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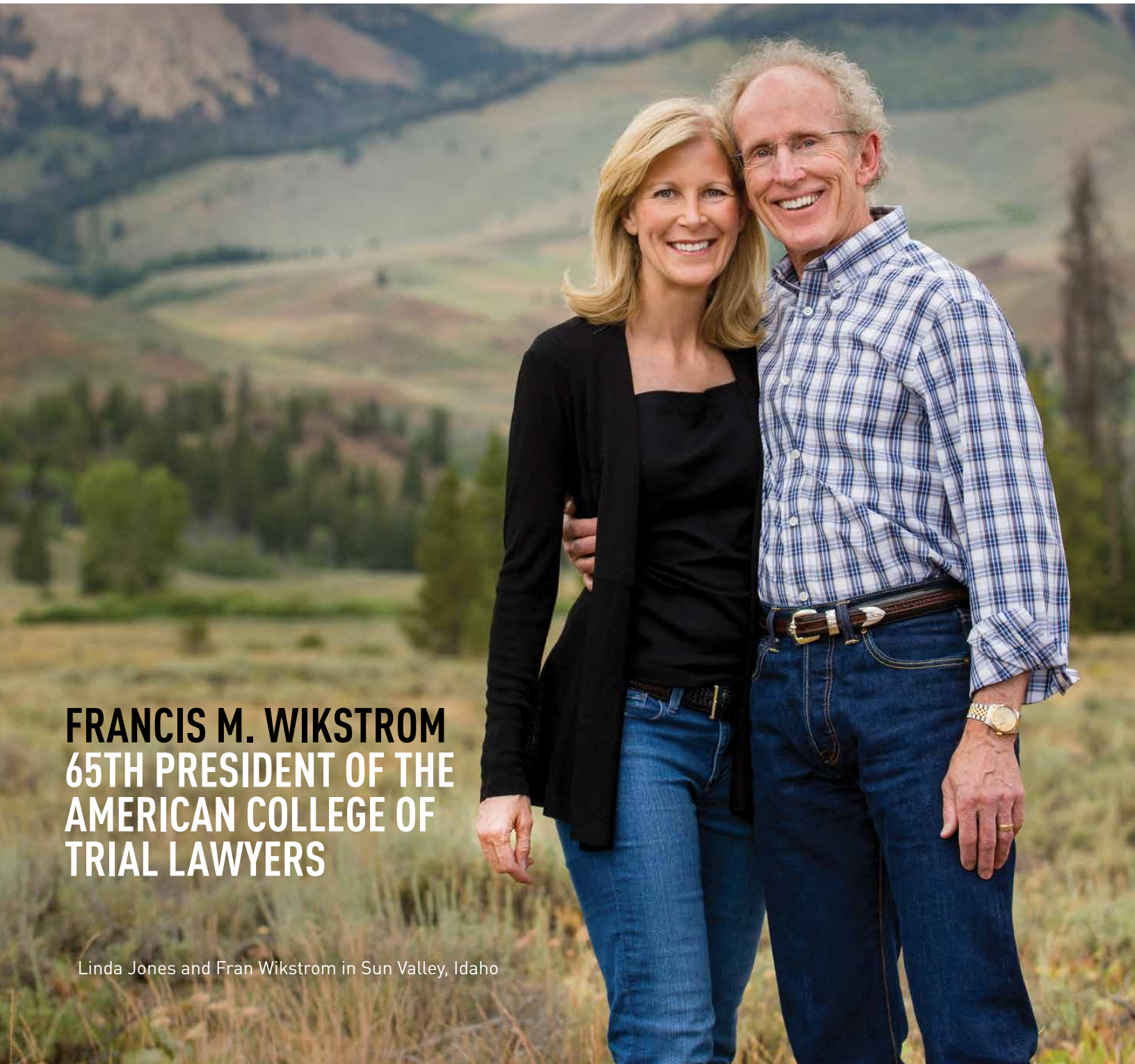

FRANCIS M. WIKSTROM 65TH PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

Linda Jones and Fran Wikstrom in Sun Valley, Idaho

American College of Trial Lawyers
JOURNAL
Chancellor-Founder
Hon. Emil Gumpert
(1895-1982)

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FROM THE EDITORS

Andy Coats
and Stephen Grant

Please contact the National Office with contributions or suggestions at editor@actl.com.

We know the problems, the solutions are at hand.

In 2009, the Institute for the Advancement of the American Legal System (IAALS) and the College released their final report on discovery and other aspects of the civil justice system. With some alarm, the report highlighted the problems facing the system itself and offered twenty-nine sound recommendations. Trials, particularly jury trials, the report concluded, are not the concern and are well-worth preserving as they represent a fundamental keystone of our democracy. Rather, at its core, the issue is the lack of cost-benefit rationale in most civil suits, emanating from the notion that justice in every case must mean perfect justice.

Until fairly recently, in other words, we have been mired in the idea that no evidentiary stone—whether by expert or lay witnesses, at discovery or trial—should be left unturned, oblivious to the concept of proportionality or cost, the latter of which has prevented many actions being brought in the first place, irrespective of the merits of the claim. That a plenitude of cases have already left (and continue to leave) the civil justice system altogether for various forms of alternative dispute resolution, where the ability to craft a process suitable to a particular mandate is readily apparent, is beyond doubt.

In 2012, the IAALS released another report on implementing a Short, Summary and Expedited (SSE) Civil Action program designed to turn the tide away from the current procedural and other inefficiencies now beleaguering our system. This report called for fixing focused, short trials, with certain trial dates, encouraging evidentiary stipulations and issue agreements along the way then streamlining the entire litigation process along these lines. Is this perfect justice? Likely not, but on several fronts, it may be a better way or, in many cases, a more-than-viable alternative.

Obviously, one size does not fit all, and this approach is clearly not suitable for all cases. Yet, there is much to commend it in any number of practice areas—from ordinary negligence actions through straightforward commercial contract disputes. Among other benefits, this easily could lead to the possibility of more lawyers actually trying more cases, a consequence of note for the College. (For those interested, the IAALS released a report titled "Summary of Empirical Research on the Civil Justice Process" in May 2014.)

North of the border, the profession and public face the same pressures.

As early as 1999, Honorary Fellow and Supreme Court of Canada Justice Rosalie Abella (as she is now) told an audience of senior lawyers that "we have moved from being a society governed by the rule of law to being a society governed by the law of rules." She asked rhetorically, "Can we honestly say that the fair resolution of [a civil] dispute [usually between two private parties] requires several years and resort to hundreds of rules?... People want their day in court, not their years."

More recently, Professor Adam Dodek of the University of Ottawa Faculty of Law and well-known legal commentator has written about "Rationing Civil Justice." Except for the lawyers, he notes, the civil justice system is publicly-funded and to allow lawyers (and their clients) the right to dictate the time required for their cases is backward. Rather, as is done in most appellate courts, the court should allot the time for the presentation of a trial, based on the resources available. Each side gets one day, say. The parties are allowed one expert each or, even more radical, one expert appointed by the court. Discovery is presumptively limited to one day, with extensions permitted only with leave, all of these echoing to some degree the IAALS/College recommendations.

Do hybrid trials have their utility? These are trials conducted partly through affidavit evidence founded on factual assertions and partly through *vive voce* evidence where credibility is in issue. (See, T. Dickson, "A Few Thoughts on Hybrid Trials", *The Advocate*, Vol. 72, p. 361). What if the parties were required to pay user-fees? These would be based on a sliding scale to ensure that the impecunious also have access to the courts. This is a current feature of the British Columbia courts but now before the Supreme Court of Canada for judicial consideration.

Is this perfect justice? Clearly not, but it may go some distance to restoring public confidence in, and increasing access to, the civil justice system. And there is light on the horizon. In a recent *ABA Journal* ("Change afoot in American civil justice system"), IAALS Executive Director Rebecca Love Kourlis reports that the system has been responding and "momentum is building." After citing examples of expanded case management, streamlined discovery and simplified rules for less complex cases, she concludes that these efforts will make the system more responsive and less costly. While not "your grandfather's or even your mother's litigation system," the risk that the civil justice system will implode on itself "is receding."

We know the solutions. Like the vanishing trial, trial lawyer and, now apparently, law student, if we fail to facilitate the transformation of the civil justice system into a new, efficient model, our chance to take some ownership of these changes will vanish as well, sooner than we think. As with "Working Smarter, Not Harder" (January 2014), a joint project of the IAALS and the College on case management, the College has been and remains in a unique position to promote implementation of these initiatives.

In this issue, we feature an array of articles on various topics of interest, thought-provoking opinion pieces and a recap of our regional and other meetings. The London/Paris meeting, as well, should be, well, "Splendid, we say. Just splendid." See you there.

Andy Coats/Stephen Grant

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PRESERVING THE COLLEGE'S HERITAGE, ADDRESSING FUTURE CHALLENGES: A PROFILE OF FRANCIS M. WIKSTROM

Some of us know from childhood the career path we will follow; others bounce around and then find something that suits them. **Francis M. Wikstrom**, who is the 65th President of the College, falls decidedly into the first group. At an early age he wanted to be a lawyer trying cases to juries. Fran, 65, assumes the leadership of the fellowship with a history not only of trying a broad range of civil and criminal cases, but also of leading efforts in his home state of Utah to make the adversary process less expensive and more accessible to the average person, and perhaps help bring back the small trial in the process. Like so many members of the College, he recalls fondly the Fellows who mentored him in the art of trying cases and is humbled by having been asked to serve as President of this great institution.

GROWING UP

Fran was born in Montana but grew up in Ogden, Utah, a small town that is a rail hub in the northern part of the state, where his father worked for the U.S. Forest Service. He graduated from a parochial high school (class of only thirty-five students) and then majored in history and minored in political science at Weber State College (now Weber State University) in Ogden, where he was president of the student body.

A big part of Fran's path from boyhood to manhood was a series of jobs he held while in high school and college to help pay for his education. His first job at age thirteen, after moving up from playing Babe Ruth baseball, was umpiring Little League games at $1 per game. He could earn $3 in a day. As a high schooler he washed dishes for $0.91 an hour at a local hospital. He spent much time on the ski slopes, became an accomplished skier, and later earned money as a ski instructor. (He also served as president of the Professional Ski Instructors of America: Intermountain Division.) But the big money came when in college Fran got work at a U.S. Department of Defense depot unloading box cars and semi-trailers, and later operating a forklift and driving a truck.

LAW SCHOOL

After graduating from Weber State in 1971 Fran headed east to Yale Law School and joined the class of 1974. (Honorary Fellows Justice **Clarence Thomas** was a classmate and Justice **Samuel Alito** was one year behind.) Yale Law is known for developing law professors and cerebral lawyers, not so much for producing lawyers who really try cases to juries, but because Fran knew he was headed for the courtroom, he joined the Thomas Swan Barristers' Union, a moot court competition where the students try cases before local judges and mock jurors from the community. He enjoyed the challenges and had success, so at the end of his second year he got a call from Bill Clinton, a member of the board of the Barristers' Union, and was notified that he had been elected chair for the following year.

PRACTICE

The approved career path in the 1970s for graduates of the top law schools was to join a major firm in the largest cities, but Fran chose to join a new civil and criminal defense boutique in Connecticut led by **Jacob D. (Jack) Zeldes**, a Fellow, so he could further develop the skill of trying lawsuits. One thing he quickly learned, however, was that it was claustrophobic for him to live in the densely populated East and good skiing was too far away. So after one year he returned to Ogden and hung out a shingle as a sole practitioner. One wonders how many members of the Yale Law Class of 1974 had the fortitude to place that type of bet on themselves right out of the gate.

But the bet paid off fairly quickly when Fran received a call from a local lawyer he knew who referred the defense of a man who was charged with homicide and, not surprisingly, could not pay a fee. The client pleaded self-defense but the victim had been shot in the back five times. Fran got his first jury trial and a defense verdict to boot. He still recalls today the tension in the courtroom.

Fran continued on his own (later with a partner) working criminal defense, plaintiff's personal injury and some commercial cases until 1979 when he joined the U.S. Attorney's office in Salt Lake City as an Assistant U.S. Attorney prosecuting white collar criminal cases. At this time, Salt Lake City was a hotbed of penny stock scams so there was plenty of trial work. As an AUSA Fran learned that if you had a strong theme that fit the facts you did not have to quibble over every detail in the other guy's case.

In 1981 he became the court appointed United States Attorney for the District of Utah for a brief time until a political appointee took over, and in 1982, he joined the litigation intensive Parsons, Behle & Latimer firm in Salt Lake City (45 lawyers then; 120 now) where he continues to practice today. Fran joined that firm so he could continue honing his skills as a trial lawyer under **Gordon L. Roberts**, another Fellow, and in Fran's view one of the most talented trial lawyers in town.

The commercial litigation practice Fran developed at Parsons Behle & Latimer was shaped by the economy of Utah and the mining, agriculture and land use industries. He calls himself a general trial lawyer but unlike most who wear that label he has also tried regulatory and patent cases. Fran does not have a scientific or technical education but enjoys the challenge of figuring out

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the technology and then explaining it to jurors through testimony.

Fran's practice, however, has not been confined to Utah. He also has tried cases throughout the country. He is a veteran of, as they say about many Fellows, a lot of cases in a lot of places.

Fran cheerfully admits that he still feels that mixture of exhilaration and trepidation at the start of each trial. He is unguarded and carries himself with the veteran confidence of a trial lawyer who has won a few he did not deserve to win and lost a few he did not deserve to lose, but with a firm belief in the value to society of the adversary process, and an equally firm respect for the ability of juries to decide the great issues presented in each case of fault (liability) and harm (damages).

FAMILY AND LIFE OUTSIDE THE PRACTICE

Fran is married to Linda Jones who is an appellate lawyer in Salt Lake City with a small firm, and a Fellow in the American Academy of Appellate Lawyers. They have two children, twins now thirty-five. Sara, the older by six minutes, is an internal medicine physician in Washington, D.C., is married and recently presented Fran and Linda with their first grandchild, John R. Schultze III. Sara's husband, Jay Schultze, works for the FBI. Fran and Linda's son, Matthew, is an executive vice president with a sports marketing group in Los Angeles and his wife, Carey, works for a national business consulting group.

Fran still skis, downhill, back country and cross country, and bicycles reasonably seriously but claims he is not as insufferable about it as the most serious cyclists. He also fly fishes and is most relaxed at a mountain home he and Linda have near Sun Valley, Idaho.

UTAH RULES COMMITTEE

Fran served on the Utah Supreme Court Advisory Committee on the Civil Rules for about twenty years, twelve as Chair. The committee presented a proposal that was adopted by the Utah Supreme Court in 2011 to make the adjudication of civil cases less expensive by curtailing open ended discovery and providing for prompt trials. Utah was the first state to adopt many of the ideas that had been developed in work done by the College's Task Force on Discovery and Civil Justice. Utah's new rules break down the civil caseload into three tiers and provide for pretrial activities, especially discovery, proportional to the amount in controversy. Tier One includes cases seeking less than $50,000 with much curtailed discovery; Tier Two is up to $300,000 or no monetary relief and slightly more discovery, and Tier Three is over $300,000. Even Tier Three cases are subject to strictly limited discovery unless the parties agree or a court orders otherwise.

Fran believes the system is working in limiting wasteful discovery and he says both plaintiff's lawyers and insurers are using Tier One for small cases because of the speedy resolutions and the damages cap. And in the process the lawyers in Utah may be enjoying more opportunities to try cases. The National Center for State Courts is currently conducting an empirical study of the new system and if the system is measurably more efficient to look for other states to follow. The notion of "proportionality" is a hot topic with civil rules makers.

HIS TIME AS PRESIDENT

Fran sees the presidency of the College as both a great honor and an opportunity to provide service in recognition of those Fellows who helped him develop his skills to the best of his ability. When Fran worked with Jack Zeldes and **Douglas L. Shrader** in Connecticut he did not know they were Fellows; the same was true with **La Var E. (Bud) Stark** and **David S. Kunz** in Ogden; and when he joined Gordon Roberts in Salt Lake he was also unaware of the College and that Roberts would shortly become a Fellow. But he knew that all of them were first class trial lawyers, respected by the community, and people he too respected and enjoyed being with. And Fran knew he wanted to be like them.

Fran learned of the College after Gordon Roberts became a Fellow and was deeply honored when he was inducted in 1995, not only because fellowship is conferred solely on merit but also because he enjoys the companionship of men and women who practice our great art at this high level, who may be adversaries in the courtroom today but in a deeper and more durable sense are brothers and sisters.

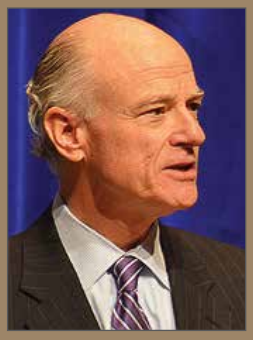
As President, Fran is mindful of the quality of leadership the College has enjoyed in the past and will seek to maintain College traditions and preserve the heritage of the many Fellows from the World War II and pre-baby boomer generations who shaped the College into the institution it is today. He also wants to help address the challenges the College faces in the future. He and Linda are looking forward to meeting as many Fellows and spouses as they can during his year as President of the American College of Trial Lawyers.

