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JOURNAL

THE AMERICAN COLLEGE OF TRIAL LAWYERS

SAMUEL H. FRANKLIN
68TH PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

Betty and Sam Franklin in Birmingham, Alabama

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FROM THE EDITOR

Stephen Grant

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There was a certain genius in the creation of the separation of powers by the nation's founders. That the checks and balances may sway one way or another from time to time seems like the torque of a skyscraper, a necessary elasticity, the absence of which would cause the edifice—governmental or concrete—to collapse.

Fascinating, then, that where there's a power vacuum, one of the executive, legislature or judiciary occupies it as may be necessary (although the judiciary is generally more reactive than proactive).

It's also becoming increasingly evident that the courts are proving the mainstay of democratic values, at least in terms of ensuring that legislative or executive excesses are restrained if they were to otherwise fall outside of tolerable norms. This has certainly been the case in restraining incursions into civil and related rights over the last century. Indeed, it can be fairly said that in "calling balls and strikes" as Chief Justice Roberts once put it, the Supreme Court has nevertheless shaped the contours of the democracy.

Former justice of the Colorado Supreme Court Rebecca Love Kourlis of the Institute for the Advancement of the American Legal System (IAALS), the College's partner in certain endeavors, highlighted this recently in "The Courts Are the Bulwark of Democracy" (IAALS Online, March 24, 2017) and concluded by urging that "May we all enjoy a deeper understanding of the gulf between a judge and an elected official—between a representative of the people's interests and an adjudicator of equal justice."

As trial lawyers, we craft the arguments the judges use to craft and shape the law. May this creative and evolving interdependence never be eroded despite the occasional tilt, one way or the other, of the judiciary.

Meanwhile, the protection of judicial independence and diversity has taken a blow with the demise, for funding reasons, of Justice at Stake, operating since 2001. Again, the College, which has staunchly asserted judicial independence in a published white paper, *Judicial Independence: A Cornerstone of Democracy Which Must Be Defended*, may well have to help fill this new void.

✦ ✦ ✦ ✦ ✦ ✦

As we look forward to our Annual Meeting in September, I'd note that the *Journal* (and its predecessor *The Bulletin*) has been landing on your desks for thirty-five years. This issue is chock full of articles that are unrelated to our national meetings, meaning this is a great opportunity to contribute something topical, timely and reflective of our collective calling. And if there is anything you wish to grouse about, let us know. You can send a note to editor@actl.com or email me directly at sgrant@gcwllp.com. As well, if you have a burning desire to assist us on the Editorial Board, especially new Fellows out there, let us know as well.

Montreal beckons.

Stephen Grant ■

PRESIDENT'S PERSPECTIVE WITH BARTHOLOMEW J. DALTON

Last September when I was installed as the 67th President of the College I told the Fellows and guests that although fellowship is a great honor, and that the collegiality is a cornerstone, the College was not an honors or social society. What I thought was true in September 2016 was proven again and again throughout my travels as President.

The College is a dynamic organization that lives and acts on the mission of advancing the standards of the profession, enhancing the administration of justice, promoting the rule of law and protecting judicial independence. The evidence of this dynamism can be found in both the eBulletin and the *Journal*. Just look at what the Fellows have been doing this summer:

New York, New York, May 12, 2017: The Public Defenders Committee sponsored a seminar on implicit bias at Fordham University Law School. Presentations from the two-hour seminar are available on the College YouTube channel.

Gainesville, Florida, May 24, 2017: Eight Florida Fellows hosted a Legal Services Training Program at the Levin College of Law at the University of Florida. The day-long program, part of an ongoing project with Florida Legal Services, had fifteen legal service attorneys in attendance.

Salt Lake City, Utah, May 24, 2017: The Utah Chapter and the University of Utah S.J. Quinney College of Law co-sponsored a half-day symposium on the topic of Implicit bias. The symposium drew almost 100 participants consisting of state and federal judges; representatives from the Federal Public Defender's Office, the U.S. Attorney's Office and the Legal Services Corporation; and local prosecutors and private practitioners.

Hot Springs, Arkansas, June 2017: The Arkansas Chapter presented a one-hour ethics program utilizing the vignettes, slides and Code of Pretrial and Trial Conduct segments at the annual meeting of the Arkansas Bar Association.

St. Louis, Missouri, June 13, 2017: An interactive mock trial CLE was presented by the Missouri Fellows in partnership with Saint Louis University titled "Trial Wars: Return of the Jury."

New York, New York, June 22, 2017: An all-day program with twenty-four participants was held by Fellows from the New York-Downstate chapter. Titled "Direct & Cross Examination," all participants were legal services lawyers and it consisted of mock trial exercises using College materials.

Austin, Texas, June 23, 2017: The Utah Supreme Court case *State v. Long* was the basis for a program called "May It Please the Court: Effective Oral Advocacy." It was presented to public interest lawyers at the University of Texas College of Law by the Teaching of Trial and Appellate Advocacy Committee and the American Academy of Appellate Lawyers—the first time the two organizations have collaborated.

San Francisco, California, July 14, 2017: The Teaching of Trial and Appellate Advocacy Committee presented its one-day Bootcamp Trial Training Program at the Federal Courthouse. The program was co-sponsored by

the San Francisco Bar Association and the ABA's Litigation Section.

South Royalton, Vermont, July 21, 2017: Vermont Fellows contributed to the inaugural VBA Trial Academy at the Vermont Law School (VLS). The day-long program was organized to allow an opportunity for lawyers to present a variety of trial segments in either a criminal or civil mock trial setting.

Our State and Province Committees are not the only ones moving our mission forward. The Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence is leading the effort to help the university disciplinary system confront the significant due process issues that are currently perplexing complaining witnesses, the accused and university administrators. This is a controversial issue with strong feelings on all sides. The College is proud of the work of Task Force. Their work has been recognized by many groups that are grappling with this issue.

The Federal Committees on Evidence, Civil Procedure and Criminal Procedure continue to be actively engaged in the rule-making process. Our Teaching of Trial and Appellate Advocacy Committee has been leading world-class seminars and has more on the way with an ethics and social media seminar scheduled in Philadelphia, a one-day legal aid "boot camp" trial training in Baltimore and a mock trial and focus group seminar in New Orleans.

Our International Committee is preparing for a seminar in Guam. Their proposal for a similar event in the Eastern Caribbean at the request of the Eastern Caribbean Supreme Court was just approved by the Executive Committee.

The Board has spoken out on issues of judicial independence when judges were unfairly attacked. The Board has also spoken out when legal services for the indigent were threatened by federal budget proposals.

Internally the College has confronted the issue of diversity. The policy on diversity states, "The College's current membership demonstrates that the number of diverse Fellows does not reflect the diverse nature of the trial bar at large."

In response to that we have appointed a Diversity Liaison for every state and province. We created a checklist consistent with the policy for each liaison to use and report to the Committee Chair and the Regent. We then covered what we expect at the workshop and have followed up with teleconferences with the liaisons. I have discussed this initiative at every stop I have made as President. It has been encouraging to see how this initiative has been embraced by the Fellows as soon as we are clear that this initiative will not change any of our standards. We expect the Regents to report on progress to the Board in Montreal. Our diversity efforts will keep our standards strong and make the College even stronger.

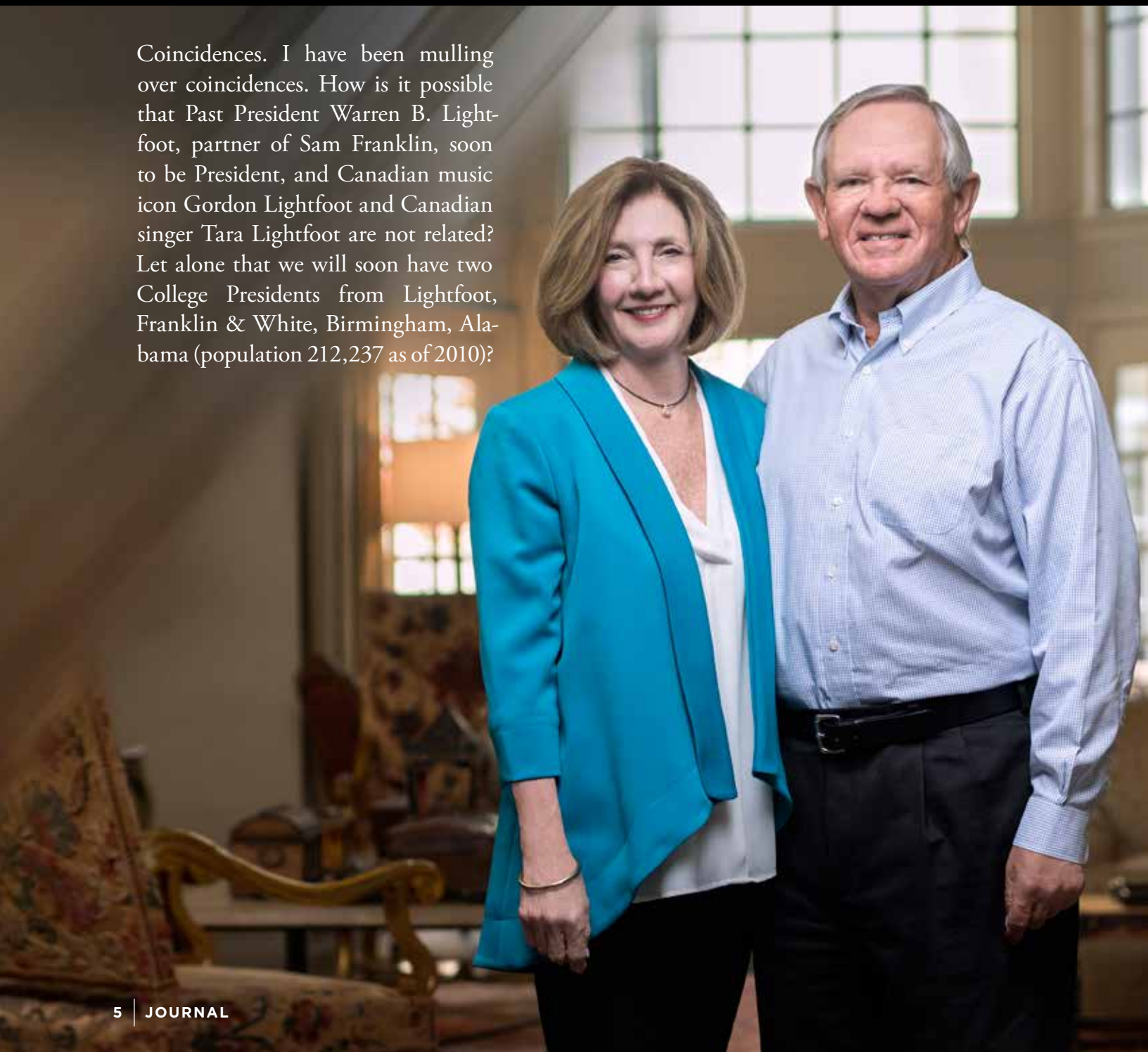
But to do all of this requires that the College stay robust fiscally. Under the leadership of Past President Tom Tongue, the Long Range Financial Planning Committee has done important work to ensure a fiscally solid College for years to come. The recommendations of the Committee have been reviewed by the Executive Committee and will be Board action items in Montreal.

All organizations thrive on efficient communication. The College was in need of better internal communication. The Fellows did not know all of the good things that were being accomplished. Immediate Past President Mike Smith began to change all of that. He started with a meeting in Richmond in January 2016. From that meeting came the eBulletin and the hiring of Être Communications to help us improve how to communicate internally and externally. A new website has been finished which will enhance the experience of being a Fellow. The *eBulletin* has done a wonderful job under Communications Chair and Former Regent Paul Fortino. We expected to publish six times per year, but given several special editions we are on course to publish 10 times in our first year. The *Journal*, under Editor Stephen Grant, continues to win awards and publish a journal of which we can all be proud to read and display.

When I became a Regent eight years ago I could not believe my luck. During my first meeting I got to meet many of the Past Presidents. These Fellows were and remain giants of our profession. It has been hard to believe my good fortune in now being able to call them my friends. The Past Presidents of the College are the true conscience of the College. They remind us of our past and guide us to a better future. The voice of the Past Presidents and what they give the College is what makes the College such a unique institution.

This year as President has been an extraordinary experience and I thank all of you for your counsel, your encouragement and most of all, your friendship. ■

A PROFILE ON 2017-2018 PRESIDENT SAMUEL H. FRANKLIN



Coincidences. I have been mulling over coincidences. How is it possible that Past President Warren B. Lightfoot, partner of Sam Franklin, soon to be President, and Canadian music icon Gordon Lightfoot and Canadian singer Tara Lightfoot are not related? Let alone that we will soon have two College Presidents from Lightfoot, Franklin & White, Birmingham, Alabama (population 212,237 as of 2010)?

This in mind, I asked our incoming President the key question. How is it possible that his spouse, Betty, and Past President Chilton Davis Varner both come from Opelika, Alabama? As of the 2013 census, there are 28,635 people in Opelika. As there appears to be no good answer to any of these questions, I hasten on to Franklin's own storied history.

Charm and the ability to get along with people is the short synopsis of Franklin's success, both, I think, in life and law. As congenial a person as you'd ever meet, I also believe this cleverly masks a kind interior but steely resolve. And I also suspect this is the tenor of the office Franklin is about to assume.

Hailing from Brewton, Alabama (2010 population 5,408), there were no lawyers in Franklin's family, but his parents wanted nothing more than for their children to reach as far as they could academically. Franklin and his siblings—a twin brother and a sister—did exactly that. As Franklin was attending Auburn as an undergraduate, his twin, clearly the clever brother, found his way to MIT. At the University of Alabama Law School, Franklin was heavily involved in the law review, making me very conscious to avoid any solecisms in this profile. As it happens, just after Franklin obtained his LLM from Harvard, his brother received his MBA from Harvard Business School, while their sister became a long-time, small-town Alabama school teacher. Their parents would be proud.

