was passionate about education at all levels. He was instrumental in transitioning George Mason University from a small four-year college in Fairfax to one of the leading research universities in the nation and the largest university in Virginia. Til served as Rector of the University during the period of its greatest growth and facilitated partnerships between the University and the business community that provided significant support to the University and real-world learning opportunities to its students. Til was also the impetus behind the acquisition and accreditation of the George Mason Law School, now the Scalia School of Law, where John T. Hazel, Jr. Hall stands as a lasting tribute to his leadership. On the secondary school level, Til was instrumental in the founding of Thomas Jefferson High School of Science and Technology, a school often described as the best public school in the nation. In addition to his many business, community and civil endeavors, Til raised cattle and farmed his family's land in Fauquier County. Til was predeceased by his first wife, Marion Virginia ("Jinx") Engle Hazel and later by his second wife, Anne Barnett Merrill Hazel. He is survived by six children and step-children, and numerous grandchildren and great-grandchildren. ▶

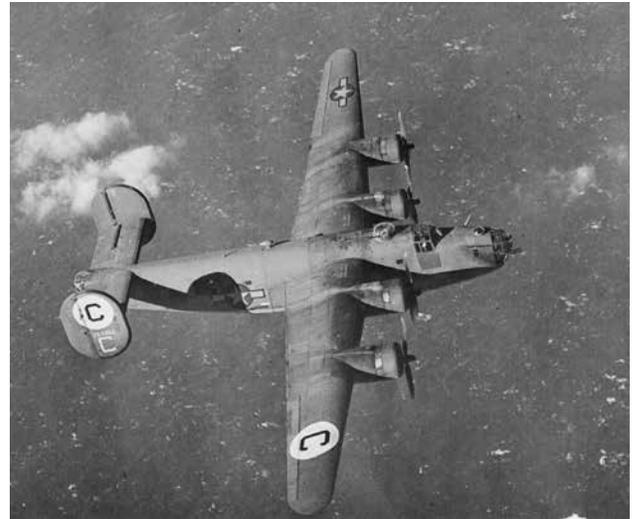
**Ed Hendricks, Sr.**, '06, was eighty when he passed away peacefully on November 28, 2021. Born in Chicago, Ed moved to Phoenix while he was in grade school. He attended the University of Santa Clara, served as a military police officer in the U.S. Army, and attended the University of Arizona Law School. He was a trial lawyer from 1969 to his retirement in 2010. Ed is survived by his wife, Genevieve Hendricks, their four children, and ten grandchildren.

**Richard C. Hite**, '78, passed away on December 16, 2021 at the age of ninety-three. Dick studied chemistry and business at Kansas State and the University of Kansas, and was a 1953 graduate of Washburn Law School. Dick served as a Judge Advocate in the Air Force, stationed in Goose Bay Labrador, Canada. Active in the College, Dick was Kansas State Chair in 1986-87 and served as Chair of four separate General Committees and as a member of five others. Dick was actively involved in many local, state, and national legal associations as well as many Wichita civic organizations. He was a tremendous father, grandfather, husband and partner. His many interests included family, golf, KU sports, travel, bridge and Glenlivet. Dick is survived by his three children and three grandchildren.

**Richard A Hollern**, '80, died on Feb. 22, 2021 at age eight-seven. A graduate of the University of Wisconsin, Richard was a lieutenant in the military police and a member of the first Army pistol team. After his stint in the Army, Richard obtained his law degree from the University of Wisconsin. Richard loved music that rattled the windows, and possibly neighbors. He also loved golf, motorcycles, flying and fishing. On two occasions, he flew his family to Key West. He landed a trophy tarpon that landed him a listing in the Key West Miami Herald fishing tournament. Survivors include his wife, Marlene, two children and two grandsons.



**Richard William Hosking**, '12, died too young, at the age of sixty-six, on February 13, 2022. Rick was an Eagle Scout who earned his B.A. degree from Dartmouth College and his J.D. degree from the University of Pittsburgh, School of Law. Rick was a passionate trial lawyer dedicated to his charitable endeavors. Rick is survived by three daughters and two granddaughters



**Charles Thomas Hvass, Jr.**, '75, died peacefully at age ninety on May 20, 2012. We are ten years late in remembering him, but we weren't aware of his passing until just recently. Charlie grew up in Lubbock, Texas. He attended the University of Texas. During WWII, he was a pilot and Acting Command Pilot in the 564th Squadron, 389th Bombardment Group, 8th Air Force. Stationed in Hethel, England, he flew bombing missions all over Germany. After law school in Texas, Charlie moved to Minnesota, where he was a plaintiff's personal injury trial lawyer specializing in airplane crash cases. One of Charley's great passions was golf. He first shot his age at seventy-one and continued to do so until he was eighty-eight. Charley and his first wife, Geraldine Sykora, were married for eighteen years and had eight children together. Geraldine died in a car accident in 1966. In 1967, Charley married Barbara Bunde, who had two young sons whom he adopted. Barb and Charley were married for thirty-five years before Barb died in 2002.

