issue 73 / fall / 2013

THE BULLETIN

This sculpture by Past President ***Warren B. Lightfoot*** *was commissioned by Past President* ***Lively Wilson*** *on the occasion of Frances and Lively Wilson's sixtieth wedding anniversary. The abstract piece symbolizes a mother surrounded by her four daughters — the five most-important people in Wilson's life. Wilson died in July 2009, but the sculpture resides in the foyer of the Wilson's Louisville, Kentucky home.*

American College of Trial Lawyers

THE BULLETIN

Chancellor-Founder
Hon. Emil Gumpert
(1895-1982)

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FROM THE EDITORS

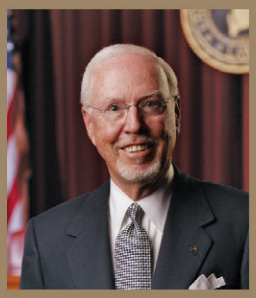
We are always looking for contributions from Fellows on any timely advocacy related topic, whether a commentary on a judicial decision of note, skills advice or anything else of general interest. We are also looking for Fellow-artist drawings, paintings, photography and anything else we might use to grace our cover and pages. Please send ideas or contributions to nationaloffice@actl.com

IS BIG BROTHER WATCHING?

Urban area transportation apps are available for iPhones, iPads, Androids, Blackberries and the like, showing available cars at your disposal. When you request the car, you can see it manoeuvering into position and heading your way. The driver knows where you are, of course, by the satellite homing in on you, just as does Google maps which can pinpoint your home, your apartment, your country place. Whatever one wants to see or have shown can be displayed, clearly raising privacy concerns.

Privacy rights are precious, yet they are now in peril, if not lost already. Put another way, there is profound conflict between the need for vigilant protection from those who would seek to harm us and the sanctity of our own private space. While the Internet has brought us closer in the world, it has endangered these rights, opened us to scrutiny from friends and foes alike, almost indiscriminately. While we, as lawyers, should know better, we use default privacy settings on social networking sites without a second thought; we accept "apps" on cell phones that request personal information; and we allow access to our private information on unsecure websites. The trouble isn't that the car service knows where to find you; it's that there is a permanent record accessible to almost anyone who wishes to track you. If this isn't readily apparent, see a new documentary called "Terms and Conditions," terms, so to speak, familiar to lawyers but pernicious in their implications when blithely ignored.

The right to privacy seems intuitive, and it comes as a shock when we learn that it's been breached— by anyone, but more immediately, by the government. After some judicial refinement, the privacy "right" ultimately emanates from the Fourth Amendment to the Constitution and, in Canada, from the Charter of Rights and Freedoms. Interestingly, while Americans typically view privacy as protection from government intrusion, Canadians seem to view it as the right to control access to personal information.



Andy Coats

Privacy legislation, such as the 1974 *Privacy Act*, has been undermined by the 2011 *Patriot Act*, and we should have been less surprised than we were by the recent exposure of the N.S.A.'s nation-wide surveillance (not to mention the recent defeat in the U.S. House of Representatives of legislation designed to rein in the N.S.A. data gathering, with national security trumping our privacy rights).

Despite its constant and spirited tension with surveillance, privacy has become ever more worthy of zealous protection. The perils of failing to safeguard our privacy rights are obvious, culminating in the terrifying thought that George Orwell's dystopian fantasy is our new reality, only thirty years late.

✦ ✦ ✦ ✦ ✦ ✦ ✦

Stephen Grant

In this issue, we have begun to focus discussion on a number of current issues — law school training and judicial term limits — being two important, thought provoking topics. We also include in this issue of *The Bulletin* a report on the North Carolina Innocence Project, an initiative capable of replication in states and provinces throughout the College's jurisdiction.

As has become a traditional feature, we continue to report on significant regional meetings and the College's ongoing work so that, you, our Fellows, learn what is happening in other locales and areas of interest.

We should note that we are open to constructive dialogue from Fellows on any issue of general legal interest as long as it is timely and topical.

We hope you enjoy this issue and look forward to seeing you in San Francisco.

— Andy Coats/Stephen Grant

CIVIL JUSTICE REFORM IS ON THE MARCH

A REPORT FROM THE TASK FORCE ON DISCOVERY AND CIVIL JUSTICE

Executive Director of the Institute for the Advancement of the American Legal System (IAALS), former Colorado Supreme Court Justice **Rebecca Love (Becky) Kourlis** recently spoke to the Fellows of Region 4 (the Federal Tenth Circuit's jurisdiction) about the accomplishments made by the College and the IAALS through six years of cooperation and determination. Justice Kourlis energized and encouraged the Fellows as she described the work that began as an initial spark of a project that some believed impossible, to today's realization that with commitment and dedication, even the nation's civil justice system is capable of reformation. Her message follows.

Civil justice reform is on the march, and the College is playing a crucial role. The history of the College's involvement and the plan for the future are respectively a cause for pride, and a call to action.

In 2007, Kourlis addressed the Annual Meeting of the College at La Quinta, California. **David J. Beck** was then President of the College. Kourlis talked about a civil justice system bloated with process, and plagued by expense, delay, and resulting inaccessibility. She also talked about the commitment of her organization, IAALS, to address the issues in a balanced and thoughtful way and to develop proposed solutions. Both the problem and the approach to it resonated with the College Fellows. As a result, President Beck appointed a Task Force to work with IAALS.[1] The initial name of the Task Force was the ACTL Task Force on Discovery. It has since morphed into the ACTL Task Force on Discovery and Civil Justice. The Task Force was chaired by Fellow **Paul C. Saunders** of New York, New York, with Fellow **Ann B. Frick** of Denver, Colorado, serving as co-chair. (Frick later went on the trial court bench in Colorado, but has remained active as the Task Force's co-chair). Additional members include: Fellows **John T. Broderick, Jr.** of Concord, New Hampshire; **Robert L. Byman** of Chicago, Illinois; Hon. **Colin L. Campbell** of Toronto, Ontario; Hon. **Philip R. Garrison** of Springfield, Missouri; **James T. Gilbert** of Richmond, Kentucky; **William T. Hangley** of Philadelphia, Pennsylvania; **Richard P. Holme** of Denver, Colorado; **Chris Kitchel** of Portland, Oregon; **Lynette Labinger** of Providence, Rhode Island; **Charles Meadows** of Dallas, Texas; **Edward W. Mullinix** of Philadelphia, Pennsylvania;

[1] The College seldom works with partners. IAALS has been an exception. Not only has the College joined forces with IAALS through the Task Force, but there are two other projects in which IAALS is involved. The first is a project with the Judiciary Committee that seeks to explore the case management techniques of judges around the country identified by the Fellows as excellent judges. The report emanating from those interviews, led by Dick Holmes and IAALS, is due this fall. Additionally, the ACTL Foundation is supporting an E-Discovery Summit put on by IAALS and the National Judicial College in September for state court Judges. State court judges from 33 states are already signed up to attend.

Gordon W. (Skip) Netzorg of Denver, Colorado; **William Usher Norwood, III** of Atlanta, Georgia; **R. Joseph Parker** of Cincinnati, Ohio; **Collins J. (C.J.) Seitz, Jr.** of Wilmington, Delaware; **Michael W. Smith** of Richmond, Virginia; **Alan L. Sullivan** of Salt Lake City, Utah; **Francis M. Wikstrom** of Salt Lake City, Utah; **William N. Withrow, Jr.** of Atlanta, Georgia; **W. Foster Wollen** of San Francisco; and Hon. **Jack Zouhary** of Toledo, Ohio. Past President of the College, **E. Osborne Ayscue, Jr.**, of Charlotte, North Carolina, participates as the IAALS liaison to the project. **Michael L. O'Donnell** of Denver, Colorado, serves as Regent Liaison to the Task Force.

The Task Force began meeting in the fall of 2007. It concluded that the first task was to determine if the notion that the system is too costly and takes too long was shared by the College generally. Thus, the Task Force and IAALS hired Mathematica Policy Research, Inc. to undertake a systematic survey of the Fellows. The results were overwhelming. 92% said that the longer a case goes on, the more it costs. 85% thought that litigation in general and discovery in particular are too expensive. In fact, 87% agreed that electronic discovery, in particular, is too costly. Expert witness fees were reported as a significant cost factor driving litigants to settle, ranking just behind trial costs and attorneys fees. Thus, the survey results confirmed that there are serious problems in many aspects of our civil justice system. The Task Force issued an Interim Report containing the data, which was the subject of surprising national media attention. The survey results were highlighted by mainstream media—including the Wall Street Journal and the Economist—and trade publications—including the National Law Journal, the ABA Journal, and Judicature. More than 35 websites nationwide reprinted or referenced the survey and its coverage.

Further, the survey, or a variation, was then used in a number of other settings, including surveys of the ABA Litigation Section, members of the National Employment Lawyers Association, and Chief Legal Officers and General Counsel belonging to the Association of Corporate Counsel. The Task Force felt it had the necessary consensus to move forward, and move forward it did. IAALS collated a significant amount of additional research: original empirical research about civil process in Oregon, Arizona, Colorado, and certain Federal Courts; and legal research regarding the history of the Federal Rules since their inception.

The Task Force began to focus its attention on solutions to the problems, and after a series of lengthy meetings (in Tucson, the Task Force never saw the sun), arrived at a set of Principles that the Task Force and IAALS agreed should underpin changes to the civil justice system in America. Those 29 Principles (such things as proportionality/intensive case management/ targeted discovery) were contained in the Task

Force's "Final Report," issued in 2009. It, too, received widespread coverage in trade publications and mainstream media.

The next step was implementation—because no report that sits on a shelf changes behavior. IAALS and the Task Force developed some proposed Rules that incorporate the Principles; and IAALS developed additional recommendations for caseflow management and measuring innovation. Those three publications comprise the "Roadmap for Reform" series that appears on the IAALS website.[2]

Almost immediately, thanks to the efforts of Fellows 'on the ground', the recommendations were put in place in two jurisdictions: New Hampshire (**John T. Broderick, Jr.** at the helm) and Boston Commercial Court (**Joan A. Lukey** in the lead). Both of those jurisdictions used Rules very similar to the Roadmap suggestions. New Hampshire's project has been expanded and made permanent. The Boston project is under evaluation. Shortly thereafter, Utah took up the challenge, as did Colorado. Utah changed its rules in entirety, and Colorado put a pilot project in place.

In 2009, Paul Saunders and Becky Kourlis also made a presentation to the Judicial Conference Committee on Rules of Practice and Procedure about the Task Force/IAALS recommendations. That presentation sparked a deep conversation about the Federal Rules, which in turn led to the 2010 Conference on Civil Litigation at Duke University School of Law. That Conference brought together nationwide experts and a wealth of materials on the topics of the current costs of civil litigation, particularly discovery, and possible solutions. In turn, out of that Conference have come proposed changes to the Federal Rules that are now in circulation, and other changes in the wings.

The Seventh Circuit Electronic Discovery Pilot Program Committee was formed in May 2009 under the leadership of then-Chief Judge **James Holderman** and with the assistance of Robert Byman, to address the e-discovery aspects of civil justice reform. That project is burgeoning, now in its third phase and being fully evaluated by the Federal Judicial Center.

Additionally, as a further outgrowth of the 'one size does not fit all' principle, the Federal District Courts have developed particularized protocols in two areas: patent cases and adverse action employment discrimination cases. As to the latter, Chris Kitchel co-chaired the committee that developed the protocols, and IAALS staffed the committee.

This national response to the Task Force's work has not been limited to the federal level. In 2011, the Conference of Chief Justices passed Resolution 4 In Support of State Action Plans to Reduce the Costs Associated with the Prosecution and Defense of Ordinary Civil Cases, supporting statewide rule changes, pilot projects, and caseflow management changes designed to achieve a more just, speedy and inexpensive process. Recognizing the importance of uniformity following this period of experimentation, in 2013 the Conference of Chief Justices passed Resolution 5 To Establish a Committee Charged with Developing Guidelines and Best Practices for Civil Litigation.

The Task Force is reconvening to collect information from the various projects and to revisit the Principles and proposed Rules to revise the Principles as supported by the data. Even before the College's Annual Meeting in October, members of the Task Force will reach out to convene conversations with Fellows in pilot project jurisdictions to get information about what is working and what is not.

IAALS is grateful for the opportunity to work with the College on these challenging projects that significantly impact our civil justice system. IAALS has developed a map on its website showing all of the states that have a pilot project. Take a look and celebrate the influence that our joint work has had. Further, answer surveys, participate in hearings on rules changes and be a proactive part of this national movement to make the civil justice system truly just, speedy and inexpensive. ■

[2] The 2008 ACTL-IAALS Interim Report, the 2009 ACTL-IAALS Final Report, and the 2009 Roadmap for Reform: Pilot Project Rules are all available on the ACTL website as well.

CONTINUING LEGAL EDUCATION PROGRAM

TEACHING FOREIGN LAWYERS ABOUT THE RULE OF LAW: TRAINING AND OPPORTUNITIES FOR TRIAL ADVOCACY

Sponsored by the International Committee of the American College of Trial Lawyers

Thursday, October 24, 2013 // 2:00 p.m. // San Francisco Marriott Marquis

2 hours credit

Experts from four trial-advocacy organizations will discuss current worldwide efforts to advance the rule of law by training lawyers in other countries about civil and criminal procedure, trial advocacy skills and the rights of the accused in criminal trials. Advocates from the American Bar Association's Rule of Law Initiative, the International Senior Lawyers' Project, Lawyers Without Borders and War Child Canada will be joined by Fellows and other lawyers who have participated in the lawyer training program.

The panel will discuss the ongoing crucial need to extend access to justice through lawyer training programs in countries such as Belarus, Haiti, Liberia, Mongolia, Tanzania, Uganda and the Ukraine, as well as other countries in East and West Africa, Asia, Central and South America and Eastern Europe.

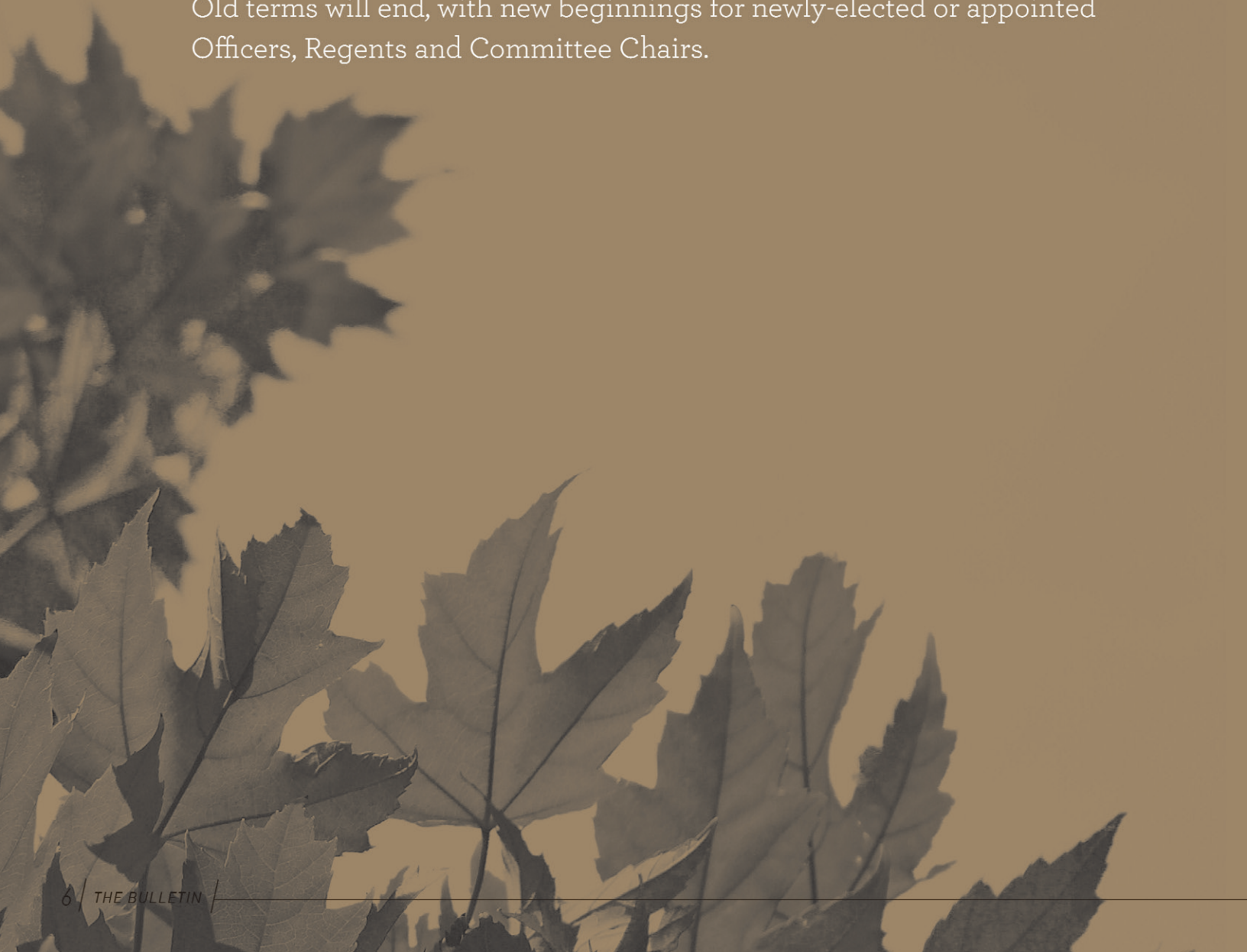
The panelists will call for your pro bono service to train lawyers about the rule of law and your promise to assist governments, non-governmental organizations and other institutions as their countries build and advance the legal rights and well-being of their citizens. You will learn how you can participate by reducing the suffering of children and adults, whether affected by poverty, war or an existing lack of justice.

The expert-panelists are: **Rob Boone**, Director of the ABA's Rule of Law Initiative and Associate Executive Director of the American Bar Association; **Andra Moss**, Director of Communications and Volunteer Development for the International Senior Lawyers' Project; **Christina Storm**, Executive Director of Lawyers Without Borders; and **Dr. Samantha Nutt**, Executive Director of War Child Canada;

Promoting the Rule of Law through Foreign Lawyer Trial Advocacy Training will offer two CLE credit hours, and will be held on Thursday, October 24, 2013, before the 2013 Annual Meeting. **Note: The program is open to Fellows and non-Fellow-lawyers who wish to attend.**

SEASONS CHANGE AND SO DOES THE COLLEGE

With evidence of the seasons changing in San Francisco, the College's Annual Meeting will also mark the transition of College leadership and election of a new President, President-Elect, Treasurer and Secretary. Old terms will end, with new beginnings for newly-elected or appointed Officers, Regents and Committee Chairs.



From left to right: Michael W. Smith, Bartholomew J. Dalton

The Officers Nominating Committee will present the following slate of officers for election at the 2013 Annual Meeting in San Francisco:

President: **Robert L. Byman** of Chicago, Illinois

President-Elect: **Francis M. Wikstrom** of Salt Lake City, Utah

Treasurer: **Michael W. Smith** of Richmond, Virginia

Secretary: **Bartholomew J. Dalton** of Wilmington, Delaware

CANDIDATES FOR TREASURER AND SECRETARY:

Michael W. (Mike) Smith
Inducted in 1989 at the College's Annual Meeting in New Orleans, Treasurer-elect Smith has served as Regent to the states of North Carolina, South Carolina, Virginia and West Virginia since 2009. During that time, he also supported the Federal Legislation, Jury and Technology Committees. He previously served as Chair of the Virginia State Committee, Jury Committee and Teaching of Trial and Appellate Advocacy Committee, and he had been a member of the Regents Nominating Committee and the Task Force on Discovery and Civil Justice. Smith practices in Richmond, Virginia. His law practice is focused on corporate and commercial litigation, as well as products liability and health care litigation. He has served as liaison to the Federal Judicial Center and the National Center for State Courts.

Smith and his wife Ellen Bain live in Manakin-Sabot, Virginia.

Bartholomew J. (Bart) Dalton
The nominee for Secretary of the College, Dalton was inducted at the College's 2004 Spring Meeting in Phoenix Arizona, and has served as Regent to Delaware, New Jersey and Pennsylvania. His work as Regent included support to the Access to Justice and Legal Services Committee, Heritage Committee, Public Defenders Committee and National College of District Attorneys Committee (now named Prosecuting Attorneys Committee). Dalton had previously served as a member and Chair of the Delaware State Committee and as a member of the International Committee.

Dalton's practice focuses on medical malpractice, product liability, personal injury and general commercial litigation. Prior to opening his private practice, he served as Deputy Attorney General and Chief Deputy Attorney General in the Delaware Department of Justice.

Dalton and his wife, Eileen, live in Wilmington, Delaware. They have three sons, one daughter-in-law and one grandson. ■

SAN FRANCISCO
THE 2013 ANNUAL MEETING PREVIEW

Join old friends and make new ones in the City by the Bay October 24-27, 2013.

63rd Annual Meeting of the
American College of Trial Lawyers
October 24-27, 2013
San Francisco Marriott Marquis

Honorary Fellowship, reserved for the highest members of the judiciary, will be conferred on The Honourable Mr. Justice **Richard R. Wagner** of the Supreme Court of Canada. The Samuel E. Gates Litigation Award will be presented to Fellow **Donald R. Dunner** of Washington, D.C., in recognition of his significant contributions toward the improvement of patent litigation.

Other speakers scheduled at the time of printing include:

S. Jack Balagia, Jr., Vice President and General Counsel, Exxon Mobil Corporation

Rear Admiral (Ret.) Marsha J. Evans, United States Navy

Lawrence C. Marshall, Professor, Stanford University Law School

Eric Metaxas, Author

Michael Moran, Vice President, Control Risks

Travis T. Tygart, Chief Executive Officer, U.S. Anti-Doping Agency

Kent Walker, Senior Vice President and General Counsel, Google, Inc.

Robert B. Wallace, Fellow

Hon. James Robertson, Fellow, JAMS

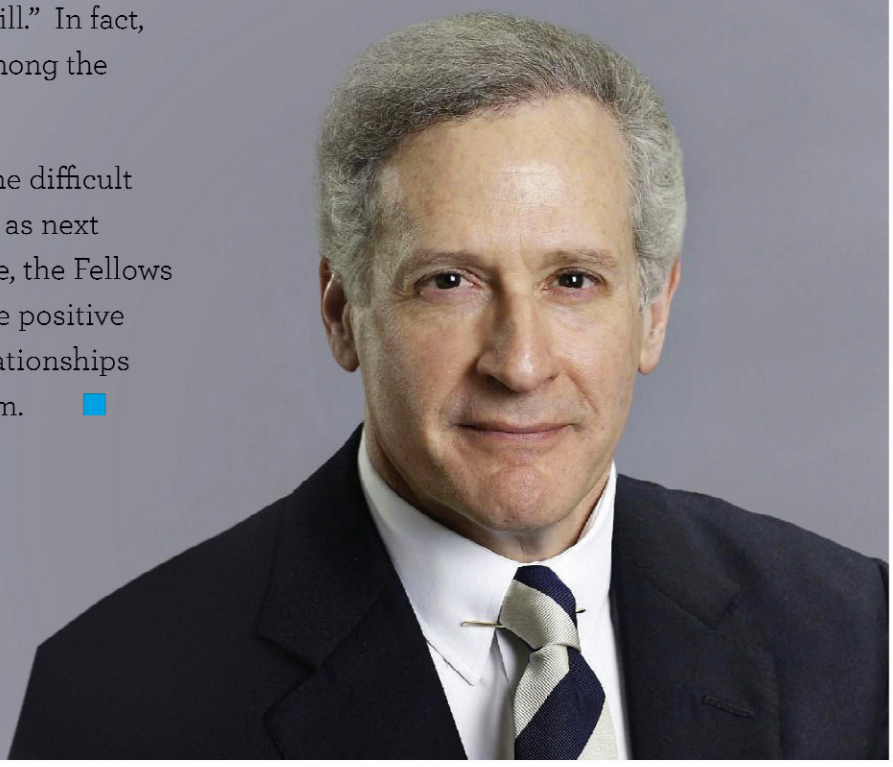
Professor **Paolo Annino** will accept the 2013 Emil Gumpert Award on behalf of the Miller Resentencing Project of the Florida State University College of Law Public Interest Law Center's Children in Prison Project.

FELLOWS EXTEND APPRECIATION TO PRESIDENT-ELECT KESSLER
FOR SEVENTEEN YEARS ... AND COUNTING

Philip J. Kessler of Bloomfield Hills, Michigan, and New York City, President-Elect of the College for 2012-2013, has advised that, because of pressing professional commitments, he has decided not to stand for election as President for the 2013-2014 term.

As the Past Presidents, Board of Regents and Fellows extend appreciation to Kessler for his years of dedication and involvement in furthering the College mission, he has indicated that nothing alters his commitment "...and nothing will." In fact, Kessler promises to remain among the College's most loyal members.

Although Kessler has made the difficult decision not to be considered as next year's President of the College, the Fellows look forward to continuing the positive professional and personal relationships they have established with him.



TERM LIMITS FOR JUDGES

A NEW PROBLEM WITH LIFE TENURE FOR SUPREME COURT JUSTICES

Timothy D. Kelly, Minneapolis, Minnesota

The world was startled recently when Benedict XVI became the first pope in 600 years to resign the papacy; all the others since the time of Columbus had died in office. Benedict said he made the decision in the best interests of the papacy although there was much speculation he suffered from several deteriorating health problems. Benedict also may have recognized that medical science can now keep people alive much longer than even a few years ago but cannot maintain their mental acuity.

Mental acuity into old age is kind of a hit or miss proposition for all of us. For some very able people, dotage can start in their 70s or sooner; for others, it may never happen. But even for those renowned for their brilliance, age takes its toll.

When Justice Owen Roberts was appointed to the Supreme Court in 1930, he told his colleagues how remarkable Justice Holmes, then 89 years of age, was in conference. The other justices responded that Roberts should have seen him ten years ago because he had slipped tremendously.

All federal judges in this country, like the Pope, enjoy life tenure, but the risk to the country is not the same with district judges or courts of appeals judges. Both can maintain their salaries by taking senior status with reduced workload or simply retiring from the bench, subject to certain judge-friendly time of service requirements. More importantly, final rulings by district court judges are subject to review by the courts of appeals. And the courts of appeals themselves are different than the Supreme Court in two crucial respects: the courts of appeals do almost all their work in three-judge panels (so if one judge is slipping, the parties can rely on the acuity of the other two), and the docket of those courts is full of "appeals of right," where the judgments of the lower courts are overwhelmingly affirmed--because they got it right in the first place. And in those cases, generally the interests at stake are those of the parties alone.

The Supreme Court is different. Its docket is almost entirely discretionary, addressing matters of national importance; the cases are heard *en banc*, and while there are many unanimous or clear majority rulings, there are also many five-to-four rulings on gravely important issues, often Constitutional issues.

Another story illustrates the problem. In 1991, when the tenure of Justice Marshall, one of my personal heroes, was ending when he was in his eighties, he cast the decisive fifth vote to send a convicted murderer to his death. It was the first vote he had ever cast in favor of a death penalty, after voting over 2,000 times against death sentences because, in his view, any death sentence violated the Eighth Amendment. He was assigned the opinion and later changed his vote and

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relinquished the opinion. Justice Stevens wrote an opinion reversing the death sentence. The episode was an embarrassment to Justice Marshall and to the Court.

On at least two occasions, the Court itself has taken steps to prevent a justice whose abilities the others questioned to cast a decisive vote. In 1924, then Chief Justice Taft led the Court unanimously (and privately) to agree to such a device after Justice McKenna showed signs of irreversible mental decline; and after two justices had met with McKenna's physician who confirmed he should retire. In late 1974, Justice Douglas suffered a stroke that physically and mentally impaired him. At first, oral arguments were postponed, but when Justice Douglas returned to work, although in a wheelchair and having serious difficulties in communicating, seven other justices agreed he could no longer cast the deciding vote. Justice White, however, objected and stated the justices had no power to neuter any vote by Douglas, who finally succumbed to pressure and about a year after his stroke, resigned.

EFFORTS TO LIMIT LIFE TENURE FOR SUPREME COURT JUSTICES

We all have learned about FDR's 1937 "court packing" plan that was defeated in the Senate by public opinion. The public saw the proposal as an attempt to compromise the power of an independent branch of government rather than a genuine effort to mitigate age problems at the Court. Nevertheless, in the 1950s, the American Bar Association came very close to adopting a resolution calling for a constitutional amendment limiting the term of justices by age. And, periodically, academics suggest a statutory a constitutional remedy for justices who refuse to retire, or statutory remedies that provide financial benefits if a justice retires at age 75.

Interestingly, all the proposals to limit service during "good behavior" pretty much agree that the age limit ought to be 75 years. Only one state (Rhode Island) allows life tenure for its Supreme Court justices, and the rest either limit terms of service, or have an age limit, say 70-75 years. And the list of former justices or presidents who have endorsed these limitations is long: Charles Evans Hughes, Earl Warren, Byron White, and Lewis F. Powell, Jr. (a former President of the College), along with Presidents Kennedy, Johnson, and George H.W. Bush. Richard Posner did some empirical work years ago that showed even the great Learned Hand's output declined precipitously after age 75.

We all can think of people 75 years of age whom we would let make important decisions for us or our families; but none of us, I suspect, would allow anyone who is 90 years old or older to do so. Yet we now have a Court where, since 1990, eight justices have left the bench and five of the eight have been in their 80s, or in Justice Stevens' case, over 90.

THE RECENT ADVANCES IN MEDICAL SCIENCE

Medical Science Can Now Extend the Lives of People Far Beyond Traditional Expectancies

The story of how human longevity in this country has been extended by medical science is a fascinating one. At the time the Constitution was adopted, life expectancy was about 40, but many like Ben Franklin and Chief Justice Marshall, who died at 79, lived much longer. Not much had changed by 1900 (life expectancy: 47 years), but in the first half of the 20th Century, life expectancy jumped 23 years with the advent

Quips & Quotes

...in the first half of the 20th Century, life expectancy jumped 23 years with the advent of antibiotics and other ways to defeat what had been lethal infections.

Mental acuity into old age is kind of a hit or miss proposition for all of us.

of antibiotics and other ways to defeat what had been lethal infections.