One can read about the minutiae of his career on his website—from personal injury/wrongful death cases to complex commercial disputes—but I think it's more important to focus on his take on the College and his goals. As well-prepared as anyone in any courtroom anywhere, Franklin had done some research for our chat. He has learned that in 2002, there were 1,435 Fellows under 60 years of age; in 2015, there were 673, speaking to an aging, graying College fellowship. To him, this alone mandates the College's need not only to diversify our reach for new Fellows but, without compromising our standards, find the bright *young* trial lawyers who are clearly out there.

As I asked Franklin what accounted for his hugely successful career, he posited not only that he was "right place, right time," lucky but that in every endeavour, specifically in every case from the time he was called to the Bar, he swore that no one would ever work harder or be more prepared than he. When I mentioned the Branch Rickey aphorism that "luck is the residue of design," he insisted that he had found sound colleagues, mentors and partners along the way but that only added to his luck.

While the vanishing trial may lead to a shrinking College, caused in some measure by various pre-trial processes, judges "mediating" settlements as part of case management and the advent of ADR, Franklin is only worried that we aren't looking far and wide enough for prospective excellent candidates for Fellowship.

Franklin reflected my own attachment to the College when he spoke of the power of personal relationships, one of the more significant factors in the College's mandate. But I am sure Franklin meant it as well in his professional dealings, namely that personal relationships are a mainstay of our work as trial lawyers. With judges, opposing counsel and our colleagues, these are key facets of becoming lawyers worthy of any success we have achieved. Without a doubt, Franklin personifies this, from first meeting to every subsequent interaction.

Franklin and his wife Betty have two daughters, neither lawyers, but probably just as well as the dinner time discussions would likely never end. Although one daughter is too far away for his liking (New York City), he dotes on his three grandchildren as often as he gets the opportunity.

The College is in for a charming year with Franklin's presidency.

Stephen Grant
Toronto, Ontario

■

THE NULL BEFORE THE STORM

A memorial was created to mark where sixteen-year-old Derrion Albert was beat to death on a Chicago street while walking home from school. His death was caught on video.

Perhaps you remember seeing the video; it did, after all, go viral. Someone took a ninety-second cellphone clip of a frenetic melee involving dozens of teens that tragically left one of them dead. President Obama sent two Cabinet Secretaries – his Attorney General and Secretary of Education – to investigate. The video – which had been viewed by hundreds of thousands, was sent to the Cook County State's Attorney.

The video reveals multiple skirmishes. The eventual victim – Derrion – is seen sucker-punching another teen; then almost immediately, Derrion is hit over the head with a large board, dropping him to the ground. As he tries to stand, he is brutally punched and sent back to the pavement, falling like a sack of potatoes, not even able to hold out his arms to break the fall. The scene shifts away to other combats, as four youths corner one other boy behind a car and pelt him with sticks and boards. There are numerous one-on-one, two-on-one, two-on-two fist fights and stick fencing vignettes. It is chaos. And then Derrion comes back into the camera frame, as he rolls into the street from some unobserved blow. He isn't moving. But he is surrounded by six youths, who begin kicking at his prostrate form for five or six seconds before running off.

Derrion was a willing participant in the melee, but he is most certainly a victim in this story – he is dead. And the nation – President Obama, Louis Farrakhan, Mike Tyson, you name-it – calls for justice. The State's Attorney indicts the six youths who were the last identifiable persons to have been in physical contact with Derrion – the group that encircled and kicked at him.

I represented the first of the six to be brought to trial. He was a kid; seventeen-years-old at the time, never in any real trouble. The video does show that my kid was one of the six in that final kicking scene. Before that, he and Derrion are never seen together. Oh, there is a scene of my kid being whacked over the head by a six-foot length of 2' by 8' with enough force to split it into two 2' by 4's. There are scenes of Derrion being pummeled by numerous others – not by my kid – before the kicking scene. But, well, yes, there was the kicking scene.

Now, every defense lawyer wants to tell you that his client was a good kid, just caught up in being in the wrong place at the wrong time. This time, it was true. My kid was simply walking to the bus to go home from school. He had purposely turned down a ride because he feared that the guys in the car might be looking for trouble; my kid was not. But as he walked past the melee in progress, he was drawn in. He got punched. He was whacked over the head with a board. After that, he didn't even remember being in the kicking group. And when you slow motion the video, it becomes clear that my kid's feet never made actual contact with Derrion.

The original indictments were for first degree murder, but the state did not proceed on that charge because there was a small but real problem: there was no evidence to support a first degree murder charge against any individual, much less my kid. The medical examiner admitted on cross that she could not identify any particular blow as the actual cause of death. The original videoed smack with the board (delivered by someone other than the six kickers) – even though Derrion was able to stand immediately afterward, could have been the cause of death; the punch (wielded by someone other than the six) could have been the cause of death. The unobserved blow that rolled Derrion out into the street for the final kicking sequence could have been the cause of death. One of the three video-captured falls to the pavement could have been the cause of death. Some other blow, not on the video, could have been the cause of death. What could *not* be the cause of death was my kid's ineffectual kicking motions that did not even land on Derrion's body.

And, of course, first degree murder requires proof of intent. My kid's only intent that day was to get home; his intent changed to self-defense when he was whacked ▷

over the head with lumber; and it may have changed again when he was presented with an opportunity to engage one of his possible attackers. But he didn't intend to inflict serious injury, and the state knew it could not prove otherwise. The state also knew it didn't have to.

Can't prove intent? Can't prove cause of death? Can't prove causal connection? No problem. My kid was recharged with one count of felony murder. The felony was Mob Action, defined in Illinois as "the knowing or reckless use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law." 720 ILCS § 5/25-1. Mob Action is a Class 4 Felony – the least serious class of felony – in Illinois. But it is a felony, a forcible felony. And if someone dies during the commission of a forcible felony, it is first degree murder in Illinois. 720 ILCS § 5/9-1(c).

I would like to rant against the felony murder rule. It is a harsh, brutal, more often than not misapplied bludgeon that subjects minor participants to major jeopardy. But that is a rant for another day. Well, actually, it is the rant I wanted to make that day when I spoke to the jury. I wanted to rant to my jury that they didn't have to follow that rule if they agreed that it is stupid. I wanted them to ignore that rule. But I was not allowed to tell them they could do that.

We knew what the instructions were going to be. For sure, we could argue that mob action didn't apply because my kid acted as a lone individual. But there were fifty kids fighting on two distinct opposing sides. When you looked at the video, your brain just naturally thought mob. No one was going to buy that there wasn't a mob action happening. The jury was going to hear that if someone died – which was undeniable – and if it happened while there was a mob action going on – which was only technically deniable and only if you listen to a lawyer's argument rather than to your lyin' eyes – then, the judge was going to instruct, the only possible verdict was guilty.

Unless the jury could be persuaded to look away from that instruction, the outcome was inevitable.

So I want to rant instead about jury nullification.

I simply wanted to tell the jury that the state could have charged my kid with what he actually did – mob action, which carries a maximum term of three years. If the state had charged that, there would have been no trial – my kid would have accepted that he had to pay for six seconds of madness with three years of his life. But the state had charged felony murder, with a minimum sentence of twenty years and as much as sixty. I wanted to tell the jury that if they, like I, believed that a law that turned those six aberrational seconds into first degree murder was unfair, then they could, without fear of reprisal, ignore that law. And if I had been allowed to tell them that, it would have been true. It's just that if I had told that truth, I would have been reprised against – fined, disbarred, incarcerated, all possible outcomes – for simply speaking a truth, for letting the jury know about jury nullification.

A courtroom may be the only place in America where speaking the truth is not permitted.

Most histories of jury nullification begin with *Bushell's Case*, 124 Eng.Rep. 1006 (C.P. 1670). The English Crown prosecuted William Penn and William Mead for congregating to discuss a religion other than that of the Church of England. The judge was convinced the verdict must be guilty, but the jury refused to convict, so the judge jailed the jury for contempt. But the incarceration was dissolved on a writ of habeas corpus, granted by an appellate judge who found that no juror could be punished for rendering a verdict contrary to the court's opinion.

The Founding Fathers agreed. Approval of the jury's right to nullify is found in the writings of some of the most eminent American lawyers of the age – such as Alexander Hamilton, who wrote, "Jurors should acquit, even against the judge's instruction . . . if exercising their judgment with discretion and honesty they have a clear conviction the charge of the court is wrong."

Don't get me wrong. I am not a nullification nut. Nullification has been used for evil, and there are good reasons we should view it with caution. Hamilton could not have imagined the Civil War and the assault to justice jury nullification brought in its aftermath. (Nor, of

Emmett Till and his mother Mamie Till-Mobley. Till, 14, was mutilated and murdered.

In one example of a jury who refused to convict in the face of overwhelming evidence of guilt, J.W. Milam, left, and his half-brother Roy Bryant, right, were found not guilty in the murder of Till.

course, could Andrew Jackson, who died sixteen years before the war began, despite the belief of our current chief executive that Old Stonewall could have prevented the war. But that's a rant for yet another day.) Following what our friends from Alabama call the War of Northern Aggression, violence in the South spiraled out of control as the Ku Klux Klan sought to undermine postwar order by murdering, brutally assaulting and terrorizing blacks. In response, Congress enacted the Enforcement Act of 1870, which made it a federal crime to intimidate voters or conspire to prevent citizens from exercising constitutional rights. So the Klan required its members to pledge to obtain places on juries and to vote in favor of fellow members no matter what the evidence. As a result, there were frequent miscarriages of justice, as juries refused to convict in the face of overwhelming evidence of guilt in heinous crimes.

Well into the twentieth century, despite the evidence, a jury famously refused to convict Roy Bryant and his brother, who had brutally mutilated and murdered fourteen-year-old Emmett Till for his audacity in speaking to Roy's wife; Byron De La Beckwith was acquitted by a jury of his peers in the assassination of NAACP leader Medgar Evers.

It is impossible to defend the righteousness of jury nullification in cases like these. But in other cases, the lines are less clear. When the federal government tried to enforce federal statutes that prohibited bigamy and polygamy in Utah, where those practices were largely accepted as lawful, Utah jurors refused to convict their neighbors for acts they considered justified and not criminal. No one was being murdered; people were simply following their religious beliefs. When the government prosecuted hundreds of young men for burning their draft cards during the Vietnam era, many juries refused to convict, because they considered it a legitimate exercise of opposition to the war, no matter how clear the law.

Nullification is the embodiment of the power of the people. When the prevailing public ethos is evil as in the KKK South, nullification is also evil; but when the ethos is more benign or even salutary, the power of nullification is exercised for good.

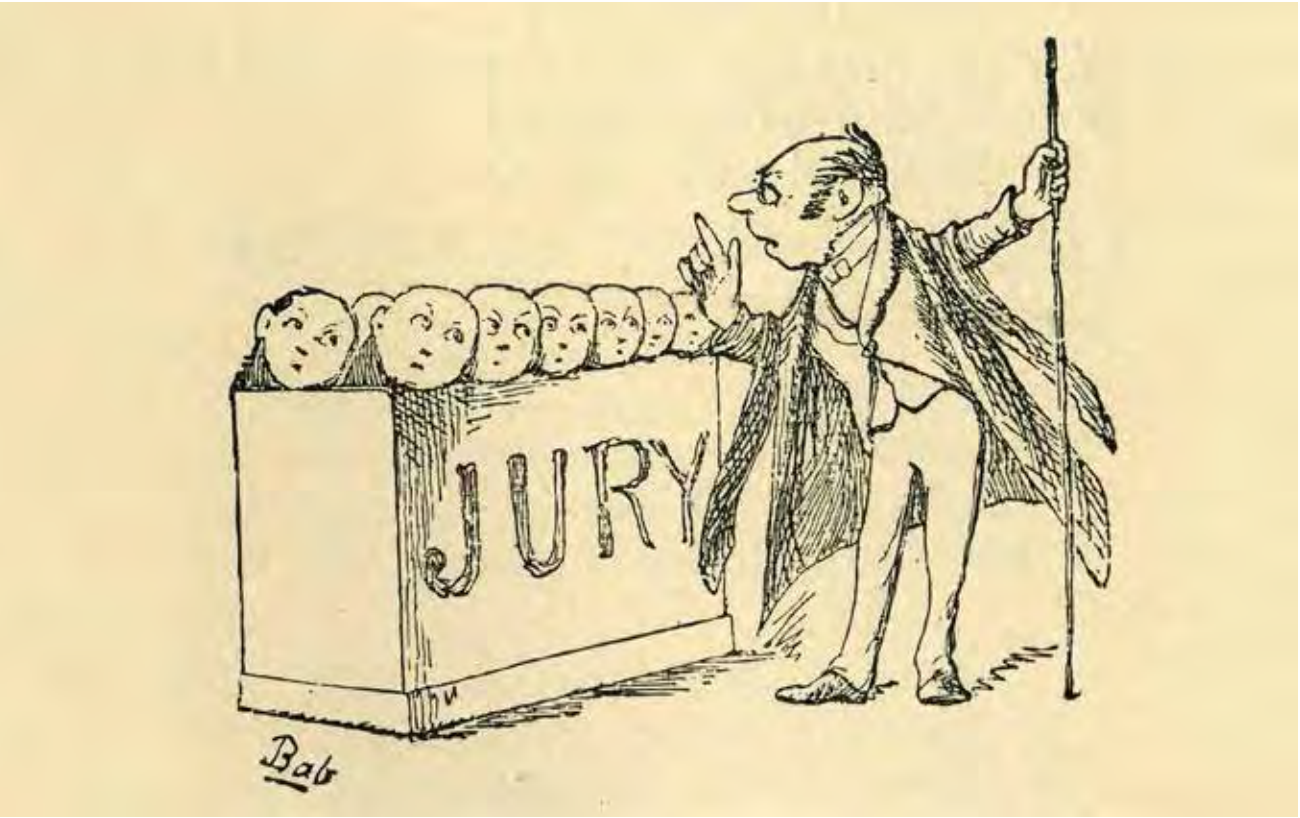
And that's the thing – nullification is a power, not a right. Jurors have no right to nullify. As a then Washington, D.C. Circuit Judge, Ruth Bader Ginsburg explained:

> A jury has no more "*right*" to find a "guilty" defendant "not guilty" than it has to find a "not guilty" defendant "guilty," and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power.