**Arthur Johnson**, '81, died on March 10, 2022 at the age of ninety-four. Art was a former Oregon State Bar President. He and his wife Anita were owners of the *Eugene Weekly*. Art specialized in personal injury and death claims, and he was also a warrior for civil justice, such as his representation of the famous farmworker advocate Dolores Huerta after she was beaten by San Francisco police officers. Art dove into outdoor pursuits, pioneering climbing routes in his beloved Cascades, floating rivers in canoes and drift boats and hunting with a bow and arrow. He turned wood in a shop attached to his house and photographed the nature he prized. Art graduated from the University of Oregon and Harvard Law before starting practice in Eugene with his father, but was soon called into the U.S. Air Force, where he served two years as a legal officer and survival instructor. Art is survived by Anita, their four children and eight grandchildren.



**William V. Johnson**, '85, died peacefully in his home on January 28, 2022 at the age of eighty-two. After graduation from high school in Kentucky in 1958, Bill was offered a full scholarship to play football at Marquette University's then Division I team. During his freshman year Bill met Diane Donovan and began their six-decade adventure together. Bill only played football three years, because Marquette discontinued football after his junior year. Bill attended law school, first at the University of Kentucky, then in the night school program at Chicago-Kent School of Law while he and Diane started their family. Bill graduated from law school in 1966. Bill eventually tried hundreds of cases to verdict in courtrooms across the country. But Bill was usually home by 6 pm, in time to coach hockey, teach religious education, and actively cheer on his four kids in their swimming meets, tennis matches, and hockey and football games. Bill is survived by Diane, four children and ten grandchildren.

**Michael Charles Keating**, '03, passed away unexpectedly at age sixty-nine on November 5, 2021. Mike, self-described as a tall drink of water, started playing basketball at an early age, perfecting the art of fouling to compensate for less than impressive speed and jumping ability. Mike played on many great teams, seeing the end of most games from the bench having fouled out. Mike graduated from Wabash College *summa cum laude* then earned a law degree from Indiana University School of Law. Mike was described by his friends as grouchy, yet everyone who knew him either loved him dearly or was baffled by his ability to be so well-liked. Mike is survived by his wife, Shelly James, two children and three grandchildren.

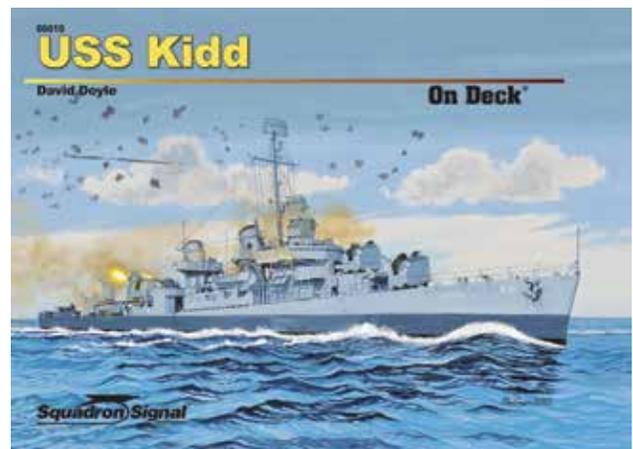
**Raymond J. Keegan**, '04, died at the age of eighty-two on September 17, 2019. Ray graduated from Iona College in 1958 and went on to UConn Law School, graduating in 1963. Ray married his college sweetheart, Judy Henry, in 1959. Ray obtained many substantial jury awards for his clients in complex personal-injury litigation based out of White Plains, NY. He retired in 2009 and relocated to South Carolina. Ray was a lifelong student who always enjoyed the challenge of learning something new. In 2014, he and Judy attended Mooseburger Clown Camp in Minnesota and volunteered as clowns at area hospitals in South Carolina. Ray is survived by Judy, five children and four grandchildren.



**Michael Patrick Kelly, Sr.**, '15, died on January 10, 2022 after a long battle with gallbladder cancer. He was sixty-five. In high school, Mike was class president and a member of the football, wrestling and track teams. Mike did not lose a wrestling match his last two years of high school and was state champion in the shot put for two years. Mike and his identical twin brother continued their football and track activities at Columbia University, where both lettered in football and track. Mike was also an undefeated amateur boxer. In his last fight, he defeated the Pennsylvania Golden Gloves Champ in an exhibition match. At Dickinson Law School Mike met the love of his life, Deanna Henderson (“the far better lawyer”). They married just before graduation and both returned to Wilmington to practice law. As an attorney, Mike represented such notables as “Smoking” Joe Frazier, Jay-Z, Diane Von Furstenberg, the New York Giants, and several monarchs. But he was most proud of his pro bono service, which he undertook “under the radar”, as he shunned recognition for “what we all are obliged to do.” Mike never said No to a charity. Mike was also a comedian and popular speaker. He often brought his humor, always respectfully, to the court room. He emceed many dinners, almost all of which benefitted charitable organizations. Mike is survived by Deanna and their two children.

**Wesley Charles Ernst Kettelkamp, Jr.**, '73, passed away on December 13, 2021 at his home in Pueblo, CO at the age of ninety-seven. Wes was born in Ottawa, IL, the son of a college professor and grandson of a Methodist minister. Wes served his country during World War II in the Navy on Destroyers USS Kidd and USS Henderson in both the Atlantic and Pacific Theaters. After the War, Wes graduated from Westminster College in Fulton, Mo., (B.S. 1947) and the University of Colorado School of Law (J.D. 1950). While attending law school, Wes was employed as a hasher in the Delta Gamma Sorority house, where he met Gretta Holder, his bride to be. After graduating from law school, Wes started his legal career in private

practice first in Florence, then later in Pueblo. In 1952, at age twenty-eight, Wes was elected District Attorney for the 10th Judicial District which, at the time, included Otero and Crowley counties as well as Pueblo. His margin of victory as the nation’s youngest District Attorney was a mere 57 votes. Wes ran for reelection in 1956 but was defeated. He turned back to a highly successful private practice. But Wes was much more than a successful lawyer. He was an athlete, both a downhill and cross-country skier, a golfer, tennis player and runner. He was a rancher, raising cattle, cashmere goats, and horses (Tennessee Walkers). Wes also competed in numerous horse shows on his stallion Phoenix. Wes and Gretta married in 1952. They traveled the world together, ranched together, rode horses together and were seldom, if ever, apart for sixty-nine years. Wes is survived by Gretta, three children, seven grandchildren and two great-grandchildren.