Examination of recent U.S. Life Tables (2006 versus 2008) shows that life expectancy is growing even faster today. In 2006, the overall life expectancy was 77.7 years, an increase in 0.3 years from 2005; in 2008, however, the overall life expectancy was 78.1, and materially longer for females (80.4 to 80.6).

But we are not examining people born today; our interest is someone who is, say, 55 years old today. The overall life expectancy for that group is 26.8 years. In people 75 years old today, the life expectancy is 11.8 years and growing; the expectancy for a woman 80 years old is about 10 years. Supreme Court justices are a subset that receive top of the line medical care and, with very few exceptions, live orderly and healthy lives. It is reasonable to assume that a justice appointed in 2013 at age 55 has a good chance to live to age 90, or beyond.

Medical Science Has Not Been Able to Extend the Mental Acuity of People in Extended Lifespans

The story of how medical science has attempted to combat mental deterioration as people live longer is equally fascinating but not nearly as successful. Today, nearly 50 percent of people over 85 years of age are afflicted with Alzheimer's disease, a neurodegenerative disorder, an initially stunning statistic until we examine our own families. Unfortunately, medical science has not identified "biomarkers" that will predict which of us will be afflicted with this disease.

Even in those individuals who avoid the disease, the normal aging process impairs their ability to perform executive level tasks to one degree or another as they age. The cognitive decline problem challenging scientists is not only people with disorders, it is aging of the brain itself. One study concluded: "[r]ecent findings suggest that higher-order brain systems became less efficient with age, with some degree of disconnection between brain areas that normally function together in young adults." And while imaging technology advances have made it easier for scientists to visualize changes in the brains as people age, therapeutic intervention and even a firm understanding of how age impairs brain function has not proceeded apace.

A recent British study of ten-year decline in cognitive function concluded that all groups starting with ages 45-49 and concluding with ages 65-70 showed objective declines in scores. As the people aged, the evidence showed faster decline in older people--pretty much confirming our personal experiences. While this study is not without criticism, all studies seem to agree there is a "finely graded inverse association between age and cognitive performance."

A MODEST PROPOSAL

A constitutional amendment is too blunt an instrument in these polarized times to address the risk of a justice staying on the bench beyond the time he or she can ably do the work, and a statutory effort would smell partisan, like FDR's court packing plan. But we do need to appoint

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justices with an expectation that they will retire at a reasonable age before they are impaired and not die in office after a period of service where they were no longer able to do the work.

The public, moreover, ought to expect that once a justice reaches 75 years or so, that justice will look to retire, not continue in office. Unfortunately, today the public perception is that justices will hang on to their positions as long as they can. What needs to change is this perception, this point of view.

Justices should join the Court with an expectation that they will resign when they reach 75 years of age. This expectation can be created by Senators requesting a commitment from a nominee in public confirmation proceedings as to when he or she will resign. Any commitment, of course, could not be legally binding.

The justices now sitting would get a pass under this proposal because they were not asked to make a commitment when they were appointed. But the nominees who may be asked in the future to make such a commitment should also be specifically asked to promise to resign at the date selected whether or not the incumbent president at the time is of the party of the president who appointed the nominee.

Some nominees may decline to make such a commitment, perhaps citing judicial independence, but that should tell us something important about the nominee. Some justices may make a commitment and later ignore it, but they certainly would be reminded of it by the press as the target date approached. I like to think that someone of the moral fiber of a Holmes or a Brandeis, who had promised to leave at age 75, would have honored the promise. In any event, this is a step towards creating a public expectation that Supreme Court justices will retire around age 75 and before the risk of age-related loss of their skills leaves great power in the hands of one no longer able to exercise it.

Timothy D. Kelly was inducted in 2004. He practices business litigation in Minneapolis, Minnesota.

Quips & Quotes

A constitutional amendment is too blunt... a statutory effort would smell partisan... what needs to change is this perception

TERM LIMITS: WHO NEEDS THEM?

Paul Mark Sandler,
Baltimore, Maryland

SOCRATES SPEAKS

The venerable thinker Socrates said, "Four things belong to a judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially." Socrates did not include youth as a standard a judge should meet. He did not mention term limits. Nor did the United States Constitution, which enshrined the rule of life tenure, stating that the judges, "both of the supreme and inferior courts, shall hold their offices during good behavior."

HAMILTON SPEAKS

The rule of life tenure was implemented to strengthen the judiciary—the "least dangerous" branch of the federal government—against the other two elected branches, as explained by Alexander Hamilton in Federalist No. 78. Noting that the Executive "holds the sword of the community" and the Legislature "not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated," Hamilton explained that the judiciary, by contrast "has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."

After warning of the perils of a judiciary that was dependent on the Legislature or Executive, Hamilton stated that "nothing can contribute so much to the judiciary's firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security."

PROFESSOR GRABER SPEAKS

Hamilton's words ring true today. The Supreme Court holds a vital check on the tyranny of the elected branches, safeguarding individual rights against invasion. In a recent article, Professor Mark A. Graber explained how life tenure helps the Supreme Court protect rights of minorities:

> Life tenure provides two good reasons for thinking that Supreme Court Justices will act on different values than elected officials and that these differences will often lead courts to be sensitive to the needs of politically vulnerable populations. Justices who do not have to seek reelection are far freer to protect unpopular persons and groups than persons who depend on popular support for their offices. American Justices who have made unpopular decisions have never lost their jobs or lives. At worst, such decisions have not been implemented. Moreover, Justices who have served for decades are likely to have different values than recently elected officials. For this reason, the Supreme Court is likely to protect former members of a majority coalition should they become politically vulnerable minorities. *Mark A. Graber, "The Coming Constitutional Yo-Yo? Elite Opinion, Polarization and the Direction of Judicial Decision Making," 56 Howard L.J. 101, 112 (2013).*

Of the three branches of the federal government, the Court consistently rates as the most trusted in national opinion polls. But while

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Hamilton's fear of a Court beholden to the elected branches has not come to pass, that does not mean the time has come to reduce the protections the Constitution affords the Court. Rather, in evaluating proposed changes to the Court, there should be a rebuttable presumption in favor of preserving the status quo.

To be sure, individuals are living longer now than they were in 1787, and mental decline is often the handmaiden of advancing age. As Mr. Kelly points out, several Justices have lingered on the bench after their diminished faculties had made retirement the logical decision. But a handful of examples should not lead us to hastily dispense with an institution—life tenure for federal judges—that is enshrined in our country's founding charter.

Quips & Quotes

[T]he judiciary..."has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever."

Alexander Hamilton, Federalist No. 78

INDEPENDENCE OF THE JUDICIARY

In examining this issue, we should be guided by the U.S. Senate's handling of the impeachment of Justice Samuel Chase. Chase, a staunch federalist, was impeached by the Republican-controlled House of Representatives, after being charged with making inflammatory, partisan remarks both on and off the bench. The House had been encouraged to take this step by President Thomas Jefferson, who opposed not only Chase, but the overall idea of life tenure for judges. The Senate acquitted Chase despite his misdeeds, and many legal historians regard this decision as vital to the continued independence of the judicial branch. That independence is so valuable that it must be preserved even at the cost of having the occasional Justice, such as Chase, who falls short of the ideal of the unbiased jurist. This same reasoning applies to the issue of elderly justices. Assuming for the sake of argument that the ideal Justice is a person under the age of 75, we should not uphold that ideal at the expense of reducing the Court's independence.

The example of Justice Chase also shows that advanced age is but one of the factors that might make a Justice inadequate to his or her task. While the President and Senate employ rigorous screening procedures in nominating and confirming Justices, there is no guarantee that a Justice, once on the bench, wouldn't begin to act erratically. For example, a Justice might begin commenting on bills pending before Congress, or revealing the Court's closed-door deliberations—conduct that would probably not rise to the level of an impeachable offense, but would nevertheless be highly undesirable. There is no formal procedure, short of impeachment, for dealing with such a "rogue Justice," any more than there is a procedure for forcing a Justice stricken by dementia to retire. All we can do in any of these matters is trust in the Court's ability to regulate itself.

It appears such self-regulation already takes place with regard to elderly members, if the examples cited by Mr. Kelly are any indication. Each of the Justices identified by Mr. Kelly retired shortly after his impairments became evident: Justice McKenna in 1925, less than a year after Chief Justice Taft observed his mental decline, Justice Douglas in 1975, less than a year after his stroke, and Justice Marshall in 1991, less than a year after he had to change his vote on a death penalty case, presumably due to a mental lapse.

SELF-REGULATION

These examples suggest that the Court is capable of addressing the problem of impaired members on a case-by-case basis. The Justices are well-placed to assess each other's mental fitness, and to encourage a member with impaired faculties to retire. In light of the trust we place in the Court to carry out its primary duty of deciding cases, we

should have similar confidence in the Court's ability to address the issue of infirm members. Many other Justices choose to retire before age 80. Since 1950, twenty-six Justices have left the bench and only six have done so at age 80 or older (Black, Brennan, Marshall Rehnquist, Blackmun, and Stevens). In recent years, Justice Souter retired at 70 and Justice O'Connor at 75. With respect to current Justices, Justice Ginsburg is 80, and Justices Scalia, Kennedy, and Breyer will reach that age in the next few years. But it would be premature to assume that all four will serve well into their 80s, or that one of the four would refuse to resign in the face of diminished capabilities.

A bright-line retirement age of 75, whether implemented through a Constitutional Amendment or by some other means, would present problems of its own. A justice approaching that age would begin to lose influence with his or her peers on the Court, thereby affecting the Court's deliberation process. Knowing that a colleague will soon be departing for private practice or academia may lead a Justice to discount that colleagues' views.

An age cap would also impact the nomination and confirmation process, because the timing of vacancies would be known years in advance. This would give the various groups who have made confirmations so contentious even more time to prepare for them.

A mandatory retirement age would also deprive the Court of the benefit of its experienced Justices who are perfectly capable of deciding weighty matters, but happen to be over the age of 75. Admittedly, reaching that age correlates to a higher risk of Alzheimer's Disease and other ailments. But a person can reduce that risk by continuing to work, particularly in a mentally demanding field like the law. In other words, a 75-year-old Justice who is still on the bench is less likely to be mentally impaired than the average person, who more likely than not has been retired for years. Recognizing this positive trend, several states with mandatory retirement for judges have moved to eliminate or alter this practice. In New York, the Legislature has proposed an amendment to the State Constitution raising the retirement age to 80, which will go before state's voters in November of this year. The proposal stemmed in part, from the mandatory retirement at age 70 of the well-respected Judith S. Kaye, former Chief Judge of the New York Court of Appeals.

UPHOLDING THE RULE OF LAW

Allowing each Justice to choose when he or she retires also upholds the rule of law. At present,

> Justices who do not have to seek reelection are far freer to protect unpopular persons and groups than persons who depend on popular support for their offices.
>
> Professor Mark A. Graber

Quips & Quotes

a Justice who has reached 75 can continue to apply his or her judicial philosophy and years of experience to new cases, rather than stepping down in favor of a new and inexperienced Justice, who may bring a diametrically different approach to the bench. This increases the stability of the Court's decision-making, enhancing the Court's legitimacy in the eyes of the people.

Finally, from a practical view, to impose term limits advocated by Mr. Kelly is an impractical idea which would never see the light of day. Term limits on Supreme Court Justices would require a constitutional amendment. Good luck to proponents of this idea.

Paul Mark Sandler was inducted into the College in 2011. His practice in Baltimore, Maryland, is focused on personal injury, insurance defense, medical malpractice, commercial litigation, criminal defense, securities and antitrust. ■

MANDATORY RETIREMENT: A CANADIAN PERSPECTIVE

Lynne D. Kassie, Ad. E.
Montréal, Québec

THERE OUGHT TO BE A LAW!

In 2009, heads turned—and some would say rolled—when Mr. Rocco Galati challenged the jurisdiction of Federal Court deputy judge Louis Tannenbaum, an eminent Judge of great repute. His offense? Judge Tannenbaum was over the mandatory retirement age of 75. The now famous decision, known as *Felipa v Canada (Citizenship and Immigration)*, initially an application for judicial review, was rendered by the Federal Court on January 26th, 2010 and later reversed by the Federal Court of Appeal on October 3rd, 2011. Galati, Luis Alberto Felipa's attorney, successfully persuaded the Federal Court of Appeal that the retired judge's return to the bench in a limited and temporary capacity was legally invalid. At the time, six of the Federal Court's seven deputy judges were all over the age of seventy-five. Galati argued that deputy judges of the Federal Court are subject to the mandatory retirement age of seventy-five, a restriction common to all federally appointed judges. The Federal Court of Appeal agreed. As a result, some believe that the *Felipa* case has opened the door for the federal government to reconsider the acceptable length of tenure of Canadian judges.

IN CANADA ...

Unlike its American counterpart, in addition to appointing judges to the country's Federal Court and Supreme Court, the Canadian federal government also appoints judges to the Superior (court of first instance) and appellate courts of each province. As it stands, pursuant to § 99 of the *Constitution Act of 1867* , the current fixed mandatory retirement age of justices holding office in all Superior or appellate-level courts in Canada is seventy-five years of age. § 26 of the *Supreme Court Act* and Section 8 of the *Federal Courts Act* later emulated the Constitution, and fixed an identical mandatory retirement age for all Supreme Court and Federal Court justices respectively. Thus, Canadian judges, unburdened by electoral campaigns and a predetermined length of service or term, can remain on the bench until their retirement. As the Supreme Court of Canada ruled in its landmark case *R. v Valente*, federally appointed judges enjoy the highest level of judicial independence. Only Parliament can dismiss a judge before the latter's seventy-fifth birthday and may only do so for reasons of failure to "hold office during good behaviour". As history has come to show, this happens only rarely, and in the gravest of circumstances.

Nonetheless, as of late, a growing societal concern has emerged. Specifically, has the concept

of a mandatory retirement age become outdated? It should come as no surprise to anyone that Canadians are living longer, healthier, and more active lives. In fact, recently, the Canadian government eliminated the mandatory retirement age for all federally regulated employees, thus amending the *Canadian Human Rights Act* and *Canadian Labour Code*. Canadians are now permitted to work as long as their heart's desire, barring any health or safety concerns. This begs the question: if the average Canadian no longer has to retire at a specific age, why should it be any different for judges?

PROS AND CONS

Many have argued that given the important nature of a judge's position, and given the potential long-lasting impact any ruling or judgment may have on our justice system, the federal government should want to avoid unnecessary risks by maintaining the mandatory retirement age at seventy-five. The overriding concern is that a judge's mental acuity may diminish significantly after this age. On the other hand, others have argued that many judges are still as fit to occupy their influential position after seventy-five and forcing them to retire could lead to the loss of highly-experienced and competent jurists.

This issue of a mandatory retirement age for judges has been raised frequently in the past few years. In *Association of Justices of the Peace* v. *Attorney General of Ontario*, Judge Strathy from Ontario's Superior Court of Justice (now on the Court of Appeal) ruled that the *Justices of the Peace Act*'s provisions imposing a mandatory retirement for justices of the peace at age seventy violated their rights under s 15 (1) of the *Canadian Charter of Rights and Freedoms* and was not justified under s 1. The Court held that it would "read in" retirement at age sixty-five and subject each justice of the peace to an annual approval by the Chief justice, with the possibility to hold office until the age of seventy-five.

In contrast, Judge Alain from Québec's Superior Court, in *Paquet* v. *Quebec (Procureur général)*, when ruling on the mandatory retirement age of Municipal Court judges pursuant to s 39 of the *Act Respecting Municipal Courts*, disagreed with Judge Strathy and found said section of the law to be constitutionally valid. Judge Alain reasoned that a mandatory retirement age is the crucial ingredient that guarantees the constitutional notion of judicial independence by ensuring security of tenure. In a free and democratic society, Judge Alain held, citizens must have access to courts presided by wholly independent judges.

Although both of these judgments tackled the difficult issue of mandatory retirement age of provincially appointed judges, they are worthy of note in this debate.

In the *Felipa* case, Luis Alberto Felipa, in a preliminary motion, challenged the jurisdiction of a deputy judge over the age of seventy-five to rule on two separate and distinct issues relating to judicial review under the *Immigration and Refugee Protection Act*. Under s 10(2) of the *Federal Courts Act*, at the request of the Chief Justice of the Federal Court, any judge who has previously held office in a superior court may act as a "deputy judge" of the Federal Court. It was common practice to appoint deputy judges in an effort to alleviate the backlog of files the Federal Court was handling. Felipa argued that a deputy judge, vested with all the powers of an appointed judge, falls under the jurisdiction of s 8(2) of *the Federal Courts Act*, and thus should be ineligible to preside over any hearing in any court after the age of seventy-five.

The Federal Court disagreed, claiming that deputy judges do not hold the same office as judges of the Federal Court. Thus, they could not be subject to the mandatory retirement age. Chief Justice Lutfy cited with approval the Honourable Mark MacGuigan who stated:

> The device of allowing the better judges to come back beyond the mandatory retirement age has been a very successful one in the United States. Some judges there in their eighties are performing well. It seems to me that this is the kind of judgment which a Chief Justice could make if there is sufficient demand. ... Just because a man feels he no longer wants to sit every day and retires is no reason why, if his faculties are still there and he is highly regarded by those administering the court, he could not be called back occasionally to do additional jobs.

Felipa appealed the decision before the Federal Court of Appeal, the latter reversing the Federal Court's decision. Basing itself on a statutory interpretation of the *Federal Courts Act*, the Federal Court of Appeal stated that "despite the broad language used in s 10 (1.1), it must be understood to be subject to the implied limitation that persons 75 years of age or older should not serve as deputy judges." The Federal Court of Appeal held:

> Mandatory retirement upon attaining age 75 is the forced termination of a person's employment because of age without regard to the individual's capabilities, merits, job performance or worth. One would expect that Parliament would use clear, express words in its legislation in order to trigger that sort of drastic consequence. ... And that is exactly what Parliament does.

WHAT DOES ALL THIS MEAN?

In other words, retirement truly means retirement.

Just as the Federal Court of Appeal abstained from ruling on the reasonableness of this type of provision and refused to offer any indication as to whether it was discriminatory, the federal government has not reviewed the legislation. Where do these recent cases leave lawmakers? Is the status quo still satisfactory?

There is an ongoing debate as to whether a mandatory retirement age is still warranted, particularly in view of the trend in all professions to work longer as the population lives longer. As noted in the dissenting opinion in the *Felipa* appellate decision:

> On the other hand, it is well-known that a number of former judges who were forced against their will to retire at age 75 are still available, in good health, full of energy and keen to hear cases. Indeed, many act as arbitrators and mediators in complex matters and, in recognition of their continued capacity, skill, wisdom and experience, are paid top dollar for their services.

However, many judges have opted to retire even prior to their seventy-fifth birthday. For instance, three Supreme Court justices in recent memory chose to retire early: Michel Bastarache at age 61, Louise Charron at age 60 and Marie Deschamps at age 59. The reality is that the job is demanding. Following her retirement, Louise Charron sat down with *Canadian Lawyer* magazine for its April 2012 issue and gave the latter's readers an honest insight into the challenging life of a Supreme Court Justice. On why she retired so early, she states: "And as much as I enjoyed the work and I found it interesting and I was passionate about many aspects of it, it does take its toll. There is a certain treadmill feel to it. And I just asked myself the question as I turned 60, how long do you want to do that?"

Arguably, revoking the mandatory retirement age of judges might inhibit the advancement and modernization of law. New and fresh ideas result from a consistent change of judges in a moderate and predictable fashion.

PROPOSALS?

Some have proposed fixed terms of either five, ten or fifteen years on the bench. Others have proposed adopting a customized version of judge Strathy's proposition. This would provide that the Canadian judicial council created in 1971 by the *Judge's Act* would investigate any judge upon his seventy-fifth birthday who requested an extension of his mandate. A subcommittee of the council could be formed to evaluate that judge's current ability to continue the performance of his duties.

Empirical studies are being performed to measure cognitive and motor skill decline with age in various professions, such as for surgeons and pilots. The final results, still unknown, may have an impact on future thinking.

IN CANADA ...

Canada is blessed with some of the most outstanding and competent judges in the world. For the present, we seem to have hit on the delicate balance of cultivating experienced judges as well as meeting the need to innovate and reflect the current values of Canada's evolving societal and demographic trends.

Lynne D. Kassie, Ad. E., was inducted into the College in 1998. She practices in Montréal, Québec, with a focus on family law.

DOING GOOD WHILE DOING GOOD

Sylvia H. Walbolt, Tampa, Florida

In early June, under the leadership of the College's Teaching Trial and Appellate Advocacy Committee's Vice Chair, Fellow **John C. Aisenbrey**, along with eight Fellows - all members of the committee, from Portland, Oregon, to Philadelphia and points in between - converged on Kansas City at their own expense for a three-day session to put together a video program to educate less-experienced trial lawyers. More particularly, the goal was to educate young public-interest lawyers about the practical realities of deposition practice.

The objective was to create a video program to be used by College Fellows at seminars throughout the country to teach public interest lawyers the ins-and-outs of deposition practice.

Fellows **Dennis R. Suplee** of Philadelphia, Pennsylvania; **David B. Markowitz** of Portland, Oregon; **George H. Robinson, Jr.** of Lafayette, Louisiana; **Mary Lee Ratzel** of Milwaukee, Wisconsin; **Paul L. Redfearn, III** of Kansas City, Missouri; **Lonnie J. Williams, Jr.** of Phoenix, Arizona; **Lynn R. Johnson** of Kansas City, Missouri; and Chair Aisenbrey of Kansas City, Missouri, participated in the program. The Foundation of the American College of Trial Lawyers provided its funding.

The program's general format involved videotaping a segment of a mock deposition showing some of the problems that may be encountered in taking depositions (for example, speaking objections) and defending the deponent, followed by a discussion of how well counsel dealt with the problem during the mock video and alternative ways that might have worked better.

The objective was to create a program to be used by College Fellows at seminars throughout the country to teach public interest lawyers the ins-and-outs of deposition practice. Hence, the first aspect of the designation, "Doing Good." The program is organized to allow Fellows to pick and choose desired portions to supplement their own CLE presentations on taking and defending depositions. This method is in contrast to other videos that require the viewer to watch the presentation in its entirety from start to finish. The video is supplemented by written materials on key subjects. Much of the video commentary furthers the College's objectives of "maintaining and improving the standards of trial practice, the administration of justice, and the ethics of the profession."

Fellows will find the video to be an excellent training tool, and along with the supplementary written materials, it is ideal for in-house training programs at litigation firms. Although the program was conceived and developed for presentation to public interest lawyers, there is nothing within it that is unique to them. As Gertrude Stein once observed, "Depositions are depositions are depositions." The committee's plan, therefore, is to make its newly minted video and course materials available to Fellows requesting it. Copies may be requested from the National Office at nationaloffice@actl.com. That is the second part of "doing good."

Further sayeth deponent not.

Sylvia H. Walbolt was inducted in 1981. Her Tampa, Florida, appellate practice focuses on all areas of the law, including torts, products liability, business disputes, construction law, securities laws, constitutional, insurance, antitrust and employment law. ■

GULF OIL SPILL LITIGATION: FELLOWS AT THE FOREFRONT

Robert F. Parker, Merrillville, Indiana

What happens when you take the largest environmental disaster in United States history, add several thousand plaintiffs, mix in several defendants with their company's future at stake, and then sprinkle several ACTL Fellows on the top? You get one of the largest and most complex multi-district litigations ever conducted – and so far it is running like a Swiss watch.

On April 20, 2010, a blowout caused an explosion aboard the oil drilling platform *Deepwater Horizon*, in the Gulf of Mexico about forty miles south of New Orleans, killing eleven workers and injuring sixteen more. The resulting fire raged out of control until the rig sank the next day, leading to the largest accidental oil spillage in U.S. history. Predictably, thousands of lawsuits followed. The lawsuits were consolidated in a multi-district litigation in federal court in New Orleans, and comprised the largest mass tort/environmental litigation in history.

The plaintiffs in the litigation were thousands of fishermen, hotel operators, landowners, rental companies, restaurants and seafood processors who claimed a current or potential future loss of business in the aftermath of the oil spill. The U.S. Government, as well as the governments of Louisiana, Mississippi, Florida, Texas, and Alabama, as well as some municipal and county governments in those states, also entered the fray as plaintiffs. The principal defendants were the owner of the platform, Transocean, the manufacturer of the blowout preventer, Cameron, BP, who had leased the platform from Transocean, and Halliburton, who did the cement work at the well. The lead trial counsel for Transocean, Cameron, and BP, as well as a key member of the Plaintiffs' Steering Committee, were all College Fellows.

The litigation was divided into three phases;

I. The trial's first phase was to determine the liability of BP, Transocean, Halliburton, Cameron, and other companies, and to determine whether the companies acted with gross negligence and willful misconduct. This phase was concluded in February 2013, and the Court is in the process of issuing its rulings.

II. The second phase, scheduled to begin on September 30, 2013, will focus on how much oil spilled into the Gulf and who was responsible for stopping it.

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Phase I: Liability. Rulings pending

Phase II: How much oil spilled into the Gulf? Who should have stopped it? Begins September 30, 2013

Phase III: Collateral liability - cleanup, containment, use of dispersants, etc.

III. The third phase will focus on all other liability that occurred in the process of the oil spill cleanup, such as containment issues, and including the use of dispersants.

The metrics of the case are truly staggering. The MDL was initiated in August 2010. A case management order was entered that October, and fact discovery began in earnest in January 2011 and ended in November 2011. Approximately 250 fact witnesses were deposed, most of them two-day depositions. At the height of discovery, there were depositions occurring constantly, and on most days there were anywhere from two to five depositions going by teams of trial counsel. Once fact discovery ended in November 2011, expert discovery began and proceeded for the next three months. Approximately sixty experts were deposed during those three months, again with most of those involving multiple day depositions. The expert discovery concluded in January 2012 and the first phase of the case was set for trial in February 2012. However, there was a settlement on the eve of trial that resolved the claims of the vast majority of plaintiffs. There was then a period of reorganization as the effects of the settlements were taken into account, and the first phase of the case was concluded with a seven-week trial for the remaining plaintiffs, starting in February 2013.

Quips & Quotes

It was "not an accident" that the major parties had College Fellows as their lead trial counsel. "If you just look at the amount of work accomplished over the course of basically a one-year period, you simply cannot hope to accomplish that much without approaching the work with a spirit of collegiality and professionalism."

Robert C. (Mike) Brock, Washington, D.C

Despite the high stakes, numerous complicated legal and factual issues, and the crushing work schedule, all of the participants have commented that the massive litigation was one of the most well managed in which they have been involved.

Fellow **David J. Beck**, a partner at Beck Redden in Houston, served as lead counsel in the litigation for defendant Cameron, the manufacturer of the blowout preventer sold to Transocean. Cameron's liability was adjudicated in the Phase One trial, and it was found not liable. Beck has tried many antitrust, patent infringement, and other "bet the company" cases. A Past President of the College, Beck was "extremely gratified" by the cooperative spirit among the parties to the case. He is convinced that the presence of Fellows in key positions set the cooperative tone for the litigation from the outset. "The litigation was extremely complex and the stakes very high. Despite this, there was a spirit of cooperation among counsel that resulted in the case proceeding with a minimum of side issues or other distractions."

Fellow **Robert T. Cunningham** is a plaintiffs' lawyer from Mobile, Alabama, who has participated in a number of environmental and class action litigations. He was a key member of the Plaintiffs' Steering Committee in the *Deepwater Horizon* litigation, the group of lawyers responsible for prosecuting the claims of the thousands of plaintiffs. Cunningham played a key role in the February 2012 multi-billion dollar settlement of the vast majority of the plaintiffs' claims, as well as the trial of the remaining claims in February 2013. Cunningham echoed David Beck's comments about the professionalism and cooperation of the lawyers involved. "The way this very complex case was handled by the Judge and Magistrate and prepared, litigated and tried by the lawyers made me truly proud to be a lawyer."

Robert C. (Mike) Brock, also a Fellow, is Chair of Covington & Burling's Product Liability and Mass Torts Practice. Brock currently serves as national trial counsel for a number of major pharmaceutical companies facing mass tort claims. BP selected Brock to serve as its lead

trial lawyer in the *Deepwater Horizon* oil spill litigation even though he had not worked for BP before this case. Brock firmly believes that it was "not an accident" that the major parties had College Fellows as their lead trial counsel. "If you just look at the amount of work accomplished over the course of basically a one-year period, you simply cannot hope to accomplish that much without approaching the work with a spirit of collegiality and professionalism."

Brad D. Brian is a national trial lawyer and Fellow based in the Los Angeles office of Munger, Tolles & Olson. A complex civil and criminal litigator, Brian was selected by Transocean, the owner of Deepwater Horizon, to serve as its lead counsel at trial. He also negotiated the resolution of the criminal charges brought against Transocean by the Justice Department. According to Brian, this case is the most challenging of his career, but so far it has also been one of the most rewarding. "The two distinguishing features of this case are its incredible complexity, both legally and factually, and the exemplary spirit of professionalism and cooperation that all of the lawyers involved on all sides brought to their work," said Brian. He continued, "although there were many contested issues, and the stakes were very high for many of the participants, the lawyers involved for both plaintiffs and defendants conducted themselves with the utmost civility at all times. It was truly one of the most remarkable experiences I have had in my career."

There is still much to be done in the trial court, and it is likely the focus will shift to appeals at some point. But the parties involved have done a remarkable job of conducting a very difficult and complex litigation with the least possible discord, and the greatest possible efficiency. These Fellows are leading the way.

Robert F. Parker was inducted into the College in 2012. He serves on the College's Communications Committee and as a member of The Bulletin *Editorial Board. His Merrillville, Indiana, practice is concentrated in commercial, professional liability and personal injury litigation.*

THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION

Mark W. Merritt Charlotte, North Carolina

"It is better to risk saving a guilty man than to condemn an innocent one."

THE REALITY OF OUR CRIMINAL JUSTICE SYSTEM

As trial lawyers, we believe in our system of jury trials and constitutional protections. We also know that our system is far from perfect and that miscarriages of justice can and do occur. Exonerations from DNA evidence have shown the frailties of a criminal justice system where resources are limited, investigations can focus too quickly on the wrong suspect, poor assumptions skew the process, prejudices can have their influences, and simple mistakes are made by people acting in good faith. North Carolina chose to address this situation by allowing extraordinary relief to convicted felons who can establish credible claims of factual innocence. Since 2007, the North Carolina Innocence Inquiry Commission has provided a last chance for the wrongfully convicted and helped free innocent men.