United States v. Washington, 705 F.2d 489, 494 (D.C.Cir.1983) (per curiam) (emphasis in original).

But as a practical matter, criminal juries in the United States possess the *power* to acquit against the law and the evidence because, once a jury decides to acquit, the Double Jeopardy Clause bars the government from attempting to convict the defendant again of the same offense. And under the Sixth Amendment, no matter how convincing the evidence of guilt, a judge may not direct a verdict of guilt and convict a defendant without a jury's decision. Instructions or other actions that may coerce a jury to convict are forbidden, as are verdict forms that require the jury to provide findings but leave for the judge the decision to convict or acquit. A jury need never explain its verdict, nor may an individual juror be punished for his or her vote, even if it was contrary to the judge's instructions. As a result, the Supreme Court describes jury nullification as the "assumption of a power which [the jurors] had no right to exercise, but to which they were disposed through lenity." *Standefer v. United States*, 447 U.S. 10, 22 (1980).

And, the Court reasoned, since juries have no actual right to nullify, they have no right to be informed of their illegitimate power and lawyers have no right to have the court so instruct. Reviewing a conviction of two sailors for murdering a shipmate in 1895, the Supreme Court upheld a trial judge's decision to instruct the jury that it did not have the option under the law to convict the defendants of the less serious offense of manslaughter. The Court explained that with no evidence in the case that would provide a basis for finding manslaughter rather than murder, the trial judge did not commit error by barring that alternative. *Sparf v. United States,* 156 U.S. 51 (1895). Two decades later the Court found no error when a judge instructed the jury that "a failure by you to bring in a verdict in this case can arise only from a willful and flagrant disregard of the evidence and the law. … I cannot tell you, in so many words, to find a defendant guilty, but what I say amounts to that." *Horning v. District of Columbia*, 254 U.S. 135 (1920). *See United States v. Boardman,* 419 F.2d 110, 116 (1st Cir.1969). A court may "block defense attorneys' attempts to serenade a jury with the siren song of nullification . . . and . . . may instruct the jury on the dimensions of their duty to the exclusion of jury nullification." *United States v. Sepulveda,* 15 F.3d 1161, 1190 (1st Cir. 1993).



Prosecutors have not been shy about pursuing nullifiers. While they cannot prosecute a juror for his or her verdict under the law going back to *Bushell's Case*, they can – and have – prosecuted jurors who got seated by committing perjury. In *Clark v. United States*, 289 U.S. 1, 17 (1933), the Court affirmed the perjury conviction of a juror who lied during voir dire to get on a jury and later held out for acquittal, because a juror punished for perjury "has not been held to answer for any verdict that she has rendered."

Nor have prosecutors – and courts – been shy about pursuing those who attempt to advise jurors of their nullification rights. Jury nullification supporters have been charged with obstructing justice or with contempt after passing out literature advocating jury nullification at state and federal courthouses in various locations from Billings, Montana to Los Angeles to Las Vegas to Milwaukee to Wichita, Kansas. *See* Nancy J. King, *Silencing Nullification Advocacy Inside The Jury Room And Outside The Courtroom,* 65 U. Chi. L. Rev. 433, 492 (Spring 1998).

Individuals and organizations, such as the Fully Informed Jury Association, often set up outside courts and pass out literature about the right of jury nullification. Those efforts have been attacked by the adoption of local ordinances and court rules, by contempt orders and even criminal charges of jury tampering. Yet sometimes, not always, but sometimes, free speech wins. *See, e.g., Verlo et al. v. The City and County of Denver, Colorado*, 2015 WL 5159146 (D. Colo. 09/03/2015) (Defendants enjoined from interfering with peaceful distribution of jury nullification literature on court plaza).

Still lawyer beware. In *United States v. Renfroe*, 634 F. Supp. 1536, 1550 (W.D. Pa. 1986), *aff'd sub nom. Appeal of Renfroe*, 806 F.2d 254 (3d Cir. 1986), and aff'd, 806 F.2d 255 (3d Cir. 1986), a lawyer was imprisoned for thirty days after being found in contempt for making a nullification argument to the jury. Granted, the argument was made after the Court, sensing a nullification argument coming, entered a specific order barring the argument; so maybe the penalty might have been lighter if there had been no advance admonition.

But maybe not. The Court found that a nullification argument is "reprehensible," because it is an attempt to obstruct justice and subvert the judicial process. "The zeal which an attorney owes to his client in no way justifies that tactic." *Id.* at 1540. Check your own jurisdiction. But the ABA Standards for Criminal Justice 4–7.8(d) (4th ed. 2015) could not be clearer: "Defense counsel should not argue to the jury that the jury should not follow its oath to consider the evidence and follow the law."

The Bible quotes Jesus to have said, "And you will know the truth, and the truth will set you free." John 8:32. Just not in the courts, where telling the truth can get you thirty days in the clink.

I have some hope for the future, not because of anything in the Bible, but because the Supreme Court seems to be evolving as a result, ironically, of its quest for the original past. In 2011, a *University of Chicago Law Review* article carefully reported on the trend of then recent cases in which the Supreme Court has emphasized originalism in constitutional criminal procedure, analyzing Founding-era history to determine the Sixth Amendment's original meaning and its continuing constitutional requirements. Jonathan Bressler, *Reconstruction And The Transformation Of Jury Nullification,* 78 U. Chi. L. Rev. 1133 (2011). Relying on these decisions, Bressler concludes that scholars and a number of lower court federal judges have concluded that, because Founding-era juries had the right to nullify, the right was implicit in the constitutional meaning of jury, was beyond the judiciary's authority to curtail, and should be restored. "*Sparf*, they assert, should be overruled because it cannot be justified on originalist or historical grounds."

So maybe I will live to see a future in which lawyers can tell juries the truth about their power to do what is right. Until then, call me chicken. Call me pusillanimous. Call me Ishmael. Call me whatever, but I didn't feel I could make a nullification argument to the jury. I have no idea whether it would have made a difference, but I do know what happened without it. We came in second, and in criminal trials, second sucks. That good kid will not be a kid any more when he is finally released from prison. That isn't right.

Robert L. Byman
Chicago, Illinois ■

BOOK REVIEW: JURY TRIALS OUTSIDE IN

BY MELISSA M. GOMEZ, PH.D (2016) (142 PP.)

No newly minted trial lawyer should undertake his/her first jury trial without reading this destined-to-be-a-classic text on the subject. Less than 150 pages, but rich in anecdotes and examples from a jury trial consultant who has worked on serious personal injury cases and complex commercial disputes, both for plaintiffs and for defendants, in courts across the country, this slender work will give the jury trial tyro a sense of confidence that he/she can handle whatever arises in that important first case.

More experienced jury trial lawyers will find it just as useful in confirming or challenging what they think they have learned from their own experiences in the courtroom.

The subtitle *"Leveraging Psychology from Discovery to Decision"* says much about the approach taken. Time and again, the author – herself the holder of a Ph.D. in psychology – cites one learned study or another about human behavior and then explains, in simple but not simplistic terms, the lesson to be learned in terms of what happens inside the courtroom. The lucid writing style makes the text a pleasure to read.

Perhaps the best way to show the value of this work is to list some of the topics with which the author grapples. Here is a selective review of the five parts of the book:

PART ONE – UNDERSTANDING JURIES

- The importance of presenting a consistent picture
- The significance to jurors that the defendant is a large corporation – and how counsel for defendant should deal with that reality
- What does it mean when a juror smiles at you?
- Miller's Law – what is it, what does it say about jurors' ability to remember evidence and how to present your case?
- The role of sympathy and anger in jurors' decisions – the danger of overplaying sympathy
- To what extent can you expect jurors to follow the law versus their own sense of justice?
- The pluses and minuses of appealing to jurors' "common sense"
- Guidelines for using disturbing (that is, gruesome) evidence
- The importance of an outsider's perspective to evaluating the strength of your case

PART TWO – CHOOSING TRIAL STRATEGIES

- Using your opponent's momentum to your advantage
- Anticipating jurors' "gut reactions" – and how to overcome them
- Your opponent's failure to present certain evidence – and how best to exploit that
- The concepts of primacy and recency – and what gets lost in the middle
- Should defendant concede liability where liability is clear – the answer may surprise
- Plaintiffs' loss of consortium claim – should it be dropped? If not, how should it be presented?
- Should counsel for defendant address damages in his/her closing even when there appears to be a sound liability defense? How should counsel for defendant discuss damages without

conveying the sense that he/she believes that plaintiff is entitled to a verdict in some amount?

- When should a claim for punitive damages be made? What are the dangers of making such a claim just because you can?
- The critical importance of the verdict form – with examples of how the verdict form influenced the outcome of the case

PART THREE – DESELECTING JURIES

- The importance of knowing your own biases
- The bias in favor of the status quo
- Recognizing potential leaders on the panel – who are not necessarily the loudest. Do you want them on or off the jury?
- Crafting voir dire questions so that you identify biases but don't plant biases that are not there
- The usefulness – or not – of Internet searches regarding prospective jurors
- Knowing the Court – with a checklist of things to ascertain about how the judge conducts voir dire before you show up for that exercise
- The benefits of written jury questionnaires – why is the author so high on them?
- Constructing your voir dire questions to fit the judge's procedures
- The importance of conducting the voir dire quickly, clearly and professionally
- Keeping track of the information gleaned during voir dire
- A suggested system for rating prospective jurors

PART FOUR – MANAGING WITNESSES

- Identifying the witness's natural communication style
- How does his/her pattern of problem-solving fit with the testimony to be given
- Establishing a foundation for the testimony of the witness – what are the key points to be made through him/her?
- Asking the right questions outside the courtroom to identify what is bothering the witness
- Teaching balance in preparing a witness for his/her deposition – what is wrong with the common caution that the deponent should strive to answer every question (a) "Yes" (b) "No" (c) "I don't know," or (d) "I don't remember"?
- Preparing the witness for the lingo and rituals of the courtroom
- Preparing the witness who may see the cross-examiner as an authority figure (a problem especially with foreign witnesses who may be inclined to defer, to concede, to admit)
- Preparing the witness with the opposite problem, that is, one who expects others to defer to him
- Recognizing and dealing with the witness on your side whom the jurors will not find credible – for example, a convicted thief
- Dealing with an adverse witness strategically – the pros and cons of calling an adverse witness as on cross-examination
- What is the real significance to the typical juror of the fact that the witness is shown to have made a prior inconsistent statement (for example, at deposition)?
- Preparing and presenting the unlikable witness

PART FIVE – MAINTAINING THE RIGHT CASE IMAGE

- Does "being nice" have anything to do with being an effective jury trial lawyer?
- Dealing with the home-field advantage
- Investigating public opinion
- Dress to impress – what does that mean in terms of appropriate attire in the courtroom for men? For women?
- How to be the right reflection of your client

Each chapter ends with a section entitled "Questions to Ask Yourself," listing the five to six questions that distill the take-away from that section.

I dislike being so uncritical in writing a critique but the truth is that the book is that good.

If you can honestly say that you already know all there is to be learned on these subjects, you don't need this book. Otherwise, it is "a must."

Dennis R. Suplee
Philadelphia, Pennsylvania ■

PERSONAL HISTORY: WORKING WITH THE INTERNATIONAL SENIOR LAWYERS PROJECT

Fellow Matthew Rooney with Justice John Krielger in the South African Constitutional Court, where the justices were reminded of the heritage of their country by the antelope skin draped over the bench.

I am a retired partner from Mayer Brown's Chicago office and am now a Senior Counsel at the firm. In 2011, when I stepped down as an active partner, I embarked upon a second career, helping organizations protect and promote human rights and strengthen the rule of law in countries with less-developed democratic traditions. One of the principle organizations I have worked with is the International Senior Lawyer Project (ISLP), which has sent me on an overseas assignment in each of the past five years. ISLP is a New-York based NGO that promotes just and accountable development that is sustainable and supportive of human rights and strengthens the rule of law.

As I was approaching retirement, I knew I wanted to put to use my training and abilities as a trial lawyer on behalf of deserving organizations. I had served for three years as co-chair of Mayer Brown's firm-wide pro bono committee, which exposed me to the need for improved legal skills in many non-Western countries. As an experienced traveler, offering my skills to lawyers and legal service providers abroad seemed like a good fit. I have found my subsequent experiences to be immensely rewarding and impactful.

ENHANCING, PROTECTING HUMAN RIGHTS IN SOUTH AFRICA

In 2011, the ISLP asked me to travel to South Africa to work with the South Africa Human Rights Commission (SAHRC). The project required I use the legal skills and managerial experience from thirty-five years in a large law firm to help the SAHRC determine how it could operate more effectively and efficiently. I visited four provincial offices and SAHRC's headquarters to understand how it was performing its duties. A highlight of the trip was participating in the 8th Biennial Conference of the Network of African National Human Rights Institutions, hosted by the SAHRC, in Cape Town, during which human rights issues from member countries across Africa were addressed.