**Paul Revere Leitner**, '82, was ninety-two when he passed on May 22, 2021. A graduate of Duke University and McKenzie College of Law, he practiced law in Chattanooga for more than sixty years. Paul joined the U.S. Army and served in Korea in 1946-47. A longtime member of the Chattanooga Track Club, Paul completed twenty-five marathons, including the 1983 Chickamauga 1 Marathon, in which his time was the best for his age group in any interstate marathon that year. Paul is survived by his wife of thirty-six years, Jeannette, five children and stepchildren, eight grandchildren and three great-grandchildren.

**John Edmund Lindberg**, '82, died peacefully on April 28, 2021 at the age of ninety-five. John grew up in Cloquet, MN. Following service during WWII in the Army Air Corps, he attended the University of Notre Dame, earning a degree in Commerce in 1950 and a law degree in 1951. His legal career spanned over 40 years, serving as clerk to U.S. District Judge James Walsh, subsequently becoming an Assistant US Attorney, followed by private practice, then service as Judge Pro-Tempore for the Pima County Superior Court. John married Jean (Bryant) Lindberg in 1950, and together they raised eleven children. Family trips were always adventures. John's life of service included volunteering well into his nineties for Mobile Meals and church programs. A lifelong sports fan and athlete, John played golf and tennis regularly and skied until he was ninety-three. He was an enthusiastic supporter of Notre Dame and University of Arizona sports and could play the Notre Dame Victory March on nearly any instrument, even bagpipes. John was preceded in death by Jean, one of his sons and a grandson; he is survived by his other ten children, twenty-two grandchildren and six great-grandchildren.

**James W. McCartney**, '80, died at age ninety-one on September 18, 2021. He was born on Black Thursday, the 24th of October 1929, the first day of the stock market crash that introduced the Great Depression. Growing up in this era gave him a sense of value and appreciation for family and the dollar. His father died in 1933 when Jim was only three years old; and his grandfather's bank and business failed. Jim was raised by his mother, who was a teacher, and by his grandmother. Jim began work in a grocery store at age ten and never quit working. He worked his way through school with jobs in the Texas Senate, as a bookkeeper in the gas utility, and as an intern in the Pentagon. Jim's father, grandfathers, great grandfather, as well as his uncle, had all been lawyers. His great grandfather, Captain J. C. Terrell partnered in the

first law office in Fort Worth in the late 1850s. Jim graduated from the University of Texas School of Law in 1952. Jim's representation of pipelines and oil companies involved him in a great range of cases from the cow-in-the-ditch to multiple millions of dollars and took him to courts across the nation and to Great Britain, India, and South America. He claimed the record for the lowest damage award in his firm's history, 75¢, but he successfully argued three cases in the US Supreme Court. To evaluate the quality of his oral arguments, Jim coined the "looking at the shoes test." If he had done poorly, his clients would be looking at their shoes after the argument. If he had done well, they would be laughing and slapping him on the back. Jim loved music of all varieties except rap (which he did not regard as music); he played the piano, the guitar, and occasionally, after a few drinks, the trumpet. Jim is survived by his wife Linda, four children, seven grandchildren, and two great grandchildren.

**John Cooper McDonald**, '89, age eighty-five, died on January 25, 2022, survived by his wife of thirty-nine years, Sally, his three children, five grandchildren, and three great-grandchildren. As John put it, his grandchildren were "good-looking and above average" but the great-grandchildren were simply perfect. John was proud of having been an Eagle Scout and tried to live his life according to the Boy Scout Code of being "trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent." John graduated from Denison University with Honors, where he was on the golf and debate teams. After being accepted at Harvard, Yale, and the University of Michigan law schools, John went to The Ohio State University College of Law, where he was an Associate Editor of the Law Journal, won the National Moot Competition and graduated *summa cum laude* and Order of the Coif. John served in the Ohio Legislature from 1964-1970, quickly becoming Minority Leader in his second term. He then became

Counsel to Governor John Gilligan from 1971-1972. John fiercely believed public service was a noble profession. He ran unsuccessfully for Ohio Attorney General and for Congress, was a delegate to the 1968 Democratic National Convention and a member of the Electoral College in 1976. John taught at Capital Law School, was President of the Legal Aid Society, and served as a Trustee of the University of Rio Grande. John was active in the College, serving as Ohio State Chair and as a member of the Trial Competition Committee for ten years. John was a scratch golfer when he left law school, but found it hard to find the time to play regularly when he began practicing. When his handicap crept up to 3, he abandoned golf for tennis, and quickly became a good player.