Timothy D. Kelly
Minneapolis, Minnesota

AWARDS & HONORS

James LaVoy Branton of San Antonio, Texas, received an Outstanding 50 Year Lawyer Award from the Texas Bar Foundation at the Foundation's annual meeting on June 27, 2014, in Austin, Texas. The Outstanding 50 Year Lawyer Award recognizes an attorney whose practice spans fifty years or more and who adheres to the highest principles and traditions of the legal profession and service to the public. Five 50 Year Lawyers are selected each year to receive the award. Branton has been a Fellow of the College since 1982 and is a former Texas State Committee Chair.

David L. Cleary of Rutland, Vermont, was elected President of the International Academy of Trial Lawyers (IATL) at its recent annual meeting in Hawaii, having served as Dean from 2011-2012. Cleary has been a Fellow since 2001. The IATL is composed of trial lawyers representing both sides of the bar, promoting reforms in the law and the rule of law internationally, and working to elevate the standards of integrity, honor, and courtesy in the legal profession.



William C. Hubbard of Columbia, S
Carolina was installed as President
American Bar Association at its rec
meeting in August in Boston, Massa
Hubbard has been a Fellow since 2

NATIONAL OFFICE UPDATES

Eliza Gano is the new Communications Manager. Eliza joined the College in May and writes and organizes content for the *Journal*. She will also work on developing the College's website and promoting The Fellow Connection.

Katrina Savercool arrived at the College in July and is the new Meetings and Conference Assistant. She assists Suzanne Alsnauer, the recently promoted Meetings and Conference Manager, with meeting registration and materials. She will also work on obtaining CLE credits for College events.

BRITAIN'S RESPONSE TO TERRORISM, REVISITED

Eight years ago in September 2006, the College's Federal Criminal Procedure Committee presented a panel discussion on the subject of "Britain's Response to Terrorism," which was conducted in conjunction with the College's Annual Meeting in London and covered in Issue 55 of *The Bulletin*. The distinguished speakers included Sue Hemming, then (and now) the lead prosecutor of terrorism cases in the United Kingdom; Tim O'Toole, managing director of the London Underground, and hence one of the principal actors in the aftermath of the July 2005 bombing of London's public transportation; Keir Starmer, QC, a barrister who specializes in criminal and civil rights law; as well as Fellow **Donald B. Bayne**, who provided the Canadian perspective on terrorism prosecutions.

Much of the British legal framework for dealing with terrorist suspects remains the same eight years later. Prosecutions are still handled by lawyers at the Counter-Terrorism Division of the Crown Prosecution Service; they are assisted in the later stages, in some cases, by barristers from the private bar who become part of the prosecution team for purposes of trial. In 2006, as now, UK terrorism prosecutions were handled as much like non-terrorism-related cases as possible. In 2006, as now, police were permitted to arrest without a warrant on "reasonable suspicion," and a suspect could be subsequently charged if, according to The Code for Crown Prosecutors, law enforcement has a "reasonable prospect of conviction." There was and is no grand jury, and judges first become involved when and if the prosecution wants to detain a suspect for more than forty-eight hours.

In other respects, however, the framework for handling terrorist investigations and prosecutions has changed significantly in Britain. The change has been described as "cautious liberalization," a phrase from David Anderson's, QC, *The Terrorism Acts in 2012*.

One of the most controversial of the laws governing British prosecutions in 2008 provided for the use of "control orders," which were rulings, obtainable by the prosecution, that permitted law enforcement to remove a suspect from his home and place him in a housing unit far from his residence, under curfew up to eighteen hours a day, and subject to electronic monitoring. Control orders could be in place for up to twelve months and were renewable. Judges periodically held hearings into the necessity of continuing control orders, but the evidence was largely kept hidden from the suspect, and barristers appointed to challenge the evidence (as best they could) had no client relationship with the suspect.

Control orders have now been replaced by Terrorism Prevention and Investigation Measures (TPIMs), which were intended to be significantly less onerous. Following a fairly strict procedure of authorization (most often by the courts), the government can serve a TPIM notice on an individual, the contents of which will vary from case to case. The notice will outline restrictions on the particular individual's liberty, ranging from GPS tagging, to forfeiture of passports, to the inability to change one's overnight residence without permission and the inability to hold certain types of property or engage in certain types of financial transactions. Violation of any of these restrictions is considered a crime.

Unlike control orders, which could be renewed annually if approved by the courts, TPIMs by statute expire after two years, provided the government cannot show any new terrorist activity on the individual's part during that time. TPIMs have not been widely used in recent years: at last report, fewer than one dozen were in effect, and a number of those were due to expire.

Another highly controversial law in effect in 2008 was Section 44 of the Terrorism Act 2000, which permitted police to stop individuals and search persons and places without any articulable grounds for suspicion. This law was criticized not only for its encroachment on civil liberties but also on the ground that activities taken under the law turned out to be >>

singularly ineffective at finding terrorists or evidence of terrorism.

In 2010 the European Court of Human Rights ruled that the stop-and-search powers granted in Section 44 were illegal, overruling judgments of the British courts, including the House of Lords. Since that time, Section 44 has in effect been superseded by a new law. This law provides for authorizations, requested by a senior police officer and granted (if deemed appropriate) by assistant chief constables or their equivalent, that allow police in a limited area, for a limited period of time, to stop vehicles or people for the purpose of finding evidence of terrorism; the police performing the search do not need to have a reasonable suspicion that there is such evidence before performing the search so long as the search is done within the time-frame and geographical limits authorized.

In the United Kingdom over the past eight years, the terrorist threat has abated, at least somewhat and at least for the time being. In the latest year for which I could find figures, 2012, there were about 200 arrests in the UK for terrorism-related offenses, and only 43% of those arrests led to terrorism-related charges; that is, most of these arrests led to charges that were not terrorism-related. Moreover, most of the terrorism-related arrests were made pursuant to Britain's normal police powers and procedures and did not resort to the special procedures described above.

TWO LAST NOTES

First, I had originally intended to write about the current status of terrorism law enforcement in the United States as well as Britain, but I found it very difficult to find anything about the current status of American anti-terrorism efforts. Apart from terrorism-related charges that are being prosecuted through normal federal channels, and apart from the Guantánamo detainees (whose prospects for being prosecuted through normal channels seem dim), I found it impossible to pin down the status of "military detention" and "indefinite detention," both of which are referred to in the literature; whether these are currently being utilized, and if so to what extent, are questions I haven't been able to answer. If any Fellows can shed any light on this, I'd be very interested in hearing from them.

Second, I find it disturbing that I've been unable to track down the information I've sought about the practices regarding terrorism in the United States. If this is due to my ineptitude, that's disturbing to me, but if it's due to deliberate obfuscation on the part of American law enforcement, it's even more disturbing. Practices in the UK, by contrast, are described in great detail in the Report of the Independent Reviewer of Terrorism Legislation, David Anderson, QC, which is published annually in accordance with the terrorism law itself. I suggest that American legislation could, and should, follow the British example and provide for a public report on terrorism prevention and procedures, by an independent person or entity, to be published on a regular basis.

Elizabeth K. Ainslie
Philadelphia, Pennsylvania

FELLOWS TO THE BENCH

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

Stanley A. Bastian
Wanatchee, Washington

Effective June 2014
Judge
United States District Court for the Eastern District of Washington

Page Kelley
Boston, Massachusetts

Appointed June 2014
Judge
United States District Court for the District of Massachusetts

Timothy J. Thomason
Phoenix, Arizona

Appointed July 2014
Judge
Superior Court of Maricopa County

Ferris M. Wharton
Wilmington, Delaware

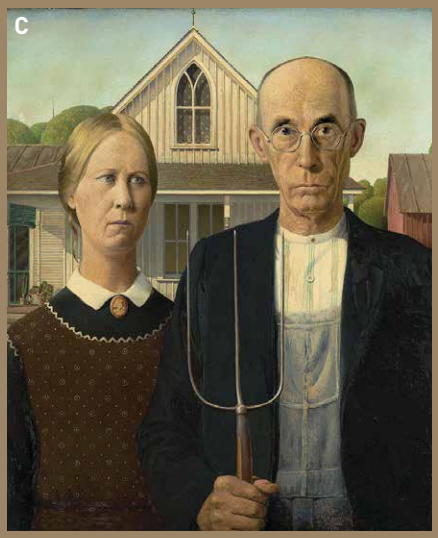
Effective June 2014
Judge
Superior Court of Delaware

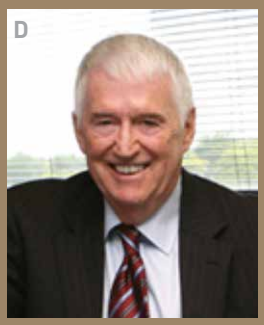
The College extends congratulations to these newly designated Judicial Fellows.

ANSWER: WHOSE IS IT?

In issue 75 we challenged readers to name this Midwestern home. How clever were you?

This beautiful house is a living portrait of archetypal Victorian-era Italianate design. Created in the late 1850s and listed on the National Register of Historic Places, well-known Iowa artist Grant Wood lived at "1142," for almost seven years – from 1935 until his death from pancreatic cancer on February 12, 1942, one day before his 51st birthday. "1142" is the name Wood affectionately called it. Wood's work, *American Gothic*, hangs at the Art Institute of Chicago. Former Iowa State Chair **James P. Hayes** of Iowa City, Iowa is responsible for maintaining and preserving the historical spirit of the house.





A. "1142," an Iowa City landmark B. "1142" when owned and occupied by Wood
C. Wood's *American Gothic* D. Former Iowa State Chair James P. Hayes

THE VANISHING LAW STUDENT
THE THIRD ASPECT OF THE VANISHING TRILOGY

Over the last few years we have all become aware of the phenomena of "the vanishing trial." Many fewer civil and criminal trials take place these days, and a number of reasons have been advanced for this decline.

For the civil cases, the first and probably most compelling reason is cost. For us as trial lawyers, it is truly a self-inflicted wound. We have simply priced ourselves out of the market. These days, it takes a mighty matter to justify the enormous cost of litigation. For example, the median automobile tort case costs $43,000 to conduct, and the median malpractice case costs $122,000, according to a 2011 report.

The vast majority of our citizens simply cannot afford to hire a lawyer to resolve their day-to-day disputes. Even when a case is filed, the courts throw up a myriad of obstacles to force the case into settlement and thus avoid trial.

There are, of course, other factors involved, but the result is a significant decrease in the number of trials. The total number of civil trials declined by over 50% from 1992 to 2005 in the nation's seventy-five most populous counties. Tort cases decreased the least at 40%, while real property (77%) and contract (63%) cases registered the largest declines. In 1962, 11.5% of federal civil cases were disposed of by trial. By 2002, that figure had plummeted to 1.8%. The statistics from Canada also show a sharp decline over the same time periods.

50%
DECLINE IN CIVIL TRIALS FROM 1992 TO 2005

Oddly enough, the same vanishing trial phenomena occur on the criminal side of the docket as fewer criminal cases are going to trial. My youngest son, Sandy, is the United States Attorney for the Western District of Oklahoma. His district is comprised of the Oklahoma City Metroplex, the forty-four western counties of the state and twenty-six Native American tribes. The federal government has jurisdiction over most serious crimes committed on Indian tribal land.

With twenty-seven felony trial lawyers on Sandy's staff and a filing of 248 felony cases against 411 defendants in 2013, my son's staff conducted only eighteen trials, or 5% of the cases filed. Just six years ago in 2008, more felony charges were filed and 12% of those cases went to trial. In earlier years, the percentage of trials was in the 25 to 30% range.

Sandy has served for several years on the Attorney General's Advisory Committee and tells me that a similar decrease in the number of trials is taking place in most of the federal districts.

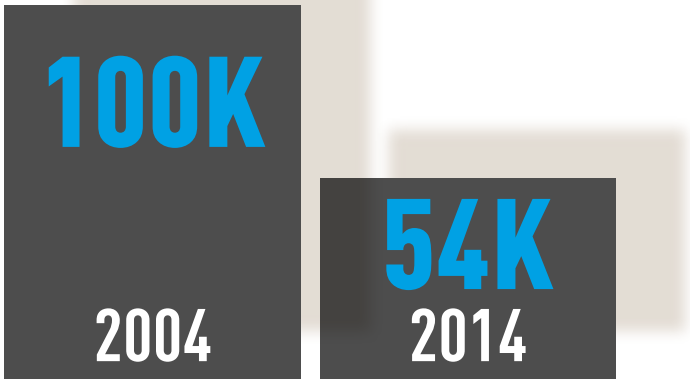
The reason for this decline in the number of criminal trials is somewhat more obscure than on the civil side. It may be that the FBI is presenting better cases. It may be that when the U.S. Supreme Court ruled in *United States v Booker* that the Federal Sentencing Guidelines were no longer mandatory, an incentive was created for a defendant to plead in order to avail himself of some judicial discretion to lower the penalty. It may be the unspoken rule that every

criminal lawyer knows, which is this—if a criminal defendant forces his case to trial and loses, the sentence he or she faces is increased over that which a plea would have brought. Criminal defendants run a significant risk of greater penalty if the government is put to the trouble of trying their case.

Whatever the reasons, the United States is still incarcerating a higher percentage of the population than any other developed nation in the world. The only thing that has changed is that fewer of those persons in prison got there because of a guilty verdict.

Along with the reduction in the number of trials, we see a corresponding decrease in the number of trial lawyers. The smaller cases on which most of us "cut our teeth" simply are not there. These matters are disposed of by alternative dispute resolution methods. As we undertake our search for the best trial lawyers to become Fellows of the College, we frequently find that nominees have inadequate trial lists. Thus, "the vanishing trial lawyer."

What now appears, to the consternation of most persons involved in legal education, is the "vanishing law student." Across the United States, the applications to law schools have decreased by almost forty percent in the last three years. There were approximately 100,000 applicants to ABA-approved law schools in 2004, and there will be an estimated 54,000 applicants to ABA-approved law schools this year. While not as dramatic as in the U.S., the number of applications to Canadian law schools has also markedly declined over the last few years.



APPLICANTS TO ABA-APPROVED LAW SCHOOLS

Except at the most established and prestigious law schools, the job of the Dean and the admissions committee is no longer to select the best qualified applicants and turn the rest away. These days, their job is to fill the chairs with enough students to keep the law school doors open and the lights on. Law schools are now competing actively for students. Schools vie not only for the best and brightest, but even for those in the middle range of undergraduate grade-point averages and law school admission test scores. Students with low grades and low LSAT scores, who would have had trouble being admitted to any law school a few years ago, are now able to get into many law schools across the land.

There are a number of reasons proposed to explain this strange turn of events. One is that prospective students are alarmed at the cost of a legal education. The average cost of law school tuition is somewhere between $30,000 and $40,000 U.S. dollars per year. Add to that living costs for three years, and the total cost of a legal education is most daunting.

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While sticker shock has been a problem for private institutions for some time, the situation for public institutions is not much better. Across the United States, support for public colleges and universities has been withdrawn at such an alarming rate that many institutions who used to say they were "state supported" now refer to themselves as only "state located."

As has been true at private law schools all along and is now true of public law schools, the cost of a legal education is often funded by student loan programs. The average amount borrowed by law students at public ABA-approved law schools in 2012-2013 was $84,600, and the average amount borrowed by law students at private ABA-approved law schools was $122,158. With possible additional loans from undergraduate education, students may graduate from law school owing as much as $150,000 or $200,000 U.S. dollars.

In earlier years, this was not an insurmountable problem because good paying jobs were generally available to the new grad. However, as our profession retrenched over the last few years, good jobs became scarce. Law schools reported that 57% of graduates of the class of 2013 were employed in long-term, full-time positions where bar passage was required.

As word of this problem spread throughout the country, bright young college graduates, who in other years would have looked to the study of law, began to look elsewhere for career opportunities. The average decline in the number of applicants from the "elite" undergraduate schools to ABA-approved law schools was twenty-eight percent between fall 2008 and fall 2012.

Total first-year enrollment at ABA-approved law schools fell to 39,765 in the fall of 2013–the lowest number of full and part-time students since 1977–when there were far fewer ABA-approved law schools.

These numbers support the phenomena of the "vanishing law student."

Law schools were initially slow to react. But as the downward trend in applications has continued, the response from law schools has begun to change the legal academic landscape.

Some of these changes (and proposed changes) include making the study of law a two-year course, offering many of the classes online, and/or closing law school staff positions and eliminating untenured faculty members so tuition can be lowered.

An analysis of the effect of these changes on legal education and the resultant ultimate effect upon the delivery of legal services cannot be adequately summarized here.

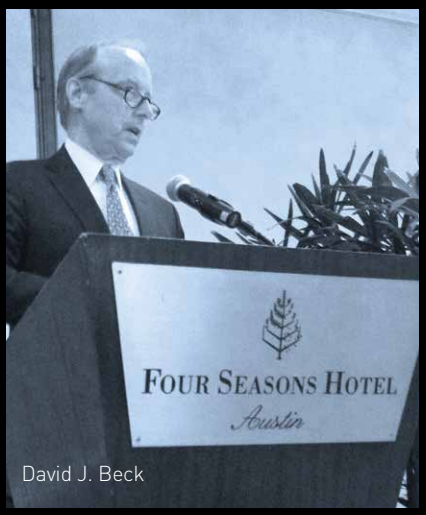
Suffice it to say, this third leg of the "vanishing" trilogy, "the vanishing law student" may forever change our profession. It appears that we are victims of the well-known and venerable Chinese curse: "May you live in interesting times."