Another noteworthy event was meeting the Honourable Albie Sachs, one of the original members and justices on South Africa's Constitutional Court, who had been general counsel for the African National Congress and was a drafter of the South African Constitution — perhaps the most progressive constitution in the world. Since then, my path has crossed with Sachs's several times and we have had many interesting conversations about human rights and the decisions of the South African court.

This project culminated in a report that included a specific plan for how the SAHRC could enhance its performance and further protect and promote human rights in the country. Both the ISLP and the SAHRC embraced the report's recommendations and agreed to work together to implement them. I agreed to consult on that effort.

Often, experience destroys one's pre-conceived notions of reality. For example, during the South Africa trip it quickly became apparent to me that broad generalizations about Afrikaners as racists were mistaken. Many of the most devoted people at the SAHRC were Afrikaners, who were firmly dedicated to helping the most underprivileged black South Africans gain access to the justice system.

One of the recommendations of my report was that lawyers at the SAHRC should receive training to improve their trial lawyer skills. In 2012, ISLP asked me to undertake that assignment. With Mayer Brown's support, I developed training materials so that the lawyers could receive NITA-like training, including a lecture about how to perform each aspect of a trial (opening, direct, cross and closing), demonstrations, and opportunities for participants to practice each skill. The materials included mock-trial problems based on actual cases identified by SAHRC lawyers. I had previously led similar trainings in which I used excerpts from the movie *To Kill A Mockingbird* to illustrate the various skills, to keep the training interesting and to talk about the role of lawyers in protecting human rights. That technique was incorporated in the training and was well received.

I did not conduct the training alone. Nick Paul, a human rights barrister from London, co-taught the program, and we became fast friends. We enjoyed trying a mock trial against each other and competed to outdo ▷

each other in the demonstration of our legal skills. We also had a good time pointing out the difference between English and American trials and arguing about the superiority of our own ways of doing things. Over the course of two weeks, all of the SAHRC lawyers came to Johannesburg and participated in a week of training.

On his 2012 trip to South Africa, Rooney spoke to a group of South African lawyers about trial advocacy training at the South African Human Rights Commission.

A highlight of the trip was getting to know another one of the original justices from the Constitutional Court, Judge Johann Kriegler. Judge Kriegler took Nick and me on a private tour of the Constitutional Court Building, which he had helped design. The court is well worth a visit on any trip to South Africa. Built on the site of a prison where both Mahatma Gandhi and Nelson Mandela had been held, it is an open and welcoming building, with none of the austere features of a typical courthouse. Excerpts from Mandela's closing argument from the Rivonia Trial are etched in the wall of the main hallway. The Rivonia Trial took place from October 9 1963 to June 12, 1964. It led to the imprisonment of Mandela and the others among the accused who were convicted of sabotage and sentenced to life at the Palace of Justice, Pretoria. We also enjoyed several hours over meals with Judge Kriegler at his home, in which many aspects of human rights law and trial practice were debated.

IDENTIFYING OPPORTUNITIES FOR PROMOTING RIGHTS IN MYANMAR

The following year, ISLP asked me to return to my former role to assess organizations in Myanmar (formerly Burma) and to develop plans regarding how ISLP could assist them. Just as the country was opening up to the West, in May 2013, I traveled to Myanmar for a month. I was based in Yangon (previously Rangoon), the commercial center of the country, and also made a two-day trip with one organization as it determined whether to establish a branch office in Hpa-An, a city down the narrow peninsula that forms the southern part of the country.

At the time I visited, there were no automated teller machines in the country, nor were credit cards in use. I had to carry thousands of dollars in cash to be able to pay expenses, including the cost of a relatively spartan hotel room that was extremely expensive because of the scarcity of hotels in the country. There was a real thirst for information and knowledge in the country in every area, since it had been cut off from the rest of the world by sanctions for so long. One of the most positive aspects of visiting Myanmar at this time was the opportunity to experience the country before it was transformed by outside commercial influences.

My assignment was to spend several days scoping potential projects and partnerships with half-dozen human rights organizations, known as civil society organizations (CSOs), and one bar association. For instance, I worked with two groups that were interested in protecting land-use rights and the cultures of several indigenous groups. Another CSO was interested in developing the ability to draft legislation that would protect the rights of workers and other groups to organize. Another CSO was working in the area of protecting citizens from land grabs by foreign investors. Yet another was looking to set up a legal aid clinic for criminal defendants.

In addition to identifying projects and partners that were successfully promoting rights, I was also charged with seeking means to advance inclusive economic development. For instance, I helped ISLP scope out a project to build commercial law capacity among the local bar, so it would be ready to represent entities in Myanmar when international businesses came to engage in commercial transactions. In addition to developing plans for the bar associations and the CSOs, I made two presentations to the bar association on trial and appellate advocacy skills.

There are always interesting sidelights on such trips. And the cultural/language differences can be amusing. One of the highly successful commercial firms I got to know was the High See law firm. I was curious about how they came up with that name. (I had not seen it in writing yet and assumed that the firm had an admiralty practice.) They explained that the members of the firm had a lot of experience and perspective, which enabled them to see over all of the confusion. Their English translation of this concept was High See.

The end result of my work was a report outlining the needs of the various organizations and suggesting how other ISLP volunteers with expertise in the requisite areas could meet those needs. Since none of the groups had any immediate need for civil litigation expertise, unlike in South Africa, the report did not offer an opportunity to help further, but ISLP did embark on a program of implementing most of the recommended courses of action, which in the years that followed has evolved into a major program of assistance, most notably to communities whose lives and livelihoods are impacted by large-scale development projects.

A year later, in 2014, I was preparing to travel to Cambodia to teach trial advocacy skills for another organization. ISLP asked if I could assess the needs of two civil law firms, which ISLP had identified as having potential to develop into strong human rights law firms. Both firms employ a unique hybrid model, through which they undertake paid, commercial legal work to generate fees that can fund the pro bono rights-based assistance to communities (including communities that have suffered land grabs and other development-related harms). I arranged my trip so I had time to meet with various people who knew the firms and then spent a day at each one. Here again, I did an assessment of both the need for legal skill development and for methods of enhancing both their human rights and commercial law practices. I developed a plan for each firm to meet both goals. ISLP and the firms accepted the plans. Subsequently, ISLP found mentors to go to Cambodia to work with each firm.

DRAFTING A MANUAL FOR THE EQUALITY COURT IN SOUTH AFRICA

Finally, in 2015, I returned to South Africa for ISLP. One of the unique features of the South Africa Constitution is a provision calling for the creation of an Equality Court. The principle underlying this institution is that individuals should be able to bring post-Apartheid discrimination claims without the need for a lawyer and to have the claims resolved expeditiously. ISLP correctly perceived that, although the court had been created, it was not being fully utilized. I was enlisted to assist another ISLP volunteer in drafting a manual for the Equality Court. The resulting manual is a short and simple step-by-step guide on how to bring a claim before the court, with forms for pleadings and outlines on how to conduct hearings without a lawyer.

I agreed to go to South Africa with the primary drafter to conduct trainings on how to use the manual. When the lawyer who drafted the manual could not participate, ISLP and I enlisted the services of Nick Paul, the barrister who had done the previous training with me.

We conducted trainings in Cape Town, Durban, Johannesburg and a township outside of Durban. We also met with about a half-dozen organizations to get their support in publicizing the court and the manual. The daylong trainings were aimed at community organizers and paralegals and were well-attended and well-received. Again, rather than spend a day lecturing to the audience, we included demonstrations and used a case problem, which the participants had to work through using the manual and group discussions so that they would learn by doing.

As with each of these projects, this one provided an interesting experience beyond the work itself. The group that supported the training throughout South Africa was the Legal Resource Center, one of the oldest human rights clinics in South Africa, which was at the forefront of the opposition to Apartheid. The Johannesburg training was conducted at its offices. While there, the two of us were able to spend about an hour with Nelson Mandela's lawyer George Bizos. Bizos told several humorous and touching stories about Mandela, including how he came to be Mandela's lawyer. Bizos was Mandela's lawyer for the Rivonia Trial and shared memories of his numerous visits to Robben Island when he was the only person allowed to see Mandela. He also told us about the work he did with Mandela during the negotiations with F.W. de Klerk that led to the end of Apartheid.

The call to assist ISLP continues to this day. At the end of September 2017, I am returning to Myanmar for ISLP. I will be holding training for human rights lawyers on negotiation and trial advocacy skills.

I consider myself lucky to have been given all these opportunities to help on various human rights projects with ISLP. Being able to travel to interesting places, where I usually linger a little longer than is necessary for the project (at my own expense) to experience different parts of the world is rewarding and fun. But what is even more rewarding and inspiring is meeting and supporting the work of people in other parts of the world, who are making their societies better places to live in and protecting and advancing human rights, many times in the face of difficult odds.

Matthew A. Rooney
Evanston, Illinois ■

Kentucky, Michigan, Ohio, Tennessee

April 21-22, 2017
Griffin Gate Marriott Resort & Spa

Lexington, Kentucky

REGION 9: SIXTH CIRCUIT REGIONAL MEETING

Close to eighty Fellows and guests were part of the festivities and fellowship. The meeting began with a welcome dinner at Portofino's in Lexington, which included President **Bart Dalton** and Regent **Kathleen** and **Buzz Trafford**.

The meeting continued on Saturday morning with a professional program. The first speaker was **Kent Mastonson Brown**, a civil war historian who spoke on the Lincoln family in Kentucky. He discussed the legal issues President Lincoln's father, Thomas, dealt with concerning their farm at Sinking Spring, where Lincoln was born, and Knob Creek farm, where the family lived before moving to Indiana. Brown gathered information by scouring the court, tax and public records all related to Thomas Lincoln. "The best way to summarize Thomas Lincoln is that he is like a lot of us. There are things that we can do something about and that are things that we really can't. He was willing to coexist. With respect to Abraham's comment about his father leaving Kentucky… he never ran from Kentucky. No one fought as hard as he did to stay here," Brown said. Brown ended his presentation by answering questions from the audience.

Following Brown was **William M. "Bill" Lear, Jr**, a Trustee from Keeneland, who discussed the many aspects of racing such as grade stakes, technology at the track, thoroughbred sales and horse breeding. He also discussed thoroughbred basics, including the art and science of naming a horse, where names can range from the silly ("Arg", "Stop Charging Maria" to " Wife Knows Everything") to cute ("Bluegrass Kitten") to regal ("Arrow Gate", "Thunderbolt" and "Risen Star"). He shared with attendees the history, tradition and interesting facts of the revered racing track, including how the "gates never close. There is security around the barns and security around the clubhouse, but the gates to our 1,000 acre property are never closed. It is treated like a public park," Lear said.

The final speaker was **Matt Higgins,** visitor center manager of Buffalo Trace Distillery, who spoke on the history of bourbon. The distillery has eighteen brands of bourbon; within those eighteen

brands are thirty-two label variations. "Buffalo Trace has a lot of firsts in its history. We were the first to commercially market single barrel bourbon, Blanton's. We were the first to incorporate steam power and we were the first to incorporate steam heat in our warehouse," Higgins said. A taste testing was conducted where participants were selected from the four states that make up Region 9. The willing subjects were tasked with guessing what bourbons they were drinking based on verbal descriptions. The taste testers included Trafford, **Clarence (Rocky) L. Pozza, Jr.**, **James M. Doran, Jr**. and President Dalton. President Dalton correctly guessed two out of the four blind samples.

Evening cocktails and dinner were held at the Mansion, an old Southern-style home next to the hotel. President Dalton recognized deceased Former Regent **John M. Famularo** and his wife, Karen, who attended the weekend activities.

The four participants put their bourbon tasting and smelling skills to the test.

Atlantic Provinces, Maine, Massachusetts,
New Hampshire, Puerto Rico, Rhode Island

June 16-18, 2017
The Algonquin Resort

St. Andrews, New Brunswick

REGION 12: NORTHEAST REGIONAL MEETING

The weather was maritime gray – rain, drizzle and fog. But that didn't dampen the enthusiasm of the Fellows and their guests who got together at the Algonquin Resort in St. Andrews By the Sea, New Brunswick, for the Northeastern Regional Meeting on June 16-18, 2017. St. Andrews is a picturesque historical community close to the border with Maine.

Things got off to a tremendous start on Friday evening with a traditional lobster boil and kitchen party with the band "Homemade Bread." It wasn't long before everyone was in the party mood and joining in the singing.

On Saturday morning the meeting opened with introductory comments from Regent **Elizabeth N. Mulvey**, and Atlantic Provinces Committee Chair **Marjorie A. Hickey**, **Q.C.** Fellow **Thomas G. O'Neil, Q.C.** did yeomen service as Master of Ceremonies, having organized a great program.

Susan Goertzen explained the history of St. Andrews and, in particular, Ministers Island. Her historical knowledge and quick sense of humor were readily apparent.

The Honourable **Dominic Leblanc**, the Minister of Fisheries, Oceans and the Canadian Coast Guard spoke about the Canadian government's new Litigation Management Committee, of which he is a member. The Committee now oversees the management of the tens of thousands of litigation cases that face the federal government. Its objective is to provide better management and timely decision making of claims against the government of Canada.

Dr. **Jamey A. Smith** is the Executive Director of the Huntsman Marine Science Centre in St. Andrews. He explained the important research work that is being done in the marine sciences in St. Andrews.

The meeting was privileged to also hear from the Honourable **H. Wade MacLauchlan**, CM OPEI MILA, the Premier of Prince Edward Island. Premier MacLauchlan spoke about the historical and continuing connection between Atlantic Canada and the "Boston States," the traditional maritime Canadian name for New England.

Then came the Great Debate: Arbitration or Litigation? The debate was moderated by Treasurer **Jeffrey S. Leon, LSM.** Former Atlantic Provinces Committee Chair and former Canadian Foundation Director **George W. MacDonald, Q.C.** argued for arbitration, while Former Regent **Bruce W. Felmly** took up the case for litigation.