Quips & Quotes

[North Carolina's Inquiry Commission] has extensive powers...to administer oaths, issue subpoenas, compel attendance of witnesses, issue process and petition courts to aid in the enforcement of process [and to] take custody of evidence and subject it to DNA testing.

The case of Willie Grimes is an example.

WILLIE GRIMES: AN INNOCENT MAN CONVICTED

In 1988, a jury in Catawba County, North Carolina, convicted William Grimes of raping and kidnapping an elderly woman. Grimes was given a life sentence. Grimes' conviction rested largely on eyewitness identification testimony that was suspect. At one point in her testimony, the eyewitness identified Grimes' lawyer as the perpetrator of the crime. The only evidence that linked Grimes, who is African American, to the crime was a strand of hair that an expert witness said was from an African American.

Pivotal fingerprint evidence, however, was unidentified during the original investigation and trial. The rapist had taken fruit from a bowl in the victim's home and left his fingerprints behind on the remaining fruit. The unexamined fingerprint evidence from the crime scene did not match the fingerprints of Grimes but matched those of an individual who was a neighbor of the victim and who had a long history of sex offenses. Several witnesses testified that Grimes was with them

at the time of the crime. Grimes steadfastly maintained his innocence during his trial and twenty-four years in prison.

On October 18, 2010, Grimes submitted a questionnaire and consent form to the Inquiry Commission, an independent state agency charged with investigating and evaluating post-conviction claims of factual innocence. Grimes again proclaimed his innocence and sought a review of his conviction. That began a process that led to his vindication and allowed an innocent man to clear his good name. Almost two years later, on October 4, 2012, William Grimes was exonerated. Grimes was sixty-six years old at the time of his exoneration and had lost much of his adult life due to a wrongful conviction. That exoneration would not have happened without the work of the Inquiry Commission and the perseverance of a man who never lost faith or hope in our justice system.

THE FORMATION OF THE INQUIRY COMMISSION

The North Carolina General Assembly created the Inquiry Commission in 2006. The Commission, which began its work in 2007, focuses only on cases of factual innocence and not on technical or procedural trial errors. It was the first of its kind in the nation, and since its inception through the end of April 2013 has reviewed 1301 claims of innocence, and 1113 of those cases have been closed. Five cases have moved through the entire process of the Commission, and four exonerations have resulted.

The impetus for the Commission came from then North Carolina Chief Justice I. Beverly Lake.

[Thus] ...began a process that led to his vindication and allowed an innocent man to clear his good name.

Quips & Quotes

Chief Justice Lake had become concerned about the issue of wrongful convictions due to several exonerations. The injustice that occurs when an innocent person is convicted and the negative public perception those cases caused for the entire criminal justice system prompted Chief Justice Lake in November 2002 to gather representatives from the criminal justice system and the legal academic community to confront the issue of wrongful convictions in North Carolina. Chief Justice Lake's efforts led to the formation of the North Carolina Actual Innocence Commission to evaluate North Carolina's post-conviction review of innocence claims. That Commission along with judges, prosecutors and defense attorneys were concerned not only with the number of post-conviction motions but with the difficulty in identifying credible claims of innocence and the challenges both procedurally and politically to resolving such claims. After a year and a half of study, the Actual Innocence Commission issued an extensive report to the North Carolina General Assembly recommending the creation of "an independent and balanced, truth-seeking forum

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North Carolina's Inquiry Commission has extensive powers to administer oaths, issue subpoenas, compel attendance of witnesses, issue process and petition courts to aid in the enforcement of process and to take custody of evidence and subject it to DNA testing.

for credible claims of innocence." The General Assembly enacted legislation in 2006 that created the Inquiry Commission.

THE STRUCTURE AND POWERS OF THE INQUIRY COMMISSION

The mandate, structure and operation of the Inquiry Commission are spelled out in detail in Article 92 of the North Carolina General Statutes. The Inquiry Commission is established as an independent state agency charged with administering "an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges." *See* N.C. Gen. Stat. §15A-1461. The governing statutes require the employment of a director of the agency who must be an attorney licensed to practice in North Carolina and who is charged with investigating cases accepted for review. The Director is charged with employing a staff and running the investigatory function of the Commission on a day-to day basis. The Director is also empowered to apply for grants and receive private gifts and donations to support the work of the Inquiry Commission.

The Commission is made up of eight members and eight alternates that bring different perspectives to the process: a superior court judge, a prosecuting attorney, a criminal defense attorney, a sheriff, a victims' advocate, a member of the public and two additional discretionary appointments. The Chief Justice of the North Carolina Supreme Court and the Chief Judge of the Court of Appeals appoint the Commissioners to three-year terms. The Commission members are reimbursed for expenses but receive no compensation for their service.

The Inquiry Commission has extensive powers to conduct investigations. By statute, the Commission has the power to administer oaths, issue subpoenas, compel attendance of witnesses, issue process and petition courts to seek aid in the enforcement of process. The Commission has statutory authority to take custody of evidence and subject it to DNA testing. Once a claim advances to the Commission for consideration, the claimant's right to counsel is triggered, and the victim is given notice of the inquiry. The Commission's work is aided by a full-time staff of five attorneys, two investigators, a paralegal and a case coordinator.

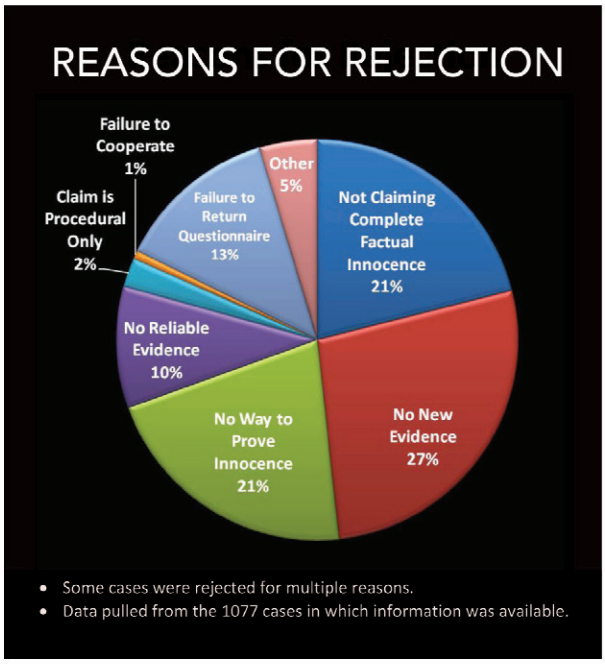
HOW THE INQUIRY COMMISSION WORKS

A claim of innocence to the Inquiry Commission can be made by a court, a state or local agency, a claimant or claimant's counsel. Once a claim is made, the staff of the Inquiry Commission conducts a review to determine if the claim meets the statutory criteria for review. If the Commission determines that a case merits further review, it will go through a period of more active investigation, and if that investigation reveals merit to the claim, proceed into a "formal inquiry." If a matter moves into formal inquiry, the Commission is required by statute to obtain a signed agreement from the claimant waiving his or her procedural safeguards and privileges. The claimant also agrees to cooperate and to provide full disclosure regarding all inquiry requirements of the Commission. The Commission's Rules and Procedures provide for the right to representation by counsel before signing the agreement waiving rights and throughout the formal inquiry process and claimants may apply for appointed counsel. The Commission has the ability to informally screen out and dismiss a case summarily at its discretion at any time.

The criteria for eligibility are set forth in the Inquiry Commission's Rules and Procedures and are quite strict:

1. Conviction must have been in a North Carolina State Court.
2. Conviction must have been for a felony.
3. The claimant must be a living person.
4. The claimant must be claiming complete factual innocence for any criminal responsibility for the crime, including any other reduced level of criminal responsibility relating to the crime.
5. Credible evidence of innocence must exist.
6. Verifiable evidence of innocence must exist.
7. The credible, verifiable evidence of innocence must not have been previously heard at trial or in a post-conviction hearing.
8. The claimant must sign an agreement waiving procedural safeguards and privileges and promising cooperation.

If at any point during the process the Commission determines that one of the criteria cannot be met, the claim is rejected. The claims can be rejected for a variety of reasons, but most rejections relate



to the lack of new evidence, the inability to prove actual innocence or a finding that the claim is not for complete factual innocence.

If the Commission staff's investigation establishes that the statutory criteria are all met, which occurs in approximately two percent of the cases referred to it, the staff refers the case to the Inquiry Commission for a formal inquiry.

FORMAL INQUIRIES BEFORE THE COMMISSION

The Commission meets to review cases that proceed successfully through the formal inquiry stage. If a claimant pleaded guilty in the trial court, all eight commissioners must vote in favor of a claim moving forward to the next stage in the process, which is formal judicial review by a three-judge panel. If the claimant entered a not guilty plea, five of eight commissioners must vote to move a claim forward. The Commission must find sufficient evidence of factual innocence to merit judicial review.

The level of review at the Commission level is rigorous. For the case of Willie Grimes, the Commission's hearing lasted three full days. For the Grimes' inquiry, the Commission reviewed a 463-page brief prepared by the Commission's staff and heard testimony from eleven witnesses, including three expert witnesses. Most critically, the Staff's investigation found and analyzed the long-lost fingerprint evidence that conclusively linked a repeated sex offender who lived close to the victim to the crime. The Commission unanimously found sufficient evidence of factual innocence to merit judicial review.

Fellow **Wade M. Smith**, a prominent criminal defense lawyer in Raleigh, has served on the Commission since its formation. Smith is an ardent believer in our criminal justice system and has devoted much of his legal career to working in that system. Smith's view is that he cannot be happy if there is "one innocent person in prison." Smith describes the Commission hearings as "intense" and "deadly serious." Smith notes that the only guidepost for the Commission is to "find the truth," and he believes a critical strength of the Commission is the extraordinary respect that its members hold for each other's views. Smith's experiences with the Inquiry Commission have led him to conclude that it plays a critical role in preserving the integrity of the North Carolina criminal justice system.

REVIEW OF CLAIMS BY THREE-JUDGE PANEL

In those cases where the Inquiry Commission finds sufficient evidence of actual innocence, the Commission refers the matter for judicial review. The Chief Justice then appoints a panel of three judges who did not have any prior involvement in the case to review the inquiry. The panel meets in the County where the crime occurred and hears evidence relevant to the Commission's recommendations. Like the proceedings before the Commission itself, the panel's review of matters is rigorous. >>

Quips & Quotes

...murdered while watching Monday Night Football

...911 tape lost

...Crime Stoppers tip ignored

...three men never interviewed

...evidence never provided

...no procedure in place

...nothing happened to the evidence

...the system was broken down

...bad assumptions, a poor investigation and pressures to avoid the death penalty




From left to right:
Wade M. Smith
W. Erwin Spainhour
C. Colon Willoughby, Jr.
Mark W. Merritt

In the Grimes case, the panel heard evidence for four days, which included the sworn testimony of fifteen persons, including Grimes, reviewed the transcripts of the first trial and the Inquiry Commission hearing and reviewed the Staff's brief. Prior to that hearing, on October 5, 2012, the District Attorney agreed that the evidence presented established Mr. Grimes' innocence and apologized to Mr. Grimes for a criminal justice system that in his case had failed.

Quips & Quotes

The claims can be rejected for a variety of reasons, but most rejections relate to the lack of new evidence, the inability to prove actual innocence or a finding that the claim is not for complete factual evidence.

Fellow and North Carolina Superior Court Judge **W. Erwin Spainhour** originally had some modest skepticism when he first learned of the Inquiry Commission. In 2011, Judge Spainhour was appointed by the Chief Justice to chair a three-judge panel to hear the case of two men, Kenneth Kagonyera and Robert Wilcoxson, who had entered a guilty plea in 2001 to the second degree murder of Robert Bowman in 2000 in Asheville. Bowman had been murdered by a shotgun blast fired through his front door while he was watching Monday Night Football. The tape of the 911 call reporting the crime had been lost. A tip to Crime Stoppers that had identified three men as the perpetrators by name was ignored because the Sheriff mistakenly believed one of those three men was in jail at the time and did not know the man had been serving his sentence only on the weekends. The three men were never interviewed even though one of them drove a car that matched the description of the car driven by the perpetrators. The perpetrators were wearing bandanas, and three bandanas were found near the scene and provided to police. DNA evidence from the bandanas excluded Kagonyera and Wilcoxson as the perpetrators, but that evidence was never provided to the defense team. A second Crime Stoppers tip identified Kagonyera and Wilcoxson as two of six perpetrators of the crime, and three of those individuals ultimately agreed to testify against Kagonyera and Wilcoxson. Kagonyera and Wilcoxson entered guilty pleas to avoid the death penalty, but were denied the right to withdraw those pleas at a later time.

In 2003, after Kagonyera and Wilcoxson were incarcerated, one of the three men who was identified in the original Crime Stoppers tip was arrested for another crime, and his DNA was run through the Combined DNA Index System database, resulting in a full-on match to the DNA on one of the bandanas. That evidence was provided to the Sheriff's department in Buncombe County, but there was no procedure in place to do anything with the post-conviction evidence. While in federal prison, another one of the three men that had been identified in the original Crime Stoppers tip told a DEA agent that he was involved in Bowman's murder, identified the other two men originally identified as the perpetrators as involved in the murder and provided evidence that exonerated Kagonyera and Wilcoxson. That evidence was provided by the DEA agent to the District Attorney, but nothing happened to it.

In November 2010, Kagonyera and Wilcoxson submitted their claims of factual innocence to the Commission. The Commission's investigation uncovered additional exculpatory evidence and developed the evidence from the DNA testing and the jailhouse confession. In April 2011 after a two-day hearing, the Commission unanimously recommended that the matter receive judicial review. Judge Spainhour presided over a hearing that lasted two weeks and

reviewed evidence that consisted of the sworn testimony of 33 persons, the transcripts from prior proceedings and 240 exhibits. The judges unanimously found Kagonyera and Wilcoxson to be innocent. For Judge Spainhour, he saw firsthand how in this case the system had simply "broken down" and that bad assumptions, a poor investigation and pressures to avoid the death penalty led to innocent men pleading guilty and going to prison for a crime that they did not commit. Judge Spainhour is a supporter of the work of the Inquiry Commission based on his experience and believes that it is fulfilling its role of exonerating the innocent.

A PROSECUTOR'S PERSPECTIVE

C. Colon Willoughby, Jr. is a Fellow and the District Attorney for Wake County in North Carolina. Willoughby acknowledges the important role of the Inquiry Commission, but he adds a note of caution based on his experience with the case of Greg Taylor, who was the first individual exonerated by the Inquiry Commission process in 2010. Taylor was an admitted crack cocaine user whose car was found stuck in the mud near a murdered woman who was also a drug user. Evidence at trial had linked Taylor to the woman who was murdered and had placed the woman in Taylor's car. After Taylor was convicted of the murder, another individual confessed to the murder, but his original description of the murder was not consistent with the evidence of the murder itself. Taylor also attacked his conviction based on the recantation of testimony by two key witnesses, the lack of DNA evidence that linked him to the victim or that placed the victim in his vehicle, and on the poor job done by the State Bureau of Investigation's crime lab on the case involving a series of mishaps and errors in performing its work. To Willoughby, in the Taylor case, the case of factual innocence was simply not clear, and he is concerned that evidence of failure by the crime lab distracted from the core issue of whether Taylor was factually innocent.

THE CURRENT WORK OF THE COMMISSION

The work of the Commission is ongoing under the leadership of Executive Director Kendra Montgomery-Blinn. The Commission has fifteen claims in active investigation and seven cases in the formal inquiry stage. Montgomery-Blinn does not yet know how many of those cases will lead to a hearing before the Commission. Montgomery-Blinn is heartened by the receipt of a two-year federal grant from the National Institute of Justice that can be used in investigations involving violent felony crimes in which DNA testing may help prove innocence. Montgomery-Blinn faces an ongoing situation where the volume of cases that are ripe for investigation and formal inquiry continually outweigh the Commission's resources.

Despite those resource limitations, Montgomery-Blinn and her staff devote their efforts to giving each case a fair and thorough review. As Montgomery-Blinn notes, "knowing that each case has been fully vetted and the truth uncovered is what truly makes this job worthwhile." Montgomery-Blinn is in constant communication with other states that are considering instituting commissions like that in North Carolina, and she offers her encouragement. The key to initiating such efforts, according to Montgomery-Blinn, is to "enlist the support of your Supreme Court and to reach out to all segments of the criminal justice system and not just defense attorneys." She believes that the North Carolina model with its detailed statutory framework and processes is worthy of emulation and will provide a needed safety valve for those individuals who are wrongfully convicted.

Mark W. Merritt was inducted in October 2004. He is a member of the College's North Carolina State Committee. His Charlotte, North Carolina, practice covers a broad range of business-related litigation including antitrust litigation and counseling, complex and class action litigation and securities litigation.

North Carolina Innocence Inquiry Commission's Executive Director Kendra Montgomery-Blinn believes that the North Carolina model with its detailed statutory framework and processes is worthy of emulation and will provide a needed safety valve for those individuals who are wrongfully convicted.

LAW SCHOOL: IS IT STILL USEFUL?

SOCRATES IS ALIVE AND WELL IN CLEVELAND:
OR HOW LAW SCHOOLS HONE THE ART OF PERSUASION

G. Gray Wilson, Winston-Salem, North Carolina

Professor Kingsfield had it right in the 1973 cult classic movie, *The Paper Chase,* when he marched into the first-year contracts class at Harvard Law School and announced, "You come in here with a skull full of mush, but you will leave thinking like a lawyer." Whatever shortcomings the standard law school curriculum may have, the overriding purpose of a legal education is to learn how to analyze a factual scenario through the lens of the law. While most of us in the profession would agree that this discipline of legal reasoning can be honed by experience, few would dispute that it has to be taught and learned properly at the outset in order to stick. Sadly, some lawyers do not master the rudiments of legal reasoning even after three years of law school and a lifetime of practice. They may learn how to try a fender-bender adequately, to examine witnesses and present a respectable closing argument, thus amassing a successful track record in a comfortable practice niche. But that may not be everyone's idea of success. Uninformed or unstructured judgment is no better than cloistered virtue. As a former mentor of mine often said, all a real lawyer has to be able to do is think. The rest is just icing on the cake.

This in no way disparages the value of a trial skills or other practical internship course during law school, including a summer clerkship program with a public or private firm. Thinking and doing are not mutually exclusive concepts but the notion that one can master the art of legal reasoning that spans a professional lifetime in less than three years of training in an academic setting lacks an empirical database. One cannot look to ancient history when lawyers merely read the law attached to a venerable advocate for guidance in this regard, as the practice of law has changed markedly over the centuries. Nor do analogies drawn from the medical or other professions which involve institutionalized apprenticeships necessarily apply to the legal field. For better or worse, the study of law is a unique undertaking which only lawyers ultimately come to understand and appreciate.

It is naïve to expect that somehow altering the law school curriculum will magically transform more modern-day litigators into trial lawyers. Knowing how to litigate a case through pretrial pleadings, discovery and motions is not the same as knowing how to try a case before a jury. Yet law schools are neither to blame for this difference nor do they offer a remedy. While law school professors are often excellent at teaching the fundamentals of legal analysis, not many of them boast expertise at handling jury trials, much less the experience of several decades in court handling all facets of a busy case load. Adjunct professors from the community can certainly contribute in this regard but they also likely have a busy trial practice which renders their service part-time at best. There is simply no easy way to transform law students into wily courtroom gladiators, especially when they have yet to master the basic concepts of logical deduction where facts and law collide.

The medical profession offers no template for lawyers. With its internship and residency programs, following rotation among various clinical services during the latter years of medical school, the application of medical science requires the observation and performance of testing and procedures on the human body, with a wide assortment of software, hardware, equipment and facilities. It is also important to learn how to think like a doctor, an inductive process in which the "hands on" application is literal. This is not to suggest that medical science is a field exalted over the practice of law; it just involves different tools for problem solving. But the practice of law is much more than just pushing paper. To pick a crude example, there are a number of online legal services, permitted in some states, which offer virtual legal representation with a host of forms and algorithms to guide the user through the legal maze to the formation of a will, deed, divorce complaint, whatever. People

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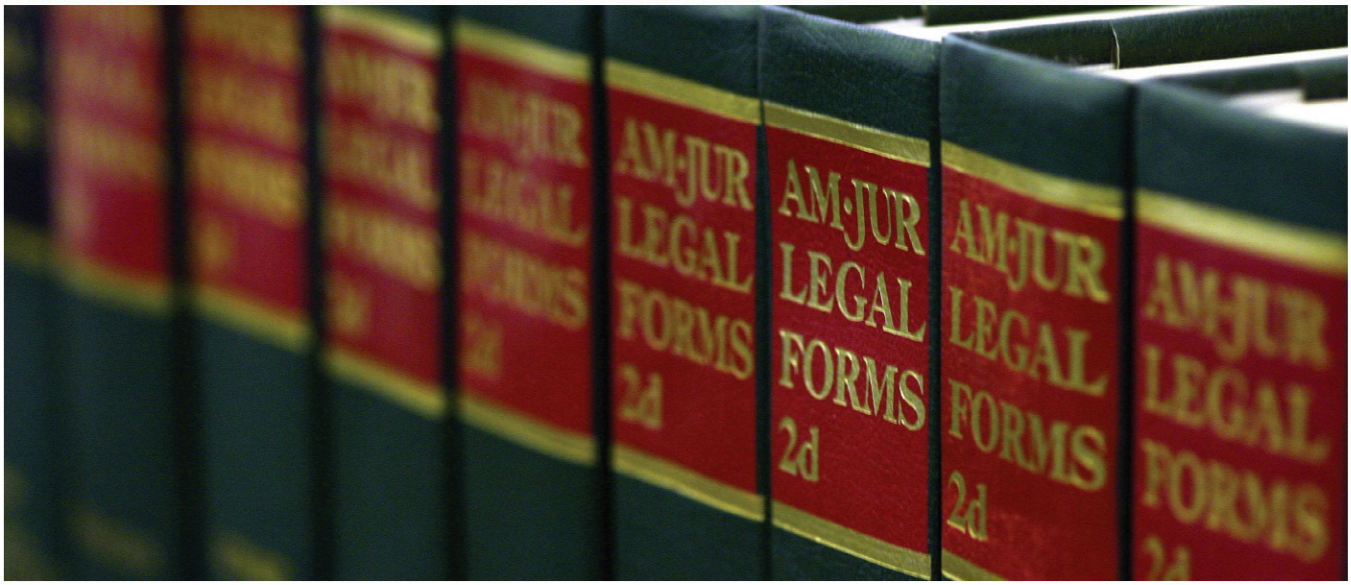
who employ this type of internet service avoid the higher cost of legal representation. They can also get into trouble quickly.

Given the phenomenon of the vanishing jury trial, along with the increasing complexity of civil litigation, a trial lawyer cannot be trained the old-fashioned way, when there were 15-20 relatively simple jury trials per year and sometimes two or more jury trials (drawn from the same jury pool no less) within the same week or two-week session of court. But a number of other innovative resources are being tested in the twenty-first century. Practical skills boot camp courses, legal job corps and even law-school sponsored nonprofit law firms for jobless graduates are underway across the country. These efforts are matched by other state and local bar programs fashioned to address the crying need for the inculcation and development of genuine trial skills in the courtroom, namely, the art of persuasion. The consummate advocate hones his courtroom acumen over the course of a professional career, taking decades to reach peak potential, but only with the solid foundation provided by a sound legal education in an academic setting where Socrates is alive and well and living in Cleveland.

All drama aside, the Socratic or casebook method of instruction is not nearly as draconian as Kingsfield would have us believe. Poor Socrates developed this dialectical method of discourse in response to the false teachings of the Sophists, who were more interested in scoring points in an argument than getting to the truth of the matter. While zealous advocacy may not always be synonymous with truth-seeking, the paramount function of the judicial system is to get to the correct legal result. So who do you really want by your side in court? Alcibiades (blowhard) or Socrates (master of critical thinking)? The former may be able to bluff his way past a single issue and a mediocre bench, but the latter will consistently reason his way to the best solution and correct result for the client. Bad arguments, bad policy and bad law derive from closed minds that eschew core values for experience. A good trial lawyer learns early on how to argue both sides of an issue, not by ignoring the dictates of conscience but rather by focusing on rational decision-making that flows from keeping an open mind. Unfortunately, this is not a skill that can be picked up off the street. It requires years of concentrated tutelage and study in a rigorous, disciplined classroom setting with exposure to a variety of areas of the law. That cloistered environment is a law school and just like a Porsche, there is no substitute.

G. Gray Wilson was inducted into the College in 1995. His area of practice includes professional malpractice, insurance litigation, commercial litigation and employment litigation. ■



TRULY PRACTICE-READY LAW GRADUATES

Carol Elder Bruce, Washington, D.C.

Let's get one thing straight, right up front: The law partners – especially the trial lawyers -- who pontificate the loudest about how law schools are not producing "practice-ready" law graduates were once, themselves, newly minted lawyers who were clueless about how to actually practice law. On this, I am sure that Gray [Wilson. *See counter article in this issue*] and I agree. Thirty or more years ago, some partner had to teach them the intricate steps to accomplish a merger, draft a divorce complaint, or defend a murder defendant. Back then, partnerships saw such in-house training as part of their roles as mentors. Clients then and now (and especially now, given the high billing rates) didn't like paying for a young lawyer's on-the-job learning curve, and partners usually would, and should now, write down excessive time.

Still, there is a debate raging within the legal academy and the ABA about whether there is something else or different that law schools should be doing to make their graduates as practice-ready as possible, especially given the changing legal landscape. The ABA's Task Force on the Future of Legal Education will issue its final report this fall. Its meetings have been very public and publicized. The grim job prospects in law firms for graduates since 2008 are due mainly to recession-impacted clients pulling back on their legal work, conducting price-driven beauty contests, and demanding alternative fee arrangements and discounts. We all have seen the troubling law graduate placement statistics. E-discovery, once the domain of associates, can be done cheaply now on computers or out-sourced to foreign markets at lower cost. Many Big Law and mid-size firms have downsized considerably, making for fewer job opportunities for law graduates in the private sector. Federal and state governments still have hiring freezes, and nonprofits are less able to bring on new lawyers given reduced funding. More than ever, law graduates need to be able to persuade employers that they are as ready as possible to hit the ground running, even if on an insecure and much-reduced playing field. Just the extraordinary student loan debt alone being carried by this generation of law graduates, compels law schools and the profession to consider these important educational issues.

I agree with some of the very good suggestions that are on the table in the debates about what changes

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Quips & Quotes

...the teachers are law professors who are largely legal scholars *and not necessarily practitioners*...

should happen in law schools to give graduates more marketable skills. They are worthy of discussion. In my view, being practice-ready requires, well, practice. It requires practice grounded on a good, old-fashioned foundation of solid critical legal thinking skills and a strong set of legal research and writing skills.

Gray and I agree that the primary mission of a law school education today is and should be much like it was almost 150 years ago when the case book method of instruction was first introduced to teach students to "think like a lawyer." What does that mean as a pedagogical matter? It means that the teachers are law professors who are largely legal scholars *and not necessarily practitioners*, who use the case book method and graded classroom participation to teach students critical thinking, reasoning, and analytical skills that will enable them to apply the law to both mundane and complex factual disputes.

We also probably agree that, in support of this mission to teach students to "think like a lawyer," truly good law schools (without regard to magazine rankings) provide today excellent, much-improved first and second year legal research and writing programs. These programs, often taught by adjuncts who themselves often are practicing appellate or trial lawyers, provide students with a strong foundation in these very practical competencies. These hands-on programs teach students how to (1) spot legal issues; (2) find and apply to the facts relevant precedent, statutes, rules and public policy statements and correctly cite them; and (3) make the most cogent and analytically unassailable case possible on paper and orally under fire. So, how, if at all, do Gray and I disagree?

Quips & Quotes

With respect, where is it written that a law student needs three full years of the case method to develop sound critical thinking skills?

At some law schools and from very early in a semester during the first two years, professors coordinate with legal writing professors to incorporate both in the substantive law and the writing classes, the *same* hypothetical cases using samples of legal documents relevant to the course being taught. These samples include actual contracts, including some based on a fraudulent inducement in Contracts; an estate plan, with a living will, and pour-over Trust in Trusts and Estates; an Indictment, Motion to Suppress Evidence, and a pre-sentencing memorandum in Criminal Procedure. Seeing, discussing, and even drafting actual case documents drives home and gives meaning to the lawyer's role in advising and representing a party in matters involving, for example, a breach of contract, an inadequate estate plan, a high stakes criminal prosecution. This collaborative and modern teaching approach is a simple, good idea and I'm all for it.

Second, students should be encouraged to take as many clinical law programs or externships as they can after their first semester of law school, during the second half of the first year, and throughout the second year, as well as in the summer between the first and second year of law school. Law students are, as one commentator put it, "the actors with the least amount of actual knowledge as to what the work world requires." That is why law school administrators should encourage students to grab these opportunities. My daughter, who is a rising 3L and worked a few years before law school (a very good idea), had an externship with Homeland Security last Fall in which she served as trial counsel, standing up and representing the United States in deportation proceedings. She also briefed an appeal in which the government was the appellant and she was fortunate to receive wise counsel from experienced government prosecutors throughout her

externship. It was an awesome learning experience she will never forget and it reaffirmed her desire to become a trial lawyer.

I also agree with those who advocate allowing many more clinical law opportunities for credit in the third year as well as more credit-earning externships with government agencies, nonprofits and law firms in that final year. Such hands-on, *practical experience should constitute at least 50% of a student's credits in third year*, leaving time to take a number of the excellent upper-level seminars most law schools offer. Any externship, however, should contain a carefully coordinated in-class component that would provide the students with invaluable perspectives on the interplay of scholarship and critical thinking skills with these practice experiences.