Andrew M. Coats
Oklahoma City, Oklahoma

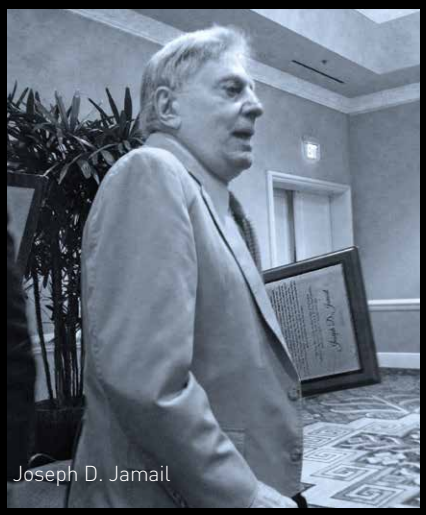
A full version of this article with footnotes is available on the College website, www.actl.com.

"THE VANISHING LAW STUDENT" MAY FOREVER CHANGE OUR PROFESSION

JOE H. REYNOLDS AWARD PRESENTED AT TEXAS FELLOWS LUNCHEON



David J. Beck


Joseph D. Jamail

Texas Fellows from throughout the Lone Star State met at the Four Seasons Hotel Austin on June 27 for their annual luncheon. Eighty Fellows were in attendance, which represented almost thirty percent of the total number of Fellows in Texas. The high turnout is believed to be the largest meeting of Fellows outside of a Regional or National meeting. College President **Robert L. Byman** and Immediate Past President **Chilton Davis Varner** were also in attendance. The luncheon is a long-standing tradition and is always held in the city where the state bar convention meets. Despite the state's vast size, some Fellows traveled 300 miles or more to enjoy the community of new and old friends.

President Byman gave a brief presentation on the state of the College and work being done by the various committees. Fellow **Tom Cunningham** gave an inspirational memorial to the six Texas Fellows who had died in 2014.

The highlight of the luncheon was when President of the Foundation Board of Trustees **David J. Beck** presented **Joseph D. Jamail** with the Joe H. Reynolds Award for his distinguished career and his support of the College throughout his forty years as a Fellow. "I won't list Joe's many accomplishments and tireless efforts on behalf of the poor and disadvantaged or his significant philanthropy, but needless to say there were many," Beck said.

The award was created by Texas Fellows in honor and memory of Reynolds, a Houston Fellow. Reynolds was not only a respected trial lawyer and a person of impeccable integrity, but he was also one of the few Marines who participated in two decisive battles – the Battle of Iwo Jima in World War II and the Battle of Chosin Reservoir in the Korean War. The award has been granted only three times before to a Fellow with a record of exemplary and extraordinary achievement. include Past President **Leon Jaworski**, Past President **Morris Harrell** and **James E. Coleman, Jr.**

QUIPS & QUOTES

This award recognizes a Texas Fellow of the American College of Trial Lawyers whose extraordinary achievements and demonstrated excellence in trial advocacy is universally acknowledged by colleagues of the trial community and whose conspicuous efforts have made a positive impact on the community and society and whose professional achievements and noteworthy efforts on behalf of the public interest have stood the test of time and reflect the highest credit on the college and the legal profession.

This award will be presented only when the Texas State Committee of the American College of Trial Lawyers makes the determination that there is a deserving recipient. The award is not an annual award but is reserved for rare occasions of exemplary merit as demonstrated by the selected recipient.

Adopted this 15th day of January, 2010.

Resolution from the Texas State Committee establishing the Joe H. Reynolds Award

The Texas Fellows also presented Byman and Regent **Rodney Acker** with bronze hand sculptures. Created by Fellow **Don Davis**, the gifts to Byman and Acker were a token of appreciation for their dedication and work on behalf of the College.

David N. Kitner
Dallas, Texas

FELLOWS PROVIDE ACCESS TO JUSTICE

A MISSISSIPPI CRUSADER FOR JUSTICE

As a teenager, Rob McDuff's hometown of Hattiesburg, Mississippi probably seemed similar to any other American town he saw on television in the 1960's. His perception changed the day he picked up the local newspaper and read a story about a man named Vernon Dahmer. Dahmer was a civil rights leader in the area who was killed when the Ku Klux Klan firebombed his home and fired shots into it as his terrified family watched in horror. McDuff wondered why the KKK killed the man, and the story sparked a curiosity in him about the struggle for equality and justice. That event and the media coverage of the subsequent trial, which also ignited his interest in courtrooms and lawyers, had an impact on his academic and professional life that has been of inestimable benefit to many clients and to the law profession as a whole.

While a student at Millsaps College in Jackson, Mississippi, McDuff volunteered at the office of the Lawyers Committee for Civil Rights Under Law. Here, he learned what the term "civil rights lawyer" truly meant. Frank Parker, a voting rights activist and lawyer who was the lead counsel in the effort to redistrict and integrate Mississippi's state legislature as well as numerous county and city governing boards, took the eager student under his wing and proved to be a lifelong influence. After graduation from Millsaps and Harvard Law, McDuff clerked for a federal judge and then practiced with a civil rights law firm in Memphis, Tennessee, collaborating with his mentor to litigate the redistricting case that led to the election of Mississippi's first black Congressman in the twentieth century. That work eventually took him to Washington, D.C. to the national office of The Lawyers' Committee for Civil Rights Under Law where he honed his skills in election litigation, solidifying his belief in the importance of election plans that included a fair number of majority black districts to go along with white districts. While election work dominated his practice for many years, Washington ultimately was not the place McDuff felt his efforts were most needed. He knew that his personal fight for justice was at home, so in 1992 he returned to Jackson and opened a practice, viewing at ground level the issues his home state faced. In abundance were wrongful convictions, prisoner mistreatment, and all the types of problems that arise when the underprivileged are inadequately represented. In contrast, civil rights attorneys willing to address those issues were scarce.

His efforts since have included collaborations with his wife, Emily Maw, who directs the Innocence Project New Orleans, which handles cases in Louisiana and Mississippi. Several of the cases McDuff participated in have resulted in inmates being exonerated. He has been inspired by those prosecutors who join in the effort to set aside bad convictions, and frustrated to see some who refuse to concede a clear injustice.

Recently, his ork has led to murder charges being dismissed against Rennie Gibbs, a 15-year-old who suffered a stillborn child at 16. Her child's body contained traces of the metabolite of cocaine during the autopsy, resulting in the prosecution's decision to file the charges in spite of the absence of proof of causation. McDuff led a defense that was supported by amicus briefs from over seventy organizations and individuals with medical, scientific and public health expertise, all of whom opposed expanding the law to allow prosecutions of this sort, given the possibility that those who chose to have a drink, smoke, remain overweight or fail to follow doctor's orders during pregnancy could become criminally liable in the case of a stillbirth.

McDuff worked with the ACLU National Prison Project and the Southern Poverty Law Center in a challenge to conditions at the Walnut Grove Youth Correctional Facility in Mississippi, a prison notorious for the mistreatment of juvenile offenders. This led to a landmark consent decree between the plaintiff class and the Mississippi Department of Corrections that was approved by the Honorable Carlton Reeves, a United States District Judge for the Southern District of Mississippi, who held that prison officials had allowed a "cesspool of unconstitutional and inhuman acts and conditions to germinate."

McDuff has represented both retained and appointed criminal defendants at trial. Many were high-profile matters, such as the defense of one of the "Jena Six" defendants in Louisiana, or defendants facing the death penalty. He was one of the lawyers representing Sabrina Butler in her retrial, where she was acquitted after spending six years on Mississippi's death row.

McDuff is a recipient of the Pro Bono Service Award of the International Human Rights Law Group of Washington, D.C.; the 2009 William Robert Ming Advocacy Award of the national NAACP; the 2011 Champion of Justice Award of the Mississippi Center for Justice; the 2011 Outstanding Co-Counsel Award of the Innocence Project New Orleans; the Ernst Borinski Civil Libertarian Award presented by the American Civil Liberties Union of Mississippi, and the 2006 Trial Lawyer of the Year Award of the Mississippi Trial Lawyers Association. He was selected as a Fellow of the American Academy of Appellate Lawyers, and has been a member of the faculty of the Trial Advocacy Workshop at Harvard Law School. He is a founder of the Mississippi Center for Justice and is a member of the Board of Directors of The Lawyers' Committee for Civil Rights Under Law.

He exemplifies the College's mission of maintaining and improving the standards of trial practice, the administration of justice and the ethics of the profession.

Cynthia H. Speetjens
Madison, Mississippi

FOUNDATION UPDATE

EMIL GUMPERT AWARD

The $100,000 Emil Gumpert Award is the Foundation's single-largest annual donation, and is the College's highest honor bestowed upon any organization.

2015 Award

Applications for the 2015 Award are due on October 15. The application is posted on the Emil Gumpert Award page on the College website, www.actl.com. Fellows are the best source of applicants and are encouraged to nominate worthy organizations.

2014 Award

The 2014 Award was presented to the Human Trafficking Courts Project of the Urban Justice Center in New York City. The Urban Justice Center houses the only venture in the United States currently focused on providing legal and social services to both sex workers and victims of human trafficking. The Urban Justice Center has developed best practices for trauma treatment, trafficking identification, criminal defense and immigration representation.

President **Robert L. Byman** presented the $100,000 check to the Human Trafficking Courts Project at a reception hosted by Past President and former Foundation President **Michael A. Cooper** at his firm on May 14. **Joe R. Caldwell, Jr.**, the Emil Gumpert Award Committee Chair, attended and explained why the Committee had chosen the Project for the award. Other attending Fellows included Past President **Gregory P. Joseph**, Regent **Trudie Ross Hamilton**, and New York-Downstate State Chair **Isabelle A. Kirshner**, as well as **Victor Hlavinka**, a member of the Gumpert Committee's site visit team.

The funds from the Gumpert Award will enable the Human Trafficking Courts Project to share best practices, train defenders and provide alternatives to incarceration programs to individuals arrested for prostitution-related offenses, particularly in light of the establishment of eleven Human Trafficking Intervention Courts in the State of New York in 2013. It will ensure that the underserved population of individuals arrested on these charges, including sex workers and survivors of human trafficking receives due process, excellent representation and appropriate intervention services.

2013 Award Update

The 2013 Award winner was the Miller Resentencing Project of the Florida State

University Public Interest Law Center's Children in Prison Project (known as the Miller Project).

Led by FSU Law Professor Paolo Annino, the Miller Project aims to provide legal representation to children who are incarcerated in adult prisons in the wake of *Miller v. Alabama*, 132 S.Ct. 2455 (2012). The Miller decision holds that mandatory sentences of life without the possibility of parole in homicide cases are unconstitutional for juvenile offenders.

Since receiving the $50,000 grant, Professor Annino has reported that the Miller Project published an empirical report on Florida children who received mandatory life without parole sentences. "Prior to this report being published, it was unknown exactly how many *Miller* kids were in Florida prisons and what that population's demographics are … This report has since been used by advocates to argue for retroactive application of *Miller v. Alabama* in Florida and in advancing the new legislation that was recently passed to reform Florida's sentencing process in compliance with *Miller*.

"We are attorney of record in the Florida Supreme Court case, *Falcon v. State*, arguing that *Miller* applies retroactively to the 201 kids in adult prisons who received a mandatory life without parole sentence. We are co-counseling in this case with two pro bono appellate attorneys. When we succeed, the 201 kids condemned to die in Florida's prisons will finally have hope."

Professor Annino credited receiving the Gumpert Award as the main reason why the Miller Project got off the ground. "Without the Emil Gumpert Award we would not have been able to litigate the issue of *Miller*'s retroactivity in the Florida Supreme Court; file amicus briefs in the Florida Supreme Court on extreme sentencing of children; be a resource center for pro bono attorneys and advocates both in Florida and nationwide on the issue of extreme sentences for children and advocate in the Florida Legislature to pass a bill providing a 'second look' at lengthy sentences imposed on juveniles."

Funding for the Emil Gumpert Award, like the other projects the Foundation supports, is available because of the contributions of Fellows.

Images from top to bottom:

2013 check presentation left to right: H. Talbot D'Alemberte; Larry D. Simpson; James P. Ludkins; Carl R. Pennington, Jr.; Gumpert Committee Member Robert P. MacKenzie, III; Professor Paolo Annino; Regent C. Rufus Pennington, III; Gumpert Committee Chair Joe R. Caldwell, Jr.; Gumpert Committee Ex Officio Gary L. Bostwick; Immediate Past President Chilton Davis Varner; George E. (Buddy) Schulz, Jr.

2014 check presentation left to right: Gumpert Committee Member Victor Hlavinka, President Robert L. Byman, Urban Justice Center Executive Director Doug Lasdon, Gumpert Committee Chair Joe R. Caldwell, Jr., Co-Director of the Sex Workers Project at the Urban Justice Center Crystal Deboise, New York-Downstate Chair Isabelle A. Kirshner, Co-Director of the Sex Workers Project at the Urban Justice Center Sienna Baskin, Past President Michael A. Cooper, Regent Trudie Ross Hamilton

MODELING THE "ALABAMA PLAN" IF ALABAMA CAN DO THIS...

Fellows in Alabama have seen much success in their "Alabama Plan," where every Fellow in the state is encouraged to annually contribute a sum equal to one billable hour. During the 2013-2014 fiscal year, the effort has resulted in donations from more than fifty Alabama Fellows, or nearly eighty percent of all practicing Fellows in the state. At $20,000, that represents more than ten percent of the Foundation's total donations.

But the idea behind the "Alabama Plan" did not happen overnight. It can trace its roots back to former Alabama State Committee Chair **Richard H. Gill**, who served in the position from 2002-2004.

Gill had met with Past President **Lively M. Wilson** at a College meeting. Wilson was head of the Foundation at that time. A push to increase funding was discussed, and Gill brought the message to his Fellows at the next state committee meeting.

RICHARD GILL

"I wish I could claim sole credit for the brilliant idea of asking for the value of one billable hour, and would be glad to act as if it was my idea, but I am confident that we all hashed it out, and realized that some sort of benchmark was needed rather than just an appeal to "send us your most generous gift." Because of the difference between the ways the plaintiffs' lawyers and the defense lawyers are compensated, asking for a "tithe" (i.e., a percentage-based gift) also didn't seem workable. The one-billable-hour standard sounded so reasonable and so effortless (and, in fact, so modest) that we felt we could sell it. In fact, viewed as just the value of an hour, it was so apparently trivial that we figured we could sort of shame everyone into it."

SETTING A COMMON STANDARD

The challenge to join other Fellows, as well as reach 100% participation, was part of the motivation. Because all the Fellows were, by definition, successful, "this allowed us to be all on the same team and to have a manageable common standard.

"If some gave $5,000, it would be easy for others who weren't comfortable with a large gift to just not respond, and thus to avoid appearing ungenerous by making a much smaller gift. But everyone could easily meet the one-hour standard, and with equal pride of having done what was asked for… The "shame" would then be to let the team down. A rural Fellow whose rate is $200 an hour would have met the goal in every way equal to the Birmingham lawyer whose rate is $800 an hour."

The plan can be applied in states with a larger number of Fellows, but would obviously "face a more difficult problem, of scale if nothing else." However, no matter what state or province is attempting to implement its own version of the plan, the motivations can be the same.

Fellows are motivated by "pride of participation, 'competition' in the sense of a 100% goal, manageability of the size of the gifts sought, a sense of contributing to a body of good work and a sense of the Fellows being a professional team that is unique, special and devoted to the advancement of justice and professionalism. It is a group like no other – we occupy an honored place and, whether counsel for plaintiff or for defendant, we can all contribute in this measured way. Maybe other states can adopt a challenge that says: 'If a small state like Alabama can do this, we can meet or exceed it.'"

FROM THE FOUNDATION BOARD OF TRUSTEES PRESIDENT:

The generosity of our Fellows makes the good work of our Foundation possible. In just this past year, we have provided valuable financial assistance to programs as varied as the Human Trafficking Courts Project in New York; the Veterans Legal Support Center and Clinic in Chicago; the San Francisco Medical Legal Partnership, a collaboration between Bay Area Legal Aid and the Clinics at San Francisco General Hospital; and Advanced Trial Advocacy or Negotiation Symposium programs for public interest lawyers in Montana, Washington and Pennsylvania. But as our awards have increased in number and value, so have the number of requests for funding increased, substantially. Although most of the requests we receive have considerable merit, unfortunately, we do not possess sufficient funds to provide assistance to all of them.

We recently took a hard look at the giving history of our Fellows. We identified data points that were quite revealing. First, I am proud to say that every one of our Foundation Board members is a Patron of our Foundation, defined as a Fellow who has cumulatively contributed more than $1,000. Second, nearly 70% of our donors are between the ages of sixty-one and seventy-six. Third, over the two year period from the 2011 - 2012 fiscal year to the year 2013 - 2014 fiscal year, the number of our donors decreased from 588 to 345. That is a precipitous drop. Fourth, less than 10% of our Fellows have contributed to our Foundation – an embarrassing statistic. Finally, of those Fellows who attended our 2014 Spring Meeting, only about 22% were donors.