Saturday afternoon, despite more fog and rain, Fellows and guests headed out on a boat tour of Campobello Island, the summer home of President Franklin D. Roosevelt. His summer home, located in Canada, reflects the longstanding friendly relations between Canada and the United States.

President **Bartholomew J. Dalton** brought closing remarks at Saturday's dinner. It was particularly fitting that the Atlantic Provinces should host the meeting while he is President of the College. Dalton's family originally came from the small community of Conception Harbour in the Province of Newfoundland and Labrador. His grandfather, Frederick Dalton, enlisted in the Newfoundland Regiment in March, 1915 at age 22. He served with the Regiment in Gallipoli, France and Belgium. He was captured in the Battle of Monchy-le-Preux on April 4, 1917, just over 100 years ago. He remained a prisoner of war until the end of the war. He was repatriated to Newfoundland on December 14, 1918. The Dalton family, like many other Newfoundland families, emigrated to the United States in the 1920s.

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

Fellows and guests returning to the boat after a tour of Campobello Island, the summer home of President Franklin D. Roosevelt.

From left: Regent Liz Mulvey, Dominic LeBlanc, minister of Fisheries, Oceans and the Canadian Coast Guard; Wade MacLauchlan, premier of Prince Edward Island; Province Committee Chair for the Atlantic Provinces Marjorie Hickey, Q.C.; and Thomas O'Neil, Q.C. ■

WAR STORIES FROM FELLOWS

Below is a continuing series in the *Journal* featuring war stories from our very own Fellows. Ranging from entertaining to instructive, these stories will feature something a Fellow did or something that happened to a Fellow or another Fellow during a trial.

Please send stories for consideration to editor@actl.com.

A LIGHT MOMENT DURING LONG LITIGATION

Some years ago, I was involved in protracted litigation with Fellow **Frank Newbould** (now the Honourable Mr. Justice Newbould). The case involved the squeeze-out of the minority shareholders in a public corporation, as well as allegations of unfairly disregarding the interests of minority shareholders. The case was tried by a judge alone and took over fifty days. Most of the evidence consisted of very dry and incomprehensible (at least to me) evidence from economists. There was a lot at stake in the litigation and it was fought on the basis of no quarter requested or given.

The following is a very brief excerpt of (at least what I consider to be) one of the lighter moments during the litigation. Thanks to Frank, I had a number of heavy moments. The case was hard fought but collegial throughout.

MR. HODGSON: What I would like is I think my friend should call his next witness, and then I will have this evening to review the matter and to try and understand the ramifications of it and be in a position to give Your Honour a considered position tomorrow.

THE COURT: I see him shaking his head about calling his next witness, and without him speaking

I assume that you want this evidence before your next witness.

MR. NEWBOULD: (Mr. Newbould shakes his head.)

THE COURT: He is shaking his head affirmatively.

MR. HODGSON: I can hear the rattle.

THE COURT: That was a good line.

MR. NEWBOULD: Well, I have many. I am saving it up for the right moment in time.

James A. Hodgson
Toronto, Ontario

A PROSECUTOR'S SURPRISE

It was a case of three counts of murder in the first degree. My client was a husband and father accused of murdering his wife and two young children. There wasn't much opportunity for levity. However, during the third week of trial, with the jurors assembled, the judge took his seat and instructed the prosecutor to proceed. The assistant district attorney said there was one administrative detail he wished to bring to the court and jurors' attention. "Today is Mr. Hanrahan's 39th birthday, your honor," he said, smiling. I rose quickly, "I object." I replied. "Sustained" said the judge.

The jurors and spectators laughed briefly. The case then proceeded in its typically serious fashion. That exchange was selected as the quote of the day on the first page of the *Lawrence Massachusetts Eagle-Tribune*.

BEWARE OF THE MISGUIDED ANALOGY

Many years ago, my opponent stood before the jury after a lengthy trial and suggested that because of the complexity of the case, the jurors might be confused. So he told them that "This case is a lot like an architect designing a building." He then regaled them with a lengthy description of how that was so. Undaunted, counsel then said, "in fact, this case is a lot like a busy railroad station." Again, a lengthy analysis followed. Surprisingly, my opponent had one more! This time he explained in great detail how the case was a lot like a baseball game.

When it was my turn, I reminded the jury that my opponent and I had disagreed on many things during the trial and now there was one more. I told them they were attentive throughout the trial and that I believed they did fully understand the case. I then said, "but if you were my opponent, wouldn't you rather be an architect designing a building, or at a busy railroad station or at a baseball game – wouldn't you rather be anywhere but here!"

My opponent was still red faced when I walked past his table at the end of my closing. The jury returned a $1 million verdict for my client.

David G. Hanrahan
Boston, Massachusetts

■

COMMITTEE UPDATES

ARIZONA

The Arizona Chapter will hold its annual Jenckes Competition between the law schools of the University of Arizona and Arizona State on Friday, November 3 at the Arizona State University Law School in Phoenix.

ARKANSAS

The Arkansas Chapter presented a one-hour ethics program utilizing the ACTL vignettes, slides and Code of Pretrial and Trial Conduct segments, utilizing a moderator and three-person panel at the annual meeting of the Arkansas Bar Association in June in Hot Springs, Arkansas.

COLORADO

The Colorado Chapter unanimously endorsed Fellow **Roger Thomasch** for the Lifetime Achievement Award. "It's an exceptional award, and it has been given only a few times to trial lawyers who have made a really unique and important contribution, such as Roger has," **Michael McCarthy**, the Vice Chair of the state committee said. The Colorado Fellows held their annual dinner July 15, 2017 where they recognized Thomasch for his outstanding legal career. The award has no established procedure for selection nor is it given on a systematic basis. It originates with the Colorado State Committee when one or more Fellows raise the suggestion that a particular lawyer is sufficiently qualified and had made a unique and important contribution to the legal community. **Daniel S. Hoffman** and deceased Judicial Fellow **William H. Erickson** are the only past recipients of the award.

COMPLEX LITIGATION COMMITTEE

The Complex Litigation Committee has published a new book on *Demonstrative Aids At Trial*. In this book the Committee identifies and unravels the legal and practical issues presented by demonstrative aids and offers suggestions for their persuasive and proper use. Included within the book are more than seventy pages of full-color sample exhibits; a thorough discussion of related law and rules; the best practices of experienced lawyers, with general guidelines all lawyers should follow; insights into the views of highly experienced federal trial judges, along with the opinions of jury consultants; and useful checklists for judges and lawyers. Former Complex Litigation Committee Chair **Harry J. Roper** and Complex Litigation Committee Member **Douglas R. Dalgleish** served as editors-in-chief of the publication. The book is available for purchase on the Bloomberg BNA website, https://www.bna.com/demonstrative-aids-trial-p57982087143/. Fellows are eligible to receive a 25% discount by using the code ACTL17.

FLORIDA

On May 24, 2017, eight Florida Fellows from Tallahassee, Jacksonville and Gainesville hosted a Legal Services Training Program at the Fred Levin (University of Florida) College of Law. The daylong program allowed attendees to participate in each phase of a trial and then receive the benefit of suggestions on each performance from Fellows in their group. Kathy Grunewald with Legal Services coordinated the program for the Fellows and her planning and attention to detail created a great

opportunity for professional growth for the participants and the Fellows as well. The fifteen legal services attorneys in attendance were enthusiastic, energetic and especially motivated to improve their trial skills. Their feedback regarding the program taught all how much can be gained from this sort of outreach by the College. The North Florida Fellows in attendance were: **Jeptha F. Barbour**, **Alan Chipperfield**, **Angelo M. Patacca, Jr.** and **George E. (Buddy) Schulz, Jr.** from Jacksonville; **Larry D. Simpson**, **James P. Judkins** and **S. William Fuller, Jr.** from Tallahassee; and **John D. Jopling** from Gainesville. Many thanks to Judkins and Fuller for organizing this very successful event.

MISSOURI

An interactive mock trial CLE was presented by the Missouri Fellows in partnership with Saint Louis University Law School on June 13, 2017. Titled "Trial Wars: Return of the Jury," the seminar focused on the adversarial skills and persuasion techniques for effectively trying a lawsuit both from plaintiff and defense perspective from opening statement through closing argument. During the presentation, presenters explained their trial strategy while attendees had the opportunity to ask questions.

NEW YORK-DOWNSTATE

An all-day program with 24 participants was held by Fellows from the New York-Downstate chapter on June 22, 2017. All participants were legal services lawyers. Held at the Jones Day office in downtown Manhattan, it included nine Fellows who acted as trainers. Titled "Direct & Cross Examination," it consisted of mock trial exercises using College materials. Fellows who volunteered to assist as trainers included: **Jonathan P. Bach**; **Peter A. Bicks**; **Barry A. Bohrer**; **Thomas Fitzpatrick**; **Shawn P. Kelly**; former New York-Downstate Committee Chair **Larry H. Krantz**; New York-Downstate Committee Chair **J. Bruce Maffeo**; **William J. Schwartz**; and **Charles A. Stillman**. The feedback received was overwhelmingly positive.

PUBLIC DEFENDERS

The committee, through a grant from the Foundation of the College, sponsored a seminar on implicit bias on May 12, 2017 at Fordham University Law School. Fellows **Paul Dewolfe**, **Maurice Grant**, Public Defenders Committee Chair **Brendan O'Neill** and **Leigh Skipper** attended the live presentation at Fordham. The two-hour seminar was a success. The presenters were Rachel Godsil, Director of Research at the Perception Institute and professor at Rutgers University Law School, and Alexis McGill Johnson, Executive Director of the Perception Institute. The presentation was filmed and then formatted into two separate videos, each one hour long. In Part 1, Godsil and Johnson address racial paradoxes (why outcomes do not seem to align with society's egalitarian values) and implicit bias. In Part 2, Godsil covers racial anxiety, stereotype threat, and then took questions from the audience. The videos are available on the College YouTube channel.

TEACHING OF TRIAL AND APPELLATE ADVOCACY

On July 14, 2017, the committee presented its one-day Bootcamp Trial Training Program at the Federal Courthouse of San Francisco. The program was co-sponsored by the San Francisco Bar Association and the ABA's Litigation Section, and coordinated under the leadership of Northern California State Committee Chair **William P. Keane** and **Teresa M. Caffese** and Teaching of Trial and Appellate Advocacy Committee Chair **Paul Mark Sandler**.

Teaching of Trial and Appellate Advocacy Committee Chair Paul Mark Sandler during the one-day Bootcamp Trial Training Program that was held at the Federal Courthouse of San Francisco.

TEXAS

For the first time, the Texas Fellows will offer an all-day Ethics Litigation CLE program on Thursday, September 28, 2017 at the Marriott Marquis in Houston, Texas. The program, "Ethics and Litigation: A Radically Different Approach," will consist of real-life trial demonstrations conducted by widely known lawyers and ethics experts. There also will be a twelve-person jury during the exercise, and there will be a panel discussion following the jury's verdict. Attendance will be limited to ACTL Fellows and lawyers from their firms. The cost is $250, and six hours of ethics CLE credit will be provided.

UTAH

On May 24, 2017, the Utah Chapter and the University of Utah College of Law co-sponsored a half-day symposium on the topic of Implicit Bias. The symposium was funded, in part, by a public service grant from the Foundation. The symposium featured as its guest speaker the Hon. Mark Bennett, a Senior U.S. District Court Judge from the Northern District of Iowa, who has written and spoken on this subject extensively and who delivered a powerful and provocative presentation. In addition, the program included three skills-based sessions during which Fellows **Kathryn N. Nester**, **Alan L. Sullivan** and **Richard D. Burbidge** effectively demonstrated how to identify implicit bias through juror voir dire, address it in opening statements and expose it during cross-examination. The brief demonstrations were then followed by panel discussions with Judge Bennett, local jurists and Fellow **Andrew M. Morse**. The symposium drew almost 100 participants consisting of state and federal judges; representatives from the Federal Public Defender's Office, the U.S. Attorney's Office and the Legal Services Corporation; and local prosecutors and private practitioners. The topic of implicit bias is one of great importance to the College and the fair administration of justice. Judges, advocates, litigants and jurors all come to the table with implicit biases that influence how they interpret evidence, understand facts, parse legal principles and make judgment calls. The symposium provided participants the opportunity to better understand this concept and consider various ways of addressing its impacts in the courtroom. Many participants expressed appreciation for the program, frequently describing it as "one of the best CLEs I have ever attended." Many others suggested that they left the symposium with much to think about and more reading to be done. The success of the symposium was enhanced by the Utah Chapter's ability to donate $8,000 from the registration fees to "And Justice For All," an organization whose continued viability in the community is critical to providing free civil legal aid for individuals and families struggling with abuse, disability, discrimination and poverty. The organization was recognized with the 2008 Emil Gumpert Award.

VERMONT

Vermont Fellows contributed to the inaugural VBA Trial Academy on July 21, 2017 at the Vermont Law School (VLS). The daylong program included contributions from presiding judges from the federal, state and Vermont Supreme Court benches; VBA Young Lawyers Division members; and volunteers from the Consumer Assistance Program and the Vermont Law School. The teaching session was organized to allow an opportunity for lawyers to present a variety of trial segments in either a criminal or civil mock trial setting. Each participating lawyer was critiqued in an individual courtroom by one of the following volunteer presiding judges: U.S. District Court Judge Christina Reiss, Justices Harold Eaton and Karen Carroll, and Vermont Superior Court Judges Thomas Zonay, Cortland Corsones, Samuel Hoar and Judicial Fellow **David Fenster**. Vermont State Committee Chair **David L. Cleary**, **Richard I. Rubin**, **Karen McAndrew**, **James W. Murdoch**, **Robert L. Sand**, **E. William Leckerling III** and **Peter B. Joslin** joined the judges in offering thoughtful and detailed critiques of the lawyer participants as they presented opening statements, direct and cross examinations of fact and expert witnesses, and closing statements in seven classrooms, each set up as courtrooms at VLS. The event closed with a brief plenary debriefing where each volunteer judge spoke about the day's experience, the quality of presentations and the importance of trial advocacy. The Vermont Bar Association is seriously considering making the Trial Academy an annual CLE joint event with the Vermont Fellows.