John and Sally loved to travel, mostly to France, where he loved to play pétanque (the French version of bocce, or maybe bocce is the Italian version of pétanque), always with a glass of rosé in his hand. John and Sally extended their travels to Tuscany, the Amalfi Coast, Sicily, Germany, Africa and Grand Cayman. John and Sally built a lake house in Port Clinton on Lake Erie, where great meals and too much wine was consumed over many years of house parties.

**Otis M. G.e, Jr.**, '06, passed away on February 14, 2022 at the age of seventy-five. Otis was raised in Chicago and San Francisco and understandably chose to remain in California. He served in the U.S. Army during the Vietnam War, but he saw more action in his next job as a Pacifica police officer, when he was dispatched to Berkeley to control anti-war protests. Otis was a cofounder and managing partner of a law

firm that went on to become the largest minority-owned law firm in the country. He later served as Chief Assistant City Attorney at the Oakland City Attorney's Office. After leaving public service, Otis was a highly successful mediator. Otis was active in the College, serving as State Chair and as Chair of two General Committees. Otis is survived by his wife, Valerie Lewis, and two children.

**John Mathews McNatt Jr.**, '81, passed away at age eighty-eight on August 22, 2021 in Jacksonville, Florida. John grew up in Jacksonville, attended college at Emory University, received his JD from the University of Florida and returned to Jacksonville to practice law. John served on the board of Blue Cross and Blue Shield of Florida and was a life-long member of Southside United Methodist Church.

**Hobart Amory McWhorter, Jr.**, '76, died on January 6, 2022 after a brief illness, a month after his ninetieth birthday. Hobart was an Eagle Scout. He graduated from Yale University, where he was a member of the swim team, in 1953. He then served in the U.S. Army for two years as a battery commander for artillery forces stationed in Hokkaido, Japan. Hobart attended the University of Virginia School of Law and graduated in 1958. He practiced at the same Birmingham, AL law firm for sixty-three years. Hobart was not one to assign tasks to young lawyers and then retire to home while they did the work. To the contrary, he would often be found on nights and weekends in the firm's library, searching for the case to win his client's cause. Early in his career, Hobart represented a local soft drink bottling company in cases that alleged that there was broken glass in their bottles. During one trial, Hobart grabbed the bottle, removed the cap, added glass shards, and then drank the contents. Hobart was a great mentor to young lawyers and trained generations of his firm's litigators. Hobart was an avid fly fisherman, traveling in and outside the country in pursuit of the fish that would win the bet of the day. Hobart liked to say "The Great Architect of the Universe never invented a substitute for results." Hobart is survived by his wife Ellen, three children, nine grandchildren and one great-grandchild.

**Joseph Kenneth Meusey**, 82, passed away peacefully on November 15, 2021 in Omaha at age eighty. After completing law school at the University of Iowa, Joe began private practice in 1965 and retired in 2019. He served as a member of the United States Army JAG Reserve. Concentrating on personal injury defense, Joe taught for twenty years at the University of Nebraska College of Medicine – yes, Medicine, not Law. Judicial Fellow and Chief U.S. District Judge Robert Rossiter was Joe’s partner for more than thirty years and recalls “Joe was one of the best I ever saw in the courtroom. His ability to connect with a jury was simply amazing. . . . Joe was the epitome of a professional, ethical, and collegial advocate (and he was a lot of fun!)” Joe is survived by his wife of thirty-six years, Sue (Mack) Meusey, six children and twelve grandchildren.

**Alfred Montague Miller**, ’84, was eighty-one when he passed on November 13, 2021. In high school, Mont was a member of the 1956 Georgia State Championship football team and the 1957 Georgia State Championship track team. He was the Georgia State Champion in the 100 and 220 yard dashes. He went on to letter in track at the University of Georgia, where he received his B.A. and JD degrees. Mont taught economics at the University of Georgia in Athens and business law at Augusta University in Augusta. He practiced law in Augusta for over twenty-eight years before leaving to become President and Chief Executive Officer of Club Car, Inc., the Augusta-based manufacturer of golf cars and utility vehicles. After his retirement from Club Car in 2001, Mont returned to the practice of law. Mont was predeceased by a son and survived by his wife, Peggy Mays Miller, another son and numerous grandchildren. A lifelong lover of the outdoors and animals, especially dogs, Mont left instructions that in lieu of flowers, well-wishers should adopt a dog from a local shelter.



**Michael Mauro Monopoli**, ’02, passed unexpectedly at home at age seventy-four on March 15, 2022, survived by his wife of fifty-two years, Susan (Wright) Monopoli, two children and two grandchildren. Mike graduated from The College of the Holy Cross in 1970 and attained his law degree from Suffolk University Law School in 1974. Mike had a soft spot for animals and was a devoted dog owner. He liked to work with his hands and enjoyed spending his free time doing landscaping work and other projects around his home.

**John Edward Moore**, ’05, was sixty-eight when he passed on April 9, 2021, survived by his wife of forty-four years, Nancy Duke Moore, two children and three grandchildren. John had more than four hundred jury trials, but somehow also found time for church and civic activities such as serving on the Little Rock School Board. John was an avid Razorback fan and loved attending/watching football and basketball games. He loved spending time with his granddaughters, especially bringing donuts and chocolate milk on Saturday mornings. John also enjoyed running, hiking and biking, working in the garden with Nancy, bush hogging the land, taking family and friend vacations, and spending time with his dogs.