What do these numbers tell us? The obvious message is that if we are to continue the important work of our Foundation and to extend the College's reach in supporting worthwhile programs, we must increase our donor base. No longer can we rely upon less than 10% of our Fellows to support these meaningful projects brought to our attention. There is no question that we need the assistance of our younger Fellows, not just Fellows over sixty. We therefore urge those of you who have never made a donation to our Foundation to do so now. We desperately need your help. Please help us to help others.

David J. Beck
Houston, Texas

COLLEGE ENCOURAGES NEXT GENERATION OF LITIGATORS

Since the early days of the College, scores of Fellows have invested in the future of the profession by serving as judges and feedback providers at the four law student competitions sponsored by the College.

In addition to the time and expertise donated by Fellows, the College also provides each participating student with either the American or bilingual Canadian *Code of Pretrial and Trial Conduct* and a brochure describing the College and its work.

Along with the work of their partner organizations, the College's competition committee members ensure the success of the events. The 2013-2014 Chairs were **J. Gregory Richards** of Toronto, Ontario, Canadian Competitions Committee; **J. Bruce Alverson** of Las Vegas, Nevada, National Moot Court Competition Committee; and **Timothy J. Helfrich** of Ontario, Oregon, National Trial Competition Committee.

CANADIAN COMPETITIONS

Gale Cup

Founded in 1974, the Gale Cup Moot is Canada's premier bilingual law student moot court competition and is held annually at Osgoode Hall in Toronto, Ontario.

College President **Robert L. Byman** attended this year's competition, held on February 21 and 22, and presented the College's awards and spoke about the late Chief Justice Brian Dickson. Byman presented the awards from the College, including the Dickson Medals awarded to the top three oralists of the competition.

The 2014 Gale Cup was awarded to Université de Sherbrooke, and each of the six students on the team received plaques. Annie-Claude Authier from Université du Québec à Montréal was deemed the Exceptional Oralist in the Final Round and received her trophy at the regional meeting of Fellows held in Quebec in June.

Sopinka Cup

The annual Sopinka Cup national trial advocacy competition began in 1999 and was named in honor of the late Hon. Mr. Justice **John Sopinka**, Justice of the Supreme Court of Canada and Honorary Fellow of the College. The competition is administered by The Advocates' Society, with the final rounds traditionally held at the Ottawa Court House.

President Byman attended the 2014 competition and, noting the College's annual financial contribution, said that "our money is well spent. The Sopinka Cup

President Byman promotes cross-border goodwill at the 2014 Sopinka Cup.

is one of the most important things we do. It enjoys enormous support and participation from the Canadian Supreme Court. It is a meaningful contribution to the future of the advocacy bar and is in the wheelhouse of our core mission. It energizes students … to aspire to join us one day as Fellows."

The University of Ottawa team earned the 2014 title. Team members of the Ottawa team, Sarah Sullivan and Reem Zaia, who was also named the Best Overall Advocate, were honored by the Ontario Fellows at their May dinner in Toronto. Committee Chair Greg Richards described all eight participating teams as exhibiting "an extraordinary level of advocacy. These students will be formidable trial counsel when they enter practice in the next couple of years."

AMERICAN COMPETITIONS

National Moot Court Competition

Held annually since 1951, the National Moot Court Competition is organized by the New York City Bar and has been sponsored by the College for decades. Fifteen regional rounds were held around the country in November, and regional winners were sent to the final rounds, held in New York City in February. More than a dozen Fellows volunteered to serve as judges of the elimination rounds. The winter storms of 2014 prevented President Byman from attending, so Regent **Trudie Ross Hamilton** served on the panel of judges for the final round.

The team from the University of Georgia School of Law won the 2014 National Moot Court Competition, and team members Steven L. Strasberg, Ben Thorpe and Emily Kate Westberry were presented plaques at the Georgia Fellows' annual dinner in August. Best Oral Advocate Ben Thorpe also received a crystal obelisk.

National Trial Competition

Since the inception of the National Trial Competition in 1975, the mock trial competition has been co-sponsored by the College and the competition's administrator, the Texas Young Lawyers Association.

More than 300 teams from more than 150 law schools participated in regional rounds held around the country, and each of the fourteen regions sent its top two teams to the finals held in Austin, Texas, in March. Members of the National Trial Competition Committee served as jurors, Immediate Past President **Chilton Davis Varner** presided over the final round and President Byman presented the College's awards.

Competing without the support of a coach, three students from Yale Law won the 2014 competition. Hank Moon, John James "J.J." Snidow and Ben Wallace were honored at the Connecticut Fellows' dinner in May. Best Oral Advocate Gus J. Lazares from The Ohio State University Moritz College of Law was recognized by President Byman and a group of Ohio Fellows who gathered specifically for the occasion.

Fulbright & Jaworski LLP provided plaques for the Yale students, while a silver bowl and $10,000 were presented to the school in honor of Past President of the College, Kraft W. Eidman. Loyola Law School, Los Angeles, the runner-up, received a $5,000 cash award from Beck Redden LLP, and the semifinalist teams, including the one from the Moritz College of Law, received $1,500 each from Polsinelli Shughart, PC.

Iowa, Manitoba, Minnesota, Missouri, Nebraska, North Dakota, Saskatchewan, South Dakota

May 16-17, 2014

Keystone, South Dakota

REGION 5 MEETING

Fellows from Region 5 convened May 16-17, 2014 at the K Bar S Lodge in Keystone, South Dakota, for a two-day program filled with presentations from enlightening speakers and visits to national treasures.

The Friday program opened the weekend's theme of judicial independence. University of Montana School of Law Professor Larry Howell focused on *Caperton v. A.T. Massey Coal Co.* and *Citizens United*, pointing out disengagement between the two cases that were argued only seven months apart.

The 2009 *Caperton* case out of West Virginia resulted in the United States Supreme Court holding that the Due Process clause of the Fourteenth Amendment requires a judge to recuse himself not only when actual bias has been demonstrated or when the judge has an economic interest in the outcome of the case, but also when "extreme facts" create a "probability of bias."

Hugh Caperton, president of Harman Mining Company, filed a lawsuit against Massey, alleging that Massey had fraudulently canceled a contract that led to the demise of Harman Mining. The initial result of the case at the county court level was a $50 million jury verdict in favor of the plaintiff. It was on appeal to the West Virginia Supreme Court when the president and CEO of Massey Energy Co., Don Blankenship, contributed $3 million into a contested Supreme Court election, defeating the incumbent and electing Brent Benjamin, a Republican lawyer. Blankenship made the maximum $1,000 direct political donation to Benjamin's campaign. He also gave two and a half million dollars of his own money to a nonprofit called Save the Kids, which was created to help Benjamin and hurt the incumbent. Additionally, Blankenship spent another half a million on direct mailings and advertisements. Benjamin proceeded to sit on the Caperton case, after having been asked to recuse himself three times, and the court ended up voting by a 3-2 majority to overturn the verdict and grant Massey the judgment.

QUIPS & QUOTES

Corporations are not persons. Human beings are persons. And it is an affront to the inviolable dignity of our species that Courts have created a legal fiction which forces people, human beings, to share fundamental natural rights with solace creations of governments. Worse still, while corporations and human beings share many of the same rights under the law, they clearly are not bound equally to the same codes of good conduct, decency and morality, and they're not held equally accountable for their sins. Indeed it is truly ironic that the death penalty and hell are reserved only to natural persons.

Mike Schafer, quoting Justice of the Montana Supreme Court, James C. Nelson, during his introduction of Larry Howell

The U.S. Supreme Court looked at the case and reversed it, reinstating Caperton's $50 million judgment. Justice Kennedy, who wrote the 5-4 decision, held that even though no one alleged that Justice Benjamin had taken the money in order to do things that Massey Coal wanted, the "reversal of the verdict had to be overturned because Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship because of the extraordinary efforts that got him elected." Throughout his opinion, Justice Kennedy

referred to the three million dollars as political contributions.

Seven months later, the result of the *Citizens United* case "created an uproar" by striking down any restrictions on independent expenditures by corporations. In *Citizens United v. Federal Election Commission*, the U.S. Supreme Court held that political spending is protected under the First Amendment and the government cannot prohibit corporations or unions from spending money to support or denounce individual candidates in elections. While corporations or unions may not contribute directly to campaigns, they may seek to influence the voting public through other means, including advertising.

"The Court left intact in *Citizens United* the complete prohibition on political contributions by corporations. And the reason they did that is because direct contributions pose a risk, the Court said, or at least the appearance of a risk of corruption," Howell said. "So that created what I think of as a disconnect, but which we can more politely call tension.

"What the *Citizens United* decision disregarded, and what I hope somehow someone brings back to the Court, is that the answer to that question is different if the elected officials in question are judges. If judges allow access and influence by people who spend money to get them elected, that is corruption."

QUIPS & QUOTES

When you have threats for inadequate funding for your courts, when you have threats on one judge who has decided an unpopular decision and people go after you, you have to have something set up in your state to defend your judiciary.

Bob Waterman, Jr., former Iowa State Chair

IOWA JUDICIAL RETENTION ELECTIONS

Bob Waterman, Jr., a partner with Lane and Waterman, LLP, and former Iowa State Committee Chair, spoke on the lessons learned from the 2010 Iowa judicial retention elections.

In 2010 the state was undergoing a difficult period, what Waterman called a "perfect storm." The country was dealing with a poor economy, the court system was in crisis with courthouse closures and layoffs and an unpopular Chief Justice wanted to save money by getting rid of court reporters. "There was a two-year backlog, eight-month-plus time from submission to decision … all right before the Court decided the *Varnum v. Brien* decision legalizing same-sex marriage."

Those opposed to the *Varnum* decision were spreading the notion that "activist judges legislate from the bench, not following the Constitution, not following the will of the people" and the public should vote to oust the justices. That fall, Chief Justice Marsha Ternus, Justice David Baker and Justice Michael Streit, were up for retention election November 2010. All three justices had supported the majority decision in the *Varnum* case, and Iowa voters defeated their retention.

"This was a threat," Waterman said. "Hindsight is 20-20, but when things like this happen, when you have threats for inadequate funding for your courts, when you have threats on one judge who has decided an unpopular decision and people go after you, you have to have something set up in your state to defend your judiciary … Another thing to consider is judicial qualification surveys. You have to have a way for the public to be able to understand your judges and justices standing for retention."

Because of the outcome of the 2010 election, the "Judicial Nominating Commission opened their interviews to the public and took oral arguments on the road. With the help of increased funding, the Court eliminated its backlog of cases, going from eight months or greater from submission to decision to less than four. And we have Chief Justice Mark Cady, who is extremely personable, who has made it a point to get out and be available and meet with legislators and tell them the importance of funding, and to get out and talk with the public."

JAIL 4 JUDGES

The Saturday presentations started with Chief Justice of the South Dakota Supreme Court, the Hon-

QUIPS & QUOTES

Our best piece of advertising, it shows a woman in her mid-30s, a soccer mom, and she's holding up the sign when you're arrested with the numbers on it and the jail bars are in front of her. "Soccer mom went to jail because Jail 4 Judges threw her in jail for serving on a jury." And that really resonated with a lot of people.

David Gilbertson, Chief Justice of the South Dakota Supreme, talking about how the Jail 4 Judges ballot initiative was defeated in the November 2006 statewide election

orable David Gilbertson, who has served on the Court as a justice since 1995. Gilbertson spoke on Jail 4 Judges, a proposal that was on the statewide ballot in November 2006. The proposal would have amended the South Dakota Constitution to set up a kind of grand jury whose thirteen members could include convicted felons, but not police officers and lawyers. The plan abrogated judicial immunity for judges, where the judge could be brought before the grand jury and disciplined for what the grand jury described as violation of law. The judge would have to pay for his or her own defense and there was no right to a jury trial. It was to be funded by an income tax on judge's salaries, so there would be no cost to the taxpayer.

Gilbertson described how the initiative was defeated through a multi-pronged approach of educating the public. Members of the state bar were asked to write letters to all their clients, detailing the proposal, and to speak in front of various organizations. Fundraising supported media campaigns in print, radio and television. Jail 4 Judges was defeated with 90% of voters deciding against it.

SPENDING ON SUPREME COURT ELECTIONS

The last speaker was Alicia Bannon, Counsel in the Democracy Program at the Brennan Center for Justice at the New York University School of Law, where her work focuses on judicial selection and promoting fair and impartial courts. Bannon spoke on the trends the Center has observed on judicial elections and special interest spending. She noted that in the past fifteen years, there has been an explosion of spending on State Supreme Court elections. "We saw increased attention from business interest on one side, on the other side union-linked groups, plaintiffs, trial lawyer groups, trying to shape the compensation of courts and determine how business-friendly these courts were going to be."

Bannon asserted that the most significant influence the *Citizens United* case has had on State Supreme Court races and other state races is that "it helps create or lead to the creation of a spending infrastructure on the federal level that is then weaving its way into the state races." Other trends the Center has documented include how spending has typically been highest in divided courts, how national politics are invading state judicial races and the role of television in the State Supreme Court elections.

QUIPS & QUOTES

It's an issue that the courts are under attack and judges aren't in a particularly strong position to defend themselves. They're often not great spokepersons for themselves, because there are concerns about appearing too politicized. One of the roles of the Brennan Center has been to push for reforms that will help judges in our court system avoid some of the politicized trends that we've been seeing.

Alicia Bannon
Counsel in the Democracy Program
at the Brennan Center for Justice

The Center has seen a rise in negative advertising but she noted the ads "are not just negative, they're misleading. The backers of these ads are putting judges on notice that when you make a decision in a controversial case, you are potentially setting yourself up for an attack on your record going forward….Most judges don't want to be politicians in robes. Judges want to be judges, but there's tremendous pressure right now for judges to fundraise."

Arkansas, Louisiana,
Mississippi, Texas

April 25-27, 2014

Little Rock, Arkansas

REGION 6 MEETING

With the Arkansas River as the backdrop, Fellows from Arkansas, Louisiana, Mississippi, and Texas gathered April 25-27, 2014 at the historic Capitol Hotel in downtown Little Rock.

The first speakers were Randy Dixon and Scott Lunsford, the director and associate director of the Pryor Center for Arkansas Oral and Visual History. The pair described the Center's work in recording, documenting and preserving the history of notable Arkansans whose lives have impacted the state, country and world. The interview process includes a representative of the Center going to an interviewee's home and spending a day with him or her, capturing their stories on video as well as photo images to use in the final creation. The transcript is "still the best way" to capture "a critical part" of this oral history but thanks to technology it is no longer the primary document. "The primary document is the raw footage that happens at the time of the interview," where the interview captures not only the words and mannerisms but also what is not being spoken in the body language. Arkansans who are selected, many in their eighties and up, feel honored to be interviewed. Lunsford emphasized that because of their age, the process of capturing their stories is a "race against time." Future plans for the Center include raising the funds to operate a mobile studio that will travel to different statewide events. It will allow people to interview each other about their life stories, record the interviews for the Center and leave with a personal copy.

QUIPS & QUOTES

I do want to encourage everyone to get out there and record your folks. If your parents are still living – even if it's one of those little micro-cassette recorders – get out there and record those stories. Because once they're gone, those stories are gone. And you will be surprised. You will hear things that you have never heard before.

Randy Dixon, director, Pryor Center for Arkansas Oral and Visual History

James L. (Skip) Rutherford III, dean of the University of Arkansas Clinton School of Public Service, was the next speaker. Rutherford is former president of the Clinton Foundation and supervisor for the planning and construction of the Clinton Presidential Library. Rutherford told the audience that while working on construction for the Library, one of the toughest conversations he had with President Bill Clinton was asking him where he planned to be buried. "It's one of those aspects of planning a presidential library that you would never, ever anticipate," but when designing a presidential library, a burial site needs to be considered in case the president chooses to be buried there.

Rutherford recalled that when he posed the question to President Clinton, the President "looked up over his glasses" and gave him a look similar to when Darth Vader looks at Luke Skywalker. Rutherford went into painstaking detail about the logistics of creating the burial

site, from making sure the doors are large enough to get a casket in and out to being able to run electricity and natural gas. The President asked him why it would need electricity and natural gas. "I said 'We need electricity because they're going to film this live on television.' He responded, 'Why do you need natural gas?' I said 'In case you want an eternal flame.' He said, 'What are you going to do if I decide not to do that?' I said, 'Then we'll cook hot dogs. And you know, we're not putting in an eternal flame. We're just putting a natural gas line in.'"

QUIPS & QUOTES

This is a design issue, Mr. President. It is not a funeral issue. And he said, 'You mean my casket is coming up in a freight elevator? You know, Middle East issues, Russia, and here we are talking about freight elevators and caskets?' After I said, 'Yeah, I've got to design this.'

James L. (Skip) Rutherford, dean of the University of Arkansas Clinton School of Public Service and supervisor for the construction of the Clinton Presidential Library, talking to President Clinton about building a burial site at the Library

Rutherford ended his presentation on a positive note: "The experiences of a Presidential Library are so good for a city, a state and a country. And what makes them very special, as Richard Norton Smith who began the Gerald Ford Library said, 'They're a continuous journey in American history.' And if we can separate our partisan views and rise to a level that is about what's best for the country and world, then the Presidential Library system is a model for us all."