Vermont Fellows and judges offered thoughtful and detailed critiques of the lawyer participants as they presented opening statements, direct and cross examinations of fact and expert witnesses and closing statements during the VBA Trial Academy.

FOUNDATION UPDATES

POWER OF AN HOUR

The Foundation's Power of an Hour campaign has been a resounding success. This year the Foundation saw an increase in donations of 42% as Fellows answered the call to contribute the equivalent of one billable hour. You can learn more about the Foundation's worthy causes by reading the 2017 Annual Report or visiting the website at www.actl.com/foundation.

EMIL GUMPERT AWARD

The Foundation's largest gift has traditionally been for the Emil Gumpert Award. The award recognizes programs, public or private, whose principal purpose is to maintain and improve the administration of justice. The programs considered may be associated with courts, law schools, bar associations or any other organization that provides such a program.

Applications for the 2018 Award are due October 2 and the form may be downloaded from the website, www.actl.com/gumpertaward. Fellows have been a source of applicant referrals in the past, and they are encouraged to urge worthy organizations to consider applying. For any questions regarding the award or application process, contact Amy Mrugalski at the National Office, amrugalski@actl.com.

CORRECTION/ERRATA

In issue 84 of the *Journal*, a photo caption in the article titled, "Canadian Competitions Shape Next Generation of Trial Lawyers" was incorrect. Olivier Kott is the Quebec Province Committee Chair.

MAY IT PLEASE THE COURT: EFFECTIVE ORAL APPELLATE ADVOCACY

In 1986, by a 3-to-2 vote, the Utah Supreme Court, in *State v. Long*, overturned a conviction based on an eyewitness identification, citing the trial court's failure to give a cautionary instruction where the eyewitness identification was central to proof of guilt. Thereafter, *Long* instructions became routine in Utah trial courts.

In 2001, the Utah Supreme Court suggested that expert testimony was appropriate in situations where the eyewitness identification was key to the state's case, but it left its admission to the discretion of the trial courts. Trial courts generally exercised their discretion to exclude such testimony and simply gave a *Long* instruction. This brings us to Deon Clopten.

In 2008, the Utah Court of Appeals affirmed Deon Clopten's murder conviction for shooting a rival gang member outside a club. Eyewitness identification was central to the state's case. Clopten contended his cousin was the shooter. He argued witnesses who identified him were confused by the similarity of the red clothing the two wore, and he sought to introduce expert testimony about the unreliability of eyewitness identifications. The trial judge declined to admit the expert evidence, based in part on the state's argument that there was a trend against admitting such evidence when a *Long* instruction was given.

Following Clopten's conviction, the Utah Court of Appeals held that the trial judge did not abuse his discretion in excluding expert testimony. The court's opinion, however, marshaled post-*Long* case law from other jurisdictions and scholarly studies suggesting that cautionary instructions were inadequate to address the problems inherent in eyewitness identification. The court affirmed only because the Utah Supreme Court's decision appeared clear that the trial court had broad discretion on the issue.

Michael Zimmerman, a Fellow of the American Academy of Appellate Lawyers, who had authored *Long* while on the Utah Supreme Court and was now in private practice, took the case pro bono, obtained a grant of certiorari and briefed the matter.

In Austin, Texas, on Friday, June 23, 2017, this case was the basis for a program called "May It Please the Court: Effective Oral Appellate Advocacy." It was presented to public interest lawyers by the American College of Trial Lawyers and the American Academy of Appellate Lawyers – the first time these two organizations have collaborated.

Developed by the College's Teaching of Trial and Appellate Advocacy Committee, chaired by **Paul Mark Sandler**, and the College's Access to Justice Committee, chaired by **Barry Abrams**, in conjunction with the American Academy, the entire program was videotaped. It will be available for state and province committees to use as a

The program "May It Please the Court: Effective Oral Appellate Advocacy" was presented by the College and the American Academy of Appellate Lawyers at the University of Texas School of Law. The entire program was videotaped to be used as a training tool for public interest lawyers.

training tool for public interest lawyers in their communities. Here is how the program, with its stellar cast of participants, proceeded:

After a brief welcome by Abrams on behalf of the College, a lecture was given on how to prepare for and present an appellate oral argument. Immediately thereafter, the case was argued twice to a panel of three mock (one was real) judges. Past President **Chilton Davis Varner**, and a Fellow of the American Academy, led off as appellant. After that argument was over (complete with sharp questioning from the bench), Former Regent **Dennis R. Suplee**, presented a second argument as the appellant, again to much questioning from the bench.

Michael Zimmerman then discussed the actual oral argument, using PowerPoint clips of some of the questioning by the Utah Supreme Court. and explaining his thinking and goals in presenting the argument in the manner he did. The program ended with a spirited panel discussion on how to handle appellate oral arguments and various strategic issues that can arise in them. It was moderated by Abrams and **Sylvia H. Walbolt**, a former President of the Academy and a former Chair of the College's Teaching of Trial and Appellate Advocacy and Access to Justice and Legal Services Committees. In the remaining time, the panel responded to questions from the audience. Starting at 8:00 a.m., it concluded right on time at noon.

All participants in the program contributed considerable time to make it happen as successfully as it did, as well as covering their own out-of-pocket expenses. The Foundation paid half of the video cost. Abrams was indispensable in the final weeks of preparation, dealing with a multitude of logistical issues. The University of Texas School of Law provided the courtroom and important supporting staff assistance.

Given the resounding success of this program, it may be just the beginning of a productive collaboration between the College and the Academy in developing and presenting appellate advocacy programs to public interest lawyers. And, hopefully many State and Province Committees will present programs using the video.

So – how was *State v. Clopten* resolved? Five to zip for reversal.

Sylvia H. Walbolt
Tampa, Florida

NATIONAL OFFICE UPDATES

JOURNAL, ANNUAL REPORT WIN INTERNATIONAL AWARD

The College was named the winner of a Gold Stevie® Award in the Best House Organ – For Customers (Public Enterprise, Government, Association) category in the 14th Annual International Business Awards as well as the winner of a Bronze Stevie® Award in the Best Annual Report – Print – Non-Profit or Government Organizations category. The International Business Awards are the world's premier business awards program. All individuals and organizations worldwide – public and private, for-profit and non-profit, large and small – are eligible to submit nominations. The 2017 IBAs received entries from more than 60 nations and territories. Nicknamed the Stevies for the Greek word for "crowned," the awards will be presented to winners at a gala awards banquet at the W Hotel in Barcelona, Spain on October 21. A record total of more than 3,900 nominations from organizations of all sizes and in virtually every industry were submitted this year for consideration in a wide range of categories, including Company of the Year, Marketing Campaign of the Year, Best New Product or Service of the Year, Startup of the Year, Corporate Social Responsibility Program of the Year, and Executive of the Year, among others.

The *Journal* was recognized with the Gold Stevie Award. It was deemed by judges as "interesting and well-coordinated" and "simple, effective [,and its] typographic organization is clear and beautiful." The 2016 Annual Report of the Foundation, selected for the Bronze Stevie Awards, was considered by judges to be "well-designed and expressed" and an "excellent example [of] nice, bold, readable typography."

"The College is proud of all those who contributed to the *Journal* and to the Annual Report," said Dennis Maggi, Executive Director of ACTL. "Both publications are a testament to the excellence of the College and the good work advanced by our Fellows and the Foundation."

Stevie Award winners were determined by the average scores of more than 200 executives worldwide who participated on 12 juries.

COLLEGE SWITCHES TO ASSOCIATION ANYWHERE E-COMMUNICATION FOR SENDING MESSAGES TO FELLOWS

The College will be sending out important news for Fellows through our database system, Association Anywhere. Please adjust your email settings and ensure actl@mailams.actl.com is added to your firm's whitelist so mail originating from Association Anywhere will always be allowed. Contact the National Office for more details.

SPECIAL COLLEGE PUBLICATIONS AVAILABLE

For a limited time, *Sages of Our Craft – The First Fifty Years of the American College of Trial Lawyers* and *No Fault Cooking*, a compilation of recipes submitted by Fellows and their spouses, edited by Past President Robert L. Clare, Jr. are available. Fellows interested in obtaining a copy of the publications may contact nationaloffice@actl.com. ■

FELLOWS TO THE BENCH

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

Peter Kalichman
Westmont, Quebec
Effective June 21, 2017
Judge
Superior Court of Québec
District of Montreal

Jocelyn Speyer
Toronto, Ontario
Effective July 2017
Judge of the Central East Region
Superior Court of Justice, Ontario

John P. McDonald
Watchung, New Jersey
Effective July 12, 2017
Judge
Superior Court, Somerset County

Heather J. Williams
Ottawa, Ontario
Effective April 2017
Judge of the East Region
Superior Court of Justice, Ottawa

The College extends congratulations to these Judicial Fellows.

AWARDS & HONORS

William Robert Garmer of Lexington, Kentucky was sworn in as President of the Kentucky Bar Association (KBA) during the 2017 KBA Annual Convention in June. Garmer has served on the Kentucky State Committee. He has been a Fellow since 1992.

Hilarie Bass of Miami, Florida was installed president of the American Bar Association at its annual meeting in August. She has served on the Florida State and Teaching of Trial and Appellate Advocacy committees. Bass has been a Fellow since 2011.

Conrad K. Harper of New York, New York was awarded the Henry J. Friendly Medal of the American Law Institute at its Annual Meeting in May 2017 in Washington, D.C. Established in memory of Judge Henry J. Friendly and endowed by his former law clerks, the Friendly Medal is not awarded on an annual basis but reserved for recipients who are considered especially worthy of receiving it. The medal recognizes contributions to the law in the tradition of Judge Friendly and the Institute and is not limited to ALI members or those associated with its projects. Harper has served on the College's Admission to Fellowship and District of Columbia State Committees. He has been a Fellow since 1982.

IN MEMORIAM

The following thirty-eight memorials to departed Fellows of the College whose deaths have been recently reported bring to 1,468 the total that we have published over the years since we began this feature of the *Journal*. This growing body of tributes is the essence of the College's history. The professional stature of each person is presumed from his or her having been invited to become a Fellow. The stages on which each of their professional and personal lives played out are often remarkably different. In these memorial tributes, we focus on what set each of them apart, where they came from, the course of their professional lives and of their lives outside the law through their post-retirement years.

✦

Two were sons of immigrants who came seeking a better life for themselves and their children. The story of one springs from the almost forgotten century-old Armenian Genocide. Another, foreclosed from the college of his dreams because his parents could not produce the $500 contribution that its scholarship offer required, found another school from which he graduated a three-sport letterman, two-sport captain and a member of both Phi Beta Kappa and ODK. One was the son of a Brooklyn union organizer. One was the fifth son of a father who died when he was nine-years-old. One who studied law at night while working in a law firm finished first in his class. Another went to law school because his wife insisted that he do so; she paid his tuition from her modest earnings as a schoolteacher. One who at age two could recite the alphabet, name over sixty explorers who had visited the New World and name all of the Presidents of the United States, became the Editor of the *Harvard Law Review*.

✦

The number of those who served in World War II, ten in all, is for the first time exceeded by those who served in the Korean and Vietnam eras. One World War II naval officer had witnessed from the deck of his ship the legendary raising of the flag on the crest of Iwo Jima's Mount Suribachi by a group of Marines. One came home from the Pacific Theater with a Bronze Star and six battle stars; another had three years of combat infantry experience in Korea. One was assigned to a unit of the United States Army Quartermaster Corps whose task was to build cemeteries and bury in them dead United States soldiers killed in France and Germany.

✦

Their careers took many courses. The news article noting the death of one featured the five high-profile death penalty cases to which he had devoted much of his career. Another had prosecuted the infamous Richard Speck, whose murder of eight nursing students was the first mass killing of strangers in the 20th Century. He then wrote a book to call attention to this disturbing new phenomenon. Another defended an accused in the infamous BCCI banking case. One, a prosecutor, had never lost a death penalty case. Turning to private practice as a white-collar criminal defense attorney, he never lost a death penalty case brought against a client.

✦

Their obituaries were filled with glowing descriptions of them as human beings. The law firm of one created an award in his name, given not for professional success, but for deep understanding of the interdependent role of each player in a large law firm. Another had a conference room in his local U.S. Attorney's office posthumously named for him.

Several practiced in large national firms. Others practiced in a family firm with a parent or one or more children. Many were mentors of young lawyers who went on to their own successful careers. One mentored a future Vice President of the United States. Another, who had mentored a young lawyer who went on to become the governor of his state, voluntarily took leave from his law firm to act as that governor's in-house counsel.

✦

One sat by appointment in a case in his state's highest court after all its members had recused themselves. One, an international scholar, had led the first United States delegation to visit China after President Richard Nixon and Chairman Mao had agreed to open that possibility. Many were legal scholars, law review editors, appellate court clerks, writers, adjunct professors and lecturers. One translated a four-volume text on Jewish law into English.

✦

Not surprisingly, many had been chairs of College committees. Many devoted a substantial part of their lives to leadership of public service, charitable and religious organizations. Their outside interests were broad. Many became world travelers in their later years. One collected everything from old guns to wooden canoes. One had sewn over a hundred quilts for her friends and, dying, had asked that those who attended her memorial service bring their quilt. Their physical activities ranged from college varsity teams to amateur activities in their later years. One in his later years played amateur ice hockey; another became an international rugby club star. One ran twenty marathons, ten of them in Boston. One played tennis daily until his approaching terminal illness prevented it.