I think Gray would disagree with me on this last recommendation for the third year. I also have no doubt that there would likely be a significant push-back on this suggestion from university centers if there is any accompanying tuition/revenue drop or cost associated with this suggestion, as many law schools now find themselves in the unhappy place of being under-performing units. Given the large amount of time professors devote to producing scholarship (some say 40%) under the incentives system in place within the legal academy, it is unclear if they would resist this suggestion that would entail less teaching by some of them. With respect, where is it written that a law student needs three full years of the case method to develop sound critical thinking skills? Law Reviews presume that their editors "got it" on that front by the middle of the second semester of the second year as that is when the baton is passed to the newly selected editorial board, followed almost immediately with crushing editing responsibilities.

Please note that I am not embracing an increased emphasis on clinical law and externships in order to make a graduate "practice-ready" for a large law firm. Only a small percentage (some say 10%) of graduates end up in Big Law these days and those grads are usually from the top law schools. I endorse this approach simply because I think it's a smart way of making a graduate feel more confident in her abilities to rise to the tasks ahead of her and more eager to continue learning every day in the work world.

So, let me leave you with a few random closing thoughts on the whole "practice-ready" law graduate phenomenon. Whether or not Big Law is dying (*New Republic*, July 21, 2013) or, at the very least, their associate hiring and retention models are changing, that should not alter the teaching mission of law schools. Law schools should not make pedagogical decisions based upon the financial pressures on partners in law firms and the desire of some in law practices to have someone else (the law school or the client) pay for training a new lawyer in the minutia of a specific practice area. Law schools and the profession know that there is no shortage of need for lawyers to counsel the poor and the middle class. The economic challenges associated with meeting that need for free or low-cost legal services with "practice-ready" but debt-ridden law grads is an important subject for another article. Law school clinics make significant contributions to such needs and could make more.

Whether or not Big Law is dying (*New Republic*, July 21, 2013) or, at the very least, their associate hiring and retention models are changing, that should not alter the teaching mission of law schools.

The dramatic decrease in applications to law schools attributed largely to widespread news accounts about fewer jobs for law grads, will result in fewer graduates entering the profession, because law schools largely are shrinking their entering class sizes to avoid compromising on admission standards. We'll have to wait and see if the problem of low graduate job placement is self-correcting. In the meantime, though, law schools in this challenging economy should continue to take the kind of steps discussed above to enable their graduates to leave law school and pursue their passion for the law as confident, truly practice-ready lawyers -- young lawyers with critical thinking skills, first rate legal research and writing skills, and the many written, oral, on-your-feet practice skills that come from invaluable clinical and externship experiences.

Carol Elder Bruce was inducted in 2001. Her Washington, D.C. practice focuses on white collar criminal defense and complex litigation.

GETTING IT RIGHT

THE WORK OF THE BOSTON BAR ASSOCIATION'S TASK FORCE TO IMPROVE THE ACCURACY OF THE CRIMINAL JUSTICE SYSTEM

David E. Meier and **Martin F. Murphy**, Boston, Massachusetts

The *Washington Post*'s recent report that FBI expert hair-comparison testimony, evidence the Bureau has acknowledged is unreliable, may have sent twenty-seven defendants to death row is only the latest in what has become a regular drumbeat of news stories reminding us that our criminal justice system is far from perfect. The Innocence Project reports that since 1989, DNA testing on crime scene evidence has exonerated 311 prisoners, many of whom served lengthy prison sentences before the post-conviction testing demonstrated their innocence.

Massachusetts, where we practice, has had its share of wrongful convictions. DNA testing has resulted in the exoneration of nine defendants convicted of serious crimes, including murder and rape. In 2009, the Boston Bar Association asked us to lead a Task Force designed to identify the causes of wrongful convictions and to recommend reforms to reduce the likelihood that other men and women would be sent to prison for crimes they did not commit.

As former prosecutors who now represent individuals accused of crimes, we knew that the subject could provoke great controversy. It is only natural for police officers who have "solved" cases, prosecutors who have obtained convictions, and victims who have experienced some measure of closure to distrust the prospect of opening up old wounds when a prisoner, claiming innocence, seeks a new trial and asks that crime scene evidence to be tested—or re-tested. But our own experience on both sides of the fence gave us optimism that everyone involved in that system—victims, police, prosecutors, defense attorneys, defendants, forensic scientists, and judges—shared a common belief that no good comes when an innocent person is convicted of a crime he did not commit. That defendant surely suffers a tremendous personal injustice. And while there is no doubt that an innocent man wrongly convicted suffers the most when the system fails, the defendant is not the only victim. Wrongful convictions not only work a tremendous injustice on innocent defendants, they also pose an immeasurable cost to the public -- and to public safety.

For every innocent man wrongly convicted, the real perpetrator goes free, avoiding accountability for his own actions and creating a risk that he will commit more crimes. The most famous example of this is the Central Park jogger case, in which five young defendants convicted of the brutal attack of a young woman in New York were ultimately exonerated by DNA evidence. The real perpetrator was a serial rapist with no connection to any of the five young men falsely arrested, convicted, and imprisoned. In the four months after the Central Park jogger case was closed by police and prosecutors, the real perpetrator attacked and raped four other women and raped and killed a fifth.

It is only natural for police officers who have "solved" cases, prosecutors who have obtained convictions, and victims who have experienced some measure of closure to distrust the prospect of opening up old wounds when a prisoner, claiming innocence, seeks a new trial and asks that crime scene evidence to be tested—or re-tested.

Quips & Quotes

We built our Task Force and organized our work around a fundamental principle: that the criminal defense, civil liberties, and law enforcement communities each had an equal stake in taking steps to avoid wrongful convictions. To that end, we asked individuals across the full range of the criminal justice system to join our work. And they did. Our

We built our Task Force and organized our work around a fundamental principle: that the criminal defense, civil liberties, and law enforcement communities each had an equal stake in taking steps to avoid wrongful convictions.

Task Force had its share of criminal defense lawyers, including College Fellows **Joseph F. Savage, Jr.**, Chair of the New England Innocence Project, and **William H. Kettlewell**. The Task Force also included Boston Police Commissioner Ed Davis, Major James Connolly of the Massachusetts State Police, a senior official in the state's office of public safety, the director of the state's crime laboratory, senior prosecutors from the state's two largest counties, and the retired Chief Justice of the Massachusetts Appeals Court.

Our objective was to review Massachusetts exonerations and to draw on well-developed academic literature and the documented experience of other states to identify the most common causes of wrongful convictions, and to develop recommendations to increase the likelihood of "Getting it Right," the name we gave to our report when we issued it in December 2009. In keeping with our primary objective to focus on the common goals of law enforcement and the criminal defense bar to increase the accuracy and reliability of the criminal justice system, we hoped to issue a unanimous report.

THE CAUSES OF WRONGFUL CONVICTIONS

Our experience in Massachusetts and data from elsewhere in the country makes clear that nearly every wrongful conviction is caused by a common constellation of problems:

1. Mistaken eyewitness identification
2. Flawed forensic science
3. False confessions
4. Police and prosecution failures to produce required discovery
5. Inadequate defense counsel performance and
6. False testimony by jailhouse informants and cooperating witnesses

In many cases, the research shows that more than one of these elements combine to create a perfect storm that leads to an innocent man's conviction. Our experience in Massachusetts was no different.

RECOMMENDATIONS

Our Task Force developed a comprehensive set of recommendations addressing each of these issues, and we did so in the midst of the worst economic crisis since the Great Depression, a circumstance that required us to focus on recommendations that could be adopted without breaking the budgets of police departments, forensic laboratories, and prosecutor's office and the state's public defender system. We worked to identify best practices in police departments and prosecutor's offices in the hope that our work could help spread the word among Massachusetts' cities and towns. In the end, after a year's work, we issued a detailed, 99-page report. Our recommendations in the Report were unanimous.

Our recommendations were detailed and specific, far too detailed and specific to describe at length here. Some were of particular note:

Eyewitness Identification

Flawed eyewitness identification is at the heart of many wrongful identification cases. Perhaps our most important recommendation on this issue was to urge police departments to conduct "double blind" identification procedures, that is, to have groups of photographs presented to a witness by an officer not involved in the investigation who does not know which of the individuals in the photographs is the actual suspect. Adopting that practice prevents one obvious problem: it eliminates the possibility that an officer would deliberately tell a witness which photograph depicts the suspect whom the officer believes

is guilty. Just as importantly, an officer who knows the identity of the suspect may, without bad intentions, steer a witness toward a suspect by unconscious, non-verbal cues that a witness may absorb and that may impact the witness's identification.

Forensic Science

Our most important recommendation in the area of forensic science was to urge the Massachusetts legislature to adopt a statute affording prisoners a right to obtain DNA testing of crime scene evidence in cases where it might bear on a prisoner's guilt or innocence. At the time of our work, Massachusetts was one of only a small handful of states that did not have a statute providing for post-conviction DNA access. Some of the state's District Attorneys routinely acceded to motions for access to forensic evidence by defendants who claimed to have been wrongfully convicted, but others did not. Our Task Force believed it was important to establish a baseline right for all defendants to obtain forensic evidence when it could exonerate them. Bills providing such a right had been filed for years but had languished for nearly a decade in the legislature. Our Task Force developed a bill of its own, addressing each of the objections made to previous bills. In February 2012, our legislative proposal unanimously passed the legislature and was signed by the Governor.

Recording Police Interviews

For many years in Massachusetts, the defense bar had advocated that the police record all custodial interrogations from the beginning, including the police's administration of Miranda warnings. Several years before our Task Force began its work, the Massachusetts Supreme Judicial Court held that unless a custodial interrogation was recorded, either by audio or video means, the jury would be instructed that the police had failed to follow the preferred procedure, although not formally mandated, by the state's highest court. Many police departments were initially skeptical of the court's ruling, and feared that it would discourage suspects from speaking with them. But somewhat ironically, after the ruling, as departments began recording statements, police detectives conducting investigations of serious crimes became the most vocal proponents of recording statements, particularly by videotape. Detectives found that cameras did not deter suspects from making statements, encouraged police to administer Miranda warnings properly and conduct suspect interviews without any hint of coercion, reducing statements and confessions "lost" at suppression hearings and perhaps most importantly, providing vivid, visual evidence that could be presented to the jury at trial.

Quips & Quotes

Recording complete statements from the beginning of an interview not only enhances compliance with a suspect's constitutional rights, thereby eliminating tactics that most-often lead to false confessions, but also helps police and prosecutors prove their case.

Approximately twenty states now require that suspect interviews be recorded. Our experience suggests that recording complete statements from the beginning of an interview not only enhances compliance with a suspect's constitutional rights, thereby eliminating tactics that most-often lead to false con-

fessions, but also helps police and prosecutors prove their case. Indeed, this reform serves as an important benefit to everyone in the criminal justice system.

Our Task Force also addressed whether law enforcement officers should record interviews of witnesses who are not suspects. We concluded, again unanimously, that they should do so in serious cases, wherever practical. We recognized that it may be impractical to record some interviews, particularly those conducted at a crime scene. But the Task Force concluded that recording witness interviews, in addition to suspect interviews, would enhance the truth seeking function that lay at the heart of our work. As our report concluded:

> Having a complete record—the kind that only comes from a recording—of important witness interviews would remove nearly all question about what a witness said at the outset of the investigation, and permit the trial of the matter to focus on the witness's testimony and prior statements, not on whether the investigators fully or accurately described the witness's statements in reports or notes.

We were particularly pleased that at the end of our work, Boston Police Commissioner and Task Force member Ed Davis announced that the Boston Police Department had adopted a new policy calling for recording all witness interviews in the most important of criminal investigations: homicide investigations.

Discovery in Criminal Cases

The Task Force Members -- police, prosecutors and defense counsel -- unanimously recognized the importance of prosecutors fulfilling their obligation to provide mandated discovery including the production of exculpatory evidence required under *Brady v. Maryland*. We developed a specific list of best practices for prosecutors' offices and recommendations for training prosecutors. Two of our recommendations merit brief discussion here. The first is our Task Force's explicit recognition that a prosecutor's obligation to produce exculpatory evidence is broader than a prosecutor's constitutional *Brady* obligation because it is also based on the Model Rules of Professional Conduct, which "'requires the disclosure of evidence or information favorable to the defense without regard to the anticipated impact of the evidence or information on a trial's outcome.'" The second recommendation of merit for prosecutors is the recognition that in serious cases, best practices require a prosecutor to review a police officer's notes to determine whether the notes contain exculpatory information. Only by personally reviewing a police officer's notes to determine if they contain, for example, information about a witness' prior inconsistent statements not reduced to writing, can a prosecutor meet his or her obligation to produce exculpatory information, a task we believed critical to preventing conviction of innocent men and women.

Defense Counsel Performance

The Task Force also recognized that many wrongful convictions unfortunately result from defense counsels' inadequate performance. While we recognized that representing a criminal defendant is by no means a paint-by-numbers exercise, the Task Force report provides a detailed checklist to help defense counsel ensure that they are fulfilling their obligation to provide effective assistance of counsel at every step of the trial process.

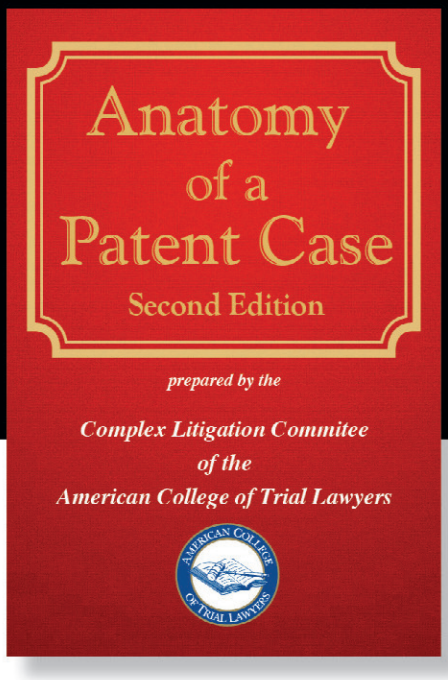
FUTURE STEPS

Our efforts to implement the recommendations of the Task Force are ongoing. A critical recommendation not previously mentioned proposed legislation to reconfigure the State's Forensic Science Advisory Board to include forensic scientists and defense counsel. The legislation is a priority of the Boston Bar Association in its current legislative session. In the past year, one component of the state crime lab system — an unaccredited drug laboratory operated by the state Department of Public Health — experienced a major scandal: a drug analyst at that lab has been accused of falsifying test results and lab reports over a period of years, the results of thousands of criminal drug cases have been called into question, and more than 300 defendants convicted of drug offenses have been released before their sentences expired. A Forensic Science Advisory Board that has the same kind of broad-based representation as our Task Force would represent an important step in ensuring that our state's chronically-underfunded forensic science system has advocates from all segments of the criminal justice system. In this area, as in many others, much work remains before our system for investigating and prosecuting crimes truly deserves to be called a criminal *justice* system. Only then will all of the participants in the system have been afforded the opportunity to truly "Get it Right."

David E. Meyer was inducted into the College in 2010. His Boston practice is focused on criminal defense and governmental investigations.

Martin F. Murphy, of Boston, was inducted in 2009. He practices criminal defense, high stakes civil litigation and regulatory investigations. ■

PATENT MANUAL READ BY MANY, (HOPEFULLY) COPIED BY NONE



Anatomy of a Patent Case, Second Edition, authored by the College's Complex Litigation Committee and published by Bloomberg BNA, is assuming its rightful place on the shelves of America's notable members of the judiciary.

The Federal Judicial Center is providing copies of the second edition of the seminal patent instruction manual to Judges of the U.S. District Courts, the U.S. Court of International Trade, the U.S. Court of Federal Claims, U.S. Magistrate Judges and the U.S. Court Libraries, including branches and satellite locations. Approximately 1,700 copies have been sent or are designated to be mailed soon; approximately 1,300 copies remain in the FJC cache to ensure all newly appointed judges and judges and employees of the Federal judicial bench will obtain copies upon request.

With patent litigation assuming a pivotal role in today's global economy, the manual provides an updated and concise, yet thorough view that balances the issues of a patent case for both judges and lawyers.

Anatomy of a Patent Case specifically addresses the complex technical, procedural and legal issues inherent in a patent lawsuit that are not usually found in other types of civil litigation. It is limited to the unique characteristics of patent litigation and provides concise coverage of the fundamentals, including effective lessons from the most-significant cases and essential insights from leading experts and judges.

The *Second Edition* includes new chapters analyzing the America Invents Act (AIA), special considerations of the Hatch-Waxman litigation and the use of special masters, court-appointed expert witnesses and technical advisors aiding the court in patent litigation.

Editors-in-Chief of *Anatomy of a Patent Case, Second Edition*, were Fellows **Henry B. Gutman**, **John L. Cooper** and **George F. Pappas.**

To purchase your copy, go to www.bna.com/bnabooks/aop. Fellows of the American College of Trial Lawyers are offered a 25% discount at checkout with coupon code **ACTAOP**. ■

TEACHING TRIAL ADVOCACY SKILLS IN MONTANA

Hon. Karen S. Townsend, Missoula, Montana

In 1985, a newly minted Fellow of the College, (now the Honorable **Sam E. Haddon**), then a partner in the Missoula, Montana law firm of Boone, Karlberg and Haddon, was determined to improve the trial bar in the state. He knew that skills could be improved by watching competent attorneys demonstrate a trial skill and then having the students get on their feet and practice the skill before more-experienced practitioners who could provide feedback on these performances. He rounded up a handful of the most-skilled trial lawyers and trial judges he knew and practiced with from across Montana, persuaded them to donate a week of their time and come to Missoula for this trial advocacy program, added a communications specialist to the mix, found a NITA problem for use, secured community volunteers who served as prospective jurors or witnesses, and convinced the Dean of the University of Montana School of Law to donate facilities, provide logistical support, and underwrite the program financially so that tuition for the program could be modest. That first program attracted a small group of students, and from these modest beginnings, the Advanced Trial Advocacy Program has grown and evolved and has just completed its 25th version.

Hon. Ted O. Lympus, Judge for the 11th District Court of Montana

Montana Fellows of the College often serve as faculty members of the Advanced Trial Advocacy Program. Of the current thirty-nine Montana Fellows, thirteen have served as faculty members for the program. Judge Haddon served as Director of the Program and faculty member from the original program until he was elevated to the federal bench in 2001. Fellow **Karen S. Townsend** (now Judicial Fellow) assumed the directorship at that time. Other outstanding trial lawyers also participate as faculty members. The faculty is augmented by experienced trial judges from Montana, including federal judges, and almost every year, a justice of the Montana Supreme Court attends and presents, usually, the ethics lecture. As director of the program, Judge Townsend frequently receives telephone calls or e-mails from Montana lawyers or judges wishing to volunteer their services to the program. The faculty is rounded out by the participation of two distinguished law professors who assist with the program, one from the University of Montana School of Law and the other from Seattle University Law School. Both professors have extensive trial advocacy teaching experience.

Students attending the program are primarily practicing lawyers with less than five years' practice experience, although any practicing lawyer is welcome to attend. The program is open to law students who have completed their second year of study so that they have had the Evidence course. The law students who have been chosen to participate in the National Trial Competition are strongly encouraged to take the class. Law students earn one academic credit for successful completion of the course. Until this year, the program attracted only Montana lawyers and law students, but for the first time, in 2013, a lawyer from St. Louis, after learning about the program on the University of Montana School of Law's website, enrolled. Thirty-six students is the maximum enrollment to ensure that each student has an opportunity to try each exercise.

With the assistance of the Foundation of the American College of Trial Lawyers, the program has offered scholarship assistance to public interest lawyers wishing to attend the program. The Foundation's assistance allows public defenders, prosecutors, legal services attorneys, and state government lawyers to attend and improve their trial skills at a reduced cost. The Montana Fellows believe that this cooperative effort is a way in which they can meet their obligation as Fellows assisting public interest lawyers as they sharpen their trial advocacy skills.

The current curriculum consists of three segments: lectures on aspects of trial advocacy, ethics, and communication; faculty demonstrations of different

Hon. Karen S. Townsend, Judge for the 4th District Court of Montana, Missoula

Trial advocacy and dispute resolution are important parts of the law school's required curriculum. The advanced trial advocacy program assists the University of Montana School of Law as it meets its mission of integrating theory and practice while serving as Montana's academic legal center.

Melinda Tilton; Gary Zadik; Fellow Carey E. Matovich, Billings

trial skills; and student participation in workshops where students get on their feet and attempt trial skill exercises. A factual scenario is used as the "case" for the course. For many years, the program used NITA problems, but three years ago, the course used a past problem from the National Trial Competition, which was co-sponsored by the College and the Texas Young Lawyers. The administrators of the program determined that the National Trial Competition scenarios are less factually complicated, and students spend less time learning the "facts" and more time focusing on trial skills. An additional advantage is that there is no charge for use of the National Trial Competition scenarios. Each student "tries" the case during the week, beginning with a jury selection exercise, giving an opening statement, directing or crossing several witnesses, including an expert witness, and presenting a closing argument. Students and faculty members earn twenty-nine CLE credits for their participation, including one Ethics credit.

Each student exercise is videoed and each exercise is followed by an immediate critique of the performance in the workshop room by the faculty team. A one-on-one session with a faculty member is then conducted, using the recorded video. Each workshop room has a communications expert as part of the faculty and the communication specialist adds his or her pointers on how effective the student's communication has been. Students are pre-assigned the exercises and sometimes represent the plaintiff and sometimes the defendant. Students rotate among the workshop rooms so that each student has an opportunity to hear from each faculty member during the week.

The program is evaluated by the students each year. Students are asked to evaluate the strengths and weaknesses of the program, offer suggestions for change and rate each segment of the course as well as the course as a whole on a nine-point scale. Return of the evaluation forms has been unusually high, with the most-recent year's return rate of more than 80%. Over the years, the program has been tweaked based on the evaluations. Included on the evaluation is the question of whether they would recommend the program to others, and the responses are usually "Yes!" Often to this question we are told that the program far exceeded the student's expectations.

The participating faculty has always profited from the experience. Many return year after year. The faculty enjoys seeing the progress made by the students over the course of the week, and it is not uncommon to pick up ideas for use in our future trials. A particular source of pride for the faculty members that have had a long association with the program is that two former graduates of the program have now returned as faculty.

Could this program serve as a model for your particular state or province fellows? Certainly it could. The Montana Fellows are happy to share what they have developed and learned. A similar program needs a core group of faculty willing to participate, probably a law school willing to assist with space and logistics, and some financial underpinning until the program becomes self-supporting.

Karen S. Townsend was inducted into the College in 2000. In 2011, her status changed to Judicial Fellow when she assumed the bench of the 4th Judicial District of the State of Montana. She has served the College as Chair of the Montana State Committee, the Admission to Fellowship Committee and the National College of District Attorneys Committee. ■

FELLOWS TO THE BENCH

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

Robert L. Ullmann

Boston, Massachusetts
Effective April 2013

Associate Justice
Massachusetts Superior Court

Edward J. McDonough, Jr.

Longmeadow, Massachusetts
Effective February 2013

Associate Justice
Massachusetts Superior Court

Wendy M. Matheson

Toronto, Ontario
Effective June 2013

Judge
Superior Court of
Justice of Ontario

The College extends congratulations to these newly designated Judicial Fellows.

ATTENTION CHAIRS: PUBLIC-INTEREST FELLOWS WANTED AT MEETINGS

Based on the current economic climate, government entities are frequently unable to finance public service Fellows' attendance at the College's state, province or regional meetings. The College recognizes the difficulty this causes our public defenders and prosecutors who may be unable to participate to the extent they would like.

As each area plans its College meetings, assistance to public service Fellows is encouraged. Some states, provinces and regions have set aside funds to defray costs associated with public service Fellows' attendance. Others, however, are unable to do so.

If your state, province or region does not have local resources set aside for this purpose, the Board of Regents has committed funds to assist our dedicated government representatives to attend College meetings. Their participation and input is invaluable to continuing the diverse interests of the College's mission.

As you plan upcoming meetings in your area, please contact the National Office, nationaloffice@actl.com, to learn how funds can be made available.

CONTINUING SERIES

FELLOWS PROVIDE ACCESS TO JUSTICE

The College's commitment to pro bono service is well known. The members of the Access to Justice and Legal Services Committee, co-chaired by Charles A. Weiss of St. Louis, and Guy J. Pratte of Toronto, serve their communities in numerous pro bono cases. This is about such a case.

AN INNOCENT MAN IS FREE

People v. George Souliotes
James J. Brosnahan, San Francisco, California

Modesto, California is a short distance from the Sierra Foothills. It is partly a farming community but has added many other economic activities over the years and is the home of E & J Gallo Winery. As my partner, Raj Chatterjee, and I drove to our first court appearance, it occurred to me that this new case had put us in the position of barristers, as though we were on the train from London to Oxford and reading the brief. Linda Starr of the Northern California Innocence Project at Santa Clara University had spent ten years seeking to establish the innocence of George Souliotes who had been wrongfully convicted of burning down a house he owned and of murder because a woman and her children living in the house died in the fire. She was assisted in that matter by Jimmy McBirney, of Orrick, Herrington & Sutcliffe, who had spent six years mastering both trial transcripts.

Led by the tireless work of Linda Starr and the Northern California Innocence Project with important help from Jimmy McBirney and a number of other lawyers and Santa Clara law students, the habeas corpus team obtained an order from a federal court that George Souliotes either be retried by July 10, 2013, or released. The federal court had actually found him innocent for the purpose of defeating the statute of limitations. The Chief Deputy District Attorney, David Harris, announced that he would retry the case, and we believed him. Raj and I were to lead the murder trial in defense of Mr. Souliotes. We had seven weeks to prepare.

Linda Starr described the case: "A questionable eyewitness, defective arson science and a cooperative client, who had never testified in his own defense." Our pro bono committee at Morrison & Foerster LLP approved the case.

What is it like for a man to spend seventeen years in a California prison for a crime he did not commit? We were about to find out.

I had a short visit with the client before our first court appearance. He is now 72 years old, but still able to smile and show a retained sense of humor

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Professionally, lawyers must participate in cases where gratitude is not to be expected. But when it comes, it can renew the energies of advocacy that keep us going.

James J. Brosnahan

Quips & Quotes

and a complete mastery of the prior record. He knew the exhibits by number. He would also demonstrate time and time again something that not every client shows: he was very grateful for our entry into the case. Professionally, lawyers must participate in cases where gratitude is not to be expected. But when it comes, it can renew the energies of advocacy that keep us going.

THE CLIENT

Mr. Souliotes was born in Greece. He grew up there, went to school, served in the Greek army, and met an American woman. They fell in love and married. Mr. Souliotes came to the United States with the desire to be economically independent. He was good with tools, repairs and building upkeep. He got a job with Montgomery Ward repairing their facilities and worked for them for about ten years. A terrible accident required the fusion of three joints in his neck and made it impossible for him to work further, but he had saved his money and used it to buy three houses in Modesto. He refurbished the houses and rented two of them. The house on Ronald Avenue that burned was one of those three houses.

THE FIRE

In the early morning hours of January 15, 1997, the house on Ronald Avenue caught fire due to what had always been claimed by the defense to be unknown causes. The small house was quickly consumed with flames and a mother and two children died. The firemen observed a very hot fire with a pattern on the floor. There was a knock on Mr. Souliotes' door at six o'clock in the morning on January 15, 1997. His life was about to totally change. He was arrested and taken into custody where he remained until his release in July 2013.

Was it arson? These two indicia were crucial because they had been disputed and then negated by much better science and conclusions through experimentation that the heat of the fire and the pattern on the floor did not establish arson. These new scientific principles were not used by the prosecution.

There was a knock on the door at six o'clock in the morning on January 15, 1997. His life was about to totally change. He was arrested and taken into custody where he remained until his release in July 2013.

In the trial that convicted Mr. Souliotes, the discovery of molecular petroleum distillates (MPDs) was presented like a fingerprint. The defendant had some on his shoes. This was wrong for several reasons. First, MPDs are found in many products that can be located in most homes. Second, and more to the point, the Innocence Project and its lawyers, had established that the MPDs on Mr. Souliotes' shoes were from a different source than the MPDs allegedly found at the scene of the fire. So there was no reliable evidence placing Mr. Souliotes at the fire. There was an eyewitness who claimed that from one to three o'clock in the morning on that day in January 1997 she was sitting on her cold balcony 100 yards away from the fire for two and a half hours waiting for her boyfriend to come home.

She testified that she had seen a man in an RV for two or three seconds in the middle of the night. She first said she would not be able to identify him, but after spending time with police officers and after the passage of a number of months, she identified the defendant. Much has been written about the injustice that can be created by false eyewitness identifications. At the time of the fire, the witness had a pending criminal case in Stanislaus County being handled by the same District Attorney's office. She had been charged with stabbing her boyfriend. After she supplied her testimony to the authorities in the Souliotes trial, her pending criminal case was dismissed.

The evening before the fire, Mr. Souliotes had been getting ready to take his new girlfriend to Monterey to a dancing competition. Dancing was very important in the Souliotes family. One of his sons competed nationally and the other has been very active in competitive dancing. George fell asleep on the couch, and when he woke up he moved his RV from the street to a slab by the edge of his house to avoid vandalism that had occurred on his truck a month or so before. This would become an important misleading piece of evidence in the two trials when neighbors, in good faith, came and testified that on their way to their night jobs, they saw the Winnebago on the street and when they returned in the morning it was on the slab.

There were two trials. The first resulted in a hung jury. The second resulted in a conviction since Mr. Souliotes had not testified in either trial, the two juries never heard the innocent explanation of him moving his RV to the slab by his home.

It was odd for me to realize that almost every single person in America routinely getting into bed and going to sleep is doing so without an alibi. In the last fifty years, the public has shifted away from an interest in criminal defense towards support for prosecutors. The television program *Law and Order,* run and rerun, is evidence of such a shift in American thought. When a suspect says they were home by themselves, the suspicions of the detectives lead the television viewer to a questioning state of mind. But 27% of Americans live alone. What would a Modesto jury think? Fate left Mr. Souliotes without an alibi.

FEDERAL PROCEEDINGS LEAD TO VACATION OF SOULIOTES CONVICTION

The Northern California Innocence Project and Linda Starr, together with Jimmy McBirney, obtained a decision by a magistrate judge and then a federal judge in Fresno that Mr. Souliotes was denied his right to proper representation in violation of the Sixth Amendment. The defense lawyer in his second trial had given an opening statement in which he promised the jury considerable evidence, but when the state rested, the defense also rested. The team representing Mr. Souliotes on his habeas corpus petition persuaded the federal court that Mr. Souliotes had been denied his fundamental right to counsel and issued a long opinion that resulted in a finding of innocence.