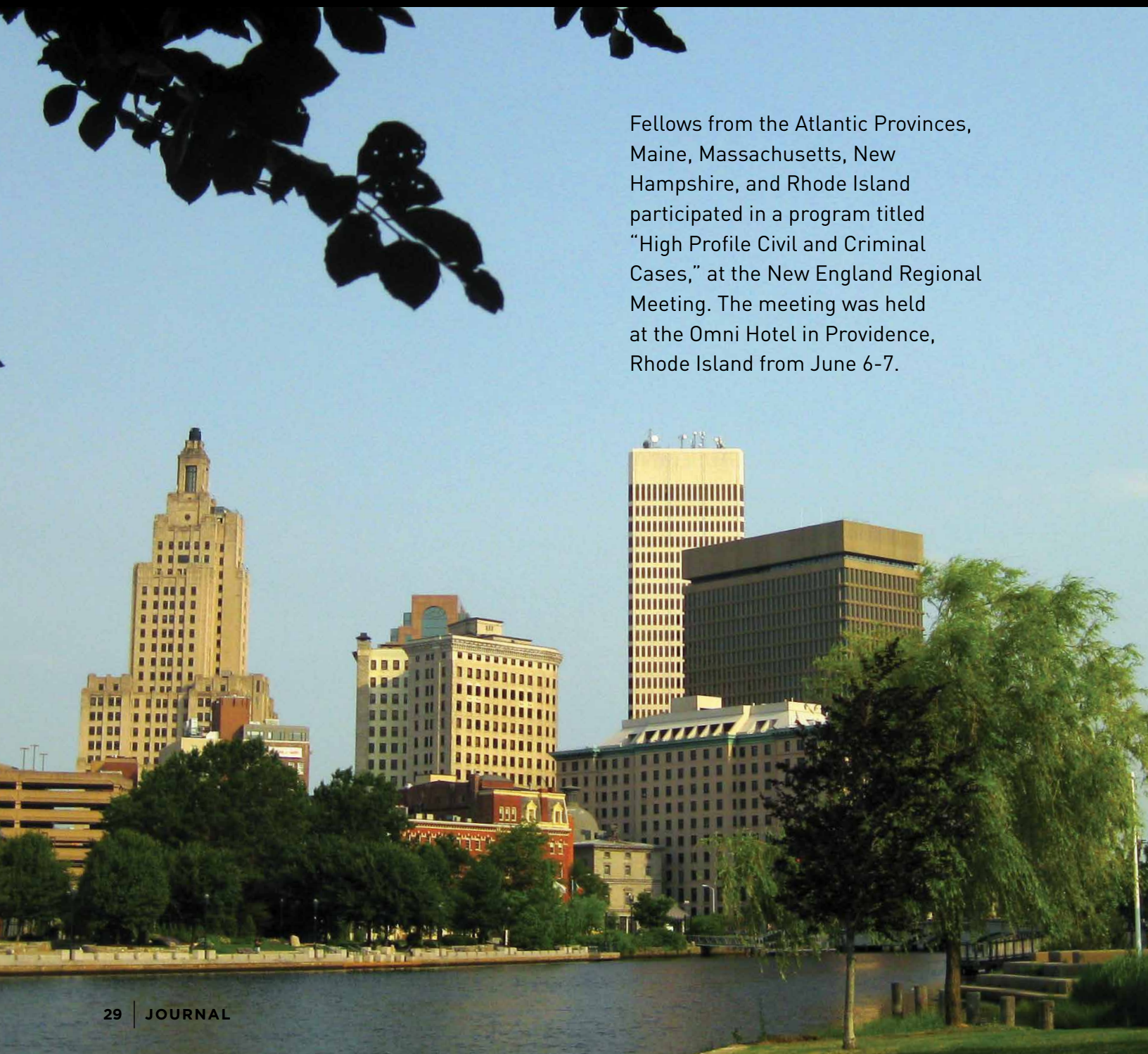
The final speaker was Mary Mel French, who served as the U.S. Chief of Protocol under the Clinton Administration from 1997 to 2000. French worked directly with President Clinton and Secretary of State Madeleine Albright in planning and arranging visits to the United States by foreign chiefs of state and head of governments. She was responsible for formally presenting foreign leaders to the President and the Secretary. French explained that "protocol represents good manners and etiquette and civility in our government and around the world."

She stressed the importance of understanding the customs and norms of another country, because "we all need to do our homework regardless of how basic that sounds." One way to establish a connection and sense of goodwill is through gift giving. French recounted compiling a gift for Nelson Mandela, a leather scrapbook personally signed by President Clinton that included letters and memorabilia from living boxing champions. When Mandela opened the gift, tears came to his eyes. He thanked President Clinton and also thanked French and her staff. "The gift created a bond a friendship between two presidents that was not only diplomatic but personal."

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

June 6–7, 2014

REGION 12
NEW ENGLAND REGIONAL MEETING



Fellows from the Atlantic Provinces, Maine, Massachusetts, New Hampshire, and Rhode Island participated in a program titled "High Profile Civil and Criminal Cases," at the New England Regional Meeting. The meeting was held at the Omni Hotel in Providence, Rhode Island from June 6-7.

Rhode Island State Committee Chair **John A. Tarantino** welcomed Fellows to the Saturday General Session while Rhode Island State Vice Chair **Patricia K. Rocha** moderated the panel of speakers.

Speaking first, Tarantino focused on the notion that "in many cases the high-profile case is going to be decided first in the court of public opinion."

Contrary to what his mentor advised him when dealing with media, to always say 'no comment' and that one cannot be hurt by 'no comment,' "I absolutely think you can get hurt by saying 'no comment.'"

Tarantino shared practical strategies an attorney can use to reduce media generated prejudicial coverage. "In a lot of high-profile litigation, the client has the ability to not only retain counsel and pay for counsel but also to pay for a variety of experts or consultants, one of whom should be a skilled media relations person." It is also vital "to recognize that it is, in fact, ethical under appropriate circumstances to comment on a matter in litigation."

When handling high-profile cases that receive intense media coverage, one should not "underestimate your opponent or your opponent's legal theories …. Research the elements of each claim and defense depending on what side you're on before taking the position in the media or in the court filing … Once you've taken a position in the media, that position is going to be very hard to retreat from. They'll write a story about it on day one and they'll put a whole bunch of facts and issues in there … once you say something in the media, expect to see it again and again and again."

Another suggestion was "stick to a plan, even if a large part of that plan is ultimately going to be one that's carried out at the direction of the court." For any case, whether it is in the civil or criminal court, and particularly in the federal court "the judges are going to take a very active role in case management and they're going to, among other things, set time periods and deadlines. From the lawyers' perspective, we generally think those deadlines often are unreasonable but you're going to have to live with it … design the plan early on; be ready to implement."

QUIPS & QUOTES

In high-profile corporate litigation, particularly ones involving, you know, public companies, plaintiffs' lawyers will often consider strategically using the media as a means to advance what a number of commentators have come to call the triple pressure point litigation planning. What is that? Strategy is: Drive up the cost of litigation, drive down the company stock price and vilify the company not only with customers and consumers in general, but also with perspective jurors and that's known in the media now as the triple pressure point play.

John A. Tarantino

LITIGATION COMMUNICATION IS REPUTATION MANAGEMENT

Crisis management consultant and president of the Perry Group, Gregg Perry, spoke on how to engage the media in high-profile civil and criminal litigations.

Public relations professionals "generally want to react immediately at the speed of public perception in the court of public opinion and diminish those threats or damage to a company or a defendant's reputation. It's because in the court of public opinion snap judgments are often made based on limited or very incorrect in-

formation and, unfortunately, it often creates a conflict between attorneys and PR folks."

Perry described reputation management as "litigation communications" because it is a distinctive part of public relations and is not "spin." "It's about getting the facts out to wide audiences, including the media. It's about working to protect against judicial copycat litigation or issue-base attacks, about explaining and reinforcing the defendant's defense strategy before a wide range of audience, or plaintiff's strategy sometimes, and it's about getting in front of the news cycle to shape a story and correct the record so that the litigation isn't compromised by the spin being put out by the other side. It's also about educating the media about what's happening in the courtroom, the significance of a motion or a filing by the other side or procedural posture of a case or the significance of a particular ruling in the court. It's about making complicated things understandable."

In order for a litigation communication strategy to be effective, it "has to be in lockstep with litigation strategy, and I want to repeat that because a lot of PR people don't understand that and a lot of lawyers are afraid of that. Communications and legal strategy have to be in sync at all times. Otherwise, the entire effort will be undermined, both in the courtroom and in the court of public opinion."

QUIPS & QUOTES

In today's 24/7 media environment 'no comment' may not be the best response and can indeed harm your client's reputation and impair your credibility and perhaps the client's innocence with key audiences right from the very beginning. First of all, 'no comment' allows the other side to shape or frame an issue ... No comment allows for incorrect or misleading information about your client to go unchecked and undisputed and it lives forever. It also emboldens the other side to attempt to spin the facts in their favor.

Gregg Perry

COMPLEX, HIGH-PROFILE CASES DO NOT FIT THE MOLD

The next speakers were the Honorable Frank Williams, Chief Justice of the Supreme Court of Rhode Island (ret.), and Nicole Benjamin, his former law clerk, who spoke on the court's management of high profile civil and criminal cases. Their presentation highlighted the trial court's management of the Block Island rape case in the late 1990s, commonly known as the Yellow Kittens Case, and the appellate court's management of the Lead Paint case, which came before the Rhode Island Supreme Court in 2008 after the longest civil trial in the state's history.

The two discussed how complex, high-profile cases do not normally fit the mold, and because of this they require flexibility and creativity from the court as well as counsel.

The court showed flexibility in the Lead Paint case by allowing one day dedicated to oral arguments, which lasted for approximately four hours. Judge Williams understood that the trial had gone on too long, "not just because of the litigants but because of the cultural aspects of it that involved victims and the legislature that intervened in an attempt to ameliorate lead paint poisoning by creating a fund to assist. So my concern was getting everything to go quickly."

Flexibility was shown in the Yellow Kittens case in several areas: bifurcation of the trial; submission of pre-trial motions and memos to resolve significant issues before trial; discussion on pre-trial motions before trial and issuance of decisions each morning before the court session; and written preliminary jury instructions and final jury instructions.

Open communication was also essential between the court and counsel on procedural issues. In the Lead Paint case, the types of communication allowed were emails between the law clerk and counsel, periodic status meetings with counsel and open discussion about the court's expectations and opportunity for counsel to ask questions of the court. "It took trust in knowing that local counsel were going to be communicating that which was permissible, and it took trust on the part of the lawyers, too, to get comfortable with the idea that they would be communicating directly with a law clerk who was directly involved in the case," Benjamin said. In the Yellow Kittens case, expectations of counsel were established from the onset and frequent status meetings were held with counsel. Communication went the distance in creating "that platoon spirit, that squad spirit that we're all in this together, invested, in an outcome that's just and fair," Williams said.

Staffing is another area that poses a challenge in complex, high-profile cases. In the Lead Paint case, one obstacle to the docketing of appeals was that the stenographer was struggling to find time to complete the transcripts. The court managed that issue by taking the stenographer off her regular daily court calendar, providing her more time to complete the transcripts.

Judges can be placed in four classifications. Those judges would need a head nor heart, they should be avoided at all costs. Judges with head but no heart, almost as bad. Judges with heart with no head, risky but better than the first two. And judges with both a head and a heart, the rare judges.

Judge Frank Williams, quoting a line from the book Anatomy of a Murder

"From the practitioner side of things, it's often easy to lose sight of what the court has the visibility into and what the court doesn't, and sometimes I think we assume that the court knows everything that's going on in a particular case. From an insider's perspective, having clerked to the court, that's just not always true," Benjamin said.

TAMING THE MEDIA

Rounding out the program was criminal defense attorney and Fellow **J.W. Carney, Jr.** He handled the Whitey Bulger trial among other well-known cases, including representing John Salvi for the murders at a Brookline Abortion Clinic in a suburb of Boston, Massachusetts and Tarek Mahenna in a terrorism case. He shared his ten tips for dealing with the media.

Because the publicity generated by a high-profile case tends to be one sided, "there's no one out there telling the other side of the story or standing up for the person who's got this terrible charge against him or her. There's got to be a role for the lawyer. The tsunami of prejudicial publicity focused on your client affects everybody in the process."

One factor that affects high-profile criminal cases is the problem created by lawyers when they are interviewed by the media. Some lawyers may provide answers the media wants, eventually attacking lawyers personally. "But our obligation as lawyers is to educate the public, to talk about the roles of the lawyers, especially the responsibility of the criminal defense lawyer. I was asked to represent James Bulger by the court, as I was by the court for the alleged terrorist, and I proudly did so. I'm also pleased to say that in thirty-six years of criminal practice, I've never turned down an appointment when a court has asked me to represent an indigent defendant. I wish these lawyer-commentators would talk about us in a way that brings repute to our profession and helps the public understand why we do what we do."

One of Carney's tips was to be disciplined in what is said to the media. "We have to control the content. The content we give is not controlled in any way by the questions that are asked of us." The print reporter is only looking for two sentences to include in an article while a broadcast reporter is looking for fifteen seconds of footage for the nightly news. "You should decide in advance what you want to have in that news story and what you want to have on that nightly news and limit what you say to that and only that."

Another tip was to make a plan when a press conference with cameras waits outside the courtroom. "Before I leave the courthouse, I think about the one sentence I want to have on the news that night." Carney will also mention the first name of the reporter asking the question at the outset of his answer. "If you include the reporter's name in the answer, they'll absolutely show it," because it gives the appearance that the reporter is prominent enough to be mentioned.

Carney also advised keeping cordial relations with reporters. "It's okay if the reporters hate your client, but don't let them hate you." Noting a personal story, he also cautioned the audience to "always remember that everything that you say or do that is not off the record is not protected, no matter how friendly you are with people." He recalled a time when a reporter asked him to share something that she didn't know. He assumed the reporter was asking about him, so he showed her his toenails were painted eggplant purple. "It was such a slow a Bulger news day that the reporters madly tweeted this disclosure …. My daughter called me and screamed, 'Dad, are you insane?' She said, 'Dad, go to hashtag Carney's toenails.' I didn't know what a hashtag (#) meant. I do now."

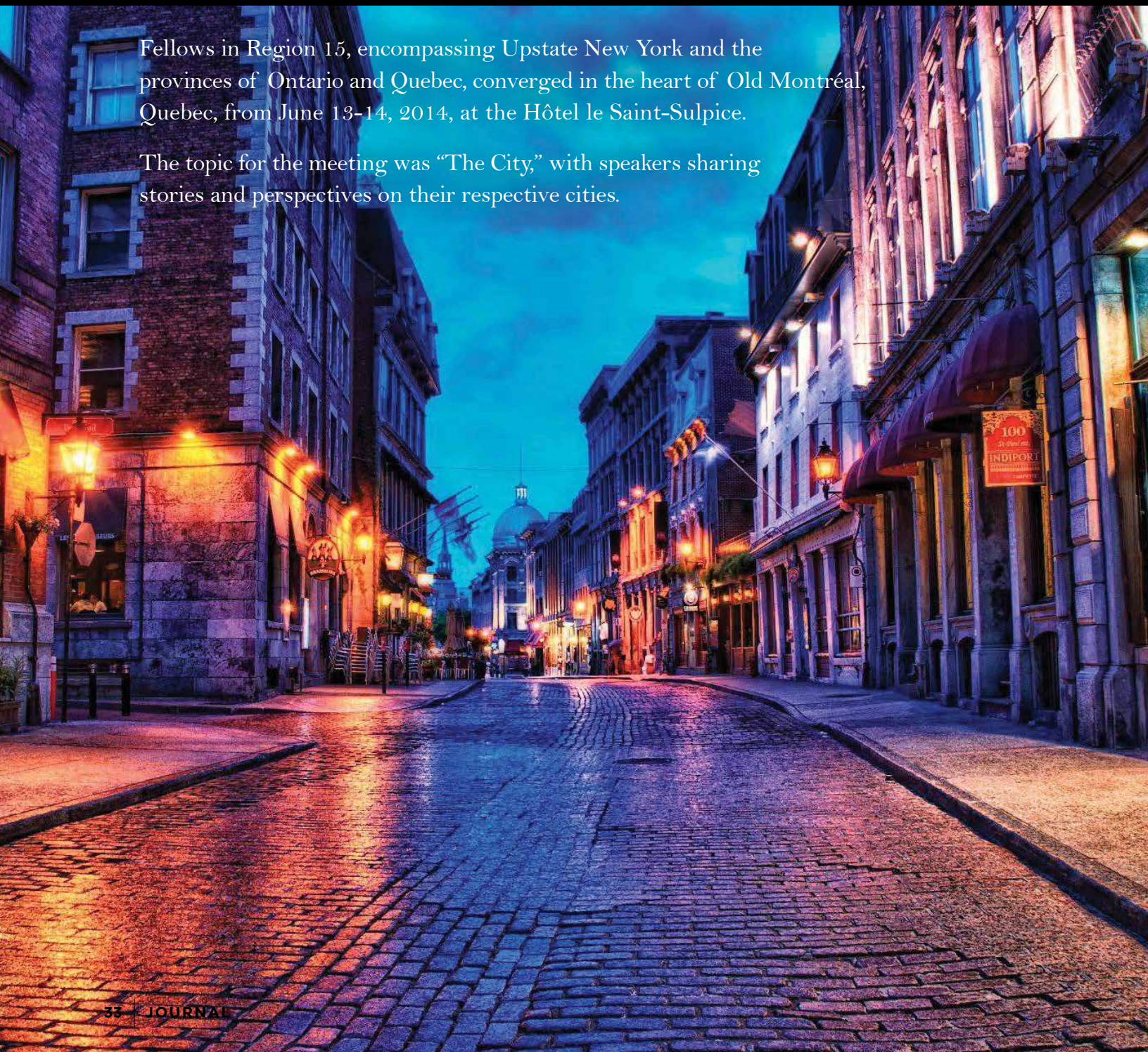
Carney's final tip was, "if you want a guarantee to have good press, walk out of the courthouse with your mom on your arm, approach the microphones, and introduce her. Softball questions will follow. One commentator the next day said, 'We've all heard of taking your son or daughter to work; yesterday, J. W. Carney, Jr. took his mother to work.' Desperate times call for desperate actions."