✦

The number who live into their late eighties and nineties, about two-thirds of the total, remains constant. The number who die at a younger age of things such as ALS, glioblastoma, Parkinson's Disease and Alzheimer's Disease, to which the older ones among us were until recently strangers, remains steady. Their longevity is remarkable, clearly the product of engaged lives. One served as a local judge pro tem until he was ninety-two and, as a volunteer, drove cancer patients to their treatment centers until he was ninety-four. One practiced until he was ninety-three. One collapsed and died at counsel table at age ninety-one.

✦

And last, the part played by long-term marriages remains constant. Fourteen deceased Fellows had marriages that had lasted over fifty-three years by the time of the death of the first of the pair, ten of those for sixty or more, one for seventy-two years. One, married for sixty-six years, left a widow who was herself a retired lawyer.

✦

Sadly, some of the memorials that follow are abbreviated. Some Fellows clearly choose to follow the adage that the road to senility is paved with plaques and thus instruct their survivors not to publish obituaries that dwell on their lives and their accomplishments. Others, long retired, have simply have fallen out of sight of those who knew them. We continue to urge the Fellows in each state and province to let the College know what they can tell us about the lives of their departed Fellows. We, and the College, will be the richer for that effort.

E. Osborne (Ozzie) Ayscue, Jr.
Editor Emeritus

Everette Garrett (Buddy) Allen, Jr., '86, LeClaire Ryan, Richmond, Virginia, died May 29, 2017 at age seventy-six. A philosophy major and three-sport varsity athlete–football quarterback, basketball shooting guard and baseball pitcher and shortstop–who attended Randolph-Macon College on a four-year academic scholarship, he captained two varsity teams and was elected to both Phi Beta Kappa and ODK. He went on to earn his law degree at the University of Virginia, where he was Executive Editor of its law review and a member of the Order of the Coif. He practiced in Richmond his entire career. Known for his larger-than-life persona as a lawyer, negotiator and entrepreneur and for his generosity, he was the recipient of an Honorary Doctor of Laws from his alma mater, as well as being elected to its Athletic Hall of Fame. His memory of not being able to attend the college of his dreams because the scholarship it offered required his family to contribute $500, which his parents did not have, prompted him and his wife to include among their many charitable efforts the creation of the Buddy and Ann Allen Scholarship, which in its first seven years had enabled twenty-five students from Richmond to attend Randolph-Macon. His survivors include his wife of fifty-six years, a daughter and two sons.

Harry Culbertson Armstrong, '75, a Fellow Emeritus, retired from Reed Armstrong, Edwardsville, Illinois, died June 29, 2017 at age eighty-five. A graduate of the University of Illinois and of its law school, he then served as an officer in the United States Army Judge Advocate General Corps during the Korean Era in both the United States and Korea. He thereafter spent his entire career with one Edwardsville firm. He served as President of his county bar. His survivors include his wife of sixty years, two daughters and a son.

Sidney Balick, '85, a Fellow Emeritus, retired from Balick & Balick, Wilmington, Delaware, died May 18, 2017 at age eighty-five after a brief illness. The son of immigrants who had brought their children to the United States seeking a better life, he was a graduate of the University of Delaware and of Dickinson School of Law. Within a year of his graduation from law school, he became Delaware's first Family Court Master, serving for six years. For decades he served on the Professional Guidance Committee of the Delaware State Bar and the Delaware Supreme Court's Board of Professional Responsibility. He served for a number of years as Attorney for the State Senate, as a member of the State Board of Corrections and the Delaware House of Representatives. One of his early young associates was Vice-President-to-be Joe Biden. He served the College as Delaware State Committee Chair. Remembering the influence of his Boys Club on his early life, he served on the Board of the Delaware Boys Clubs for more than forty years. A regular runner, he ran twenty marathons, including ten Boston Marathons. His survivors include his wife of fifty-five years, two daughters and a son.

William Stephen Bon, '89, a Fellow Emeritus, retired from Schwartz, Bon, Walker & Studer, Casper, Wyoming, in which he had practiced until his death at age ninety-three, died February 1, 2017. He attended New Mexico Military Institute, finishing his undergraduate work at the University of New Mexico. After service in the South Pacific as an officer in the United States Navy in World War II, he earned his law degree from the University of Wyoming. He served as a municipal judge and as President of both his county Bar and the Wyoming State Bar. He also served the College as Wyoming State Committee Chair. His wife of sixty-three years predeceased him by seven months.

Lanny Boone Bridgers, '92, Atlanta, Georgia, died May 16, 2017 at age seventy-four. Growing up on a farm in eastern North Carolina, he was a graduate of the University of North Carolina, which he attended on a Morehead Scholarship, and then, with high honors, from its School of Law. He served for three years as a United States Marine Corps Intelligence Officer on the aircraft carrier *USS Enterprise*. He practiced with the Atlanta firm King & Spalding until

2000 and thereafter in as solo practice on a case-by-case basis for nine more years. A divorcé, his survivors include a daughter and a son.

Richard P. Brown, Jr., '68, Fellow Emeritus, retired from Morgan Lewis and Bockius LLP, Philadelphia, Pennsylvania, died May 30, 2017 at age ninety-six. A graduate with honors from Princeton, he then served in the United States Navy in World War II, participating in the campaign in the Marianas and in the invasions of Iwo Jima and Okinawa. From the deck of his ship at Iwo Jima, he witnessed the raising of the United States flag by a group of Marines atop Mount Suribachi. Returning with six campaign stars and a Bronze Star, he earned his law degree from the University of Pennsylvania. He led his firm's litigation practice for ten years and retired in 1988. A member of the Council on Foreign Relations and other related organizations, including the Foreign Policy Research Institute, he chaired the International Law Section of the American Bar Association. He led the first group to tour China after President Nixon persuaded Chairman Mao to open relations with the West. In retirement, he acted as a voluntary judge pro tem until he was ninety-two, and for twenty years, until he was ninety-four years old, he was a volunteer driver, transporting cancer patients to treatment centers. His wife of thirty-six years had predeceased him.

Edward Poland Camus, '78, a Fellow Emeritus from Olney, Maryland and living in Alto, New Mexico, died September 2, 2016 at age eighty-four. A graduate of the University of Maryland and of George Washington School of Law, he long served as a district public defender. His survivors include his wife, two daughters and a son.

Gary James Clendening, '90, Clendening, Johnson & Bohrer PC, Bloomington, Indiana, died November 16, 2016 at age seventy-two of a form of leukemia. A graduate of the University of Indiana and of its School of Law, he served three years as an officer in the United States Marine Judge Advocate General Corps. A Past President of the Indiana Defense Lawyers Association, he served the College as Indiana State Committee Chair. Leaving active practice in 2015, he played tennis almost daily so long as he was able. His survivors include his wife of nineteen years, two daughters and three stepsons.

Paul R. Cressman, Sr. '70, a Fellow Emeritus, Bellevue, Washington, died October 7, 2016 at age ninety-four of kidney failure. After graduating from the University of Washington, where he was a member of the golf team, he served in the United States Army Quartermaster Corps in World War II. His unit's assignment to build cemeteries in France and Germany and bury United States soldiers had a lasting effect on his life. He practiced in Seattle until his retirement. In the course of his career, he was a member of the Washington State Bar Board of Governors, Chair of the University of Washington President's Club and a Trustee of the University of Washington Alumni Association. He was President of a charitable foundation for over fifty years and served on the Board of the Museum of Flight. A widower who had remarried, his survivors include his wife of twenty-eight years and two sons.

John T. (Chuck) Dolan, '84, a member of Gibbons P.C., Newark, New Jersey, died May 24, 2017 at age eighty-six. He was a graduate of the College of Holy Cross and of Fordham Law School, where he was Associate Editor of the law review. After serving for three years as a legal officer in the United States Marine Corps during the Korean Conflict, he spent his entire career at one law firm as it evolved over time. He served as Trustee, President and Chairman of the Trial Lawyers of New Jersey and served as the College's New Jersey State Committee Chair and as a member of two general committees. In 2013, his firm created the John T. Dolan St. Patrick's Day Award, given to employees to recognize their devotion to the firm and its members, a positive attitude towards the workplace, compassion and diligent effort on behalf of clients of the firm. He served as a Knight of Malta for thirty years and endowed a fund at Holy Cross to benefit inner city students who had attended his local preparatory school. His survivors include his wife of fifty-nine years, four daughters and three sons.

Robert Keith Drummond, '86, a Fellow Emeritus, who practiced with Strasburger & Price in Dallas, Texas, but was living in Nashville, Tennessee at the time of his death, died July 25, 2017 at age eighty-three. A graduate of the University of Tennessee, where he lettered in varsity football, he earned his law degree from the University of Texas. Between undergraduate and law school, he served in the 101st Airborne Division of the United States Army. A remarried widower whose first wife of forty-eight years had died, his survivors include his second wife and two daughters.

Noel Margaret Ferris, '12, Sacramento, California, died May 21, 2017 at age sixty-eight, of ALS. She was a graduate of Stanford and of the McGeorge School of Law at the University of the Pacific, where she met her husband, also a lawyer. She was revered as a model of combining a high-profile trial practice with the role of a mother who cooked, sewed her children's Halloween costumes, maintained a garden and made hundreds of handmade quilts for her friends. She was the first Sacramento lawyer invited into the International Association of Defense Counsel and had recently been elected its President. She also served as a Regent of the University of the Pacific. She had requested that those attending her memorial service for whom she had sewn a quilt bring it with them. Her survivors include her husband and three daughters.

Jervis Spencer Finney, '82, a Fellow Emeritus, retired from Ober, Kaler, Grimes & Shriver, Baltimore, Maryland, died April 9, 2017 at age eighty-five, of congestive heart failure. A cum laude graduate of Princeton University, he served as a paratrooper in the United States Army 11th Airborne Division before earning his law degree at Harvard Law School. In a life that wove its way between law practice and public service, he was elected to the Baltimore Council four years out of law school. Four years later, he was elected to the Maryland State Senate, serving two terms. He was then named United States Attorney for the District of Maryland, succeeding College Fellow George Beall, who had prosecuted Vice President Spiro T. Agnew. Finney's term was dominated by the corruption trial of Governor Marvin Mandell. After rejoining his old firm, Finney served on the Maryland State Ethics Committee and as Special Counsel to the Joint Legislative Ethics Committee, whose work resulted in the first expulsion in over two centuries of a member of the Maryland General Assembly. When Robert L. Ehrlich, Jr., was elected Governor of Maryland, Finney, who had been his first supervisor at Ober Kaler, became his legal counsel. Finney retired from Ober Kaler in 2016. He had served the College both as Maryland State Committee Chair and as Chair of a general committee. A conference room in the Maryland United States Attorney's office has been named for him. His survivors include his wife of forty-two years and two sons.

John Clark Frakes, Jr., '84, a Fellow Emeritus, Grosse Pointe Woods, Michigan, died January 18, 2017 at age eighty-four. He was a graduate of Michigan State University and of the University of Michigan Law School. His survivors include his wife and three daughters.

William Roger Fry, '95, Rendigs, Fry, Kiely & Dennis, LLP, Cincinnati, Ohio, died May 2, 2017 at age seventy-seven, of ocular melanoma. After earning his undergraduate degree at the University of Cincinnati, he went to work in the law firm of his father, also a Fellow of the College, attending night classes at Salmon P. Chase College of Law, graduating first in his class. In a remarkable stream-of-consciousness obituary, his family described him as a lifelong collector–of guns, art of the American West, Native American art, vintage brass bolts, old wooden canoes and carved furniture. He turned his collecting activity to the camera, tracing the migratory patterns and other activities of birds. He travelled from the northernmost inhabited place in the Western Hemisphere to its southernmost one. He was also a writer. He wrapped up his last cases two months before his death. In his spare time, he had been a member of the local City Council. His survivors include his wife of fifty-three years and three sons.

Paul J. Geragos, '83, retired from Geragos & Geragos, Los Angeles, California, the son of two Armenian Genocide survivors, died October 21, 2016 at age eighty-nine. His father died when he was young and his mother remarried. He graduated from the University of California at Los Angeles. Four years later, his wife, a schoolteacher, insisted on putting him through law school. He graduated from the University of Southern California School of Law and went to work as a Deputy District Attorney in Los Angeles. During his thirteen-year career as Major Crimes Prosecutor he won over twenty death penalty cases without a loss. When it came time to begin putting his three sons through college, he formed his own law firm, which eventually would include two of those sons. In private practice as a criminal defense attorney he defended seventeen death penalty cases, and none of his clients received the death penalty. A Past President of the Armenian Professional Society, he was for over forty years General Counsel of the Western Diocese of the Armenian Church of North America. His survivors include his wife of sixty-three years and three sons.

Bradford Morris (Buck) Gearinger, '89, a Fellow Emeritus from Akron, Ohio, died May 30, 2017 at age seventy-six. After graduating from the University of the South and Vanderbilt Law School, he served for three years as a Legal Officer in the United States Marine Corps in the Vietnam War era. A Past President of the Akron Bar, he had been honored with its Professionalism Award. His survivors include his wife and a son.

George F. Gore, '84, a Fellow Emeritus from Avon, Ohio, died April 11, 2017 at age seventy-seven. A graduate of the University of Notre Dame and of the Western Reserve University Law School, he then spent two years in the United States Army before going to work in the office of the General Counsel of the United States Department of Health, Education and Welfare. He then entered private practice. A Past President of the International Association of Defense Counsel, he served the College as Chair of its Ohio State Committee. His survivors include his wife, two daughters, a son and three stepsons.