**James Francis Moseley**, ’77, was eighty-five when he passed away peacefully in Charleston, South Carolina on March 28, 2022, only five blocks from where he was born in 1936. Jim graduated from The Citadel in 1958 and the University of Florida School of Law in 1961 and married his wife of sixty-plus years, Anne M. G.hee Moseley. They had two sons and five grandchildren. After law school, Jim served in the United States Army Reserve as a Captain. In 1963, he began his law practice. Jim was President of the Jacksonville Bar Association, chairman of the Association of Florida Bar Presidents, President of the Southeast Admiralty Law Institute and President of The Maritime Law Association of the United States. Jim was awarded the U.S. Coast Guard and Transportation Department Meritorious Public Service medal, and the Palmetto Medal from The Citadel, the highest honor the college bestows. Jim was quick with a smile, a “good to be with you,” and the fellowship of his friends.



**Carl Stanley Nelson**, '78, passed away on May 31, 2021 at the age of ninety-six. C. Stanley attended the University of Kansas for a year before joining the U.S. Marine Corps in 1943. He spent three years in the Pacific. Once he was discharged from the Marines, C. Stanley went back to KU, finished his undergraduate degree, and graduated from the University of Kansas law school. C. Stanley married Rosemary Gaines in 1949. In 1950 they moved to Salina, Kansas where he spent over sixty years practicing law. C. Stanley and Rosemary loved traveling to the Ozarks for family boating and tennis-playing vacations. He was a diehard Jayhawk fan and loved tailgating at KU football games. C. Stanley was preceded in death by Rosemary and survived by their four sons and four grandchildren, in addition to his companion of ten years, Ann Neumann.

**Thomas J. Nolan**, '96, died on December 21, 2021 at the age of seventy-six after a battle with pancreatic cancer. During his fifty-year career, Tom represented Synanon, Billionaire Boys Club member Arben Dosti, Bono (U2), and numerous others in high-profile, high stakes criminal matters. Tom tried many death-penalty cases, and in later years was counsel to other attorneys trying those cases. Tom, the son of a public-school teacher, liked to say that he didn't have a fancy education. He attended Sacramento City College and obtained his degree at Sacramento State; he got his law degree from UC Davis. Beginning in 1987, Tom was a lecturer at Stanford Law School. Tom began his career on the San Mateo County private defender panel, providing representation to the poor. Tom loved antiquarian books and enjoyed reading detective stories and crime novels. He had many friends, including former Irish President Mary Robinson, to whom he was introduced by an Irish attorney Tom worked with on a death penalty case. Tom is survived by his wife Sue and two children.



**Bernard W. Nussbaum**, '06, who served as counsel to President Bill Clinton and who was a senior member of the U.S. House Judiciary Committee's staff for the impeachment of President Richard Nixon, passed away March 13, 2022 at the age of eighty-four. Born to Polish immigrants, Bernie was the first in his family to attend a higher learning institution, obtaining degrees from Columbia University and Harvard Law School. As a note editor for the Harvard Law Review, Bernie's contemporaries included Anthony Kennedy and Antonin Scalia. Bernie started his legal career under Robert Morgenthau in the U.S. Attorney's Office for the Southern District of New York. Bernie moved on to private practice, but after President Nixon carried out the "Saturday Night Massacre," in which he unsuccessfully ordered the U.S. Attorney General and his deputy to fire the special prosecutor leading an impeachment inquiry into Nixon during the Watergate scandal, Morgenthau floated Nussbaum's name as counsel in Nixon's impeachment. During that assignment, Bernie became acquainted with Hillary Rodham, who was a fellow House Judiciary Counsel. One night, Rodham told him that her boyfriend Bill Clinton planned to someday be President of the United States. Bernie recalls thinking "This is nuts. So I started—I blow up, I start screaming at her." But Bernie apologized for his outburst and ultimately met Clinton. And there were apparently no hard feelings. In 1993, after he was elected to his first presidential term, Clinton appointed Nussbaum as White House counsel. Bernie is preceded in death by his wives, Toby Sheinfeld and Nancy Kuhn, and survived by four children.

**Roy L. Reardon**, '73, age ninety-two, died peacefully on January 7, 2022, survived by his wife **FACTL Patricia M. Hynes**, four children, eleven grandchildren and two great grandsons. Roy was a legendary lawyer. He appeared for major corporations and financial institutions, including General Motors, Seagrams, Ford, and GTE, for whom he secured a \$100 million libel verdict in Florida in 1989, the largest such award at the time. He represented the women's tennis organization originally known as the Virginia Slims, and the Men's International Professional Tennis Council for many years. Roy successfully represented professional golfer Casey Martin in a landmark case before the United States Supreme Court establishing Martin's right to accommodations for his disability which prevented him from walking 18 holes as required by PGA Rules. Roy's columns for the New York Law Journal were required reading for New York practitioners and judges. He was dedicated to public service, serving on such boards as the Appellate Defender and the Judges' and Lawyers' Breast Cancer Alert. Roy was a natural athlete, attending St. Francis College in Brooklyn on a basketball scholarship. When he graduated with the school's scoring record he was drafted by the Syracuse Nationals, the franchise now known as the Philadelphia 76ers. He tried to balance professional basketball and law school, but eventually chose law. At St. John's University Law School, Roy met his classmate and first wife, Teresa Steele, the mother of his four children, who passed away in 1989 of breast cancer. In January 1993, Roy and Pat Hynes were married. After law school, Roy served in the U.S. Army in the Counter Intelligence Corps. On completion of service, he began his sixty-year legal career. Roy's greatest joys included welcoming extended family and friends into his home, cooking enormous and exotic meals for a crowd of children and grandchildren on holidays, celebrating his family's achievements, attending graduations, school plays and athletic events, and tending to his magnificent vegetable garden. He loved playing tennis and skiing, watching basketball (mostly college, but he never gave up on the Knicks), being in Vermont or swimming in the ocean, spaghetti and meatballs, old-fashioned crumb cake, almost anything spicy and Jack Daniels.