Upstate New York,
Ontario, Quebec

June 13-14, 2014

Montreal, Quebec

REGION 15 MEETING



Fellows in Region 15, encompassing Upstate New York and the provinces of Ontario and Quebec, converged in the heart of Old Montréal, Quebec, from June 13-14, 2014, at the Hôtel le Saint-Sulpice.

The topic for the meeting was "The City," with speakers sharing stories and perspectives on their respective cities.

HERITAGE MONTREAL

Dinu Bumbaru, the current policy director of Heritage Montreal, is one of the founders of Université de Montréal Graduate Studies and Conservation and is an active lecturer and advisor. Bumbaru spoke on the issue of heritage in Montreal, which is a "cultural construct…not a rational objective form."

Bumbaru noted that while heritage is often rooted in history and historic buildings, he asked the audience to shift their thinking and consider it as a "notion of geography." Heritage Montreal was founded not to protect things, but to be an "actor of promotion and a catalyst." The organization is contending with three main issues: how to deal with the institutional estate, which includes around 600 churches and places of worship; how to deal with the industrial estate; and planning at the largest scale for a metropolitan area.

Heritage is to be observed within "the cultural ecosystem, which involves a number of objects, types, resources, assets and consequently a much broader system of actors and players."

URBAN AGRICULTURE

Marie-Claude Lortie has been a columnist and food critic for the Montreal daily newspaper *La Presse* for the last twenty-five years. She recently published a book *Carnet d'un urbain a Toronto* (Notes of an Urbanite in Toronto). Her topic was the politics of food and urban agriculture in Montreal.

Urban agriculture, which would include being able to raise and own chickens in the city, "is the response to a tragic phenomenon which I would call "the two-speed food system" or the "two-tier food system," where ... you have the wealthy people who can eat organic food and natural food and food that's not been too processed, and that's healthy, and on the other hand, you have people who have a lot less money, who end up eating food that's imported from the other end of the world, or very industrial food that is cheap." Lortie sees urban agriculture as a way for "immigrant communities or the less wealthy to actually grow their own vegetables and maybe have their own eggs for a lot less money, and have access to the produce and products that they currently don't have access to because they don't have the financial means for it."

QUIPS & QUOTES

Food is often seen as something light, as something funny, as something very pleasant, but in my opinion, it's probably one of the most important political issues right now.

Marie-Claude Lortie, columnist and food critic for La Presse, the Montreal daily newspaper

COMMISSIONS OF INQUIRY

Quebec Province Chair **Sylvain Lussier**, Ad. E., spoke on the Charbonneau Commission, which was mandated to inquire into the allegations of collusion and corruption in the granting of public contracts in the municipal construction industry in Montreal. It was commissioned in 2001, and resulted in the resignation of Laval mayor Gilles Vaillancourt, the resignation of Montreal mayor Gérald Tremblay and the resignation of Montreal interim-mayor Michael Applebaum.

Lussier gave historical perspective to the Charbonneau Commission by providing a brief history on commissions of inquiry, which goes as far back as the Inquiries

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Act in 1895. The main difference is "in 1895, the remuneration of the commissioners shall not exceed $10.00 for sitting six hours. So, that's increased a little bit. But the general framework of the Act has not changed since."

The Hon. **Dennis R. O'Connor**, a Fellow and former Associate Chief Justice of Ontario, has been commissioner of two commissions of inquiry— the Walkerton Commission, which looked into the causes and effect of a tainted water system in a small town in Ontario, and an inquiry into the circumstances surrounding the treatment of Maher Arar, a Canadian citizen who was tortured and imprisoned in a foreign country. "We use public inquiries, and have used them over history far more than any of the other countries we consider as comparables. We've had over 400 public inquiries since Confederation. We most often use judges as the public inquiry commissioner, not always, but most often. And, in Canada, we use public inquiries to cover certainly corruption, but almost any conceivable topic you can think of, from big public policy issues to all sorts of scandals and tragedies."

QUIPS & QUOTES

In Canada, when something goes wrong we read the editorials, the public comment, and they not only call for an inquiry, they often use the words 'a judicial inquiry.'

The Hon. Dennis O'Connor, a former Associate Chief Justice of Ontario

O'Connor advised that one of the most important things to do when conducting a public inquiry is to gain and maintain the public confidence of people who are divided on issues. "The reason a commission has been called is because there's a lack of confidence in the government or institution that is involved…it involves communicating and behaving differently than you do in a trial or in a field as a judge." In the midst of an emotional and tension-filled inquiry, "the aura of respect that we have for judges" can maintain decorum, and "the tone that the commission counsel sets plays a huge role in the way people respond to it."

Fellow **Linda Rothstein** of Toronto was commission counsel to the Goudge Inquiry, which looked into issues relating to expert evidence and the reliance on expert evidence in criminal convictions. She was also counsel to the city of Toronto in the commission of inquiry related to a leasing scandal. For Rothstein, when serving as a commission counsel "you're always taking your lead from the commissioner….most of what you're doing is actually investigative, it is planning, it's creating a process. It always felt to me like I was in a gigantic mediation with twenty other parties, and what was really odd was that I wasn't really just the meditator, I was a party, too."

As a student of public inquiries, Rothstein sees the attributes for success on a commission to include a "really deep interest in public policy and public policy making, and I don't think that's every lawyer or every judge. I think you have to be extremely innovative and creative, and that's sometimes in short supply in our profession. I think you have to be curious, decisive, fair, have a reputation for fairness, and it doesn't hurt to have a towering intellect."

CORRUPTION IN CHICAGO

President **Robert L. Byman** spoke about Chicago's reputation as the indisputable capital of municipal corruption, and pointed out that the corruption has not been limited to the state's governors. Dan Rostenkowski, an 18-term congressman from the South Side of Chicago, who became Chairman of the House Ways and Means Committee, was convicted of mail fraud. Congressman Mel Reynolds was convicted of statutory rape, and while serving the rape sentence, was indicted and convicted of extortion and bribery. Bill Scott, the former attorney general of the State of Illinois, was convicted of mail fraud, bank fraud and extortion. From 1970 to 2010, one hundred different individuals have served as Chicago aldermen. During that period of time, thirty-three have been convicted of crimes.

Byman also discussed Operation Greylord, the investigation into corruption in the judiciary of Cook County, Illinois. "The people in Illinois already know that they don't like crooks, but they don't want their elected crooks to appoint their judges. They'd rather at least have the right to vote for somebody, and maybe make the right decision."

JUDICIAL INDEPENDENCE

Sean Fine, a legal journalist with *The Globe and Mail*, spoke about the public squabble between Stephen Harper, the Canadian Prime Minister, and The Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada. Fine challenged the Fellows to consider "to what extent our system permits Canadians to be informed, and what role the legal community should play."

MIAMI BEACH

AMERICAN COLLEGE OF TRIAL LAWYERS SPRING MEETING

FEBRUARY 26 - MARCH 1, 2015, EDEN ROC, MIAMI BEACH, FLORIDA

REGISTRATION INFORMATION WILL BE AVAILABLE IN EARLY DECEMBER 2014

BOOK REVIEW:

"ROSE HEILBRON: THE STORY OF ENGLAND'S FIRST WOMAN QUEEN'S COUNSEL AND JUDGE"

The titled book is more than a tribute to a distinguished mother by a daughter whose own accomplishments (she is also now a QC) are impressive: it is a story of a woman who diligently pursued her ambitions, while retaining an extraordinary personal warmth and integrity that endeared her to many. A letter expressing appreciation for her "splendid" address in 1950 explaining the Universal Declaration of Human Rights, an aspirational document which had been adopted two years earlier by the United Nations but was not yet well known, captures her personality:

> You won all our hearts, not only because of our admiration for the lucidity and clarity of your statement, not only for the arduous work which you gave in order that your contribution should be so outstanding, but for your wholly charming and compelling self.

Hilary Heilbron, QC, the author, has followed her mother into the ranks of Britain's barristers, and later into the ranks of the most celebrated of these: Queen's Counsel. She doesn't seem to be the slightest bothered that her mother preceded her, because her mother preceded every other woman in the legal profession at nearly every stage. She remains the youngest woman barrister ever (called to the Bar at twenty-five), and was a mere thirty-four when she and another, Helena Normanton, became the first two women to "take silk," entering, along with seventeen men that year, the rarified atmosphere of Queen's Counsellors; (actually, "King's Counsellors at that time, as George VI occupied the throne). And she became the first woman judge in England in 1956 at the age of forty-two.

This book is affectionate but also fact-intensive, as we say on this side of the Pond. It is an inspiring narrative of Heilbron's journey through the world of Britain's elite counselors and jurists. Perhaps in retrospect it may seem that her career path was predestined, but in this telling, the journey was even more impressive because the odds were all against it.

Rose Heilbron was born two weeks into World War I; and in that era, she came with two disadvantages: she was Jewish, and she was a woman. She entered Liverpool University in 1932, (the year of this reviewer's birth), when "it was still relatively rare for girls to go to university." Only one other young woman was "reading law" in her class. At twenty-two, Heilbron had tea with a King's Counsellor named Edward Hemmerde, who was then serving as Recorder of Liverpool. She wrote that he told her "there was not much chance for a woman at the Bar as there was unreasoning prejudice among solicitors, but he was all in favour of them." He meant what he said, and became a great supporter of Heilbron.

The story continues as twenty-one-year-old Rose becomes the first woman to receive a scholarship at Gray's Inn, and as she is called to the Bar at twenty-five, she has already become "Portia" to the press:

> Portia, twenty-four, is no blue stocking….She is quoted as saying "I am no blue stocking. The general impression of a woman lawyer seems to be a sober old maid. I have not adopted the law as a hobby. I am serious about my career, but that does not mean I shall give up dancing, swimming, golf or tennis. When I marry I intend to continue as a barrister."

She joins Chambers in Liverpool, described by the author as a group of junior barristers, "who only addressed themselves by their surnames and were not supposed to shake hands," and who sat "behind a crowded row of bewigged barristers," taking in the court proceedings as part of their "pupillage." Although she starts her practice enduring "a telling off" by a judge commenting on her cross-examination that she had thought was rather good, she attracts wide admiration from barristers and jurists alike. She becomes active in criminal cases, tries her first murder case in her second year in practice, and it reaches the Court of Criminal Appeal, becoming a leading case, later to be published in the Law Reports. People call her "Portia" for her brilliance and her skill, while her warmth and charm attract a multitude of friends and admirers. A number of her cases become landmark decisions. By the age of 30, she argues her first case in the House of Lords, commenting pithily afterward, "Interesting argument… we lost."

As World War II ends, 30-year-old Rose is a seasoned trial lawyer, and she begins to make "serious forays" into the world of speech-making. She addresses an important gathering on 'Some Defects in the Law' which needed reform. She also meets her future husband, 40-year- old Nathaniel Burstein, an Irish-born physician then practicing in Liverpool. The author, her daughter Hilary, tells us, alas, that Rose "had a tendency to exaggerate" when telling a story, and that Rose's oft-repeated statement that she and "Nat" became engaged only three days after they met was such an exaggeration: it was *two weeks* afterward! No dispute however, about the wedding, which came three months later.

Rose continues her criminal law practice with "The Hanging Boy case," winning acquittal for a young man with a criminal record who admits burgling the home of a known moneylender but denies hanging the moneylender's 11-year-old son from a clothes rack in the kitchen of the home. Rose is briefed in on personal injury and medical negligence cases, and also a major libel case, in which she represents a plaintiff, Bessie Braddock MP, who was accused in an opponent's campaign speech of "having an understanding with the Communists." This case is an interesting tidbit, if only to read about Rose's client, "Battling Bessie." ("Larger than life…and of an indomitable character…she said what she thought…a great campaigner against poverty and injustice.") American readers may think of Bella Abzug as they peruse this section. Rose loses the case on qualified privilege grounds, but the Court of Appeal reinstates Battling Bessie's claim.

Hilary tells us that Bessie was the person who told Winston Churchill that he was "disgustingly drunk," only to be met with Churchill's famous response, "I might say, Mrs. Braddock, that you are disgustingly ugly, but tomorrow I shall be sober and you shall still be ugly."

Rose, at thirty-four, gives birth to Hilary via emergency Caesarian section, but returns to work after a mere six weeks. Three months after her daughter's birth, Rose takes silk. Soon thereafter, she receives a letter from the Lord Chancellor's Office:

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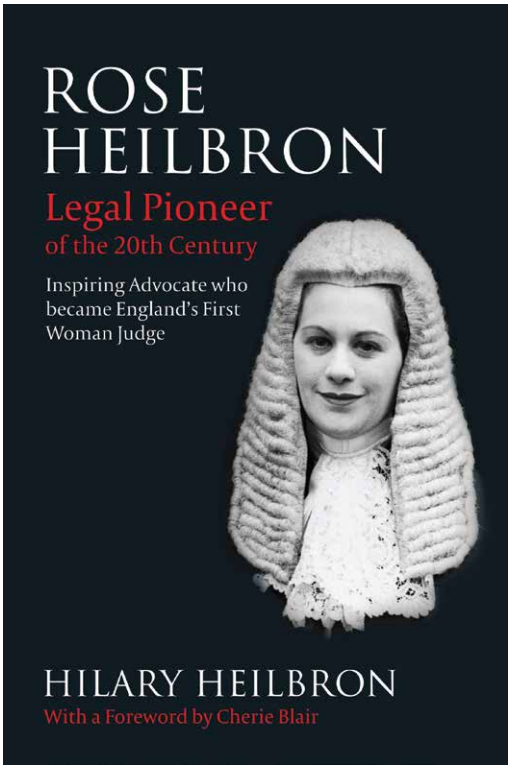
> With the appointment of ladies to be King's Counsel, it has become necessary for provision to be made as to the style of dress to be worn by them, and I have been instructed by the Lord Chancellor for the information of the General Council of the Bar, to send you details of the style of dress that has been formally approved.
>
> [Details of the new dress requirements are at page 69 of the book].

Her appointment occasioned wonderful newspaper copy. A staff reporter for the *Daily Post* wrote that "Miss Heilbron's court technique has impressed me on scores of occasions. She has brought a refreshing sparkle into the most wearying of Assize civil actions. Her admirable air of confidence, her twinkling eyes, and – more often than not – the tilt of her wig with just that slight suggestion of rakishness, make her presentation of a case an affair of interest no matter how dull its content."



This book is crammed with exhausting details of Rose Heilbron's many cases – each fascinating in large part because of the creative lawyering she brought to it. One case, notorious at the time, was dubbed the "Cameo Murders" and arose out of the point-blank shooting of the manager of the Cameo Cinema and his assistant as they tallied the takings from "Bond Street," that evening's film, which ironically concerned a double murder. Rose takes the case under the Poor Person's Act to the dismay of her client, George Kelly, "a 26-year-old small-time villain, well known to the local police." Upon learning that his defense had been assigned to a woman, Kelly complains to his codefendant Charles Connolly, "Hey, Charlie, I'm not happy with this at all. Why couldn't I have a fella, like you've got? Whoever heard of a judy defending anyone?" Rose comes within a single juror of obtaining an acquittal, but a later retrial results in a conviction and Kelly is hanged. Connolly accepts a plea bargain and is released from prison in six years. Fifty-three years later, the entire matter is reviewed by the Criminal Cases Review Commission and referred to the Court of Appeal, which concludes that the prosecution concealed exculpatory evidence and used evidence that "was false, and probably deliberately so," and thus, Kelly's conviction was "unsafe." Rose's efforts in the trial – "the longest murder trial ever" – failed to save her client, but "sealed her already growing reputation as an advocate." And the grounds for acquittal that she unsuccessfully urged upon the courts so many years before were finally vindicated by the Court of Appeal.

For an American trial lawyer, (particularly one who has on occasion presented House of Lords authority to the New York courts), the English legal system, with its divided bar, the various interchangeable roles of barristers, and the painstakingly thorough opinions of the appeals courts, never ceases to amaze. Even more striking are the many indications in this book that we, Americans and British, continue to wrestle with and agonize over the same significant questions of law, and that we tend to reach the same conclusions.

Rose Heilbron brought her scholarly skills to her profession. She clearly believed that the law is to be respected and honored as our principal instrument for attaining justice. She thought the history of the law is important to know. She did not hesitate to cite history as she petitioned the courts to change it. She attained the heights of our shared profession because she was an outstanding exemplar of what a lawyer should be.

This book is both a history and a celebration, and is a good read during the centennial year of its subject's birth.