DISTRICT ATTORNEY VOWS TO RETRY CASE

The District Attorney maintained that he had a circumstantial case based on the configuration of fire damage, the presence of a fire wall between the garage and the house, which he said strengthened the pattern evidence, and after some assistance from the Modesto Police Department, the eyewitness's decision that it wasn't just an RV that she saw in the street at night, it was a Winnebago. After first not identifying Mr. Souliotes' Winnebago, she later provided a declaration that it was his Winnebago, although she misidentified five prominent features. It is chilling to note that, in the first two trials, the state asked for the death penalty.

PREPARING FOR RETRIAL

Defects in the Case

There is much literature on faulty convictions caused by authorities leaping too fast to a conclusion and eliminating the possibility of others who might be responsible. In this case, that error was magnified by leaping to the conclusion that it was arson. In fact, there was no reliable evidence of arson nor did the District Attorney supply us with any new reliable evidence.

Why would George Souliotes burn down his own house? There was no good motive or evidence but the prosecution attempted to establish that the equity was insufficient to justify continued monthly payments. In a blazing indication of innocence, Mr. Souliotes had continued to pay the monthly payments on the house for two years after the fire and after he was arrested. There was an unreal quality to the evidence of the proposed motive that made me wonder whether a true or valid motive could be established for any human in any case where the District Attorney had made the decision. In addition, Mr. Souliotes had an agreement to sell his house to a man that liked the house and had lived in it as a renter. It made no sense that Mr. Souliotes would burn down his own house.

We had seven weeks to prepare the case for trial and the difficulties of recreating reality seventeen years later were obvious to all. Would we be able to exclude the arson testimony and the eyewitness testimony?

First, we moved to exclude the eyewitness as unreliable as a matter of due process. Judge Donald Shaver, retired Superior Court Judge in Stanislaus County, was appointed to try the case. He read all the briefs and ruled out the false eye witness identification.

That left the "science" evidence establishing arson, which had been criticized in the federal court case. During the habeas proceedings, the State Deputy Attorney General stipulated that the

Quips & Quotes

Much has been written about the injustice that can be created by false eyewitness identifications. The witness had a pending criminal case...being handled by the same District Attorney's office. After she supplied her testimony to the authorities her pending criminal case was dismissed.

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arson evidence was unreliable. The District Attorney objected to the use of those stipulations in the Superior Court. Raj Chatterjee and the Morrison & Foerster lawyers prepared a motion that the federal habeas corpus and the murder cases in Stanislaus County were the same and the Attorney General and the District Attorney were in privity for purpose of enforcing the stipulations. Judge Shaver agreed. The state would not be allowed to use any of the evidence covered by the stipulations.

The Plea

Despite all of this evidence of innocence, the prosecutor was determined to proceed with trial a third time. The prosecution said they would let Mr. Souliotes out if he would plead to the arson charges. Mr. Souliotes refused the offer, stating, "Either I will be found innocent or I will die in jail." I have practiced law a long time and have seen a lot of courageous positions taken by clients but none greater than the day Mr. Souliotes insisted on justice.

Quips & Quotes

For a criminal lawyer, the door to a jail can grow in importance over the years. There is a moment in some criminal cases when your client is taken by a sheriff or a U. S. Marshal and walked through the door after a sentence is imposed. The lawyer is aware that in all likelihood the defendant will not come out for a long time. Now..., the door would swing the other way.

After further negotiations, we came to an agreement that the District Attorney would dismiss all arson and murder charges and Mr. Souliotes would be released immediately--no restitution, no probation, no parole--if Mr. Souliotes pleaded no contest to three counts of involuntary manslaughter based upon the negligent maintenance of smoke detectors in the burned house. This he did on Tuesday, July 2, 2013.

Judge Steffen ordered that Mr. Souliotes be released forthwith but there was still one more saga to unfold.

THE CLIENT'S RELEASE

One would think that when a Superior Court Judge orders someone released "forthwith" that the California prison system would do so. But they believe themselves to have some form of inherent power. Mr. Souliotes' sister, his two sons, a number of law students from Santa Clara University who had worked on the case, our legal team from Morrison & Foerster, Jimmy McBirney and several of the Orrick associates who assisted on the habeas corpus and in trial preparation all gathered at the Public Safety Center in Modesto. We had been told that Mr. Souliotes would be released around noon. Noon came and went. The afternoon dragged on. The afternoon dragged on into early evening. No release. The Salinas Valley authorities were refusing to authorize the release. They gave various explanations at different times to different people. There were many television cameras gathered for the event of George's release, but they, too, began to leave around 8 o'clock that night.

The following day would turn out to be George Souliotes' last day in captivity. We had consulted by phone with Judge Steffen seeking an additional order providing for George's immediate release and when the morning went by on the second day with no release, I spoke again to Judge Steffen, who issued an Order to Show Cause to the warden of Salinas Valley. The Order directed that either the California Department of Corrections and Rehabilitation lift its hold on Mr. Souliotes and notify the Stanislaus County Sheriff's Department that Mr. Souliotes could be released, or the respondent must show cause before the court why Mr. Souliotes should not be immediately released.

The case was started by the team at Morrison & Foerster and others wondering what it was like for a man to be in jail for seventeen years for something he did not do. Now we were gathered again in the lobby of the Stanislaus County Sheriff Public Safety Center. The crowd was smaller. There were fewer television cameras.

For a criminal lawyer, the door to a jail can grow in importance over the years. There is a moment in some criminal cases when your client is taken by a sheriff or a U. S. Marshal and walked through the door after a sentence is imposed. The lawyer is aware that in all likelihood the defendant will not come out for a long time. Now in Modesto, the door would swing the other way. Even some of the

Souliotes leaves prison a free man after seventeen years. Photo Courtesy of the Modesto Bee.

prison personnel seemed visibly animated by the release of George Souliotes.

We could see George through the glass in his civilian clothes supplied by his family. The door opened and there he was. He smiled and then he began to cry. His sister embraced him as did his two sons. He looked at me and said, "You did it." I looked at him and said, "No George, you did it." He was profuse in his thanks to all of the lawyers, and there were many, who had brought this moment about.

I am quite familiar with the hysteria that can grip crowds in any part of the United States. When a mother and two children die in a fire, there is a strong community reaction. Television coverage of the arrest of a suspect in such a crime assumes guilt and quotes whatever a District Attorney might say. That was the atmosphere against George Souliotes in Modesto in 1997. The reaction could have been the same in any town or city in this country. Someone has to pay for these deaths. It can be a primal societal reaction. Seventeen years later, led by the work of Linda Starr at the Northern California Innocence Project, Jimmy McBirney and the work of many lawyers, and with the unfailing belief by George's sister that he didn't do it, an innocent man was free.

The criminal justice system can be a fragile thing. Firemen and policemen deserve community support as first responders, but lawyers on both sides of the bar have a heavy responsibility to make sure that the criminal process is conducted responsibly. It is a terrible thing for an innocent man to spend seventeen years in jail. So let me put it here so that any reader can understand: he didn't do it.

James J. Brosnahan was inducted into the College in 1977. He is a member of the Access to Justice and Legal Services Committee and a recent past member of the Bulletin Committee and the Federal Criminal Procedure Committee. His San Francisco practice includes antitrust and competition law, complex commercial litigation, intellectual property and patent litigation, employment law, product liability and white-collar criminal defense. In 2000, Brosnahan was awarded the College's Samuel E. Gates Award for his contribution to the improvement of the litigation process. ■

The criminal justice system can be a fragile thing. ...[L]awyers on both sides of the bar have a heavy responsibility to make sure that the criminal process is conducted responsibly. It is a terrible thing for an innocent man to spend seventeen years in jail. So let me put it here so that any reader can understand: he didn't do it.

BOARD OF REGENTS LOOKS TO THE FUTURE

Part III of III

At the October 2012 Annual Meeting in New York City, the College's Board of Regents discussed various strategic issues confronting the College and assessed current commitments against potential growth and possibilities.

The dialogue on each of the three strategic issues discussed was led by a different officer of the College, with input provided by the past presidents and current regents.

Part I of the strategic discussion was reviewed in Issue 71, the Spring 2013 issue of *The Bulletin*. It addressed the question, *What are the types of trials that are likely to take place in the future on both national and local levels?*

Part II addressed in Issue 72, the Summer 2013 issue of *The Bulletin*, considered *Perceived Value of College Fellowship to Fellows and their Firms: Possible Options for Enhancing Value*.

Part III, considered here, discusses *The Five-Year Projection of Revenues and Expenses and Recommended Plan for the Future*. Treasurer of the College, Robert L. Byman, authored this third and final issue discussed by the Board of Regents in late 2012.

THE FIVE-YEAR PROJECTION OF REVENUES AND EXPENSES AND RECOMMENDED PLAN FOR THE FUTURE

Robert L. Byman. Chicago, Illinois
Treasurer

Poor Richard's Almanac famously observed that the only things certain in life are death and taxes. Will Rogers pointed out that the main difference between death and taxes is that death doesn't get worse every time Congress convenes. Death and taxes are certain. Well, yes, that and dues increases.

The Board of Regents did not come lightly to the decision, but it has decided that the long term future of the College requires an increase in annual dues for fiscal year 2014 from $725 to $800. Dues for Emeritus Fellows will remain as a percentage – 30% – of full dues.

Death and taxes and dues may be certain – although we don't have to die every year. Why do we need a dues increase? Why now? Fair questions – that deserve fair answers.

First, consider the history. The last dues increase was put in place in 2009 – when we increased dues from $600 to $725. Prior increases occurred in 2004 and 1996.

Date	Previous	New	$ Increase	% Increase	Years Elapsed
1996	$400	$500	$100	25%	
2004	$500	$600	$100	20%	8
2009	$600	$725	$125	21%	5
2014	$725	$800	$75	10%	5

The 2014 increase is modest in both absolute dollars and in percentage terms compared to previous increases. But that isn't the point. The point is that this modest increase is necessary to support the College and its mission; and that the timing and amount of the increase has been carefully weighed to seamlessly continue the work of the College and to minimize the need for further increases in the foreseeable future.

We made conservative but realistic projections of the College's anticipated revenues and expenses through 2017 at current dues levels. Although we project a small surplus in 2013, without a dues increase or other adjustments, we forecast six-figure deficits in each of the next four years:

	2013	2014	2015	2016	2017
DUES INCREASE $					
EXPENSE REDUCTION					
SURPLUS/(DEFICIT)	20,489	12,189	(49,370)	(190,926)	(198,420)
CUMULATIVE		32,678	(16,692)	(207,618)	(406,038)
PROFIT (DEFICIT)	20,489	(187,811)	(299,370)	(315,926)	(198,420)
CUMULATIVE		(167,322)	(466,692)	(782,618)	(981,038)
CASH FLOW RESERVE	1,020,489	832,678	533,308	217,382	18,962

By contrast, we estimate that the proposed $75 dues increase will allow the College to reach the end of fiscal year 2017 with a cumulative surplus.

		2013	2014	2015	2016	2017
DUES INCREASE	**$ 75.00**		$75	$75	$75	$75
EXPENSE REDUCTION						
SURPLUS (DEFICIT)		**20,489**	**158,118**	**243,290**	**99,307**	**88,573**
CUMULATIVE			**178,608**	**421,898**	**521,205**	**609,778**
PROFIT (DEFICIT)		**20,489**	**(41,882)**	**(6,710)**	**(25,693)**	**88,573**
CUMULATIVE			**(21,392)**	**(28,102)**	**(53,795)**	**34,778**
CASH FLOW RESERVE		**1,020,489**	**978,608**	**971,898**	**946,205**	**1,034,778**

It is important to point out that even running such deficits would not render the College insolvent. The College has, for good number of years, maintained roughly $2M in investments and $1M as a cash flow reserve. Even without a dues increase, we could sustain losses and remain solvent by the end of 2017. But it is not good business to use up savings and equity, when other choices are available.

Before we considered a dues increase, we looked for alternate sources of revenue such as Foundation grants and ways to reduce costs to a bare minimum. In large measure, Dennis Maggi and his staff have already been diligent in eliminating unnecessary expense. There was no obvious fat to cut. But for the sake of argument, we hypothecated an annual 10% reduction in administrative expenses over the years 2014-17. Cuts of that magnitude would be close to impossible to achieve; but even with that unreasonable assumption, it would not alone be enough to solve our financial challenges without some dues increase; a 10% expense cut without a dues increase would still see significant deficits every year and deplete our cash reserve by 30%:

		2013	2014	2015	2016	2017
DUES INCREASE	**$ -**					
EXPENSE REDUCTION	**10.0%**		$158,973	$166,360	$171,768	$178,330
SURPLUS (DEFICIT)		**20,489**	**171,162**	**116,989**	**(19,158)**	**(20,091)**
CUMULATIVE			**191,652**	**308,641**	**289,483**	**269,392**
PROFIT (DEFICIT)		**20,489**	**(28,838)**	**(133,011)**	**(144,158)**	**(20,091)**
CUMULATIVE			**(8,348)**	**(141,359)**	**(285,517)**	**(305,608)**
CASH FLOW RESERVE		**1,020,489**	**991,652**	**858,641**	**714,483**	**694,392**

We were left with the conclusion that *some* dues increase is necessary, and our further analysis convinced us that *$75 is the right number*. The $75 increase does not totally eliminate all red ink –

there would be small projected deficits in 2014-16; but cumulatively we would finish 2017 with a surplus and maintain our cash flow reserves. We believe that $75 is the right porridge – not too hot, not too cold. A smaller increase, say $50, would result in consistent deficits and serious erosion in the cash flow reserve:

While a larger increase, say $100, would be unnecessary and create surpluses we do not appear to need to fulfill our mission:

		2013	2014	2015	2016	2017
DUES INCREASE	**$ 50.00**		$50	$50	$50	$50
EXPENSE REDUCTION						
SURPLUS (DEFICIT)		**20,489**	**109,475**	**145,737**	**2,563**	**(7,091)**
CUMULATIVE			**129,965**	**275,701**	**278,264**	**271,173**
PROFIT (DEFICIT)		**20,489**	**(90,525)**	**(104,263)**	**(122,437)**	**(7,091)**
CUMULATIVE			**(70,035)**	**(174,299)**	**(296,736)**	**(303,827)**
CASH FLOW RESERVE		**1,020,489**	**929,965**	**825,701**	**703,264**	**696,173**

Even with the dues increase, the College will aggressively look for further expense savings and other revenue. While a 10% expense reduction is Quixotic, a more modest goal – say 1.5% - should be attainable, and we have given Dennis and his staff that target as a performance goal. We will continue to look for other savings and other potential sources of revenue. But this dues increase will make the College's financial position robust enough that we may be able to forestall any further dues increases for some considerable time.

And then, maybe, dues increases won't be all that certain after all.

		2013	2014	2015	2016	2017
DUES INCREASE	**$ 100.00**		$100	$100	$100	$100
EXPENSE REDUCTION						
SURPLUS (DEFICIT)		**20,489**	**206,761**	**340,844**	**196,051**	**184,238**
CUMULATIVE			**227,251**	**568,095**	**764,146**	**948,384**
PROFIT (DEFICIT)		**20,489**	**6,761**	**90,844**	**71,051**	**184,238**
CUMULATIVE			**27,251**	**118,095**	**189,146**	**373,384**
CASH FLOW RESERVE		**1,020,489**	**1,027,251**	**1,118,095**	**1,189,146**	**1,373,384**

LEFT COAST FELLOWS GATHER IN THE DESERT

Ted A. Schmidt, Tucson, Arizona

The Southwest Regional Meeting, which included Fellows from Arizona, California, Hawaii and Nevada was a very well-attended and a first-of-its-kind retreat for the hosting Arizona Fellows.

Held at the historic Phoenix Biltmore, the weekend gathering began with an all-Fellows faculty CLE program. Our Fellows tried an excessive force case to a live jury for the audience, then watched deliberations on closed circuit. "Focus Group to Verdict" was a first-of-its-kind experiment in continuing legal education. Fellows **Ron Mercaldo** and **Patrick J. McGroder, III**, for the plaintiffs and Fellows **Georgia A. Staton** and **Tom Slutes** for the defense first performed a videotaped "focus-group" on the case, and utilizing what was learned from this process, tried the case to a live jury under the guidance of nationally recognized jury consultant, **Robert Jessen**. The audience had the benefit of the earlier taped focus group and discussed strategy with the faculty. The combination provided an extraordinary view of the impact of evidence and the strategy decisions of counsel.

Saturday morning included a discussion of the evolving nature of legal education with new University of Arizona College of Law Dean **Marc L. Miller**; a discussion of changing juror attitudes and how to unveil them by **Robert Jessen**; a call to action by **Arthur H. Bryant**, Executive Director of Public Justice, a public-interest law firm; and a fascinating discussion with Prosecuting Attorney, Fellow **Rick A. Unklesbay**, attorneys for public justice, Fellows **Michael L. Piccarreta** and **Lawrence A. (Larry) Hammond** concerning the Pioneer Hotel fire case and recent release of the defendant due to newly discovered evidence.

After an afternoon of golf, tennis, swimming and shopping, we enjoyed "The Oscars Come to the College." **Tim Reckert**, finalist for Best Animated Short at the 85th Academy Awards, shared each of the animated shorts in the finals and discussed the techniques involved. It was a mesmerizing and perfect ending to a remarkable retreat.

Ted A. Schmidt was inducted in 1996. He practices law in Tucson, Arizona, with a focus on plaintiff's insurance, legal malpractice, personal injury and products liability. He served as the College's Arizona State Chair from 1999-2001. ■

Arizona Biltmore: Jewel of the Desert

SIXTH CIRCUIT REGIONAL FELLOWS MESMERIZED, ENTERTAINED AND SPELLBOUND

Richard C. Cahn, Huntington, New York

Fifty Fellows plus their spouses and partners who attended the Sixth Circuit Regional Meeting in Nashville in April could not have known what they were in for over the next two and one-half hours as they picked up their programs to see what presentations the preparers had in mind: a lecture by **Steven H. Hobbs**, a University of Alabama Law Professor, a panel discussion by three "successful Nashville Songwriters" and remarks by Honorable **James W. Kitchens**, an Associate Justice of the Mississippi Supreme Court.

STEVEN HOBBS:

The Storyteller

The first surprise the program sprang on the (probably mostly unsuspecting) audience was that Professor Steven H. Hobbs is a member of the National Storytelling Network. Who ever heard of such a thing? In his words, the network "connects people to and through storytelling." And, in answering the question, Hobbs began to talk about "how we can think about storytelling in our work."

Hobbs first told one of his stories: the farmer told his children, in his later years, that he had buried treasure on the family farm; after he died, the kids plowed all over the farm looking for the treasure, and having dug so deep, they planted crops. Eventually they learned, of course, that the knowledge that the land and all it could provide in the future was the buried treasure.

The Connection

The connection to our work as trial lawyers came next:

"As you know, when you do your presentations in trial, it is how you position yourself, how you relate to either the people you are examining or the people you are taking a deposition with or talking to the jury. You're aware of every -- all your body movements.

"The notion of being mindful is a very powerful thing that's moving through our profession, that mindfulness, not only mentally, but emotionally, to find out who we are and where we stand in the process that we're engaged in.

"Being mindful allows us to access that aspect of our brain that in some ways was killed in law school. I was a poet in undergraduate school. I loved to write poetry. I wrote poetry when I was in high school. I got to law school and just took it straight -- it took me ten years to write another poem. The right side of my brain was just atrophied, you know. All that analysis and stuff that we learn to think like a lawyer is from the left side of the brain.

"But it is an idea of imagination, the use of words, that is really the heart of what we do. It is the ability, I think, to be grounded in imagination. And I think storytelling allows us to see things and to dream awake; that is, to see something even while you're paying attention and being awake.

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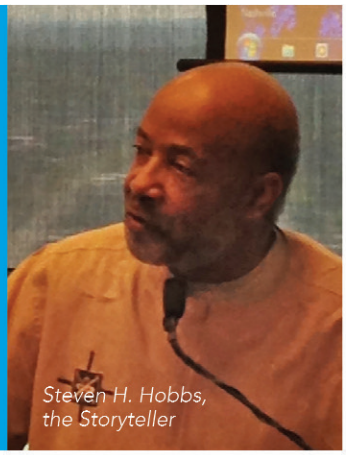
Quips & Quotes

The notion of being mindful is a very powerful thing...

Professor Steven H. Hobbs,
Law Professor, University of Alabama School of Law

But it is an idea of imagination, the use of words, that is really the heart of what we do. It is the ability, I think, to be grounded in imagination.... The sounds, the images, those descriptive skills that we are so good at, utilizing them as we think about the shape of our stories and develop these characters that we call clients.

Professor Hobbs



Steven H. Hobbs, the Storyteller

"Stories are about the way we relate to characters,

"But the quest stories are those in which something happened. Something changes the situation. We are here today, and then something changes. Four planes crash into buildings or land. Our world is changed. Here we go on a quest.

"And sometimes I think that what happens with our clients is like that. They're going along in their life and then, boom, something happens.

"And they are called out to do something, and we are called to be their helpers. We are called to be their advice, to help them, shepherd them through this process.

"And we think in terms of story, what we are doing when we are talking about our cases is we are listening to them tell their story about what happened. And they're charging us with going out and telling their story.

"In *Amistad*, the movie, Anthony Hopkins says, we're representing Cinqué before the Supreme Court. 'We're going to tell your story.'

"But before he can do that, he sent out people to listen to these folks who are on the Amistad, that slave ship that Cinqué and his men took over. Were they free? Are they slaves? Who do they belong to?

"We're going to tell their stories about how they got on that ship and tell their story about freedom."

"You can only do that when we listen with our whole body to the story that's coming from our clients. And I think that when we think in terms of how we position them, how we develop our theme into about how we tell their story.

"So I think about why I tell stories and what I want to do with my storytelling. Clearly, it's about time and place. It's about character development. It's about sensory perception: What did those spices smell like, in the stolen smell story. The sounds, the images, those descriptive skills that we are so good at, utilizing them as we think about the shape of our stories and develop these characters that we call clients.

The Zulu Tale

Hobbs then left the audience with a Zulu tale that revolves around the idea that "the rivers in Africa are guarded by a river guardian, because the river is the lifeblood of the village and the community.

"We are guardians. We are guardians of everything that's important to us in this country. We are guardians of the values that we hold dear. We are guardians of the truth that is the essence of who we are. We are more significantly guardians of justice. Whether we're trial lawyers, we are always going to be perceived as leaders in our community and the ones who are the guardians of our justice system."

THE NASHVILLE SONGWRITERS:

The Connection

John A. Day, Tennessee State Chair, introduced the "successful Nashville songwriters" noting that **Ryder Lee**, of The Lost Trailers, spent the first part of his life making music and then "had the audacity to go to law school."

Lee had invited two friends, **Trent Summar**, who had his first major label release in 1994, and a trendsetter and barn door blower-offer, and **Jim Femino**, "a.k.a. Uncle Sexy" and a Grammy-nominated singer/songwriter whose song "Just Got Started Lovin' You" became Billboard's most-played country song of 2008.

Lee recalled how he originally "didn't get" the connection between "the freedom and creativity of my former creative career as a performer and writer" and what he was doing pinch hitting at a CLE program. But then, he "got it," and "it really does match up, especially when you're sitting in a co-write room pulling your hair out trying to find the perfect word to condense it down to get it perfect and get everything in this tiny little space. That's what I was doing in law school, and that's what we do when we sit down to write a song.

Lee talked about how, although there is "a lot of subjectivity to the quality of the songs," there is that "special moment...it's all about the song and where it connects."

Trent Summar chimed in, "I'm always listening, looking for the hook. Somebody may say something, I'm like, 'Wow, that's a song.' But you have to write it down or you'll lose it."

A friend of Jim Femino once likened songwriting to archeology: "The song is already there. It's already written. It's out there. And our job is to take that little whisk broom and move all the trash out of the way until the bones reveal themselves. And the song's already written."

He described ending up "writing a great song called 'I Woke Up Today,' which starts off: 'I woke up today, got out of bed,' blah, blah, blah. And then he goes out and he gets in a near fatal accident, and he woke up today about what was important in life. So I don't try to grow the idea or condense the idea. I try to find an idea that writes itself because it's a truth."

He thought there are "a lot of similarities in how lawyers can approach things and maybe look to what we've talked about today and go the same route. There is "the art of grabbing and holding the audience. Just as important when you're in front of a jury or at oral argument than it is -- as it is, you know, for a songwriter to come out right out of the gate and really make an impact and make you want to stay on that song. And this was at the panel last year, the CLE legal writing panel. And they were talking about dull issues and how you write a brief to make it compelling to keep the reader interested. "

Femino and Summar noted that you have to know your audience. If you're working in Nashville and country music is what you're doing,

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The Nashville Songwriters

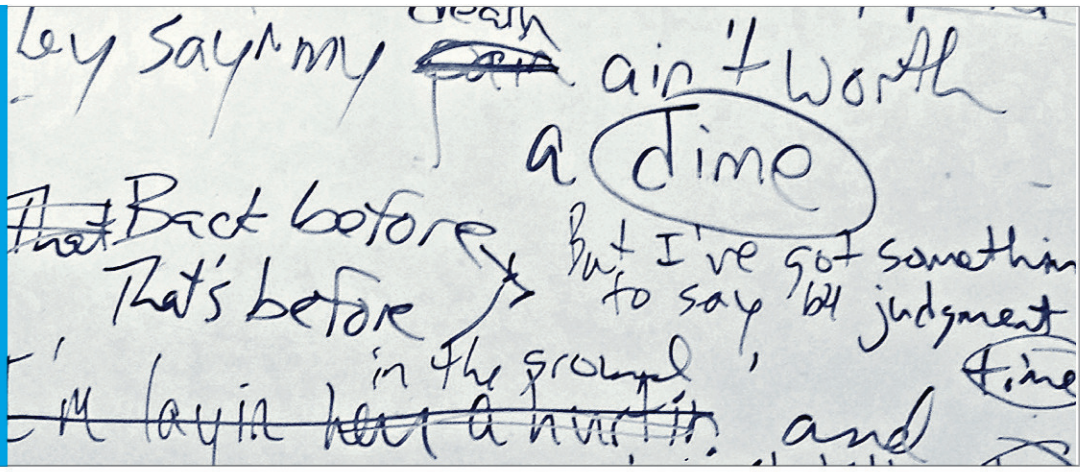
You're...pulling your hair out trying to find the perfect word to condense it down to get it perfect and get everything in this tiny little space. That's what I was doing in law school, and that's what we do when we sit down to write a song.

Ryder Lee, musician

Quips & Quotes

Quips & Quotes

They say my death ain't worth a dime.... I'm laying here dead, and you're billing time.



then you better immerse yourself in the culture, —the local culture— and find out what means what to them. And likewise, if you go to L.A. or New York, one word can mean three entirely different things depending upon your locale and the mentality of the people."

Lee drew the comparison, "You have to know the jury after *voir dire*."

The Law and a Song

The audience happily complied with the invitation to help compose a new song, by shouting out proposed song lines, and the proposed topic, "tort reform," brought forth lines such as : "My pain ain't worth a dime, but my body hurts all the time" or "My head is hurting all the time," or "Pray for me, you've capped my fees." The songwriters picked up on it: "They say my death ain't worth a dime." And, "I'm laying here dead, and you're billing time."

The panel ended with the songwriters and the audience composing the words and music to the new song that was to come out of the meeting, whose lines included:

> Tort Reform, that's what goin' 'round
> Tort reform, everyone's got it now
> For better or worse,
> It's a blessing or a curse
> Oh, we'll have to wait and see,
> Because it's the law of Tennessee.
> Tort reform, tort reform!

JUSTICE JAMES KITCHENS:

The Assignment from Hell

The program then segued into a memorable talk by Justice James Kitchens, Associate Justice of the Mississippi Supreme Court, who gave a deeply personal account of his assignment to defend Bryan de la Beckwith, accused of murdering Medgar Evers some thirty years before. It was an unwanted and unwelcomed assignment, but one that Kitchens embraced in the greatest tradition of the legal profession.

He took the audience back to early 1991, when the young Kitchens had gone to a meeting at the law school at Ole Miss. Judge L Breland Hilburn, the senior circuit judge in Hinds County, "located, tracked me down. Got me on the phone and said, 'Jim, I need you in my court tomorrow morning at, 8:30'."

"I said, "What for, Your Honor?"

"He said, 'I am appointing you to represent Byron De La Beckwith.' You could have hit me in the head with a hammer and it wouldn't have been any more debilitating to me mentally than that was."

Kitchens recounted how he was twenty years old when Medgar Evans was killed, and how everybody in the state knew about it, how Beckwith was arrested, indicted for murder, and tried twice in 1963, both times ending in mistrial before juries of twelve white men. A new DA *nolle prossed* the indictment, and everybody thought the case was over. Kitchens continued:

"Now, during the next twenty years or so, Beckwith was sort of an icon, a hero in certain circles. And in those circles, they usually have a big bonfire and a bunch of guys with sheets on standing around the bonfire.

"And he was known everywhere he went and was introduced -- and never denied -- that he was the man who killed Medgar Evers. So later on, the State was able to bring a number of those witnesses in the Court that had heard Beckwith say, in one way or another, that yes, he indeed had killed Medgar Evers.

"I never had any kind of meaningful conversation with him because everything that ever was mentioned reminded him of some racist theme that was of paramount importance to him. He was the most despicable human being I ever was around in my life, and that covers a great deal of ground.

"When I was a Democrat, I was a liberal Democrat. In my law practice, I represented a lot more African Americans than anybody else, because we have the highest percentage of African American population in the United States, in Mississippi. I grew up with African Americans. My dearest friends are African Americans. A black man named Joe Arnold had as much to do with rearing me as my parents did, and this shaped me. And I never -- I don't know how this really came about, but I just never saw color.

"And when Medgar Evers was killed, I knew that it was because he was trying to help people register to vote. And he was trying to get common courtesy for people who were not allowed to go to the front door of your house, if you were a Caucasian. They had to always go around to the back. And if they met you on the street, they had to move aside. And if you were eighteen years old, there wasn't any question that they had to call you 'Mister,' even if they were eighty, or 'Miss, even if they were much older, much wiser, and much smarter than you.