**Charles W. Rees**, '85, died on February 5, 2022 – his eighty-sixth birthday. Charlie earned his bachelor's and law degrees from Stanford in just six years. Charlie practiced with the same firm his entire forty-five-year career. Charlie met his first wife, Dorothy, at Stanford; they married on campus in 1957, and had four children. The marriage ended in 1971, yet Charlie remained an active and engaged father in his children's lives. Charlie married Judith Marie Rees in 1973. Charlie spent countless days skiing in the Mammoth area and backpacking in the Eastern Sierras. He summited Mt. Whitney (14,496 feet) three times. He was also an avid and skilled woodworker, which he focused on in retirement, building many beautiful pieces of furniture, signing most works with the inscription "Pops." Judy passed in 2015. Charlie is survived by five children and six grandchildren.

**Hugh E. Reynolds, Jr.**, '76, passed away on December 22, 2021 at the age of ninety-two. Hugh was born in Indianapolis, received his B.S from the University of Notre Dame in 1950, and his JD from the University of Michigan School of Law in 1953. Hugh served active duty in the Army's Judge Advocate General's Corps and remained in the Army Reserves, retiring with the rank of Lieutenant Colonel in 1989. Hugh served as Chair of the Tort and Insurance Practice Section of the ABA, as President and Chairman of the Board of the Federation of Insurance & Corporate Counsel, and as President of the Federation of Defense and Corporate Counsel. Hugh was an avid reader and a military history buff. He loved social gatherings, good food and wine, a competitive board game, painting military miniatures and listening to classical music. A life-long Catholic and an inveterate optimist, Hugh was devoted to his wife and family. Hugh is survived by his wife, Rita Helen (Schneider) Reynolds, whom he met in New York while he was on active duty. Last August, they celebrated sixty-seven years of marriage. Hugh is also survived by their four children, seven grandchildren, and four great-grandchildren.

**Daniel P. Ruggiero**, '07, died of cancer on November 16, 2021 at the age of seventy-four survived by his wife of fifty-two years, Peggy Smalley Ruggiero, three children and two grandchildren. Dan was a graduate of ▶

Miami University and the University of Toledo College of Law. His legal career began as an Assistant Attorney General for the State of Ohio, followed by forty-three years in private practice in Portsmouth, Ohio. He was a mentor to many lawyers, most significantly to his daughter, who could not have asked for a greater law partner. He was known for his high standard of ethics and keen sense of right and wrong, and he always strived to do what was right. Dan was an athlete and avid sports fan. He coached his children in baseball, softball, basketball, soccer, and tennis and was the Portsmouth High School boys' tennis coach for several years. He completed too many 5Ks to count and ran many other races including Flying Pig relays. When he ran with his family members, he often logged twice the length of the races because he often circled back to check on them. He spent months planning for his annual fishing trips to the Boundary Waters of Canada with his buddies. He was a co-owner of the Portsmouth Explorers baseball team.

**James Matthias Russ**, '83, spent his entire childhood in Duluth; but as a Naval aviator he trained in Pensacola, where he met his future wife, Nanelle Davis. After service and Georgetown University Law School, Jim and Nan moved to Orlando in 1957 where they raised their large family and Jim practiced law. Jim died at age ninety-two on November 25, 2021, predeceased by Nan and survived by eight children, eight grandchildren and two great-grandchildren.

**Stephen H. Sachs**, '78, former Maryland U.S. Attorney and Attorney General died at age eighty-seven on January 12, 2022. As U.S. attorney, Steve prosecuted nine Catonsville activists in 1968 who had burned draft files to protest the Vietnam War. The "Catonsville Nine" were convicted of destroying U.S. property and sentenced to two to three-and-a-half years in prison. Their convictions became a rallying point for Vietnam protestors. A sign in Catonsville, erected by the state in 2018, praises them for "inspiring similar acts of civil disobedience across the

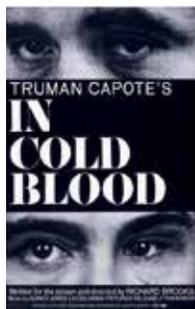


country." Steve never wavered in his belief that the prosecutions were justified. In 2018 he told The New York Times "I can't accept people who violate the law, even if their motives are, to them at least, pure. A guy who robs a bank because he wants to give alms to the poor, it's a bank robbery." But as Maryland attorney general from 1979 to 1987, Steve declined to defend what some called "the state practice of warehousing" the developmentally challenged and mentally ill, which led to needed reforms. Later, in private practice, he tried in vain to find and bring a case before Maryland's top court that would lead to its finding of a state constitutional right to counsel for indigent litigants in civil cases. In 2008, Steve led an inquiry into the Maryland State Police's undercover surveillance of peace and anti-death penalty advocates, concluding that the State Police acted improperly. Steve argued three times before the U.S. Supreme Court on behalf of Maryland, winning each time. *Smith v. Maryland*, 1978; *Maryland v. Louisiana*, 1981; and *Maryland v. Garrison*, 1986. Steve's wife Sheila predeceased him in 2019. Steve is survived by two children and grandchildren.