Richard C. Cahn
Huntington, New York

IN MEMORIAM

We recognize below the passing of thirty-five Fellows of the American College of Trial Lawyers. ✦ Over the last twenty-eight issues of the *Journal* (formerly *The Bulletin*), in which we have recounted the lives of 1,067 departed Fellows, their reported roles in the world's twentieth century conflicts have slowly changed. ✦ Only ten of the thirty-five on whom we report here served in World War II. ✦ Six of those had entered military service as teenagers and another had waived his 4-F status to enlist. ✦ One was on a destroyer bound for Japan when the war ended. ✦ Another, a twenty-year-old Ensign with a high school education, commanded a destroyer on its return to the United States after the Japanese surrender. ✦ One commanded an all-black infantry unit in the South Pacific, returning home with a Bronze Star. ✦ Another, whose military career was the only one that resounded with names that are fading into history—Guam, Guadalcanal, Bouganville and Iwo Jima—returned with a Purple Heart. ✦ One flew as a passenger in a B-29 Superfortress on a surveillance flight over Nagasaki on August 10, 1945, the day after the plutonium bomb that essentially ended World War II had been dropped on that city. ✦ Nine others saw military service during the Korean and Vietnam conflicts or thereafter. ✦ One of these remained in the Marine Air Corps Reserves, retiring as a Major General. ✦ Virtually all of them went on to complete their education with the aid of the GI Bill. ✦ The lives and their professional careers continue to be an inspiration. ✦ In their youth, some had been college athletes—football, basketball, track and golf. ✦ One was an Eagle Scout, as later were his son and grandson. ✦ One had been a Fulbright Scholar. ✦ In the wake of World War II several had been allowed to enter law school without an undergraduate degree. ✦ Several became law review editors. ✦ They came from many different backgrounds. ✦ One was a sixth-generation lawyer in a southern city. ✦ Another, the eleventh child in his family, had worked in a steel mill to supplement his income in his early years of practice. ✦ One, along with his sister, had been placed in an orphan's home as a child by parents who could not afford to feed them in the depths of the Great Depression. ✦ As a fourteen-year-old, he had located his mother in Alaska and traveled in steerage on a tramp steamer to join her, earning his spending money en route playing poker. ✦ Their professional careers were as varied as their backgrounds. ✦ Some became the pillars of their local communities. ✦ Others achieved national prominence. ✦ One was the Honorary French Consul in his city. One co-authored a book on trial practice with College Past President Chilton Davis Varner. ✦ Many had led their local bars. ✦ Five had been presidents of their state bar organizations. ✦ Six had served the College as state chairs and one as chair of a national committee. ✦ One had been President of American Board of Trial Advocates (ABOTA). ✦ One had been Special Counsel to investigate the causes of the savings and loan crisis of the 1980s in his state and went on to participate in a similar national commission. ✦ Five had gone on to be judges, one of them on the United States Court of Appeals

for the Eighth Circuit. ✦ One had appeared before the United States Supreme Court in *New York Times Co. v Sullivan.* ✦ One had been appointed by the court as lead counsel in the consolidated multi-party litigation arising from the Exxon Valdez environmental disaster. ✦ The youngster who had left the orphanage in search of his mother at age fourteen ended up going to law school at age thirty-one with a wife and two children, was inducted into the College after eighteen years of practice and became a member of the Inner Circle of Advocates. ✦ Collectively, their longevity, their broad interests and the stability of their relationships may well be interrelated. ✦ Sixteen lived into their eighties; ten into their nineties. ✦ Their average age at death was eighty-five. ✦ Of those whose obituaries included that information, fifteen had been married for fifty years or more, nine of those for sixty or more. ✦ Several who had been widowers had remarried. ✦ They had all remained active. ✦ Civic and charitable engagement, lives of service long past their years of active practice, was a common theme. ✦ One who had skied in three U.S. Alpine Ski Championships as a young man, skied in U.S. Alpine Masters events in retirement. ✦ One had enjoyed a single-digit golf handicap. ✦ One regularly played tennis well into his nineties. ✦ Many became world travelers. ✦ Many undertook to expose their grandchildren to the adventures that had enriched their own lives. ✦ One moved to California and, at age sixty-nine, sat for and passed the California bar examination and began a second practice there. ✦ In retirement, one continued to run his national firm's pro bono efforts, handling high-profile death penalty cases. Several of the tributes that follow are shorter than we would like them to be. ✦ The reality is that, for even those whose deaths are reported promptly, many Fellows who live into their nineties retired from active practice before the advent of the Internet, often moving to another place in retirement, and the available information about them is thus limited. ✦ Collectively, their histories are persuasive evidence of the impact of continued professional, personal, intellectual, and physical engagement on the length and lasting value of one's life. ✦

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

THE DATE FOLLOWING THE NAME OF EACH DECEASED FELLOW REPRESENTS THE DATE OF HIS OR HER INDUCTION INTO THE COLLEGE.

Frederic Kenneth Becker, '83, Woodbridge, New Jersey, chairman of Wilentz, Goldman & Spitzer, P.A., died January 15, 2014, at age 78. A *summa cum laude* graduate of Brown University who earned his law degree *cum laude* from the Harvard Law School, he had then studied at the University of Copenhagen as a Fulbright Scholar. A Past President of the Association of the Federal Bar of New Jersey and of the Harvard Law School Association of New Jersey, a member of the AAA commercial arbitration panel and a former mediator of complex commercial cases for the local Federal District Court, he had served on four different committees appointed by the New Jersey Supreme Court. He had also chaired the editorial board of the *New Jersey Lawyer* and was a member of the Council of Trustees of the New Jersey Performing Arts Center. He had also been a Director of Prudential Financial, Inc. and chair of its audit committee. The Association of the Federal Bar of the State of New Jersey had honored him with its William J. Brennan, Jr. Award, and he was the 2012 recipient of the Judge Learned Hand Award, presented by the American Jewish Committee. His survivors include his wife, four daughters and two sons.

James Willard Bartlett Benkard, '95, retired from Davis Polk & Wardwell LLP, New York, died April 1, 2014 of complications of melanoma nine days short of his seventy-seventh birthday. A graduate of Harvard University, where he was the sports editor of the *Harvard Crimson*, he served in the United States Marine Corps before earning his law degree from the Columbia Law School – Columbia University. He had clerked for a judge on both the Appellate Division and the Court of Appeals of New York. Perhaps best known for his death penalty cases, the first of which he undertook in 1977, he had served on the Board of Prisoner Legal Services and after his 2005 retirement from active practice, continued to run his firm's pro bono program and to handle death penalty cases in Tennessee, Georgia and Louisiana. The New York City Bar Association had honored him with its Norman Redlich Capital Defense Pro Bono Award. For four decades he had served as a Governor and for a term as President of the Knickerbocker Club of New York. He had served on the Boards of Vassar College, St. Mark's School, and Teachers College of Columbia University, where he was the longest serving board member. President George H. Bush had proposed to appoint him Assistant Attorney General in charge of the Department of Justice's Environment and Natural Resources Division, but his role as a trustee of the Environmental Defense Fund short-circuited that nomination. His survivors include his wife of forty-nine years, two sons and a daughter.

Richard Carl Civerolo, '81, a Fellow Emeritus, a founder of Civerolo, Gralow, Hall and Curtis, P.A., Albuquerque, New Mexico, died May 12,

2014 at age 96. He had graduated from high school in 1935, served as a Captain in the United States Army and then, after World War II, went to undergraduate and then to law school at the University of New Mexico, graduating in its first law school class in 1950. He had served as a Special Assistant Attorney General for the State of New Mexico for eight years. He had been the national President of the American Board of Trial Advocates (ABOTA) and a recipient of the New Mexico State Bar's Distinguished Bar Service Award. Best known for his service in the medical community, he was a Past President of the New Mexico Cancer Society and a long-time member and Chairman of the New Mexico Medical Review Commission. An author of New Mexico's medical malpractice statute, he had been honored by the New Mexico Medical Society with a special award for his service to the public, the legal profession and the medical profession. Preceded in death by his wife of sixty-five years, his survivors include a daughter and a son.

Max Cohen, '88, a Fellow Emeritus, retired from the Gary, Indiana firm, Cohen & Thiros, P.C., and living in Merrillville, Indiana, died May 30, 2014 at age 87. The youngest of eleven children, raised in the Jewish Orthodox tradition of his Sephardic parents, during World War II, he enlisted in the United States Navy at age seventeen, training for an underwater demolition team. Then, using the GI Bill, he earned his undergraduate and law degrees from the University of Indiana. To supplement his income in the first four years of his practice, he worked as a cinder snapper for U.S. Steel, eventually serving as the President of the Northwestern Indiana Steelworkers' Union. In 1971, he formed the law firm with which he practiced until his retirement. He also taught as a part-time professor at the Valparaiso University School of Law. He had served as President of the Gary Bar Association and of the Federal Bar Association of Northwest Indiana. His survivors include his wife of thirty-three years and a daughter and a son, both practicing lawyers.

John Joseph Collins, '89, a Fellow Emeritus, retired from Collins, Collins, Muir & Stewart LLP, Pasadena, California, and living in Laguna Beach, California, died December 26, 2013 at age 77, of cancer. A graduate of Santa Clara University and of Loyola Law School Los Angeles, he did a year of graduate work at the University of Southern California Law Center. After two years as Deputy Counsel for Los Angeles County, he joined his father in the practice of law. He had served as Vice-President of the California State Bar Association, as President of both the Pasadena and Los Angeles County Bar Associations, as President of the Association of Southern California Defense Counsel and of the California Defense Counsel. A President of the California chapter of the American Board of Trial Advocates, he had been its California Trial Lawyer of the

Year. He had served on the Judicial Council of California and on the state Judicial Nominees Evaluation Commission. In retirement, he had served as Foreman Pro Tem of the Orange County Grand Jury. He had been honored as the Metropolitan News-Enterprise Person of the Year for his contribution to the California judicial system. A member of the Board of Overseers of Loyola Law School, it had honored him as a Distinguished Alumnus and a Champion of Justice. He had also received the Pasadena Bar Association's Donald R. Wright Distinguished Service Award. His survivors include his wife, three daughters and four sons.

John Arthur Curtiss, '75, a Fellow Emeritus, Of Counsel to Baylor, Evnen, Curtiss, Grimit & Witt, LLP, Lincoln, Nebraska, died May 29, 2014 at age 87. A graduate of the University of Nebraska and of its School of Law, he served in the United States Army Air Corps in World War II. A widower, his survivors include four sons.

Frank William Draper, '75, a Fellow Emeritus, retired from Detels, Draper & Marinkovich, Seattle, Washington, died May 26, 2014 at age 84, of Alzheimer's Disease. A graduate of the University of Washington, where he was a member of the golf team, and of the University of Washington School of Law, after law school he spent two years in the United States Army Counterintelligence Corps. After serving as Assistant Corporation Counsel for the City of Seattle, he entered private practice, eventually forming the law firm in which he practiced until his retirement. In retirement, he had taken up oil painting. His survivors include his wife of sixty years, two daughters and a son.

Richard C. Fields, '88, Boise, Idaho, retired from Moffatt Thomas Barrett Rock & Fields, Boise, Idaho, died April 23, 2014, in the aftermath of a fall, at age 83. A *magna cum laude* graduate of Harvard College, he had served in the United States Air Force in Japan, then became a reporter for the Associated Press in Helena, Montana. He returned to Japan to marry a Japanese woman, later baptized as Shirley Fields, whom he had met when she worked as a translator and interpreter in the headquarters building where he had been stationed in Japan. He then entered and graduated from the University of Denver Sturm College of Law while working in the editorial department of the Martin Company. After law school, for two years he was a staff attorney for the National Labor Relations Board in Denver, then moved to Boise to help to form the firm in which he practiced for almost fifty years. He had led his chapter of the American Board of Trial Advocates, the Idaho Association of Defense Counsel, the Jackrabbit States Bar, the Western States Bar and the Idaho chapter of the Federal Bar Association. He had served as President of the Idaho State Bar, which had over the years honored him with its Award for Outstanding

Service and Professionalism and its highest honor, its Distinguished Lawyer Award. He had taught at Boise State University and graded bar examinations for thirty years. A Rotarian like his father, he and Shirley had been honored by that organization for their philanthropy by naming an award in their names. He had also chaired his county Emergency Medical Society Advisory Board, setting up the first paramedic program in the state. He had served the College as its Idaho State Chair. His survivors include his wife of fifty-seven years, two daughters and a son.

Kurt Herman Frauen, '74, Oconomowoc, Wisconsin, retired from Borgelt, Powell, Peterson & Frauen, S.C., Milwaukee, died April 27, 2014 at age 89. Serving the United States Navy in World War II, as a twenty-year-old Ensign, he commanded a destroyer on its post-war return from Japan to San Diego. He then attended Northwestern University and earned his law degree from Yale Law School. He had been the President of the Wisconsin Bar Association and the College's Wisconsin State Chair. His survivors include his wife of fifty-nine years, two daughters and three sons.

Richard Lattimore Griffith, '93, a Fellow Emeritus retired from Cantey & Hanger, LLP, Fort Worth, Texas, died June 12, 2014 at age 75. A graduate of the University of Oklahoma who earned his law degree from the University of Texas, he was the co-author of a textbook on Texas hospital law, the principal field of his practice. His survivors include his wife and two sons.

Haynes L. Harkey, Jr., '86, a Fellow Emeritus, retired from Haynes, Harkey, Smith & Cascio, LLP, Monroe, Louisiana, died April 11, 2014 at age 93. He earned his undergraduate degree from Louisiana Polytechnic Institute and, after three years' service in the United States Navy in World War II, his law degree from Tulane University Law School. He had served for seventeen years as the City Attorney of Monroe and as President of both the Louisiana Association of City Attorneys and of the Louisiana Association of Defense Counsel. For fifty years he taught a church school class at his Methodist church, where he had chaired both the congregation's Board of Trustees and the building committee that constructed the church's present sanctuary. An amateur photographer, he, along with a son and a grandson, had been an Eagle Scout. His wife of sixty-four years had predeceased him. His survivors include a daughter and two sons.

Walter Charlton Hartridge II, '85, a member of Bouhan, Williams & Levy, LLP, Savannah, Georgia, died April 23, 2014 at age 80. He earned his undergraduate degree with distinction from the University of Virginia, where he "lived on the Lawn." and was a member of Phi Beta Kappa and the Raven Society. He then spent three

years in the post-Korean conflict era as an officer in the United States Army, stationed in Germany, before returning to Harvard Law School for his legal education. He had been a member of the Board of Governors of the Georgia State Bar and Chair of the Southeastern Admiralty Law Institute. A seventh-generation Savannahian and a sixth-generation Savannah lawyer, he was a Past President of the Society of the Cincinnati in the State of Georgia, a Past President and Chairman of the Historic Savannah Foundation and a Trustee of the Georgia Conservancy. Fluent in French and German, he had for many years been the Honorary French Consul in Savannah. His survivors include his wife of fifty years, two daughters and a son.

Samuel Omar Jackson, Jr., '84, a Fellow Emeritus, retired since 1985 from Israelson, Jackson & Salisbury, PA, Baltimore, Maryland, and living in Naples, Florida, died February 28, 2014 at age 93. A 1943 graduate *magna cum laude* of Washington College, which he attended on football and track scholarships and where he served as President of the Student Council, he served as an officer in the United States Navy in the Pacific Theater in World War II. Stationed on Okinawa, he took the opportunity to fly over Nagasaki in a B-29 *Superfortress* the day after the bombing that led to the end of the war. He then earned his law degree at the University of Maryland School of Law. He was recalled to active duty for two years during the Korean Conflict. A widower, his survivors include two daughters and a son.

Eugene Jericho, '75, a Fellow Emeritus, retired from Strasburger & Price, LLP, Dallas, Texas, died June 3, 2014 at age 89. Entering the United States Army Air Corps at age seventeen, he was a flying instructor until the end of World War II. He began his undergraduate education at Southern Methodist University, and, after attending the University of Missouri, earned his law degree from the Southern Methodist Dedman School of Law. Principally an aviation lawyer, he had served the profession in numerous capacities at the local, state and national levels, including chairing the aviation committees of the Dallas and Texas State Bars, various committees of the American Bar Association and its Section on Insurance, Negligence and Compensation Law. He served on the Board of Overseers of the Rand Corporation. The Air Law Library at the Southern Methodist University School of Law bears his name. He had served the College as Chair of its Committee on Specialization/Advertising of Legal Services. His survivors include his wife of sixty-one years and five daughters.

Orrin Wendell Johnson, '76, Harlingen, Texas, died May 16, 2014 at age 93. His education at the University of Texas interrupted by World War II, he was an officer in the Third Division of the United States Marine Corps, seeing combat on Guam, Guadalcanal, Bouganville and

Iwo Jima and returning with a Purple Heart. Resuming his education at the University of Texas School of Law, he served as President of the law school student body and Associate Editor of the law review, graduated *cum laude* and was inducted into the Order of the Coif. He was a Fellow of both the College and the American College of Trust and Estate Counsel. He had been President of his county Bar, of the Fellows of the Texas Bar Foundation and of the State Bar of Texas, which had honored him with its Frank J. Scurlock Award, President's Award and Lola Wright Foundation Award. Known for his pro bono work and public service, he had been a founder and had chaired the Board of the Marine Military Academy. One of the primary founders of the Good Government League, designed to monitor and eliminate corruption in county government, he had been one of six national recipients of Common Cause's Public Service Award. His survivors include his wife of sixty-three years, two daughters and three sons.