"And we had water fountains in Crystal Springs that said 'White' and 'Colored.' We had gas stations where there was some little, dinky, nasty, never-cleaned rest room, if that, that said 'Colored.' Most of them didn't even have that. And it was just a different world. It was apartheid in the place where I grew up. And somehow, as a kid, I figured out that this was wrong. And I thought that then, and I know it now. And I thought it at the time Medgar Evers was killed.

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Justice James W. Kitchens

Now, during the next twenty years or so, Beckwith was sort of an icon, a hero in certain circles. And in those circles, they usually have a big bonfire and a bunch of guys with sheets on standing around the bonfire.... And he was known everywhere he went and was introduced -- and never denied -- that he was the man who killed Medgar Evers. So later on, the State was able to bring a number of those witnesses in the Court that had heard Beckwith say, in one way or another, that yes, he indeed had killed Medgar Evers.

Hon. James W. Kitchens,
Associate Justice, Mississippi Supreme Court

And all these things had influenced and impacted my life up to that point."

Kitchens told of his friendship with an African-American man named Claud Johnson, "one of the best friends I ever had. I love him. I love his family. And I was representing him and a lot of other people like him who are African American people who are good people and the backbone of the state of Mississippi. And here I am being called upon to defend a man who, as I fully understand -- and I know you do, too -- was presumed to be innocent.

"And I really believe in the presumption of innocence. And so on the way home from Oxford that night, my friend who had driven me up there, had to pull over on the side of I-55 two or three times for me to throw up because, ladies and gentlemen, it made me physically ill to know that I had several years of dealing with Byron De La Beckwith ahead of me.

"And so I went back to Jackson. I had a small law firm. Had a lady there, an African American lady, who is now the courtroom deputy for a federal judge -- very proud of her. And she was just a brilliant paralegal named Jackie Jones. And Jackie is from Columbia, Mississippi. And I went in, and by then, the staff knew that I had been appointed. And I worked very closely with her. And I called her in my office, and I said, 'Jackie, I want to tell you that I've got to do this. I'm a lawyer and I have no choice but to do this. But I'm going to tell you, you do not have to touch a single piece of paper about this case. You don't have to file anything, you don't have to take any phone calls or anything.' She looked me in the eye, and she said, 'Mr. Kitchens, let me tell you something. I am a professional just like you are, and I will help you with this case. And we will do everything we can for that son of a bitch.'

"And she meant it. She worked hard on that case. She worked like a true professional. Now, one day a guy came in the office, a fairly well-known Klansman from up in the Mississippi Delta. Wanted to see me. I went in the conference room and talked with him. And he chatted for a couple of minutes, and then he said, 'I want to tell you something. You have got to fire that' -- *("N" word)* – 'secretary you got up there.'

"I said, 'What?'

"He said, 'You have got to fire that woman. She is nothing but a spy for the District Attorney. They all do that. She's not on your side. She's on the District Attorney's side. You have got to fire her.'

"Well, I won't use all the language that I used with him, but he didn't get to stay very long after that and was told never to come back."

As the trial approached in January of '91, Kitchens and his co-counsel visited Beckwith, who was out on bond and living at his home in Tennessee.

"So we had rented this little car, and it was a green -- about like that green on that bottle there. And it was a smaller car, mid-sized car, maybe.

I had to pull over on the side of I-55 two or three times for me to throw up because, ladies and gentlemen, it made me physically ill to know that I had several years of dealing with Byron De La Beckwith ahead of me.

Justice Kitchens

Byron De La Beckwith

And we drove up in that car. I was driving.

"We got out, and he said, 'Oh, Jim, I see you came in your daughter's car.'

"There is not any ice in one of these buckets around here as cold as my blood got. My daughter, Rebecca, was a senior in high school. I had just bought her a car the same color as that car. These bastards were watching my family. I can't say it any nicer than that.

"Right now, this bothers me tremendously. This is the first time, by the way, I've talked about this case at any length. And it's been a long time ago now."

Two weeks earlier, the Sheriff of Hinds County called him and told him "the Klan doesn't trust you, Jim," and offered Kitchens security, which Kitchens had declined.

"But when Beckwith said that, it was hard for me to keep my composure. But I didn't say anything to him about it. Just hit me real fast about what was going on, that they were down in Mississippi 3-[00] or 400 miles from where we were, watching my family. I went home and gave my wife and my girls a refresher course on how to fire a .38 special really well.

"That is the kind of thing that lawyers usually don't have to put up with. And I hope you don't ever have to put up with anything like that. But at the same time, I guess our duty really requires whatever it takes, doesn't it, when we're put into a situation where we have a duty as lawyers. For the privilege of being in the greatest profession in the world, we just have to pay the freight. We just have to pay our way.

"And I'm not telling you this because of me. I don't want you to react to what I'm saying in any particular way because of me, because it's not about me. It's about the United States of America, our government of laws and the fact that you lawyers, we lawyers, are the most important component in that system. And without that, it falls apart. Lawyers are the glue that holds together the government of laws. The government cannot function without you. Our society cannot function without you. Remember, we're the glue that holds America together, the government of laws, the system of laws.

"I will just tell you that the thing that kept going through my mind when I was representing Beckwith was that if the most despicable, the most unpleasant, the most dastardly person accused of a crime in this country can't get a fair trial represented by a good lawyer who is doing his or her best, how can I expect one of my children to get that same thing if he or she is falsely accused of a crime? Think on that.

I guess our duty really requires whatever it takes, doesn't it, when we're put into a situation where we have a duty as lawyers. For the privilege of being in the greatest profession in the world, we just have to pay the freight. We just have to pay our way.

Justice Kitchens

Quips & Quotes

"And thank you very much."

Justice Kitchens' words were greeted with momentary stunned silence, and only then did the ovation begin. In the words of one participant, "'moving' doesn't begin to describe it. Justice Kitchens deserves a national courageous advocacy award." It was truly one of the great presentations in College history.

Richard C. Cahn was inducted into the College in 2007. A member of The Bulletin *Editorial Board, his legal practice focuses on commercial, environmental, real estate and civil litigation and corporate and municipal law.* ■

NORTHEAST REGIONAL ROUNDUP

Lisa Arrowood, Boston, Massachusetts

On June 14-15, 2013, the Northeast Regional meeting of the American College of Trial Lawyers was held in Portland, Maine. A highlight of the weekend took place on Saturday, June 15 when the Maine State Committee sponsored an informative and lively program by Maine's freshman United States Senator, **Angus S. King**. Senator King is one of only three Independents serving in the Senate. Senator King had previously been Governor of Maine from 1995 - 2003. When Senator Olympia Snowe surprisingly announced her retirement in 2012, King decided to run for her seat and won. He has served in the Senate for less than a year. Although some of his observations were not necessarily new, it was interesting to hear the fresh and sometimes-humorous views of a newcomer to Congress.

A DEEPLY DIVIDED SENATE

Although it was a lovely spring day in Portland, Senator King established a somber tone at the outset by observing, "I am concerned about our government." Senator King believes that the Constitution and current Senate parliamentary procedure allows Senators to prevent the Senate from passing legislation too easily. He pointed out that, historically, there have been isolated periods when groups of senators wanted to stop specific legislation – civil rights legislation, for instance – and used the filibuster to do so. "What has changed, and what concerns me," Senator King said, "is we now seem to be in a time where there is a group of senators who want to stop everything, not just one set of issues." He compared the six years when Lyndon Johnson was majority leader in the late 1950s, during which Johnson filed only one cloture motion to stop a filibuster, to Harry Reid's experience in the last six years, during which he has had to file over 400 cloture motions. Another new development King found concerning is that some Senators now believe that every bill must be crafted to satisfy a 60-vote threshold even though "the country survived for 200 years with majority votes able to pass legislation."

Senator King remarked that there are those in the Senate for whom gridlock is success and whose stated goal is to keep government from functioning. Senator King explained the potential impact this philosophy could have on our body politic:

"This is a 200 year experiment. We tend to think of things as always being the way they are and sort of self-evidently true. But democracy as we've practiced it is a relatively new phenomenon in the sweep of human history. And the jury just isn't, to put it in a term that you guys will understand, the jury is still out on whether this experiment is going to succeed ... I think that we are in a kind of test period of whether our system of government can function."

On the challenges presented by the federal budget, including the long term structural deficit, Senator King opined that the Senate can solve this issue, and that the fiscal cliff deal at the end of last year is a significant part of the solution and an illustration of how to proceed. However, he observed that because budgetary priorities reflect the core values of both parties, it is a particularly difficult problem. Senator King sees it very simply: on the one hand, Democrats want to protect entitlements and expenditure programs, while on the other hand, Republicans want no taxes, and on a deeper level, to reduce the scope and reach of the Federal government. Thus, there is impasse.

On the bright side, Senator King noted that despite this gridlock, some legislation has been passed by Congress. A major farm bill has been passed, the Violence Against Women Act has been passed, and -- of particular interest to the ACTL -- the Senate is (finally) confirming judges. Senator King stated that these have gotten far less attention than political conflict,

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and when the Senate does get things done, they get no press: "I am convinced that if I got up in the morning and walked across the Potomac River, the headline in the *Washington Post* would be, 'King unable to swim.'"

ON BEING A FORMER GOVERNOR IN THE SENATE

Senator King is one of eleven former governors in the Senate (along with six Democrats and four Republicans) and contrasted the two roles. He noted that as executive officials, governors can get things done unilaterally, while senators have no such power. Senator King would like to form a "former governors' caucus" within the Senate, but says it might more appropriately be named, "the extremely frustrated caucus." Mitch McConnell told him, "I've noticed that if you have a former governor who is now a senator and you ask him which job they like better, if they tell you senator, they will lie to you about other things." With all that said, King has discovered an area he is now able to pursue that Governors cannot: foreign policy. This has been new and interesting for him because as the Governor of Maine, he obviously never confronted such issues. (Although, he quipped, "We can see Canada from here.")

SERVING ON THE ARMED SERVICES AND INTELLIGENCE COMMITTEES

Senator King is one of three senators who serves on both the Armed Services and Intelligence Committees. This has thrust him into many hot issues – Syria, North Korea, the NSA and Snowden. Senator King is clearly fascinated by the foreign policy/national defense aspects of his job. "The fundamental purpose of government is security. It's to protect us from each other and from other people, the police and the Army." The tension between protecting us from those who want to attack us and protecting us from our own government is directly at issue in the NSA telephone surveillance controversy. While acknowledging that protection of citizens' privacy is important, Senator King far prefers to read

Margie Mone, Boston, MA; Mary Lou Lancaster, Portland, ME; Fellow Joe Steinfield, Past President Mike Mone, Virginia Eskin Steinfield, Boston, MA; Past President Ralph Lancaster, Portland, ME; Mal and Kathy Lyons, Augusta, ME

today's headlines of, "Obama collects phone data" than one saying, "Obama abolished program which would have prevented nuclear strike which has now occurred in Miami." Senator King emphasized how real the threat is: "[P]eople, they want to attack us. This isn't an academic concern. This is the real deal."

Nonetheless, Senator King believes that some adjustments to the NSA program can and should be made. Currently the NSA collects all the phone records every three months and stores them in a huge database. The records only show who called whom and how long the call was. If there is a national security issue, the Justice Department obtains a warrant to get a particular individual's phone records. What bothers Senator King about current procedure is that the government is already holding all of our phone records in the first instance. Senator King analogized it as follows: "It's as if the prosecutor said, I want all of your files ... I'm going to have them here in the basement of my office, but don't worry, I won't go through them unless I get a warrant."

This, he believes, is not an adequate protection of our privacy. In other countries, individuals' phone records stay with telecommunications' providers, and law enforcement can only secure possession of those records after getting a warrant. Senator King feels that we should follow this approach, which would strike the appropriate balance between the needs of national security and the

protections in the Fourth Amendment.

ON BEING AN INDEPENDENT

As an Independent, Senator King said he originally would have liked to have a chair in "the middle of the aisle" and not align himself with either party. He quickly learned how impractical that was; since the two parties control committee assignments, he realized he had to choose one caucus or the other. King chose the Democratic party because it is in the majority and, as a result, has more committee slots available and controls the flow of legislative activity on the floor. Being concerned his choice would bind him to always vote with the Democratic caucus, he spoke with former Senate Majority Leader George Mitchell (also of Maine) and current Senators Joe Lieberman and Bernie Sanders, who assured him that they had felt no pressure to "toe the [Democratic] line." Harry Reid also assured him that he only had to do what he thought was right. To date, he feels the Majority Leader has proven true to his word.

Senator King emphasized that he is trying to work cooperatively with both sides of the aisle. As one example, he is now co-sponsoring a major bill with Roy Blunt, a conservative Missouri Republican, concerning regulatory reform. King did find that while there is a definite advantage and ideological flexibility in not having to align with either party, he has discovered disadvantages as well. For one thing, he feels distrusted a bit by senators on both sides of the aisle. How that will play out remains to be seen.

Regardless, it was clear to all that Senator King is relishing his new role: he described an Armed Services Committee hearing during which he was questioning Secretary Chuck Hagel and the head of the Joint Chiefs of Staff. He marveled that, when he asked questions, they had to answer them. He turned to Tim Kaine, the new senator from Virginia, and said, "This is really fun!" All of the attendees appreciated Senator King's time and inside view of life in today's U.S. Senate and hope he continues to have fun in that role in the future.

Lisa G. Arrowood was inducted in 2000. Her Boston practice includes business litigation, employment disputes, medical malpractice, personal injury and legal malpractice. ■

The 10th Circuit and Northwest Regional Meetings took place immediately prior to printing and will be featured in Issue 74 of *The Bulletin*.

DR. BARNES, HIS ART AND HIS TRUST

Elizabeth K. Ainslie, Philadelphia, Pennsylvania

In May 2013, the 3rd Circuit Regional Meeting, held in Philadelphia and hosted by **Robert E. Welsh, Jr.**, Pennsylvania State Chair, focused on the turbulent life of the famously cranky Albert Barnes (1872-1951), and, more specifically, on his magnificent collection, and on the lawsuit that resulted in the removal of that collection from Dr. Barnes' property in the leafy suburb of Merion to a new museum and art education center, specially built to house the collection, in downtown Philadelphia.

The new Barnes

THE COLLECTIONS OF ALBERT C. AND LAURA L. BARNES: PRESERVATION, PRESENTATION AND INTERPRETATION

The title of the meeting was "The Barnes Foundation: A Personal Vision," and the program featured Fellow **Ralph G. Wellington**, who led the Barnes Trustees' legal efforts to modify Dr. Barnes's trust so as to permit the move from Merion to Philadelphia; also **William W. McDowell, III**, architect and project executive for the Barnes Foundation, who oversaw the design and construction of the new facility; and **Blake Bradford**, the Foundation's Director of Education.

Following this program, the many Fellows and guests in attendance toured the new facility to see the art for themselves and to judge whether indeed the results of the move conformed to the intentions expressed in Dr. Barnes's trust, the trust that set up the Foundation. For many it was the first time they had viewed the collection, and this in itself was evidence in favor of the move; the Barnes property in Merion was somewhat hard to find and was definitely not visitor-friendly. It had limited hours and permitted a limited number of guests at any given time, and no photographs, of course. All of this, and more, was legally mandated by the terms of Dr. Barnes's trust, a highly idiosyncratic document.

As Messrs. Wellington and Bradford pointed out, the articulated mission of the Barnes Foundation is "to promote the advancement of education and the appreciation of fine art." When the Trustees of the Foundation proposed to move the collection to a new museum in the nearby city of Philadelphia, and to expand its accessibility to the general public significantly, a group calling itself "The Friends of the Barnes" sued to enjoin the move. The legal issue before the court then, as Ralph Wellington characterized it, was "how to preserve a charitable foundation and continue to fulfill its mission when the founder's restrictions and external forces threaten the existence of the charitable foundation."

The basic problem was money. Or rather, the lack of money. Although Dr. Barnes had set up an endowment of several million dollars for the care of the museum and collection, over the years the endowment became less and less adequate for its purpose. An effort was made in the 1990s, as Ralph Wellington pointed out, to raise funds (for capital improvements, not for operating costs) by taking some of the collection on tour, and by charging money to see it, while necessary repairs and upgrades to the suburban facility were being made. But within a few years it became clear that this would not be enough, and that more drastic steps had to be taken.

At least this was the view of the Foundation and its Trustees. The opposition, in its effort to stop the move to Philadelphia, asserted that there were alternative ways to raise funds and that many of the Trustees' assumptions were flawed. The opposition also asserted fervently that turning the Barnes collection into a metropolitan art museum flew in the face of Dr. Barnes's intentions for his collection, intentions that focused on art education, and in particular on art education of Dr. Barnes's own devising.

In the end, the Foundation was permitted to move the collection to Philadelphia and into a modern facility that many people consider a remarkably suc- >>

cessful piece of architecture. Part of the solution has been to incorporate rooms that are identical to the exhibition rooms at the old Barnes in Merion and to distribute the art works in those rooms in precisely the same manner as they had been distributed at the time of Dr. Barnes's death.

THE DIRECTOR AND THE PERSONAL VISION

Following Ralph Wellington's presentation about the litigation that led to the move, Blake Bradford, Bernard C. Watson Director of Education at the Barnes, prepared the Fellows and guests for what they were about to see in the museum.

As Mr. Bradford pointed out, Dr. Barnes's "personal vision" was indeed personal. Thus, the Barnes art works do not represent a consensus of the world's art critics about what constitutes great art; rather, the collection consists of art that appealed to one individual who cared passionately about art. Thus, while many of the works are indisputably superb, many others are indisputably pedestrian.

Moreover, Dr. Barnes's "personal vision" prompted him to arrange his collection on the walls and floors of the Barnes building in such a way as to promote his own educational vision. As Mr. Bradford told the audience, "In the ensembles you'll see rhythm and harmony and unity and a relentless symmetry to them. And so that was the way he looked at everything, whether it was an African mask, or whether it was a 17th century altar piece, or whether it was a Chinese fan." (Personally, I find this relentless symmetry naïve and distracting, but it is certain that Dr. Barnes's vision makes for a unique aesthetic experience.)

Finally, as Mr. Bradford said, the Barnes "has a fundamental kind of generosity in your experience" so that people with all different levels of art-history background and sophistication can enjoy it. It's not all that difficult or daunting to examine a wall in the Barnes and perceive that he liked, for instance, matching the Modigliani painting with a very similar African mask or that he liked showing an older painting with a particular red next to a much more recent painting featuring the same red, with the intent presumably of prompting the viewer to come up with his or her own "personal vision" of art.

THE BUILDING PEOPLE, THE MISSION AND THE RESULT

Following Mr. Bradford's discussion of the art and Dr. Barnes' educational mission, the architect and project director of the "new" Barnes, William McDowell, prepared the Fellows and their guests for the new building they were about to experience, and Ralph Wellington pointed out in conclusion that the move had, in raw numbers at the very least, been a success: while the Barnes was in the smallish building in the suburbs it had about 400 paying annual member/supporters, but it now has 23,000. And the greater accessibility and income have allowed the Barnes to expand its educational programming as well.

Perhaps the President of Sarah Lawrence, if he were alive today, might regret not participating in Dr. Barnes's "personal vision" of his art, however exasperating and exhausting his personal relationships often were.

Elizabeth K. Ainslie was inducted into the College in 1998. Her Philadelphia practice is focused on financial services litigation, corporate government investigations, compliance and criminal defense, health law and litigation services. ■

Quips & Quotes

"Let's get this straight right away... There is nothing you have that I want. As far as I'm concerned, you can stuff your money, your pictures, your ironwork, your antiques, and the whole goddam thing right up the Schuylkill River, Pennsylvania, or the Barnes Foundation chimney."

From the President of Sarah Lawrence College in the 1940s. While other institutions of higher education also discussed possible joint art educational programs with Dr. Barnes, the efforts rarely ended so contentiously.

THE COLLEGE ACTS

Recent issues of importance have stimulated the College's Board of Regents to take action in furtherance of our commitment to maintain and improve the standards of trial practice, the administration of justice and the ethics of the profession.

VETERANS' APPEALS BOGGED DOWN: FELLOWS' RESPONSE OVERWHELMING

In June 2013, President **Chilton Davis Varner** referred to the College's Committee on Special Problems in the Administration of Justice (U.S.) a project brought forward by several Fellows who were interested in assisting veterans confronting long delays in the processing of their claims. The committee's Chair, **Daniel J. Buckley** of Cincinnati, Ohio, asked Vice Chair **John A. Chandler**, of Atlanta, Georgia, to head a subcommittee for the project, including identifying Fellows who were veterans to assist.

The subcommittee is specifically considering the Veterans Appeals Board's massive delays in processing claims submitted by disabled veterans returning from Iraq, Afghanistan and other overseas assignments. More than 45,000 appeals are pending, with an average delay of 1,419 days (3.9 years) before resolution. The two areas of identified concern are 1) the intractable delay in processing claims; and 2) the inadequacies in formulating and documenting benefits.

Chandler's call to action, emailed to State Chairs, resulted in a prodigious response. With dozens of Veteran-Fellows offering to help, Chandler reported back to Varner: "Response has been overwhelming."

PUBLIC DEFENDERS AFFECTED BY SEQUESTRATION; THE COLLEGE DEFENDS THE DEFENDERS

In early August 2013, the officers of the College were made aware of sequestration-based cuts proposed for federal public defenders' budgets. While the College cannot single-handedly change the legislative requirements of reduced budgets, the College joined other interested constituencies in pointing out to the Executive Committee of the Judicial Conference that simply slashing the number of Federal Defenders would actually *increase* the cost to taxpayers. With prompt and able assistance from the Public Defenders Committee, and on behalf of the Board of Regents and the membership of the College, President Chilton Davis Varner submitted a letter to the Honorable William B. Traxler, Jr., Chair of the Executive Committee of the Judicial Conference of the United States. Varner expressed the College's deep concern about the right to counsel.

In her letter, Varner pointed out that if public defenders become unavailable, the Sixth Amendment right to counsel will require the courts to increase the number of referrals to the Criminal Justice Act panels, which have historically proved to be significantly more expensive, on a per-case basis, than representation by federal defenders. Varner also noted that if defenders' offices are required to lay off their experienced investigators, lawyers and support staff, the result will be delayed trials, hearings and sentencing. On behalf of the College, Varner proposed a short-term mitigation strategy for this impending crisis in the federal criminal justice system, *i.e.*, temporarily postponing payments to Criminal Justice Act (CJA) panel attorneys – an action that has been taken in the past.

Varner emphasized that "Without action, the quality and efficiency of our nation's federal system of justice will be compromised. A brief, temporary deferral of payments to CJA panel attorneys would obviate the need for precipitous reductions in federal defender staffing and would give Congress an opportunity to address a longer-term solution when it returns from summer recess in mid-September."

Varner's letter is posted on the College website at http://www.actl.com/Content/NavigationMenu/News/Communications/default.htm.

BASEBALL AND THE LAW

FELLOWS MEET IN COOPERSTOWN WITH BASEBALL PROVIDING A FOCAL POINT FOR DIALOG ON LAW AND ADVOCACY

Stephen G. Schwarz, Rochester, New York

Region 15 of the American College of Trial Lawyers, encompassing Upstate New York and the Provinces of Ontario and Québec, held a regional meeting on the weekend of May 17-19, 2013 in the quaint and historic upstate New York Village of Cooperstown at the beautiful century-old Otesaga Hotel located on the southern tip of Otsego Lake. More than 80 Fellows and guests gathered to hear an impressive array of speakers discuss issues of legal practice and, most certainly, baseball.

College President **Chilton Davis Varner** began the weekend with a warm address and, later, at the Friday night dinner, enthralled the gathering with a personal reminiscence about becoming a baseball fan and, although they rooted for different teams, the connection it provided with her father. On Saturday, May 18 the formal program began with addresses from three esteemed jurists: the Hon. **Eugene Pigott, Jr.**, Associate Justice New York Court of Appeals, the Hon. **Kathryn N. Feldman**, Justice Ontario Court of Appeal and the Hon. **Richard C. Wesley** United States Circuit Judge, Second Circuit Court of Appeals who individually spoke about appellate practice and then participated in a panel discussion moderated by Ontario Province Chair **Sandra A. Forbes** of Toronto entitled: *What Separates Great Appellate Advocacy from Average Appellate Advocacy?*

Following the weekend theme, Judge Pigott's remarks on *Baseball and Appellate Practice* compared the seemingly different disciplines and demonstrated the remarkable similarity between the two. Justice Feldman offered a number of fascinating insights into judicial conflicts of interest in her talk entitled *Black robe, grey zone: when does a judge have a conflict of interest?* Judge Wesley was able to offer perspective from his tenure on both New York State's highest court and the Second Circuit Court of Appeals in his discussion *Observations from the Bench: Differences in State and Federal Appellate Practice.*

Jane Forbes Clark, Chairman of the Board of Directors of the National Baseball Hall of Fame welcomed the group to Cooperstown. Ms. Clark described the history of the founding of the museum by her late grandfather and the process of running the historic venue today, which draws millions of visitors each year to enjoy the Mecca for America's national pastime. Ms. Clark was followed on the program by Professor **Paul Finkelman** of Albany Law School, an expert in constitutional law who has written extensively on baseball


Play Ball!

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Hon. Eugene Pigott, Jr., Hon. Kathryn N. Feldman, Hon. Richard C. Wesley

and the law and also cited as an expert witness in the trial of the rightful ownership of Barry Bonds' record setting 73rd home run baseball. In *Baseball and the Rule of Law*, Professor Finkelman highlighted compelling similarities between the two fields of endeavor and observed how baseball has shaped our jurisprudence.

Attendees were treated to a fascinating description of the Roger Clemens perjury trial by Clemens' trial counsel **Rusty Hardin**. Hardin spoke passionately of the courage of his client in fighting the charges and refusing to plead to any wrongdoing and the toll it took on him and his family.

The final program event, and for many the highlight of the weekend, was a panel discussion on *The Effect of the Steroid Era on Major League Baseball*. The panel consisted of Finkelman and Hardin, who were joined by two other special guests, **Stanley Brand**, counsel to Minor League Baseball, Inc., who also served as counsel to Major League Baseball during the congressional steroid investigation that resulted in the charges being brought against Clemens, and **Richard Pound**, Former President of World Anti-Doping Agency and current member of the International Olympic Committee. The discussion was led by passionate baseball fan and Anchor and Senior Editor of *"The Agenda with Steve Paikin"* TVO Toronto, **Steve Paikin**. Paikin, true to his reputation as a tough and engaging interviewer, prodded the panel with provocative questions and refused to allow anyone to avoid a direct answer without a fight. There ensued a spirited debate on the effect of performance enhancing substances on baseball and who, if anyone, was to blame for the proliferation of steroid use during this era.

The weekend was capped off with a cocktail reception held at the Hall of Fame where Fellows could browse among plaques commemorating all of those inducted to date and enjoy the true home of the sport, followed by a final dinner at the Otesaga before the Fellows and guests made their way home. The comment most heard was about the wonderful opportunity the weekend had presented for Fellows and guests to visit a place they had never been as well as meet and enjoy again the companionship with others throughout the region.

Stephen G. Schwarz was inducted in 2005. He practices in Rochester, New York, focusing on commercial litigation, environmental litigation, medical malpractice, personal injury and product liability.

STATE COMMITTEE-SPONSORED AWARDS INCREASE THE COLLEGE'S VISIBILITY

CHAPPELL-MORRIS AWARD FOR YOUNG LAWYERS

The Virginia State Committee, chaired by **Glenn W. Pulley** of Danville, recently presented the first Chappell-Morris Award for Young Lawyers. Named after two Past Presidents of the College from Virginia, **R. Harvey Chappell, Jr.** and **James W. Morris, III**, the purpose of the award is to promote the goals of the College, and it is to be given every other year to members of the Virginia State Bar under the age of thirty-seven who have demonstrated professionalism, high ethical and moral standards, excellent character and outstanding trial skills. The 2013 award plaques were presented by Past President **David W. Scott**, O.C., Q.C., at the June meeting of the Virginia State Bar to Robyn P. Ayres, Zachary T. Lee, Jon A. Nichols and Robert Edward Travers, IV.

LEON SILVERMAN AWARD

Named after Past President **Leon Silverman**, the purpose of the biennial Leon Silverman Award is to honor a lawyer or senior judge who exemplifies the qualities of ethics and professionalism embodied in the College's *Code of Pretrial and Trial Conduct* and whose accomplishments manifest a lifetime commitment to advancing the administration of justice. Past President **Robert B. Fiske, Jr.** presented the 2013 award to **Patricia M. Hynes** at the Downstate New York Fellows Dinner last spring. Hynes served as President of the New York City Bar and chaired the Board of Directors of The Legal Aid Society, presiding over a financial restructuring that saved the organization from bankruptcy.

2013 NORTH CAROLINA STATE MEETING

Catharine Biggs Arrowood, Raleigh, North Carolina

The North Carolina Fellows gathered at Charleston Place Hotel in Charleston South Carolina for their annual state meeting from March 21-24, 2013. True to state tradition, they combined Fellows' presentations with outings and social gatherings.

Following a Thursday evening reception, Fellows and guests convened on Friday morning to hear Fellow **Leslie C. Packer** provide the Cowan Decision Update (a presentation to the Fellows given for many years by Packer's partner, former Secretary of the College, **J. Donald Cowan, Jr.**). Fellow **Edward T. Hinson, Jr.** spoke about Litigation Issues Arising from Social Media and the New ABA Ethics Rules, followed by a panel discussion on Handling Media in High Profile Cases. The panel included Fellow **Alan W. Duncan**, lead defense counsel in the John Edwards prosecution; **Claire J. Rauscher**, former Federal Public Defender for the Western District of North Carolina; and Senior Resident Superior Court Judge of North Carolina's 9A District of the Third Division, Hon. **W. Osmond Smith, III**, who has had considerable experience with high profile cases, including the Cesar Laurean murder case; the trial of Dr. Raymond Cook, accused of murder in the death of a Raleigh ballerina; and proceedings related to Crystal Mangum, the accuser at the center of the Duke Lacrosse case.