**Gus Sacopulos**, '85, was eighty-six when he passed on October 11, 2021, preceded by his wife of sixty years, Joy Sacopulos. He is survived by his two sons and four grandchildren. Gus grew up in Gary, Indiana, where he worked in his family business - The Toasty Shop - a diner that catered to steel mill workers. After practicing briefly in Evansville, Gus relocated to Terre Haute, where he practiced for over fifty years. Gus was President of the Terre Haute Bar Association from 1972 to 1973 and a founding member of the Workers Compensation Defense Bar Association of Indiana.

**Jesse Brian Scott**, '70, age ninety-four, passed away on January 3, 2022 preceded in death by his first wife, Betty Shuler Scott, and a daughter. After service in the U.S. Army, Brian attended Wake Forest College and Wake Forest Law School and settled in Rocky Mount, North Carolina to practice law for sixty years. Brian enjoyed singing and was often the bass soloist for Handel's Messiah. Brian is survived by his wife of thirty years, Vena Eason Scott, five children and two granddaughters.

**Roger D. Stanton**, '81, was eighty-three when he, passed away unexpectedly on Friday, March 4, 2022. Roger's father started and owned Stanton Hardware in Maryville, Kansas and Roger worked summers delivering stoves and refrigerators to customers and sometimes baled hay for local farmers. Roger attended the University of Kansas, where he acted in several KU theater productions and wrote and starred in Rock Chalk Revue (Student production); he became the Executive Producer of the Revue – paid position – and was responsible for the outlandish change to coed skits, much to the chagrin of the Dean of Women. He spent his earnings on an engagement ring for classmate Judy Duncan. Roger graduated from the KU Law School Class of '63; he was an Editor on the KU Law Review and was elected as VP of his Law Class and later served as President. Roger and Judy married in 1962; they celebrated sixty years of marriage on January 27th. Roger reveled in representing the underdog. He served as President of the Johnson County Bar Foundation and the Kansas Association of Defense Counsel. He was a member of many groups, ranging from the Boy Scouts of America to the Civil War Round Table of Kansas City. As a very new young lawyer, Roger spent time at the Lansing Penitentiary interviewing his firm's client, Perry Edward Smith, who ended up being "hanged by the neck until dead" in 1965 which at the time was still the law in Kansas; Smith's crime became the subject of Truman Capote's 1966 book *In Cold Blood*. Roger was very active in the College, serving as State Chair, Chair of the Gumpert Committee, and as a member of numerous other committees. Roger enjoyed managing and coaching his sons and others in baseball and football. He served as President of the Johnson County 3&2 Baseball organization and as President of the Johnson County Football Youth organization. Roger was an avid reader all his life. He enjoyed reading anything about history (with a special interest in the Civil War). He thought it was important to show his sons parts of American History – Grand Canyon, Monument Valley, Badlands, Great Sand Dunes, Mesa Verde, Canyon de Chelly, Yellowstone Park, the Tetons, Battle of the Little Big Horn to name a few. Roger was predeceased by one son but survived by two others, Judy, and five grandchildren.



**James M. Sturdivant**, '82, passed away on November 24, 2021 at the age of eighty-four. Jim graduated from the University of Oklahoma in 1959 with an ROTC Commission as a Marine officer. His active duty included a fifteen-month posting in Okinawa, after which he returned to OU and earned a JD degree in 1964. He took his last law school final in Norman the morning of January 22 and drove to Tulsa that afternoon to begin a distinguished career of fifty-seven years. Active in the College, Jim served as State Chair and on multiple General Committees. While Jim's years at OU made him a staunch Sooner, he was actually a fan of any game that involved a ball. He played an excellent game of tennis and golf and was an avid competitor in both. For many years he was a runner with a distinguished group of fellow Tulsans that solved "the great issues of our times." When running was behind him, he switched to a coffee group that continued to solve the problems of the world. Jim married Barbara Dunn in 1978. He is survived by Barbara, four children, nine grandchildren and a great-granddaughter.

**Paul H. Titus**, '95, passed away on February 19, 2022, in his home at age eighty-eight. Paul grew up during the Great Depression, where his family home was an open haven for the homeless to stay, leading to Paul's lifelong desire to help others. Paul was known for his *pro bono* work, his good humor and gentle spirit. While practicing law, he was professional and stoic, but that masked a well-intentioned prankster. As a high schooler he once called the local newspaper and hoaxed them into writing a story about "red balls of fire in the sky." Paul is survived by his wife, Bonnie, his three children and two grandchildren.

**James Burns Tucker**, '90, passed away unexpectedly on December 28, 2021 at the age of eighty-two. James was trial counsel in more than one hundred jury trials and authored over sixty appeals court briefs. James graduated from Millsaps College in 1961 with a bachelor's degree in English Literature. He earned his JD from the University of Mississippi School of Law in 1966. James served in the U.S. Naval Reserve as a JAG officer, serving in a number of posts across the country and ultimately retiring as a Captain (O-6).