Lawrence Rouner King, '07, a partner in Larsen King, LLP, St. Paul, Minnesota, died March 29, 2014 at age 62 of cancer of the brain. A graduate of the University of Missouri and of the Hamline University School of Law, he had served on the Board of Directors of a local Bar organization promoting diversity in the practice of law and on the Boards of Directors of two performing arts organizations. His survivors include his wife, a daughter and two sons.

Michael Leo Kinney, '63, Kinney, Fernandez & Boire, P.A., Tampa, Florida, died October 31, 2013 at age 95. A graduate of St. Peters College and of the Rutgers University School of Law-Newark, he spoke six languages, had served as a Director of the Berlitz School of Foreign Languages and had played tennis well into his nineties. A widower, his survivors include three daughters.

Konrad D. Kohl, '77, a Fellow Emeritus, retired from Kohl, Harris, Nolan & McCarthy. P.C., Metamora, Michigan, died July 18, 2012 at age 85 in Naples, Florida. Beginning his undergraduate studies at Albion College, he had been called to post-World War II active duty in the United States Army Special Services in Garmish, Germany. He then returned to earn his law degree at Detroit College of Law (now Michigan State University College of Law) in 1951. His survivors include his wife of sixty-two years, and four sons.

Joseph Hayes Koonz, Jr., '83, a partner in Koonz, McKenney, Johnson, DePaolis & Lightfoot, LLP, Washington, District of Columbia, died September 28, 2013 at age 78. A graduate of St. Anselm College in Manchester, New Hampshire and of Georgetown University Law Center, his survivors include his wife, a daughter, two sons, a stepdaughter and a stepson.

George J. Lavin, Jr., '86, Lavin, O'Neil, Ricci, Cedrone, & DiSipio, Philadelphia, Pennsylvania, died July 26, 2014 at age 85 after a long

illness. A graduate of Bucknell University, where he was a member of the basketball team, he then served in the Korean Conflict era for two years as a Special Agent in the United States Army Counterintelligence Corps. After receiving his law degree from the University of Pennsylvania Law School, he was for three years a Special Agent and then a Resident Agent in the Federal Bureau of Investigation. He was then employed in the legal departments of the Philadelphia Transportation Company and Keystone Insurance Company before entering private practice. He taught widely as a lecturer and an adjunct professor at several Philadelphia area law schools and was the co-author, with College Past President Chilton Davis Varner, of *Silent Advocacy: A Practical Primer for the Trial Attorney* (2006). He also served in various capacities in community and religious organizations. His survivors include his wife of sixty-one years and two sons.

Hon. Jack L. Lively, '82, a Judicial Fellow from Coffeyville, Kansas, died July 12, 2014 at age 82 after a long illness. After earning his undergraduate degree from the University of Tulsa, he served for three years as a pilot in the United States Air Force in the Korean Conflict era. He then graduated from the University of Oklahoma College of Law. Remaining in the Air Force Reserves, he retired as a Major General. After practicing law in Coffeyville, Kansas, where, at the time of his induction in the College, he was a member of the firm of Hall, Levy, Lively, Viets, DeVore & Belot, he became a state District Court Judge, served two terms and continued as a Senior Judge for almost ten more years, holding court around the state. He had served his community in a number of leadership positions, and while in private practice, had served the College as Kansas State Chair. His survivors include his wife of sixty years, a daughter and a son.

Hon. Frank J. Magill, '83, a Judicial Fellow from Fargo, North Dakota, died June 12, 2013 at age 85, one day short of his 86th birthday. Upon graduation from high school in 1945, he entered the United States Navy in the last days of World War II, serving for two years. A graduate of the Georgetown University School of Foreign Service, he earned a master's degree in economics from Columbia University and then earned his law degree from Georgetown University Law Center. He practiced law in Fargo, where he had been President of his county Bar. He had also served on numerous boards in his community and served as one of two laymen with North Dakota's Catholic Bishops on the North Dakota Catholic Conference. Three years after his induction into the College, he was nominated by President Ronald Reagan and confirmed to a seat of the United States Court of Appeals for the Eighth Circuit, where he served for eleven years before assuming senior status. He served as Chair of the Financial Disclosure Committee of the Federal

judiciary. His survivors include his wife of fifty-eight years, two daughters and four sons.

Hon. Rodney Wayne Miller,'82, who had practiced in Salem, Oregon before going on the bench, and who had retired to Oro Valley, Arizona, a suburb of Tucson, moving in the past year to Denver, Colorado be closer to family, died July 3, 2014 at age 83. His undergraduate and law school studies at the University of Iowa were interrupted by two years' service as an officer in the United States Marine Corps during the Korean Conflict. In private practice he had been President of the Oregon Association of Defense Counsel. On the bench as a Circuit Court Judge for sixteen years, he had taught trial practice courses at Willamette University School of Law. His survivors include his wife of fifty-eight years, a daughter and three sons.

John S. Moore, '85, Stokes Lawrence Velikanje Moore & Shore, Yakima, Washington, died March 27, 2014 at age 94. After receiving his undergraduate degree from the University of Washington, he spent two years in law school after the start of World War II before waiving his 4-F status and enlisting in the United States Army Signal Corps, where he became a cryptographer, serving in the continental United States, Alaska and the Aleutian Islands. After returning to finish law school at the University of Washington, he practiced for the rest of his life in Yakima. He had served as an officer of his local bar, on the Board of Governors of the Washington State Bar and as a deacon in his Presbyterian church. His survivors include his wife, a daughter, two step-daughters and six step-sons.

Robert H. Mow, Jr., '83, K&L Gates LLP, Dallas, Texas, died June 28, 2014 at age 72. Educated at Westminster College and the University of Missouri, from which he received his undergraduate degree, and the Southern Methodist Dedman School of Law, he then spent three years in the United States Army. He began his career at Carrington, Coleman, Sloman and Blumenthal, LLP, then joined what became Hughes & Luce, now merged into K&L Gates. Active in his church, teaching classes for most of his adult life, he chaired the Board of the First Baptist Academy, a school created in downtown Dallas, which honored him and his wife with its Orville and Esther Beth Rogers Award. He had also been honored with the Dallas Bar Association's Trial Lawyer of the Year Award, the Texas Bar Foundation's Ronald D. Secrest Outstanding Trial Lawyer Award and the Dallas Bar Foundation's inaugural Fellows Justinian Award. His survivors include his wife of twenty-six years, three daughters and three sons.

Hon. Kenneth Cameron Murphy, Q.C., '82, a Fellow Emeritus from Victoria, British Columbia, died April 19, 2014 at age 91. Born

on Glassingall Estate, Dunblane, Scotland, he moved to New York with his parents when he was eight years old, and after completing high school in 1941, joined the Royal Canadian Air Force. After World War II he attended Victoria College, then earned his law degree at the University of British Columbia. He practiced as a senior partner in the Victoria firm Harman MacKenzie Sloan and Murphy. He had been for sixteen years a prosecutor, also acting as a defense lawyer and practicing in the labor law field. A former President of the Victoria Chamber of Commerce and a member of the Board of Governors of the University of Victoria, he had been an election official for twenty years, also serving as a member of the local police commission. He had been President of the Victoria Bar Association and had served on the National Council of the Canadian Bar Association. Appointed as a Judge of the County Court in 1981, he was appointed a Justice of the Supreme Court of British Columbia in 1990, retiring in 1997. After retirement, he Joined ADR Chambers, practicing as a mediator until he turned eighty in 2002. In retirement he had also acted as an adjudicator to conduct hearings required by the Police Act. He was also an avid golfer who once had a single-digit handicap. Twice married, his survivors include his second wife of thirty years, three daughters, two sons and two step-sons.

David Winslow Oesting, '99, Davis Wright Tremaine LLP, Anchorage, Alaska, died May 11, 2014 at age 69. Born in Chicago, he was a graduate of Earlham College and of Washington University School of Law in St. Louis, where he finished second in his class and served as Editor of the law review. After ten years in the home office of Davis Wright in Seattle, Washington, he and another partner opened that firm's office in Anchorage. Described in his obituary as "a rare combination of professional litigator, educator and mountain man," he was a world traveler who flew his own plane, grew his own garden and changed the oil in his aging truck. He had served the College as its Alaska State Chair. A founder of the Alaskan Native Heritage Center, he is best known for his role as court-appointed Lead Counsel to coordinate the handling of the consolidated cases, both class and direct actions, arising out of the March 24, 1989 grounding of the supertanker *Exxon Valdez* and the resulting environmental disaster. These 250 cases involved 30,000 plaintiffs, represented by sixty law firms, and led to a prolonged saga in which College Fellow and Former Regent Brian B. O'Neill, working with Oesting, acted as the lead trial counsel in the trial of the principal case. Oesting's survivors include his wife of almost fifty years, two daughters and a son.

Wilbur D. (Woody) Preston, Jr., '73, a Fellow Emeritus, retired from Whiteford, Taylor & Preston, LLP, Baltimore, Maryland, where he had practiced for fifty years and served as

its chairman, died August 28, 2014 at age 90, of complications from Alzheimer's Disease. After two years at Western Maryland College, now McDaniel College, he was drafted into the United States Army in World War II and ultimately served as an infantry officer in the occupation of Japan. After returning to complete his undergraduate education, he earned his law degree from the University of Maryland Francis King Carey School of Law. He had served as counsel in many major antitrust, intellectual property and shareholder cases. During the 1970s he had led Western Maryland College through its transition from a church-related institution to a private independent institution of higher learning, chairing its Board for eleven years. He is perhaps best known for his role as Maryland's Special Counsel in the savings and loan crisis that swept the state in the 1980s. His work culminated in what was known as the Preston Report, an analysis of that debacle, leading to the rewriting of the state's thrift laws and regulations. He was thereafter appointed to the bipartisan National Commission on Financial Institution Reform, Recovery and Enforcement, created to investigate the national savings and loan crisis and to recommend remedial action at the federal level. He had served as President of the Baltimore Bar Association, the Maryland Bar Foundation and the Maryland State Bar Association. The Bar Foundation had honored him with its H. Vernon Eney Endowment Fund Award for his work to improve government and the administration of justice. A widower who had remarried, his survivors include his wife of twenty-one years, four sons, two stepsons and one stepdaughter.

Don H. Reuben, '70, Indian Wells, California, died February 3, 2014 at age 85, of melanoma. A graduate with honors of Northwestern University and of its School of Law, where he was class valedictorian, he began his practice with the Chicago firm now known as Kirkland & Ellis, LLP, rising to become its managing partner. He thereafter formed his own firm, Reuben & Proctor, and ultimately left Chicago to live in Rancho Mirage, California. A charismatic, and sometimes controversial, lawyer, he was noted for his work with media clients, appearing or counseling in over 700 libel and First Amendment cases. He appeared for his long-time client, the *Chicago Tribune*, in *New York Times Co. v Sullivan*, and for Time, Inc. in the Supreme Court case that established the right of the media to publish government reports free of libel claims. His clientele ranged from Zsa Zsa Gábor and Hollywood gossip columnist Hedda Hopper through the Chicago White Sox, the Chicago Cubs and the Chicago Bears to the Moody Bible Institute and the Catholic Archdiocese of Chicago. He had been heavily involved in the restructuring and redistricting of political districts in Illinois. After leaving Chicago, at age 69 he sat for and passed the California Bar and began to practice both in California and in Illinois. In his later

years he served as a professional arbitrator and as a California Superior Court Judge *pro tem.* In California, he was a member of many local civic, environmental and medical organizations, including serving as a director, officer and general counsel of the WWII Palm Springs Air Museum, the site of past College events. His survivors include his wife of forty-two years, a daughter, four sons and two stepsons.

Hon. Marshall Selikoff, '73, a Judicial Fellow from West Allenhurst, New Jersey, died May 17, 2008 at age 90. The son of a Russian emigrant, he was a graduate of Albright College. In June 1941, two years after his graduation, he enlisted in the United States Army. After World War II, he earned his law degree from the Rutgers School of Law - Newark. At the time of his induction into the College, he was a partner in the Rumson, New Jersey firm, Lane, Evans & Selikoff. He became a Judge of the Superior Court of New Jersey within four years of his induction and as of 2003, was still serving as a retired judge on his state's Judicial Evaluation Commission. As the unfortunate combined result of the College's having received notice of Judge Selikoff's death six years late and our inability to locate a published obituary, other than a cryptic online entry, we unfortunately have no further information about his life. We would welcome any further information that any Fellow who knew Judge Selikoff may be able to furnish us.

James A. Vander Stoep, '77, Vander Stoep, Remund, Blinks & Jones, Chehalis, Washington, died March 8, 2014 at age 88. After a year in college, he enlisted in the United States Navy, completed officer training school and was aboard a destroyer bound for Japan when World War II ended. Graduating from Washington State University, he earned his law degree from the University of Oregon School of Law. He was President of his county Bar and of the Washington State Bar Association and had served the College as its Washington State Chair. A leader in numerous civic and charitable organizations in his small community, he was an ordained elder in his Presbyterian church. His survivors include his wife of sixty-six years, two daughters and a son.

Roane Waring, Jr., '72, a Fellow Emeritus, retired from Shuttleworth Williams Harper Waring Detrick, Memphis, Tennessee, died August 27, 2012 at age 95. A graduate of the University of Virginia and of its School of Law, his legal education had been interrupted by service in World War II. He commanded a unit of black infantrymen in the United States Army's 24th Infantry, spending four years in the Pacific Theater and earning a Bronze Star. He had served on a number of civic and charitable boards, as a member of the Vestry of his Episcopal church and as President of his local Bar. His survivors include his wife, a daughter and a son.

Thomas D. Washburne, 77, a Fellow Emeritus, retired from Ober|Kaler, Baltimore, Maryland, died May 20, 2014 at age 86 of an undiagnosed neurological disorder. The son of a lawyer, a graduate of Princeton University and of the University of Virginia School of Law, he had clerked for a federal district judge before beginning private practice. He had served the College as Maryland State Chair. In his later years, he had focused on estate planning. He had chaired the Maryland State Ethics Commission, had been President of the Baltimore County Election Board, had served on a number of local civic and charitable boards and was a member of the Knights of Malta. His survivors include his wife of sixty years, two daughters and two sons.

William Mortimer Wycoff, '95, Clark Hill Thorp Reed, Pittsburgh, Pennsylvania, died October 21, 2013 at age 72. A graduate of Cornell University and of the Northwestern School of Law, he had served on a number of local civic and charitable boards and was a Trustee of the Pennsylvania chapter of The Nature Conservancy. He had served the College as its Pennsylvania State Chair. His survivors include his wife of fifty years, a daughter and two sons.

Joseph L. Young, '82, a Fellow Emeritus from Anchorage, Alaska, died April 11, 2014 at age 84 of complications from a stroke he had suffered four and a half years earlier. Born a month after the Crash of 1929, economic hardship during the Great Depression had forced his parents to place him and his younger sister in an orphan's home in Great Falls, Montana. At age fourteen he left Montana and traveled in steerage by steamship to Anchorage, where his mother lived, playing poker during the voyage to earn spending money. In high school in Anchorage he became an accomplished ski racer. After high school graduation, he went to Colorado, where he skied for the Aspen and then the Sun Valley ski teams, working as an instructor and ski patrolman. In those years, he skied three times in the U.S. Alpine Ski Championships. During the summers, he worked as a lineman in Anchorage and, an excellent poker player, supplemented his income through gambling. Drafted into the United States Army during the Korean Conflict, he was stationed in Germany, racing throughout Europe as a member of the Army International Ski Team. After his military service was completed, he attended the University of Washington for two years of undergraduate work before returning to Anchorage, where he started the Joe Young Ski School. At age thirty-one he decided to go to law school. His explanation: "I woke up and had a wife and a couple of kids, and all I knew how to do was slide down hills and climb poles." Lacking an undergraduate degree, his score on law school admission tests was sufficient to win him a waiver, and he moved his family to California, earning his law degree from Santa Clara University School of Law. Back in Alaska, he worked as an Assistant District Attorney for two years before entering full-time private practice. A plaintiff's lawyer, he was inducted into the College in his eighteenth year of practice, became a member of the Inner Circle of Advocates and was a recipient of the Alaska Bar Association Award for Professionalism. Then, in the early 1990s he retired from law practice to devote more time to skiing, spending a good part of each year with his wife at Sun Valley. In retirement, he raced in a number of U.S. Alpine Masters races. His survivors include his wife of fifty-nine years and two daughters.

UPCOMING EVENTS

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

NATIONAL MEETINGS

2015 Spring Meeting
Eden Roc Resort
Miami Beach, Florida
February 26 – March 1, 2015

2015 Annual Meeting
Fairmont Chicago Millennium Park
Chicago, Illinois
October 1 – October 4, 2015

COMMITTEE CHAIR WORKSHOPS

Western Chairs Workshop
Hyatt Regency Huntington Beach Resort and Spa
Huntington Beach, California
October 9 – 12, 2014

Eastern Chairs Workshop
The Willard InterContinental
Washington, D.C.
October 30 – November 2, 2014

JOURNAL

American College of Trial Lawyers
19900 MacArthur Boulevard, Suite 530
Irvine, California 92612

"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.