Friday afternoon was reserved for some fun arranged by Anne Copenhaver, wife of Fellow **W. Andrew Copenhaver**. Anne is the incoming president of the Garden Clubs of America, and arranged for a private visit to Mrs. Emily Whaley's Church Street garden, close by Charleston Place. Prior to visiting the gardens, Fellows and guests were encouraged to read her best-selling book, *Mrs. Whaley and Her Charleston Garden*, written in 1997 at the age of 85.

Mrs. Whaley's Garden, described as the most-visited private garden in the country, is now under the care of Mrs. Whaley's daughter Marty Whaley Adams, whose husband, it turned out, taught several of the visiting Fellows at Davidson College. After this happy reunion, we visited Alkyon Arts, owned by another Whaley daughter, Anne LeClerq, and her husband Fred. Anne is the author of *A Grand Tour of Gardens: Traveling in Beauty through Western Europe and the United States.*

Fellow Edwin M. Speas, Jr. and Debra Stewart

Following a reception and dinner at Marion's in the French Quarter, where we were joined by President **Chilton Davis Varner** and her husband **Morgan**, the Fellows reconvened Saturday morning for more education. After remarks from President Varner,

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Judge Smith and Judge **Forrest D. (Don) Bridges**, we heard an extraordinary panel discussion and debate about North Carolina's Innocence Inquiry Commission. The Commission is the subject matter of a separate article in this edition, and we refer you to that article for details. Panel members included Fellow **C. Colon Willoughby, Jr.**, District Attorney of Wake County; Commission member, defense attorney and Fellow **Wade M. Smith**; Commission Alternate Chair, Judge Don Bridges and Judicial Fellow Judge **W. Erwin Spainhour** who presided over the Kagonyera and Wilcoxson matter described in the related [Innocence Inquiry Commission] article. The morning session concluded with a panel entitled, "Where Have All the Trial Lawyers Gone?" led by the always entertaining Fellow **John P. (Jack) OHale**; Judicial Fellow, Hon. **W. Douglas Parsons** and Judge Osmond Smith.

Saturday evening the Fellows and guests gathered for cocktails and a black tie dinner at Charleston Place. We celebrated Judge Bridges' sixtieth birthday with a round of singing during cocktails. The dinner was long on fun and mercifully short on program. But we concluded on a serious note, with a reading of the Charge by former North Carolina State Chair, **John Robbins (Buddy) Wester**, with which we end this article:

> Tonight (today) the portals of the American College of Trial Lawyers are again opened to receive into Fellowship a group of distinguished barristers. None who fails to justly merit that worthy title may enter here, for we recognize not only the distinction between the two branches of our profession, but the varying standards, as well, of the individuals within each.
>
> You, whose names are freshly inscribed upon our rolls, have, by your mastery of the art of advocacy, by your high degree of personal integrity, your maturity in practice and your signal triumphs at the bar of justice, earned the honor about to be conferred upon you. By your ability, learning and character you have added luster to the legal and judicial annals of your state or province, and have helped to strengthen and to preserve the mighty fabric of our law.
>
> We are confident that in the days to come, the lofty objects and purposes of this organization will be further advanced by the application of those rare qualities and virtues which nature, fortune and laborious days have bestowed upon you.

Fellows Catharine Biggs Arrowood and Buddy Wester

> We know that your attainment of the front ranks of the bar has not been without its costs, and we recognize that our specialty exacts much of those who win its favor. Truly, we are, in Lord Elden's words, the hermit and the horse.
>
> And so, we like to look upon these gatherings, not only as regular meetings of the Fellows, striving to improve and to elevate the standards of trial practice, the administration of justice and the ethics of the trial branch of our profession, but also as meetings of regular fellows, where we may with utter freedom and equanimity, go from labor to repose. Here, we seek, for the moment, to obliterate the recollection of our distractions, our controversies and our trials, and to transport ourselves from the rush and tumult and uproar of our daily lives into the quiet fellowship and congenial society of our fellow leaders in the bar. 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.
>
> You have all met all of our qualifications and have been duly elected to membership in the College, and so we welcome you into our Fellowship and, with pride, we now address you as Fellows of the American College of Trial Lawyers – as sages of our craft.
>
> Long and happy may be our years together!

Catharine Biggs Arrowood was inducted in 2004. Her law practice focus is commercial litigation, commercial arbitration, intellectual property and antitrust, energy, mining, oil and gas litigation. ■

Supreme Court Commendation
to
Texas Fellows of the American College of Trial Lawyers

The Supreme Court of Texas commends the Texas Fellows of the American College of Trial Lawyers who participated in the 2013 Texas Pretrial Academy. In 2001, the Supreme Court established the Texas Access to Justice Commission, the sponsor of the Pretrial Academy, to expand access to and enhance the quality of justice in civil legal matters for low-income Texans.

To fulfill its purpose of both improving and increasing the quality of justice, the Commission requested that the Texas Fellows organize and conduct a comprehensive Pretrial Academy to augment the advocacy skills and trial techniques for legal aid lawyers, thereby increasing their proficiency as effective advocates for their clients. The Texas Fellows who generously contributed their vast knowledge, skills, talent, and time through lectures, demonstrations, and critiques are:

Barry Abrams – Houston
Robert C. Alden – Austin
Emerson Banack – San Antonio
Darrell Barger – Corpus Christi
Dan Bishop – Austin
Rick Brantley – Fort Worth
Reagan Brown – Houston
Milton Colia – El Paso
Tom Cunningham – Houston
Richard Danysh – San Antonio
Otway Denny – Houston
Daniel Flatten – Houston
Murray Fogler – Houston
Dicky Grigg – Austin
Tommy Jacks – Austin
Lamont Jefferson – San Antonio
Frank G. Jones – Houston
David Kitner – Dallas
Jim Leahy – Houston
Steve McConnico – Austin
Mike McKetta – Austin
Chris Reynolds – Houston
James B. Sales – Houston
Reagan Simpson – Austin
Tom Watkins – Austin
Curt Webb – Houston
John W. Weber – San Antonio
Guy Wellborn – Austin
Bill Whitehurst – Austin
Bill Wood – Denton

The Supreme Court expresses its profound and sincere gratitude to the Texas Fellows of the American College of Trial Lawyers for their willingness to participate in the important endeavor of training trial lawyers to represent poor and low-income Texans. The Commission recognizes that the Texas Fellows have been and continue to be vital to the success of the Pretrial Academy. This exemplary training is made possible only through the dedication and continued support of the Texas Fellows.

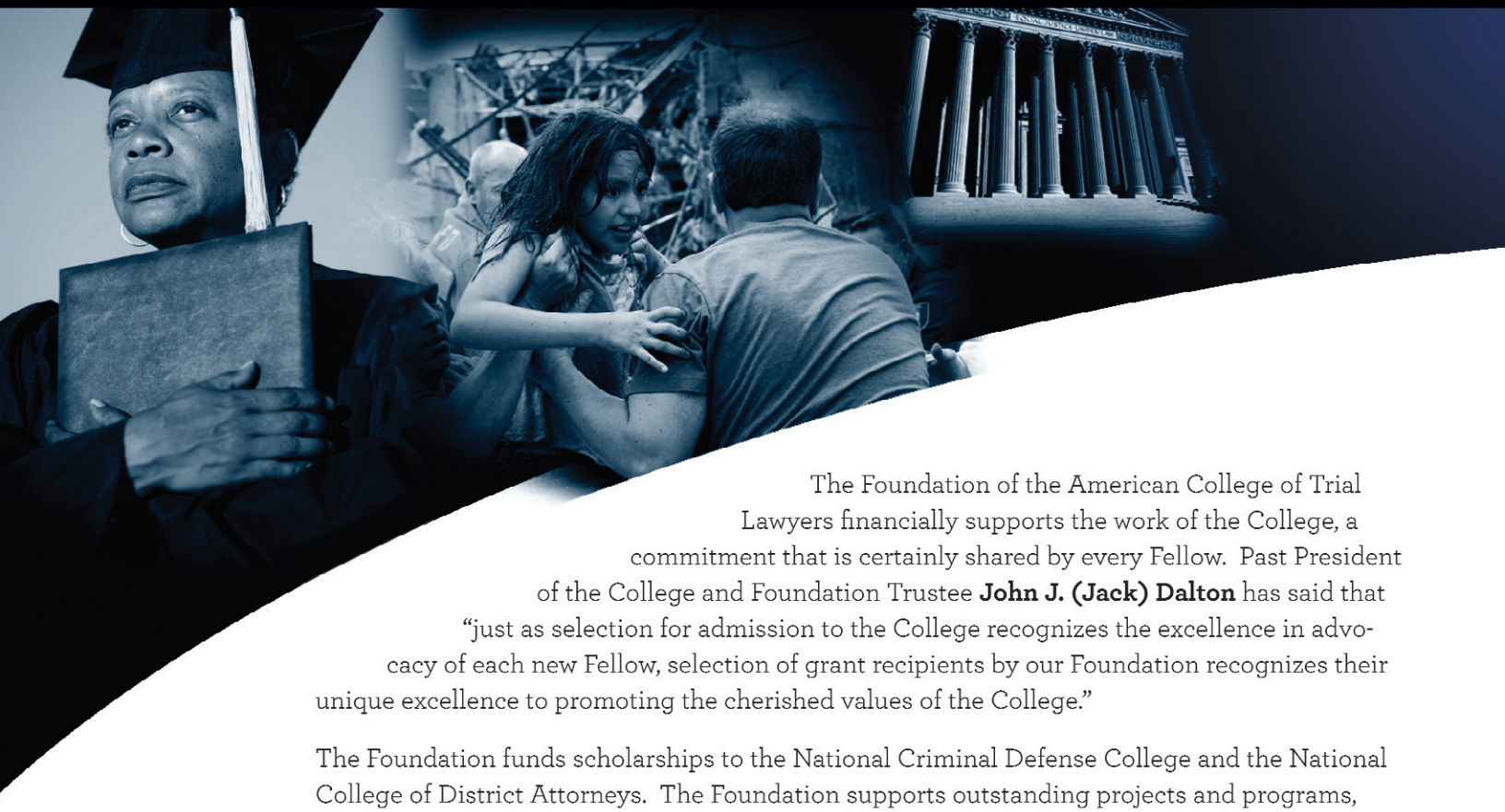
The Supreme Court particularly recognizes Reagan Brown for his exceptional commitment of time and effort in developing, planning, and conducting the Pretrial Academy on behalf of legal aid lawyers.

The Supreme Court acknowledges that the performance by the Texas Fellows who participated in the Trial Academy is in keeping with the highest tradition and ideals of the American College of Trial Lawyers and the legal profession.

Signed August 12, 2013

Chief Justice Wallace B. Jefferson
Justice Nathan L. Hecht
Justice Paul W. Green
Justice Phil Johnson
Justice Don R. Willett
Justice Eva Guzman
Justice Debra H. Lehrmann
Justice Jeffrey S. Boyd
Justice John Phillip Devine

THE FOUNDATION KEEPS THE COLLEGE MOVING; ARE YOU WITH US?



The Foundation of the American College of Trial Lawyers financially supports the work of the College, a commitment that is certainly shared by every Fellow. Past President of the College and Foundation Trustee **John J. (Jack) Dalton** has said that "just as selection for admission to the College recognizes the excellence in advocacy of each new Fellow, selection of grant recipients by our Foundation recognizes their unique excellence to promoting the cherished values of the College."

The Foundation funds scholarships to the National Criminal Defense College and the National College of District Attorneys. The Foundation supports outstanding projects and programs, such as trial skills training for beginning public interest lawyers, law school competitions, committee projects and legal assistance to victims of natural disasters. When the Trustees met during the 2013 Spring Meeting in Naples, Florida, they unanimously voted to increase the first-place cash award for the winner of the Emil Gumpert Award from $50,000 to $100,000. The annual grant recognizes programs, whether public or private, whose principal purpose is to maintain and improve the administration of justice – thus sharing the lofty, yet reachable, goal of the College and its Fellows. The worthwhile causes and programs that have been recipients of the Foundation's largesse, too many to list here, are noted in a new Foundation brochure, to be mailed to all Fellows soon.

The Foundation's increased visibility and corpus can be attributed to the outstanding leadership and vision of **Michael A. Cooper** of New York, New York, who has served as President of the Foundation since 2009 and as Trustee from 2008-2009. As Cooper ends his official duties with

the Foundation, Fellows should not be surprised to hear his name remain associated with that of the Foundation or to hear him as he continues to make a pitch for the organization that has become a source of personal pride. When asked to sum up his thoughts about the Foundation as he leaves its helm, Cooper said,

> I have derived great satisfaction serving as President of the Foundation these past four years and watching its net assets grow over that period from $2,028,974 to $4,069,824. The Foundation shares the College's three-fold mission, and grants are made with that mission in mind. With an attractive new brochure and under the leadership of my successor, David Beck, I am confident that the best years of the Foundation lie ahead.

Incoming Foundation President **David J. Beck** applauded his predecessor, stating that "We owe Mike Cooper a debt of gratitude for his tireless efforts on behalf of our Foundation. But as Mike well knows, the true reward of a job well done is to have done it."

New Trustees' terms coincide with the Foundation's July 1-June 30 fiscal year. David J. Beck, of Houston, Texas, who was elected President of the Foundation, served as President of the College from 2006-2007 and as Secretary of the Foundation from 2011-2013. He is well prepared for his new role, having served as a Foundation Trustee since 2009. He and his wife, Judy, are familiar faces at local, state, regional and national College gatherings. Although Mike Cooper is a hard act to follow, the Foundation could not be left in better hands than those of David Beck.

Sharing the heavy lifting with David Beck, other new Foundation officers are Past President of the College, **Mikel L. Stout**, of Wichita, Kansas, Secretary; and former Regent **Charles H. Dick, Jr.**, of San Diego, California, Treasurer.

Trustees furthering the work of the Foundation represent different levels of participation within the College, a requirement of the Foundation's bylaws. Three Past Presidents serve as Trustees: **John J. (Jack) Dalton** of Atlanta, Georgia; **Joan A. Lukey** of Boston, Massachusetts; and **Michael E. Mone** of Boston, Massachusetts. Three former College Regents serve: **Paul D. Bekman** of Baltimore, Maryland; **Christy D. Jones** of Ridgeland, Mississippi; and **John S. Siffert** of New York, New York. Three Fellows-at-large bring the perspective of the Fellows to the Foundation: **James L. Eisenbrandt** of Prairie Village, Kansas; **Kathleen Flynn Peterson** of Minneapolis, Minnesota; and **Alan G. Greer** of Miami, Florida. The Trustees recently changed the Foundation's bylaws to include and invite a representative of the Canadian Fellows. President of the Board of Directors of the College's Canadian Foundation, **J. Bruce Carr-Harris** of Ottawa, Ontario, represents the Canadian contingent as a Trustee of the American Foundation.

As you learn more about the Foundation and how it makes the College an *active, doing and giving* organization, please contribute now or soon; please keep the College and Foundation *active and doing* by naming the Foundation in your will or trust; and please challenge other Fellows to be *active and giving* by *doing* the same. The Foundation and the College appreciate your help and will give back many times over. ■

BOOK REVIEW

Elizabeth K. Ainslie, Philadelphia, Pennsylvania

Mistrial, by Mark Geragos and Pat Harris

✦ ✦ ✦ ✦ ✦ ✦ ✦

Mistrial is a lively and entertaining read, and probably 90% or more of what Mark Geragos and Pat Harris relate about their long and successful careers as criminal defense lawyers is true. Certainly, most of the observations they make about the shortcomings of the criminal justice system are true. Yet many of their anecdotes seem suspiciously one-sided, and I know one narrative is downright misleading as they tell it.

FIRST, THE GOOD PARTS:

Geragos and Harris make many excellent points about the criminal justice system overall. For instance, (1) many innocent people get convicted; (2) politics and 24/7 media coverage have contributed to the convictions of these innocent people; and (3) criminal defense attorneys generally have legitimate and sound reasons for taking a case to trial and will not do so if a guilty plea to an appropriate charge is an option.

The authors also make vivid and valid points about prosecutors and criminal defense lawyers. For instance, the difference between a prosecutor and a defense lawyer is like "the difference between a stand-up comic and an improv comic." A prosecutor generally goes with a script and builds a case fact by fact, aiming to create a clear narrative for the jury. A criminal defense lawyer has to "react quickly and figure out what is working and what is not while [he's] in the middle of thinking up new ideas. Done well, improv is a work of art. Done poorly, it is painful to watch."

Geragos and Harris are also good on the nature of cross-examination. They point out that the old law-school adage that a lawyer should never ask a question to which she doesn't know the answer just doesn't work, especially not for a criminal defense lawyer. "Attorneys should be daring, take risks, and ask questions they do not know the answer[s] to, as long as the answers aren't likely to hurt the case."

Criminal defense clients are another category that the authors discuss accurately and amusingly. They describe three categories of prospective clients who are nothing but trouble: the ones who expect you to bribe somebody to get them off; the ones who don't want to go to trial but who refuse to consider pleading guilty; and the ones who refuse to pay for your services unless you guarantee an acquittal or dismissal. And they state their preference (with which I agree) for not getting a client's story in great detail, at least at the outset. As the authors say, "until we

go to court and see what the prosecution has for evidence, it is pretty stupid to set up a defense."

THE NEGATIVE PARTS:

My sense, though, is that Geragos and Harris have tried too hard for lively narrative and rhetorical flourish.

First, there's an inordinate amount of detail about high-profile celebrity cases they've handled. If you followed the Scott Peterson, Susan McDougal and Michael Jackson trials, you will undoubtedly have applauded Geragos' and Harris' skill in their defense and will be avid to learn exactly how they managed to get their results. This book will tell you in great, and probably accurate, detail how they did it. As I didn't follow those trials, the amount of space devoted in the book to these cases came across to me as unpleasantly self-congratulatory.

And while I was enjoying this book, with its singular voice, amusing narrative and practical insights into the criminal justice system, I came across a few scathing paragraphs about a prosecutor described as having "the ethics of a Somali warlord." The facts sounded slightly familiar, and I slowly realized they were talking about a friend of mine and a case he'd prosecuted, which he had discussed with me some years ago.

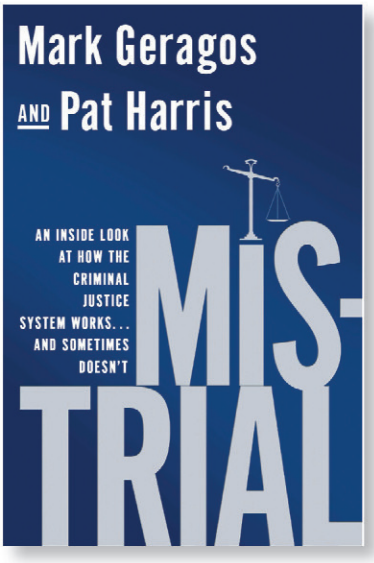
In one instance, Geragos and Harris describe a district court hearing on prosecutorial misconduct in the trial court without mentioning the fact that their clients' appeal, primarily on those grounds, was unanimously denied by the Court of Appeals. (See 386 Fed. Appx. 156, 2010 U.S. App. LEXIS 13618.) That Court said, "We will assume for purposes of analysis, *albeit with no great confidence*, that the District Court correctly decided that the government intentionally prevented [a defense witness's] appearance at trial [by obtaining an arrest warrant for that person, who was reported to have intimidated government child-witnesses]." The Court of Appeals went on to say that there was, in any event, no prejudice to the defendant, and that if Geragos' and Harris' witness had appeared at trial, "the government surely would have savaged him [on cross-examination] and might well have recalled the victims [children who had been abused sexually by Geragos' client] on rebuttal to tell the jury how [the defense witness] had intimidated them."

Geragos and Harris conclude their version of this incident with the statement that my friend's subsequent elevation to acting U.S. Attorney sent a message to prosecutors: "win at all costs, including committing misconduct."

OVERALL IMPRESSION:

For me, the authors' factual omissions, their *ad hominem* attack on persons whose reputation I know to be impeccable and their reach for an inflammatory "message" in this particular instance undid all the favorable impressions I'd received from the rest of the book.

Elizabeth K. Ainslie was inducted into the College in 1998. Her Philadelphia practice is focused on financial services litigation, corporate government investigations, compliance and criminal defense, health law and litigation services. ■



Book reviews are the opinion of the individual writer and do not necessarily reflect the position of the College, its Board of Regents or the Fellows.

If you would like to see book reviews in future issues of The Bulletin, *please direct your comments to the Editors at the National Office, nationaloffice@actl.com.*

WHO ARE THEY NOW?

While everyone has songs they believe reflected their exact life experience, this man practiced remarkable loyalty to singer/songwriter Ed Bruce's musical advice.

Almost finished his Ph. D. in physiological psychology and biochemistry, this young musician received a letter from the department head of his planned postdoctoral fellowship—an early affinity for Fellow-hood forming—advising him that budget cuts meant his postdoc was now unfunded.

With only a final edit left to go on his dissertation, our young guitar-playing advocate packed his academic saddlebags and rode off into the stage-lights of California's country music industry.

> *On the road again... The life I love is making music with my friends...*

After about two years of fast-paced touring, he did what all good country musicians do. He went home to visit his mother.

She was a legal secretary and, tired of the heavy travelling, he agreed to a lunch with her boss.

Having given an empathic "no" when asked whether he had ever considered going to law school, he went to the local library and checked out Louis Nizer's "My Life in Court", as formative book for many bourgeoning advocates as was ever written. That read, he took the LSATs in the middle of a tour, quit the band and went to law school.

While his former bandmates released "Heart Like a Wheel", this chord-strumming counsel-to-be released "First Year", featuring such hits as "Torts" and "My Heart's On the Docket".

Obeying Ed Bruce's dictum almost to the note, he became a medical malpractice counsel. Bruce wrote these timeless lines:

> *Mammas, don't let your babies*
> *grow up to be cowboys*
>
> *Don't let 'em pick guitars and*
> *drive them old trucks*
>
> *Make 'em be doctors and lawyers and such.*

Who would have imagined that this man would later turn out to be a Fellow of the American College of Trial Lawyers, let alone a state chair?

Who is the man in the sepia-toned photo, graced with age?

Our winning contestant, chosen at random, will receive a commendation for perspicacity and wit not to mention a salutation in the next issue of the Bulletin.

Contest not open to...

- The professor of neuropathology who let that student walk away from a perfectly good Ph. D.
- Linda Ronstadt
- The late, great Roy Orbison (Music's not been the same since he died.—Eds.)
- The Monkees, at least those still alive
- Residents of Lotusland
- Practicing or retired doctors or other members of the American Medical Association
- Leftover roadies or groupies from the early 70s.
- Past President Joan Lukey

IN MEMORIAM

The lives of forty-four Fellows of the College are remembered in the pages that follow. ✦ Three lived past the century mark. ✦ Eight lived into their nineties, twenty into their eighties, eleven into their seventies and two into their sixties. ✦ Their average age was 84.6 years. ✦ One had practiced law for eighty years and stopped coming to his office only after turning in his driver's license when he turned one hundred. ✦ At least seventeen saw military service in World War II, seven more during the Korean Conflict. ✦ One participated in the D-Day invasion of Normandy. ✦ One was the officer of the deck when his ship suffered a Kamikaze attack in the invasion of the Philippines. ✦ One had worked on the Manhattan Project and, sent abroad to interrogate captured German prisoners about the German effort to develop an atomic weapon, received the one-word coded message, "Valhalla," that told him that we had dropped the first bomb on Hiroshima. ✦ Some practiced out of the limelight; others had more public roles. ✦ One prosecuted two alleged Mafia leaders and a Congressman and was the first Independent Counsel appointed under the Ethics in Government Act. ✦ One was the mentor of the current Commissioners of both the National Hockey League and Major League Baseball. ✦ One was the ninth winner of the College's Courageous Advocacy Award whose car, home and office had been bombed in the civil rights era. ✦ One had been a Regent of the College. ✦ Several had been state or province chairs. ✦ One Honorary Fellow had been the first woman Prime Minister of the British Empire. ✦ One had been the longest-serving state senator in Nevada history. ✦ One had returned to lead his undergraduate university after having been the third Director-Counsel of the NAACP Legal Defense Fund. ✦ One had been President of the American Academy of Matrimonial Lawyers. ✦ One had been President of the National Council of Catholic Men who had led the United States delegation to a conference of the laity in Rome. ✦ Several led their law classes; many were editors of their law review. ✦ One had been a Fulbright Scholar. ✦ Two earned their law degrees in night school while supporting their families. ✦ Many of them were adjunct professors, prolific writers, frequent lecturers. ✦ In retirement, one taught Latin at a private school, another taught English in a community of Somali immigrants. ✦ They included college athletes, a Golden Gloves boxer, one who was a ranked senior tennis player and ski instructor in retirement, one who shot his age on the golf course at 82 and another who had five holes-in-one and one who had run in one marathon thirty-three times. ✦ One, a career public defender had handled one of the early cases that established the battered woman syndrome as a defense. She once insisted that the charges against a defendant who had broken into her old Volvo and stolen a coat be dismissed. ✦ One had handled the case that legalized gay marriages in Canada. ✦ One arranged for comity to practice in Colorado so that he could handle pro bono cases on his annual vacation there.

Collectively, they represent the best of their chosen profession and indeed of their generation.

— **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

William Clifford Ball, '76, a Fellow Emeritus retired from Ball, Kirk & Holm, P.C., Waterloo, Iowa, died August 1, 1911 at age 82, of complications from Alzheimer's disease. A graduate of the University of Iowa, where he was a member of the tennis team, he served as an officer in the United States Army in the Korean Conflict. After then earning his law degree from the University of Iowa School of Law, he practiced law in Waterloo until 1986. He had served as Black Hawk County Attorney, as Executive Assistant to the Governor of Iowa, as the Iowa Commissioner on the National Conference of Uniform State Laws and on the Board of Governors of the Iowa Academy of Trial Lawyers and the Board of Governors of the Association of Trial Lawyers of Iowa. Retiring at age fifty-eight, in retirement he lived in Aspen, Colorado and in the 1990s became an internationally ranked senior tennis player. He had also served on the Pitkin County Planning and Zoning Commission and worked as a ski instructor. His survivors include his wife, a daughter and two sons.

Russell Edwin Brooks, '91, New York, New York, died June 8, 2013 at age 74. A graduate of Columbia University and of its School of Law, from which he earned both his J.D. and an LLM, he had practiced his entire career with the New York firm Milbank, Tweed, Hadley & McCloy, LLP. His survivors include his wife, a daughter and a son.

F. Lee Campbell, '70, a Fellow Emeritus retired from Karr Tuttle Campbell, Seattle, Washington and a former Regent of the College, died December 17, 2012 at age 89 of diabetic complications. His undergraduate education at the University of Washington interrupted by World War II, he served in Belgium and Germany as an officer in the 102nd Infantry Division, returning from the war with a Combat Infantry Badge and a Bronze Star. After the war, he earned his law degree from the University of Washington School of Law. He had served as President of his local Bar, as a member of the Board of Governors of the Washington State Bar Association and thereafter as its President. He had been the first Chair of the Washington State Judicial Conduct Commission and President of the Washington Defense Trial Lawyers and was a co-founder of the Trial Practice Section of his state Bar Association. His survivors include his wife of sixty-two years, two daughters and a son.

Blaine Emerson Capehart, '68, Capehart Scatchard PA, Mount Laurel, New Jersey, died June 23, 2012 at age one hundred and four. A member of the third-oldest law firm in New Jersey, after graduating from Dickinson College, he attended Harvard Law School for a year and then, in the midst of the Great Depression, completed his law degree by attending Temple University Law School at night. He then joined the law firm with which he practiced for eighty years. Continuing to practice law into his nineties, he ceased coming to the office only when he stopped driving after he turned one hundred. He had served on the New Jersey Supreme Court Advisory Committee for Professional Ethics and was named Professional Lawyer of the Year in 2002. A widower, his survivors include two daughters.

Julius LeVonne Chambers, '92, Charlotte, North Carolina, the ninth winner of the College's Courageous Advocacy Award, died August, 2, 2013 at age 76 after a period of declining health. He graduated *summa cum laude* from then-

predominantly black North Carolina Central College, where he was valedictorian and president of his class and the smallest man on the school's football team. He went on to earn a master's degree in history at the University of Michigan and then enrolled in the University of North Carolina School of Law eight years after that institution's undergraduate school had denied him admission on account of his race. Valedictorian of his law class, he was Editor-in-Chief of the law review, the first of his race to hold that post. He then became the first intern of the NAACP Legal Defense Fund under Thurgood Marshall and Jack Greenberg, earning an LLM at Columbia School of Law during his internship. In 1964, with a small grant from the Legal Defense Fund, he established a law office in Charlotte, North Carolina, which was to become the region's first racially integrated law firm and a national legend in the civil rights era. That small firm, which has produced five Fellows of the College, was the subject of an article in the Fall 2009 issue of *The Bulletin*. In a career that spanned those tumultuous years, Chambers argued–and won–eight cases before the United States Supreme Court. In the course of his early career, his car was blown up, his home bombed, his law office burned and his father's small-town garage business twice torched. He dryly described those incidents as "things that made life interesting." In 1984, he became the third Director-Counsel of the Legal Defense Fund, following in the footsteps of Marshall and Greenberg. Nine years later, he came back to North Carolina to become the Chancellor of his undergraduate alma mater, now named North Carolina Central University. He then became director of the Civil Rights Center at the University of North Carolina at Chapel Hill and Of Counsel to his old law firm. In a city that had once been torn apart by the strife that accompanied the desegregation of its public schools, strife that had ultimately called forth a new generation of progressive leaders, his funeral was attended by over three thousand people of all races, most of them citizens of his adopted city. A widower whose wife had died after a long illness a year before him, his survivors include a daughter and a son.

Arthur Hill Christy, '69, New York, New York, whose death had previously gone unreported, died March 12, 2010 at age 86 of chronic pulmonary disease. After attending Yale University, he entered the United States Navy in World War II and became the youngest commanding officer of a commissioned ship, an antisubmarine vessel, in the Pacific Theater. He then earned his law degree from Columbia Law School. After three years in private practice, in 1953, he became an Assistant United States Attorney for the Southern District of New York, then Chief of the Criminal Division, then Chief Assistant and finally, in 1958-59, United States Attorney. Taking a year off from the federal office in 1954-55, he was Assistant Attorney General of New York and Chief Prosecutor in investigations of alleged corruption in Saratoga and Columbia Counties. During his years as a federal prosecutor, he was involved in the prosecution of Mafia boss Frank Costello for tax evasion, Representative Adam Clayton Powell for tax fraud, and Vito Genovese, alleged Mafia head, on drug charges. In 1959-60, he served as Special Counsel to Governor Nelson Rockefeller. He was the first special prosecutor appointed under the Ethics in Government Act to investigate accusations of cocaine use by Hamilton Jordan, White House Chief of Staff in the Carter Administration. He ultimately concluded that there was no basis for the charges. His private practice began in his father's firm. He later formed his own firm, Christy & Viener, which in 1999 merged with the international firm, Salans. Divorced and remarried,

his survivors include his wife, a son, a daughter and two step-daughters.