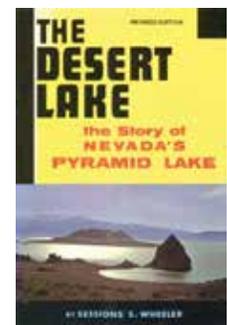
James's private practice in Jackson, Mississippi focused on plaintiffs' personal injury, bankruptcy receiver matters, and criminal defense and prosecution. He was appointed an Assistant City Prosecutor and from that experience, a series of increasingly important positions in a thirty-year career as a prosecutor. James served as a Department of Justice Trial Attorney, Senior Litigation Counsel, Assistant U.S. Attorney, Chief of the Criminal Division, and, in 2000, as U.S. Attorney for the Southern District of Mississippi. In 2001, James retired from public service and resumed private practice. For more than twenty years, James served as an adjunct professor of trial practice at the Mississippi College School of Law. James enjoyed fly fishing and was an avid upland bird hunter, taking numerous trips to the Dakotas to hunt pheasant and grouse. James was preceded in death by a son and survived by his wife, Jeanne, two children, ten grandchildren and three great-grandchildren.

**James Clayton Wheat**, '02, passed on April 6, 2022 at the age of seventy-five, survived by his wife, Jill Lorraine Glander Wheat and three daughters. Jim was the first in his family to attend college, a compulsion of his father's, who had quit high school in tenth grade, and served in the Army Air Corps as a tail gunner in World War II. Jim was a former New Hampshire State Chair who liked to say that the significance of his professional achievements is not that he achieved them but that they opened the doors to allow him to help others.

**Wendell Stanley Wigle, QC**, '88, passed on January 9, 2022 at the age of ninety-one. Wendell's family were United Empire Loyalists – colonists who migrated to Canada from what became the United States during or in the aftermath of the Revolutionary War. Wendell graduated from Osgood Hall in 1959 and practiced civil litigation. He was appointed Queen's Counsel in 1972. He served as President of the Advocates Society in 1977-78 and was President of the Medico-Legal Society in 1984-85. When he was well past the usual retirement age, he left civil litigation and sat on the Ontario Securities Commission tribunal for six years. During his undergraduate years at Western University, Wendell was a star basketball player. Later he became addicted to golf and often travelled with his friends to

play in Ireland. Wendell and his wife Christina travelled all over the world, from African safaris to the Galapagos Islands, and their favorite destination, Italy. Wendell was predeceased by his first wife, Lola; his is survived by Christina, her three children and four grandchildren.

**Thomas R. C. Wilson, II**, '83, was eighty-six on March 28, 2022 when he passed away peacefully. A fourth-generation Nevadan, Spike grew up in Reno, and often spent time on the family ranch in Carson City. He graduated from Stanford University and Georgetown University Law Center, where he was the Moot Court Champion. In 1958, Spike married Sandra Opsahl. Following graduation from Georgetown in 1961, Spike began his legal career as Assistant U.S. Attorney for the State of Nevada and entered private practice in 1964. Spike served in the Nevada State Senate from 1970 to 1986, rising to Assistant Majority Leader and President Pro Tempore. Spike was well known for his bipartisan leadership, his zealous protection of Nevada's natural resources and his eloquence in both the courtroom and on the floor of the senate. Spike married Patricia Becker in 1984. After retiring from the Nevada legislature, Spike served as chairman of the Nevada Ethics Commission from 1991 to 1996. He ran unsuccessfully for Congress in 1996. In 2000, Spike married Janice Pine. Spike enjoyed hiking, fly-fishing and horseback riding all over the state of Nevada. He loved photography and spent hours behind the camera and in the dark room, perfecting his beautiful scenic prints. His photograph of Pyramid Lake was published in Sessions S. Wheeler's book, "The Desert Lake." Spike is survived by Janice, eight children and step-children, and nine grandchildren.



**Lee Houston Woodard**, '92, passed away on March 13, 2022 at the age of eighty-six, survived by his wife, Nancy Woodard, two children and two grandchildren. Lee was a lifelong Wichitan. He attended college and law school at the University of Kansas and practiced law in Wichita his entire life. He served as president of the Wichita Bar Association. Sports played a major part of Lee's life. If he wasn't cheering on the Shockers or Jayhawks, he was coaching his own kids in their sports.

# 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](http://www.actl.com), in the 'Events' section.

## NATIONAL MEETINGS



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



**2023 SPRING MEETING**  
THE RITZ CARLTON,  
KEY BISCAYNE  
MIAMI, FLORIDA  
FEBRUARY 23 – 26, 2023

## REGIONAL MEETINGS

JULY 7-10, 2022

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

## STATE/PROVINCE MEETINGS

JULY 26, 2022

**MINNESOTA FELLOWS MEETING**

AUGUST 14, 2022

**IOWA STATE COMMITTEE MEETING**

AUGUST 4, 2022

**MASSACHUSETTS EVENT**

AUGUST 17, 2022

**NEW JERSEY SUMMER GALA**

AUGUST 6, 2022

**COLORADO SUMMER PARTY**

AUGUST 18, 2022

**GEORGIA FELLOWS BLACK-TIE DINNER**

AUGUST 12-13, 2022

**IOWA FELLOWS MEETING**

AUGUST 20, 2022

**IDAHO FELLOWS ANNUAL DINNER** ■

# JOURNAL

American College of Trial Lawyers  
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## Statement of Purpose

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.

"In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships."

*Hon. Emil Gumpert  
Chancellor-Founder  
American College of Trial Lawyers*