Jerald Edmund Jackson, '67, a Fellow Emeritus, retired from Samuels, Miller, Schroeder, Jackson & Sly, Decatur, Illinois, died May 17, 2016 at age ninety-four. A graduate of Western Illinois University, his legal education at the University of Chicago Law School was interrupted by service as an officer in the United States Army Air Corps in World War II. Returning and graduating as a member of the Order of the Coif, he thereafter spent his entire career with one firm, serving as President of his local Bar and in numerous civic and church-related positions. His survivors include his wife of seventy-two years and four sons.

William Russell Jones, Jr., '85, Jones, Skelton & Hochuli, P.L.C., Phoenix, Arizona, died May 7, 2017 at age seventy-eight. The son of a country lawyer, he was a graduate of the University of Michigan and of its Law School. Confinement to a wheelchair did not limit his extensive litigation experience. He was the first Chair of the Arizona State Bar Workers' Compensation Committee and a participant in rewriting the rules for proceedings in that area. He received the College's Samuel E. Gates Litigation Award in 2003 for his extensive contribution to the litigation process. An adjunct professor at Arizona State University Law School, he was Chair of the Trustees of the Scottsdale Memorial Hospital. He served the College as Arizona State Committee Chair and as Chair of its Access to Justice and Legal Services Committee. His survivors include his wife, a daughter and a son.

Larry Lee Lambert, '77, Fellow Emeritus, Wichita Falls, Texas, died April 27, 2017 at age eighty-six. His undergraduate degree was from Midwestern State University and his law degree was from the University of Texas. He then served as a Special Agent in the United States Army Counterintelligence Corps. He practiced with several firms over his fifty-seven-year career. Past President of his county Bar, he had been an Assistant City Attorney and a member of the Wichita Falls City Council, including a year as Mayor pro tem. He chaired the Midwestern State University Board of Regents and its former students' association. His survivors include a daughter and three sons.

Patton Greene Lochridge, '97, Austin, Texas, McGinnis, Lochridge & Kilgore, LLP, died June 1, 2017 at age sixty-seven, of glioblastoma. He graduated from the University of Texas and, with high honors, from its School of Law, where he was Associate Editor of the law review and a member of the Order of the Coif. He then served as a law clerk for a judge on the Federal Court of Appeals for the Ninth Circuit. He had been named a Texas Legal Legend by the Texas State Bar Litigation Section and was named the University of Texas Outstanding Alumnus in 2015. In adulthood, he had learned to play rugby and played on club teams at the national and international levels. His survivors include his wife of almost twenty-two years, a daughter and a son.

William J. Martin, '81, a sole practitioner from Oak Park, Illinois, died in July 2017 at age eighty, of cancer. A graduate of Loyola University and of its School of Law, he was Assistant State's Attorney for Cook County in the early years of his practice and for ten years an assistant Professor of Law at the Northwestern University Pritzker School of Law. He successfully prosecuted Richard Speck, convicted of the 1966 murders of eight student nurses, the first random mass murder in the United States in the 20th Century. He was the author of *Crime of the Century*, a detailed account of that saga and its aftermath. His obituary described him as an avid amateur hockey player. His survivors include three daughters and three sons.

Stephen A. Matthews,'77, a Fellow Emeritus, Bridges, Young, Matthews & Drake, PLC, Pine Bluff, Arkansas, died March 1, 2017 after losing consciousness at counsel table in a courtroom. He was ninety-one years old. The valedictorian of his high school class, upon graduation he entered the United States Navy. Discharged as an Ensign at the end of World War II, he earned his undergraduate degree and his law degree with honors from the University of Arkansas. He practiced in one firm for his entire career. President of the Arkansas Association of Defense Counsel, he chaired the Arkansas Bar Foundation and had received the Arkansas Bar Association's Outstanding Lawyer Award. He served on the local school board and served many times over as a Deacon and a Ruling Elder in his Presbyterian church. He served on the board of the local retirement center and was for eighteen years a member of the Board of the Austin Presbyterian Theological Seminary, which named him a trustee Emeritus. His survivors include his wife of sixty-six years, a son and two daughters.

Gustave H. Newman, '96, a Fellow Emeritus retired from Newman & Greenberg, New York, New York, died May 17, 2017 at age ninety. The son of a Brooklyn union organizer, he was a graduate of New York University and of its law school. A legend in the New York white collar defense bar, his most remembered case was his defense of Robert Altman, accused of money-laundering and illegal transfer of capital in the case involving the allegedly secret illegal acquisition of an American bank by the Bank of Credit and Commerce International. His survivors include his wife, a daughter and a son.

Hon. John J. O'Brien,'80, a retired Judicial Fellow from Milton, Massachusetts, died November 5, 2016 at age eighty-six. He was a graduate of Boston College and the New England School of Law and served as an officer in the United States Marine Corps during the Korean Conflict. Appointed an Associate Justice of the Superior Court of Massachusetts, he retired at age seventy, the mandatory retirement age. The New England School of Law had awarded him an Honorary Doctorate of Law. His survivors include his wife of sixty-two years, three sons, all of them attorneys, and a daughter.

Paul W. Painter, Jr., '92, a Fellow Emeritus, retired from Ellis, Painter, Ratterree & Adams, LLP, Savannah, Georgia, died May 27, 2017 at age seventy-one. An all-state high school football player, he attended Georgia Tech on a football scholarship. After three years active duty in the United States Navy, he graduated with honors from the University of Georgia School of Law, serving as Senior Editor of the law review. A Past President of the Georgia Law School Alumni Association and a member of its Board

of Visitors, he was President of the Savannah Bar Association and of the Georgia Defense Lawyers Association. He received the State Bar of Georgia's Tradition of Excellence Award, the Savannah Bar's Professionalism Award and the Paul W. Painter, Jr. Award from the Southeast Georgia Chapter of ABOTA. He was a founding member of the Board of Georgia Appleseed, Inc., a non-profit, nonpartisan public interest law center in addition to being active in leadership roles in several local charitable and public service organizations. His survivors include his wife of forty-five years and a son.

Peter N. Perretti. Jr., '90, a Fellow Emeritus, retired from Riker, Danzer, Scherer, Hyland & Perretti LLP, Morristown, New Jersey, died February 27, 2016 at age eighty-four. A graduate of Colgate College and Cornell Law School, he served as an Assistant County Prosecutor and later as Attorney General of New Jersey. The New Jersey Trial Lawyers Association had honored him with its Award for Contribution to the Justice System. His survivors include his wife, a daughter and two sons.

Elton A. Rieves, '81, a Fellow Emeritus from Mountain View, Arkansas, died June 20, 2016 at age eighty. An Eagle Scout, he received his undergraduate education from Southern Methodist University, where he was a member of the track team, and his law degree from the University of Arkansas School of Law. The author of a treatise on Arkansas law, he had been recognized with an award as the outstanding defense attorney in Arkansas in 2000. His survivors include his wife of twenty-one years, son and a stepson.

Jeffrey Bordeaux Smith,'84, a Fellow Emeritus, retired from Smith, Somerville & Case LLC, Sykesville, Maryland, died June 17, 2017 at age ninety, of Alzheimer's Disease. After serving in the United States Army Air Corps in 1945, he earned his undergraduate degree from then Western Maryland College and his law degree from the University of Maryland. After working as an in-house attorney for an insurance company, he entered private practice, retiring in 1990. He served in the American Bar Association House of Delegates and as President of the Maryland State Bar Association. A private pilot and an adventurer, his family took three trips to Alaska in their RV. His survivors include his wife of over sixty-eight years, four daughters and a son.

David Solomon, '80, a Fellow Emeritus, from Helena, Arkansas, died March 23, 2017 at age ninety-one. After attending Davidson College, he earned his undergraduate degree from Washington University in St. Louis and his law degree from Harvard Law School. He served for three years in the United States Army in World War II and served as City Attorney of Helena and as Chair of the Arkansas State Highway Commission. A long-time Chair of the Arkansas Bar Foundation, he served as a Special Associate Justice in a time when all of the judges of that court had recused themselves. He was also President of a local bank and an oil company. His wife of sixty years predeceased him. His survivors include three sons, one the Dean Emeritus of Rutgers Law School.

David Burford (Nick) Stutsman, '75, a Fellow Emeritus, retired from Walker & Williams P.C., Belleville, Illinois, died December 29, 2016 just short of age eighty-eight. He earned his undergraduate degree from the University of Oklahoma and his law degree from the University of Illinois. He then spent two years in the United States Army in the Korean conflict before entering private practice. He had been President of his local Bar. A widower with two sons, he spent much of his time in retirement at his residence in Florida.

Melvin Julius Sykes, '73, Fellow Emeritus, Baltimore, Maryland, retired in 2015 as of Counsel to Brown, Goldstein & Levy, LLP after sixty-seven years of practice, most of that as a solo practitioner, died May 22, 2017 at age ninety-three. The son of a former Chief Judge of the Orphans Court, his intellect had begun to emerge at age two, when he could already recite the alphabet, name sixty explorers who had visited America and name all the Presidents of the United States. A Phi Beta Kappa graduate of Johns Hopkins University, he then served in Italy as a staff sergeant in the 464th Bombardment Group in World War II. He earned his law degree magna cum laude from Harvard Law School, where he was Editor of the law review. He had the highest

grade on the 1949 Maryland Bar Examination. After clerking for a judge of the United States Court of Appeals for the Fourth Circuit, he spent over fifty years on the Rules of Practice and Procedure Committee of the Maryland Court of Appeals. An early champion of fair housing, he was a founding member of Baltimore Neighborhoods, Inc. Fluent in four languages other than English, he was a scholar of Jewish law and translated into English a four-volume work entitled *The Casebook of Jewish Law.* His survivors include his wife of sixty-six years, herself a retired lawyer, and three sons.

William J. Taylor, '76, Wynnewood, Pennsylvania, died June 16, 2017 at age eighty-seven. He was the fifth child of a father who died when he was nine years old. Drafted in the middle of his undergraduate education, he served as a combat infantryman in Korea, then returned to graduate from the University of Pennsylvania and from the Georgetown University Law Center. After a career at Morgan Lewis & Bockius, LLP, Philadelphia, he formed his own firm, Taylor and Taylor. He was a President of the National Association of Railroad Counsel and active in his Roman Catholic Church. Georgetown honored him with its highest honor, the John Carroll Award. He was playing tennis once a week until shortly before his death. His survivors include his wife of sixty-five years three daughters and three sons.

Roger P. Thomasch, '99, Ballard Spahr LLP, Denver, Colorado, died July 14, 2017 at age seventy-four, of cancer. A graduate of the College of William & Mary and of Duke University School of Law, he began his career in Stamford, Connecticut, then was a trial attorney in the United States Department of Justice for three years. He later served another year in that position. He taught for a year at Drake University Law School and continued for many years as a Visiting Associate Professor, winning its Outstanding Professor Award. He ended up in Denver, where he practiced until his death. The Colorado Fellows of the College had given him its third Lifetime Achievement Award. His survivors include a daughter and a son.

George M. Vetter, Jr., '70, a Fellow Emeritus, retired from Vetter & White, Providence, Rhode Island, died December 24, 2015 at age ninety. He was a graduate of the University of Michigan and of Harvard Law School. He spent four years as an Assistant United States Attorney in the Southern District of New York. He had been a member of the faculty of the Massachusetts Continuing Legal Education Trial Advocacy Program and was a published author. He served the College as Rhode Island State Committee Chair.

LeRoy R. Voigts, '83, a Fellow Emeritus, living in Waverly, Iowa, died April 26, 2017 at age eighty-nine. Born and raised on a family farm, after graduation from Warburg College, he taught and coached and then served in the United States Navy before earning his law degree at Drake University. He practiced law in Des Moines until his 2003 retirement, when he moved to Waverly. He had been President of his county Bar, the Iowa Defense Counsel and the Drake Law School Board of Governors and a member of the Warburg College Board of Regents. The deafness of a son who predeceased him led him to serve in leadership roles in organizations dealing with speech and hearing and other family and child-related issues. A widower whose wife of sixty-five years predeceased him, his survivors include two daughters.

Hershel Edward Wolch, Q.C., '93, Wolch deWit Watts & Wilson, Calgary, Alberta, died July 71, 2017 at age seventy-seven. He earned his undergraduate and law degrees from the University of Manitoba. A Past President of the Manitoba Trial Lawyers Association, and a 2015 recipient if the Law Society of Alberta's Service to the Profession Award, he was widely known for his representation of wrongfully accused criminal defendants. One such case involved a twenty-three-year campaign to gain the exoneration of a defendant imprisoned for life for murder. The emergence of DNA proof enabled him to free that client. Indeed, the regional newspaper article at the time of his death featured the five cases that defined his practice. He served on the Board of the Winnipeg Convention Center and was a bridge Life Master. ■

UPCOMING EVENTS

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

NATIONAL MEETINGS

2018 Spring Meeting
Arizona Biltmore
Phoenix, Arizona
March 1-4, 2018

2018 Annual Meeting
The Roosevelt
New Orleans, Louisiana
September 27-30, 2018

REGIONAL MEETINGS

REGION 7
Tri-State Regional Meeting
Savannah, Georgia
January 25-28, 2018

REGION 6
Oxford, Mississippi
April 20-22, 2018

STATE / PROVINCE MEETINGS

September 20, 2017	**Vermont Fellows Meeting**
September 22-24, 2017	**New Mexico Fellows Meeting**
September 29, 2017	**Nebraska Fellows Dinner**
October 20, 2017	**Indiana Fellows Dinner**
November 16, 2017	**Eastern Pennsylvania Fellows Dinner**
November 30, 2017	**Arkansas Fellows Dinner**
December 1, 2017	**Mississippi Fellows Dinner**
December 2, 2017	**Louisiana Fellows Dinner**
December 13, 2017	**Oregon Fellows Dinner**
December 14, 2017	**Washington Fellows Dinner**

JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
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"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

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.