Bill Charles Clifton, '92, a Fellow Emeritus from Memphis, Tennessee, died May 15, 2013 at age 79 of heart failure. Entering the United States Army after high school, he served with the National Security Agency in Frankfurt, Germany during the Korean Conflict era. He earned his undergraduate degree at Memphis State University and his law degree from the same institution, attending at night while working to support his family. He worked briefly for the Internal Revenue Service before entering private practice, specializing in criminal tax matters. His most famous case involved the successful defense of country music star Jerry Lee Lewis. His survivors include a daughter and three sons.

Robert E. Cook, '81, a Fellow Emeritus retired to Sarasota, Florida, died March 11, 2013 at age 89. His education at Ripon College was interrupted by service as a pilot in the United States Army Air Corps in World War II. After the war, he completed his undergraduate education at the University of Wisconsin and earned his law degree at its School of Law. After serving for several years as a special agent for the Federal Bureau of Investigation, he practiced law, for most of his career as a partner in Cook & Franke, S.C., in Milwaukee. He had served on the Board of Governors of the Wisconsin State Bar and as President of the American Academy of Matrimonial Lawyers. A widower, his survivors include five daughters.

George Beamer Davis, '58, Greenfield, Indiana, died July 16, 2012 at age 97. He attended DePauw University, dropping out in the middle of the Great Depression, then earned his law degree from the Benjamin Harrison Law School, now the University of Indiana School of Law. He served as Indiana Deputy Attorney General until he was inducted into the United States Army in June 1941, six months before the beginning of World War II. An agent in the Counterintelligence Corps, he was assigned to the Manhattan Project and stationed at Oak Ridge, Tennessee under the command of General Leslie Groves. Following the invasion of Normandy, he was assigned to the Office of the Military Attaché in the United States Embassy in London. He participated in the interrogation of Albert Speer, Germany's Minister of Armaments and War Production to determine that country's source of raw materials for the production of an atomic weapon. He was then placed in charge of the Chateau du Facqueval in Huy, Belgium, where Werner Heisenberg and other captured German scientists were being held in order to obtain information about Germany's attempt to produce an atomic bomb. On August 6, 1945, he had received a one-word message, "Valhalla," from General Groves, informing him that the first atomic bomb had been dropped on Hiroshima. After the war, he practiced law as a partner in Davis & Williams in Greenfield. While serving as Chairman of his County Democratic Party, he had the opportunity to introduce President Harry S. Truman on a campaign stop. He had served as President of his local Bar, as City Attorney and as a member of the Board of Managers of the Indiana Bar Association. For eighteen years he served as a Circuit Judge, returning to practice with his son until his retirement in 1996. His local bar established the George Beamer Davis Distinguished Jurist Award in his honor. His survivors include his wife of seventy-seven years and three sons.

David MacDuff Elderkin, '72, a Fellow Emeritus from Cedar Rapids, Iowa, died November 3, 2012, two days short of his ninety-ninth birthday. A graduate of the University of Iowa and of its School of Law, from which he graduated *cum laude,* he was a member of that university's boxing team, boxing in national Golden Gloves tournaments, and a member of ODK. He had practiced law in Cedar Rapids until he reached the age of ninety. Enlisting in the United States Marine Corps in World War II, he participated with the Second Marine Air Wing in the Battle of Okinawa. After the war, he was for several years a deputy trial prosecutor in his county before returning to private practice. His firm ultimately became Elderkin & Pirnie, P.L.C. He had served as President of the Iowa State Bar Association and was later awarded its highest honor, the Award of Merit. He also served as President of the Iowa Academy of Trial Lawyers, which had honored him as Dean of the Academy. A prolific writer whose work included guest columns and articles for local newspapers as well as trial-related writing, and a frequent lecturer, he had served the College as Iowa State Chair. His survivors include his wife and a son.

William Charles Fuerste, '73, a Fellow Emeritus, retired from Fuerste, Carew, Coyle, Juergens & Sudemeier, P.C., Dubuque, Iowa, died March 26, 2011, at age 88. He attended both the University of Dubuque and the University of Iowa before entering the United States Navy in World War II, in which he saw sea duty on a destroyer escort. He graduated with distinction from the University of Iowa School of Law. He had served the College as Iowa State Chair. His survivors include his wife, three daughters and two sons.

George B. Gallantz, '68, a Fellow Emeritus from New York, New York, retired from Proskauer Rose, died April 24, 2013 at age 100, indeed the day after his one hundredth birthday. The son of Ukranian Jewish parents, he grew up in cold-water tenements in East Harlem and the Bronx. He attended City College of New York and earned his law degree from Brooklyn Law School at a time when that school was tuition-free. He began his career as Assistant Corporation Counsel in the New York City Corporation Counsel's office during the Fiorello LaGuardia administration. He then became a litigation attorney for the New York State Labor Relations Board and then clerked for a judge on the New York State Court of Appeals. After a stint with a large New York City law firm, he formed a small entertainment law firm, where his clients included Marlon Brando and Mickey Mantle. He then joined Proskauer Rose, where he spent the rest of his active career. The longtime outside counsel for the National Basketball Association, he was instrumental in the merger of the NBA and the American Basketball Association. He was a mentor to former Proskauer partner NBA Commissioner David Stern; National Hockey League Commissioner Gary Bettman; and New York City Corporation Counsel Michael Cardozo. His survivors include a son and a daughter.

N. A. Giambalvo, '68, a Fellow Emeritus retired to Singer Island, Florida, died February 2, 2013 at age 99. He was a graduate of DePaul University and of its College of Law. He had spent two years in the Chicago office of the United States Department of Justice at the beginning of World War II before becoming a Special Agent of the United States Army Counterintelligence Corps, serving as Liaison Officer between the Federal Bureau of Investigation and Army Intelligence in Europe. A partner in the Chicago, Illinois firm Boodell, Sears Sugrue, Giambalvo & Crowley, he was later Of Counsel to McBride

Baker & Coles. A Past President of the National Council of Catholic Men, he had chaired the United States delegation to the 1967 Third World Congress of the Laity in Rome. He had been a professor at DePaul College of Law and a Trustee of DePaul University. His survivors include his wife and a son.

Richard Haas, '71, a Fellow Emeritus from Berkeley, California, retired from Lasky, Haas, Cohler & Munter, died December 12, 2012 at age 88. His undergraduate education at the University of California at Los Angeles, where he was a member of the golf team, was interrupted by World War II. He was stationed on the *USS Mugford,* DD389, participating in various battles in the South Pacific and the occupation of Japan and ultimately serving as its Executive Officer. During the invasion of the Philippines, his ship was the victim of a kamikaze attack in the Surigao Strait, suffering major damage and loss of life. After the war, he earned his undergraduate degree from UCLA and his law degree at Boalt Hall of the University of California at Berkeley, where he was a member of the Order of the Coif. He initially practiced with the San Francisco firm, Brobeck, Phleger & Harrison, before leaving to form his own firm. A golfer, he had scored five holes-in-one, including one at the famed course at Carnoustie, Scotland. He had been a sworn officer of the Berkeley Police Department and had served as the College's Northern California State Chair. A widower, his survivors include two sons.

Robert H. Harry, '65, a Fellow Emeritus and former Regent, retired from Davis, Graham & Stubbs, Denver, Colorado, died June 25, 2013, at age 94, three days short of his ninety-fifth birthday. He was a graduate of Yale and of Yale Law School. He had also served the College as Colorado State Chair. A widower, he is survived by a daughter.

C. Clark Hodgson, Jr., '94, retired Chairman of Stradley Ronon Stevens & Young, LLP, Philadelphia, Pennsylvania, died April 15, 2013 at age 73 after a lengthy illness. A graduate of the College of the Holy Cross, where he was recognized as the outstanding student in his class, he earned his law degree from Villanova Law School, where he was editor of the law review, and clerked for a federal district judge before entering private practice in his father's law firm, where he spent his entire practicing career. During his career, he served as Special Counsel to the Pennsylvania Senate and House of Representatives. In a "second career" after his retirement, he taught Latin at a local private school. He had served in the leadership roles in numerous civic organizations and had served the College as Pennsylvania State Chair. His survivors include his wife, three daughters and a son.

James E. Hullverson, '89, a Fellow Emeritus from St. Louis, Missouri, retired and living in Naples, Florida, died May 26, 2012 at age 83. A graduate of Yale University and of St. Louis University School of Law, he won one of the first million-dollar verdicts in the United States. He had been President of the Lawyers Association of St. Louis, the Missouri Association of Trial Lawyers and the Inner Circle of Trial Advocates and had served on the Board of Governors of the Association of Trial Lawyers of America and of the Missouri Bar. He served a term on the Missouri Appellate Judicial Commission, which nominates state appellate judges, and had been a Director of the St. Louis Legal

Aid Society. The author of numerous articles and a frequent lecturer, he received numerous honorary degrees. An athlete, he was elected to the Missouri Athletic Club Hall of Fame for both basketball and swimming. He had received the Lawyers Association of St. Louis Award of Honor and the University of Missouri School of Law's Distinguished Non-Alumnus Award. His survivors include his wife of sixty-one years, a daughter and a son.

Colin Kirkland Irving, Ad.E. '82, Montréal, Québec, Canada, died June 11, 2013 at age 78. He had earned his undergraduate and law degrees from McGill University. In 1997 at age sixty-three, he had cofounded a firm, Irving Mitchell Kalichman, whose guiding principle was to do good work and be a good person. He had handled a number of high profile *pro bono* cases, including acting as lead counsel in the case that resulted in the legalization of gay marriage in Canada. In his later years, he devoted a great deal of his time to two legal aid clinics, interacting with law students. A widower, his survivors include two daughters, a son, a stepdaughter and a stepson.

Jamille George Jamra, '78, a Fellow Emeritus, retired from Eastman & Smith, Sylvania, Ohio, died July 2, 2013 at age 95, of kidney failure. He was a graduate of Northwestern University and of the University of Michigan School of Law. He served in the 13th Air Force, 868th Bombardment Squadron, of the United States Army Air Corps in World War II, seeing service in the South Pacific. A Past President of the Lucas County Bar Association, the Toledo Bar Association and the Ohio Bar Association, he had served in the American Bar Association House of Delegates. He was the recipient of the Ohio Bar's highest honor, the Ohio Bar Medal. He had also served as Senior Warden of his Episcopal Church. A widower, his survivors include a daughter and two sons.

Daniel D. Jewell, '72, a Fellow Emeritus, retired from Jewell, Collins & Flood, Norfolk, Nebraska, died May 24, 2013 at age 90. After attending Doane College, Crete, Nebraska, he graduated from the University of Nebraska, then enlisted in the United States Navy, and, assigned as an officer to the European Theater, took part in the D-Day invasion of Normandy. He earned his law degree from the University of Nebraska College of Law. He served as President of the Nebraska State Bar Association and was a member of the Nebraska State Bar Commission, which administered that state's bar examination. His survivors include his wife, two daughters and a son.

Thomas Soloman (T. Sol) Johnson, '93, a Fellow Emeritus, retired from Johnson & Green, PA, Milton, Florida, died August 5, 2012 at age 72. A graduate of Auburn University and of the University of Florida School of Law, he began his legal career practicing with his father and ended it practicing with his son. He had served as President of his local Bar and had served in many capacities in his Baptist church. His survivors include his wife of thirty-one years and five sons.

John Jerome Kennelly, '58, Chicago, Illinois, a Fellow Emeritus who had practiced in Chicago, Illinois, died December 21, 2012 in Palm Springs, California at age 101. He had earned his undergraduate and law degrees at Loyola University, Chicago. A Past President of the Illinois Trial Lawyers Association, he was an early specialist in aviation law. A widower whose wife of sixty-two years predeceased him, his survivors include two daughters.

Robert J. King, Sr., '70, a Fellow Emeritus, retired from Hvass, Weisman & King, Chartered, Minneapolis, Minnesota and living in Hopkins, Minnesota, died in June, 2013 at age 87. Beginning his undergraduate education at Purdue University, he had joined the United States Navy V-12 officer's program in World War II, studying electrical engineering at the University of Michigan. Returning from active duty as a naval officer, he earned his law degree at the University of Michigan School of Law. He remained in the United States Naval Reserve, retiring after twenty years with the rank of Commander. He had been a founding member and President of the Minnesota chapter of ABOTA and President of the Minnesota State Bar Association. He had served the College as Minnesota State Chair. In his later years, he taught English in a local Somali community. His survivors include his wife of sixty-one years, three sons and five daughters.

Robert L. Kleinpeter, '78, a Fellow Emeritus retired from Kleinpeter & Kleinpeter L.L.C., Baton Rouge, Louisiana, died May 18, 2013 at age 88. His undergraduate education interrupted by World War II, he served in the United States Army Air Corps as a tail gunner on a Bomber in the Aleutians, India, China and South Pacific Theaters. He returned to complete his undergraduate and legal education at Louisiana State University, serving as editor of the law review. He began his career as a Special Agent for the Federal Bureau of investigation, then returned to Baton Rouge. Active in the organized Bar, he served on the Board of Governors of the Louisiana State Bar Association. For many years, he was an adjunct professor at the LSU School of Law. His survivors include his wife of sixty-two years and a son and a daughter, both of whom practiced law with him.

Samuel Hubert Mayes, Jr., '83, Little Rock, Arkansas, died May7, 2013 at age 81. A graduate of the University of Arkansas and of its School of Law, he had served as Assistant Secretary for the Arkansas State Senate while in law school. He first worked as attorney in the State Revenue Department, then entered the United States Air Force as a jet fighter pilot. He then became a Deputy Prosecuting Attorney before entering private practice. He later acted for a year as Special Assistant Attorney General of Arkansas. An avid horse racing enthusiast and thoroughbred owner, he served on the board of the Arkansas Thoroughbred Breeders and Horseman's Association. His survivors include his wife of forty-one years and three daughters.

Glenn Richard Murray, '83, retired from Bingham McCutchen LLP, San Francisco, California, died August 7, 2012 at age 82. A graduate of Yale University, he had served as a destroyer officer in the United States Navy during the Korean Conflict. A *magna cum laude* graduate of the Harvard Law School, he was editor of the law review and thereafter Frederick Sheldon Traveling Fellow in Law. In his early career, he left the practice twice, first to serve as a political-military analyst for the Office of the Assistant Secretary of Defense for International Security Affairs and later as a consultant on nuclear non-proliferation in that same office. One of the suits he handled resulted in his client's being awarded the largest condemnation award in the history of the United States Court of Claims. He is survived by his wife of thirty-two years.

Joe H. Nagy, '90, a Fellow Emeritus, retired from Crenshaw, Dupree & Milam, Lubbock, Texas, died April 6. 2013 at age 84. A graduate of Texas A&M University, he served in the United States Army in the Korean Conflict. Discharged after being wounded, he earned his law degree from the University of Texas Law School. He served as President of the State Bar of Texas and as an adjunct professor at the Texas Tech School of Law. He chose to donate his body to the Texas Tech School of Medicine. His survivors include his wife and two children.

P. Keith Nelson, '86, a Fellow Emeritus, retired from Richards, Brandt, Miller & Nelson, Salt Lake City, Utah, died March 5, 2013 at age 73 of complications from a malignant melanoma. After attending Stanford University for a year, he served on a Latter Day Saints mission in central Germany before returning to graduate. He thereafter earned his law degree from the University of Utah College of Law. He served in many capacities in his local temple, and he and his wife spent ten years as missionaries in the LDS Addiction Recovery Program, helping those struggling with addiction. A motorcyclist, he also ran countless marathons, including Boston and New York. He ran in the St. George Marathon thirty-three consecutive years. His survivors include his wife of forty-eight years, two daughters and a son.

John Jude O'Donnell, '75, a Fellow Emeritus, retired from Thompson O'Donnell, Washington, District of Columbia, died February 23, 2013 at age 81. A graduate of Villanova University and of the Georgetown University School of Law, he clerked for a federal district judge and served as Assistant United States Attorney for the District of Columbia before entering private practice. He served as a member of the Board of Governors of the District of Columbia Bar Association and was named its Lawyer of the Year in 1990. He was the District of Columbia Defense Lawyers' Association Lawyer of the Year in 1993. He had served the College as the District of Columbia State Chair. His survivors include his wife of fifty-seven years, four daughters and two sons.

George Dewey Oxner, Jr.'81, a partner in Haynsworth Sinkler Boyd, PA, Greenville, South Carolina, died July 7, 2013 at age 79. A graduate of Washington & Lee University and of the University of South Carolina School of Law, he had served as Secretary and Treasurer of the Defense Research Institute and as President of his local Bar, of the South Carolina Defense Trial Attorneys Association, of the South Carolina Chapter of the American Board of Trial Advocacy and of the South Carolina Bar Foundation. At the time of his death he was Co-Chair of the South Carolina Supreme Court Chief Justice's Commission on Professionalism. He had received the Tommy Thomason Award from his local Bar, the DuRant Distinguished Public Service Award, the South Carolina Defense Trial Association's Robert Hempbell Award and the University of South Carolina School of Law Alumni Association's Compleat Lawyer Platinum Award. A Lieutenant Colonel in the United States Air Force Reserve, he had served the College as South Carolina State Chair. His survivors include his wife, a son and two daughters.

John Dalton Peacock, '84, a Fellow Emeritus, retired from Peacock, Ingleson & Stenton, Sault Ste. Marie, Michigan, whose death had been previously unreported, died August 30, 2008 at age 87. A graduate of the University of Detroit and of its School of Law, the gap between his undergraduate and law school years would

indicate that he probably served in World War II, though information to verify that is not available. In the middle of his career, he served as a municipal judge for nine years. A widower who had remarried, his survivors include his wife, two daughters, four sons, six step-daughters and one step-son.

Samuel Hamilton Porter, '85, a member of Porter Wright Morris & Arthur LLP, Columbus, Ohio, died May 5, 2013 at age 85 as the result of a stroke. A graduate of Amherst College, after a stint in the United States Navy, he earned his law degree from Ohio State University College of Law. He represented the local school board in its school desegregation case, which went all the way to the United States Supreme Court. As he reached the age when many of his peers were retiring, he began a second career of teaching law and acting as a mediator and arbitrator in major cases. He was Chair of the American Bar Association Section of Public Utility, Communications and Transportation Law and a long-time member of the American Bar Association House of Delegates. At the time of his death, he was slated to become a member of that organization's Board of Governors. He had volunteered to sit second chair in the defense of indigents charged with murder, and he ultimately served as Chair of the Ohio Public Defender Commission. He arranged to be admitted to the Colorado Bar so that he could do *pro bono* work while on vacation there. On the day he suffered the stroke from which he ultimately died, a neighbor had found him behind the wheel of his car, engine running, preparing to go to his office on a Monday morning. His survivors include his wife, two daughters and two sons, one of whom is a Fellow of the College.

William J. Raggio, '85, a partner in Jones Vargas, Reno, Nevada, died February 24, 2012 at age 85 while on vacation in Australia. Enlisting in the United States Navy at age seventeen, he was commissioned an officer in the United States Marines near the end of World War II. He received his undergraduate degree from the University of Nevada, Reno, and his law degree from Hastings College of Law, then pursued a master's degree from Boalt Hall at the University of California, Berkeley. The District Attorney of Washoe County for twelve years, he was named Outstanding Prosecutor in the United States in 1965 and thereafter was elected President of the National District Attorneys Association. The longest serving State Senator in Nevada history, he served for five decades and was Majority Leader for ten sessions. He had been a Trustee of the University of Nevada, Reno Foundation and a Director and as Chair of the Board of Directors of the American Legislative Exchange Council. A widower who had remarried, his survivors include his wife and two daughters.

Lionel David Roebuck, '02, Heenan Blaikie LLP, Toronto, Ontario, Canada, died April 11, 2013 of pancreatic cancer. A graduate of the University of Toronto and of its School of Law, he had been Treasurer and Chairman of the Ontario Bar Association Civil Litigation Section and a Director of the Advocates' Society. His survivors include his wife and two sons.

Edward Maum Sheehy, '89, a partner in McElroy, Deutsch, Mulvaney & Carpenter, LLP, Southport, Connecticut, died April 22, 2013 at age 73. A graduate of Yale University and of the University of Connecticut School of Law, where he was editor of the law review, he served three terms as First Selectman of Woodbridge, Connecticut. He

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had been President of the Greater Bridgeport Bar Association, the Connecticut Bar Association and the University of Connecticut Law School Alumni Association. He had received the Career Service Award of the Greater Bridgeport Bar Association, the Connecticut Bar Association's John Eldridge Shields Distinguished Professional Service Award and the Connecticut Defense Lawyers Award for Outstanding and Distinguished Service to the Defense Bar. His survivors include his wife, a daughter and three sons.

Henry Evans Simpson, '81, a partner in Adams and Reese LLP, Birmingham, Alabama, died July 8, 2013 at age 78. A graduate of Vanderbilt University and of the University of Virginia School of Law, where he was a member of the law review, he had served the College as Alabama State Chair. He had served as a director of Regions Financial Corporation for thirty-four years and as a member of the Board of Directors and as Chair of the Civil War Preservation Trust. A widower, his survivors include a daughter and two sons.

William E. Smith, '72, a Fellow Emeritus who practiced for over sixty years in Americus, Georgia, died December 11, 2011 at age 94. His undergraduate education came from Emory Junior College in Valdosta, Georgia and Georgia Southwestern College, and he earned his law degree at the University of Georgia School of Law. He served as an officer in the United States Army Air Corps in World War II. He had been a Juvenile Court Judge and had been Chair of the Georgia Game and Fish Commission, was a Past President of the Georgia Bar Examiners and a former city attorney for a number of small communities in his area. His survivors include his wife and two daughters.

Harlow Lee Sprouse, '80, Sprouse, Shrader Smith PC, Amarillo, Texas, died April 5, 2013 at age 82. He had served four years in the United States Air Force during the Korean Conflict as an electrician on a B-36 Bomber before earning his undergraduate degree at North Texas State University. At the University of Texas Law School, from which he graduated third in his class, he had turned down the Texas Law Review because he was told that he could not participate in both the law review and moot court. He ultimately won the school's moot court competition and was named the outstanding student in his class. He had served as President of the Amarillo Bar, as a Director of the State Bar of Texas and as Chair of the Texas Bar Foundation. He had served as a member of the Board of the Texas Center for Legal Ethics and Professionalism and co-authored the *Texas Trial Notebook*. He had received the Texas State Bar's President's Award of Merit and sat on the Texas Disciplinary Rules of Professional Conduct Committee. He had also served on the board of the Amarillo Little Theater. His survivors include his wife of almost fifty-five years and three daughters.

Shelley Jean Stark, '02, a Fellow Emeritus, retired Federal Public Defender from Pittsburgh, Pennsylvania, died June 24, 2013 at age 64 as the result of a fall. She had attended undergraduate school at Smith College for two years before transferring to Stanford University, from which she graduated, then earned her law degree at the University of Pennsylvania School of

Law. Urged by her grandfather to be a "poor person's lawyer," she spent her entire legal career doing just that. She began practice with the Philadelphia Lawyers' Committee for Civil Rights, then worked for the Public Interest Law Center of Philadelphia and the King County Public Defender before joining the Allegheny County Public Defender's office in Pittsburgh, later becoming the Federal Public Defender in Pittsburgh. She had taught at the University of Pittsburgh and was a yearly visiting instructor in trial advocacy at the Harvard Law School. In one of her early cases, she won a new trial and ultimately an acquittal for a woman accused of homicide, using the battered woman defense. A passionate advocate for her clients, even the repeat ones, she once asked that charges against a defendant who had broken into her old Volvo and stolen her coat be dropped. (The defendant's lawyer had informed him that he had "robbed Robin Hood.") Disabled by a stroke, her psychiatrist-husband had moved her to New Haven, where she would not have to suffer from seeing colleagues with whom she could no longer practice. Her survivors include her husband, a son and two daughters.

Lawrence Edward Stewart, '76, a Fellow Emeritus, retired from Stewart & DeChant Co. L.P.A., Cleveland, Ohio, died June 28, 2013 at age 88. A graduate of the University of Ohio and Case Western Reserve School of Law, he was a Past President of the Cleveland Bar Association, the Ohio Academy of Trial Attorneys and the Cleveland Academy of Trial Lawyers. He had chaired the Court Management Project for construction of the Justice Center in Cleveland. He had served the College as Ohio State Chair. His survivors include his wife of fifty-six years, a daughter and three sons.

Alan Sweatman, Q.C., '73, a Fellow Emeritus, retired from Thompson Dorfman Sweatman LLP, Winnipeg, Manitoba, Canada, died April 10, 2012 at age 91. After earning his undergraduate degree at the University of Manitoba, he enlisted in the Royal Canadian Navy in World War II, in which he served as an officer. After the war, he earned his law degree at Manitoba Law School. For many years, he was chair of the partners in his law firm. A former President and a Life Bencher of the Law Society of Manitoba, he had been a Chairman of the Canadian Council of Christians and Jews and served as a director of a number of major corporations. A golfer, he had shot his age at age eighty-two, and he and his wife had sailed the Adriatic and the Caribbean. His survivors include his wife of sixty-eight years and six children.

Thomas Werth Thagard, Jr., '91, a Fellow Emeritus, retired from Balch & Bingham, Montgomery, Alabama, died July 3, 2013 at age 78 of Parkinson's disease. An Eagle Scout and the son of a judge, he graduated *summa cum laude* from the University of the South at Sewanee, where he was a member of Phi Beta Kappa and ODK. He earned his M.A. in political science from Emory University, was a Fulbright Scholar and earned his law degree from the University of Virginia School of Law. At the time of his death, he was living in retirement in Birmingham. His survivors include his wife, a son who is a Birmingham lawyer and two

daughters, one of whom professes to have gone to law school so that she could hold her own at the family dinner table.

The Rt. Hon. Baroness Margaret Thatcher, '90, former Prime Minister of the United Kingdom and an Honorary Fellow, London, England, died April 8, 2013 at age 87 of a stroke. One of the most influential political figures of the Twentieth Century, she served at No. 10 Downing Street for over eleven years. The daughter of a grocer, Methodist lay preacher and local councilor, she studied chemistry at Somerville College, Oxford, becoming active in Conservative politics while a student. She qualified as a barrister in 1953, specializing in taxation. In a long political career, she was the youngest-ever Conservative candidate for a seat in Parliament, the first woman to lead a major British political party and the first to lead the Opposition in Parliament. When the Conservative Party won the 1979 election, she became Prime Minister. Her policies of reducing the role of the state and boosting the free market, though unpopular at the time, are generally credited with turning Britain's economy around. Her decisive response to the Argentine invasion of the Falkland Islands added to her domestic popularity. In both economic matters and foreign policy, she found a soulmate in United States President Ronald Reagan. Although the Soviet Union had dubbed her "The Iron Lady" for her early criticism of its repressive policies, her unlikely alliance with Mikhail Gorbachev led to a shift in relations between the two countries. Known as a politician who was willing to stand on her own convictions rather than compromising to achieve consensus, her reaction against the emerging European Union ultimately led to her downfall within her own party. She was elevated to the Peerage as Baroness Thatcher of Kestevan and received the Order of the Garter in 1995. Beginning in the early 2000s, her health began to decline. A widow, her survivors include a daughter and a son, twins.

Robert Byron Webster, '91, a Fellow Emeritus, retired from Cox Hodgman & Giamarco PC, Troy Michigan and living in Beverly Hills, Michigan, at the time of his death, died May 15, 2013 at age 81. A state champion swimmer in high school, and a college swimmer, he enlisted in the Air National Guard during the Korean Conflict while a student at the University of Michigan and saw active duty for three years. After completing his undergraduate degree, he earned his law degree from the University of Michigan School of Law. After a clerkship with a federal district judge, he practiced law for fifteen years before serving for nineteen years as a Circuit Court Judge, then returning to private practice for twenty-nine more years. He had served as President of the Michigan State Bar, as Chair of the Committee to Revise and Consolidate Michigan Court Rules, as Co-Chair of the Judicial Qualifications Committee that screened candidates for federal judgeships, as a member of the Board of Directors of the American Judicature Society and as a member of the National Commission on Uniform State Laws. He had served the College as Michigan State Chair. His survivors include his two daughters and two sons.

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Linda Coats, Oklahoma City, Oklahoma, wife of Past President Andrew M. Coats, died July 24, 2013, of ovarian cancer and MDS.

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

2013 Annual Meeting
San Francisco, California
October 24-27, 2013
Marriott Marquis San Francisco
Registration open now

2014 Spring Meeting
La Quinta, California
March 6-9, 2014
La Quinta Resort & Club
Registration materials to be mailed in November 2013

2014 Annual Meeting
London, England and
Paris, France
September 11-14, 2014
Grosvenor House, London
Le Grand, Paris
Registration materials to be mailed in April 2014

REGIONAL MEETINGS

Tri-State Regional Meeting
Alabama, Florida, Georgia
February 6-8, 2014
The Ritz-Carlton, Amelia Island, Florida

Region VI Meeting
Arkansas, Louisiana, Mississippi, Texas
April 25-27, 2014
Capital Hotel, Little Rock, Arkansas

3rd Circuit Regional Meeting
Delaware, New Jersey, Pennsylvania
May 30-31, 2014
Hotel du Pont, Wilmington, Delaware

Region V Meeting
Iowa, Manitoba, Minnesota, Missouri, Nebraska, North Dakota, Saskatchewan, South Dakota
May 16-17, 2014
South Dakota Location TBA

Northwest Regional Meeting
Alaska, Alberta, British Columbia, Idaho, Montana, Oregon Washington
August 7-9, 2014
Suncadia Resort, Cle Elum, Washington

THE BULLETIN

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.